



Organization of
American States

A Review of the CARIFORUM-EC Economic Partnership Agreement and the Trade Regulatory Framework in Belize

By

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15 October 2010

The following is a report on the review of Belize's laws and regulations relevant to the implementation of its EPA obligations. The report reflects the record of consultations and various email exchanges between the consultant, Senior Officials, private sector representatives and various stakeholders in Belize which were facilitated by the Directorate for Foreign Trade. The Implementation Schedule attached to the report provides an executive summary of the findings and recommendations made herein. 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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TITLE I – TRADE IN GOODS

Title I of the EPA Part II, on ‘Trade in Goods,’ covers articles 9 to 59 and is divided into seven (7) chapters treated below in five (5) sections. The first four sections discuss the first four chapters of Title I and the fifth section deals with the remaining three:

- VI. Chapter 1: Customs Duties
- VII. Chapter 2: Trade Defence Instruments
- VIII. Chapter 3: Non-Tariff Measures
- IX. Chapter 4: Customs and Trade Facilitation
- X. Chapter 5: Agriculture and Fisheries
- XI. Chapter 6: Technical Barriers to Trade
- XII. Chapter 7: Sanitary and Phytosanitary Measures

I. CUSTOMS DUTIES

Chapter 1, on ‘Customs Duties’, deals with the permissible duties and other charges which may be levied on goods *originating* in the Parties to the EPA (i.e. the EC and CARIFORUM States). Article 10, on ‘Rules of origin’, defines ‘originating products’ in terms of the rules set out in Protocol 1 (which is to be reviewed within 5 years).¹ Regulations detailing preferential rules of origin for goods originating in the EC and Dominican Republic,² similar to those established for CARICOM products in the Customs (Caricom Preference) Regulations (under section 4 of the Customs and Excise Duty Act, CAP 48), should have been prepared with the provisional entry into force of the EPA. **As this has not been done, this is listed as one of the priority items to be addressed in the attached Implementation Schedule.**

¹ Note that EPA, Protocol 1, Article 43, provides for a review of some aspects of the Protocol after three (3) years with a view to reducing the list of products included in Annex X which only benefit from certain provisions on cumulation after an initial period (which in certain cases is not slated before 1 October 2015).

² See also EPA, Article 238, i.e. the ‘Regional preference’ clause, which requires Belize to provide EC equivalent concessions to the Dominican Republic, beginning as of two (2) years from the date of signature of the EPA. Note also EPA, Article 18 suggesting a best endeavour commitment on the leveling of customs duties only once on EU products within CARIFORUM

Goods are classified in the EPA according to the Harmonized Commodity Description and Coding System (HS Code).³ Differing rates of duty are assigned to goods classified at the six (6) digit level (whereas the CARICOM CET is generally established at the eight (8) digit level).⁴ The term ‘customs duty’ is defined in Article 11 of the EPA as including a surtax or surcharge but not including internal taxes, antidumping, countervailing duty, and safeguard measures, or fees and other charges. Such measures appropriately fall within Articles 13 and 27 and Chapter 2 of Title I of the EPA and may be charged *in addition* to the customs duties provided (in Appendix 1 to Annex III).

A review of the legislation and practice in Belize suggests certain ‘irregularities’ in the application of fees and other charges and internal taxes which may lead to their treatment as *de facto* customs duties (i.e. to be counted within the rates specified in Appendix 1 to Annex III). **Correcting these ‘irregularities’ is an important part of the outstanding work to be addressed in the attached Implementation Schedule.**

EPA, Article 13 – ‘fees and other charges’

The ‘fees and other charges’ referred to in Article 13, must be limited to the “approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall not exceed the real value of the service rendered.”⁵ Article 13 of the EPA largely reflects the basic prescriptions of the Customs Regulation Act of Belize which provides, for example in section 101, that goods “shall be liable to such charges, *commensurate with administration expenses entailed*”.

The customs service charge in Belize is applied *ad valorem* at the rate of 1.5%. This rate is also generally applicable to goods in transit.⁶ An *ad valorem* charge may not be compliant with

³ See EPA, Article 12.

⁴ The HS Code allows for classification up to the ten (10) digit level. In the EPA products are classified up to the six (6) digit level. However, in relation to certain products listed in Appendix 1 to Annex III where an HS numerical code is qualified by the term "Ex" linked to a specific description, the associated customs duty rate applies only to products falling under the specific description.

⁵ EPA, Article 13 (added emphasis). Note that fees and charges may not be imposed for consular services; see EPA Article 13.

⁶ This is levied at a general rate of 1.5%, with particular rates for whiskey and other potable spirits, excluding wine and beer (BZ\$1.50 per gallon); wine and beer (2%); cigarettes (BZ\$1 per 1,000 cigarettes); and fresh fruit and vegetables and spices (1%); see Goods in Transit (Administration Charges) Order, S.I. 125 of 1998.

Article 13 of the EPA, particularly where highly priced imports are involved (e.g. European luxury vehicles). Here a 1.5% service charge will likely exceed the real value of the service rendered. It may be noted that the EC is one of the proponents in the WTO Doha negotiations on trade facilitation for an interpretation of Article VIII.I(a) of the GATT 1994 which would provide a total prohibition on the calculation of fees and charges on an *ad valorem* basis.⁷

Attention has been drawn to the fact that the administrative tax of 1.5% generates significant revenues (estimated at 22 million for the 2009 fiscal year according to the feedback received during our consultations). It is also recognized that several developing countries apply similar *ad valorem* service charges. As such, there is an understandable level of resistance to implementing changes in the method of calculation. Given the widespread use of *ad valorem* service charges in the region the issue may perhaps best be resolved at a CARICOM/CARIFORUM level with a view to determining a common approach should compliance concerns be raised in the future. In this regard it is noted that the draft Caricom Customs (Fees for Rendering Services by Customs officers) Regulations 2009, made pursuant to section 13 of the 2008 Draft Harmonised Customs Bill, provides for the imposition of service charges on a fees per hour basis.⁸

The proposal that the use of *ad valorem* customs service charges be raised at the regional level with a view to adopting a common approach on this issue is one of the recommendations made in the attached Implementation Schedule.

EPA Article 27 – Internal taxes

Article 27 of the EPA provides for national treatment on internal taxation and regulations similarly to Article III of GATT 1994.⁹ The internal taxes imposed consistently with Article 27 are those which are applied to all like products whether locally produced or imported. Belize, however, maintains certain ‘internal taxes’ applied (in addition to customs duties) on imports which are not applied to like domestic products. Such measures are discriminatory and therefore not protected by Article 27 of the EPA; I refer in particular to the Environmental Tax, the

⁷ E.g. TN/TF/W/107, *Communication from the European Communities, Korea and Switzerland*, 6 June 2006.

⁸ See also the Belize Agricultural Health Authority (Service Fees) Regulations, S.I. No. 182 of 2004, which provides for flat fees as well as fees to be charged on a per hour basis.

⁹ Note that the requirement for national treatment does not apply to subsidies and government procurement; see EPA, Article 27(4) & (5).

Revenue Replacement Duty (RRD), and the General Sales Tax (GST) as applied to certain products.

Environmental Tax

The Environmental Tax Act (CAP 64.01) provides for the imposition of an *ad valorem* environmental tax which is applied at the rate of two percent (2%) on every good¹⁰ imported into Belize and charged on the c.i.f. value of the good as if it were a customs duty within the meaning of the Customs and Excise Duties Act; the environmental tax is applied in addition to the customs duties leviable.¹¹ The legislation provides for certain exemptions such as medicines and basic foodstuffs. The tax is not applied to domestically produced goods and does not appear to be linked to the potential damage of the product to the environment. It may therefore be portrayed as arbitrary and discriminatory. It would seem therefore to violate Article 27 of the EPA and not be justifiable under Article 224, i.e. the ‘General Exception Clause’. The environmental tax also was not notified under Article 16 of the EPA (discussed below).

An additional point which may be made concerns the contribution made to the environmental fund.¹² The fundamental principle of non-discrimination requires that an imported product should not be subject to a charge which is in the nature of a contribution to a fund meant for addressing particular concerns (e.g. the environment), if such a charge is not levied on the like domestic product. The environmental tax is, as such, one of the measures which should be reformed with a view to bringing it into compliance with Belize’s EPA (and WTO) commitments. **This constitutes one of the recommendations made in the attached Implementation Schedule.**

Revenue Replacement Duty (RRD)

The Customs and Excise Duties Act (CAP 48) ties the imposition of the RRD to the implementation of liberalization measures in the context of the CARICOM CET.¹³ The Act

¹⁰ Note that fuels, including aviation and jet fuels, gasoline and kerosene are taxed at the rate of \$0.18 per imperial gallon.

¹¹ See Environmental Tax Act, section 3.

¹² See Environmental Tax Act, section 7.

¹³ See Customs and Excise Duties Act (CAP 48), section 25(1): “Where any customs duty or entry tax chargeable in respect of goods of a class or description imported into the country has been removed, altered, reduced or

expressly mandates that “**Notwithstanding anything to the contrary in any other enactment, the duty under this section shall be imposed without discrimination on all goods of the same type, class or description**”¹⁴ This is further emphasized in section 27 of the Act which provides as follows:

(1) **No Order made pursuant to section 25 shall make any provision which is discriminatory.**

(2) **In this section “discriminatory” means affording different treatment to goods of the same description and class by way of imposing different rates of duty attributable wholly or mainly to the country in which the goods are produced, whether Belize or any other country.**

Section 21(b) of the Belize Interpretation Act (CAP1) states that, “**no subsidiary legislation shall be inconsistent with the provisions of the Act under which it is made**”. Any Order made under the Customs and Excise Duties Act which purports to provide differential treatment by imposing different rates of duty based on origin – whether local or foreign - would seem to be an improper exercise of the powers conferred under section 25 of the Customs and Excise Duties Act.

By virtue of section 29 of the Customs and Excise Act the Minister may make regulations for the better carrying out of the provisions of section 25 in particular, *inter alia*, the determination of value of goods on which RRD duty is payable, and the waiver, remission or refund of RRD. The Revenue Replacement Duty Regulations made pursuant to the Customs and Excise Act, provides that the RRD is to be imposed: in the case of imported goods on the aggregate of the customs value of the goods and the amount of any Customs duty and entry tax payable; and in the case of locally manufactured products on the aggregate of the estimated selling price of the goods in the

progressively phased down with a view to implementing the treaty establishing the Caribbean Community and the Caribbean Single Market and Economy, the Minister may by Order impose a revenue replacement duty on goods of such class or description or on goods of any other class or description manufactured in the country or imported from a country inside or outside the Caricom area which shall become payable from the date of publication of the Order in the *Gazette*: Provided that the duty under this section shall be imposed on goods which are for consumption or use within the country.”

¹⁴ Customs and Excise Duties Act, section 25(2) (added emphasis).

open market *and* the amount of any excise duty payable.¹⁵ The Regulations therefore do not treat the RRD and excise duty as substitutable, i.e. alternative measures.

The Customs and Excise Duties Act provides that the RRD shall be collected and enforced on imported goods as if it were a customs duty imposed on such goods, and on locally manufactured goods, as if it were an excise duty imposed on such products.¹⁶ The RRD, however, is not applied *in place of* the customs duty on imports but *in addition to* such duties. The Revenue Replacement Duty Order 2010 (as opposed to the Revenue Replacement Duty Regulations) suggests that payment of excise duties is *in substitution for* payment of the RRD. It may be noted that sections 21 and 24 of the Customs and Excise Act do not suggest any link in the payment of excise duties or the grant of a refund thereof based on sums collected as RRD.

The Revenue Replacement Duty Order, 2010 repeals the Revenue Replacement Duty (Consolidation) Order 2009 (which repealed the Revenue Replacement Duty (Consolidation) Order 2005, as amended) but maintains a similar approach to the 2009 Order in establishing the rates to be charged for the list of products (whether imports or domestically produced goods) in a Schedule annexed thereto. The duty stated in the Schedule, however, does not apply to locally manufactured goods where these are subject to the payment of Excise Duty under the Customs and Excise Duties Act.

The Revenue Replacement Duty Order, 2010 frequently imposes differential rates based on whether the product is of CARICOM origin. It is assumed that the rates stated for CARICOM products are meant to apply to locally produced goods where these are not subject to the payment of Excise Duty. This, however, is unclear as there were suggestions that the RRD is still not applied to any domestically produced goods. In any event, where the Excise Duty and RRD differ, as in the case of cigarettes for example, it appears that three different rates apply – one for Belize goods, another for other CARICOM products and a third rate for MFN imports. (It is

¹⁵ See Revenue Replacement Duty Regulations, Regulation 3. Note that Regulation 7 permits the Minister, upon an application made by the person who has paid, or is liable for the payment of, any duty under the Act to waive, remit or refund in whole or in part any such duty, if s/he is satisfied that it is just and equitable to do so.

¹⁶ See Customs and Excise Duties Act, section 26.

assumed that the MFN import rate also applies to goods imported under the EPA from the EU and Dominican Republic.)

Questions may be raised as to the legitimacy of the approach adopted in the Revenue Replaced Duty Order given the language of the principal Act. Difficulties with the approach adopted are highlighted in the differential rates applied to CARICOM and non-CARICOM products suggesting that the RRD is in part a *de facto* tariff and partially also an internal tax measure (assuming that the RRD is in fact applied to some domestic products). These difficulties are further compounded by certain lower rates specified in the Schedule for excise duties in comparison with the RRD (e.g. cigarettes as noted above). The dilemma arises not only because of the clear dictates of the Customs and Excise Act but most significantly, for present purposes, due to Belize's obligations under the EPA (and WTO Agreements).

Significantly, our consultations suggest that the RRD *was notified* under Article 16 of the EPA. Article 16(3) of the EPA allows for a 10 year transitional period for irregular charges which are: 1. listed in Annex III, and 2. "the same duties are imposed on the like product imported from *all other countries*".¹⁷ There is no explicit exclusion for other CARIFORUM or CARICOM countries and questions may be asked whether the reference to 'all other countries' without any exception for partners in a free trade agreement or customs union allows for differential treatment (as regards this particular measure) between CARICOM countries and the EC and Dominican Republic. However, given that the principal Act prohibits the discriminatory application of the RRD based on the origin of the product, including products made in Belize, it would seem that the RRD may not – according to Belizean law – be applied in a discriminatory

¹⁷ See EPA, Article 16 which provides, *inter alia*, that: "(3) For a period of ten years after the signature of this Agreement, the CARIFORUM States may continue to apply any such customs duties within the meaning of Article 11 other than those listed in Annex III to any imported product originating in the EC Party, *provided that these duties were applicable to this product on the date of signature of this Agreement, and that the same duties are imposed on the like product imported from all other countries.*

"(4) The Signatory CARIFORUM States shall not be required to begin a phased elimination of the customs duties other than those listed in Annex III and referred to in paragraph 2 in the seven years subsequent to the signature of this Agreement. This process shall be accompanied by the support of the necessary fiscal reforms as provided for under Article 22.

"(5) With a view to ensuring transparency, such duties shall be notified to the CARIFORUM-EC Trade and Development Committee *within six months of the date of signature of this Agreement. Their elimination shall also be notified promptly to the CARIFORUM-EC Trade and Development Committee.*" (added emphasis)

manner against imports irrespective of origin. Any discrepancy in the Order should therefore be brought into compliance with the principal legislation.

An additional point which may be made with respect to the approach adopted in the Revenue Replacement Duty Order 2010 is that the WTO and EPA national treatment obligation should not be implemented with a view to simply balancing the effects of various measures. Thus, less favourable treatment accorded to an imported product under the RRD regime cannot be justified, strictly speaking, on the ground that the product receives more favourable treatment under the excise tax regime. Similarly so, the suggestion that a measure has ‘negligible effect’ is no defense (technically). The actual trade effect is not important once the conditions of competition are *affected* by the trade measure – a matter which perhaps merits further investigation with respect to the application of the RRD vis-à-vis the excise tax regime.

As above-noted questions may be raised as to whether the Revenue Replacement Duty Order, 2010, conforms to the principal Act. Further concerns emerged during our consultations as to whether the Order is in fact applied as written, in particular as regards the application of the RRD to domestic goods. The RRD is one of the measures requiring further review and reform in the context of the EPA (and WTO rules). **This is one of the recommendations made in the attached Implementation Schedule.**

General Sales Tax (GST)

The General Sales Tax Act of 2005 (which repeals the former Act) read together with the General Sales Tax Regulations 2006 (as amended) provide the relevant regime for assessing the compatibility of the GST with the EPA. Regulation 2 of the General Sales Tax Regulations provides that the GST on imports is to be assessed on the value of the product including custom duties and other duties, taxes and charges including the RRD. The Regulation provides that for domestic goods, the GST is to be applied to the value of product including excise duties where payable. The Regulation, however, does not provide for the GST to be applied to the value of the domestically produced good including the RRD where applicable. Domestic goods on which the RRD is to be applied pursuant to the Revenue Replacement Duty Order 2010 are not captured by

the language used in the General Sales Tax Regulations 2006 (as amended). This would suggest the GST is applied in a manner which favours domestically produced goods.

The General Sales Tax Act empowers the Minister of Finance to establish and amend the list of goods and services which are GST-exempt or zero-rated.¹⁸ Exports of goods and services are zero-rated under the GST, as well as certain imports. The discriminatory application of the GST is further demonstrated in the General Sales Tax (Amendment of Schedules) (No.2) Order 2010, which specifically provides in certain cases that the zero-rating is applicable only to domestically produced goods; reference is made, in particular, to fresh fruits and vegetables (locally produced); fresh milk (locally produced); and locally produced sweet bread and bun. The discriminatory application of the GST should be eliminated in accordance with Belize's EPA (and WTO) obligations.¹⁹ **This is one of the recommendations made in the attached Implementation Schedule.**

Export Duties

The EPA imposes an obligation to eliminate customs duties on exports.²⁰ However, special provision is made for the notification of export duties in Annex I which are subject to a phase-out period of three (3) years from the signature of the EPA. Only Guyana and Suriname notified export duties under this provision. The assumption is therefore that Belize no longer imposes export duties although a number of legislative instruments provide for this.²¹ Such 'outdated' legislative instruments imposing export duties which are, in fact, not collected should be

¹⁸ Under Section 96 of the General Sales Act (2005), the Minister may "make regulations for the better carrying out of the provisions of this Act or for prescribing anything that needs to be prescribed".

¹⁹ Other initial queries which arose with respect to the application of the GST were in general satisfactorily resolved during our consultations. Exchanges took place, for example, on the provisions of the General Sales Tax Act which provide for the exercise of the judgment of the Commissioner of General Sales Tax in various circumstances where greater clarity may have been sought in the legislation (e.g. General Sales Tax Act, section 6(3) – on the determination of 'fair market value'; section 32 – on allowable 'input tax credits'). It was noted that the decisions of the Commissioner are subject to review by the General Sales Tax Appeal Board and a right of appeal lies from the Board to the Supreme Court; see General Sales Tax Act, sections 41-44.

²⁰ See EPA, Article 14.

²¹ E.g. Forests (Export Duty) Order made pursuant to section 5(3) of the Forests Act (CAP 213); Fish (Export Duty) Order made pursuant to section 9 of the Fisheries Act (CAP 210). See also Produce Export Duties Act (CAP 60) which provides for duties to be paid on the export of certain wood products and coconuts. There was some suggestion in our consultations that the Produce Export Duties Act was repealed by the General Sales Tax Act, 2005, however, this would not seem to be correct. Sections 98, 99 and 100 of the General Sales Tax Act, 2005, repeal the Sales Tax Act (CAP 63), Entertainment Act (CAP 51) and section 62 of the Stamp Duty Act (CAP 64), respectively.

repealed or amended accordingly. **This is one of the recommendations advanced in the attached Implementation Schedule.**

Our consultations suggest that export duties are levied only on waste metals and scrap metal for recycling. The Customs and Excise Duties Act (CAP 48) was amended as of 1 February 2005 to include section 37 on ‘Export Duty on Goods’. In spite of the broad reference to goods in the title, section 37 is in fact limited to scrap metal. SI No 105 of 2005 varies the rate of duty on scrap metal to ten dollars (BZ\$10.00) per ton – which Officials confirm is the applicable rate. The duty was apparently imposed with a view to controlling the disposal of hazardous materials and to monitor theft of wires where copper is sourced.²² The export of scrap metal is subject to the issuance of a permit by the Department of the Environment under S.I. No. 77 of 2006 Customs Regulation (Prohibited and Restricted Goods) (Consolidation) (Amendment) Order. Permits are currently issued but only to registered exporters.

Cess

The imposition of a cess on the exportation of certain products may appear akin to an ‘export duty’. The Meat and Livestock Act (CAP 214) provides for the imposition of a ‘cess’, i.e. a monetary imposition raised under section 21 of the Act,²³ which is applied to all cattle sold to butchers or sold for export. The Act expressly stipulates the amount of cess to be paid on cattle for export until such time as determined otherwise by the Association with the approval of the Minister. The rates of cess approved by the Minister must be published in the *Gazette* before the start of each financial year. The butcher is responsible for the collection of cess from the producer and its payment to the slaughter house operators or such other person as designated by the Minister. The cess is paid into the fund of the Association and used to defer some of the expenses incurred by the Meat and Livestock Commission in the exercise, discharge and performance of its powers, functions and duties under the Act and the approved expenses of the Association. The budget of the Commission and the Association are approved by the Minister.²⁴

²²Reports suggest that the imposition of a duty was not successful in curbing the illegal activities in the scrap metal sector and a moratorium on the issuance of licences was instituted in September 2008; see My Government Services, The Belize Government Official Portal, “New guidelines for the exportation of scrap metals”, <http://www.belize.gov.bz/ct.asp?xItem=432&ctNode=345&mp=27>

²³ See Meat and Livestock Act (CAP 214), section 2, ‘Interpretation’.

²⁴ See Meat and Livestock Act, sections 21 & 22.

Our consultations confirm that for meat, the cess is charged on all producers, whether or not members of the Belize Livestock Producers Association (BLPA). There are varying charges for meat for domestic slaughter and (higher charges for) meat for export; additionally, no sales tax is charged.

The above description of the cess on cattle suggests that it is a charge which is imposed, the amount determined and gazetted, and the sums collected expended in a manner approved by the Minister, similar to a tax. In so far as the cess on exports is greater than the cess on cattle consumed locally, it could be seen as a tax contingent on exportation and therefore arguably an 'export tax'. The persuasiveness of this argument, however, is significantly diminished in light of recent jurisprudence addressing the Citrus (Processing and Production) Act (CAP 277) discussed below. However, it should be noted that there are some significant differences between the cess imposed under the Meat and Livestock Act and that applied under the Citrus (Processing and Production) Act and Sugar Industry Act.

The Citrus (Processing and Production) Act (CAP 277) provides for payment of a cess per box levied by the Citrus Growers' Association (CGA) in accordance with section 38 of the Act. The cess is fixed by a Committee which provides notice to every member of the Association at the beginning of each year. Ministerial approval is only required where the cess exceeds the rate stated in the Act. The Association collects cess²⁵ which is charged on citrus delivered to the factory and it is applied for research purposes and to meet the expenses of the Association.²⁶ There is nothing in the Act to suggest any differential treatment between the cess imposed on citrus sold locally and that which is exported. However, in our consultations it was explained that there is a variation in the cess levied on fruit for local consumption and fruit for export.

The Citrus (Processing and Production) Act (CAP 277) is under review following a successful constitutional challenge to its validity in *H.T.A. Bowman Ltd et al vs. The Attorney General of*

²⁵ See Citrus (Processing and Production) Act (CAP 277), section 18(5)(b).

²⁶ See Citrus (Processing and Production) Act, section 38.

*Belize and the Citrus Growers Association of Belize and Citrus Products of Belize Ltd.*²⁷ The Supreme Court found the Citrus (Processing and Production) Act to be unconstitutional as it “allows the CGA as a private association to benefit from the compulsory acquisition of property belonging to other private individuals without compensation.”²⁸ The Supreme Court also rejected the argument advanced by the CGA that the cess was indeed a tax:

“The cess is not a tax, rate or due imposed by government for a public purpose. It is a sum of money deducted from money belonging to individual growers by the CGA and used for research and for meeting the running expenses of the CGA.”²⁹

The ruling of the Supreme Court on the cess imposed under the Citrus Processing and Production Act underpins recent challenges to the Sugar Industry Act. It should be noted that the action brought against the Attorney General and Belize Cane Farmers Association has been stayed pending the undertaking of the Government to amend the Sugar Industry Act.³⁰

The Sugar Industry Act (CAP 325) entered into force in September of 2001. It repeals three earlier enactments while retaining key features of the repealed legislation; reference is made, in particular to the imposition of a cess and export levies in the context of the Sugar Cane Industry (Control) Act (CAP 283); the Sugar Cane Farmers Association Act (CAP 325); and the Sugar (Special Funds) Act (CAP 219). The application of the cess under the Sugar Industry Act is somewhat similar to the Citrus Processing and Production Act.³¹ The proposed amendments to the Sugar Industry Act, and section 53 in particular, would remove any reference to the cess and replace this with “membership fees;” participation in the Sugar Cane Farmers Association has also been made voluntary. The cess, as such, is clearly no longer a concern in the context of the Sugar Industry Act.

²⁷ See Claim No. 93 of 2007 (Supreme Court of Belize) and Claim No. 730 of 2009.

²⁸ Claim 93 of 2007 at para 20.

²⁹ Claim 93 of 2007 at para 22.

³⁰ See *Magana, Bustillo, Santos, Nicholson, Campos and Toledano vs. AG and Sugar Cane Farmers Association*, Claim No. 354 of 2009, Order of the Hon. Justice Oswald Legall (2 March 2010). The undertaking concerns the amendment of sections 2, 17, 18, 19 and 53 and repeal of section 38 of the Sugar Industry Act.

³¹ But note that section 53 of the Sugar Industry Act makes no distinction as to whether the product is for local consumption or export. As such, the provisions on the cess even before the recent challenges appeared less relevant than in the case of citrus

Part V of the Sugar Industry Act which establishes the Sugar (Industry Development) Fund and Sugar (Labour Welfare) Fund imposes a levy on all sugar manufactured for export. As sums charged are contingent on production for export this would seem to be an export tax. During our consultations there was some discussion as to whether the levies are imposed by the Sugar Association as opposed to the Government, which would merit an analysis similar to that of the Supreme Court in *H.T.A. Bowman Ltd et al.* However, it is noted that the proposed amendments to the Sugar Industry Act arising from recent court challenges do not suggest any changes to the imposition of the levy. The levy, if applied in accordance with the statute, is collected by the Government. As it is contingent on production for export, this would be in the nature of an export tax. As above-mentioned, Belize has not notified that it applies any export taxes although several pieces of ‘outdated’ legislation provide for such taxes which are not in fact imposed. The provision for the imposition of a levy on sugar manufactured for export should be reviewed in the context of the recommended repeal of outdated legislation imposing export duties. **This is one of the suggestions made in the attached Implementation Schedule.**

The application of the cess is a ‘grey measure’ – so to speak – that has been effectively clarified by recent rulings of the Belize Supreme Court. The legislation governing the citrus and sugar sectors are under review and it may be anticipated that the Meat and Livestock Act will also be examined. As such, the imposition of the cess would not seem to merit further attention herein.

Special Flexibility Measures

Article 16 of the EPA – Mechanism for all CARIFORUM States

It has already been noted that Article 16 of the EPA provides a transitional period for the phase out of ‘irregular’ customs duties which are not covered by Article 11 of the EPA under certain conditions. Belize has notified the RRD as one such measure. Paragraph 6 of Article 16 provides additional flexibility where a country is facing serious difficulties in respect of imports of a given product. The provision allows Belize to request a review by the CARIFORUM-EC Trade and Development Committee (TDC) of its tariff commitments under the EPA with a view to possibly

modifying the time schedule for reduction or elimination.³² If the TDC is unable to reach a consensus within thirty (30) days of the application to review the timetable, Belize would be entitled to suspend the timetable provisionally for a period up to one year.

Article 17 of the EPA – A Special Mechanism for CARICOM LDCs, Haiti and Guyana

In addition to the possibility of modifying the time schedule for reduction or elimination of tariffs, the EPA opens the door for certain CARICOM Members, including Belize, in light of their special development needs, to modify their commitments on the level of customs duties stipulated in Annex III as may be necessary. There are two provisos: 1. any such modification may not result in the EPA not meeting the requirements of Article XXIV of the GATT 1994 (particularly as regards the liberalization of ‘substantially all trade’); and 2. an adjustment of the customs duty commitments relating to other products imported from the EC may be required, as appropriate.³³

Neither of the above-mentioned measures requires any special implementing legislation or regulations in contrast with the trade policy tools available under Chapter 2 discussed immediately following. Nevertheless, the provisions are highlighted as possible mechanisms which may be utilized in the process of phasing-in appropriate trade policy reforms with a view to full implementation of the EPA.

II. TRADE DEFENCE INSTRUMENTS

The EPA permits the use of WTO-compatible antidumping and countervailing duty measures,³⁴ and WTO Safeguards³⁵ applying non-preferential rules of origin. Provision is also made for the use of a special EPA safeguard mechanism.

³² Note that any such modification shall not lead to the time periods in the schedule for which the review has been requested being extended in respect of the product concerned beyond the maximum transitional period for duty reduction or elimination for that product as provided for in Annex III.

³³ Note that the EPA specifically addresses the need for cooperation assistance in terms of fiscal reform to assist in the shift from tariffs and other duties and charges (ODCs) to other indirect taxes; see EPA, Article 22.

³⁴ See EPA, Article 23; note that Article 23(3) provides that where a regional or sub-regional authority imposes antidumping or countervailing duty measures on behalf of two (2) or more CARIFORUM countries on a particular product there must be a single form of review and single appeal. Additionally, the national authority should not apply antidumping or countervailing duty measures to a product which falls within the scope of a similar measure applied by a regional authority; see Article 23(4).

Article 25 of the EPA allows Belize to take action to protect its domestic industry where increased imports cause serious injury or there are ‘disturbances’ in a sector of the economy or ‘disturbances’ in the markets of competing agricultural products. In such instances the EPA allows the use of one or more of the following measures: temporarily suspending further tariff liberalization, increasing tariffs to the MFN level, or introducing tariff quotas (TRQs).³⁶ It should be noted that Article 40 of the EPA in recognition of the significant challenges faced by CARIFORUM producers in the agriculture, food and fisheries sectors and to consumers, provides an undertaking for the Parties to consult and further extends the use of the Article 25 EPA safeguard mechanism for food security purposes.

The trade defence mechanisms of the EPA require appropriate legislative action to facilitate their implementation in accordance with the rules. The Government of Belize received technical assistance from the Commonwealth Secretariat on the possible establishment of WTO-compatible safeguards, antidumping and countervailing duty measures and are awaiting the Consultant’s final report. While it is possible that a national antidumping countervailing duty and safeguards agency could be established (for example, in conjunction with a competition authority), Belize is principally looking towards CARICOM for the development of a regional approach to the implementation of trade remedies.³⁷ Senior Officials stressed the practical difficulties faced by a small economy such as Belize, given the resource constraints – human and financial. They further noted the length of time which it takes to complete an antidumping or countervailing duty investigation and expressed the view that given the small profit margins

³⁵ See EPA, Article 24 – referring to Article XIX of the GATT 1994 and the Agreement on Safeguards as well as Article 5 of the Agreement on Agriculture. Note that the EC Party shall not impose such measures against CARIFORUM countries for an initial period of 5 years from the entry into force of the EPA. This will be reviewed in the TDC at least 120 days before the expiry of the 5 year period.

³⁶ Note that Article 25(5)(b) of the EPA provides that for an initial period of ten (10) years after entry into force of the EPA, a CARIFORUM State may take safeguard measures where imports from the EC cause or threaten to cause disturbances to an infant industry.

³⁷ Article 74 of the Revised Treaty of Chaguaramas provides for the harmonization of laws and administrative practices with respect to dumping and subsidies and countervailing measures. Towards this end a Draft Model Antidumping Law has been prepared. Our consultations reveal that Belize has participated in discussions regarding a possible CARICOM model Institutional and Organizational framework to assist Member States to design and deliver training programmes and empower Member States to effectively maintain surveillance and take enforcement action against dumped and subsidized imports. Belize has expressed an interest in hosting this regional institution.

which typify the operating conditions of Belizean companies, it was likely that they would be forced out of the market during the course of any such investigations.

The resource constraints identified by Senior Officials pose significant hurdles to the implementation of effective trade defence mechanisms in Belize. Nevertheless, consideration should be given, at a minimum, to establishing appropriate regulations to implement the special safeguard mechanism available under Article 25 of the EPA. **This is one of the recommendations included in the attached Implementation Schedule.**

III. NON-TARIFF MEASURES

The EPA follows WTO rules in proscribing certain non-tariff barriers.³⁸ Article 27 of the EPA mirrors in part Article III of the GATT 1994, i.e. the national treatment clause,³⁹ and proscribes, *inter alia*, “treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use”.⁴⁰ Article 26 of the EPA provides a general prohibition on quantitative restrictions whether made effective through various measures including import licenses; the provision is modelled on Article XI.1 of the GATT 1994.

Belize’s import licensing regime is viewed by some Senior Officials and members of the private sector as an indispensable tool in the implementation of Belize’s trade policy. Attempts to reform the regime in accordance with WTO rules have seen marginal success with the apparent removal of six (6) products from the list of some twenty-eight (28) product categories covering one hundred and twenty-three (123) tariff lines subject to mostly non-automatic licensing requirements. It is widely perceived that Belize uses import licensing to shield domestic

³⁸ Note that the rules on non-tariff measures also apply to ‘excluded products’ and extend to goods originating in the Dominican Republic by virtue of the regional preference clause, i.e. Article 238, which takes effect two (2) years after signature for Belize.

³⁹ Note that Article 27(1) which addresses national treatment on internal taxes and other charges is dealt with in the discussion on customs duties as many of these charges appear to be *de facto* tariffs.

