



Organization of
American States

**AN EXAMINATION OF OECS TRADE IN SERVICES AND INVESTMENT
COMMITMENTS IN THE EPA *VIS-À-VIS* THE DOMESTIC REGULATORY
FRAMEWORK:
*COMPLIANCE ISSUES AND PROPOSALS FOR THE WAY FORWARD***

By

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The following is a report on the review of OECS laws and regulations relevant to the implementation of EPA trade in services and investment obligations. The report reflects the record of consultations and various email exchanges between the consultant, senior officials, private sector representatives and various stakeholders in the OECS which were facilitated by the Governments, OECS Secretariat and EPA Implementation Unit of the CARICOM Secretariat. The report was prepared by the Organization of the American States with the financial support of the Canadian International Development Agency (CIDA).

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INTRODUCTION:

Terms of Reference

The terms of reference which forms the basis for this report provides the following background and context for the review:

Having signed the CARIFORUM-EC Economic Partnership Agreement (EPA) in October of 2008 and in conformity with the fulfillment of obligations emanating from both signature and provisional application, the Governments of Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines are in the process of implementing the EPA. In this context, trade in services and investment represent key areas of interest for these countries.

First, as an initial starting point there is an urgent need to undertake a legal review of the EPA against the domestic legislation to effect harmonization, building on the work done by the legislative drafting Services for Trade Negotiations and Policy Formulation Project for the OECS countries. Subsequently, it is also important to prepare proposals to support the implementation of the EPA.

With the support of the EPA Implementation Unit of the CARICOM Secretariat, the OECS Secretariat with funding from the General Secretariat of the Organization of American States (GS/OAS) through the Canadian International Development Agency (CIDA), the consultant will work with the Governments of Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, Saint Lucia, and St Vincent and the Grenadines in the implementation of the EPA with regard to trade in services and investment.

The objectives of the project are set out as follows:

Identify, for each OECS Member State, pieces of legislation related to services trade and investment that need to brought into conformity with the EPA,

including suggested legislative changes, taking into account the legislative drafting project which identified fiscal incentives and professional services work permits, and

Identify and design possible projects for enduring conformity of the OECS countries' legislation with the EPA.

Structure of the Report

The analysis undertaken is essentially divided into five segments: firstly, certain preliminary observations are advanced on the approach to the liberalization of services trade and investment adopted in Title II of the EPA. Comparisons are made where appropriate to the World Trade Organization (WTO) Agreements with a view to gaining insight into likely interpretations of the EPA text. Secondly, the horizontal commitments circumscribing the scope of OECS commitments in the EPA are reviewed in light of various pieces of legislation which are either expressly cited in Annex IV.E and F or identified through general references. The third and most substantive focus of the analysis reviews the specific commitments undertaken by OECS States. The scope of the commitments are defined and in light of that, pertinent pieces of legislation identified and reviewed for compatibility with EPA undertakings relating to market access, national treatment, transparency and due process as well as the agreed-on regulatory frameworks, where applicable. Fourthly, certain additional obligations linked to commercial presence covering social aspects and other related concerns are reviewed, in addition to providing a brief overview of OECS commitments on commercial presence in non-services sectors. The final and fifth segment of the report provides a summary of the recommendations for further action. Additionally, an Annex to the report offers a quick overview of OECS horizontal and specific commitments as set out in Annex IV.E and F of the EPA.

I. THE SCOPE OF REVIEW: *Preliminary Observations*

Title II of the EPA covers trade in services and investment (commercial presence). The sectors which are covered for CARIFORUM States are those listed in Annex IV.E for non-service sectors, subject to any express limitations, and the specific commitments inscribed in Annex IV.F read in light of the conditions attributable to each State.¹ The methodology adopted in scheduling commitments is, in fact, a mixture of the ‘positive’ and ‘negative’ list approaches, which is of significance in defining States’ obligations under the EPA.

The measures reviewed herein are those *affecting* trade in covered services and investment.² The word “affecting” is not to be equated with ‘regulating’ or ‘governing’, nor limited to measures taken ‘in respect of’ such matters. The word “affecting” potentially covers any measure bearing upon the conditions of competition within covered sectors, regardless of whether the measure directly governs or indirectly affects it. Additionally, *any* alteration, no matter how small, in the conditions of competition is relevant.³ The “measures” referred to include laws, regulations, procedures, rules, decisions, administrative actions and other relevant instruments (irrespective of the form), adopted by any level of governmental authority, including the exercise of powers delegated to non-governmental bodies.⁴ As such, the scope of the review applicable to ‘measures affecting’ trade in services and investment is potentially very broad.

Expressly excluded from our review (and Title II of the EPA) are measures affecting natural persons seeking access to the employment market of another Party, and measures regarding citizenship, residence or employment on a permanent basis. Such measures

¹ The EPA text provides for a positive list approach for commercial presence (in services and non-services sectors) as well as cross-border supply, but essentially employs a negative list approach for the temporary movement of business personnel as these are tied to sectoral commitments; see EPA, Articles 81 & 82.

² See EPA, Articles 66 & 75.

³ See also WHO paper, “Legal Review of the GATS from a Health Policy Perspective.” 2005, at p.65 - suggesting that “*Any* alteration, no matter how small, in the conditions of competition by the different treatment qualifies as less favourable treatment”.

⁴ See also EPA, Article 61.

should be distinguished from those affecting the *temporary movement* of natural persons (Mode 4).⁵

Subsidies are also excluded from the scope of review.⁶ This is significant as subsidies constitute one of the most important measures affecting cross-border trade in services and investment. Subsidies, taxes and other financial measures are widely seen as the only instruments that can be used effectively in almost all economic activities and across all service sub-sectors and modes of supply.⁷ Subsidies are included within the measures covered by the WTO General Agreement on Trade in Services (GATS). **Their omission from the EPA is a significant ‘WTO-minus feature’ and affects efforts at a comparison of EPA and WTO commitments, or efforts to use EPA commitments as a benchmark of the preparedness of OECS States to undertake extended services commitments in other negotiations at the bilateral or multilateral level.**

The extent to which the exclusion of subsidies from the scope of the EPA may provide a legal loophole for non-conforming measures akin to subsidies is unclear. A number of Acts reviewed in OECS countries provide for differential (higher) fees to be applied to foreign suppliers and investors. It is possible to argue that such measures should have been scheduled as a limitation on the national treatment obligation. Alternatively, it could be suggested that differential fees are a *de facto* subsidy measure and, as such, beyond the scope of the EPA. A subsidy is generally defined as a financial contribution by a government or any public body within the territory which confers a benefit.⁸

⁵ States retain the right to regulate the entry of natural persons into, or their temporary stay in their territory, but this may not nullify or impair their specific commitments; see EPA, Article 60.

⁶ See EPA, Article 60(3).

⁷ E.g. J. Adlung & P. Morrison, “Less than the GATS: ‘Negative Preferences’ in Regional Services Agreements” 13(4) J.I.E.L. 1103 at p. 1127.

⁸ See also WTO Agreement on Subsidies and Countervailing Measures, Article 1. Note that the WTO Working Party on GATS Rules has not agreed on a definition of a subsidy in relation to services. It has been proposed that a provisional definition of subsidies in services could be based on the Agreement on Subsidies and Countervailing Measures; see Communication from Chile, Hong Kong, China, Mexico, Peru and Switzerland (JOB(05)/96 dated 9 June 2005. But see comments by Japan suggesting caution owing to the many specificities of trade in services – the four modes of supply, sector particularities as well as the wider context, and noting that, in particular, the provisions on the calculation of benefit and countervailing

There is no universally agreed upon definition of a subsidy in relation to services. The treatment of differential fees and other similar measures is therefore open to argument. It may be suggested that they constitute ‘grey measures’. The approach adopted herein is merely to identify differential fees where found without any specific recommendation for their amendment.

The Parties to the EPA have utilized a combination of scheduling lists in identifying sectors in the Annexes to the EPA.⁹ The commitments inscribed in Annexes IV.E follow the International Standard Industrial Classification of all Economic Activities as set out by the UN Statistical Office (ISIC Rev.3.1), while those inscribed in Annex IV.F follow the Services Sectoral Classification List (MTN.GNS/W/120; hereinafter ‘W/120’), which in turn refers to the UN Central Product Classification (CPC) list (the relevant CPC numbers that correspond to the sectors and sub-sectors are identified)¹⁰ in addition, some service activities not covered by these classification schemes are also included.¹¹ It should be noted that the schemes overlap. A basic interpretive principle applied in the WTO General Agreement on Trade in Services (GATS) is that a sector is only covered once in a Member’s Schedule of Commitments.¹² However, the five ISIC headings used in Annex IV.E combine service and non-service activities in ways that are difficult to

measures could not be translated directly from goods to services; see ‘Report of the Meeting Held on 14 February 2011’, WTO doc. S/WPGR/M/72, paras 36 & 37.

⁹ It should be recalled that the WTO Agreements do not generally regulate investment in non-services sectors, though they clearly impact upon such investments, e.g. the Agreement on Trade-Related Investment Measures (TRIMS).

¹⁰ The CPC is a detailed, multi-level classification of goods and services, consisting of Sections (10), Divisions (69), Groups (295), Classes (1,050) and Subclasses (1,811). Of the 10 Sections of the CPC, only the latter 5 classify services and are referred to in W/120.

¹¹ The W/120 list contains 12 sectors and 160 sub-sectors; the 12th heading is titled “Other services not included elsewhere”. As classification systems tend to become obsolete quickly; the CPC has been updated to take into account the evolution of new service activities since end of the Uruguay Round. CARIFORUM commitments are classified based on the W120 categories but are supplemented in certain instances by references to sub-sectors which have no external reference to determine their meaning.

¹² See also *US — Gambling*, WT/DS285/AB/R at para. 180: “To us, the structure of the GATS necessarily implies two things. First, because the GATS covers *all* services except those supplied in the exercise of governmental authority, it follows that a Member may schedule a specific commitment in respect of *any* service. Secondly, because a Member’s obligations regarding a particular service depend on the specific commitments that it has made with respect to the sector or subsector within which that service falls, a specific service cannot fall within two different sectors or subsectors. In other words, the sectors and subsectors in a Member’s Schedule must be mutually exclusive.”

separate. Yet Annex IV.E purports to be limited to “economic activities other than services sectors”, and the commitments on services incidental to these activities are scheduled in Annex IV.F using the W/120 and CPC classification.¹³ Our focus is predominantly on a review of the OECS EPA services commitments and these are treated as listed exclusively in annex IV.F. Also included at the end of this commentary is a brief discussion of the commitments made in Annex IV.E.

The EPA does not define the term ‘service’ or ‘economic activity’, the latter of which is used with reference to commercial presence in service and non-service sectors. The inscriptions in Annexes IV.E and F, read in conjunction with the ISIC Rev.3.1, W/120 and CPC classification lists identify the sectors of concern. However, whether an economic activity or service is covered by the EPA is linked to the meaning attributed to “supply of a service” and “commercial presence”.

The term “commercial presence” in the context of the EPA relates to the constitution, acquisition or maintenance of a juridical person, or the creation or maintenance of a branch or representative office for the purpose of performing an economic activity.¹⁴ The terms "constitution" and "acquisition" of a juridical person are defined in the EPA to include capital participation in a juridical person with a view to establishing or maintaining lasting economic links.¹⁵ However, capital participation in a juridical person does not necessarily make that entity a juridical person of another party,¹⁶ and as such,

¹³ See the category of “Other business services” in the CPC code. It should be noted that the heading under which an activity falls may not always be obvious. So, for example, whereas the rental and leasing of yachts is under “recreation, cultural and sporting services”; cruise ships are under “maritime transport”; “health related and social services” do not cover nurses, doctors and midwives which are classified as business services (professional).

¹⁴ This basic definition adopted by the EPA essentially accords with the GATS.

¹⁵ See footnote to Article 65(a)(i) clarifying further that “[w]hen the juridical person has the status of a company limited by shares, there is a lasting economic link where the block of shares held enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control. Long-term loans of a participating nature are loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links; the main examples being loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement.” As such, commercial presence requires more than mere equity capital.

¹⁶ See EPA, Article 61(e).

the EPA addresses *foreign investment*¹⁷ as well as *foreign investors*.¹⁸ It covers measures affecting both pre- and post-establishment phases, i.e. market access as well as post-entry market regulation.¹⁹

The term “supply of a service” includes the *production, distribution, marketing, sale and delivery* of a service.²⁰ The definition highlights the indivisibility of service transactions and may be interpreted to suggest that a commitment on a ‘final’ service essentially covers all operational processes required to support a service supplier in that covered activity. This interpretation would not apply in relation to WTO Members’ commitments due to footnote 9 of the GATS which makes it clear that market access commitments do not cover inputs for the supply of services.²¹ However, there is no equivalent footnote in the EPA.²² It may be questioned: what is the implication of the omission in interpreting EPA commitments on services?

The general interpretation of footnote 9 of the GATS is that a liberalizing commitment on a particular service is not taken to imply that the Member is obliged to allow liberal trade

¹⁷ E.g. EPA, Article 68 on “National treatment” covers investors and investments / commercial presence. Note that in order for GATS disciplines to apply the measures must concern a foreign investor. Service suppliers are foreign when they meet the conditions of being a ‘juridical person of another member’ - which goes to ownership and control by nationals or companies of another member. See also GATS, Article XVIII “(m) ‘juridical person of another Member’ means a juridical person which is either: (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or (ii) in the case of the supply of a service through commercial presence, owned or controlled by: 1. natural persons of that Member; or 2. juridical persons of that other Member identified under subparagraph (i);”

¹⁸ See EPA, Article 65.

¹⁹ The attempt to devise a clear distinction between pre-entry / pre-establishment (i.e. market access) and post-entry / post-establishment (i.e. market regulation) measures affecting the flows of services (or investments) is not always easy. Note also that the EPA is not an investment promotion and protection agreement with the sort of provisions typically evidenced in bilateral investment treaties (BITs). There are no restrictions on the imposition of performance requirements or specific disciplines on investment protection. There are also no measures relating to expropriation and investor-to-State dispute settlement; see EPA, Article 66, footnote 1.

²⁰ See EPA, Article 75(2)(e).

²¹ Note that there is no definition of “input for the supply of a service” in the GATS. See also Mattoo & Wunsch, “Preempting Protection in Services: GATS and Outsourcing,” 2004, at p 15 - pointing to the new ‘Guidelines and Procedures for the Negotiations on Trade in Services’ as giving an expansive interpretation to footnote 9: “It is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.”

²² See EPA, Articles 67 & 76; the corresponding footnote in Article 67 concerns measures taken in order to limit the production of an agricultural product, and there are no footnotes to Article 76.

in all other services that are inputs into that service. So, for example, a commitment on mode 2 tourism services does not necessarily infer an undertaking to liberalize air and maritime transport services although such services are required for tourists to visit distant locations; similarly, a commitment on financial services such as mode 1 cross-border banking does not extend in the GATS context to telecommunication services which may be required to facilitate this.²³ The absence of the footnote from the EPA could lead to a more expansive interpretation of EPA commitments than that which is permissible under the GATS; i.e. the inclusion with the ‘core’ service or activity of ‘inputs for its supply’. For the purpose of this review it is assumed that this is not what the Parties to the EPA intended.

In defining the scope of our review attention is drawn to the fact that certain sectors are expressly excluded from the scope of the EPA. These concern trade and investment related arms, munitions, war materials and nuclear materials, audio-visual services, maritime cabotage and ostensibly a subcategory of air transport services that are generally treated within bilateral air services agreements.²⁴ Significantly, however, Annex IV.F includes CARIFORUM commitments on passenger and freight air transport services. This may be contrasted with Annex IV.A and B listing EU commitments and may be seen as one of the anomalies which appear in Annex IV.F.

Certain types of services or ‘economic activities’ are also excluded from the EPA, most notably, activities undertaken in the exercise of governmental authority, i.e. not done on a commercial basis or in competition with one or more economic operators and/or service suppliers.²⁵ Few activities undertaken in OECS countries would arguably seem to fall within this category. Article 224(2) of the EPA further qualifies:

²³ *E.g.* Mattoo & Wunsh, *supra*, at p.16

²⁴ See EPA, Articles 66 & 75; note that this covers international air transport services, whether scheduled or nonscheduled, and services directly related to the exercise of traffic rights, other than: aircraft repair and maintenance services during which an aircraft is withdrawn from service; the selling and marketing of 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.

²⁵ See EPA, Articles 65(d) & 75(2)(c); note also that the concept of ‘the exercise of governmental authority’ is defined with reference to the circumstances and conditions of supply of the services or economic activity. The nature of the activity itself or the characteristics of the supplier are irrelevant.

The provisions of Title II and of Annex IV shall not apply to the EC Party and Signatory CARIFORUM States respective social security systems or to activities in the territory of each Party, which are connected, *even occasionally*, with the exercise of official authority. (added emphasis)²⁶

The term ‘official authority’ is not defined but may be equated with the term ‘governmental authority’. The list of activities which may be “connected, even occasionally,” with the exercise of official authority is clearly broader than activities undertaken in the exercise of governmental authority as addressed in Articles 65(d) and 75(2)(c) of the EPA. The possible application of the provision in committed sectors is considered as relevant for the purposes of this review.

It should also be noted that the EPA provides for certain permissible exceptions in the implementation of commitments. Those relevant for present purposes include specific exceptions such as Article 124 as well as general exceptions such as Articles 224 and 225 which are found outside Title II but have a direct bearing thereon. These include measures to safeguard the operation of monetary policy, protect morals, health, privacy, the environment, heritage sites, essential security interests and/or ensure the effective and equitable imposition or collection of direct taxes on services and investments.²⁷ These measures may be applied irrespective of the commitments undertaken. That is to say, where limitations on commitments have been included in Annexes IV.E and IV.F they may be maintained without having to justify their use. But even where no such reservations have been made, measures covered by Articles 124, 224 and 225, which may

²⁶ Consider national insurance schemes, e.g. Saint Lucia National Insurance Corporation Act (CAP16:01) – which potentially covers all (non-self) employed persons between the age of 16 and 60 domiciled or resident in Saint Lucia and may extend to others who voluntarily contribute (see *ibid*, sections 26 & 27). Benefits under this Act include: sickness benefit, invalidity benefit, maternity benefit, hospitalisation and medical treatment, survivors benefit, retirement benefit, funeral grant, and employment injury benefit (see *ibid*, Part V, sections 41 et seq).

²⁷ See also the footnote to Article 224(h) which clarifies the nature of permissible measures aimed at ensuring the equitable or effective imposition or collection of direct taxes.

appear to be in breach of scheduled commitments may still be used as they are justifiable under the specific and general exceptions provided for in the EPA.²⁸

The test of a measure's compliance

The approach adopted in this review is not to comment on every measure potentially affecting covered services trade and investment. Measures affecting covered trade in services and investment, such as those relating to qualification requirements, technical standards and licensing requirements and procedures are subject to comment when they may be seen as constituting (or enabling, i.e. providing broad discretion to impose) a limitation on market access or national treatment within the meaning of Articles 67 and 68, and 76 and 77 of the EPA, and where they appear not to conform to the regulatory framework established in Chapter 5 of Title II of the EPA which is applicable to a limited subset of sectors addressed therein.²⁹

Most-favoured-nation (MFN) principle

It should be noted that the most-favoured-nation (MFN) principle has only limited applicability in the context of the EPA and this relates to possible future free trade agreements (FTAs) which may be negotiated by CARIFORUM States with any major trading economy,³⁰ such as the proposed CARICOM/Canada FTA. As such, the MFN norm is not a basis on which to assess compliance in the context of the present review.

²⁸ Note that the 'necessity' test does not apply to all exceptions. Where it applies WTO jurisprudence suggests that certain tests define the permissibility of the measure; e.g. the importance of interests or values that the challenged measure is intended to protect; the extent to which the challenged measure contributes to the realization of the end pursued by that measure; the trade impact of the challenged measure. A process of weighing and balancing takes place when comparing the challenged measure with a 'reasonably available' alternative measure which is consistent with a Member's obligations; e.g. *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO/DS169/AB/R; *EC-Measures Affecting Asbestos and Products Containing Asbestos*, WT/DS135/AB/R at paras 172-174.

²⁹ See also Annex IV.E & IV.F, paragraphs 7 & 10 respectively, stating that “[t]hose measures (e.g. need to obtain a license, need to register with the Registrar of Companies, universal service obligations, need to obtain recognition of qualifications in regulated sectors, need to pass specific examinations, including language examinations, non-discriminatory requirement that certain activities may not be carried out in environmental protected zones or areas of particular historic and artistic interest), even if not listed, apply in any case to investors of the other Party.”

³⁰ See EPA, Articles 70 & 79; note that the MFN principle does not apply even in this limited context to measures providing for recognition of qualifications, licences or prudential measures, double taxation agreements, and measures benefiting from GATS Article II:2 MFN exemptions.

The national treatment obligation

The national treatment obligation of the EPA³¹ is defined in similar language to the GATS. The test of a measure's compliance is not whether formally identical or formally different treatment is accorded but whether the measure modifies conditions of competition between investors and firms or services or service suppliers, recognizing that a State is not required to compensate for the inherent disadvantages which may be associated with the foreign character of the investor, investment or firm or relevant services or services suppliers.³² The obligation applies to "like services or service suppliers" and "like commercial presences and investors",³³ and is qualified by the conditions stated in Annex IV.E and IV.F. It is unclear the extent to which the principle of technological neutrality may be used in defining 'likeness', though it clearly is relevant and plays a role in preventing the circumvention of specific commitments which may be delivered through various legitimate means in any mode of supply.³⁴

Market access obligations

In sectors where market access commitments are undertaken in relation to commercial presence, the measures which may not be maintained or adopted either on the basis of a regional subdivision or in relation to the entire territory, unless otherwise specified in Annex IV are defined as measures limiting the number of business entities in a particular sector or the volume of business they may do or assets they may hold, or the number of activities in which they may be involved/functions they may perform, limiting the level of foreign participation in a business or requiring joint ventures or a specific form of legal entity to engage in certain business activities where this is not applied to all participants in the market.³⁵

Where market access commitments are undertaken in relation to cross-border supply (modes 1 and 2), the measures which may not be maintained or adopted either on the basis of a regional subdivision or in relation to the entire territory, unless otherwise

³¹ See EPA, Articles 68 & 77.

³² See EPA, Articles 68 & 77.

³³ See EPA, Articles 77 & 68.

³⁴ For example, cross-border surface mail versus electronic mail.

³⁵ See EPA, Article 67(2).

specified in Annex IV are defined as measures imposing limitations on the number of service suppliers in the market or the volume of business they do, the value of assets they hold or the number of service activities in which they may be involved/functions they may perform.³⁶

All measures falling under any of the categories above-listed should have been scheduled, whether or not such measures are discriminatory according to the national treatment standard, as they affect market access. Where such measures have not been scheduled they should be eliminated. A limitation stated in the market access column effectively circumscribes the nature of the State's commitment on national treatment. However, the converse is not equally true. A qualification made to national treatment is not read as necessarily limiting market access.

The market access obligation applies even to *non-discriminatory* market access restrictions. The lists (Articles 67 and 76) may be treated as exhaustive and arguably do not cover *de facto* breaches – though the extent to which the market access obligation extends to measures which *in effect* impose a quantitative limitation (e.g. a zero quota) is unclear.³⁷ If a State desires to maintain a full prohibition it is assumed that that State would not have scheduled such a sector or subsector.³⁸

Minimum requirements such as those common to licensing criteria would not normally fall within the scope of Articles 67(2) and 76(2) of the EPA unless they in effect impose a

³⁶ See EPA, Article 76(2).

³⁷ *E.g. US-Gambling* WT/DS285/AB/R at paras 230-232. See also Federico Ortino, "Treaty Interpretation and the WTO Appellate Body report in *US-Gambling: A Critique*" (2006) 9(1) J.I.E.L. 117 – observing that "Extending the *per se* prohibition of Article XVI to measures that have an *effect* equivalent to a quota (whether it be a quota equal to, or greater than, zero) runs a serious risk of *de facto* banning any type of domestic regulation with a restrictive effect on the flow of services, thus tilting the balance in favour of multilateral liberalization to the detriment of domestic regulatory prerogatives."

³⁸ Among the examples of the limitations falling within the scope of sub-paragraph (a) of Article XVI:2, the Guidelines include the following: 'nationality requirements for suppliers of services (equivalent to zero quota)'. According to the Appellate Body, this example "confirms the view that measures equivalent to a zero quota fall within the scope of Article XVI:2 (a)"; *US-Gambling, supra* at para 237. The function of Articles 67(2) and 76(2) generally appears to be to define certain limitations that are prohibited unless specifically reserved in Annexes IV.E and IV.F. The lists stated in these Articles mirror Article XVI of the GATS. The function of Articles 67(2) and 76(2) generally appears to be to define certain limitations that are prohibited unless specifically reserved in Annexes IV.E and IV.F. The lists stated in these Articles mirror Article XVI of the GATS.

quota.³⁹ If such a measure is discriminatory and, if it cannot be justified as an exception, it should generally be scheduled as a limitation on national treatment. If such a measure is non-discriminatory and implements “legitimate policy directives” in keeping with Article 60(4) of the EPA, it is subject to EPA requirements on transparency and due process.⁴⁰

The Right to Regulate, Transparency and Due Process

The EPA expressly recognizes that States retain the right to regulate “subject to legitimate policy directives”.⁴¹ The right to introduce new regulations is, however, qualified by the standstill clause (included in Annex IV.F) in relation to CARIFORUM states, which precludes the introduction of new measures which derogate from the market access or national treatment obligations (as defined within the Articles 67, 68, 76 and 77 of the EPA) in all services sectors irrespective of whether or not specific commitments have been undertaken.

Where regulations require authorization for the supply of a service or to establish a commercial presence as, for example, with respect to business / professional licences, trade licences, alien landholding licences, work permits, environmental permits, etc, certain procedural due process measures apply. Authorizations constitute a very common instrument used by governments and domestic regulatory authorities. The proliferation of such requirements in virtually all OECS countries underlies the importance of EPA procedural safeguards in providing effective market access.

³⁹ Licensing and qualification requirements and technical standards should normally be interpreted as imposing *qualitative minimum* requirements, as opposed to *quantitative maximum* limitations. However, qualitative requirements may be coupled with quantitative measures such as economic needs tests or result in barring the supply of a service through a particular mode resulting in a ‘zero quota’ which would bring the measure within the market access obligation. Note that the EPA does not include a provision repeating the language of Article VI:4 & 5 of the GATS disciplining measures relating to qualification requirements and procedures, technical standards and licensing requirements with a view to ensuring that they are (i) based on objective and transparent criteria, such as competence and ability to supply the service, (ii) not more burdensome than necessary to ensure the quality of the service; and (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

⁴⁰ See also the WTO Scheduling Guidelines to this effect: “[m]inimum requirements such as those common to *licensing criteria* ... do not fall within the scope of Article XVI. If such a measure is discriminatory within the meaning of Article XVII and, if it cannot be justified as an exception, it should be scheduled as a limitation on national treatment. If such a measure is non-discriminatory, it is subject to the disciplines of Article VI:5”.

⁴¹ See EPA, Article 60(4).

Article 87 of the EPA requires that minimum standards of procedural fairness are imposed upon persons or bodies with judicial or quasi-judicial capacities and regulatory authorities in national jurisdictions. This is designed to promote efficiency and good governance in the implementation of EPA commitments.

Article 87(1) applies only where specific commitments have been undertaken. It requires that a State ensure expeditious decisions on applications. More specifically, it provides that where authorization is required, the regulatory authorities must communicate to the applicant the decision on his or her application within a reasonable period of time after the submission of an application considered complete according to domestic laws and regulations. Additionally, regulators must promptly provide information on the status of the application whenever requested to do so.

Article 87(2) requires States to maintain or institute procedures for the review of administrative decisions. The requirement is of general application and not limited to those sectors in which specific commitments have been undertaken. Article 87(2) requires that each State party to the EPA provide *de jure* or *de facto* independent judicial, arbitral, or administrative tribunals or procedures for prompt, objective, and impartial review, upon request, of, and appropriate remedies for administrative decisions affecting trade in services and commercial presence. Each State is free to decide on the institutional structure which is commensurate with its specific needs. The provision essentially mirrors the GATS Article VI.2(a), while Article 87(1) of the EPA largely follows GATS Article VI.3.⁴²

The EPA also imposes a general transparency obligation on States to respond promptly to all requests from State parties, investors and service suppliers for specific information on any of their measures of general application or international agreements which pertain to or affect the EPA.⁴³

⁴² See also Panagiotis Delimatsis, “Due Process and ‘Good’ Regulation Embedded in the GATS – Disciplining Regulatory Behaviour in Services through Article VI of the GATS”, (2007) 10(1) J.I.E.L. 13.

⁴³ EPA, Article 86.

The basic EPA requirements for transparency and due process are in large part a standard feature of OECS legal systems and practices. Ministries with responsibility for Trade and Foreign Affairs and investment promotion agencies⁴⁴ in each OECS country respond to queries from trading partners as well as private sector entities on the general regulatory framework affecting trade in services and investment. Additionally as regards procedures to review administrative decisions, where the power of judicial review is not expressly provided for in an enabling statute it may be derived by virtue of the common law. The common law powers stem from the four original writs of certiorari, prohibition, mandamus, and habeas corpus. They exist even where a statute contains language which suggests that the administrative decision is final and binding.

The presence of clauses appearing to oust the jurisdiction of the courts (i.e. ouster clauses) in certain Acts subject to review may nevertheless raise concerns. An example of such an ouster clause is the provision in the St Vincent and the Grenadines Mutual Funds (Amendment and Consolidation) Act that, “where the Authority refuses to grant registration or its consent, it shall not be bound to assign any reasons for its refusal, which shall not be subject to appeal or review in any court”.⁴⁵ It has been said that in a country governed by the rule of law as opposed to men there is no such thing as absolute or unfettered discretion, not subject to review by the courts. Common law courts have identified three grounds for judicial review even where ouster clauses exist.⁴⁶ A decision is open to judicial review if it is irrational, illegal, or based on a procedural impropriety. In our consultations ouster clauses were generally characterized by senior legal officials as a measure to mitigate against frivolous and ineffective appeals.

⁴⁴ E.g. Antigua and Barbuda Investment Authority Act 2006, Invest Dominica Authority Act, Grenada Industrial Development Corporation, Invest Saint Lucia, St Kitts Investment Promotion Agency (SKIPA), Nevis Investment Promotion Agency (NIPA), and St Vincent and the Grenadines Invest SVG.

⁴⁵ St Vincent and the Grenadines Mutual Funds (Amendment and Consolidation) Act, section 11(3); see also sections 20(1) & 24(4).

⁴⁶ E.g. *Council of Civil Service Unions v. Minister for the Civil Service* [1985] A.C. 374.

Administrative law also highlights the progressive development of a duty to give reasons as an element of natural justice.⁴⁷ This is a function of due process and facilitates a prompt review; it assists in the exercise of general supervisory functions. There is no consistent statutory requirement in the OECS for administrators to provide reasons for their decisions, nor is this part of the traditional common law. It is difficult, however, to read the EPA requirement for a prompt review to include the provision of reasons. The obligation to state reasons is explicitly provided for in certain contexts,⁴⁸ which gives support to the view that it is not a general requirement imposed across the board.

The EPA effectively should be read as imposing a level of multilateral scrutiny as regards the adherence of the national regulatory and administration authorities to the rule of law and due process in an origin-neutral manner.

⁴⁷ *E.g.* J.A. Ali, “Duty to give Reasons : the way forward” <http://www.guyaneselawyer.com/index.html>

⁴⁸ *E.g.* EPA, Article 92(3) – on courier services; Articles 95(4) & 96(3)(b) – on telecommunication services; and Article 177(2) – concerning public procurement.

II OECS HORIZONTAL RESERVATIONS: *circumscribing specific commitments*

The Annexes to the EPA are expressly stated to be an integral part of the Agreement.⁴⁹ The inference is that they must be read as representing the *common agreement* among the Parties (and not merely what might have been intended by the State making the commitment). As such, a State's specific commitments must be interpreted in their proper context,⁵⁰ including the commitments of other States, the substantive provisions of Title II, as well as other clauses of the EPA, its Protocols and Annexes (in addition to the classification lists referred to therein and above-discussed).⁵¹

An examination of the Annexes demonstrates that most market access and national treatment "reservations", "limitations", "restrictions", "conditions", or "qualifications" (as addressed in Articles 67, 68, 76 and 77 and Annexes IV.E and IV.F) provide very succinct statements which do not fully reflect the legal regime and domestic measures that underpin them. It is unclear at times what is meant to be protected and whether the stated limitations were designed to address specific concerns or were included simply out of an abundance of caution. Certain reservations such as those pertaining to landholding are clearly defined in terms of the relevant domestic legal regime. In general and to the extent possible an attempt is made at providing an objective assessment of the inscriptions in the Annex.

There are certain technical errors and omissions present in Annex IV.F which should be addressed at the earliest opportunity. These were identified and discussed with senior officials in the course of our consultations. They are also highlighted in the commentary as well as in the Annex to this report.

⁴⁹ See EPA, Article 250 - noting that the Annexes, Protocols and footnotes all form an integral part of the Agreement.

⁵⁰ Note that the relevant context may include the provisions of other Titles of the EPA as well as the scheduled commitments of other States party to the EPA; see also *US-Gambling, supra*, para 178.

⁵¹ Note that the WTO Appellate Body in *US-Gambling, ibid*, has suggested that the W/120 should be treated as a 'supplementary means of interpretation' under Article 32 of the Vienna Convention on the Law of Treaties as opposed to 'context' under Article 31 in interpreting the Schedules of Specific Commitments to the GATS. It is submitted, however, that the classification lists are of even greater importance in interpreting Annexes IV.E and IV.F of the EPA given the introductory explanatory notes to the Annexes.

Limitations or conditions may be made applicable to all sectors in which commitments are made (horizontal reservations) or may be scheduled within a committed sector in relation to a particular mode (measure-specific limitations).

Horizontal reservations

All six (6) OECS Member States have inscribed horizontal limitations concerning landholding and specific types of commercial presence in Annex IV.E which relates to non-service sectors. All, save for Saint Lucia, have also reserved the right with respect to companies possessing land to restrict or prohibit the issue or transfer of shares or debentures to non-citizens or restrict or prohibit the holding by non-citizens of share warrants and debentures transferable by delivery or refuse to register a non-citizen as a member or the holder of a debenture. All OECS, save for Antigua and Barbuda and Grenada, have also reserved the right to use economic needs tests (ENTs) with respect to small business ventures.⁵²

Similar horizontal reservations have been made with regard to commercial presence in services sectors. **There is the notable omission in Annex IV.F of a reservation regarding alien landholding for Antigua and Barbuda (which is treated as a technical error)**. Additionally, while Grenada has made a reservation with regard to small businesses in services sectors (in Annex IV.F *versus* IV.E), Antigua and Barbuda and St Vincent and the Grenadines have not made horizontal reservations with regard to small businesses in services sectors. Antigua and Barbuda is therefore the only OECS country which has made no horizontal limitation with respect to SMEs.

Dominica and Grenada have entered additional horizontal reservations on mode 3, commercial presence, under the national treatment column in Annex IV.F. (concerning services) Grenada's reservations relate to the possible less favourable treatment of subsidiaries and eligibility for government funding or subsidies – the latter of which

⁵² Note also that all CARIFORUM countries, including the OECS, have reserved the right to prohibit the exploration, exploitation and processing of radioactive minerals and recycling, generation, processing, transportation and storage of certain nuclear materials.

would appear to have been inscribed for the sake of emphasis (as subsidies are excluded from the scope of the EPA). Dominica's reservation on mode 3, commercial presence, also addresses subsidies but is broader in scope. It provides that "[s]ubsidies, fiscal incentives, scholarships, grants and other forms of domestic support *whether financial or otherwise* may be restricted to CARICOM Nationals. *Applicable fees may be higher for Non-CARICOM Nationals.*" (added emphasis).

A broad horizontal reservation has also been made by all OECS countries with respect to the temporary movement of business persons, applicable across all service sectors. All CARIFORUM countries have qualified their commitments on the movement of business persons in paragraphs 3, 4 and 5 of the interpretative notes at the beginning of Annex IV.F. This clarifies that all CARIFORUM countries retain their rights to apply ENTs (based on the availability of persons with the requisite skills in the local market) on key personnel and graduate trainees employed by investors wishing to establish a commercial presence; and that commitments (including the indication 'None') should not be read as extending to contractual service suppliers and independent professionals unless expressly so stated. In addition to the above general clarification, all OECS countries have indicated that mode 4 is unbound for all sectors "except for Key Personnel (Business visitors, Managers and Specialists) and Graduate trainees not available locally"; all have made reference to the relevant work permit requirements. Grenada has additionally noted the requirement for key personnel to contribute to the training of local counterparts in areas of specialization. Dominica, Grenada and St Vincent and the Grenadines have further indicated the need for some professional service providers to register with the appropriate professional or governmental bodies and, in the case of Dominica reference is also made to the requirement for payment of higher fees by foreigners than nationals.

Dominica has therefore conditioned its commitments both in relation to the movement of natural persons (mode 4) and commercial presence (mode 3) to allow for differential fees and other measures of support which may be challengeable in relation to other OECS countries.

Alien landholding

The relevant legislation⁵³ of all OECS Member States is fairly similar, though not identical. The legislation contains definitions of certain terms used in the conditions inscribed in Annex IV and assists in interpreting the scope of the limitations maintained.⁵⁴ So for example, the distinction highlighted above with respect to Saint Lucia's reservation as regards companies possessing land and that of the other five (5) OECS countries is mirrored in the legislation.

The relevant legislation in Saint Lucia is the Aliens (Licensing) Act (CAP 15:37).⁵⁵ The Saint Lucian Act omits the general provision found in the legislation of other OECS countries which prevails notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any debenture, or any instrument for securing any issue of debentures, and permits a company incorporated within the jurisdiction holding or intending to acquire land to (a) restrict or prohibit the issue or transfer of its shares or debentures to non-citizens; (b) restrict or prohibit the holding by non-citizens of share warrants and of debentures transferable by delivery; (c) refuse to register a non-citizen as a member or as the holder of a debenture; and/or (d) require such evidences as it may think fit as to whether any person desiring to be registered as a member or as the holder of a debenture is a non-citizen or not, and as to whether the holder of a share warrant or debenture transferable by delivery or of a

⁵³ *E.g.* St Vincent and the Grenadines Alien (Landholding Regulation) Act; Antigua and Barbuda Non-Citizen Landholding Regulation Act; St Kitts and Nevis Alien Land Holding Regulation Act

⁵⁴ *E.g.* the definition of member of a company, debenture, share, etc. Note that the definition of an 'alien' or 'non-citizen' differs slightly between jurisdictions; e.g. in Saint Lucia an alien is defined as "(a) a person who is not a citizen of Saint Lucia or a national of a member State; (b) a company incorporated in Saint Lucia or in a Member State if it is an alien company as provided in section 8; (c) a corporation incorporated in a foreign country; (d) a firm, partnership, or unincorporated body of persons of which more than 50% of its membership consists of persons to whom paragraph (a) applies;" Section 8 defines an alien company in terms of the number of directors which are alien or votes exercisable by aliens or amount of dividends paid to aliens; 50% being the relevant threshold. The 50% threshold pertains in some other jurisdictions such as St Vincent and the Grenadines, see Aliens (Land-Holding Regulation) Act, section 8, but not all, e.g. Antigua and Barbuda Non-Citizens Landholding Regulation Act, section 6 - setting the bar for alien participation at one-third for classification as an alien company; the one-third threshold also generally applies under the St Kitts and Nevis Alien Land Holding Regulation Act, section 6, also a company is deemed to be an alien if *any* of its directors is an unlicensed alien.

⁵⁵ Note that the Aliens (Licensing) Act 2002 as amended repeals the Aliens (Licensing) Act 1999.

coupon or other document entitling the bearer to payment of any dividend or interest is a non-citizen or not.⁵⁶

Although the Saint Lucian Act does not confer on a company the power to restrict the transfer of shares and debentures to aliens, it requires a body corporate or unincorporated holding land which becomes an alien company by reason of a disposition of the shares or other interest of the body corporate or unincorporated, to obtain a licence to hold the land within 3 months of the disposition.⁵⁷ Failure to do so will lead to forfeiture of the land.⁵⁸ As such, the lack of an express provision in the Act restricting the transfers of shares and debentures to aliens is practically of little significance given the consequences attached to the inability to obtain an alien landholding licence.

Within the OECS region alien property may attract special taxes and/or penalties not applied to property held by nationals. It is noted that Grenada has inscribed a horizontal notation in Annex IV.E to the effect that the “Property Transfer Tax Act stipulates that a foreign investor interested in the purchase or sale of shares/stocks is subject to a specific tax on the value of settlement.” Other discriminatory measures are applied in some OECS jurisdictions. For example, in Antigua and Barbuda, the Non-Citizens Undeveloped Land Tax Act (CAP 294) provides that any area declared to be undeveloped land for the purposes of the Act attracts a tax of 5-20% of the value of the land per annum.⁵⁹ The imposition of penalties in relation to undeveloped land, however, would not normally be associated with economic activities linked to commercial presence or services trade.⁶⁰

The decision whether to grant an alien landholding licence is discretionary and generally not subject to review though property (i.e. land, shares and debentures) may not be

⁵⁶ See the Antigua and Barbuda Non-Citizen Landholding Regulation Act, section 7; see also section 109 of the Antigua and Barbuda Registered Land Act – for a non-citizen to get his title registered he must produce evidence that he has a licence under the Non-citizens Land Holding Regulation Act or evidence that such licence is not required; see also section 9 of the St Vincent and the Grenadines Aliens (Land-Holding Regulation) Act (CAP 235).

⁵⁷ See Saint Lucia Aliens (Licensing) Act, section 6(1).

⁵⁸ See Saint Lucia Aliens (Licensing) Act, sections 5 & 6(2).

⁵⁹ See Antigua and Barbuda Non-Citizens Undeveloped Land Tax Act, section 7 & First Schedule.

⁶⁰ It may also be noted that only Saint Lucia has undertaken limited commitments on real estate services.

forfeited without recourse to the courts. Limited exceptions exist in virtually all six OECS countries as regards small holdings (of acreage of no more than 1, 3 or 5 acres depending on the jurisdiction) for a residence, trade or business; exceptions have also been made to accommodate the banking sector.

It may be observed that the alien landholding restriction could be implemented to effectively nullify virtually all OECS commitments on commercial presence. The legitimate expectations of the Parties to the EPA, however, would suggest that the restriction be implemented reasonably, transparently with provision for due process, with a view to facilitating market access in line with the specific commitments undertaken in good faith.

Special attention is drawn once again to the fact that while the reservation relating to alien land holding is made in Annex IV.E for all six OECS countries, it is omitted from the list of horizontal reservations in Annex IV.F in relation to Antigua and Barbuda. It may be recalled that Annex IV.F includes commitments on commercial presence as regards services. Should this not be treated as a technical error (as assumed herein) significant reforms would be required to bring Antigua and Barbuda's legislative framework in accordance with its EPA obligations.

It may be noted that the situation in the island of Barbuda is somewhat exceptional. The Barbuda Land Act 2007 affirms the common ownership of all land in Barbuda by the Barbudan people.⁶¹ The law provides that no land in Barbuda shall be sold or ownership acquired by prescription or otherwise.⁶² Provision is made for the granting of leases of land for major developments (for a maximum period of 50 years) with the consent of a majority of the people of Barbuda.⁶³ As such, no business may establish in Barbuda without the express consent of the Barbudan people. Procedures have been established for obtaining such consent. But the Barbudan people may refuse to permit any new

⁶¹ See Barbuda Land Act, section 3; note also *ibid*, section 31 expressing the intention of the Government to amend the Constitution to entrench the Act.

⁶² See Barbuda Land Act, section 5.

⁶³ See Barbuda Land Act, section 6; see also *ibid.*, section 17.

developments. **The community property regime of Barbuda is unique in the OECS and underscores the importance of rectifying the omission in Annex IV.F of the reservation relating to landholding in Antigua and Barbuda.**

Types of commercial presence

The horizontal limitation on commercial presence in all non-service sectors applicable to all six OECS countries reviewed provides that, “Foreign investors have to incorporate or establish locally. Companies not incorporated locally must be registered and powers and activities may be restricted, in accordance with relevant legislation.” All OECS countries, save for Antigua and Barbuda, have also made similar reservations (with slight variations in language)⁶⁴ with respect to commercial presence in the services sector. It is unclear whether the omission of a similar reservation for Antigua and Barbuda is an omission or was intentional.

The reservations made by Grenada and Saint Lucia extend beyond incorporation and establishing a business locally to “any operating conditions that may be subject to existing laws and regulations”. The interpretation of the term ‘operating condition’ would seem to cover any circumstance which may arise during the operating cycle of a business, i.e. from the acquisition of materials or services (whether the purchase of items for inventory or production) to the final cash realization from that acquisition (e.g. sale of a product made from that asset). The reservation is therefore arguably capable of a sufficiently extensive interpretation as to remove from challenge virtually all *existing* laws and regulations, though not necessarily their application. Where existing laws are not discriminatory *per se* and/or restrict market access but rather merely grant discretionary authority which may be

⁶⁴ E.g. the Grenadian reservation additionally notes that commercial presence will “be subject to relevant Acts pertaining to property acquisition lease and rental and *any operating conditions* that may be subject to *existing laws and regulations*. Some of these are as follows: Foreign Investment enterprises in Grenada are subject to the Withholding Tax Provision of the Income Tax Ordinance. ...” (added emphasis); the Saint Lucian reservation also refers to, *inter alia*, “*any operating condition* that maybe the subject to *existing laws and regulations*.” (added emphasis). St Kitts and Nevis and St Vincent and the Grenadines have omitted any general reference to possibly restricting powers and activities in the horizontal reservations they have made in Annex IV.F. In the context of Annex IV.E St Vincent and the Grenadines have additionally indicated that “International business can only engage in particular activities as stipulated by the International Business Companies Act.”

exercised in a discriminatory manner, it would seem that the actions of Ministers and officials would remain open to challenge where they violate specific commitments.⁶⁵

The Companies Acts of all six (6) OECS countries are largely similar though not identical. The Companies Acts of several jurisdictions provide that “[n]o association, partnership, society, body or other group consisting of more than twenty persons may be formed for the purpose of carrying on any trade or business for gain unless it is incorporated under this Act or formed under some other enactment”.⁶⁶ The St Kitts and Nevis Companies Act contains no similar prohibition; it merely prescribes that any number of persons associated for any lawful purpose may by subscribing their names to a memorandum of association form a company.⁶⁷ Special rules apply to ‘external companies’⁶⁸ registered as such in all jurisdictions. In some instances the legislation permits the Registrar to restrict the powers or activities that an external company may exercise within the jurisdiction.⁶⁹ This is subject to an appeal to the Minister. Provision is, however, made for this in the horizontal limitations inscribed by all OECS in Annex

⁶⁵ An example of this sort of legislation is the Saint Lucia Trade Licence Act discussed below.

⁶⁶ See Antigua and Barbuda Companies Act, section 3; Saint Lucia Companies Act, section 3; Dominica Companies Act, section 3. The provisions of the Companies Act are generally non-discriminatory and facilitate the participation of foreign investors; *e.g.* Antigua and Barbuda Companies Act, sections 106 & 131(2); Saint Lucia Companies Act, sections 81, 106, 113.

⁶⁷ See St Kitts and Nevis, Companies Act, section 4(1).

⁶⁸ The Antigua and Barbuda Companies Act, section 543 defines the term “external company” as meaning any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Antigua and Barbuda. Section 338 of the Companies Act provides that “An external company carries on business within Antigua and Barbuda: (a) if business of the company is regularly transacted from an office in Antigua and Barbuda established or used for the purpose; (b) if the company establishes or uses a share transfer or share registration office in Antigua and Barbuda; (c) if the company owns, possesses or uses assets situated in Antigua and Barbuda for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Antigua and Barbuda or not.” See also the Dominica Companies Act, section 338 to the same effect. The St Kitts and Nevis Companies Act, section 2, defines “external company” as “a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of its business”.

⁶⁹ But see St Kitts and Nevis Companies Act, section 196(6) – the Registrar must register the external company if s/he is satisfied that all requirements of the section in respect of the registration of the external company have been complied with. See also St Vincent and the Grenadines Companies Act, section 341(1) and Antigua and Barbuda Companies Act, section 341(1) which provide that “Subject to subsection (2) [i.e. refusal to register by order of the Minister] and to sections 515 and 516 [concerning company names] an external company, upon payment of the prescribed fee, is entitled to be registered under this Act for any lawful business.” (added emphasis)

IV.E and Dominica, Grenada and Saint Lucia in Annex IV.F. The Minister may confirm, vary or overrule the decision of the Registrar.⁷⁰

A review of the legislation highlights that the three OECS countries with reservations in Annex IV.E and F are those jurisdictions where a specific provision is found in the Companies Act authorizing the Registrar to impose restrictions on the activities in which an external company may be involved. The power conferred on the Registrar is a potentially significant qualification on market access. Our consultations, however, did not highlight any instances where the powers or activities of external companies were, in fact, restricted. It may be said that a company refused registration as an ‘external company’ or having its operations restricted by the Registrar could incorporate locally.⁷¹ In this regard it may be noted that the fees charged for registration as an external company are higher in certain jurisdictions.⁷²

Concerns were raised in our consultations about the facility for registration as an external company and the need for perhaps increased supervisory measures. It was noted, for example, that the Companies Act does not require a certificate of good standing for the registration of an external company (as would be, for example, for registration under offshore legislation). The facility for registration as an ‘external company’ is utilized more in some jurisdictions than others. In Antigua and Barbuda, for example, it was noted that external companies are registered principally in the shipping industry.

⁷⁰ See Antigua and Barbuda Companies Act, section 342(3). See also Companies Act of Dominica, section 342; Saint Lucia Companies Act, section 342 provides: “(1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company can exercise or carry on in Saint Lucia. (2) When any powers or activities of an external company are restricted under subsection (1), the company shall not exercise those powers or carry on those activities in Saint Lucia. (3) Where any powers or activities of an external company are to be restricted under subsection (1) (a) the Registrar shall notify the company of what he or she intends to do; (b) the company may appeal to the Minister within 30 days from the date on which the notification from the Registrar was received by the company; and (c) the Minister may confirm, vary or overrule the decision of the Registrar.” The Minister may also refuse registration upon reference of an application by the Registrar; *e.g.* Antigua and Barbuda Companies Act, section 341(2).

⁷¹ *E.g.* Antigua and Barbuda Companies Act, section 4; Dominica Companies Act, section 4.

⁷² *E.g.* Saint Lucia Companies Regulations, Part 9 on ‘Fees’, Regulation 27 prescribing the fee for a certificate of incorporation as \$750, and the fee for the certificate of registration as an external company as \$3000.

Other pieces of legislation also appear to inform the requirement to incorporate or register locally.

In our consultations in Antigua and Barbuda attention was drawn to the fact that the Business Licence Act which repealed the Business Registration Act was declared to be unconstitutional by the Eastern Caribbean Court of Appeal.⁷³ The Business Names Act survives and as a consequence, this is now being ‘over stretched’. It was further clarified that a sole trader may simply register a business name and operate without incorporating as a company. As such, incorporation or registration under the Companies Act is not a requirement for establishing a business.

In our consultations in Grenada and St Vincent and the Grenadines the Registration of Business Names Act and the Companies Act were also identified as the two vehicles which foreigners may use to establish a commercial presence within the jurisdiction. In St Vincent and the Grenadines it was noted that foreign companies seldom incorporate within the domestic jurisdiction but are more likely to register as an external company. The investment literature of Grenada suggests that the costs are higher for foreign registrants of a company than for local registrants.⁷⁴ However, a review of the legislation suggests that this is linked to registration as an external company which is not unusual in OECS jurisdictions. The Companies Act and the Registration of Business Names Act also feature prominently in Saint Lucia.

The Franchises (Registration and Control) Act of Antigua and Barbuda is an additional measure which proscribes the operation of a franchise without a licence. The Act provides that a foreigner (as opposed to a citizen of Antigua and Barbuda or a CARICOM Member State)⁷⁵ may not operate a business using his own mark, product,

⁷³ See *Attorney General & Minister of Finance v. Goodwin et al*, Civil Appeal No. 10 of 1997.

⁷⁴ The fee for foreign registrants is US\$1,848 and for local registrants US\$1,369.

⁷⁵ Section 2 of the Franchises (Registration and Control) Act defines the term ‘citizen’ as including - (a) a dependant of a citizen, (b) a firm in which the partners who are citizens have a right to more than one half of the assets or income of the firm, or (c) a company that is controlled by individuals who are citizens or by a combination of one or more such individuals or companies” Note that the Factors Act amends the Franchises (Registration and Control) Act to include a new section 22 to remove discrimination between citizens and CARICOM nationals

service, technique, design or invention without a licence, which is not transferable and is subject to the conditions as specified therein.⁷⁶ The application for a licence is made to the Minister⁷⁷ who is conferred with the authority to issue, renew, suspend or cancel a licence.⁷⁸ Section 12 of the Act states that, “[a] decision of the Minister under this Act is final”. It may be recalled that the EPA mandates the implementation of certain minimum standards of procedural fairness including the provision of facilities for a prompt, objective and impartial review of administrative decisions. While the Act appears to make no provision for an impartial review of a decision taken by the Minister (or on his behalf),⁷⁹ as above-noted common law courts have inherent powers of review even where the enabling legislation contains finality clauses.

Other relevant legislation to which reference may be made includes certain Acts more generally associated with the offshore industry. In St Kitts and Nevis, for example, in addition to the Companies Act⁸⁰ an economic operator may establish a commercial presence under the Limited Partnerships Act 1996 which is applicable to St Kitts, the Nevis Limited Liability Company Ordinance, Nevis Business Corporation Ordinance or the Nevis Multiform Foundations Ordinance.⁸¹ Although these Acts are designed in part to facilitate offshore investments, they may be used as a vehicle through which to conduct any lawful business.⁸²

⁷⁶ See Franchises (Registration and Control) Act, section 3.

⁷⁷ See *ibid*, section 4 - providing that “[t]he Minister shall consider the application together with any objections to the issue of a licence in respect of such application and in so doing may- (a) require the applicant and the objector to appear before him to be interviewed; and (b) require such other information in writing from the applicant or the objector as he considers necessary, and may issue to the applicant on payment by him of the appropriate fee set out in paragraph 1 of the Schedule licence under this Act.”

⁷⁸ See Franchises (Regulation and Control) Act, sections 4, 10 & 11.

⁷⁹ See *ibid*, section 14.

⁸⁰ Note that the St Kitts and Nevis Companies Act, section 222 provides that the Act does not apply to companies formed under the Nevis Business Corporation Ordinance or the Nevis Limited Liability Company Ordinance or any other Ordinance of the Nevis Island Assembly.

⁸¹ The Nevis Multiform Foundations Ordinance is designed to promote the development of financial services industry businesses and trade in and from Nevis. A foundation established under this Ordinance may have any purpose or object whatsoever once it is not contrary to public policy. Where a multiform foundation is intended to be used to carry on financial services the Minister special provisions may apply; see *ibid*, section 12.

⁸² *E.g.* the Nevis Limited Liability Company Ordinance expressly addresses (without limitation) the rendering of professional services by or through the members, managers, officers or agents by limited liability companies. The legislation requires a company to have a registered agent in St Kitts and Nevis but no nationality or residence requirements are imposed on managers; see *ibid*, sections 14 & 47.

Small business ventures

As above-noted not all OECS countries have reserved the right to use ENTs with respect to small business ventures in all sectors. Dominica, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines have made horizontal reservations with respect to investment in non-services sectors (Annex IV.E) and Dominica, Grenada, St Kitts and Nevis and Saint Lucia have made similar reservations with regard to commercial presence in services sectors. Antigua and Barbuda has made certain sector specific but no general reservations on small businesses; Grenada has made no general reservation as regards investment in small businesses in non-services sectors; and St Vincent and the Grenadines has made no general reservation as regards small business in the services sector.

St Vincent and the Grenadines is the only OECS country in Annex IV.E to provide some clarification of the reference to small businesses. Inscribed in the Annex is the following notation; “[t]he Small Business Development Bill defines micro and small businesses and stipulates the activities that these businesses must engage in.” Section 2 of the said Bill defines ‘micro enterprise’ as “a small business: (a) in which not more than five persons are employed; (b) whose gross revenue does not exceed one hundred thousand dollars per year; (c) whose net assets do not exceed seventy-five thousand dollars per year; and (d) which, if it is a company, has more than 75 per cent of its shares owned locally”; and ‘small enterprise’ as “a small business: (a) in which not more than fifty persons are employed; (b) whose gross revenue does not exceed one million dollars per year; (c) whose net assets do not exceed half a million dollars per year; and (d) which, if it is a company, has more than 75 per cent of its shares owned locally”. Local ownership of shares is defined as including ownership by CARICOM nationals.⁸³ The definition of micro or small business therefore excludes companies with more than 25 per cent foreign (non-regional) shareholding. The Bill would also preclude regional entities from qualifying for approved small business status where they are party to an agreement for the payment of fees on a continuing basis for managerial or other services to persons who

⁸³ See St Vincent and the Grenadines Small Business Development Bill, section 2(2).

are not nationals or resident in a CARICOM country. **The benefits conferred are not purely fiscal but include technical assistance for the purpose of assisting businesses to commence, continue or expand operations.**⁸⁴ **It is underscored that St Vincent and the Grenadines’ reservation applies only to non-service sectors. The provision of special measures to assist national/regional SMEs as opposed to those from other EPA partners may be a denial of national treatment. The implementation of the Bill (if passed) and administrative practices should be reviewed to address this.**

In Annex IV.F St Kitts and Nevis provides some though limited clarification of its definition of SMEs in alluding to the fact that the limitation placed on the number of rooms in its commitments on Hotel and Resort Development is within the context of its policy on small businesses in the services sector. The limitation inscribed with respect to commercial presence in the hotel and restaurant sector concerns “developments in excess of 75 rooms”. It may be challenging to attempt to transpose the concept of a 75 room hotel SME to other sectors of the economy although possible parameters could be developed. In our consultations reference was made to the recent passage of the Small Business Development Act. Although a copy of the legislation was not provided, it clearly post-dates the signature of the EPA (which is particularly relevant with respect to the standstill clause). As such, the Act does not provide a particularly suitable reference for defining the scope of the reservation inscribed in Annex IV.F by St Kitts and Nevis.

Only Dominica has provided a clear indication in Annex IV.F of how to define small business ventures. Dominica’s reservation provides that

“Small business investments are currently defined using one or more of the following criteria:

*Enterprises with an initial investment of less than Eastern Caribbean Dollars (EC\$) 2,700,000 (US\$1,000,000);

*Initial number of employees less than 50;

*Enterprises with projected annual sales of less than EC\$2,700,000 (US\$1,000,000) in the first year. The above criteria will be reviewed from time to

⁸⁴ See *ibid*, sections 10 & 11.

time. An economic needs test may be applied before permitting foreign service providers falling outside one or more of the above criteria to operate in Dominica.”

It was clarified in our consultations that the definition provided was not derived from legislation or any regulations. The language used, however, suggests that the definition of a small and medium enterprise (SME) is fluid and could possibly be broadened in the future. **The standstill clause in Annex IV.F which is relevant to all service activities covered in chapters 2 and 3 of Title II of the EPA, would, however, have implications for the extent to which the definition of a small business venture may be revised.**

This observation is equally applicable to the legislation of other OECS States which have reserved the right to use ENTs with respect to SMEs. Various other pieces of legislation in OECS countries may be used to provide insight into the definition of SMEs and whether a definition provided in relation to non-services sectors may be relevant to service sectors and *vice versa*.

The Saint Lucia Micro and Small Scale Business Enterprises Act⁸⁵ defines “micro business enterprise” as “a small business enterprise - (a) in which not more than 5 persons are employed; (b) whose annual turnover does not exceed \$100,000; (c) whose net assets do not exceed \$75,000; and (d) which is locally owned”. It defines “small scale business enterprise” as “a business enterprise - (a) in which not more than 50 persons are employed; (b) whose annual turnover does not exceed \$1,000,000; (c) whose net assets do not exceed \$500,000; and (d) which is locally owned”. Additionally, it defines “a locally owned business enterprise” as “a company which is not an alien company within the meaning of the Aliens Licensing Act or which is a national of a member State”⁸⁶ An alien company, therefore, by definition cannot be a micro or small scale business

⁸⁵ See Micro and Small Business Enterprises Act, section 2(1).

⁸⁶ See *ibid*, section 2(2); note also that section 2(1) of the Micro and Small Business Enterprises Act defines a ‘national’ in accordance with Article 32 of the Revised Treaty of Chaguaramas.

enterprise for the purposes of the Act which appears largely tied to the provision of fiscal incentives (i.e. subsidies which fall outside of the scope of the EPA).⁸⁷

The Agricultural Small Tenancies Act (CAP 5:03) of Saint Lucia defines “small holding” as “any area of land under cultivation or pasture or intended for cultivation or pasturage, with or without buildings, comprising not more than 5 acres in one or more parcels of the land of a landlord.”⁸⁸ The Dominica Agricultural Small Tenancies Act is similar though the acreage specified comprises “not less than half an acre or more than ten acres in one or more parcels of the land”.⁸⁹

The Small Business Development Act 2007 of Antigua and Barbuda⁹⁰ defines ‘small business’⁹¹ as (1) an enterprise (a) that has no more than 25 employees; (b) that is not a wholly- or majority-owned business or a subsidiary of a larger company; (c) in which capital investment does not exceed \$3,000,000; (d) for which total annual sales do not exceed \$2,000,000; and (e) that is majority owned (i) by citizens of Antigua and Barbuda, or (ii) subject to ... [the qualifications stated below], by persons who are not citizens of Antigua and Barbuda. (2) A small business that is majority-owned by persons who are not citizens of Antigua and Barbuda is not a business to which this Act applies unless (a)

⁸⁷ Note that the Micro and Small Business Enterprises Act appears to be limited to declarations for relief, i.e. incentives granted under the Fiscal Incentives Act; see *ibid*, sections 10 & 12. As such, the matter appears to be restricted to subsidies – i.e. not covered by the EPA.

⁸⁸ See Agricultural Small Tenancies Act, section 2. Note that under the Aliens (Licensing) Act, section 4(a), an alien may hold 2 acres or less of land on a lease for up to 2 years for the purposes of the alien’s residence, trade or business in Saint Lucia

⁸⁹ Dominica Agricultural Small Holdings Act, section 2. See also Antigua and Barbuda Agricultural Small Holdings Act, section 2 - defining “small holding” as “a parcel of land intended for cultivation or pasturage, with or without buildings thereon, consisting of not less than a quarter of an acre and not more than twenty-five acres held under a contract of tenancy.”

⁹⁰ This Act provides incentives to small businesses which are seen to be of “significant or substantial socio-economic benefit”, see Small Business Development Act, section 7(3). Section 7(7) defines the term “socio-economic benefit” as involving or likely to lead, in Antigua and Barbuda, to (a) the expansion, maintenance and reorganization of existing small businesses; (b) the generation of new investment or the development of product or processes; (c) an improvement in employment or production capacity through market research, technical invention or innovation; or (d) the enhancement of export potential or foreign exchange earnings or savings. Section 7(8) further specifies that “[t]he government will, as far as is feasible, reserve at least 25% of the procurement of its goods and services for small businesses registered under the Act.” Some of the performance requirements above-stated appear to be WTO/GATT-incompatible when applied to goods trade.

⁹¹ See section 3 which also raises concerns with respect to the GATT national treatment principle and the ASCM in terms of export conditionalities and import substitution/domestic sourcing rules.

over one-half of the production of the business, calculated by value of the product, is exported; (b) there is a minimum investment in the business of \$500,000; (c) at least 50% of the employees of the business are citizens of Antigua and Barbuda; and (d) at least 40% of goods and services used for the production of the business is procured from businesses located in Antigua and Barbuda.

