



Services Regulation in the Caribbean

Transport Services

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Abstract

CARIFORUM States have generally taken a cautious approach in adopting commitments under the Economic Partnership Agreement by having them reflect their World Trade Organization commitments, excluding sensitive subsectors, and inscribing broad horizontal reservations. This report assesses the regulatory framework for trade and investment in five areas – horizontal measures, information and communications technologies, transport services, professional services, and tourism services in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago under the CARIFORUM – European Union Economic Partnership Agreement. The analysis concludes that of the five areas reviewed, adjustments are recommended principally to legislation covering information and communications technologies, professional services, and transport services.

The report is part of the series: SERVICES REGULATION IN THE CARIBBEAN, which includes the present technical note of Transport Services as well as a Summary Report and 4 technical notes. To access them, you may either go to the web page www.iadb.org/publications or use the links below:

Summary Report

Horizontal Measures

Information and Communications Technology

Transport Services

Professional Services

Tourism services

TRANSPORT SERVICES

This chapter reviews water, air, and land transport services, which are crucial to trade in goods and services (modes 2, 3, and 4) and central to economic growth and development. For the three island-States covered in this review, air and maritime transport are critical means for engaging in global commerce. Land transportation services are potentially of greater significance to continental countries.

The UNCTAD Review of Maritime Transport, 2011, provides the most recent Liner Shipping Connectivity Index scores indicating how well countries are connected to global shipping networks based on the status of their maritime transport sector.¹ The Liner Shipping Connectivity Index score for Jamaica was 28.16, giving the country a rank of 41 out of 162 countries; Trinidad and Tobago, with a score of 17.90, had a rank of 65; Barbados received a score of 5.85, giving it a rank of 111. These rankings may be compared with 136 for Guyana, which had a score of 3.96; and 139 for Belize, which had a slightly lower score of 3.85. The UNCTAD Review highlights the importance of maritime transport to Jamaica, which is attempting to position itself as a global transshipment and logistics hub;² and to Trinidad and Tobago, which has a large energy export sector and a growing role as an important container trans-shipment centre between North America/Europe and South America. Internal waterways transport services appear to feature prominently only for Guyana, though there is evidence of sub-sectoral regulation in other countries reviewed.

The regulatory framework defining the road and rail transportation sector of all five countries shows certain similarities. The industry in both Belize and Guyana is not as highly developed as may be expected given their location in Central and South America, respectively. Railway services have generally not been used in recent times in any of the five countries, but attempts to revive traditional railway services have been undertaken in Jamaica and Trinidad and Tobago.

Studies of Guyana's transport sector suggest a need for the sector to become more efficient, and that governmental measures are required to expand the role of private investment. The country's government has expressed its commitment to public-private partnerships (PPP), as

¹ See UNCTAD Review of Maritime Transport 2011, pp. 204-206. Note that the highest ranking country is China with 152.06 index points. Hong Kong China is second with 115.27 points, and Singapore is third with 105.02 points; viewed on line at http://archive.unctad.org/en/docs/rmt2011_en.pdf.

² E.g., "Vision 2030 Jamaica: Transport Sector Plan 2009-2030," Transport Task Force 2009, pp. 16-17, viewed on-line at http://www.mtw.gov.jm/general_information/reports/Vision%202030%20Jamaica%20-%20Final%20Draft%20Transport%20Sector%20Plan%20_Jul.pdf.

evidenced by the construction and maintenance of road infrastructure, river, and maritime port facilities, and more recently concession contracts for the maintenance of highways or the management of airports.³ It has also expressed its commitment to the general principle that the costs of transport infrastructure and services should be paid for by the users and that subsidies should be reduced.

The 2005 comprehensive review of the Guyana transport sector, which was financed by the European Development Fund (EDF), advances a transport strategy designed to address the problems of the transport sector through a mixture of regulatory reform, measures to encourage competition, and measures to ensure the long-term sustainability of transport sector infrastructure and equipment. There is little evidence to suggest that the proposed regulatory reforms have been implemented. No similarly comprehensive independent study of the transport sector of the other four countries was readily available for the purpose of this analysis.⁴

The following assessment of transportation services addresses key areas where liberalization commitments have been undertaken by the five countries reviewed, such as passenger and freight services, as well as certain distinct “GATS plus” regulatory features of the EPA that may require amendments to existing legislation, regulations, and/or practices. The EPA establishes a special regulatory framework for maritime transport services for which there is no GATS counterpart, and the scope of air transport services covered by the EPA is arguably broader than in the GATS. Special incentives designed to attract investment in transport services are also examined.

Water transport

The services under the heading “maritime transport services” in Annex IV.F of the EPA of which one or more of the five countries have undertaken commitments are passenger transportation, freight transportation, rental of vessels with crew, maintenance and repair of vessels, pushing and towing services, vessel salvaging and refloating services, ships surveys, ship registration,

³ E.g., “Guyana Transport Sector Study,” December 2005, on line, which may be viewed at <http://www.gina.gov.gy/guyanatrtransportstudy/mainreport.pdf>.

⁴ But note that countries have developed sectoral strategy documents which provide useful insights; e.g., “Vision 2030 Jamaica: Transport Sector Plan 2009-2030,” Transport Task Force 2009, viewed on-line at http://www.mtw.gov.jm/general_information/reports/Vision%202030%20Jamaica%20-%20Final%20Draft%20Transport%20Sector%20Plan%20_Jul.pdf.

navigational aid and communications / meteorological services, and home-porting, bunkering, and short-sea and ship chandelling.⁵

The particular nature of passenger transportation differs from other segments of the maritime transport sector. Passenger transportation services may involve ocean-going or coastal water ferries, including hydrofoils and hovercraft, as well as other vessels on a scheduled or non-scheduled basis. Small pleasure craft and ferries generally operate within coastal waters and are subject to the legal regime governing cabotage that falls outside of EPA disciplines. International passenger transport pertains to the cruise ship industry which, subject to environmental regulations and possible tax measures, largely operates without any restrictions on market access. Multilateral and regional frameworks other than the EPA are therefore of greater practical significance in defining the regulation of passenger transportation services in the region.

EPA special regulatory framework for maritime transport services

Freight services and port services are subject to a ‘GATS plus’ regulatory regime under the EPA. Additionally, the EPA imposes certain general undertakings with respect to the commercial presence of international maritime service suppliers.

Freight services

Freight transport services may involve the transportation of frozen or refrigerated goods, bulk liquids or gases, containerized freight, and other freight. Liner services and bulk shipping operations have different structural features. Liner services are provided by shipping companies operating (mostly) containerships on a regular basis between scheduled, advertised ports of loading and discharge. Bulk shipping operations are undertaken on ships designed to carry homogenous unpacked (dry or liquid) cargoes. Bulk shipping operations are ordinarily carried out for individual shippers on non-scheduled routes. Freight transportation is subject to special disciplines under the EPA.

⁵ Note that some of these services are classified under CPC Code 72 relating to water transport services; others fall under CPC Code 74 relating to supporting and auxiliary transport services; some are not listed as falling within any particular CPC classification; and that concerning the maintenance and repair of transport equipment (vessels) falls under another section (8) of the CPC Code on “Business services; agricultural, mining and manufacturing services.” But note that the need for the inclusion of maintenance and repair of transport equipment in comprehensive commitments in the sector has long been recognized. See also “Maritime Transport Services,” Background Note by the Secretariat, S/C/W/62, 16 November 1998, paragraph 54. Where specific commitments have been taken, the legislative measures in the five countries reviewed are addressed in so far as these merit attention.

Article 109 of the EPA specifically prohibits the introduction of cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and requires States to terminate, within a reasonable period of time, any existing cargo-sharing arrangements. Moreover, upon the entry into force of the EPA, States must abolish and abstain from introducing any unilateral measures and administrative, technical, and other obstacles that could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport. International maritime service suppliers should be granted commercial presence on either an MFN or national treatment basis, whichever is more favourable.

The United Nations Convention on a Code of Conduct for Liner Conferences, to which all countries reviewed except Belize are parties, provides a framework for cooperation in the provision of liner services. A liner conference is a group of two or more vessel-operating carriers that provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits with an arrangement to operate under uniform or common freight rates and any other agreed conditions. Membership of a conference under the convention is open to national lines involved in a country's trade and may include other shipping lines, depending on factors such as the volume of trade on any route, the adequacy of shipping space, and the probable effect of admission of the shipping line to the conference. The approach adopted by the convention was traditionally facilitated through block exemptions from anti-trust laws. The convention, however, was never widely implemented and largely affected only trade between Western Europe and West Africa.⁶

In 2006 the European Commission proposed the repeal of the block exemption established by Council Regulation 4056/86, which allowed carriers to fix prices and regulate capacity jointly as provided by the UN Convention on a Code of Conduct for Liner Conferences. The commission's proposal was adopted at the September 25 Competitiveness Council, and following a transitional period the repeal entered into effect in October 2008. The abolition of the

⁶ See also "Maritime Transport Services, Background Note by Secretariat" WTO doc. S/C/W/62, 16th November 1998, which notes that the conference system and bilateral inter-governmental cargo sharing agreements gradually lost significance due to the erosion of the "mercantilist model," which dates back as far as the 17th century, as evidenced in the British "Navigation Acts." The model was premised on the view that the external trade of a country had to be transported by ships flagged in the country and manned by nationals, and colonial traffic was to be reserved to the flag of the country. Despite the abolition of this approach in the UK in 1847, traces of this doctrine remain in the legislation of numerous countries. During the 1960's and 1970's the mercantilist model largely disappeared as a result of decolonization and the "deflagging" of bulk fleets and the growth of trade between countries carried in ships belonging to neither.

exemption for liner conferences affects EU and non-EU carriers operating on routes both to and from Europe. The only form of collaboration that remains lawful in the EU is the liner consortium which allows carriers to rationalize their operations in technical, operational, and/or commercial arrangements, with the exception of price fixing.⁷

The EPA proscriptions on bilateral agreements are largely informed by the position adopted in the EU. The EU is virtually the only jurisdiction in the world where shipping conferences are prohibited, *versus* regulated under increasingly strict terms. The EPA extends this in requiring CARIFORUM countries to adopt a similar position in any future arrangements. This has implications for the legislative framework in some of the countries reviewed.

The Cargo Preference Act of Jamaica establishes a legal framework that facilitates cargo sharing arrangements. The act proscribes the importation into or exportation from Jamaica of cargoes of bauxite, alumina, and other natural resources of Jamaica and their by-products,⁸ agricultural products, and any prescribed government-controlled goods, except in ships owned, chartered or operated by the Government and approved for the purpose by the minister.⁹ Provision is made for a general waiver of this requirement in the national interest as well as in the specific instance where the country to which such cargoes are exported or from which such cargoes are imported, has expressed a desire to participate in the transportation of such cargoes. In this instance, the act provides that the minister may allow a maximum of 50 percent of such cargoes to be carried in ships belonging to or flying the flag of such country. Significantly, although provision is made for the minister to make regulations prescribing anything required or authorized to be prescribed under the act,¹⁰ no regulations prescribing specific products to be carried in government ships have been promulgated, nor has the government entered into any cargo-sharing arrangements. It may be observed that the national shipping lines ceased to operate over two decades ago. The Cargo Preference Act of 1979 appears to be unused and outdated. In

⁷ See EU Council Regulation No. 1419/2006. See also “Maritime Transport Services”, Background Note by the Secretariat, S/C/W/315, June 7, 2010, paragraph 77, which highlights that some industry representatives have called for a temporary suspension of competition rules and of the EU’s abolition of liner conferences in particular. In a survey published in December 2009, customers acknowledged that, in the face of recently plummeting freight rates, it was very difficult to apportion responsibility between the economic crisis and the abolition of the conference system, since the two phenomena occurred almost simultaneously in October 2008.

⁸ See also the Harbour Fees Order defining, *inter alia*, alumina ship, bauxite ship, gypsum ship, and petroleum ship.

⁹ See Cargo Preference Act, section 3; section 3(3), which further clarifies that a ship is deemed to be owned by the government if the government or an agency of the government owns the majority of shares of such ship or the company or companies owning, chartering or operating such ship. Section 3(6) defines, *inter alia*, “government controlled goods” as meaning goods purchased or sold by the government or an agency of the government or an enterprise owned or controlled by the government.

¹⁰ See Cargo Preference Act, section 5(2).

light of Jamaica's commitments under the EPA, it may be asked whether the act should be repealed.¹¹

Trinidad and Tobago is also a signatory to the United Nations Code of Conduct on Liner Conferences Convention, which it ratified in 1983 and has scheduled a WTO GATS MFN exemption in this regard. There is, however, no evidence of any arrangements to set uniform rates, or any cargo-sharing agreements, or a national shipping line. As regards bulk traffic (e.g., transport of oil—crude and refined—and grain), there are no market access restrictions. International trade is organized as a spot market (including a futures market) which is driven by highly competitive freight rates. The transport of containerized and general cargo by regular lines on publicized routes is organized through conferences or independent contractors.¹²

The Liner Conferences Act CAP 290 gives the United Nations Convention on a Code of Conduct for Liner Conferences the force of law in Barbados. There is, however, no evidence to suggest that Barbados has entered into any cargo-sharing arrangements and the continuing relevance of the legislation may be questioned. Likewise, Guyana is a party to the UN Convention, but there is no evidence of any cargo-sharing arrangements involving that country. Belize, as noted above, is not a party to the convention on a Code of Conduct for Liner Conferences. Belize is also not party to any bilateral or plurilateral maritime arrangements which provide for preferential treatment.

Port Services

With respect to the access and use of port facilities and services, the EPA regulatory framework appears to build on the provisions of the ACP/EU Cotonou Agreement, in particular, article 42, paragraphs (1), (3) and (4). The basic liberal principle endorsed is unrestricted access to international maritime markets (excluding cabotage) and trades on a commercial and non-discriminatory basis.¹³ The EPA requires national treatment with respect to access to ports, related fees and charges, customs facilities, and assignment of berths and facilities for loading and unloading.¹⁴ It further calls on State parties to make available to maritime transport suppliers

¹¹ Reference may be made to the EPA proscriptions on cargo sharing arrangements and the requirement for international maritime services suppliers to have a commercial presence on either an MFN or national treatment basis, whichever is more favorable.

¹² See also WTO Secretariat Trade Policy Review Report on Trinidad and Tobago, 2012, WT/TPR/S/260, pp.79-81; WTO TPR Report on Trinidad and Tobago, 2005, WT/TPR/S/151, pp.105-106.

¹³ See EPA, Article 109(3) (a); see also ACP-EC Partnership (Cotonou) Agreement, Article 42(1).

¹⁴ See also ACP-EC Partnership (Cotonou) Agreement, Article 42(3).

on reasonable and non-discriminatory terms the following port services: pilotage; towing and tug assistance; provisioning; fuelling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operations, including communications, water and electrical supplies; emergency repair facilities; anchorage; berth; and berthing services.¹⁵

Modern day regulatory activity in international ports has moved away from a situation where port authorities provide all port services, in particular cargo handling, to a situation where they largely oversee port facilities and supply and manage heavy infrastructure (e.g., wharves, jetties, lighthouses, and navigational aid systems). Many services are left in the hands of concessionaires or private operators. Port authorities still generally assume responsibility for traffic control inside the perimeter of the harbour and other regulatory functions routinely done by governmental authorities, most notably, health, environment, and security measures. The modern approach to the provision of port and harbour services is demonstrated in the evolving regulatory regime in the five countries reviewed.

In Jamaica the Port Authority established under the Port Authority Act regulates the use of port facilities, and is charged with maintaining, improving and operating them, and, as appropriate, leasing out such facilities on terms and conditions as may be approved by the minister.¹⁶ The act defines “port facilities” as “facilities for the dry-docking, berthing, towing, mooring or moving of vessels in or entering or leaving a port or its approaches, for the loading and unloading of goods or embarking or disembarking of passengers in or from any such vessel, for the ligherage or the sorting, weighing, warehousing or handling of goods, and for the carriage of passengers or goods in connection with any such facilities.”¹⁷ As such, the Port Authority is an important regulator, though it need not be a maritime transport service supplier under the law.¹⁸

¹⁵ See EPA, Article 109.

¹⁶ See Port Authority Act, sections 4 and 6; the authority has the power to regulate and operate such facilities and may exercise its powers through its authorized servants or agents; see *ibid*, sections 7(1) (a) and 9. The Port Authority may also make by-laws for the management and control of premises vested in or in the possession of the authority; see *ibid*, section 11; e.g., Port Authority (Regulation of Cruise Ship Premises) By-Laws, 2001. But note that the authority may not carry on business of Wharfinger as defined by the Wharfage Act, i.e., the person in occupation of any public wharf and carrying on the business of landing, receiving and otherwise dealing with thereat the goods of other people.

¹⁷ See Port Authority Act, section 2. Note also that a port is defined as the Harbour of Kingston and includes any other harbour declared to be a port by the Minister; see *ibid*, sections 2 and 3.

¹⁸ Note that the Shipping Act establishes the Maritime Authority to regulate shipping and seafarers. The Maritime Authority has replaced the Marine Board as the regulatory agency for harbors in the Island (including channels and approaches leading thereto). The Harbours Act confers responsibility on the Maritime Authority for regulating

Similarly in Trinidad and Tobago, port administration is the responsibility of the Port Authority of Trinidad and Tobago (PATT). The Port Authority Act provides that PATT may carry out its duties directly through its own officers, servants, and employees, or may enter into contractual arrangements with other entities to undertake the activities for which it is responsible, whether independently of the authority or under its control or partial control, and may give assistance to such entities, including financial assistance.¹⁹ Authorization from the PATT is required to discharge and load general cargo and to supply other port services at any port in the country, other than Point Lisas, where authorization from PLIPDECO (a public company with majority Government ownership) is required.²⁰ There are reportedly no restrictions on foreign suppliers of auxiliary port services.²¹

Private sector involvement in the construction, maintenance and operation of ports and harbour facilities in Barbados is also evident. The Port St. Charles Development Act CAP 234 authorizes Port St. Charles Development Limited to maintain a marina at Heywoods and certain works and facilities which the company was granted permission to construct under the Town and Country Planning Act. The act provides that the company is entitled to the use of the works, breakwater, and facilities and to the sole use and benefit of the jetty, slip, and dock without payment of fees.²² Additionally, the Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act CAP 285B provides for the Port of Bridgetown to be operated by the Barbados Port Inc., a company incorporated under the Companies Act (from December 19, 2003).²³ The

commercial boats and vessels (other than certified sea-going vessels) in such harbors, channels and approaches. Note that references in the Harbours Act are to the Marine Board, which was established by the Marine Board Act. The Marine Board Act was repealed by the Shipping Act, which established the Maritime Authority, which replaces the Marine Board.

¹⁹ See Port Authority Act, section 9. Also noting the possibility of PATT taking up share or loan capital or providing assistance through loans or otherwise.

²⁰ The Point Lisas Industrial Port Development Corporation Limited (PLIPDECO) is a public company owned 51 percent by the Government of Trinidad and Tobago and 49 percent by private shareholders including banks, insurance companies, financial institutions, company employees and the general public. PLIPDECO's two core activities are industrial real estate management, and port management and operations, including cargo handling services. Port Point Lisas, the second major port in Trinidad and Tobago, consists of six general cargo and container berths. The facility handles a variety of cargo including containerized, break bulk, lumber, paper, consumables dry bulk and steel. See <http://www.plipdeco.com/main/index.php?page=corporate-overview>.

²¹ See WTO TPR Report, WT/TPR/S/151/Rev.1, page 106, paragraph 137.

²² See Port St Charles Development Act CAP 234, sections 2-5. Note that the term “works” includes any wharf, jetty, slip, dock, pier, quay, bridge, breakwater, workshop, shed, warehouse and any building, plant, machinery and other property appertaining thereto, ancillary facilities or excavation, whether complete or incomplete, on or near the shore or in the sea. The company is also authorized and required, at its own expense, to dredge the area around the breakwater regularly and to keep all channels free from silt and any debris and obstructions to shipping.

²³ Note that the rights to set, collect, and retain port dues and charges for the provision and use of port facilities and services are expressly transferred to and vested in the company by virtue of the act; see Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act CAP 285B, sections 2-6. The act provides for the lands of the port to be

company, however, is owned by the Government of Barbados²⁴ and formal governmental oversight is maintained over the operation of the port as a commercial entity.²⁵ Some services are provided by the private sector on behalf of the Barbados Port Inc. These include depot services, maritime agency services, maritime freight forwarding services, stevedoring, and maintenance and repair of vessels.²⁶

In Guyana, the Transport and Harbours Act CAP 49:04, regulates the use of harbours in Guyana and establishes the Transport and Harbours Department for the purpose of managing government vessels (and railway services). The Maritime Administration Department and the Director of Maritime Affairs established under the Guyana Shipping Act CAP 49:01 of 1998, have assumed many of the tasks assigned to the Transport and Harbours Department and its general manager by the Transport and Harbours Act and subsidiary legislation.²⁷ Guyana Harbour is Guyana's main port; the land and berths are mostly privately owned. The government owns two ports: Spring lands and New Amsterdam, as well as port infrastructure at Vreed-en-hoop, the Guyana National Shipping Corporation Limited (GNSC), and the Transport and Harbours Department Goods Wharf. The port at Linden is privately owned and operated.²⁸

leased to the company and transfers the assets in relation to the operation of the port that were vested in the Barbados Port Authority as well as the liabilities incurred in relation thereto to be transferred to the company (with an exemption from the payment of property transfer tax). Additionally, all rights, privileges, duties, or obligations conferred or imposed upon the Port Authority, including those in relation to legal proceedings for ascertaining, perfecting, or enforcing of all rights or liabilities previously vested in the Port Authority are conferred or imposed on the company.