⁴⁰ See EPA, Article 27(2); note that questions may be raised by suggestions (e.g. WT/TPR/S/134 at p.53, para 113) that CFZ businesses that undertake construction projects within the CFZ must purchase at least 15% of the construction materials in Belize. This sort of domestic sourcing/purchasing requirement would breach, *inter alia*, Article 27 of the EPA, Article III of the GATT 1994 and the WTO Agreement on Trade-Related Investment Measures (TRIMS).

producers from external competition: for example, the 2010 WTO Trade Policy Review Report observes: “[a]most all licences are non-automatic and are in place to control the supply of imports, and thereby to protect domestic products.”⁴¹

Our consultations raised several questions about Belize’s import licensing regime. It was confirmed that licences are only automatically granted for molasses, jams and jellies (and pepper sauce jams only), animal feed, fuel (petroleum products), yachts and other vessels, furniture of cane, osier or similar material, lumber and articles made of wood. CARICOM countries are exempt from import licences with a few exceptions: flour; flour made of durum wheat; aerated beverages; chairs and seats made of wood; other furniture made of wood for use in offices, kitchens, schools, churches, laboratories; beer; oxygen; acetylene; toilet paper; paper bags and rice.⁴²

The Supplies Control (Import/Export) Regulations makes it an offence for any person to import or attempt to import into, or export or attempt to export from Belize any of the goods listed in the First and Second Schedules of the Regulations respectively, save under or in accordance with the provisions of a licence.⁴³ No published criteria exist for the evaluation of licence applications. As such, the regime is non-transparent and appears to provide for the grant of non-automatic licences on a discretionary basis.

The EPA requires that where an application for a licence has been rejected, the applicant should have the right to know the reasons and to file an appeal against the decision. Article 32 of the EPA further requires, *inter alia*, that all legislation, procedures etc be made publicly available and best practices adhered to. These substantive and procedural requirements are extended to imports from CARIFORUM countries under the Regional Preference Clause.⁴⁴

⁴¹ WT/TPR/S/238 at p.50, para 47.

⁴² Customs and Excise Belize. Viewed at: http://www.customs.gov.bz/imp_caricom.html#. Note also that import licences are automatically granted for products from Guatemala covered by the Belize/Guatemala Partial Scope Agreement.

⁴³ Note that an exception is made for goods imported from CARICOM. Note also that other requirements for licences and permits are contained in the Customs Regulation (Prohibited and Restricted Goods)(Consolidation) Order. These appear mainly to be applied for purposes of national security, public health and safety, sanitary and phytosanitary measures and preservation of cultural heritage or the environment

⁴⁴ See EPA, Article 238.

Despite the seemingly limited success at reforming the regime to date, renewed efforts are underway to develop guidelines for the issuing of licences which conform to the WTO Import Licensing Agreement. Difficulties, however, may be anticipated with respect to sensitive products, particularly in the agricultural sector. A way forward must be found by the Belizean Authorities in consultation with the private sector.

As above-noted the Supplies Control (Import/Export) Regulations also mandates that exports of certain products require a licence, regardless of their destination. Licences for beans and sugar are automatic; for all other products – live animals, fish, crustaceans and molluscs, logs and lumber, and citrus fruit – the Supply Control Unit must generally consult with the government body or association responsible for the product before granting the licence.

The Supplies Control Act (Cap. 293) provides the legislative authority for the implementation of various restrictive measures administered by the Supplies Control Unit.⁴⁵ The Supplies Control (Import/Export) Regulations discussed above, and the Supplies Control (Distribution of Rice) Regulations and Supplies Control (Prices) Regulations potentially raise concerns as regards their compatibility with the EPA and WTO rules.

Our consultations revealed that the Government of Belize has initiated a comprehensive review designed to reform the principal act and subsidiary regulations on licensing with the objective of ensuring transparency and equity in the administration of the regime. A Task Force comprising representatives from the Ministry of Economic Development, Commerce, Industry and Consumer Protection, Customs, BAHA, the Directorate for Foreign Trade, Ministry of Agriculture, and the Chamber of Commerce, has been established to formulate appropriate recommendations for reform. It is suggested that draft revisions of the legislation and regulations have been prepared and an appropriate Cabinet Memorandum will be submitted to seek approval for the proposed changes.

⁴⁵ Several agricultural products, including sugar, bananas, and citrus are also subject to licensing requirements under specific laws.

It is unclear whether the proposed reforms extend to the Supply Control (Distribution of Rice) Regulations and the Belize Marketing and Development Corporation (BMDC). The Supply Control (Distribution of Rice) Regulations makes it an offence to sell or distribute rice wholesale without the prior authority of the Minister. The Regulations further provide that the Minister, where s/he believes the circumstances so justify, may take over any stocks of rice in possession or control of any producer, manufacturer or trader to ensure the equitable distribution thereof. The BMDC is the sole importer of rice products in Belize. It therefore has been granted exclusive or special privileges with respect to its purchases and sales. In accordance with Belize's multilateral obligations, all purchases and sales should be made solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other such conditions.⁴⁶ Should the BMDC exercise its privileged status in a manner which distorts trade, this would be in breach of Belize's EPA and WTO commitments.⁴⁷

Our consultations confirm that the BMDC attempts to source imports from the most competitive suppliers. The profits from imports sold on the local market (particularly onions for which it is also the sole importer as licences are not granted to any other entity) are used to subsidize domestic producers of rice. One of the functions of the BMDC is therefore to operate essentially as a vehicle through which the Government of Belize provides 'domestic support' to the local rice industry. The provision of such support may be quite legitimate. As a WTO developing country Member Belize is permitted to provide product-specific support up to 10% of the total value of production of the product during the relevant year.⁴⁸ It appears, however, that as the sole importer of rice and onions BMDC provides further protection to the domestic market through restricting imports when sufficient supplies are available locally.⁴⁹ This would suggest that the BMDC is used to protect the domestic industry in a manner which distorts trade contrary to Belize's WTO and EPA commitments.

⁴⁶ See GATT 1994, Article XVII.

⁴⁷ See also the discussion on Title IV, Article 129.

⁴⁸ See WTO Agreement on Agriculture, Article 6 (4) establishing special *de minimis* levels for developing countries.

⁴⁹ Senior Officials noted that the BMDC conducts local marketing for farmers in the onion and rice sectors. It is the sole importer of onion from Holland, Mexico and USA; importation begins in the month of July and closes to mid February. The BMDC purchases paddy from Toledo Farmers which is milled, packaged in 20lb, 50lb and 100lb and then distributed to each depot for distribution to the supermarket. However the option is there for BMDC to export rice for the export market and import when there is a shortage. The BMDC has been given an exclusive licence to import rice and onions when there is a shortage in the country. Note however that any producer in his or her capacity can export rice to other countries not solely the BMDC.

The Supplies Control (Prices) Regulations specify administrative prices or permissible mark-ups for several products.⁵⁰ The Regulations provide the maximum prices that may be applied to certain goods. Maximum prices are expressed either as mark-ups at the wholesale or retail levels (or both), or as absolute prices. The Supply Control (Prices) Regulations have two separate schedules – one for imported produce and another for domestically produced goods. In certain instances there is an apparent differentiation between imports and domestic products in the level of permissible mark ups which may affect competitive opportunities. Although in the past the Supplies Control Unit has not actively monitored price controls (except in the case of rice, beans, sugar, and fuel), more recently funds have been provided to undertake more active monitoring of the prices of goods subject to price controls due to certain price increases. The Unit, however, remains most active in monitoring the traditional short-list of products afore-mentioned. No enforcement action, however, has been taken.⁵¹

The Supplies Control Act and the regulations thereto raise a number of concerns with respect to Belize’s compliance with its EPA obligations, particularly as regards the licensing regime, the operation of the BMDC and the implementation of price controls. The restructuring of these measures will require fundamental trade policy reforms. The Supplies Control Unit proposed review of the legislation and regulations appears timely. **The need for extensive revision of the Supplies Control Act is one of the issues addressed in the attached Implementation Schedule.**

Agricultural export subsidies

Article 28 of the EPA imposes certain disciplines on the use of export subsidies with respect to agricultural products covered by Annex I of the WTO Agreement on Agriculture. The provision, however, is without prejudice to the application of Article 9.4 of the WTO Agreement on Agriculture and Article 27 of the WTO Agreement on Subsidies and Countervailing Measures.

⁵⁰ Note that no price controls are applied to goods and services sold or supplied within a Commercial Free Zone; see section 25(3) of the Free Zone Act of 2005 (CAP 278).

⁵¹ See Also Article III.9 of the GATT 1994 9, where Members “recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.”

Our consultations reveal that Belize’s Fiscal Incentives Programme, Export Processing Zone Programme and Commercial Free Zone Programme benefit, *inter alia*, agricultural products as classified in Annex I of the WTO Agreement on Agriculture; reference is made, in particular, to the agro-industry and food-processing sub-sector. Such measures are not covered by Article 27 of the WTO Agreement on Subsidies and Countervailing Measures which benefits industrial (as opposed to agricultural) products. However, they may be covered by Article 9.4 of the WTO Agreement on Agriculture which permits developing countries such as Belize, during a transitional period,⁵² to provide subsidies to reduce the costs of marketing exports of agricultural products (including handling, upgrading and other processing costs), and the costs of internal as well as international transport and freight. The afore-mentioned programmes therefore appear to be EPA-compliant for the time being, i.e. during the respective transitional periods provided under the WTO rules. Thereafter, appropriate reforms would be required.

IV. CUSTOMS AND TRADE FACILITATION

Chapter 4 of the EPA on Customs and Trade Facilitation builds on the relevant WTO rules and are similar in many respects to some of the proposals which have been advanced in the Doha Round negotiations on trade facilitation; they are essentially “WTO plus”.

The EPA and the WTO Agreements

The EPA reaffirms Belize’s obligations under the WTO Agreements, i.e. the GATT 1994, in particular, Articles V, VIII and X, and the WTO Customs Valuation Agreement.⁵³

WTO Customs Valuation Agreement

The Customs and Excise Duty Act adopts the prescribed WTO methodology for customs valuation. There had been some suggestions that reference prices were generally used,⁵⁴ however Senior Customs Officials refuted this. The use of reference prices would run contrary to Article

⁵² See paragraph 6 of the Hong Kong Ministerial Declaration adopted on 18 December 2005, which allows developing countries to provide subsidies for domestic and international freight charges, handling, processing charges under Article 9.4 of the Agreement on Agriculture for five years after the end date for elimination of export subsidies (which should be completed by the end of 2013).

⁵³ See EPA, Article 33

⁵⁴ *E.g.* WT/TPR/S/134 at p. 28, para 19.

7(2)(g) of the WTO Customs Valuation Agreement - a provision which is both reflected in the Customs and Excise Duty Act (Third Schedule) and affirmed in Article 33 of the EPA.⁵⁵

During consultations Customs Officials stated that the transaction value is in fact used in ninety-five percent (95%) of cases. The other five percent (5%) of cases involved gifts or other similar items where Customs was required to establish the cost.⁵⁶ Additionally, it was explained that with regard to the exchange rate used in valuations, Customs receives a daily rate sheet from the Central Bank of Belize which gives current indications of exchange rates against the US dollar. Customs actually uses (foreign currency) exchange rates as determined every Monday; this is an average weekly rate (versus the daily rate) and this is published. The exchanges with Customs Officials were informative and largely reassuring.

Concerns, nevertheless, remain with respect to section 17 (3)-(5) of the Customs Regulations Act which operates, “notwithstanding any other Act”. This provision authorizes the Comptroller to take steps for determining the value of goods which will not necessarily provide a valuation which accords with WTO rules. Section 17 of the Customs Regulations Act therefore undermines the positive prescriptions of the Customs and Excise Duty Act and should be amended. **This is one of the recommendations included in the attached Implementation Schedule.**

⁵⁵ See EPA, Article 33 providing that the Agreement on the Implementation of Article VII of the GATT 1994 (i.e. the Customs Valuation Agreement) shall govern customs valuation rules applied to trade between the Parties. Annex III, paragraph 2 of the WTO Customs Valuation Agreement is an S&D treatment provision which allowed Developing countries that used minimum values “to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.” Belize, however, made no such reservation. Article 17 of the Agreement recognizes that authorities may question “the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.” Additionally, the Decision Regarding Cases Where Customs Administrations Have Reason to Doubt the Truth or Accuracy of the Declared Value, adopted by Ministers in Marrakesh, 15 April 1994 – provides that where there are reasonable doubts about the truth or accuracy of the declared value, the authorities may (subject to the provision for an appeal), after receiving further information, or in the absence of a response, deem that the customs value cannot be determined by the transaction value method and determine the value by the alternative methods (in the order established) in the Agreement.

⁵⁶ It was noted that in the case of used motor vehicles where the transaction value is questioned and additional proof in relation to the value cannot be furnished or where used vehicles are imported to which there is no transaction value (e.g. because it is a gift or privately owned) used vehicle guides and/or internet searches are utilized in consultation with the importer. In instances regarding privately owned vehicles where the owner can provide the transaction document a yearly depreciative process is used whereby the value is reduced by 20% for the first year and 15% for each subsequent year thereafter.

Articles V & X of the GATT 1994

The EPA requires that all laws and procedures are to be published and any changes made thereto made available to economic operators in advance. The principles articulated in the EPA (like proposals advanced in the Doha negotiations on trade facilitation) build on Articles V and X of the GATT 1994 which provide, respectively, for ‘Freedom of transit’ (requiring, among other things, that goods in transit shall not be subject to unnecessary delays or restrictions) and the ‘publication and administration of trade regulations’, including laws, judicial decisions and administrative rulings (with the obligation of, *inter alia*, administering them in a uniform, impartial and reasonable manner with the provision for prompt review by an independent authority). Additional obligations imposed in the EPA require that that customs and related requirements and procedures follow best practices, remain as least trade-restrictive as possible,⁵⁷ and draw upon international instruments and standards applicable in the field of customs and trade.⁵⁸

A number of specific principles on which customs legislation and procedures shall be based are identified in the EPA, including:⁵⁹

- The use of modern customs techniques, risk assessments, the provision of additional facilitation for traders with a high level of compliance, and post release controls;
- The use of a single administrative document or electronic equivalent and progressive development of systems based upon Information Technology;

⁵⁷ See EPA, Article 32.

⁵⁸ See also EPA Article 35 which makes specific reference to the revised Kyoto Convention on the simplification and harmonisation of customs procedures, the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO data set and the HS Convention. Note that the prescriptions of the EPA parallel proposals advanced by the EC and other WTO members in the Doha negotiations on trade facilitation. The EC has advanced proposals to, *inter alia*, eliminate the requirement for pre-shipment inspection and remove the mandatory requirement on the use of customs brokers (also requiring that rules on future licensing of brokers be non-discriminatory and proportionate; e.g. TN/TF/W/108, *Communication from the European Communities, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*, 6 June 2006); expedite clearance for ‘authorised traders’ based on reliability criteria (for compliance) which would not be arbitrary or discriminatory in application (e.g. allowing for SMEs) and utilize risk management techniques (providing for more rapid release and clearance of goods, less physical inspections and facilitated documentation requirements); e.g. TN/TF/W/109, *Communication from the European Communities, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Switzerland*, 6 June 2006. The importance of such measures may be underscored in relation to goods in transit where facilitation would suggest more limited inspections, the use of risk management techniques, non-application of quality controls and technical standards (unless there is the risk of contamination) and reduced administrative burdens.

⁵⁹ See EPA, Article 31, in particular paragraphs (2) & (3).

- Implementation of transparent systems which enhance predictability for economic operators;
- Implementation of measures to facilitate transit movements;
- The non-requirement for the mandatory use of independent customs brokers;
- Avoiding the mandatory use of pre-shipment inspections or their equivalent;
- Ensuring non-discriminatory treatment across-the-board;
- Implementation of binding rulings on customs matters, including a right of appeal against customs administrative actions, rulings and decisions affecting imports, exports or goods in transit;
- Avoiding excessive penalties for minor breaches of customs regulations or procedural requirements.

It should be noted that the prescribed measures to expedite customs clearance and the expressed desire to promote trade facilitation are made subject to legitimate public policy objectives, including the prevention of fraud and other security concerns.⁶⁰

The Customs Regulation Act implements some of the specific principles set out in the EPA, such as the preference for utilizing a Single Administrative Document (SAD),⁶¹ the non-requirement for the mandatory use of independent customs brokers,⁶² the non-requirement for pre-shipment inspections and provision for appeals against administrative rulings to the Supreme Court⁶³. In certain other areas further work is required.

It is noted, for example, that while there are expedited customs clearance procedures for perishable goods, no additional facilitation is provided for traders with a high level of compliance. The goods are cleared through customs on presentation of the customs declaration, and on payment of customs duties plus a deposit of either one-and-a-half or twice the value of

⁶⁰ See EPA, Article 29(3).

⁶¹ See the Customs Regulation (Single Customs Declaration Form) Order.

⁶² See also the Customs Regulation Act, section 27 which provides for entry and clearance by the importer defined in section 2 of the Act as including and applying “to any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof”. Importers need to apply for an importer’s code and brokers for a declarant code before they can clear customs.

⁶³ See the Customs Regulation Act, section 52.

the duty. A post-delivery audit is undertaken by the customs authorities. There is little use of risk assessment techniques (resulting in almost 100% documentary validation and almost full documentary and physical check at the cargo delivery points);⁶⁴ goods in transit are also subject to the same customs procedures as regular imports.

Consultations with Customs Officials revealed that there are sixty (60) different steps to importing a product into Belize. It was explained that the lengthiest process is the valuation and that in spite of the apparent complexity due to the established short timeframes it is possible to clear a product at a border station within twelve (12) hours.

With respect to the requirement to put in place a system of binding rulings on customs matters, including tariff classification and rules of origin, our discussions focused on section 52 of the Customs Regulation Act which establishes a Customs Tariff Board in charge of settling disputes related to the valuation or classification of imports. The Customs Tariff Board, however, is not operational. The clarifications received suggest that a committee, i.e. the Customs Classification Committee, has been established and is very active.

The process, however, is an informal one and there are no internal guidelines setting out procedures or time-frames to be followed. Where disputes arise they are normally dealt with by the immediate supervisor, i.e. the relevant senior examiner and then in the following sequential order if not resolved; Collectors of Invoice or Valuation, the Assisting Comptroller and the Comptroller. In certain instances classification disputes have been resolved by the Customs Classification Committee which is convened by the Comptroller of Customs and comprised of customs officials, a member of the Brokers Association and the respective importer (and or his representative) that is a party to the dispute. If a complainant is dissatisfied with the decision of the Committee an appeal may be made to the Supreme Court.⁶⁵ Appeals from the decision of the Comptroller of Customs may also be made to the Financial Secretary of the Ministry of Finance before they are pursued before the courts. All disputes (whether related to the classification or valuation of goods) have been resolved administratively.

⁶⁴ See Belize Customs and Excise Department online information; viewed at: <http://www.customs.gov.bz/download/modernization.pdf>.

⁶⁵ WTO Doc. G/VAL/W/183, 4 September 2009.

It is anticipated that the Customs Tariff Board will be established in the context of the new Customs legislation. It is expected that negotiations on the CARICOM Draft Model Customs Bill will be concluded in 2010 which would allow for the enactment of new Customs legislation in 2011.

During the consultations questions were raised about the nature of certain penalties imposed by the Act. The EPA requires that excessive penalties should be avoided for minor breaches of customs regulations or procedural requirements. What is 'excessive' and the definition of a 'minor breach' is not expressly defined. It is noted that the Customs Regulation (Amendment) Act of 2005 increases the level of penalties applicable for customs offences. However, the focus of the legislation is with fraudulent cases. Other provisions of the Customs Regulation Act could appear excessive depending on their application in practice.⁶⁶

The Belize Government has identified certain inefficiencies in customs procedures stemming in part from capacity constraints (both human and financial resources): these include difficulties in monitoring the movement of transit cargo between offices; an absence of a computerised system for processing customs documentation and generally out-of-date computer equipment. It was noted, however, that Belize is receiving technical assistance on Customs reform and modernization. A phased implementation of ASYCUDA World – a computerized customs system – should begin in 2011. This will facilitate the customs clearance process through allowing traders to submit customs declarations on-line; assess duties and taxes themselves; and, make payments online. With the implementation of ASYCUDA new guidelines will be circulated and these will be included in new Customs legislation. It was noted that CARTAC is also providing training on general risk management procedures. This will also be facilitated by the implementation of ASYCUDA World. **Note is taken of this in the attached Implementation Schedule.**

⁶⁶ *E.g.* section 20 of the Customs Regulation Act which empowers the Comptroller to retain the goods and pay the importer an amount equal to the declared value where s/he holds the view that the declared value is not the true value.

Protocol II – a cooperation framework

Chapter 4 of Title I establishes, *inter alia*, a cooperation framework on customs-related matters. Exchange of information and mutual assistance is to take place in accordance with Protocol II.⁶⁷ The implementation of Protocol II is entrusted to Customs authorities assisting one another in, *inter alia*, preventing, investigating and combating operations in breach of customs legislation.⁶⁸ A comparison may be made to the framework for cooperation among customs authorities where there is doubt about the truth or accuracy of customs declarations which has been proposed in the WTO Doha Round of negotiations.⁶⁹

In the context of the EPA the obligation on mutual administrative assistance is mandatory and failure to provide administrative cooperation and/or irregularities or fraud⁷⁰ could lead to the suspension of trade preferences.⁷¹ Additionally, a condition precedent to benefiting from the preferential access provided for under the EPA is having in place the necessary arrangements, structures and systems required for the implementation and enforcement of the customs rules and procedures laid down in Protocol I.⁷²

⁶⁷ See EPA, Article 30.

⁶⁸ Note that the provisions for mutual assistance between Customs authorities is without prejudice to the rules governing mutual legal assistance in criminal matters and does not extend to assistance to recover duties, taxes or fines; see EPA Protocol II, Article 2. The assistance is also subject to certain exceptions relating to a State's sovereignty, public policy, security or other essential interests or the violation of industrial, commercial or professional secrets; see EPA Protocol II, Article 9.

⁶⁹ *E.g.* TN/TF/W/123/Rev.2, *Communication from India, South Africa and Sri Lanka*, 10 March 2008; TN/TF/W/154, *Communication from Canada*, 10 March 2008.

⁷⁰ See also EPA, Article 20(3) – providing that “For the purpose of this Article a failure to provide administrative cooperation shall mean, *inter alia*: (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned; (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin; (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

“For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.” (added emphasis)

⁷¹ See EPA, Article 20(4) requiring notification to the TDC. If the consultations do not lead to a solution within three (3) months, a Party is allowed to suspend preferences for six (6) months and this can be renewed. Any suspension of preferences must be limited to that which is necessary to protect the financial interests of the affected State. Article 20(5) provides for the publication of a notice to all importers of a finding of non-cooperation, irregularity or fraud in official journal. Article 20bis allows recourse to a mediator to deal with differences under Article 20(2-5). Note also EPA, Article 21 providing that administrative errors in certification of origin which have consequences in terms of import duties should be brought to the attention of the TDC.

⁷² See EPA, Protocol 1, Article 31 on ‘Administrative conditions for products to benefit from the Agreement’; see also EPA, Article 15 on duty-free preferential treatment for Belizean goods entering the EC market.

Protocol I required Customs procedures

In accordance with Protocol I, all Belizean goods exported to the EC must be issued with either a movement certificate EUR.1 or, in certain cases, an "invoice declaration" given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified.⁷³ Although, the Customs and Excise Department is responsible for issuing all origin certificates, the EPA makes provision for an 'approved exporter' to certify the originating status of a product.⁷⁴ This could allow for arrangements similar to those which exist for exports to the United States under the Caribbean Basin Initiative (CBI) where the Belize Chamber of Commerce and Industry is also authorized to issue certificates. Our consultations suggest that no decision has been taken on whether to make use of this additional flexibility; it was noted that Belize is waiting on CARICOM to determine a regional approach on this issue.

Protocol I requires that a declaration of proof of origin must be valid for ten (10) months.⁷⁵ There are certain exemptions from the requirement of proof of origin.⁷⁶ The Customs and Excise (Duties Act) Regulations provides that the invoice which accompanies imported products clearly state the country of origin of the goods. The point has already been made that regulations similar to those defining goods of CARICOM origin⁷⁷ must be issued for products originating in the EC and Dominican Republic entering the Belizean market under the EPA. Additionally, for Belizean exporters to benefit from the EPA provisions on cumulation certain steps must be taken including the publication (according to local procedures) of the date on which the cumulation may be applied with the OCTs⁷⁸ and ACP States which meet certain requirements.⁷⁹ Additional supporting documentation,⁸⁰ such as a supplier's declaration, is also required.⁸¹

⁷³ See EPA, Protocol 1, Article 16.

⁷⁴ See EPA, Protocol 1, Article 22.

⁷⁵ See EPA Protocol 1, Article 23.

⁷⁶ See EPA Protocol 1, Article 26.

⁷⁷ See Customs (CARICOM preference) Regulations.

⁷⁸ "OCTs" means the Overseas Countries and Territories as defined in Annex IX of the EPA.

⁷⁹ See EPA, Protocol 1, Articles 3(3)(c) & 4(3)(c).

⁸⁰ See EPA, Protocol 1, Article 28.

⁸¹ See EPA, Protocol 1, Article 27.

Protocol I requires that all relevant documentation be retained by the exporter, supplier, importing and exporting countries for a period of three (3) years for verification purposes which may be carried out at random or based on risk analysis.⁸² The Customs Regulation Act and the regulations made pursuant thereto make no provision for this.⁸³ There is evidence to suggest, however, that some special administrative rules have been established for exports to the EC.⁸⁴ It was also suggested during our consultations that Customs Officials generally retain copies of customs documents for several (approximately seven) years. In this regard it may be noted that Protocol I appears to require Customs Authorities in certain instances to retain original documentation while providing that exporters and suppliers retain copies of the same.⁸⁵

It is noted that both (CARISEC and CARTAC) Draft Model CARICOM Harmonized Customs Bills provide that any importer, exporter, agent, broker, and any other person who conducts business under any customs enactment is required to keep records for [X] years; ‘X’ proposed as being equal to five (5) years.⁸⁶ This stipulation partially addresses Protocol I requirements; significantly, the Protocol’s obligation applies not only to traders and their agents, etc, but also to customs authorities. Establishing a clear requirement in law for exporters, suppliers and Customs Authorities to retain the original or copies of all relevant documentation as appropriate will promote compliance with Protocol I. This could be done through the issuance of regulation to

⁸² See EPA, Protocol I, Articles 29 & 35(2); this includes all appropriate documents proving the originating status of the product and a copy of the invoice declaration – to be retained by the exporter; copies of the declaration and of the invoice, delivery notes or other commercial documents to which this declaration is annexed as well as all appropriate documents proving that the information given on the declaration is correct – to be retained by the supplier; and the completed application forms to obtain a movement certificates EUR. 1, the movement certificates EUR. 1 and invoice declarations submitted to Customs as well as information certificates issued by the Customs Authorities in relation to a supplier’s declaration – to be retained by the Customs Authorities.

⁸³ Section 51 of the Customs Regulation Act provides the Minister with authority to make rules regulating the importation and exportation of goods, e.g. the Customs Regulation (Importation and Exportation by Inland Carriage) Rules, Exportation of Goods in Bond Rules, Customs Regulation (Single Customs Declaration Form), Order, and Customs Invoices Regulations. Some provision is made for the retention of copies of entries and invoices in various circumstances but not as provided for in EPA Protocol I; e.g. Regulation 2 of the Customs Invoices Regulations provides: “2. All invoices and documents in support of particulars declared on customs warrants (commonly called customs entries) on first importation of goods shall be retained by the Comptroller of Customs for a period not exceeding three months from the date of presentation and shall thereafter be returned to the importer or his duly authorised agent.”

⁸⁴ *E.g.* BELTRAIDE online information at <http://www.belizeinvest.org.bz/PDF/Exporter's%20Manual.pdf>. on the use of special forms for exports to be certified by Customs which serves as a certificate of origin.

⁸⁵ *Ibid.*

⁸⁶ *E.g.* section 197 of the 2008 Draft Model CARICOM Harmonized Customs Bill and section 87 of the 2010 Draft Model CARICOM Harmonized Customs Bill which suggests a period of five (5) years; see also the 2010 Draft Customs Regulations, regulation 124 – which would require “every person with an obligation to keep records” to keep these for not less than five (5) years.

that effect pursuant to section 51 of the Customs Regulation Act. **This constitutes one of the recommendations advanced in the attached Implementation Schedule.**

Many other requirements of Protocol I are adequately addressed in the Customs Regulations Act (CAP 49) and subsidiary legislation. For example, the requirement that Customs authorities have the right to call for evidence and inspect accounts and other documents to verify the origin of products⁸⁷ is provided for in the Customs Regulation (Query Notice) Regulations.⁸⁸ Protocol I also explicitly requires that penalties be imposed on any person who gives incorrect information in a document for the purpose of obtaining a preferential treatment for products. The Customs Regulations Act provides for such penalties.⁸⁹

Free Zones

Protocol I requires that special care be exercised in the context of Free Zones to ensure that goods transported through such Zones are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration; where goods undergo treatment or processing a new movement certificate (EUR 1) should be issued at the exporter's request. The Free Zone Act of 2005 (CAP 278) provides for the issuance of Certificates of Origin by the Chief Executive Office of a Commercial Free Zone.⁹⁰ The Export Processing Zone Act (CAP 280) has no similar provision; it does not grant similar authority to the CFZMA to issue Certificates of Origin.

During the consultations questions arose as to whether the Customs Regulations Act provides Customs Officials with sufficient authority to exercise an adequate level of supervision over activities in Free Zones. There were mixed views. Some Senior Officials highlighted the

⁸⁷ See EPA, Protocol I, Article 34(3).

⁸⁸ Regulation 2 authorizes the Comptroller of Customs to issue a Query Notice requiring an importer or his agent to supply further information and particulars etc, where in the course of examining a customs entry s/he determines that further information or clarification is required. Every importer or other person to whom such notice is sent must supply the requisite information. It is an offence to give false information or particulars in response to a Query Notice.

⁸⁹ *E.g.* Customs Regulation Act (CAP 49), sections 59, 111 & 132.

⁹⁰ See Free Zone Act (CAP 278), section 11(1)(h); paragraph 2 of section 11 defines "certificate of origin" as "the document issued by the National Free Zone Authority (NFZA) or any authorized agency in Belize for the purpose of import or export trade, as designating goods and services as originating from Belize subject to regulations made under this Act".

authority provided under the relevant Free Zones legislation.⁹¹ It is noted that the Customs Regulations Act provides Customs Officials with various powers which are exercisable in, *inter alia*, customs areas.⁹² Goods may not be removed from a customs area except in accordance with the customs law.⁹³ The provision for the designation of customs areas and general authority granted to Customs Officials under the Customs Regulations Act appear to provide a sufficient framework within which to operationalize an appropriate level of supervision in CFZs and EPZs.⁹⁴ In spite of some initial reservations which were expressed by some Customs Officials, it is submitted that a general assessment of the regulatory frameworks governing Free Zones in Belize suggests that the ‘special care’ required by Protocol I is provided for under the law. It is unclear, however, whether this has been effectively operationalized in practice.

A detailed review of EPA Protocols I and II by Customs Officials with a view to highlighting areas of perceived weakness or non-compliance should be undertaken. Familiarization exercises for the private sector to raise awareness and encourage full exploitation of the market access opportunities available under the EPA would also be useful. **These general recommendations are included the attached Implementation Schedule.**

⁹¹ *E.g.* sections 19-23 of the Free Zone Act of 2005 (CAP 278). Although section 9 of the Export Processing Zone Act appears to highlight the largely minimal regulation of imports and exports from EPZs (unless destined for the customs territory of Belize), it should be noted that the Customs Department is required to maintain an on-site office at each EPZ to carry out its responsibilities. The Export Processing Zone Regulations also mandate that each EPZ business maintain records documenting the entry, storage, use and exit of all EPZ imports and exports, and provide Customs officials with the authority to inspect the premises and records of any EPZ Developer or EPZ business to ensure compliance with applicable import and export regulations; see Export Processing Zone Regulations, Regulation 8. Regulations 6(3) of the Export Processing Zone Regulations further requires the EPZ Developer to provide the salary of all customs officers necessary for the normal functioning of the EPZ and equip a customs office with furnishing and office equipment, in addition to setting up a security unit to guarantee the safety of goods and persons within the EPZ and ensure that rules regarding the entry, permanence, and departure of persons, vehicles and goods into and out of the EPZ are observed.

⁹² Section 2 of the Customs Regulations Act defines a ‘customs area’ as any place appointed to be a customs area by the Comptroller by notice in the *Gazette*. The Comptroller is further authorized by section 65 of the Act to appoint any suitable building or place as a private warehouse or customs area where goods may be kept without payment of duty on first entry thereof. See also Customs Regulation (Private Warehouse Licensing Fee) Order.

⁹³ See section 28 of the Customs Regulations Act; see also section 2 defining customs law as any law in force at any time within Belize relating to Customs.

⁹⁴ See also sections 64-69 of the Customs Regulations Act.

Harmonized regional customs legislation and regulations

The EPA emphasizes the development of regional customs legislation and procedures and, in this regard, a monitoring role is provided to the Special Committee on Customs Cooperation and Trade Facilitation.⁹⁵

There are currently two Draft Model Harmonised Customs Bills and subsidiary regulations which are the subject of review by Belizean Customs Authorities; it was clarified that one of the draft bills was developed by the CARICOM Secretariat (CARISEC) and a subsequent text was produced by CARTAC in an attempt to further refine the CARISEC model. The earlier 2008 CARISEC text provides greater details in the rules and procedures to be implemented, and thereby would likely promote broader harmonization of best practices. As above-noted, it was suggested that the negotiations on the draft Bill should be completed by the end of 2010, thereby facilitating the adoption of new legislation in 2011.⁹⁶

V. OTHER CHAPTERS

Title I of the EPA includes Chapter 5 on Agriculture and Fisheries, Chapter 6 on Technical Barriers to Trade and Chapter 7 on Sanitary and Phytosanitary Measures (SPS). These chapters do not impose new obligations *per se* which require legislative intervention.

In Chapter 5 CARIFORUM countries commit themselves to adopting and implementing policies and institutional reforms to enable and facilitate the achievement of key objectives of sustainable development and the eradication of poverty, addressing, *inter alia*, food security and responsible fisheries practices. It may be noted that Article 40 which provides a safeguard mechanism available for food security purposes is discussed above in relation to Article 25, i.e. the EPA Safeguard Clause.

⁹⁵ See EPA, Article 34.