It may be recalled that Antigua and Barbuda has made no horizontal reservation with respect to SMEs, though certain sector-specific reservations apply. Where such reservations are not applicable, the legislation may not be used to discriminate against foreign businesses in sectors subject to commitments (other than the provision of fiscal incentives/subsidies). Additionally, it is recommended that certain conditionalities imposed by the legislation be reviewed in light of Antigua and Barbuda's WTO/GATT and EPA obligations relating to goods trade and investment in non-services sectors.

There appears to be no legislation in Grenada defining a small business venture. However, the Grenada Development Bank Small Enterprise Development Unit (SEDU) provides management, technical and ancillary services to small businesses. SEDU was formed through cooperation between the Government of Grenada, the United Nation Development Program (UNDP) and the International Labour Organization (ILO). ILO documentation suggests that in 1991 the Government of Grenada adopted a definition recommended by the National Small Enterprise Development Advisory Committee but this definition was never formalized in legislation. As no formal definition of what constitutes micro or small business exists, institutions such as the Micro Enterprise Project within the Grenada Industrial Development Corporation (GIDC) have developed their own criteria and norms.⁹²

⁹² See Willi Momm, ILO Director, "Small enterprise development in the Caribbean", Port of Spain (2000) <http://www.ilocarib.org.tt/portal/images/stories/contenido/pdf/SmallEnterpriseDev/SEDCaribbean.pdf> - the criteria ascribed to the GIDC Micro Enterprise Project are: the applicant must be directly involved in the work, supervision and management of the business; the applicant is either unemployed or underemployed, with net family income not exceeding EC\$800 (US\$300) per month; net asset of less than EC\$50,000 (US\$18,518)

In our consultations the suggestion that further work should be commissioned on an appropriate definition for the reference to small business ventures was widely supported. It was suggested that the lending policies of international institutions generally inform administrative practices in this area and could serve as a useful reference point in the development of a working definition. Criteria which may be used to define SMEs globally, however, may not be appropriate in the OECS context. It has been observed, for example, that “the relative size of enterprises in the Eastern Caribbean is such that they all can be considered as falling in the category of SME, despite classification that may suggest otherwise.”⁹³ It would, however, seem questionable to provide such a broad definition of SMEs so as to effectively negate many of the commitments undertaken by OECS countries.

Immigration laws and the movement of labour – mode 4

All OECS countries have made horizontal reservations with respect to the temporary movement of business persons which are, in principle, applicable in all sectors (services and non-services). The reservation provides that mode 4 is unbound save with respect to key personnel and graduate trainees where ENTs may be applied.

This limitation providing for the application of ENTs on key personnel and graduate trainees, leaving all other categories unbound would generally be interpreted as permitting OECS countries to restrict the temporary movement of business persons in accordance with their development needs. The situation, however, is unclear given the inscription of the word ‘None’ in relation to mode 4 in certain sector specific commitments. It could be suggested that ‘None’ should be read as indicating that the horizontal reservation is not applicable in the relevant sector.

This interpretation was initially rejected by senior officials in the course of our consultations. Arguably, it would undermine the basic approach to the structure of

⁹³ See Wayne Saniford, “Development Banking in the Eastern Caribbean: the case of Saint Lucia and Grenada” GTZ & ECLAC, Development Studies Unit, Series 197 (May 2007).

the commitments; i.e. that horizontal commitments may be applied to all sectors irrespective of sector specific undertakings. Conversely, as all inscriptions in a State's schedule should be read as having value and in order to make sense of commitments with the indication 'None' in relation to mode 4 it may be suggested that ENTs not be applied in those sectors despite the horizontal reservation; the proviso being that 'None' would not be read as extending to contractual service suppliers and independent professionals unless expressly so stated in keeping with the interpretive notes (generally applicable to all CARIFORUM countries) set out at the beginning of Annex IV.F.

During our consultations a few officials (the clear minority) were receptive of this position and it was noted that the specific inscription of 'None' should be seen as *lex specialis*.⁹⁴ The apparent conflict between the horizontal reservations made on mode 4 and certain sector specific commitments suggesting the absence of limitations on the movement of natural persons merits further attention. Note is made of those instances where specific commitments suggest that an OECS State has made no reservations on mode 4 in the commentary as well as the Annex to the report.

The laws governing the issuance of work permits in the OECS provide a mechanism for the imposition of ENTs.

The Immigration and Passport Act of Antigua and Barbuda defines a *bona fide* visitor as one who, *inter alia*, "does not engage in any gainful employment"⁹⁵ throughout the period during which he remains in the country. Breach of this condition without first obtaining a work permit is a breach of the Immigration and Passport Act for which the relevant penalties apply. The Act also authorizes any immigration officer to make certain

⁹⁴ The essence of the principle is that a provision in relation to a specific subject matter (*lex specialis*) overrides the law which governs general matters (*lex generalis*).

⁹⁵ See Antigua and Barbuda Immigration and Passport Act, section 20(1)(c). Note that section 2 of the Act defines "engage in gainful occupation" as meaning - (i) to take and continue in any employment; or (ii) to practise any profession; or (iii) to carry on any trade; or (iv) to engage in business; or (v) to engage in such other form of occupation as may be specified in regulations made under this Act, where such employment, profession, trade or business is taken or continued or is practised, carried on or engaged in, for reward, profit or gain: Provided that such expression shall not include any exception which may be prescribed.

enquiries before granting an entry permit to a visitor, including the provision of full particulars of any gainful occupation in which s/he proposes to engage.⁹⁶

The provisions of the Immigration and Passport Act are complemented by the Labour Code. This requires that “[a] person who is not a citizen of Antigua and Barbuda shall not engage in employment or self-employment in Antigua and Barbuda unless he has obtained a work permit issued by or on behalf of the Minister.”⁹⁷ The Labour Code requires the Chief of the Employment Service to conduct an investigation of the conditions surrounding any application for a work permit, and make a report and recommendation to the Minister, taking into account, among other things, the effect of the grant upon employment opportunities open to citizens of Antigua and Barbuda. The Labour Code provides that the Minister may recommend that any work permit granted contain such conditions as appear to be warranted under the circumstances, including the conditions that there be assigned, from among citizens of Antigua and Barbuda, a counterpart-trainee to the position for which the work permit is being granted; and a condition of renewal by the filing of periodic reports on the progress of the counterpart-trainee.⁹⁸

The decision of the Minister whether or not to grant the work permit and, if so, under what conditions, is based on the report and recommendation provided by the Chief of the Employment Services. The permit is effective for a period not exceeding one year, though it is subject to renewal.

The requirement for a work permit is expressly extended to persons working in Free Zones by the Antigua and Barbuda Free Trade Zone Processing Act. Section 15 of the Act provides that every person who is not a citizen of Antigua and Barbuda requires a special work permit to work in the Free Trade and Processing Zone. The Minister may only issue a permit where s/he is satisfied that there is no suitable person in Antigua and

⁹⁶ See *ibid*, section 21(2)(d); note that this is expressly stated to be “[w]ithout prejudice to the other provisions of this Act ...” .

⁹⁷ See Antigua and Barbuda Labour Code, section F4; see also the Factors Act concerning work permits and CARICOM nationals.

⁹⁸ See Antigua and Barbuda Labour Code, section F6

Barbuda with the kind of skill or expertise required. However, it is within the discretion of Cabinet to approve the application of any other person.

Section 19 of the Dominica Immigration and Passport Act makes provision for visitors and passengers in transit not exceeding twelve months to be granted a temporary entry permit. Section 27C imposes the requirement of a work permit on non-citizens engaging in any occupation for profit in the Island. A work permit may be granted by the Minister where s/he is satisfied that the applicant will not be able to find a suitably qualified national for the position; and the Minister may impose such conditions as s/he may think fit.⁹⁹ The Minister is also placed under an obligation by virtue of the Employment and Training Act, to provide training facilities and services to assist persons to select, fit themselves for, and obtain and retain employment suitable to their ages and capacity, for the purpose of assisting employers to obtain suitable employees, and generally for promoting employment in accordance with the development requirements of the State.¹⁰⁰

The Saint Lucia Foreign Nationals and Commonwealth Citizens (Employment) Act read in conjunction with the Immigration Ordinance of 1954 and Immigration Amendment Act of 1983 is similar to other legislation in the OECS with respect to the application of work permit requirements on foreigners. The Saint Lucia Free Zone Act affirms this requirement in relation to the free zone developer, the Free Zone Management and free zone businesses. The legislation, however, exempts free zone businesses from the fees payable for work permits issued to management staff for an initial period of five (5) years which may be extended.¹⁰¹

Work permits for foreign nationals in St Vincent and the Grenadines are considered in the context of the Employment of Foreign Nationals and Commonwealth Citizens Act and the Residence Act. The Residence Act requires foreigners to apply for the grant of a

⁹⁹ See Dominica Immigration and Passport (Amendment) Act 2003, section 27F; see also Immigration and Passport (Amendment) Act No.2, 2007, and the Caribbean Community (Work Permit Exemption) Order, 2006 on the treatment of CARICOM nationals.

¹⁰⁰ See Dominica Employment and Training Act, section 3.

¹⁰¹ See Saint Lucia Free Zone Act, section 20.

permit of permanent or temporary residence.¹⁰² The Employment of Foreign Nationals and Commonwealth Citizens Act requires foreigners to obtain a work permit in order to engage in any occupation in the country for reward or profit, and prohibits employers from hiring foreigners who do not possess a valid work permit.¹⁰³ The Minister may by Order exempt certain categories of persons from the requirements of the Act. The Employment of Foreign Nationals and Commonwealth Citizens (Exempted Persons) Order provides for such exemptions. Significantly, the list of exempted persons includes:

- journalists (including feature writers, broadcasters, and painters – excluding industrial painters);
- directors, auditors, inspectors of any company, organisation or body (whether incorporated, registered or established in St Vincent and the Grenadines or elsewhere) which either operates in the country or controls any company, associate, organisation or body which operates in the country;
- persons visiting the country on behalf of a principal abroad, in connection with the appointment of, or for the purpose of holding business consultations with, a local business agent or local distributor of good manufactured or produced abroad;
- persons visiting the country for the purpose of inspecting the plant, machinery or equipment of any factory or other industrial works, or for the purpose of giving technical advice on the operation of any local undertaking, business or enterprise; and
- persons visiting the country in connection with their occupation as commercial travellers and for the purpose of soliciting orders for the goods on a commission basis or otherwise, for and on behalf of a manufacturer, producer or supplier abroad.

The observation may be made that the exemptions provided in the Order cover many contract service suppliers, independent professionals and business visitors.

¹⁰² See St Vincent and the Grenadines Residence Act, section 4.

¹⁰³ See St Vincent and the Grenadines Employment of Foreign Nationals and Commonwealth Citizens Act, section 3; see also Employment of Foreign Nationals and Commonwealth Citizens Regulations.

Specific sectoral exemptions have also been made to the work permit regime. Notably, the St Vincent and the Grenadines Information and Communication Technology Services Investment Incentives Act 2007 provides fiscal and regulatory incentives, including an entitlement to the grant of a work permit subject to certain specified conditions relating to the number of persons employed.¹⁰⁴

In our consultations in St Vincent and the Grenadines it was noted that when a work permit application is made the Immigration Department makes a notation on whether or not the business or enterprise has advertised the position and interviewed applicants in accordance with the law. However, nothing in the legislation requires the employer to divulge details about the applications which are received, so it is difficult to know whether every effort has been made to fill the post locally. This was portrayed as a possible shorting coming of the legislation which provides basic procedural safeguards. Nevertheless, it was observed that given the smallness of the society people frequently know whether or not a post can be filled locally. The requirement placed on all work permits for a local understudy facilitates training and technology transfer providing a workforce to fill future job opportunities. Work permits are handled entirely by the Office of the Prime Minister. The Ministry of Labour merely receives copies of the work permits that have been issued. They do not actually conduct economic needs tests (ENTs).¹⁰⁵

The views expressed by officials in St Vincent and the Grenadines were generally representative of the region. In Dominica, it was noted that the Ministry of Labour handles the entire process (in consultation with the Ministry of National Security, the police, investment agencies, Legal Affairs, and other relevant agencies). ENTs were described as essentially “procedural safeguards”. At the end of the day it is left to the

¹⁰⁴ See St Vincent and the Grenadines Information and Communication Technology Services Investment Incentives Act, section 12(2) providing an entitlement to three work permits for every fifty qualified employees (i.e. persons employed for whom a work permit is not required); two work permits for less than fifty but more than thirty qualified employees; and additional work permits calculated on a similar basis. A work permit that is not granted within twenty-one days of the date of filing shall be deemed to have been issued on the twenty-first day after filing of the application for the work permit, and is valid for not less than two years and may be extended for additional two year terms; see *ibid*, section 12(4) & (5).

¹⁰⁵ Note also that no statistics could be provided as regards the level of unemployment.

firm to determine who they wish to employ, the decision is not taken by the Government whose involvement is, in fact, minimal. While this appears to be generally true of the implementation of work permit legislation in all OECS countries, anecdotal evidence highlights that enforcement measures have been applied at various times in the past.¹⁰⁶

Previous consultancies have suggested, *inter alia*, that exemptions should be made from the application of ENTs, and accordingly work permits automatically granted for business visitors, intra-corporate transfers and graduate trainees. This has been proposed as a measure which would avoid unnecessary paperwork and delay as the requirements are largely “formalistic and accomplish no meaningful purpose.”¹⁰⁷ The proposal, though not *legally* required by the EPA, could serve as a trade facilitation measure and is worthy of consideration by OECS governments.

EPA categories of business persons (mode 4)

Service suppliers are classified in the EPA as key personnel, graduate trainees, business service sellers, contractual service suppliers, independent professionals, and short term visitors.

The definition of key personnel follows that found in the GATS, i.e. individuals employed by a juridical person (other than a non-profit organization) who are responsible for the setting up or proper control, administration and operation of a commercial presence. Key personnel may be either business visitors or intra-corporate transfers. Business visitors are individuals holding a senior position in the organization who are responsible for setting up a commercial presence. They are therefore not remunerated within the host state nor transact business directly with the public. Intra-corporate transfers may be either managers (who receive general supervision from the board of directors or stockholders) or specialists (with ‘uncommon knowledge’ essential to the

¹⁰⁶ E.g. “Work Permit Procedure Explained,” Office of the Prime Minister, St Kitts and Nevis, 2005, <http://www.cuopm.com/newsitem.asp?articlenumber=189>

¹⁰⁷ See “OECS Model Legislation; Amendments to Work Permit Regime: Drafting Guidelines”, prepared by the Legislative Drafting for Trade Policy & Negotiation Project.

business) who are employed by a firm or who may be a partner in the firm for at least one (1) year and who are transferred temporarily.

The treatment of graduate trainees in the EPA is slightly broader than in the GATS. The GATS covers movement from headquarters to subsidiary and between subsidiaries, whereas the EPA also contemplates movement from a subsidiary to the headquarters.¹⁰⁸ A graduate trainee must be employed by the firm for at least one (1) year, have a university degree, and be temporarily transferred for career development or training.

Business services sellers are defined in the EPA as persons who represent service suppliers seeking temporary entry and attempt to negotiate the sale of their services. They are not paid within the host state and do they make direct sales to the general public.

Article 81 of the EPA requires that where commitments are made on commercial presence (subject to any reservations stated in Annex IV) the temporary entry and stay of key personnel and graduate trainees shall be for a period of up to three (3) years for intra-corporate transfers, ninety (90) days in any twelve-month period for business visitors, and one (1) year for graduate trainees. Additionally, a State may not impose limits on the total number of natural persons an investor may employ in a particular sector through quotas or needs tests and other discriminatory measures.

Article 82 of the EPA requires that in relation to any commitments made on the liberalization of services (subject to reservations made in Annex IV) States must facilitate the temporary entry and stay of business services sellers for a period of up to ninety (90) days in any twelve-month period.

Where the word 'None' has been inscribed under the market access column in Annex IV.F it is possible (as above-noted) that OECS countries may be treated as bound (in spite of the horizontal reservation) to facilitate the temporary entry and stay of key personnel,

¹⁰⁸ This is not covered trade under the GATS as the natural person would be supplying a service to the domestic company.

graduate trainees and business visitors without restrictions save for the duration of their stay as above-noted. In this regard, note is made of the provision for a three (3) year stay for intra-corporate transfers which may require some accommodation within the legislative framework and administrative practices of OECS countries as provision is generally made for the issuance of work permits for a period of no longer than one (1) year, although subject to renewal.

As clarified by the interpretative notes set out at the beginning of Annex IV.F even where the word 'None' is inscribed, save an express indication to the contrary, commitments do not apply to other categories of natural persons. The EPA makes reference to contractual services suppliers who are employed by a juridical person which has no commercial presence in the host country but has a contract to provide services which requires temporary presence,¹⁰⁹ and independent professionals who are self employed persons with a contract to provide services.¹¹⁰ The EPA also addresses short term visitors for business purposes but the obligation to permit entry even in the absence of a reservation is limited to best endeavours.¹¹¹

Where OECS countries have inscribed 'None' in relation to mode 4 commitments they are highlighted in the commentary which follows as well as the Annex to the report.

¹⁰⁹ See EPA, Article 83(2)- contractual service suppliers employed with a foreign company for at least one (1) year, with at least three (3) years experience in the field, a university degree and professional qualifications (except for fashion models, chef de cuisines and entertainment services other than audiovisual), must have a contract for service for not more than 12 months. Their cumulative stay within the host country should not to exceed six (6) months in any twelve month period. They are not entitled to use the professional title of the Party where service is provided. The number of persons to provide a service also should not to be 'larger than necessary' – as may be provided in laws, regulations, and requirement of Party.

¹¹⁰ See EPA, Article 83(3) - independent professionals should have a university degree or equivalent, professional qualifications as required where service is to be provided, and at least six years professional experience. They are not entitled to use the professional title of the Party where service is provided and should have a contract for service for not more than twelve (12) months.

¹¹¹ See EPA, Article 84 - This category covers research and design, marketing research, training seminars, trade fairs, sales (negotiating contracts for goods), purchasing, tourism provided that they are not selling or supplying goods or services to the general public, do not receive remuneration a from source within the host country, and are not supplying a service under a contract with a contractual service supplier. Entry is allowed for ninety (90) days within any twelve (12) month period.

III SECTOR SPECIFIC COMMITMENTS

A review of the regulatory framework in OECS countries raises few concerns with respect to market access and national treatment in relation to the specific commitments which have been undertaken. This is in large part attributable to the broad horizontal reservations which have been made relating to alien/non-citizen landholding, SMEs, incorporation or registration of businesses, operating conditions imposed by existing laws, ENTs on mode 4, as well as various sectoral reservations which will be addressed where relevant.

The most common sector specific reservation made by OECS countries concerns joint venture requirements. Neither the EPA nor the GATS provides a definition of the term ‘joint venture’ and interpretations of the concept vary greatly between jurisdictions, ranging from structured cooperation between two legally separate entities on a project with shared objectives to the joint establishment of an affiliate company without any necessary limitations on the scope of the undertaking. As such, the term signifies a combined endeavour for some purpose but does not define a particular type of entity. A joint venture may be a corporation, a limited liability enterprise, a partnership or other legal structure or undertaking. Implementation of EPA conditions on market access requiring joint ventures will likely be defined under the rules of company law. However no legislative measure or administrative guidelines were identified.¹¹² Some relevant practice is highlighted in the commentary which follows.¹¹³ In our consultations suggestions were made that this would be a useful area for further work to be undertaken to support OECS countries in implementing their EPA commitments.

¹¹² The references which may be found are general and do not assist in further clarification of the term; e.g. Grenada Investment Promotion Act, Schedule I, “Statement of Investment Policies” – addressing the ‘Modalities of Ownership’ including the following notation “[i]n the case of a joint venture, the organization, management and activities of a joint venture and the relationship between its parties shall be governed by the contract between the parties and its articles of association, in accordance with the Laws of Grenada.”

¹¹³ See, for example, the discussion on waste and waste water management services concerning WASCO.

The following addresses OECS countries sector specific commitments (following the formats adopted in Annex IV.F and IV.E) and pertinent pieces of legislation which were identified in our consultations and an independent review of the laws which were made available. The discussion is not exhaustive. Indeed, given the similarity in the laws and administrative practices across the region where difficulties are highlighted in one jurisdiction this may signal areas to be addressed in an ongoing review of the regulatory framework of all OECS countries, particularly given the commitment to Economic Union.

1. BUSINESS SERVICES

Trade/Professional Licensing – general legislation

The regulatory framework governing professional services in the OECS includes general trade/professional licensing measures in addition to sector specific legislation governing registration in certain disciplines. The purpose of the general trade/professional licensing legislation appears to be revenue generating.

In St Vincent and the Grenadines the Professions Licensing Act provides for the registration of every person practising any of the professions listed in the Schedule to the Act, including lawyers, medical practitioners, dentists, veterinary surgeons, engineers, architects, accountants, building contractors, entertainers, insurance brokers and agents, real estate agents and traders. Registration is also required of every “transient trader” as soon as possible after his/her arrival in the Island.¹¹⁴ In our consultations it was noted that the legislation serves a revenue generating purpose only and no restrictions or conditions are applied.

The Dominica Trade and Professional Licences Act requires, *inter alia*, any person practising any profession listed in the Schedule to the Act to register and pay the

¹¹⁴ See St Vincent and the Grenadines Professions Licensing Act, sections 3 & 5. Note that registration and payment of the fee under the Professions Licensing Act absolves one from registering and paying the fee under the Licences Act.

prescribed fee. A licence is issued for a maximum period of one (1) year (expiring on 31st December of each year). The obligation imposed on ‘non-residents’¹¹⁵ is broader in that it applies to any calling, business or profession (whether or not specified in the Schedule to the Act) and requires for the payment of additional fees to those set out in the Schedule with respect to the professions listed therein.¹¹⁶ The list of professions includes lawyers, accountants, architects, medical practitioners, dentists, engineers, veterinary surgeons, contractors, managers, insurance salesmen, hoteliers, entertainers, real estate agents, and shipping agents.¹¹⁷ **National treatment is therefore not accorded with respect to fees nor the obligation to register with respect to professions not listed in the Schedule to the Act. Dominica, however, has expressly reserved its right to impose higher fees on foreign professional service providers who may be required to register with the appropriate professional or governmental bodies.**

The Saint Lucia Trade Licence Act makes it unlawful for an alien¹¹⁸ to engage in trade without a licence.¹¹⁹ The legislation applies across the board to all sectors and affects trade in services and commercial presence in non-service sectors. The term ‘trade’ is defined in section 2 as meaning “any operation of a commercial character by which the trader provides to customers for reward some kind of goods or services.” **The same restriction does not apply to citizens and CARICOM nationals.** The Act establishes an Advisory Board which considers licence applications.¹²⁰ The licence is issued by the

¹¹⁵ See section 2 of the Dominica Trade and Professional Licences Act as amended (in 2005); “‘non-resident individual’ means a person other than- (a) a person born in the State, and the children of such persons whether born in the State or not; (b) a Community national, and the children of such persons whether born in the relevant Member State or not; (c) notwithstanding paragraph (b) a child of a Community national who is not born in the relevant Member State must be a citizen of that Member State; (d) a person born outside the State but ordinarily resident therein for at least five years immediately preceding the application for a licence under this Act; Non-resident means when applied to (a) a firm, a firm of which any member is non-resident; (b) a company, a company incorporated anywhere outside the Community or a company whose registered office is situated outside the Community.”

¹¹⁶ See Dominica Trade and Professional Licences Act, sections 16 & 19.

¹¹⁷ See also Dominica Trade and Professional Licences (Schedule) (Amendment) Order 1996.

¹¹⁸ See Saint Lucia Trade Licence Act, section 3(2) which excepts a citizen of Saint Lucia; a company in Saint Lucia, that is not an alien company within the meaning of the Aliens Licensing Act; and a national of a CARICOM member State.

¹¹⁹ See *ibid*, section 3; note that citizens, nationals of member States and non-alien companies may also not engage in trade on behalf of others not falling within these groups without the approval of the Minister.

¹²⁰ See Saint Lucia Trade Licence Act, sections 4 & 5.

Secretary of the Advisory Board with the approval of Minister subject to the payment of the prescribed fee.¹²¹ The legislation provides that the licence expires on the 31st of December each year and may be renewed.¹²² **The Act further states that the Minister may make regulations, *inter alia*, “prescribing the limits to the number of licences issued either generally or in relation to a particular trade or in relation to any district or any area”.**¹²³

The legislation therefore provides a means through which ENTs may be imposed. No regulations to this effect were identified during the course of our consultations. However, reference was made to a Cabinet approved list of areas of investment activity reserved for nationals. The list includes business services such as real estate and advertising and affects other service sectors such as construction and entertainment where Saint Lucia has also undertaken commitments. It is unclear the extent to which the list is currently enforced (informally or otherwise) through the provision of trade licences by the Advisory Board. **The provision in the Act for the issuance of regulations to this effect is permissive as opposed to mandatory and, as such, does not require conduct contrary to Saint Lucia’s EPA obligations. Nonetheless, it may be suggested that the optimal course would be to repeal the relevant section of the Act, noting that it has not been invoked in the past. Additionally, it would seem useful to develop administrative guidelines to ensure that matters taken into account by the Advisory Board in issuing licences provide for the implementation of the legislation consistent with Saint Lucia’s EPA commitments.**

The Saint Lucia Trade Licence Act applies to all services and is also discriminatory in relation to the prescribed fees. It may be noted that the national treatment obligation applies where Saint Lucia has undertaken specific commitments. Although no specific recommendation is made with respect to differential fees, given the previous discussion in relation to subsidies and the scope of the EPA, this is

¹²¹ See Saint Lucia Trade Licence Act, sections 6 & 8.

¹²² See Saint Lucia Trade Licence Act, section 10. Note that Cabinet may waive the licence or reduce or waive the licence fee in the public interest; see *ibid*, sections 7 & 8(3).

¹²³ See Saint Lucia Trade Licence Act, section 12(d).

highlighted as a matter for further review and discussion. The legislation also facilitates the imposition of ENTs, the use of which has not been reserved across-the-board. The market access obligation does not permit the use of ENTs or other measures limiting the number of suppliers in a particular sector or the volume of business they may do or activities in which they may be involved or functions they may perform. The discretion provided in the Act should be clarified through the adoption of an appropriate amendment and/or regulations or administrative guidelines.

The Grenada Investment Promotion Act, 2009, adopts an approach somewhat similar to the Saint Lucia Trade Licence Act in empowering the Minister, acting on the advice of Grenada Industrial Development Corporation (GIDC), to prescribe by way of regulations a list of activities that are reserved for local investors, and subject to review from time to time.¹²⁴ **The Act expressly provides that “[a] foreign investor shall not, whether by means of a joint venture, partnership or an association, engage in any business activity that is reserved for a local investor as prescribed by the Minister”.**¹²⁵ **The prohibition, as such, goes beyond mere certification under the legislation for the purposes of receiving fiscal incentives.**¹²⁶ **No information was received on the list of activities, if any, that has been reserved for local investors. Where Grenada has made sector specific market access commitments areas may not be reserved for nationals consistent with the EPA. To reiterate, the market access obligation does not permit the use of ENTs or other measures limiting the number of suppliers in a particular sector or the volume of business they may do or activities in which they may be involved or functions they may perform. Additionally, in light of the**

¹²⁴ See Grenada Investment Promotion Act, section 7 & Schedule I – noting restrictions on the freedom to invest.

¹²⁵ Grenada Investment Promotion Act, section 7(3). Note that for the purposes of this section “local investor” means a person who is a Grenadian national, and “foreign investor” means a person who is not a local investor and subject to any waiver or designation granted under the Treaty, including a CARICOM national; see *ibid*, section 7(5).

¹²⁶ Note that the Grenada Investment Promotion Act, section 25 repeals the following Acts: the Hotels Aid Act, Cap. 138; Fiscal Incentives Act, Cap. 107; Qualified Enterprises Act, Cap. 155; and Investment Code Incentives Act, Cap.155. Certification under the Act is based on non-discriminatory criteria set out in Schedule II and provision is made for due process; see Grenada Investment Promotion Act, sections 8(1), 8(8) & 11. General facilitation services are provided to all investors and not merely those certified; see *ibid*, section 16.

standstill clause in Annex IV.F, areas which were not reserved for nationals before the signature of the EPA in 2008 may not be so reserved under the 2009 Act. If the provision is to be retained in the legislation, appropriate administrative guidelines should be developed with a view to ensuring its implementation consistent with Grenada’s international obligations, and in particular its EPA commitments.

The Antigua and Barbuda Professions Licensing Act requires that a licence be obtained under the Act before engaging in the practice of one of the professions listed in the Schedule to the Act, including lawyers, accountants, architects, engineers, medical practitioners, dental practitioners, veterinary surgeons and insurance adjusters or assessors.¹²⁷ A licence issued under the Act, however, does not authorize the practice of any profession for which a licence or permit is otherwise required to comply with conditions imposed by any other law.¹²⁸

A similar provision is also found in the Antigua and Barbuda Business Licence Act which made it mandatory for every person wishing to engage in business¹²⁹ activities to first obtain an annual licence for that purpose. Where the carrying on of such business is subject to the grant of a licence under any other law, the application for a licence under that other law would not be entertained unless it is accompanied by a certified copy of the licence granted under the Business Licence Act.¹³⁰

The Business Licence Act draws a distinction between applicants who are citizens¹³¹ and non-citizens.¹³² Where the applicant is not Antiguan and Barbudan, Cabinet will have “regard to the performance of the economy and the public interest” in granting

¹²⁷ See Antigua and Barbuda Professions Licensing Act, section 3 and Part I of the Schedule to the Act.

¹²⁸ See Antigua and Barbuda Professions Licensing Act, section 14.

¹²⁹ The Act defines “business” as including “calling, professional practice, vocation, occupation, trade, industry, service enterprises, manufacture, commercial activity or undertaking of any kind whatever, an adventure or concern in the nature of trade, but does not include an office of employment”.

¹³⁰ See Antigua and Barbuda Business Licensing Act, section 5(3).

¹³¹ An “Antiguan & Barbudan” is defined as a citizen or a company registered under the Companies Act in which two-thirds of the shares are beneficially owned by Antiguan and Barbudans; and defines ‘citizen’ as an Antiguan & Barbudan.

¹³² Further particulars are required from applicants who are not Antiguan and Barbudan but these are reasonably justifiable given the foreign nature of the applicant.

approval.¹³³ It may be recalled that the Business Licence Act was declared unconstitutional by the Eastern Caribbean Court of Appeal.¹³⁴ This finding of the Court, however, did not relate to any of the provisions above-discussed. While it was argued that the Act effectively deprived a person of the right to practise his or her profession, the Court found that the Constitution did not in fact guarantee the right to work or earn a livelihood. In our consultations it was suggested that the Act remains on the statute books although it is not operational; new legislation may be required. In light of the clarifications received attention is drawn to the fact that the discretion provided to Cabinet could be a means through which to impose ENTs contrary to Antigua and Barbuda's market access commitments. However, it could equally be seen as a tool for the furtherance of legitimate policy objectives.¹³⁵ **Should the legislation be re-operationalized through Parliamentary processes, the requirement for multiple licences may be reviewed as a trade facilitation measure. Additionally, it may be suggested if the discretion given to Cabinet to refuse to grant a licence based on the "performance of the economy and the public interest" is retained, a useful measure would be to further define the relevant criteria to be taken into account by Cabinet in making this determination.**

The St Kitts and Nevis Licences on Businesses and Occupations Act requires persons wishing to engage in business activities to obtain a business and occupations licence. This applies to corporations, professionals, traders etc. Amendments to the Act introduced new categories for occupations, businesses and professions which were hitherto unlicensed including, consultancy services, advertising agency, internet/web development, marina, money transfer or cambio transactor, trucking and haulage, waste disposal, debt collecting, scuba diving, tutoring, rental of beach equipment, landscaping and telecommunications installation contractor.¹³⁶ The licence is granted on an annual basis

¹³³ See subsections 4 & 7 of section 5 of the Business Licensing Act. Note that in addition to possessing a valid work permit the applicant must produce satisfactory proof of financial ability to engage in the type of business applied for and "such other conditions as the Minister considers appropriate."

¹³⁴ See *Attorney General & Minister of Finance v. Ann Henry Goodwin et al*, *supra*

¹³⁵ See EPA, Article 60.4.

¹³⁶ See http://www.cuopm.com/newsitem_new.asp?articlenumber=574&post200803=true "Licences on Businesses and Occupations Act to be amended", Feb 27th 2009 –noting efforts to harmonise the provisions of the Licences on Businesses and Occupations, No. 6 of 1972 with those of the Development Control and

and must be renewed by the 31st January each year.¹³⁷ As above-noted with regard to other trade and business licensing legislation it is important that administrative notes be prepared with a view to ensuring these measures are not used as a means to impose ENTs contrary to a State's specific commitments.

PROFESSIONAL SERVICES

Professional services fall under 'Business services' in the CPC code. The category is broad and heterogeneous and represents a rapidly growing group of service suppliers. Technological innovation, particularly through the Internet (e.g. VoIP, webcasting) has facilitated cross-border trade in professional services. The expansion of trade has in many instances been checked by domestic regulations which frequently pose an effective barrier to market access.

The principal restrictive measures generally identified include nationality and residence requirements, requirements related to membership of local professional associations, and discriminatory prior conditions to licensing which are unrelated to the ability of the supplier to provide the service. Where these are found in OECS laws they generally do not breach specific commitments. Progressive harmonization and liberalization within the OECS Economic Union may suggest that such conditions should be 'relaxed' through the introduction of less restrictive measures, such as requirements for collaboration between foreign and local professionals and bonding / insurance stipulations where consumer

Planning Act, No. 14 of 2000. According to the Legal Department, the amendment to the Licences on Businesses and Occupations (Amendment) Bill, 2009, introduces a new subsection (3) which will provide that where an application is made for a license pursuant to the Licences on Businesses and Occupations, Act, for which express development permission is required pursuant to the Development Control and Planning Act, the applicant shall attach to the application, proof that either express development permission has been granted or is not required, pursuant to the latter Act. Clause 6 of the Bill seeks to give the Minister power to refuse to issue, revoke or suspend a licence where the licensee has failed to submit income tax returns or to pay assessed income tax as required by the Income Tax Act, No. 17 of 1966. Clause 7 seeks to introduce new categories for occupations, businesses and professions which were hitherto unlicensed. These include movie theater, marketing and promotion agency, backhoe service, consultancy services, airline services, advertising agency, internet/web development, marina, money transfer or cambio transactor, trucking and haulage, waste disposal, debt collecting, Laundromat, pharmacy, recording studio, scuba diving, buses, ice making and sales, taxis, tutoring, rental of beach equipment, landscaping and telecommunications installation contractor.

¹³⁷ See <http://ird.gov.kn/?q=node/6> Department of Inland Revenue, Government of St Kitts and Nevis.

protection concerns warrant such measures.¹³⁸ Examples of OECS legislation facilitating trade in professional services which may be seen as evidence of best practices are highlighted in the discussion below.

A potentially significant barrier affecting trade in professional services is found in the reservation made by all OECS countries with respect to the application of ENTs on the temporary movement of business persons. As above-noted, however, our consultations suggest that there are several practical challenges which arise in the implementation of ENTs in the context of the current work permit legislation. One is left with the impression that very few professional service suppliers are, in fact, denied work permits. In this regard, it may be emphasized that accreditation of qualifications (which should be checked within a reasonable period of time) and procedures for presenting and processing a request for authorization should not in themselves be a restriction on the supply of the service.

It may be noted that terminology and the functions associated with any particular profession may differ from country to country. Bearing this in mind, reference is made in the commentary which follows to the content of the service provided in determining its classification and identifying the relevant legislation.

Legal Services

Trade in legal services has expanded with globalization and the preference of corporate clients to rely on a single source for trusted legal advice across jurisdictions. Technological developments have greatly facilitated the expansion of trade in legal services as most activities involved in the delivery of legal services – with the exception of court appearances – can be delivered electronically.¹³⁹ As such, commercial presence

¹³⁸ A professional bond is a form of insurance generally taken out by health care professionals and others to insure payments to insurance companies, etc. The bond protects others from fraudulent actions by the service provider.

¹³⁹ See also ‘Legal Services’, Background Note by the Secretariat, WTO doc. S/C/W/43, 6 July 1998, paras 22-29.

is not as important as a mode of delivery of legal services as for certain other professions, most notably, accountancy.

Annex IV.F of the EPA facilitates commitments covering the broad category of legal services falling within CPC code 861 for which only Dominica has made commitments. It should be noted that the commitments undertaken do not include those supplied in the exercise of governmental authority such as activities relating to the administration of justice involving, for example, judges and public prosecutors. Other OECS countries have made commitments for specific sub-categories of legal services.

Grenada has undertaken commitments on ‘Legal documentation and certification’ (CPC code 86130). This category includes the provision of advice and the execution of various tasks necessary for the drawing up of certification documents, such as wills, marriage contracts, commercial contracts, and business charters and is associated with legal services concerning patents, copyrights and other intellectual property rights.¹⁴⁰

Antigua and Barbuda, Grenada and Saint Lucia have made commitments in ‘Legal services consultancy in international law’. The term ‘international law’ is not defined. However, similar commitments made in WTO GATS Schedules have been treated as confined to public international law, i.e. the law established by international treaties and conventions as well as customary international law as opposed to private international law, otherwise referred to as ‘conflicts of laws’.¹⁴¹ **Note is made of the fact that Antigua and Barbuda and Grenada have indicated ‘None’ under the national treatment column for mode 4.**

All OECS countries have undertaken commitments in ‘Legal services – consulting in Home Law’ (CPC code 86119) covering advisory and representational services in areas

¹⁴⁰ Note that the CPC Provisional code made no explicit reference to patent and copyright law. However CPC Version 1 and subsequent versions, CPC Version 1.1 and Version 2, include intellectual property law under ‘Legal documentation and certification services’ (new code CPC 8213 which is indicated to correspond to CPC 8613 in the Provisional Code).

¹⁴¹ See also ‘Legal Services’, Background Note by the Secretariat, WTO doc. S/C/W/318, para. 43.

other than criminal law, dealing with the pleading of a case in court as well as out-of-court legal work.

Antigua and Barbuda has also undertaken commitments in ‘Legal advisory and information services’ (CPC code 86190) covering advisory services to clients related to their legal rights and obligations and providing information on legal matters not elsewhere classified, such as escrow services and estate settlement services. **Note is made of the fact that Antigua and Barbuda has indicated ‘None’ under the national treatment column for mode 4.**

All OECS countries have legislation governing the admission to practice law. In this regard it should be noted that the mere requirement for membership in the local Bar does not constitute a market access limitation unless, for example, a numerical limitation is placed on the number of lawyers who may be admitted. The Eastern Caribbean Supreme Court Acts of OECS countries set out the basic conditions for admission to the Bar as an Attorney-at-law (Barrister or Solicitor). These are based on educational qualifications and training.¹⁴² The qualifications stated are the Legal Education Certificate issued by the Council of Legal Education (Caribbean) held by any *person* and other qualifications held by *nationals*¹⁴³ which would entitle an individual to practice in the U.K. The Attorney General may, however, in the public interest admit any *person* qualified to practice at the Bar in the UK or any other Commonwealth country within the jurisdiction.¹⁴⁴ The Eastern Caribbean Supreme Court forms the sole basis on which legal practitioners may be admitted to the Bar in certain jurisdictions, most notably, St Vincent and the Grenadines. However, other jurisdictions have in place legislation specifically designed to regulate the profession.

¹⁴² *E.g.* Eastern Caribbean Supreme Court (Dominica) Act, section 70.

¹⁴³ See Eastern Caribbean Supreme Court (Dominica) Act, section 70(3); the word “national” is defined in accordance with the Agreement Establishing the Council of Legal Education, i.e. “citizen of any participating territory, or regarded as belonging to any participating territory under any law in force in that territory”.

¹⁴⁴ See Eastern Caribbean Supreme Court (Dominica) (Amendment) Act, 2005 – adding the reference to other Commonwealth countries.

The Saint Lucia Legal Profession Act, provides in section 15 on “admission of citizens to practice”, for the admission of persons qualified to practice in the UK (as an English, Irish and Scottish barrister, solicitor or advocate). The eligibility and admission of *non-citizens* to practice is based on the reciprocal treatment of Saint Lucian citizens.¹⁴⁵ Provision is made for due process and an appeal to the Court of Appeal from a decision of the High Court refusing to an application for admission to practice.¹⁴⁶ The legislation largely follows the approach taken in the Eastern Caribbean Supreme Court Act. It should be noted, however, that the Legal Profession (Fees) Regulations provide for higher fees for the registration of non-citizens than citizens.¹⁴⁷ **National treatment is therefore not accorded with respect to fees. This is noted in light of previous observations made in relation to fees and the treatment of subsidies in the EPA.**

The Antigua and Barbuda Legal Profession Act 2008 establishes the Antigua and Barbuda Bar Association, and addresses qualifications for admission to practice law. Interestingly, the Act makes provision for “limited admissions”.¹⁴⁸ **It allows a ‘visiting advocate’¹⁴⁹ to apply to the Court to be admitted to practise law for the purposes of participating in a matter.¹⁵⁰ If the Court is satisfied that, *inter alia*, the matter is “difficult and complex” and the visiting advocate has “special qualifications or experience”, it may admit the visiting advocate to practice law for the matter which is specified in the practising certificate. The accommodation made for foreign professionals is commendatory and therefore highlighted.** An appeal lies to the Court of Appeal from an order of the Court refusing an application to be so registered. A

¹⁴⁵ See Saint Lucia Legal Profession Act, section 16(2).

¹⁴⁶ See Saint Lucia Legal Profession Act, section 17. See also *ibid*, section 21 prohibiting the practice of law unless a person’s name is entered on the Roll and is a holder of a valid practising certificate. Section 24 of the Act provides the grounds on which the High Court may order the Registrar to refuse to issue a practising certificate.

¹⁴⁷ The Regulations provide fees which increase depending on seniority at the Bar and nationality: i.e. less than or equal to 5 years - \$300/500; more than 5 years and less than or equal to 10 years - \$500/750; more than 10 years \$750/1000- the latter noted figures are for non-citizens.

¹⁴⁸ See Antigua and Barbuda Legal Profession Act, section 17.

¹⁴⁹ See Antigua and Barbuda Legal Profession Act, section 17(1) defining ““visiting advocate” as a barrister or Attorney-at-Law who— (a) has not been admitted to practise law in Antigua and Barbuda; and(b) does not hold the qualifications prescribed by law to be eligible to be admitted by the Court to practise as an attorney-at-law in Antigua and Barbuda”.

¹⁵⁰ See Antigua and Barbuda Legal Profession Act, section 17(1) defining “matter” as including any interlocutory or appeal proceedings.

separate Roll is maintained by the Registrar for visiting advocates. Additionally, Schedule 4 to the Act which sets out the Code of Ethics expressly addresses the possible involvement of foreign practitioners in a matter.¹⁵¹

The St Kitts and Nevis Legal Profession Act, 2008, establishes the St Kitts and Nevis Bar Association and provides for compulsory membership by every person holding a valid practicing certificate.¹⁵² The Act provides for the admission of appropriately qualified OECS and CARICOM nationals. Other persons who have obtained the qualifications to practice law as prescribed by the Act are eligible to practice law on the basis of reciprocity.¹⁵³

In Grenada the Legal Profession Bill is before Parliament and it is therefore anticipated that legislation specifically designed to regulate the profession will soon be enacted.

No market access measures contrary to the specific commitments undertaken by OECS countries were identified in this sector. Discriminatory national treatment measures relating to professional fees are applied in Saint Lucia as above-noted.

Accountancy Services

The practice of accountancy is linked to many other services and is identified, most notably, with financial regulation and supervision through the implementation and enforcement of prudential measures. All six (6) OECS countries have undertaken commitments on “Accounting, Auditing and Book-keeping Services” CPC code 862 in

¹⁵¹ *E.g.* Antigua and Barbuda Legal Profession Act, Schedule 4 – which relates to section 35 on the Act, on Code of Ethics “31. Where an attorney-at-law engages a foreign colleague to advise on a case or to cooperate in handling it, he is responsible for the payment of the charges involved except if there is an express agreement to the contrary, but where an attorney-at-law directs a client to a foreign colleague he is not responsible for the payment of the charges, nor is he entitled to a share of the fee of his foreign colleague except where there is an express agreement to the contrary.”

¹⁵² See St Kitts and Nevis Legal Profession Act, 2008, section 6.

¹⁵³ See St Kitts and Nevis Legal Profession Act, 2008, section 16(2) – providing that the Minister may not make an Order providing for a person who has obtained the qualifications to practice law to be so eligible “unless the Minister, is satisfied that such entitlement to admission would be on terms as favourable as those which citizens or nationals of Saint Christopher and Nevis would, if an order were made under this subsection, be or become entitled to admission as attorneys-at-law in that country.”

the EPA, though the level of liberalization commitments vary significantly.¹⁵⁴ It may be noted that Saint Lucia has essentially left unbound all commitments. This would seem peculiar but it is not a unique occurrence. This sort of anomaly appears to be largely attributable to the pressures which were brought to bear on some countries in the closing hours of the EPA negotiations. **Note is also made of the fact that Antigua and Barbuda has indicated 'None' under the national treatment column for mode 4**

Accounting and Auditing services generally embrace: financial auditing services (i.e. reviewing the books of an organization to see whether its financial statements fairly present that position as at a given date and time in accordance with generally accepted accounting principles); accounting review services (where the scope of a review is less than that of an audit and therefore the level of assurance provided is lower); compilation of financial statements services (where no assurances regarding accuracy are provided, and may include the preparation of business tax returns);¹⁵⁵ and other accounting services such as attestations, valuations, preparation of *pro forma* statements, etc. Bookkeeping services (CPC 8622 which excludes tax returns)¹⁵⁶ consist of classifying and recording business transactions in terms of money or some unit of measurement in the books of account.

The definition of "Accounting, auditing and book-keeping services" is, in fact, narrower than the wide range of activities which may be undertaken by accountancy firms, including taxation and management consultancy. Consequently, it has been observed, "that a distinction should be made, in certain cases, between accountancy services and services provided by accountancy firms. Others would argue that if a service is provided by an accountancy firm it is, by definition, an accountancy service".¹⁵⁷

¹⁵⁴ Antigua and Barbuda, which is the only OECS country to have undertaken commitments in this sector in the context of the WTO GATS, has made more liberal commitments.

¹⁵⁵ Note that Business tax preparation services, when provided as separate services, are classified in subclass 86302 (Business tax preparation and review services).

¹⁵⁶ Note that Bookkeeping services related to tax returns are classified in subclass 86302 (Business tax preparation and review services).

¹⁵⁷ WTO doc. S/WPPS/W/2, 27 June 1995, p. 7.

In general regulatory frameworks for accountancy services range from virtually no oversight or self-regulation to an environment where there are multiple regulators.¹⁵⁸ At the multilateral level there have been two significant developments in the accountancy sector of relevance to the implementation of the EPA. The Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector which were adopted in 1997 and are voluntary but provide the basis for the negotiation of mutual recognition agreements under Article 85 of the EPA (placing emphasis on the negotiation of arrangements in accounting, architecture, engineering and tourism).¹⁵⁹ Additionally, the Disciplines on Domestic Regulation in the Accountancy Sector which were adopted in December 1998 (and though not legally in effect), are relevant given the inclusion of a 'standstill provision' in the Regulations¹⁶⁰ as well as Annex IV.F of the EPA. A general undertaking of the Disciplines on Domestic Regulation in the Accountancy Sector is that "Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession."¹⁶¹

The Institute of Chartered Accountants of the Eastern Caribbean Agreement Act 2003 implements the Agreement establishing the Institute of Chartered Accountants of the Eastern Caribbean (ICAEC), 23 November 2000 (set out in a Schedule to the Act) which

¹⁵⁸ See also "Accountancy Services" Background Note by the Secretariat, WTO doc. S/C/W/316, 7 June 2010, section IV.

¹⁵⁹ OECD literature highlights the fact that the creation of MRAs can be a difficult, time-consuming and expensive process; to date, they have primarily been between the professional associations of developed countries; see OECD, *Service Providers on the Move: Mutual recognition agreements*, Working Party of the Trade Committee, 2003, TD/TC/WP(2003)48/FINAL. (Circulated as WTO document JOB(03)/28, 13 February 2003).

¹⁶⁰ The *Decision* of the Council for Trade in Services adopting the *Accountancy Disciplines* (WTO document S/L/63, 15 December 1998) is composed of three elements: a statement that the disciplines are applicable to Members who have scheduled specific commitments on accountancy; affirmation that Members will continue their work on domestic regulation, aiming to develop general disciplines for professional services while retaining the possibility to develop additional sectoral disciplines; and a 'standstill provision', effective immediately, under which all WTO Members, including those without GATS commitments in the accountancy sector, have agreed, consistent with their existing legislation, not to take new measures which would be in violation of the accountancy disciplines; see also "Accountancy Services" Background Note by the Secretariat, WTO doc. S/C/W/316, 7 June 2010, paragraphs 28-34 and accompanying footnotes.

¹⁶¹ "Disciplines on Domestic Regulation in the Accountancy Sector, S/L/64, 17 December 1998, para. 2.

is given the force of law in each OECS country. All six (6) OECS countries subject to review are members of the ICAEC and all (save St Vincent and the Grenadines) have established national branches to regulate the accounting profession in accordance with the Agreement.

Article 2 of the ICAEC Agreement defines “accountant” as a person who investigates accounts and certifies as to their accuracy and includes a person whose business it is to compute, adjust and arrange in due order accounts or to audit accounts. The Agreement defines “Chartered Accountant” as a person who is a member of the Institute of Chartered Accountants of the Eastern Caribbean. The Institute is empowered to make rules prescribing, *inter alia*, the requirements for admission, resignation and removal of its members; the qualifications for admission, the education, training, including if the Institute thinks fit, service under articles, and the examinations to be undergone by a person seeking to be admitted to membership and to be registered under the Agreement; and the conditions under which its members may engage in public practice.¹⁶²

Article 12 of the ICAEC Agreement provides that persons who are resident or a citizen of a member State and a member of a ‘parent body’¹⁶³ are entitled to be registered as members and any person who successfully passes the accountancy examinations conducted by the Institute or by some other body on behalf of the Institute for the election of chartered membership and is awarded a certificate by the Institute.¹⁶⁴

A person may not offer him/herself to be in public practice as a “Chartered Accountant” or use such title unless the person is registered as a member of the Institute. It is not deemed to be in public practice where a person undertakes work in the course of his

¹⁶² See Agreement establishing the Institute of Chartered Accountants of the Eastern Caribbean, Article 6.

¹⁶³ Article 2 of the ICAEC Agreement defines ‘parent body’ as the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Ireland, the Institute of Chartered Accountants of Scotland, the Canadian Institute of Chartered Accountants, the Association of Chartered Certified Accountants, the American Institute of Certified Public Accountants, the Chartered Institute of Management Accountants, the Certified General Accountants Association of Canada, the Certified Management Accountants of Canada or any other such body of accountants as may from time to time be recommended by the Council and approved by the Institute at a general meeting.

¹⁶⁴ Note that certain transitional measures apply with respect to accountants resident within a member state and/or already practising there.

duties as an employee of any person, or engages in book-keeping or cost accounting or the installation of book-keeping business or cost systems.¹⁶⁵ The provisions of the Institute of Chartered Accountants of the Eastern Caribbean which govern the sector in the OECS countries subject to the review is consistent with the EPA and should facilitate the negotiation of MRAs in the context of Article 85 thereof.

Taxation

As above-noted, while certain aspects of the preparation of business tax returns may be included under accountancy and bookkeeping services, where this is undertaken as a separate service it is classified under subclass 86302, “Business tax preparation and review services”.

All OECS countries with the exception of Saint Lucia have made commitments with respect to taxation services. (This is consistent with the nature of commitments undertaken under Accounting, Auditing and Book-keeping, i.e. where Saint Lucia has left essentially all its commitments unbound.)

OECS taxation legislation generally provides for, *inter alia*, the submission of audited tax returns in certain cases and allows the deduction of expenditures incurred by way of audit fees, and accountancy fees.¹⁶⁶ It may be noted that where deductions are linked to the qualifications of the professional undertaking the service this may affect the supply of the service, but is a permissible measure. So, for example, the submission of audited statements and any deductions claimed may be limited to professionally qualified auditors recognized as such within the jurisdiction.

A review of the legislation of OECS countries did not suggest the presence of any measures contrary to the specific commitments which have been undertaken.

¹⁶⁵ See ICAEC Agreement, Article 15.

¹⁶⁶ *E.g.* Saint Lucia Income Tax Act, sections 91 & 38(m).

Architectural services

Architectural services (CPC code 8671) include advisory and pre-design architectural services, including preliminary studies addressing issues such as site philosophy, intent of development, climatic and environmental concerns, occupancy requirements, cost constraints, site selection analysis, design and construction scheduling (related to new construction projects as well as renovation, restoration etc.); architectural design services whether schematic designs, design development or final design services consisting of drawings and written specifications sufficiently detailed for tender submission and construction; contract administration services (i.e. advisory and technical assistance services to the client during the construction phase to ensure that the structure is being erected in conformity with the final drawings and specifications); combined architectural design and contract administration services (including post construction services which consist of the assessment of deficiencies in construction and instructions regarding corrective measures to be taken during the 12-month period following the completion of the construction); and other architectural services such as the preparation of as-built drawings and constant site representation during the construction phase.

Certain associated services such as the work of surveyors may fall under other classifications such as construction services, related scientific and technical consulting services (which covers, *inter alia*, surface surveying services and map-making services) or engineering services.

The definition of the profession in the legislation reviewed is not uniform. The Antigua and Barbuda Architects (Registration) Act defines the "practice of architecture" as

“rendering one or more of the following professional services to clients - advice, consultation, evaluation, planning, design, and minor engineering services, inspection of construction, and any other services wherein expert knowledge, skill and experience are required in connection with the erection, enlargement or alteration of any building or buildings, or the equipment or accessories thereof, or

with the creation of the built environment where public amenity is concerned or involved”¹⁶⁷

The definition of the practice of architecture therefore allows for, *inter alia*, minor engineering services. Section 11(2) qualifies the prohibitions placed on non-registered professionals with the proviso that the Act shall not be deemed or construed to prevent the practice of their professions by engineers registered under the Engineers (Registration) Act; land surveyors; town planners; naval architects or landscape architects, provided such persons do not use the term "architect" in its unqualified form with intent to mislead the public; or interior decorators or furniture designers.¹⁶⁸

The Dominica Architecture Profession Act appears to define the profession somewhat more narrowly. It defines the “practice of architecture” as including the preparation of provision of a design to govern the construction, enlargement or alteration of a building; and evaluating, advising on or reporting on the construction, enlargement or alteration of a building; and a general view of the construction, enlargement or alteration of a building. There appears to be no OECS led initiative on the harmonization through model legislation. The EPA preparatory negotiations on MRAs to facilitate trade in architectural services is promoting positive discussion in this regard.

The architectural profession globally is very heterogeneous. The practice of the profession is regulated in most countries, but not all and there are significant exceptions among the parties to the EPA. In the European Union, for example, few regulations governing the profession may be found in Belgium, Finland, Ireland, Netherlands, Sweden and the UK.¹⁶⁹ Within the OECS the measure of regulation varies greatly: in Antigua and Barbuda the legislation appears to be unduly restrictive but is the subject of

¹⁶⁷ See section 2; note that this definition is retained in the proposed 2010 Architects (Registration) Bill.

¹⁶⁸ Note that the language used in the proposed Architects (Registration) Bill of 2010 is narrower limiting the explicit reference to registered engineers and land surveyors engaging in architectural work as may be incidental to their practice.

¹⁶⁹ Belgian law, for example, regulates admittance to the profession (i.e. who may or may not practise), but not the profession as such; in the United Kingdom, the use of the title of architect is protected, but not its function (COAC, *op. cit.*, p. 46); see ‘Architectural Services’, Background Note by the Secretariat, WTO doc. S/C/W/303, 17 Sept. 2009, para 20 and accompanying footnotes.

review (as above-noted); in St Vincent and the Grenadines there is no relevant legislation and even the use of the title “architect” is not protected, though this is likely to change given the presence of a very active Association which is aggressively lobbying for effective regulation. Recent updates on the situation in St Vincent and the Grenadines suggest that legislation is now before Parliament. In Saint Lucia there is no legislation regulating the profession although a Bill is before Parliament. There is no legislation regulating the profession in Grenada, nor any suggestion of the matter being brought before Parliament.

Throughout the Caribbean many architects operate as sole principals though there are a number of established firms of partners and associates. Most of the architects interviewed in our consultations in the OECS identified themselves as sole principals. Our discussions support the suggestion that the traditional focus on the domestic market is changing; professionals are looking regionally and globally while preparing themselves for increased competition in the local market. Regional trading arrangements and cross-border investment have opened new opportunities for an expanded range of architectural services. The negotiations on mutual recognition agreements (MRAs) have spawned interest in the implementation of regulations which promote, *inter alia*, standards and professional ethics and define and protect the use of the title ‘architect’.

Globally and within the region there is increasing importance on registering architects possessing a degree in architecture granted by an accredited school of architecture, and the proper documentation of post-degree internship experience. In order to maintain a professional licence some regulatory bodies are considering imposing requirements for continuing education. The additional emphasis on qualifications is evident in the recently passed Architect Registration Act of St Kitts and Nevis and the proposed new legislation in Antigua and Barbuda. The required standards presented in the St Kitts and Nevis legislation and the new Antigua and Barbuda Bill, however, are not the same. For example the requirement of continuing education to maintain registration is found only in the proposed legislation of Antigua and Barbuda.¹⁷⁰ It may be noted that differing

¹⁷⁰ See Architects (Registration) Act 2010, section 4(5).

standards are likely to pose a hindrance to negotiations on MRAs within the region and with Europe.¹⁷¹

In general, compared to other accredited professional services, such as accountancy and legal services, architectural services are usually subject to fewer restrictive regulations. The Dominica Architecture Profession Act 2003, for example, provides for the registration of any person who is qualified and fit and proper to practice as an architect. A person is qualified to be registered on the basis of his/her education and three years practical experience.¹⁷² The legislation makes no distinction on the basis of nationality or residence.

In contrast with the legislation in Dominica, section 5 of the Antigua and Barbuda Architects (Registration) Act limits registration as an architect to qualified persons, fit and proper to practice architecture, who are “domiciled and resident in Antigua and Barbuda”.¹⁷³ The proposed 2010 Architecture (Registration) Bill dispenses with the additional restrictions based on domicile and residence. **By way of comparison, although the requirement for citizenship or residence is found in the St Kitts and Nevis Architecture (Registration) Act 2010, provision is also made for temporary registration of architects seeking to practice within the State for an initial period of one year or less, subject to such terms and conditions as may be specified.**¹⁷⁴ **The provision for temporary registration facilitates trade in architectural services and is**

¹⁷¹ The basis on which recognition is provided in APEC and ASEAN is instructive: to be eligible for admission to the APEC Architect Register, candidates must demonstrate to the Monitoring Committee of their home economy that they: have completed an accredited/recognised program of architectural education; have fulfilled the necessary pre-registration experience requirements; are currently registered / licensed as architects in their home economy; have gained at least seven years of professional experience as an architect in specified categories of practice; comply with continuing professional development obligations prescribed by the home economy regulatory authority; and are bound by a home economy code of professional conduct. The requirements for registration as an ASEAN Architect (AA) are similar save that the requirement is for not less than ten years of practice of architecture since graduation, of which five years shall be after licensure/registration and at least two years in responsible charge of significant architectural work.

¹⁷² See Dominica Architecture Profession Act, section 17(3); see also *ibid*, section 18 which provides certain transitional measures for persons practicing architecture before the commencement of the Act. Note also the provision for an appeal to the Appeals Tribunal by a person aggrieved by a decision refusing to register him under the Act; see *ibid*, section 20.

¹⁷³ Antigua and Barbuda Architects (Registration) Act, section 5(1)(c).

¹⁷⁴ See St Kitts and Nevis Architects Registration Act 2010, Section 11.

therefore highlighted. The legislation in both Antigua and Barbuda (existing and proposed) as well as the legislation in St Kitts and Nevis also make provision for registering architects on the basis of reciprocal arrangements,¹⁷⁵ such as the MRAs contemplated by the EPA.

The International Union of Architects (which represents architects from over 124 countries) has established an Accord on Recommended International Standards of Professionalism in Architectural Practice which includes a statement on “Policy on Practice in Host Nation”. It states that “*Architects providing architectural services on a project in a country in which they are not registered shall collaborate with a local architect to ensure that proper and effective understanding is given to legal, environmental, social, cultural, and heritage factors. The conditions of the association should be determined by the parties alone in accordance with UIA ethical standards and local statutes and laws.*”¹⁷⁶ Additionally, at the UIA council meeting in Sydney (17-18 January 2010) the Policy statement was amended by the approved insertion of the following qualification: “*When practicing in a host nation, the foreign architect should either be registered in that country or should enter into a contractual relationship with an architect duly registered in the host country*”.

In this regard it may be noted that Grenada, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines have all stipulated a joint venture requirement for market access for mode 3 (commercial presence). **It may be recalled that there is no agreed definition of the term ‘joint venture’ and it may be useful to commission further work in this area with a view to facilitating the implementation of commitments where this stipulation has been made.** The Accord on Recommended International Standards of Professionalism in Architectural Practice establishes the principles on which to develop joint ventures in this field.

¹⁷⁵ See Antigua and Barbuda Architects (Registration) Act; section 8 (see also section 6 of the 2010 Architects (Registration) Bill); see St Kitts and Nevis Architects Registration Act 2010, section 12.

¹⁷⁶ See http://www.uia-architectes.org/image/PDF/UIA-Accord%20full_def.pdf

The joint venture reservation suggests that market access through commercial presence is conditioned on some form of collaboration between foreign architects and their local counterparts. Although Antigua and Barbuda has not made a similar reservation the requirements of the Architecture (Registration) Act effectively require this. Section 14 of the said Act provides that “A partnership, association, or corporation may practise architecture in its own name if its principal and customary functions is to practise architecture, and if the work is done under the responsible supervision of a partner or an associate or a director respectively, who, in any case, is a registered architect.”¹⁷⁷ The Dominica legislation is much more liberal and would appear, in principle, to allow for the practise of architecture by suitably qualified foreigners (including companies) without association with local architects.

From our consultations it may be deduced that in most jurisdictions there are practically speaking no restrictions for cross-border trade and consumption abroad (modes 1 and 2). The effective limitation on the practice of foreign professionals lies with the requirement for certain documents to be authenticated by registered architects. It should be noted, however, that the requirements for registration as an architect in Antigua and Barbuda, Dominica and St Kitts and Nevis apply equally to cross-border supply of architectural services.

An additional potential restriction on market access is the requirement for work permits in all six (6) OECS countries. Cross-border supply through modes 1 and 2 provides a means to circumvent this. It is noteworthy therefore that Grenada and Saint Lucia (where no legislation regulating the profession is currently in place) have both indicated “Unbound” for market access in both modes 1 and 2.

Engineering services

The category of engineering services (CPC 8672) covers advisory and consultative engineering services; engineering design services for the construction of foundations and

¹⁷⁷ See also Antigua and Barbuda Architects (Registration) Bill, section 11.

building structures, the construction of civil engineering works, mechanical and electrical installations for buildings, and industrial processes and production; and other engineering services during the construction and installation phase.

All six (6) OECS countries have undertaken commitments in engineering services but the scope and nature of the commitments vary. Grenada and St Vincent and the Grenadines have limited their commitments to engineering design services for the construction of civil engineering works and industrial processes and production. St Kitts and Nevis has limited its commitments to advisory and consultative engineering services, engineering design services for industrial processes and production and engineering design services n.e.c.¹⁷⁸ St Kitts and Nevis has also conditioned market access on a “Joint venture, transfer of knowledge and technology” requirement. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

The Dominica Engineering Profession Act 2002 defines ‘engineering’ as “the performance of or the assumption of responsibilities for any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, inspection and supervision of construction for the purpose of assuring compliance with specifications and design, execution of responsible maintenance and operational functions, in connection with the utilisation of the forces, energies and materials of nature in the development, production and functioning of any of [an extensive list of works or operations or other matters set out in the First Schedule to the Act]”. A person may not practise engineering within the jurisdiction unless registered under the Act.¹⁷⁹

¹⁷⁸ Grenada and St Vincent and the Grenadines have made commitments only for CPC 86724 & 86725; and St Kitts and Nevis for CPC 86721, 86725 & 86726; note that CPC 86726 covers engineering design services n.e.c., i.e. not elsewhere classified.