²⁴ See WTO/TPR/S203/Rev.1, p.74, paragraph 100.

²⁵ Note that the company is mandated to submit a port master plan (i.e., a 10-year development plan) to the minister for approval every five years, an annual report and audited financial statements, which are laid before Parliament, and not later than six months after the end of each financial year submit to the minister a business plan for the ensuing financial year and for each of the four subsequent financial years. The act also provides for the repeal of the Barbados Port Authority Act while saving certain listed regulations and orders made pursuant thereto; see Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act CAP 285B, sections 7-9 and 13 and Second Schedule. The act provides that the following enactments continue in force until amended or revoked: Barbados Harbours Regulations, 1961; Barbados Port Authority (Tariff Book of Dues and Charges) Regulations, 1987; Barbados Port Authority (Watersports) Order, 1990; Barbados Port Authority (Watersports) Regulations, 1990; Barbados Harbours (Amendment) Regulations, 2002; and Barbados Port Authority (Port St. Charles) Order, 2002.

²⁶ See WTO/TPR/S203/Rev.1, p.75, paragraph 100.

²⁷ See Guyana Shipping Act CAP 49:01, sections 4 and 8; Transport and Harbours Act CAP 49:04, section 2(2); 1998 Amendment to the Government Wharves Act CAP 49:05. Note that Maritime Administration Department established under the Guyana Shipping Act CAP 49:01 of 1998, has general responsibility for administering maritime affairs. The director of Maritime Affairs who also may be appointed the Registrar of Ships and Registrar of Seamen assumes certain functions previously assigned to the general manager of the Transport and Harbours Department under the Transport and Harbours Act CAP 49:04, and those of other officers and bodies which were assigned functions relating to maritime affairs under other legislation such as the Government Wharves Act CAP 49:05.

²⁸ See Guyana Trade Policy Review, WT/TPR/S/218/Rev.1, paragraph 130.

The Belize Port Authority Act CAP 233 establishes the Belize Port Authority, which is charged with, *inter alia*, operating ports to serve the public interest, regulating and controlling navigation within the limits of ports and their approaches; maintaining, improving and regulating the use of ports and services and facilities; and providing pilotage services, beacons, buoys and other navigational services and aids.²⁹ The jurisdiction of the Port Authority is not exclusive in so far as the act makes provision for private sector participation in the operation of ports. The minister, after consultation with the Port Authority, may grant a license for the construction and operation of a private port on such terms, conditions and restrictions and payment of such fees as he/she considers appropriate. A license may be granted for a period not exceeding thirty years and may be renewed from time to time.³⁰

Part XIII of the Belize Port Authority Act CAP 233 establishes special provisions relating to privatized and leased ports, and has effect notwithstanding anything to the contrary in the act or any other law.³¹ The Port Authority is recognized as the regulatory authority in respect of privatized or leased ports, as it is best placed to advance the public interest, but may not perform any operational or management functions which are assigned to a nominated company or lessee company.³² A nominated company or lessee may perform all operational and management functions in respect of privatized or leased ports.³³ A license for the operation and management of a privatized port or related services may be granted for a period not exceeding 35 years and is subject to renewal. A lease to operate and manage a leased port or to provide any port or related services may be granted for 30 years and is also subject to renewal. All subsidiary legislation relevant to ports applies to privatized and leased ports insofar as they are not inconsistent with

²⁹ See Belize Port Authority Act CAP 233, sections 3 and 19.

³⁰ See Belize Port Authority Act CAP 233, section 23. Note that the minister may make regulations for the governance of private ports and may authorize the licensee to make by-laws, subject to his/her approval, for the control and regulation of such port

³¹ See Belize Port Authority Act CAP 233, section 102(3), which further expressly states that where there is a conflict or inconsistency between the provisions of this Part XIII and the Harbours and Merchant Shipping Act, the provisions of Part XIII shall prevail. Note that Part XIII of the Act entered into force on January 18, 2002.

³² See Belize Port Authority Act CAP 233, sections 102(1) and 103(4), which further defines “lessee company” as a company to whom a lease for the operation and management of a port has been granted under section 107 of the act; and “nominated company” as a company nominated by the minister by order published in the *Gazette* to take over the operational and management functions of the authority in respect of a privatized port, e.g., Port of Belize Limited by virtue of S.I. 58 of 2002 is a nominated company and the vesting day was February 18, 2002, by virtue of S.I. 59 of 2002.

³³ See Belize Port Authority Act, section 104, which lists in particular the following services: (a) pilotage (b) dock (c) Tug (d) cranes (e) opening and closing of hatches (f) storage (g) loading and unloading (h) security *i* cargo control (j) land transportation within port premises (k) cargo classification (l) Stripping of containers (m) cargo packaging (n) cargo repair (o) weighing (p) lashing supplies (q) garbage collection (r) warehousing (s) container repairs (t) free zone activity (u) dredging (v) other activities related to normal functions and operations of ports.

the provisions of Part XIII.³⁴ Some ports have been privatized, most notably, the facility at Port Loyola.³⁵

The ports commissioner appointed under the Belize Port Authority Act performs the duties previously performed by the harbour master under the Harbours and Merchant Shipping Act CAP 234.³⁶ The general superintendence, management, and control of all harbours in Belize rests with the minister, who is empowered to, *inter alia*, lease any portion of any public wharf to any person or company and make regulations for prescribing the terms and conditions of such lease.³⁷ The Public Wharves Regulations provide for leases of portions of public wharves to persons or companies and specify rates varying with the length of wharf frontage; lower rates (two-thirds of the rate generally applicable) are provided to the owner, manager or agent of a vessel under contract with the government.³⁸ Significantly, preferential rates are not based on the nationality of the service provider. It may be recalled that the EPA provides for national treatment of ships flying the flag or operated by service suppliers of any EPA party with regard to, *inter alia*, use of infrastructure of ports as well as related fees and charges; wharfs, quays, piers, etc. may all comprise part of a port.

Few regulatory concerns arise with respect to access to ports and the use of facilities on reasonable and non-discriminatory terms in the laws of the countries reviewed. In Guyana, the Transport and Harbours Act provides for the control, improvement, lighting and regulation of harbours and the approaches thereto and the maintenance of a pilotage service for Guyana. The maritime transport services that are provided solely by the government are pilotage, aids to navigation, dredging, and hydro graphic services. All other port operations are undertaken by private operators and the prices of port services are not controlled.³⁹

Tonnage dues, light dues, and shipping fees payable under the Transport and Harbours Act are non-discriminatory flat charges.⁴⁰ The act imposes pilotage dues on any vessel which enters a pilotage district or obtains the services of a licensed pilot. In every pilotage district,

³⁴ See Belize Port Authority Act, sections 105-107. Note that the schedule to the act lists Belize City Port Loyola as a privatized port and Commerce Bight Port as a leased port.

³⁵ E.g., Belize Port Authority (Tariff) (Amendment) Regulations, 2008, which authorize the Port of Belize Ltd to collect cargo dues from vessels calling at its facility at Port Loyola and those not calling at the facility where such vessels engage in certain activities which formed a part of the revenue stream of the port before privatization.

³⁶ See Harbours and Merchant Shipping Act CAP 234, section 5.

³⁷ See Harbours and Merchant Shipping Act CAP 234, section 6. Note that any regulations made prescribing the terms and conditions of a lease are subject to negative resolution of the National Assembly.

³⁸ See Public Wharves Regulations, regulation 8. Note that leases are granted for one year and extended thereafter from year to year.

³⁹ See WTO TPR Report, WT/TPR/S/218/Rev.1, p.81, paragraph 134.

⁴⁰ See Transport and Harbours Act CAP 49:04, sections 3, 24 and 25, & Third Schedule.

pilotage by a licensed pilot is compulsory save in the instance of certain smaller vessels or where the harbour master (a post established under the act) provides a certificate exempting the vessel.⁴¹ The provisions of the Transport and Harbours Act are in these respects fairly similar to those of the other four countries.

An unusual measure not found in other countries reviewed concerns the provision in the Tax Act CAP 80:01 for a duty (per head tax for each day or part thereof) to be paid by any entity in the shipping business who employs in the loading or discharging of cargo on or from any ship any person who is not a Guyanese resident or has at least resided in Guyana for three months; an exception is made for ships of not more than 200 tons bearing cargo shipped at a West Indian port which may be discharged over the side of the ship upon the wharf by members of the crew.⁴² The exception does not suggest any discrimination based on the nationality of the vessel or its operator; rather it is based on the size of the cargo and the port from which it is shipped. The term “West Indian” may also be interpreted to include certain European ports, including the British Overseas Territories, the French Departments and the Special Municipalities of the Kingdom of the Netherlands.

Other fees and charges are imposed by the Tax Act CAP 80:01 on the use of infrastructure and auxiliary maritime services of the ports. However, these are non-discriminatory charges as required by the EPA.⁴³

⁴¹ See Transport and Harbours Act CAP 49:04, sections 30-33, 37, 39 and Fourth Schedule on non-compulsory pilotage for vessels of 1,250 tons gross or less registered in and engaged in coasting trade of Guyana; more than 50 tons but less than 1,500 tons gross registered in Guyana and taking cargo to Community States (as defined in Customs Act); and vessels of 1,500 or less registered outside Guyana, provided in all instances that master or chief officer possesses a valid certificate. Note also that an exemption may be granted by the harbor master where the master or chief officer is conversant with local navigational conditions and requirements and competent to pilot the vessel.

⁴² See Tax Act CAP 80:01, section 3, which also provides that the minister may, during a state of emergency, remit the payment of the duty. Note that the section does not apply to any ship while in quarantine or while in any port of Guyana that is subject to quarantine. The EPA regulatory framework on maritime services includes a definition of "maritime cargo handling services" as activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organized independently of the stevedoring or terminal operator companies. The activities covered include the organization and supervision of the loading/discharging of cargo to/from a ship; the lashing/unlashing of cargo; and the reception/delivery and safekeeping of cargoes before shipment or after discharge. See EPA, Article 109(2) (b); note that the term “docker” is particularly associated with the UK as referring to a person who works at a port putting goods onto and taking them off ships; in the UK only the highly skilled master of a loading gang is referred to as a “stevedore.” No CARIFORUM state has made any commitments on cargo handling services (CPC Code 741).

⁴³ E.g., Tax Act CAP 80:01, sections 18, 21 and 31, which require an annual licence and payment of a licence duty on a wharf and any place used for storing goods, wares, merchandise, or stock in trade of any business. The act requires that every master of a vessel, or other person on board, who arrives in Guyana having on board goods for sale not consigned to someone holding a trade licence must take out a trade licence for each voyage unless he/she turns the goods over to someone holding a trade licence; it also imposes an annual licence and licence duty on every

The Port Authority of Jamaica regulates the berths and stations to be occupied by vessels in port.⁴⁴ A port is defined in the Port Authority Act as the Harbour of Kingston and includes any other harbour declared to be a port by the minister.⁴⁵ The Harbour Rules made pursuant to the Harbours Act gives the harbour master the right to designate the berth in which vessels may be moored in harbours not designated as ports under the Port Authority Act.⁴⁶

The Harbour Fees Act imposes on every vessel coming into harbour or moored therein liability to pay harbour fees,⁴⁷ and makes provision for differential fees based on the classification of vessels (not defined in terms of nationality criteria) and the particular harbour concerned.⁴⁸

The wharfage Act regulates the landing, receiving, and otherwise dealing with goods at public wharfs.⁴⁹ The act provides the basis for establishing wharfage rates (which also do not discriminate on the basis of nationality) and a mechanism for the settlement of disputes as to what wharfage or storage is payable on any goods through the auspices of the Port Authority.⁵⁰

The Pilotage Act confers additional powers on the Port Authority in relation to coastal pilotage and the pilotage in all pilotage areas, harbours and the channels thereto. As in the case of Guyana, the act imposes an obligation on every ship (with some exceptions) in a pilotage area to be under the pilotage of a pilot licensed for such area by the authority. In circumstances where a ship is permitted to navigate in a pilotage area without being under the pilotage of a licensed pilot, pilotage fees are nevertheless due to the authority.⁵¹ Only Jamaican citizens may normally

person (other than an Amerindian) who uses or permits to be used for coastal or river trade any vessel or boat 25 feet or over in length.

⁴⁴ See Port Authority Act of Jamaica, section 7(1) (a) and 9, which further provides that the Port Authority may exercise its powers through its authorized servants or agents.

⁴⁵ See Port Authority Act of Jamaica, sections 2 and 3.

⁴⁶ See Port Authority Act of Jamaica, section 10, which provides that the general power vested in the authority to regulate berths and stations in ports under section 7(1)(a) prevails notwithstanding anything inconsistent therewith contained in any other law in force at the commencement of the act, and any directions given or regulations made under any law

⁴⁷ See Harbour Fees Act of Jamaica, section 7; see also *ibid*, section 8, exempting Jamaica government vessels and those of other governments not engaged in any trade, private pleasure yachts, and others such as may be specified by resolution of the House of Representatives from the payment of harbor fees.

⁴⁸ See Harbour Fees Act of Jamaica, section 4.

⁴⁹ See also Wharfage Act of Jamaica, section 4, which provides that where any person receives payment for landing, delivering or shipping goods from a wharf, or any vessel thereat, or an adjacent beach or riverside, that person shall be deemed to be carrying on the business of a wharfinger under the Licences on Trades and Business Act and the wharf will be declared to be a public wharf.

⁵⁰ Where a person is dissatisfied with the decision of the authority, he/she may appeal to the Court of Appeal; see Wharfage Act of Jamaica, section 21.

⁵¹ See Pilotage Act of Jamaica, section 26. See also Port Authority (Compulsory Towing) (Harbour of Kingston) Directions, 1994, which provides for the use of towing services provided by the Authority for the purposes of safe

be licensed as pilots, though provision is made for certain exceptions.⁵² The importance of local knowledge of the area is a significant consideration in granting a license.⁵³

The territorial waters of Belize are compulsory pilotage waters and, as such, all ships, save government vessels and those plying exclusively within Belizean waters, may navigate within those waters only under the pilotage of a licensed pilot.⁵⁴ The Belize Port Authority (Pilotage) Regulations provides for the licensing of pilots who must be citizens of Belize.⁵⁵ The condition on nationality for pilotage licenses is, in fact, a common feature of the regulatory framework in the region; in Barbados the Aliens Act CAP 185 prohibits an alien from holding a pilotage license;⁵⁶ and in Guyana, the Transport and Harbours Act CAP 49:04 provides that a pilot's license may not be granted to a person who is not a Commonwealth citizen.⁵⁷ It may be noted that none of the countries reviewed have undertaken specific commitments on pilotage and berthing services (CPC Code 7452).

Under the Port Authority Act CAP 51:01, the Port Authority of Trinidad and Tobago (PATT) is responsible for, *inter alia*, developing the harbours and operating port services, and collecting dues and charges.⁵⁸ PATT's responsibility for the development of harbours and operation of port services covers the provision and maintenance of facilities for the entry and berthing of ships, the landing and embarkation of passengers, the loading, unloading, storage and warehousing of cargo; the provision of docking facilities, slipways, and machine shops; the provision of towage services, bunkering services, dredging services, salvage services, repair services; and such other services as are ordinarily required by ships coming into port in the course of their voyages.⁵⁹ It should be noted, however, that the Tobago House of Assembly is charged with constructing, maintaining, and repairing storage and warehousing facilities at ports

navigation, movement and berthing of vessels in the Harbour of Kingston and the payment of towage fees even where the services provided have not been used by exempted ships.

⁵² See Pilotage Act of Jamaica, section 5(5).

⁵³ See also Pilotage Act of Jamaica, section 25(1) (b).

⁵⁴ See Belize Port Authority Act, sections 53-55 and 59. Note that the master or owner of a ship navigating in the circumstances in which pilotage is compulsory is answerable for any loss or damage caused by the ship or by any fault in the navigation of the ship in the same manner as it would if pilotage were not compulsory; see *ibid*, sections 62 and 63.

⁵⁵ See Belize Port authority (Pilotage) Regulations, regulation 3. Note that the regulations were promulgated under the Pilotage Act, which was repealed by the Port Authority Act; but the regulations are saved by virtue of section 28(3) of the Interpretation Act CAP 1.

⁵⁶ See Alien Act CAP 185 of Barbados, section 5.

⁵⁷ See Transport and Harbours Act CAP 49:04, section 34, which also recognizes pilotage licenses granted under the Pilotage Ordinance 1905, and Harbours and Pilotage Ordinance.

⁵⁸ See TT Port Authority Act, section 8(1).

⁵⁹ See TT Port Authority Act, section 8(2).

in Tobago.⁶⁰ A review of the legislation and regulations suggest that the treatment of vessels in ports is generally non-discriminatory as regards the reservation of berths,⁶¹ and almost all tariffs which are due and payable for services requested by the owners, masters or agents of a vessel.⁶²

The Port Authority (Tariff) Regulations sets out, *inter alia*, the basis for calculating dues and other charges made payable and provides for certain exemptions as applicable to coastal trade and government non-commercial vessels.⁶³ Distinctions are made in the regulations between CARICOM and non-CARICOM wharves as well as CARICOM and non-CARICOM cargo. Handling charges at conventional wharves are higher for non-CARICOM cargo than for CARICOM cargo. Distinct charges also apply to non-CARICOM cargo handled on CARICOM wharves.⁶⁴ It may be recalled that Article 238 of the EPA explicitly affirms that the agreement does not oblige either party to extend any more favourable treatment that is applied within each of the parties as part of its respective regional integration process. The application of differential rates, however, does not appear to be based on any specific requirement of the Revised Treaty of Chaguaramas (CARICOM Treaty). The general principle of non-discrimination on grounds of nationality as regards matters within the scope of the CARICOM Treaty is a relevant consideration.⁶⁵ Significantly, however, the EPA regulatory framework on maritime services imposes a similar national treatment obligation.

The differential treatment of CARICOM and non-CARICOM cargoes should be more closely examined in light of Article 109 of the EPA, which requires States to provide ships flying the flag or operated by service suppliers of another party treatment no less favourable than that accorded to their own ships with regard to, *inter alia*, auxiliary maritime services of the ports, as

⁶⁰ See TT Port Authority Act, section 8(3).

⁶¹ The Port Authority (Tariff) Regulations require that the estimated time of arrival advice of a vessel be provided one week prior to arrival, with updates at intervals of 72 hours, 48 hours, and 24 hours before actual arrival of the vessel; see Port Authority (Tariff) Regulations, regulation 4(3). Note that section 76 of the Port Authority Act repeals the Port Services (Dues, Charges and Management) Ordinance, except sections 3 to 8 inclusive, and the bye-laws made under section 22 of the said ordinance. A notation to the act clarifies that these sections and the bye-laws will remain in force until the said sections 3 to 8 are amended and the said bye-laws are revoked and replaced by new regulations made under the act. See also paragraph 3 of the said bye-Laws, which addresses the procedures for securing the allotment of a berth for a vessel on arrival.

⁶² See Port Authority (Tariff) Regulations, regulation 7, which lists various dues and charges including port dues, wharf dues, berth occupancy, pleasure craft, mooring lines—berthing/unberthing, towage service, fresh water services, garbage disposal, conventional cargo handling charges, rent of berth and wharf space for ship repairs, throughput charges, container handling charges, use of parking space by chassis, stuffing/unstuffing, hire of gears, and hire of mechanical units.

⁶³ See Port Authority (Tariff) Regulations, regulation 15.

⁶⁴ See Port Authority (Tariff) Regulations, Schedule 'Port Authority of Trinidad and Tobago Tariff Book.

⁶⁵ See Revised CARICOM Treaty, Article 7; see also *ibid*, Article 140 on the development of maritime transport services providing for member States to cooperate through, *inter alia*, measures for the establishment, improvement and rationalization of port facilities in the community.

well as related fees and charges, customs facilities and facilities for loading and unloading. The application of the national treatment principle in this context (irrespective of a State's specific commitments) is a "GATS plus" obligation, and would seem to require that any preferential rates that benefit Trinidad and Tobago ships and service suppliers (as well as those of other CARICOM countries) are extended to ships and their operators of all State parties to the EPA.

The Belize Port Authority Act provides for the payment of dues and charges for services or facilities provided by the Port Authority. These are set out in a Tariff Book. All ships entering a port to load or discharge cargo or embark or disembark passengers, occupying an anchorage or berth within a port, or using carriage or warehousing facilities, incur charges and are required to appoint an agent responsible for their payment.⁶⁶ The Port Authority (Tariff) Regulations of Belize provides for non-discrimination in the application of charges, rates, rules and regulations in respect of any port which is within the jurisdiction of the Belize Port Authority.⁶⁷

The ports commissioner, who is the chief executive officer of the Port Authority, or a port manager is given the authority under the Belize Port Authority Act to regulate the moving of ships within the port and the approaches to the port, direct where any ship may be berthed, moored or anchored, and direct the removal therefrom to another berth, station or anchorage, and indicate the time within which such removal is to be effected.⁶⁸ The Belize Port Authority Regulations provide that in directing the berthing of ships priority is to be given to ships arriving in order of their time of arrival, save for emergencies or other special circumstances.⁶⁹ The Belize Port Authority (Designated Berth) Regulations establish the general rules for the assignment of berths, designation of parking places for vehicles engaged in the delivery or

⁶⁶ See Belize Port Authority Act, sections 38, 39, 40 and 52.