⁹⁶ Some of the identified proposed modifications relate to: the creation of a Customs Appeal Board, consultation between the private sector and Government prior to the passage of legislation; a code of conduct for Customs Officers; and certain structural changes including the revision of responsibilities among staff.

In chapters 6 and 7 the Parties reaffirm their commitment to the rights and obligations provided for in the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, respectively. Upon the provisional application of the EPA, Belize designated its contact point for the exchange of information under Chapter 6 and its Competent Authority for the implementation of SPS measures under Chapter 7. It is, nevertheless, understood that information will be channeled principally through regional (versus national) contact points and Competent Authorities.⁹⁷

Belize has made tremendous strides in modernizing SPS regulations, but this is far less evident in the area of technical barriers to trade (TBT). With regard to SPS measures, responsibility for preventing and controlling the introduction of plant and animal diseases and pests into Belize rests with the Belize Agricultural Health Authority (BAHA) established by virtue of the Belize Agricultural Health Authority Act, 2000 (Cap. 211). As such, BAHA is responsible for food safety and animal and plant health.⁹⁸ Discussions with Senior Officials underscore that some work remains to be done with regard to the application of risk assessment techniques, among other SPS measures, and requests have been made for technical assistance and capacity building. Less emphasis in practice on the implementation of technical standards and regulations resulted in more work left to be done in the TBT area.

The main law on standardization is the Standards Act, 1992 (Cap. 295) which established the Belize Bureau of Standards (BBS) as the entity responsible for the preparation and promotion of standards for goods, services, and processes. The Act also created a Standards Advisory Council to advise the Minister on all matters related to standardization.

⁹⁷ See EPA, Articles 49 & 55. The use of regional bodies in the context of a customs union as opposed to national authorities has been advanced in the WTO negotiations on trade facilitation by some small economies as an important measure given their resource constraint; e.g. TN/TF/W/129/Rev.2, *Communication from Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands*, 10 March 2008.

⁹⁸ BAHA's functions include: the provision of animal and plant health and quarantine services; monitoring, preventing, and controlling plant and animal diseases and pests; and regulating and controlling imports of animal and plant products through, *inter alia*, the issuance of import permits.

A review of the few national standards which have been promulgated suggests some minor irregularities;⁹⁹ I refer, for example, to the requirement that whiskey, liqueurs,¹⁰⁰ imported cigarettes and imported beer carry a “Belize Market” label. The basic WTO rule which is affirmed by the EPA¹⁰¹ is that regulations, standards and procedures should not be prepared, adopted or applied with the intention or effect of creating unnecessary obstacles to trade. For technical regulations, this requirement demands that they not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. One legitimate objective mentioned in both the preamble and Article 2.2 of the TBT Agreement is the prevention of deceptive practices. Presumably, this is the intention of the requirement for certain products to carry a “Belize Market” label. But the question may be legitimately raised, why only whiskey, liqueurs, cigarettes and beer? Without a reasonable / rational answer this particular labelling requirement may be described as arbitrary and discriminatory. **The review of the use of the “Belize Market” label is one of the recommendations included in the attached Implementation Schedule.**

Lack of resources and the absence of any accredited laboratory in Belize have limited the BBS’ ability to verify compliance with standards. Conformity checks limited to labelling are carried out after imports have cleared customs. It was suggested that broader compliance measures could only be undertaken with the use of external third party certification from an accredited lab outside of Belize, but this has not been done.

Bringing Belize’s TBT regime in line with best practices will facilitate exports and protect consumers from substandard products (whether imports or locally produced goods). The issue is therefore one of some importance. Note should be taken of the provision in the EPA for cooperation and capacity building in this area.¹⁰²

⁹⁹ See also the standard for pre-packaged foods which provides that “10.1 A processed food that is prepackaged and labelled in English in accordance with the laws or standards in force in Canada, the Caribbean Community, the European Union, or the United States of America shall be deemed to comply with this standard.” The standard appears discriminatory in favour some WTO Members over others. However it is worth noting, particularly in the context of a review of the EPA, that the EC is among those receiving more favourable treatment.

¹⁰⁰ Note that imported liqueurs were not traditionally required to carry a “Belize Market” label. However, during our consultations it was suggested that liqueurs and other similar products have been added to the list.

¹⁰¹ See EPA, Article 44.

¹⁰² E.g. EPA, Article 51.

Our consultations highlighted that a project funded through the TradeCom facility (out of the European Development Fund) should assist in addressing some of the shortcomings of Belize's TBT regime. The project on Institutional Strengthening for the Belize Bureau of Standards was implemented by the British Standards Institution (BSI). The specific project objectives provide for upgrading the legislation on consumer protection and standards as well as providing training for their implementation in accordance with the WTO TBT Agreement and the EPA.

As regards standards, discrete interventions as described in the project documentation include:

- Review and amend existing Policy, Legal and Institutional Framework to strengthen the Standards Unit in line with international best practices.
- Harmonize the upgraded Act with other related Legislation and make recommendations in other areas which require urgent upgrading for compatibility with the new Act.
 - Consideration should be given to ongoing Projects at the Regional level with the of harmonizing Regional Policy on Standards to meet the objectives of the EPA Agreement
- Develop National Standards and Technical regulations/rules.
- Undertake a needs –assessment for the Metrology Unit.
- Provide assistance in establishing a National TBT Trade Committee.
- Provide assistance in establishing a TBT national Notification Point in line with WTO Regulation 10.6, Article 15 and Annex 3C of the Agreement on TBT
- Training will be provided for the Staff of the Unit and other Government stakeholders on the implementation of the new Act.
- Training should also include a Public Awareness strategy for the implementation of the new Act.
 - A Training Workshop will be organized for Private sector actors in matters related to trade information, labelling, standards, standard-type documentation and technical regulations/rules.

The key project interventions have been completed. Support for further capacity building measures is required. Further work is to be undertaken by BBS in the review and revision of established national and regional standards and technical regulations. This will be done in

consultations with the CARICOM Regional Organisation for Standards and Quality (CROSQ) which is designed to promote the development and harmonization of standards, technical regulations and mutual recognition of conformity assessment procedures for goods and services produced in the CARICOM region.¹⁰³ Belizean Authorities indicated that Belize may also seek membership in the International Organization for Standardization (ISO).¹⁰⁴ **Note is taken of this in the attached Implementation Schedule.**

¹⁰³ Belizean Authorities observed that CROSQ is engaged in talks with the American Society for Testing and Materials (ASTM) in developing an MOU with the objectives of: promoting communication between the organizations; avoiding duplication of work efforts where possible; promoting knowledge of the standards development activities of each organization; utilizing the resources of ASTM International to strengthen CROSQ standards; promoting greater CROSQ member input and content into ASTM International standards through greater CROSQ member participation in the ASTM International standards development process; and promoting the worldwide acceptance and use of ASTM International standards. It was suggested that as a member of CROSQ, Belize should benefit from this MOU.

¹⁰⁴ Consultations with Authorities suggest that for financial reasons Belize is more likely to seek some sort of affiliated membership, most likely, '*subscriber membership*' which has been established for countries with very small economies. Subscriber members pay reduced membership fees that nevertheless allow them to maintain contact with international standardization. An alternative would be the category of '*correspondent member*' which is usually reserved for an organization in a country which does not yet have a fully-developed national standards activity. Correspondent members do not take an active part in the technical and policy development work, but are entitled to be kept fully informed about the work of interest to them.

TITLE II

INVESTMENT, TRADE IN SERVICES AND E-COMMERCE

Title II of the EPA Part II, on ‘Investment, Trade in Services and E-Commerce,’ covers articles 60 to 121 and is divided into seven (7) chapters treated sequentially in seven (7) sections below:

- XIII. Chapter 1: General Provisions
- XIV. Chapter 2: Commercial Presence
- XV. Chapter 3: Cross Border Supply of Services
- XVI. Chapter 4: Temporary Presence of Natural Persons for Business Purposes
- XVII. Chapter 5: Regulatory Framework
- XVIII. Chapter 6: Electronic Commerce
- XIX. Chapter 7: Cooperation

I. GENERAL OBSERVATIONS

The measures covered by this Title include laws, regulations, procedures, rules, decisions, administrative actions and other relevant instruments (irrespective of the form). It also covers all levels of governmental authority, including the exercise of powers delegated to non-governmental bodies.¹⁰⁵

The Title applies to measures *affecting* covered trade and investment. The word ‘affecting’ casts very wide the scope of any proposed review. The Title covers all four modes of supply of services including the movement of natural persons. Measures affecting natural persons seeking access to the employment market of another Party, and measures regarding citizenship, residence or employment on a permanent basis are, however, excluded.¹⁰⁶ The Title also covers commercial presence (commonly referred to as investment) in non-services sectors.

¹⁰⁵ See also EPA, Article 61.

¹⁰⁶ See EPA, Article 60.

The ‘reach’ of the obligations imposed by the EPA depend on the commitments inscribed in Annex IV. The GATS scheduling template is used in Annex IV.F.¹⁰⁷ Where an unlimited market access commitment is made (i.e. the word ‘None’ appears) this commits Belize not to maintain measures that prohibit the use of one, several or all means of delivery of that service (i.e. referring to a mode or any part of a mode of supply where there is one or more means of supplying a given service); and where a market access commitment is made in a sector or sub-sector this is binding in respect of *all* services (and non-services as indicated in Annex IV.E as regards commercial presence) that fall within the relevant sector or sub-sector.¹⁰⁸

It is useful to underscore that Title II does not require the privatization of public undertakings or affect government procurement (which is dealt with under a distinct Title). It does not apply to subsidies nor negate the right of Governments to regulate and introduce new regulations to meet “legitimate” policy objectives (which may not necessarily be as equivalent to ‘national policy’ objectives). Indeed, Belize and other CARIFORUM States have expressly affirmed their right to use measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures irrespective of whether they are listed in Annex IV once these do not constitute a market access or national treatment limitation within Articles 67, 68, 76 and 77 of the EPA.¹⁰⁹ Such measures therefore are permissible once they are not trade distorting (contrary to the specific commitments undertaken in Annex IV). So, for example, licences which are granted on a discretionary basis are not covered by the above general reservation and if not specified as a limitation on market access, EPA-compliance would require that such measures be appropriately reformed or eliminated.

The right to introduce new regulations is, however, qualified by the standstill clause (included in Annex IV.F) in relation to CARIFORUM states, which expressly precludes the introduction of new measures which derogate from the market access or national treatment obligations (as

¹⁰⁷ See Annex IV.F, para 2.

¹⁰⁸ *E.g. US-Gambling* WT/DS285/R 6.287 & 6.290; see also WT/DS285/AB/R paras 219-220: “(i) as regards a particular service, a Member that has made an unlimited market access commitment under mode 1 commits itself not to maintain measures that prohibit the use of one, several or all means of delivery of that service; and (ii) a Member that has made a market access commitment in a sector or subsector has committed itself in respect of *all* services that fall within the relevant sector or subsector.”

¹⁰⁹ See Annex IV.F, para 10.

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.

II. COMMERCIAL PRESENCE

Chapter 2 of Title II sets out the obligations on ‘commercial presence’ (investment) for all committed services sectors¹¹⁰ and the following non-services sectors:¹¹¹

- 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

Significantly, a ‘negative list’ approach is adopted in Annex IV.E, i.e. save for an express indication to the contrary, Belize and other CARIFORUM States undertake full commitments on market access and national treatment in the covered non-services sectors. As regards Sector E (i.e. production, transmission and distribution on own account of electricity, gas, steam and hot water), this is unbound for Belize and all other CARIFORUM states except the Dominican Republic and therefore of lesser significance in the context of the present review.

With regard to Annex IV.E, an additional preliminary point to be underscored is the fact that CARIFORUM States have reserved their rights to inscribe in the Annex any *existing measure* (at time of signature) that has not been listed, provided this is done within two (2) years of entry into force of the Agreement. This provision is discussed further below.

¹¹⁰ See Annex IV.F.

¹¹¹ See 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 Belize and other 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.

Scope of undertakings on Commercial presence/investment

No attempt is made in the EPA to promote and protect investment in the manner typically evidenced in bilateral investment treaties (BITs). Indeed, it is expressly clarified that the EPA does not cover measures relating to expropriation and investor-to-State dispute settlement.¹¹² There are also no obligations in the EPA on performance requirements or specific disciplines on investment protection.

Chapter 2 on commercial presence adopts a similar approach to the GATS¹¹³ and imposes obligations in both the pre- and post- establishment phases of an investment; the term ‘commercial presence’ applies to the *constitution, acquisition or maintenance* of a juridical entity and the *creation or maintenance* of a branch or representative office.

The Chapter applies to measures *affecting* commercial presence in all economic activities¹¹⁴ save for a few exceptions.¹¹⁵ The concept draws on the GATS reference to “measures by Members affecting trade in services”.¹¹⁶ The word ‘affecting’ widens the scope of measures potentially subject to review. The scope of the review is, of course, limited by the specific reservations made by Belize in Annex IV.E (‘negative list’ approach) and positive commitments made in Annex IV.F. It would be difficult to undertake a review of every measure which potentially could *affect* commercial presence in all committed sectors. A review has been undertaken of the legislation, subsidiary regulations, orders, and published guidelines which were made available and other well known practices discussed during our consultations. The commentary provided highlights those measures which appeared initially and/or during the course of consultations to raise ‘red flags’.

¹¹² See EPA, Article 66, footnote 1.

¹¹³ See GATS, Article XXVIII (d) on the definition of ‘commercial presence’.

¹¹⁴ EPA, Article 65(d) clarifies that economic activity does not include exercise of governmental authority.

¹¹⁵ The exceptions listed in Article 66 cover nuclear materials; arms, munitions and war material; audio-visual services; maritime cabotage; and air transport services (i.e. whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than aircraft repair and maintenance, marketing, computer reservation system and other ancillary services, e.g. ground handling, aircraft rental and airport management).

¹¹⁶ See GATS, Article XXVIII (c) - defining “measures by Members affecting trade in services” as including measures in respect of: (i) the purchase, payment or use of a service; (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally; and (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.

The national treatment obligation

The national treatment obligation of the EPA¹¹⁷ is defined similarly 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, 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. The obligation is also qualified by the conditions stated in Annex IV.E and F where CARIFORUM States have adopted contrasting negative (Annex IV.E) and positive (Annex IV.F) list approaches in making commitments.

Market access obligations

Where market access commitments have been undertaken certain measures may not be imposed unless they have been expressly scheduled as limitations in Annex IV. The measures which may not be imposed are listed in Article 67(2) as relating to:

- (a) limitations on the number of commercial presences (e.g. quotas, monopolies, exclusive rights, economic needs tests)
- (b) limitations on the total value of transactions or assets in numerical quotas or economic needs tests
- (c) limitations on the total number of operations or quantity of output in numerical units or economic needs tests
- (d) limitations on participation of foreign capital in terms of maximum percentage limit on foreign shareholding or total value of individual or aggregate foreign investment; and
- (e) restrictions or requirements for specific types of commercial presence (e.g. subsidiary, branch, representative office) or joint ventures through which an investor of the other Party may perform an economic activity

All measures falling within any of the categories above-listed must have been scheduled if they are to be maintained (whether or not such measures are discriminatory according to the national

¹¹⁷ See EPA, Article 68; contrast the approach adopted with respect to the most-favoured-nation (MFN) treatment, i.e. Article 70, and the concept of a 'major trading economy'.

treatment standard) as they affect market access. Article 67(2) of the EPA closely follows the language of Article XVI(2)¹¹⁸ of the GATS and likely merits a similar interpretation covering *de jure* and *de facto* restrictions as well as outright prohibitions.¹¹⁹ To the extent that a positive list approach is adopted in Annex IV.F (as opposed to Annex IV.E), limitations stated in the market access column effectively circumscribe the nature of the State's commitment on national treatment. The converse, however, is not equally true, and irrespective of any limitations inscribed in the market access column, a "None" (i.e. no limitations) in the National Treatment column suggests that national treatment is bound for the entire mode (here commercial presence / investment); it is not limited to what may be bound in the relevant market access commitment.

In all sectors liberalized under the Chapter on commercial presence the EPA imposes an obligation on the host State to allow investors to employ key personnel (business visitors and intra-corporate transfers) and graduate trainees: intra-corporate transfers are to be permitted to stay for a period of three (3) years, and business visitors ninety (90) days over a twelve (12) month period; graduate trainees are entitled to one (1) year. No limitations on the number of natural persons in the form of quotas or needs tests may be imposed *unless clearly stated in Annex IV*¹²⁰ (as per Belize's horizontal limitations discussed immediately below). A similar obligation is imposed with regard to business service sellers who must be allowed to enter for the purposes of their trade for ninety (90) days over a twelve (12) month period.¹²¹

Belize's horizontal limitations

As regards trade in services, Belize has inscribed in its Schedule certain horizontal limitations (applicable to all service sectors). These include a horizontal limitation on its market access commitments which obliges Belize only to accept Key Personnel and Graduate Trainees who are not available locally. Belize has also specified the requirement of a valid work permit before taking up employment in the country. For all other classifications of natural persons who are service suppliers, including business service sellers, Belize has not bound any commitments.

¹¹⁸ Note that the Article omits language equivalent to Article XVI(2)(d) which refers to natural persons employed in a particular sector. The EPA provides specific undertakings on key personnel and business service sellers attached to a commercial presence, see *infra*.

¹¹⁹ See *US-Gambling* WT/DS285/AB/R paras 223 *et seq.*

¹²⁰ See EPA, Article 81.

¹²¹ See EPA, Article 82.

Similarly as regards national treatment, Belize has not bound its commitments except with respect to managerial personnel and technical experts¹²² on which no limitations are imposed. As such, while the EPA imposes certain basic obligations to allow investors to bring in certain categories of employees, Belize has substantially narrowed the scope of these obligations (both as regards services and non-service sectors; the exception being forestry and logging which is addressed later in this section).

Belize has inscribed further horizontal limitations subjecting, *inter alia*, all service providers accessing the Belize market through commercial presence to any “operating condition” required by *existing laws and regulations*.¹²³ 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. the time 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). On this interpretation the Government of Belize appears to a certain extent¹²⁴ to have removed from challenge *existing* laws and regulations affecting Mode 3 (commercial presence) service suppliers, which are also expressly required to “incorporate or establish the business locally in accordance with the relevant provisions of the Laws of Belize.”¹²⁵

Other limitations

In several service sectors Belize has specified limitations listed in paragraphs (a)-(e) of Article 67(2) (cited above). This is so, for example, with the need for joint ventures which is frequently

¹²² Note that the category of intra-corporate transfers is comprised of managers and specialists; see EPA Article 80(2).

¹²³ The full inscription in the Annex provides: “Where relevant the business shall also be subject to relevant Acts pertaining to property acquisition, lease and rental, and any operating condition that may be subject to existing laws and regulations”

¹²⁴ Where existing laws are not *per se* discriminatory and/or restrict market access but grant discretionary authority which is open to such application, it would seem the actions of officials may be challenged in appropriate cases. An example of this sort of legislation is the Trade Licensing Act discussed below.

¹²⁵ The Companies Act of Belize (Cap 250) prohibits large associations or partnerships from engaging in commercial activities unless registered as a company under the Act; see Companies Act, section 3(2): “No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business [i.e. other than banking for which the limit is ten persons] that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act or law.”

coupled with the additional specification of a minimum of 50% local participation¹²⁶ (and also linked with the transfer of knowledge and technology)¹²⁷ as a condition for providing market access. In certain sectors Belize has also reserved the right to impose economic needs tests.¹²⁸

As regards investment in non-services sectors, Belize has expressly maintained the right to adopt or maintain measures on investment in most covered sectors. Where it has not expressly done so, as in the mining sector, Belize subjects its commitments to possible performance requirements and includes nationality and residency conditions. The only instance where neither of the aforementioned reservations applies is in forestry and logging.

Belize Specific Commitments on commercial presence

Non-services Sectors: Forestry and logging

In the non-services sector the most important sector for review is forestry and logging as Belize has not specified any limitations on market access or national treatment.

The United Nations Statistical Division International Standard Industrial Classification of All Economic Activities (ISIC), Rev.3.1 includes the following explanatory note for “forestry, logging and related service activities” (ISIC rev 3.1:02)

“Forestry 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 (e.g. pit-props, pulpwood etc.).

¹²⁶ E.g. consultancy services related to the installation of computer hardware, software implementation services, data processing, data base services, advertising services, market research and public opinion polling services.

¹²⁷ E.g. architectural services, engineering services; note that the condition for the transfer of knowledge and technology which is frequently advanced as one of the general benefits of joint ventures is not always expressly linked thereto in Belize’s Annex IV commitments, e.g. technical testing and analysis services, services incidental to manufacturing, related scientific and technical consulting services, hazardous waste collection services, hazardous waste treatment and disposal services, noise abatement services, waste and waste water management, maintenance and repair of aircraft, and news agency services (which is also subject to the condition of reciprocity). The requirement for joint ventures is also found without express reference to technology transfer in Belize’s Annex IV commitments, e.g. rental of aircraft with crew.

¹²⁸ E.g. voice telephone services where it is indicated that the main criterion is the number of licensed providers operating in the market, and hotels of less than 50 rooms.

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).”

In this sub-sector Belize, in not scheduling any limitations, has in effect indicated that it has no restrictions on market access or national treatment within the meaning of Articles 67 and 68 of the EPA (or is willing to remove them). A review of Belize’s laws, in particular the Forest Act (CAP 213) and subsidiary regulations,¹²⁹ does not suggest any measures which necessarily conflict with this suggestion. The mere requirement for a licence to undertake various activities in the sub-sector does not contradict this. Questions were raised with respect to Rule 7(2) of the Forest Rules which states that the Minister “shall not be obliged to direct the issue of a licence to the person submitting the best tender or any tender”. No specific information was forthcoming on the basis on which this discretion is exercised and the consistency of its application as evidenced in past practice, though our consultations revealed that the legislation and regulations are under review. The intention is to modernize the legal framework in accordance with the Mesoamerican Forestry Congress guidelines.¹³⁰

An additional matter which arose late in our consultations was the nature of Maya customary land tenure in Southern Belize and the constitutional implications of this as adjudged by the Belize Supreme Court in two landmark rulings.¹³¹ The Supreme Court has upheld the customary rights of the Maya in actions pursued by individuals holding office as ‘Alcades’ (which is the customary symbol of their villages’ collective customary title and jurisdiction over their land). The most recent judgment of the Supreme Court imposes an obligation on the Government “to

¹²⁹ See also Private Forests (Conservation) Act (CAP 217).

¹³⁰ The Mesoamerican Biological Corridor (MBC) is a cooperation initiative between the seven Central-American countries (including Belize) and the southern states of Mexico, to harmonize and execute in a coordinated way the activities aimed to the conservation of biological diversity and to promote sustainable human development in their territories. The MBC regional initiative proposes various objectives for short, medium and long-term periods including issuing a new complete model to face issues such as deforestation, protection of the forest, basins or watersheds and climate change, and promoting a new way to understand the protection of environmental issues, with the integration of conservation into economic competitiveness; see also *Mesoamerican Biological Corridor – A platform for sustainable development*, CCAD Technical Series No. 2, 2002 – which may be viewed at <http://www.ccad.ws/pccbm/docs/platform.pdf>.

¹³¹ See *The Maya Leaders Alliance et al vs. The AG of Belize and Minister of Natural Resources and Environment*, Claim No. 366 of 2008; and Judgment of the Supreme Court claims no. 171 & 172 of 2007, delivered on 18th October 2007.

adopt affirmative measures to identify and protect the rights of the claimants based on Maya customary tenure in conformity with the constitutional protection of property and non-discrimination pursuant to sections 3, 3(d), 16 and 17 of the Belize Constitution.”¹³² This will require the development of legislative, administrative and/or other measures necessary to create an effective mechanism to identify and protect Maya customary property rights in land in accordance with Maya customary laws and land tenure practices. In the interim, the Government may not take certain measures including:

- a) issuing any leases or grants to lands or resources under the National Lands Act or any other Act;
- b) registering any interest in land; and
- c) **issuing any concessions for resource exploitation, including concessions, permits or contracts authorizing logging**, prospecting or exploration, mining or similar activity under the **Forests Act**, the Mines and Minerals Act, the Petroleum Act, **or any other Act**.

The ruling of the Supreme Court is significant and affects potential investors in the logging and forestry sector in Southern Belize.

It may be observed that Annex IV.E of the EPA provides that certain measures, even if not listed in the Annex, may apply in any case to investors of the other Party. These include “*non-discriminatory* requirement that certain activities may not be carried out in environmental protected zones or areas of particular historic and artistic interest”¹³³ Emphasis must be placed on the word “non-discriminatory”.

The June 2010 Supreme Court ruling reaffirming the 2007 judgment¹³⁴ recognizes the customary land tenure of the Maya in Southern Belize. This affects, *inter alia*, investments in the forestry

¹³² Claim No. 366 of 2008, para 126

¹³³ EPA Annex IV.E, para. 7 (added emphasis).

¹³⁴ The 28th June 2010 judgement of Chief Justice Conteh in Claim No. 366 of 2008 affirms the 2007 judgments of the Supreme Court claims no. 171 & 172 of 2007, delivered on 18th October 2007, which followed the 2004 judgment of the Inter-American Commission of Human Rights affirming the customary land rights of the Maya people of Belize.

and logging sector in a manner which is likely to be discriminatory. Although the full implications of the customary rights of the Maya which are protected by the Belize Constitution are not yet well defined it would seem prudent to notify their existence under paragraph 5 of Annex IV.E of the EPA. In accordance with this provision Belize has two years from the entry into force of the EPA to list any non-conforming measures (relating to investment in non-services sectors) existing at the time of the signature of the Agreement.¹³⁵ **Note is taken of this in the attached Implementation Schedule.**

Services Sectors

In services Belize has undertaken bound commitments on commercial presence (Mode 3) in the following areas:

A. PROFESSIONAL SERVICES

- (a) Legal services (legal certification and documentation – with the specification under the market access column that only a natural person can practice law), no limitations are made on national treatment
- (b) Accounting, Auditing and Book-keeping – with the specification that the market access commitment will be phased in within a period of 5 years after entry into force of the Agreement. There is also a requirement for joint ventures, transfer of knowledge and technology (national treatment is unbound)
- (d) Architectural services – market access is subject to a requirement for joint ventures and the transfer of knowledge and technology (national treatment is unbound)
- (e) Engineering services – market access is subject to a requirement for joint ventures and the transfer of knowledge and technology (national treatment is unbound)
- (g) Urban Planning and Landscape Architectural services – the market access commitment takes effect on 1 January 2013 (national treatment is unbound)
- (h) Medical and Dental services, as well as Neurosurgery, Epidemiological services, CATSCAN services – no limitations are imposed on market access or national treatment

¹³⁵ It may be noted that the Forests (Export Duty) Order suggests that export duties are charged on various wild animals, spices, seeds, plants and gum or resin (from forest trees and plants). Under Title I of the EPA Belize has undertaken not to charge export duties and failed to schedule any export duties to be phased out under a transitional period. This matter is treated in the discussion under Title I dealing with export duties.

The Legal Profession Act (CAP 320) requires that a person must have a valid practising certificate to practice law.¹³⁶ However, this requirement does not extend to persons employed solely to engross any instrument or proceeding; or a person drawing or preparing a will or other testamentary instrument, a letter notice or power of attorney, and other similar documents.¹³⁷ It is noted that Belize's commitments in this sub-sector are limited to legal certification and documentation and therefore the requirement of a practising certificate does not apply.

The Accountancy Profession Act (CAP 305) only permits persons with a valid certificate issued by the Council of the Institute of Chartered Accountants of Belize to practice as a public accountant.¹³⁸ Membership of the Institute of Chartered Accountants of Belize is open to any person possessing any qualification accepted by the Council as sufficient to qualify the applicant to practise as an accountant in Belize.¹³⁹ A member of the Institute who has been in good standing for at least two years (either with the Institute or another recognized accounting body) who satisfies the Council of his professional competence and pays the prescribed fee is entitled to a practising certificate.¹⁴⁰ It would appear that one must be a member of the Institute to receive a practising certificate. Although membership could be used to restrict market access¹⁴¹ the requirement (depending on how it is applied) may be characterized as an 'operating condition' falling within Belize's horizontal limitations. Additionally, Belize has specified horizontal limitations on market access concerning the movement of natural persons. Belize has expressly reserved a 5-year phase in period (from entry into force of the EPA) to implement its market access commitments in this sector. Clarifications sought on the rationale for the transitional period were not received.

¹³⁶ See Legal Profession Act, section 10(2); note that certain limited exceptions are provided for, e.g. section 8.

¹³⁷ See Legal Profession Act, section 14(4) "Section 10 (2) and subsections (1) and (2) of this section shall not extend to- (a) a public officer or person appointed under any law to act for another for the purposes of:- (i) drawing or preparing instruments; or (ii) appearing for the complainant or plaintiff in a summary jurisdiction court or district court, if authorised by law to do so in the course of his duty; (b) a person employed merely to engross any instrument or proceeding; or (c) a person drawing or preparing- (i) a will or other testamentary instrument, (ii) an instrument for his own use, (iii) an agreement other than for his own use for which the consideration does not exceed five thousand dollars, (iv) a letter, notice or power of attorney."

¹³⁸ Accountancy Profession Act, section 9(1).

¹³⁹ *Ibid.*, section 10(a)(v).

¹⁴⁰ *Ibid.*, section 11(a).

¹⁴¹ Note that unsuccessful attempts were made to obtain clarification of how the rules operate in practice.

The Professional Architects (Registration) Act (CAP 326.02) and Professional Engineers (Registration) Act (CAP 326.03) adopt similar approaches to the regulation of architects and engineers. Neither Act appears to discriminate against foreigners.

The Dentists Act (CAP 316) requires registration under the Act before one may lawfully practice as a dentist. An exception is made for a medical practitioner.¹⁴² Nothing in the Act appears to be discriminatory and no discriminatory practices were raised in our consultations. A fairly similar conclusion is made with respect to the Medical Practitioners Registration Act (CAP 318).¹⁴³ The Medical Practitioners Registration (Fees) Regulations are discriminatory in so far as they require non-citizens to pay double the fees required of citizens for an application to register as a medical practitioner as well as the annual practicing fee. This may be characterized as an “operating condition” required by existing regulations within the horizontal limitations specified by Belize in Annex IV.F. Additionally, as the provisions of Title II of the EPA (unlike the situation under the WTO GATS) do not apply to subsidies granted by the Parties,¹⁴⁴ in so far as a discriminatory fee may be considered to confer a subsidy, it may evade scrutiny. Such fees are, however, subject to regional and multilateral agreements to which Belize is a party. A review of the fee structure for medical practitioners is recommended. **This is one of the proposals advanced in the attached Implementation Schedule.**

It is noted that architects, doctors and engineers are also required to apply for a trade licence under the Trade Licensing Act (CAP 66). The observations made below on hotel businesses with respect to the requirement for a trade licence are equally applicable here.

B. COMPUTER AND RELATED SERVICES – for the sub-sectors listed below there is a market access requirement of a minimum local participation of 50% and transfer of technology. There are no limitations on national treatment save for (a) ‘Consultancy services related to the installation of computer hardware’ where national treatment is unbound.

(a) Consultancy services related to the installation of computer hardware

¹⁴² See Dentists Act, section 3(3).

¹⁴³ See also Medical Practitioners Registration Act, section 7(7)(b) which also permits the temporary registration of medical practitioners upon proof, *inter alia*, “(iv) that he will be practising as a specialist in a field of medicine in which such specialist services are not available in Belize”

¹⁴⁴ See EPA, Article 60(3).

- (b) Software Implementation Services
- (c) Data Processing (except CPC 8439)¹⁴⁵
- (d) Data base services

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁴⁶

C. RESEARCH AND DEVELOPMENT SERVICES – for the sub-sectors listed below there are no limitations save for the market access condition that publicly funded R&D may be limited to citizens and/or residents; sub-sector (b) on social sciences and humanities is the exception and there no limitations are specified on market access or national treatment

- (a) Research and Development on natural sciences
- (b) Research and Development on social sciences and humanities
- (c) Inter-disciplinary Research and Development services

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁴⁷

F. OTHER BUSINESS SERVICES

- (a) Advertising services – market access is conditioned on entering into joint ventures with minimum local participation of not less than 50% (national treatment is unbound)
- (b) Market research and public opinion polling services - market access is conditioned on entering into joint ventures or local partnerships with a minimum local participation of not less than 50% (national treatment is unbound)
- (d) Services related to management consulting (limited to CPC 86609)¹⁴⁸ – no limitations are imposed on market access or national treatment
- (e) Technical testing analysis services – market access is conditioned on the transfer of knowledge and technology (national treatment is unbound)

¹⁴⁵ CPC 8439 covers ‘Other data processing services (i.e. other than input preparation services, data processing and tabulation services, and time sharing services)’.

¹⁴⁶ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁴⁷ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁴⁸ CPC 86609 covers ‘Other management services n.e.c. (i.e. other than project management services other than for construction and arbitration and conciliation services)’.

(i) Services incidental to manufacturing (limited to CPC 8843, 8846-8848 and 885)¹⁴⁹ - market access is conditioned on transfer of knowledge and technology (national treatment is unbound)

(m) Related scientific and technical consulting services (limited to CPC 86751 and 86752)¹⁵⁰ - market access is conditioned on transfer of knowledge and technology, additionally publicly funded services may be limited to citizens and/or residents (national treatment is unbound)

(s) Convention services – no limitations are imposed on market access and national treatment

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁵¹

2. COMMUNICATION SERVICES

B. COURIER SERVICES – no limitations are imposed on national treatment (market access is unbound)

There is no specific legislation governing courier services. The Post Office Act (CAP 228) covers postal services and grants the Post Master General and officers and servants of the Post Office the exclusive right to receive, collect, send and deliver letters.¹⁵² Courier companies, however, have registered under the Companies Act and are operating locally essentially outside of the law. While there has been some discussion about introducing legislation that would provide for the delivery of mail by class, thereby providing a legal framework within which other service suppliers may operate, there are no immediate plans to move forward on this.

The Courier services sector is one of the areas in which the EPA imposes special regulatory disciplines. Further discussion on this is included in subsequent commentary on the Regulatory Framework, Chapter 5 of Title II.