¹⁷⁹ Note that a person does not carry on the practice of engineering by reason only that he does so in the course of his duties as an employee or agent of a registered engineer or under the direction of a registered engineer; see Dominica Engineering Profession Act, section 3(3).

The Antigua and Barbuda Engineering (Registration) Act provides a similarly broad definition of engineering relating to advising and reporting on, the designing, inspection and construction of any of the works, operation or other matters set out in the Third Schedule to the Act.¹⁸⁰ The definition in the Saint Lucia Engineering (Registration) Act is similarly scripted.¹⁸¹

The Dominica Engineering Profession Act establishes the Board of Engineering which serves as the regulatory agency for the profession.¹⁸² The Act provides for the registration of, *inter alia*, persons registered as an engineer within a CARICOM country where reciprocal arrangements exist, and for other persons with an appropriate, degree, diploma or other engineering qualification granted by an accredited University or School of Engineering with no less than four (4) years practical experience where such persons are fit and proper to practise in the field.¹⁸³ The Board may, however, require an applicant to submit to an examination relating to his/her competence as an engineer.¹⁸⁴ Persons who are suitably qualified may therefore be registered irrespective of their nationality or residence. Additionally, provision is made for due process; an adverse ruling of the Board may be appealed to an Appeals Tribunal.¹⁸⁵

The Saint Lucia Engineers (Registration) Act establishes the Engineers Registration Board which is the regulatory body for the profession in Saint Lucia. The criteria for registration are neutral referring to the registration of persons who are qualified, fit and proper to practice; the requisite qualifications being the award of an appropriate degree, diploma or other suitable qualification, and not less than two (2) years of practical

¹⁸⁰ See Antigua and Barbuda Engineering (Registration) Act, Third Schedule – covering public utilities; harbour, sewerage sanitation and hydraulic works; industrial processes; bridges, roads; wet, dry and floating docks; airports; certain ships; buildings, etc. The list is not dissimilar to that stated in the First Schedule to the Dominica Act.

¹⁸¹ See Saint Lucia Engineering (Registration) Act, section 2 and Schedule 1; see also *ibid*, section 12 which stipulates that a person who is not an engineer may operate, execute or supervise any engineering works as owner, contractor, superintendent, foreman, technician, inspector or master, where the public interest and public safety are not likely to be affected.

¹⁸² See Dominica Engineering Profession Act, section 10.

¹⁸³ See Dominica Engineering Profession Act, section 24.

¹⁸⁴ See Dominica Engineering Profession Act, section 21(2).

¹⁸⁵ See Dominica Engineering Profession Act, section 23.

experience.¹⁸⁶ Nationality and residence are not factors on which to refuse registration. The Act expressly provides for a partnership, association or corporation to practice engineering in its own name if one of its main functions is to practice engineering and the practice is done under the control and supervision of a member of the partnership or association or a director of the corporation who is a registered engineer.¹⁸⁷ Provision is also made an aggrieved person who has been denied registration to appeal to a judge in Chambers.¹⁸⁸

In our consultations in Saint Lucia it was noted that the Engineers (Registration) Act has been reviewed and is being redrafted (work which was apparently initiated by the OAS). The Association of Engineers is actively involved in the process.¹⁸⁹ **One of the particular features of the proposed new legislation is the facility for temporary registration of professionals who come to the Island to work on specific projects. The proposal is that a temporary licence be granted in such instances as opposed to a general licence. The proposal facilitates trade in engineering services and is therefore highlighted.** The proposed new law apparently would not require personal indemnity insurance. It was felt that the industry should be market driven and consumers desiring indemnity insurance would request this. While it was preferable to have an OECS harmonized approach, it was suggested that this would likely take too long to develop.

The Antigua and Barbuda Engineers (Registration) Act provides for different categories of registration: qualified engineers who are resident within the jurisdiction;¹⁹⁰ engineers

¹⁸⁶ See Saint Lucia Engineers (Registration) Act, section 7.

¹⁸⁷ See Saint Lucia Engineers (Registration) Act, section 14.

¹⁸⁸ See Saint Lucia Engineers (Registration) Act, section 16.

¹⁸⁹ The Association of Engineers is a non-profit company with bye-laws and a Code of Conduct; it is a voluntary association (of about 40 persons out of approximately 200 engineers practising in Saint Lucia). The Association nominates four (4) persons to the Registration Board established under the Act and can refer persons to the Board for de-registration. It was noted that many engineers practise without being registered, although registration is virtually automatic once the requirements of the Act are satisfied. There is little monitoring of the profession and so the matter of registration only arises when the law requires the stamp of a registered engineer on a particular document.

¹⁹⁰ See Antigua and Barbuda Engineers (Registration) Act, section 9.

registered in another country where reciprocal arrangements apply;¹⁹¹ and other **persons not normally resident within the jurisdiction who are ‘Consulting Specialists’ in a field of engineering with not less than ten (10) years practical experience who may be registered for a period of one year or less, provided that they obtain the necessary work permit.**¹⁹² **The facilitation of consulting specialists promotes trade in engineering services and is therefore highlighted.** Subsequent amendments to the Act impose certain additional requirements, such as proof that the applicant is able to read, write, speak and understand the English language.¹⁹³ The legislation also expressly addresses due process rights.¹⁹⁴

In our consultations in Grenada reference was made to an Engineers (Registration) Bill and the Grenada Institute of Professional Engineers. The Bill apparently remains in draft form with Parliamentary Counsel who indicate that it should be finalized and brought before Parliament by the end of the year. In St Vincent and the Grenadines it was clarified that there is no legislation regulating the profession of engineering; the Chief Engineer Act addresses the responsibilities of the Chief Engineer for public works. It was also noted that there is also no functional professional association in St Vincent and the Grenadines. The situation is similar in St Kitts and Nevis. As such, there is no law precluding foreign professionals from practising locally, save for general licensing requirements (concerning work permits, business and occupation licences, etc).

A review of OECS legislation highlights that the regulatory framework is, indeed, far more liberal than the commitments undertaken by OECS countries in the EPA.

¹⁹¹ See Antigua and Barbuda Engineers (Registration) Act, section 6.

¹⁹² See Antigua and Barbuda Engineers (Registration) Act, section 7.

¹⁹³ See Antigua and Barbuda Engineers (Registration) (Amendment) Act, No. 12 of 2009, replacing, *inter alia*, section 5(2)(c).

¹⁹⁴ See also Antigua and Barbuda Engineers (Registration) (Amendment) Act, No. 12 of 2009, replacing, *inter alia*, section 13 (5) providing that “[i]f the Board is not satisfied that the applicant does not meet the requirements of this Act, the Board shall provide the reasons for the refusal to license the applicant and indicate to the applicant the steps that are required in order for the applicant to be eligible to be licensed.”

Integrated Engineering Services

The category of integrated engineering services (CPC 8673) is divided into integrated engineering services for transportation infrastructure turnkey projects, integrated engineering and project management services for water supply and sanitation works turnkey projects, integrated engineering services for the construction of manufacturing turnkey projects, and for other turnkey projects.

Four (4) OECS countries have undertaken commitments in the sub-sector; Dominica and St Vincent and the Grenadines in relation to the entire class (CPC 8673); Grenada for integrated engineering and project management services for water supply and sanitation works turnkey projects, integrated engineering services for transportation infrastructure turnkey projects and other turnkey projects; and St Kitts and Nevis has undertaken commitments only for integrated engineering services for the construction of manufacturing turnkey projects.

St Kitts and Nevis and St Vincent and the Grenadines have conditioned market access for commercial presence on joint venture arrangements. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

The above observations with respect to engineering services are generally relevant here also.

Urban Planning and Landscape Architectural Services

CPC code 8674 may be divided into two sub-classes: urban planning services and landscape architectural services. Four (4) OECS countries have undertaken commitments; Antigua and Barbuda, Dominica and St Vincent and the Grenadines have made commitments for the entire class; (**note that certain entries are missing in relation to Antigua and Barbuda**). Grenada has made commitments solely with respect to

landscape architectural services. St Vincent and the Grenadines has conditioned market access for commercial presence on joint venture arrangements. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

The profession of a landscape architect involves developing, designing and overseeing the construction of landscape development, including golf courses, office complexes and residential design. The profession is generally not subject to independent regulation within the region and, as such, the appropriateness of the service supplier's qualifications (education and experience) is determined by the client and the willingness of governments to grant work permits where required for the supply of the service. Likewise, there is generally a lack of regulation of urban planning as an occupation involving the development of plans and recommended policies for managing land use, physical facilities and associated services for urban, rural and remote regions. As such, no specific regulatory barriers to market access or national treatment apply; general restrictions relating to the issuance of work permits, for example, do exist but as above-noted these are permissible, covered by, *inter alia*, horizontal limitations specified in Annex IV.F.

Geological, geophysical and other scientific prospecting services

Only Saint Lucia has made commitments for the category of professional services CPC 86751; commitments are bound only for cross-border trade (modes 1 and 2) for both market access and national treatment. The services covered concern geological, geophysical, geochemical and other scientific consulting services as they relate to the location of mineral deposits, oil and gas and groundwater by studying the properties of the earth and rock formations and structures. Included here are the services of analysing the results of subsurface surveys, the study of earth sample and core, and assistance and advice in developing and extracting mineral resources. No specific regulations were found addressing cross-border trade in geological, geophysical and other scientific

prospecting services. As such, there appear to be no market access restrictions or other discriminatory measures on which to comment.

Medical and Dental services

Medical and dental services fall under the heading of “Human and social services”, within the group of “Human health services” in the CPC code. The class is divided into: general medical services, specialized medical services and dental services. It covers services chiefly aimed at preventing, diagnosing and treating illness through consultation by individual patients without institutional nursing, except nursing provided by hospital out-patient clinics (for a part of the day).

All six (6) OECS countries have undertaken commitments in this area; **(but note that two contradictory entries have been made for Grenada with respect to modes 1 and 2)**. However, the commitments for St Vincent and the Grenadines relate to general and specialized medical services only and do not cover dental services. **Note is also made of the fact that Antigua and Barbuda has indicated ‘None’ under the national treatment column for mode 4.**

The Medical Act of Dominica represents the traditional approach to regulation of health professionals in the OECS region – and is similar, for example, to the Medical Registration Act of St Vincent and the Grenadines (which was described in our consultations as “90% irrelevant or not applicable”). This model has been reformed in the Medical Practitioners Act, 2009 of Antigua and Barbuda, the Health Practitioners Act No. 33 of 2006 of Saint Lucia, and the Health Practitioners Act 2010 of Grenada.

The Medical Act of Dominica regulates medical practitioners, dentists, opticians, chemists and druggists (pharmacists), nurses and dental auxiliaries. The Act establishes a Medical Board; medical boards may also be established by Order for each district. Applications for registration are sent by the Registrar to the medical board for the district in which the professional wishes to practice. An aggrieved applicant may appeal from the

decision of the medical board to the Minister.¹⁹⁵ The conditions stated for registration as a medical practitioner are based on education, good character and being a fit and proper person to practise medicine.¹⁹⁶

The conditions for registration as a dentist are similar. A person who is of good moral character with any diploma or licence from any university, college or incorporated society in Great Britain or Northern Ireland and who is by law entitled to practise dental surgery or dentistry in Great Britain or Northern Ireland; or who holds a certificate from a British possession or a foreign country recognised for the time being as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of dental surgery or dentistry is entitled to be registered in Dominica as a dentist. A person's nationality and/or residence are not relevant criteria for the purposes of registration.

The St Kitts and Nevis Medical Act is somewhat similar to that of Dominica. It provides for the registration of medical practitioners, chiropractors and chiropodists, podiatrists, dentists, opticians, and chemists and druggists. Registration is based on possessing the appropriate qualifications and being fit and proper to practice. **Significantly, provision is made for the temporary registration of persons qualified as medical practitioners and dentists who are temporarily within the State upon payment of the prescribed fee.¹⁹⁷ The provision for temporary registration facilitates trade in professional services and is therefore highlighted.**

The Antigua and Barbuda Medical Practitioners Act 2009 repeals certain portions of the Antigua and Barbuda Medical Act, i.e. those dealing with medical practitioners. Additionally, the 1995 Pharmacy Act repeals those sections of the Medical Act dealing with Chemists and Druggists. However, sections IV and V of the Medical Act dealing

¹⁹⁵ See Dominica Medical Act, section 13.

¹⁹⁶ See Dominica Medical Act, section 23.

¹⁹⁷ See St Kitts and Nevis Medical Act, sections 25 & 45. Note that temporary registration is provided for a period of no more than six (6) months. See also *ibid*, section 25 - providing for, *inter alia*, special registration of medical practitioners involved in the field of public health and research where this is sponsored by recognized agencies.

dentists and opticians, respectively, remain essentially in tact. Registration as an optician or dentist does not include nationality or residence requirements and is based on qualifications awarded by accredited foreign institutions.

The 2009 Medical Practitioners Act of Antigua and Barbuda establishes the Medical Council that is responsible for the registration and licensing of medical practitioners and the regulation of medical practice.¹⁹⁸ In order to practice a person must have a licence.¹⁹⁹ Qualifications for registration include proficiency in the English language, holding a recognized diploma or degree and evidence of satisfactory medical training.²⁰⁰ The Medical Council applies the standards set by the Caribbean Accreditation Authority for medicine and other Health Professions and maintains a list of accredited institutions. **Section 13 of the Act also makes provision for provisional registration as a visiting medical practitioner either at the discretion of the Medical Council or on application by the person seeking to be provisionally registered. The provision for temporary registration facilitates trade in professional services and is therefore highlighted.** A person may also be registered as a consultant or specialist in a particular area.²⁰¹ Applicants for registration are accorded due process rights: the Medical Council must provide reasons for its refusal to register and indicate required steps for the applicant to be eligible for registration. Additionally, an appeal lies from the decision of the Medical Council to a judge of the High Court.²⁰²

The Saint Lucia Health Practitioners Act repeals the Medical Registration Ordinance and the Registration of Medical Practitioners Act. The new legislation covers medical and dental practitioners as well as “allied health professionals” – a list of which is contained

¹⁹⁸ See Antigua and Barbuda Medical Practitioners Act, section 3(1).

¹⁹⁹ See Antigua and Barbuda Medical Practitioners Act, section 16 providing that a person who is registered as a medical practitioner and who wishes to practise medicine in Antigua and Barbuda shall provide proof of current registration or a practising certificate from another medical registering body, and a certificate of good standing from that body, if the applicant is registered as a medical practitioner in another State; and in the case of a person who is not a citizen, furnish proof to the Medical Council of a work permit issued to him or her or an exemption therefrom.

²⁰⁰ See Antigua and Barbuda Medical Practitioners Act, section 13.

²⁰¹ See Antigua and Barbuda Medical Practitioners Act, section 13A.

²⁰² See Antigua and Barbuda Medical Practitioners Act, section 15.

in the Schedule to the Act.²⁰³ The Act establishes a Medical and Dental Council as well as an Allied Health Council.

The Medical and Dental Council registers medical and dental practitioners and generally regulates the professions. The Act provides that “[i]n performing its functions and exercising its powers, the Council shall act independently, impartially and in the public interest.”²⁰⁴ Provision is made for full or limited registration in the practise of medicine or dentistry: full registration includes registration as a general or specialist practitioner; limited registration includes registration as a **temporary**, conditional, academic, or research practitioner. Additionally, provision is made for institutional registration.²⁰⁵ **The provision for temporary registration facilitates trade in professional services and is therefore highlighted.**

Section 40 sets out the basic conditions for registration as a practitioner. These relate to standard criteria that a person is fit and proper to practice medicine or dentistry, is of good character and is in good standing, holds the requisite qualifications or degrees and satisfactory training and is “temporarily resident” in Saint Lucia. Registration as a Temporary Practitioner is provided for no more than six months.²⁰⁶ In determining an application the Council may require the applicant to, *inter alia*, undergo a written, practical or oral examination. Additionally, the Act expressly instructs the Council to have regard to the applicant’s ability to communicate effectively. During consultations questions were raised about the ability of foreign practitioners to understand and speak Creole and the legitimacy of refusing to register foreigners who are unable to

²⁰³ The Schedule covers a wide range of professionals: acupuncturists, audiologists, chiropractors, chiropractors, dental hygienists, dental technicians, dental therapists, dietitians, emergency medical technicians, emergency medical dispatchers, herbalists, homeopaths, imaging technologists, masseuse, medical technologists, naturopathists, opticians, optometrists, occupational therapists, podiatrists, psychotherapists, physiotherapists, psychologists and reflexologists.

²⁰⁴ Saint Lucia Health Practitioners Act, section 10. Note that the affairs of the Council are administered by a Board which may take written directions from the Minister in the public interest, but not in relation to (a) the registration or refusal of an applicant; (b) the suspension or revocation of a practising certificate issued pursuant to the Act; or (c) the imposing or removal of conditions on the registration of an applicant; see *ibid*, section 30(3).

²⁰⁵ See Saint Lucia Health Practitioners Act, section 37.

²⁰⁶ See Saint Lucia Health Practitioners Act, section 37(4); see also *ibid*, section 47(15).

communicate with a large section of the Saint Lucian population. The issue is one of practical significance and it was confirmed that such requirements may be imposed.

Registration under the Act is subject to such conditions as the “Council considers necessary or desirable to enable the applicant to practise medicine or dentistry in Saint Lucia competently and safely”.²⁰⁷ Such conditions may include a requirement of internship.²⁰⁸ Professional indemnity insurance is also required save for circumstances essentially justifying institutional registration.²⁰⁹ Provision is made for due process for an aggrieved applicant: the Council must provide reasons for its refusal to register, the proposed imposition of certain conditions, and/or refusal to renew a practising certificate; an applicant has a right of appeal.²¹⁰

The Grenada Health Practitioners Act, 2010, is very similar to the Saint Lucia legislation. Section 6 establishes the Medical and Dental Council for the purpose of, *inter alia*, registering medical and dental practitioners, ensuring the ethical conduct of medical research and adopting and monitoring programmes for the continuing education of practitioners.²¹¹ The Act expressly provides that “[i]n performing its functions and exercising its powers, the Council shall act independently, impartially and in the public interest”²¹² Provision is made for fewer categories of registration than under the Saint Lucia legislation; i.e. full registration as a General or Specialist Practitioner, and limited registration as a Temporary Practitioner or a Conditional Practitioner (which includes medical and dental practitioners in training or on probation).²¹³ **The provision for**

²⁰⁷ See Saint Lucia Health Practitioners Act, section 41(4).

²⁰⁸ See Saint Lucia Health Practitioners Act, section 42.

²⁰⁹ See Saint Lucia Health Practitioners Act, section 44; see also *ibid*, section 47(12). Note that Institutional Registration entitles a medical practitioner or a dental practitioner who works in a medical institution or dental institution and who holds a valid practising certificate to practise general medicine or general dentistry or to practise medicine or dentistry in an area of specialty under the supervision of a Specialist Practitioner; see *ibid*, section 37(7).

²¹⁰ See Saint Lucia Health Practitioners Act, section 41(6); see also *ibid*, sections 47(8), 47(15) & 53.

²¹¹ See also Grenada Health Practitioners Act, section 7.

²¹² Grenada Health Practitioners Act, section 9.

²¹³ See Grenada Health Practitioners Act, section 34; see also *ibid*, section 36 which makes special provision for registration in a state of emergency. Compare Saint Lucia Health Practitioners Act, section 37 also making provision for registration as an Academic Practitioner or Research Practitioner in addition to Institutional Registration. Note that as with the Saint Lucian legislation, section 44(16) of the Grenada Act

temporary registration facilitates trade in professional services and is therefore highlighted. The criteria for registration are based on having the appropriate educational qualifications, training or practical experience and being fit and proper to practice. No distinctions are made on the basis of nationality or residence.²¹⁴ The Council will however have regard to, *inter alia*, the applicant's ability to communicate fluently in English.²¹⁵ Provision is also made for due process as above-noted with respect to the Saint Lucian legislation.²¹⁶

In St Vincent and the Grenadines the draft Health Professionals Registration Act 2005 should have replaced the Medical Registration Act and provided a regulatory framework similar to that adopted in Saint Lucia and Grenada. The draft legislation covers medical, dental, various allied health and adjuvant health professionals. It may be noted that the definition of the practise of medicine is quite broad and covers, *inter alia*, anyone who attempts or holds himself out as being able to heal, cure or relieve persons suffering from pain, injury, deformity or disease whether or mind or body *by any means*.²¹⁷ An exception is made for "the domestic administration of home or family remedies and treatment."²¹⁸ It is unclear, however, whether persons such as traditional 'faith healers' would fall within the exception.

The draft Health Professionals Registration Act would establish a Health Professionals Council which would, *inter alia*, determine what constitutes the practice of the profession; evaluate the risk to the public from incompetent, unethical or impaired practice of the profession; consider the potential costs and benefits of regulating the profession; and significantly, "*evaluate the effect, if any, that there would be on any agreements on trade and mobility to which St Vincent and the Grenadines is a signatory if the profession were to become regulated profession*". Registration is based on

provides that a practising certificate shall be valid for a period of three (3) years in the case of a General Practitioner or a Specialist Practitioner; and six (6) months in the case of a Temporary Practitioner.

²¹⁴ See Grenada Health Practitioners Act, section 37; contrast Saint Lucia Health Practitioners Act, section 40(5) requiring temporary residence.

²¹⁵ See Grenada Health Practitioners Act, section 38.

²¹⁶ *E.g.* Grenada Health Practitioners Act, sections 38(6) & 109.

²¹⁷ See St Vincent and the Grenadines Health Professionals Registration Act, section 2(3).

²¹⁸ See St Vincent and the Grenadines Health Professionals Registration Act, section 52(b).

evidence of good character, qualifications, experience, proficiency in the English language and work permits where required.²¹⁹ The Accreditation Committee of the Council would determine applications. Due process guarantees are expressly provided; reasons must be given for conditions imposed on approval of registration or a decision to defer or refuse registration,²²⁰ and an aggrieved applicant has the right to appeal.²²¹

Significantly, the draft legislation makes provision for, *inter alia*, interim registration where an applicant is qualified but it is not practicable to wait until the application is considered,²²² and temporary registration which may be granted for a period not exceeding one year, although subject to renewal. **Temporary registration would be provided to persons engaged in teaching, research or postgraduate study or a professional with “international standing” or who “will have special value to the people of St Vincent and the Grenadines”.**²²³ **The provision for temporary registration facilitates trade in professional services and is therefore highlighted.**

The 2005 draft legislation omits the discriminatory aspects of the 2003 draft New Medical Registration Act. The 2003 draft sought to impose economic needs tests (ENTs) which would have entitled the Council to refuse to register non-nationals taking into account “the number of physicians already practicing in St Vincent and the Grenadines, the need to preserve areas for citizens of St Vincent and the Grenadines currently in training and other similar factors.”²²⁴

A review of the legislation highlights the progressive development of a regulatory environment which facilitates trade in medical and dental services.

²¹⁹ See St Vincent and the Grenadines Health Professionals Registration Act, section 24.

²²⁰ See St Vincent and the Grenadines Health Professionals Registration Act, section 26(3)

²²¹ See St Vincent and the Grenadines Health Professionals Registration Act, section 27 - note that the review is undertaken by the Council.

²²² See St Vincent and the Grenadines Health Professionals Registration Act, section 32 – note that this may be granted unconditionally or subject to conditions.

²²³ See St Vincent and the Grenadines Health Professionals Registration Act, section 34.

²²⁴ See St Vincent and the Grenadines draft 2003 New Medical Registration Act, section 10(5).

Neurosurgery, Epidemiological services, CATSCAN services

All OECS countries, save for Dominica, have undertaken commitments in neurosurgery, epidemiological services and CATSCAN services which all fall within the “human health services” group. The above observations with regard to medical and dental services are of relevance. **It should be noted that with respect to CATSCAN services, mode 4, two entries appear for St Kitts and Nevis under the national treatment column. This should be addressed for purposes of clarity.**

Veterinary Services

This group of services covers animal and veterinary hospital and non-hospital medical, surgical and dental services delivered to animals. The services are aimed at curing, reactivating and/or maintaining the health status of the animal. Included are hospital, laboratory and technical services, food, and other facilities and resources.

All six (6) OECS countries have undertaken commitments on veterinary services. It may be observed that commitments are generally more liberal for mode 2 than other modes of supply; and the commitments undertaken by Antigua and Barbuda are generally more liberal than for other OECS countries.

The Veterinary Act of Antigua and Barbuda establishes a Veterinary Board to, *inter alia*, register veterinary surgeons and enrol animal health assistants.²²⁵ Registration as a veterinary surgeon is based on holding a degree in veterinary medicine from a recognized institution or equivalent qualification, being of good character and a fit and proper person to practise veterinary surgery.²²⁶ Due process rights are provided to an aggrieved applicant who may, *inter alia*, appeal to the Veterinary Appeals Tribunal.²²⁷

²²⁵ See Antigua and Barbuda Veterinary Act, section 4.

²²⁶ See Antigua and Barbuda Veterinary Act, sections 7 & 11.

²²⁷ See Antigua and Barbuda Veterinary Act, section 18.

The approach adopted in Antigua and Barbuda is similar to other jurisdictions. The Veterinary Surgeons Act of Saint Lucia provides for the registration of persons as veterinary surgeons based on entitlement to practice the profession in the UK or in another CARICOM country, or other appropriate qualifications recognized as furnishing a sufficient guarantee of the possession of requisite knowledge and skill for the efficient practice of veterinary surgery.²²⁸ The Medical Board (discussed above in relation to the Medical Registration Act and Health Practitioners Act) serves as the Board for the purpose of registering professionals under the Veterinary Surgeons Act.²²⁹ The relevant legislation in St Vincent and the Grenadines is also entitled the Veterinary Surgeons Act; and that in St Kitts and Nevis, the Veterinary Act. The provisions of the Medical Practitioners, Dentists and Veterinary Surgeons Registration Act of Grenada were repealed by the Health Practitioners Act of 2010.²³⁰ The Health Practitioners Act as above-noted regulates medical and dental practitioners as well as allied health professionals. The provisions of the Act do not expressly address veterinary surgeons. The status of the law with respect to veterinary surgeons in Grenada is therefore unclear. In Dominica there is no law regulating the veterinary profession.

The conditions placed on market access in all the legislation reviewed relate to appropriate qualifications and training and do not constitute unnecessary barriers to trade in veterinary services.

Services provided by midwives, nurses, physiotherapists and para-medical personnel

This subclass covers services such as supervision during pregnancy and childbirth and the supervision of the mother after birth. Services in the field of nursing (without admission) care, advice and prevention for patients at home, the provision of maternity care, children's hygienics, and similar activities. Physiotherapy and para-medical services are services in the field of physiotherapy, ergotherapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, and other related fields.

²²⁸ See Saint Lucia Veterinary Surgeons Act, section 6.

²²⁹ See Saint Lucia Veterinary Surgeons Act, sections 2 & 8.

²³⁰ See Grenada Health Practitioners Act, section 118.

Five (5) OECS countries, i.e. all save for Saint Lucia, have undertaken commitments in this subclass of services. Although Saint Lucia has not undertaken commitments its regulatory framework is not dissimilar to other OECS countries, in particular Grenada. It may be recalled that both Saint Lucia and Grenada have adopted Health Practitioners Acts establishing Allied Health (Professional) Councils for the purpose of, *inter alia*, registering allied health professionals (a list of which is contained in a Schedule to the Act). Eligibility for registration is based on obtaining the appropriate qualifications and training, fitness for practice and appropriate qualifications without nationality or residence requirements.²³¹ The regulatory framework for allied health professionals parallels that provided for medical and dental practitioners.

Saint Lucia and Grenada both have a Nurses and Midwives Registration Act. The Registration of Nurses and Midwives Act of Saint Lucia establishes a General Nursing Council to assist and advise the Minister with responsibility for health on matters relating to nursing and midwifery services. The Nurses and Midwives Registration Act, 2003, of Grenada establishes the Nurses and Midwives Council with similar responsibilities, including maintaining registers of nurses, nursing assistants and midwives (including entering and removing persons names from the register); conducting examinations of persons who wish to be registered on a register and who do not have appropriate qualifications; verifying overseas training institutions qualifications in nursing and midwifery; prescribing continuing professional education for nurses and midwives; prescribing qualifications for teachers of nursing and midwifery; certifying suitable nursing schools in Grenada; and generally, to ensure as far as possible maintenance of standards in the nursing and midwifery professions in Grenada.²³²

²³¹ See Saint Lucia Health Practitioners Act, section 90; Grenada Health Practitioners Act, section 58, 86 & 89 – also noting that a licence is valid for three (3) years unless suspended or revoked and is subject to renewal. Note that provision is made for professional indemnity insurance or coverage arrangements as determined by the Council, see Saint Lucia Health Practitioners Act, section 93(6) and due process for aggrieved applicants, *e.g. ibid*, sections 93(4) & 97(4).

²³² See Grenada Nurses and Midwives Registration Act, sections 3 & 7; see also *ibid*, section 16 - authorizing the Council to, *inter alia*, prescribe the conditions for admission to the nurses register, the register of nursing assistants, and the midwives register and, for that purpose, the required examinations, training and experience.

Section 13(1) of the Act provides that “[a]ny person who is appropriately qualified, whether or not he is a citizen of Grenada, may apply to the Secretary for registration in the appropriate register.” The appropriate qualifications are defined in terms of the completion of a prescribed course of study in theory and practice.²³³ An appeal lies to the High Court for any person aggrieved by the refusal of the Council to enter or a decision to remove a person’s name from the register.²³⁴

Reference has already been made to the draft St Vincent and the Grenadines Health Professionals Registration Act 2005 which covers, *inter alia*, physiotherapists as an allied health professional. The draft legislation does not include criteria based on nationality and residence and is essentially non-discriminatory in application. The Nurses Registration Act of St Vincent and the Grenadines regulates nurses, midwives and nursing assistants. The chief regulatory authority is the General Nursing Council which deals with accreditation and registration.²³⁵

The Dominica Nurses Registration Ordinance 1952 (as amended) establishes a Nursing Council with responsibility for, *inter alia*, registering nurses based on registration in the UK or any CARICOM Member State, additionally provision is made for registration based on reciprocal arrangements.²³⁶ Provision is also made for an appeal from a decision of the Council not to register an applicant or to remove a person’s name from the Register.²³⁷ The legislation is somewhat older and bears some resemblance to that found in Antigua and Barbuda.

The Nurses Registration Act of Antigua and Barbuda creates a Nursing Council which regulates the profession. Registration is based on registration in the UK or a CARICOM Member State and the language of the Act appears to create for such persons an

²³³ See Grenada Nurse and Midwives Registration Act, sections 18 -20; see also, *ibid*, section 21 on recognition of overseas qualifications.

²³⁴ See Grenada Nurse and Midwives Registration Act, section 27.

²³⁵ Note also that there is a Nurses Association which is a collegiate body looking out for the interests of its members.

²³⁶ See Dominica Nurses Registration Ordinance 1952 (as amended), section 7.

²³⁷ See Dominica Nurses Registration Ordinance 1952 (as amended), section 8.

entitlement to registration upon payment of the prescribed fee.²³⁸ Registration in any other jurisdiction entitles one to sit an exam to qualify for registration. The Antigua and Barbuda Nurses Registration Act consistently refers to the applicant in the feminine.²³⁹ Section 42(1) of the Antigua and Barbuda Interpretation Act provides that “[w]ords in an enactment importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons.” The language of the legislation is at best ambiguous and may be interpreted to restrict the practice of nursing to women. We were informed during our consultations that male nurses are being registered. **Nevertheless, with a view to providing clarity in the law the provision should be amended as the Act may be read to limit market access based on gender.**

The Antigua and Barbuda Midwifery Act is even more specific in its references to the female gender. The Act provides for the registration of any “woman” who has passed the first examination of the Central Midwives' Board of England under the rules of that Board; or any “woman” who produces a certificate of proficiency in midwifery issued by an institution in Antigua and Barbuda recognized by the Board as competent to carry out the prescribed training and to issue such certificate; or any “woman” certified or registered as a midwife in any other country where the Board is satisfied that the standard of training and examination required in that country is not lower than the standard of training and examination required under the Act. The regulatory framework provides that midwives may be registered for identified districts. Where this is done they must reside within the district and attend to cases solely within the district (save for cases of emergency) unless they have permission of a supervisory authority. The Act, however, does not impose quotas on the number of midwives which may be registered which, potentially, could give rise to market access concerns. In this regard it is worth noting

²³⁸ See Antigua and Barbuda Nurses Registration Act, section 7, as amended by the Factors Act.

²³⁹ *E.g.* Antigua and Barbuda Nurses Registration Act, section 7(1) “Any person who proves to the satisfaction of the Council that *she* has been registered generally as a nurse for the sick in the United Kingdom or a Member State, shall be entitled, on making an application in the prescribed manner and paying such fee not being greater than the fee payable on ordinary applications for registration under this Act, as the Council may demand, to be registered in a corresponding manner under this Act.” (added emphasis)

that Antigua and Barbuda has only bond commitments on market access with respect to consumption abroad (mode 2).

The Antigua and Barbuda Midwifery Act appears to be in need of updating. It is unclear whether the legislation is actually used and/or seen as relevant in modern circumstances.

The apparent limitation of the practice of midwifery to women is discriminatory and should be amended.

COMPUTER AND RELATED SERVICES

Consultancy service related to the installation of computer hardware

Software Implementation Services

Data Processing Services

Data base services

All six (6) OECS countries have undertaken commitments in the above listed groups of computer and related services. Saint Lucia has excluded systems and software consulting services (CPC 8421) and systems analysis services (CPC 8422) from its commitments on software implementation services (CPC 842).²⁴⁰ **Note is also made of the fact that Saint Lucia has indicated 'None' in both market access and national treatment columns for mode 4.** All six (6) OECS countries have also excluded CPC 8439 relating to "other data processing services" from their commitments; their specific commitments relating to CPC code 843 are therefore limited to input preparation services (CPC 8431), data processing and tabulation services (CPC 8432) and time sharing services (CPC 8433). The commitments of OECS countries in this sector are also subject to ENTs on commercial presence in certain instances (i.e. Saint Lucia and Grenada for consultancy services related to the installation of computer hardware) as well as well as local hiring requirements linked to commercial presence (for Grenada, St Kitts and Nevis, St Vincent and the Grenadines and Saint Lucia in varying instances).

The computer industry is largely unregulated in OECS countries; i.e. there is no specific legislation designed to control the supply of services. General legislation applicable to the licensing of professionals and various other occupations, above-discussed, also affect trade in computer and related services. It is presumed that the imposition of ENTs on

²⁴⁰ Note that this group covers all services involving consultancy services on, development and implementation of software. The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two. Saint Lucia's commitments are limited to system design services (CPC 8423), programming services (CPC 8424) and systems maintenance services (CPC 8425).

commercial presence (in addition to the general horizontal limitation with respect to ENTs on mode 4 – temporary movement of business persons – where relevant) will be implemented through the general business licensing regime as deemed necessary.

RESEARCH AND DEVELOPMENT SERVICES

Research and Development on natural sciences

Research and Development on social sciences and humanities

Inter-disciplinary Research and Development services

All six (6) OECS countries have undertaken commitments in the above-listed groups of R&D services. St Kitts and Nevis has excluded genetically modified agriculture and the use of radioactive material and equipment from R&D on natural sciences, and cultural services, heritage and educational services from R&D on social sciences and humanities; and Saint Lucia has excluded cultural sciences from R&D on social sciences and humanities. The principal reservations concern access to public funds for research (e.g. Grenada, St Kitts and Nevis, St Vincent and the Grenadines and Saint Lucia) and subsidies. As regards the latter, it may be recalled that the EPA expressly excludes disciplines on subsidies in services trade. It is understood that such specific reservations have been made for the purpose of emphasis.

It should be noted that some of the legislation above-discussed regulating professionals also addresses R&D services. For example, the Saint Lucia Health Practitioners Act provides for registration as a “research practitioner”.²⁴¹ Various other pieces of legislation in OECS countries affect trade in R&D services through the establishment of regional agencies to promote and supply R&D services.²⁴² It may be noted that in the context of the review no specific legislation restricting market access or national treatment in this sector was identified.

²⁴¹ See Saint Lucia Health Practitioners Act, section 37.

²⁴² E.g. Caribbean Agricultural and Research Development Institute Act; Caribbean Council for Science and Technology Act.

REAL ESTATE SERVICES

Saint Lucia is the only OECS country to have undertaken commitments on real estate services and these are limited to services provided on a fee or contract basis (as opposed to services involving own or leased property). The real estate sector in Saint Lucia is largely unregulated though the Real Estate Association has developed a manual for realtors which provides for registration and certification and establishes a code of conduct. The horizontal reservation concerning alien land holding licences is a measure which significantly affects real estate business. Saint Lucia has inscribed a sector specific limitation indicating “Joint ventures preferred” in the market access column for commercial presence. This suggests that market access may be conditioned on entering in to a joint venture arrangement (though the use of the word “preferred” is ambivalent). **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

It may be recalled that real estate services is one of the areas thought to be reserved for national in Saint Lucia.²⁴³ In light of Saint Lucia’s commitments in real estate services it is assumed that the Cabinet approved list of reserved areas has either been revised or is no longer utilized.

RENTAL/LEASING SERVICES WITHOUT OPERATORS

Relating to ships

Relating to aircraft

Relating to other transport equipment

Relating to other machinery and equipment

All six (6) OECS countries have made commitments with respect to rental/leasing services without operators. St Vincent and the Grenadines has excluded the subclass relating to ships but has undertaken commitments in all other subclasses, i.e. relating to

²⁴³ See *supra* discussion on Saint Lucia Trade Licence Act.

rental/leasing services concerning private cars, goods transport vehicles, aircraft, land transport equipment, agricultural machinery and equipment, construction machinery and equipment, office machinery and equipment (including computers), and other machinery and equipment without operators. A reservation on market access for commercial presence is inscribed with regard to Grenada, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines as regards enterprises with an initial investment of less than US\$1MIL which may be reserved for nationals. In the instance of Saint Lucia this figure is US\$500,000. as regards leasing or rental services concerning agricultural, construction, office and other machinery and equipment without operators. **Note is also made of the fact that Antigua and Barbuda has indicated ‘None’ under the national treatment column for mode 4 for all four (4) above-listed subclasses.**

No specific legislation limiting market access or national treatment for this group of services was identified. However, general measures regulating licences and permits are applicable and the discussion above on such measures is relevant here.

OTHER BUSINESS SERVICES

Advertising services

Market research and public opinion polling services

Management consulting services

Services related to management consulting

Technical testing and analysis services

Services incidental to agriculture, hunting and forestry

Services incidental to mining

Services incidental to manufacturing

Services incidental to energy distribution

Placement and supply services of personnel

Related scientific and technical consulting services

Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)

Packaging services

Publishing and printing on a fee or contract basis

Convention services

Other business services

OECS countries have undertaken various levels of commitments in relation to some or all of the above-mentioned groups of services as highlighted in the Annex to the Report.

Errors have been identified with respect to the inscriptions concerning Antigua and Barbuda on related scientific and technical consulting services and maintenance and repair of equipment.

Some of the services above-listed fall within the division which treats generally with professional services in the CPC code; reference is made, in particular, to market research and public opinion polling services, management consulting services, services related to management consulting, technical testing and analysis services, and related scientific and technical consulting services. All six (6) OECS countries have undertaken commitments in these areas, save for Saint Lucia as regards services related to management consulting. Grenada has limited its commitments to public relations services under management consulting and project management services other than for construction and other management services not elsewhere classified (i.e. excluding arbitration and conciliation services) with respect to services related to management consulting; St Kitts and Nevis has limited its commitments to geological, geophysical and other scientific prospecting services, subsurface surveying services and map making services (excluding surface surveying services) with respect to related scientific and technical consulting services. St Kitts and Nevis has conditioned market access on commercial presence with a joint venture requirement on environmental water, food and medical testing. Saint Lucia has conditioned market access on commercial presence indicating “None. Joint venture required on environmental water, food and medical testing” and for national treatment, “None, Joint venture required except environmental water, food and medical testing”.

Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work. Note is also made of the fact that

Antigua and Barbuda has indicated ‘None’ under the national treatment column for mode 4 for market research and public opinion polling services and services related to management consulting.

It may be noted that some classification concerns have arisen with respect to the treatment of consultants as a class of professional services which may, in fact, be associated with any activity. The cross-cutting nature of consultancy services means that while consulting appears to be a sector in itself, the service can be supplied in relation to virtually all other services sectors.²⁴⁴ In the CPC code ‘Management consulting services’ (CPC 865) and ‘Services related to management consulting’ (CPC 866) fall under ‘Other Business Services’. Management consulting covers general management consulting, marketing management consulting, human resources management consulting, production management consulting, public relations, and other management consulting services. Services related to management consulting cover project management other than for construction, arbitration and conciliation and other management services not elsewhere classified. The list does not cover all consultancy services and there are other references to consultancy services in the CPC code as seen above, for example, in relation to consultancy services related to the installation of computer hardware.

All six (6) OECS countries have undertaken commitments in advertising services; Grenada has limited these to planning, creating and placement services of advertising and other advertising services (excluding sale or leasing services of advertising space or time). Grenada, St Kitts and Nevis and St Vincent and the Grenadines have conditioned market access on commercial presence on joint venture requirements with minimum local participation of not less than 40%. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

²⁴⁴ See also “Negotiating Proposal for Consulting Services”, Communication from New Zealand, WTO doc. S/CSS/W/116, 6 Nov. 2001.

St Kitts and Nevis is the only OECS country to have undertaken commitments on placement and supply services of personnel. These are all unbound save for market access for commercial presence which is subject to ENTs.

Saint Lucia is the only OECS country to have undertaken commitments on investigation and security services. Saint Lucia has stated no reservations ('None'), save for mode 4 which is unbound. This class of services is divided into security consultation services, alarm monitoring services, armoured car services, guard services and other security services. The preliminary discussion in opening on the exclusion of services in the exercise of governmental authority, as well as the provisos stated in Article 224(2) of the EPA, are relevant here. The Saint Lucia Police Act regulates the Royal Saint Lucia Police Force and does not treat with private security services. No specific legislation was identified limiting market access or national treatment with respect to investigation and security services.

All OECS countries save for Antigua and Barbuda have undertaken commitments with respect to packaging services. This includes services consisting in packaging goods for others on a fee or contract basis, such as food products, pharmaceuticals, etc. and may entail form filling and sealing, pouch filling, bottling and aerosol packaging, etc. Parcel packing and gift wrapping are also included as well as labelling or imprinting of the package (but not if the services provided consist solely of printing information on packaging materials); packing and crating services incidental to transport are classified elsewhere in supporting and auxiliary transport services). Also if the packaging services include the processing of materials into a different product it falls within services incidental to manufacturing. No specific legislation restricting market access or national treatment was identified in relation to this class of services.

All six (6) OECS countries have undertaken commitments in relation to convention services (CPC 87909) which is a component of a more aggregated service CPC item "other business services n.e.c." (CPC 87909), falling within the wider class of 'Other

business services' (CPC 8790).²⁴⁵ Four (4) OECS countries have also specified commitments within the wider group classification. Antigua and Barbuda, St Kitts and Nevis and Saint Lucia have limited their commitments to translation and interpretation services, while St Vincent and the Grenadines has limited its commitment to CPC 87909, i.e. other business services not elsewhere classified. It may be noted that the commitments undertaken by St Vincent and the Grenadines for the aggregated service CPC 87909 differ from those undertaken in relation to convention services (where the latter more specific commitments prevail). No legislation limiting market access or national treatment in relation to these groups of services was identified.

A range of services listed under the general heading F. 'Other Business Services' are linked to the non-service sectors identified in Annex IV.E where OECS countries have undertaken commitments on commercial presence; reference is made to the services listed within the division of the CPC code concerning agricultural, mining and manufacturing services. These concern services incidental to agriculture, hunting and forestry; fishing; mining; manufacturing; energy distribution; and repair services incidental to metal products, machinery and equipment.

Four (4) OECS countries have undertaken commitments on services incidental to agriculture, hunting and forestry. Dominica has made commitments with respect to the group,²⁴⁶ while Grenada and St Vincent and the Grenadines have limited their commitments to services providing agricultural machinery, promoting propagation, growth and output of animals; Saint Lucia has limited its commitments to services incidental to hunting, forestry and logging.

²⁴⁵ This class is comprised of the following subclasses: Credit reporting services, Collection agency services, Telephone answering services, Duplicating services, Translation and interpretation services, Mailing list compilation and mailing services, Specialty design services, and Other business services n.e.c.

²⁴⁶ Services incidental to agriculture, hunting, forestry and fishing include: services rendered on a fee or contract basis, mostly performed at the site where the agricultural production is done, e.g. services providing agricultural machinery with drivers and crew; harvesting and related services; services of farm labour contractors; animal boarding, care and breeding services; services to promote propagation, growth and output of animals; services to promote commercial hunting and trapping; timber evaluation, firefighting, forest management including forest damage assessment services; logging related services; services related to fishery and operational services of fish hatcheries or fish farms.

Only St Kitts and Nevis has undertaken commitments on services incidental to mining.²⁴⁷ However, its commitments are all unbound save for market access on commercial presence which is subject to a joint venture requirement. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

All six (6) OECS countries have undertaken commitments in relation to services incidental to manufacturing. Antigua and Barbuda has made commitments with regard to the entire group of services (save for publishing and printing on a fee or contract basis, i.e. CPC 88442).²⁴⁸ Dominica, Grenada and St Vincent and the Grenadines have limited their commitments to manufacture of food and beverages, on a fee or contract basis (CPC 88411), manufacture of textiles, wearing apparel and leather products on a fee or contract basis (CPC 8842),²⁴⁹ Manufacture of paper and paper products, on a fee or contract basis (CPC88441), Manufacture of machinery and equipment n.e.c., on a fee or contract basis (CPC 8853), Manufacture of electrical machinery and apparatus n.e.c., on a fee or contract basis (CPC 8855), and Manufacture of medical precision and optical instruments, watches and clocks, on a fee or contract basis (CPC 8857). St Kitts and Nevis has undertaken commitments for the group of services incidental to the manufacture of metal products, machinery and equipment (CPC 885). Saint Lucia has undertaken commitments for Manufacture of machinery and equipment n.e.c., on a fee or

²⁴⁷ Services incidental to mining cover services rendered on a fee or contract basis at oil and gas fields, e.g. drilling services, derrick building, repair and dismantling services, oil and gas well casings cementing services. But note that it excludes mineral prospecting services, oil and gas field exploration and geophysical (e.g. seismic) and geological surveying services which are classified in class 8675 (Engineering related scientific and technical consulting services).

²⁴⁸ Services incidental to manufacturing include manufacturing on a fee or contract basis, i.e. manufacturing services rendered to others where the raw materials processed, treated or finished are not owned by the manufacturer. Assembly, installation other than construction work, fitting of articles, maintenance and repair services are also classified here. Manufacturing services may relate, for example, to processing and preserving of meat, fish, fruit, vegetables, dairy products and bakery products; or finishing of textiles and manufacture of made-up textile articles (incl. services concerning some entrepreneurial functions, e.g. designing and preparing samples); printing, e.g. bookbinding services. But note that it does not include installation work for constructions, or repair services of motor vehicles, motorcycles, and household appliances, equipment, furnishings and other consumer goods, or services consisting in merely bottling and labelling liquors, wines and waters.

²⁴⁹ Note that the class CPC 8842 is divided into three subclasses, i.e. CPC 88421 Manufacture of textiles on a fee or contract basis; CPC 88422 Manufacture of wearing apparel on a fee or contract basis; and CPC 88423 Manufacture of leather products on a fee or contract basis; i.e. the items individually specified in the commitments undertaken by Dominica, Grenada and St Vincent and the Grenadines.

contract basis (CPC 8853); Manufacture of electrical machinery and apparatus n.e.c., on a fee or contract basis (CPC 8855); and Manufacture of medical precision and optical instruments, watches and clocks, on a fee or contract basis (CPC 8857). St Kitts and Nevis has reserved the right to impose ENTs on market access for commercial presence, while Saint Lucia has conditioned market access for commercial presence on technology transfer.

No specific legislation restricting market access or national treatment was identified. General measures as above-discussed in relation to the licensing of business services will affect the supply of services. Reference may also be made to the subsequent discussion on commercial presence in non-services sectors.

Only Grenada has undertaken commitments in relation to services incidental to energy distribution, transmission and generation of electricity, except transmission, generation and distribution services of gaseous fuels and steam and hot water. Grenada has undertaken bound commitments with respect to mode 2 as well as market access for commercial presence but only as of 1 January 2012. Currently Grenada Electricity Services Ltd (GRENLEC) is the exclusive supplier of electricity to Grenada, Carriacou and Petite Martinique. The company was created as a private limited company, a subsidiary of the Commonwealth Development Corporation, by an Act passed in the Grenada Legislative Council on 7th November, 1960. It was privatised in 1994 with the Government retaining 10% of its shares. **The commitments made by Grenada will require the liberalization of the market by 2012. Assistance will likely be required in the negotiation and development of a regulatory framework appropriate to Grenada's circumstances. This constitutes one of the areas identified for further work.**

All six (6) OECS countries have undertaken commitments for the maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment). Antigua and Barbuda, Dominica and Saint Lucia have made commitments for the full range of services listed in the Annex under this heading, encompassing repair services of

personal and household goods (CPC 633),²⁵⁰ as well as most repair services incidental to metal products, machinery and equipment (CPC 886).²⁵¹ Grenada and St Vincent and the Grenadines made commitments for a sub-list of repair services incidental to metal products, machinery and equipment.²⁵² St Kitts and Nevis made commitments only in relation to repair services of fabricated metal products on a fee or contract basis (CPC 8861 & 8862); and repair services of medical, precision and optical instruments, watches and clocks, on a fee or contract basis (CPC 8866). **It should be noted that certain entries for Antigua and Barbuda are missing with respect to modes 2 and 3.** No specific legislation limiting market access or national treatment was identified in relation to this category of services.

St Kitts and Nevis is the only OECS country to have undertaken commitments with respect to publishing and printing on a fee or contract basis (CPC 88442). The commitments undertaken, however, are minimal as they are unbound, save for market access on commercial presence which is subject to ENTs.

²⁵⁰ Note that this falls within CPC Division: 63 on Retail trade services; repair services of personal and household goods

²⁵¹ Specific commitments were taken with respect to Repair services of fabricated metal products, except machinery and equipment, on a fee or contract basis (CPC 8861); Repair services of machinery and equipment n.e.c., on a fee or contract basis (CPC 8862); Repair services n.e.c. of office, accounting and computing machinery, on a fee or contract basis (CPC 8863); Repair services of electrical machinery and apparatus n.e.c., on a fee or contract basis (CPC 8864); Repair services of radio, television and communication equipment and apparatus, on a fee or contract basis (CPC 8865); Repair services of medical, precision and optical instruments, watches and clocks, on a fee or contract basis (CPC 8866), but excluding Repair services n.e.c. of motor vehicles, trailers and semi-trailers, on a fee or contract basis (CPC 8867) and Repair services of other transport equipment, on a fee or contract basis (CPC 8868)

²⁵² *Ibid.*

2. COMMUNICATION SERVICES

COURIER SERVICES

All six (6) OECS countries have undertaken commitments on courier services; **entries are, however, missing for Dominica and St Vincent and the Grenadines with respect to market access for modes 1 and 2.** Antigua and Barbuda, Grenada and Saint Lucia have all made broader commitments for cross-border trade than commercial presence which is unbound for market access and national treatment. St Kitts and Nevis, St Vincent and the Grenadines (with respect to market access) and Dominica (as of 2018) have not made any specific reservations on commercial presence. **Note is also made of the fact that Grenada and St Kitts and Nevis have indicated ‘None’ under the national treatment column for mode 4**

The class of courier services on which commitments have been taken covers multi-modal courier services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, *other than by the national postal administration.*²⁵³

Significant postal reforms in the European Union have been implemented since the late 1990s mandating the gradual opening of the postal markets within a regulatory framework including universal service obligations. In accordance with European Commission Postal Directives the majority of EU Member States abolished exclusive rights in the postal market before 1 January 2011; the remaining States must do so by 1 January 2013. The regulatory framework which has been established to govern the liberalized postal market requires tariffs for universal services to be cost-based, transparent and non-discriminatory; limits cross-subsidization to the fulfillment of universal services obligations; requires universal service providers to apply transparent

²⁵³ Note that these services can be provided by using either self-owned or public transport media and other courier services for goods, not elsewhere classified, e.g. trucking or transfer services without storage, for freight. This class excludes courier services for mail by air which are classified under mail transportation by air, i.e. CPC 73210.

and separated cost accounting principles; and requires EU Member States to establish regulatory authorities independent from postal operators. The Directives also require EU Member States to establish a compensation fund to assist with the implementation of the universal service obligation where this would otherwise constitute an unfair burden for the provider. Access to postal networks is also addressed by the relevant EU Directives although no specific access obligations are imposed. Nevertheless, some EU Member States have granted their regulatory authority the right to require downstream access to the public postal network under appropriate circumstances.²⁵⁴

The regulatory framework governing the liberalized postal market in Europe is reflected in the framework set out in the EPA for courier services. The EPA regulatory framework provides for certain pro-competitive disciplines which are essentially GATS plus.²⁵⁵ It is anticipated that these measures will be undertaken in accordance with Title IV, Chapter 1 on competition policy.

Article 93 of the EPA contemplates the establishment of an appropriate regulatory body for the industry. The EPA provides that such entity “shall be legally separate from, and not accountable to, any supplier of courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.”²⁵⁶ Measures must be maintained or introduced to prevent anti-competitive actions by dominant suppliers (i.e. those that may materially affect conditions in the market). Although the market behaviours which may constitute anticompetitive practices are not spelt out, analogies may be drawn from the examples provided on telecommunications below.²⁵⁷

²⁵⁴ See also “Postal and Courier Services”, Background Note by the Secretariat, S/C/W/319 at pp.20-21 & 29.

²⁵⁵ Note that Dominica and Grenada have undertaken GATS commitments on courier services.

²⁵⁶ EPA, Article 93.

²⁵⁷ See EPA, Article 97; note in particular references to cross-subsidization, and not making available technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Provision is also made for the imposition of universal service obligations which are not regarded as anti-competitive where such programmes are administered transparently, non-discriminatorily, in a competitively neutral manner and not more burdensome than necessary.²⁵⁸ However, the definition of universal service in Article 89 of the EPA refers to the 'postal' service. It may be questioned therefore whether the provisions on universal service are in fact applicable to courier services.²⁵⁹ It is likely that the intention is to mirror the universal service obligations imposed by the EU Directives above-discussed.

Licences may only be required for the provision of courier services where they fall within the scope of the universal service obligation.²⁶⁰ As such, normal courier services that do not fall within the scope of the universal service obligation must be permitted without the requirement for a licence for cross-border supply.²⁶¹ Where the supply of the service falls within the universal service obligation, the relevant information with respect to licensing criteria, the time for making decisions, and the terms and conditions of individual licences must be published. The reasons for denial of any applications must be provided on request and a transparent, non-discriminatory and objective appeal procedure implemented.

In contrast with the EU, there is no legislation regulating courier services as distinct from postal services (i.e. that undertaken by the national administration) in the OECS region. Additionally, OECS countries have not yet developed and implemented an effective competition policy and law. It would seem that the prevention of anti-competitive practices in the courier sector could be adequately dealt by any national/OECS regional competition authority which may be established or the CARICOM Competition Commission (to the extent that anti-competitive acts have cross-border effects) given the

²⁵⁸ See EPA, Article 91.

²⁵⁹ Note that the WTO Services Sectoral Classification List places postal and courier services in a single subcategory of 'communication services'. The substantive difference between the services is in the nature of the supplier, i.e. postal services are supplied by a national postal administration. The universal service obligation is usually discussed in the context of postal services as opposed to courier services; however, Section 3 of Chapter 5 of Title II of the EPA is expressly limited to courier services.

²⁶⁰ See EPA, Article 92.

²⁶¹ OECS countries have undertaken bound commitments for modes 1 and 2 without limitation, and there are no existing operating conditions for the supply of courier services.

primacy of the reference to Title IV, Chapter in Article 90 of the EPA. This is one of the options which may be considered in implementing the EPA regulatory framework.

The development of an appropriate regulatory framework to govern courier services is a substantive implementation concern for all six (6) OECS countries. This constitutes one of the areas identified for further work.

TELECOMMUNICATIONS

Article 94(1)(a) EPA defines "telecommunications services" as all services consisting of the transmission and reception of electro-magnetic signals but not covering the economic activity consisting of the provision of content which requires telecommunications for its transport.

The national Telecommunications Acts and implementing regulations of the five (5) OECS countries which are party to the Treaty establishing the Eastern Caribbean Telecommunications Authority (ECTEL) are similar. The Telecommunications Acts provide that²⁶²

“telecommunications” means any form of transmission, emission, or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic means;

“telecommunications services” means services provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise, or such other services as may be prescribed by the Minister.

The legislation further clarifies that it does not apply to, *inter alia*, the program content and scheduling, as opposed to the transmission aspects of broadcasting networks and services.²⁶³

The services covered under “telecommunications services” in the EPA as such accord with that regulated under the ECTEL Telecommunications Act. Consultations are underway to replace the existing legislation with a new ‘Electronic Communications Bill’ (hereinafter ‘new BILL’). The new BILL would replace the traditional reference to

²⁶² E.g. Saint Lucia Telecommunications Act, section 3; note also that “telecommunications facilities” means any facility, apparatus or other thing that is used or capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;

²⁶³ E.g. Saint Lucia Act, section 5(1).

‘telecommunications services’ with the more modern term “electronic communications service”. This is defined in section 2 as “a service provided wholly or partially by the conveyance of signals on electronic communications networks”. “Electronic communications network” is in turn defined in terms of transmission systems which permit the conveyance of signals by electromagnetic means.²⁶⁴ Section 5 of the new BILL on “Application and Non-Application of the Act” further clarifies that the Act does not apply to the program content and scheduling aspects of broadcasting networks and services but it applies to the transmission aspects of broadcasting. As such, the scope of the existing and proposed legislation is equivalent to that covered by the EPA which provides for the implementation of specific sectoral regulatory disciplines.

The legislation and implementing regulations as well as the proposed new BILL are reviewed for their consistency with the EPA regulatory disciplines. The legislative framework with respect to telecommunications services in Antigua and Barbuda, however, is very different to that of other OECS countries and, as such, is reviewed following the discussion on ECTEL member States.

The Regulatory Authority

Article 95(1) of the EPA requires that the regulatory authority for telecommunications services shall be “legally distinct and functionally independent from any supplier of telecommunications services”. The “regulatory authority” is defined as the *body or bodies* charged with the regulation of telecommunications.²⁶⁵ For the OECS Members of ECTEL the regulatory bodies are ECTEL and their respective National Telecommunications Regulatory Commissions (NTRC). The ECTEL Treaty and the

²⁶⁴ See Electronic Communications Bill, section 2 - defining “electronic communications network” as transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks; and “electronic communications” as any type of transmission and receipt of symbols, signals, writing, images and sounds, or any sort of communication on lines, by radio, optical, wire, or other electromagnetic systems.

²⁶⁵ See EPA, Article 94(1)(b).

Telecommunications Acts of the five (5) OECS ECTEL Members clearly provide for a legally distinct and functionally independent regulator as required by the EPA.²⁶⁶

Article 95(2) of the EPA provides that “[t]he regulatory authority *shall be sufficiently empowered to regulate the sector*. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, *in particular where those tasks are assigned to more than one body*.” (added emphasis)

The ECTEL model is intended, *inter alia*, to achieve economies of scale and scope with a view to creating a more empowered regulator. The model is not perfect but it appears to have served the region well. The new BILL is designed to address some, though not all, of the possible shortcomings which have been identified. Certain concerns which were raised during our consultations pertaining, for example, to the establishment and approval of NTRC budgets are not resolved in the new Bill. However, it may be questioned the extent to which this is relevant to the EPA regulatory framework *per se*. Adequate resources must be made available to the bodies charged with regulating the sector to ensure that they are sufficiently empowered to perform their assigned tasks. The extent to which budgetary concerns may inhibit the effectiveness of NTRCs may also be addressed through the manner of the collection and use of telecommunications fees which is dealt with subsequently.

The Telecommunications Acts clearly address the powers of the Minister,²⁶⁷ and the functions and powers of the NTRCs,²⁶⁸ which include significantly, a mandate to ensure compliance with their respective Government’s international obligations on telecommunications. The Acts also address the role of ECTEL as an advisory board on

²⁶⁶ The current legislation provides that the Commissioners must be persons of recognised standing and experience, all of whom may be drawn from the certain stated disciplines. Provision is made for disclosure of any conflict of interest and the withdrawal of a Commissioner on grounds of interest from discussions and/or a vote on any matter in meetings as well in the context of dispute resolution; see Telecommunications Act, section 17(4) & Schedule 1, paras 9 & 10. The proposed new Bill also addresses certain factors which may disqualify a person from being appointed a Commissioner including; see new BILL, sections 9(4) & 20.

²⁶⁷ *E.g.* Saint Lucia Telecommunications Act section 6.

²⁶⁸ *E.g.* Saint Lucia Telecommunications Act sections 11 & 12, and Part 3; see also the new BILL, Part 3.

policy formulation and other technical aspects of regulations, which are highly specialized. In certain instances it is clearly stated that the NTRCs which retain certain decision making powers must act in accordance with the recommendations of ECTEL. In other cases this is implicit. The new BILL is, arguably, clearer on the nature of this relationship.²⁶⁹ The ECTEL model is seen as a positive alternative for emulation within other groups of small states.

Article 95(3) of the EPA requires that the regulator be impartial with respect to all market participants. A supplier affected by the decision of a regulatory authority must have a right to appeal against that decision to an appeal body that is independent of the parties involved.²⁷⁰

The Telecommunications Acts of all ECTEL Member States provide for a right to appeal to the Court of Appeal from any judgement, order or award of the NTRCs.²⁷¹ This is further affirmed in the Telecommunications (Dispute Resolution) Regulations²⁷² which provides, *inter alia*, additional details on the procedures for appeals.²⁷³ The proposed new BILL also addresses the right to appeal and, indeed, extends this to certain cases where the regulator fails to act within prescribed time limits.²⁷⁴

²⁶⁹ See, for example, the procedures concerning individual licences and fees generally.

²⁷⁰ See EPA, Article 95(4) which also provides that where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced. Note that the right to an appeal is further affirmed in Article 96(3)(c) which provides that where a licence is required “the applicant of a licence shall be able to seek recourse before an appeal body in case a licence is unduly denied”.

²⁷¹ *E.g.* Saint Lucia Act, Section 18(5).

²⁷² *E.g.* Saint Lucia Telecommunications (Dispute Resolution) Regulations, Regulation 3(1) - providing that “[t]hese Regulations apply to all disputes concerning the operation of telecommunications facilities and provision of telecommunication services arising in Saint Lucia including, but not limited to, complaints initiated by (a) subscribers or other members of the public against a telecommunications provider; (b) a licensee against another licensee; (c) persons using frequencies authorization.”

²⁷³ See also Saint Lucia Telecommunications (Dispute Resolution) Regulations, Part 4 - dealing with disputes settled by arbitration either voluntarily or at the direction of the Commission.

²⁷⁴ Note that provisions of the Telecommunications Act are further elaborated in the proposed new BILL in sections 40(10) & 76 - but there is some ambiguity as to whether the reference therein is to working days or calendar days; contrast the drafting of section 41 of the new BILL.

Authorisation requirements and procedures

Article 96 of the EPA addresses States' obligations regarding authorisation to provide telecommunications services. The basic guiding principle is that the "[p]rovision of services shall, as much as possible, be authorised following mere notification." The position adopted in the Telecommunications Acts, however, is essentially the inverse; i.e. "[a] person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence."²⁷⁵ **The new BILL maintains this stance.** Consultations with some NTRCs suggest a willingness to consider the EU approach adopted in Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive). A key concern, however, is the indirect effect this could possibly have on fees. The EPA directly addresses the issue of fees and as indicated below would seem to require certain amendments to the current regime for the imposition, collection and distribution of fees, separate and distinct to the discussion on whether to liberalize the licensing regime.