⁶⁷ See Regulation 2 of the Port Authority (Tariff) Regulations which provides that "[t]he Tariff set out in the Schedule hereto and the Regulations therein embodied shall apply in respect of any port which is within the jurisdiction of the Belize Port Authority." Section II, paragraph 1(a) of the schedule provides "The charges, rates, rules and regulations published in this tariff shall apply equally to all users of, and all traffic in, any harbour and to all users of the facilities owned, operated and administered by the Authority on and after the effective date of this tariff or any supplements thereto."

⁶⁸ See Belize Port Authority Act, section 67. See also See Belize Port Authority (Tariff) Regulations, section II, regulations 26 and 27, which provides that all applications for berths must be made 72 hours beforehand, and assignments by the ports commissioner must be strictly adhered to. But see Belize Port Authority (Designated Berth) Regulations, regulation 4, which provide for notification not less than 12 hours in advance of the arrival of the vessel. See also Port Authority Regulations, regulation 14, which provides that no person shall berth a ship other than at a designated berth and a ship berthed at a designated berth, shall not be shifted without the prior approval of the ports commissioner.

⁶⁹ Regulation 25 of the Belize Port Authority Regulations provides that "Ships arriving at a port with intentions of discharging cargo shall have priority to berth in order of their time of arrival, but if a ship proceeds to another port and commences discharging, priority shall be given to the next ship arriving. Nevertheless, the ports commissioner may give priority to later ships in an emergency or in order to save perishable cargo."

removal of cargo to and from berths, loading and unloading of cargo, payment of berthage dues and other related matters.

The provision of other supporting and auxiliary transport services such as vessel salvage and refloating services (CPC Code 7454) are also dealt with fairly consistently in the shipping acts of the countries reviewed and do not appear to suggest any discriminatory treatment of service suppliers.⁷⁰ It may be noted that few countries have undertaken liberalization commitments on supporting and auxiliary services; therefore our interest in the area is primarily to ensure that the additional EPA regulatory disciplines are respected in the legislation. A notable proviso to this concerns navigation aid services (CPC Code 7453), where Trinidad and Tobago has bound commitments without reservation on all four modes of supply.⁷¹ Prior authorization and conformity with any stipulated specifications are conditions imposed on establishing navigational aids under the Trinidad and Tobago legislation.⁷² These measures do not raise any concerns once they are not applied to artificially restrict market access or deny national treatment.

International maritime service suppliers

The EPA regulatory framework setting out the principles regarding the liberalization of international maritime transport services includes a general undertaking by all States to permit international maritime service suppliers of other State parties to have a commercial presence in their territory under conditions of establishment and operation no less favourable than those

⁷⁰ E.g., Shipping Act CAP 296 of Barbados, sections 2, 267, 269 and 284-86, which address wrecks, salvage, and investigations. The act provides for the appointment of a receiver of wrecks who is authorized to determine the amount of salvage where the parties consent or where the value of the vessel or the amount claimed is below a given sum; see also Shipping Act CAP 50:10 of Trinidad and Tobago, Part XVI; Wrecks and Salvage Act of Belize; and the Abandoned Wreck Act of Belize; Shipping Act of Jamaica, Part XI on “Wreck and Salvage.” Note that vessels salvaging and refloating services consist of recovering distressed and sunk vessels and their cargoes, including the raising of sunken vessels, the righting of capsized vessels and the refloating of stranded vessels; towing services supplied to distressed vessels are classified elsewhere (in subclass 72140, if for seagoing vessels, and in 72240, if for non-seagoing vessels). Lifeboat services, marine fireboat services, and other marine search and rescue services are classified in subclass 91260 (Police and fire protection services) and 91290 (Other public order and safety affairs related services).

⁷¹ Note that Belize is the only other CARIFORUM State to have undertaken commitments on CPC 7453; these are bound for modes 1 and 2.

⁷² See Shipping Act CAP 50:10 of Trinidad and Tobago, section 17-20, which also defines “navigational aids” as all lighthouses, buoys, beacons, radio aids, or any other light, signal or mark established to aid marine navigation, including all buildings, moorings, and other works associated therewith. The director of the Maritime Services Division exercises general supervision over all navigational aids.

accorded to their own service suppliers or those of any third country, whichever is the better.⁷³ This general obligation appears to exist independently of the specific liberalization commitments that may be undertaken by the parties in Annex IV of the EPA.

There is nothing to suggest that the legislation of the five countries reviewed do not conform to this general obligation. Significantly, the regulatory framework in Barbados specifically provides for the establishment of shipping companies. The Shipping Corporation Act CAP 296B of Barbados is designed to facilitate the commercial presence of owners and/or operators of ships. The act provides that any adult of sound mind who is not a bankrupt may form a shipping corporation by submitting articles of association to the registrar together with the prescribed fee.⁷⁴ A shipping corporation must have a registered office and agent in Barbados. The act provides for a certificate of incorporation and addresses the capacity, rights, and powers of a shipping corporation, meetings of shareholders, and other such matters similar to the approach adopted in the Companies Act.⁷⁵ Provision is made for striking a corporation off the register where, *inter alia*, it engages in any business other than the ownership or operation of ships.⁷⁶

⁷³ See EPA, Article 109(1) and (5). Note that the article “sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters 2, 3 and 4 of this Title”; compare EPA, Articles 89(1), 94(2), 103(1) and 110(1) which “sets out the principles of the regulatory framework for all [courier services] [the following telecommunications services, other than broadcasting] [all financial services] [tourism services] liberalized [in accordance with] [pursuant to] Chapters 2, 3 and 4 of this Title.” The language of Article 109 is distinct and, arguably, may be interpreted as requiring the implementation of the principles regarding liberalization, even where no specific commitments have been undertaken in the sector.

⁷⁴ See Shipping Corporations Act CAP 296B, sections 3-5. Note that where a signatory to articles of incorporation is not present in Barbados he/she may execute a statutory declaration attesting to having met the statutory requirements that is verified on oath before a diplomatic or consular representative for Barbados.

⁷⁵ Note that the Shipping Corporation Act proscribes bearer shares or bearer share certificates, while facilitating the transfer of shares or debentures; e.g., Shipping Corporations Act CAP 296B, sections 6, 9, 17, 30, 103, 104 and 156. Unless an instrument of transfer is prescribed by the by-laws of a corporation, no particular form of words are necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee. The beneficial ownership of the shares or debentures of a corporation passes to a transferee on delivery of the instrument of transfer signed by the transferor and of the transferor's share certificate or debenture, as the case may be, or certified by or on behalf of the corporation, or by or on behalf of a stock or securities exchange in Barbados. If the transferor is not registered with the corporation in respect of the shares or debentures, the instrument of transfer must be signed by the person so registered, and all holders of the shares or debentures intermediate between the person so registered and the transferor. A corporation, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer has been registered or until the court orders the registration of the transfer.

⁷⁶ See Shipping Corporations Act CAP 296B, section 310.

Restrictive practices on commercial presence in maritime transport

An assessment of EPA specific market access commitments requires more than compliance with the general obligation on MFN and national treatment to include additional liberalization measures. The OECD consolidated list of restrictive practices in maritime transport services⁷⁷ includes the following examples of restrictions on international transport (passenger and freight) for market access in mode 3, commercial presence:

- Nationality requirement for the establishment of a registered company for the purpose of operating a fleet under the national flag.
- Nationality and residence requirements for key positions in the company.
- For the incorporation of a company, the head office and real centre of activities have to be in the country.
- For registration, the majority share capital must belong to local natural or legal persons.
- Assignment of local shipping agent.
- Majority foreign ownership not permitted, minority share only in joint venture permitted.
- A national maritime transport company must be incorporated and registered with the local ministry.

The examples provided of limitations on national treatment in the OECD list include the following:

- Establishment of a registered company for the purpose of operating a fleet under the national flag not allowed.
- Nationality requirement for a natural person.
- National requirement for a company to incorporate as national legal person.
- Nationality requirements for key personnel.
- Majority of shares must belong to national (natural or legal) persons.
- Income derived from international operations of ships registered in the national register is exempted from profit tax.
- Withholding tax.
- Support schemes for parts of national fleet.

⁷⁷ The OECD list may be viewed at <http://www.oecd.org/dataoecd/40/40/2759168.pdf>.

Some restrictive measures identified in the OECD consolidated list are found in a number of the jurisdictions reviewed. However, where present, they are generally permissible, one of the most obvious being the stipulation for withholding taxes.⁷⁸ The mere fact that industry analysts may characterize them as barriers to trade does not necessarily infer that they are prohibited measures.

Water passenger and freight transportation services—liberalization commitments

All countries reviewed except Barbados have undertaken liberalization commitments on maritime passenger transportation, though for Trinidad and Tobago this is limited to passenger transportation by ferries.⁷⁹ All countries except Trinidad and Tobago have undertaken liberalization commitments on maritime freight transportation.

It may be recalled that articles 66 and 75 of the EPA exclude measures affecting national maritime cabotage from the coverage of the EPA.⁸⁰ Restrictions on cabotage are found in the legislation of most States. The Guyana Shipping Act restricts local trade in Guyana waters (cabotage) to ships registered or licensed under the act or otherwise classified as Guyana ships by virtue of special registration or licensing exemptions. This limitation is expressly made subject to bilateral or multilateral agreements or exemptions as may be provided under the act or any other written law.⁸¹ Similar restrictions are found in the legislation of Jamaica and other countries reviewed;⁸² Belize is a notable exception. Foreign shipping companies in Belize are allowed to undertake cabotage operations, and do so in practice.⁸³

⁷⁸ See EPA, Article 226.

⁷⁹ Note that CPC Code 72111 provides that passenger transportation by ferries includes ocean-going or coastal water ferries, including hydrofoils and hovercraft, on a scheduled or non-scheduled basis, as opposed to other passenger transportation by sea-going vessels, regardless of class of service and including passenger accompanying baggage transport.

⁸⁰ See also footnotes to Articles 66(d) and 75(1)(b), which provide that “[n]ational maritime cabotage covers transport services within a Signatory CARIFORUM State or within a member State of the European Union for the carriage of passengers or goods originating and terminating in that CARIFORUM State or in that member State.”

⁸¹ Note that Guyana has not made any GATS commitments on maritime transport services. See also Guyana Shipping Act CAP 49:01, sections 2 and 10, which defines “local trade in Guyana waters” as the transport locally of passengers or goods or the carrying out of any other operation or activity locally, within Guyana waters, for profit or reward; and further providing that no person not qualified to own a Guyana ship shall charter or otherwise engage a Guyana ship for trading locally within Guyana waters, save under such conditions as may be prescribed. With respect to joint ventures, note that for the purposes of registration the property in a ship is divided into 64 shares; there may be joint ownership of shares though not fractional owners of any part of a share; see *ibid*, section 21.

⁸² E.g., Shipping Act of Jamaica, section 15, which provide that only Jamaican ships may be engaged in local trade in Jamaican waters. See also *ibid*, section 2, which defines “local trade in Jamaican waters” as the transport locally of passengers or goods or the carrying out of any other operation or activity locally, within Jamaican waters, for purposes of trade, profit or reward.

⁸³ See WTO TPR Report on Belize, WT/TPR/S/238, p. 91, which further notes that the authorities indicated that cabotage services consist mainly of passenger transport between Belize City and the islands as well as between Independence and Placencia.

A general assessment of the legislation in all five countries raises few concerns regarding compliance with the EPA. It is noteworthy that provision is made in some shipping acts for giving due deference to international agreements or conventions concerning maritime matters which the State has ratified or adhered to.⁸⁴ This is particularly so given the dualist nature of their legal system.⁸⁵ The shipping acts of Jamaica and Guyana provide the clearest statement in this regard. The acts explicitly provide that where there is a conflict between an international maritime treaty obligation on the State and a provision of the act, the treaty prevails unless the minister, by order, otherwise provides.⁸⁶

The Shipping Act of Guyana provides for making regulations with respect to passenger ships, having due regard to the 1974 International Convention on the Carriage of Passengers and Their Luggage by Sea, and for waiving or varying the rules in relation to licensed Guyana passenger ships operating solely within Guyana waters.⁸⁷ The provision for differential treatment is therefore limited to circumstances involving cabotage, which falls outside the scope of the EPA. The Passengers Act CAP 49:03, which establishes certain standards for transporting passengers at sea, applies only to regional voyages and is expressly stated not to prevent the operation of the Guyana Shipping Act.⁸⁸

In Barbados, the Vessels (Registration Fees) Act CAP 287A requires the operator of a vessel that provides passenger service, cruise service, or pleasure trips *starting and ending in Barbados*, to register the vessel with the Licensing Authority and pay the prescribed fees.⁸⁹ The Shipping Act of Barbados contains special rules for ships trading in the “near coastal area,” i.e., the Eastern Caribbean, and the “Caribbean trading area” (as distinct from a “foreign-going ship,”

⁸⁴ E.g., Shipping Act CAP 296 of Barbados, section 5, which provides for the minister to exempt any ship or class of ship, or any person or class of persons, from all or any of the provisions of the act upon such conditions as he/she thinks fit to impose, subject to any international agreement or convention that the Government of Barbados has ratified or adhered to in the case of foreign-going ships or other classes of ships; note that the authority granted to the minister is subject to affirmative resolution.

⁸⁵ The terms monism and dualism are used to describe two different theories of the relationship between international law and national law. In a dualist legal system the provisions of treaty must be incorporated into municipal law through an act of the parliament to be given effect in the domestic legal system.

⁸⁶ See Shipping Act of Jamaica, section 459; Guyana Shipping Act, sections 455 and 456.

⁸⁷ See Guyana Shipping Act CAP 49:01, section 398.

⁸⁸ See Passengers Act CAP 49:03, sections 2, 3 and 6, which define a “passenger ship” as every sea-going vessel carrying passengers on a regional voyage; a “regional voyage” is defined as a voyage from any place in Guyana to any other place whatever, where the distance between those places does not exceed 400 miles, or the duration of the voyage does not exceed three days. See also the Government and Contract Steamer (Traffic) Act CAP 49:06, which also addresses passenger traffic but appears to be even more dated and of questionable relevance.

⁸⁹ See Vessels (Registration Fees) Act CAP 297A, sections 2-6. The Licensing Authority issues a certificate of registration for the vessel, which is defined as including any launch, boat, ship or sailing vessel. Note that the legislation appears most likely to impact vessels operating within local waters and also does not seem to be discriminatory.

i.e., a ship which is neither a near coastal trade ship nor a Caribbean trade ship) and allows the minister by order to modify the application of the act in respect of these vessels.⁹⁰ The provisions of the act are addressed further below in the discussion on ship registration.

The special provision for regional voyages or voyages within the “near coastal area” or “Caribbean trading area” as found in the Guyana and Barbados legislation, respectively, are reminiscent of the earlier-noted, distinct treatment of CARICOM cargoes in the Trinidad and Tobago legislation. The importance of regional shipping in establishing ties between Commonwealth Caribbean countries and promoting growth and development has long been recognized. Initially (since 1948) a regional shipping line linked the CARICOM islands of Trinidad and Tobago, Jamaica, Barbados, the Windward and Leeward islands. The West Indies Shipping Corporation (WISCO), set up in 1961 by an act of the UK, continued to operate in the post-CARICOM era under the Agreement Establishing a West Indies Shipping Corporation. This agreement was motivated by the resolution of CARICOM Heads of Government that the Commonwealth Caribbean Countries should endeavour to maintain and improve regional carriers to facilitate the movement of persons, goods and services within the Region. However, WISCO has not survived in spite of efforts to restart its operations in 1994.⁹¹ The legislative provisions concerning regional voyages or voyages within the near coastal area or Caribbean trading area likely stem from these traditional arrangements.

A restrictive measure (included in the OECD list above-noted) associated with passenger and freight transport services (in countries such as the United States where the flag registry includes citizenship requirements)⁹² concerns the imposition of nationality requirements for key personnel. The legislation of the countries reviewed, however, is generally facilitatory in this regard. Although provision is made for introducing regulations for the possible imposition of conditions as to nationality as a condition for service on board locally registered or licensed

⁹⁰ See Shipping Act of Barbados, sections 2 and 5. Note that any such order is subject to affirmative resolution.

⁹¹ See Oruno D. Lara, *Space and History in the Caribbean* (Presses Universitaires de France, France, 1986, rev. ed. 1997; 2006 English translation by Markus Wiener Publishers). Note that other regional entities including non-Anglophone countries, such as the Caribbean Multinational Maritime Transportation Enterprise (NAMUCAR) were also established. The NAMUCAR was formed by the governments of Cuba, Jamaica, Mexico, Nicaragua, Venezuela, Trinidad and Tobago, and Costa Rica (where it had its head office); Panama, El Salvador, Guatemala, Honduras, Colombia, Barbados, the Dominican Republic, Haiti and Grenada later joined. NAMUCAR equipped a fleet of ships for transporting Mexican and Venezuelan oil in particular and attempted to break the monopoly of shipping companies from the developed countries with very high freight charges.

⁹² E.g., James Corbett and James Winebrake, “The Impacts of Globalisation on International Maritime Transport Activity: past trends and future perspectives,” Global Forum on Transportation and Environment in a Globalising World, 10-12 November 2008, Guadalajara, Mexico, paragraph 19.

vessels or any ship engaged in local trade in local waters,⁹³ this authority has not been utilized. Indeed, provision is made for the recognition of foreign certificates of competency held by foreign nationals in certain key positions, such as master, deck officer, or engineer.⁹⁴

A common stipulation in almost all legislation concerns the use of the English language as regards correspondence and documentation and (in all save for Belize) signs on board a ship, even if a (certified copy, where appropriate, of the) foreign language version is appended thereto. Additionally, where the crew includes persons who are not sufficiently versed in the English language, adequate arrangements must be made for transmitting orders in a language that they know sufficiently well, otherwise the vessel may be prevented from proceeding to sea.⁹⁵

Guyana has an extensive and very important river system used for freight transport to the interior and access to ports. Government and private sector river services, including ferry services for passengers and vehicles and water taxis (speed boats) are found in the Essequibo, Berbice and Corentyne rivers.⁹⁶ The River Navigation Act CAP 50:01 establishes the administrative framework for regulating craft used for the navigation of any river or lake in Guyana and confers on the minister the authority to make regulations addressing the conduct of craft and crew, such as the certification of competency of masters of vessels and of steersmen and bowmen of boats.⁹⁷ Guyana is the only country reviewed that has undertaken commitments on internal waterways passenger transportation and the rental of vessels with crew (CPC code 7223); these commitments are bound without reservation on modes 1, 2 and 3. Guyana and Barbados have undertaken commitments on internal waterways freight transportation; for both

⁹³ See Guyana Shipping Act CAP 49:01, sections 105 and 106; see also *ibid*, sections 115 and 121, which provides for possibly entering into crew agreements and permitting the minister to waive the legislative requirements where he/she considers it expedient to do so. But in no case shall stipulations adopted by the parties be contrary to the laws of the flag state of the ship in matters relating to wages and conditions of employment of seamen and masters on board ships.

⁹⁴ , Shipping Act of Jamaica, section 113; Shipping Act CAP 296 of Barbados, section 91; Guyana Shipping Act CAP 49:01, section 107, which provides that such licence shall during its currency have the same force as a certificate of competency granted under the act and may be cancelled or suspended for like reason, and be valid for up to five years from the date of issue and may be renewed upon such conditions as may be prescribed. Note also that citizens holding foreign certificates of competency may be granted a certificate of equivalent grade under the act. See also Trinidad and Tobago Shipping Act, section 89; Harbours and Merchant Shipping Act CAP 234 of Belize, sections 19 and 20.

⁹⁵ E.g., Guyana Shipping Act CAP 49:01, sections 129 and 130; Shipping Act of Jamaica, section 132; Shipping Act of Trinidad and Tobago, sections 112 and 113; Shipping Act CAP 296 of Barbados, section 89.

⁹⁶ E.g., “Guyana Transport Sector Study,” December 2005, on line, which may be viewed at: <http://www.gina.gov.gy/guyanatransportstudy/mainreport.pdf>.