¹⁴⁹ CPC 8843 covers ‘Manufacture of wood and of products of and cork, except furniture; manufacture of articles of straw and plaiting materials, on a fee or contract basis’; CPC 8846 – ‘Manufacture of chemicals and chemical products on a fee or contract basis’; CPC 8847 - ‘Manufacture of rubber and plastics products on a fee or contract basis’; CPC 8848 – ‘Manufacture of other non-metallic minerals products, on a fee or contract basis; CPC 885 – ‘Services incidental to the manufacture of metal products, machinery and equipment’.

¹⁵⁰ CPC 86751 covers ‘Geological, geophysical and other scientific prospecting services; CPC 86752- ‘Subsurface surveying services’.

¹⁵¹ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁵² See section 6(1) of the Post Office Act; but note that certain exceptions apply. It does not cover paying or receiving hire or reward, advantage or profit for the delivery of letters; e.g. section 6(1)(d) & (e). Additionally, section 6 (2) expressly provides that, “Nothing contained herein shall authorise any person to make a collection of such exempted letters for the purpose of sending them in the manner hereby authorised”; see also section 6(3).

C. TELECOMMUNICATIONS SERVICES

- (a) Voice telephone services (excluding trunked radio services) – market access is subject to economic needs tests; the main criterion is the number of licensed providers operating in the market. Access is limited through facilities supplied by licensed operators. No limitations are imposed on national treatment.
- (d) Telex services – no limitations are imposed on national treatment (market access is unbound)
- (e) Telegraph services - no limitations are imposed on national treatment (market access is unbound)
- (f) Facsimile services - no limitations are imposed on national treatment (market access is unbound)
- (h) Electronic mail - no limitations are imposed on national treatment (market access is unbound)
- (i) Voice mail - no limitations are imposed on national treatment (market access is unbound)
- (j) Online information and data base retrieval - no limitations are imposed on national treatment (market access is unbound)
- (l) Enhanced/value added facsimile services including store and forward, store and retrieve - no limitations are imposed on national treatment (market access is unbound)
- (n) Online information and/or data processing (including transaction processing) - no limitations are imposed on national treatment (market access is unbound)
- (k) Electronic data interchange – commitments on market access are limited through facilities supplied by the licensed operators (national treatment is unbound)
- (o) Other – Internet and Internet access (except voice) (leased lines only) – commitments on market access are limited through facilities supplied by licensed operators “*and vice versa*”; no limitations are imposed on national treatment
 - Trunked radio system services - market access is conditioned on entering into joint venture arrangements with Belizean nationals (national treatment is unbound)
 - Paging - market access is conditioned on entering into joint venture arrangements with Belizean nationals (national treatment is unbound)
 - Teleconferencing services- commitments on market access are limited through facilities supplied by licensed operators (national treatment is unbound)

The telecommunications sector is one of the areas in which the EPA imposes special regulatory disciplines. The discussion on the Belize Telecommunications Act (CAP 229) is included in subsequent commentary on the Regulatory Framework, Chapter 5 of Title II.

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

E. OTHER

Tunnel construction – no limitations are imposed on national treatment (market access is unbound)

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁵³

6. ENVIRONMENTAL SERVICES

B. REFUSE DISPOSAL SERVICES - for the sub-sectors listed below market access is conditioned on the transfer of knowledge and technology; national treatment is unbound

Hazardous waste collection services

Hazardous waste treatment and disposal services

During the course of consultations no significant measures, whether guidelines, policy documents, etc, were identified for review in this sub-sector. The legislative instruments reviewed, including the Solid Waste Management Authority Act (CAP 224) and Public Health Act (CAP 40) were not particularly relevant.¹⁵⁴

D. OTHER

Cleaning series of exhaust gases – no limitations are imposed on market access or national treatment

Noise abatement services - market access is conditioned on the transfer of knowledge and technology; national treatment is unbound

¹⁵³ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁵⁴ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁵⁵

8. HEALTH RELATED AND SOCIAL SERVICES

A. HOSPITAL SERVICES – no limitations are imposed on market access or national treatment

During the course of consultations no significant legislation, measures, whether guidelines, policy documents, etc, were identified for review in this sub-sector. The legislation which was examined, including the Health Act (CAP 40), Medical Service and Institutions Act (CAP 39) and the Karl Heusner Memorial Hospital Authority (CAP 38) and the regulations thereunder were not particularly relevant.

9. TOURISM AND TRAVEL-RELATED SERVICES

A. HOTELS AND RESTAURANTS¹⁵⁶

Hotel lodging (limited to CPC 64110) – no limitations are imposed on market access for hotels in excess of 50 rooms; hotels of less than 50 rooms may be subject to economic needs tests; there are no limitations on national treatment

Letting services of furnished accommodation (CPC 64193 and 64195 only)¹⁵⁷ - no limitations are imposed on national treatment (market access is unbound)

Meal serving with full restaurant services - no limitations are imposed on national treatment (market access is unbound)

Meal serving services in self-service facilities - no limitations are imposed on national treatment (market access is unbound)

¹⁵⁵ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁵⁶ Under the Provisional Central Product Classification itself, CPC 641 (Hotel and other lodging services) is divided into CPC 6411 (Hotel lodging services), CPC 6412 (Motel lodging services) and CPC 6419 (Other lodging services), the last of which is further separated to include holiday camp services, youth hostels, etc. CPC 642 (Food serving services) is divided into full restaurant services (CPC 6421), self-service facilities (CPC 6422), catering services (CPC 6423) and other (CPC 6429). The CPC 643 classification (Beverage serving services for consumption on the premises) is composed of services without entertainment (CPC 6431) and those with entertainment (CPC 6432). See WTO doc. S/C/W/51 at para. 6.

¹⁵⁷ CPC 64193 covers ‘Letting services of furnished accommodation; 64195 - Camping and caravanning site services’.

The Belize National Tourism Council is charged with, *inter alia*, identifying, developing and adopting policies, guidelines and various other measures which *affect* investment in the tourism sector.¹⁵⁸ During the course of our consultations no particular policies, guidelines etc were identified which appeared to be discriminatory in a manner contrary to Belize's specific commitments. It is noted, for example, that one of the duties of the Council is to advocate the generation of employment for Belizean citizens in the tourism industry.¹⁵⁹ However, as above-noted, Belize has included certain reservations concerning Mode 4, i.e. the movement of natural persons.

The Hotels and Tourist Accommodation Act (CAP 285) requires that the proprietor of a hotel apply for and obtain registration from the Registrar for himself and his prospective business.¹⁶⁰ The Registrar issues a licence containing such terms and conditions as may be determined by him.¹⁶¹ The issuance of the licence by the Registrar is in addition to that required under the Trade Licensing Act (CAP 66).¹⁶² Under the Trade Licensing Act, the Trade Licensing Board of the relevant town where the hotel business is to be established must issue a licence before the hotel may commence operation. Section 8 of the Trade Licensing Act provides that "In deciding upon the application made to it, a Board may take into account the need for such a trade in that town, the need for control of trade within the town and such other matters as to the Board may seem fit or which may be set out in any regulations made by the Minister." The decision of the Board is subject to an appeal to the Minister.¹⁶³

The Hotels and Tourist Accommodation Act and the Trade Licensing Act are not *per se* discriminatory or restrictive of market access by potential investors. They do, however, leave open the door for the implementation of restrictive policies. Some of the feedback which was received from Trade Licensing Boards suggests that discriminatory practices are in fact

¹⁵⁸ *E.g.* Belize National Tourism Council Act (CAP 276), sections 9 & 10.

¹⁵⁹ See Belize National Tourism Council Act (CAP 276) section 10(b).

¹⁶⁰ Hotel and Tourist Accommodation Act (CAP 285), section 5(3).

¹⁶¹ *Ibid.*, section 9(1).

¹⁶² Section 31 of the Licensing Act requires "Every person who, in any town, carries or intends to carry on any of the vocations set out in the Seventh Schedule shall obtain a licence from the Board of that town." A 'Hotel Business' is one of the vocations listed in the Seventh Schedule.

¹⁶³ Trade Licensing Act (CAP 66), section 19.

implemented in certain instances.¹⁶⁴ Reform of the legislation or the issuance of appropriate regulations or guidelines for administrative entities with a view to ensuring that they do not place Belize in breach of its EPA commitments would seem advisable. **This is one of the recommendations made in the attached Implementation Schedule.**

D. OTHER

Spa services - no limitations are imposed on market access or national treatment

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (Other than audiovisual)

A. ENTERTAINMENT SERVICES (CPC 96194 and 96195 only)¹⁶⁵ – no limitation is imposed on market access (national treatment is unbound)

B. NEWS AGENCY SERVICES (CPC 9621 and CPC 9623 only)¹⁶⁶ – market access is conditioned on the transfer of knowledge and technology, and the establishment of press agencies is subject to the condition of reciprocity; there are no limitations on national treatment.

D. SPORTING AND OTHER RECREATIONAL SERVICES (CPC 96413 only) – no limitations are imposed on national treatment (market access is unbound)

E. OTHER

Rental and leasing of yachts without operators limited to class 1 under 12 passengers with or without crew and with multiple days on itinerary – no limitations are imposed on market access or national treatment

During the course of consultations no specific measures (such as regulations, guidelines, policy documents, etc) were identified for review in this sub-sector.¹⁶⁷

¹⁶⁴ *E.g.* email communication dated 2 September 2010 from Phillip de la Fuente, Mayor, Orange Walk Town, to Ms. Sharon Lindo.

¹⁶⁵ CPC 96194 covers ‘Circus, amusement park and similar attraction services; and 96195 - Ballroom, discotheque and dance instructor services’.

¹⁶⁶ CPC 9621 covers ‘News agency services to newspapers and periodicals; and 9623 – News agency services related to television stations’.

¹⁶⁷ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

11. TRANSPORT SERVICES

A. MARITIME SERVICES

(b) Freight transport (less cabotage) - no limitations are imposed on market access and national treatment

(c) Rental of vessels with crew (Passenger transportation for abroad, limited to class 2 boats under 100 passengers but with multiple days on the itinerary) – no limitations are imposed on market access or national treatment

(e) Pushing and towing services – market access is limited to joint venture arrangements (national treatment is unbound)

(f) Vessel salvaging and refloating services – no limitations are imposed on market access and national treatment

Ship registration – is unbound except as indicated in the horizontal commitments for national treatment

The legislation reviewed, including the Harbours and Merchant Shipping Act (CAP 234), Belize Port Authority Act (CAP 233) Registration of Merchant Ships Act (CAP 236), the Wrecks and Salvage Act (CAP 237) and Abandoned Wrecks Act (CAP 235), do not raise any concerns with respect to the application of discriminatory measures in this sector. This conclusion was confirmed during the course of our consultations.

C. AIR TRANSPORT SERVICES

(a) Passenger transportation (excluding the carriage of passengers within the domain of Belize) – no limitations are imposed on market access or national treatment

(b) Freight transportation (except 7321)¹⁶⁸ – no limitations are imposed on national treatment (market access is unbound)

(d) Maintenance and repair of aircraft – market access is conditioned on the transfer of knowledge and technology (national treatment is unbound)¹⁶⁹

¹⁶⁸ CPC 7321 covers 'Mail transportation by air'.

¹⁶⁹ During the course of our consultations it was clarified that Aircraft Maintenance Organizations are certified by the Department of Civil Aviation for the provision of maintenance services to aircraft registered in Belize. There are no repair stations in Belize certified by the US Federal Aviation Administration or European Aviation Safety Agency. Aircraft are maintained in accordance with the requirements of the State of Registry. Approval has to be obtained from the State of Registry for the maintenance of aircraft registered in such State.

The Civil Aviation Act (CAP 239) and the regulations made thereto establish the principal rules governing air transport in Belize. No significant concerns are raised by the legislation nor did any arise in the course of our consultations.

E. RAIL TRANSPORT SERVICES – for the sub-sectors listed below there are no limitations on market access or national treatment

- (a) Passenger transportation
- (b) Freight transport
- (c) Pushing and towing services
- (d) Maintenance and repair of rail transport equipment
- (e) Supporting services for rail transport services

During the course of consultations no relevant legislation, measures, whether guidelines, policy documents, etc, were identified for review in this sub-sector. The Government Railway Act (CAP 230) was examined and found not to be significant for present purposes.¹⁷⁰

Additional Commitments on Labour, Environment, Cultural Diversity and Anti-Corruption

Labour and the Environment

In addition to implementing the liberalization commitments above-noted, Belize has undertaken to ensure that in promoting investment and in regulating investors it will adhere to certain ‘best practices’. Belize has undertaken, *inter alia*, not to lower domestic environmental, labour or occupational health and safety standards including those aimed at protecting and promoting cultural diversity,¹⁷¹ and to ensure that investors act in accordance with core labour standards, and do not manage or operate their investments in a manner that circumvents international environmental or labour obligations to which Belize is a party.¹⁷²

Belize has enacted legislation and adopted regulations and various guidelines to maintain high labour and environmental standards; I refer in particular to the Labour Act (CAP 297) and the

¹⁷⁰ Note also that Belize has specified in Annex IV.F that all service providers accessing the Belize market through commercial presence are subject to any “operating condition” required by existing laws and regulations.

¹⁷¹ See EPA, Article 73.

¹⁷² See EPA, Article 72.

numerous regulations which give effect to this,¹⁷³ the International Labour Organization Conventions Act (CAP 304.01) which gives the force of law to all the ILO conventions to which Belize is a party,¹⁷⁴ and the Environmental Protection Act (CAP 328) and the regulations adopted thereto including the Environmental Impact Assessment Regulations¹⁷⁵. The legislative framework sets the bar comparatively high for a developing country,¹⁷⁶ and proposed amendments to the Labour Act confirm the commitment of the Government to further raise as opposed to lower labour standards.¹⁷⁷

Provision is made within the legislative framework for derogations from various obligations at the Minister's discretion. For example, section 19(2) of the Labour Act empowers the Minister by Order to exempt an employer/organization from maintaining certain standards in the work place relating to the maximum number of hours of work per day, days per week and work on holidays; and section 160(2) gives the Minister the discretion to exempt certain industrial undertakings from other mandates relating to the employment of women and children. As regards the environment, Regulation 27 of the Environmental Impact Assessment Regulations provides the Minister with the authority to override a decision of the Department that an undertaking, project or activity shall not proceed; the Minister's decision is final.

The question may be asked whether the exercise of the Minister's powers to exempt business ventures from some of the strict requirements of the existing legislation could open the door to a lowering of labour and environmental standards contrary to the EPA. A proper reading of the legislative framework regulating employment/labour practices sets aside any real concerns:

¹⁷³ See Labour Act (CAP 297).

¹⁷⁴ See also Cap 296 Factories Act, Cap 300 Trade Unions Act, Cap 302 Wages Council Act, Cap 303 Workmen's Compensation Act, Cap 304 Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act.

¹⁷⁵ See also Coastal Zone Management Act (CAP 329).

¹⁷⁶ *E.g.* the Hotels and Tourist Accommodation Act (CAP 285), section 16(1) giving employees a right to a share of any service charge collected: "Any service charges collected or received by a proprietor or employer from guests or customers shall be distributed among employees in accordance with the provisions of a scheme prescribed or registered under the provisions of this section, and in the absence of any such scheme, by agreement with the employees."

¹⁷⁷ See the proposed Labour (Amendment) Act 2010 which is designed, *inter alia*, to confer upon employees the right to continuity of employment and protection against unfair dismissal; to establish procedures for employees and employers to follow to terminate an employment relationship in a fair and equitable manner; and to establish a Labour Complaints Tribunal, to provide for greater benefits to workers, including better provisions in respect of severance pay.

Section 4 of the International Labour Organization Conventions Act provides that

This Act shall be read and construed as being in addition to, and not in derogation of, the provisions of the Labour Act, but where there is a conflict between the provisions of this Act and the Labour Act, the provisions of this Act shall prevail.

As such, Belize's domestic law gives precedence to the core labour standards in the ILO Conventions to which Belize is a party. This implements the basic obligations which Belize has undertaken in Article 72 of the EPA.

In the course of our consultations questions were raised about the general policies on the attraction of investment in Commercial Free Zones. Attention was drawn to the fact that there is new legislation, i.e. the Free Zones Act of 2005¹⁷⁸ described as "An Act to make better provisions with respect to free zones; to repeal the Commercial Free Zones Act, Chapter 278 of the Laws of Belize, Revised Edition 2000; and to provide for matters connected therewith or incidental thereto."

Our consultations (which included Senior Officials with responsibility for overseeing the implementation of the legislation) clarified that Commercial Free Zones and Export Processing Zones are required to comply with all Labour and Environmental Laws although the provisions of the Free Zone Act are less explicit than the Export Processing Zone Act. The Free Zone Act of 2005 maintains the same flexibility for employers to open twenty-four hours, seven days a week,¹⁷⁹ and contains no provision similar to section 13 of the Export Processing Zone Act (CAP 280) which expressly states that the "provisions of the Labour Act shall apply to the EPZ Developer and EPZ businesses." It was explained, however, that in administering the two regimes the Authorities adopt a uniform approach and apply similar labour standards in both EPZs and CFZs.

¹⁷⁸ See section 33 of the Free Zone Act (CAP 278).

¹⁷⁹ See section 28 of the Free Zone Act (CAP278).

As regards environmental standards, it was noted that before approval all EPZ applicants must get environmental clearance from the Department of the Environment and sign an Environmental Compliance Plan. The Environmental Impact Assessment Regulations make special provision for projects undertaken in Free Zones or Export Processing Zones.¹⁸⁰ However, this is not designed to derogate from overall standards but rather to facilitate investors in certain approved activities. The social responsibility of firms operating in Commercial Free Zones and Export Processing Zones is further affirmed through the imposition of a ‘social fee’ to be used for social services provided by the Government and the alleviation of poverty.¹⁸¹

Cultural Diversity

The National Institute of Culture and History, established under an Act (CAP 331) of the same name, is designed to promote Belize’s multicultural, multi-ethnic and multi-lingual nature. The Institute for Social and Cultural Research and the Institute for Creative Arts are divisions of the National Institute of Culture and History. Their mandate on publication, dissemination of information and training would suggest that the Institutes could have an important role to play in protecting and promoting cultural diversity in implementing measures to attract foreign direct investment consistent with Belize’s obligations under Article 73 of the EPA.¹⁸² Other legislative instruments also promote awareness of socio-cultural values, history, ethnic diversity and cultures. The Belize National Tourism Council, for example, has been given the mandate to, *inter alia*, advocate and encourage the protection and preservation of Belize’s natural and cultural environment by increasing linkages between tourism and the environment and other related subjects.¹⁸³

A review of the legislation and subsidiary regulations and our consultations do not suggest any particular concerns with regard to the protection and promotion of cultural diversity.

¹⁸⁰ See Regulation 9(c) of the Environmental Impact Assessment Regulations.

¹⁸¹ See section 24 of the Free Zone Act; note also that the Export Processing Zone Act was amended by S.I. No. 16 of 2010 to also allow for the charging of a social fee on the value of imports to all Export Processing Zones. The fee is similar to that imposed in Commercial Free Zones, i.e. 1.5% on imports and 10% on fuel.

¹⁸² Note that the National Institute is not directly involved in sectors in which Belize has undertaken specific commitments, e.g. it has a mandate with respect to primary and secondary education and certain audio-visual services whereas Belize has undertaken commitments only as regards adult education and broad exclusions from the EPA exist regards the audio-visual sector.

¹⁸³ See Belize National Tourism Council Act (CAP 276), section 10(f).

Anti-Corruption

The EPA provision on the “Behaviour of investors” further 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.¹⁸⁴ Belize is a party to the Inter-American Convention against Corruption which imposes an obligation on Belize to adopt legislative and other measures to establish criminal offences under its domestic law for acts of corruption including:¹⁸⁵

- 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.

¹⁸⁴ See EPA, Article 72(a) – “investors are forbidden from, and held liable for, offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to any public official or member of his/her family or business associates or other person in close proximity to the official, for that person or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, or in order to achieve any favour in relation to a proposed investment or any licences, permits, contracts or other rights in relation to an investment.”

¹⁸⁵ See Inter-American Convention against Corruption, Article VI; see also Article VIII on ‘Transnational Bribery’ and Article IX on ‘Illicit Enrichment’. Note that Belize is not a party to the UN Convention against Corruption.

Belize has implemented its obligations under the Inter-American Convention and, as such, its EPA obligation under Article 72(a) through, *inter alia*, the Prevention of Corruption in Public Life Act (CAP 12). Section 19 of the Act provides as follows:

No person shall offer any person to whom this Part applies [i.e. public officials]¹⁸⁶ any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of such person's duties.

Community Liaison Processes

Article 72 further 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 it was suggested that community liaison processes do exist but they are generally focused on the preparation of environmental impact assessments.¹⁸⁷ The Forest Department of the Ministry of Natural Resources is currently implementing policies to promote environmental sustainability which requires, *inter alia*, investors to establish community liaison processes. It was also noted that BELTRAIDE encourages investors to meet with local community leaders (Alcaldes in Toledo¹⁸⁸ or the Mayor in San Pedro) where their involvement is critical for the support of the project.

III. CROSS BORDER SUPPLY OF SERVICES

Chapter 3 of Title II of the EPA applies to measures of the Parties *affecting* the cross border supply of services with certain exceptions.¹⁸⁹ The supply of a service includes production,

¹⁸⁶ Section 14 of the Prevention of Corruption in Public Life Act provides that "This Part applies to the Governor-General, members of the National Assembly, members of the Belize Advisory Council, members of the Public Services Commission, members of the Elections and Boundaries Commission, public officers, members and officers of statutory corporations and government agencies, and members and employees of all public bodies, including local authorities."

¹⁸⁷ See the Environmental Protection Act (CAP 328), sections 20-22.

¹⁸⁸ See discussion *supra* on Maya customary land tenure as declared by the Supreme Court in Claim No. 366 of 2008 and Claims No. 171 & 172 of 2007.

¹⁸⁹ See EPA, Article 75 excluding audio-visual services, national maritime cabotage, and air transport services. This is similar to EPA, Article 66(c)–(e). Note that the Chapter does not cover services supplied in the exercise of governmental authority.

distribution, marketing, sale and delivery of a service. Cross border supply is defined as comprising GATS Modes 1 and 2, i.e. 1. 'from the territory of a Party into the territory of the other Party' and 2. 'in the territory of a Party to the service consumer of the other Party'. It may be noted that the distinguishing feature of Mode 2 is that "the service is delivered outside the territory of the Member making the commitment."¹⁹⁰ The actual movement of the consumer may not be required (as occurs, for example, when tourists travel to a vacation resort) where the property of the consumer moves or is situated aboard (as with activities such as ship repair). Cross-border trade in terms of Mode 1 frequently occurs through electronic transactions, not requiring the movement of either consumer or supplier. As such, the distinction drawn between modes 1 and 2 essentially turns on whether the service is delivered within the territory of the State making the commitment (here Belize) from the territory of another State (Mode 1) or whether the service is delivered to Belizean consumers outside of Belize (Mode 2).

It may be noted that it is sometimes difficult to draw a clear line between the two modes. It is not always obvious whether a service is supplied "into the territory" of the consumer (mode 1) or "in the territory" of the foreign supplier (mode 2). Consider, for example, the way in which a call centre may operate: a firm's traffic representing domestic calls from its clients is routed abroad to a foreign service supplier who takes calls and handles client inquiries within its own territory.¹⁹¹ In the context of the EPA, while CARIFORUM States, including Belize, have made specific and sometimes differential commitments relating to modes 1 and 2, the European Union has made commitments applicable to modes 1 and 2 without differentiation between the two modes. Special note is taken in the following commentary where distinctions have been made in modes 1 and 2 commitments undertaken by Belize in Annex IV.F of the EPA.

An observation similar to that made with respect to Chapter 2 is worth repeating here. The EPA covers all measures *affecting* cross border supply.¹⁹² The word "affecting" significantly expands the scope of measures potentially subject to review. The scope of the review is, of course, limited

¹⁹⁰ See the Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services, S/L/92, 28 March 2001, adopted by the WTO Council for Trade in Services on 23 March 2001, at paragraph 29.

¹⁹¹ See also 'Cross-border Supply (Modes 1 & 2)', Background Note by the Secretariat, WTO doc. S/C/W/304, paragraph 9.

¹⁹² See EPA, Article 75.

by the specific commitments made by Belize in Annex IV.F. These cover a range of services and it would be difficult to undertake a review of every measure which potentially could *affect* the cross border supply of services in all committed sectors.

Market access

Where market access commitments are undertaken certain measures may not be imposed unless otherwise specified in Annex IV.F. These are listed in Article 76(2) of the EPA as relating to:

- (a) limits on number of service suppliers (whether in the form of quotas, monopolies,¹⁹³ exclusive suppliers¹⁹⁴ or the imposition of economic needs tests¹⁹⁵)
- (b) limits on the total value of service transactions or assets in form of quotas or the requirement of economic needs tests
- (c) limits on the total number of service operations or total quantity of service output expressed in the form of quotas or the requirement of economic needs tests

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 may effectively circumscribes the nature of the State's commitment on national treatment. However, the converse is not equally true and irrespective of limitations inscribed in the market access column, a "None" (i.e. no limitations) in the National Treatment column suggests that national treatment is bound for the entire mode; i.e. it is not limited to what may be bound in the market access column.

¹⁹³ See also *US-Gambling* WT/DS285/AB/R para 228: "Although the word 'monopolies', as such, is not defined, Article XXVIII(h) of the GATS defines a 'monopoly supplier of a service' as: ... any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally *or in effect* by that Member as the sole supplier of that service. (emphasis added)"

¹⁹⁴ See also *US-Gambling* WT/DS285/AB/R para 229: "The term "exclusive service suppliers", which is used to identify the third limitation in Article XVI:2(a) ('limitations on the number of service suppliers...in the form of exclusive service suppliers'), is defined in Article VIII:5 of the GATS, as: "... where a Member, formally *or in effect*, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory. (emphasis added)"

¹⁹⁵ See also *US-Gambling* WT/DS285/AB/R para 230: "These two definitions suggest that the reference, in Article XVI:2(a), to limitations on the number of service suppliers 'in the form of monopolies and exclusive service suppliers' should be read to include limitations that are in form *or in effect*, monopolies or exclusive service suppliers".

Obligations and commitments relate to services and service suppliers. They relate to service consumers only insofar as services or service suppliers of other EPA States are affected. Limitations with respect to mode 2 on market access and/or on national treatment are interpreted as only relating to measures affecting the consumers of the State inscribing such limitation (here Belize), and not to measures affecting consumers of other EPA States within Belize.

The EPA provision on market access is not dissimilar to Article XVI:2 of the GATS. It may be noted that this provision has been interpreted to suggest that a prohibition of one, several or all means of delivery cross-border is a “limitation on the number of service suppliers in the form of numerical quotas” in breach of the market access obligation as it totally prevents the use of service suppliers of one, several or all possible means of delivery.¹⁹⁶

National treatment

The national treatment obligation of the EPA¹⁹⁷ is similar in scope to that of the GATS. It applies to the extent that specific commitments have been undertaken by Belize in Annex IV.F of the EPA and is subject to the conditions and qualifications stated therein. The test of a measure’s compliance is not whether formally identically or formally different treatment is accorded but whether the measure modifies conditions of competition between 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 service supplier.

Movement of natural persons linked to cross-border supply

For every sector liberalised under Chapter 3 the EPA imposes a basic obligation to allow the temporary entry and stay of business service sellers for ninety (90) days over a twelve (12) month period.¹⁹⁸ This obligation is, however, subject to reservations listed in Annex IV.F. As above noted, Belize has specified certain horizontal limitations which largely relieve Belize from the general EPA obligation to facilitate the entry and stay of business service sellers.

¹⁹⁶ See *US-Gambling* WT/DS285/AB/R paras 223-234.

¹⁹⁷ See EPA, Article 77; contrast the approach adopted with respect to the most-favoured-nation (MFN) treatment, i.e. Article 70, and the concept of a ‘major trading economy’.

¹⁹⁸ See EPA, Article 82.

Belize Specific Commitments on Cross-Border Services

Belize has undertaken more extensive bound commitments on the cross-border supply than on commercial presence in the service sector. Indeed, where commitments have been undertaken (on cross-border supply) these are generally without limitation. The principal exception, as will be seen, is with respect to telecommunications services where Mode 1 may only be exercised through licensed facilities based operators (other restrictions such as the prohibition of callback and refile on voice telephone services also apply as indicated below).

The sectors where Belize has undertaken bound market access and/or national treatment commitments on the cross-border supply of services are the following:

PROFESSIONAL SERVICES – for all the listed sub-sectors no limitations are imposed on market access or national treatment save for *Legal services consulting in home law and *(g) Urban Planning where mode 1 is unbound):

a. Legal services

Legal services consultancy in international law

Legal services consulting in home law*

b. Accounting, Auditing & Book-keeping services

c. Taxation

d. Architectural services

e. Engineering services

g. Urban Planning and Landscape Architectural services*

h. Medical and Dental Services

Epidemiological services

CATSCAN services

B.COMPUTER & RELATED SERVICES - for all the listed sub-sectors no limitations are imposed on market access or national treatment:

a. Consultancy services related to the installation of computer hardware

b. Software implementation services

- c. Data processing services
- d. Data base services

C. RESEARCH AND DEVELOPMENT SERVICES – for all listed sub-sectors market access is subject to the specification that publicly funded R&D services may be limited to citizens and/or residents save for *(b) R&D on social sciences; no limitations are imposed on national treatment:

- a. Research and Development on natural sciences
- b. R&D on social sciences and humanities (except cultural sciences)*
- c. Inter-disciplinary R&D services

E. RENTAL/LEASING SERVICES WITHOUT OPERATORS – for all listed sub-sectors there are no limitations on market access or national treatment:

- a. Relating to ships
- b. Relating to aircraft
- c. Relating to other transport equipment (CPC 83101 and 83102)¹⁹⁹
- d. Relating to other machinery and equipment

F. OTHER BUSINESS SERVICES – for all listed sub-sectors there are no limitations on market access or national treatment save for (k)* and (t);* with respect to (k) placement and supply of personnel, Mode 2 is unbound; with respect to (t) other business services, Mode 1 is unbound for market access:

- a. Advertising services
- b. Market research and public opinion polling services
- c. Management consulting services
- d. Services related to management consulting (CPC 86609)²⁰⁰
- e. Technical testing analysis services
- i. Services incidental to manufacturing (CPC 8842, 8846-8848 & 885)²⁰¹

¹⁹⁹ CPC 83101 covers ‘Leasing or rental services concerning pars without operator’; CPC 83102 – ‘Leasing or rental services concerning goods transport vehicles without operator’.

²⁰⁰ CPC 86609 covers ‘Other management services n.e.c’.

²⁰¹ CPC 8842 covers ‘Manufacture of textiles, wearing apparel and leather products on a fee or contract basis’; CPC 8846 – ‘Manufacture of chemicals and chemical products on a fee or contract basis; 8847 – ‘Manufacture of rubber and plastics products on a fee or contract basis’; CPC 8848 – ‘Manufacture of other non-metallic minerals products,

- k. Placement and supply services of personnel* (except CPC 87206 and 87209)²⁰²
- m. Related scientific and technical consulting services (CPC 86753 and 86752)²⁰³
- n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)
- p. Photographic Services (Specialty photography services – photomicrography only CPC 87504)
- q. Packaging services
- s. Convention services
- t. Other business services* (CPC87905 translation & interpretation services)

2. COMMUNICATION SERVICES

B. COURIER SERVICES – there are no limitations on market access or national treatment

C. TELECOMMUNICATIONS SERVICES (public and non-public use) – there are no limitations on national treatment (modes 1 and 2) and Mode 2 market access; for Mode 1 market access is only afforded through licensed facilities based operators (except with respect to paging where no limitation is specified); additionally for voice telephone services Mode 1 market access does not permit callback and refile:

- a. Voice telephone services (excluding trunked radio services)
 - d. Telex services; e. Telegraph services; f. Facsimile Services
 - h. Electronic mail; i. Voice mail; j. Online information and data base retrieval; l. Enhanced/value added facsimile services including store and forward, store and retrieve; m. Code and protocol conversion n. Online information and/or data processing (including transaction processing)
- [Note that for the foregoing subsectors (i.e. h, i, j, l, m, and n) there are two (2) entries for Belize Mode 1 market access: one indicates ‘None’, the other ‘Only through licensed facilities based operators’. Given the consistent reservation limiting market access for Mode 1 only through licensed facilities based operators it is assumed that the second entry is correct. If this anomaly has not already been corrected, it is recommended that the matter be addressed through the appropriate technical rectification.]**

on a fee or contract basis’; CPC 885 – ‘Services incidental to the manufacture of metal products, machinery and equipment’.

²⁰² CPC 87206 covers ‘Supply services of nursing personnel’; CPC 87209 – ‘Supply services of other personnel not elsewhere classified’.

²⁰³ CPC 86753 covers ‘Surface surveying services’; CPC 86752 – ‘Subsurface surveying services’.

k. Electronic Data interchange

o. Other

Internet and Internet access (except voice) (leased lines only)

Trunked radio system services

Paging

Teleconferencing Services

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

E. OTHER

Special trade Construction (Tunnel construction CPC 5224) – there are no limitations on Mode 2; however, Mode 1 is unbound. **[It should be noted CPC 5224 refers to long distance pipelines communication and power lines (cables). CPC 52224 relates to tunnel construction. It is assumed that the latter reference (i.e. CPC 52224) is correct. It is recommended that if this has not already been corrected the appropriate adjustment should be made.]**

4. DISTRIBUTION SERVICES

C. RETAILING SERVICES (Non-food retailing services, CPC 632) – there are no limitations on market access or national treatment

5. EDUCATIONAL SERVICES

D. ADULT EDUCATION (except non-profit, public and publicly funded entities) – there are no limitations on market access or national treatment

6. ENVIRONMENTAL SERVICES – for all the sub-sectors listed below there are no limitations on market access or national treatment

A. SEWAGE SERVICES

B. REFUSE DISPOSAL SERVICES

Hazardous waste collection

Hazardous waste treatment and disposal

D. OTHER

Cleaning services of exhaust gases
Noise abatement services
Waste and waste water management
Recycling services

7. FINANCIAL SERVICES

A. ALL INSURANCE AND INSURANCE RELATED SERVICES

Actuarial services – there are no limitations on market access or national treatment

8. HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1.A h-j) – for all sub-sectors listed below there are no limitations on market access or national treatment:

A. HOSPITAL SERVICES

B. OTHER HUMAN HEALTH SERVICES (other than CPC 93191 & except for CPC 93199)²⁰⁴

C. SOCIAL SERVICES (except CPC 93319, 93321, 93322 & 93329)²⁰⁵

9. TOURISM AND TRAVEL-RELATED SERVICES – for all the sub-sectors listed below there are no limitations on market access or national treatment save for *A. Hotels and Restaurants where Mode 1) is unbound

A. HOTELS AND RESTAURANTS (including catering) (CPC 64110)^{206*}

Letting services of furnished accommodation (CPC 64193 and 64195)²⁰⁷

Meal serving with full restaurant services

Meal serving services in self-service facilities (except for institutionalized cafeteria services such as schools, hospitals and other public institutions)

D. OTHER

Marina services

Spa services

²⁰⁴ CPC 93191 covers ‘Deliveries and related services, nursing services, physiotherapeutic and para-medical services’; CPC 93199 – ‘Other human health services n.e.c.’