The language of the EPA draws heavily on EU regulations in the telecommunications sector. A review of the EU Authorisation Directive is instructive. The EU Directive covers authorisations of all electronic communications networks and services whether they are provided to the public or not.²⁷⁶ The basic principle espoused is that the least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.²⁷⁷ *The Directive seeks to achieve those aims by providing for the general authorisation of all electronic communications networks and services without*

²⁷⁵ E.g. Saint Lucia Telecommunications Act, section 28(1).

²⁷⁶ Note that the Directive only applies to the granting of rights to use radio frequencies where such use involves the provision of an electronic communications network or service, normally for remuneration. The self-use of radio terminal equipment, based on the non-exclusive use of specific radio frequencies by a user and not related to an economic activity, such as use of a citizen's band by radio amateurs, does not consist of the provision of an electronic communications network or service and is therefore not covered by the Directive; see EU Authorisation Directive, preambular para 5

²⁷⁷ See EU Authorisation Directive, 7th preambular paragraph.

requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only. Where Member States require notification by providers of electronic communication networks or services when they start their activities, they may also require proof of such notification having been made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority to which the notification must be made.²⁷⁸ This extends in principle to rights of use of radio frequencies and numbers,²⁷⁹ though special rules apply to authorizations for the allocation of frequencies, numbers, rights of way and other scarce resources.²⁸⁰

In the case of electronic communications networks and services not provided to the public the EU Directive recognizes that it is appropriate to impose fewer and lighter conditions than are justified for electronic communications networks and services provided to the public.²⁸¹

The Directive ostensibly seeks to minimize the administrative burden of regulation on the service supplier and the regulator. It recognizes that subjecting service providers to reporting and information obligations can be cumbersome, both for the undertaking and for the national regulatory authority concerned. Such obligations should therefore be proportionate, objectively justified and limited to what is strictly necessary.²⁸² It is not

²⁷⁸ See EU Authorisation Directive, 8th preambular paragraph & Article 3(2) providing that “... [t]he undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use...”

²⁷⁹ See EU Authorisation Directive, Article 5(1) providing that, where possible, in particular where the risk of harmful interference is negligible, the use of radio frequencies should not be subject to the grant of individual rights of use but should form part of the general authorisation.

²⁸⁰ *E.g.* EU Authorisation Directive, Article 7 - on procedures for limiting the number of rights of use to be granted for radio frequencies.

²⁸¹ See EU Authorisation Directive, 16th preambular paragraph.

²⁸² See EU Authorisation Directive, Article 3(3) providing that “[t]he notification referred to in paragraph 2 shall not entail more than a declaration by a legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to what is necessary for the identification of the provider, such as company registration numbers,

necessary to require systematic and regular proof of compliance with all conditions under the general authorisation or attached to rights of use. Additionally, a supplier has a right to know the purposes for which the information it should provide will be used. The Directive expressly states that the provision of information should not be a condition for market access. For statistical purposes a notification may be required from providers of electronic communication networks or services when they cease activities.²⁸³

The Authorization Directive directly addresses concerns alluded to above with respect to EU policies on licensing fees which are built into the EPA. The Directive provides that administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. For this purpose transparency should be created in the income and expenditure of national regulatory authorities by means of annual reporting about the total sum of charges collected and the administrative costs incurred. This will allow undertakings to verify that administrative costs and charges are in balance.²⁸⁴ The correlation between fees and the effective budgetary requirements of the regulator is (as highlighted in the discussion below) a basic obligation of the regulatory framework on telecommunications provided for in the EPA.

It is recognized that with acceptance of a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to use numbers, radio frequencies and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. The Directive cites as an example of a fair, simple and transparent alternative for these charge attribution criteria a turnover related distribution

and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.”

²⁸³ See EU Authorisation Directive, 28th preambular paragraph.

²⁸⁴ See EU Authorisation Directive, 30th preambular paragraph.

fee. Alternatively, where administrative charges are very low, flat rate charges, or charges combining a flat rate basis with a turnover related element could also be appropriate.²⁸⁵

In accordance with this Article 12 of the Authorisation Directive provides:

1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations ..., which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

2. Where national regulatory authorities impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market.²⁸⁶ *Significantly the Directive is without prejudice to the purpose for which fees for rights of use are employed. Such fees may for instance be used to finance*

²⁸⁵ See EU Authorisation Directive, 31st preambular paragraph.

²⁸⁶ See also EU Authorisation Directive, Article 13 - providing that “Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).”

*activities of national regulatory authorities that cannot be covered by administrative charges.*²⁸⁷

The Directive also recognizes the need for possible transitional measures as there may be circumstances under which the abolition of an authorisation condition regarding access to electronic communications networks would create serious hardship for one or more undertakings that have benefited from the condition.²⁸⁸

Article 96 of the EPA is clearly intended to ‘export’ to the Caribbean the EU approach to regulation of the telecommunications sector. Article 96 on “Authorisation to provide telecommunications services” provides:

1. Provision of services shall, as much as possible, be *authorised following mere notification*.
2. A licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. Where a licence is required:
 - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
 - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;
 - (c) the applicant of a licence shall be able to seek recourse before an appeal body in case a licence is unduly denied;
 - (d) licence fees required by the EC Party or by the Signatory CARIFORUM States for granting a licence shall not exceed the administrative costs normally incurred in the *management, control and enforcement* of the applicable licences.
(added emphasis)

²⁸⁷ See EU Authorisation Directive, 32nd preambular paragraph.

²⁸⁸ See EU Authorisation Directive, 37th preambular paragraph.

Some requirements of Article 96 are reflected in the Telecommunications Acts. NTRCs are required to publish in the Gazette licences issued, modified, renewed or revoked.²⁸⁹ The new BILL repeats this.²⁹⁰ The Telecommunications Acts and implementing regulations address the matters which the Minister must consider in granting a licence, including considerations relating to competition, universal service and whether foreign and domestic investors will be encouraged to invest in telecommunications. The Acts limit the Minister's discretionary authority in providing that s/he may not grant an individual licence unless ECTEL recommends accordingly.²⁹¹ With respect to class licences, the Acts provide for applications to be submitted to the NTRC which determines whether the applicant falls within the definition of the class licence. The Minister acts on the recommendation of the NTRC in granting the licence.²⁹² As regards frequency authorizations, the NTRC must consult with ECTEL and the Minister may grant the frequency authorization where the NTRC recommends accordingly.²⁹³

The Telecommunications Acts suggest prompt action in treating with licence applications.²⁹⁴ The procedures for granting an individual licence, for example, provide that the NTRCs “*shall immediately transmit*” the application to ECTEL, for its review and recommendation. On receipt of the recommendation from ECTEL, the NTRCs transmit the application together with ECTEL's recommendation to the Minister with whom the decision to grant the licence lies. The Telecommunications (Licensing and Authorization) Regulations provide greater detail, notably limiting ECTEL's consideration of an application for an individual or class licence to sixty (60) days; mandating the forwarding by the NTRCs of ECTEL's recommendations within five (5) days of receiving same, and the decision of the Minister within two (2) days therefrom.²⁹⁵

²⁸⁹ E.g. Saint Lucia Telecommunications Act, section 13(7).

²⁹⁰ See new BILL, section 34(7).

²⁹¹ E.g. Saint Lucia Telecommunications Act, section 31.

²⁹² E.g. Saint Lucia Telecommunications Act, sections 32 & 33.

²⁹³ E.g. Saint Lucia Telecommunications Act, section 35; note also *ibid*, section 34 on the grant of special licences by the Minister in emergencies or other exigent circumstances which are valid for no more than ten (10) days.

²⁹⁴ E.g. Saint Lucia Telecommunications Act, section 29.

²⁹⁵ E.g. Saint Lucia Telecommunications (Licensing and Authorization) Regulations, regulations 7 & 8.

The new BILL proposes shorter timeframes and, as above-noted, provides a right of appeal where the regulator fails to act in a timely fashion.²⁹⁶

The Telecommunications Acts also require the provision of reasons for the denial of a licence or authorization. This is further underscored in the Telecommunications (Licensing and Authorization) Regulations.²⁹⁷ This satisfies and indeed, goes further than the EPA which requires that the reasons for the denial of a licence shall be made known in writing to the applicant upon request.²⁹⁸

The EPA obligations with respect to licence fees are new disciplines for CARIFORUM States as they go beyond the WTO Agreements. As above-noted, Article 96(3)(d) of the EPA provides that “licence fees ... for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences.” (added emphasis)

One of the functions assigned to the NTRCs under the Telecommunications Acts is the collection of all fees prescribed and any other tariffs levied under the legislation or implementing regulations.²⁹⁹ The new BILL is more explicit and essentially codifies current practices in providing that the NTRCs “collect, for paying into the Consolidated Fund, all fees prescribed other than fees collected by ECTEL under section 73 [sic];”³⁰⁰ Section 70 of the new BILL provides:

- (1) The fees payable under this Act are as prescribed.
- (2) Subject to subsection (3), the fees payable under this Act or the Regulations shall be paid to the Consolidated Fund
- (3) The fees payable under this Act or the Regulations with respect to spectrum shall be payable to ECTEL and shall form part of the Revenue of ECTEL.

²⁹⁶ See new BILL, section see s.40(10); see also *ibid*, sections 41 & 42.

²⁹⁷ *E.g.* Saint Lucia Telecommunications (Licensing and Authorization) Regulations, regulation 8(2); Saint Lucia Telecommunications Act, section 6(2) – where the Minister fails to grant to an applicant a licence or frequency authorisation s/he must give that applicant his or her reasons for that decision in writing.

²⁹⁸ See EPA, Article 96(3)(b).

²⁹⁹ *E.g.* Saint Lucia Telecommunications Act, section 11(g).

³⁰⁰ See new BILL, section 1(g).

Consultations with NTRCs reveal that the administrative costs of ECTEL and NTRCs are funded through frequency authorization fees,³⁰¹ whereas licensing fees are treated as the general revenue of the respective governments. There were some suggestions that this was justified as the Consolidated Fund is used to finance various activities relevant to the regulation of the Telecommunications sector and the fees charged were, in fact, not necessarily disproportionate to the costs normally incurred in the management, control and enforcement of licences. This position gains support in the provisions of the new BILL addressing the revenue of the NTRCs which includes monies allocated to these entities by Parliament.³⁰² While the approach does not promote maximum transparency, the argument could be supported by an examination of the actual fees collected vis-à-vis the relevant budgetary expenditures of the NTRCs and ECTEL.³⁰³

The Telecommunications (Fees) Regulations provide for a non refundable application fee, an initial fee payable within two (2) weeks of notice being provided of the grant of a licence, and an annual fee payable on the anniversary date of the grant of the licence or frequency authorization.³⁰⁴ The Schedule to the Telecommunications (Fees) Regulations provides for a flat application fee and initial fee. The annual fee is generally stated as a (3) % of gross revenues for individual licences and type ‘A’ class licences. The annual fees for frequency authorizations are generally stated as a flat rate per frequency, link, antenna/day. The Telecommunications (Numbering) Regulations provide a distinct schedule of flat fees (application, initial and annual).³⁰⁵

³⁰¹ See also Telecommunications (Frequency Fees) (Collection Mechanism) Regulations, regulations 5 -7 - requiring licensees to pay the frequency fees at the principal office of the Commission by a bank draft made payable to ECTEL, and establishing procedures for the collection of fees by ECTEL.

³⁰² See new BILL, section 26 - providing that “[t]he Revenue of the Commission shall comprise the following - (a) monies allocated to it by Parliament; (b) annual financial contributions made by ECTEL to the Commission and chargeable to the General Budget of ECTEL; and (c) monies received by the Commission as grants or loans. See also *ibid*, sections 28, 30, 31 & 33 – providing for, *inter alia*, exemptions for NTRCs from the payment of taxes, levies, and fees on income, property and documents.

³⁰³ But note that spectrum licence fees can include payments for scarce resources. As such, some of the funds now being used to fund ECTEL and NTRCs need not have been allocated for this purpose.

³⁰⁴ E.g. Saint Lucia Telecommunications (Fees) Regulations, regulation 4.

³⁰⁵ E.g. Saint Lucia Telecommunications (Numbering) Regulations, regulation 8.

As above-noted in the discussion on the EU Authorization Directive, a revenue-based contribution regime such as prescribed in the Telecommunications (Fees) Regulations may not necessarily exceed administrative costs taking into account the tasks assigned to the Regulator. Revenue-based contribution regimes are commonly used. Some of these regimes expressly provide for annual adjustments to supplement fees based on the actual expenditures of the Regulator.³⁰⁶ While such checks and balances are not expressly required by the EPA such mechanisms provide a means through which to keep fees in line with administrative costs.

It should be noted that the EPA requirement on fees effectively proscribes the auctioning of licences. This is something which appears to be contemplated in the Telecommunications Acts though it, in fact, it has not been utilized.³⁰⁷ In this regard it may be noted that the new BILL makes no similar provision for invitations to tender in respect of telecommunications networks or services.³⁰⁸

Competitive safeguards on major suppliers

Article 97 of the EPA requires that appropriate measures are put in place to prevent suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. A non-exhaustive list of anti-competitive practices is provided, including engaging in anti-competitive cross-subsidisation; using information obtained from competitors with anti-competitive results; and not making available to other services suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

A "major supplier" in the telecommunications sector is defined in Article 94(1)(d) of the EPA as a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications

³⁰⁶ E.g. Canada Radio-television and Telecommunications Commission, www.crtc.gc.ca

³⁰⁷ E.g. Saint Lucia Telecommunications Act, section 3 - defining "tender fees" as the fees payable by an applicant for an individual licence in order to participate in an open tender procedure. See also *ibid*, section 29(4) on the procedure for the grant of individual licences in the absence of an invitation to tender in respect of telecommunications network or service.

³⁰⁸ Note that section 40 of the new BILL addressing procedures for the grant of licences has no similar reference to invitations to tender, nor is there a definition of tender fees in the interpretation section.

services as a result of control over essential facilities³⁰⁹ or the use of its position in the market.

The Telecommunications Acts address competition issues but do not provide an adequate regulatory framework. This is one of clear deficiencies of the legislation which the new BILL seeks to address. The Telecommunications Acts provide that the NTRCs are to monitor anti-competitive practices in the telecommunications sector and advise the national body responsible for the regulation of anti-competitive practices.³¹⁰ No OECS State, however, has established an effective competition policy and law and national competition authority. The role of the NTRCs in monitoring competition in the telecommunications sector is repeated in the new BILL which seeks to expand this. Section 53 of the new BILL on “Competition and Dominance” would empower the NTRCs to:³¹¹

- (a) declare the service provider to be a dominant service provider;
- (b) issue an enforcement order against the dominant service provider;
- (c) order the cessation of abusive conduct or to prescribe specific changes in its conduct to limit the abusive aspects;
- (d) recommend the suspension or revocation of the licence of the dominant service provider;
- (e) order compensation to be paid to subscribers or competitors injured by the abusive conduct;
- (f) order the restructuring of the dominant service provider;
- (g) facilitate and approve settlement with the aggrieved service provider through dispute resolution.

The new BILL clearly contemplates the NTRCs undertaking more than a mere advisory role in relation to the national competition commissions than at present provided in the Telecommunications Acts.

³⁰⁹ See EPA, Article 94 (1)(c) defining "essential telecommunications facilities" as facilities of a public telecommunications transport network and service that: (i) are exclusively or predominantly provided by a single or limited number of suppliers; and (ii) cannot feasibly be economically or technically substituted in order to provide a service.

³¹⁰ *E.g.* Saint Lucia Telecommunications Act, section 11(m).

³¹¹ See new BILL, sections 11(1)(m) & 53(9).

Virtually all NTRCs concede that there is currently an inadequate infrastructure to deal with anti-competitive behaviour in the telecommunications sector. This possibly encourages greater regulation in an effort to prevent market distortions as few mechanisms exist to address the negative effects of such behavior as they are manifested. The current arrangement is also plagued by a lack of transparency as the principles and rules used to determine anti-competitive behaviour are not published and may therefore appear to be unpredictable. It has been suggested that local entrepreneurs would benefit immensely if the concept of a dominant and non-dominant carrier was developed beyond being referenced in the Telecommunications (Wholesale) Regulations and Telecommunications (Interconnection) Regulations.³¹²

The Telecommunications (Interconnection) Regulations provide for the designation of a supplier as a “dominant telecommunications provider in respect of a particular telecommunications market or markets” where, after a public consultation process, the NTRC acting on the recommendation of ECTEL determines that the telecommunications provider “possesses significant market power with respect to the market or markets for telecommunications services” within the jurisdiction and “it is in the long-term interests of consumers of telecommunications services” that the service be so designated.³¹³

The Telecommunications (Wholesale) Regulations provide for a public network operator to be designated a dominant wholesale service provider, where the NTRC determines, after a public consultation process, that a public network operator “enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers in a market or markets for telecommunications services” within the jurisdiction; and that it is in “the

³¹² Note also that Grenada Telecommunications (Tariff) Regulations 2003 includes a definition of ‘dominant’ in regulation 3: “‘dominant’ means, in respect of a telecommunications provider in a market, the ability to operate without constraints imposed by competitors, or potential competitors of the telecommunications provider or persons to whom, or from whom, the telecommunications provider supplies or acquires goods or services”.

³¹³ *E.g.* Saint Lucia Telecommunications (Interconnection) Regulations, regulation 8.

best interests of consumers of the telecommunications services,” that the public network operator be so designated.³¹⁴

The new BILL alludes to the drafting of new regulations to provide greater clarity in defining a dominant provider. In text which remains in square brackets the new BILL highlights certain factors to be considered in a determination of dominance:³¹⁵

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the service provider;
- (d) the power of the service provider to introduce and sustain a material price increase independently of competitors;
- (e) the degree of differentiation among networks and services in the market;
- (f) any other matters that the Commission deems relevant.

The new BILL does not address the specific anti-competitive practices highlighted in the EPA, most notably, engaging in anti-competitive cross-subsidisation; using information obtained from competitors with anti-competitive results; and not making available to other services suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services. It may be suggested that the appropriate references should be made to the aforementioned conduct in defining anti-competitive behaviour either in the principal legislation (which would be preferable) and/or the implementing regulations.

It is anticipated that the ECTEL Directorate will be expanded to include capacities to provide more critical assessment of the competitive environment for all basic services.

³¹⁴ *E.g.* Saint Lucia Telecommunications (Wholesale) Regulations, regulation 4(2).

³¹⁵ See new BILL, section 53(7) – providing for a determination by the Commission that a service provider is dominant where the service provider is in breach of subsections (1) to (6) of section 53, or individually or jointly with others, enjoys a position of economic strength affording the service provider the power to behave to an appreciable extent independently of competitors and users.

The OECS countries have not implemented the provisions of the Revised Treaty on competition policy. St Vincent and the Grenadines passed a competition law but it appears that the Act is not yet in force. The intention is to establish a common OECS competition authority which will operate as the national regulatory body for the OECS States. The interface between any such authority and the NTRCs and ECTEL will need to be addressed. Possible options for consideration may draw on EC practices, having regard to common principles underpinning the regulatory framework prescribed in the EPA and the relevant EC Directives. Reference may be made to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) which further elaborates on, *inter alia*, the requirement for appropriate consultation and cooperation on matters of common interest between telecommunications regulatory authorities and national authorities entrusted with the implementation of competition law and consumer law. It suggests that a clear definition of the respective tasks of each agency should be established and information sharing encouraged having due regard to maintaining the required level of confidentiality.³¹⁶

A comprehensive competition policy would address, *inter alia*, the telecommunications sector. However, in the absence of this reliance must be placed on the Telecommunications Acts and implementing regulations which proscribe certain types of anti-competitive conduct but do not specifically address the matters listed in Article 97 of the EPA. In light of the fact that the Telecommunications legislation is under review, it would seem prudent that the new BILL and/or any new regulations which will be designed to address competition and dominance, incorporate the specific proscriptions listed in Article 97 of the EPA.

Interconnection

Article 98 of the EPA on “interconnection” takes into account WTO jurisprudence in the *Mexico – Measures Affecting Telecommunications Services* (WT/DS204) which interprets the GATS Annex on Telecommunications and the Telecoms Reference Paper.

³¹⁶ See EU Framework Directive, Article 3.

Article 98 of the EPA provides that all telecommunications service providers have the right to negotiate interconnection with every other provider suggesting a regulatory framework which promotes open commercial negotiations. The information provided during the process of negotiating interconnection must be used solely for the purpose supplied paying due regard to principles of confidentiality. As with the GATS Telecoms Reference Paper, provision is made for non-discriminatory terms and conditions, timely interconnection based on cost-oriented rates that are transparent and reasonable. The procedures for interconnection to a major supplier shall be made publicly available and major suppliers must make publicly available either their interconnect agreements or reference interconnection offers. Provision should be made for the referral of disputes to an independent agency.³¹⁷

The Telecommunications Acts establish an environment where service suppliers negotiate the interconnection agreements following a request in writing from the interested party. The interconnection agreement, however, must be approved by the NTRC. The new BILL affirms this and expressly adds that the approval by the NTRC must be *in accordance* with the advice of ECTEL.³¹⁸ A telecommunications provider to whom a request for interconnection is made may in its response refuse that request in writing on reasonable technical grounds only. Any such refusal may be referred to the NTRCs for review and possible dispute resolution.³¹⁹

The Telecommunications (Interconnection) Regulations address the use of information in respect of interconnection and proscribe knowingly communicating, or allowing access to information received from a telecommunications provider in respect of interconnection,

³¹⁷ See EPA, Article 98; see also EPA, Article 102 on disputes between service suppliers which provides that the national regulatory authority shall issue a binding decision to resolve a dispute in shortest possible timeframe. Where cross-border suppliers are involved the national regulatory authorities must coordinate efforts. Note that there is no equivalent requirement in the GATS Telecoms Reference paper.

³¹⁸ Compare the new BILL, sections 57 & 58 with Saint Lucia Telecommunications Act, sections 45 & 46.

³¹⁹ *E.g.* Saint Lucia Telecommunications Act, section 45(5) & (6); see also new BILL, section 57 (6) & (7). Compare the Grenada Telecommunications (Interconnection) Regulations, regulation 14, or Saint Lucia Telecommunications (Interconnection) Regulations, regulation 13 and the new BILL, section 59 on the sharing of the cost of establishing any interconnection to the network of another service provider. The new BILL provides two alternatives; i.e. the cost “shall be borne by [both parties to the interconnection agreement/the service provider requesting the interconnection].”

except to the extent authorised by the telecommunications provider in writing, or by the Act.³²⁰ The Regulations also require that interconnection agreements specify how information is to be handled and include appropriate confidentiality provisions.³²¹

The Telecommunications Acts further prescribe that interconnection services must be provided at reasonable cost-based rates, and such other reasonable terms and conditions as the NTRCs may, on the recommendation of ECTEL, determine. Interconnection must be provided to non-affiliated suppliers on terms which are not less favourable than those granted to subsidiaries or affiliates of the interconnection provider.³²² Additionally, cost-oriented rates must be reasonable and arrived at in a transparent manner having regard to economic feasibility; they must be sufficiently unbundled such that the provider requesting the interconnection service does not have to pay for network components that are not required for the interconnection service to be provided.³²³

The Telecommunications Acts meet the requirements of Article 98 of the EPA in further requiring NTRCs, after consulting ECTEL, to prepare, publish, and make available copies of the procedures to be followed by the telecommunications providers when negotiating interconnection agreements. The interconnection agreements between telecommunications providers are kept in a public registry maintained by the NTRCs and open to public inspection.³²⁴ Additionally, the Telecommunications (Interconnection) Regulations require each dominant interconnection provider to publish a reference interconnection offer.³²⁵ The Regulations also provide that where an interconnection provider and an interconnecting operator are unable, after having negotiated in good faith

³²⁰ *E.g.* Saint Lucia Telecommunications (Interconnection) Regulations, regulations 6 & 7; Grenada Telecommunications (Interconnection) Regulations, regulations 7 & 8.

³²¹ *E.g.* Saint Lucia Telecommunications (Interconnection) Regulations, regulation 15(1)(h); Grenada Telecommunications (Interconnection) Regulations, regulation 16(VIII).

³²² See EPA, Article 98(3) which is addressed, for example, in the Saint Lucia Telecommunications Act, sections 45 & 47, and the new BILL, sections 57 & 59. Section 45 (9) of the Saint Lucia Telecommunications Act provides that “[a] telecommunications provider shall not, in respect to any rates charged for interconnection services provided to another telecommunications provider, vary the rates on the basis of the type of customers to be served, or on the type of services that the telecommunications provider requesting the interconnection services intends to provide.”

³²³ *E.g.* Saint Lucia Telecommunications Act, section 47.

³²⁴ *E.g. ibid.*, section 46 of the Act; see also new BILL, section 58.

³²⁵ *E.g.* Saint Lucia Telecommunications (Interconnection) Regulations, regulation 12; Grenada Telecommunications (Interconnection) Regulations, regulation 13.

for a reasonable period, to agree the terms and conditions of an interconnection agreement, either party may request the assistance of the NTRC in resolving the dispute.³²⁶

Scarce resources

Article 99 of the EPA on “Scarce resources,” including frequencies, numbers and rights of way, requires that the procedures for their allocation and use be implemented in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands must be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Among the functions assigned to the NTRCs in the Telecommunications Acts is to plan, supervise, regulate and manage the use of the radio frequency spectrum in conjunction with ECTEL.³²⁷ The NTRCS are required to maintain a register of licensees and frequency authorisation holders.³²⁸ The language in the Acts is retained in the new BILL.

The Telecommunications Acts address the procedures for the grant of frequency authorizations and their content.³²⁹ An application is made to the NTRC which submits this to ECTEL. After consultation with ECTEL the NTRC makes a recommendation to the Minister who “may grant the frequency authorisation where the Commission recommends accordingly”³³⁰ The relevant provisions of the Telecommunications Acts are essentially combined in section 42 of the new BILL.³³¹ The Telecommunications (Licensing and Authorisation) Regulations provide additional details addressing, *inter*

³²⁶ *E.g.* Saint Lucia Telecommunications (Interconnection) Regulations, regulations 27 et seq; Grenada Telecommunications (Interconnection) Regulations, regulations 28 et seq; see also Saint Lucia Telecommunications Act, section 17; new BILL, section 37.

³²⁷ This includes the assignment and registration of radio frequencies to be used by all stations operating within the jurisdiction or on any ship, aircraft, vessel, or other floating or airborne contrivance or spacecraft registered in the jurisdiction

³²⁸ *E.g.* Saint Lucia Telecommunications Act, section 11(1)(d) & (n).

³²⁹ *E.g.* Saint Lucia Telecommunications Act, sections 35 & 36. See also *ibid*, sections 39 & 40 - on the modification, suspension or revocation of licences and authorizations; new BILL, sections 44 & 45 - on modification and sale or transfer of a licence or frequency authorization.

³³⁰ *E.g.* Saint Lucia Telecommunications Act, section 35(3).

³³¹ See also new BILL, section 62(1) - expressly directing the Commission to “establish and manage a national plan for spectrum management in accordance with the regional plan established by ECTEL.”

alia, the timeframe within which certain actions must be taken (i.e. 60 days for a recommendation in writing from ECTEL to be submitted to the Minister and 21 days therefrom for the Minister to make his decision) The proposed new BILL would shorten the timeframes for approving licences. The Telecommunications (Spectrum Management) Regulations provides greater details on how NTRCs are to manage the spectrum in consultation with ECTEL and provides, *inter alia*, guidelines on the assignment of frequencies.

With respect to numbering, the Telecommunications Acts require the NTRC to establish and manage a national plan for the allocation of numbers among telecommunications providers in accordance with the regional plan established by ECTEL.³³² The provision is repeated in section 63 of the new BILL. The Telecommunications (Numbering) Regulations provide additional clarity on the role of NTRCs in, *inter alia*, assigning numbers and maintaining a register which is open to the public.

Universal service

The EPA defines ‘universal service’ as “the set of services of specified quality that must be made available to all users within the territory regardless of their geographical location and at an affordable price”.³³³ It expressly acknowledges the right of each State to define the kind of universal service obligation it wishes to maintain.³³⁴ Universal service obligations must be administered in a transparent, objective and non-discriminatory manner; they must be neutral with respect to competition and not more burdensome than necessary.³³⁵ The EPA requires that all suppliers should be eligible to ensure universal service, and that the designation be made through an efficient, transparent and non-discriminatory mechanism. In recognition that there are costs as well as market benefits which may be derived from the provision of universal service, the EPA requires that

³³² *E.g.* Saint Lucia Telecommunications Act, section 51(1). See also *ibid*, section 13 - on ‘Records’ of the Commission [which] shall, upon request, be available for public inspection at the offices of the Commission on payment of the prescribed fee; see also new BILL, section 34 on “Public access to records of the Commission”.

³³³ EPA, Article 94(1)(f).

³³⁴ See EPA, Article 100(1).

³³⁵ EPA, Article 100(2).

consideration be given to the establishment of a compensatory mechanism.³³⁶ Directories of all subscribers should be made available to users and updated on a regular basis (at least once a year), and the organisations producing directories must not discriminate in the treatment of information that has been provided to them by other organisations.

The Telecommunications Acts provide a non-exhaustive definition of universal service as including the provision of public voice telephony; internet access; telecommunications services to schools, hospitals and similar institutions, and the disabled and physically challenged; or other service by which people access efficient, affordable and modern telecommunications.³³⁷ The legislation expressly provides that the requirement to provide universal service, if included in a licence, “shall be carried out in a transparent, non-discriminatory and competitively neutral manner.”³³⁸

The Telecommunications Acts create within each jurisdiction a Universal Service Fund which is managed by the NTRC.³³⁹ The purpose of the Fund is to compensate any telecommunications provider who is required to provide universal service or to otherwise promote universal service.³⁴⁰ In computing the amount of compensation, the Acts require that the actual cost that is incurred in making available the required universal service shall serve as a guide.³⁴¹ Every telecommunications provider is required to contribute to the Fund and the percentage to be contributed must be the same for all providers.³⁴² The legislation therefore addresses all key elements of the EPA regulatory framework in this regard.

³³⁶ EPA, Article 100(3).

³³⁷ *E.g.* Saint Lucia Telecommunications Act, section 3(1).

³³⁸ Saint Lucia Telecommunications Act, section 42(1); see also new BILL, section 54(1) to the same effect.

³³⁹ The Telecommunications (Universal Service Fund) Regulations further define the nature of the universal service obligation and the management of the regime. It provides for the appointment of a Fund Administrator by the NTRCs, conflicts of interests, separate accounts for the Fund, defining Fund projects, procuring service suppliers, etc and clarifies, *inter alia*, that ECTEL shall provide assistance to the NTRCs in relation to the performance of technical tasks associated with the management of the Fund; *e.g.* Saint Lucia Telecommunications (Universal Service Fund) Regulations, regulation 8.

³⁴⁰ *E.g.* Saint Lucia Telecommunications Act, section 44(1).

³⁴¹ *E.g.* Saint Lucia Telecommunications Act, section 44(3); see also new BILL, section 56.

³⁴² *E.g.* Saint Lucia Telecommunications Act, section 43.

The new BILL reproduces the provisions of the Telecommunications Act and further requires, *inter alia*, that a dominant service provider shall permit other service providers to have equal access to telephone numbers, operator services, directory assistance and directory listing without unreasonable delay.³⁴³

It may also be noted that the Telecommunications (Confidentiality in Network and Services) Regulations provides, *inter alia*, that a telecommunications provider or publisher of subscriber and lists directories must first obtain the consent of a subscriber before listing the subscriber's personal information in a telephone directory.³⁴⁴

Confidentiality of information

Article 101 of the EPA on “Confidentiality of information” requires that each State “ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services, without restricting trade in services.” The provision overlaps with Chapter 6 of Title IV of the EPA on the protection of personal data, which recognizes the importance of maintaining effective data protection regimes as a means of, *inter alia*, stimulating investor confidence.

The Telecommunications Acts proscribe the interception or interruption of any message transmitted over a public telecommunications network without the consent of the sender or except as provided under statute. The legislation expressly recognizes that messages transmitted over public telecommunications networks are confidential.³⁴⁵ Additionally any personal information relating to a subscriber must also be treated as confidential and not disclosed by any telecommunications provider without the consent of the subscriber or pursuant to a court order.³⁴⁶ The new BILL provides similar assurances.³⁴⁷

³⁴³ See new BILL, section 53(11).

³⁴⁴ *E.g.* Saint Lucia Telecommunications (Confidentiality in Network and Services) Regulations, regulation 19.

³⁴⁵ *E.g.* Saint Lucia Telecommunications Act, section 60.

³⁴⁶ *E.g.* Saint Lucia Telecommunications Act, section 61; see also *ibid*, section 63 – concerning penalties. See also Saint Lucia Telecommunications (Confidentiality in Network and Services) Regulations, regulation 18 – providing that a subscriber's personal information or subscriber's proprietary network

Additionally, the Telecommunications (Confidentiality in Network and Services) Regulations establish controls and provide for monitoring and reporting on the handling of personal, confidential information.³⁴⁸

Dispute resolution

Article 102 of the EPA on “Disputes between suppliers” provides that, in the event of a dispute arising between suppliers of telecommunications networks or services, the national regulatory authority must be empowered, at the request of either party to the dispute, to issue a binding decision to resolve the dispute in the shortest possible timeframe. Where the dispute concerns the cross-border provision of services, the national regulatory authorities are expected to coordinate their efforts in order to bring about a resolution of the dispute.

The Telecommunications Acts include among the functions of NTRCs the following;³⁴⁹ investigate and resolve any dispute relating to interconnections or sharing of infrastructure between telecommunications providers; and investigate and resolve complaints related to harmful interference. The NTRCs are established as telecommunications tribunals to:³⁵⁰

- (a) to hear and determine disputes between licensees of telecommunications services;
- (b) to hear and adjudicate disputes between licensees and the public involving alleged breaches of the Act or regulations, or licences or frequency authorisations;

information shall not be disclosed by an employee or officer of a telecommunications provider without the consent of the subscriber or under a court order.

³⁴⁷ *E.g.* the new BILL, sections 18 & 66 – providing for an oath of secrecy and confidentiality and proscribing interception or interruption of any message over a public network without consent of the sender or as provided by law, and the disclosure of personal information relating to a subscriber.

³⁴⁸ *E.g.* Saint Lucia Telecommunications (Confidentiality in Network and Services) Regulations, regulation 2 defining, *inter alia*, “subscriber personal information” and “subscriber proprietary network information”.

³⁴⁹ *E.g.* Saint Lucia Telecommunications Act, section 11(1)(k) & (l).

³⁵⁰ *E.g.* Saint Lucia Telecommunications Act, section 17(2). The role of the NTRCs is further defined in the regulations, e.g. Telecommunications (Interconnection) Regulations, Telecommunications (Universal Service Fund) Regulations, Telecommunications (Dispute Resolution) Regulations.

- (c) to hear and determine complaints by subscribers relating to rates payable for telecommunications services;
- (d) to hear and determine claims by a licensee for a change in rates payable for any of its services;
- (e) to hear and determine objections to agreements between licensees;
- (f) of its own motion or at the instance of the Minister, to review and determine the rate payable for any telecommunications service;
- (g) to hear and determine complaints between licensees and members of the public.

The NTRCs must refer disputes between licensees requiring an interpretation of licences, frequency authorisations or regulations to ECTEL with a request that ECTEL provide the NTRC with an opinion or, with the consent of the licensees, refer the matter to ECTEL for mediation or arbitration . The NTRC are required to take account of the opinion and recommendation of ECTEL in resolving the relevant dispute.³⁵¹ The new BILL affirms and elaborates on the powers of NTRCs in dispute settlement.³⁵²

The involvement of ECTEL in the dispute settlement process facilitates cooperation in disputes concerning the cross-border provision of services within the OECS region. It should also assist in ensuring that the best expertise is brought to bear in addressing cross-border disputes involving service suppliers from ECTEL and non-ECTEL member States.³⁵³

The telecommunications framework in Antigua & Barbuda

The two most relevant pieces of legislation governing the telecommunications sector in Antigua and Barbuda are the Telecommunications Act (CAP 423) and the Telecommunications (Prevention and Prohibition of Unauthorised Use and Services) Act 1994 (as amended).

³⁵¹ E.g. Saint Lucia Telecommunications Act, section 16.

³⁵² See new BILL, sections 11(1)(l) & 36.

³⁵³ See also EPA, Article 102(2) – addressing, *inter alia*, cross-border disputes.

Section 3 of the Telecommunications Act provides for the appointment of a Telecommunications Officer for Antigua and Barbuda to carry out the provisions of the Act. Section 4 prohibits the establishment of any telecommunications station or the installation, working or operation of any telecommunications apparatus in the State or on board any ship or aircraft registered in the State except in accordance with a licence granted under the Act. Section 6 provides for the grant of licences by the Telecommunications Officer or other appropriately authorized individuals and the maintenance of a register where the particulars contained in every licence which is issued must be entered.

The Telecommunications (Prevention and Prohibition of Unauthorised Use and Services) Act is described as “An ACT to prevent and prohibit the unauthorised use of the telecommunications system of Antigua and Barbuda; to take appropriate measures to deal with those who abuse the telecommunication services provided by or authorised by the Government; and for those matters connected therewith.” The Act defines in section 2 the “telecommunications authority”. The 2003 Amendment Act to the Telecommunications (Prevention and Prohibition of Unauthorised Use and Services) Act 1994 modifies the definition of the 1994 Act as follows:

- “(i) in relation to international telecommunication, the officer appointed under section 3 of the Telecommunications Act;
- (ii) in relation to national telecommunication, the Antigua and Barbuda Public Utilities Authority.”

The Act therefore establishes two Authorities for a segmented telecommunications market: the market for international calls where the Telecommunications Officer appointed under the Telecommunications Act is deemed to be the Telecommunications Authority; and the market for local calls where the Telecommunications provider APUA also serves as the Telecommunications Authority. **The EPA imposes an obligation on Antigua and Barbuda to establish an independent and sufficiently empowered telecommunications regulator. Antigua and Barbuda currently has two Authorities:**

one which may not be sufficiently resourced as to be “empowered” and the other which is not independent from the service provider.

Section 2 also provides a definition of “the licensee” which is effectively limited to international calls only.

"the licensee" means any person to whom Government has granted a licence to own, provide, install, maintain, operate or promote telecommunication systems and services from a point in Antigua and Barbuda to a destination outside Antigua and Barbuda or from a destination outside Antigua and Barbuda to a destination inside Antigua and Barbuda,”

The legislation, as such, appears to make no provision for the introduction of competition in the local market through the licensing of telecommunication providers of local calls.

Section 3 of the 1994 Act is repealed and replaced by the 2003 Amendment Act and effectively proscribes any bypass³⁵⁴ activity or the provision of a call back service.

"No person shall use or permit or suffer to be used any telecommunication system or telecommunication apparatus in connection with any bypass activity or the provision of a call back service or do anything so as to facilitate the use of any telecommunication system or telecommunication apparatus in connection with the provision, operation or use of any such bypass activity or call back service."

It may be noted that the 2003 Amendment Act defines “voice service” as including transmission by circuit switched service, voice over the internet or voice over internet

³⁵⁴ The 2003 Amendment Act inserts the following definition of “bypass” – “‘bypass’ means, (i) the passing of an international voice service (including a reconstructable voice service as part of a data or mixed voice and data service) without passing through the international gateway switch of any licensee; or (ii) the termination of international voice services over the domestic public switched telecommunications network by a person who does not originate the call or does not possess a valid interconnection agreement with that domestic network operator with respect to international voice services”.

protocol and any means over any telecommunication apparatus of wholly or partly real time or near real time audio communications within Antigua and Barbuda or between Antigua and Barbuda and places outside of Antigua and Barbuda. As such, the prohibition contained in section 3 read together with the definition of ‘voice service’ effectively proscribes VoIP. The treatment of VoIP within ECTEL Member States is also the subject of ongoing debate.³⁵⁵

Section 6 of the Act (as amended by the 2003 Amendment Act) sets out the steps which may be taken against persons engaged in bypass activity or call back service. This includes blocking transmission over any route used for such bypass activity or call back service; or suspending the provision of telecommunication services to such person or a user who permits the telephone services provided to him to facilitate the transmission of unauthorised telecommunication; or varying the terms and conditions of service to such person or user. The 2003 Amendment Act also contemplates the possible application ex parte to a judge in Chambers for an order to restrain persons suspected of being engaged in any bypass activity or call back service from carrying on the bypass activity or call back service.³⁵⁶

The situation in Antigua and Barbuda is substantially different from that which obtains in the other OECS countries. **It may be recalled that Antigua and Barbuda have deferred most of its obligations on telecommunications in the EPA until 1 January 2012. The 2012 deadline for liberalization of the telecommunications sector is also indicated in Antigua and Barbuda WTO GATS commitments. The deadline coincides with the end of the exclusive agreement between the Government of**

³⁵⁵ In our consultations it was suggested that the adoption of the principle of technological neutrality forced ECTEL to treat VoIP as a fixed service licence class. This appeared to facilitate the incumbent which used its dominant position and fixed licence to provide a service that could easily be provided by local entrepreneurs. A contrast was drawn with the US hands-off approach to VoIP. However, some NTRCs favour regulation, noting that VoIP providers pay no taxes, employ no local staff and have no offices, and generate no income for the country, but use bandwidth of licensed operators for free, are not required to participate in universal service or quality of service, and their actions result in an acceleration in the depletion of scarce numbering resources.

³⁵⁶ This is inserted as a new subsection (4) to section 6.

Antigua and Barbuda and Cable and Wireless. Substantial work is required if regulatory reforms are to be implemented in a timely fashion.

Note on mode 4 commitments in the telecommunications sector

Note is also made of the fact that Antigua and Barbuda has indicated ‘None’ for international services after 2012 under the market access column for mode 4 for telex, telegraph and facsimile services. That Dominica and Grenada have indicated ‘None’ under the national treatment column for mode 4 for the same services as well as voice telephone services. That Grenada has also indicated ‘None’ under the national treatment column for mode 4 for fixed satellite services. That St Kitts and Nevis has indicated ‘None’ under the national treatment column for mode 4 for electronic mail, voice mail, online information and data base retrieval, enhanced/value added facsimile services, and online information and/or data processing. And that Saint Lucia has indicated ‘None’ under the market access and national treatment columns for mode 4 for voice telephone, telex, telegraph, and facsimile services as well as electronic mail, voice mail, online information and data base retrieval, enhanced/valued added facsimile services and online information and/or data processing services.

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

General construction work for buildings

General construction work for civil engineers

Other – Special trade construction

The reference to ‘construction and related engineering services’ in the CPC code may appear to be somewhat deceptive. The services falling within this category treat with construction work as distinct from engineering services. The ambiguity regarding the respective coverage of "Engineering services" and "Construction and related engineering services" in the W/120 classification list has attracted some attention in WTO discussions.³⁵⁷ Engineering services (CPC 8672) do not exclude construction-related engineering services, while "construction work" (CPC 511–518) does not appear to explicitly cover "related engineering services". In fact, in the provisional CPC code, construction-related engineering services are included in "Other engineering services during the construction and installation phase" (CPC 86727), a subset of engineering services.

OECS countries have not made extensive commitments with respect to construction services. Antigua and Barbuda has made commitments only in relation to construction work of hotels, motels, inns, hostels, restaurants and similar buildings (including new work, additions, alterations and renovation work). This commitment is subject to a joint venture requirement on commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** Dominica, St Kitts and Nevis and Saint Lucia have limited their commitments to hotels and resorts in excess of 100 rooms, restaurants and similar buildings. St Kitts and Nevis cross border (modes 1 and 2) commitments are unbound and market access on commercial presence is subject to a joint venture requirement. St Kitts and Nevis has also made commitments with respect to civil engineering works (CPC 522) which are unbound for cross-border trade and subject to a joint venture requirement for market

³⁵⁷ See Secretariat Background Note on Architectural and Engineering Services, S/C/W/44, 1 July 1998, paragraph 8; ‘Construction and Related Engineering Services’, Secretariat Background Note, S/C/W/301, 18 Sept. 2009.

access on commercial presence.³⁵⁸ **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** Dominica has made commitments with respect to ‘other civil engineering works’ (referred to as **CPC 529 which it is assumed is meant to be CPC 5229**). All Dominica’s commitments on construction are time deferred to 2022 for commercial presence, unbound for mode 1 and without reservation for mode 2. Grenada has made commitments only with respect to certain classes within the group of general construction work for civil engineering.³⁵⁹ These are all unbound save for commercial presence.

The legislation on Physical Planning³⁶⁰ in OECS countries establishes the legal framework for the grant of authorizations to develop land (including the construction of roads, bridges, etc) and regulation of construction of buildings and related matters. Certain exceptions may apply with respect to activities undertaken on behalf of the government or statutory bodies, such as road works and repairs to sewers, water mains, pipes, cables, and other similar activities.³⁶¹ The Physical Planning legislation is not discriminatory in relation to national treatment, nor is it designed to restrict market access (although any requirement for authorization could potentially be so used).³⁶² Building

³⁵⁸ Civil engineering works cover construction in relation to highways (except elevated highways), streets, roads, railways, airfield runways, bridges, elevated highways, tunnels and subways, waterways, harbours, dams and other waterworks, long distance pipelines, communication and power lines (cables), local pipelines and cables, ancillary works, constructions for mining and manufacture, constructions for sport and recreation, and other civil engineering works.

³⁵⁹ Grenada’s commitments are in relation to bridges, elevated highways, tunnels and subways, waterways, harbours, dams and other water works, long distance pipelines, communication and power lines (cables), local pipelines and cables, ancillary works, and constructions for sport and recreation (stadia and sports grounds and other sport and recreation installations, e.g. swimming pools, tennis courts, golf courses).

³⁶⁰ E.g. Antigua and Barbuda Physical Planning Act; Saint Lucia Physical Planning and Development Act; St Vincent and the Grenadines Housing and Land Development Corporation Act, and the Town and Country Planning Act; and St Kitts and Nevis Development Control and Planning Act.

³⁶¹ E.g. Grenada Physical Planning and Development Control Act, 2002, section 20(1).

³⁶² E.g. St Kitts and Nevis Development Control and Planning Act, section 5(3) providing that “[i]n exercising his or her functions, the Minister shall be guided by the principle that the provisions of this Act shall be applied uniformly, fairly and equally to all persons.” The provision however does not constitute any duty or liability enforceable in proceedings before any court; see *ibid*, section 5(4). Note that the Act prohibits the issuance of any licence, permit, approval, consent or other document of authorisation pursuant to any other written law in connection with any matter related to or affecting the development of land unless it has established that express development permission with respect to the proposed development has been granted under the Act, or is not required; see *ibid*, section 20(4). Section 29 of the Act provides that the Chief Physical Planner should make a determination within 90 days either to grant conditionally or unconditionally or refuse to grant permission. A statement of reasons must be provided and information concerning the opportunities for an appeal. If the determination is not made an update should be provided

Codes and other similar guidelines are relevant to the sector but not for the purposes of the present review. In the assessment of the overall legislative framework no specific legislation limiting market access or national treatment contrary to OECS EPA commitments were identified.

4. EDUCATION SERVICES

Education services are defined by reference to five categories: primary education services; secondary education services; higher education services; adult education, as well as the residual category of other education services. Excluded are non-profit, public and publicly funded entities.

Expansion and innovation in education services has promoted increased cross-border trade. Consumption abroad is the most common way by which trade in education services occurs (mode 2). But there may, for example, also be on-line services (mode 1), franchise/twinning arrangements between local and foreign institutions (involving offshore programmes as well as student exchanges, modes 1 & 2), commercial presence (mode 3), and visiting academic arrangements (mode 4).

In general OECS countries have not made overly extensive commitments in education services. Dominica has undertaken greater commitments than other OECS countries. Dominica's commitments cover primary, secondary, higher (i.e. post-secondary technical and vocational education services) and adult education; commitments on commercial presence are time deferred to either 2022 (primary), 2020 (higher) or 2018 (adult). Saint Lucia's commitments cover secondary, higher, adult and other education services (limited to training of air traffic controllers, pilots and seafarers); all commitments for commercial presence are unbound. Antigua and Barbuda, Grenada and St Vincent and the Grenadines have made commitments in relation to higher and adult education services only; St Vincent and the Grenadines' commitments on commercial presence are time

with a new timeframe for making a determination. Note however that where there is no determination within 90 days and no notification of an extended date the application is deemed to have been refused.

deferred to 2020 (**note that there is a missing entry for St Vincent and the Grenadines with regard to mode 4 market access**); and St Kitts and Nevis has not made any commitments on education services.

The principal barriers to cross-border supply of education services that are commonly cited relate to: restrictions on the electronic transmission of course material, as well as the use/import of educational materials; non-recognition of qualifications obtained through distance learning; quotas or ENTs restricting the number of suppliers; discriminatory local accreditation and recognition requirements; restrictions on the types of courses that may be offered; requiring the use of a local partner, or the establishment of a physical presence by a foreign institution. Some of these barriers derive from legitimate concerns relating to consumer protection and quality assurance given the prevalence of fraudulent education providers (“diploma mills”). Many of the barriers posed to cross-border supply may also affect commercial presence.³⁶³

The Education Acts of OECS countries are similar; they regulate education services from early childhood to adult education, public and private institutions as well as distance learning. The legislation requires the granting of a permit and registration of private educational institutions. The criteria established for registration relate to the appropriateness of the premises and adequacy of human and material resources for the supply of the service. The legislation also allows the Minister to place limits on class sizes and other conditions as he may determine on the issuance of a permit.³⁶⁴

The Accreditation Acts of the OECS countries provide for the registration of institutions located within and outside of the jurisdiction which offer programmes of study within the country.³⁶⁵ Not all countries have adopted an Accreditation Act (Saint Lucia and Grenada

³⁶³ See also ‘Education Services’, Background Note by the Secretariat, S/C/W/313, 1 April 2010, paras 72-82.

³⁶⁴ *E.g.* Antigua and Barbuda Education Act, section 100; Saint Lucia Education Act, section 100; Dominica Education Act, sections 98 & 99. See also the St Vincent and the Grenadines Education Act of 2006, and Community College Act.

³⁶⁵ *E.g.* St Kitts and Nevis Accreditation of Institutions Act 1999; St Vincent and the Grenadines Further and Higher Education (Accreditation) Act; Dominica Accreditation Act; Antigua and Barbuda

are the current exceptions – however, an Accreditation Act was recently passed by both the Senate and House of Representatives in Grenada),³⁶⁶ and where this occurs the Ministry of Education effectively assumes the functions of the Accreditation Board. The Accreditation Boards provide an important quality assurance mechanism in ensuring that minimum standards are met by education providers offering programmes to the public, whether delivered face to face or through distance learning modalities.³⁶⁷ Provision is made for due process for a service provider aggrieved by a decision of the Board.³⁶⁸ During consultations it became apparent that difficulties have arisen in implementing the system of registration and accreditation in certain instances. This was particularly true of our consultations in St Vincent and the Grenadines and Dominica.

The Accreditation Board of Dominica, created by the Accreditation Act No 13 of 2006, was officially launched on 17th November 201. The Act charges the Board with the responsibility for assessing and improving the quality of education in Dominica. The Board, however, has only two (2) staff members, i.e. the Executive Director and an Executive Secretary. It is the Board's intention to register all institutions providing post-secondary education services within the jurisdiction - be it on-line or face-to-face or a combination / blended approach. Registration is the first step, to be followed by accreditation. The Act, however, only deals with accreditation and is silent on registration. The difficulties encountered in attempts to implement the Act underlie current proposals for reform of the legislation. As a result no registration or accreditation is currently taking place in Dominica.³⁶⁹

Accreditation Act; see also the Antigua and Barbuda Caribbean Accreditation Authority (Medicine and Other Health Professions) Act.

³⁶⁶ The Saint Lucia Accreditation Bill 2009 provides for, *inter alia*, the the registration of institutions offering post-secondary and tertiary education and programmes of study, and the accreditation of qualifications offered in Saint Lucia. The law would establish the National Accreditation Council as an independent body corporate to act impartially and in the public interest. Provision is made for the establishment of an Accreditation Register and due process for an aggrieved applicant.

³⁶⁷ *E.g.* St Kitts and Nevis Accreditation of Institutions Act 1999 as amended – only institutions that are registered with and accredited by the Accreditation Board may legally provide services in the State. Accredited institutions are required to carry out a self-study, re-apply for accreditation and undergo a site review by the Accreditation Board at least once every five years to maintain accreditation status.

³⁶⁸ *E.g.* Dominica Accreditation Act, section 21; Antigua and Barbuda Accreditation Act, section 21; St Vincent and the Grenadines Further and Higher Education (Accreditation) Act, section 21.

³⁶⁹ Consultations suggest that only preparatory work has been done. It was noted that the Office has produced criteria and various booklets to assist with undertaking a self-study which is part of the evaluation

A review of the legislation in the region, including the Accreditation and Education Acts of OECS countries, suggests that there are no specific measures imposing restrictions on market access or national treatment on education services contrary to OECS countries commitments under the EPA.³⁷⁰ Other legislation, for example, concerning franchising and general licensing measures above-discussed are also relevant.³⁷¹

5. ENVIRONMENTAL SERVICES

Sewage services

Refuse disposal services

- *Hazardous waste collection services*
- *Hazardous waste treatment and disposal services*

Other

- *Cleaning services of exhaust gases*
- *Noise abatement services*
- *Other environmental services – closed loop pollution control systems for factories*
- *Waste and waste water management*
- *Recycling services*

The classification of environmental services in the EPA which is based on the WTO W/120 scheme is widely seen as obsolete. Its focus on infrastructure services such as waste water treatment, refuse collection and disposal, or street cleaning, which are typically provided by public authorities to local communities is generally considered too

process. They also have had training sessions, and have received support from the University Council of Jamaica, and Education Councils of Trinidad and Tobago and Barbados.

³⁷⁰ Note may be taken of the success of offshore universities campuses and other similar arrangements in some OECS countries, *e.g.* St George's University in Grenada, founded in 1977, is credited with employing almost 600 Grenadian citizens and educating almost 1.000 Grenadian students in addition to the expatriate student population.

³⁷¹ *E.g.* Franchises (Registration and Control) Act of Antigua and Barbuda, discussed *supra*.

narrow.³⁷² A second category of environmental services, referred to as "non-infrastructure" environmental services is also covered. This group addresses more modern regulatory requirements regarding air pollution prevention and mitigation, noise abatement and remediation of polluted sites, amongst others.

Three OECS countries have made commitments with respect to sewage services consisting of sewage removal, treatment and disposal services.³⁷³ St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines have indicated no reservations for cross-border trade (modes 1 and 2, save for St Kitts and Nevis where mode 1 is unbound). Joint venture requirements apply for commercial presence for St Kitts and Nevis and St Vincent and the Grenadines; for Saint Lucia, commercial presence is unbound. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

Only St Vincent and the Grenadines has undertaken commitments on the full class of refuse disposal services including collection services of garbage, trash, rubbish and waste, whether from households or from industrial and commercial establishments, transport services and disposal services by incineration or by other means; as well as waste reduction services.³⁷⁴ No reservations are made for cross-border trade (modes 1 and 2), and market access for commercial presence is subject to a joint venture requirement. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

³⁷² See also "Background Note on Environmental Services", Note by the Secretariat, S/C/W/320, 20 August 2010, section IV. It is noted that the first challenge with environmental services is to define them. As many services can have an environmental end-use, it is difficult to draw the line between "environmental services" *per se* and other services coming into play for the protection of the environment in a broad sense. The Secretariat paper discusses, *inter alia*, developed classification systems such as OECD/Eurostat and the CPC 2 which have adopted a more detailed breakdown.

³⁷³ Note that the equipment used are waste pipes, sewers or drains, cesspools or septic tanks and processes utilized may be dilution, screening and filtering, sedimentation, chemical precipitation, etc; this subclass does not include collection, purification and distribution services of water which are classified in subclass 18000 (Natural water); also construction, repair and alteration work of sewers which are classified in subclass 51330 (Construction work for waterways, harbours, dams and other waterworks).

³⁷⁴ Note that dealing services in wastes or scraps are classified in subclass 62118 (Sales on a fee or contract basis of goods n.e.c.) and 62278 (Wholesale trade services of waste and scrap and materials for recycling).

All OECS countries, save Dominica, have undertaken commitments on hazardous waste collection services. Antigua and Barbuda, Grenada and Saint Vincent and the Grenadines have undertaken commitments on hazardous waste treatment and disposal services; St Kitts and Nevis has undertaken commitments on hazardous waste treatment only.³⁷⁵ **Note is made of the fact that Antigua and Barbuda has indicated ‘None’ under the national treatment column for mode 4.**

The precise definition of hazardous waste differs from country to country. The Antigua and Barbuda National Solid Waste Management (Amendment) Act defines “hazardous waste” as, *inter alia*, “any substance or preparation which by reason of its chemical or physicochemical or biological properties or handling, is liable to cause harm to human beings, other living creatures, plants, microorganisms, property or the environment”.³⁷⁶ The Dominica Solid Waste Management Act defines “hazardous waste” as, *inter alia*, any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because – (i) such wastes are non-degradable or persistent in nature; (ii) they can be biologically magnified; (iii) they can be lethal; or (iv) they may otherwise cause or tend to cause detrimental cumulative effects.³⁷⁷ The legislation highlights the common core elements linking the potential harm to living organisms and/or the environment to waste resulting from certain manufacturing processes (e.g. petrochemical and pharmaceutical industries) and other establishments dealing with dangerous substances, such as hospitals and clinics, and nuclear power plants. The Grenada Waste Management Act defines hazardous waste in terms of a list of materials possessing certain characteristics utilizing the code letters and numbers assigned by the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

³⁷⁵ Note that the CPC prov. does not make a distinction between solid and hazardous waste. The latest version of the CPC (Version 2, completed on 31 December 2008, hereinafter "CPC 2"), has introduced a distinction between various categories of waste.

³⁷⁶ See Antigua and Barbuda National Solid Waste Management Act, section 2; see also the Antigua and Barbuda Physical Planning Act.

³⁷⁷ See Dominica Solid Waste Management Act, section 2.

Significantly, however, all OECS countries, save Grenada, are parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their disposal. The Basel Convention provides for extensive regulation of the movement of wastes which is designed to be beneficial in guaranteeing safe and proper disposal. The Convention is being implemented through appropriate legislative references³⁷⁸ and administrative practices.

The Grenada Waste Management Act establishes a regime for the management of waste generally, including the licensing of waste management facilities and issuance of waste haulage permits. Any business involving the transportation of waste must obtain a waste haulage permit which is valid for a period of one year or such shorter period as the Minister may specify.³⁷⁹ An environmental impact assessment and other conditions are established pre-requisites for the grant of a licence for the operation of a waste management facility. The stated conditions include ensuring as far as practicable that affected landowners have been consulted and their consent obtained with regard to certain features of the proposed facility.³⁸⁰ The legislative mandate is relevant to general EPA obligations on investor behaviour (discussed later in this report) with regard to the institution of local community liaison processes.³⁸¹

The Waste Management Act also provides for the imposition of ENTs. Section 22(3) provides that the “Minister may refuse to issue a licence if the Minister considers that there are already sufficient facilities in Grenada.” Additionally, the “Minister may refuse to issue a licence for the operation by a private person of a landfill or incinerator for the purpose of accepting or processing waste on contract if the Minister considers that such facilities ought to be reserved for operation by the Authority.”³⁸² **Grenada’s sector**

³⁷⁸ *E.g.* St Kitts and Nevis National Conservation and Environment Protection Act, section 59 – providing that International Conventions specified in the Fifth Schedule shall have the force of law; the Basel Convention is included in the Fifth Schedule.

³⁷⁹ See Grenada Waste Management Act, sections 25 & 26.

³⁸⁰ See Grenada Waste Management Act 2001, section 21(3)(d); see also section 11 *et seq.*

³⁸¹ See EPA, Article 72(d).

³⁸² See Grenada Waste Management Act 2001, section 22(4). Note that the Reference to the ‘Authority’ is the Grenada Solid Waste Management Authority established by the Solid Waste Management Authority Act.

specific commitments under the EPA do not provide for the implementation of ENTs. Consideration may be given to the drafting of an appropriate administrative note with a view to ensuring that ENTs are not applied to EU and CARIFORUM service suppliers contrary to Grenada’s EPA market access commitments.

Antigua and Barbuda, Grenada and St Vincent and the Grenadines have indicated that their market access commitments on commercial presence undertaken with respect to hazardous waste are “*Subject to the development of relevant regulations*”. WTO jurisprudence suggests that this type of reservation is, in fact, simply a temporal limitation that is not a market access limitation within the meaning of Article XVI:2 of the GATS from which Article 67 of the EPA is derived. **Adopting this interpretation, the reservation could not be used for a prolonged period of time to prohibit the supply of services by commercial agencies based on the absence of a regulatory framework.³⁸³ This conclusion gains support from the principle of legitimate expectation as parties would arguably be entitled to assume that the relevant regulations would be developed within a reasonable period of time following the signature and provisional application of the EPA.³⁸⁴ Steps should therefore be taken at the earliest opportunity to develop the necessary regulatory framework.**

All six (6) OECS countries have made commitments without reservations on cross-border trade (modes 1 and 2) and commercial presence on cleaning services of exhaust gases, including emission monitoring and control services of pollutants into the air, whether from mobile or stationary sources (mostly caused by the burning of fossil fuels); and concentration monitoring, control and reduction services of pollutants in ambient air.

All six (6) OECS countries have undertaken commitments on noise abatement services, including noise pollution monitoring, control and abatement services, e.g. traffic-related noise abatement services in urban areas. Noise abatement services are seemingly difficult

³⁸³ See *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R at paras 7.353-7.371

³⁸⁴ See also Eric H. Leroux “Eleven Years of GATS Case Law: What Have We Learned?” (2007) 10(4) J.I.E.L. 749 at p.770 – further arguing that this could be the basis for a nullification and impairment (non-violation) complaint.

to describe as a uniform sector as each source of noise calls for a different abatement method.³⁸⁵ No reservations have made indicated for cross-border trade (mode 2), save for St Kitts and Nevis, and commercial presence. Mode 1 is unbound (due to lack of technical feasibility for all OECS countries, save St Kitts and Nevis for which it is simply unbound).

Some OECS countries have specific legislation concerning noise abatement. The Noise Abatement Acts of Antigua and Barbuda and Dominica, for example, authorize the Minister to take measures to abate noise which causes an annoyance and prohibit or restrict its occurrence or recurrence.³⁸⁶ It extends, *inter alia*, to the control of noise on construction sites, playing of loud music in a motor vehicle, the use of loud speakers in a street, noise from plants or machinery, etc. The Noise Control Act of Grenada is somewhat similar and empowers the Commissioner of Police to take measures to prevent the occurrence or continuation of noise amounting to a nuisance.³⁸⁷ The Acts, however, do not seek to regulate noise abatement services as opposed to require action, as appropriate, to be taken to abate noises which cause an annoyance. The legislation is, as such, not relevant for immediate purposes.

All six (6) OECS countries have undertaken commitments on closed loop pollution control systems for factories. All commitments are unbound save for those relating to commercial presence.

Five (5) OECS countries, all save Dominica, have undertaken commitments on waste and waste water management. Wastewater services entail the removal of sewage through pipes and drains and treatment with various techniques (chemical, physical or biological) with the objective of removing contaminants and making water available for reuse or release into the environment. Grenada, Saint Lucia and Saint Vincent and the Grenadines have stipulated a joint venture requirement for market access for commercial presence.

³⁸⁵ See also “Background Note on Environmental Services”, Note by the Secretariat, S/C/W/320, 20 August 2010.

³⁸⁶ See Antigua and Barbuda Noise Abatement Act, section 4; Dominica Noise Abatement Act, section 4.

³⁸⁷ *E.g.* Grenada Noise Control Act, section 7.

Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.