⁹⁷ See River Navigation Act CAP 50:01, sections 2-7. See also *ibid*, sections 12 and 14, which operates as a savings clause with respect to the rights of Amerindians as regards boats belonging to them and used solely for their own purposes, and reaffirming the duty of the director of maritime affairs and the Maritime Administration Department to enforce the act.

countries these are bound without reservation for modes 1, 2 and 3. The significance of this is unclear for Barbados given the country's lack of internal waterways.⁹⁸ Trinidad and Tobago has only undertaken associated commitments with respect to the repair and maintenance of vessels. However, there is no evidence of commercial activity in this area.⁹⁹

Jamaica has not undertaken any commitments on internal waterways transportation services, although there is limited activity in this sector; reference may be made to the River Rafting Act¹⁰⁰ and Harbours Act.¹⁰¹ The Sector Plan for Transport, which is one of the strategic priority areas of the *Vision 2030 Jamaica–National Development Plan*, suggests that Jamaica's water-based transport subsector is almost entirely represented by deep-sea maritime transport, as inland waterways and short-sea coastal shipping play insignificant roles in the island's transport sector.¹⁰²

Belize also has not undertaken any commitments on internal waterways transportation services. Part III of the Harbours and Merchant Shipping Act CAP 234 regulates the coastal and river service, which is defined as passenger trade between all places in Belize by sea or on any river or inland water, including the coastal and river service between Belize and the coasts of

⁹⁸ Note that Barbados and Trinidad and Tobago have also undertaken commitments on the maintenance and repair of vessels (CPC 8868**) relating to internal waterways.

⁹⁹ Note that the Port Authority of Trinidad and Tobago (PATT) has responsibility for the Government Shipping Service between Trinidad and Tobago under the Port Authority Act CAP 51:01.

¹⁰⁰ The River Rafting Act establishes the River Rafting Authority to regulate, control, and promote river rafting in Jamaica; see River Rafting Act, sections 3 and 4. The River Rafting Regulations made pursuant to section 9 of the act provides for, *inter alia*, a system of licensing of rafts and rafting men; and the licensing or appointment of tradesmen or businesses to provide goods, entertainment, food or drink in the near vicinity of the designated river rafting route, or transportation or valet parking services between embarkation and disembarkation points. The regulations proscribe all persons from pursuing such activities without a license or appointment. See River Rafting Regulations, regulations 3, 4, 5, 11, 13, 14, 29, 20, 31 and 33, and Fourth Schedule concerning the Rio Grande River in Portland; the Martha Brae River in Trelawny; the Great River in St. James; the White River in St. Mary; the Milk River in Clarendon; the Black River in St. Elizabeth, and the Cabarita River in Westmoreland. Note that in accordance with section 9(3) of the act, the River Rafting Regulations establishes an appeal tribunal to hear appeals from aggrieved applicants with respect to the refusal to grant a license, the imposition of any condition attached to a license, or the suspension or revocation of a license.

¹⁰¹ Provision is made in the Harbours Act for the Maritime Authority to grant licences for boats and vessels to be used for carrying passengers or goods in such harbours, channels and approaches; see also Harbour Rules providing for the licensing of any boat or vessel to be used for the carrying of passengers and goods. Exceptions are made for, *inter alia*, government vessels, private vessels not used for commercial purposes, fishing vessels, and vessels in possession of valid sea-going certificates. The licensing requirement, as such, appears to be aimed at coastal trade. Note that references in the Harbours Act are to the Marine Board which was established by the Marine Board Act. The Marine Board Act was repealed by the Shipping Act, which established the Maritime Authority, which replaces the Marine Board as the regulatory agency for harbors in the country (including channels and approaches leading thereto).

¹⁰² See "Vision 2030 Jamaica: Transport Sector Plan 2009-2030," Transport Task Force 2009, p.16, viewed on-line at http://www.mtw.gov.jm/general_information/reports/Vision%202030%20Jamaica%20-%20Final%20Draft%20Transport%20Sector%20Plan%20_Jul.pdf.

Mexico, Guatemala, Honduras, and Nicaragua;¹⁰³ as such it extends beyond cabotage and includes cross-border inland water transport services. The act provides for the grant of sea-going certificates to vessels and certificates of competency for persons to act as master, mate, or engineer of vessels. Vessels may not engage in coastal and river service without certification.¹⁰⁴ This requirement, however, only applies to vessels, owned, operated, or managed by persons residing in Belize.¹⁰⁵

Ship registration

In general, the legislation reviewed is more restrictive with respect to the registration of ships involved in local trade than for international shipping. As is true for most jurisdictions (including those reviewed) the property in a ship is divided into sixty-four shares, and any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein, though not a fractional part of a share in a ship.¹⁰⁶ Smaller vessels, i.e., those generally under 24 meters in length, are formally licensed—as opposed to registered—under the legislation. The number of joint owners of a licensed vessel is normally no more than eight persons.¹⁰⁷ Additionally, irrespective of the nationality conditions imposed on ship registration, provision is made in the legislation of all five countries reviewed for the registration of a foreign vessel that has been bareboat chartered to any person qualified to own a local ship, and which otherwise satisfies the requirements for registration.¹⁰⁸

¹⁰³ See Harbours and Merchant Shipping Act CAP 234, section 9.

¹⁰⁴ See Harbours and Merchant Shipping Act CAP 234, sections 12, 15, 16, 17, 19, 20 and 21.

¹⁰⁵ See Harbours and Merchant Shipping Act CAP 234, section 11. But note that any foreign vessel engaged in coastal and river service in any port of place in Belize which is found to be unsafe may be provisionally detained; see Harbours and Merchant Shipping Act CAP 234, section 28. Note that section 12 of the Harbours and Merchant Shipping Act was amended by Act No. 11 of 2007 to extend the categories of vessels involved in coastal and river service that must be licensed. This now includes: tug boats, barges, sailing vessels, jet skis, scientific research vessels, casino boats, party boats, private pleasure boats, dredges, all vessels for hire, and all power driven vessels. The only exceptions are paddle dories or other similar craft.

¹⁰⁶ E.g., Shipping Act of Trinidad and Tobago, section 14; see also Shipping (Registration of Ships) Regulations; Shipping Act CAP 296 of Barbados, sections 17-19.

¹⁰⁷ E.g., Guyana Shipping Act CAP 49:01, section 50; Shipping Act of Trinidad and Tobago, section 41.

¹⁰⁸ E.g., Shipping Act of Jamaica, sections 18 and 19; Guyana Shipping Act CAP 49:01, section 17; Shipping Act of Trinidad and Tobago, section 4; Shipping Act CAP 296 of Barbados, section 9; Registration of Merchant Ships Act CAP 236 of Belize, sections 18-20. See also Registration of Merchant Ships (Registration and Miscellaneous Provisions) Regulations of Belize, regulation 48. Note that the converse also applies, i.e., provision is made for the possibility of dual registration where local ships are bare-boat chartered-out.

Belize is the only country reviewed which has undertaken liberalization commitments on ship registration; Belize has bound commitments without reservation on modes 1 and 2 only, leaving mode 3 unbound.

The Registration of Merchant Ships Act CAP 236 establishes the International Marine Registry of Belize (IMMARBE) for the registration of vessels of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including pleasure vessels.¹⁰⁹ IMMARBE maintains the International Merchant Marine Register of Belize which is essentially an ‘open registry’. Any person may apply to register a vessel in IMMARBE by submitting an application in the prescribed format with the appropriate fee.¹¹⁰ All registered vessels must have a shipping agent in Belize appointed by the ship owner.¹¹¹ Any change in the ownership of a ship must be notified to the registrar,¹¹² and the new owner must apply for a new certificate of registry.¹¹³ It may be noted that Belize has the most liberal regime for ship registration of the five countries reviewed. There are no restrictions on ownership, participation in ownership and, investment or personnel.

The legislation in Guyana is more typical. Persons qualified to own a Guyana ship are: citizens of Guyana; persons domiciled or ordinarily resident in Guyana; CARICOM citizens residing in the CARICOM country where the ship is customarily engaged in international voyages; a body corporate established under the laws of Guyana with a majority of shareholders

¹⁰⁹ See Registration of Merchant Ships Act CAP 236, section 3. Note also that the act authorizes the attorney general to engage the services of a person to manage IMMARBE’s business abroad.

¹¹⁰ See Registration of Merchant Ships Act CAP 236, sections 5, 6, 8 and 16. See also Registration of Merchant Ships (Registration and Miscellaneous Provisions) Regulations, which further authorizes the attorney general, in special circumstances, to confer the status of a Belizean ship on vessels not registered under the act; *ibid*, regulation 2(2).

¹¹¹ See Registration of Merchant Ships Act CAP 236, section 17, which notes that only an attorney-at-law holding a current practicing certificate issued under the Legal Profession Act, an accountant possessing a current practising certificate in accordance with the Accountancy Profession Act, a company registered under the Companies Act and licensed as a bank or financial institution under the Banks and Financial Institutions Act, or a person designated for the purpose by the attorney general, may act as a shipping agent.

¹¹² See Harbours and Merchant Shipping Act CAP 234, section 61, which provides that whenever any person becomes the owner of any ship registered in Belize, or acquires any interest therein, and whenever there is any change in the ownership of any such ship, the new owner and the person parting with such ship or any interest therein must give notice in writing to the harbour master (now ports commissioner) of the change of ownership.

¹¹³ See Registration of Merchant Ships (Registration and Miscellaneous Provisions) Regulations, regulation 19, which provides that whenever a change occurs in the ownership of a ship, the registrar shall be notified accordingly and a new certificate of registry shall be applied for by the new owner; the new owner or owners, operators, or the master shall, for the purpose of obtaining a new certificate, deliver the certificate of registry to any deputy registrar as soon as practicable. Contrast this with the Shipping Act of Barbados, section 63, which provides that registration is not required where the ownership of a Barbadian ship is changed, though the original registrar may, on the application of the owner of the ship, register the ship anew. Note that the Hotel and Tourist Accommodation Act of Belize which provides for registration and licensing of “tourist accommodations” is defined to include cruise ships and live-aboard vessels; see Hotels and Tourist Accommodation Act CAP 285, section 2, 5 and 7-9.

meeting the criteria for individual ownership (as aforesaid) and having its principal place of business in Guyana, persons in *bona fide* joint venture relationships with Guyana citizens, residents, domiciliaries or CARICOM citizens qualifying for individual ownership (as aforesaid); or other persons as determined by the minister by order. A ship registered in a foreign state sold to persons qualified to own a Guyana ship may also be registered in Guyana once it has been deregistered from its previous registration. A ship may not be registered in Guyana unless it is wholly owned by persons qualified to own a Guyana ship. A ship which is owned wholly by such persons must be registered unless it is registered in or otherwise recognized by the law of another country as a ship of that country, or is expressly exempted from registration under the act, such as where the ship is required to be licensed and operates solely within Guyana waters, or is exempt from being licensed, or is otherwise exempted by the minister.¹¹⁴

The Guyana Shipping Act requires every ship, wholly owned by Guyanese citizens, persons ordinarily resident or domiciliaries, CARICOM citizens, a body corporate or joint venture fulfilling the above-stated criteria for ship registration, but which is under 24 meters in length to be licensed as opposed to registered under the act; certain exemptions are made for small pleasure craft.¹¹⁵ A smaller vessel that is otherwise required to be licensed (as opposed to registered), but which is owned by persons not fulfilling the above-mentioned criteria, may not be licensed in Guyana unless an exemption is granted by the minister. Where an unqualified person acquires a legal or beneficial interest as owner of a ship flying the Guyana flag, other than

¹¹⁴ See Guyana Shipping Act CAP 49:01, sections 11, 12, 17 and 71; see also *ibid*, section 15, which requires that in the declaration of ownership that must be submitted for registration include a declaration that, to best of the applicant's belief, no unqualified person is entitled as owner to any legal or beneficial interest in the ship. Note also that where a ship is acquired under a bareboat charter and is registered in Guyana, the registration terminates upon termination of the bareboat charter; additionally, unless the ship owner is a Guyanese citizen or a body corporate incorporated in Guyana, no matters pertaining to the ownership of the ship or any proprietary interest connected therewith are subject to the Laws of Guyana (unless expressly provided in some other law), though all other matters pertaining to the ship are governed by the act; see *ibid*, section 18.

¹¹⁵ See Guyana Shipping Act CAP 49:01, section 49. Note that exemptions are made for pleasure craft of less than five meters in length which are not equipped with propulsion machinery; pleasure craft of less than three meters in length equipped with propulsion machinery of not more than five) horse power. Additionally, the minister may exempt either generally or specifically ships from compliance with this section subject to such conditions as deemed appropriate. See also *ibid*, section 2, defining "pleasure craft" as a ship, however propelled, that is used exclusively for pleasure and does not carry passengers or cargo for hire or reward, but does not include a vessel that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding houses, guest house, or other establishment.

by the procedures for transmission as provided in the act, that interest is subject to forfeiture under the act.¹¹⁶

In accordance with the Shipping Act CAP 50:10, to be eligible for registration as a Trinidad and Tobago ship the vessel must be wholly owned by persons qualified to own a Trinidad and Tobago ship. Persons qualified to own a Trinidad and Tobago ship are nationals of Trinidad and Tobago;¹¹⁷ CARICOM citizens residing in a member State where the ship is customarily engaged in international voyages; individuals or corporations owning ships hired out on bareboat charter to nationals of Trinidad and Tobago; individuals or corporations in *bona fide* joint venture shipping enterprise relationships with nationals of Trinidad and Tobago as may be prescribed; and such other persons as the minister may by order determine, subject to affirmative resolution of Parliament.¹¹⁸

The Shipping Act provides for the licensing of vessels under 24 meters in length which are not registered as ships under the act, or classified as small pleasure craft.¹¹⁹ Vessels may only be licensed in Trinidad and Tobago where they are wholly owned by individuals or corporations ordinarily resident in Trinidad and Tobago. Where the owner of a licensed Trinidad and Tobago vessel ceases to be resident in the country, the license is deemed to have been cancelled. A licensed Trinidad and Tobago vessel is normally restricted to operating only within local waters.¹²⁰

The Maritime Authority is responsible for administering the registration of ships in Jamaica.¹²¹ Persons qualifying for ownership of a Jamaican ship include Jamaican citizens; persons deemed to belong to Jamaica (pursuant to the Immigration Restriction (Commonwealth

¹¹⁶ See Guyana Shipping Act CAP 49:01, sections 52, 53, 55, 56, 103 and 104. Note that the act addresses the appropriate procedures for the transfer of a ship or share therein and how this may be dealt with where the transfer arises due to death, bankruptcy, or other such circumstances, allowing, *inter alia*, for the High Court on an application by a person not qualified to own a Guyana ship or share therein, to order sale.

¹¹⁷ See Shipping Act, section 2, which defines “nationals of Trinidad and Tobago” as citizens of Trinidad and Tobago; persons who have obtained residency status under the Immigration Act; and corporations established by or under the laws of Trinidad and Tobago having the principal place of business in Trinidad and Tobago.

¹¹⁸ See Shipping Act, section 4.

¹¹⁹ See Shipping Act, sections 2 and 40; note that the term “pleasure craft” is defined as a ship, however propelled, that is used exclusively for pleasure and does not carry passengers or cargo for hire or reward, but does not include a ship that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding house, guest house, or other establishment. The reference in the text to “small pleasure craft” is meant to refer to vessels of such description which are less than five meters in length and not equipped with propulsion machinery, or less than three meters in length equipped with propulsion machinery of not more than five horse power.

¹²⁰ But note that the licensing requirements of the act are subject to such exemptions as may be granted by the minister; see Shipping Act of Trinidad and Tobago, sections 41(5) and 42(2).

¹²¹ See Shipping Act of Jamaica, section 8; see also *ibid*, section 28, which sets out the bases on which a ship may be refused registration.

Citizens) Act), bodies corporate or partnerships established under and subject to the law of Jamaica and having a place of business or a managing owner or agent in Jamaica; or business entities established under and subject to the law of a State other than Jamaica which, pursuant to that law, are entitled to own or operate ships.¹²² Significantly, the two latter mentioned bases for qualification would allow for the registration of foreign interests as owners of a Jamaican ship.

A ship must be registered unless it is a small vessel and subject to the requirement for licensing or is an exempted vessel.¹²³ Small vessels, wholly owned by persons qualified to own a Jamaican ship that operates in Jamaican waters must be licensed under the act, unless exempted.¹²⁴

A ship may be registered as a Barbadian ship if it is a pleasure yacht (i.e., not carrying passengers or cargo for hire or reward), a local fishing vessel registered under the Fisheries Act, or at least 44 of its 64 shares are owned by “qualified persons” or “CARICOM persons.”¹²⁵ A “qualified person” is defined as a Barbadian citizen resident in Barbados, a permanent resident within the meaning of the Immigration Act, or a Barbadian ship company (incorporated or registered under the Companies Act or any special Act). A CARICOM person is defined as a citizen of a CARICOM State who is resident in a CARICOM State, or a CARICOM shipping company, i.e., a corporation incorporated under the laws of a CARICOM State whose principal place of business is within a CARICOM State, and all the shares or stock is beneficially owned by CARICOM persons (citizens and shipping companies) or CARICOM States.¹²⁶

A ship registered under the Fisheries Act as a "local fishing vessel" must be a commercial fishing vessel wholly owned by the Barbadian Government, Barbadian citizens, or permanent residents within the meaning of the Immigration Act; or wholly owned by a company or other association incorporated or established under the laws of Barbados, having its principal place of business there, all the members of which are citizens or permanent residents of Barbados, or all the shares or stock of which are beneficially owned by such persons or by a company or other

¹²² See Shipping Act, section 20; see also *ibid*, section 20A(2), which restricts the appointment as a managing owner or agent to a resident if an individual, or in the case of a body corporate, a body incorporated under the laws of Jamaica and having its place of business in Jamaica.

¹²³ See Shipping Act, section 17.

¹²⁴ See Shipping Act, section 55, which concerns ships less than 24 meters in length and exempting pleasure craft of less than five meters in length not equipped with propulsion machinery or less than three meters in length with propulsion machinery of not more than five horse power, and ships registered under the act.

¹²⁵ See Shipping Act CAP 296 of Barbados, sections 7-8. Note that a vessel should be no more than 20 years old or such greater period as the registrar may permit to qualify for general registration (i.e., permitting use in the Caribbean trading area). See also Fisheries Act CAP 391, sections 11 and 14.

¹²⁶ See Shipping Act CAP 296, section 2.

association meeting the aforesaid criteria; or certified by the minister as having substantial economic connections with Barbados in relation to its ownership as to be deemed to be a local fishing vessel.¹²⁷

A ship generally trading within the Caribbean area, as a near coastal trade ship or Caribbean trade ship, of one hundred and fifty (150) gross register tons or more, and which is owned by CARICOM persons, may be registered in Barbados. Conversely, a ship engaged only in foreign-going trade (i.e., voyages to ports beyond the Caribbean or between such ports) may be approved for registration *regardless of the nationality of the owners*.¹²⁸ The legislative framework suggests that Barbados maintains an open registry (not linked to the nationality of the owners) for pleasure yachts and vessels engaged in international shipping, but places restrictions on registration for vessels remaining within the near coastal or broader Caribbean area.¹²⁹

Maritime services and investment incentives

Special investment incentives for businesses engaged in shipping and related activities are provided in most of the countries reviewed.

The Shipping Corporation Act CAP 296B of Barbados is designed to attract investment and expressly provides that the Exchange Control Act, Income Tax Act, and Stamp Duty Act do not apply to corporations incorporated under the act or to the directors or officers of such corporations who are resident outside of CARICOM.¹³⁰ The Shipping (Incentives) Act CAP 90A makes additional provision for the granting of tax and duty concessions to shipping companies in Barbados. Any company engaged in “shipping activities” may be an approved shipping company. “Shipping activities” are defined as including the operation of ships for carriage of passengers or cargo; commercial shipping and boating in the tourist industry; the leasing of

¹²⁷ See Fisheries Act CAP 391, section 2; note that a local fishing vessel may not be registered outside Barbados.

¹²⁸ See Shipping Act CAP 296, sections 8-10. Note that small commercial vessels and Caribbean trade ships (other than vessels registered under the Fisheries Act) that are below 150 tons (though not less than one ton) and which meet the registration criteria are registered by the director of maritime affairs in a small vessel register. Vessels less than one ton engaged in the carriage of passengers and cargo for hire or reward pursuant to the Barbados Port Authority Act may also be registered in the small vessel registry; see *ibid*, section 15.

¹²⁹ But see WTO Trade Policy Review of Barbados, WTO/TPR/S203/Rev.1, p. 74, paragraph 99, which states that “The Barbados Ships' Registry deals with all foreign-going ships and all coastal and Caribbean ships over 150 tons. There are no restrictions on the ownership of vessels. Vessels over 20 years of age on initial registration may be accepted by the Principal Registrar, providing they meet the requirements of Conventions to which Barbados is party. At end-May 2008, 160 vessels were registered under the Barbados flag. The Director of Maritime Affairs deals with all other ships.”

¹³⁰ See Shipping Corporations Act CAP 296B, section 330.

ships; and shipbuilding, including the reconstruction, alteration, refitting, equipping, maintenance or repair of ships.¹³¹

The Shipping (Incentives) Act provides for a concession period of ten years (beginning on the date specified in the order) in respect of an approved shipping company. Specific benefits conferred by the act, however, may extend beyond the 10-year period.¹³² Key elements of the scheme include the following:

- Where an approved shipping company incurs approved capital expenditures up to \$200 million in respect of an approved shipping activity, the expenditure may be deducted against the income arising over a period of 15 years, for income tax purposes.
- Where an approved shipping company in an income year incurs certain marketing expenditures, in calculating the assessable income it may deduct an amount equal to 150 per cent of the expenditure incurred.¹³³
- An approved shipping company may carry forward losses incurred but not written off during the concession period for the first nine years of assessment after the expiration of that period.
- Where a person other than a commercial bank provides funding (whether a loan or otherwise) for an approved shipping activity, either the interest or dividends received by that person is exempt from income tax.