²⁰⁵ CPC 93319 covers ‘Other social services with accommodation’; CPC 93321- ‘Child day-care services including day-care services for the handicapped’; CPC 93322 – ‘Guidance and counselling services n.e.c. related to children’; CPC 93329 – ‘Other social services without accommodation’.

²⁰⁶ CPC 64110 covers ‘Hotel lodging services’.

²⁰⁷ CPC 64193 covers ‘Letting services of furnished accommodation’; CPC 64195- ‘Camping and caravanning site services’.

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual) – for all the sub-sectors listed below there are no limitations on market access and national treatment save for *D. Sporting and other Recreational services where Mode 1 market access is unbound:

A. ENTERTAINMENT SERVICES (including theatre, live bands and circus) (CPC 96194 and 96195)²⁰⁸

B. NEWS AGENCY SERVICES (CPC 9621 & 9623)²⁰⁹

D. SPORTING AND OTHER RECREATIONAL SERVICES (CPC 96413)^{210*}

E. OTHER (rental and leasing of yachts without operators limited to class 1 under 12 passengers with or without crew and with multiple days on itinerary)

11. TRANSPORT SERVICES – for all the sub-sectors listed below there are no limitations on market access or national treatment save for *H(c) Freight transport agency services where national treatment is unbound:

A. MARITIME TRANSPORT SERVICES

- a. passenger transport (less cabotage)
- b. Freight transportation (less cabotage)
- c. Rental of vessels with crew (passenger transportation for abroad, limited to class 2 boats under 100 passengers but with multiple days on itinerary)
- e. Pushing and towing services

Ship Registration

Navigation Aid and Communications/Meteorological Services

C. AIR TRANSPORT SERVICES

- a. passenger transportation (excluding the carriage of passengers within the domain of Belize)
- b. freight transportation
- c. rental of aircraft with crew
- d. maintenance and repair of aircraft

²⁰⁸ CPC 96194 covers ‘Circus, amusement park and similar attraction services’; CPC 96195 – ‘Balloon, discotheque and dance instructor services’.

²⁰⁹ CPC 9621 covers ‘News agency services to newspapers and periodicals’; CPC 9623 – ‘News agency services to television stations’.

²¹⁰ CPC 96413 covers ‘Sports facility operation services’.

Computer reservation system services

Selling and marketing of air transport services

E. RAIL TRANSPORT SERVICES

a. passenger transportation

b. freight transportation

c. pushing and towing services

d. maintenance and repair of rail transport equipment

e. Supporting services for rail transport services

H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT

c. Freight transport agency services*

12. OTHER SERVICES NOT INCLUDED ELSEWHERE

Services of membership organizations (CPC95910)²¹¹ - no limitations on market access or national treatment

A review of the legislation has not raised any particular concerns with respect to the cross-border supply of services which may legitimately be subject to measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures which do not constitute disguised barriers to trade. During the course of our consultations no particular guidelines, understandings, practices, etc which may adversely affect the cross-border supply of the above-listed services, contrary to Belize's specific commitments, were highlighted. Some initial queries were raised with respect to the legislation and regulations governing the telecommunications sector and to a certain extent the tourism sector. These are addressed under Chapter 5 on 'Regulatory Framework'.

IV. TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

The categories of service suppliers accommodated within Chapter 4 of Title II fall under the umbrella of GATS Mode 4 commitments. These are classified in the EPA as Key Personnel (i.e.

²¹¹ CPC 95910 covers 'Religious services'.

Business visitors and Intra-corporate transfers – the latter including managers and specialists), Graduate trainees, Business service sellers, Contractual service suppliers, Independent professionals, and short term visitors.

Belize's horizontal commitments provide that Mode 4 is unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate Trainees not available locally (as regards market access). National treatment is unbound except for 'managerial personnel and technical experts,' i.e. those classified as 'intra-corporate transfers'. Additionally, no entries in the Annex (i.e. specific commitments) relate to business service sellers, contractual service suppliers and independent professionals for Belize. As such, where persons are available locally Belize has undertaken essentially no Mode 4 market access commitments. Where they are not so available they are subject to work permit requirements (as indicated in the Annex) which should not be used as a disguised barrier to trade. National treatment is only assured for intra-corporate transfers.

Definitions

The definition of Key Personnel follows the classification found in 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. The category of Key Personnel is comprised of Business visitors and 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 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.²¹² 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.

The only bound Mode 4 commitments made by Belize relate to the afore-mentioned categories of persons who are all linked to commercial presence (above-discussed). The basic EPA obligation is essentially not to maintain or adopt (unless explicitly stated in Annex IV) limits on the total number of natural persons an investor may employ in a particular sector in the form of quotas or needs tests and as discriminatory limitations.²¹³ As above-noted, Belize has added the horizontal limitation “not available locally” as a condition of market access.

Additional categories covered in the EPA for which Belize has no bound commitments are:

- Business services sellers who represent service suppliers seeking temporary entry and attempt to negotiate the sale of their services. They are not paid within the host state nor do they make direct sales to the general public. The EPA obligations with respect to Business services sellers are linked to the specific commitments undertaken in the context of Chapters 2 and 3.²¹⁴
- Contractual services suppliers who are employed by a juridical person which has no commercial presence in Belize but has a contract to provide services which requires temporary presence.²¹⁵

²¹² This is not covered trade under the GATS as the natural person would be supplying a service to the domestic company.

²¹³ See EPA, Article 81.

²¹⁴ See EPA, Article 82.

²¹⁵ 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 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.

- Independent professionals who are self employed persons with a contract to provide services,²¹⁶ and
- Short term visitors for business purposes.²¹⁷

These categories of service suppliers are therefore principally of interest to Belize from an export perspective where the EU or the Dominican Republic have undertaken Mode 4 commitments.²¹⁸

V. REGULATORY FRAMEWORK

To support investment and trade in services the EPA imposes general obligations to promote mutual recognition, transparency, and due process. Additional sector specific regulatory obligations apply in certain instances as discussed below.

The decision of the CARICOM Council for Economic Trade and Development (COTED) for the establishment of coalitions of service providers at national and regional levels is designed to, *inter alia*, increase services exports, establish standards for professional services, and organize professionals where professional bodies do not exist. The Belize Services Coalition of Service Providers was launched on 11 March 2009 and may be expected to play an important role in the implementation of Belize's EPA obligations on services.²¹⁹ Our consultations suggest that the Coalition is not yet active, though efforts are underway to lay the foundation for it to assume an appropriate role in the development and promotion of Belize's services industries over the coming years.

²¹⁶ 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 professional title of Party where service is provided and should have a contract for service for not more than twelve (12) months.

²¹⁷ 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 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. The EPA obligation is merely to permit entry on a 'best endeavour' basis.

²¹⁸ The obligations of the Revised Treaty of Chaguaramas are far more extensive than the EPA and therefore a more appropriate point of reference for trade in services between Belize and other Caricom Member States.

²¹⁹ The establishment of the services coalition follows a decision of the COTED that, as part of the regional development plan for services, the service firms, professionals and other service providers should be organised into an effective group to interface with member governments in the development of the sector, at both national and regional levels.

Mutual Recognition

The EPA commits Belize to encourage professional bodies such as the Institute of Chartered Accountants of Belize to work with its regional and EU counterparts to jointly develop recommendations to the CARIFORUM-EC Trade and Development Committee (TDC) on the mutual recognition of qualifications, professional experience and other criteria required for the authorization, licensing, certification and operation of investors and service suppliers in CARIFORUM and EU member countries. The process should be initiated within three (3) years of entry into force of the EPA. Accounting, architecture, engineering and tourism are priority areas.²²⁰

The CARICOM Draft Model Professional Services Bill facilitates the development of a harmonized system within CARICOM. The Bill provides the basis for the practice of professions within Member States by introducing a regulatory framework and administrative body to implement its provisions. Draft bills have been developed in the areas of Medical, Nursing and Midwifery, Dental, Pharmacy, Veterinary, Allied Health, Medical Laboratory professions, Engineering, Architecture, Accountancy, Consulting and building contracting.

With a view to taking advantage of market access opportunities in the context of the EPA the Government of Belize must follow through on its commitment to encourage professional bodies, particularly in the identified priority areas to be actively involved in the development of recommendations for the consideration of the TDC. The work of the emerging Belize Services Coalition of Service Providers will undoubtedly contribute to this. **Note is taken of this in the attached Implementation Schedule.**

Transparency – enquiry points

The transparency provisions of the EPA largely mirror those of Article III:4 of the GATS. It is, however, broader in scope as the list of beneficiaries (i.e. those with the right to make enquiries) is extended to include private parties and not just governmental entities; additionally, enquiries

²²⁰ See EPA, Article 85. Note that GATS Article VII requires that where WTO Members enter into recognition arrangements they must afford an adequate opportunity for other interested Members to negotiate their accession to such agreements or negotiate comparable ones with them.

may be made with respect to all matters affecting trade in services as well as investment in non-services sectors.²²¹

The Director, Directorate for Foreign Trade, Ministry of Foreign Affairs and Foreign Trade is the contact point listed in Annex V of the EPA. Depending on the level of interest of traders and investors in Belize the resources placed at the disposal of the Directorate may need to be enhanced to enable it to respond promptly to all requests for information “which pertain or affect”²²² the EPA.

Due process

The due process procedures of Article 87 of the EPA mirror those of the GATS; I refer in particular to Article IV:3 and 2. The EPA extends this obligation to investments (commercial presence) in non-services sectors. The requirement for a response within a reasonable period of time for information on the status of applications for authorization to provide a service (where such authorization is required), and for the implementation of procedures for an impartial review of decisions made with respect to such applications, conform to the GATS. As such, there is little ‘additionality’ in terms of the need to establish new governmental structures, though additional resources may be required to cope with the potentially increased administrative burden placed on the existing institutions.

The Regulatory Framework for computer, courier, telecommunications, financial and tourism services

Section 2 - Computer services

Belize has undertaken bound commitments in computer services in both cross-border supply (where no limitations have been made) and commercial presence (where market access is subject to the condition of a minimum fifty percent (50%) local participation and transfer of knowledge

²²¹ The provision could be subject to even broader interpretations but it is assumed that that it was intended to be limited as suggested herein; see EPA, Article 86 which provides: “Subject to Article 235(3) the Parties and the Signatory CARIFORUM States shall respond promptly to all requests made by the other Party for specific information on any of their measures of general application or international agreements which pertain to or affect this Agreement. The Parties shall also establish one or more enquiry points to provide, upon request, specific information to investors and services suppliers of the other Party on all such matters. ..” (added emphasis)

²²² See EPA, Article 86.

and technology). The EPA Understanding on computer services defines the scope of the sector (CPC 84). It provides a non-exhaustive list of computer services (it is largely definitional) and, draws an important distinction between the enabling service and the content or core service which is *not* covered by CPC 84.²²³ A useful comparison may be made with the definition of telecommunication services in Article 94 of the EPA, discussed below.

Significantly, Section 2 on computer services does not impose new obligations but merely clarifies the scope of the commitments undertaken in this sector in Annex IV.F.

Section 3 - Courier services

Belize has undertaken bound commitments (with no limitations) in the cross-border supply of courier services, and bound national treatment for commercial presence (market access is unbound). The EPA regulatory framework provides for certain pro-competitive disciplines which are essentially GATS plus. It is anticipated that these measures will be undertaken in accordance with Title IV, Chapter 1 on competition policy.

Belize is expected to maintain or introduce measures to prevent anti-competitive actions by dominant suppliers (i.e. those that may materially affect conditions in the market). The provision does not spell out which market behaviours may constitute anticompetitive practices but analogies may be drawn from the examples provided on telecommunications below.²²⁴

Belize has not yet developed an effective competition policy and law. There is also no specific legislation governing courier services and, as such, no appropriate regulatory body as contemplated under Article 93 of the EPA. 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.”²²⁵ It would seem that the prevention of anti-competitive practices in the courier sector could be adequately dealt by any national competition authority which may be established

²²³ See EPA, Article 88.

²²⁴ See EPA, Article 97; note in particular cross-subsidization and not making available technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

²²⁵ EPA, Article 93.

or the CARICOM Competition Commission (to the extent that anti-competitive acts have cross-border effects) given the 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.

Provision is 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.²²⁶ 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.²²⁷

Licenses may only be required for the provision of courier services where they fall within the scope of the universal service obligation.²²⁸ 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 the cross-border supply of services (as Belize has undertaken bound commitments without limitations and there are no existing operating conditions for the supply of courier services). 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.

It is noted that courier service suppliers in Belize now operate to a certain extent outside of the law in an unregulated environment. The development of appropriate regulations that would allow service suppliers other than the Postmaster General and other officers and servants of the Post

²²⁶ See EPA, Article 91.

²²⁷ 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 as provided for in the Belize Post Office Act (CAP 228). 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.

²²⁸ See EPA, Article 92.

Office to provide courier services is therefore necessary. **This is one of the proposals advanced in the attached Implementation Schedule.**

Section 4 – Telecommunications services

Belize has undertaken bound commitments in the telecommunications sector both as regards cross-border supply of services and commercial presence (investment) as discussed above. Belize has generally conditioned market access on Mode 1 cross-border supply on the use of facilities provided by licensed operators; this condition also applies to certain bound commitments on investment in the sector which are in certain instances subject to additional joint venture requirements. The regulatory framework provided in the EPA relates to the specific commitments made by Belize in Annex IV.

The definition of telecommunications services in the EPA is more precise than that found in the GATS.²²⁹ A clear distinction is drawn between the transmission and reception of electromagnetic signals and the content of whatever is transmitted. The definition of telecommunications services relates exclusively to the former, i.e. is limited to the transmission and reception and does not cover content.

The Regulatory Authority plays a critical role in the implementation of Belize’s EPA obligations. It must be legally distinct and functionally independent of any telecommunications supplier and “shall be sufficiently empowered to regulate the sector.”²³⁰ During our consultations the point was made that the regulatory authority in Belize, i.e. the Public Utilities Commission (PUC) was not initially provided with the resources to effectively fulfil the mandate it has been given in domestic law. However, it was suggested that in recent years this has improved.

²²⁹ The definitions in Article 94 of the EPA largely correspond to those of the GATS Telecoms Reference Paper. A notable exception is the definition of ‘regulatory authority’ which is new.

²³⁰ EPA, Article 95(2); note that the emphasis here goes beyond the GATS. It is evolutionary and principally expands on section 5 of the Telecoms Reference Paper.

The PUC is established under the Public Utilities Commission Act (CAP 223) as an autonomous institution.²³¹ The independence of the Commissioners, employees and members of the administrative staff of the Commission is promoted under the Act which forbids the holding or acquisition of any interest in a public utility provider.²³² The procedures established for the PUC are designed with a view to ensuring impartiality.²³³ The functions of the PUC are clearly set out in law.²³⁴

The Public Utilities Commission Act authorizes the PUC to hear complaints against public utility providers including telecommunications service suppliers.²³⁵ This is affirmed in the Telecommunications Act which provides that “[a]ny disagreements or disputes over interconnection charges, terms and practices of public telecommunication service providers shall be submitted to the PUC for resolution.”²³⁶ An appeal may be made on a question of law to the Supreme Court,²³⁷ which may also grant injunctions where necessary on the application of the PUC or a member of the public.²³⁸

The EPA requires that authorization to provide telecommunications services shall, as much as possible, be based on *mere notification*; i.e. automatically and without the need for a non-automatic/discretionary licence.²³⁹ Provision is made for the requirement of a licence in two

²³¹ See Public Utilities Commission Act (CAP 223) section 3(2). The Commissioners are appointed by the Governor-General acting on the advice of the Prime Minister given after consultation with the Leader of the Opposition; *ibid.* section 4(1)(b).

²³² See *ibid.* section 10.

²³³ *E.g. ibid.* section 31 (for example subsection (4) requires that “While a matter is pending before the Commission, both the Commissioners and the Commission’s staff shall not consult with a person or entity substantially affected by the matter, without giving notice and an opportunity to be present to all persons interested in the matter.” See also EPA, Article 95(3) mandating that decisions and procedures of the regulatory authority be impartial.

²³⁴ See *ibid.* sections 22 & 23; see also EPA, Article 95 (2) which requires, *inter alia*, that “The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form”.

²³⁵ See *ibid.* section 24.

²³⁶ See Telecommunications Act (CAP 229), section 23(1).

²³⁷ See Public Utilities Commission Act, sections 32-36; see also EPA, Article 95(4) providing for a right of appeal to an independent agency.

²³⁸ See Telecommunications Act, section 47; see also *Belize Telemidia Ltd vs. Speednet Communications Ltd*, Civil Appeal No. 27 of 2009.

²³⁹ See EPA, Article 96(1) - The undertaking is that this be done “as much as possible” which appears – at a minimum – to shift the burden of proof on the Party imposing a non-automatic licensing requirement for a particular service to demonstrate that it is necessary. As such, the EPA goes well beyond the GATS Telecom Reference Paper.

areas, i.e. attribution of numbers and frequencies.²⁴⁰ The provision for licensing outside of these two areas is not generally anticipated.²⁴¹ However, as above-noted, Belize has generally conditioned market access on Mode 1 cross-border supply through the use of facilities provided by licensed operators.²⁴² Where licences are required the EPA imposes basic conditions of transparency²⁴³ and due process.²⁴⁴ The Telecommunications Act conforms to the EPA (and, indeed, appears to go beyond its requirements) in providing for the publication of terms and conditions of every licence²⁴⁵ (while the EPA only refers to the publication of ‘such licences’ with respect to telecommunication services as opposed to courier services). The Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations also expressly provides for the issuance of licences on a non-discriminatory basis.²⁴⁶ The provisions for appeal to the Supreme Court on decisions from the PUC on any matter have already been noted above.

During our consultations it was explained that the PUC is in the process of reviewing all issued licences as questions have arisen as to the interpretation and application of the regulations with respect to the issuance of ‘Individual Licences’ and ‘Class Licences’.²⁴⁷ Additionally, it was stated that the PUC is deliberating on various other regulatory matters requiring possible policy

²⁴⁰ See EPA, Article 96(2).

²⁴¹ It may be suggested that in light of the provision for licences in only two areas, licensing requirements in other instances would seem to require exceptional justification (possibly security or data safety concerns).

²⁴² See also Telecommunications Act, section 15 providing that “no person shall provide any telecommunication service except under and in accordance with a telecommunication service licence issued by the PUC”. Note that section 16 of the Act provides the criteria for granting licences.

²⁴³ Article 96(3)(a) of the EPA reflects the basic GATS Telecoms Reference Paper disciplines on the administration of licences. Unlike the requirement with respect to courier services which mandates making publicly available the terms and conditions of *individual* licences, Article 93 only requires that that terms and conditions for ‘such licences’ must be made publicly available.

²⁴⁴ Article 96(3)(b) & (c) of the EPA provide that the reasons for the denial of a licence shall be provided, if requested, and an appeal procedure be put in place; note that the GATS Telecoms Reference Paper does not require that there be the facility for an appeal.

²⁴⁵ See Telecommunications Act, section 13; see also section 26(4).

²⁴⁶ See Regulation 10 (2) provides that “For the purpose of this regulation, an Individual Licence, Class Licence or Frequency Authorisation is issued on non-discriminatory terms if: - (a) telecommunication providers of similar types of telecommunications networks are treated similarly; (b) the licence or authorisation does not favor any one telecommunication provider; and (c) the issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market”.

²⁴⁷ See Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations, Regulations 5 & 6. Note that separate provision is made in Regulation 7 for the application for a licence for frequency authorisation. It was explained that the PUC has not been issuing formal Orders in accordance with Regulation 4 and a review of all licences will be undertaken. This will not prejudice any licence holders.

and/or legislative changes. It was explained, for example, that the PUC does not charge a licensing fee for every activity as specified in the Regulations. It merely charges the fee prescribed for the most expensive service covered by the licence. It is anticipated that some resolution of the discrepancy between the Regulations and PUC practices will likely emerge from the review to be undertaken. The issue of licensing fees is an area of possible concern not only with respect to the application of the Regulations but also the need for some correlation between the fee imposed and the administrative burden placed on the PUC – a matter which is addressed further below.

Following our initial consultations the PUC issued the Belize Telecommunications Interconnection and Infrastructure Sharing Regulations Order (Amended) (18th August 2010). Interconnection network and facilities and interconnection agreements between telecommunications licensees are governed by Schedule 1; infrastructure and facilities sharing and any agreements therefor between telecommunications licensees are governed by Schedule 2; and rates, fees or charges in respect of interconnection and infrastructure and facilities are governed by Schedule 3. The PUC also issued the Belize Telecommunications General Order (Interconnection, Infrastructure Sharing, International Access) (Amended) No. 1 of 2010 (18th August 2010) (hereinafter “Telecommunications General Order”).

The Telecommunications General Order “deems it to be in the public interest for all telecommunication service licensees to share infrastructure, networks or facilities with other licensees for the provision of telecommunications services,”²⁴⁸ and further directs that this be done “on reasonable and non-discriminatory terms upon reasonable request”.²⁴⁹ Telecommunication service licensees may procure international telecommunications services

²⁴⁸ Telecommunications General Order, para 4 – this is upon reasonable request, where any such licensees possess or operate infrastructure, networks or facilities that can adequately satisfy the demands or requirements of such licensees and any other licensee who may request that such infrastructure, network or facility be shared.

²⁴⁹ See Telecommunications General Order, paragraph 6; see also Schedule 1, “Belize Telecommunications Interconnection Regulations (Amended) 2010”, para 6 imposing a requirement on licensees to enter into infrastructure sharing arrangements for the purpose of effecting interconnection. Note that Schedule 2 “Telecommunications Infrastructure and Facilities Sharing Regulations (amended)”, para 8 – provides that the PUC may consider any failure to conclude an infrastructure and facilities sharing agreement within twenty-eight (28) days to constitute a dispute and intervene to resolve the dispute in accordance with the Belize Telecommunications Act or any Orders or regulations made by the Commission. See also Telecommunications Act, section 22.

directly from, and enter into commercial arrangements directly with, foreign public telecommunication service licensees.²⁵⁰

All licensed telecommunications service suppliers have the “right and, when requested, an obligation to negotiate interconnection with each other for the purpose of providing public telecommunications services, including access to technical interfaces, protocols or other key technologies or facilities that are indispensable for the interoperability of public network services.”²⁵¹

Licensees are also required to supply to interconnecting licensees upon request, such information about their network and services as is necessary and sufficient for interconnecting licensees to plan and operate their networks and services. All information which is provided shall be used for the purpose of facilitating interconnection only, and shall not be disclosed to any third party without the expressed written consent of the information provider.²⁵² A licensee is required to provide interconnection under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners, or the networks and services of any other licensee to which it provides interconnection.²⁵³ Similar obligations apply with respect to infrastructure and facilities

²⁵⁰ See paragraph 7(a); but note paragraph 7(b) providing that “(b) no telecommunication service licensee shall be allowed unrestricted access to any foreign telecommunications network or facility, and the responsibility to restrict such access is vested in the Public Utilities Commission, which shall prescribe the terms and conditions by which such access shall be restricted.”

²⁵¹ Schedule 1, Belize Telecommunications Interconnection Regulations (Amended) 2010, para 4; see also Schedule 2, “Telecommunications Infrastructure and Facilities Sharing Regulations (amended), para 4 – providing, *inter alia*, a right and, when requested, an obligation to negotiate the sharing of infrastructure and facilities with each other for the purpose of providing public telecommunications services right and, when requested, an obligation to negotiate the sharing of infrastructure and facilities with each other for the purpose of providing public telecommunications services.

²⁵² See paragraph 5 of Schedule 1, “Belize Telecommunications Interconnection Regulations (Amended) 2010”. Note that provision is made for the possible exemption of certain information. Special provision is made for the treatment of confidential information in the establishment of rates, fees and charges; see Schedule 3, “Telecommunications Interconnection and Infrastructure Sharing (Rates, Fees and Charges) Regulations (Amended), 2010, para 15. See also the Telecommunications Act, section 9 ‘Obligation of secrecy’ and sections 31(5) & 32 – on the confidentiality of information submitted to the PUC.

²⁵³ See paragraph 9 of Schedule 1; note that the Commission may determine any failure to conclude an interconnection agreement within sixty (60) days of the receipt of a request to constitute a dispute and intervene to resolve the dispute in accordance with the Belize Telecommunications Act or any Orders or regulations made by the Commission; see Schedule 1, paragraph 14.

sharing.²⁵⁴ Certain obligations are targeted at existing or dominant licensees with a view to preventing anti-competitive practices.²⁵⁵

Provision is made for all relevant rates, fees and charges to be based on costs determined in accordance with prescribed costing methodologies, models or formulae.²⁵⁶ The PUC is provided with the authority to seek to resolve all disagreements or disputes on matters within its jurisdiction “in any reasonable manner it thinks is best calculated to achieve the objectives of these regulations, the Belize Telecommunications Act and the Public Utilities Commission Act.”²⁵⁷

All the above-noted provisions affirm and conform to the pro-competitive safeguards of the EPA regulatory framework which are to be implemented in accordance with Chapter 1 on competition policy. Questions may arise as to how the PUC will work in tandem with any national competition authority which may be established and/or the CARICOM Competition Commission given the primacy of the reference to Title IV, Chapter 1. Similar concerns may be raised with regard to pro-competitive disciplines applicable to the tourism sector.

Possible recommendations for the interface between the PUC and national competition authorities could draw on EC practices, having regard to common principles underpinning the regulatory framework prescribed in the EPA and certain 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

²⁵⁴ See Schedule 2, “Telecommunications Infrastructure and Sharing Regulations (amended)”, para. 7

²⁵⁵ *E.g.* paragraph 7 of Schedule 1, “Belize Telecommunications Interconnection Regulations (Amended) 2010”. See also Telecommunications Act, sections 26 & 42 – but note that the legislation does not specify how anti-competitive effects are determined.

²⁵⁶ *E.g.* Schedule 1, “Belize Telecommunications Interconnection Regulations (Amended) 2010, para. 18; Schedule 2, “Telecommunications Infrastructure and Sharing Regulations (amended)”, para. 11. Note that Schedule 3, “Telecommunications interconnection and Infrastructure Sharing (Rates, Fees and Charges) Regulations (amended), 2010, defines the public telecommunications services licensee’s costs as “the incremental cost, and may include allowance for a reasonable return on capital investment”; see para 4 (1); see also Schedule 3, para 10 - requiring that proposed new rates, tariffs, fees or charges or any proposed amendments, along with all pertinent information, must be submitted to the PUC for its consideration at least thirty-five (35) days prior to the proposed introduction of any such new or amended rates, tariffs, fees or charges. See also Telecommunications Act, sections 21(3), 22(2)(f), 25 & 26(2) – note that the PUC may impose limits on potential profits, e.g. price caps, maximum-rate-of-return, if deemed necessary, in order to prevent unfair business practices in a “competitive market”.

²⁵⁷ *E.g.* Schedule 2, “Telecommunications Infrastructure and Sharing Regulations (amended)”, para 18; Schedule 1, “Belize Telecommunications Interconnection Regulations (Amended) 2010”, para. 27.

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.²⁵⁸

As with the GATS Telecoms Reference Paper, EPA Article 97 is focused on preventing suppliers who, alone or together, are a major supplier from engaging in anti-competitive practices, including cross-subsidization, using information from competitors in an anticompetitive way, and not making available information with respect to essential facilities or other information necessary to supply the service. The EPA also imposes a *duty* to ensure the confidentiality of information.²⁵⁹ This may be compared with the “right to confidentiality” found in the GATS.

The EPA provisions on interconnection take into account WTO jurisprudence in the *Mexico – Telecoms case* (WT/DS204) which interprets the GATS Annex on Telecommunications and the Telecoms Reference Paper. 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.²⁶⁰ These requirements, as

²⁵⁸ See Article 3 of the Framework Directive.

²⁵⁹ See EPA, Article 101.

²⁶⁰ See EPA, Article 98; see also EPA, Article 102 on disputes between service suppliers which provides that the national regulatory authority (PUC in the case of Belize) shall issue a binding decision to resolve 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.

above-noted, are found in the Public Utilities Commission Act and the Telecommunications Act and Regulations promulgated thereunder.

Returning to the issue of the licensing fee, the Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations stipulates the payment of an annual licence fee to the PUC as from the second year, consisting of 1.5% of gross revenues from the previous year.²⁶¹ A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that licence fees should not exceed administrative costs. This precludes the auctioning of licences (scarce frequencies) and other charges such as percentage fees not directly linked to administrative costs.

The EPA provision may be compared with EC Directive 2002/20.²⁶² Directive 2002/20/EC provides for administrative flat rate charges or charges combining a flat rate basis and a turnover related element, as well as usage fees levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Administrative charges imposed on undertakings are limited in total, to 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.²⁶³ A number of other policy objectives and regulatory principles govern the imposition of usage fees.²⁶⁴

A revenue-based contribution regime such as prescribed in the Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations may not necessarily exceed administrative costs taking into account the tasks assigned to the Regulator. Some telecoms regimes provide for annual adjustments to supplement fees based on the actual expenditures of

²⁶¹ The annual licence fee is a distinct charge which may be distinguished from business taxes on receipts imposed under the Income and Business Tax Act (CAP 55); see Chapter II. For telecommunication services the tax is levied at a rate of 24.5%. See also Schedule 3, “Telecommunications Interconnection and Infrastructure Sharing (Rates, Fees and Charges) Regulations (Amended) 2010, para 6(f) “Taxes/Licence Fees are defined as the annual taxes and licence fees payable to the Government of Belize or the Public Utilities Commission (PUC), respectively, in respect of revenues associated with the provision of a relevant service or with the implementation or execution of any relevant arrangements between licensees, and are expressed arithmetically as follows: Taxes/Licence Fees = (TSR + OI) x (TR +LFR) where: (i) TSR is the Total Service Revenue defined in section 4(a); (ii) OI is the Other Income defined in section 4(b); (iii) TR represents the legal tax rate, being 24.5% for the time being; (iv) LFR represents the legal annual licence fee rate where applicable, being 1.5% for the time being.”

²⁶² 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)

²⁶³ *Ibid.* Article 12(1).

²⁶⁴ See *ibid.*, Article 13 cross-referencing to Article 8 of the Framework Directive (2002/21/EC).

the Regulator.²⁶⁵ While this is not required by the EPA attempts should be made by the PUC to ensure that the licensing fees imposed remain somewhat approximate to administrative costs.

The proposed review of conditions associated with the issuance of licences by the PUC is intended to include the fee structure, as above-noted. The review therefore should not only address any inconsistencies between the legislation and current practices but also take into account the commitments undertaken by Belize in the context of the EPA. **Note is taken of this in the attached Implementation Schedule.**

The EPA obligations on scarce resources²⁶⁶ and the universal service obligation mirror those of the GATS Telecoms Reference Paper. The EPA provides the additional right for all suppliers to be eligible to ensure universal service; the appropriate designation to be made through efficient, transparent and non-discriminatory mechanism.²⁶⁷ Should it be determined that the provision of universal service is an undue burden, a Party may determine whether a mechanism is required to compensate a supplier or provide for the sharing of the net cost of the universal obligation; such provision is made in the Belize Telecommunications Act (CAP 229).²⁶⁸

In its Schedule of Specific Commitments to the GATS Belize has undertaken the additional commitments in the Telecoms Reference Paper.²⁶⁹ As such, the principal new obligations imposed by the EPA are:

1. the provision for a right of appeal against regulatory decisions;²⁷⁰
2. the requirement that licensing fees be capped at the level of costs;²⁷¹
3. the obligation to establish compensation mechanisms for the provision of universal service;²⁷²

²⁶⁵ E.g. Canada Radio-television and Telecommunications Commission, www.crtc.gc.ca

²⁶⁶ See EPA, Article 99 – requiring that the current state of allocated frequency bands are to be made public and the allocation is to be made in an objective, transparent, timely and non-discriminatory manner.

²⁶⁷ See EPA, Article 100(3). An additional obligation of the EPA is that directories of all suppliers should be made available on a non-discriminatory basis.

²⁶⁸ See the Belize Telecommunications Act (CAP 229), section 34(3).

²⁶⁹ But note that the specific sectoral commitments undertaken by Belize in the GATS are more limited than in the context of the EPA.

²⁷⁰ See EPA, Article 95.

²⁷¹ See EPA, Article 96.

²⁷² See EPA, Article 100.

4. the obligation to ensure confidentiality of telecommunications and related traffic data;²⁷³
and
5. the obligation for the national regulatory authority to intervene, where requested, to settle disputes between service suppliers.²⁷⁴

As above-noted, the new obligations imposed by the EPA are already largely addressed in the existing legislation though it is recommended that the requirements of the EPA are given some prominence in the ongoing review of the telecommunications regulations.

Section 5 - Financial Services

The EPA regulatory framework on financial services is largely irrelevant to the current analysis as Belize has made commitments in only one sub-sector, i.e. actuarial services. The EPA framework draws on the GATS Annex on Financial Services which is binding on all WTO Members, including Belize. However, certain additional elements from the GATS Understanding on Financial Services which is optional (and not applicable to Belize) are also incorporated in to the EPA.²⁷⁵

Section 6 – Maritime Transport

Belize has undertaken commitments in maritime transport. There are generally no limitations on Belize’s specific commitments on cross-border supply and commercial presence in this sector, save for a few instances noted above.

The EPA approach to liberalization 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)²⁷⁶ and trades on a commercial and non-discriminatory basis.²⁷⁷ The EPA requires

²⁷³ See EPA, Article 101; note that EPA obligations on data protection are discussed under Title IV.