The Saint Lucia Water and Sewerage Act regulates water and waste management and defines “waste” as including “any solid, liquid or gaseous material including but not limited to logs, bottles, tins, sawdust, derelict vehicles, cartons, plastic, paper, glass, food, animal remains, garbage, refuse, debris, gravel stone, sand dirt or sewage or other material which may cause pollution”.³⁸⁸ The Act establishes the National Water and Sewerage Commission for the purpose of regulating the delivery of water supply services and sewerage services throughout Saint Lucia. Through a system of service licences and permits the Act seeks to regulate waste (including waste water) management in an environmentally sound manner. Licences may be granted for a water supply service or a sewerage service. Provision is made for the award of service licences through advertised invitations to tender applications. However, applications may be submitted for a service licence to provide a water supply service or a sewerage service to the public or to a part of the public even in the absence of a published notice.³⁸⁹ The recommendation of the Commission to the Minister is based on the requisite technical and managerial capacity and experience as well as the financial ability of the applicant for the execution of the service.³⁹⁰ The legislation promotes environmental objectives and its provisions do not suggest the imposition of any market access or national treatment limitations contrary to Saint Lucia’s commitments.³⁹¹

Section 99 of the Water and Sewerage Act is a savings clause which preserves the validity of any action taken under the repealed 1999 Water and Sewerage legislation. Significantly, this preserves the validity of the arrangement for the Water and Sewerage Corporation (WASCO), a statutory body, to provide water and sewerage services to the public for twenty-five (25) years (commencing from the commencement of the former

³⁸⁸ See Saint Lucia Water and Sewerage Act, section 2; see also Saint Lucia National Conservation Authority Act.

³⁸⁹ See Saint Lucia Water and Sewerage Act, sections 60 & 61.

³⁹⁰ See Saint Lucia Water and Sewerage Act, section 62; see also *ibid*, section 63 – providing that the Minister must give reasons for refusing to grant a licence which is subject to appeal.

³⁹¹ See also Grenada National Water and Sewerage Authority Act.

1999 Act). The International Finance Corporation (IFC) has been advising the Government of Saint Lucia under a sector reform project including a new generation of Public Private Partnerships (PPP) to provide water and sewerage services in the island. NewCo, a joint venture enterprise, will be the dominant supplier in the sector. It may be noted that Saint Lucia has indicated a joint venture requirement on market access for commercial presence in this sector. **The new arrangements for the provision of services in the sector could assist any further work which may be undertaken on establishing a working definition of joint ventures in the implementation of EPA commitments.**³⁹²

Four (4) OECS countries, i.e. Grenada, St Kitts and Nevis, St Vincent and the Grenadines and Antigua and Barbuda have undertaken commitments with respect to recycling services; for Antigua and Barbuda this is limited to recycling of glass only. St Vincent and the Grenadines has stipulated a joint venture requirement for market access for commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

During our consultations and the course of the review no specific legislation was identified which appeared to impose restrictions on market access and national treatment contrary to the commitments undertaken by OECS countries in the EPA.

³⁹² The IFC brief clarifies that the Government will retain 20% of the shares in NewCo, through WASCO, in exchange for the lease on the existing fixed assets, and for transferring selected assets (vehicles, IT, stocks and inventories, etc.). The Government will maintain ownership of the existing infrastructure assets through WASCO, but will assume all of WASCO's existing liabilities. The winning bidder will subscribe to 40% of NewCo's shares in cash. Despite the minority shareholding, the shareholder agreement grants the winning bidder operational and managerial control over NewCo. The National Insurance Corporation (a Government owned pension fund) subscribe to 20% of NewCo's shares in cash (pari-passu with the winning bidder). An institutional investor will also subscribe to 20% of NewCo's shares in cash (pari-passu with the winning bidder), with the understanding that its shareholding will be sold to the general public as soon as the economic and market conditions will permit; see http://www.castalia-advisors.com/files/Saint_Lucia_Water_PPP_NSaporiti.pdf

6. FINANCIAL SERVICES

The Financial Services sector in the six (6) OECS countries subject to this review generally accounts for ten percent (10%) or more of GDP though significantly less in terms of employment.³⁹³ OECS countries, however, have not generally undertaken extensive commitments in financial services. The only sector where all OECS countries have undertaken commitments is reinsurance and retrocession. **Note is made of the fact that Dominica, Grenada, St Kitts and Nevis, and Saint Lucia have indicated ‘None’ under the national treatment column for mode 4 in this sector.** St Kitts and Nevis has undertaken commitments in only one other financial sector, i.e. the registration of offshore companies and trust (not including insurance companies and banks) to do offshore business. Antigua and Barbuda has undertaken commitments in only two sub-sectors other than reinsurance and retrocession; i.e. life, accident and health insurance services, and all payment and money transmission services. Dominica, on the other hand has undertaken commitments in ten (10) other subsectors;³⁹⁴ Grenada, eight (8) other subsectors;³⁹⁵ and Saint Lucia and Saint Vincent and the Grenadines four (4) other subsectors each.³⁹⁶

³⁹³See “Financial Services”, Background Note by the Secretariat, Corrigendum, S/C/W/312, 3 February 2010, Tables 1 & 2.

³⁹⁴ Dominica has undertaken commitments in life, accident and health insurance services; non-life insurance services; services auxiliary to insurance (broking agency); acceptance of deposits and other repayable funds; lending of all types including inter alia consumer credit, mortgage credit, factoring and financing of commercial transactions; trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise; participation in issues of all kinds of securities including underwriting and placement of agents; advisory and other auxiliary financial services on all the activities listed in MTN.TNC/W/50; provision and transfer of financial information and financial data processing and related software by providers of other financial services; and registration of offshore companies and trusts (not including insurance companies and banks) to do offshore business; in addition to reinsurance and retrocession.

³⁹⁵ Grenada has undertaken commitments in lending of all types including inter alia consumer credit, mortgage credit, factoring and financing of commercial transactions; trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise; participation in issues of all kinds of securities including underwriting and placement as agents; asset management such as cash or portfolio management, all forms of collective management; advisory and other auxiliary financial services on all the activities listed in MRN.TNC/W/50; provision and transfer of financial information and financial data processing and related software by providers of other financial services; investment and property unit trust services; and mutual funds and venture capital services; in addition to reinsurance and retrocession.

³⁹⁶ Saint Lucia has undertaken commitments in services auxiliary to insurance (broking agency); all payment and money transmission; advisory and other auxiliary financial services on all the activities listed in MRN.TNC/W/50; and investment and property unit trust services; in addition to reinsurance and retrocession. St Vincent and the Grenadines has undertaken commitments in life, accident and health insurance services; non-life insurance services; all payment and money transmission; and advisory and

The emphasis on reinsurance services mirrors discernible trends in the WTO GATS financial services commitments. Commitments on reinsurance services tend to be higher as these are commonly supplied on a cross-border basis from the world's major financial centres. Cross-border commitments in life and non-life insurance services are generally low as these sectors have traditionally been subjected to requirements (*de facto* or *de jure*) for establishing a commercial presence in the host country. Stronger commitments are therefore generally found with respect to commercial presence than cross-border supply, though the differences in the level of commitments overall are not very great.³⁹⁷ This trend is generally attributable to concerns over financial regulation and supervision and consumer protection, and partly due to the possible implications of disciplines on the regulation of capital flows which are particularly important with cross-border supply.

The obligations on the liberalization of financial services in Title II of the EPA are inseparable from those imposed by Title III of the EPA on 'Current payments and capital movements'. Cross-border trade in financial services such as the acceptance of deposits, lending, or trading in securities, cannot be divorced from capital movements. Hence, liberalizing financial service transactions requires the liberalization of related capital flows required to make the transactions effective. Our review suggests that limited authorizations may be required in some OECS countries with regard to transfers in excess of quarter million EC\$³⁹⁸. It was clarified in our consultations that the requirement for approval does not, in practice, operate as a *de facto* restriction on capital transfers, and approval of legitimate transfers is virtually automatic. The requirement (where it exists) facilitates transparency and is designed to assist in the detection of illicit activities (such as money laundering).

other auxiliary financial services on all the activities listed in MTN.TNC/W/50; in addition to reinsurance and retrocession.

³⁹⁷ See also "Financial Services", Background Note by the Secretariat, Corrigendum, S/C/W/312, 3 February 2010, paragraphs 144 & 145.

³⁹⁸ This was confirmed in consultations in St Kitts and Nevis, though it was noted that the regulations are not, in fact, applied to restrict financial transfers but rather to promote transparency. But note that most OECS countries suggest that all regulations imposing any restrictions have been removed; see also Saint Lucia Exchange Control Suspension Order 56 of 2004; and Exchange Control Suspension Order 165 of 2006 suspending Section 32 of the Exchange Control Act.

The EPA recognizes that “States retain the right to regulate and to introduce new regulations to meet legitimate policy objectives.”³⁹⁹ This may be compared with the recognition in the Multilateral Trading System of “the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives”.⁴⁰⁰ Significantly, the concept of ‘national policy objectives’ is broader than ‘legitimate policy objectives’. The right to regulate in the context of the EPA is also constrained by the standstill clause in Annex IV.F. It may be said that measures that do not constitute a limitation on market access or national treatment as defined in Articles 67, 68, 76 and 77 of the EPA, fall within the realm of regulation.

The EPA regulatory framework on financial services set out in Section 5 of Chapter 5 of Title II draws on the GATS Annex on Financial Services, which is binding on all WTO Members. However, certain additional elements from the GATS Understanding on Financial Services which is optional (i.e. not an integral part of the GATS and not applicable to OECS WTO-Members) have also been incorporated.⁴⁰¹ Section 5 of Chapter 5 sets out the principles of the regulatory framework for all financial services liberalised pursuant to Chapters 2, 3 and 4 on commercial presence, cross-border supply and the temporary presence of natural persons for business purposes.

The term "financial service" is defined in the EPA as any service of a financial nature offered by a financial service supplier of another party to the Agreement. The definition includes a list of services of a financial nature which parallels that found in Article 1 of the GATS Annex on Financial Services.⁴⁰² This is similar, though not identical to the W/120 classification which provides the template for the scheduling of specific

³⁹⁹ EPA, Article 60(4).

⁴⁰⁰ GATS, fourth Preambular paragraph – which further recognizes, “given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right”.

⁴⁰¹ The principal new disciplines relate to new financial services (i.e. EPA, Article 106) and financial data processing (i.e. EPA, Article 107). Other principles relating to ‘effective and transparent regulation’ are elaborated in addition to certain best endeavour undertakings.

⁴⁰² See EPA, Article 103(2).

commitments in Annex IV of the EPA. The use of the W/120 template introduces possible ambiguities, notably, (i) the inclusion of ‘accident and health’ insurance under ‘life’ insurance using the CPC code 8121 which does not cover those aspects of accident and health insurance under non-life insurance, i.e. CPC code 81291; and (ii) the identification of reinsurance and retrocession services under non-life insurance using CPC code 81299* which does not take into account the provision of reinsurance services to both life and non-life insurers (as could have been done through appropriate reference to CPC code 812*).⁴⁰³ The effects of points (i) and (ii) above-noted is to narrow the nature of the commitments which OECS countries may have intended to undertake.

The definition of ‘financial service supplier’ covers any natural or juridical person⁴⁰⁴ which *seeks* to provide or provides financial services. The language underscores that the definition covers all potential suppliers and not merely those already engaged in the supply of financial services. The use of the term ‘juridical person’ would not normally be read to cover branches or representative offices. However, as the commitments on commercial presence are expressly stated as covering a branch or representative office of a juridical person,⁴⁰⁵ it may be inferred (though not expressly stated as in the GATS)⁴⁰⁶ that branches and representative offices are entitled to treatment as financial service

⁴⁰³ See “Financial Services”, Background Note by the Secretariat, Corrigendum, S/C/W/312, 3 February 2010, Annex, paragraph 3.

⁴⁰⁴ See EPA, Article 61(d), "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

⁴⁰⁵ See EPA, Article 65(a)(ii) – “the creation or maintenance of a branch or representative office within the territory of the EC Party or of the Signatory CARIFORUM States for the purpose of performing an economic activity;” see also Article 65(e) - "branch" of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that such third parties, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension

⁴⁰⁶ Note that the GATS expressly clarifies the matter in footnote 12 to Article XXVIII(g) – “Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied”. See also Article 75(2)(d) - "service supplier" means any natural or juridical person that seeks to supply or supplies a service.

suppliers, though differences in treatment in relation to juridical persons may be justifiable based on their status.

The term ‘financial service supplier’, however, does not cover public entities such as a Central Bank or an entity owned or controlled by a State that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms.⁴⁰⁷ As such, the Central Bank functions of the Eastern Caribbean Central Bank (ECCB) fall outside the scope of the EPA. Additionally, certain development banks may or may not be considered public entities depending on the terms on which services are provided to the public.

Prudential Measures

Article 104 of the EPA recognizes the right of all States to adopt or maintain measures for prudential reasons, such as ensuring the integrity and stability of their financial system, or the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier. The list is non-exhaustive and therefore other justifications could be advanced to address crises or other developments in the sector.

The recent financial crisis has led to an international review of the quality and quantity of capital and liquid resources that financial institutions may be required to maintain. It is suggested that this could possibly involve ‘discriminatory’ treatment, for example, with respect to foreign bank branches in the assessment of capital adequacy ratios, or at least more comprehensive requirements on capital adequacy and leverage ratios in the “whole foreign bank” on a continuing basis.⁴⁰⁸ The use of discriminatory prudential standards,

⁴⁰⁷Specific exceptions apply to public retirement plans or social security schemes except where these may be carried out by financial service suppliers in competition with public entities or private institutions; activities conducted by a central bank or similar agency in pursuit of monetary or exchange rate policies; and activities or services for the account or with the guarantee or using the financial resources of the State or its public entities; see EPA, Article 108.

⁴⁰⁸ *E.g.* the Basel Committee has also introduced a new non risk-weighted leverage ratio to prevent banks building-up excessive on- and off-balance sheet leverage.

i.e. imposing stricter standards on foreign operators⁴⁰⁹ would seem permissible in the WTO as the right to use prudential measures under the GATS obtains “[n]otwithstanding any other provisions of the Agreement”.⁴¹⁰ Under WTO rules Members may therefore discriminate in recognizing foreign prudential standards as well as operate different standards for domestic and foreign-controlled operators inconsistently with a WTO Member’s MFN or national treatment obligations.⁴¹¹ The language of the WTO provision may be contrasted with that of the EPA.

Article 104 of the EPA is entitled ‘*prudential carve-out*’ and would seem to suggest an exception to the application of general norms. However, the provision does not explicitly state that prudential measures may be adopted or maintained “notwithstanding any other provisions of the Agreement”.⁴¹² As such, it is arguably unclear whether measures for prudential reasons may include measures that are inconsistent with the specific commitments of OECS countries. **Coherence would suggest that the EPA prudential carve out be read consistently with that provided in the GATS. To the extent that an ambiguity exists, however, it may be questioned whether and to what degree discriminatory measures are, in fact, required for prudential reasons.**

Implementation of International Standards

Article 105 of the EPA imposes a ‘best endeavour’ obligation on States to provide an opportunity for prior comment to all interested persons on measures of general application which are proposed for adoption. This allows the views of all suppliers

⁴⁰⁹ See also Thomas Cottier, “What Role for Non-discrimination and Prudential Standards in International Financial Law?” (2010) 13(3) J.I.E.L. 817 at 824.

⁴¹⁰ See GATS Annex on Financial Services, paragraph 2(a) – “Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.”

⁴¹¹ Note that the GATS Annex on Financial Services also provides for the recognition of prudential measures of other WTO Members, including possible harmonization. Members must afford adequate opportunity to other interested Members to either negotiate their accession to existing agreements or arrangements or negotiate comparable arrangements with it, provided specific circumstances apply; see paragraph 3 of the Annex. The Annex expressly excludes the requirement for Members to notify the WTO of the opening of negotiations with another country for the purpose of concluding such arrangements, as is found in Article VII:4 of the GATS; see paragraph 3(c) of the Annex.

⁴¹² Compare GATS Annex on Financial Services, paragraph 2(a) where this is explicitly stated.

(foreign and local) to be taken into account in making modifications to the regulatory framework. The general requirement for effective and transparent regulation is largely addressed through the provision for due publicity to be given to all relevant laws, regulations and established practices.⁴¹³ The Authorities are required to make available to interested persons their requirements for completing applications relating to the supply of financial services, on request provide feedback on the status of applications, and notify the applicant without undue delay where additional information is required.⁴¹⁴ Article 105(2) further imposes a best endeavour obligation on States to “*facilitate the implementation and application in their territory of internationally agreed standards for regulation and supervision in the financial services sector.*”

Whereas the prudential carve-out leaves it to the discretion of a State to establish regulatory standards or abandon them, the requirement to endeavour to implement international standards of regulation and supervision serves to qualify this. This is not to infer that international standards *must* be applied or take precedence over regional or national rules and supervisory practices.⁴¹⁵ The ‘best endeavour’ nature of the obligation allows States to take into account the structure of the financial industry and the particular regulatory concerns in determining whether international, regional, or national rules are most appropriate. The effects of international standards in the financial sector, however, cannot be avoided given the extraterritorial application of the laws governing major financial markets.⁴¹⁶

⁴¹³ See also Christine Kaufmann, “The Role of Transparency in Financial Regulation”, (2010) 13(3) J.I.E.L. 779 at 777; UN Framework for Corporate Responsibility for Human Rights (the Protect, Respect and Remedy Framework) addressing legitimacy, fair and equitable procedures, accessibility, predictability and openness. The mandate of financial regulation is not to fill all the details of these criteria but to provide the overall framework by defining the applicable criteria and their minimum content.

⁴¹⁴ See also EPA Article 87(1).

⁴¹⁵ There is almost no ‘hard’ international law on regulation and supervision; different categories of ‘soft’ law are commonly used. The typical international soft law instrument in this regard is standardization, e.g. the International Convergence of Capital Measurement and Capital Standards (i.e. the Basel Accord). While the Basel Accord is essentially a non-binding instrument, in other areas of financial regulation a strategy of incorporation is used in order to give non-binding instruments some legal force, e.g. international accounting standards incorporated into domestic law. It may be suggested, however, that the new Financial Stability Board (FSB) offers evidence of increasing reliance on legal principles and rules in order to provide financial stability; see also Christian Tietje, “The Role and Prospects of International Law in Financial Regulation and Supervision” (2010) 13(3) J.I.E.L. 663 at 671-672.

⁴¹⁶ E.g. Rolf H. Weber, “Mutilayered Governance in International Financial Regulation and Supervision” (2010) 13(3) J.I.E.L. 683 at 691.

The identification of international standards draws on a global financial system which is somewhat fragmented with a variety of players (public and private sector actors in different types of organizations).⁴¹⁷ Their recommendations provide guidelines and principles as opposed to a legalistic set of rules akin to the multilateral trading system. Standards of financial supervision and regulation have been developed by the Basel committees. Basel standards are non-binding and have not been implemented uniformly in all major markets.⁴¹⁸ They are designed for countries with a highly developed financial sector and therefore do not address the problems of capacity building and institutional constraints found in many developing countries. The difficulties associated with implementing key elements of governance such as transparency have been recognized. Indeed it has been observed that too much transparency may overburden supervisors thus making it impossible for them to adequately process information.⁴¹⁹

The central objective of financial regulation (conceived as the prescription of rules, as distinct from supervision or risk assessment) is to reduce systemic risk. Financial supervision may be distinguished from regulation *per se* as it refers only to the enforcement of regulatory standards. In contrast to the increasing importance of international standards in financial regulations, financial supervision has remained a function that is largely executed and determined on the national level.⁴²⁰

⁴¹⁷ E.g. Thomas Cottier, "What Role for Non-discrimination and Prudential Standards in International Financial Law?" (2010) 13(3) J.I.E.L. 817 at 827 – noting that while in theory the Basel Committee on Banking Supervision is open to all states (there are no formal membership rules), it is *de facto* a club of a few countries, and not open to the rest of the world.

⁴¹⁸ E.g. Hal S. Scott, "Reducing Systemic Risk through the Reform of Capital Regulation" (2010) 13(3) J Int Economic Law 763 at 764-765. Note that the International Association of Deposit Insurers (IADI) has been collaborating with the Basel Committee on Banking Supervision (BCBS), the European Forum of Deposit Insurers (EFDI), the International Monetary Fund (IMF), the World Bank, and the European Commission (EC) to develop a robust methodology to assess compliance with the Core Principles; see <http://www.bis.org/>

⁴¹⁹ An illustration in this regard is the report of the Swiss Financial Market Supervisory Authority on the financial crisis, which concluded that the level of complexity of the Basel II model exceeded the capacities of the supervisor, let alone the bank's management; see Swiss Financial Market Supervisory Authority (FINMA), 'Finanzmarktkrise und Finanzmarktaufsicht', 14 Sept 2009, at pp. 12-13 & 21-22. See also Christine Kaufmann, "The Role of Transparency in Financial Regulation", (2010) 13(3) J.I.E.L.779 at 784.

⁴²⁰ While regulation captures the notion of rulemaking, supervision can be referred to as the monitoring of compliance by financial institutions (and other market participants) with the rules, i.e. while the regulators create the rules, the supervisors implement and enforce them; see Rolf H. Weber, "Mutlayered Governance in International Financial Regulation and Supervision" (2010) 13(3) J.I.E.L. 683 at 694.

There is no single prescribed model of financial supervision.⁴²¹ In recent years the trend has been towards the unification of financial supervision (of the banking, insurance and capital markets sectors) in a single authority.⁴²² Generally, there has been greater consensus with regard to the responsibilities and powers granted to financial supervisors than to the benefits of establishing any particular structure.⁴²³ In this regard, note is taken of the twenty-five (25) Core principles considered necessary for a supervisory system to be effective as defined by the Basel Committee on Banking Supervision (BCBS).⁴²⁴

The regulator for all domestic banking in the OECS is the ECCB. Consultations in the OECS suggest an on-going review of supervision in the financial sector (excluding the domestic banking sector). There appears to be broad support for a single national regulator where this has not already been created:

- In Antigua and Barbuda - the Financial Services Regulatory Commission (FSRC) which currently regulates only the offshore sector is to be conferred authority for credit unions, domestic casinos, land-based casinos, insurance and money transfer services.

⁴²¹ The traditional method is the sectoral model: for each sector of the financial industry, one supervisor is installed. For these purposes, the industry is typically divided into banks, insurance companies, and securities firms. Sectoral supervision and regulation has been called into question by cross-sectoral financial intermediation. Newer models of supervision include: the operational model – based on the types of products that are offered; institutional model – following the sectoral model but extending the functions of the supervisor to all activities of the institutions under its supervision, no matter in which market they take place; and functional approach – based on the supervisory task to be fulfilled; see Christian Tietje, “The Role and Prospects of International Law in Financial Regulation and Supervision” (2010) 13(3) J.I.E.L. 663 at 666.

⁴²² *E.g.* UK Financial Services Authority in 1997 and Swiss Financial Market Supervisory Authority in 2009.

⁴²³ *E.g.* Rolf H. Weber, “Multilayered Governance in International Financial Regulation and Supervision” (2010) 13(3) J.I.E.L. 683 at 694.

⁴²⁴ The 25 Core Principles are globally agreed minimum standards for banking regulation and supervision, covering a wide range of aspects including areas such as licensing, ownership of banks, bank capital adequacy, risk management, consolidated supervision, ways to deal with problematic situations in banks, and the division of tasks and responsibilities between home and host authorities. The Core Principles Methodology provides further details and guidance to assist in the interpretation and assessment of the 25 Core Principles. While providing a concise material framework for financial supervision, the Principles only deal rudimentarily with the procedural side of financial supervision. Mutual assistance and collaboration in the supervision of financial groups with subsidiaries and branches located in different jurisdictions are addressed more explicitly in the Financial Stability Forum’s work on cross-border cooperation in crisis management and supervisory colleges; see <http://www.bis.org/>

- In Dominica - the Financial Services Unit regulates all on-shore and offshore financial services sectors, with the exception of domestic banks.⁴²⁵
- In Grenada - the Grenada Authority for the Regulation of Financial Institutions (GARFIN) replaced the Grenada International Financial Services Authority,⁴²⁶ and is responsible for the regulation of all financial institutions in Grenada, with the exception of domestic banks.⁴²⁷
- In St Vincent and the Grenadines – the intention is to create a single regulatory agency for all non-domestic bank financial services (including credit unions) by essentially merging the International Financial Services Authority (IFSA) (which has regulatory responsibility for the offshore sector) with the Supervisory and Regulatory Division of the Ministry of Finance (which has regulatory responsibility for domestic financial institutions other than banks and credit unions, i.e. essentially domestic insurance and money remitters) and the Registrar of Cooperatives which supervises credit unions and building societies.⁴²⁸
- In St. Kitts and Nevis the Financial Services Commission created in 2000, acts as the ultimate regulatory body for financial services (with the exclusion of the domestic banking sector). Distinct regulatory and supervisory regimes exist in the island of St. Kitts and the island of Nevis. Offshore banking and insurance are regulated in St. Kitts by the Financial Services Department in the Ministry of

⁴²⁵ See Dominica Financial Services Unit Act, section 4 – setting out the objectives of the Unit, i.e. (a) maintain the public’s confidence in the financial system; (b) facilitate the deterrence of financial crimes; (c) supervise financial services licensees in accordance with legislation, regulations and codes; (d) ensure periodic evaluation of the legislative and regulatory framework in accordance with developments in the financial services sector; (e) promote best practices, mutual assistance and exchange of information by maintaining contact and forging relations with foreign regulatory authorities, international associations of regulatory authority bodies or groups relevant to its functions; (f) facilitate the development of the financial sector and services.

⁴²⁶ Grenada Authority for the Regulation of Financial Institutions (GARFIN) Act No. 5 of 2006. It may be noted that provision is made for the appointment of an external director (defined as a director who is not a citizen or resident of Grenada) on the Board of Directors of the Authority; see *ibid*, section 5(1)(c).

⁴²⁷ GARFIN has responsibility for the institutions under: the Building Societies Act; Company Management Act, 1996; Co-operative Societies Act, 1996; Friendly Societies Act; Insurance Act, 2002; International Betting Act, 1998; International Companies Act; International Insurance Act, 1996; International Trusts Act, 1996; and Offshore Banking Act, 2003. GARFIN also has responsibility for money service businesses now regulated by the 2010 Money Services Business Act; see also the Grenada Authority for the Regulation of Financial Institutions Act, sections 16 & 17.

⁴²⁸ See also St Vincent and the Grenadines Building Societies Act.

Finance, and in Nevis by the Nevis Financial Services Department in the Ministry of Finance and Development.⁴²⁹

- In Saint Lucia the Ministry of International Financial Services within the Ministry of Foreign Affairs serves as the single regulatory authority for both offshore and onshore financial services, with the exception of domestic banks and credit unions. This should soon change as we were informed during our consultations that the Single Financial Regulatory Authority (SFRA) Act which is designed to establish a single independent entity to supervise credit unions, international banks and the financial sector as a whole (save for domestic banks) is before Parliament.

The recent financial crisis has led to renewed emphasis on host-country supervision. The emphasis is on a more intrusive and systemic approach, particularly as regards the treatment of foreign bank branches which (as noted below have a significant presence within all OECS jurisdictions). There is discussion concerning, *inter alia*, the need for parent banks to provide guarantees for their branches and possible restrictions on the range of activities or even requirements to operate through subsidiaries rather than branches, particularly where branches become systemically important in the host country market or if there is a concentration of assets in the hands of banks originating in the same home country.⁴³⁰

New Financial Services

Article 106 of the EPA requires a State to permit a foreign financial service supplier (from an EPA party) to provide any new financial service of a type similar to those

⁴²⁹ See also St Kitts and Nevis Financial Services Commission Act establishing the Financial Services Commission (FSC) as the ultimate regulatory body for financial services in St Kitts and Nevis; see *ibid*, section 6 providing that the FSC shall receive reports from the Regulator in St Kitts and the Regulator in Nevis as may be required. Note that the Act is expressly stated to apply to the island of Nevis, and the Minister of Finance may make regulations with the concurrence of the Premier of Nevis; see *ibid*, sections 5(3), 15 & 16.

⁴³⁰ Internationally agreed standards for financial regulation and supervision (including questions as to whether standards are applied individually to each firm established in the market, counting foreign bank branches, or at a 'group' level) are evolving. The scope of financial regulation and supervision is expanding; see also 'Financial Services', Background Note by the Secretariat, Corrigendum, S/C/W/312, 3 February 2010, at paragraph 134.

services that it permits its own financial service suppliers to provide in like circumstances. A State therefore retains the freedom to determine the juridical form through which the service may be provided. Authorisation for the provision of the service may be required, though it may only be refused for prudential reasons and a decision must be made within a reasonable period of time.

The EPA commitments on ‘new financial services’ relate to activities falling within those listed in Article 103 where liberalization commitments have been made.⁴³¹ Article 103 defines “new financial service” as a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in that territory but which is supplied in another jurisdiction.⁴³² As such, it appears to cover financial services providers which are *not established in its territory*. The obligation with respect to new financial services constitutes one of the additional elements derived from the GATS Understanding on Financial Services, though the language used in the EPA is broader. The obligation imposed in the optional GATS Understanding is to permit “financial service suppliers of any other Member *established in its territory* to offer in its territory any new financial service.”

The obligation on new financial services is prospective and arises as new products or means of delivery are evident in a market, the undertakings with respect to new financial services should be subject to continuing review by financial regulators.

Transfer and Processing of Information

Article 107 of the EPA requires States to permit a foreign financial service supplier to transfer information in electronic or other form, into and out of the territory, for data processing as may be required in the ordinary course of business.⁴³³ The EPA

⁴³¹ See the footnote to EPA, Article 106 providing that “[t]his Article applies only to financial services activities covered by Article 103 and liberalized according to this Title.”

⁴³² Note that the new financial service must be supplied in the jurisdiction of a party to the EPA though not necessarily the State from which the supplier wishing to introduce it originates.

⁴³³ See also EPA, Article 198 defining “Personal data” as any information relating to an identified or identifiable individual (data subject); and “Processing of personal data” as any operation or set of

requirement mirrors a similar provision in the (optional) GATS Understanding on Financial Services.⁴³⁴ The corollary of permitting the free transfer and processing of information is the obligation to adopt adequate safeguards to protect personal privacy and the confidentiality of individual records and accounts.

The obligation to adopt adequate safeguards for data protection is further elaborated in Title IV of the EPA. Article 197 of the EPA imposes a requirement for States to, *inter alia*, establish the appropriate legal and regulatory regimes for data protection, as well as the administrative capacity to implement them in line with existing high international standards.⁴³⁵ This is promoted as a means of protecting the interests of consumers and stimulating investor confidence.

Banks and other Financial Services (Excluding Insurance)

Onshore/Domestic Banking

The OECS countries have implemented harmonized onshore domestic banking legislation under the supervision of the ECCB. The legislation of each country is based on a template Uniform Banking Act which was amended in 2005 with a view to incorporating the Basel Core Principles. It may be recalled that Article 105(2) of the EPA requires States to facilitate the implementation and application of internationally agreed standards for regulation and supervision in the financial services sector. All OECS countries have incorporated the revisions into their domestic law. The enhanced regulatory and supervisory measures include strengthened oversight of financial institutions by the ECCB, and more stringent and systematic reporting requirements. For example, a foreign financial institution intending to open a branch or affiliate is required to provide certification that the banking supervisor in the jurisdiction in which it was

operations which is performed upon personal data, such as collection, recording, organisation, storage, alteration, retrieval, consultation, use, disclosure, combination, blocking, erasure or destruction, as well as transfers of personal data across national borders.

⁴³⁴ See GATS Understanding on Financial Services, paragraph 8, on “Transfers of Information and Processing of Information”.

⁴³⁵ See EPA, Article 197(1) and the footnote thereto defining international standards are including the following international instruments: Guidelines for the regulation of computerised personal data files, modified by the General Assembly of the United Nations on 20 November 1990; Recommendation of the Organisation for Economic Cooperation and Development Council concerning guidelines governing the protection of privacy and trans-border flows of personal data of 23 September 1980.

incorporated has no objection to its application for a licence, and evidence that it is subject to comprehensive supervision on a consolidated basis by the authorities in its home jurisdiction. As above-noted new regulatory and supervisory measures on branches and other services suppliers to address weaknesses manifested in the recent financial crisis are contemplated in certain jurisdictions. The relevance of these measures to the circumstances of the OECS is a matter for the consideration of the ECCB as the relevant supervisory authority.

The Eastern Caribbean Central Bank Agreement 1983 gives the ECCB the authority to regulate banking businesses on behalf of, and in collaboration with, participating governments. Banks are licensed locally through the Ministry of Finance and licences are specific to the country where they are granted. All applications are investigated by the ECCB which makes its recommendation to the Minister. The Minister may grant the licence attaching any conditions as deemed prudent or may refuse to grant a licence if of the opinion that it is not in the public interest to do so.⁴³⁶ The ECCB issues prudential guidelines and related orders to financial institutions and their affiliates concerning, *inter alia*, policies, practices and procedures for evaluating the quality of assets, identifying risks, methods of valuation of collateral, liquidity requirements and ratios, and corporate governance.⁴³⁷

There are no limitations on foreign investment in the banking sector in OECS countries. Foreign-owned banks are free to establish subsidiaries or branches. Indeed, there appears to be significant reliance on branches of foreign banking institutions within the region. Foreign-owned banks licensed and incorporated within the jurisdiction are subject to the same requirements as locally owned and incorporated banks and may provide the same services. As above-noted, branches of foreign banks must submit additional information concerning effective home country supervision when applying for a licence. All banks

⁴³⁶ See Uniform Banking Act (2005), section 5 - providing that the Minister "...may refuse to grant the licence *and need not give any reason for so refusing* but shall inform the applicant that he has refused to grant the licence." (added emphasis) Note that the italicised phrase has been omitted from some OECS Banking Acts, e.g. Antigua and Barbuda Banking Act, section 5; this contrasts with Saint Lucia Banking Act, section 5 where the language has been retained. Note that section 11 of the Uniform Banking Act (2005) provides for a statement of reasons where a decision is taken to revoke a licence.

⁴³⁷ See Uniform Banking Act, section 36.

(both local and foreign) must have a place of business within the State in which they are licensed.⁴³⁸

There are no residency or citizenship requirements applied to bank managers or directors. Significantly also, the restrictions imposed on non-nationals with respect to the possession of land, shares and debentures under the Aliens/Non-Citizens Landholding Regulation Acts of OECS countries are generally not applicable to financial institutions licensed under the Banking Act (or at a minimum not applicable with respect to charges held by banks as security).⁴³⁹ There are also no restrictions on persons within the jurisdiction borrowing or placing deposits with banks located abroad.⁴⁴⁰

Securities

The Eastern Caribbean Securities Market (ECSM) facilitates the trading of securities in the OECS region. The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the regulatory body for the ECSM. The Securities Acts which have been enacted in all OECS countries give the Agreement establishing the Eastern Caribbean Securities Regulatory Commission (reproduced in a Schedule to the Act) the force of law within their respective jurisdictions. Amendments made to the Agreement in 2005 (and

⁴³⁸ See also Uniform Banking Act (2005), section 2 - defining "place of business" as "any office including a mobile office of a financial institution"; reference may also be made to the each OECS country, e.g., Antigua and Barbuda Banking Act, Dominica Banking Act and Saint Lucia Banking Act.

⁴³⁹ E.g. Uniform Banking Act, section 68; Antigua and Barbuda Banking Act, section 68. See also St Kitts and Nevis Alien Land Holding Regulation Act, section 2 – excluding from the definition of 'alien' any bank or financial institution whether incorporated within or outside of St Kitts and Nevis; St Vincent and the Grenadines Alien (Landholding Regulation) Act, section 3 - providing an exception for businesses in banking and life assurance, and mortgage financing (under an agreement with the government) as exempted by the Governor General; see also Antigua and Barbuda Banking Act 2005, section 68 - providing that "[t]he provisions of the Non-Citizens Landholding Regulation Act, do not apply to financial institutions licensed under this Act in relation to charges held by the bank as security." Note that provision has been made for other exemptions from the aliens landholding legislation; e.g. Saint Lucia International Business Corporation Act, section 2(10) – providing that "[a] company incorporated under this Act, or a director, shareholder, debenture holder, or any mortgagee or pledgee of the shares or assets thereof shall be exempt from the provisions of the Aliens (Licensing) Act."

⁴⁴⁰ Note that in some jurisdictions approval must be sought as regards transfers in excess of quarter million EC\$; e.g. Antigua and Barbuda, Exchange Control Act, sections 7 & 8 restricting payments in and out of the jurisdiction unless approved. The situation is similar in St Kitts and Nevis as above-noted. The provision is designed to promote transparency with a view to facilitating measures to counter illicit activities and is not viewed as a restriction on financial transfers.

incorporated in all participating territories) facilitate the listing and trading of foreign securities.⁴⁴¹

The Securities Acts address all four modes of supply in securities trading. Section 153D(11) of the Securities Act⁴⁴² speaks to conducting business through, *inter alia*,

- (a) use of the telephone, telegraph, mail, Internet or e-mail to communicate with investors or potential investors within the jurisdiction, whether on a regular or sporadic basis;
- (b) visiting investors or potential investors within the jurisdiction, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis;
- (c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange; or
- (d) engaging in any other activity or combination of activities undertaken by foreign broker dealers, limited service brokers or foreign investment advisers, if any part of the activity takes place or is designed or intended to communicate with persons present within the jurisdiction.

The general licensing requirements to practice as a Broker Dealer, Limited Broker Dealer, Investment Adviser, Principal, or Representative have been standardized and are based on standard criteria, such as good reputation and character, requisite education, qualifications and experience, and recognition as a fit and proper person to undertake the responsibilities of the job.⁴⁴³ Similar criteria apply for the grant of a custodian licence.⁴⁴⁴

⁴⁴¹ See also the Securities (Foreign Securities and Intermediaries) Regulations made pursuant to section 160 of the principal legislation which provides for, *inter alia*, the listing and trading on the securities exchange of foreign securities issued by a foreign company formed or incorporated in the countries specified in Schedule 1. Schedule 1 includes all EU members as of 1st July 2003; see *ibid*, regulation 3.

⁴⁴² See also the Securities (Foreign Securities and Intermediaries) Regulations, regulation 8.

⁴⁴³ See also the Securities (Foreign Securities and Intermediaries) Regulations; note that regulation 7(1) extends the application of the Regulations to a foreign investment adviser that desires to give advice on securities or holds himself or herself out as carrying on the business of giving advice on securities. The exceptions made for foreign broker dealers, among others, do not apply to a person who conducts business or holds himself or herself out as conducting business within a member territory; such persons must obtain a normal licence under Part IV of the Securities Act.

Some exemptions apply with respect to certain categories of persons (foreign broker dealers and limited service brokers and investment advisers and their principals and representatives) who trade securities for their own account or on behalf of foreign persons.

Other Legislation

The Financial Institutions (Non-Banking) Act of Antigua and Barbuda provides for the licensing of companies (incorporated or registered under the Companies Act) which carry on the business of a financial institution.⁴⁴⁵ A “business of a financial nature” is defined as the collection of funds in the form of deposits, shares, loans, premiums, and the investment of such funds in loans, shares or other securities, and includes the performance of the functions and duties of a trustee, administrator, executor or attorney but excludes commercial banks licensed under the Banking Act.⁴⁴⁶ The Act gives the Minister (with the approval of Cabinet) the discretion to restrict the nature of the activities (i.e. class of business) that may be undertaken when issuing or renewing a licence.⁴⁴⁷ Provision is made for the possible introduction of control measures, however, these must be uniformly applied to all financial institutions.⁴⁴⁸ **The legislation could potentially be used to restrict market access in the sector. However no such indication was given in our consultations and, indeed, we were informed that the legislation is to be repealed.** Moreover, it is noted that the only specific commitments undertaken by Antigua and Barbuda in the financial sector (excluding insurance) relate to payment and money transmission services; this commitment is unbound save for commercial presence.

Several OECS countries (including St Vincent and the Grenadines, St Kitts and Nevis and Dominica) have Financial Services Unit Acts. The Financial Services Unit Act 2008

⁴⁴⁴ E.g. Saint Lucia Securities Act, section 57.

⁴⁴⁵ See Financial Institutions (Non-Banking) Act, section 4(1).

⁴⁴⁶ See Financial Institutions (Non-Banking) Act, section 2.

⁴⁴⁷ See Financial Institutions (Non-Banking) Act, section 6; see also *ibid*, section 7 with respect to the annual renewal of licences.

⁴⁴⁸ E.g. Financial Institutions (Non-Banking) Act, section 19 - providing for the introduction of non-discriminatory controls necessary to restrict or prevent an undue expansion of credit; see also *ibid*, section 11 - providing for an appeal to the High Court on the revocation of a licence.

of Dominica applies to ‘financial services businesses’ which is defined similarly to “business of a financial nature” under the Antigua and Barbuda Financial Institutions (Non-Banking) Act (above-discussed). Significantly, it does not cover commercial banks.⁴⁴⁹ The legislation should be distinguished from the Financial Intelligence Unit Acts found in a number of countries which are designed to combat money laundering and other illicit activity.⁴⁵⁰ The Financial Services Unit Act requires any person wishing to carry on a financial services (non-banking) business in Dominica to obtain a licence.⁴⁵¹ The criteria for becoming a director, controlling shareholder or manager of a licensed financial institution is based on the fitness of the person to hold the particular position irrespective of one’s nationality.⁴⁵² The Act also empowers the Minister, on the recommendation of the ECCB or the Director of the Financial Services Unit (which regulates all on-shore and off-shore financial services save for domestic banks) to issue Orders establishing sound principles for the conduct of financial services businesses.⁴⁵³

Dominica, as above-noted, has undertaken more commitments in the financial sector than other OECS countries. These are largely unbound for cross-border trade (modes 1 and 2) and the temporary movement of business persons, as opposed to commercial presence – where obligations are, in certain instances, time deferred until 2018. Despite the differences in approach to undertaking commitments, the regulatory framework for financial services in Dominica does not differ significantly from other OECS countries.

The Dominica Money Services Business Act 2010 regulates money services businesses operating within the jurisdiction. A “money service business” is defined under the Act as a business which primarily, transmits money or monetary value in any form; engages in

⁴⁴⁹ See Dominica Financial Services Unit Act, section 2(1) - excluding from the definition of “financial services business” domestic deposit taking institutions regulated by the Eastern Caribbean Central Bank.; see also *ibid.*, section 1(2).

⁴⁵⁰ *E.g.* St Kitts and Nevis Financial Intelligence Unit Act

⁴⁵¹ See Dominica Financial Services Unit Act, section 11.

⁴⁵² See Dominica Financial Services Unit Act, section 25(1).

⁴⁵³ See Dominica Financial Services Unit Act, section 30 – note that such Orders are subject to negative resolution of the House of Assembly and must be *Gazetted*. See also *ibid.*, section 31 where the Director with the approval of the Minister is authorized to issue guidelines with respect to the procedures to be followed by and the conduct expected of licensees in the operation of their licensed businesses which must also be *Gazetted*. In accordance with the EPA these should reflect international standards.

cheque cashing, currency exchange, the issuance, sale or redemption of money orders or traveller's cheque; pays day advances; and any other services as may be specified by the Minister in a Notice published in the *Gazette*. It also includes a franchise holder of any such business.⁴⁵⁴ The Act does not apply to, *inter alia*, persons licensed under the Banking Act or a clearing agency licensed under the Securities Act.

No person may carry on a money service business in Dominica without a licence.⁴⁵⁵ Different classes of licences (A-E) exist for different activities⁴⁵⁶ Standard non-discriminatory conditions are established for the grant of licenses, though the Minister retains general authority not to grant a licence in the "public interest".⁴⁵⁷ Certain procedural rights are provided under the Act with respect to the suspension or revocation of a licence which includes possible recourse to the courts.⁴⁵⁸ The Act contemplates the issuance of prudential guidelines by the Financial Service Unit in consultation with the Minister.⁴⁵⁹ No discriminatory prudential measures (outside of the insurance sector) were identified during our consultations.

Similar legislation governing money services businesses have been enacted in other OECS countries.⁴⁶⁰ Significantly, St Vincent and the Grenadines, Saint Lucia and Antigua and Barbuda – the three OECS countries to have undertaken commitments on all payment and money transmission also have Money Services Business Acts. The Money Services Business Act 2010 of Antigua and Barbuda provides a comparable definition of

⁴⁵⁴ See Dominica Money Services Business Act, section 2; note that a "franchise holder" is defined as a person who enters into an agreement with a money services business provider and purchases the right to use its trademark and business model to do money services business.

⁴⁵⁵ Note that a money services business which is licensed under the Money Services Business Act is not required to be licensed under the Trade and Professional Licences Act; see Dominica Money Services Business Act, section 3(2).

⁴⁵⁶ See Dominica Money Services Business Act, section 5.

⁴⁵⁷ See Dominica Money Services Business Act, section 6. Note also that no distinction is made with respect to application or annual licensing fees for national and foreign service suppliers; see *ibid*, Schedule 4.

⁴⁵⁸ See Dominica Money Services Business Act, sections 33 & 34; see also, for example, section 15 with respect to approval for the appointment of directors or other senior officers which must be sought from the Financial Services Unit – the Act provides that if there is no response within 45 days of the receipt of the required documents, the request is deemed to be approved.

⁴⁵⁹ See Dominica Money Services Business Act, section 48; see also *ibid*, section 8 on capital adequacy ratios.

⁴⁶⁰ See also Grenada Money Services Business Act 2010; Grenada Authority for the Regulation of Financial Institutions Act, sections 16 & 17; St Kitts and Nevis Money Services Business Act 2008.

money service business as found in the Dominican legislation, and is structured similarly as regards, *inter alia*, its scope (e.g. non-application to persons licensed under the Banking Act or the Securities Act) and the provision for different classes of licences for different activities. A Class ‘A’ licence, most notably, permits the holder to transmit money or monetary value in any form.⁴⁶¹ The legislation is significant as payment and money transmission is the only commitment made by Antigua and Barbuda in the banking and other financial services sector (excluding insurance); most notably, commercial presence is bound without reservation and cross-border supply (modes 1 and 2) is unbound.

The Antigua and Barbuda Money Services Business Act requires that persons obtain a licence (or be an agent or subagent) before carrying on money service business. The Act provides for the granting of licences by the Financial Services Regulatory Commission (FSRC) following any investigation as deemed necessary to ascertain the correctness of the information provided and other facts relevant to the operation of the business as well as “*the convenience and needs of the community to be served by the granting of the licence*”.⁴⁶² The FSRC is required to issue the licence within a reasonable period of time if it is satisfied that the application is in order and the applicant is a fit and proper person to be licensed.⁴⁶³ There is no suggestion that the FSRC may not issue a licence based on the needs of the community although provision is made for the imposition of “terms, conditions or restrictions” as considered necessary.⁴⁶⁴ **The reference to the “convenience and needs of the community” could potentially open the door for the imposition of restrictions on market access contrary to Antigua and Barbuda’s EPA commitments. However, the measure could simply be used to further legitimate policy objectives.⁴⁶⁵ In either event, the drafting of an appropriate administrative note may be a useful exercise.**

⁴⁶¹ See Antigua and Barbuda Money Services Business Act, section 5(2)(a).

⁴⁶² See Antigua and Barbuda Money Services Business Act, section 6(2)(f).

⁴⁶³ See Antigua and Barbuda Money Services Business Act, section 6(4).

⁴⁶⁴ *Ibid.*

⁴⁶⁵ See also EPA, Article 60(4) “Consistent with the provisions of this Title, the Parties and the Signatory CARIFORUM States retain the right to regulate and to introduce new regulations to meet legitimate policy objectives.” See also Antigua and Barbuda Money Services Business Act, section 39 - concerning measures which the FSRC may take in the public interest.

A review of the OECS financial services laws and regulations could potentially include legislation relating to the registration, supervision and management of co-operative societies, including credit unions. However, as the fundamental nature of co-operatives differs from that of the broader banking sector this course was not pursued. The exclusive nature of the membership of co-operatives is an essential element of their operation. The organizational principles of co-operative societies derive from a common bond of philosophy and socio-economic objectives, and are based on a commitment to joint action, democracy and self-help in order to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part.⁴⁶⁶ The legislation on co-operatives does not preclude foreign involvement nor is it seen as raising concerns with respect to national treatment or any other obligations imposed by the EPA. Other legislation such as moneylending Acts which remain on the statute books are also not examined herein as they are of limited relevance in modern day regulation and supervision of financial services and not particularly pertinent for the purposes of the review.

Insurance services

The absence of a regional regulator as obtains in the banking sector or with securities is highlighted in various areas of convergence and divergence in the regulation of insurance services in OECS countries. The benefits to be derived from modern uniform legislation implementing international standards have been highlighted by the challenges faced with the CLICO and British American affair.⁴⁶⁷ However, the harmonized legislation which was anticipated in 2007 is still not in place in several jurisdictions.

The domestic/onshore insurance industry in Dominica is regulated by 1974 legislation (as amended); in Saint Lucia reference may be made to 1995 legislation as amended in 2003 and 2006; in Saint Vincent and the Grenadines the 2003 legislation is apparently being

⁴⁶⁶ *E.g.* Saint Lucia Co-operative Societies Act, section 2 - definition of 'co-operative society'; see also St Vincent and the Grenadines Building Societies Act.

⁴⁶⁷ See also Prime Minister of St. Vincent and the Grenadines, the Hon. Dr. Ralph Gonsalves Feature Address at Launch of CMMB St. Vincent & the Grenadines June 16, 2009, <http://mycmmmb.com/docs/PM%20CMMB%20LAUNCH%20SPEECH.pdf>.

revised to incorporate elements from the more recently developed model legislation prepared for the OECS (for example, with respect to corporate governance); in Antigua and Barbuda more recent legislation was enacted in 2007; in St Kitts and Nevis in 2009; and in Grenada the new Insurance Act came into effect in 2010. The St Kitts and Nevis and Grenada Acts (and to a large extent also the Antigua and Barbuda Act) appear to be based on the OECS model law and, as such, reflect anticipated reforms in the existing regulatory framework in other OECS countries. It may also be observed that even without the proposed modifications, there still are significant similarities in the legislation in force throughout the region irrespective of the date of the enactment or revision. One noteworthy similarity, given the specific EPA commitments of OECS countries, is the provision for the re-insurance of liabilities under policies to be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the re-insurer.⁴⁶⁸

Local companies are defined in most of the Insurance Acts in terms of the percentage share of local and/or regional ownership as well as incorporation.⁴⁶⁹ The Dominica Insurance Act of 1974 is a notable exception; foreign companies are defined solely in terms of their place of incorporation and the designation of local insurer and external insurer is based on whether or not the registered insurer is constituted within or outside of the jurisdiction.

Foreign insurance companies (whether their agents, branches or subsidiaries) dominate the market in all OECS countries. They provide services principally in general and long-term insurance as opposed to reinsurance, i.e. the only financial services sector where all six OECS countries have made commitments. There are no nationality, citizenship or

⁴⁶⁸ *E.g.* Grenada Insurance Act, 2010, section 4(2); St Kitts and Nevis Insurance Act, 2009, section 4(2).

⁴⁶⁹ *E.g.* Grenada Insurance Act, section 2 - defining "local company" as a body incorporated under the Companies Act, with not less than fifty-one per centum of its paid-up share capital held by citizens of Grenada; and "local insurance company" as (a) a local company that has been registered under this Act to carry on an insurance business in Grenada or elsewhere; or (b) an insurance company designated to be a local insurance company under section 3. Section 3 allows for the designation of an insurance company as a local insurance company if- (a) the insurance company is incorporated and registered in a Member State of the Currency Union; (b) fifty one percent of the insurance company's paid up share capital is held by citizens of a Member State; and (c) the insurance company is registered under this Act; see also St Kitts and Nevis Insurance Act, section 2.

residency requirements for company directors or limitations on the percentage of foreign ownership. Nationality restrictions are also not applied to registered intermediaries such as insurance brokers. However, in Grenada and St Kitts and Nevis a foreign insurance company must appoint a citizen of that country as its principal representative within the jurisdiction.⁴⁷⁰ In certain countries such as Dominica, Antigua and Barbuda, Grenada, and Saint Lucia in order for a foreign company to be registered it must have been lawfully constituted in the country in which it was incorporated and have undertaken insurance business in that country for at least two years in the case of Dominica, three as regards Antigua and Barbuda and Grenada or five years in the case of Saint Lucia.⁴⁷¹ Similar requirements are provided for in St Kitts and Nevis with respect to foreign insurance companies wishing to conduct business within the jurisdiction on a branch basis.⁴⁷² All registered insurers must appoint a principal representative and maintain a principal office within the jurisdiction. Provision is made for due process for an aggrieved applicant which has been refused registration.⁴⁷³

The required statutory deposits and paid-up share capital of insurance companies vary depending on the country and, whether a supplier is treated as a local or foreign operator. In Dominica higher statutory deposit requirements are imposed on foreign insurance companies and different capital adequacy ratios also apply for domestic and foreign companies (defined in terms of their place of incorporation under the Dominica Act).⁴⁷⁴ In St Vincent and the Grenadines, while the statutory deposit and

⁴⁷⁰ See Grenada Insurance Act, 2010, section 16(1). Note that a “foreign insurance company” is defined in section 2 as “a foreign company licensed in its jurisdiction of incorporation or registration to carry on insurance activities, and is registered under this Act to carry on an insurance business in Grenada on a branch basis”; see also St Kitts and Nevis Insurance Act, 2009, section 17. Compare Antigua and Barbuda Insurance Act, section 14(1)(j) - where the principal representative need only be resident within the jurisdiction; Saint Lucia Insurance Act, sections 13(2) & 17 - requiring that the name of a principal representative and address of the principal office be provided (without addressing citizenship or residency requirements).

⁴⁷¹ *E.g.* Saint Lucia Insurance Act, section 15; note that in Dominica an association of underwriters constituted outside Dominica must have been established for at least 5 years before it can be registered as an insurer under the Dominica Insurance Act, and must nominate 2 persons within the jurisdiction to accept service. In Saint Lucia associations constituted outside of Saint Lucia must also have been established for 5 years and must nominate one person within the jurisdiction to accept service.

⁴⁷² See St Kitts and Nevis Insurance Act, 2009, section 15(1)(i); see also *ibid*, section 15(5).

⁴⁷³ *E.g.* Grenada Insurance Act, 2010, sections 14(4), 20 & 223.

⁴⁷⁴ Deposit requirements for life insurance are: EC\$100,000 for foreign companies and EC\$50,000 for local companies; and for general insurance are: EC\$30,000 for foreign companies and EC\$20,000 for

insurance fund requirements are applied equally to foreign and domestic companies, the share capital necessary for registration differs. In Saint Lucia statutory deposits and minimum capital paid-up requirements as well as licence fees are higher for foreign companies than local companies; registration fees are also higher for foreign brokers than local entities (i.e. where a majority interest is owned by citizens of Saint Lucia). Similar distinctions with regard to paid-up share capital and annual licence fees also apply in Antigua and Barbuda.⁴⁷⁵ In St Kitts and Nevis the requirements for paid-up share capital and annual licence fees are higher for foreign insurance companies than local insurance companies, though the statutory deposits are the same. It may be noted that the legislation in St Kitts and Nevis defines a ‘foreign insurance company’ as operating on a branch basis.⁴⁷⁶ In Grenada the requirements for minimum paid-up capital are higher for foreign insurance companies than for local companies, and the definition of a ‘foreign insurance company’ mirrors that of the St Kitts and Nevis Act.⁴⁷⁷

The Insurance Acts of OECS countries also impose a requirement on foreign and local insurers to establish insurance funds. The funds must be established in respect of each class of insurance business relating to policies issued within the jurisdiction and must consist of assets equal in value to the insurer’s liability and contingency reserves as

local companies, or, in each case, 30% of premium income from general insurance in Dominica during the financial year preceding the date of deposit, whichever is less. Minimum paid-up capital requirements are not stipulated in the Insurance Act.

⁴⁷⁵ See Antigua and Barbuda Insurance Act, 2007, section 12 & Schedule 3.

⁴⁷⁶ See St Kitts and Nevis Insurance Act, 2009, section 13 & Schedule 3. Note also that special restrictions apply to the repatriation of profits by a foreign insurance company, i.e. this is proscribed where the value of assets of any insurance fund is less than one hundred and ten percent (110%) of the liabilities attributable to that business; see section 21(7). Compare *ibid*, section 21(6) providing that a local insurance company may not declare a dividend when the value of the assets of its long-term insurance fund or motor vehicle insurance fund is less than the liabilities attributable to that business. See also Grenada Insurance Act, 2010, section 29. A foreign insurance company must also maintain a principal office in St Kitts and Nevis and appoint, by power of attorney, a citizen of St Kitts and Nevis as its principal representative in the State; see St Kitts and Nevis Insurance Act, section 17(1); see also Grenada Insurance Act, 2010, section 16.

⁴⁷⁷ See Grenada Insurance Act, 2010, sections 2 & 12(1). See also the laws of Antigua and Barbuda, Grenada and St Kitts and Nevis which make provision for capital adequacy ratios calculated on a consolidated and solo basis for every registered insurance company within a financial group; see Antigua and Barbuda Insurance Act, 2007, section 34; Grenada Insurance Act, 2010, section 34; and St Kitts and Nevis Insurance Act, 2009, section 35. Note also that provision is made for the entering into agreements with registered insurance companies for the purpose of implementing any measure designed to maintain or improve its safety and soundness; provision is also made for the issuing prudential guidelines; see Antigua and Barbuda Insurance Act, sections 59 & 200; Grenada Insurance Act, sections 59 & 203; St Kitts and Nevis Insurance Act, sections 60 & 204.

established by its revenue account, less the amounts held on deposit with the Supervisor. The assets of the funds must be placed in trust within four months of the end of each financial year.⁴⁷⁸ In so far as different statutory deposits are required of foreign *versus* local companies the provision for an insurance fund may be seen as an offsetting measure.

There was an admission during our consultations that it may be difficult to justify different capital ratio requirements in the Insurance sector as prudential measures. The necessity for such discriminatory measures may therefore be questioned. Still it was felt to be ‘unfair’ to have one standard for both domestic and foreign companies given the limited resources of local firms.

Distinctions are also evident in the tax imposed on regional and non-regional entities in the insurance sector. The Saint Lucia Insurance Premium Tax Act provides for the registration of insurance companies⁴⁷⁹ and imposes a tax in addition to that payable by virtue of the Income Tax Act on the premium income of an insurance company carrying on life or general insurance business. The rates imposed are higher for foreign insurance companies than resident insurance companies. A resident insurance company is defined as “a company that is registered or incorporated in Saint Lucia or a member State [of CARICOM or OECS] with not less than 51% of its paid up capital owned by persons resident in Saint Lucia or persons who are nationals of (*sic*) member State”.⁴⁸⁰ A foreign company is defined as an insurance company not being a resident insurance company.

The reduced tax rate for resident insurance companies is discriminatory and affects conditions of competition in the sector. It may be argued that the measure should be

⁴⁷⁸ See Grenada Insurance Act, 2010, sections 28(1) & 29; St Kitts and Nevis Insurance Act, 2009, sections 29(1) & 30; Saint Lucia Insurance Act 2008, section 88; Antigua and Barbuda Insurance Act, 2007, section 29. Note that in the Grenadian and St Kitts and Nevis legislation the obligation of a local insurance company is limited to the assets of its long-term insurance fund and its motor vehicle insurance fund; whereas a foreign insurance company is required to place the assets of each fund established pursuant to section 28(1) in trust. In Saint Lucia, St Vincent and the Grenadines, and Antigua and Barbuda the same obligation is placed on all insurers. Note that this requirement is not found in the Dominica Insurance Act, 1974 (as amended).

⁴⁷⁹ See Saint Lucia Insurance Premium Tax Act, section 8 - providing for the registration of insurance companies subject to tax under the Act.

⁴⁸⁰ Saint Lucia Insurance Premium Tax Act, section 2.

treated as a *de facto* subsidy to national/regional companies and therefore outside of the scope of the EPA. Attention is drawn to this fact without making a formal recommendation. Additionally, it may be noted that Saint Lucia’s commitments in the insurance sector are limited to reinsurance and retrocession. The reinsurance of liabilities under insurance policies are treated for the purposes of the Insurance Act as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer.⁴⁸¹

There appears to be some provision for persons within the OECS to obtain insurance coverage from firms located abroad. No express prohibition exists in Dominica. In Antigua and Barbuda the Insurance Levy Act makes provision for an insurance levy to be applied to the premium paid to an insurance company not registered under the Act.⁴⁸² **Our consultations suggest, however, that the intention is to repeal the Act.** In Grenada, St Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines, the Supervisor of Insurance or Registrar (in the case of St Kitts and Nevis and Saint Lucia) may grant permission for an individual to enter into an insurance contract with a company not registered under the relevant Act if the Supervisor/Registrar is satisfied that it is not possible to obtain similar insurance protection from a registered insurer. This provision, however, does not generally extend to contracts for reinsurance.⁴⁸³

The application of ENTs is a restrictive measure and the imposition of an insurance levy disadvantages unregistered insurers. However, the provision of insurance through unregistered insurers raises additional concerns for regulators and limiting their entry into the market may be justifiable for prudential reasons.

⁴⁸¹ See Saint Lucia Insurance Act, section 4(3).

⁴⁸² See the Antigua and Barbuda Insurance Levy Act which requires special insurance brokers who place business with an insurer not registered under the Insurance Act to pay an insurance levy of 3% of the premium paid to the insurer, less the agent's commission. This applies to all classes of insurance except motor vehicles.

⁴⁸³ See Saint Lucia Insurance Act, section 11(2) – providing that “a person who desires to enter into an insurance contract with a non-registered insurer (except a contract relating to reinsurance), shall apply to the Registrar for permission to do”; St Vincent and the Grenadines Insurance Act, section 11(2); St Kitts and Nevis Insurance Act, 2009, section 12(2); Grenada Insurance Act, 2010, section 11(2).

Note on the offshore sector

There are several pieces of legislation governing the offshore sector in OECS countries, including the International Business Companies Act, International Banks Act (Offshore Banking Act), International Insurance Act (Exempt Insurance Act), International Mutual Funds Act, and International Trust Act.⁴⁸⁴ The legislation generally governs activities carried on from within the jurisdiction exclusively with foreigners. As such it does not regulate the supply of services to persons within the jurisdiction which are governed by other laws, including the financial legislation above-discussed. The legislation is designed to attract foreign investment and provide incentives by way of tax exemptions and benefits to companies locating off-shore. Traditional requirements mandating the involvement of citizens in the ownership and management of off-shore companies have been partially phased out in some jurisdictions.⁴⁸⁵

International business companies (IBCs) registered under one or more of these ‘international’ Acts may not undertake business with any resident or invest in any asset which represents a claim on any resident (other than another IBC). As such, a foreign service supplier in the offshore sector essentially trades with other foreigners. The nature of the investment and cross-border supply of services do not, in fact, represent typical services trade between home and host countries. Depending on the nature of the business, the sort of legislative prescriptions imposed include requirements that transactions be made in foreign currency (i.e. foreign within every country within the CARICOM region), preclude managing or administering real property for persons resident within the jurisdiction, and restrict the insuring of risks or hazards solely to those outside the jurisdiction and CARICOM region.

⁴⁸⁴ Note that the legislation governing the offshore sector is not necessarily exclusive to it. Some acts serve a dual purpose, i.e. they may also be used to establish businesses for the purpose of operating on the domestic market, for example, the Nevis Multiiform Foundations Ordinance referred to in the previous discussion on companies or the St Vincent and the Grenadines Mutual Funds (Amendment and Consolidation) Act of 1998 referred to earlier in the discussion on ouster clauses.

⁴⁸⁵ E.g. Antigua and Barbuda International Business Corporations Act which was amended in 2007 to repeal the requirement for at least one director to be a citizen and resident of the country. But note that most OECS (except Antigua and Barbuda and Saint Lucia) maintain citizenship and/or residency requirements as regards at least one director of an offshore bank (which is not generally applicable in the case of insurance companies).