¹³¹ See Shipping (Incentives) Act CAP 90A, sections 2-4 – further providing that the minister may not revoke an order made under the act before he/she gives the company a reasonable opportunity to respond. Note that in order to receive concessions, an approved shipping company engaged in commercial shipping and boating in the tourist industry must have a valid license under the Barbados Harbours Regulations or a valid permit under the Shipping (Waterports) Regulations; see *ibid*, section 6.

¹³² See Shipping (Incentives) Act CAP 90A, sections 2 and 5.

¹³³ The marketing expenditures which attract 150 percent deductions in calculating assessable income include fares, accommodation, and subsistence of the taxpayer or his/her employees and employee salaries and wages accountable for time spent attending promotional events for yachting or boating tourism or training in agreed marine skills; payments to an agent in Barbados engaged in the promotion of yachting or boating tourism to undertake work overseas on behalf of the taxpayer; the cost of advertising or otherwise soliciting business outside of Barbados, or supplying brochures for distribution to visiting yachts or boats; costs incurred at yachting or boating events which provide opportunities to market yacht and boating tourism in Barbados; sums incurred on overseas market research; contributions to joint tourism-promotion arrangements carried out abroad; costs incurred in bringing to Barbados journalists and persons involved with international guides and documents for the promotion of yachting or boating tourism; costs of promoting and providing services for international events bringing yachts and boats to Barbados; costs of electronic marketing of yachting or boating tourism in Barbados via websites; and costs of hiring short-term marketing and technical consultancy services. See Shipping (Incentives) Act CAP 90A, section 5(4) and First Schedule.

- An approved shipping company that operates a restaurant on board a ship is exempt from paying customs duties on certain listed items that are not made or manufactured in Barbados.¹³⁴

An approved shipping company is entitled during the concession period to import duty-free into Barbados any article to be used exclusively in the building, alteration, refitting, equipping, maintenance, or repair of a ship or, with the consent of the minister, any ship. Additionally, an approved shipping company is exempt from the payment of customs duty on certain additional items where these are not made or manufactured in Barbados.¹³⁵ Provision is also made for the commissioner of inland revenue to certify the concessions enjoyed by an approved shipping company under the act where this may be required by the fiscal authorities of any country in which a minority shareholder in an approved shipping company is liable to pay tax in respect to his/her shareholding.¹³⁶ Additional special incentives packages may be designed for major investment projects.¹³⁷

The Shipping Act of Jamaica provides for tax and other concessions to registered Jamaican ships engaged in international trade, whether carrying goods or passengers to or from Jamaica or between ports outside Jamaica. Benefits are provided to an approved shipping entity and are subject to such conditions as the minister may deem appropriate. In order to be eligible to receive benefits as an approved shipping entity, the principal business of the shipping entity must be that of owning or operating ships. The stipulation is similar, though less strict than that found in the Shipping Corporation Act of Barbados. A concession period of ten years is specified, though provision is made for the possibility of an extension. Potential fiscal benefits include:

- Exemption from income tax for gains or profits derived from the ownership or operation of qualifying Jamaican ships and any dividend paid to shareholders (and where the

¹³⁴ See Shipping (Incentives) Act CAP 90A, section 5(5) and Second Schedule, which permits the importation of goods such as kitchen and beverage equipment, including appliances, stoves and ovens, free from customs duty and exempt from excise tax, once every five years.

¹³⁵ See Shipping (Incentives) Act CAP 90A, section 7 and Third Schedule. The additional items that may be imported duty-free that are not made in Barbados include trailers for use exclusively in the building, refurbishing, equipment, transporting, maintenance or repair of a ship, and all water sports equipment, including towables. See also *ibid*, sections 8 and 9, which establish further conditions for record keeping, use of appropriate markings, inspections, and restrictions on disposal of imported items.

¹³⁶ See Shipping (Incentives) Act CAP 90A, section 12.

¹³⁷ E.g., Deep Water Harbour (Expansion and Improvement) (Exemption from Duties) Act CAP 67A, section 3, which provides for exemption from the payment of duties or taxes on all oil (excluding petrol and motor spirits), materials, equipment, supplies or goods, including vehicles and marine vessels, imported into Barbados by or on behalf of the contractors for use exclusively by them in the expansion and improvement of the harbor.

shareholder is a company, any dividend paid to its shareholders deriving therefrom) or profits paid to partners of an approved shipping entity.

- Exemption from income tax for any debtor of an approved shipping entity with respect to interest or other income paid relating to the acquisition of ownership or operation of a qualifying Jamaican ship.
- Exemption from transfer tax, stamp duty, customs duty, general consumption tax and other similar charges related to the operation of a qualifying Jamaican ship.

Regulatory concessions include relaxation of mandatory requirements on wages and conditions of employment in crew agreements once arrangements are established on the basis of consent; and waiving any requirement of the act in order to facilitate the expedition of any matter in relation to the registration of ships in Jamaica.¹³⁸

The provision of incentives to registered Jamaican ships does not exclude foreign investors meeting the qualifications of ownership, which include any business entity established under and subject to the law of a State other than Jamaica that, pursuant to that law, is entitled to own or operate ships. The incentives provide grant relief to Jamaican vessels engaged in international trade in circumstances where ships not registered in Jamaica would not likely be subject to taxation.¹³⁹

The Shipping Incentives Act of Jamaica provides for the grant of additional concessions to an “approved shipping corporation” which is by definition limited to the Jamaica Merchant Marine Limited, the JMM Atlantic Line Limited, and any other company wholly owned by the government or in which the government has a majority interest which is engaged in shipping activities and which on application made to the minister is declared to be an approved shipping corporation for the purposes of the act. The term “shipping activities” is defined as comprising

¹³⁸ See Shipping Act, sections 101A-101J; see also *ibid*, section 456, which concern the minister’s general powers of exemption under the act.

¹³⁹ Regulatory concessions on conditions of employment may be questioned in so far as these could be seen as potentially lowering labor standards to attract investment contrary to the EPA. It may be recalled that by virtue of Article 193 of the EPA, the parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by lowering the level of protection provided by domestic social and labor legislation; or derogating from, or failing to apply such legislation and standards; see also EPA, Articles 72 and 73. See Shipping Act, section 101I; but see *ibid*, section 122, which sets forth the general rule that to the extent that any terms or conditions adopted by the parties to a crew agreement are contrary to the law of Jamaica in matters relating to wages and conditions of employment of seamen and masters on board ships, such terms and conditions shall have no effect, and the relevant provisions of Jamaican law shall be deemed to apply. See also *ibid*, section 126(2), which further requires that even where a ship is no longer registered as a Jamaican ship the provisions of Part VII of the act relating to the payment of a seaman’s wage and the resolution of disputes continue to apply as if the ship had remained registered in Jamaica.

the operation of ships for the carriage of passengers or cargo, the leasing of ships, and shipbuilding (including reconstruction, alteration, refitting, equipping, maintenance or repairing of ships).¹⁴⁰ The legislation is designed to provide incentives to government commercial vessels and is somewhat outdated; the JMM Atlantic Line Ltd, which used to carry Jamaica's banana exports, ceased to operate in the late 1980s.¹⁴¹

The basic package of incentives is fairly similar to that provided to registered Jamaican ships under the Shipping Act. Provision is made for a basic ten-year concession period, exemption from income tax in respect of profits or gains arising during the concession period with the right to carry forward losses, exemption from income tax on dividends paid out of profits or gains to Jamaican residents and non-residents if they would not be liable to income tax in respect of such dividend in their country of residence (and if so, exemption only of the amount which exceeds such liability), and exemption from customs duty on imports of ships and various listed articles which may be imported for construction, alteration, refitting, equipping, maintenance or repairs of a ship.¹⁴²

In addition to the above targeted incentives, the Jamaica Free Zones Act provides for granting incentives to approved enterprises operating in a designated free zone area or outside a free zone as a separate entity within the customs territory. An "approved enterprise" is defined as any enterprise approved by a promoter or, if the enterprise is a promoter, by the Jamaica Free Zone Council, to carry on an approved activity. The prescribed approved activities include transshipment operations, loading and unloading operations, exporting, importing, and packing and shipping.¹⁴³ However, the Jamaica Free Zone Council or a promoter may not grant approval to any person other than a company incorporated or registered in Jamaica in accordance with the provisions of the Companies Act to undertake any approved activity.¹⁴⁴

The benefits conferred on enterprises operating in a Free Zone include relief from customs duty, general consumption tax and any additional stamp duty,¹⁴⁵ and income tax on

¹⁴⁰ See Shipping (Incentives) Act, section 2.

¹⁴¹ E.g., "Jamaica Producers Group Ltd: History," which may be viewed on-line at: <http://www.jpjamaica.com/index.php?id=4+JMM+Atlantic+Line+Limited&ct=clnk>.

¹⁴² See Shipping (Incentives) Act, sections 6-11.

¹⁴³ See Jamaica Export Free Zones Act, sections 2 & 5 and First Schedule.

¹⁴⁴ See Jamaica Export Free Zones Act, section 21(1); see also *ibid*, section 22, which provides special rules for insurance businesses in free zones.

¹⁴⁵ See Jamaica Export Free Zones Act, section 23.

profits or gains earned from approved activities involving international trading in products.¹⁴⁶ Approved enterprises are exempt from import or export licensing,¹⁴⁷ and although they are required to comply with work permit laws, the payment of fees for the grant of a work permit are waived.¹⁴⁸

The Trinidad and Tobago Free Zones Act CAP 81:07 was reportedly modelled on the Jamaican legislation.¹⁴⁹ The prescribed activities that may be carried out in a free zone cover service operations, including transshipment, loading and unloading operations, and packaging and shipping.¹⁵⁰ The act requires that, in order to operate within a free zone and benefit from the incentives provided in the context of that special regime, a company must be incorporated or registered in Trinidad and Tobago in accordance with the Companies Act, or be registered as a firm under the Registration of Business Names Act.¹⁵¹ The benefits provided include broad exemptions from the import and export licensing regimes; alien landholding requirements; the waiver of fees for work permits; an exemption from withholding tax in relation to profits of a branch, dividends and other distributions arising from activities in the free zone, remitted or deemed to be remitted by an approved enterprise to a non-resident; and specifically as regards an approved enterprise engaged in exporting services from a free zone to a territory (other than the customs territory), exemption from income tax, corporation tax, business levy, or any other tax or levy, on sales, receipts, profits, or gains from those services.¹⁵²

The conditions imposed by the Trinidad and Tobago Free Zones Act traditionally excluded activities involving an investment in excess of US\$50 million from approval. This cap is removed by the Finance Act, 2010, thereby permitting large-scale projects to benefit from the range of tax concessions provided by the free zones legislation.

Other assistance to the shipping industry in Trinidad and Tobago is channelled through the Business Development Company Limited (BDC), which was established in 2002 as a quasi-

¹⁴⁶ See Jamaica Export Free Zones Act, section 39, which expressly exclude approved enterprises engaged in manufacturing.

¹⁴⁷ See Jamaica Export Free Zones Act, section 33, which includes provisos regarding the export of goods into the customs territory.

¹⁴⁸ See Jamaica Export Free Zones Act, section 43.

¹⁴⁹ E.g., Ramiro Moya, Anne-Marie Mohammed and Sandra Sookram, "Productive Development Policies in Trinidad and Tobago: A critical review," IDB Working Paper Series, No. IDB-WP-115.

¹⁵⁰ See Trinidad and Tobago Free Zones Act, First Schedule, Part I.

¹⁵¹ See Trinidad and Tobago Free Zones Act, section 16,

¹⁵² See Trinidad and Tobago Free Zones Act, sections 28, 33, 34 and 38. Note that the act expressly mandates that all necessary steps are taken to ensure that the terms of service and working conditions in any approved enterprise do not fall below minimum accepted standards in Trinidad and Tobago for such class of enterprise; see *ibid*, section 6(1)(h).

governmental authority (i.e., both private and government) under the Ministry of Trade and Industry.¹⁵³ The BDC Trade Assistance program provides technical and financial support to businesses in the context of the overall country strategy to position Trinidad and Tobago as a production base and a commercial, trans-shipment and financial hub in the Caribbean. The assistance includes loan guarantees and tax credits to approved small companies. Studies have also been undertaken on targeted sectors including yachting and the merchant marine.

Belize does not appear to have incentive legislation specially targeting maritime services. Individual incentive packages have been legislated to cater to specific investors and investments. This has generally occurred in relation to large development projects, such as the Cruise Ship Port Development Project Act 2004. The project extends to the development, financing, construction, management, operation, and use of a cruise ship port and adjacent commercial, retail store, bus/taxi terminal, and other transportation facilities, and office facilities to be constructed and developed at the Port Loyola; as well as certain other specific projects, developments and facilities related to the cruise business and for services related thereto; in addition to the use of the Cruise Ship Port and related commercial facilities by Carnival Corporation operating lines and other cruise line operators. The act exempts each developer from any taxes, duties or imposts under any laws for the duration of the agreement or 20 years, whichever is later in time. This is expressly stated to be notwithstanding anything to the contrary in the Income and Business Tax Act, the Sales Tax Act, the Customs and Excise Duties Act, the Customs Regulation Act, or the Exchange Control Regulation Act.

Additionally, the Cruise Ship Port Development Project Act 2004 facilitated the grant of special incentives to the Belize Cruise Terminal Ltd, Carnival Corporation, and Belize Ports Limited for the construction and development of a cruise ship port at the Belize Ports Free Zone at Port Loyola, Belize City.¹⁵⁴

¹⁵³ The BDC replaced and extended the operations of the Small Business Development Company Limited (SBDC) in providing facilitation services to all businesses (not only SMEs) at different stages of their development. The BDC also assumed the trade promotion and export certification functions of TIDCO, which ceased operation in 2006. The services provided by the BDC may be grouped within five clusters: trade assistance; business restructuring; project management, for and on behalf of government, the private sector, and international, multilateral, and bilateral financial institutions (including donors); consultancy and training services; and financial leasing facilities, through a subsidiary, the Caribbean Leasing Company Limited.

¹⁵⁴ The development project provides for the development, financing, construction, management, operation, and use of a cruise ship port and adjacent commercial, retail store, bus/taxi terminal, and other transportation facilities, and office facilities at the Port Loyola; as well as certain other specific projects, development and facilities related to the cruise business and for services related thereto; and the use of the Cruise Ship Port and related commercial facilities by Carnival Corporation operating lines and other cruise line operators. The act exempts each developer from any taxes, duties or imposts under any laws for the duration of the agreement or 20 years whichever is later in time. This

Other fiscal measures of benefit to the maritime industry are found in the Income and Business Tax Act CAP 55 of Belize, which provides for the imposition of an income tax on persons (natural or legal) on the gains and profits from any trade, business, profession or vocation, and employment.¹⁵⁵ Income tax is assessed on chargeable income, which is calculated with provision for the deduction of legitimate expenses. These expenses are defined as including a reasonable amount for exhaustion by wear and tear in limited cases, most notably, any industrial building (including a dock, port, wharf, pier, jetty, or other similar building or structure). Specific exemptions include exemptions for gains or profits arising from the business of shipping carried on by a non-resident where reciprocal treatment is provided by the country of his/her residence to persons resident in Belize and the UK.¹⁵⁶ The peculiar requirement that reciprocity be extended to UK residents is similar to that found in other legislation in the region, for example, in Guyana.

The Income Tax Act of Guyana establishes a single scheme for the treatment of non-residents who carry on the business of ship owner (including charterer), air transport or telecommunications. The gains or profits accruing in Guyana (before deducting for wear and tear) is the sum that bears the same ratio to overall profits as receivables from the carriage of passengers, freight and mail to Guyana vis-à-vis total sums receivable. Where this assessment cannot be computed, a fair percentage of the full sum receivable in relation to its trade in Guyana is assessed. Where trade with Guyana is casual (i.e., not regularly scheduled) no tax is chargeable. A non-resident person is also exempt from tax on the basis of reciprocity defined similarly to the legislation in Belize, i.e., not only to require the foreign State to provide similar treatment to Guyanese residents, but also persons resident in the UK.¹⁵⁷

is expressly stated to be notwithstanding anything to the contrary in the Income and Business Tax Act, Sales Tax Act, Customs and Excise Duties Act, Customs Regulation Act, and Exchange Control Regulation Act.

¹⁵⁵ See Income and Business Tax Act CAP 55, section 5. Note that allowances and other benefits granted regarding employment are generally included though exceptions are made for, for example, with respect to pension contributions and uniforms.

¹⁵⁶ See Income and Business Tax Act CAP 55, section 9, which also provides that the expression “business of shipping” refers to an owner or charterer of ships engaged in the carriage of passengers and/or freight, or the landing, shipping or warehousing of goods; and that a company is deemed to be resident where the central management and control of its business is situate.

¹⁵⁷ See Income Tax Act CAP 81:01, sections 30 and 31. Note that the residency of a company is defined in terms of where the central management and control of its business is situated. See also *ibid*, section 2, which defines the term “resident in Guyana” as applied to an individual as meaning one who resides permanently, or being in Guyana intends to reside permanently, in Guyana, except for such temporary absences as the commissioner-general may seem reasonable and not inconsistent with the claim of such individual to be resident in Guyana; or resides in Guyana for more than 183 days in the year.

The Income Tax (In Aid of Industry) Act CAP 81:02 provides fiscal incentives to encourage the establishment or development of certain industries in Guyana, including shipbuilding and repair of ships, transportation undertakings, and dock undertakings.¹⁵⁸ The tax exemption granted is for a period not exceeding five years in certain regions.¹⁵⁹ Other fiscal measures of benefit to maritime service suppliers may be found in various pieces of legislation.¹⁶⁰

¹⁵⁸ See Income Tax (In Aid of Industry) Act CAP 81:02, section 1(2) and First Schedule.

¹⁵⁹ See Income Tax (In Aid of Industry) Act CAP 81:02, section 2(1) and (1A), Which identifies the following regions; Region 1: Barima/Waini; Region 7: Cuyuni/Mazaruni; Region 8: Potaro/Siparuni; Region 9 Upper Takatu/Upper Essequibo; Region 10: Upper Demerara/Upper Berbice; and such other Regions as the minister may, by Order, subject to negative resolution of the National Assembly, specify. Note that more recent (2008) amendments to the legislation authorize the minister, notwithstanding anything to the contrary in the Income Tax Act or the Corporation Tax Act, to grant a 10-year exemption from corporation tax with respect to income from new economic activities of a developmental and risk-bearing nature which demonstrably create new employment in certain specified regions or new employment in certain stated fields including ICT (save for retail and distribution), tourist facilities, development and manufacturing of new pharmaceutical products, chemical compounds, and the processing of raw materials to produce injectables; infrastructural development, including production of electricity using renewable energy; such other fields as the minister may, by order, subject to negative resolution of the National Assembly, specify.

¹⁶⁰ E.g., Value Added Tax Act, sections 18 and 21 and Schedules I and II, which designates, *inter alia*, river crossing services that are the subject of an agreement between the government and the supplier of the service as exempt supplies under the Value Added Tax Act.

AIR TRANSPORT SERVICES

The coverage of air transport services in the EPA appears to be broader than in the GATS. The language of the two agreements is similar though not identical.

Articles 66(e) and 75(1)(c) of the EPA excludes from the scope of commitments on commercial presence (mode 3) and cross-border supply (modes 1 and 2) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than the following:¹⁶¹

- Aircraft repair and maintenance services during which an aircraft is withdrawn from service.
- Selling and marketing air transport services;
- Computer reservation system (CRS) services.
- Other ancillary services that facilitate the operation of air carriers, such as ground handling services, rental services of aircraft with crew, and airport management services.

The Annex on Air Transport Services to the GATS applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. However, the annex provides that the GATS does not apply to measures affecting traffic rights and services directly related to the exercise of traffic rights other than (a) aircraft repair and maintenance services; (b) selling and marketing air transport services; and (c) computer reservation system (CRS) services.¹⁶² As such, while the annex applies to the whole range of air transport services, including ancillary services, consensus exists on only a subset of these services (i.e., those listed in (a)-(c) above) as currently falling within the scope of the GATS.¹⁶³ The Council for Trade in Services is charged with undertaking periodic reviews with a view to considering the possible further application of the GATS in this sector.¹⁶⁴

¹⁶¹ See EPA, Articles 66(e) and 75(1) (c).

¹⁶² See GATS Annex on Air Transport Services, paragraphs 1-4, which further confirms that any specific commitment or obligation assumed under the annex to the GATS does not reduce or affect a member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO agreement. Additionally, the dispute settlement procedures of the annex may be invoked only where obligations or specific commitments have been assumed by the concerned members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

¹⁶³ E.g., "Air Transport Services," Background Note by the WTO Secretariat, S/C/W/59 (1998), paragraphs 2, 3, 5 and 60-70; "Air Transport Services," Information Note by the WTO Secretariat JOB(05)/300 (2005).

¹⁶⁴ See GATS Annex on Air Transport Services, paragraph 5.

The scope of measures excluded by the reference to “services directly related to the exercise of traffic rights” is subject to interpretation. The annex defines “traffic rights” to mean the following:

“the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.”