²⁷⁴ See EPA, Article 102.

²⁷⁵ The principal new disciplines relate to new financial services (EPA, Article 106) and financial data processing (EPA, Article 107). Other principles relating to ‘effective and transparent regulation’ are elaborated in addition to certain best endeavour undertakings.

²⁷⁶ It may be noted that the laws of Belize do not limit cabotage transportation based on nationality, residence or registration criteria, and in fact foreign shipping companies undertake some cabotage operations.

²⁷⁷ See EPA, Article 109(3)(a); see also Cotonou Agreement, Article 42(1).

national treatment with respect to access to ports, related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.²⁷⁸

The Port Authority (Tariff) Regulations of Belize provides for non-discrimination in the application of charges, rates, rules and regulations in respect of any port which is within the jurisdiction of the Belize Port Authority.²⁷⁹ With respect to access to berths, the Belize Port Authority Regulations provides that priority be given to ships arriving in order of their time of arrival, save for emergencies or other special circumstances.²⁸⁰

The EPA also: proscribes the introduction of cargo sharing arrangements in future bilateral agreements with third countries; 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; permits international maritime service suppliers to have a commercial presence on either an MFN or national treatment basis – whichever is more favourable; and makes available on non-discriminatory terms basic facilities for ships, e.g. pilotage, towing, garbage collecting, ballast waste disposal etc.²⁸¹

Belize is not party to any bilateral or plurilateral maritime arrangements which provide for preferential treatment. Additionally, during the review and consultations which were held, no legislation including the Harbours and Merchants Shipping Act (CAP 234), Registration of Merchant Ships Act (CAP 236), Belize Port Authority Act (CAP 233), Wrecks and Salvage Act (CAP 237) and Abandoned Wrecks Act (CAP 235), regulations or other measures raised in the discussions appear to present any particular concerns.

²⁷⁸ See also Cotonou Agreement, Article 42(3).

²⁷⁹ See Regulation 2 of the Port Authority (Tariff) Regulations which provides that “[t]he Tariff set out in the Schedule hereto and the Regulations therein embodied shall apply in respect of any port which is within the jurisdiction of the Belize Port Authority.” Section II, paragraph 1(a) of the Schedule provides “The charges, rates, rules and regulations published in this tariff shall apply equally to all users of, and all traffic in, any harbour, and to all users of the facilities owned, operated and administered by the Authority on and after the effective date of this tariff or any supplements thereto.”

²⁸⁰ Regulation 25 of the Belize Port Authority Regulations provides that “Ships arriving at a port with intentions of discharging cargo shall have priority to berth in order of their time of arrival, but if a ship proceeds to another port and commences discharging priority shall be given to the next ship arriving. Nevertheless, the Ports Commissioner may give priority to later ships in an emergency or in order to save perishable cargo.”

²⁸¹ See EPA, Article 109.

Section 7 – Tourism Services

Belize has undertaken limited bound EPA commitments on cross-border supply and commercial presence in Tourism services. These relate to hotels and resorts, letting of furnished accommodation, meal service facilities with and without full restaurant, Marina services, and Spa services as above-noted. Belize has also undertaken commitments in the related entertainment services sector.

The GATS contains no sector-specific disciplines in the tourism sector.²⁸² The EPA disciplines are largely ‘soft law’, i.e. best endeavour undertakings, save for Article 111 on the prevention of anti-competitive practices which must 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 provide development cooperation in certain priority areas (national accounting systems,²⁸³ environmental management, marketing strategies, effective participation in standard setting bodies, training programmes) and exchange information.²⁸⁴ The Belize Tourism Board’s National Sustainable Tourism Master Plan is expected to promote many of these principles.²⁸⁵

Article 111 requires Belize to maintain or introduce appropriate measures to prevent suppliers from affecting materially the terms of participation in the Belizean tourism market 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

²⁸² 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.* S/CSS/W/107, 26 September 2001, Communication by Bolivia, Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru and Venezuela.

²⁸³ 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.

²⁸⁴ See EPA, Article 112-118.

²⁸⁵ See <http://www.sustainabletourismbz.org/news-releases/national-sustainable-tourism-master-plans-kicks-off.html>.

tour operators and other tourism wholesalers, travel agencies and other distributors of tourism services.²⁸⁶

Belize has not undertaken any specific commitments with regard to tourism distribution networks; i.e. the afore-mentioned tour operators,²⁸⁷ travel agencies, etc. However, the activities of these agencies have the potential to *affect* trade in sub-sectors of the tourism service industry where Belize has undertaken specific commitments. The scope of measures covered by the EPA includes all those which *affect* trade in committed sectors. Belize does not have an effective competition law and policy. This is an area where substantive work is required as discussed in the review of Title IV.

The Belize Tourism Board (BTB) is established under the Act of the same name (CAP 275) “within the limits of its resources” to, *inter alia*, develop all aspects of the tourist industry of Belize and to promote the efficiency of the industry.²⁸⁸ Similarly, the Belize National Tourism Council (BNTC) is charged with, *inter alia*, developing, establishing and monitoring policies, procedures, guidelines and legislative measures to promote the efficient management and development of tourism in Belize and investment in the sector.²⁸⁹ Note is taken of the Belize Tourism Board (Tour Operators) Regulations, Belize Tourism Board (Tour Guides) Regulations and other regulations governing the sub-sector. While the review has not evidenced any material focused on promoting competition in the tourism sector, it would appear that the BTB and BNTC would be key players in developing any sector specific rules which Belize may wish to implement. It should be noted, however, that the implementation of a general competition law and policy in keeping with Title IV of the EPA would adequately address Article 111, EPA obligations. 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.

²⁸⁶ See EPA, Article 111, footnote 1.

²⁸⁷ It is noted that under the Belize Tourism Board Act (CAP 275) tour operators and tour guides must be either a citizen of Belize or a country which is a Member State of CARICOM (including the CSME); see Belize Tourism Board (Tour Operators) Regulation, 2007, Regulation 5(1)(f); see also Belize Tourism Board (Tour Guide) Regulation, Rule 4(1)(f) and Rule 7(1)(a); and Belize Tourism Board (Local Water Passenger and Watersports Vessels) Regulation, Rule 3 and Rule 4(1)(f).

²⁸⁸ See Belize Tourism Board Act (CAP 275), section 11(a).

²⁸⁹ See Belize National Tourism Council Act (CAP 276), sections 9 & 10.

VI. ELECTRONIC COMMERCE

Chapter 6 of the EPA contains two Articles on electronic commerce which commit the Parties to extend, at least as long as the EPA remains in force, the transitional period with respect to the non-imposition of custom duties on e-commerce (i.e. deliveries by electronic means) affirmed at successive WTO Ministerial Conferences, and to maintain a dialogue and exchange of information on the development and implementation of legislation in this area.²⁹⁰

The Electronic Transactions Act (CAP 290.01) is designed to, *inter alia*, eliminate legal barriers to the effective use of electronic communications in transactions; to promote the harmonization of legal rules on electronic transactions across national boundaries; and to promote business and community confidence in electronic transactions. The Act addresses some of the issues which are identified for further dialogue in the context of the EPA.²⁹¹

VII. COOPERATION

The final Article of Title II, i.e. Article 121 addresses cooperation between the Parties, i.e. technical assistance support, training and capacity building in a number of areas, including meeting regulatory standards of the EC; improving export capacity; facilitating dialogue between service suppliers; addressing quality and standards; developing and implementing regulatory regimes; establishing mechanisms to promote investment and joint ventures, and enhancing investment promotion agencies.

²⁹⁰ See EPA, Articles 119 & 120.

²⁹¹ See EPA, Article 120.

TITLE III – CURRENT PAYMENTS AND CAPITAL MOVEMENTS

Title III of the EPA has three (3) Articles dealing with current payments, capital movements and safeguard measures. The basic EPA rule prohibits restrictions on payments for current transactions which are to be allowed in freely convertible currencies.²⁹² Similarly, restrictions on free movement of capital are prohibited (subject to the imposition of safeguard measures) where they relate to investments established in accordance with Title II (i.e. concerning Belize's bound commitments), and the liquidation and repatriation of such capital.²⁹³

The EPA provides special safeguard measures in addition to the general balance-of-payment (BOP) measures permissible under the GATS and GATT.²⁹⁴ Article 124 of the EPA provides that where payments and capital movements cause or threaten to cause serious difficulties for monetary policy or the exchange rate, safeguard measures with respect to *capital movements that are strictly necessary* may be taken for a period not exceeding six (6) months. It should be noted that the imposition of safeguard measures is limited to capital movements (and is not applicable to current payments). Additionally, the concept of 'serious difficulties' is not defined. Where safeguard measures are invoked the Joint CARIFORUM-EU Council must be informed as soon as possible and provide with a time schedule for its removal.

The Exchange Control Regulations Act (CAP 52) provides the Minister with authority to impose restrictions on, *inter alia*, currency, payments, securities, debts, etc.²⁹⁵ The Act further provides the Controller appointed for the purposes of the exchange control regulations with the power to administer and enforce the said regulations and make and issue such orders and directions as necessary thereto.²⁹⁶

²⁹² See EPA, Article 122.

²⁹³ See EPA, Article 123.

²⁹⁴ See EPA, Article 240, which covers trade in goods, services and establishment, which is conditioned on its implementation consistent with the WTO Agreements i.e. GATS, Article XII, and GATT, Articles XII & XVIII of GATT.

²⁹⁵ See Exchange Control Regulations Act, section 3.

²⁹⁶ See Exchange Control Regulations Act, section 5.

The Belize Exchange Control Regulations require approval from the Central Bank in order for any person in Belize to conduct banking business across the border. This relates to current payments as well as capital transfers. It affects the purchase, sale, mortgage, etc of land, securities, imports and exports.²⁹⁷ There is also a duty not to delay the sale or importation of goods once Central Bank approval has been granted.²⁹⁸

By virtue of the Exchange Control Regulations there is an implied condition in every contract (save evidence of a clear intention to the contrary) that where the permission or consent of the Central Bank is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required.²⁹⁹

The Central Bank of Belize Act (CAP 262) establishes the Central Bank of Belize with the objectives of fostering monetary stability, especially as regards stability of the exchange rate, and promoting credit and exchange conditions conducive to the growth of the economy of Belize.³⁰⁰ The Act authorizes the Central Bank to exercise any powers or functions conferred upon or entrusted to the Controller or Competent Authority by or under the Exchange Control Regulations Act or any other law for the time being in force relating to exchange control.³⁰¹ It is the duty of the Bank to advise the Government on any matter which in its opinion is likely to affect the achievement of the principal objectives of the Bank.³⁰²

The Central Bank of Belize therefore plays a key role in the implementation of Belize's obligations under Title III of the EPA. The extensive authority given to the Central Bank to restrict current payments and capital transfers could potentially impose barriers to trade in goods and services as well as investment in Belize. Indeed, the 2009 IMF Report on Belize suggests that since 1995 the Central Bank has rationed sales of foreign exchange to commercial banks on an ad-hoc basis, except for some essential import items. This rationing of foreign exchange has

²⁹⁷ *E.g.* Exchange Control Regulations (Subsidiary Legislation), regulations 5, 6, 7, 12, 13, 14, 21 & 40.

²⁹⁸ See Exchange Control Regulations (Subsidiary Legislation), regulation 23.

²⁹⁹ See Exchange Control Regulations (Subsidiary Legislation), regulation 31.

³⁰⁰ See Central Bank of Belize Act (CAP 262), section 6.

³⁰¹ See Central Bank of Belize Act, section 29.

³⁰² See Central Bank of Belize Act, section 37.

led to restrictions on payments and transfers for current international transactions.³⁰³ The Report however notes that Belize does not have restrictions on payments and transfers for current account transactions and, although capital transfers require Central Bank approval, this is normally administered liberally.³⁰⁴ Most recent IMF Press releases (July 2010) underscore the expectation that foreign reserves will stabilize at just over three months of imports of goods and services, and further note that the overall banking system appears liquid and well capitalized.³⁰⁵

Assurances were provided by Central Bank Officials that although the Central Bank administers exchange controls current account transactions have essentially been liberalized.³⁰⁶ Additionally, credit cards transactions do not require Central Bank's prior approval, so the use of credit cards has contributed to further liberalization in the outflows of foreign currency. Central Bank approval is required for all capital account transactions. However, there are no restrictions on legitimate foreign direct investments in Belize. Foreign direct investment inflows require no Central Bank approval. Repatriation of foreign investment is freely allowed up to the amount invested. The Central Bank encourages foreign investors to register their investments to facilitate the expeditious repatriation of foreign investments.³⁰⁷

³⁰³ IMF (2009), *Staff Report for the 2009 Article IV Consultation*, April, Washington, p 2.

³⁰⁴ IMF (2009), *Staff Report for the 2009 Article IV Consultation*, April, Washington, p 15.

³⁰⁵ Statement by the 2010 Article IV Consultation Mission to Belize, Press Release No: 10/273, July 1, 2010.

³⁰⁶ It is noted that the Central Bank has delegated authority to Authorized Dealers under Section 35 (4) of the Exchange Control Regulations to approve most current account outflows. No approval is required from the Central Bank for legitimate inflows of foreign currency related to current account transactions. Additionally import payments are not subject to a ceiling amount.

³⁰⁷ Exchange Control Circular number 11 to be found at the Central Bank's website deals with the treatment of all inward investments.

TITLE IV – TRADE-RELATED ISSUES

Title IV of the EPA Part II, on “Trade-Related Issues”, covers articles 125 to 201 and is divided into six (6) chapters treated sequentially in five (5) sections; chapters four and five (on the environment and social aspects) are discussed together in one section.

VI. Chapter 1: Competition

VII. Chapter 2: Innovation and Intellectual Property

VIII. Chapter 3: Public Procurement

IX. Chapter 4: Environment

X. Chapter 5: Social Aspects

XI. Chapter 6: Protection of Personal Data

I. COMPETITION POLICY

Competition policy is not part of the WTO framework – so to speak. Competition rules are, however, embodied in some WTO Agreements which define, in part, Belize’s trade policies, e.g. Article VIII of the GATS (Monopolies and Exclusive Service Suppliers),³⁰⁸ Article XVII of the GATT (State Trading Enterprises),³⁰⁹ and Articles 8 (Principles)³¹⁰ and 31 (Other Use Without Authorization of the Right Holder)³¹¹ of the TRIPS Agreement.

³⁰⁸ Article VIII of the GATS requires each WTO Member to ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market act in a manner inconsistent with the MFN obligation and a Member’s specific commitments. Additionally, where a monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside of the scope of its monopoly rights and which is subject to that Member’s specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

³⁰⁹ Article XVII of the GATT 1994 on State Trading Enterprises (STE) applies to any enterprise which formally or otherwise effectively is granted exclusive or special privileges. The working definition of an STE is: “Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.” See Understanding on the Interpretation of Article XVII of the GATT 1994, paragraph 1; see also Ad Article XVII of the GATT 1994 which underscores that “The operation of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of subparagraphs (a) and (b)” of paragraph (1). Such enterprises must in their purchases or sales involving either imports or exports act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT. This obligation is further clarified to mean that such enterprises shall make any such purchases or sales “*solely in accordance with commercial considerations*”. See GATT 1994,

The objective of incorporation of a chapter on competition policy in the EPA is the Parties' recognition of "the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalization."³¹² As such, the Parties agree that without the implementation of an effective competitive policy regime the anticipated benefits to be derived from the conclusion of the EPA will not become a reality. The concept of "free and undistorted competition" underscores the importance of market forces and the removal of tariff and non-tariff barriers in the trading relations of the Parties.

The main obligations imposed on Belize by the Competition Chapter of the EPA are that of adopting a competition law compliant with Part I of Chapter 8 of the Revised Treaty of Chaguaramas (hereinafter 'Revised Treaty') including the establishment of the CARICOM Competition Commission;³¹³ cooperation on the exchange of information (which is not mandatory); and reforming state enterprises or the conditions under which they operate to eliminate discriminatory practices against trade with other Parties to the EPA.

Implementation of Part I of Chapter 8 of the Revised Treaty

The objective of the promotion of competition policy within CARICOM is stated in Article 169 of the Revised Treaty, i.e. that of ensuring that the benefits expected from the establishment of the Single Market are not frustrated by anti-competitive business conduct. The notion that unchecked anti-competitive behaviour will undermine the benefits of liberalization and integration is therefore common to both the EPA and the Revised Treaty. However, Belize has

Article XVIII(1); note that the provision does not apply to imports of products for consumption in governmental use and not for resale or use in the production of goods for sale.

³¹⁰ Article 8 on 'Principles' of the TRIPS Agreement provides that appropriate measures consistent with the TRIPS "may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."

³¹¹ Article 31(k) provides special flexibility for WTO Members in the compulsory licensing of patents where authorized to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur.

³¹² See EPA, Article 126 on 'Principles'.

³¹³ See EPA, Articles 125(3)(b), 127(1) & Article 129.

not implemented its obligations under Chapter 8 of the Revised Treaty.³¹⁴ In consultations with officials in Capital it was stated that Belize is receiving assistance from the CARICOM Secretariat in the preparation of competition legislation which is compliant with the Revised Treaty and based on the CARICOM Model Competition Bill.³¹⁵ The version of the CARICOM Model Bill provided by the Trade Directorate is therefore used as the basis on which to assess EPA compliance in the absence of any further definitive measure, whether in the form of a policy statement or otherwise.

The objective stated in Clause 3 of the CARICOM Model Competition Bill is to: promote, maintain and encourage fair trading and fair competition and enhance economic efficiency in production, trade and commerce; prohibit anti-competitive business conduct which prevents, restricts or distorts competition or constitutes the abuse of a dominant position in the market;³¹⁶ and promote the welfare and interest of consumers as it relates to competition matters. The objective of the CARICOM Model Competition Bill is broader than the EPA and, as such, it implements more than is required of Belize under the EPA. It, nevertheless, adequately addresses Belize's core obligation of implementing Part I of Chapter 8 of the Revised Treaty which addresses the rules of competition.

Although the EPA does not expressly require the establishment of a national competition authority, it requires that Belize's national competition legislation comply with the Revised Treaty. The Revised Treaty in turn, requires that every Member State establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.³¹⁷ The national authority must be able to, *inter alia*, investigate any allegations of anti-competitive business conduct referred to it by the CARICOM Competition Commission or another CARICOM Member State, and cooperate with other national competition authorities in the detection and prevention of anti-competitive business conduct and the exchange of

³¹⁴ Note that although Belize does not have a well developed competition regime, several sector-specific laws regulate competition in areas such as electricity, financial services, and telecommunications.

³¹⁵ See also EPA, Article 130, on 'cooperation', which provides for technical assistance and capacity building, especially during the period of six (6) to eleven (11) years after entry into force, i.e. during confidence building period, focused on, *inter alia*, assistance with laws, drafting guidelines manuals etc.

³¹⁶ See also EPA, Article 136, on 'Principles,' where the Parties agree that the underlined practices restricting competition are incompatible with the proper functioning of the EPA.

³¹⁷ See Revised Treaty, Article 170(2).

information.³¹⁸ As such, though not expressly required by the EPA, Belize will need to establish a national competition authority. During our consultations it was noted that Belize has considered the possibility of a supporting arrangement with the Competition Commission of Suriname or Barbados. The matter was apparently raised in discussions with the CARICOM Secretariat and would clearly provide a feasible option within Belize's limited resources to implement this undertaking.

Certain activities (e.g. collective bargaining arrangements) are excluded from the scope of the CARICOM Model Competition Bill. However, the list of exclusions does not extend to public service providers,³¹⁹ such as those entities regulated by the PUC. The approach adopted in the Model Bill is to require the national competition authority, before it exercises its functions in relation to a public service provider (and certain other independently regulated entities),³²⁰ to consult with the appropriate regulatory body of the enterprise or for the service provided by the enterprise.³²¹ This would appear to promote coherence and should be read in conjunction with comments made on the EPA regulatory framework (set out in Chapter 5 of Title II) which introduces pro-competitive disciplines for, *inter alia*, courier services, telecommunications services, and tourism services. The nature of the consultations which should be held may be further defined in operational guidelines.

In Article 126 on 'principles' of the EPA, the Parties agree that following practices are incompatible with the proper functioning of the EPA in so far as they affect trade between the Parties:

- (a) Agreements and concerted practices between undertakings which have the object or effect of substantially lessening competition; and
- (b) Abuse of market power

³¹⁸ See Revised Treaty, Article 170(3).

³¹⁹ The CARICOM Model Competition Bill, Clause 2 (Interpretation), defines 'public service provider' as an enterprise which provides an essential commodity of service to the public, such as water, electricity, transportation or telecommunications.

³²⁰ This provision is also made applicable to certain financial service providers; see Clause 4(3).

³²¹ See Clause 4(2) & (3), CARICOM Model Competition Bill.

Clause 17 (Provisions of agreements having effect of restricting, preventing or distorting competition) of the CARICOM Model Competition Bill prohibits and makes void and of no effect agreements between enterprises, and concerted practices³²² of enterprises or decisions of associations of enterprises, which have or are likely to have the effect of preventing, restricting³²³ or distorting competition in the relevant market.³²⁴ Additionally, Clause 20 (Prohibition of abuse of dominant position) of the CARICOM Model Competition Bill prohibits any conduct on the part of an enterprise which amounts to an abuse of a dominant position in a market. This includes circumstances where the dominant position in the relevant market is that of an enterprise with an interconnected enterprise, where combined they occupy a position of economic strength that will enable them to operate in the market, without effective constraints from competitors or potential competitors.³²⁵

The CARICOM Model Competition Bill, as such, provides an appropriate template for the implementation of most provisions in Chapter 1 of Title IV on competition policy. In this regard it is worth noting that Article 125 of the EPA includes a notification requirement: upon entry into force of the EPA and thereafter, the enactment of competition legislation complying with the Revised Treaty must be brought to the attention of the EC through the CARIFORUM-EC Trade and Development Committee (TDC). The EPA provides for a transitional period of five (5) years from the entry into force of the agreement for CARIFORUM States to have laws in force addressing restrictions on competition.³²⁶

³²²The CARICOM Model Competition Bill defines ‘concerted practice’ as cooperation between enterprises achieved through direct or indirect contact that replaces independent action but which falls short of an agreement.

³²³The CARICOM Model Competition Bill defines ‘market restriction’ as any practice whereby a supplier of goods or services, as a condition of supplying the goods or services to a customer requires that customer to supply any goods or services only in a defined market, or exacts a penalty of any kind from the customer if the customer supplies any goods or services outside a defined market.

³²⁴See also CARICOM Model Competition Bill, Clause 19 (Action by Commission in relation to anti-competitive agreement or trade) – providing the Commission with the authority to take appropriate action against such anti-competitive practises.

³²⁵ See also CARICOM Model Competition Bill, Clause 21 (Abuse of dominant position) – defining the circumstances under which an enterprise would be deemed to be abusing a dominant position; and Clause 22 (Action in relation to abuse of dominant position).

³²⁶ See EPA, Article 127 on ‘Implementation’; note that after the laws are in place there will be a period of ‘confidence building’ between the Competition Authorities of the Parties.

Exchange of information and enforcement cooperation

Cooperation between EPA competition authorities is designed to take place at the regional level as regards CARICOM-EU exchanges. The undertaking is a limited ‘positive comity’ arrangement which could be expanded following a ‘confidence building’ period.³²⁷ The focus for Belizean Authorities is therefore with the implementation of Part I of Chapter 8 of the Revised Treaty through adoption of appropriate legislation and establishment of a designated ‘national competition authority’ (whether following an ‘OECS sub-regional’ approach, i.e. partnering with other CARICOM countries in the designation of a common authority as their ‘national’ authorities, or otherwise).

Reforming state enterprises and their operating conditions to eliminate discriminatory practices

Article 129 of the EPA is a somewhat ambiguous provision which is open to fairly expansive interpretations with far-reaching consequences. A number of terms are used which are ill-defined; some appear to overlap. There is also no suggestion that the provision is limited to sectors where commitments have been undertaken under the EPA. The relationship with Chapter 3 of Title IV, on government procurement, is also not as clear as may be hoped for.

Article 129 of the EPA is entitled “Public enterprises and enterprises entrusted with special or exclusive rights including designated monopolies”. There is no obligation which would preclude the designation or maintenance of public or private monopolies.³²⁸ There is, however, an obligation with regard to “public enterprises” (a term which is not defined)³²⁹ and “enterprises to which special or exclusive rights have been granted” to “ensure that, following the date of the entry into force of this Agreement, there is neither enacted nor maintained any measure

³²⁷ See EPA, Articles 127 & 128; note that Article 128(3) is not mandatory, i.e. the competition authorities *may* inform each other of anticompetitive business practices occurring within the jurisdiction and *may* exchange information on any enforcement proceeding where the activity being investigated is wholly or substantially within the jurisdiction of other Party, or the remedy would prohibit conduct within the jurisdiction of the other Party; or the activity involves conduct encouraged or approved by other Party.

³²⁸ See EPA, Article 129(1).

³²⁹ The use of terms in the EPA is not uniform. It is not clear, for example, what precise distinctions are meant to be drawn between ‘public enterprises’, ‘enterprises entrusted with special or exclusive rights’, a ‘State monopoly of a commercial nature or character’, and ‘public or private monopolies. The lack of clarity could result in unnecessary disputes.

distorting trade in goods or services between the Parties to an extent contrary to the Parties interest, and that such enterprises shall be subject to the rules of competition ...”³³⁰

The reference to the “Parties interests” is not qualified by words such a ‘legitimate’ or ‘economic’ which would seem appropriate³³¹ – and it is suggested may be inferred. *Any measure* distorting trade in goods or services in relation to such enterprises must be eliminated. The exception provided relates to instances where public enterprises are subject to “specific sectoral rules”; such public entities are not governed by this Article.³³² While this may appear to cover those sectors where special regulatory frameworks are provided under Chapter 5 of Title II of the EPA, such as telecommunications, courier services and tourism, this is not clear, particularly when one considers the explicit provision that pro-competitive disciplines for these sectors must be undertaken in compliance with Chapter 1 of Title IV. Additionally, Belize, for example, has not undertaken commitments in the Financial sector (save with respect to actuarial services), it may be questioned whether the provisions of Article 129 and Chapter 1 of Title IV generally suggest the imposition of pro-competitive disciplines in all sectors – i.e. across-the-board?

Article 129(4) is even more extensive as it governs ‘conditions’ and not merely ‘measures’ which distort trade. Article 129(4) provides that the Parties will “progressively adjust, without prejudice to their obligations under the WTO Agreement, any State monopolies of a commercial nature so as to ensure that at end of fifth year after entry into force of this Agreement no discrimination regarding the conditions under which goods and services are sold or purchased exists between goods and services originating in the [EC & CARIFORUM] ...or between nationals of the ...[EC & CARIFORUM], unless such discrimination is inherent in the existence of the monopoly in question.” (added emphasis)

The provision requires that “State monopolies of a commercial nature or character” accord national treatment to EC goods and services unless such discrimination is inherent in the

³³⁰ EPA, Article 129(2) (added emphasis). Note that the meaning of the proviso to the Article is open to debate; i.e. that “such enterprises shall be subject to the rules of competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.”

³³¹ Note that in other sections of the EPA the ‘interests’ referred to are those of suppliers, businesses, the owner of a trademark. The use of the word ‘legitimate,’ e.g. EPA, Article 29(3), is generally used to restrict the public policy objectives of State Parties.

³³² See EPA, Article 129(3).

existence of the monopoly in question. Although bearing some similarity to Article XVII of the GATT 1994 on State Trading Enterprises the provision is much broader as it not limited to imports and exports but extends to domestic sales and purchases. It should be noted that in the GATS this sort of obligation only applies where commitments have been undertaken and is not as widely formulated as in the EPA.

As above-noted, Article 129(4) targets ‘conditions’ as opposed to specific measures. A review would therefore potentially entail a broad ranging economic analysis to complement a legal examination of the issues. This is clearly beyond the scope of the present review. However, a clear example of the sort of practices which would require close examination under Article 129(4) are those associated with the Belize Marketing and Development Cooperation (BMDC).

The Belize Marketing and Development Corporation (BMDC) is a public body established through the Belize Marketing Board Act, 1949 (Cap. 281, 2003) to provide production and marketing assistance to farmers; it also seeks to ensure supplies of essential goods at stable prices in the Belizean market. In fulfilment of its tasks the BMDC operates, *inter alia*, as a trader dealing in certain basic commodities, particularly rice (also operating a rice mill) and onions.

During our consultations copies of written responses given by Officials from BMDC to questions posed by WTO Secretariat Officials in the context of the 2010 WTO TPR Review were provided. These clarify that BMDC is *de facto* the exclusive importer and exporter of onions and the exclusive importer of rice. Other entities are free to export rice if they so wish. Imports only take place when there is a shortage in the country; for onions importation generally begins in the month of July and closes in mid-February. Currently importation is only from the Netherlands, Mexico and the US. However, the BMDC will source from wherever they find the most competitive suppliers. The BMDC also conducts local marketing for farmers in the onion and rice sector and has conducted surveys of possible export markets in neighbouring Central American countries. In our discussions it also came to light that the BMDC uses the profit from importing onions to subsidize rural rice farmers – essentially a form of domestic support which likely is less than the permissible *de minimis* level.

The description of BMDC's operations clearly suggests that it is a state trading enterprise which should be notified under Article XVII of the GATT 1994. Additionally, it appears that the entity is used, *inter alia*, to protect domestic rice and onion producers in violation of Belize's WTO and EPA commitments. Reforming the practices of the BMDC so that it does not favour domestic producers or otherwise distort trade is a significant issue to be addressed in the context of a review of Belize's trade policy and regulatory framework with a view to promoting compliance with the EPA and other international trade obligations. **This is one of the recommendations made in the attached Implementation Schedule.**

II. INNOVATION & INTELLECTUAL PROPERTY

In Chapter 2 of Title IV of the EPA, on innovation and intellectual property, the EC and CARIFORUM States expressly recognize that the protection and enforcement of intellectual property plays a key role in fostering creativity, innovation and competitiveness, which is crucial in achieving sustainable development, and state their determination to ensure increasing levels of protection appropriate to their levels of development.³³³

Section 1 of Chapter 2 focuses on various cooperation activities³³⁴ designed to promote innovation. It is recognized that the attainment of objectives of this section will require policies and measures to be taken at the regional level. As such, Section 1 does not impose obligations on Belize which require the reform of legislative or other measures.

Intellectual Property

For the most part, Section 2 of the EPA on intellectual property seeks to ensure the adequate and effective implementation of intellectual property treaties to which the Parties agree to accede in addition to the WTO TRIPS Agreement. **A transitional period – until January 2014 – is**

³³³ See EPA, Article 131.

³³⁴ *E.g.* EPA, Articles 135-138 on competitiveness and innovation, science and technology, the information society and communication technologies, and eco-innovation and renewable energy.

provided for implementation.³³⁵ It is anticipated that consideration will be given to promoting harmonization of intellectual property laws and regulations at the regional level.³³⁶ The protection of intellectual property rights must be complemented by measures to prevent or control licensing practices which may constitute an abuse of rights and may adversely affect the international transfer of technology.³³⁷

The reference to intellectual property rights in the EPA is meant to include: copyright, utility models, patents, plant varieties, designs, layout-designs of integrated circuits, geographical indications (GIs), trademarks, data bases, protection against unfair competition (Art 10bis of the Paris Convention), and undisclosed information.³³⁸

Copyright and related rights

The EPA requires Belize and other CARIFORUM States to comply with the WIPO Copyright Treaty (Geneva 1996) and WIPO Performance and Phonograms Treaty (Geneva 1996).³³⁹ Compliance with these ‘Internet’ treaties is not required by the TRIPS Agreement. It is noteworthy that in response to questions addressed to Belize in the context of its 26-29 June 2000 WTO TRIPS Review, the Belizean Authorities observed that, “Currently, Belize is examining the feasibility of becoming a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, both of 1996.”³⁴⁰ However, Belize has not yet ratified either agreement. It may be noted that there is a fair measure of debate on the merits or demerits of the WIPO Internet treaties. Indeed, the UK Commission on Intellectual Property and Development cautioned that “Developing countries should think carefully before joining the WIPO Copyright Treaty.”³⁴¹ Senior Officials in capital noted that the provisions of the WIPO Copyright Treaty pertaining to restrictions on the use of computer programs and the adoption of

³³⁵ See also EPA, Article 139 on ‘Principles’; paragraph (5) of Article 139 underscores that the EPA imposes no obligation to implement more extensive intellectual property protection than provided for under Section 2 of Chapter 2 of Title IV.

³³⁶ See EPA, Article 141.

³³⁷ See EPA, Article 142.

³³⁸ See EPA, Article 139(3).

³³⁹ See EPA, Article 143.

³⁴⁰ WTO docs IP/Q/BLZ/1, IP/Q2/BLZ/1, IP/Q3/BLZ/1, IP/Q4/BLZ/1, “Review of Legislation”, page 1.

³⁴¹ *Integrating Intellectual Property Rights and Development Policy*, Report of the Commission on Intellectual Property Rights established by the British Government, http://www.iprcommission.org/graphic/documents/final_report.htm

technological measures to prevent copyright infringement through digital mediums require careful and prudent consideration. Ratification is therefore not being recommended at this time. While the EPA requires compliance with the both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty, it does not require ratification. This affords Belize and other CARIFORUM countries the opportunity to attempt to implement the agreements without having to be bound thereby. The lessons learned from implementation could be raised in the CARIFORUM-EC Trade and Development Committee in the context of an evaluation and further elaboration of the obligations imposed in the intellectual property chapter of the EPA.³⁴²

The EPA further imposes a ‘best endeavour’ obligation on Belize to accede to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961). Consultations with Senior Officials highlighted the extent to which active consideration has been given to acceding to the Rome Convention taking due account of the challenges faced in implementing other intellectual property treaties. It was noted that the WIPO Performances and Phonograms Treaty expands copyright protection as afforded by the Rome Convention to performers of recorded or published works, including “actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore” and to the works themselves, which may be unrecorded. Although such protection is warranted by Belize’s musical culture, it was suggested that implementation is lacking in Belize. This is a matter which will need to be addressed in the context of Article 143 of the EPA, above-discussed.