The offshore sector is subject to domestic regulation and supervision and increasing scrutiny from international institutions such as the Global Forum which promote the implementation of international standards through a process of peer reviews.⁴⁸⁶

⁴⁸⁶ It should be noted that provision is made for the presence of IBCs outside of the financial sector; *e.g.* Antigua and Barbuda International Business Corporation Act, section 4(5) - defining “international manufacturing” as the manufacturing, preparation, processing, assembling, or packaging of any products within Antigua and Barbuda for which the sole intended destination is one or more countries outside the CARICOM region. But see the WTO Agreement on Trade-Related Investment Measures (TRIMS) and WTO Agreement on Subsidies and Countervailing Measures limiting the sort of measures which may be provided contingent on exporting goods.

7. HEALTH RELATED AND SOCIAL SERVICES

Hospital services

Other human health services

The division of health related and social services may be broken down into human health, veterinary and social services. OECS countries have only undertaken commitments within the human health services group.

All six (6) OECS countries have undertaken commitments with respect to hospital services including services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Cross-border supply (modes 1 and 2) are bound without reservation for all six (6) countries. Commitments on commercial presence vary (for example, Dominica's market access commitments for commercial presence in this subsector are time deferred until 2018). **Note is made of the fact that Saint Lucia has indicated 'None' under the market access and national treatment columns for mode 4.** Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services, and other similar activities. It, however, excludes services delivered by hospital out-patient clinics (which are classified under 'General medical services' or 'Specialized medical services'), dental services, and ambulance services.

The legislation in OECS countries on hospitals is generally institution specific and serves to establish Boards with responsibility for the administration, management and overall organization of the institution in an efficient manner. Examples of this are the Antigua and Barbuda Mount St. John's Medical Centre Act, the Medical and Holberton Institution Act, and Saint Lucia St Jude Hospital Act. The Dominica Hospital and Health Care Facilities Act provides a broader regulatory framework for the licensing of premises as hospital and health care facilities. The legislation does not discriminate against foreign service providers.

All OECS countries, save for Antigua and Barbuda, have undertaken commitments on other human health services (excluding deliveries and related services, nursing services, physiotherapeutic and para-medical).⁴⁸⁷ The commitments of Saint Lucia expressly exclude ambulance services; thereby limiting Saint Lucia to residential health facilities services other than hospital services,⁴⁸⁸ and other human health services n.e.c. (not elsewhere classified).⁴⁸⁹ St Vincent and the Grenadines has limited its commitments to other human health services n.e.c. It should be noted that Dominica's commitments on market access for commercial presence in this subsector are also time deferred until 2018. The observations made with respect to the regulation of hospital services in OECS countries are generally applicable here also.

⁴⁸⁷ This covers services such as supervision during pregnancy and childbirth and the supervision of the mother after birth. Services in the field of nursing (without admission) care, advice and prevention for patients at home, the provision of maternity care, children's hygienics, etc. Physiotherapy and para-medical services are services in the field of physiotherapy, ergotherapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, etc.

⁴⁸⁸ This covers combined lodging and medical services not carried out under the supervision of a medical doctor located on the premises.

⁴⁸⁹ This covers services in the field of: morphological or chemical pathology, bacteriology, virology, immunology, etc., and services not elsewhere classified, such as blood collection services.

8. TOURISM AND TRAVEL-RELATED SERVICES

Hotels and restaurants

- *Letting services of furnished accommodation*

Other

- *Hotel development*
- *Hotel management*
- *Marina services*
- *Spa services*

The list of services included under “Tourism and Travel Related Services” in the EPA follows the WTO's Services Sectoral Classification List W/120, which is distinctly limited in scope, comprising only hotels and restaurants, travel agencies and tour operators, and tourist guide services (in addition to a residual "Other" category). OECS commitments relate only to a subset of these services. Significantly, no commitments have been undertaken with respect to travel agencies and tour operators and tourist guide services.

Tourism is highly fragmented and the industry embraces a number of sectors such as transportation, accommodation, food services, tour operators and travel agencies, recreation and entertainment. Numerous services, not classified within ‘tourism services’ in the CPC provisional code are commonly associated with the industry, including computer reservation systems; cruise ships and many other transport services; car rentals; hotel construction; certain distribution, business, and financial services; and recreational, cultural and sporting services, which are found in other W/120 sectoral categories.⁴⁹⁰

All six (6) OECS countries have undertaken commitments on hotels and restaurants (including catering); St Vincent and the Grenadines has excluded commitments on

⁴⁹⁰ E.g. Communication from the Dominican Republic, El Salvador, and Honduras, “The Cluster of Tourism Industries”, S/CSS/W/19, 5 December 2000. Note that more WTO Members have made GATS commitments in Tourism and Travel Related Services as defined in W/120 than for any other sector.

restaurants which fall within the ‘food serving services’ group;⁴⁹¹ and Saint Lucia has limited its commitments to hotels and resorts in excess of one hundred (100) rooms and restaurant services (excluding beverage services).⁴⁹² Cross-border supply (mode 1) of hotel and restaurant services is unbound due to lack of technical feasibility for all OECS countries. Modes 2 and 3 are bound with certain reservations on commercial presence (mode 3). **Grenada has made a reservation on market access for commercial presence concerning the size of operations as well as ethnic and specialty restaurants. The reservation is ambiguous as the “size of operation” whether in the number of rooms or any other defining factor is not stated; additionally, the definition of ‘ethnic and specialty restaurants’ is open to broad interpretation.** St Kitts and Nevis has made a reservation on market access for commercial presence limited to developments in excess of 75 rooms, and reserved ownership of non-ethnic restaurants to nationals. Dominica has made reference to the Hotel Aid Act and Fiscal Incentives Act in its reservation on national treatment on commercial presence. It may be recalled, however, that the EPA does not discipline subsidy measures and therefore reservations need not be stated with respect to such measures. It is understood that such inscriptions have been made for purposes of emphasis.

Saint Lucia is the only OECS country to make a specific commitment with respect to camping and caravanning site services (CPC 64195 which fall within ‘Other lodging services’).⁴⁹³ The services covered include lodging and related services provided by trailer and recreational vehicle parks, campsites and similar facilities. Such services

⁴⁹¹ Food serving services include: food preparation and serving services and related beverage serving services furnished by restaurants, cafes and similar eating facilities providing full service consisting of waiter service to individual customers seated at tables (including counters or booths), with or without entertainment, and also furnished by eating facilities that provide a range of pre-cooked foods from which the customer makes individual selections and is billed accordingly, e.g. cafeterias. Included are such services provided by restaurants, bars, nightclubs and similar facilities, operated in hotels or other lodging places or in transport facilities, e.g. in trains or aboard ships and also other food preparation and serving services and related beverage services furnished, e.g. by refreshment stands.

⁴⁹² Beverage serving services concern mostly alcoholic beverages, delivered by bars and similar facilities, with and without entertainment. Included are such services provided by bars operated in hotels or other lodging places or in transport facilities, e.g. in trains or aboard ships.

⁴⁹³ The ‘Other lodging services’, CPC 6419, includes the following subclasses: children's holiday camp services; holiday center and holiday home services; letting services of furnished accommodation; youth hostel and mountain shelter services; camping and caravanning site services; sleeping car services and sleeping services in other transport media; other lodging services n.e.c.

include provision of the site only or of the site and the tent or trailer situated thereon.⁴⁹⁴ Saint Lucia has made no reservations on cross-border trade (modes 1 and 2) and commercial presence.

Only Dominica and Grenada have made commitments on hotel development. Mode 1 is unbound for both countries due to lack of technical feasibility, and market access for commercial presence is subject to reservations pertaining to the size of the development; for Dominica, in excess of 50 rooms; for Grenada, in excess of 100 rooms. **Note is made of the fact that Dominica and Grenada have indicated 'None' under the national treatment column for mode 4.**

Only Antigua and Barbuda has made commitments on hotel management. No reservations have been made on cross-border supply (modes 1 and 2) and commercial presence.

Five (5) OECS countries (all save for St Vincent and the Grenadines) have made commitments on marina services. Reservations have been made on market access for commercial presence based on the size of the vessel – “For vessels 30-100 feet, marinas with more than 100 slips. For vessels over 100 feet, marinas with less than 100 slips.” This applies to all save for Grenada for which commercial presence is unbound.

Five (5) OECS countries (all save for Saint Lucia) have made commitments on spa services. Cross-border supply (modes 1 and 2) is bound without reservation; Antigua and Barbuda and St Kitts and Nevis have stated joint venture requirements on market access for commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** St Kitts and Nevis has also indicated that subsidies may be limited to nationals. It may be recalled that

⁴⁹⁴ Note that rental services of residential mobile home sites are classified in subclass 82101 (Renting or leasing services involving own or leased residential property). Rental services of caravans and trailers for use off-site are classified in subclass 83105 (Leasing or rental services concerning other land transport equipment without operator).

subsidies are excluded from EPA disciplines and therefore such reservations need not be expressly stated, though it is understood that this has been done for the sake of emphasis.

The regulatory framework in OECS countries governing the tourism sector largely addresses issues not subject to EPA disciplines, most notably, fiscal incentives. Reference may be made to the Hotel Aids Act on the provision of tax relief, customs duty and other concessions. The legislation is not designed to restrict market access; the limited nature of its provisions is seen, for example, in the St Vincent and the Grenadines Hotels Aid Act which expressly states, “[f]or the avoidance of doubt, a hotel is not required to be registered under this Act in order to carry on business as a hotel.”⁴⁹⁵ Similar observations may be made of other legislation, such as the Saint Lucia Tourism Incentives Act.⁴⁹⁶ Other laws imposing taxes such as the Hotel Tax Act, Hotel Accommodation Tax Act, Hotel Occupancy Act, Hotel Guest (Levy) Act (slightly different titles apply in various OECS countries) are also not germane. Legislation establishing hospitality training institutes are not directly relevant for instant purposes, nor other general laws, such as the Hotel Proprietors Act (dealing with the rights and liabilities of hotel proprietors concerning damage or loss).⁴⁹⁷ In our consultations it was suggested that the Income Tax legislation may be the source of authority for some licensing measures in the sector. **Reference was made, for example, to a Grenada Refreshment House Licence which is a prerequisite to conducting business in the trade.⁴⁹⁸ It is unclear whether this licensing measure is designed principally for revenue-raising purposes or is also**

⁴⁹⁵ St Vincent and the Grenadines Hotels Aid Act, section 3(1).

⁴⁹⁶ The Saint Lucia Tourism Incentives Act provides for approval to be granted to tourism projects for the purpose of receiving incentives. As the conditions imposed on the grant of licences for the commencement of operations and/or permits for the importation of goods are linked to the provision of subsidies (e.g. tax and customs duty waivers) which are not covered by the EPA, the legislation is not material for the purposes of the review.

⁴⁹⁷ It appears that some of the older legislation may, in practice, have fallen into disuse. In consultations in St Vincent and the Grenadines, for example, the representatives from the Ministry of Tourism and Industry as well as the private sector were not aware of the existence of the Hotel Proprietors Act although it remains on the books.

⁴⁹⁸ Applications for a Refreshment House Licence must be addressed to the Comptroller, Inland Revenue Division, Ministry of Finance. The Chief Environmental Health Officer, Ministry of Health and the Commissioner of Police conduct an inspection regarding the structure and its facilities which are to be utilized for the stated purpose. The findings and recommendations are submitted to Cabinet for approval. The annual fee for a Refreshment House Licence is \$500.00.

used as a tool in restricting market access. Clarifications which were sought but these remain unanswered.

The Dominica Tourism (Regulation and Standards) Act appears to be a novel piece of legislation in the region. It is designed to establish a sustainable, internationally accepted and holistically approached programme, to be known as the Nature Island Standards of Excellence (NISE), to be applied by persons in the public and private tourism sectors and to regulate and certify certain tourism services. All standards developed under the Act are mandatory.⁴⁹⁹ All tourism services listed in the First Schedule⁵⁰⁰ to the Act are subject to licensing requirements. The licence is granted by the Minister in accordance with the recommendation of a Licensing Committee,⁵⁰¹ and may not be issued for more than three years but is renewable.⁵⁰² The legislation is not discriminatory and is principally geared towards promoting legitimate policy objectives with respect to standard setting in the industry.

The tourism sector in all OECS countries is largely unregulated and open to foreign investors and service suppliers in sectors where commitments have been undertaken (i.e. excluding travel agencies, tour operators and tourist guide services). Our consultations in Dominica, for example, suggest that the larger properties (70 + rooms) on the island are locally owned and managed (e.g. Fort Young Hotel and Garraway Hotel), while many of the smaller hotels (between 20-40 rooms) are foreign owned. There are basically only 5 hotels with 30-100 rooms. The suggestion that some smaller hotels are foreign owned was surprising given the horizontal reservations made by OECS countries with regard to

⁴⁹⁹ See Dominica Tourism (Regulation and Standards) Act, section 9(1).

⁵⁰⁰ The services listed in the First Schedule to the Act include all types of accommodation offered wholly or mainly to tourists; transportation services; vending; tour guide; water sports; food and beverage; hair braiding; sites and attractions; travel agencies; and tour operators.

⁵⁰¹ The Licensing Committee consists of the following officials or his/her nominee: the Director of Tourism, Commissioner of Police, Director of the Bureau of Standards, Chief Environmental Health Officer, Director of Forestry and National Parks, and one other person involved in the tourism industry appointed by the Minister. Provision is made for due process on the suspension or revocation of a licence, i.e. a right of appeal to the Appeals Tribunal and to the High Court on a point of law only; see Dominica Tourism (Regulations and Standards) Act, sections 17, 23 & 25.

⁵⁰² See Dominica Tourism (Regulation and Standards) Act, section 21.

SMEs. This would seem to confirm the view that the market is in fact more open than OECS commitments suggest.

Similarly in Antigua and Barbuda it was stressed that there are really no limitations on foreign investment in the tourism sector. The Bureau of Standards is legally responsible (along with the Ministry) for establishing and monitoring tourism standards (among others).⁵⁰³ It was suggested that the hotel and restaurant sector is 85% foreign owned, but most foreign ownership is by CARICOM nationals. Virtually integrated companies in the industry, in particular all-inclusive hotels, are redefining the nature of the market. For example, it was suggested that the local restaurant sector is largely dying because of this phenomenon. The Ministry of Tourism works with very small hotels (less than 10 rooms – generally 1-5 rooms) and provides assistance with training, the handling of financial assets, setting up websites (so that they are visible) and other such activities. The Ministry also works with the OAS with training and has a Sustainable Development Tourism Officer. The Ministry works with the Caribbean Tourism Organization (CTO) on compliance with standards and specifications for ground transportation.

The efforts of the Ministry of Tourism to assist and promote small and medium sized enterprises in the sector are highlighted as they address one of the obligations of the EPA (noted below) to promote SME participation in the tourism sector. The emphasis on SMEs was echoed in other OECS jurisdictions. It was noted that assistance is frequently channeled through investment agencies which provide technical support and administer incentives.⁵⁰⁴

Legislation generally exists establishing national tourism authorities to promote tourism internationally and promote a better understanding and appreciation of the benefits to be derived locally. Tourism Boards also collaborate with the Ministries of Tourism on matters relating to policy, product development and standards for the operation of the

⁵⁰³ In our consultations it was noted that the Bureau and CROSQ both have an important role in establishing standards; e.g. reference was made to CROSQ's role in the development of a Code of Conduct for tour guides.

⁵⁰⁴ In our consultations in Grenada, for example, it was noted that the Board of Tourism conducts some training and generally encourages small enterprises to go to the SME unit of the GIDC for further support.

tourist industry. An example is the Antigua and Barbuda Tourism Authority established by the Act of the same name.⁵⁰⁵ The Saint Lucia Tourism Development Industry Act establishes the Saint Lucia Tourist Board with seemingly broader functions than accorded to the Tourism Authority under the Antigua and Barbuda legislation. The overall role of the Saint Lucia Tourist Board concerns the promotion of the tourist industry overseas and fostering an understanding within the island of the importance and economic benefit of the industry. Among the specific listed functions is the control and elimination of any undesirable factors that may affect the industry.⁵⁰⁶ This could arguably be interpreted to extend to the negative effects of anticompetitive conduct (concerning a significant EPA obligation discussed below). However, our consultations suggest that the activities of the Tourist Board are, in fact, limited to marketing the sector. While there is evidence of anti-competitive practices in the tourism sector, particularly involving cruise lines (and certain concerns were expressed by the Saint Lucia Tourism Association),⁵⁰⁷ the regulatory framework is not in place to address competition issues.

The GATS contains no sector-specific disciplines for tourism services.⁵⁰⁸ The disciplines contained in the EPA are largely ‘soft law’, i.e. best endeavour undertakings, save for Article 111 on the prevention of anti-competitive practices which is to be implemented in accordance with Chapter 1 of Title IV on competition policy.

The EPA imposes best endeavour obligations to facilitate the transfer of technology, SME participation, mutual recognition of qualifications and experience; to encourage the sustainable development of tourism, compliance with environmental and quality standards and facilitate participation in relevant international organizations; and to

⁵⁰⁵ See also the Discover Dominica Authority Act 2007; Grenada Board of Tourism Act; St Vincent and the Grenadines Tourism Authority Act.

⁵⁰⁶ See Saint Lucia Tourism Development Industry Act, section 6(j). The Act provides, *inter alia*, that the Board may also be required to manage any tourism facility on behalf of the Government; see *ibid*, section 6(n).

⁵⁰⁷ All OECS countries have active Hotel and Tourism Associations which partner with Governments in policy development.

⁵⁰⁸ Note that certain CARIFORUM countries, most notably the Dominican Republic, have sought to introduce sector-specific disciplines in proposing a Draft Annex on Tourism in the WTO Doha Development Round, e.g. Communication by Bolivia, Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru and Venezuela, S/CSS/W/107, 26 September 2001..

provide development cooperation in certain priority areas (national accounting systems,⁵⁰⁹ environmental management, marketing strategies, effective participation in standard setting bodies, training programmes) and exchange information.⁵¹⁰

Article 111 requires all Parties, including OECS countries, to maintain or introduce appropriate measures to prevent suppliers from affecting materially the terms of participation in their respective tourism markets through various anticompetitive activities including abuse of dominance, exclusivity clauses, refusal to deal, tied sales, quantity restrictions or vertical integration. The provision is aimed particularly at tour operators and other tourism wholesalers, travel agencies and other distributors of tourism services.⁵¹¹ The implementation of measures to effectively deal with anti-competitive behaviour in the tourism sector should assist OECS countries in addressing some of the concerns raised in our consultations.

Anti-competitive practices can occur both between and within countries, and can involve abuses by developed and developing trading partners.⁵¹² Anti-competitive practices in many sectors, such as cement (essential for building hotels), computer software, shipping and air freight, may directly affect tourism. The concerns about anti-competitive conduct were a major impetus for the proposed GATS Annex on Tourism sponsored by the Dominican Republic and other developing countries. The proposal listed as examples of common anti-competitive practices in tourism: "1. Competitive exclusion through the discriminatory use of information networks, predatory pricing, allocation of scarce resources, and ancillary services to air transport; 2. Abuse of dominance through exclusivity clauses, refusal to deal, tied sales, quantity restrictions, or vertical integration; and 3. Misleading or discriminatory use of information by any juridical person."⁵¹³

⁵⁰⁹ Note that development cooperation with respect to national accounting systems is designed towards the introduction of Tourism Satellite Accounts which are essentially statistical instruments that allow a country to analyse the importance of tourism in the economy.

⁵¹⁰ See EPA, Article 112-118.

⁵¹¹ See EPA, Article 111, footnote 1.

⁵¹² A. E. Rodriguez & James Murdy, "Anti-Competitive Practices in the Tourism Industry: The case of small economies", *J.Bus. & Econ. Res.*, October 2006.

⁵¹³ Communication from the Dominican Republic, El Salvador, and Honduras – "Preparations for the 1999 Ministerial Conference", S/C/W/127, 14 October 1999, p.14; see also S/CSS/W/107, 26 September 2001 -

OECS countries have not undertaken any specific commitments with regard to tourism distribution networks; i.e. travel agencies and tour operators, and tourist guide services. However, the activities of these service providers have the potential to *affect* trade across the tourism industry. Tour operator services are dominated by a few large international firms which are increasingly vertically integrated and frequently operate to the disadvantage of smaller players based in small economies. The vertical relationship between holiday package providers, retailers and tourism service suppliers can be an important source of anticompetitive behaviour.

OECS countries have not have developed and implemented an effective competition law and policy. This is an area where it is generally well recognized that substantive work is required. It may be noted that the implementation of a general competition law and policy in keeping with Title IV of the EPA would also adequately address the requirements of Article 111. The possible inter-play of regulatory authorities in the implementation of pro-competitive disciplines was raised above (in the discussion on courier and telecommunications services) and may be a relevant consideration here also.

9. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual)

Entertainment services

News Agency Services

Sporting and other recreational services (except gambling)

Other – Rental and leasing of yachts

The group of entertainment services covered by OECS commitments relate to CPC 9619 covering theatrical producers, singer groups, band and orchestra entertainment services, services provided by authors, composers, sculptors, entertainers and other individual

i.e. the revised proposal which sought to address other WTO members concerns about the overly broad scope of the proposed cluster of services.

artists, as well as ancillary theatrical services, circus, amusement park and similar attraction services, ballroom, discotheque and dance instructor services, among others. All six (6) OECS countries have undertaken commitments. Grenada has inscribed a reservation on market access for commercial presence suggesting a requirement for the employment of national artists and entertainers, and limiting its commitment to theatre, musical ensembles and bands, dance troupes; reference is also made to the alien landholding regulations. **Note is made of the fact that Saint Lucia has indicated ‘None’ in the market access and national treatment columns for Mode 4; and St Kitts and Nevis has indicated ‘None’ in the national treatment column for Mode 4.** Additionally, no OECS country has made reservations on cross-border supply (modes 1 and 2).

There is limited legislation specifically regulating entertainment services in the region. General legislation relevant, for example, to intellectual property rights exist and in most cases conform to WTO rules. Specific sectoral legislation may be found in some OECS countries, most notably, Dominica with reference to the Entertainments Act. The Dominica Entertainments Act defines "entertainment" as including "any exhibition, performance, or amusement (including dances) to which persons are admitted for payment, but shall not include cricket, football or other sport played or held in any place owned or controlled by the Government or any town council or town or village council;" and "place of entertainment" as including "any building, theatre, dance hall, room, tent, or other erection, or garden, open ground or place where any entertainment is held". The Act requires that a licence be obtained from a Magistrate before any place is used as a place of entertainment.⁵¹⁴ The Magistrate may grant a licence for any period not exceeding twelve months, upon such terms and conditions and subject to such restrictions as may be endorsed on the licence upon the payment into the Treasury of the requisite fee. It is within the Magistrate's discretion to refuse to grant or transfer a licence.⁵¹⁵ A special surcharge (in addition to any tax or fee otherwise imposed) is applied to every entertainment held by non-CARICOM nationals or any person not ordinarily resident

⁵¹⁴ See Dominica Entertainments Act, section 3.

⁵¹⁵ See Dominica Entertainments Act, section 4.

therein for at least five years immediately preceding the holding of the entertainment.⁵¹⁶

The surcharge is a discriminatory measure imposed on foreign service suppliers. Dominica has made a horizontal reservation with respect to the application of differential fees (modes 3 and 4) as well as all forms of domestic support whether financial or otherwise with respect to commercial presence (mode 3). The discriminatory nature of the legislation appears to be covered by Dominica's horizontal limitation.

Reference was also found to a St Kitts and Nevis Public Entertainment and Lotteries Tax Act Cap 20:34 providing for a system of authorizations and charges linked to certain entertainment activities. However, our consultations suggest that the legislation was recently repealed with the introduction of the St Kitts and Nevis Value Added Tax.

All six (6) OECS countries have undertaken commitments on news agency services, including services to newspapers and periodicals, such as gathering, investigating and supply services of news in the form of manuscripts or pictures/images to printed media businesses (e.g. newspapers, periodicals and books), radio stations, television stations, and other news agency services. The principal condition placed on market access by all OECS countries is the requirement for reciprocity in the establishment of press agencies by foreign investors. Additionally, Antigua and Barbuda, Grenada and St Vincent and the Grenadines have stipulated a joint venture requirement and the possible imposition of ENTs on national treatment for commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.**

The legislation of OECS countries does not appear to impose discriminatory requirements on foreign news agency service providers; reference may be, for example, to the Antigua and Barbuda Newspapers Registration Act or the Dominica Newspapers Act which makes provision for the registration and control of newspapers. The Dominica

⁵¹⁶ See Dominica Entertainments Act, section 9, as amended by the Entertainments (Amendment) Act 2005.

Newspapers Act defines “newspaper” as including every paper or pamphlet containing any public news, intelligence or report of any occurrence or any remarks or observations thereon or upon any political matter, published for sale, distribution or other purpose in parts or numbers at intervals not exceeding one hundred days.⁵¹⁷ Section 3 requires any person wishing to print or publish a newspaper to file with and register at the office of the Registrar a statutory declaration. The legislation is typical of the type of regulation found in the region regarding newsprint.⁵¹⁸

The Dominica Broadcasting Corporation Act makes provision for radio and television broadcasting services and establishes the Dominica Broadcasting Corporation to provide such services, including news agency services.⁵¹⁹ The Act also empowers the Minister to, *inter alia*, make regulations with a view to preventing the making of exclusive arrangements for the broadcasting to a restricted audience of sporting or other events of national interest.⁵²⁰

Not all OECS countries have specific legislation addressing the sector. The regulation of the telecommunications sector, above-discussed, affects radio and television broadcasting and may also *affect* news agency services. In so far as such laws relate to audio visual services they are not covered by the EPA. Additionally, laws providing for censorship may lead to the imposition of certain restrictions on news agency services (and entertainment services generally) from time to time. Such measures are, however, covered by the EPA General Exception Clause providing for, *inter alia*, measures to protect public security and public morals or maintain public order.⁵²¹

⁵¹⁷ But note that this does not include the *Gazette* or any paper, report, matter or thing printed by the Government printer or published by Government authority, or programmes, notices or printed matter containing only or principally *bona fide* advertisements.

⁵¹⁸ *E.g.* St Kitts and Nevis Newspaper Act.

⁵¹⁹ See Dominica Broadcasting Corporation Act, section 8(1)(f).

⁵²⁰ See Dominica Broadcasting Corporation Act, section 11(1): - “With a view to preventing the making of exclusive arrangements for the broadcasting to a restricted audience of sporting or other events of national interest, the Minister may make Regulations as to the grant to the Corporation and programme contractors of radio or television broadcasting facilities in respect of such events.”

⁵²¹ See EPA, Article 224.

All six (6) OECS countries have undertaken commitments with respect to sporting and other recreational services (except gambling). St Kitts and Nevis have limited their commitments to sports event organization services,⁵²² and sports facility operation services;⁵²³ St Vincent and the Grenadines have excluded sport event organization services, limiting its commitments to sport event promotion services, sports facility operation services and other sporting services.⁵²⁴ St Kitts and Nevis has stipulated a joint venture requirement on market access for commercial presence; Grenada and Saint Lucia have indicated that market access is unbound but nevertheless stipulated that joint ventures are required. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work. Note is also made of the fact that Saint Lucia has indicated ‘None’ in the market access column for mode 4.**

Various pieces of legislation may affect sporting and other recreational services. An example is the Saint Lucia Fisheries Act. The regulations under the Act, i.e. the Fisheries Regulations provide for, *inter alia*, sports fishing licences. The Regulations define “sports fishing” as “fishing by any vessel within the fishery waters for sporting purposes or for purposes other than commercial”, and proscribe sports fishing without a licence.⁵²⁵ A licence is also needed to operate a scuba diving or ‘hookah diving’ facility.⁵²⁶ The Fisheries (Snorkelling Licence) Regulations prohibits the operation of a snorkelling facility without a licence.⁵²⁷ A “snorkelling facility” is defined as a building wharf, vessel

⁵²² Sports event organization services covers organization services of any kind of sports events outdoor or indoor for professionals or amateurs. Included here are services provided by different sports clubs, e.g. football clubs, bowling clubs, etc.

⁵²³ Sports facility operation services covers operation services of the facilities in which any kind of sports events are performed. Such facilities may be arenas or stadia, enclosed or covered, with or without provision for spectator seating or viewing.

⁵²⁴ The services in this class relate to sporting events, such as judges, time keepers, etc., and services provided by sport and game schools and other sporting services, not elsewhere classified. See also St Vincent and the Grenadines National Sports Council Act.

⁵²⁵ See Saint Lucia Fisheries Regulations, regulation 25.

⁵²⁶ See Saint Lucia Fisheries Regulations, regulation 43(3) - defining “SCUBA diving gear” as diving equipment which allows the user to remain submerged for a prolonged period of time without surface air supply; “Hookah diving gear” means diving equipment which allows the user to remain submerged for a prolonged period of time with surface air supply.

⁵²⁷ See Saint Lucia Fisheries (Snorkelling Licence) Regulations, regulation 3.

or any base from which snorkelling is offered or conducted as a recreational activity.⁵²⁸ The Regulations are not designed to discriminate against foreign service providers or foreign investors.

Five OECS countries (all save for St Vincent and the Grenadines) have made commitments on rental and leasing of yachts. This comprises a subset of the services falling within two subclasses: ‘other recreational services’ (CPC 9649), and ‘leasing or rental services concerning vessels without operator’ (CPC 83103 - covering renting, hiring or leasing services primarily designed for the conveyance of passengers and freight).⁵²⁹ Only Grenada has made any reservations on its commitments; these relate to subsidies with respect to national treatment on commercial presence. It may be recalled that the EPA excludes the provision of subsidies in services from its disciplines, though it is understood that such inscriptions were made for purposes of emphasis. It may be of interest to note that Grenada has not bound cross-border supply (mode 1) due to technical feasibility although the four other OECS countries undertaking commitments in this sector have indicated ‘None’ (an apparent scheduling contradiction). Grenada has also left unbound market access on commercial presence.

No legislation suggesting the imposition of discriminatory measures on services suppliers in this sub-sector were identified. Specific legislation regulating the sector exists in some OECS countries, including St Vincent and the Grenadines, St Kitts and Nevis, Grenada and Saint Lucia.⁵³⁰ The legislation establishes a licensing regime for yachts coming into port and/or cruising in the territorial waters.

⁵²⁸ See Saint Lucia Fisheries (Snorkelling Licence) Regulations, regulation 2; note that “snorkelling” is defined as the use of a diving mask or other gear operated with or without fins or other propulsion including a personal water vehicle.

⁵²⁹ Note that renting, hiring or leasing services concerning pleasure craft are classified in subclass 83204 (Leasing or rental services concerning pleasure and leisure equipment).

⁵³⁰ *E.g.* Yachting Act of St Kitts and Nevis, Yachting Act of Grenada; Yachts Licence Act of Saint Lucia, and St Vincent and the Grenadines Yachting Act.

The Saint Lucia Yachts Licence Act imposes a fee payable in respect of any yacht which may at any time ply for hire in Saint Lucian territorial waters.⁵³¹ The fee is based on the size of the vessel and the period for which the licence is issued.⁵³² Similarly the Grenada Yachting Act provides for an entry fee for Grenadian yachts in port and a cruising permit fee payable in respect of non-Grenadian yachts upon arrival in Grenada. Both fees are prescribed by the Minister and may not exceed five hundred dollars (\$500).⁵³³ Only licensed commercial yachts may be offered for hire in the territorial waters, whether they are foreign-based or home-based. Although a foreign based yacht may make a maximum of ten charter pick-ups originating within Grenada within any period of twelve months without having to obtain a licence.⁵³⁴ Provision is also made for due process.⁵³⁵

⁵³¹ See Saint Lucia Yachts Licence Act, section 3 of the Act clarifying that “a yacht plies for hire in the territorial waters where it: calls at any part of Saint Lucia in the course of a journey; takes up or puts down passengers at any part in Saint Lucia; or where there is any carriage for reward or any other use on hire or charter into or out of any part of Saint Lucia.

⁵³² See Saint Lucia Yachts Licence Act, section 6 & Schedule.

⁵³³ See Grenada Yachting Act, sections 6 & 9.

⁵³⁴ See Grenada Yachting Act, section 10. Note also that an annual licence is valid for a period of twelve months from the date of issue and a temporary licence is valid for a specific cruise unless extended. The Director of Marine Affairs may impose such conditions as s/he sees fit; see *ibid*, section 11.

⁵³⁵ See Grenada Yachting Act, sections 10 & 12(1); note that section 10(7) provides that the decision of the Minister, on an appeal from the decision of the Director of Marine Affairs, is final. As above-noted, this is subject to the common law rules providing for judicial review.

10. TRANSPORT SERVICES

Maritime transport services

- *Passenger transportation (less cabotage)*
- *Freight transportation (less cabotage)*
- *Rental of vessels with crew*
- *Maintenance and repair of vessels*
- *Vessel salvaging and refloating services*
- *Ship registration*

Internal waterways transport

- *Freight transportation*
- *Maintenance and repair of vessels*
- *Pushing and towing services*

Air Transport services

- *Freight transportation*
- *Rental of aircraft with crew*
- *Maintenance and repair of aircraft*
- *Computer reservations system (CRS) services*
- *Selling and marketing of air transport services*

Rail transport services

- *Passenger transportation*
- *Freight transport*
- *Pushing and towing services*
- *Maintenance and repair of rail transport equipment*
- *Supporting services for rail transport services*

Road transport services

- *Passenger transport*
- *Supporting services for road transport services*

Services auxiliary to all modes of transport

- *Cargo handling services*
- *Storage and warehouse services*

- *Freight transport agency services*

Other

- *Free Zone Operation*
- *Trans-shipment services*

OECS countries have undertaken a number of commitments in the transport sector. All OECS countries, save for St Kitts and Nevis, have undertaken commitments on passenger transportation within maritime transport services. Commitments are for the most part bound without reservation. Antigua and Barbuda has limited its market access commitments on cross-border supply (mode 1) to line shipping, bulk tramp and other international shipping including passenger transportation; on commercial presence, Antigua and Barbuda has left unbound establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment. Grenada has indicated that a joint venture requirement may be imposed on market access for commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work. Note is made of the fact that Saint Lucia has indicated 'None' in the market access and national treatment columns for mode 4.**

Passenger transportation services within the maritime transport sector may involve ocean-going or coastal water ferries, including hydrofoils and hovercraft, as well as other vessels traversing the high seas and coastal waters, on a scheduled or non-scheduled basis, regardless of the class of service, and including passenger accompanying baggage transportation. The particular nature of passenger transportation differs from other segments of the maritime transport sector. Small pleasure craft and ferries generally operate within coastal waters and are subject to the legal regime governing cabotage which is outside of EPA disciplines. International passenger transport is tied to the cruise ship industry which, subject to environmental regulations and possible tax measures, generally operates without any restrictions on market access.

Freight transportation within the maritime transport sector may involve the transportation of frozen or refrigerated goods (in specially refrigerated compartments), bulk liquids or gases (in special tankers), containerized freight (i.e. individual articles and packages assembled and shipped in specially constructed shipping containers designed for ease of handling in transport), 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.

All six (6) OECS countries have undertaken commitments on freight transportation. Grenada has excluded transportation of bulk liquid or gases; St Kitts and Nevis has excluded transportation of other freight not elsewhere classified, i.e. limiting its commitments to frozen or refrigerated goods, bulk liquid or gases, and containerized freight. All OECS countries have bound cross-border supply (modes 1 and 2) without reservation. OECS countries have also bound without reservation their commitments on commercial presence, save for Antigua and Barbuda (which has left unbound market access for commercial presence).

The class of rental of vessels with crew encompasses rental and leasing services of all types of self-propelled, seagoing vessels with operator, such as passenger vessels (except pleasure boats) tankers, bulk dry cargo vessels, cargo and freight vessels, tugboats and fishing vessels.⁵³⁶ All OECS countries, save for St Kitts and Nevis, have undertaken commitments in this sector; Saint Lucia has excluded from its commitments the rental of tug boats and fishing vessels. All OECS countries have bound their mode 2 commitments without reservation, but left unbound mode 1 save for Antigua and Barbuda (which has bound all cross-border supply - modes 1 and 2). Grenada, Saint Lucia and St Vincent and the Grenadines have imposed a joint venture requirement on market access for

⁵³⁶ Note that Leasing or rental services of vessels without operator are classified in subclass 83103. Additionally, Leasing or rental services of seagoing pleasure boats are classified in subclass 96499 (Other recreational services n.e.c.).

commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** In this regard it is useful to note that the St Vincent and the Grenadines Shipping Act includes in the list of persons qualified to own St Vincent and the Grenadines ships, “individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Saint Vincent and the Grenadines as may be prescribed”.⁵³⁷ The Saint Lucian and Grenadian Shipping Acts contain similar provisions.⁵³⁸

Note is also taken of the Antigua and Barbuda Aliens Restriction Act which proscribes persons who are not nationals of the OECS or CARICOM from acting as master, chief officer, or chief engineer of a merchant ship registered in Antigua and Barbuda or as skipper or second hand of a fishing boat registered in Antigua and Barbuda except in the case of a ship or boat employed habitually in voyages between ports outside Antigua and Barbuda.⁵³⁹ The measure affects Antigua and Barbuda registered vessels which may be offered for rental with crew. Significantly, Antigua and Barbuda has also undertaken commitments on the registration of ships.

Maintenance and repair of vessels is not treated within maritime transport services in the CPC Provisional Code. However, the need for its inclusion in comprehensive commitments in the sector has long been recognized.⁵⁴⁰ All OECS countries, save St Vincent and the Grenadines have made commitments in this subclass of services. Cross-border supply (mode 2) is generally bound without reservation. Antigua and Barbuda and Dominica have also bound commercial presence. Grenada, St Kitts and Nevis and Saint Lucia have indicated a joint venture requirement on market access for commercial

⁵³⁷ The St Vincent and the Grenadines Shipping Act, section 6(d); note that section 6 also includes among the list of persons qualified to own St Vincent and the Grenadines’ ships foreign companies with a registered agent in St Vincent and the Grenadines; see also *ibid*, section 51 concerning the registration of small ships. The St Vincent and the Grenadines Shipping Act in principle reserves cabotage to St Vincent and the Grenadines ships, though the Minister may make regulations providing for the circumstances under which foreign ships may engage in local trade in St Vincent and the Grenadines waters; see *ibid*, section 3.

⁵³⁸ See Saint Lucia Shipping Act, section 12(d); provision is also made for the Minister to establish additional categories for ownership other than the four listed in section 12. See also the Grenada Shipping Act and Shipping (Registration) Regulations.

⁵³⁹ See Aliens Restriction Act, sections 2 & 4 (as amended by the Factors Act).

⁵⁴⁰ See also ‘Maritime Transport Services’, Background Note by the Secretariat, S/C/W/62, 16 November 1998, paragraph 54.

presence, and left unbound national treatment. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** In this regard it is useful to note that the St Kitts and Nevis Merchant Shipping Act (similar to the legislation in Grenada, Saint Lucia and St Vincent and the Grenadines above-noted) includes among the list of persons qualified to own a St Kitts and Nevis ship, “individuals or corporations in *bona fide* joint venture shipping enterprise relations with nationals or citizens of Saint Christopher and Nevis as may be prescribed”.⁵⁴¹

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.⁵⁴² Antigua and Barbuda, St Kitts and Nevis, Saint Lucia, and St Vincent and the Grenadines have undertaken commitments in this subclass of services. Saint Lucia has indicated a joint venture requirement on commercial presence. **Defining joint venture requirements in the implementation of EPA commitments is one of the areas identified for further work.** St Kitts and Nevis has left unbound cross-border supply (modes 1 and 2). The commitments of other OECS countries for cross-border supply (modes 1 and 2) as well as commercial presence are bound without reservation.

Only Antigua and Barbuda and St Kitts and Nevis have undertaken commitments on ship registration. Commitments are bound without reservation for cross-border supply (modes 1 and 2). Commercial presence is unbound for Antigua and Barbuda; St Kitts and Nevis has inscribed what ostensibly appears to be a summary statement of the requirements of the Merchant Shipping Act 1985 into its scheduled commitments on commercial presence.⁵⁴³ The summary statement, however, differs in certain respects from the Act.

⁵⁴¹ See St Kitts and Nevis Merchant Shipping Act, section 4(1)(d). Note other grounds for registration are stated *ibid*, sections 4(1), 4(2) & 5.

⁵⁴² Note that 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).

⁵⁴³ The reservation inscribed by St Kitts and Nevis as a market access limitation on ship registration provides as follows: “The Merchant Shipping Act 1985 facilitates the registration of ships in KNA. Registration is effected by the Director of Maritime Affairs who is the Registrar of KNA ships. The registration requirements are: (a) wholly owned by citizens of KNA; (b) bodies corporate established under

The clarification provided during our consultations links what was posited in the summary statement to the position adopted in the UK Merchant Shipping Act. It is unclear whether the intention is to amend the St Kitts and Nevis Act to conform to the UK position.

Section 5 of the St Kitts and Nevis Act provides that a ship shall be entitled to be registered if a *majority interest* in the ship is owned by one or more persons qualified to be owners of St Kitts and Nevis ships by virtue of section 4(1);⁵⁴⁴ certain provisos apply with respect to ships in excess of twenty-four metres with non-resident owners.⁵⁴⁵ The inscription in Annex IV.F is more exacting in its reference to “wholly owned by citizens of KNA”, but more relaxed in the inclusion of “any ship regardless of the nationality of her owners is a sea-going ship of 1600 or more net registered tonnes and is engaged in foreign-going trade”. **In light of the sectoral commitments made by St Kitts and Nevis it is recommended that the legislation be amended to provide for the registration of all sea-going ships of 1600 or more net registered tonnes engaged in foreign-going trade. Note is also made of the fact that St Kitts and Nevis has indicated ‘None’ in the national treatment column for mode 4.**

The Antigua and Barbuda Merchant Shipping Act of 2006 restricts the class of persons who may be registered as an owner of an Antigua and Barbuda ship. This includes a citizen of Antigua and Barbuda, nationals of the OECS and CARICOM, an external

the laws of KNA; (c) any ship regardless of the nationality of her owners is a sea-going ship of 1600 or more net registered tones and is engaged in foreign-going trade.” Compare Dominica Registration of Ships Act.

⁵⁴⁴ See St Kitts and Nevis Merchant Shipping Act, section 4(1) - providing that the following are persons qualified to be owners of St Kitts and Nevis ships: (a) St Kitts and Nevis nationals or citizens; (b) citizens of CARICOM States residing in a member state of the Caribbean Community, where the ship is customarily engaged in international voyages; (c) individuals or corporations owning ships hired out on bareboat charters to nationals or citizens of St Kitts and Nevis; (d) individuals or corporations in *bona fide* joint venture shipping enterprise relations with nationals or citizens of St Kitts and Nevis as may be prescribed; (e) a corporation established and operating under and in accordance with the laws of St Kitts and Nevis and having its registered office in St Kitts and Nevis; and (f) such other persons as the Minister may, by Order, determine.

⁵⁴⁵ See St Kitts and Nevis Merchant Shipping Act, section 5(3) - providing that where a ship is twenty-four metres or more in length, and the person, or (as the case may be) each of the persons, by whom the majority interest is owned is not resident in St Kitts and Nevis: the ship shall only be entitled to be registered if a representative person resident in St Kitts and Nevis is appointed in relation to the ship.

company or partnership concern registered under the Companies Act, a corporation registered under the International Business Corporation Act, authorized public bodies corporate,⁵⁴⁶ and any other person approved by Cabinet. The Minister may also waive the requirements of the Act in certain exceptional instances.⁵⁴⁷ **As above noted, Antigua and Barbuda has bound commitments on cross-border supply without reservation. Antigua and Barbuda also has not made any relevant horizontal reservations. The provision made in the Act for Cabinet to approve persons not falling within the categories of owners who may register Antigua and Barbuda ships provides a facility through which to implement liberalization measures in accordance with Antigua and Barbuda's EPA commitments. The alternative would be to amend the Act as was notably done to remove discrimination between Antigua and Barbuda citizens and other CARICOM nationals.**

The EPA approach to the regulation of maritime transport services builds on the provisions of the ACP/EU Cotonou Agreement, Article 42, paragraphs (1), (3) and (4) in particular. The basic principle endorsed is unrestricted access to international maritime markets (excluding cabotage) and trades on a commercial and non-discriminatory basis.⁵⁴⁸ 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.⁵⁴⁹

⁵⁴⁶ See Antigua and Barbuda Merchant Shipping Act, section 11(2) – providing for the registration of ships by a public body corporate if: it is established under and subject to the laws of Antigua and Barbuda; and it has its principal place of business, or appoints a resident agent, in Antigua and Barbuda; at least fifty-one percent of its share capital is held by citizens of Antigua and Barbuda; the majority of directors, the Chairman of the Board of Directors and the Managing Director, if any, are citizens of Antigua and Barbuda. In case of a partnership concern, Antigua and Barbuda interests shall be deemed to be predominant in the capital and in the management, if the majority of the partners are Antigua and Barbuda citizens.

⁵⁴⁷ See Antigua and Barbuda Merchant Shipping Act, section 11(4) – providing for the waiver of the ownership requirements of section 11(1), in exceptional cases, where: the ship meets all other requirements for registration; and it has been satisfactorily demonstrated that there is a genuine need for such a waiver; and the owner of the ship qualified for, secures and maintains registration in Antigua and Barbuda as a foreign maritime trust or corporation or other legal entity and where he either maintains at all times an operating office in Antigua and Barbuda or appoints a qualified resident business agent in the manner prescribed by law.

⁵⁴⁸ See EPA, Article 109(3)(a); see also ACP-EC Partnership (Cotonou) Agreement, Article 42(1).

⁵⁴⁹ See also ACP-EC Partnership (Cotonou) Agreement, Article 42(3).

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 (wharves, jetties, lighthouses, navigational aid system). 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, e.g. health, environment, and security measures. This international trend is increasingly evident in OECS countries. In Saint Lucia, for example, it was noted that the private sector (foreign and local) is involved in cargo handling, and aircraft maintenance and security. For example, it was highlighted that the locally incorporated company handling aircraft is fully owned by American Airlines. Similarly at the seaport, towage services are among those which have been contracted out.

The legislation in the OECS is not restrictive of access to ports. The Merchant Shipping Act of Antigua and Barbuda sets out the principles which inform shipping policy in accordance with recognized principles of international law; in particular that “foreign ships shall have free access to Antigua and Barbuda ports in the matter of port facilities such as allocation of berths, loading and unloading facilities as well as dues and charges of all kinds levied in the name of Government or public authorities, in accordance with the provisions of the Convention and Statute on International Regime of Maritime Ports, 1923.”⁵⁵⁰ Our consultations confirmed that berthing takes place on a ‘first come, first served basis’; i.e. vessels are expected to call in 72 hours before arriving (a minimum of 24 hours) and the Chief Pilot will arrange piloting through channels to the berth. Piloting charges and tariffs are in keeping with the Schedule to the Act and there is no discrimination between local and foreign vessels.

⁵⁵⁰ See Antigua and Barbuda Merchant Shipping Act 2006, section 285(v); see also *ibid*, section 289 - providing that “[w]here an international convention or other international instrument applies to Antigua and Barbuda and a provision of that convention or instrument and a provision of this Act conflict in any manner, the provision of the convention or instrument shall prevail unless the Minister otherwise provides.” See also generally Saint Lucia Shipping (Ship and Port Facility Security) Regulations.

The ‘first come, first served’ principle is generally adhered to in all OECS jurisdictions. Reference may be made, for example, to the Nevis Port Regulations 2002. Regulation 10.3.4 of the Nevis Port Regulations clarifies the implementation of this principle and provides that notification does not constitute an agreement between the Agent and the Authority that a berth has been reserved, although provision is made for the reservation of berths at an additional cost. If a vessel is unable to complete the berthing operation before the reservation time plus 30 minutes, the vessels forfeits the reservation and must join the queue of non-reservation vessels. The Port Manager always retains the discretion to limit the time alongside and/or revoke or change the berth allocation as s/he considers necessary or expedient for the efficient operation of the port.⁵⁵¹ Pilotage is not compulsory but is recommended between certain points; pilots are licensed by the Authority based on their experience.⁵⁵² Certain services are not provided by the Authority such as tugs,⁵⁵³ and the handling of goods may only be performed by stevedoring companies licensed by the Authority.⁵⁵⁴

The Port Authority Act is the relevant legislation in Dominica governing ports.⁵⁵⁵ The Act authorizes the Port Manager to give directions and take action in various circumstances and provides the Authority with the power to make regulations, with the approval of the Minister, for the proper management and control of ports. In our consultations in Dominica it was noted that there is no direct private sector involvement in air or seaport management, though no law or regulation proscribes this. Local private sector interests, however, provide virtually all services in aerodromes (even for US carriers). In the seaports there is also private sector involvement in tugging. The tugs come from Martinique (but are rarely used). Other services at the port are provided by the Authority. Procedures concerning the berthing of ships follow the ‘first come, first served’ principle. In the past priority used to be given banana ships but this is of limited significance today due to the low volume of bananas now exported. Although there are,

⁵⁵¹ See Nevis Port Regulations, Regulation 10.3.3(a).

⁵⁵² See Nevis Port Regulations, Regulation 12.1 & 12.10.1.

⁵⁵³ See Nevis Port Regulations, Regulation 12.9. Tugs or other craft used to facilitate the berthing or unberthing of a vessel are deemed to be hired by and under the control of the Master, owner and crew of the vessel.

⁵⁵⁴ See Nevis Port Regulations, Regulation 13.1.1.

⁵⁵⁵ See Dominica Port Authority Act, Part VIII.

in general, no differentials in the fees charged to national and foreign vessels, this is not true in all cases. It was explained that if ships are laid up in port after 96 hours, Act 8 of 2006 provides that Dominica registered vessels up to 500 Gross Restricted/registered tons (GRT) are exempted from additional fees.⁵⁵⁶ However, when they are not anchored they pay the same fees. The justification advanced is that local vessels have to stay in port for longer periods. **As above-noted, differential fees result in the denial of national treatment.**

Dominica has inscribed a horizontal limitation on national treatment with respect to, *inter alia*, subsidies, and other forms of domestic support whether financial or otherwise which may be restricted to CARICOM Nationals and fees which may be higher for Non-CARICOM Nationals. The reservation is applicable to commercial presence, and a similar reservation relating to fees has been made with respect to market access for the temporary movement of business persons. Dominica's horizontal limitation does not apply to cross-border trade (modes 1 and 2). As such, the horizontal reservation is not read as affecting the general applicability of the principles set out in Section 6 of Chapter 5 of Title II regarding the liberalization of international maritime transport services pursuant to Chapter 3 (on cross-border trade). However, the provision made in the Dominican legislation for an exemption may be viewed as a subsidy. It may be recalled that subsidies fall outside of the scope of the EPA. Adopting this interpretation the measure would not appear to conflict with Dominica's commitments under the EPA.

Reference may also be made to the Saint Lucia Air and Sea Ports Authority (Seaport Tariff) Regulations which provides for an exemption for, *inter alia*, Saint Lucian fishing ships from port dues.⁵⁵⁷ The exemption appears to be a subsidy (i.e. revenue foregone) and arguably falls outside the scope of the EPA. It may be noted that Schedule 1 to the Regulations establishes the general principle that "dues, charges

⁵⁵⁶ See Dominica Port Authority Act, Schedule II, 1(b).

⁵⁵⁷ See Saint Lucia Air and Sea Ports Authority (Seaport Tariff) Regulations, Schedule 3, paragraph 2 – exempting Saint Lucian fishing ships, Royal Naval ships, Foreign Naval ships not engaged in trade, ships owned by the Government of Saint Lucia, and ships employed exclusively coast wise in Saint Lucia waters.

and conditions whether general or special in the tariff apply equally to all users of all traffic in any port or terminal facilities owned, operated or administered by the Authority”.⁵⁵⁸ The Regulations also provides for the non-discriminatory access to berths and port services.⁵⁵⁹

The Grenada Port Authority Act 1978 empowers the Port Authority to provide a coordinated and integrated system of ports, lighthouses and port services. Towards that end, the Authority may, *inter alia*, acquire any undertaking providing or intending to provide services or facilities which the Authority is competent to provide.⁵⁶⁰ Vessels entering the port for the purpose of loading or discharging cargo or passengers or anchoring or berthing within the port appear to be subject to non-discriminatory dues and charges. The Authority is responsible for licensing pilots (based on competence) and may determine by Notice whether pilotage is necessary.⁵⁶¹ The Port Manager is responsible for directing the berthing, mooring or anchoring of vessels. The Port Authority, with the approval of the Minister, is given the power to make regulations for the carrying out of the provisions of the Act.⁵⁶²

The provisions of the EPA also proscribe the introduction of cargo sharing arrangements in future bilateral agreements with third countries. The EPA calls for the abolition of existing, and proscribes the introduction of new measures which constitute a disguised restriction or have discriminatory effects on the free supply of international maritime services. The Agreement permits international maritime service suppliers to have a commercial presence on either an MFN or national treatment basis – whichever is more favourable.⁵⁶³

⁵⁵⁸ See Saint Lucia Air and Sea Ports Authority (Seaport Tariff) Regulations, Schedule 1, paragraph 1.

⁵⁵⁹ See Saint Lucia Air and Sea Ports Authority (Seaport Tariff) Regulations, Schedule 1, paragraphs 16 & 17 – providing for an application for a berth to be made 72 hours ahead of arrival, and the completion of Requisition for Port Services as far as reasonably possible in advance of the date such services are required.

⁵⁶⁰ See Grenada Port Authority Act, section 19(1)(b).

⁵⁶¹ See Grenada Port Authority Act, sections 54, 56 & 61.

⁵⁶² See Grenada Port Authority Act, section 75.

⁵⁶³ See EPA, Article 109.

The EPA proscriptions on bilateral agreements are largely informed by the position adopted in the EU which removed the block (anti-trust) exemption for shipping conferences as of 31 October 2008.⁵⁶⁴ The EU is virtually the only jurisdiction in the world where shipping conferences are prohibited (*versus* regulated under increasingly strict terms). All joint price fixing activity for services from or to the European Union and the European Economic Area is now therefore illegal. The EPA broadens this prohibition with respect to future arrangements in CARIFORUM countries.

The Antigua and Barbuda Merchant Shipping Act authorizes Cabinet to adopt various measures of assistance to the national shipping industry including, the conclusion of bilateral agreements with neighbouring countries for the sharing of export and import trade exclusively by the national shipping lines of the two countries, the provision of tax concessions to traders who patronize national shipping; and control of the terms of sale and purchase of commodity trade so as to channel as much as possible of such commodities to national ships; and the imposition of obligations on foreign lines to appoint Antigua and Barbuda lines as their agents in Antigua and Barbuda.⁵⁶⁵ The Act, as such, empowers the Minister to adopt measures which are discriminatory and designed to restrict and distort international trade contrary to Antigua and Barbuda's EPA obligations. As above-noted the EPA proscribes cargo sharing arrangements in future bilateral agreements with third countries. Although the Merchant Shipping Act provides Cabinet with the authority to enter into a number of arrangements, our consultations failed to identify any such existing agreements.

⁵⁶⁴ See EU Council Regulation No. 1419/2006. See also "Maritime Transport Services", Background Note by the Secretariat, S/C/W/315, 7 June 2010, paragraph 77 – highlighting 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.

⁵⁶⁵ See Antigua and Barbuda Merchant Shipping Act, section 286 (2)(v), (vii), (viii) & (xii).

Internal Waterways Transport

Only Antigua and Barbuda, St Kitts and Nevis and Saint Lucia have undertaken commitments on freight transport (frozen or refrigerated, bulk liquids, gases or other freight) in internal waterways. Commitments are bound without reservation for cross-border supply (modes 1 and 2) and commercial presence. Restrictions are imposed on cabotage in certain OECS countries.⁵⁶⁶ However, the EPA commitments on commercial presence and cross-border supply are expressly stated to exclude national maritime cabotage.⁵⁶⁷

St Kitts and Nevis and Saint Lucia have undertaken commitments on maintenance and repair of vessels in internal waterways. Commitments on cross-border supply (modes 1 and 2) are bound without reservation. Commercial presence is unbound for Saint Lucia, and bound without reservation for St Kitts and Nevis.

St. Kitts and Nevis has undertaken commitments for pushing and towing services in internal waterways. Included are towing services provided by tugboats of oil rigs, floating cranes, dredging vessels, buoys and of hulls and incomplete vessels, on a fee or contract basis. Towing services for distressed non-seagoing vessels are also included. Cross-border supply (modes 1 and 2) is unbound. Commercial presence is bound without reservation.

No legislation was identified which appears to conflict with the above noted sectoral commitments.

Air Transport Services

The EPA excludes from the scope of commitments on commercial presence and cross-border supply (modes 1 and 2) national and international air transport services, whether

⁵⁶⁶ E.g. Antigua and Barbuda Merchant Shipping Act, section 6 - restricting cabotage to Antigua and Barbuda ships; St Vincent and the Grenadines Shipping Act, section 3.

⁵⁶⁷ See EPA, Articles 66(d) & 75(1)(b).

scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than.⁵⁶⁸

- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services; and
- (iv) 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.

Nevertheless, Annex IV.F of the EPA includes commitments of CARIFORUM countries on passenger and freight transportation within air transport services. Annex IV.F is an integral part of the EPA and therefore must be construed consistently therewith. The legitimacy of certain commitments on air transport services inscribed in the Annex may be questioned but this debate is not pursued herein.

OECS countries have not undertaken commitments on passenger transportation but all six (6) have undertaken commitments on freight transportation. Saint Lucia and St Vincent and the Grenadines have excluded mail transportation by air; thereby undertaking commitments only with respect to transportation of containerized freight and other freight by air. **It should be noted that commitments for Antigua and Barbuda in the national treatment column for cross-border supply and commercial presence have been omitted.**

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

⁵⁶⁸ See EPA, Articles 66(e) & 75(1)(c).

to scheduled all-cargo services in the same manner as they cover the more prevalent passenger/cargo combination services.⁵⁶⁹

Antigua and Barbuda, St Kitts and Nevis and Saint Lucia have undertaken commitments on the rental of aircraft with crew. Antigua and Barbuda and Saint Lucia have bound commitments on cross-border supply (modes 1 and 2); for St Kitts and Nevis this applies only to mode 2. Market access for commercial presence is unbound for Antigua and Barbuda and Saint Lucia; St Kitts and Nevis has stipulated possible local hiring requirements.

St Kitts and Nevis and Saint Lucia have undertaken commitments on the maintenance and repair of aircraft. Saint Lucia has bound cross-border trade (modes 1 and 2) without reservation but left commercial presence unbound. St Kitts and Nevis has bound commercial presence without reservation but left cross-border trade (modes 1 and 2) unbound. Among the modes of delivery, Modes 2 and 3 are generally seen as the most important in this sector. The presence or absence of restrictions on consumption abroad of air maintenance services is treated as critical. Similarly, Mode 3 conditions the establishment of foreign maintenance facilities in third markets.

Only Antigua and Barbuda has undertaken commitments on Computer Reservation System (CRS) services and selling and marketing of air transport services. The commitments on CRS services are bound without reservation for cross-border supply (modes 1 and 2) as well as commercial presence. Commitments on selling and marketing of air transport services are bound for cross-border supply (modes 1 and 2) without reservation but commercial presence is unbound.

The scope of CRS services is undefined in the EPA and the term does not appear in the CPC code. A definition exists in the WTO Annex on Air Transport Services, i.e. "services provided by computerized systems that contain information about carriers' schedules, availability, fares and fare rules, for which reservations can be made or tickets

⁵⁶⁹ See also "Air Transport Services", Background Note by the Secretariat, S/C/W/59, 5 November 1998.

may be issued".⁵⁷⁰ The definition appears sufficiently broad as to cover CRS services provided to the public directly, for example, through the internet.

The WTO Annex on Air Transport Services also provides a definition of selling and marketing of air transport services as "opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions".⁵⁷¹ The definition is clearly restricted to selling and marketing activities by airline companies as opposed to, for example, travel agents. It may be questioned, however, whether the additional restrictions expressly stated in the WTO definition should be read into the EPA.⁵⁷²

No restrictions on market access or national treatment contrary to the specific commitments undertaken by OECS countries were identified in the review of the relevant Civil Aviation Acts and Port Authority legislation. Our consultations suggest that the relevant market has, indeed, already been significantly liberalized.

Rail Transport Services

It is noteworthy that all six (6) OECS countries have undertaken commitments on all classes of rail transportation, including passenger and freight transportation, pushing and towing services, maintenance and repair of rail transport equipment and supporting services for rail transport services. No OECS country has a general rail transportation system, though novelty services have mushroomed in some places – this largely catering to the tourism industry. **Consultations suggest that the sector may have been seen as something of a “throw away”, i.e. one where liberalization commitments could be made with few risks and therefore little costs.**

A review of the legislation of OECS countries does not suggest any specific measures (other than general requirements on licensing and permits covered by horizontal

⁵⁷⁰ See WTO Annex on Air Transport Services, paragraph 6(c).

⁵⁷¹ See WTO Annex on Air Transport Services, paragraph 6(d).

⁵⁷² See also “Air Transport Services”, Background Note by the Secretariat, S/C/W/59, 5 November 1998.

limitations) relevant to the sector which could be seen as restricting market access or national treatment.⁵⁷³

Road Transport Services

Only Grenada has undertaken commitments on passenger transport within the group of road transport services. The commitments undertaken are limited to passenger transportation by man- or animal-drawn vehicles or conveyances and by pack animals, provided that the services of a driver are provided with the vehicles or animals.⁵⁷⁴ Commitments are bound without reservation for cross-border trade (modes 1 and 2) and commercial presence. A review of the Grenada Road Traffic Act (as amended) and regulations did not raise any particular concerns.

Only Saint Lucia has undertaken commitments on supporting services for road transportation services. The commitments undertaken are limited to parking services provided by car parks, parking lots and parking garages, whether or not roofed. Commitments are bound without reservation for cross-border trade (modes 1 and 2) and commercial presence. No legislation contrary to these commitments was identified in the course of the review.⁵⁷⁵

Services Auxiliary to all modes of Transport

Saint Lucia and St Vincent and the Grenadines have undertaken commitments with respect to cargo handling services. This comprises cargo handling services provided for freight in special containers as well as non-containerized freight or for passenger baggage. Included are services of freight terminal facilities, on a fee or contract basis, for all modes of transport, including stevedoring services (i.e. the loading, unloading and discharging of vessels' containerized freight, at ports), and cargo handling services

⁵⁷³ See also “Land Transport Services: Part II Rail Transport Services”, Background Note by the Secretariat, S/C/W/61, 28 October 1998.

⁵⁷⁴ Note that excluded from this are animal-drawn freight and passenger vehicle rental services without the services of a driver which are classified in subclass 83102 (Leasing or rental services concerning goods transport vehicles without operator) and 83105 (Leasing or rental services concerning other land transport equipment without operator), respectively.

⁵⁷⁵ See also “Land Transport Services: Part I – Generalities and Road Transport”, Background Note by the Secretariat, S/C/W/60, 28 October 1998.

incidental to freight transport, not elsewhere classified. Also included are baggage handling services at airports, and at bus, rail or highway vehicle terminals. Saint Lucia and St Vincent and the Grenadines have bound without reservation (save for any horizontal limitations) cross-border supply (modes 1 and 2) and commercial presence.

All OECS countries, save for St Kitts and Nevis, have undertaken commitments on storage and warehouse services. St Vincent and the Grenadines has excluded bulk storage services of liquids or gases, thereby making commitments only on storage services of frozen or refrigerated goods (including perishable food), and other storage or warehousing services (including cotton, grain, wool, tobacco, other farm products, and other household goods). Mode 1 is unbound due to technical feasibility for all OECS save St Vincent and the Grenadines which has indicated 'None'. (This may be seen as a scheduling anomaly though it is not a unique occurrence). All five (5) OECS countries have bound commitments without reservation for mode 2 and market access for commercial presence; national treatment for commercial presence is unbound.

Only Dominica has undertaken commitments for freight transport agency services, including freight brokerage services, freight forwarding services (primarily transport organization or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk services. Commitments are bound without any specific sector reservations for cross-border trade (modes 1 and 2) and commercial presence.