This is generally interpreted as excluding from the GATS air transport services for the carriage of passengers, cargo, and mail.¹⁶⁵ However, it may be noted that two WTO members—Sierra Leone and the Gambia—have undertaken full commitments on modes 1, 2 and 3 for passenger transportation by air (CPC 731).¹⁶⁶ Similarly, in Annex IV.F of the EPA Guyana, Jamaica, and Belize have undertaken bound commitments on modes 1, 2 and 3 for CPC 731; for Jamaica this is limited to non-scheduled services (CPC 7312), and for Belize cabotage is excluded. While no WTO member has undertaken commitments on air freight transportation (CPC 732), 10 CARICOM countries have undertaken commitments in Annex IV.F of the EPA. These include Barbados, Belize, Guyana, and Trinidad and Tobago; for Barbados mail transportation by air is excluded. All have bound commitments with regard to mode 2; all except Trinidad and Tobago have bound mode 1; market access for mode 3 is either unbound or subject to ENTs for the four countries, while national treatment for mode 3 is bound for all save for Trinidad and Tobago. No European country has made similar commitments.

The regulation of cargo flights is generally addressed through bilateral arrangements. The grant of commercial rights in bilateral air service agreements is typically for "passengers, cargoes and mail." Thus bilateral air service agreements will usually apply to scheduled all-cargo services in the same way that they cover the more prevalent passenger/cargo combination services.¹⁶⁷

¹⁶⁵ Passenger air transportation covers scheduled and non-scheduled flights. These services are supplied in aircraft (including helicopters) of any type. Non-scheduled passenger transportation also covers air sightseeing services and air taxi services by helicopters. Transportation of passenger-accompanying baggage is also included. Freight air transportation covers mail, individual articles and packages assembled and shipped in specially constructed shipping containers designed for ease of handling in transport, as well as other freight transported on a scheduled or non-scheduled basis.

¹⁶⁶ E.g., “Air Transport Services – Background Note by the Secretariat” S/C/W/59, p.48, Table 6.

¹⁶⁷ See also “Air Transport Services,” Background Note by the Secretariat, S/C/W/59, 5 November 1998.

The commitments undertaken by CARIFORUM States in Annex IV.F of the EPA appear to extend beyond the purported scope of the agreement as stated in articles 66 and 75, quoted above. Article 250 of the EPA provides that “[t]he Annexes, Protocols and footnotes shall form an integral part of this Agreement.” While there are authorities who suggest that a State’s schedule of commitments may not derogate from its obligations under the principal agreement,¹⁶⁸ there is nothing to suggest that a State may not supplement its obligations. Indeed, the object and purpose of a schedule is to facilitate a State in undertaking additional liberalization commitments. Moreover, international law affirms that a State, in certain circumstances, may be bound by a unilateral undertaking.¹⁶⁹ Thus the commitments made in Annex IV.F, which appear to go beyond those contemplated in the EPA, are seemingly binding on the relevant CARIFORUM States.

The civil aviation legislation and regulations of the countries reviewed generally provide for a system of licensing and permits for scheduled and non-scheduled services, respectively. The Barbados Civil Aviation (Licensing of Air Services) Regulations, 2007, is fairly representative; it regulates the carriage of passengers, mail or cargo by air for hire or reward on scheduled and non-scheduled journeys. The regulations require service suppliers intending to operate scheduled flights to apply for a license, and in the case of unscheduled flights, a permit; this does not, however, apply to aircraft of any State which is a party to the International Air Services Transit Agreement where such aircraft fly over Barbados or land in Barbados in accordance with that agreement. The Air Transport Licensing Authority is mandated to have regard to the co-ordination and development of air services while avoiding the uneconomical overlapping of air services. The authority’s assessment includes a needs tests that takes into account the existence of other air services in the area through which the proposed services are to be operated; the demand for air transport; the degree of efficiency and regularity of the air services, if any, already provided; and the period for which such services have been operated by the applicant or by other operators.¹⁷⁰

¹⁶⁸ E.g., *EC-Regime for Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R.

¹⁶⁹ E.g., *Legal Status of Eastern Greenland (Norway v Denmark)* [1933] P.C.I.J. Ser A/B, No 53, 71; *Nuclear Tests Case (Australia & New Zealand v. France)* 1974 ICJ 253, 457; *US-Section 301-310 of the Trade Act 1974* WT/DS152/R, paragraphs 7.118 and 7.121.

¹⁷⁰ See Civil Aviation (Licensing of Air Services) Regulations, 2007, regulations 2-6, 14 and 15. See also, for example, Air Transport (Licensing of Air Services) Regulations of Belize, regulations 4, 14, and 22-24; Civil Aviation Act CAP 53:01 of Guyana, section; Civil Aviation Act of Jamaica, sections 7 and 8. The legislation and regulations are similar though not uniform. The Jamaican Act, for example, provides for the supply of air services

The exception made for carriers of States party to an International Air Services Transit Agreement is typical though noteworthy, as current EU policy requires the designation of carriers of all EU member States under air services agreements entered into by any EU country.¹⁷¹ All countries reviewed have air services agreements with at least one or more EU countries.¹⁷² As such, the provision for the grant of licenses and permits likely do not apply in any event to EU carriers.

As regards other air transport services, Barbados, Belize, and Guyana have also undertaken bound commitments on the rental of aircraft with crew (CPC 734)¹⁷³ on modes 1 and 2, and also mode 3, except for Belize, where mode 3 is unbound (market access is unbound and subject to a joint venture requirement). Similar bound commitments have also been made by the three countries for the maintenance and repair of aircraft¹⁷⁴ (CPC 8868*), except that mode 3 is unbound for Guyana in this instance, and market access for mode 3 for Belize is subject to a transfer of knowledge and technology requirement.

The civil aviation legislation and regulations of the countries reviewed provide for the licensing and certification of, *inter alia*, maintenance organizations involved in maintenance, preventive maintenance or the modification of aircraft; of persons operating or maintaining civil

by Jamaican citizens or a body incorporated in Jamaica that is substantially controlled by Jamaican citizens, but contemplates the conclusion of air services agreements providing for the designation of foreign airlines.

¹⁷¹ In November 2002, the European Court of Justice found that if an Air Services Agreement (ASA) between a Member State and a third country permits designation only of companies owned and controlled by nationals of the signatory EU member State, such designation is discriminatory and is in breach of EC law. As a result, every EU member State is required to grant equal market access for routes to destinations outside the EU to any EU carrier with an establishment on its territory. ASAs between EU member States and their bilateral partner States must be amended to reflect this; see also http://ec.europa.eu/transport/air/international_aviation/external_aviation_policy/horizontal_agreements_en.htm+EU+policy+on+air+services+agreements+and+designation+of+EU+countries&ct=clnk.

¹⁷² E.g., WTO Trade Policy Review of Barbados, WT/TPR/S/203/Rev.1, p.73, paragraph 92; WTO Trade Policy Review of Guyana, WT/TPR/S/218/Rev.1, pp. 78-79, paragraphs 119 and 121, which also notes that although cabotage is not restricted to domestically licensed carriers, it is not permitted in any of the bilateral air services agreements to which Guyana is a party; WTO Trade Policy Review of Jamaica, WT/TPR/S/139/Rev.1, p.128, paragraph 152); WTO Trade Policy Review of Trinidad and Tobago, WT/TPR/S/260, pp.81-82, paragraph 110; WTO Trade Policy Review of Belize, WT/TPR/S/134, p. 89, paragraph 126. Note also that in the case of Belize a special exemption is made for air transport operators in respect of journeys performed in accordance with an agreement between the UK and the government of that country; see Air Transport (Licensing of Air Services) Regulations of Belize, regulation 33.

¹⁷³ Note that this covers rental and leasing services of freight- or passenger-carrying aircraft (including helicopters) or of spacecraft of any type and for any purpose, with operator; services are generally supplied on a time basis and several different destinations are frequently involved. Leasing or rental services of aircraft without operator are classified in the CPC Code subclass 83104.

¹⁷⁴ See also GATS Annex on Air Transport Services, paragraph 6, which defines “aircraft repair and maintenance services” as activities undertaken on an aircraft or a part thereof while it is withdrawn from service; they do not include so-called line maintenance.

aircraft; and of organizations established to conduct the training of such persons.¹⁷⁵ The legislation does not discriminate on the basis of nationality; language conditions apply in some countries and of those undertaking bound commitments, requirements addressing one's ability to read, speak, write and understand English feature most prominently in the Barbados regulations.¹⁷⁶ Some jurists have questioned whether local language tests may not be a violation of the national treatment obligation.¹⁷⁷ In this regard, attention is drawn to Annex IV of the EPA, where both the EU and CARIFORUM States have stipulated that language examinations may be required even where such measures are not inscribed as a condition on a commitment.

With respect to supporting and auxiliary air transport services, Barbados, Belize, and Guyana have undertaken bound commitments on computer reservation system (CRS) services for modes 1 and 2, and also mode 3, except for Belize, where mode 3 is unbound. Belize has entered into the same commitment for selling and marketing air transport services. Jamaica is only CARIFORUM State to have made commitments on airport operation services, excluding cargo handling, and this is bound for modes 1, 2, and 3.

The GATS Annex on Air Transport Services defines "computer reservation system (CRS) services" as services provided by computerized systems that contain information about air carriers' schedules, availability, and fares and fare rules, through which reservations can be made or tickets may be issued. The annex defines "selling and marketing of air transport services" as opportunities for the air carrier concerned to sell and market freely its air transport services,

¹⁷⁵ E.g. with respect to Barbados, the Civil Aviation (Approved Maintenance Organisation) Regulations 2007, Civil Aviation (General Application and Personnel Licensing) Regulations, 2007, Civil Aviation (Approved Training Organisation) Regulations, 2007. With respect to Belize, Air Navigation (General) Regulations, Air Transport (Licensing of Air Services) Regulations; note that the term "air service" includes any service performed by any aircraft for hire or reward.

¹⁷⁶ E.g., with respect to Barbados, the Civil Aviation (Approved Maintenance Organisation) Regulations 2007, which require certification of an organisation based on the adequacy of the equipment and the ability of the organization to meet the requirements of the regulations in addition to employing persons who are able to read, speak, write, and understand English; Civil Aviation (General Application and Personnel Licensing) Regulations, 2007, which provide for the grant of a Barbados airman licence based on the passage of a required aeronautical knowledge test, having received instruction, training and certification for a required skill test check, experience, and the ability to read, speak, write, and understand the English language; Civil Aviation (Approved Training Organisation) Regulations, 2007, which provide that an organization must employ persons who are able to read, speak, write, and understand the English Language. Where the applicant for certification is unable to read, speak, write, or understand the English language, but employs a person who can do so, that person must hold a management function in his/her organisation. See also, for example, Civil Aviation [(No. 6) Approved Maintenance Organization] Regulations of Trinidad and Tobago, regulations 6 and 8, which requires persons employed by approved maintenance organizations to be able to read, speak, and write English; Civil Aviation [(No. 1) General Application and Personnel Licensing] Regulations of Trinidad and Tobago, regulation 160, which addresses the general requirements for an aircraft maintenance engineer licence.

¹⁷⁷ E.g., Arkell, "GATS and Domestic Regulation Disciplines and Sustainable Development Principles and Operational Concepts: The Challenges" 26 June 2006.

including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services or the applicable conditions.¹⁷⁸ The GATS definition is clearly restricted to selling and marketing activities by airline companies as opposed to, for example, travel agents. Although it may be questioned whether the definitions stated in the GATS should be read into the EPA, as Annex IV.F of the EPA is largely based on the WTO services sectorial classification list (MTN.GNS/W/120), it would seem that the GATS definition of selling and marketing of air transport services is instructive in defining EPA commitments.¹⁷⁹

As regards airport operation services (excluding cargo handling), this covers passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract basis. The Airports Authority of Jamaica is established by the Airports Authority Act to administer, control and manage the six principal airports and aerodromes in Jamaica.¹⁸⁰ The act facilitates private sector participation in the administration, control, and management of airports and the supply of services.¹⁸¹ No restriction is imposed on foreign participation.

The Airports (Economic Regulation) Act is designed to stimulate investment in airports. The act requires the Civil Aviation Authority (established under the Civil Aviation Act) to, *inter alia*, create an enabling environment for potential investors in airports and encourage investment in new facilities at airports.¹⁸² The Civil Aviation Authority is mandated to promote the efficient economic and profitable operation of airports, and must perform its functions in compliance with Jamaica's international obligations.¹⁸³ The act contemplates the designation of a person to operate an airport or parts thereof as an "approved airport operator."¹⁸⁴

¹⁷⁸ See GATS Annex on Air Transport Services, paragraph 6.

¹⁷⁹ See also "Air Transport Services," Background Note by the Secretariat, S/C/W/59, 5 November 1998.

¹⁸⁰ See Airports Authority Act, First Schedule, which lists the Sangster International Airport, Norman Manley International Airport, Tinson Pen Aerodrome, Ken Jones Aerodrome, Negril Aerodrome, and Boscobel Aerodrome (renamed the Ian Fleming International Airport).

¹⁸¹ See Airports Authority Act, sections 8 and 24; see also Airports (Economic Regulation) Act, section 4(3), which provide that where an airport is the subject of economic regulation under this act, the provisions of section 24 of the Airports Authority Act shall not apply to that airport and the minister may authorize the Airports Authority to enter into arrangements for the airport or parts thereof to be operated by an approved airport operator on such terms and conditions as the minister may approve. The two airports subject to economic regulation as listed in the schedule to the Airports (Economic Regulation) Act are the Sangster International Airport and Norman Manley International Airport.

¹⁸² See Airports (Economic Regulation) Act, section 3(1) (d) and (e); see also *ibid*, section 3(1)(h) requiring the authority to ensure that airports are operated in accordance with performance standards and service levels consistent with best industry practices.

¹⁸³ See Airports (Economic Regulation) Act, section 3(1) (b) and (c).

¹⁸⁴ See Airports (Economic Regulation) Act, section 4.

The Airports (Economic Regulation) Act addresses operational activities and other relevant activities that may be carried on by an approved airport operator or any other person.¹⁸⁵ It facilitates expanded trade in air transport services subject to the significant supervisory functions of the Jamaica Civil Aviation Authority, including investigatory powers in relation to various questionable business practices that may appear not to be in the public interest (such as discriminatory and/or anticompetitive acts).¹⁸⁶ The Civil Aviation Authority may issue compliance orders mandating that specific action be taken on the part of an approved airport operator. An aggrieved operator may appeal the authority's order to the court, which may quash the compliance order or any part thereof.¹⁸⁷

A fairly liberal regime for airport operation exists in almost all countries reviewed. The Belize Airports Authority Act CAP 238 establishes the Belize Airports Authority for administering and managing prescribed airports and making provision for the services and facilities required for their efficient operation. The Airports Authority may enter into arrangements for persons to carry on any trade or business at prescribed airports.¹⁸⁸ The Airport Authority may also grant leases, subleases or other interests or concessions for the operation or management of any airport on such terms and conditions as it sees fit.¹⁸⁹ The authority, however, may not implement long-range plans (extending beyond a five-year period) for the development of prescribed airports except in accordance with the provisions of a scheme submitted to and approved by the minister. The restrictions placed on the Airports Authority, however, do not

¹⁸⁵ See Airports (Economic Regulation) Act, section 2, which defines "operational activities" as including activities that are carried out wholly or mainly for the benefit of users of an airport, and the revenues from which are wholly or mainly attributable to payments by those users; and "relevant activities" in relation to an airport, as meaning the provision of services or facilities at that airport for the purposes of the landing, parking or taking off of aircraft at the airport, the servicing of aircraft at the airport (including the supply of fuel), or the handling of passengers or their baggage or of cargo at all stages while on the airport premises (including the transfer of passengers and their baggage or of cargo to or from an aircraft), but excluding the parking of motor vehicles, the refreshment of passengers, or the supply of consumer goods or services.

¹⁸⁶ E.g., Airports (Economic Regulation) Act, sections 11 and 14.

¹⁸⁷ See Airports (Economic Regulation) Act, sections 16 and 17.

¹⁸⁸ See Belize Airports Authority Act CAP 238, section 3, which further underscores that no person may carry on any trade or business, or solicit for any purpose whatsoever, or offer motor vehicle passenger transport services for hire or reward, or conduct any other such activities without the approval of the Airports Authority; Belize Airports Authority Regulations, regulations 3 and 6-9, which notes that any person aggrieved by a decision of the authority may appeal to the minister, see *ibid*, regulation 28. See also the Philip W.W. Goldson International Airport Regulations, regulation 4, Belize City Municipal Airport Regulations, regulation 4; and Caye Caulker Airstrip Regulations, regulation 4.

¹⁸⁹ See Belize Airports Authority Act CAP 238, sections 3, 17 and Schedule. Note that the following three airports are "prescribed airports" under the act: the Philip S.W. Goldson International Airport as described in the Philip S.W. Goldson International Airport Regulations, the Belize City Municipal Airport, and the San Pedro Airport; see also Belize Airports Authority (Transfer of Property) (Airstrips) Order, 2004, which vests all power to manage, control, and otherwise deal with 13 listed airstrips in the Belize Airports Authority.

prevent the grant of any authority, lease, sublease, or other interest or concession for a period in excess of five years.¹⁹⁰

The Philips W. Goldson International Airport Development Project Act, 2004, establishes the legislative framework for the implementation of a 2003 concession agreement between the Government of Belize, the Belize Airport Concession Company Ltd, and the Belize Airports Authority, and a 2003 management agreement between the Belize Airport Concession Company Ltd (i.e., the developer) and the Belize Airport Management Services Limited (i.e., the manager); both companies are incorporated under the laws of Belize.¹⁹¹

Further provision is made in the Civil Aviation Act CAP 239 of Belize for the Department of Civil Aviation headed by the director of civil aviation to manage and administer aerodromes and provide all services including signalling, flying control and safety services, and services connected with the execution of works, on behalf of the minister. No person may construct an aerodrome without the written permission of the director of civil aviation, who may grant an aerodrome license where, after consultation with the minister, he/she is satisfied that this is in the public interest;¹⁹² an application for an aerodrome license may be refused without ascribing reasons.¹⁹³ Aerodrome facilities may not be provided for the benefit of any air transport undertaking unless comparable facilities are available if required for other persons operating similar services upon terms and conditions which are not less favourable.¹⁹⁴

The Airports Authority of Trinidad and Tobago Act CAP 49:02 establishes the Airports Authority with the principal function of developing and managing the business of the airports, including the development, maintenance, or improvement of their facilities in a cost effective

¹⁹⁰ See Belize Airports Authority Act CAP 238, section 20.

¹⁹¹ The act exempts both manager and developer from any taxes, duties, or imposts levied or imposed under any laws for the duration of the agreement with the developer and government or 20 years, whichever is shorter. This is expressly stated to be “[n]otwithstanding anything to the contrary in the Income and Business Tax Act, the Sales Tax Act, the Customs and Excise Duties Act, the Customs Regulation Act, the Exchange Control Regulation Act.”

¹⁹² See Civil Aviation Act CAP 239, section 21. Note that every application must include an environmental impact assessment and the determination as to the public interest shall have in regard to the following concerns: (a) that the proposed aerodrome is not in any place reserved for any other national or public purpose; (b) that the aerodrome or the use thereof will not pose a threat to national security; (c) that adequate security arrangements are made to ensure that the aerodrome shall not be used for any purpose contrary to law or public policy; and (d) that the proposed aerodrome shall have no adverse impact on the environment. See also Air Navigation (General) Regulations, regulations 228 and 229. Note that the regulations were made under the Colonial Air Navigation Order 1955, but are saved under section 33 of the Civil Aviation Act.

¹⁹³ See Civil Aviation Act CAP 239, section 21(4); but note that a license in respect of any aerodrome for which permission has been given shall not be refused without ascribing the reason; see *ibid*, section 21(5).

¹⁹⁴ Note that the Civil Aviation Act also requires that in the management and administration of any aerodrome there must be consultations with local authorities in the neighboring region and with organizations representing the interests of the public; see Civil Aviation Act CAP 239, section 12.

manner, so as to ensure the availability of efficient, secure, and safe aviation services to the public at all times as well as to ensure commercial viability. Towards this end it is contemplated that the authority may pursue joint ventures, save with respect to safety and security at airports, or the supervision and administration of passenger terminal buildings.¹⁹⁵ The Trinidad and Tobago Civil Aviation [No. 12 Aerodrome Licensing] Regulations apply, *inter alia*, to the licensing of aerodromes and establish the requirements for operators of licensed aerodromes. All aerodromes must be licensed and registered in the Aerodrome Register;¹⁹⁶ licenses are granted for one year and may have conditions attached.¹⁹⁷ There are no specific restrictions on foreigners.

The Guyana Civil Aviation Authority established under the Civil Aviation Act Cap 53:01 of 2000 is charged with providing air traffic services, aeronautical telecommunications services, the regulation of all aerodromes, and participation in the negotiation of air services agreements (ASAs). Civil aviation services may be operated by a person, private enterprise or State entity. The minister responsible for the development of civil aviation must ensure that civil aviation complies with international standards as established in the international agreements to which Guyana is a party.¹⁹⁸ He/she may also establish and maintain aerodromes and/or approve the establishment and operation of aerodromes by private persons.¹⁹⁹

In Barbados, the significant role played by the private sector in airport operation services is demonstrated in the management of the Grantley Adams International Airport by a limited company, the Grantley Adams International Airport Inc., which is incorporated for that purpose. The Grantley Adams International Airport (Transfer of Management and Vesting of Assets) Act

¹⁹⁵ See Airports Authority of Trinidad and Tobago Act, sections 9A and 12. But note that the regulation 4 of the Airports Regulations prohibits the carrying on any trade or business at an airport except with the approval of the authority and under such terms and conditions as the authority may determine

¹⁹⁶ See TT Civil Aviation [No. 12 Aerodrome Licensing] Regulations, regulations 4 and 16.