Senior Officials noted that the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations sets forth the minimum protection to be provided for performers of music, choreography, drama and movies. It was suggested that ratification of the Rome Convention would therefore strengthen implementation of the WIPO Performances and Phonograms Treaty by creating a beneficial legal framework for local producers and performers seeking to protect their work from copyright infringement. However, implementation of the Rome Convention would require a higher level of organization in the music and broadcasting sectors. It was suggested that the strengthening of local broadcasting authorities and

³⁴² See EPA, Article 230(3).

the creation of a stronger regulatory infrastructure should be contemplated prior to ratification. Further work is clearly required on the technical support measures required to create an enabling environment for the implementation of EPA obligations on the protection of intellectual property rights. **This constitutes one of the recommendations made in the attached Implementation Schedule.**

Trademarks

Article 144 of the EPA requires the establishment of a registration system for trademarks. Final decisions by the trademark administration are to be reasoned and in writing. An applicant has the right to contest the refusal to register and appeal the decision to the Court. There must also be the possibility to object to the registration of a trademark after publication of the application.

The Trade Marks Act (CAP 257) of Belize conforms to Belize's obligations under the TRIPS Agreement. Article 15(5) of the TRIPS Agreement reflects in part Belize's EPA obligations in the requirement that

Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.³⁴³

The Trade Mark Act provides for this and, as required by the EPA, includes services as a protectable subject matter under the legislation.³⁴⁴

Additionally, the Laws of Belize provide for appeals to judicial bodies of final administrative decisions and the legal aspects of initial judicial decisions.³⁴⁵ The provision for an appeal from

³⁴³ See Trade Marks Act (CAP 257), section 16.

³⁴⁴ See the definitions of "trade mark", "certification mark" and "collective mark" in section 2(1) of the Trade Marks Act; see also sections 37 & 38 concerning the reference to 'earlier trade mark' which includes well known marks and is applicable to goods and services.

³⁴⁵ Section 95 of the Belize Constitution (CAP. 4) states that the "Supreme Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law. Section 10 of the Constitution states that the "Court of Appeal shall have such jurisdiction and powers to hear and determine appeals in civil and criminal matters as may

the decision of the Registrar would suggest that his/her decision must be reasoned and in writing as provided for in the EPA.

The EPA requires that certain exceptions to the rights conferred by a trademark, such as the provision for fair use of descriptive terms, be established in the legislation. These are generally provided for in the Trade Mark Act.³⁴⁶ However, it may be noted that the Trade Mark Act does not preclude registration of a trade mark if it includes a geographical indication as required by the EPA.³⁴⁷

Additionally, Article 144 of the EPA imposes an obligation on Belize to establish a publicly available electronic database of applications and registrations. During our consultations questions were raised about the existence of any such database, however, none was identified.

The EPA commits Belize to *endeavour* to apply a number of WIPO recommendations:

- WIPO recommendation for the protection of industrial property 1999
- WIPO recommendation for the protection of marks, and other industrial property rights in signs on the Internet 2000
- WIPO recommendation concerning trademark licenses 2000

The EPA also entails a 'best endeavour' obligation to accede to the Madrid protocol on international registration of marks 1989 and Revised Trademark Law Treaty 2006. During our consultations it was explained that, to date, no analysis has been undertaken on the benefits or difficulties which may arise should Belize apply the above-mentioned WIPO recommendations or accede to the above-mentioned treaties. It was noted, however, that consideration of the Madrid Protocol is on the agenda of a CARICOM regional seminar envisioned for 2011.

be conferred on it by this Constitution or any other law." See also the Trade Marks Act (CAP 257), sections 46(4), 47(3) & (4) and 70.

³⁴⁶ See Trade Mark Act (CAP 257), sections 26 & 27; see also sections 35-37.

³⁴⁷ See EPA, Article 145.

While the Parties to the EPA agree on the need for a framework to govern Internet use, that framework is yet to be established (i.e. it is not set out therein).

Geographical Indications (GIs)

Article 145 of the EPA requires Belize to establish a system of protection of GIs by 1 January 2014. Provision is also made for technical assistance.³⁴⁸ Additionally further negotiations are to commence not later than 2014 on a substantial CARIFORUM/EC agreement to protect GIs.

The EPA does not require either Party to protect GIs not protected in their country of origin. It is therefore incumbent on Belize to provide appropriate protection for Belizean GIs. Towards this end, within six (6) months of entry into force of the EPA, Belize and other CARIFORUM States are required to submit to the TDC a list of GIs for discussion.

Belize does not have specific legislation protecting GIs. Belize is the only country in the region to protect GIs as certification marks under its Trade Marks Act (CAP 257).³⁴⁹ Protection is afforded to certification marks and collective marks as defined in section 2(1) of the Trade Marks Act, read in conjunction with paragraph 3 of the First and Second Schedules.³⁵⁰ The extent to which the application of a common law approach based on certification trademarks and other regulations on business conduct meet the requirements of the EPA merits further discussion. The EPA, for example, requires Belize to prohibit or prevent, ex officio or at the request of an interested party the use of protected names for goods in the same class of product as the GI which do not originate in the geographical area even where the true origin of the good is indicated, the GI is used in translation and/or is accompanied by terms such as ‘kind’, ‘type’, ‘style’, ‘imitation’, ‘method’, etc.³⁵¹ Protection is also to be provided for homonymous GIs in

³⁴⁸ See EPA, Article 164(2)(c).

³⁴⁹ See also Carlos M. Correa, “Protection of Geographical Indications in CARICOM Countries,” September 2002, at p. 13.

³⁵⁰ The EPA addresses the relationship between GIs and trade marks. It provides that GIs shall not be registered where given a trademark’s reputation and renown and length of time in use it would be misleading. However, from the entry into force of the EPA a trademark must not be registered where it is identical or similar to a GI which is protected or where the application for protection of the GI was submitted before the application for the trademark and the former is granted. Trademarks registered contrary to the above rules shall be invalidated. There is, however, a savings clause for trademarks registered before the application of WTO Agreement or the application for protection of GIs.

³⁵¹ Compare the Trade Marks Act, First Schedule, para 3 & Second Schedule, para 3.

certain situations. Certification marks are a private right with a registered owner; the issue of homonymous marks does not exist.

In response to questions posed to Belize at the time of its June 2000 TRIPS Review Belize provided the following explanation:

“Additional protection for wines and spirits as provided for under the TRIPS Agreement will be provided in Regulations to be filed with the Registrar pursuant to paragraph 5 of the First Schedule and paragraph 6 of the Second Schedule. Other types of products to be afforded additional protection will likewise be specified in the same Regulations.”

In our consultations it was noted that rules were promulgated regarding specific protection for GIs and certification marks pursuant to the Trade Marks Act. There is no separate legislative scheme for GIs in Belize nor, it was suggested, is one being recommended at this time.

The EPA provides that protection for GIs must be indefinite, although this may be accorded through unlimited ten-year renewable terms,³⁵² similar to the system contemplated in sections 20 and 21 of the Trade Marks Act (CAP 257).

The provisions in the EPA on GIs are far broader in scope than the TRIPS Agreement. It is questionable whether Belize has fully implemented its TRIPS obligations on GIs.³⁵³ This is one of the areas where compliance with the EPA requires the enactment of new legislative measures during the transitional implementation period. However, more extensive consultations with the Authorities, including BELIPO, private sector and civil society will be required in light of the absence of a recommendation to implement a more rigorous regime for GIs at this time. **These recommendations are included in the attached Implementation Schedule.**

³⁵² See EPA, Article 145, footnote 1.

³⁵³ Note is taken of section 59 of the Trade Marks Act which provides: “The provisions of any international treaty in respect of trade marks, collective marks and certification marks to which Belize is party shall apply to matters dealt with by this Act and, in case of conflict with the provisions of this Act, shall prevail over the latter.”

Industrial designs

Article 146 of the EPA requires that protection be provided for industrial designs. The Industrial Designs Act (CAP 254) fulfils in large part Belize's obligations under the EPA in providing protection for registered designs. The Copyright Act (CAP 252) may also be used to provide protection for unregistered designs as required by the EPA. The duration of an industrial design under the Act is five years from the filing date of the application for registration but may be renewed for two further consecutive periods of five years.³⁵⁴ This complies with the EPA which provides for protection for five-year renewable terms up to (no more than) twenty-five (25) years.³⁵⁵

The Industrial Designs Act is designed to fulfil Belize's obligations under the TRIPS Agreement.³⁵⁶ However, the rights conferred by the EPA appear to be broader than those in TRIPS Agreement. In the EPA, in addition to granting the right holder the authority to prohibit others from making, selling or importing articles involving the design (as required by the TRIPS Agreement)³⁵⁷ the right holder is granted authority over offering, stocking or using the articles without the designer owner's consent.³⁵⁸ Additionally, whereas the TRIPS Agreement prohibits these activities where they are done for commercial purposes,³⁵⁹ the EPA prohibits these acts if they are not compatible with fair trade practice.³⁶⁰ The additional rights conferred by the EPA will need to be addressed through appropriate legislative amendments. **This recommendation is included in the attached Implementation Schedule.**

The Industrial Designs Act provides for limited exceptions as permitted by the EPA and specifies as required by the EPA that a design right does not subsist where it is contrary to public policy or morality.³⁶¹ The EPA also requires that design protection not extend to essentially technical or functional designs. In this regard it is noteworthy that record of questions and answers addressed

³⁵⁴ See Industrial Designs Act (CAP 254), section 11.

³⁵⁵ Note that the EPA provides protection for unregistered designs for at least three (3) years. This TRIPS plus provision may be addressed through the protection afforded under the Copyright Act and common law.

³⁵⁶ See Industrial Designs Act (CAP 254), section 10.

³⁵⁷ See TRIPS Agreement, Article 26.1.

³⁵⁸ See EPA, Article 146.4.1.

³⁵⁹ See TRIPS Agreement, Article 26.1.

³⁶⁰ See EPA, Article 146.4.1.

³⁶¹ See Industrial Designs Act (CAP 254), section 3(3).

in the context of the June 2000 TRIPS Review of Belize's intellectual property legislation contains the following:

“19. Please explain whether or not your legislation extends the protection to designs dictated essentially by technical or functional considerations. Please, explain how textile designs are protected.

[RESPONSE:] Protection of industrial designs dictated essentially by functional considerations: see the definition of "industrial design" in section 2 of the Industrial Designs Act. For the protection of textile designs, see section 10(1), (2) and (3), but note the provisions of section 10(4).”

To the extent that the above interpretation of the Act may seem to contradict with the provisions of the EPA, it is noted that Section 26 of the Industrial Designs Act (CAP 254) states:

“The provisions of any international treaty in respect of industrial property to which Belize is party shall apply to this act and matters dealt with herein, and where there is any conflict, the provisions of the treaty shall prevail.”

In so far as the EPA may be said to be an international treaty in respect of industrial property any inconsistency between the Act and the EPA would be resolved in favour of the EPA. Nevertheless, should there be inconsistencies, the desire for clarity and certainty in the law would suggest that appropriate amendments be made to the legislation. In accordance with Article 146 C (2) of the EPA the Industrial Designs Act should be amended to deny protection to designs dictated essentially by technical or functional considerations. **This is one of the recommendations made in the attached Implementation Schedule.**

The EPA suggests that Belize should *endeavour* to accede to the Hague Agreement for the International Registration of Industrial Designs 1999. It should be noted that on 12 July 2003 Belize became a party to the Hague Agreement for the International Registration of Industrial Designs (1925) and the Complementary Act of Stockholm (1967). The amendments proposed by the Geneva Act of 1999 were designed to make the 1925 Agreement more acceptable to a larger

number of States. Although no extensive analysis has been undertaken on the merits of Belize adhering to the Geneva Act, Senior Officials noted the benefits of ratification for purposes of mutuality with trading partners.

Patents

Article 147 of the EPA requires Belize and other CARIFORUM countries to accede to the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent procedure. Steps must also be taken to accept the TRIPS and Public Health amendment (2005) to the WTO TRIPS Agreement.³⁶² The EPA imposes a ‘best endeavour’ obligation on Belize with respect to acceding to the Patent Law Treaty 2000. It is worth noting that Belize is already a party to the Patent Cooperation Treaty. Steps to become a party to the Budapest Treaty and accept the 2005 amendment to the WTO TRIPS Agreement must therefore be taken during the transitional period. Also some examination of the merits or demerits of joining the Patent Law Treaty should also be pursued. **This is one of the recommendations made in the attached Implementation Schedule.**

During consultations in capital it was suggested that there has been no implementation of the compulsory licensing regime for patents. Sections 35 and 38 of the Belize Patents Act provide for the issuance of non-voluntary licences. Section 35 is particularly relevant to the above-mentioned TRIPS and Public Health amendment as it provides for the issuance of non-voluntary licences in, *inter alia*, “the public interest, in particular, national security, nutrition, health” etc. Effective implementation of the provision should be addressed in the context of taking steps to accept the WTO amendment to the TRIPS Agreement as required by the EPA. **This is one of the recommendations made in the attached Implementation Schedule.**

Utility Models

Article 148 of the EPA allows for provision to be made for the protection of utility models for a period of five (5) to ten (10) years. Part XII of the Patent Act (CAP 253) on ‘Utility Model

³⁶² See also EPA, 139(2); compare TRIPS Agreement, Article 8.

Certificates' provides protection for utility models for a non-renewable seven (7) year term.³⁶³ The provisions of the Act appear generally to accord with those of the EPA.

Protection of Plant Varieties

Article 149 of the EPA requires Belize and other CARIFORUM countries to provide protection for plant varieties in accordance with the TRIPS Agreement. As clarified in Belize's responses to questions posed on the occasion of its June 2000 WTO TRIPS Review, Belize has "opted to use a *sui generis* system for the protection of new plant varieties and as a result, the Protection of New Plant Varieties Act was enacted basically following some of the suggestions which were contained in the model legislation prepared by UPOV, with certain modifications, however, to meet the unique circumstances of Belize, in order to adequately address the concerns of our people in this critical area."³⁶⁴

The EPA further requires Belize to *consider* acceding to UPOV 1991. It would appear that Belize's choice of a *sui generis* system was designed specifically to address Belize's unique circumstances as opposed to wholesale adoption of the UPOV 1991. In any event, the EPA requires Belize to give the matter due consideration.

Genetic resources, traditional knowledge and folklore

Article 150 of the EPA addresses a matter of importance to many developing countries, i.e. promoting recognition for full protection to be accorded to genetic resources, traditional knowledge and folklore. The rights accorded, including equitable sharing, are however subject to the relevant domestic legislation, and it is recognized that a State may require a patent applicant to disclose the source of biological material used in an invention. Such measures are viewed by many developing countries as a first step in addressing the problem of 'biopiracy'. The EPA affirms that the Parties agree to implement the patent provisions of the EPA and the Convention on Biological Diversity in a mutually supportive manner. A built-in review of the article is anticipated after the conclusion of discussions in WIPO and the WTO.

³⁶³ See Patent Act (CAP 253), section 51.

³⁶⁴ WTO doc. IP/Q/BLZ/1, IP/Q2/BLZ/1, IP/Q3/BLZ/1, IP/Q4/BLZ/1, at p. 2.

Belize does not have legislation which implements Article 150 of the EPA. Studies are being undertaken through a regional mechanism – the WIPO Caribbean Working Group on Traditional Knowledge, Folklore, and Genetic Resources in which Belize participates - which will likely facilitate the enactment of a *sui generis* system of legal and non-legal mechanisms designed to protect genetic resources, traditional knowledge and folklore in Belize and other CARICOM member States. Our consultations suggest, however, that further research to assist in defining Belize’s specific interests in this area could be useful. In this regard the emerging Belize Services Coalition of Service Providers could serve as a useful consultative tool.

Enforcement of Intellectual Property Rights

A substantive section of the EPA on intellectual property rights is focussed on the issue of enforcement. These provisions may be described as ‘TRIPS plus’. This is seen, for example, in the expansion of the categories of persons entitled to bring cases and request provisional, precautionary and border measures;³⁶⁵ in the new powers to be given to judges to take effective measures, including the blocking of bank accounts of an alleged infringer.³⁶⁶ There are also extended requirements on the provision of information³⁶⁷ and evidence gathering.³⁶⁸ The EPA further expands the use of injunctions, corrective and preliminary and provisional measures against third party intermediaries who are not themselves infringers. Additionally, with regard to border measures, while the TRIPS Agreement only requires border measures to be applied to goods suspected of infringing trademarks or copyright (which are easily detectable with the naked eye),³⁶⁹ the EPA extends this to designs and geographical indications and evidences the agreement of the Parties to collaborate on possible further extensions.³⁷⁰ While the border measures required by the TRIPS Agreement are required to be applied only to imported goods, the EPA makes provision for customs authorities to monitor free zones and check goods being exported³⁷¹ and re-exported.³⁷²

³⁶⁵ See EPA, Article 152.

³⁶⁶ See EPA, Article 156.

³⁶⁷ See EPA, Article 155.

³⁶⁸ See EPA, Articles 153 & 154.

³⁶⁹ See TRIPS Agreement, Article 51.

³⁷⁰ See EPA, footnote to Article 163.1

³⁷¹ See also the Customs Regulation (Prohibited and Restricted Goods) (Consolidation) Order, 1988, the export of "any infringing copy of a work, whether printed, audio, video or other, in which copyright subsists, or plates or other devices or means for making such infringing copies" is prohibited.

³⁷² See EPA, Article 163.1.

Belize has completed the WTO Checklist of Issues on Enforcement.³⁷³ Certain lacuna exist in the Belizean legislation as regards the implementation of its WTO obligations, for example, the absence of the provision for provisional measures (as required by Article 50 of the TRIPS Agreement) as regards patents. As above-noted, the EPA is ‘TRIPS plus’ and, as such, there will be the need to appropriately amend or enact new legislation to implement the EPA obligations during the transitional period.³⁷⁴

Our consultations highlighted some degree of ambiguity as to the agency responsible for taking the lead role on the enforcement of intellectual property rights. As certain legislative reforms are required it would seem that the Attorney General's Ministry (under which BELIPO falls) should be the lead agency on implementation of the relevant EPA obligations in consultation with the Ministry of Foreign Affairs and Foreign Trade. In this regard, it may also be noted that the emerging Belize Service Coalition of Service Providers could serve as a useful consultative tool in the development of appropriate regulatory measures. **This and other suggestions noted above are included in the attached Implementation Schedule.**

III. PUBLIC PROCUREMENT

Belize is not a party to the WTO plurilateral Agreement on Government Procurement. The provisions of the EPA on public procurement therefore impose new trade policy disciplines on Belize which will require adjustments to Belize’s laws and procurement practices as suggested below. In this regard, it is worth noting that Belize benefits from a transitional period of five (5) years from the entry into force of the EPA to achieve compliance.³⁷⁵

³⁷³ See WTO doc. IP/N/6/BLZ/1.

³⁷⁴ See also EPA, Article 164 on cooperation activities which will be very important particularly during the transitional period. Emphasis is placed on, *inter alia*, regional initiatives (regional laws and regional implementation); national laws and regulations; identification of products which could benefit from GI protection taking into account promotion of traditional knowledge and biodiversity; and the development of codes of conduct.

³⁷⁵ See EPA, Article 180; See also Article 181 is a review clause providing for the review of the EPA every three (3) years with possible recommendations for modifications of, *inter alia*, the coverage of the EPA.

The general objective of the EPA Chapter on public procurement is the promotion of transparent and competitive tendering practices.³⁷⁶ The EPA provisions apply only to procurement entities listed in Annex VI and with respect to procurements above the thresholds established in Annex VI.³⁷⁷ The thresholds established for CARIFORUM countries for covered procurement in terms of SDRs are:³⁷⁸

Supplies - SDR 155,000;

Services Specified in Appendix 2 to this Annex - SDR 155,000;

Works Specified in Appendix 3 to this Annex - SDR 6,500,000

*It may be noted that 1 SDR³⁷⁹ is approximately equal to 1.51687US\$³⁸⁰

The fundamental EPA obligation is that ‘*covered procurement*’ must be conducted through transparent procedures and ‘*eligible suppliers*’³⁸¹ treated in accordance with the principle of open and effective competition.³⁸²

Article 167 of the EPA imposes a ‘best endeavour’ obligation on Belize to provide national treatment to all CARIFORUM States and not to discriminate against suppliers established in its territory because the goods or services supplied are from EC. It further **mandates** that Belize **not** treat one locally established supplier less favourably than another because of the “degree of foreign affiliation to or ownership by operators or nationals” of CARIFORUM or EC States. The

³⁷⁶ See EPA, Article 165.

³⁷⁷ ‘Government procurement’ is defined in Article 166 of the EPA to mean goods, services or a combination thereof, including works, by procuring entities listed in Annex VI not for commercial resale; it includes purchase, lease, rental, hire purchase with or without an option to buy. See also EPA, Article 167 - the Chapter does not apply to land, non-contractual agreements, certain fiscal matters, broadcasting, arbitration, public employment contracts, R&D, agricultural support programmes and food aid, intra-govt procurement, international assistance or agreements or military forces outside of the State.

³⁷⁸ See EPA, Annex VI.

³⁷⁹ The currency value of the SDR is determined by summing the values in U.S. dollars, based on market exchange rates, of a basket of major currencies (the U.S. dollar, Euro, Japanese yen, and pound sterling). The SDR currency value is calculated daily (except on IMF holidays or whenever the IMF is closed for business) and the valuation basket is reviewed and adjusted every five years; see http://www.imf.org/external/np/fin/data/rms_sdrv.aspx

³⁸⁰ The figure quoted is that quoted by the IMF for 18th August 2010.

³⁸¹ An ‘eligible supplier’ is one who is *allowed* to participate in accordance with domestic law; see EPA, Article 166. As such, there is no automatic right to participate in the tendering process. The concept of an ‘eligible supplier’ may be contrasted with the approach adopted in the WTO Government Procurement Agreement. As such it is totally within the discretion of the procuring State to negotiate market access commitments.

³⁸² See EPA, Article 167.

notion of ‘*affiliation*’ is not defined, and does not appear to be necessarily linked or limited to commitments made on ‘commercial presence’ under Title II of the EPA.³⁸³ It may be noted also that *locally established* does not necessarily suggest *locally incorporated*. But any ‘locally established’ entity would naturally be required to comply with Belizean law including the Companies Act (CAP 250) and its provisions on incorporation.³⁸⁴ The EPA further anticipates the Parties according *national treatment to the goods and services* and suppliers of the other Party but this obligation is deferred until a decision is taken by Joint CARIFORUM-EC Council.³⁸⁵

The EPA commits Belize not to use valuation rules or methods which would circumvent its commitments, but allows for special exceptions to provide differential treatment for persons with disabilities, philanthropic institutions or prison labour.³⁸⁶

Article 168 of the EPA on ‘transparency’ requires (with respect to covered procurement) that Belize publish all laws, regulations, judicial decisions and administrative rulings of general application, and procedures, as well as individual procurement opportunities (and any modifications to the aforementioned) in appropriate publications.³⁸⁷ There must be effective dissemination of tendering opportunities and, towards this end, the EPA requires Belize to establish and maintain an on-line facility.³⁸⁸ Tender documents must contain all information necessary for the submission of a response.³⁸⁹ Notices of future procurement plans should be published early in each fiscal year in addition to notices published for intended (covered) procurement. During our consultations it was noted that an on-line facility is not yet operational

³⁸³ Note that the definition of juridical person in Article 31 uses word ‘organized’ versus ‘established’ but Article 65 defines commercial presence using word ‘establishment’.

³⁸⁴ See Companies Act (CAP 250), Part I on ‘Constitution and Incorporation’; note that section 3 prohibits partnerships exceeding a certain number.

³⁸⁵ See EPA, Article 167(A) 3&4; note that the decision of the CARIFORUM-EC Council will include conditions for its application. But note that Belize’s legislation on government procurement does not distinguish between domestic and foreign companies, nor is there any express stipulation of price preferences for local companies. As such, there is no legal impediment to foreign companies participating in public procurement.

³⁸⁶ See EPA, Article 167.

³⁸⁷ See Annex VII to the EPA – for Belize the listed publications are: 1. Belize Government Gazette, www.printbelize.com; 2. The Guardian Newspaper; and 3. The Reporter.

³⁸⁸ See also EPA, Article 182 on cooperation – providing for the exchange of best practices etc, and creation of regional on-line facility for dissemination of information.

³⁸⁹ Note that the information that must be included is stated in Article 168(4) of the EPA and includes all the criteria to be used for the award of the contract.

though one is proposed. There was also no suggestion of an established practice of providing notice of future procurement plans early in each fiscal year. Current practices are under review and our consultations suggest that a variety of reforms will be submitted for the consideration of the National Assembly. It is recommended that the deficiencies of the Finance and Audit (Reform) Act identified herein are reviewed against the proposed reforms which will be submitted to the National Assembly.³⁹⁰ **This recommendation is included in the attached Implementation Schedule.**

The EPA addresses the various methods of procurement which must be specified in the notice of intended procurement or in the tender documents.³⁹¹ The EPA provides for open, selective and limited tendering procedures and provides for negotiations with suppliers under certain conditions.³⁹² The Finance and Audit (Reform) Act authorizes the Government of Belize to enter into procurement or sale contracts using open, limited and selective tendering procedures.³⁹³

Section 19 of the Act provides that any procurement or sale contract of or above five (5) million dollars shall be subject to open tendering procedures. It may be recalled that EPA thresholds for covered procurement in relation to supplies and services in CARIFORUM countries are below BZ\$5 million.³⁹⁴ Under the Finance and Audit (Reform) Act this may be subject to other procurement procedures which should also conform to the EPA. Section 19 of the Finance and Audit (Reform) Act achieves a large measure of compliance with the EPA although it falls short in various areas as noted below. Section 20 of the Act governs selective tendering procedures.

³⁹⁰ An Inter-American Development Bank/World Bank (IDB/WB) funded assessment of the national procurement system was undertaken earlier this year and submitted to the Government through the Financial Secretary. The findings of this report inform the proposed reforms to existing legislation and practices which, it is suggested, will follow the OECD model.

³⁹¹ See EPA, Article 169.

³⁹² See EPA, Article 175 which provides that negotiations may be used where this is stated in the notice or no tender is obviously the most advantageous. Once the negotiations are concluded a common deadline should be established for the remaining suppliers to submit any new or revised tenders.

³⁹³ *E.g.* Finance and Audit (Reform) Act, section 17; see also section 2 on 'Interpretation'.

³⁹⁴ The lowest thresholds for covered procurement for CARIFORUM countries are above SDR 155,000 (i.e. over Bz\$400,000). To put this in context reference may be made to the Financial Orders which provides that all services and public works contracts over BZ\$20,000 be awarded through tenders. Contracts between BZ\$10,000 and BZ\$20,000 should "normally" be put out to tender. For goods, the Stores Orders does not establish a threshold for tenders, but requires that "the fullest use" be made of the tender procedure outlined in the Financial Orders.

Section 20 fails to comply with Article 170 of the EPA on ‘selective tendering’,³⁹⁵ in so far as it does not provide for the publication of a notice of intended procurement inviting eligible suppliers to submit a request for participation within clear time limits, as well as other general requirements of the EPA on public procurement as noted below. **Aligning the provisions on selective tendering with those of the EPA is one of the recommendations included in the attached Implementation Schedule.**

Article 169 of the EPA requires that the relevant laws and regulations clearly prescribe the conditions under which procuring entities may utilize limited tendering procedures which shall not be used to restrict participation in a non-transparent manner. Section 21 of the Finance and Audit (Reform) Act sets out a number of circumstances where limited tendering procedures may be used; these fall within those listed in Article 171 of the EPA.³⁹⁶

Article 173 of the EPA addresses the technical specifications that must be included in the notice and/or tender document. It is explicitly provided that the procuring entity must not seek or accept advice in the preparation of specifications from persons with a commercial interest in the procurement. International standards should be used where these exist or national regulations or standards; references should not be made to trademarks etc unless words such as ‘as equivalent’ are included. Section 19(1)(c) of the Finance and Audit (Reform) Act partially addresses the aforementioned concerns but does not provide for this level of detail. During our consultations it was suggested that aside from the 1965 Financial Orders and 1968 Stores Orders there are to date no other general regulations or procedural guidelines on procurement.

The Finance and Audit (Reform) Act (CAP 15) repeals the former legislation (i.e. the Finance and Audit Act of 1979) and entered into force in April 2005 save and except for section 23 of the

³⁹⁵ See EPA, Article 170 on selective tendering provides that a notice must be published inviting eligible suppliers and providing a time-frame for responses. If limits are placed on the numbers of tenders which will be accepted this must be indicated in the tender and objective criteria provided for the limitation. The tender documentation must be given to all qualified suppliers at same time; see also EPA, Article 178 – time limits with respect to all procurement procedures should be reasonable and clearly stated.

³⁹⁶ Limited tendering is covered under Article 171 of the EPA – note that the rules on transparency, notice (with methods of procurement and specifications), the provision of conditions and criteria, negotiations, and opening of tenders need not be applied. Limited tendering procedures may only be used in certain circumstances; ten (10) such instances are stated in Article 171. Time limits with respect to all procurement procedures should be reasonable and clearly stated; see EPA, Article 178.

Act relating to the status of the Financial Orders and Stores Orders.³⁹⁷ The Finance and Audit (Reform) Act (Commencement) (No.2) Order, 2010³⁹⁸ brings into force subsections (2), (3) and (4) of section 23 as of 19th July 2010. Section 23(3) provides for the continuing validity of the Financial Orders and Stores Orders which were in force immediately prior to the commencement of the Act. These Orders have effect as administrative instructions to public officers to the extent that they are not inconsistent with the Act and are not expressly revoked by new instructions.

There is judicial authority to suggest that the Financial Orders of 1965 were to be viewed as binding in the context of the Finance and Audit Act of 1979.³⁹⁹ The entry into force of section 23 of the 2005 Act sets aside doubts such as those raised during our consultations as to whether this remains the case. The Finance and Audit (Reform) Act defines the Financial Orders and Stores Orders as “administrative instructions made from time to time by the Minister of Finance, directed only to public officers, for their internal guidance in the handling, processing, receipt, acquisition or disposal of public revenues, property and contracts as provided in this Act”.⁴⁰⁰ The Finance and Audit (Reform) Act essentially treats the Financial Orders and Stores Orders as mere guidance.⁴⁰¹ The Act provides for the promulgation of new financial and stores regulations by the Minister.⁴⁰² More robust administrative instructions incorporating modern best practices as required by the EPA should be drafted. Our consultations suggest that new regulations will

³⁹⁷ See SI No. 43 of 2005 and SI No. 51 of 2005.

³⁹⁸ Dated 16th July 2010.

³⁹⁹ E.g. Awich J. in Action No.556 of 2004, in the Supreme Court of Belize, *The Queen, on the application of the Belize Tourism Industry Association Limited vs the Prime Minister of Belize, the Attorney General of Belize and Belize Tourism Board – Respondents*, paras 44-47, noting that at para 46 that “whereas Orders, Instructions, warrants, Rules and Regulations are ‘executive in nature’ in contrast to Acts of Parliament, nevertheless they are delegated legislations and often it is difficult to draw a line between the effect of executive orders etc. made under an Act and an Act itself.”

⁴⁰⁰ See Finance and Audit Act (CAP 15), section 2(1) on ‘Interpretation’. Note that subsection (1) of section 23 which has not been brought into force by the most recent commencement Order (of 16th July 2010) largely repeats this provision in section 2(1).

⁴⁰¹ The Finance and Audit (Reform) Act, No. 12 of 2005, was enacted “to make new and better provisions regulating public revenue, expenditure and contracts; to repeal the Finance and Audit Act, Chapter 15 of the Substantive Laws of Belize, Revised Edition 2000 – 2003; to clarify the legal status of the Financial Orders and Stores Orders and to provide for matters connected therewith or incidental thereto”. The Belizean Authorities have articulated the Administration’s position as follows: “*The Finance and Audit (Reform) Act* has, for example, set the record straight with respect to the legal status of the Finance Orders and Stores Orders, and has determined that these are administrative instructions for the internal use of public officers to guide them in their handling of Government property”; see *Report of Belize for the 13th Meeting of the Committee of Experts of the Evaluation Mechanism of the Inter-American Convention against Corruption (2008)*.

⁴⁰² See Finance and Audit Act, section 23 (2), (3) & (4).

likely be prepared during the first six (6) months of 2011. **This is noted in the attached Implementation Schedule.**

The EPA also expressly requires that provision be made to protect the integrity of information submitted in the bidding process with a view to preventing inappropriate access.⁴⁰³ Although no specific provisions of the Finance and Audit (Reform) Act specifically address this (which could be elaborated in procurement manuals and/or guidelines), certain checks and balances are built into the regulatory framework. It may be noted that the Belize Freedom of Information Act exempts from disclosure documents relating to, *inter alia*, a person in respect of his business or professional affairs or concerning a business, commercial or financial undertaking where the information relates to trade secrets or to other matters the disclosure of which would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; and information the disclosure of which would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or a prescribed authority to obtain similar information in the future.⁴⁰⁴ The provisions of the Freedom of Information Act relating to the protection to be afforded to trade secrets/undisclosed information are also supported by the common law. Additional reference may be made to the Prevention in Public Life Act (CAP 12) which establishes, *inter alia*, a Code of Conduct for public officials at all levels.⁴⁰⁵ The Prevention in Public Life Act proscribes the use of public office for private gain and includes various measures designed to promote this.

With respect to the qualification of suppliers, Article 174 of the EPA requires that conditions and criteria must be made known in advance and limited to that which is essential. As such, requirements may not be imposed relating to prior contract awards or work experience in the territory (the exception being for social impact surveys). In certain circumstances a ‘multi-use

⁴⁰³ See also EPA, Article 170, 171 & 175.

⁴⁰⁴ See Freedom of Information Act 1994, section 29; see also sections 25 - 34.