Dominica has also undertaken commitments on other supporting and auxiliary transportation services, including freight brokerage services; bill auditing and freight rate information services; transportation document preparation services; packing and crating and unpacking and de-crating services; freight inspection, weighing and sampling services; and freight receiving and acceptance services (including local pick-up and delivery). Commitments are bound without reservation on cross-border supply (modes 1 and 2); similar commitments are made on commercial presence but these are time deferred until January 2022.

Saint Lucia and St Vincent and the Grenadines have undertaken commitments on trans-shipment services which also fall within the group of other supporting and auxiliary transport services (CPC 749). These commitments are bound without reservation for cross-border supply (modes 1 and 2) and commercial presence

Saint Lucia and St Vincent and the Grenadines have undertaken commitments on free zone operation. This group of services is not defined in the CPC code. Saint Lucia and St Vincent and the Grenadines have undertaken bound commitments with no sector specific reservations on cross-border supply (modes 1 and 2) and commercial presence. These commitments largely mirror the commitments made by both States in their Schedules to the GATS; no other countries appear to have made similar commitments in the WTO, although Guyana has inscribed commitments on this subsector in the EPA. **The scope of the commitments (placed under the umbrella of transport services) is unclear.**

The St Vincent and the Grenadines Export Free Zone Act of 1999 grants the Port Authority responsibility for administering free zones but to date there are no free zones in operation. The Saint Lucia Free Zone Act is described as an Act “to provide for the establishment and operation of free zones in Saint Lucia to foster commerce, trade and investment with other countries; to promote economic growth and development and related matters”. The legislation defines a ‘free zone’ as “a geographical area in Saint Lucia designated as such by the Cabinet, where investors may establish businesses and conduct trade and commerce, outside of the national customs territory and may include a single business and its facilities, referred to as ‘Special Free Zone’”.⁵⁷⁶ A ‘free zone business’ is defined as “a private or public party which has been granted approval to operate a business ... and which conducts a trade or business, including but not limited to manufacturing, commercial, office, warehousing, professional or other activity, within any free zone established under this Act”⁵⁷⁷

⁵⁷⁶ See Saint Lucia Free Zone Act, section 2.

⁵⁷⁷ See Saint Lucia Free Zone Act, section 2.

The criteria for establishing a business within a free zone includes whether the enterprise will conduct trade and investment activities such as a commercial office, warehousing, manufacturing, insurance services, telecommunication services, financial services, banking services, or other professional, or related activities”.⁵⁷⁸ The legislation addresses permissible activities within a free zone and provides, in particular, that “[a]ctivities of a free zone business within the national customs territory shall be limited to transportation or business meetings.”⁵⁷⁹

Businesses operating within a free zone are generally exempted from the requirement for a trade licence.⁵⁸⁰ The regulatory regime, including the labour regime, is ‘investment-friendly’, removing restrictions on the hours of operation and fees for work permits.⁵⁸¹ Provision is made for due process; in cases where a licence is revoked an appeal may be made to the Free Zone Management Appeal Board.⁵⁸² Our consultations, however, suggest that the Appeal Board is not in fact operative although this situation should change in the near term.

No legislation contrary to the above-stated commitments relating to services auxiliary to all modes of transport was identified in the course of the review.

⁵⁷⁸ See Saint Lucia Free Zone Act, section 10.

⁵⁷⁹ See Saint Lucia Free Zone Act, section 11(3). Note that activities of a free zone business may be conducted entirely within the free zone or between the Saint Lucia free zone and foreign countries; see *ibid*, section 11(2).

⁵⁸⁰ Section 11 of the Free Zone Act provides that a trade licence shall not be required to conduct a free zone business except in situations where the Board directs in writing that the applicant should apply for a trade licence under the Trade Licences Act. Where the Board makes a trade licence a requirement for the operation of a free zone business, then the Trade Licences Act shall apply to the business despite any provision in this Act.

⁵⁸¹ See Saint Lucia Free Zone Act, sections 18 & 20.

⁵⁸² See Saint Lucia Free Zone Act, section 35.

IV ADDITIONAL OBLIGATIONS RELATING TO COMMERCIAL PRESENCE

It may be recalled that under the general heading ‘Other Business Services’ are a range of services linked to agriculture, hunting, forestry, fishing, mining, manufacturing and energy distribution. The commitments in Annex IV.F are complemented by the commitments made in Annex IV.E in the following non-services sectors:⁵⁸³

- A. Agriculture, hunting and forestry;
- B. Fishing;
- C. Mining and quarrying;
- D. Manufacturing;
- E. Production, transmission and distribution on own account of electricity, gas, steam and hot water

The horizontal reservations inscribed in Annex IV.E as above-discussed, apply to all five non-services sectors. They must be read together with the specific sectoral reservations which are noted in the brief discussion which follows. As regards Sector E (i.e. production, transmission and distribution on own account of electricity, gas, steam and hot water), this is unbound for OECS countries and all other CARIFORUM States, save for the Dominican Republic. The sector is therefore not considered in the context of the present review.

It should be emphasized that with regard to the commitments made in Annex IV.E all CARIFORUM States have reserved their right to inscribe in the Annex any *existing measure* (at time of signature) that has not been listed in the Annex, provided this is done within two (2) years of entry into force of the Agreement.

⁵⁸³See Annex IV.E; the CARIFORM Schedule refers to the ISIC Rev.3 list in the given five (5) sectors. The reference to the above non-services sectors in Annex IV.E is prefaced by the word “includes” which may suggest a non-exhaustive list (i.e. that other sectors which are not listed are also covered). A literal interpretation might lead to the suggestion that CARIFORUM states have possibly assumed commitments in other sectors, i.e. other than the five expressly listed. It is submitted, however, that the scope for an overly broad interpretation is narrowed by paragraphs 2 and 3 of Annex IV.E which read together suggest that the negative list approach is in fact limited to sectors A-D above-mentioned. This is the interpretation adopted herein.

The International Standard Industrial Classification of All Economic Activities (ISIC Rev.3.1) is the classification scheme used by CARIFORUM States to define their commitments in Annex IV.E

AGRICULTURE AND HUNTING

This division covers the growing of crops; market gardening; horticulture; farming of animals; agricultural and animal husbandry service activities (except veterinary activities); hunting, trapping and game propagation including related service activities. The list of agricultural activities excludes any subsequent processing of agricultural products, beyond that needed to prepare them for the primary markets.⁵⁸⁴

The sectoral reservations made by Dominica, Grenada, St Kitts and Nevis, and Saint Lucia provide these countries with maximum policy flexibility to restrict, if necessary, market access and national treatment. The reservation inscribed by St Vincent and the Grenadines is limited to the cultivation, import and/or export of crops; as such, the commitments undertaken principally concern the farming of animals. Antigua and Barbuda has made no reservations to its specific commitments in this sector.

Consultations in Antigua and Barbuda suggest that there exists some agriculture but no real hunting. Traditionally, duck hunting was pursued but as the West Indian whistling duck has become an endangered species duck hunting is no longer allowed. There are no other significant sources of wild life to hunt. The agriculture sector is made up of small farmers (largely 1 to 50 acres). There is some foreign presence in the farming industry, most notably, an Israeli owned farm (approximately 100 acres) which specializes in vegetables and melons for export. A major advantage of foreign investment in the sector which was identified by Government officials is technology transfer. It was noted in our consultations that the alien/non-citizens landholding legislation to which reference is

⁵⁸⁴ The division excludes field construction (e.g. agricultural land terracing, drainage, preparing rice paddies etc.) classified in division 45 (Construction) and buyers and cooperative associations engaged in the marketing of farm products. But note that as an exception to the general rule for classification of integrated activities, a unit growing grapes and producing wine at the same location is classified to 01, even though the output normally is the product of division 15.

made in Antigua and Barbuda's horizontal reservations provides an important tool in ensuring that foreign farmers invest on appropriate terms. Various other pieces of legislation address the sector, for example the Agricultural Small Holdings Act, Agricultural Development Corporation Act, and Land Development and Control Act. They are not, however, of significance for current purposes.

Consultations in St Vincent and the Grenadines suggest that there is virtually no foreign presence in the agricultural sector; a minor presence exists, for example, in Mustique which caters to the tourist industry. The alien land holding legislation which is included in St Vincent and the Grenadines' horizontal reservations provides the key instrument for regulating market access. Other legislation relevant to the commitments undertaken which were raised in our consultations include: the Agricultural Act,⁵⁸⁵ Wildlife Protection Act,⁵⁸⁶ and the draft 2009 Wildlife Protection Regulations.⁵⁸⁷

FORESTRY AND LOGGING

Forestry and logging covers the production of standing timber as well as the extraction and gathering of wild growing forest materials except for mushrooms, truffles, berries and nuts. Besides the production of timber, forestry results in products that undergo little processing, such as wood for fuel or industrial use.⁵⁸⁸

⁵⁸⁵ The St Vincent and the Grenadines Agricultural Act is designed to promote *inter alia* good animal husbandry.

⁵⁸⁶ The St Vincent and the Grenadines Wildlife Protection Act prohibits the hunting of protected wildlife, imposes closed hunting seasons for certain wildlife, and provides for licences for persons ordinarily resident on a Wildlife reserve. Note that section 17 of the Wildlife Protection Act allows the Chief Wildlife Protection Officer to grant a special Hunting Licence which shall entitle the holder to hunt any wildlife specified therein for (a) scientific research (b) collection of specimens for zoological gardens, museums or similar institutions; (c) eradication of wildlife declared to be vermin; and (d) culling.

⁵⁸⁷ The Regulations would proscribe hunting game birds without a hunter's licence; provide for the grant of licences subject to such conditions as may be determined (with appeals to the Minister); and allow for the hunting of iguanas and opossum. See also Wages Regulation (Agricultural Workers) Order, National Irrigation Authority Act, Animals (National and International Movement and Disease Prevention) Act, Plant Protection Act, and the Arrowroot Industry Act.

⁵⁸⁸ Note that further processing of wood beginning with sawmilling and planing of wood, which is generally done away from the logging area, is classified to division 20 (Manufacture of wood and wood products).

Dominica, Grenada and St Vincent and the Grenadines have made reservations which largely preserve their policy flexibility in this sector. However, Antigua and Barbuda, St Kitts and Nevis and Saint Lucia have not made any sectoral reservations.

In our consultations in Antigua and Barbuda it was noted that while there is a unit responsible for managing forestry resources, there is no real commercial exploitation. The role of the Forestry Unit is one of management and conservation of the integrity of areas demarcated as forests. The only activity of a commercial nature is cutting of wattle (i.e. saplings of young trees used by fishermen to brace their fish pots). Persons who wish to engage in wattle harvesting must obtain permission from the forestry department. The Forestry Act requires the issuance of a permit before timber may be cut or land cleared for cultivation, pasturage or other purpose.⁵⁸⁹ It should be noted that private lands are part of the forestry demarcation and land development generally requires the permission of the Development Control Authority. However, exempted from this requirement is “[t]he development of land for agricultural or forestry purposes, including the construction of buildings, structures and facilities directly related to such use.”⁵⁹⁰

There are no active rangers in Antigua and Barbuda anymore but there are personnel who do monthly checks to monitor the population of saplings (which are really the replacement population of future forest of which they are mindful). Increasingly, the use of wattle is being discouraged in favour of welded mettle as brace for the fishing pots. In any event, wattle harvesting is undertaken on such a small scale that it is not that significant.

⁵⁸⁹ See Antigua and Barbuda Forestry Act, section 6(1) – proscribing the clearing of any land for cultivation, pasturage or other purpose, or cutting, or felling of any timber; or burning of any wood or charcoal within any forest reserve without having first obtained from the Chief Forest Officer a permit in writing. Compare Antigua and Barbuda Forest Resource Conservation Act - establishing the Forestry Department and providing, *inter alia*, for licences or permits for the harvesting of forest produce subject to such conditions and procedures as may be specified; and the 2009 Forest Regulations - providing for the issuance of forestry harvesting permits utilizing environmentally sound harvesting practices.

⁵⁹⁰ See Antigua and Barbuda Land Development Control Act, section 8(2) and Schedule.

The Saint Lucia Forest, Soil and Water Conservation Act makes it unlawful to convey or move any timber except with a permit from an authorized forest officer.⁵⁹¹ A person shall also not deal in timber without notifying the Chief Forest Officer.⁵⁹² The Act proscribes various forestry activities on Crown land (unless duly authorized),⁵⁹³ and provides for the declaration of Forest Reserves as may be necessary.⁵⁹⁴ The legislation is not discriminatory, neither are other regulations which were raised in our discussions, most notably, the Land conservation and Improvement Act and Timber Industry Development Board Ordinance.

The St Kitts and Nevis National Conservation and Environment Protection Act proscribes the cutting or felling of any timber in St Kitts and Nevis without a permit from the Director of Environment; the prohibition does not apply to timber cut or felled for the purposes of the domestic use of the owner.⁵⁹⁵

FISHING

Fishing is defined in the ISIC Rev.3.1 as the use of fishery resources from marine or freshwater environments, with the goal of capturing or gathering fish, crustaceans, molluscs and other marine products (e.g. pearls, sponges). The Division also includes fish farming and aquaculture activities that produce similar products. It includes activities that are normally integrated in the process of production for own account (e.g. seeding oysters for pearl production). But excludes sport or recreational fishing activities; and processing of fish, crustaceans or molluscs, whether at land-based plants or on factory ships.

⁵⁹¹ See Saint Lucia Forest, Soil and Water Conservation Act, section 6.

⁵⁹² See Saint Lucia Forest, Soil and Water Conservation Act, section 8(1); note that while a licence under the Act is not required, a trade licence and other licensing measures still apply.

⁵⁹³ See Saint Lucia Forest, Soil and Water Conservation Act, section 33 – making it an offence to: (a) fell, cut, girdle, mark, lop, tap, or bleed any tree or injure by fire or otherwise any tree or timber; (b) cause any damage by negligence in felling any tree or cutting or dragging any timber; (c) subject to any manufacturing process or convey or remove any forest produce; (d) carry any saw, axe, adze or cutlass; (e) kindle, keep or carry any fire; (f) pasture livestock or permit livestock to trespass; (g) clear, cultivate or break up any land for cultivation or for any other purpose; (h) enter a prohibited area, unless done in accordance with the rules made by the Governor General or with permission in writing given by a forest officer authorised to grant such permission or under any tenancy agreement made with the Chief Forest Officer.

⁵⁹⁴ See Saint Lucia Forest, Soil and Water Conservation Act, sections 19 & 21.

⁵⁹⁵ See St Kitts and Nevis National Conservation and Environment Protection Act, section 38 - clarifying that the term “timber” is used to refer to any kind of growing tree except brushwood.

However, processing taking place on board of ships that also fish is classified within the division.

All OECS countries, save for Grenada, have reserved broad policy space in this sector. It may be noted that the Fisheries Acts and regulations generally discriminate between local and foreign fishing licences, and provide for, *inter alia*, the conclusion of fisheries access agreements and licensing of fish processing establishments.⁵⁹⁶ The regulations are consistent with the flexibility reserved by OECS countries under the EPA. Grenada has inscribed a reservation noting that its legislation prescribes differential fees for non-nationals to obtain a license to engage in fishing activities. Save for non-discriminatory environmental and safety measures, Grenada may not restrict market access or impose discriminatory measures other than fees on fishing enterprises from other EPA countries.

The Fisheries Division of the Ministry of Agriculture in Grenada implements a policy of “open access and common property” in promoting a community-based management approach in the fishing industry. Conservation measures are maintained in managing the exploitation of conch, lobster, turtle and the inshore pelagic stock. The industry is largely comprised of artisan fishing, however, there appears to be interest in developing commercial operations including fish processing facilities.

MINING AND QUARRYING

This Section of the ISIC Rev.3.1 includes the extraction of minerals occurring naturally as solids (coal and ores), liquids (petroleum) or gases (natural gas); extraction may be achieved by underground or surface mining or well operation. Supplementary activities aimed at preparing the crude materials for marketing, for example, crushing, grinding, cleaning, drying, sorting, concentrating ores, liquefaction of natural gas and agglomeration of solid fuels are also included. But such activities not carried on in conjunction with mining and quarrying activities are excluded. Also excluded are bottling of natural spring and mineral waters at springs and wells and the collection, purification and distribution of water.

⁵⁹⁶ *E.g.* St Kitts and Nevis Fisheries Act; Saint Lucia Fisheries Act.

Dominica made a broad reservation preserving its policy flexibility in this sector. Other OECS countries have not made specific reservations though two general reservations have been inscribed by the CARIFORUM group: i.e. reserving certain (unspecified) activities in small scale mining to nationals, and (with the exception of the Dominican Republic and Guyana) reserving the right to grant approval for private or public exploration, mining, processing, importation and exportation of minerals.

The Minerals (Vesting) Acts of OECS countries vest all minerals being in, on or under any land of whatsoever ownership or tenure in the Crown. The Act requires that a licence be obtained by any person in order to prospect for or mine any minerals.⁵⁹⁷ Other relevant legislation has also been reviewed.⁵⁹⁸ However, there appears to be no inconsistency between the legislation and the commitments made in the EPA which are subject to, *inter alia*, the reservation made by OECS countries with respect to alien land holding. It may be noted that no significant mining is underway in OECS countries although interest exists in the possible mineral resources of the continental shelf.

MANUFACTURING

Manufacturing as classified in ISIC Rev.3.1 comprises units (e.g. plants, factories or mills) engaged in the physical or chemical transformation of materials, substances, or components (i.e. raw materials that are products of agriculture, forestry, fishing, mining or quarrying as well as products of other manufacturing activities) into new products (including semi-finished products). Included in this section are units that transform materials or substances into new products by hand or in the worker's home and those engaged in selling to the general public products made on the same premises from which

⁵⁹⁷ E.g. Antigua and Barbuda Minerals (Vesting) Act, sections 3 & 4; Saint Lucia Minerals (Vesting) Act, St Vincent and the Grenadines Minerals (Vesting) Act.

⁵⁹⁸ E.g. the Antigua and Barbuda Land Development and Control Act - requiring a development permit for the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, etc. Provision is made for advance rulings should one be unsure whether development permission is required; see *ibid*, section 10(2). See also St Kitts and Nevis Development and Control Planning Act.

they are sold, such as bakeries and custom tailors.⁵⁹⁹ Assembly of component parts of manufactured products is considered manufacturing.⁶⁰⁰

The boundaries of what may be appropriately classified as manufacturing are not always clear and depend on the nature of the transformation of a substance into a ‘new product’. A substantial alteration, renovation or reconstruction of goods is generally considered to be manufacturing. Equally so, the recycling of waste is a manufacturing process. It should be noted that the following items are considered to be examples of manufacturing:⁶⁰¹

- fresh fish processing (oyster shucking, fish filleting), not done on a fishing boat;
- Printing and related activities;
- Ready-mixed concrete production;
- Leather converting;
- Wood preserving

Two horizontal reservations made by OECS countries feature significantly in this sector: the conditions placed on aliens land-holding (all OECS countries), and the imposition of ENTs on small businesses (all OECS save Antigua and Barbuda and Grenada). It is not without significance that in our consultations the legislation consistently identified as governing the manufacturing sector was that concerning micro and small scale businesses.

⁵⁹⁹ Note that manufacturing units may process materials or may contract with other units to process their materials for them. Both types of units are included in manufacturing.

⁶⁰⁰ Assembly and installation of machinery and equipment in mining, manufacturing, commercial or other units, when carried out as a specialized activity, are classified in the same class of manufacturing as manufacture of the item installed. Assembly and installation of machinery and equipment that are performed as a service incidental to the sale of the goods by a unit primarily engaged in manufacturing, wholesale trade or retail trade, are classified with its main activity. Note also that activities of units primarily engaged in maintenance and repair of industrial, commercial and similar machinery and equipment are, in general, classified in the same class of manufacturing as those specializing in manufacturing the goods; but note that commitments on repair and maintenance services are covered in Annex IV.F of the EPA and not the commitments made in Annex IV.E

⁶⁰¹ But note that activities of breaking of bulk and redistribution in smaller lots, including packaging, repackaging, or bottling products, such as liquors or chemicals; the customized assembly of computers; sorting of scrap; mixing paints to customer order; and cutting metals to customer order, produce a modified version of the same product, not a new product, and are classified under ‘Wholesale and retail trade’.

The following additional notations apply with respect to the sub-sectors listed below.

Manufacture of food products and beverages

Dominica has reserved its policy space as regards the manufacture of food products and beverages. Grenada has also done this save for the manufacture of dairy products; *viz.* it has reserved production, processing and preservation of meat, fish, fruit, vegetables, oil and fats, manufacture of grain mill products, starches and starch products, and prepared animal feeds, manufacture of other food products and manufacture of beverages. Saint Lucia has limited its reservations to processing and preserving of fish and fish products, manufacture of bakery products, manufacture of macaroni, noodles, couscous and similar farinaceous products, and manufacture of beverages. Antigua and Barbuda, St Kitts and Nevis and St Vincent and the Grenadines have not made any specific reservations in this sub-sector.

There is legislation in some OECS countries providing for the licensing of breweries on a non-discriminatory basis and providing for duty free treatment of materials imported by brewers for use in brewing.⁶⁰²

Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials

Dominica has reserved its policy space within this sub-sector. All CARIFORUM States have entered a reservation in relation to small scale investments in this sector.

Manufacture of refined petroleum products; Manufacture of chemicals and chemical products other than explosives

No OECS country has indicated any specific reservations in these sub-sectors

⁶⁰² *E.g.* Saint Lucia Brewery Act, sections 3 & 28; St Kitts and Nevis Brewery Act, sections 3 & 35; Grenada Brewery Act.

Manufacture of machinery and equipment

All CARIFORUM States have indicated a reservation on investment in the production of weapons and ammunition.

Manufacture of furniture; manufacturing n.e.c.

It should be noted that this is a residual Division including the manufacture of furniture of any kind and other items not elsewhere classified, such as manufacture of jewellery and related articles, musical instruments, sports goods, games and toys, etc. Grenada and Saint Lucia have reserved their policy space within this sub-sector. All CARIFORUM States have made reservations with respect to small scale investments in this sector.

A key issue for the implementation of commitments in the manufacturing sector is the definition to be given to small business ventures. This constitutes one of the areas identified for further work.

Additional Commitments on Labour, Environment, Cultural Diversity and Anti-Corruption

Labour and the Environment

In addition to implementing the liberalization commitments on commercial presence in service and non-service sectors, OECS countries have undertaken to adhere to certain ‘best practices’ in promoting investment and regulating investors. The EPA provides, *inter alia*, that the Parties agree not to lower domestic environmental, labour or occupational health and safety standards including those aimed at protecting and promoting cultural diversity.⁶⁰³ It requires Parties to ensure that investors act in accordance with core labour standards, and not manage or operate their investments in a manner which circumvents international environmental or labour obligations (to which they are party).⁶⁰⁴

⁶⁰³ See EPA, Article 73.

⁶⁰⁴ See EPA, Article 72.

The obligations on investor behaviour set out in Articles 72 and 73 of the EPA may be distinguished from the more elaborate undertakings of Title IV, chapters 4 and 5 on the environment and social aspects (treating with social and labour standards). Analyses on the needs of CARIFORUM countries to enhance their ability to fulfil their EPA Title IV obligations in these areas suggests, *inter alia*, that not all CARIFORUM countries have adhered to all the recommended multilateral environment and labour conventions and further that work needs to be done in updating legislation and enforcing existing laws.⁶⁰⁵ It may be noted that the obligations under Article 72 are limited to implementing the conventions to which States are *already party* and not lowering *existing* standards.

The view that all OECS countries adhere to relatively high labour and environmental standards was underscored in our consultations.⁶⁰⁶ The investment literature and laws of the region similarly demonstrate the emphasis on sound labour⁶⁰⁷ and environmental⁶⁰⁸

⁶⁰⁵ E.g. “Consultancy to Assess the Social Aspects Concerning CARIFORUM’S commitment under the Economic Partnership Agreement,” CISP/CCS/R2/2.3.2B/SER09.10 (Draft Final Report, April 2011) at pp.15-16 - noting, *inter alia*, that child labour remains a problem in the region and that Saint Lucia has not ratified ILO Convention 138 dealing with the abolition of child labour. See also “Consultancy to Support the Development of International Trade Consequent with CARIFORUM Obligations under the Environment Chapter of the Economic Partnership Agreement” CISP/CCS/RE/2.3.2c/SER09.10 (Draft Final Report, February 2011) at pp. 63-64, section 4.8 - highlighting, *inter alia*, the lack of legal draftspersons as part of the problem in addressing legislative deficiencies in Antigua and Barbuda, Dominica and St Vincent and the Grenadines.

⁶⁰⁶ For example, in our discussions in Dominica the steps which have been taken by the Government to implement ILO conventions were underscored.. Dominica is an ILO Member and has ratified 26 ILO Conventions; among these are the core eight (8) conventions. Additionally, Dominica is in the process of ratifying the 2006 International Labour Maritime Convention. There are sixteen (16) pieces of labour legislation (and four (4) additional pieces of labour-related legislation concerning social security and the Public Service etc). Dominica has developed a Decent Work Country programme with four (4) main objectives: job creation; protecting rights at work; strengthening social protection; and promoting social dialogue. There are also four (4) priority areas: the review of labour legislation paying close attention to the ILO recommendations coming from the Committee of Experts of the International Labour Office; the development of a labour market information system; the development of a HIV and disabled people policy in the work place; and promoting and enhancing social dialogue. Due process guarantees are also provided through a system of arbitration, the Industrial Relations Tribunal, Advisory Committee and the Industrial Relations Board.

⁶⁰⁷ E.g. See also Grenada Investment Promotion Act, Schedule I, ‘Statement of Investment Policies’ – addressing the obligations of investors, including the pursuit of investment activities in a manner that best contributes to consumer and environmental protection, industrial harmony and the development of the human resources; and observing workers' rights relating to collective bargaining in accordance with existing applicable laws. Employers and employees are free to enter into labour contracts save and except that these labour contracts may not establish standards lower than the mandatory requirements of existing law. Investors must also contribute to the social insurance and welfare programmes for their workers in accordance with the National Insurance Act.

practices. Free zones are often billed as investment attraction regimes incentivized by lax labour and environmental standards. Few OECS countries have laws specifically regulating free zones, but where these exist it could be beneficial for the governing statute to expressly address environmental and social aspects. In this regard, it may be noted that the Antigua and Barbuda Free Trade Zone Processing Act expressly subjects employers and employees to all relevant laws in force in the State.⁶⁰⁹ The Saint Lucia legislation specifically addresses the free zone labour regime but appears to emphasize trade facilitation measures such as the relaxation of rules relating to opening hours and the waiver of fees for work permits.⁶¹⁰

Although recommendations could be made with respect to strengthening the legislative prescriptions or the development of administrative guidelines to ensure that environmental and labour standards are not eroded to facilitate investors, this would not seem to be necessary given the more extensive work which is being undertaken to facilitate the implementation of EPA Title IV, chapters 4 and 5. As such, the EPA obligation is therefore merely restated here for emphasis.

Cultural Diversity

Article 73 of the EPA requires, *inter alia*, that OECS countries ensure that foreign investment is not encouraged by relaxing laws aimed at protecting and promoting cultural diversity. In our consultations it was emphasized that there is no conflict between the promotion and protection of cultural diversity and foreign investment in the region. Indeed, some OECS countries have established Cultural Boards to undertake pro-active programmes promoting indigenous cultural and artistic goods and services, and use arts and culture to affirm a national identity within the regional and international context.⁶¹¹

⁶⁰⁸ *E.g.* there are said to be over forty (40) pieces of legislation governing various aspects of the environment in Antigua and Barbuda.

⁶⁰⁹ See Antigua and Barbuda Free Trade Zone Processing Act, section 15(5) - providing that all employers and employees in a free trade and processing zone shall be subject to the laws in force in Antigua and Barbuda.

⁶¹⁰ See Saint Lucia Free Zone Act, section 20.

⁶¹¹ *E.g.* Saint Lucia Cultural Development Foundation Act, section 4(1) & 4(2)(a) & (j).

These Boards also serve an important role in implementing national strategies for developing and promoting culture and cultural events in the society.⁶¹²

Various other pieces of legislation also address the importance of culture. Reference may be made, for example, to the Physical Planning legislation of the region; the Antigua and Barbuda Physical Planning Act provides that the objectives and purposes of the Act include the protection and conservation of the cultural heritage of Antigua and Barbuda as it finds expression in the natural and the built environment.⁶¹³ This language is mirrored in other planning legislation in the OECS.⁶¹⁴ It is also worthy of note that Grenada, Saint Lucia and St Vincent and the Grenadines are parties to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).⁶¹⁵

Overall it may be stated that a review of the legislation and subsidiary regulations does not suggest any particular concerns with regard to the possible relaxation of laws aimed at protecting and promoting cultural diversity. Indeed, the general framework for investment suggests the promotion of culture as integral to the social and economic environment.

⁶¹² *E.g.* Dominica Culture Act - establishing the National Culture Council to develop and promote culture and cultural events in Dominica. Towards this end the Council consults with the public, education authorities, cultural associations, the business community and other groups on measures necessary for the improvement of culture in Dominica. In this context, the Government has adopted a national cultural policy (in 2007) which addresses the Dominican culture as a whole, including that of indigenous people. In our consultations an effort was made to draw a distinction between culture and the cultural industry. The view was expressed that not all culture should be packaged for financial gain. There were a number of cultural events which sought to capitalize on trade in services, e.g. carnival, independence celebrations, and the World Creole Music Festival, but it was suggested that the promotion and preservation of culture went beyond this. See also the Saint Lucia Cultural Development Foundation Act establishing the Cultural Development Foundation similar to the Dominica National Council.

⁶¹³ See Antigua and Barbuda Physical Planning Act, section 3(1)(f); see also Saint Lucia Physical Planning and Development Act, section 3(e).

⁶¹⁴ *E.g.* St Kitts and Nevis Development Control and Planning Act, section 4(f); Grenada Physical Planning and Development Control Act, 2002, section 3(e).

⁶¹⁵ See also Grenada Physical Planning and Development Control Act, 2002, section 40 – providing that the Planning and Development Authority functions as the national service for the identification, protection, conservation and rehabilitation of the natural and cultural heritage of Grenada in accordance with the United Nations Educational, Scientific and Cultural Organisation’s Convention for the Protection of the World Cultural and Natural Heritage.

Anti-Corruption

The EPA provision on the “Behaviour of investors” requires the enactment of domestic legislation to ensure that investors are forbidden from, and held liable for offering or giving bribes directly or indirectly to any public official to induce a desired outcome in relation to an investment.⁶¹⁶ OECS countries are party to the Inter-American Convention against Corruption which imposes an obligation to adopt legislative and other measures to establish criminal offences under its domestic law for acts of corruption including:⁶¹⁷

- a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
- b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
- c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
- d. The fraudulent use or concealment of property derived from any of the above-mentioned acts; and
- e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the above-mentioned acts.

Antigua and Barbuda and Dominica are also parties to the UN Convention against Corruption which imposes similar obligations. All OECS countries have implemented

⁶¹⁶ See EPA, Article 72(a).

⁶¹⁷ See Inter-American Convention against Corruption, Article VI; see also Article VIII on ‘Transnational Bribery’ and Article IX on ‘Illicit Enrichment’.

their obligations under the Inter-American Convention and, as such, its EPA obligation under Article 72(a) through, *inter alia*, legislation such as the Integrity in Public Life Act⁶¹⁸ and the Prevention of Corruption Act.⁶¹⁹

Community Liaison Processes

Article 72 of the EPA requires that investors be made to establish local community liaison processes, especially in natural resource-based activities, such as investments which may be made in agriculture, hunting and forestry, fishing, mining and quarrying. **During our consultations few officials could identify any formal community liaison processes. However it was suggested that general investment policies promote corporate social responsibility with respect to the surrounding communities and the environment.** There is evidence of this in the planning legislation.⁶²⁰ Additionally, in Antigua and Barbuda it was suggested that similar processes are effectively implemented, in Barbuda in line with community land ownership practices.

⁶¹⁸ *E.g.* Antigua and Barbuda Integrity in Public Life Act, section 26; Saint Lucia Integrity in Public Life Act, section 28.

⁶¹⁹ *E.g.* Antigua and Barbuda Prevention of Corruption Act, sections 3 & 4.

⁶²⁰ *E.g.* St Kitts and Nevis Development Control and Planning Act, section 4(g) – including as one of the objectives of the Act to facilitate a process whereby people participate in the development and planning of their communities so far as it is compatible with the public interest; see also *ibid.*, section 14 on public participation.

SUMMARY RECOMMENDATIONS AND CONCLUSIONS

A review of the regulatory framework in OECS countries raises few concerns with respect to market access and national treatment in relation to the specific commitments which have been undertaken. This is in large part attributable to the broad horizontal reservations which have been made concerning alien/non-citizen landholding, small business ventures, the incorporation or registration of businesses and other operating conditions imposed by existing laws, economic needs tests on mode 4, as well as various sectoral reservations, including joint venture requirements.

The following general and country-specific recommendations are made with a view to facilitating the implementation of OECS EPA commitments.

GENERAL RECOMMENDATIONS

1. Small Businesses & Joint Ventures

The scope of certain reservations made by OECS countries and, as such, the legitimate boundaries of the policy space retained by Governments in implementing their EPA commitments lacks sufficient clarity. There was broad consensus in our consultations on the utility of undertaking further work on defining two frequently used terms, i.e. small business enterprises and joint ventures as used in Annex IV.E and F. This constitutes our first recommendation.

2. Mode 4 & ENTs

This horizontal limitation providing for the application of economic needs tests (ENTs) on key personnel and graduate trainees, leaving all other categories unbound would generally be interpreted as permitting OECS countries to restrict the temporary movement of business persons in accordance with their development needs. The situation, however, is unclear given the inscription of the word 'None' in relation to mode 4 in certain sector specific commitments. Discussions on the interpretation of Annex IV.F raised a number of questions on the value of retaining the flexibility to impose ENTs.

Previous consultancies have suggested, *inter alia*, that exemptions should be made from the application of ENTs, and accordingly work permits automatically granted for all business visitors, intra-corporate transfers and graduate trainees. This has been proposed as a measure which would avoid unnecessary paperwork and delay as the requirements are largely “formalistic and accomplish no meaningful purpose.”⁶²¹ The proposal, though not *legally* required by the EPA, could serve as a trade facilitation measure and is worthy of consideration by OECS Governments. Further analysis on work permit practices, statistics and safeguards measures would be required. This constitutes our second recommendation.

3. Technical errors

There are several technical errors and omissions present in Annex IV.F which should be addressed at the earliest opportunity. These were identified and discussed with Senior Officials during our consultations. They are also highlighted in the commentary as well as in the Annex to this report. Initiating procedures to rectify the identified errors and omissions in Annex IV.F is our third recommendation.

4. The exercise of discretionary authority

Regulations requiring authorization for the supply of a service or to establish a commercial presence as, for example, with respect to business or professional licences, trade licences, alien landholding licences, work permits, environmental permits, development permits, etc, should not be used to undermine EPA commitments.

It may be observed, for example, that the alien landholding restriction could be implemented to effectively nullify virtually all OECS commitments on commercial presence. The legitimate expectations of the Parties to the EPA, however, would suggest that the restriction be implemented reasonably, transparently with provision for due

⁶²¹ See “OECS Model Legislation; Amendments to Work Permit Regime: Drafting Guidelines”, prepared by the Legislative Drafting for Trade Policy & Negotiation Project.

process, and with a view to facilitating market access in line with the specific commitments undertaken in good faith.

Authorizations constitute a very common instrument used by regulatory authorities. The proliferation of such requirements in virtually all OECS countries underlies the recommendation for the development of appropriate guidance notes for administrators with a view to ensuring effective market access. Certain examples of this are highlighted in the country-specific recommendations below. However, it is felt that the drafting of a general administrative note on EPA implementation would serve to inform and/or remind administrators of the appropriate boundaries for the exercise of their discretionary authority given the obligations undertaken in the EPA. This constitutes our fourth recommendation.

5. Professional services

The professional services sector is important for all OECS countries. The strength of the regulatory regime varies depending on the profession and country. This is demonstrated, for example, in a comparison of the laws governing architects and engineers in OECS countries. Addressing these deficiencies will be an important endeavour, especially in support of the negotiation of mutual recognition agreements (MRAs). The multiplicity of licensing regimes and the imposition of differential (higher) fees on foreign professionals should also be reviewed with a view to streamlining measures and facilitating the growth of trade in professional services. This constitutes our fifth recommendation.

6. Courier services

The development of an appropriate regulatory framework to govern courier services is a substantive implementation concern for all six (6) OECS countries as there are currently no laws governing the sector in place. This constitutes our sixth recommendation.

7. Telecommunications – ECTEL Member States

The laws of ECTEL Member States are largely compliant with the regulatory framework prescribed in the EPA. Three issues however merit further review:

- The EPA requirement that the provision of telecommunications services should, as much as possible, be authorised following mere notification is not reflected in the legislation; the position adopted in the Telecommunications Acts is essentially the inverse.
- The EPA requirement that licence fees must not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences does not appear to be generally adhered to. Indeed, the administrative costs of ECTEL and NTRCs are funded through frequency authorization fees, whereas licensing fees are treated as the general revenue of the respective governments. It should also be noted that the EPA requirement on fees effectively proscribes the auctioning of licences. This is something which appears to be contemplated in the Telecommunications Acts though the provision is not utilized and therefore could simply be deleted.
- The Telecommunications Acts address competition issues but do not provide an adequate regulatory framework which meets with EPA requirements. This is one of clear deficiencies of the legislation. In the absence of a comprehensive competition policy which would address, *inter alia*, the telecommunications sector, reliance must be placed on the Telecommunications Acts and implementing regulations; these proscribe certain types of anti-competitive conduct but do not specifically address the matters listed in Article 97 of the EPA.

ECTEL Member States are currently in the process of reviewing the Telecommunications Acts. It is hoped that this review will be extended to address the above three mentioned concerns. This constitutes the seventh recommendation.

8. Hazardous waste regulations – 3 OECS countries

Antigua and Barbuda, Grenada and St Vincent and the Grenadines have indicated that their market access commitments on commercial presence with respect to hazardous waste are “*Subject to the development of relevant regulations*”. WTO jurisprudence suggests that this type of reservation is, in fact, simply a temporal limitation that is not a

market access limitation within the meaning of Article XVI:2 of the GATS from which Article 67 of the EPA is derived.⁶²² Adopting this interpretation, the reservation could not be used for a prolonged period of time to prohibit the supply of services by commercial agencies based on the absence of a regulatory framework. This conclusion gains support from the principle of legitimate expectation as parties would arguably be entitled to assume that the relevant regulations would be developed within a reasonable period of time following the signature and provisional application of the EPA. Steps should therefore be taken at the earliest opportunity to develop the necessary regulatory framework. This constitutes our eighth recommendation.

9. Insurance Acts

The required statutory deposits and/or paid-up share capital of insurance companies are higher for foreign than local operators in virtually all OECS countries. Additionally, in some countries, such as Antigua and Barbuda and Saint Lucia, licence fees are higher for foreign companies and registration fees are higher for foreign brokers. There was an admission during our consultations that it may be difficult to justify different capital ratio requirements in the insurance sector as prudential measures. The necessity for such discriminatory measures may therefore be questioned. The imposition of differential fees should also be examined. A general assessment of the views expressed suggests that the matter requires further discussions among OECS regulators. Where the current differential requirements, such as those relating to statutory deposits and paid-up share capital, are not justifiable as prudential measures they should be reformed. This constitutes our ninth recommendation.

10. Competition Policy

OECS countries have not have developed and implemented an effective competition law and policy. This is an area where it is generally well recognized that substantive work is required. It may be noted that the implementation of a general competition law and policy in keeping with Title IV of the EPA would also adequately address the requirements of Chapter 5 of Title II which includes the implementation of pro-competitive disciplines in

⁶²² See *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R at paras 7.353-7.371

the regulatory frameworks prescribed for certain sectors, most notably, telecommunications, courier services and tourism.

It was noted in our consultations that technical assistance has been provided for the establishment of an OECS regional competition authority. Funding is a concern in taking the project forward but apparently donor sources have been identified. In light of this no specific recommendation is made.

11. Other Technical Assistance and Capacity Building Measures

During our consultations several technical assistance and capacity building measures were raised and some specific proposals submitted. They address, *inter alia*, the support requirements of the Services Coalitions (given the important work they undertake), investment promotion, export promotion, training and technical assistance for the review and revamping of investment and industrial policies as well as the implementation of standards in services trade. The proposals have been transmitted to the EPA Implementation Unit for further action as permitted by the available resources.

COUNTRY-SPECIFIC OBSERVATIONS

The following is a non-exhaustive, illustrative list of the sort of measures **red flagged** in the commentary. The examples provided below include the subset of priority measures which require review at the earliest opportunity.

ANTIGUA AND BARBUDA

Alien landholding legislation

Reference has been made to possible errors and omissions in Annex IV.F of the EPA. The omission of likely greatest consequence in Annex IV.F concerns the reservation regarding alien landholding in respect of Antigua and Barbuda. The reservation relating to alien land holding is made in Annex IV.E for all six OECS countries, but it is omitted from the list of horizontal reservations in Annex IV.F in respect of Antigua and Barbuda. It may be recalled that Annex IV.F includes commitments on commercial presence as

regards services. Should this not be treated as a technical error (as assumed herein) significant reforms would be required to bring Antigua and Barbuda's legislative framework in accordance with its EPA obligations. The community property regime of Barbuda is unique in the OECS and underscores the importance of rectifying the omission in Annex IV.F of the reservation relating to landholding.

Small Business Development Act

Antigua and Barbuda has made no horizontal reservation with respect to SMEs, though certain sector-specific reservations apply. Where such reservations are not applicable, the Small Business Development Act may not be used to discriminate against foreign businesses in sectors subject to commitments (other than the provision of fiscal incentives/subsidies). The export conditionalities imposed by the legislation for the grant of incentives also do not conform to WTO/GATT rules and EPA obligations concerning trade in goods, which may affect investments in non-services sectors. It is recommended that broader consultations be pursued on the implementation of trade-related investment measures under the Small Business Development Act with a view to possibly amending the Act to bring it into conformity with Antigua and Barbuda's international obligations.

Nurses (Registration) Act

The Antigua and Barbuda Nurses (Registration) Act consistently refers to the applicant in the feminine. Whereas the Interpretation Act provides for the reference to the male to include the female, the converse is not stated. The Act may therefore be interpreted to restrict the practice of nursing to women. We were informed during our consultations that male nurses are being registered. Nevertheless, with a view to providing clarity in the law the provision should be amended as the Act may be read to limit market access based on gender.

Midwifery Act

The Antigua and Barbuda Midwifery Act consistently refers to the applicant in the feminine and could therefore be read as limiting the practice of midwifery to women. The

above comments and recommendation in relation to an amendment of the Nurses (Registration) Act is relevant here also.

Telecommunications Act & Telecommunications (Prevention and Prohibition of Unauthorised Use and Services) Act

The situation in Antigua and Barbuda is substantially different from that which obtains in the other OECS countries. It may be recalled that Antigua and Barbuda have deferred most of its obligations on telecommunications in the EPA until 1 January 2012. The 2012 deadline for liberalization of the telecommunications sector is also indicated in Antigua and Barbuda WTO GATS commitments. The deadline coincides with the end of the exclusive agreement between the Government of Antigua and Barbuda and Cable and Wireless. Substantial work is required if regulatory reforms are to be implemented in a timely fashion. It is recommended that assistance be provided to the Antigua and Barbuda Government to implement a challenging reform agenda in a relatively short period of time.

Financial Institutions (Non-Banking) Act

The Financial Institutions (Non-Banking) Act provides substantial discretion to the Minister to restrict the nature of the activities (i.e. class of business) that may be undertaken when issuing or renewing a licence. Our consultations suggest that the legislation is to be repealed. Note is taken of this.

Money Services Business Act

The Money Services Business Act, section 6(2)(f), provides for the granting of licences by the Financial Services Regulatory Commission (FSRC) following any investigation as deemed necessary to ascertain the correctness of the information provided and other facts relevant to the operation of the business as well as “*the convenience and needs of the community to be served by the granting of the licence*”. The FSRC is required to issue the licence within a reasonable period of time if it is satisfied that the application is in order and the applicant is a fit and proper person to be licensed. There is no suggestion that the FSRC may not issue a licence based on the needs of the community although

provision is made for the imposition of “terms, conditions or restrictions” as considered necessary. Though seemingly unlikely, the reference to the “convenience and needs of the community” could possibly be used to restrict market access contrary to the EPA commitments undertaken by Antigua and Barbuda. It is in instances such as this, as above-noted, that the drafting of an appropriate administrative note could be a useful exercise.

Alien Restriction Act

The Aliens Restriction Act proscribes persons who are not nationals of the OECS or CARICOM from acting as master, chief officer, or chief engineer of a merchant ship registered in Antigua and Barbuda or as skipper or second hand of a fishing boat registered in Antigua and Barbuda except in the case of a ship or boat employed habitually in voyages between ports outside Antigua and Barbuda. The measure affects Antiguan and Barbudan registered vessels which may be offered for rental with crew. It is recommended that the restriction imposed on non-CARICOM nationals be reviewed in the context of broader analysis (above-recommended) on measures affecting the temporary movement of business persons.

Merchant Shipping Act

The Merchant Shipping Act restricts the class of persons who may be registered as an owner of an Antigua and Barbuda ship. Antigua and Barbuda has bound commitments on cross-border supply without reservation. The provision made in the Act for Cabinet to approve persons not falling within the categories of owners who may register Antigua and Barbuda ships provides a facility through which to implement liberalization measures in accordance with Antigua and Barbuda’s EPA commitments. The alternative would be to amend the Act as was notably done to remove discrimination between Antigua and Barbuda citizens and other CARICOM nationals.

The Merchant Shipping Act also authorizes Cabinet to adopt various measures of assistance to the national shipping industry including, the conclusion of bilateral agreements with neighbouring countries for the sharing of export and import trade

exclusively between national shipping lines, the provision of tax concessions to traders who patronize national shipping; and control of the terms of sale and purchase of commodity trade so as to channel as much as possible of such commodities to national ships; as well as the imposition of obligations on foreign lines to appoint Antigua and Barbuda lines as their agents in Antigua and Barbuda. The Act, as such, empowers the Minister to adopt measures which are discriminatory and designed to restrict and distort international trade contrary to Antigua and Barbuda's EPA obligations. The EPA proscribes cargo sharing arrangements in future bilateral agreements with third countries. Although the Merchant Shipping Act provides Cabinet with the authority to enter into a number of arrangements, our consultations failed to identify any such existing agreements. It is recommended that the legislation be amended to remove the above-noted discriminatory provisions.

GRENADA

Investment Promotion Act

The Investment Promotion Act, section 7(3), provides that “[a] foreign investor shall not, whether by means of a joint venture, partnership or an association, engage in any business activity that is reserved for a local investor as prescribed by the Minister”. The prohibition, as such, goes beyond mere certification under the legislation for the purposes of receiving fiscal incentives. No information was received on the list of activities, if any, that has been reserved for local investors. However, where Grenada has made sector specific market access commitments areas may not be reserved for nationals consistent with the EPA. If the provision is to be retained in the legislation, appropriate administrative guidelines should be developed with a view to ensuring its implementation consistent with Grenada's EPA commitments.

GRENLEC

Grenada has undertaken commitments in relation to services incidental to energy distribution, transmission and generation of electricity, except transmission, generation and distribution services of gaseous fuels and steam and hot water. Grenada's commitments on market access for commercial presence are deferred to 1 January 2012.

Currently Grenada Electricity Services Ltd (GRENLEC) is the exclusive supplier of electricity to Grenada, Carriacou and Petite Martinique. The commitments made by Grenada will require the substantial liberalization of the market by 2012. Assistance will likely be required in the negotiation and development of a regulatory framework appropriate to Grenada's circumstances. This constitutes one of our recommendations.

Waste Management Act

The Waste Management Act provides for the imposition of ENTs; section 22(3) states that the "Minister may refuse to issue a licence if the Minister considers that there are already sufficient facilities in Grenada." Grenada's specific EPA commitments on waste and water management and hazardous waste treatment and disposal do not provide for the implementation of ENTs. This is one of the instances, above-noted, where it would seem useful to draft an appropriate administrative note with a view to ensuring that ENTs are not applied to EU and CARIFORUM service suppliers contrary to Grenada's EPA market access commitments.

Refreshment House Licences

The Refreshment House Licence is a prerequisite to conducting business in some tourism services. The above-stated recommendation with respect to the preparation of an appropriate guidance note for administrators is repeated here.

ST KITTS AND NEVIS

Merchant Shipping Act

St Kitts and Nevis has undertaken specific commitments with respect to ship registration and inscribed a reservation which does not conform to the Merchant Shipping Act. The inscription in Annex IV.F is more exacting than the Act in some respects, but more relaxed in the inclusion of "any ship regardless of the nationality of her owners is a sea-going ship of 1600 or more net registered tonnes and is engaged in foreign-going trade". In light of the sectoral commitments made by St Kitts and Nevis it is recommended that the legislation be amended to provide for the registration of all sea-going ships of 1600 or more net registered tonnes engaged in foreign-going trade.

SAINT LUCIA

Trade Licence Act

The Trade Licence Act, section 12(d), authorizes the Minister to make regulations, *inter alia*, “prescribing the limits to the number of licences issued either generally or in relation to a particular trade or in relation to any district or any area”. The provision is permissive as opposed to mandatory and, as such, does not require conduct contrary to Saint Lucia’s EPA obligations. Nonetheless, it may be suggested that the optimal course would be to repeal the relevant section of the Act, noting that it has not been invoked in the past. Additionally, this is one of the instances (above-noted) where it would seem useful to develop administrative guidelines to ensure that the matters taken into account by the Advisory Board in issuing licences promote the implementation of the legislation consistent with Saint Lucia’s EPA commitments. This is particularly important in light of discussion on a list of reserved areas for nationals.

Legal Profession Act – Legal Professions (fees) Regulations

Note is made of the fact that the Legal Professions (fees) Regulations provides for the imposition of higher fees on non-nationals. National treatment is therefore not accorded to foreign professionals. The need for maintaining discriminatory fees merits further review as above-noted.

ANNEX TO THE REPORT

ANNEX IV.F

1. Business;
2. Communication;
3. Construction and Engineering;
4. Distribution; [no commitments for OECS]
5. Education;
6. Environment;
7. Financial;
8. Health;
9. Tourism and Travel;
10. Recreation, Cultural, and Sporting;
11. Transport;
12. "Other". [no commitments for OECS]

HORIZONTAL LIMITATIONS

CAF: All CARIFORUM States may reserve NT with respect to subsidies or grants

A&B MKA 4) Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate trainees not available locally. Every person who is not a national of Antigua and Barbuda must have a valid work permit before taking up employment in the country. Normally, a work permit will be issued for a specific period to a non-national to fill a particular post and only when qualified nationals are unavailable. A prospective employer is required to submit the application for a work permit to the Minister of Labour for approval.

No A&B reservation on landholding for mode 3)

DMA MKA 3) Foreign service providers must register under the Companies Act of Dominica. **In prescribed circumstances the registrar may restrict the powers and activities that a foreign company can exercise or carry on in** Dominica. A license is required for non-OECS nationals to hold more than 3 acres of land for business purposes. Dominica may reserve small business service investments for CARICOM Nationals. Small business investments are currently defined using one or more of the following criteria:

- * Enterprises with an initial investment of less than Eastern Caribbean Dollars (EC\$) 2,700,000 (US\$1,000,000);
- * Initial number of employees less than 50;
- * Enterprises with projected annual sales of less than EC\$ 2,700,000 (US\$1,000,000) in the first year. The above criteria will be reviewed from time to time. An economic needs

test may be applied before permitting foreign service providers falling outside one or more of the above criteria to operate in Dominica.

DMA NT 3) Subsidies, fiscal incentives, scholarships, grants and other forms of domestic support whether financial or otherwise may be restricted to CARICOM Nationals. Applicable fees may be higher for Non-CARICOM Nationals.

DMA MKA 4) Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate Trainees not available locally. Professional service providers may be required to register with the appropriate professional or governmental bodies and pay higher fees than nationals. All foreign natural persons must obtain a work permit before commencing any economic activity in Dominica.

GRD MKA 3) Commercial presence requires that foreign service providers incorporate or establish the business locally in accordance with the relevant provisions of the Laws of Grenada, and where so required, be subject to relevant Acts pertaining to property acquisition lease and rental and **any operating conditions that** may be subject to existing laws and regulations. Some of these are as follows: Foreign Investment enterprises in Grenada are subject to the Withholding Tax Provision of the Income Tax Ordinance. Only corporate entities are allowed to conduct insurance business in Grenada. All such entities must first be registered by the Registrar of Insurance. The **Alien Act** requires foreign companies and individuals wishing to hold property in Grenada to first obtain a license in order to do so, within which conditions of purchase are detailed. Grenada reserves a number of small business service opportunities for nationals.

GRD NT 3) Treatment less favourable may be accorded to subsidiaries formed in accordance with the laws of Grenada. Eligibility for government funding or subsidies is limited to Grenadian entities and to services considered in the public interest.

GRD MKA 4) Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate trainees not available locally. The entry of all foreign natural persons to Grenada and their residence in Grenada is regulated by Grenada's immigration laws. The entry of all foreign natural persons is subject to Work Permit Regulations. Issue of permits is normally confined to people with managerial and technical skills which are in short supply or not available in Grenada. Key Personnel must contribute to the training of Grenadian personnel in the areas of specialization concerned. Professionals in certain disciplines may be required to register with the appropriate professional or governmental body.

SKN MKA 3) Commercial presence requires that foreign service providers incorporate or **establish the business locally** in accordance with the regulatory requirements of St. Christopher and Nevis' Commercial code. The **Alien Landholding Act** requires foreign companies and individuals wishing to hold property in St. Christopher and Nevis to first obtain a licence in order to do so, within which conditions of purchase are detailed. St. Christopher and Nevis reserves a number of small business service opportunities for

nationals. The limitation on the number of rooms in Hotel and Resort Development is within the context of this policy.

SKN MKA 4) Unbound except for Key personnel (Business visitors, Managers and Specialists) and Graduate trainees not available locally. The employment of foreign natural persons is subject to Work Permit regulations.

STL MKA 3) Commercial presence requires that foreign service providers incorporate or **establish the business locally** in accordance with the laws of St. Lucia, and where so required, be subject to relevant Acts pertaining to property acquisition, lease and rental and any operating condition that maybe the subject of existing laws and regulations. Some of these are as follows: The **Alien Landholding Act** requires foreign companies and individuals wishing to hold property in Saint Lucia to first obtain a licence in order to do so, within which conditions of purchase are detailed.

Saint Lucia reserves a number of small business service opportunities for nationals.

STL MKA 4) Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate Trainees not available locally. The entry of all foreign natural persons and their residence in Saint Lucia is regulated by Saint Lucia's immigration laws. The entry of foreign natural persons who intend to engage in any occupation for reward or profit or be employed in Saint Lucia is subject to Work Permit regulations. The administration of the regime is normally guided by a labour market test.

SVG MKA 3) Foreign Service Providers must be incorporated or registered in St. Vincent and the Grenadines and foreign investors are required to obtain an **Alien Land Holding License** to hold or **transfer land, mortgage, shares or debentures** in St. Vincent and the Grenadines. All payments made to non-residents providing a service are subject to withholding tax.

SVG MKA 4) Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate Trainees not available locally. The employment of foreign natural persons is subject to Work Permit regulations. Professionals in certain disciplines are required to register with the appropriate professional or governmental body.

SECTOR-SPECIFIC COMMITMENTS

With respect to classification systems, the description of the sectors listed in the Services schedules are based on the GATS w/120 along with the CPC number.

1. BUSINESS SERVICES

A. PROFESSIONAL SERVICES

a) Legal Services CPC 861 – DMA only FULL 861

- 1)2)NONE for MKA & NT – DMA
- 3)UNBOUND for NT and UNBOUND until 2018 for MKA – DMA
- 4)UNBOUND except as per horizontal commitments for MKA; for NT states “Non-CARICOM Commonwealth Nationals would be required to have their qualifications reviewed by the Council of Legal Education and also undergo a six (6) month period of training at one of the law schools. Non-Commonwealth Nationals would be required to have their qualifications reviewed by the Council for Legal Education, which would determine the amount of retraining they would be required to undergo.”

Legal documentation and certification CPC 86130 GRD only - subcategory

- 1)2)UNBOUND for MKA & NT – GRD
- 3)UNBOUND for MKA and NONE for NT – GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT- GRD

Legal Services Consultancy in international law CPC 86119 – A&B GRD STL (see definition concerns public/private)

- 1)2)NONE for MKA & NT for A&B GRD STL
- 3)NONE for MKA & NT for A&B GRD; UNBOUND for MKA & NT for STL
- 4)UNBOUND except as per horizontal commitments for MKA for A&B – plus subject to economic needs test for CSS and IP for GRD and STL
- 4)NONE for NT for A&B GRD; UNBOUND except as per horizontal commitments for NT for STL

Legal services – consulting in Home Law of the Service Provider CPC 86119 - all 6 OECS (5 OECS plus DMA – full)**

- 1)NONE for MKA & NT for A&B STL; UNBOUND for MKA & NT for GRD SKN SVG
- 2)NONE for MKA & NT for A&B GRD SKN STL SVG
- 3)NONE for MKA & NT for A&B; for SKN STL for MKA & NT – NONE. Local certification required. Attorneys from other jurisdictions cannot practice without acceptance by the respective local Bar Association.
- 3) UNBOUND for MKA & NT for GRD SVG
- 4)UNBOUND except as per horizontal commitments for NT – and for MKA plus Subject to economic needs test for CSS and IP for MKA for A&B GRD SKN STL SVG

- Legal advisory and information services CPC 86190 A&B only**
1)2)3)NONE for MKA – **BUT NO ENTRY FOR NT!!!!** – A&B
4)NONE for NT; UNBOUND except as per horizontal commitments for MKA for A&B

- b)Accounting, Auditing and Book-keeping Services CPC 862 all 6 OECS**
1)2)NONE for MKA for A&B DMA SKN; UNBOUND for GRD STL SVG
1)2)NONE for NT for A&B DMA SKN SVG; UNBOUND for NT for GRD STL
3)NONE for MKA & NT for GRD SVG; NONE plus ‘A Practicing Certification from the Institute of Chartered Accountants of A&B is necessary for commercial practice’ for MKA & NT for A&B; NONE from 2018 (UNBOUND until then) for MKA for DMA, NONE, except as per horizontal commitments for NT for DMA
3)UNBOUND for MKA & NT for SKN STL
4)UNBOUND except as per horizontal commitments for all 6 OECS for MKA & NT – save A&B for NT which is NONE.

- c)Taxation CPC 863 - 5 OECS (STL no commitments)**
1)NONE for MKA & NT for A&B DMA SKN SVG; UNBOUND for MKA & NT for GRD
2)NONE for MKA & NT for A&B DMA GRD SKN SVG
3)NONE for MKA for A&B; NONE from 2022 for DMA; ‘subject to economic needs tests. Main criterion the number of operators in the market’ for SKN; joint venture required for SVG; UNBOUND for GRD
3)NONE for NT for A&B SKN; NONE from 2022 for DMA; NONE except as per horizontal commitments for SVG; UNBOUND for GRD SVG
4)UNBOUND except as per horizontal commitments for MKA & NT for 5 OECS – A&B DMA SKN SVG GRD

- d)Architectural services CPC 8671 – all 6 OECS**
1)2) NONE for MKA & NT for A&B DMA SKN SVG; NONE for NT for STL; UNBOUND for MKA for GRD STL; UNBOUND for NT for GRD
3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND till then); Joint venture required for GRD SKN STL SVG for MKA;
3)NONE for SKN STL SVG; for A&B “Architects must obtain residency in A&B and obtain permission from the Board of Architects in order to practice”; UNBOUND for GRD; UNBOUND except as per horizontal commitments for DMA
4) UNBOUND except as per horizontal commitments for MKA & NT for DMA GRD SKN STL SVG; for A&B “Architects must be resident in A&B to be registered, otherwise, UNBOUND except as per horizontal commitments

- e)Engineering services CPC 8672 all 6 OECS but for GRD SVG CPC 86724, 86725; for SKN CPC 86721, 86725, 86726**
1)2)NONE for MKA & NT for all 6 OECS

3)NONE for MKA for A&B GRD; for DMA from 2018 & SVG from 2020 (UNBOUND until then); for SKN “Joint Venture, transfer of knowledge and technology required”; & for STL UNBOUND

3)NONE for NT for GRD; NONE except as per horizontal commitments for DMA; for A&B “NONE. Engineers must have a practical knowledge of the local conditions and be registered by the Engineer’s Association Board.”;

3)UNBOUND for NT for SKN STL SVG

4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

f)Integrated engineering services CPC 8673 4 OECS but for GRD CPC 86731, 86732, 86739; and for SKN CPC 86733

1)2)NONE for MKA & NT for DMA GRD SVG; NONE for SKN for MKA but UNBOUND for NT re 2) (NONE for SKN re 1)

3)NONE for MKA & NT for GRD; NONE from 2022 for DMA (UNBOUND until then)

3)Joint venture required for MKA for SVG SKN; NONE for NT for SVG; UNBOUND for NT for SKN

4)UNBOUND except as per horizontal commitments for MKA & NT for all 4 – DMA GRD SKN SVG

g)Urban Planning and Landscape Architectural services CPC 8674 – 4 OECS but for GRD CPC 86742

1)2)NONE for MKA & NT for DMA GRD SVG; for A&B NONE for 2)MKA; for A&B UNBOUND for 1) MKA – **but NO ENTRY FOR NT!!!!**

3)NONE for MKA & NT for GRD; NONE from 2022 for DMA (UNBOUND till then); for SVG NONE for NT & Joint venture for MKA; A&B UNBOUND for MKA – **but NO ENTRY FOR NT!!!!**

4)UNBOUND except as per horizontal commitments for NT & MKA for all 4 – A&B DMA GRD SVG

Geological, geophysical and other scientific prospection services CPC 86751 – only STL

1)2) NONE for MKA & NT – STL

3)UNBOUND for MKA & NT – STL

4)UNBOUND except as per horizontal commitments for MKA & NT – STL

h)Medical and Dental Services CPC 9312 – all 6 OECS but for SVG CPC 93121 and 93122

1)2)NONE for MKA & NT for A&B DMA GRD SKN STL; for SVG 2)NONE for MKA & NT; for SVG 1)UNBOUND for MKA & NT – **but NOTE 2 ENTRIES FOR GRD for MKA also 1)2) UNBOUND**

3)NONE for MKA for A&B GRD STL; NONE from 2018 for DMA and from 2020 for SVG (UNBOUND until then); UNBOUND for MKA for SKN

3)NONE for NT for GRD STL SKN; for A&B “NONE. Must be registered by the Medical Board and licensed by the Medical Council to practice in A&B”; for DMA UNBOUND for NT

4)UNBOUND except as per horizontal commitments for NT & MKA for 5 OECS – DMA GRD SKN STL SVG; for A&B UNBOUND except as per horizontal commitments for MKA but NONE for NT

Neurosurgery – 5 OECS (DMA no commitments)

- 1)2) NONE for MKA & NT for A&B STL SKN SVG; NONE for 2) for MKA & NT for GRD but UNBOUND for 1) for MKA & NT for GRD;
- 3)NONE for MKA & NT for A&B GRD STL; NONE except as per horizontal commitments for SVG for MKA; UNBOUND for SVG for NT; UNBOUND for MKA & NT for SKN
- 4)UNBOUND except as per horizontal commitments for NT & MKA for all 5 OECS – A&B GRD STL SKN SVG

Epidemiological services CPC931 - 5 OECS (DMA no commitments)**

- 1)NONE for MKA & NT for A&B STL; UNBOUND for MKA & NT for GRD SKN; for SVG NONE for MKA but UNBOUND for NT
- 2)NONE for MKA & NT for A&B GRD STL SKN SVG
- 3)NONE for MKA & NT for A&B GRD STL SKN SVG – but for SVG “None except as per horizontal commitments for MKA
- 4)UNBOUND except as per horizontal commitments for MKA & NT – for all 5 – A&B GRD STL SKN SVG

CATSCAN services CPC 931 - 5 OECS (DMA no commitments)**

- 1)2)NONE for MKA & NT for A&B STL SKN SVG; NONE for GRD for 2) for MKA & NT; but UNBOUND for 1) for MKA & NT for GRD.
- 3)NONE for MKA & NT for A&B GRD STL; for SVG NONE except as per horizontal commitments for MKA; but UNBOUND for NT for SVG;
- Re SKN – UNBOUND for MKA but 2 ENTRIES for NT i.e. UNBOUND & NONE????
- 4) UNBOUND except as per horizontal for all 6 OECS

i)Veterinary services CPC 932 – all 6 OECS

- 1)NONE for MKA & NT for A&B; UNBOUND for MKA & NT for GRD SKN STL SVG; NONE for MKA for DMA but UNBOUND for DMA for NT
- 2)NONE for MKA & NT for A&B GRD STL SKN SVG; but for DMA for MKA NONE but for NT UNBOUND
- 3)NONE for MKA for A&B; NONE from 2018 for DMA and from 2020 for SVG (UNBOUND till then); UNBOUND for GRD SKN STL
- 3)NONE for NT for A&B GRD SKN STL; UNBOUND except as per horizontal commitments for DMA SVG
- 4)UNBOUND except as per horizontal commitments for all 6 OECS

j)Services provided by midwives, nurses, physiotherapists and para-medical personnel CPC 93191 - 5 OECS (no STL commitments)

- 1)2)NONE for MKA & NT for DMA GRD SVG; for A&B and SKN – 1)UNBOUND for MKA & NT; for A&B and SKN – 2) NONE for MKA & NT

- 3) UNBOUND for MKA for A&B GRD SKN; but NONE from 2018 for DMA and from 2020 for SVG (UNBOUND until then)
- 3) NONE for NT for A&B GRD SKN SVG; for DMA – UNBOUND except as per horizontal commitments
- 4) UNBOUND except as per horizontal commitments for all 5 – A&B DMA GRD SKN SVG

B. COMPUTER AND RELATED SERVICES

a) Consultancy services related to the installation of computer hardware – all 6 OECS

- 1) 2) NONE for MKA & NT for A&B GRD SVG; UNBOUND for MKA & NT for DMA SKN; UNBOUND for MKA for STL but NONE for NT for STL
- 3) NONE for MKA for A&B; NONE for MKA from 2018 for DMA and from 2014 for SKN; NONE except as per horizontal commitments for MKA for SKN; for GRD STL for MKA “Economic needs test may be applied. Main criteria: Location of business and employment situation in the sub-sector”
- 3) NONE for NT for A&G GRD SKN STL SVG; NONE except as per horizontal commitments for NT for DMA
- 4) UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS save for DMA for MKA where it is only stated “Limitations on number of non-nationals in managerial positions”

b) Software Implementation Services CPC842 – all 6 OECS but for STL except CPC 8421 & 8422

- 1) 2) NONE for MKA & NT – for all 6 OECS
- 3) NONE for NT for all 6 OECS but for DMA adds – except as per horizontal commitments
- 3) NONE for MKA for A&B STL; NONE for DMA from 2018 (UNBOUND until then); for GRD SKN SVG “Percentage of local persons to be employed”
- 4) NONE for MKA & NT for STL
- 4) UNBOUND except as per horizontal commitments for MKA & NT for A&B DMA GRD SKN SVG

c) Data Processing Services CPC 843 all 6 OECS except CPC 8439

- 1) 2) NONE for MKA & NT – all 6 OECS
- 3) NONE for NT for all 6 OECS but for DMA add except as per horizontal commitments
- 3) NONE for MKA for A&B; NONE for DMA from 2018 (UNBOUND until then); for other 4 GRD SKN STL SVG for MKA “Percentage of local persons to be employed”
- 4) UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

d) Data base services CPC 844 – all 6 OECS

- 1) 2) NONE for MKA & NT for all 6 OECS
- 3) NONE for NT for all 6 OECS but for DMA except as indicated in horizontal commitments

- 3)NONE for MKA for A&B STL; NONE for DMA from 2018 (UNBOUND till then); for GRD SKN SVG “Percentage of local persons to be employed”
- 4)UNBOUND except as per horizontal commitments for NT for all 6 OECS
- 4)UNBOUND except as per horizontal commitments for MKA for A&B; for other 5 OECS GMA GRD SKN STL SVG “Limitation on number of non-nationals in managerial positions. Subject to an economic needs test.”