¹⁹⁷ See TT Civil Aviation [No. 12 Aerodrome Licensing] Regulations, regulations 9 and 10.

¹⁹⁸ Note that Guyana has made GATS commitments related to air transport services in two sub-sectors— aircraft repair and maintenance services—that are bound without limitations for market access and national treatment for modes 1 and 2, but unbound for modes 3 and 4; and computer reservation system services, which are bound for market access and national treatment for modes 1, 2, and 3.

¹⁹⁹ See Civil Aviation Act CAP 53:01, sections 3, 4, 6 and 17; see also *ibid*, section 2 defining “Aerodrome” as any area of land or water (including any buildings, installations, fixtures and other equipment) intended to be used either wholly or in part for the arrival, departure, and movement of aircraft. See also Cheddi Jagan International Airport Act CAP 52:01. Note also that the act of 2000 repeals the earlier Civil Aviation Act of 1996 and is seen as facilitating greater efficiency in the industry. It is noted that since 2000, two new corporations have been established to perform functions previously undertaken by departments of the Ministry of Public Works and Communications, which is responsible for operating national airports and airstrips. These are the Cheddi Jagan International Airport Corporation (CJIAC) and the Guyana Civil Aviation Authority (GCAA); see “Guyana Transport Sector Study,” December 2005, which may be viewed on-line at: <http://www.gina.gov.gy/guyanatransportstudy/mainreport.pdf>.

CAP 286 makes provision for the transfer of the commercial assets and liabilities of the government in the Airport to the company. The act provides the minister with certain oversight responsibilities and places certain reporting obligations on the company.²⁰⁰

²⁰⁰ See Grantley Adams International Airport (Transfer of Management and Vesting of Assets) CAP 286, sections 2-8. Note that the company is required to, *inter alia*, submit an airport master plan once in every 10 years for the minister's approval and a business plan covering the ensuing financial year and each of the subsequent four financial years, no later than six months after the end of each financial year.

LAND (ROAD AND RAIL) TRANSPORT SERVICES

The land transport services (CPC Code 71) on which CARIFORUM countries have made commitments in the EPA include road transport services, namely passenger and freight transportation, rental of commercial vehicles with operator, maintenance and repair of road equipment, and supporting services for road transport services; and rail transport services, namely, passenger and freight transportation, pushing and towing services, maintenance and repair of rail transport equipment, and supporting services for rail transport services.²⁰¹ No CARIFORUM State has undertaken commitments on pipeline transport (i.e., transportation of fuels and other goods) which is included within CPC Code 71; these services are therefore excluded from the discussion below.

In general, the supply of land transport services through modes 2 and 4 is of minor significance. Three of the countries reviewed are small developing island States (Barbados, Jamaica, and Trinidad and Tobago) and as such, mode 1 cross-border supply of land transport services such as the international transport of passengers and freight, is not practically feasible (even if technically so as evidenced in the Channel Tunnel linking the UK to France). Increasingly international traffic for continental-based States is regulated by bilateral agreements establishing tariffs and quantitative restrictions that generally divide traffic between bordering States. However, there is no record of any such arrangements involving Belize or Guyana. Reports however suggest that Guyana is pursuing negotiations with Brazil on an international road traffic agreement.²⁰²

There is little evidence of a viable rail transportation industry in the five countries reviewed. Road transportation services dominate and the principal means of passenger

²⁰¹ Note that the CPC is much more detailed than WTO Doc. MTN.GNS/W/120 (cf. Annex 1) ('W/120'), as it distinguishes, between 10 kinds of passenger transportation, seven kinds of freight transportation, two types of maintenance, and four types of supporting services. However, it is suggested that this degree of detail seems not to be uniformly relevant for trade purposes. For example, in the case of freight, the distinctions are based not on transport organization and structure but on the nature of the goods transported, and therefore are less relevant. This is contrasted with passenger transportation where the more detailed approach of the CPC is arguably justifiable as "the economic structure, the involvement of the public authority, the subsidy regime, the licence regime, and the regulatory regime are completely different for a taxi and for a long-distance bus, for instance. Thus, some forms of transport are collective, others individual, some are based on competition, others on a monopoly with public services obligations and subsidization regime, etc." WTO Secretariat Background Note, "Land Transport Services: Part I – Generalities and Road Transport," S/C/W/60, pp.14-15, paragraph 65.

²⁰² E.g. "Trade to benefit from Guyana-Brazil road transport agreement", viewed on line at <http://bis.gy/2011/06/trade-to-benefit-from-guyana-brazil-road-transportation-agreement/>

transportation is by car. It should be noted, however, that individuals traveling in their own cars (as opposed to taking a taxi) are not supplying a service subject to the GATS or the EPA.

The most frequent barriers to the supply of road transportation services as identified by industry specialists include the following:

- Bans and restrictions on coach movements and parking in cities and tourist centres.²⁰³
- Blocking roads and motorways as a result of political and sectorial demonstrations; traffic bans at weekends and on public holidays.
- Border-crossing difficulties caused by inefficient and uncoordinated border-crossing procedures.
- Issuing visas for professional drivers rather than a driver identification document similar to the "seaman's passport".
- Hindrances to freedom of transit (as recognized by Article V of the GATT or "the need to facilitate transit movements" as recognized in Article 31(2)(h) of the EPA), such as total or partial bans on transit, quantitative restrictions on road transport that distort intermodal competition, bureaucracy which prevents forwarders from freely choosing their mode of transport, quantitative restrictions on road transit in the form of authorization quotas or limitations on vehicle weights and dimensions below the levels usually accepted, and excessive transit charges.
- Inadequate harmonization of fiscal charges (excise duties on fuel, road use charges and tolls), technical regulations (specifying weights and dimensions and making it necessary to underload goods vehicles in order to comply with the legislation of the transit country), and the uneven application of social legislation concerning driving and rest times (number of controls, penalties).²⁰⁴

Several of these measures may be found in one form or another in most jurisdictions. Most societies have public order measures relating to political demonstrations or restrictions on parking or traffic controls. Although they may affect the supply of a service, these measures generally do not discriminate against foreign service providers. Many of the above-mentioned trade barriers may be addressed by measures which promote trade facilitation.

²⁰³ See Final Resolution of the XXVI Congress of the International Road Transport Union, adopted at Marrakesh on 25 April 1998, cited in WTO Secretariat Background Note, "Land Transport Services: Part I – Generalities and Road Transport," S/C/W/60, p.9, paragraph 39.

²⁰⁴ See WTO Secretariat Background Note, "Land Transport Services: Part I – Generalities and Road Transport," S/C/W/60, paragraphs 52-59.

The EPA affirms the importance of trade facilitation in the evolving global environment and provides for cooperation in this area to ensure implementation of suitable legislation and procedures as well as adequate administrative capacity to implement the agreement's objectives on trade facilitation.²⁰⁵ The parties to the EPA agree on certain principles that will inform their respective trade and customs legislation, provisions and procedures, including basic rules on non-discrimination, and the need to facilitate transit movements.²⁰⁶ A Special Committee on Customs Cooperation and Trade Facilitation is established under the Article 36 of the EPA and could play a useful role in addressing many of the above-mentioned trade barriers. Certain measures, such as the lack of harmonization of technical regulations, which pose difficulties for cross-border traffic, have attracted critical attention, most notably, in Guyana.

A common feature of legislation on land transportation in the countries reviewed is the provision for imposing economic needs tests (ENTs) in granting licenses with a view to maximizing efficiencies, eliminating unnecessary services, and maintaining a desirable level of competition in the public interest.

Road transport services

Belize has not undertaken any commitments on road transport services. Regarding passenger transportation by road, Guyana, Jamaica, and Barbados have undertaken bound commitments on modes 1, 2, and 3; for Barbados this is limited to passenger transportation by man- or animal-drawn vehicles or conveyances and by pack animals, provided that a driver is provided with the vehicles or animals (CPC 71224). Guyana, Jamaica, Barbados, and Trinidad and Tobago have undertaken bound commitments on freight transportation by road for modes 1, 2, and 3, except for Trinidad and Tobago, where mode 3 is unbound; Barbados has excluded from its commitments transportation of mail by any land mode of transport other than railway (CPC 71235).

Jamaica and Barbados have undertaken bound commitments on the rental of commercial freight vehicles (i.e., trucks and other motorized freight vehicles) with a driver (CPC 7124) for

²⁰⁵ See EPA, Article 29, which includes the provision that in implementing trade facilitation measures, legitimate public policy objectives, including those related to security and the prevention of fraud, shall not be compromised in any way.

²⁰⁶ See EPA, Article 31.

modes 1, 2, and 3.²⁰⁷ Of the five countries reviewed, only Jamaica has undertaken bound commitments on the maintenance and repair of road transport equipment (CPC 6112 and 8867)²⁰⁸ for modes 1, 2, and 3. Guyana, Jamaica and Barbados have undertaken bound commitments on supporting services for road transport (CPC 744) for modes 1, 2, and 3; Barbados has excluded parking services provided by car parks, parking lots and parking garages (CPC 7443).²⁰⁹ Finally, Barbados, Guyana, Jamaica, and Trinidad and Tobago have undertaken commitments on storage and warehousing services (CPC 742), including frozen or refrigerated goods and bulk storage services of liquids and gases. All four countries have bound commitments on mode 2; Barbados and Trinidad and Tobago have also bound commitments on mode 3, but for Jamaica and Guyana this is only on market access (as national treatment is left unbound). Interestingly, mode 1 is bound for Barbados and Jamaica but unbound as technically unfeasible for Guyana and Trinidad and Tobago.

The legislation and regulations of all countries reviewed are fairly similar in their approach to licensing road transport service providers.

The Motor Vehicles and Road Traffic Act CAP 51:02 of Guyana establishes a Licensing Authority²¹⁰ that is responsible for granting road service licenses (with provision for granting an exclusive license), dealer's general licenses, goods transportation licenses, special licenses for hire cars, and licenses for drivers and conductors, among others.²¹¹ The legislation addresses motorized as well as non-motorized traffic, including animal drawn vehicles, which must also receive a certificate of fitness where constructed and used for the carriage of six or more

²⁰⁷ Note that excluded from CPC 7124 are animal-drawn freight vehicle rental services with drivers which are classified in subclass 71236 (freight transportation by man- or animal-drawn vehicles). Rental services in connection with client-driven trucks are classified in subclass 83102 (leasing or rental services concerning goods transport vehicles without operator).

²⁰⁸ The services covered by CPC 6112 are automobile maintenance and repair services, automobile body repair and similar services, automobile emergency road services and cleaning and routine maintenance services, such as vehicle laundry and car-wash services, undercoating, polishing and waxing services etc.,

²⁰⁹ Note that the sort of supporting services covered by CPC 744, aside from parking services, include services for roads, bridges and causeways whether on a fee or contract basis as well as commercial road vehicle maintenance and minor repair services.

²¹⁰ Note that the minister is the licensing authority for the purpose of the act and all licensing officers are under the direction of the licensing authority; see Motor Vehicles and Road Traffic Act CAP 51:02, section 3.

²¹¹ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 17, 18, 22, 24-26, 65, 70, 78 and 87. Note that a licensing officer may issue a dealer's general license authorizing the use of motor vehicles (not exceeding 4) at any one time as specified in license, covering the use of the vehicle belonging to dealer or entrusted to him for sale or repair or a vehicle which is being tested for effecting a sale or hire. But note that a dealer's general license does not authorize the use of a vehicle for carriage of passengers or goods for reward; see *ibid*, section 22.

passengers for hire or reward.²¹² The act allows for the granting of exclusive licenses to provide transportation services, whether to a hire car service operating as a shared taxi (referred to as a route taxi in some other jurisdictions) or a feeder service or to operate a motor bus.²¹³ Where an exclusive license is granted, this precludes the grant of licenses to competitors within the designated area.²¹⁴ As above-noted, Guyana has undertaken bound commitments on passenger and freight road transportation on modes 1, 2, and 3. It is therefore bound to permit new market entrants meeting the required technical standards, unless public order or other general exceptions may be applied.²¹⁵

The Motor Vehicles and Road Traffic Act CAP 48:50 of Trinidad and Tobago provides for, *inter alia*, the registration of motor vehicles for use as taxis, motor omnibuses and other public service vehicles;²¹⁶ and the issue of licenses to dealers for the manufacture or repair of motor vehicles or trailers.²¹⁷ The Motor Vehicles and Road Traffic Regulations provide greater detail on registration; licensing; drivers' and conductors' permits; the requirements for the construction and maintenance of public service vehicles (i.e., how they are to be fitted and the attire of drivers, etc.); restrictions on the use of omnibuses and taxis (e.g., concerning specified routes); permissible parking for transport providers (i.e., where vehicles may park and their formation/alignment in relation to one another); and special rules for vehicles drawn by animals, persons propelling a cart, and persons riding a cycle or an animal on the road; among other matters.²¹⁸

The Road Traffic Act CAP 295 of Barbados provides for the licensing of all forms of vehicles including carriages, wagons, carts, motor vehicles, bicycles, tricycles, vans, handcarts, sledges, trucks, barrows or any other machine for the carriage on land of goods or persons, and

²¹² See Motor Vehicles and Road Traffic Act CAP 51:02, section 17, which refers to animal- drawn vehicles carrying passengers at separate fares stage by stage, or stopping to pick up or set down passengers along the line of route.

²¹³ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 2, 71 and 78, which also defines a motor bus as a vehicle constructed and used for carrying not less than eight passengers for hire or reward at separate fares stage by stage.

²¹⁴ But see Motor Vehicles and Road Traffic Act CAP 51:02, which permits a person operating a motor bus outside area to be able to drop off passengers picked up outside area within area, and vice versa.

²¹⁵ See also EPA, Article 224, General Exceptions Clause.

²¹⁶ See Motor Vehicles and Road Traffic Act, section 2, which defines defining "public service vehicle" as a motor vehicle used for carrying passengers for hire or reward, whether at separate and distinct fares for their respective places or not.

²¹⁷ See Motor Vehicles and Road Traffic Act, sections 34 and 35.

²¹⁸ See Motor Vehicles and Road Traffic Regulations, Parts IX, X, XI and XIV, and in particular, regulations 58, 85-87, 92-98 and 111. It may be noted that provision is also made for an aggrieved person to appeal the decision of the licensing authority or transport officer to the Trinidad Transport Board; see *ibid*, regulation 91.

for this purpose provides for the appointment of a licensing authority (or authorities). The act empowers the licensing authority to issue a permit authorizing the use of a motor vehicle as a public service vehicle, i.e., a motor vehicle used to convey passengers for hire or reward at separate fares, or if not so doing, is adapted to carry five or more passengers.²¹⁹ Limited trade licenses may also be issued to importers, dealers, or repairers of motor vehicles.²²⁰

The Omnibus and Carriages Act CAP 294 of Barbados further provides for the licensing and use of omnibuses, carriages and hackney carriages. Any person wishing to keep, use, let to hire, or drive any carriage as an omnibus, livery, or hackney carriage must obtain a license from the commissioner of police.²²¹ Additionally, the Carters and Porters Act CAP 288 requires the proprietor of every cart drawn by porters or otherwise and let for hire in Bridgetown or Speight town to register with the accountant-general.²²² The Highways Act Cap 289 provides for, *inter alia*, the licensing of carts, cycles, vehicles, and taxable animals (including any horse, mule, or ass) driven or used on any highway.²²³

The system for licensing private operators co-exists with the government-run transport service. The Transport Board of Barbados, established under the Transport Board Act CAP 297, is authorized to maintain and operate a passenger road transport service and provide other

²¹⁹ See Road Traffic Act CAP 295, sections 104 and 104A, which further provide that the authority may at any time review its decision to issue or refuse a permit, or it may revoke any permit it has issued. The licensing authority may also issue a special permit for a public service vehicle, subject to such restrictions and conditions as the authority may specify therein authorizing the operation of that vehicle on a route other than a route for which the original permit authorizes. A special permit may be issued for the purpose of carrying school children and teachers to and from school; persons to and from cinemas, theatres and other places of public entertainment and recreation; or passengers to and from any place if, in the opinion of the licensing authority, there are exceptional circumstances that render the issue of a special permit desirable. Provision is made for due process and appeals to the minister or a magistrate depending on the circumstances; e.g., Road Traffic Act CAP 295, sections 33,104 and 104A.

²²⁰ See Road Traffic Act CAP 295, sections 2, 5-8 and 15, which further restrict the number of limited trade licenses to an applicant to six, providing for the issuance of limited trade number plates and setting out the permissible activities for vehicles with such plates.

²²¹ See Omnibus and Carriages Act CAP 294, sections 2 and 3, which further defines an “omnibus” as including a wagonette, brake, stage coach, and other carriage, whether propelled by mechanical power or drawn by horses, plying or standing for hire by, or used to carry passengers at separate fares, but not include a hackney or livery carriage; a “hackney carriage” includes any carriage, whether propelled by mechanical power or drawn by horses, for the conveyance of passengers that plies for hire and is not an omnibus or a livery carriage; a “livery carriage” means any carriage, whether propelled by mechanical power or drawn by horses, starting from, and previously hired for the particular passengers thereby carried at any garage where carriages propelled by mechanical power are let for hire, or any livery stable yard where horses are stabled and carriages let for hire, such carriage starting from the garage or stable yard and being *bona fide* the property of the owner thereof and not standing or plying for hire but does not include any omnibus or hackney carriage.

²²² See Carters and Porters Act CAP 288, sections 2, 4, 5, 9 and 10, which provides that every person wishing to serve as a porter or carter must register with the accountant-general and present a certificate of good character signed by two well known and respectable persons. The act provides that the minister may make regulations prescribing the fares to be taken by porters and carters in Bridgetown, and the interim commissioner for local government shall fix the rates to be taken by porters and carters in Speightstown.

²²³ See Highways Act CAP 289, sections 35, 45, 46, 51, 52, 56 and 57.

amenities and facilities for its customers. Transport Board vehicles are larger busses; it is expressly provided that the Transport Board may not carry passengers in a hackney carriage or motor cab adapted to carry less than six persons.²²⁴

The complementary role of the private and public transport sector is not unusual, particularly in urban settings characterized by public service concerns and government subsidized operations competing with private sector entities.²²⁵

In Jamaica, the responsibilities of the Public Passenger Transport (Kingston Metropolitan Transport Region) Board of Control under the Public Passenger Transport (Kingston Metropolitan Transport Region) Act, the Public Passenger Transport (Rural Area) Board of Control under the Public Passenger Transport (Rural Area) Act, and all licensing authorities under the Road Traffic Act have been assumed by the transport authority established under the Transport Authority Act.²²⁶

The attempt to restructure the public transportation system in Jamaica to enhance efficiencies has progressed from a licensed monopoly service, to a route sub-franchise system (seen as creating a “free-for-all” service), to a centrally managed system with zoning franchises, to the grant of exclusive licenses to private and State-run entities, which has been the subject of litigation in the courts.²²⁷ The State-run Jamaica Urban Transit Company (JUTC) currently operates under an exclusive license as provided for in section 3(1) of the Public Passenger Transport (Kingston Metropolitan Transport Region) Act. This does not preclude competition from other licensed (and unlicensed/illegal) road transport service suppliers.

Section 3(1) permits the minister to grant an exclusive license to provide public passenger transport services within and throughout the Kingston Metropolitan Transport Region by means of stage carriages or express carriages or both. Where an exclusive license is granted, no other stage carriage or express carriage license may be granted for the same area (without the consent of the exclusive licensee), although licenses may be granted for adjacent areas with routes that are partly within the Kingston Metropolitan Region. Additionally, the grant of an

²²⁴ See Transport Board Act CAP 297, sections 2, 3 and 11, which further provides the board with the power to acquire any undertaking providing services that it is authorized to provide. Note that the expressions used in the Transport Board Act are given the same meanings as in the Road Traffic Act; see also Road Traffic Act CAP 295, section 2, which defines “hackney carriage,” “motor cab,” or “taxi” as a vehicle, other than a van, constructed to convey not more than five passengers for hire or reward.

²²⁵ E.g., WTO Secretariat Background Note, “Land Transport Services: Part I – Generalities and Road Transport,” S/C/W/60, paragraphs 15 and 70. Note that the Barbados Transport Board is not exempt from liability for any tax, duty, rate, levy, or other charge whatsoever, whether general or local; see Transport Board Act CAP 297, section 14.

²²⁶ See Transport Authority Act of Jamaica, section 19.

²²⁷ See *National Transport Co-operative Society Limited v AG of Jamaica* [2011] JMCA Civ 34.

exclusive license does not preclude licenses being provided for the operation of a contract carriage service or a hackney carriage service within the same region.²²⁸

The Public Passenger Transport (Kingston Metropolitan Transport Region) Act also provides for the grant of a market service license to supply a service over the route specified in the license under and in accordance with any terms and conditions as the board may consider necessary for securing the provision of an adequate and efficient market service under the license, proper co-ordination of that service with any service or services from time to time provided under or by virtue of any exclusive license granted under section 3, and the prevention of wasteful competition with any service or services so provided.²²⁹ Similar provision is made in the Public Passenger Transport (Rural Area) Act with respect to exclusive licenses granted outside of the Kingston Metropolitan Transport Region Public Passenger Transport (Rural Area) Act.²³⁰

As noted above, Jamaica, unlike Barbados, has undertaken bound commitments without reservation on passenger transport services by road (CPC 7121 and 7122) covering urban suburban and interurban regular and special services as well as taxi services, car, bus, and coach rental services among others. This includes services such as supplied under the exclusive license granted to the JUTC. The EPA does not include a general proscription on the grant of special or exclusive rights to an enterprise. As such, States in principle may designate and maintain public

²²⁸ See also Road Traffic Act, section 60 on “Classification of public passenger vehicles,” which provides that public passenger vehicles shall be divided into the following classes: (a) stage carriages, i.e., motor vehicles carrying passengers for hire or reward at separate fares, stage by stage, and stopping to pick up or set down passengers along the line route, and not being express carriages or hackney carriages as hereinafter defined; (b) express carriages, i.e., motor vehicles not being hackney carriages as hereinafter defined carrying passengers for hire or reward at separate fares and for a journey or journeys from one or more points specified in advance to one or more common destinations so specified, and not stopping to take up or set down passengers other than those paying appropriate fares for the journey or journeys in question; (c) contract carriages, i.e., motor vehicles carrying passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum; (d) hackney carriages, i.e., motor vehicles carrying passengers for reward or hire used in standing or plying for hire on any thoroughfare or place frequented by the public and which have seating accommodation for not more than four persons; (e) route taxis, i.e., motor vehicles, adapted for carrying no more than ten passengers for hire or reward at separate fares along a designated route not exceeding 30 kilometers and stopping to pick up and set down passengers along that route. It is provided that, subject to section 21 of the Public Passenger Transport (Corporate Area) Act, a public passenger vehicle adapted to carry less than eight passengers shall not be deemed to be a stage carriage or an express carriage by reason only that on occasions of race meetings, public gatherings, and other like special occasions it is used to carry passengers at separate fares. Compare Barbados Omnibus and Carriages Act CAP 294, sections 2 and 3.

²²⁹ See Public Passenger Transport (Kingston Metropolitan Transport Region) Act, sections 3 and 4.

²³⁰ See Public Passenger Transport (Rural Area) Act, sections 3 and 4. Note that provision is made for an appeal to the Court of Appeal of any decision with respect to the grant or refusal thereof, variation of conditions, revocation or suspension of a market services licence; see Public Passenger Transport (Kingston Metropolitan Transport Region) Act, sections 11 and 12. See also Public Passenger Transport (Corporate Area) Regulations; Public Passenger Transport (Corporate Area) (Market Service Licence) Regulations.

or private monopolies according to their respective laws, subject to certain non-trade distorting disciplines.²³¹ However, in sectors where market access commitments are undertaken, States may not maintain or adopt, either on the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, measures which impose “*limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.*”²³² The grant of an exclusive license to the JUTC should be reviewed in this context.

The Road Traffic Act regulates vehicles of every description, however drawn or propelled, including animal-drawn vehicles, pedal bicycles, handcarts, wheel-barrow and other similar vehicles, and provides for the safe conduct of traffic on the roads.²³³ The act classifies public passenger vehicles into various divisions for licensing purposes and contemplates the imposition of economic needs tests. The conditions to be taken into account by the Transport Authority in reviewing a license application include the extent to which the needs of the proposed route are already adequately served; the need for adequate, suitable, and efficient transport services and for the elimination of unnecessary services and prevention of unremunerated services; the extent to which the proposed service is necessary or desirable in the public interest; and the results of any technical survey determining the population to be served, the preferred routes of travel, the number of seats required for passengers at different times of a day, and the service being supplied to those passengers.²³⁴ Any licensed operator may object to the grant of an application on the ground that there is no need for any additional service on the route as the transportation needs of the passengers using the route are adequately served.²³⁵ Where the number of road licenses that may be granted for any specified class of vehicle, or in relation to any specified licensing area during any specified period, is limited in accordance with

²³¹ See EPA, Article 129, which provides, *inter alia*, that with regard to public enterprises and enterprises to which special or exclusive rights have been granted, States shall ensure that, following the date of the entry into force of this agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the parties to an extent contrary to the parties interest, and that such enterprises shall be subject to the rules of competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

²³² See EPA, Articles 67(2)(a) and 76(2)(a).

²³³ See also Road Traffic Act, Part VI, “Roads and Vehicles generally.”

²³⁴ See Road Traffic Act, section 63; see also *ibid*, section 82, with respect to the grant of a carrier’s licence.

²³⁵ See Road Traffic Act, section 63(7); see also *ibid*, section 85, which concerns objections to the grant of a licence by persons already providing facilities for the carriage of goods for hire or reward in any particular district.

an order made by the minister, the authority must ensure that any limitation on the number of licenses to be granted is, as far as possible, equitably applied.²³⁶

The provision for possibly restricting trade through limiting the number of licenses appears designed to maximize efficiencies in the context of a relatively small economy.²³⁷ However, as noted above, where specific commitments have been undertaken in a sector, economic needs tests may not be applied where such conditions have not been inscribed in a State's schedule or circumstances justify the invocation of measures justifiable under the General Exceptions Clause or other limited derogations as provided in the EPA.²³⁸

The conditions to be taken into account in granting licenses under the Road Traffic Act of Jamaica are similar to those found in the legislation of other countries, including Guyana, which has also undertaken bound commitments without reservation on modes 1, 2, and 3 for passenger transport services by road.

The Motor Vehicles and Road Traffic Act CAP 51:02 of Guyana, for example, requires that a person hold a road service license in order to operate a motor vehicle such as a motor bus in the county of Demerara, including city of Georgetown. In exercising its discretion to grant or refuse a road service license, the minister is mandated to have regard to, *inter alia*, the extent to which the needs of the proposed routes are already adequately served or the proposed service is necessary or desirable in the public interest; the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services, and the provision of unremunerated services) and the co-ordination of all forms of passenger transport, including transport by rail; and take into consideration any representations made by persons providing transport facilities along or near to the routes or by any local authority in whose area any of the routes is situate.²³⁹

In granting a special license for a "shared taxi" (i.e., a hire car to ply for hire at separate fares stage by stage), or operate a feeder service (conveying passengers from steamers, railway,

²³⁶ See Road Traffic Act, section 64. Provision is made for appeals to the Road Traffic Appeal Tribunal by an aggrieved applicant for the grant of a road licence, or a local authority or service provider who opposed the grant or variation of a licence, or a person whose licence has been revoked or suspended; see *ibid*, sections 72, 73 and 86.

²³⁷ E.g., Road Traffic Act, section 64.

²³⁸ E.g., EPA, Articles 224-226.

²³⁹ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 65, 66 and 98, which also provide that the prescribed authority may specify conditions to ensure in the public interest that the fares shall be so fixed as to *prevent wasteful competition* with alternative forms of transport along the route, if any. See also *ibid*, section 74 on the setting of minimum and maximum fares for the operation of motor buses, in the public interest, that is made a condition of the license. Note also that any person whose application for the grant of a road service license is refused or later revoked or suspended may appeal to the president against the decision of the minister; the decision of the resident is final.

or aircraft terminus to their respective destinations at separate fares) the minister must have regard to, *inter alia*, the extent to which the proposed service is necessary or desirable in the public interest and the needs of the area as a whole, in relation to traffic; where the needs of the area are sufficiently served by holders of road service licenses no license may be granted.²⁴⁰ In licensing a motor car to operate as a hire car, the minister is directed to have regard to the coordination of traffic, the interests of existing bus services, and the needs of the public.²⁴¹ The implications of articles 67(2)(a) and 76(2)(a) must inform the application of the legislation, since economic needs tests may not be imposed on EU services suppliers and, by extension, any CARIFORUM State, given the regional preference clause.²⁴²

The Motor Vehicles and Road Traffic Act requires persons to obtain a goods transportation license in order to use a goods vehicle (i.e. a vehicle constructed or adapted for use for the carriage of goods) for hire or reward or in connection with any trade or business. The minister is given full power to grant or refuse an application for a goods transportation license and is directed by the act, in the exercise of his/her discretion, to have regard primarily to the interests of the public generally, including those of persons requiring or providing, facilities for transport.²⁴³ As noted above, Guyana has undertaken bound commitments without reservation for modes 1, 2, and 3 for freight transportation by road. The exercise of the discretion granted to the minister must therefore take into account the undertaking made by Guyana in the EPA not to impose economic needs tests.

A transport sector study financed by the European Development Fund and undertaken by German and Guyanese consultants suggests that increasing regional integration will require modifications to Guyana's laws to facilitate road freight and passenger transport connections with neighbouring countries. The suggested legal changes include the following:

²⁴⁰ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 70 and 71. Note also that provision is made for an appeal to the president where a special licence is revoked; see *ibid*, section 73.

²⁴¹ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 80 and 98. Note that a person aggrieved by the refusal of the minister to grant a license to operate a hire car or to drive a hire car may appeal to a magistrate and thereafter to the Full Court of the High Court; see *ibid*, section 85. Note that a specific license is not required for a person who hires a hire car to be driven for private use. Provision is also made under the Tax Act CAP 80:01 for an annual license and license fee on every person who keeps and uses, or owns and permits to be used, any hackney carriage, cart, horse, pony, or mule for the purposes of trade or hire; see Tax Act CAP 80:01, sections 34-36. Note that certain exceptions from the licensing requirement apply to vehicles and animals used for trade or hire, including those used exclusively for municipal purposes by a local authority, and vehicles or animals used on sugarcane plantations, cattle farms, cocoa or rubber estates, or similar ventures. See also *ibid* section 66, which provides that the minister may remit any license duty collected on any cart fitted with pneumatic or solid rubber tires, drawn by any donkey, ox, horse, mule, or pony, kept and used elsewhere than in Georgetown.

²⁴² See also EPA, Article 238.

²⁴³ See Motor Vehicles and Road Traffic Act CAP 51:02, sections 2, 87-90 and 98.

- Coordination of vehicle weights and dimensions legislation.²⁴⁴
- Modification of insurance arrangements to facilitate cross-border movements.
- Changes to customs procedures to facilitate cross-border movements, in particular transit movements.

- Permitting foreign trucking and bus companies to operate commercially inside Guyana, either to carry passenger or cargo to neighbouring countries or to compete directly with domestic carriers on domestic routes.²⁴⁵

Although there is very little cross-border freight movement at present, this is anticipated to change, particularly as trade grows with Brazil in light of the partial scope trade agreement and the ratification of a transport and cargo agreement with Brazil that is intended to streamline customs and border processes.²⁴⁶

The regulatory regime in Belize is similar to that of other countries reviewed, although Belize has not undertaken any commitments on road transport services. The Transport Board of Belize has assumed many of the functions assigned to the Department of Transport under the Motor Vehicles and Road Traffic Act CAP 230,²⁴⁷ including determining all applications for road service permits and other consents required to operate omnibuses.²⁴⁸ The act makes provision for the grant of licenses and permits, such as a limited or exclusive concession to operate motor omnibuses,²⁴⁹ a dealers' general license,²⁵⁰ a dealer in second-hand bicycles

²⁴⁴ See also Guyana Transport Sector Study, December 2005, which may be viewed on-line at <http://www.guyanagateway.org.gy/node/270>. Note that trucking and other commercial vehicle services are provided by the private sector, but highlighting that axle loads limits under the law do not conform to international standards and are inconsistent with the limit in neighboring countries. As regional integration progresses, and the trade grows (particularly with Brazil), it is suggested that standards be revised to coordinate with vehicle weights and dimensions of neighboring countries, and to establish the rules under which foreign trucking companies can operate in Guyana.

²⁴⁵ See GOPA Consultants and E & A Consultants, *Guyana: Transport Sector Study* (December 2005), section 0.3.4.6 on "Regional Integration"; see also section 0.3.4.2 on "Vehicle Weights and Dimensions", which provide that the current axle load limit of 10 tons is probably too low and should be reviewed, giving attention to the need to coordinate legislation with neighboring countries. Consideration should also be given to increasing taxes on heavy vehicles of certain axle configurations, to help recover the costs of the damage they cause to roads.

²⁴⁶ See also http://www.goinvest.gov.gy/guyana_economy.html.

²⁴⁷ Note that whenever the provisions of the Motor Vehicles and Road Traffic Act CAP 230 (or of any regulations made pursuant thereto), are in conflict with any other law relating to the control of vehicles and road traffic, the provisions of the Motor Vehicles and Road Traffic Act (and the regulations) prevail; see Motor Vehicles and Road Traffic Act CAP 230, section 116.

²⁴⁸ See Motor Vehicles and Road Traffic Act CAP 230, sections 3 and 4, esp. section 4(7), which note for that purpose that a reference to the Department of Transport in Part XII of the Motor Vehicles and Road Traffic Regulations shall be read and construed as a reference to the board. Note also that any person aggrieved by a decision of the board may appeal to the minister, whose decision is final; see *ibid*, section 4(10).

²⁴⁹ See Motor Vehicles and Road Traffic Act CAP 230, section 115; see also *ibid*, section 2 defining "motor omnibus" as a public service vehicle other than one licensed as a freight passenger vehicle or as a taxi.

²⁵⁰ See Motor Vehicles and Road Traffic Act CAP 230, section 21. Note that a person aggrieved by the decision of a transport officer in refusing to grant or cancelling a licence may appeal to the minister; see *ibid*, section 24.

license, etc.²⁵¹ Standard facilities exist to accommodate visitors traveling with their private motor cars through the provision of an international certificate or temporary license. However, where this is done the vehicle may not be used for hire or trade purposes.²⁵²

Rail transport services

Four of the five countries reviewed have undertaken commitments on rail transport services. Trinidad and Tobago has not undertaken any commitments, which is noteworthy given the interest taken in railway services by the previous administration led by the Hon. Prime Minister Patrick Manning, which was in office when the EPA was being negotiated.

The 1965 Public Transport Service Act CAP 48:02 mandated the divestment of the government railway service in Trinidad and Tobago²⁵³ and the phased substitution of road transport for the previous railway system.²⁵⁴ Although the government-run railway was in fact shut down at the end of 1968, in more recent times the Government of Trinidad and Tobago initiated measures to develop a Rapid Rail Transit System. The National Infrastructure Development Company Ltd (NIDCO), a special purpose state enterprise wholly owned by the government, working in partnership with the Ministry of Works and Transport, selected a consortium to design build, operate and maintain the system. However, in September 2010, the then newly elected Government of Trinidad and Tobago, under the leadership of the Hon. Prime Minister Kamla Persad-Bissessar, reportedly cancelled the project.²⁵⁵

²⁵¹ See Motor Vehicles and Road Traffic Act CAP 230, sections 60-63, which provide that any person who wishes to deal in second-hand bicycles must apply for a license to the magistrate of the district in which he desires to deal in second-hand bicycles and be registered.

²⁵² See Motor Vehicles and Road Traffic Act CAP 230, section 28. The Motor Vehicles and Road Traffic Act CAP 230 provides for certain exemptions from registration, including private motor cars brought into Belize by visitors for periods not exceeding three months (subject to prescribed conditions) and specific exemptions as may be granted by the minister; see *ibid*, section 9.

²⁵³ See Trinidad and Tobago Public Transport Service Act, section 31.

²⁵⁴ The 1965 Act established the corporation to carry on the business of operating public service vehicles, so as to ensure the provision of a safe, adequate, economic and efficient public transportation system, including the carriage of passengers and cargo by rail and road. The powers conferred on the corporation are said to be “to the exclusion of any right, power or authority in any other person or authority”; see Public Transport Service Act, section 8(3). This, however, is not applicable for carrying passengers by road in a hiring car (within the meaning of the Motor Vehicles and Road Traffic Act) adapted to carry less than six passengers, or to the carriage of goods by any other person for hire or reward or otherwise. Additionally, the act provides that corporation may authorize any person to operate public service vehicles of any special class or description (upon such terms and conditions as may be prescribed), in any area or district where the corporation on economic or any other grounds does not consider it suitable or expedient to operate its own service; see Public Transport Service Act, section 8(4).

²⁵⁵ See also <http://articles.janes.com/articles/Janes-World-Railways/National-Infrastructure-Development-Company-Ltd-NIDCO-Trinidad-and-Tobago.html>.

Barbados, Belize, Guyana, and Jamaica have undertaken bound commitments on modes 1, 2, and 3 for both passenger and freight rail transportation (CPC 7111 and 7112), pushing and towing services (CPC 7113), maintenance and repair of rail transport equipment (CPC 8868) and supporting services for rail transport services (CPC 743). However, there appears to be little evidence of a viable railway industry or interest in promoting railway services in these countries.

Currently no railways operate in Belize; a major railway line known as the Stann Creek Railway was built by the British Honduras Syndicate but was only used by the United Fruit Company between 1913 and 1937.²⁵⁶ The Government Railway Act CAP 240 nevertheless remains in place and provides the relevant legal framework for the operation of railway services in Belize.

There are no operational railway services in Barbados. The Highways Act CAP 289 authorizes the owner of any plantation to construct and maintain tramways across any public road to facilitate the delivery of produce to and from the factory.²⁵⁷ The provision for tramways is largely historic although tramways have been constructed in modern times in at least one notable instance, i.e., to take tourists to Harrison's Cave.

There are no railways currently in operation in Guyana. The government railway and private railway lines that previously operated have been closed and there appears to be little prospect that they will reopen, save perhaps in the development of the industrial sector, particularly mining.²⁵⁸ The Transport and Harbours Act CAP 49:04 provides for the management of a railway service by the General Manager of the Transport and Harbours Department.²⁵⁹ The "railway" is defined as the railway acquired under the Railways Purchase Ordinance, and includes any railway thereafter acquired, constructed, established, or maintained by the government, together with any road transport service that may be established and maintained under the act.²⁶⁰

²⁵⁶http://webcache.googleusercontent.com/search?rlz=1T4HPND_enJM308JM226&hl=en&q=cache:XFIEv4LCbLoJ:http://www.guidetobelize.info/en/travel/belize-train-railway-guide.shtml+Belize+railway+system&ct=clnk.

²⁵⁷ See Highways Act CAP 289, section 61 – also incorporating sections 2, 15 to 24, 29, 41, 42, 44, 46, 48 and 50 to 53 of the Bridgetown Tramways Company, Limited Act.

²⁵⁸ E.g., "Guyana Transport Sector Study," December 2005, on line, which may be viewed at: <http://www.gina.gov.gy/guyanatransportstudy/mainreport.pdf>.

²⁵⁹ See Transport and Harbours Act CAP 49:04, sections 2, 13 and 14. The Act vests in the minister (from December 31, 1921) the rights, powers, privileges, and capacities which Demerara Railway Company (incorporated by the Demerara Railway Company Ordinance, 1846) and staff previously possessed, with a view to carrying on, regulating, and maintaining the railway and business of the Company.

²⁶⁰ See Transport and Harbours Act CAP 49:04, sections 2 and 3, which also provide that the general manager, with the approval of the minister, may also establish and maintain road transport services upon any road within Guyana. See also Tax Act CAP 80:01, section 41 on imposing an annual licence duty for railway stations.

A train service began operations in Jamaica in 1845 and was finally completely shut down in 1992. More recently, however, there have been initiatives to privatize the Jamaica Railway Corporation and reintroduce rail service in Jamaica, which has met with limited success. The former administration led by the Hon. Prime Minister Bruce Golding, reportedly developed a phased two-year plan which should have seen the implementation of a “modern railway service with state-of-the-art technology” by 2013.²⁶¹ The previously established targets seem hardly achievable at present and it is possible that, as in the case of Trinidad and Tobago, the new administration is reviewing its priorities.

The Jamaica Railway Corporation Act establishes the Jamaica Railway Corporation to provide, *inter alia*, railway services to the public on a commercial basis, i.e., the services or facilities offered should be on an economic basis and in principle should not require government subsidies.²⁶² The act makes it unlawful for any person, without the consent of the minister, to construct or operate a railway for the public carriage of passengers or goods within Jamaica.²⁶³ The Jamaica Railway Corporation may, however, subcontract out any of the facilities or services which it is mandated to provide.²⁶⁴ As such, two avenues for private sector involvement potentially exist, i.e., as a subcontractor of the Jamaica Railway Corporation or an independent competitor having been granted approval by the minister.

²⁶¹ See “Passenger Trains Return to Jamaica,” May 25, 2011, viewed on-line at <http://www.railwaygazette.com/nc/news/single-view/view/passenger-trains-return-to-jamaica.html>; see also http://www.mtw.gov.jm/dep_agencies/ja_rail.aspx.

²⁶² See Jamaica Railway Corporation Act, section 7(1)(a). But note that the minister may direct otherwise, in which event the Jamaica Railway Corporation may be reimbursed from the Consolidated Fund.

²⁶³ See Jamaica Railway Corporation Act, section 18.

²⁶⁴ See Jamaica Railway Corporation Act, section 10(2)(c); see also the Jamaica Railway Corporation By-Laws, 1970.