C.RESEARCH AND DEVELOPMENT SERVICES

- a)Research and Development on natural sciences CPC 851** – all 6 OECS but for SKN except genetically modified agriculture and use of radioactive material and equipment
 - 1)2)NONE for MKA & NT for all 6 OECS – but for GRD for MKA “Publicly funded R&D services may be limited to citizens and/or residents”
 - 3)NONE for MKA for A&B SKN; NONE from 2018 for DMA (UNBOUND until then); for GRD STL SVG “Publicly funded R&D may be limited to citizens and/or residents”
 - 3)NONE for NT for 5 OECS A&B GRD SKN STL SVG; but for DMA NT is UNBOUND
 - 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS – but for MKA add “Subject to economic needs tests for CSS and IP”

- b)Research and Development on social sciences and humanities CPC 852** – all 6 OECS but for STL “except cultural sciences” [see web on cultural science versus humanities]; and for SKN except “cultural services, heritage and educational services”
 - 1)2)NONE for MKA & NT for all 6 OECS
 - 3)NONE for MKA & NT for 6 OECS – but for MKA DMA is NONE from 2018 (UNBOUND until then) and for NT DMA is NONE except as per horizontal commitments; and for GRD NT only simply states “Subsidies may be limited to citizens and/or residents”
 - 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS – but adds for MKA “Subject to an economic needs test for CSS and IP”

- c)Inter-disciplinary Research and Development services CPC 853** – all 6 OECS
 - 1)2)NONE for NT for all 6 OECS
 - 1)2)NONE for MKA for A&B; for other 5 OECS “Publicly funded research and development services may be limited to citizens and/or residents” i.e. DMA GRD STL SKN SVG
 - 3)NONE for NT for 5 OECS A&B GRD SKN STL SVG; but for DMA UNBOUND except as per horizontal commitments
 - 3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND until then); for other 4 OECS “Publicly funded research and development services may be limited to citizens and/or residents” i.e. GRD SKN STL SVG

4)UNBOUND for MKA & NT for all 6 OECS; but adds re MKA “Subject to economic needs test for CSS and IP”

D.REAL ESTATE SERVICES

b) Real Estate services – on a fee or contract basis CPC822 – only STL

1)2)NONE for MKA & NT – STL

3)NONE for NT; but for MKA “Joint ventures preferred” - STL

4)UNBOUND except as per horizontal commitments for MKA & NT - STL

E.RENTAL/LEASING SERVICES WITHOUT OPERATORS

a)Relating to ships CPC 83103 – 5 OECS; no commitments for SVG

1)2)NONE for MKA & NT for all 5 – A&B DMA GRD SKN STL

3)NONE for MKA for A&B; NONE from 2018 for MKA for DMA; for the other 3 GRD SKN STL “NONE. Enterprises with initial investment of less than US\$1MIL may be reserved for nationals”

3)NONE for NT for GRD STL. But for DMA for NT NONE except as per horizontal commitments; for A&B SKN UNBOUND for NT

4)UNBOUND except as per horizontal commitments for NT & MKA for all 5; save for A&B for NT where NONE.

b)Relating to aircraft CPC 83104- all 6 OECS

1)2)NONE for MKA & NT for all 6 OECS

3)NONE for NT for 4 A&B GRD SKN STL; NONE except as per horizontal for DMA; but for SVG UNBOUND for NT

3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND until then) for other 4 GRD SKN STL SVG “NONE. Enterprises with initial investment of less than US\$1MIL may be reserved for nationals”

4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS except A&B which for NT (only) is NONE

c)Relating to other transport equipment CPC 83101 83102 83105 – all 6 OECS

1)2)NONE for MKA & NT for all 6 OECS

3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND until then); for remaining 4 GRD SKN STL SVG “NONE. Enterprises with initial investment of less than US\$1MIL may be reserved for nationals”

3)NONE for NT for A&B GRD SKN STL; for DMA NONE except as per horizontal commitments ; but for SVG UNBOUND for NT

4)UNBOUND except as per horizontal commitments for NT & MKA for all 6 OECS; but for A&B NONE for NT only.

d)Relating to other machinery and equipment CPC 83106-83109 – all 6 OECS except CPC 83109

- 1)2)NONE for MKA & NT – for all 6 OECS
- 3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND until then); for 3 GRD SKN SVG “NONE. Enterprises with initial investment of less than US\$1MIL may be reserved for nationals”; for STL “NONE. Enterprises with initial investment of less than US\$500,000 may be reserved for nationals.”
- 3)NONE for NT for A&B GRD SKN; for DMA NONE except as per horizontal commitments; for STL “NONE. Enterprises with initial investment of less than US\$500,000 may be reserved for nationals”; but for SVG UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for NT & MKA for all 6 OECS; but for A&B NONE for NT only

F.OTHER BUSINESS SERVICES

a)Advertising services CPC 871 – all 6 OECS but for GRD CPC 87120, 87190

- 1)2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA for A&B; NONE from 2018 for DMA (UNBOUND until then); for GRD SKN SVG “Joint venture with minimum local participation of not less than 40%”; but for STL UNBOUND for MKA
- 3)NONE for NT for GRD SKN SVG; for DMA NONE except as per horizontal commitments; but for STL A&B UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for NT & MKA – for all 6 OECS

b)Market research and public opinion polling services CPC 864 - all 6 OECS

- 1)2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for A&B GRD SKN STL; for DMA for MKA NONE from 2018 (UNBOUND till then) & NONE except as per horizontal commitments for NT; for SVG for MKA NONE except as per horizontal commitments but for NT UNBOUND for SVG
- 4)UNBOUND except as per horizontal commitments for MKA & NT all 6 OECS save for STL NONE for MKA & NT, and A&B NONE for NT only.

c)Management consulting services CPC 865 – all 6 OECS but for GRD CPC 86506

- 1)UNBOUND for MKA & NT for DMA GRD SKN SVG; UNBOUND for STL for NT but NONE for MKA; NONE for A&B for MKA & NT
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA for A&B STL; NONE from 2018 for DMA and from 2020 for SVG (UNBOUND until then); UNBOUND for GRD SKN for MKA
- 3)NONE for NT for A&B STL; NONE except as per horizontal commitments for DMA; but for GRD SKN SVG UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

d)Services related to management consulting CPC 866- all except STL (no commitments) but for GRD CPC 86601, 86609

- 1)NONE for MKA & NT for A&B DMA GRD; NONE for SKN for NT but for MKA UNBOUND for SKN; for SVG UNBOUND for NT & MKA
- 2)NONE for MKA & NT for all 5 A&B DMA GRD SKN SVG
- 3)NONE for MKA & NT for A&B GRD; NONE from 2022 for DMA for MKA & NT (UNBOUND until then); for SVG NONE from 2020 (UNBOUND until then) for MKA but for SVG UNBOUND for NT; for SKN UNBOUND for MKA & NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 DMA GRD SKN SVG; but for A&B NONE for NT only.

e)Technical testing and analysis services CPC 8676 – all 6 OECS

- 1)2)NONE for MKA for all 6 OECS
- 1)NONE for MKA for all 6 OECS
- 2)NONE for NT for DMA GRD SKN SVG; but for A&B STL UNBOUND for NT
- 3)NONE for MKA for A&B STL. NONE from 2018 for DMA for MKA (UNBOUND until then); NONE except as per horizontal commitments for SVG; for SKN “Joint venture required for environmental water, food and medical testing”; but for SVG UNBOUND for MKA
- 3)UNBOUND for NT for A&B STL GRD SVG; NONE except as per horizontal commitments for DMA for NT; and for SKN “Subsidies and grants may be limited to nationals, citizens and residents
- 4)UNBOUND for NT for A&B STL; UNBOUND except as per horizontal commitments for remaining 4, i.e DMA GRD SKN SVG for NT
- 4)UNBOUND except as per horizontal commitments + “Subject to economic needs test for CSS and IP” for all 6 OECS

f)Services incidental to agriculture, hunting and forestry CPC 881 – for 4 OECS, i.e. DMA + for GRD SVG “services providing agricultural machinery, promoting propagation, growth and output of animals CPC 88110 + for LDC CPC 8813 and 8814

- 1)2)NONE for MKA & NT for all 4 STL DMA SVG GRD
- 3)UNBOUND for MKA & NT for 3 STL DMA SVG but NONE from 2022 for MKA & NT for DMA & SVG; NONE for MKA & NT for GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 4DMA GRD STL SVG

h)Services incidental to mining CPC 883 5115 – only SKN

- 1)2)UNBOUND for MKA & NT – SKN
- 3)Joint venture required for MKA; UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT – SKN

i)Services incidental to manufacturing CPC 884, 885 except 88442 – for all 6 OECS but for DMA GRD SVG CPC 88411, 88421, 88422, 88423, 88441M 8853, 8855 AND 8857; for SKN CPC 885; and for LNA CPC 8853, 8855, 8857

- 1)2)NONE for MKA & NT for 5 OECS A&G DMA GRD STL SVG – all save SKN for which MKA & NT is UNBOUND
- 3)NONE for MKA for A&B GRD; NONE from 2022 for MKA for DMA SVG; NONE “Subject to economic needs tests:” for SKN; for STL “Transfer of knowledge and technology required” for MKA
- 3)NONE for NT for A&B GRD; but UNBOUND for NT for DMA STL SKN SVG
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

j)Services incidental to energy distribution CPC 887 – only GRD CPC 887**
(services incidental to energy distribution, transmission and generation of electricity, except transmission, generation and distribution services of gaseous fuels and steam and hot water)

- 1)UNBOUND* for MKA & NT – GRD
- 2)NONE for MKA & NT – GRD
- 3)Reserved to exclusive supply until 2012. NONE as of 1 Jan 2012 for MKA; UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT – GRD

k)Placement and supply services of personnel CPC 872 – SKN only

- 1)2)UNBOUND for MKA & NT – SKN
- 3)Subject to economic needs tests for MKA and UNBOUND for NT – SKN
- 4)UNBOUND except as per horizontal commitments for MKA & NT – SKN

l)Investigation and Security CPC 873 – for STL only

- 1)2)3)NONE for MKA & NT – STL
- 4)UNBOUND except as per horizontal commitments for MKA & NT – STL

m)Related scientific and technical consulting services CPC 8675 – all 6 OECS
but for GRD CPC 8671-4, and for SKN CPC 86751, 86752 and 86754

- 1)2)NONE for MKA & NT for DMA GRD SKN; UNBOUND for MKA & NT for A&B STL; UNBOUND for 1) for MKA & NT for SVG but NONE for 2) for MKA for SVG while UNBOUND for 2) for NT for SVG
- 3)NONE for MKA for GRD SKN; NONE from 2022 for DMA and from 2020 for SVG for MKA (UNBOUND until then); for STL (“NONE. Joint ventures required for environmental, water, food, and medical testing” . **NO ENTRY for A&B for MKA 3**)
- 3)NONE for NT for GRD SKN; NONE from 2022 for DMA for NT; for STL “NONE. Joint ventures except environmental, water, food and medical testing”; UNBOUND for A&B SVG
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

n)Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) CPC 633, 8861-8866 – all 6 OECS
but for GRD SVG CPC 8861-8866 and for SKN CPC 8861, 8862, 8866

- 1)UNBOUND for MKA & NT for 5 – A&G GRD SKN STL SVG; but NONE for DMA for MKA & NT

2)NONE for MKA & NT for DMA GRD SKN STL SVG and for A&B for MKA – but **NO ENTRY for A&B for NT!!!**

3)NONE for MKA & NT for SKN STL; for DMA NONE from 2022 (UNBOUND until then); UNBOUND for MKA for GRD SVG; NONE for NT for A&B SVG; for NT for GRD “Subsidies may be limited to Grenadian citizens and or residents” – **but NO ENTRY for A&B for MKA!!!**

4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

q)Packaging services CPC 876 – 5 OECS (no commitments for A&B)

1)2)NONE for MKA & NT for DMA GRD STL SVG but for SKN UNBOUND for MKA & NT

3)NONE for MKA & NT for DMA GRD STL; for SVG for MKA NONE except as per horizontal commitments; for SKN for MKA “Subject to economic needs test”; but UNBOUND for SKN SVG for NT;

4)UNBOUND except as per horizontal commitments for all 5 DMA GRD SKN STL SVG

r)Publishing and printing on a fee or contract basis CPC 8842 – only SKN

1)2)UNBOUND for MKA & NT for SKN

3) Subject to economic needs test for MKA; UNBOUND for NT for SKN

4)UNBOUND except as per horizontal commitments for MKA & NT for SKN

s)Convention services CPC 87909 - all 6 OECS**

1)UNBOUND* for MKA & NT for 5 – DMA GRD SKN STL SVG; but for A&B NONE for MKA & NT

2) NONE for MKA & NT for all 6 OECS

3)NONE for MKA & NT for 6 OECS but for DMA NONE from 2018 for MKA and NONE except as per horizontal commitments for NA

4)UNBOUND for MKA & NT for all 6 OECS

t)Other business services CPC8790 – 4 OECS but for A&B SKN STL CPC 87905 Translation and interpretation services; for SVG CPC 87909

1)NONE for MKA & NT for A&B STL SVG; for SKN NONE for NT but UNBOUND for MKA

2)NONE for MKA & NT for all 4 A&B SKN STL SVG

3)NONE for MKA & NT for A&B STL; NONE except as per horizontal commitments for MKA for SVG but UNBOUND for NT for SVG and UNBOUND for SKN for MKA & NT

4)Unbound for MKA & NT except as per horizontal for all 4

2. COMMUNICATION SERVICES

B.COURIER SERVICES CPC 7512 – all 6 OECS

1)2)NONE for MKA & NT for all recorded OECS (6 entries for NT; 4 entries for MKA) **but NO ENTRIES for DMA & SVG for MKA for 1)2)**

3)NONE for MKA for SKN; NONE except as per horizontal commitments for SVG for MKA; NONE from 2018 for DMA (UNBOUND until then); UNBOUND for MKA for A&B GRD STL

3)NONE for NT for SKN; NONE except as per horizontal commitments for DMA for NT; UNBOUND for remaining 4 A&B GRD STL SVG

4)UNBOUND except as per horizontal commitments for MKA for all 6 OECS

4)NONE for NT for SKN GRD; UNBOUND except as per horizontal commitments for NT for remaining 4 A&B DMA STL SVG

TELECOMMUNICATIONS SERVICES

a)Voice Telephone services CPC 7521 (A&B excl trunked radio services)

1) for MKA for A&B by pass of exclusive operators not permitted until 2012. None as of 1 Jan 2012; DMA, GRD, STL, SVG – NONE; SKN – UNBOUND

2) – NONE MKA for all OECS

3) – A&B (same as MKA for Mode 1); all other OECS – NONE for MKA

1)2) 3) NONE NT for all OECS

Mode 4 – STL – NONE for MKA & NT; DMA & GRD – NONE FOR NT

UNBOUND for all other OECS except per horizontal commitments for MKA and NT

[NO COMMITMENTS FOR OECS for b) c) & g)]

d)Telex services CPC 7523 e) Telegraph services CPC 7522 f) Facsimile Services CPC 7521, 7529,**

1) for MKA for A&B – by pass not permitted until 2012. NONE after 1 Jan 2012; all other OECS – NONE

2) for MKA – NONE for all 6 OECS

3) for – MKA – NONE for all 6 OECS except A&B where reserved to excl supplier until 2012. NONE for international services after 2012.

1)2) 3) NONE for all 6 OECS NT

4) for STL – NONE for MKA & NT; DMA & GRD – NONE for NT; A&B – NONE for MKA as of 2012 for international services (otherwise UNBOUND except as per horizontal commitments) DMA, GRD, SKN, SVG – UNBOUND MKA except as per horizontal commitments; A&B, SKN, SVG – UNBOUND NT except as per horizontal commitments

h) Electronic mail CPC 7523; i) Voice mail CPC 7523; j) Online info & data base retrieval CPC 7523; l) Enhanced/value added facsimile services including store and forward, store and retrieve; and n) Online info and/or data processing (incl transaction processing) CPC 843

1) 2) & 3) NONE for all OECS for MKA & NT

4) NONE for STL for MKA & NT; NONE for SKN for NT

4) UNBOUND for A&B DMA GRD SKN SVG except as per horizontal commitments for MKA & NT (SAVE for SKN which is NONE for NT)

k) Electronic Data interchange (EDI) CPC 7523

- 1) 2) & 3) NONE for all OECS for MKA & NT (SAVE for SKN which is UNBOUND for 1) MKA)
- 4) UNBOUND for all OECS MKA & NT except as per horizontal commitments

o) Other – Internet and Internet access (except voice) CPC 75260 – A&B, DMA, STL, SVG (leased lines only), GRD & SKN (voice & leased lines)

- 1) & 2) NONE for all OECS for MKA & NT
- 3) NONE for all OECS for NT & MKA (SAVE for A&B MKA – only through facilities supplied by licensed operators and vice versa)
- 4) UNBOUND for all OECS except as per horizontal commitments

Other – Personal communication services (except Mobile data services, paging services and Trunked radio systems) – only 4 OECS with commitments

- 3) All 4 OECS (A&B DMA SKN & SVG) – NONE for Mode 3 MKA & NT;
- 4) UNBOUND for Mode 4 MKA & NT except as per horizontal commitments
- 1) 2) DMA SKN SVG – NONE for Modes 1) & 2) for MKA & NT
- A&B – UNBOUND for Modes 1) & 2) for MKA & NT

Other – Telecommunications equipment sales, rental maintenance, connection, repair and consulting services CPC 75410, 75450 - all OECS save for STL have commitments

- 1) 2) 3) - NONE for MKA & NT for A&B DMA GRD SKN SVG; UNBOUND for MKA & NT for all except as per horizontal commitments

Other – Trunked radio system services – SKN (excl phone patching) & STL – no commitments

- 1) 2) – NONE for NT for all 5 – A&B DMA GRD SKN SVG; NONE for 2) for all 5 for MKA
- 1) 3) NONE for MKA for A&B DMA SVG; 1) SKN UNBOUND for MKA, 3) SKN NONE for MKA
- 1) 3) MKA GRD foreign ownership ltd to 49%
- 4) all 5 – UNBOUND except as per horizontal commitments for MKA & NT

Other – Paging CPC 75291

- 1) 2) & 3) NONE for all 6 OECS for MKA & NT
- 4) UNBOUND for all 6 OECS for MKA & NT except as per horizontal commitments

Other – Teleconferencing services (SKN leased lines only)

- 1) 2) & 3) NONE for all 6 OECS for NT
- 1) 3) NONE for all 6 OECS for MKA (SAVE A&B – only on network facilities supplied by the exclusive operators)
- 2) NONE for all 6 OECS for MKA (SAVE STL – NO ENTRY FOUND!)
- 4) UNBOUND for all 6 OECS except as per horizontal commitments

Other Mobile data services (for public use) – only SKN

1)2)& 3) NONE for MKA & NT; 4)UNBOUND except as per horizontal commitments

Other – Mobile services (terrestrial based) (for public use)

1)2)&3) NONE for all 6 OECS for MKA & NT (SAVE for A&B re 3) MKA – foreign ventures permitted only if capital invested is greater than US\$500,000 ventures less than US\$500,000 reserved to nationals

4)UNBOUND for all 6 OECS except as per horizontal commitments

Other – Mobile services (satellite based) (for public use) – ONLY 4 OECS – A&B DMA GRD SVG

1)2)3) NONE for NT & 4) UNBOUND NT & MKA except as per horizontal commitments for all 4

2)NONE for MKA for all 4

1)3) NONE for MKA for 3 (i.e. SAVE for A&B re 1) only through arrangements b/w satellite transport services suppliers & exclusive international operator, who is under an obligation not to limit the number of suppliers with whom such arrangements will be entered into; re 3) reserved to supply by exclusive operator in accordance with arrangements indicated under mode 1

Other – Fixed satellite services – A&B (VSAT for non-public use); DMA GRD SKN STL SVG (for public use)

1)2)3)NONE for NT for all 6 OECS

1)2) NONE for MKA - DMA GRD STL SVG; 1)2) SKN UNBOUND for MKA; 2) NONE MKA for A&B

1)3) – A&B - re 1) only through arrangements b/w satellite transport services suppliers & exclusive international operator, who is under an obligation not to limit the number of suppliers with whom such arrangements will be entered into; re 3) reserved to supply by exclusive operator in accordance with arrangements indicated under mode 1

3) NONE for MKA – DMA GRD LAC SVG; 3)UNBOUND – SKN for MKA

4)NONE for GRD for NT; UNBOUND except as per horizontal commitments for all OECS for MKA & for NT (SAVE for GRD)

Other – International voice, data and video transmission services supplied to firms involved in info processing located within free zones – only SKN

1)2)3) NONE for MKA & NT– SAVE for 3) MKA – not until 1 Sept 2013, interconnection with the local public switched networks not permitted. Services to unauthorized parties not permitted

4) UNBOUND for MKA & NT except as per horizontal commitments

Other – Video transmission services (satellite based) CPC 75241 (only GRD SKN)**

1)2) UNBOUND for MKA & NT for both GRD SKN;

3) NONE for MKA & NT for both GRD SKN

4) UNBOUND except as per horizontal commitments – for both GRD SKN

Other – Connection and interconnection services (CPC 7543 & 7525) (only GRD SKN)

- 1)2) UNBOUND for MKA & NT for both GRD SKN'
- 3) NONE for MKA & NT for both GRD SKN
- 4) UNBOUND except as per horizontal commitments – for both GRD SKN

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

A.GENERAL CONSTRUCTION WORK FOR BUILDINGS CPC 512 A&B CPC 51260, DMA SKN STL CPC5126 (Hotels and resorts in excess of 100 rooms, restaurants and similar buildings)**

- 1)2)NONE for MKA & NT for A&B STL; and NONE for 2) MKA & NT for DMA
- 1)2)UNBOUND for MKA & NT for SKN; and UNBOUND for 1) MKA &NT for DMA
- 3)NONE for NT for STL SKN; UNBOUND for MKA for STL
- 3)NONE from Jan 2022 for MKA & NT for DMA
- 3)Joint venture required for MKA & NT for A&B; Joint venture required for MKA for SKN
- 4)UNBOUND except as per horizontal commitments for MKA & NT for A&B DMA SKN STL

B.GENERAL CONTRUCTION WORK FOR CIVIL ENGINEERING CPC 513 GDR CPC 51320, 51330, 51340, 51350, 51371, 51372

- 1)UNBOUND* for MKA & NT - GRD
- 2)UNBOUND for MKA & NT - GRD
- 3)NONE for MKA & NT - GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT - GRD

E.OTHER –Special trade construction CPC 515, 521, 522 and 529 (SKN – CPC 522) (DMA – other civil engineering works, CPC 529)

- 1)UNBOUND for MKA & NT for DMA SKN
- 2)NONE for MKA & NT for DMA; UNBOUND for MKA & NT for SKN
- 3)NONE from 2022 for MKA & NT for DMA; NONE for NT for SKN & Joint venture required for MKA for SKN
- 4)UNBOUND except as per horizontal commitments for MKA & NT – DMA SKN

NO COMMITMENTS ON DISTRIBUTION SERVICES

5.EDUCATIONAL SERVICES

A.PRIMARY EDUCATION SERVICES CPC 921 (except non-profit, public and publicly funded entities) – only DMA

- 1) UNBOUND for MKA & NT – DMA
- 2) NONE for MKA & NT – DMA
- 3) NONE from 1 Jan 2022 for MKA & NT – DMA
- 4) UNBOUND except as per horizontal commitments for MKA & NT – DMA

B. SECONDARY EDUCATION SERVICES CPC 922 (except non-profit, public and publicly funded entities) – only DMA STL

- 1) NONE for MKA & NT for STL; but UNBOUND for MKA & NT for DMA
- 2) NONE for MKA & NT for STL DMA
- 3) NONE from 1 Jan 2022 for MKA & NT for DMA; but UNBOUND for MKA & NT for STL
- 4) UNBOUND except as per horizontal commitments for MKA & NT for DMA STL

C. HIGHER EDUCATION SERVICES CPC 923 (except non-profit, public and publicly funded entities) – 5 OECS A&B GRD STL SVG but for DMA CPC 92310 – no SKN

- 1) UNBOUND for MKA for 4 DMA GRD STL SVG; NONE for A&B for MKA
- 1) NONE for NT for all 5 A&G DMA GRD STL SVG
- 2) NONE for NT & MKA for 5 A&B DMA GRD STL SVG
- 3) UNBOUND for MKA for GRD STL; NONE from 2020 for SVG for MKA and from 2018 for DMA; NONE for A&B
- 3) NONE except as per horizontal commitments for DMA for NT; “UNBOUND. Scholarships and grants may be limited to citizens and/or residents. Measures relating to the supply of education and training may result in differential treatment in terms of benefits or prices.” for A&B GRD STL SVG
- 4) UNBOUND except as per horizontal commitments for MKA & NT for all recorded A&B DMA GRD STL (SVG NT only) – **BUT NO ENTRY for SVG for MKA 4)**

D. ADULT EDUCATION CPC 924 (except non-profit, public and publicly funded entities) – 5 OECS; no commitments for SKN

- 1) 2) NONE for MKA & NT for all 5 A&B DMA GRD STL SVG
- 3) UNBOUND for MKA for A&B GRD STL; NONE from 2018 for DMA and from 2020 for SVG for MKA (UNBOUND till then)
- 3) UNBOUND for A&B; for DMA GRD STL SVG “UNBOUND. Scholarships and grants may be limited to citizens and/or residents. Measures relating to the supply of education and training may result in differential treatment in terms of benefits or prices”
- 4) UNBOUND for MKA & NT for DMA GRD STL SVG; UNBOUND for MKA for A&B; NONE for NT for A&B

E. OTHER EDUCATION SERVICES – only STL CPC 9290 training of air traffic controllers, pilots and seafarers

- 1) 2) NONE for MKA & NT – STL
- 3) UNBOUND for MKA & NT – STL
- 4) UNBOUND except as per horizontal commitments for MKA & NT – STL

6. ENVIRONMENTAL SERVICES

A.SEWAGE SERVICES CPC 9401 – 3 SKN STL SVG

- 1)2)NONE for MKA & NT for STL SVG; for SKN NONE for MKA & NT for 2) but UNBOUND for MKA & NT for 1)
- 3)Joint venture required for MKA for SKN SVG; UNBOUND for STL
- 3)NONE for NT for SVG; Joint venture required for NT for SKN; UNBOUND for STL
- 4)UNBOUND except as per horizontal commitments for all 3 SKN STL SVG

B.REFUSE DISPOSAL SERVICES CPC 9402 – only SVG

- 1)2)NONE for MKA & NT – SVG
- 3)Joint venture required for MKA for SVG; NONE for NT for SVG
- 4)UNBOUND except as per horizontal commitments – SVG

Hazardous waste collection services CPC 9402 - 5 OECS (DMA no commitments)**

- 1)2)NONE for MKA & NT for A&B GRD STL SVG; NONE for 2) for MKA & NT for SKN but UNBOUND for 1) for MKA & NT for SKN
- 3)NONE for MKA for SKN; for GRD SVG MKA is “Subject to the development of relevant regulations”; for A&B & STL UNBOUND for MKA
- 3)UNBOUND for NT for 4 – A&B GRD STL SVG; but NONE for NT for SKN
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 – A&B GRD SKN STL SVG

Hazardous waste treatment and disposal services CPC 94022 – A&B GRD SVG and for SKN (treatment only)

- 1)2)NONE for MKA & NT for A&B GRD SVG; NONE for 2) for MKA & NT for SKN but UNBOUND for 1) for MKA & NT for SKN
- 3)NONE for MKA for SKN; for A&B GRD SVG MKA is “Subject to the development of relevant regulations”
- 3)UNBOUND for NT for 3 – GRD STL SVG; but NONE for NT for A&B
- 4)UNBOUND except as per horizontal commitments for MKA & NT for 4 – GRD SKN SVG and A&B for MKA but for NT A&B NONE.

D.OTHER

Cleaning services of exhaust gases CPC 94040 – all 6 OECS

- 1)2)3)NONE for MKA & NT for all 6 OECS
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS plus for MKA adds “Subject to economic needs test for CSS”

Noise abatement services CPC 94050 – all 6 OECS

- 1)UNBOUND* for MKA & NT for A&B DMA GRD STL SVG; for SKN UNBOUND
- 2)NONE for MKA & NT for A&B DMA GRD STL SVG; for SKN UNBOUND for MKA & NT

- 3)NONE for MKA & NT for all 6 OECS
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

Other environmental services – Closed loop pollution control systems for factories CPC 94090 - all 6 OECS**

- 1)2)UNBOUND for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for all 6 OECS
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS and adds “Subject to economic needs test for CSS and IP” for MKA

Waste and waste water management CPC 94090 – 5 OECS (DMA no commitments)

- 1)NONE for MKA for A&B; UNBOUND for MKA for GRD STL SKN SVG
- 1)2) NONE for NT for A&B STL SVG; UNBOUND for NT for GRD SKN
- 2)NONE for MKA for A&B GRD STL SVG; UNBOUND for NT for SKN
- 3)NONE for MKA for A&B SKN; Joint venture required for GRD STL SVG
- 3)NONE for NT for A&B GRD SKN; UNBOUND for NT for STL ASVG
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 A&B GRD STL SKN SVG

Recycling services CPC 94090 - 4 OECS – GRD SKN SVG; for A&B glass only**

- 1)2)NONE for MKA & NT for A&B GRD SVG; UNBOUND for SKN for MKA & NT
- 3)NONE for MKA for SKN; Joint venture required for SVG for MKA; UNBOUND for A&B GRD
- 3)NONE for NT for SKN SVG; UNBOUND for NT for A&B GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 4 A&B GRD SKN SVG

7.FINANCIAL SERVICES

A.ALL INSURANCE AND INSURANCE RELATED SERVICES

a)Life, accident and health insurance services CPC 8121 (only 3 OECS A&B DMA SVG)

- 1)2)NONE for MKA & NT for A&B SVG; UNBOUND for DMA both MKA & NT
- 3) NONE for MKA & NT for A&B, SVG (except as per horizontal commitments), DMA (from 2018 for MKA until then unbound, and except as per horizontal commitments for NT)
- 4)UNBOUND for MKA & NT for A&B SVG DMA (except as per horizontal commitments)

b) Non-life insurance services CPC 8129 (only 2 OECS DMA SVG)

- 1)2)NONE for MKA& NT for SVG; UNBOUND for DMA both MKA & NT

3)NONE for SVG for NT & MKA (except as per horizontal commitments MKA); NONE for DMA (from 2018 for MKA until then UNBOUND; for NT except as per horizontal commitments)

4)UNBOUND for SVG & DMA (except as per horizontal commitments)

c)Reinsurance and retrocession CPC 81299**

1)2)NONE for all 6 OECS for MKA & NT

3)NONE for MKA for A&B GRD SKN DMA(from 2018 until then UNBOUND) SVG (except as per horizontal commitments) STL (only corporate entities are allowed to conduct insurance business in STL. All such entities must first be registered by the Registrar of Insurance)

3)NONE for NT for A&B STL and re DMA (except as per horizontal commitments - DMA); UNBOUND for NT for GRD SKN SVG

4)UNBOUND (except as per horizontal commitments) for all 6 OECS for MKA; and A&B SVG for NT

4)NONE for NT for DMA GRD SKN STL

d) Services auxiliary to insurance (broking agency) CPC 8140 (only 2 OECS DMA, STL)

1)2)NONE for DMA for NT & MKA; UNBOUND for STL for NT & MKA

3) UNBOUND for STL for NT & MKA; UNBOUND for DMA for MKA but NONE as of 2018 & NONE except as per horizontal commitments for NT

4)UNBOUND except as per horizontal commitments for STL DMA for NT & MKA

B.BANKING AND OTHER FINANCIAL SERVICES (Excluding insurance)

a)Acceptance of deposits and other repayable funds CPC 81115 & 81116 (only DMA)

1)2)UNBOUND for MKA & NT for DMA

3)NONE for NT (except as per horizontal commitments) & MKA from 2018 until then UNBOUND

4)UNBOUND for NT & MKA (except as per horizontal commitments)

b)Lending of all types including inter alia consumer credit, mortgage credit, factoring and financing of commercial transactions CPC 8113 (only 2 OECS – DMA & GRD – GRD only for CPC 81133 & 81139)

1)2)UNBOUND for MKA & NT for DMA & GRD

3)NONE for MKA & NT for GRD; for DMA NONE for MKA only from 2018 until then UNBOUND and NONE for NT except as per horizontal commitments

4) UNBOUND for MKA & NT for GRD & DMA except as per horizontal commitments

d)All payment and money transmission CPC 81399 (only 3 OECS A&B STL SVG)**

1)2)NONE for MKA & NT for STL SVG; UNBOUND for MKA & NT for A&B

3)NONE for MKA & NT for A&B; NONE for SVG for NT & MKA except as per horizontal commitments for MKA; UNBOUND for MKA & NT for STL

4) UNBOUND for MKA & NT except as per horizontal commitments for A&B STL SVG

f)Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise CPC 81339, 81333, 81321* (only DMA GRD)**

- 1)UNBOUND for MKA & NT for DMA GRD
- 2)NONE for MKA & NT for DMA; UNBOUND for MKA & NT for GRD
- 3)NONE for MKA & NT for GRD; for DMA (only from 2018 – until then UNBOUND for MKA & NT)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for GRD DMA

g)Participation in issues of all kinds of securities including underwriting and placement as agents CPC 8132 (only DMA GRD)

- 1)UNBOUND for MKA & NT for DMA GRD
- 2)NONE for MKA & NT for DMA; UNBOUND for MKA & NT for GRD
- 3)NONE for MKA & NT for GRD; for DMA (only from 2018 – until then UNBOUND for MKA & NT)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for GRD DMA

i)Asset management such as cash or portfolio management, all forms of collective investment management CPC 81323 (only GRD)

- 1)2)UNBOUND for MKA & NT; 3)NONE for MKA & NT; 4) UNBOUND except as per horizontal commitments for MKA & NT for GRD

k)Advisory and other auxiliary financial services on all the activities listed in MTN.TNC/W/50 including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring (only 4 OECS DMA GRD STL SVG)

- 1)NONE for DMA GRD for MKA; UNBOUND for STL SVG for MKA; NONE for NT for DMA GRD STL SVG
- 2)NONE for MKA & NT for DMA GRD STL SVG
- 3)NONE for MKA & NT for DMA GRD; UNBOUND for MKA & NT for STL SVG
- 4)UNBOUND except as per horizontal commitments for MKA & NT for DMA GRD STL SVG

l)Provision and transfer of financial information and financial data processing and related software by providers of other financial services CPC 8131 (only DMA GRD)

- 1)2)UNBOUND for MKA & NT for DMA GRD
- 3)UNBOUND for MKA but none as of 2018 for DMA GRD (yes also GRD); and NONE for NT except as per horizontal commitments for DMA GRD
- 4)UNBOUND for MKA & NT except as per horizontal commitments for DMA GRD

C.OTHER

Registration of offshore companies and trust (not including insurance companies and banks) to do offshore business (only DMA SKN)

- 1)2)NONE for MKA & NT for DMA SKN
- 3)NONE for MKA for DMA SKN; for NT for SKN & re DMA except as per horizontal commitments
- 4)UNBOUND except as per horizontal commitments for MKA & NT for DMA SKN

Investment and property until trust services (only GRD STL)

- 1)2)3)NONE for MKA & NT for GRD STL
- 4)UNBOUND except as per horizontal commitments for MKA & NT for GRD STL

Mutual funds and venture capital services (only GRD)

- 1)2)UNBOUND for MKA & NT for GRD
- 3)NONE for MKA & NT for GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT for GRD

8. HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1.A h-j)_

A.HOSPITAL SERVICES CPC 9311

- 1)2)NONE for MKA & NT for all 6 OECS
- 3) NONE for MKA & NT for A&B STL; GRD SKN - NONE for MKA but UNBOUND for NT (limit on number of foreign professionals – under NT column ...) DMA – UNBOUND for MKA until 2018 then NONE; DMA SVG – NONE for NT & MKA except as per horizontal commitments
- 4) UNBOUND for MKA & NT for DMA GRD SKN SVG; UNBOUND for MKA for A&B but for NT NONE;
- 4)NONE for MKA & NT for STL

B. OTHER HUMAN HEALTH SERVICES CPC 9319 other than 93191 (STL - except ambulance services CPC 93192); (SVG - residential health facilities services other than hospital services CPC 93193) – no commitment for A&B

- 1)2)NONE for DMA GRD SKN STL SVG for MKA & NT
- 3)NONE for MKA for GRD SKN; UNBOUND for DMA until 2018 then NONE; UNBOUND for MKA for STL SVG
- 3)NONE for NT for GRD SKN; NONE except as per horizontal commitments for DMA; UNBOUND for STL SVG
- 4)UNBOUND except as per horizontal commitments for MKA NT for all 5 OECS DMA GRD SKN STL SVG

9. TOURISM AND TRAVEL-RELATED SERVICES

A. HOTELS AND RESTAURANTS (incl. catering) CPC 641-643 – all 6 OECS but for SVG excl restaurants, and for STL (hotels and resorts in excess of 100 rooms and restaurant services CPC 641**, 642)

1) UNBOUND* for MKA & NT for all 6 OECS

2) NONE for MKA & NT for all 6 OECS

3) NONE for MKA for A&B DMA STL; NONE except as per horizontal commitments for SVG; for GRD “limitation on the size of operation. Ethnic and Specialty restaurants”; for SKN “Limited to developments in excess of 75 rooms. Ownership of no-ethnic restaurants reserved for nationals”

3) NONE for NT for A&B GRD SKN STL; for DMA “Fiscal incentives under the Hotel Aid Act and the Fiscal Incentives Act may be limited to Hotels of ten(10) rooms or more”; but for SVG UNBOUND for NT

4) UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

Letting services of furnished accommodation CPC 6419 – only STL CPC 64195

1)2)3) NONE for MKA & NT – STL

4) UNBOUND except as per horizontal commitments for MKA & NT – STL

NO COMMITMENTS ON TOUR GUIDES

D. OTHER

Hotel Development – only DMA GRD

1) UNBOUND* for MKA for DMA GRD

1) NONE for NT for DMA GRD

2) NONE for MKA & NT for DMA GRD

3) for MKA for DMA “Limited to the development of hotels in excess of 50 rooms. Hotel development of less than 50 rooms may be subject to an economic needs test”

3) for MKA for GRD “Limited to the development of hotels in excess of 100 rooms. Hotel development of less than 100 rooms may be subject to an economic needs test. Main criteria: location and number of national operators.

3) NONE for NT for DMA GRD

4) NONE for NT for DMA GRD

4) for MKA for DMA GRD “Limited to managerial and specialist skills level and as indicated in the horizontal commitments. Subject to work permit and immigration regulations”

Hotel Management – only A&B

1)2)3) NONE for MKA & NT – A&B

4) UNBOUND except as per horizontal commitments for MKA & NT – A&B

Marina Services – 5 OECS no SVG commitments

1)2) NONE for NT for all 5 - A&B DMA GRD SKN STL

- 1)NONE for MKA for A&B GRD STL; UNBOUND for 1) DMA SKN
- 2)NONE for MKA for all 5 – A&B DMA GRD SKN STL
- 3) for MKA for A&B DMA SKN STL “For vessels 30-100 feet, marinas with more than 100 slips. For vessels over 100 feet, marinas with less than 100 slips.”; for GRD UNBOUND
- 3) for NT for A&B SKN STL “Government subsidies may be limited to nationals”; for NT for DMA GRD UNBOUND
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 – A&B DMA GRD SKN STL

Spa services – 5 OECS; no STL commitments

- 1)2)NONE for MKA & NT for all 5 – A&B DMA GRD SKN SVG
- 3)NONE for MKA for DMA GRD; Joint venture required for MKA for A&B SKN; UNBOUND except as per horizontal commitments for SVG
- 3)NONE for NT for A&B GRD; for SKN “Government subsidies may be limited to nationals”; for DMA SVG UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 – A&B DMA GRD SKN SVG

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (Other than audiovisual)

A. ENTERTAINMENT SERVICES (including theatre, live bands and circus services) CPC 9619 – all 6 OECS

- 1)2)NONE for MKA & NT for all 6 OECS
- 3)NONE for NT for all 6 OECS; for DMA NONE except as per horizontal commitments
- 3)NONE for MKA for A&B STL SVG; NONE for DMA except as per horizontal commitments; for GRD “May be required to employ national artists and entertainers. Limited to theatre, musical ensembles and bands, dance troupes. Subject to alien landholding regulations”; for SKN “May be required to employ national artists and entertainers.”
- 4)UNBOUND except as per horizontal commitments for MKA & NT for A&B DMA GRD SVG; UNBOUND except as per horizontal commitments for MKA for SKN; for 5 OECS UNBOUND MKA adds “Subject to economic needs tests for CSS and IP” but NONE for NT for SKN STL; NONE for MKA for STL

B. NEWS AGENCY SERVICES CPC 962 – all 6 OECS

- 1)2)NONE for MKA & NT for 6 OECS except for SVG for 1) UNBOUND for MKA
- 3)NONE. Establishment of press agencies by foreign investors is subject to reciprocity for MKA for all 6 OECS
- 3)NONE for NT for SKN STL; for A&B GRD SVG “Joint venture and or economic needs test may be required”; for DMA for NT UNBOUND
- 4)UNBOUND except as per horizontal commitments for NT & MKA for all 6 OECS

D. SPORTING AND OTHER RECREATIONAL SERVICES CPC 964 (except Gambling) all 6 OECS but for SKN CPC 96412, 96413; for SVG CPC 96411, 96413, 96419

- 1)UNBOUND for MKA for all 6 OECS
- 1)NONE for NT for all 6 OECS
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA for A&B DMA SVG; for SKN “Joint venture required”; for GRD STL “UNBOUND. Joint venture required”
- 3)NONE for NT for A&B GRD SKN; for DMA NONE except as per horizontal commitments; for STL SVG UNBOUND for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT for 6 OECS except for STL for MKA only which is NONE

E. OTHER

Rental and leasing of yachts CPC 96499, 83103** - 5 OECS; no SVG commitments**

- 1)NONE for MKA & NT for 4 A&B DMA SKN STL; for GRD UNBOUND*
- 2)NONE for MKA & NT for 5 A&B DMA GRD SKN STL
- 3)NONE for MKA & NT for 4 A&B DMA SKN STL; for GRD UNBOUND for MKA and for NT “Subsidies may be limited to citizens and/or residents”
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 5 A&B DMA GRD SKN STL

11. TRANSPORT SERVICES

A. MARITIME TRANSPORT SERVICES

a) Passenger transportation CPC 7211 (less cabotage) – all OECS except SKN

- 1)2)NONE for MKA & NT for DMA GRD STL SVG; 2)NONE for MKA & NT for A&B
- 1)for A&B NONE for NT; for MKA “(a)Liner Shipping: NONE, (b)Bulk tramp and other international shipping including passenger transportation: NONE”
- 3)for A&B for MKA “3)(a) Establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment: UNBOUND; (b) Other forms of commercial presence for the supply of international maritime transport services: NONE”; for NT 3)(a) UNBOUND (b) NONE
- 3)NONE for MKA & NT for DMA STL; GRD NONE for NT but for MKA “NONE, Joint venture may be required”
- 3)UNBOUND for SVG for NT; NONE except as per horizontal commitments for MKA for SVG
- 4)NONE for STL for MKA & NT
- 4)UNBOUND except as per horizontal commitments for A&B DMA GRD SVG

b)Freight transportation CPC 7212 (less cabotage) – all OECS but GRD (except CPC 72122) and SKN (CPC 72121, 72122, 72123)

- 1)2)NONE for all 6 OECS for MKA & NT
- 3)NONE for MKA & NT for all 6 OECS except A&B (UNBOUND for MKA) and DMA(NONE except as per horizontal commitments for NT)
- 4)UNBOUND except as per horizontal commitments for all 6 OECS for MKA & NT (but add for NT – subject to an economic needs test)

c)Rental of vessels with crew CPC 7213 – A&B DMA GRD SVG (less cabotage); STL (except rental of tug boats and fishing vessels)

- 1)NONE for MKA & NT for A&B; UNBOUND for DMA GRD STL SVG
- 2)NONE for MKA & NT for all 5 - A&B DMA GRD SVG STL
- 3)NONE for MKA & NT for A&B DMA; but for GRD STL SVG joint venture required for MKA and UNBOUND for NT
- 4)UNBOUND except as indicated in horizontal commitments for all 5 – A&B DMA GRD SVG LAC

d)Maintenance and repair of vessels CPC 8868** (no commitment for SVG)

- 1)NONE for NT & MKA for A&B; UNBOUND for all others for NT & MKA, i.e. DMA GRD SKN STL
- 2)NONE for NT & MKA for all 5 – A&B DMA GRD SKN STL
- 3)NONE for NT & MKA for A&B; NONE for MKA for DMA – for NT NONE except as per horizontal commitments;
- 3)Joint venture required for MKA for GRD SKN STL; UNBOUND for NT for GRD SKN STL
- 4)UNBOUND except as per horizontal commitments for all 5 A&B DMA GRD SKN STL

f)Vessel salvaging and refloating services CPC 74540 – only 4 OECS – A&B SKN STL SVG

- 1)2) NONE for MKA & NT for A&B STL SVG; UNBOUND for MKA & NT for SKN
- 3)NONE for MKA & NT for A&B SKN SVG (for SVG re MKA – except as per horizontal commitments); for STL – Joint venture required for MKA & NT
- 4)UNBOUND for MKA & NT except as per horizontal commitments for all 4 – A&B SKN STL SVG

Ship registration – only A&B SKN

- 1)2)NONE for MKA & NT for A&B SKN
- 3)UNBOUND for A&B for MKA and UNBOUND for NT except as per horizontal commitments
- 3) for MKA for SKN – “The Merchant Shipping Act 1985 facilitates the registration of ships in SKN. Registration is effected by the Director of Maritime Affairs who is the Registrar of SKN ships. The registration requirements are (a) wholly owned by citizen of SKN (b) bodies corporate established under the laws of SKN; (c) any ship regardless of

the nationality of her owners is a sea-going ship of 1600 or more net registered tonnes and is engaged in foreign-going trade; for NT NONE for SKN
4)UNBOUND for MKA except as per horizontal commitments for SKN and A&B (for A&B UNBOUND except as per horizontal commitments for NT also); for SKN – NONE for NT

B.INTERNAL WATERWAYS TRANSPORT

b)Freight transportation CPC 7222 – 3 OECS A&B GRD STL

1)2)3)NONE for MKA & NT for A&B GRD STL
4)UNBOUND except as per horizontal commitments for MKA & NT for A&B GRD STL

d)Maintenance and repair of vesels CPC 8868 - 2 OECS – SKN STL**

1)2)NONE for MKA & NT for SKN STL
3)UNBOUND for MKA for SKN STL; NONE for NT for SKN STL
4)UNBOUND for MKA & NT except as per horizontal commitments FOR SKN STL

e)Pushing and towing services CPC 7224 – SKN only

1)2)UNBOUND for MKA & NT for SKN
3)NONE for MKA & NT for SKN
4)UNBOUND except as per horizontal commitments for MKA & NT for SKN

C.AIR TRANSPORT SERVICES

b)Freight transportation CPC 732 – all 6 OECS (but for STL SVG except 7321)

1)2)NONE for MKA & NT for DMA GRD SKN STL SVG; for A&B NONE in MKA column BUT NO ENTRY IN NT????!!
3)NONE for MKA & NT for DMA SKN STL; UNBOUND for MKA for A&B GRD SVG but NONE for NT for GRD & SVG – once again no entry for A&B (perhaps should have been NONE for both 1) & 3) –simple omission???)
4)UNBOUND except as per horizontal commits for MKA & NT for all 6 OECS

c)Rental of aircraft with crew CPC 734 – 3 OECS – A&B SKN STL

1) NONE for NT & MKA for A&B STL; UNBOUND for SKN for MKA & NT
2)NONE for NT & MKA for A&B STL SKN
3)UNBOUND for NT & MKA for A&B STL; for SKN for MKA “May be required to employ some local personnel” and for NT – NONE.
4)UNBOUND except as per horizontal commitments for MKA & NT for A&B SKN STL

d)Maintenance and repair of aircraft CPC 8868 - only SKN STL**

1)2) NONE for MKA & NT for STL; UNBOUND for MKA & NT for SKN
3)NONE for MKA & NT for SKN; UNBOUND for MKA & NT for STL
4)UNBOUND except as per horizontal commitments for MKA & NT for STL SKN

Computer Reservations System (CRS) services – only A&B

- 1)2)3) NONE for MK & NT for A&B
- 4)UNBOUND except as per horizontal commitments for MKA & NT for A&B

Selling and marketing of air transport services – only A&B

- 1)2)NONE for MKA & NT for A&B
- 3)UNBOUND for MKA & NT for A&B
- 4)UNBOUND except as per horizontal commitments for MKA & NT for A&B

E.RAIL TRANSPORT SERVICES

a)Passenger transportation CPC 7111 – all 6 OECS

- 1)2)NONE for MKA & NT for A&B DMA GRD STL, SVG; 1) UNBOUND for SKN for MKA & NT; 2)NONE for SKN for MKA & NT
- 3)NONE for MKA & NT for A&B DMA GRD STL; UNBOUND for MKA & NT for SKN; UNBOUND FOR NT for SVG & for MKA (though adds here except as per horizontal commitments)
- 4)UNBOUND for MKA & NT for all 6 OECS

b)Freight transport CPC 7112 – all 6 OECS

- 1)NONE for MKA & NT for A&B DMA GRD STL SVG; UNBOUND for MKA & NT for SKN
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for A&B DMA GRD STL; UNBOUND for MKA & NT for SKN & SVG – (re MKA SVG adds except as per horizontal commitments)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

c)Pushing and towing services CPC 7113 – all 6 OECS

- 1)NONE for MKA & NT for A&B DMA GRD STL SVG; UNBOUND for MKA & NT for SKN
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for A&B DMA GRD STL; UNBOUND for MKA & NT for SKN & SVG – (re MKA SVG adds except as per horizontal commitments)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

d)Maintenance and repair of rail transport equipment CPC 8868 – all 6 OECS

- 1)NONE for MKA & NT for A&B DMA GRD STL SVG; UNBOUND for MKA & NT for SKN
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for A&B DMA GRD STL; UNBOUND for MKA & NT for SKN & SVG – (re MKA SVG adds except as per horizontal commitments)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

e)Supporting services for rail transport services CPC 743 – all 6 OECS

- 1)NONE for MKA & NT for A&B DMA GRD STL SVG; UNBOUND for MKA & NT for SKN
- 2)NONE for MKA & NT for all 6 OECS
- 3)NONE for MKA & NT for A&B DMA GRD STL; UNBOUND for MKA & NT for SKN & SVG – (re MKA SVG adds except as per horizontal commitments)
- 4)UNBOUND except as per horizontal commitments for MKA & NT for all 6 OECS

F.ROAD TRANSPORT SERVICES

a)Passenger transport CPC 71224 only (not full CPC) for GRD

- 1)2)3)NONE for MKA & NT for GRD
- 4)UNBOUND except as per horizontal commitments for MKA & NT for GRD

e)Supporting services for road transport services CPC 7443 only (not full CPC) for STL

- 1)2)3)NONE for MKA & NT for STL
- 4)UNBOUND except as per horizontal commitments for MKA & NT for STL

H.SERVICES AUXILIARY TO ALL MODES OF TRANSPORT

a)Cargo handling services CPC 741 – 2 OECS only STL SVG

- 1)2)3) NONE for MKA & NT for STL SVG (but for SVG adds re MKA – except as per horizontal commitments)
- 4)UNBOUND except as per horizontal comtts for MKA & NT for STL SVG

b)Storage and warehouse services CPC 742 for A&B DMA GRD STL; for SVG only CPC 7421 & 7429

- 1)*UNBOUND (with *) for MKA & NT for A&B DMA GRD STL; but NONE for MKA & NT for SVG;
- 2) NONE for MKA & NT for the 5 OECS A&B DMA GRD STL SVG
- 3)NONE for the 5 OECS for MKA; UNBOUND for the 5 OECS for NT
- 4)UNBOUND except as per horizontal commitments for MKA & NT for the 5 OECS

c)Freight transport agency services CPC 748 – DMA only

- 1)2)3)NONE for MKA & NT – but for NT adds except as per horizontal commitmentsts
- 4)UNBOUND except as per horizontal commitments for MKA & NT

d)Other CPC 749

Other supporting and auxiliary transportation services CPC 74900 – DMA only

- 1)2)NONE for MKA & NT – for DMA
- 3)NONE for MKA & NT from Jan 2022 – for DMA
- 4)UNBOUND except as per horizontal commitments for MKA & NT for DMA

Free Zone Operation – STL SVG only

1)2)3)NONE for MKA & NT for STL SVG – but SVG adds re MKA except as per horizontal commitments

4)UNBOUND except as per horizontal commitments for MKA & NT for STL SVG

Trans-shipment services CPC 749– STL SVG only

1)2)3) NONE for MKA & NT for STL SVG

4)NONE for MKA & NT for STL

4)UNBOUND except as per horizontal commitments for MKA & NT for SVG

ANNEX IV.E

LIST OF COMMITMENTS ON INVESTMENT (COMMERCIAL PRESENCE) IN ECONOMIC ACTIVITIES OTHER THAN SERVICES SECTORS (referred to in Article 69)

- A. Agriculture, hunting and forestry
- B. Fishing
- C. Mining and quarrying
- D. Manufacturing
- E. Production, transmission and distribution on own account of electricity, gas, steam and hot water

HORIZONTAL LIMITATIONS – ALL SECTORS

Land holding

All 6 OECS - A&B, DMA, GRD, SKN, STL, SVG: Foreign companies and individuals wishing to possess property by title or on condition of paying rent need to first obtain a licence.

Companies incorporated in **Antigua and Barbuda, Grenada and St. Christopher and Nevis**, possessing by title, having an estate on condition of paying rent or intending to acquire more than five acres of land (in **Dominica and St. Vincent and the Grenadines** intending to acquire any land) may be restricted or prohibited from the issue or transfer of their shares or debentures to non-citizens or restricted or prohibited from the holding by non-citizens of share warrants and of debentures transferable by delivery or may be refused to register a noncitizen as a member or as the holder of a debenture.

DMA: More than 3 acres of land in Dominica shall not be possessed by title or on condition of paying rent for business purposes by an Alien, who is defined in national legislation as an individual who is not a citizen of one of the OECS Member States, without a licence.

Types of commercial presence

All 6 OECS - A&B, DMA, GRD, SKN, STL, SVG, TTO: Foreign investors have to incorporate or establish the business locally. **Companies not incorporated locally must be registered and powers and activities may be restricted, in accordance with relevant legislation.**

Investment

CAF: Prohibits the exploration, exploitation and processing of radioactive minerals, the recycle of nuclear fuel, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and processing of nuclear fuel and regulation of its applications for other purposes, as well as the production of heavy water.

GRD: The Property Transfer Tax Act stipulates that a foreign investor interested in the purchase or sale of shares/stocks is subject to a specific tax on the value of settlement.

DMA, SKN, STL, SVG: Economic needs tests are applied in small business.

SVG: The **Small Business Development Bill** defines micro and small businesses and stipulates the activities that these businesses must engage in. **International business can only engage in particular activities as stipulated by the International Business Companies Act.**

A. AGRICULTURE, HUNTING, FORESTRY

Agriculture and hunting (ISIC rev 3.1: 01) – only A&B no reservation
DMA, SKN: **The State reserves the right to adopt or maintain measures on investment in this sector.**

GRD: **Legislation reserves this sector to domestic producers** but foreign investment may be allowed only for the production for export.

STL: Legislation prescribes production exclusively for the domestic market.

SVG: **The State reserves the right to prohibit, control or restrict** cultivation of certain crops and the import or export of certain crops.

Forestry and logging (ISIC rev 3.1: 02) – no reservations by A&B SKN STL
DMA, SVG: The State reserves the **right to adopt or maintain measures on investment** in this sector.

GRD: **Legislation reserves this sector to domestic producers** but foreign investment may be allowed only for the production for export.

B. FISHING (ISIC rev.3.1: 05)

ANT, DMA, SKN, STL, SVG: The State **reserves the right to adopt or maintain measures on investment** in this sector.

GRD: The Legislation prescribes **differential fees for non-nationals to obtain a license** to engage in fishing activities.

C. MINING AND QUARRYING

CAF: Certain activities in **small scale mining** may be reserved to nationals.

CAF (except DOM and GUY): The State reserves the right to grant approval for private or public exploration, mining, processing, importation and exportation of minerals.

DMA: **No mineral right shall be granted to an individual unless he is a citizen of Dominica. No mineral right** being a reconnaissance licence, an exclusive prospecting licence, or a mining licence, **shall be granted to a body corporate, unless the body corporate is a company or corporation incorporated in Dominica.** The Inspector shall not issue a non-exclusive prospecting licence to: (i) an **individual unless he is a citizen of Dominica**; and (ii) to a **company** unless it is a company whose entire share capital is beneficially owned by citizens of Dominica or by a corporation which in the opinion of the Minister has been **established for a public purpose** or partly by such citizens and partly by such a corporation; (iii) to a **corporation** unless it is a corporation incorporated in Dominica. The Inspector may grant a non-citizen a non-exclusive prospecting licence if that person was ordinarily resident in Dominica during the period of seven (7) years immediately preceding the date of his/her application.

Mining of coal and lignite; extraction of peat (ISIC rev 3.1: 10) – no OECS
reservations specific to this sub-sector

Extraction of crude petroleum and natural gas (ISIC rev 3.1: 11) – no OECS reservations specific to this sub-sector

Mining of metal ores (ISIC rev 3.1: 13) - no OECS reservations specific to this sub-sector

Other mining and quarrying (ISIC rev 3.1: 14) - no OECS reservations specific to this sub-sector

D. MANUFACTURING

Manufacture of food products and beverages (ISIC rev 3.1: 15) – no reservations by A&B SKN SVG

DMA: The State reserves the **right to adopt or maintain measures on investment** in this sector.

GRD: Regarding ISIC 151, 153, 154, 155, legislation **reserves this sector to domestic producers** but foreign investment may be allowed only for the production for export.

STL: Regarding ISIC 1512, 1541, 1544, 155, legislation prescribes requirements for the **granting of a license** or production exclusively for **domestic market [ck leg?]**.

Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials (ISIC rev 3.1: 20)

CAF: States reserve the right to **adopt or maintain restrictions on small scale investment** in this sector.

DMA: The state **reserves the right to adopt or maintain measures on investment** in this sector.

Manufacture of refined petroleum products (ISIC rev 3.1: 232) – no OECS reservations in this sub-sector

Manufacture of chemicals and chemical products other than explosives (ISIC rev 3.1: 24 excluding manufacture of explosives) - no OECS reservations in this sub-sector

Manufacture of machinery and equipment (ISIC rev 3.1:29)

CAF: States may reserve the right to adopt or maintain measures on investment in the production of weapons and ammunition.

Manufacture of furniture; manufacturing n.e.c. (ISIC rev 3.1: 36)

CAF: States reserve the right to **adopt or maintain restrictions on small scale investment** in this sector.

GRD: **Legislation reserves this sector to domestic producers** but foreign investment may be allowed only for the production for export.

STL: **Production is reserved for domestic market** except where production is for export. [ck leg]

E. PRODUCTION, TRANSMISSION AND DISTRIBUTION ON OWN ACCOUNT OF ELECTRICITY, GAS, STEAM AND HOT WATER (Excluding Nuclear Based Electricity Generation)

Production of electricity; transmission and distribution of electricity on own account (part of ISIC rev 3.1: 4010)₁

All CARIFORUM States except DOM: Unbound

**Manufacture of gas; distribution of gaseous fuels through mains on own account
(part of ISIC rev 3.1: 4020)²**

All CARIFORUM States except DOM: Unbound.

**Production of steam and hot water; distribution of steam and hot water on own
account (part of ISIC rev 3.1: 4030)³**

All CARIFORUM States except DOM: Unbound.