⁴⁰⁵ See Prevention of Corruption in Public Life Act, Section 14 which provides that “[t]his Part applies to the Governor-General, members of the National Assembly, members of the Belize Advisory Council, members of the Public Services Commission, members of the Elections and Boundaries Commission, public officers, members and officers of statutory corporations and government agencies, and members and employees of all public bodies, including local authorities.”

list' of suppliers may be utilized.⁴⁰⁶ Section 19 of the Finance and Audit (Reform) Act provides generally for this in relation to open tendering procedures. Similar provision is not made with respect to section 20 on selective tendering procedures. As above-noted the Act permits the use of selective tendering in relation to some covered procurement (i.e. services and supplies). Article 171 of the EPA does not require that the disciplines of Article 174 be extended to limited tendering procedures. **It may be recalled that aligning the provisions on selective tendering with those of the EPA is one of the recommendations made in the attached Implementation Schedule.**

All tenders solicited under open or selective procedures must be received and opened under conditions guaranteeing fairness and transparency. Additionally, the contract must be awarded to the lowest and/or 'most advantageous' tender.⁴⁰⁷ Section 19 of the Finance and Audit (Reform) Act provides that the contract is to be awarded to "a suitable supplier or suppliers" which need not be equated to the 'lowest' or 'most advantageous' tender. Section 20 of the Act (on selective tendering) is silent on the matter. The Act also does not expressly address procedures on the opening of tenders though long-standing practice confirms that tenders are opened under supervision in circumstances designed to promote transparency and fairness.⁴⁰⁸ Many of these important details could be incorporated in regulations under the Act establishing general rules and guidelines governing procurement practices across-the-board. **The importance of such measures was highlighted during our consultations, particularly in light of the decentralization of public procurement to individual Ministries, and is underscored in the attached Implementation Schedule.**

The EPA addresses the information which must be provided on the contract award and essentially calls for the effective dissemination of the results of procurement process. Upon request the Authorities are to provide their decision in writing and state reasons. Section 19(4)

⁴⁰⁶ See also EPA, Article 166 which defines a "multi-use list" as a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once. Note that the use of such list must be published annually, inviting interested suppliers etc. The use of such list should not exclude other suppliers unless there is no opportunity to examine the request for justifiable reasons.

⁴⁰⁷ See EPA, Article 176; note that this provision need not be applied with respect to limited tendering procedures.

⁴⁰⁸ *E.g.* 2004 WTO Secretariat Trade Policy Review Report on Belize, Table III.11 "Principal features of the tender procedure, March 2004"; 2010 WTO TPR Report, WT/TPR/S/238, Table III.13 "Tendering Procedures under the Finance and Audit (Reform) Act, 2010.

of the Finance and Audit (Reform) Act prevents Belizean officials from complying with this EPA obligation. Article 177 of the EPA provides that:⁴⁰⁹

“(2) Procuring entities shall promptly inform suppliers of decisions regarding the award of the contract and, on request, in writing. Upon request, procuring entities shall inform any eliminated supplier of *the reasons for the rejection* of its tender and of the relative advantages of the successful supplier's tender.” (added emphasis)

Section 19(3)(c) of the Finance and Audit (Reform) Act states that the Government shall, through the appropriate Ministry- ‘notify the unsuccessful suppliers or purchasers in writing’. Section 19(4) further specifies that “[a] notice under subsection (3) (c) shall not state reasons why a supplier was unsuccessful in the opening tendering procedure.” Section 19(4) of the Finance and Audit (Reform) Act is one of the provisions clearly requiring amendment. **This is one of the recommendations advanced in the attached Implementation Schedule.**

Article 179 of the EPA on bid challenges requires that Belize establish an impartial administrative or judicial authority - independent from its procuring entity - to receive challenges to domestic measures regarding covered procurement where a person has or had a legitimate commercial interest.⁴¹⁰ The Finance and Audit (Reform) Act does not expressly provide for bid challenges. However, Rule 56 of the Supreme Court (Civil Procedure) Rules 2005 allows for applications to be filed for judicial review of administrative actions.⁴¹¹ The provision for judicial review would seem to address the EPA requirement.

⁴⁰⁹ Section 20 of the Finance and Audit (Reform) Act on selective tendering procedures imports section 19(4) by way of cross-reference and any amendment should also address this. Note that Article 177(4) of the EPA provides a five-year transitional period for complying with the EPA post-contract award notice requirements. This applies even to those countries (other than Belize) which are subject to a shorter general transitional period to comply with the provisions on public procurement.

⁴¹⁰ Note that any time limits for such challenges should be made known in advance. Challenge procedures must provide effective rapid interim measures.

⁴¹¹ See the Supreme Court Judicature Act (CAP 91); see also *Queen and the Minister of Budget Management, Investment & Public Utilities; Ex parte Belize Telecommunications Ltd*, Supreme Court Action No. 47 of 2002, A.O. Conteh, C.J. See also *Report of Belize for the 13th Meeting of the Committee of Experts of the Evaluation Mechanism of the Inter-American Convention against Corruption (2008)* where the Attorney General’s Ministry observes that “the Finance and Audit Act, Chapter 15 of the Laws of Belize, R.E. 2000 – 2003, was tainted with challenges to its transparency and accountability provisions and to its questionable position with regard to the status of the Financial Orders and Stores Orders, which provide valuable guidance to public officers with respect to their administration of public funds and other Government property. The Finance and Audit (Reform) Act of 2005 was enacted with the

The Finance and Audit (Reform) Act further provides for the auditing of accounts of all Accounting Officers and of all persons entrusted with, *inter alia*, the issue or payment of public moneys with a view to ascertaining whether all public moneys disbursed have been expended and applied under proper authority and for the purpose or purposes intended by such authority.⁴¹² Additionally, in his/her report to the National Assembly, the Auditor General may call attention to any case of, *inter alia*, irregular, excessive, wasteful or extravagant use of government funds and property.⁴¹³

Section 18 of the Finance and Audit (Reform) Act requires that all contracts subject to open, selective or limited tendering procedures must be submitted to the Contractor-General for review and comment *before* the contract is executed. The Contractor-General may indicate that the contract is or is not in the national interest of Belize. Where s/he indicates that it is, this is treated as conclusive evidence thereof. The Contractor-General Act (CAP 6) grants extensive powers to the Contractor-General to monitor the award and implementation of public contracts with a view to ensuring, *inter alia*, that such contracts are awarded impartially and on merit.⁴¹⁴ The Contractor-General is expressly authorized to investigate, *inter alia*, tender procedures related to contracts awarded by public bodies and other matters concerning the award of any public contracts.⁴¹⁵ There are, as such, several avenues through which irregularities in public procurement practices may be scrutinized.

IV. ENVIRONMENT AND SOCIAL ASPECTS

Chapters 4 and 5 of Title IV of the EPA do not impose obligations on Belize not found elsewhere in the EPA; for example, the obligations not to lower environmental and labour standards to

aim of curing the above-mentioned defects and to set the record straight regarding the said Financial Orders and Stores Orders.”

⁴¹² See Finance and Audit (Reform) Act, section 12(1).

⁴¹³ See Finance and Audit (Reform) Act, section 16; see also the Prevention of Corruption Act 2007, and *Report of Belize for the 13th Meeting of the Committee of Experts of the Evaluation Mechanism of the Inter-American Convention against Corruption (2008)*.

⁴¹⁴ See Contractor-General Act, section 14.

⁴¹⁵ See Contractor-General Act, sections 15 & 16.

attract investment⁴¹⁶ are also found in Title II, Chapter 2 on Commercial Presence; similarly the right to regulate and establish social and labour standards as well as those for the protection of the environment and sustainable development are also found in Title II.⁴¹⁷ The preference for the use of international standards,⁴¹⁸ and the recognition that measures must be based on the available scientific information,⁴¹⁹ are features of Titles I and II; equally so, the commitment to transparency, consultation, monitoring and cooperation.⁴²⁰ As such, it is not felt necessary to undertake a further independent review of the provisions of Chapters 4 and 5 of Title IV in relation to Belize's legislation and regulations which would merely repeat earlier analysis.

V. PROTECTION OF PERSONAL DATA

The EPA provides for extended protection of personal data.⁴²¹ This is described as part and parcel of a fundamental right to privacy.⁴²² In light of this it is agreed that Belize and other CARIFORUM countries will establish appropriate legal and regulatory regimes, and develop the appropriate administrative capacity, including independent supervisory authorities, to implement such a regime in line with existing high international standards.⁴²³

The legal and regulatory regime and administrative capacity to be established shall *at a minimum* include the following principles and enforcement mechanisms:⁴²⁴

Content principles addressing: purpose limitation; data quality and proportionality; transparency; security; rights of access, rectification and opposition; restrictions on onward transfers; and additional safeguards for sensitive data.

⁴¹⁶ See EPA, Articles 188 & 193.

⁴¹⁷ See EPA, Articles 184 & 192.

⁴¹⁸ See EPA, Articles 185 & 191.

⁴¹⁹ See EPA, Article 186.

⁴²⁰ See EPA, Articles 187, 189, 190, 195 & 196.

⁴²¹ See EPA, Article 198 – which defines "Personal data" as "any information relating to an identified or identifiable individual (data subject)"

⁴²² See EPA, Article 197.

⁴²³ See EPA, Article 197; see also the footnote to Article 197 providing examples of such standards and referring to Guidelines for regulation of computerized personal data files, modified by UNGA on 20 Nov 1990; and OECD Council Recommendation concerning guidelines governing the protection of privacy and trans-border flows of personal data of 23 Sept 1980.

⁴²⁴ See EPA, Article 199, 'Principles and general rules'.

Enforcement mechanisms facilitating: a good level of compliance with the rules; support and assistance to individual data subjects in exercising their rights; and appropriate redress to an injured party where the rules are not complied with.

The EPA calls for coherence with other international commitments, including consultations on arrangements which include third countries,⁴²⁵ as well as cooperation, in particular, in drafting legislation, guidelines, manuals; training personnel; and establishing institutional frameworks.

Belize does not appear to have in place a well developed framework on data protection; there is no specific legislation addressing undisclosed information and reliance is generally placed on the provisions of the common law.⁴²⁶ The establishment of a comprehensive data protection regime in Belize is one of those areas where significant work is required. **This constitutes one of the recommendations included in the attached Implementation Schedule.**

⁴²⁵ See EPA, Article 200, 'Coherence and international commitments'.

⁴²⁶ E.g. WTO doc. IP/Q/BLZ/1; IP/Q2/BLZ/1; IP/Q3/BLZ/1; IP/Q4/BLZ/1 at pp. 10 & 24-25.

IMPLEMENTATION SCHEDULE

TITLE I – TRADE IN GOODS

- **Customs duties and rules of origin:** Regulations should be drafted to implement phased tariff reductions (2009-2033) and establish preferential rules of origin for goods originating in the European Community and Dominican Republic similar to those established for CARICOM products in the Customs (Caricom Preference) Regulations under section 4 of the Customs and Excise Duty Act, CAP 48. This is included as a ‘track 1’ exercise.

- **Duties and other charges on imports:** There are various ‘irregularities’ in the application of duties and other charges (including internal taxes) levied on imports which may lead to their treatment as *de facto* customs duties (to be counted within those specified in Appendix 1 to Annex III of the EPA). The fiscal implications of some proposed reforms may require that further work be done on possible compensatory mechanisms before existing laws, regulations and practices are changed. The review and reform of the following measures is included as a ‘track 1’ activity:
 - **Customs service charge** - The customs service charge in Belize is applied *ad valorem* at the rate of 1.5%. An *ad valorem* charge may exceed the real value of the service rendered particularly where highly priced imports are involved (e.g. European luxury vehicles). Nevertheless, it is recognized that the service charge generates significant revenues and that several developing countries apply similar *ad valorem* charges. Given the widespread use of *ad valorem* service charges in the region, it is proposed that the issue may perhaps best be resolved at a CARICOM/CARIFORUM level with a view to determining a common approach should compliance concerns be raised in the future. In this regard, it is noted that the draft Caricom Customs (Fees for Rendering Services by Customs officers) Regulations 2009, made pursuant to section 13 of the 2008 Draft Harmonised

Customs Bill, provides for the imposition of service charges on a fees per hour basis.

- **Environmental tax** - The fundamental principle of non-discrimination requires that an imported product should not be subject to a charge which is in the nature of a contribution to a fund meant for addressing particular concerns (e.g. the environment), if such a charge is not levied on the like domestic product. The environmental tax is charged on imports but not on domestic goods. The tax should be applied equally to imports and domestic goods or removed altogether. The appropriate amendments should be made to the Environmental Tax Act (CAP 64.01).

- **Revenue Replacement Duty (RRD)** – The RRD does not conform to the EPA. Questions may also be raised as to whether the Revenue Replacement Duty Order, 2010, conforms to the Customs and Excise Duty Act (CAP 48). Section 25(2) of the Act mandates that *“Notwithstanding anything to the contrary in any other enactment, the duty under this section shall be imposed without discrimination on all goods of the same type, class or description”*⁴²⁷ Additionally, our consultations suggest that despite the instruction in the Order that the RRD should be applied to certain domestic products, this in fact is not done. The RRD was notified under Article 16 of the EPA which allows for a 10 year transitional period for irregular charges where “the same duties are imposed on the like product imported from *all other countries*.” This proviso is open to various interpretations and could be construed to suggest that the application of different rates of duties based on the origin of the product (e.g. CARICOM vis-à-vis third countries) removes the RRD from the protection provided by Article 16 of the EPA. The inconsistencies between the Order as written and applied vis-à-

⁴²⁷ Customs and Excise Duties Act, section 25(2) (added emphasis). This is further emphasized in section 27 of the Act which provides as follows: “(1) No Order made pursuant to section 25 shall make any provision which is discriminatory. (2) In this section “discriminatory” means affording different treatment to goods of the same description and class by way of imposing different rates of duty attributable wholly or mainly to the country in which the goods are produced, whether Belize or any other country.”

vis the Customs and Excise Duty Act should be addressed with a view to removing any discrimination based on the source of the product.

- **General Sales Tax (GST)** - The General Sales Tax Regulations provides that the GST on imports is to be assessed on the value of the product together with custom duties and other duties, taxes and charges including the RRD. The Regulation provides that for domestic goods, the GST is to be applied to the value of the product including excise duties where payable; however, there is no provision for including the RRD where applicable. As such, domestic goods on which the RRD is to be applied pursuant to the Revenue Replacement Duty Order 2010 are not captured by the language used in the General Sales Tax Regulations 2006 (as amended). This would suggest the GST is applied in a manner which favours domestically produced goods. The discriminatory application of the GST is further demonstrated in the General Sales Tax (Amendment of Schedules) (No.2) Order 2010, which specifically provides in certain cases that zero-rating is applicable only to domestically produced goods; reference is made, in particular, to fresh fruits and vegetables (locally produced); fresh milk (locally produced); and locally produced sweet bread and bun. The GST should be reformed with a view to removing any discrimination based on the source of the product.

- **Export taxes** - Belize did not notify any export duties to be phased out over the transitional period provided for in Annex I of the EPA. Consultations suggest that Belize in fact does not impose export duties although a number of legislative instruments provide for this.⁴²⁸ Such ‘outdated’ legislative instruments prescribing export duties which are not collected should be repealed or amended accordingly. In this context reference is also made to the imposition of a levy on sugar manufactured for export under the Sugar Industry Act (CAP 325).

⁴²⁸ E.g. Forests (Export Duty) Order made pursuant to section 5(3) of the Forests Act (CAP 213); Fish (Export Duty) Order made pursuant to section 9 of the Fisheries Act (CAP 210). See also Produce Export Duties Act (CAP 60) which provides for duties to be paid on the export of certain wood products and coconuts.

- **Trade remedies (antidumping, countervailing duty and safeguard measures):**
Resource constraints pose significant hurdles to the implementation of effective trade defence mechanisms in Belize. Possible options exist at the regional and/or sub-regional levels. Implementation may therefore require coordination with other CARICOM Member States. More immediate action, however, may be taken locally to implement the very basic special safeguard mechanism available under Article 25 of the EPA. This is suggested as a ‘track 2’ medium term measure.
- **Non-Tariff Barriers (NTBs) - Supplies Control Act (licensing and price controls):**
The Supplies Control Act and the regulations thereto raise a number of concerns particularly in relation to the licensing regime which in some cases serves effectively as a mechanism through which to block imports. Addressing the licensing regime will require fundamental trade policy reforms. Additionally, the Supplies Control Act prescribes price controls with a differential rate structure for locally produced goods and imports. Consultations suggest that the legislation is currently under review. This appears timely and the amendment of the Supplies Control Act and the regulations thereto is included as a ‘track 1’ measure.
- **Customs valuation:** Section 17 (3)-(5) of the Customs Regulations Act which operates “notwithstanding any other Act,” authorizes the Comptroller to take steps for determining the value of goods in a manner which will not necessarily provide a valuation which accords with WTO rules. In so doing section 17 undermines the positive prescriptions of the Customs and Excise Duty Act (which accords with the WTO Customs Valuation Agreement) and should be amended. Consultations suggest that the provision is not invoked in practice and there was a general consensus that the provision should be repealed. The repeal of section 17 (3)-(5) of the Customs Regulations Act is proposed as a ‘track 1’ exercise.

Section 52 of the Customs Regulation Act establishes a Customs Tariff Board in charge of settling disputes related to the valuation or classification of imports. The Customs Tariff Board however is not operational, though a Customs Classification Committee has

been established (informally) to pursue similar functions. It is anticipated that the Customs Tariff Board will be established in the context of the new Customs legislation modeled on the CARICOM Draft Model Customs Bill. It was suggested that negotiations on the CARICOM Draft will be concluded in 2010 which would allow for the enactment of new Customs legislation in 2011.

- **Customs procedures and trade facilitation:** The Belize Government has identified certain inefficiencies in customs procedures stemming in large part from capacity constraints (both human and financial resources). These include difficulties in monitoring the movement of transit cargo between offices; an absence of a computerised system for processing customs documentation and generally out-of-date computer equipment. It is noted, however, that Belize is receiving technical assistance on Customs reform and modernization. A phased implementation of ASYCUDA World – a computerized customs system – should begin in 2011. This will facilitate the customs clearance process by allowing traders to submit customs declarations on-line; assess duties and taxes themselves; and, make payments online. With the implementation of ASYCUDA new guidelines will be circulated and eventually included in revised Customs legislation. CARTAC is also providing training on general risk management procedures. This will also be facilitated by the implementation of ASYCUDA World. Note is taken of the significant steps which have already been made to promote the implementation of Belize's EPA (WTO and regional trade) obligations.
- **Customs procedures facilitating exports and familiarization exercises for the private sector:** In order for Belizean exporters to benefit from certain flexibility measures provided for in the EPA certain steps must be taken. For example, in accordance with Protocol 1, all Belizean goods exported to the EC must be issued with either a movement certificate EUR.1 or, in certain cases, an "invoice declaration" given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified. Although, the Customs and Excise Department is responsible for issuing all origin certificates, the EPA makes provision for an 'approved exporter' to certify the originating status of a product.

This could allow for arrangements similar to those which exist for exports to the United States under the Caribbean Basin Initiative (CBI) where the Belize Chamber of Commerce and Industry is also authorized to issue certificates. Consultations suggest that no decision has been taken on whether to make use of this additional flexibility; it was noted that Belize is waiting on CARICOM to determine a regional approach on this. Similarly, to benefit from the provisions on cumulation certain steps must be taken including the publication (according to local procedures) of the date on which the cumulation may be applied with the OCTs⁴²⁹ and ACP States which meet certain requirements. Additional supporting documentation such as a supplier's declaration is also required.

Familiarization exercises for the private sector to raise awareness and encourage full exploitation of the market access opportunities available under the EPA are recommended. This is included as a 'track 2' short to medium term exercise.

- **Customs documentation and verification:** Protocol I of the EPA requires that all relevant documentation be retained by the exporter, supplier, importing and exporting countries for a period of three (3) years for verification purposes which may be carried out at random or based on risk analysis. The Belize Customs Regulations Act (CAP 49) and regulations thereto do not provide for this.⁴³⁰ It is noted that both (CARISEC and CARTAC) Draft Model CARICOM Harmonized Customs Bills provide that any importer, exporter, agent, broker, and any other person who conducts business under any customs enactment is required to keep records for [X] years; 'X' proposed as being equal to five (5) years. This stipulation partially addresses the EPA requirements; significantly, the EPA obligation applies not only to traders and their agents but also to customs authorities. Establishing a clear requirement in law for exporters, suppliers and Customs Authorities to retain the original and/or copies of all relevant documentation, as appropriate, will promote compliance with Protocol I. This could be done by regulations issued under section 51 of the Customs Regulation Act.

⁴²⁹ "OCTs" means the Overseas Countries and Territories as defined in Annex IX of the EPA.

⁴³⁰ Note that the Customs Invoices Regulations addresses imports as opposed to exports and, moreover, provides for the retention of all invoices and documents for a period not exceeding three months from the date of presentation.

Additionally, it is further recommended that a detailed review of EPA Protocols I and II should be undertaken by Customs Officials with a view to highlighting areas of perceived weakness or non-compliance. This is included as a ‘track 1’ exercise as trade is already taking place under the EPA.

- **Standards**: A review of the few national standards which have been promulgated suggests some minor irregularities.⁴³¹ Reference may be made, for example, to the requirement that whiskey, liqueurs, imported cigarettes and imported beer carry a “Belize Market” label. The basic WTO rule which is affirmed by the EPA⁴³² is that regulations, standards and procedures should not to be prepared, adopted or applied with the intention or effect of creating unnecessary obstacles to trade. For technical regulations, this requirement demands that they not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. One legitimate objective mentioned in both the preamble and Article 2.2 of the TBT Agreement is the prevention of deceptive practices. Presumably, this is the intention of the requirement for certain products to carry a “Belize Market” label. However, the limited application of the regulation to a restricted list of products raises questions as to the arbitrary and discriminatory nature of its application. It is recommended that the use of the “Belize Market” label be reviewed as a “Tier 2” exercise.

Belize requires extensive support and capacity building in the standards area. The Belize Bureau of Standards (BBS) has recently benefited from a programme on institutional strengthening (funded out of the European Development Fund). Support for further capacity building measures is required. It is anticipated that this will likely be channelled in part through the CARICOM Regional Organization for Standards and Quality (CROSQ).

⁴³¹ See also the standard for pre-packaged foods which provides that “10.1 A processed food that is prepackaged and labelled in English in accordance with the laws or standards in force in Canada, the Caribbean Community, the European Union, or the United States of America shall be deemed to comply with this standard.” The standard appears discriminatory in favour some WTO Members over others. However it is worth noting, particularly in the context of a review of the EPA, that the EC is among those receiving more favourable treatment.

⁴³² See EPA, Article 44.

TITLE II – INVESTMENT, TRADE IN SERVICES AND E-COMMERCE

- **Contact Points:** The EPA requires that each State establish a Contact Point to receive and respond to enquiries from other State Parties as well as private entities. Enquiries may be made with respect to all matters affecting trade in services as well as investment in non-services sectors.⁴³³ The Director, Directorate for Foreign Trade, Ministry of Foreign Affairs and Foreign Trade is the contact point listed in Annex V of the EPA. Depending on the level of interest of traders and investors in Belize the resources placed at the disposal of the Directorate may need to be enhanced to enable it to respond promptly to all requests for information “which pertain or affect”⁴³⁴ the EPA
- **Investment in non-services sectors:** Belize has made certain commitments with respect to investment in certain non-services sectors in Annex IV.E. Belize (as with all other CARIFORUM States) has reserved its right to inscribe in Annex IV.E any *existing measure* (at time of signature) that has not been listed, provided this is done within two (2) years of entry into force of the Agreement. Unlike other non-services sectors, in the area of forestry and logging Belize has not specified any limitations on market access or national treatment. In not scheduling any limitations Belize has in effect indicated that it has no restrictions on market access or national treatment (within the meaning of Articles 67 and 68 of the EPA) or is willing to remove them. A review of Belize’s laws, in particular the Forest Act (CAP 213) and subsidiary regulations, does not suggest any measures which necessarily conflict with this suggestion; for example, the mere requirement for a licence to undertake various activities in the sub-sector does not contradict this. Questions were, however, raised with respect to Rule 7(2) of the Forest Rules which states that the Minister “shall not be obliged to direct the issue of a licence

⁴³³ The provision could be subject to even broader interpretations but it is assumed that that it was intended to be limited as suggested herein; see EPA, Article 86 which provides: “Subject to Article 235(3) the Parties and the Signatory CARIFORUM States shall respond promptly to all requests made by the other Party for specific information on any of their measures of general application or international agreements which pertain to or affect this Agreement. The Parties shall also establish one or more enquiry points to provide, upon request, specific information to investors and services suppliers of the other Party on all such matters. ..” (added emphasis)

⁴³⁴ *Ibid.* Article 86.

to the person submitting the best tender or any tender”. Our consultations suggest that the Forest Act and regulations are under review.

The jurisprudence of the Supreme Court is, however, significant. The rulings of the Supreme Court⁴³⁵ affirming the customary land tenure of the Maya in Southern Belize affects, *inter alia*, investments in forestry and logging. Although the full implications of the customary rights of the Maya are not yet well defined, it would seem prudent to notify their rights which are protected under the Constitution as a possible non-conforming measure existing at the time of the signature of the Agreement.⁴³⁶ The attention of Senior Officials is drawn to this so that appropriate follow-up actions may be taken, as necessary.

- **Professional services**: Belize has made a number of commitments in the area of professional services. It is not anticipated that many difficulties will arise in their implementation.

The EPA commits Belize to encourage professional bodies to work with its regional and EU counterparts to jointly develop recommendations to the CARIFORUM-EC Trade and Development Committee (TDC) on the mutual recognition of qualifications, professional experience and other criteria required for the authorization, licensing, certification and operation of investors and service suppliers in CARIFORUM and EC member countries. The process should be initiated within three (3) years of entry into force of the EPA. Accounting, architecture, engineering and tourism are priority sectors. This is an area where Belize is committed to pursue pro-active work with the private sector with a view to encouraging trade in professional services. The work of the emerging Belize Services Coalition of Service Providers will undoubtedly contribute to this. The development of

⁴³⁵ The 28th June 2010 judgement of Chief Justice Conteh in Claim No. 366 of 2008 affirms the 2007 judgments of the Supreme Court claims no. 171 & 172 of 2007, delivered on 18th October 2007, which followed the 2004 judgment of the Inter-American Commission of Human Rights affirming the customary land rights of the Maya people of Belize.

⁴³⁶ It may be noted that the Forests (Export Duty) Order suggests that export duties are charged on various wild animals, spices, seeds, plants and gum or resin (from forest trees and plants). Under Title I of the EPA Belize has undertaken not to charge export duties and failed to schedule any export duties to be phased out under a transitional period. This matter is treated in the discussion under Title I dealing with export duties.

common professional standards to facilitate mutual recognition and trade in professional services is included as a 'Track 3' measure.

Certain concerns may be raised with respect to the regulations governing medical practitioners, architects and engineers. It is noted that architects, doctors and engineers are among those professionals required to apply for a trade licence under the Trade Licensing Act (CAP 66). This is a discretionary measure which is potentially open to abuse and the observations made below (with respect to the requirement of a trade licence for hotel businesses) are equally applicable here.

Additionally, the Medical Practitioners Registration (Fees) Regulations made pursuant to the Medical Practitioners Registration Act (CAP 318) is discriminatory in so far as it requires non-citizens to pay double the fees required of citizens for an application to register as a medical practitioner as well as the annual practicing fee. It may be argued that this is an "operating condition" which falls within the horizontal limitations specified by Belize in Annex IV.F. Alternatively, a discriminatory fee imposed by the State could possibly be portrayed as a *de facto* subsidy to local service suppliers. It may be recalled that the provisions of Title II of the EPA (unlike the situation under the WTO GATS) do not apply to subsidies granted by the Parties.⁴³⁷ On either of the above arguments discriminatory registration fees could be said to fall outside of the scope of the review on the suggestion that they are not effectively regulated by the EPA. It is not clear the extent to which the Belizean Administration sees such discriminatory fees as necessary. These fees are, however, clearly subject to other regional and multilateral agreements to which Belize is a party. A review of the fee structure for medical practitioners would therefore seem warranted and is proposed as a 'Track 3' exercise.

- **Tourism sector**: The Hotels and Tourist Accommodation Act and the Trade Licensing Act are not *per se* discriminatory or restrictive of market access. They do, however, leave open the door for the implementation of restrictive policies. Some of the feedback which was received from Trade Licensing Boards suggests that discriminatory practices are in

⁴³⁷ See EPA, Article 60(3).

fact implemented in certain instances. The extent to which the legislation as implemented negatively affects trade in services is unclear. Reform of the legislation or the issuance of appropriate regulations for administrative entities with a view to ensuring that they do not place Belize in breach of its EPA commitments appears advisable. This is suggested as a ‘track 3’ measure.

- **Courier services**: It is noted that courier service suppliers in Belize now operate to a certain extent outside of the law in an unregulated environment. The development of appropriate regulations that would allow service suppliers other than the Postmaster General and other officers and servants of the Post Office to provide courier services is advisable. This is recommended as a ‘Track 2’ measure.
- **Telecommunications services**: A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that licence fees should not exceed administrative costs. This precludes the auctioning of licences (scarce frequencies) and other charges such as percentage fees not directly linked to administrative costs. A revenue-based contribution regime such as prescribed in the Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations may not necessarily exceed administrative costs taking into account the tasks assigned to the Regulator. Some telecoms regimes provide for annual adjustments to supplement fees based on the actual expenditures of the Regulator. While this is not required by the EPA attempts should be made by the PUC to ensure that licensing fees remain somewhat approximate to administrative costs. Our consultations suggest that the proposed review of conditions associated with the issuance of licences by the PUC is intended to include the fee structure. It is recommended that the review take into account the commitments undertaken by Belize in the context of the EPA. As the review is ongoing this is included as a ‘Track 1’ exercise.
- **Telecommunications commitments**: With respect to Belize’s commitments in Annex IV.F concerning telecommunications services, it should be noted that for the subsectors h, i, j, l, m, and n, there are two (2) entries for Belize Mode 1 market access: one indicates ‘None’, the other ‘Only through licensed facilities based operators’. Given the

almost consistent reservation limiting market access for Mode 1 only through licensed facilities based operators it is assumed that the second entry is correct. If this anomaly has not already been corrected, it is recommended that the matter be addressed through an appropriate technical rectification. This is included as a ‘Track 1’ exercise.

- **Tunnel construction commitments**: With respect to Belize’s commitments in Annex IV.F concerning “Special trade Construction (Tunnel construction CPC 5224),” it should be noted that CPC 5224 refers to long distance pipelines communication and power lines (cables). CPC 52224 relates to tunnel construction. It is assumed that the latter reference (i.e. CPC 52224) is correct. It is recommended that if this has not already been corrected the appropriate adjustment should be made to the text. This is included as a ‘Track 1’ exercise.

TITLE IV – TRADE-RELATED ISSUES

- **Competition law and policy**: Belizean Officials are currently reviewing a draft Competition Bill derived from the CARICOM Model Competition Bill. This Bill provides an appropriate template for implementing most of the provisions of Chapter 1 of Title IV on competition policy. Assuming that the draft Bill (or something approximating thereto) becomes law it should be notified to the CARIFORUM-EC Trade and Development Committee (TDC) in accordance with Article 125 of the EPA. An effective competition policy is important for growth and development. The EPA provides a transitional period of five (5) years from the entry into force of the agreement for CARIFORUM States to have laws in force addressing restrictions on competition.⁴³⁸ Given that the transitional period which runs from the date of entry into force (as opposed to provisional application) addressing competition concerns is proposed as a ‘Track 3’ measure.

⁴³⁸ See EPA, Article 127 on ‘Implementation’; note that after the laws are in place there will be a period of ‘confidence building’ between the Competition Authorities of the Parties.

- **Competition and state trading enterprises:** The Belize Marketing Board Act (CAP 281) establishes the Belize Marketing and Development Corporation (BMDC) to provide production and marketing assistance to farmers; it also seeks to ensure supplies of essential goods at stable prices in the Belizean market. In fulfilment of its tasks the BMDC operates, *inter alia*, as a trader dealing in certain basic commodities, particularly rice (also operating a rice mill) and onions. Consultations on BMDC’s operations suggest that it is a state trading enterprise which should be notified under Article XVII of the GATT 1994 for transparency purposes. However, it also appears that the entity is used, contrary to Belize’s WTO and EPA commitments, to protect domestic rice and onion production.

Article 129 of the EPA, entitled “Public enterprises and enterprises entrusted with special or exclusive rights including designated monopolies,” imposes an obligation on Belize with respect to public enterprises and enterprises to which special or exclusive rights have been granted, to “ensure that, following the date of the entry into force of this Agreement, there is *neither enacted nor maintained any measure distorting trade in goods or services* between the Parties to an extent contrary to the Parties interest, and that such enterprises shall be subject to the rules of competition ...”⁴³⁹ Article 129(4) provides that the Parties will “progressively adjust, without prejudice to their obligations under the WTO Agreement, any *State monopolies of a commercial nature* so as to ensure that at end of fifth year after entry into force of this Agreement *no discrimination regarding the conditions under which goods and services are sold or purchased* exists between goods and services originating in the [EC & CARIFORUM] ...or between nationals of the ...[EC & CARIFORUM], unless such discrimination is inherent in the existence of the monopoly in question.”

Reforming the BMDC so that it does not operate in a manner which favours domestic producers or otherwise distorts trade contrary to Article 129 of the EPA is a significant issue to be addressed in the context of a review of Belize’s trade policy and regulatory framework with a view to promoting compliance with the EPA and other international

⁴³⁹ EPA, Article 129(2) added emphasis.

trade agreements. Our consultations suggest that reform of the BMDC is unlikely to occur overnight. A review of the role played by the BMDC and an assessment of alternative measures which may legitimately be taken to address key policy objectives in conformity with Belize's WTO and EPA obligations should be undertaken. The initiation of this process is proposed as a 'Track 1' exercise.

- **Intellectual property protection and multilateral treaties:** The EPA provides a transitional period, i.e. until January 2014, for the implementation of obligations on the protection of intellectual property.⁴⁴⁰

The EPA contains a number of 'best endeavour' undertakings to accede to various intellectual property treaties. A thorough analysis of these conventions and certain listed WIPO recommendations should be undertaken. Additionally, consultations should be pursued with the private sector, civil society and other stakeholders with a view to determining Belize's strategic interests and the timeliness of pursuing steps to accede to these arrangements. This is included as a 'Track 3' exercise.

- **Copyright protection:** The EPA requires *compliance* with the both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Belize is not party to either agreement. Reservations have been expressed about the benefits of developing countries acceding to the WIPO Copyright Treaty. The EPA requirement for *compliance* (as opposed to *ratification*) affords Belize and other CARIFORUM countries the opportunity to attempt to implement the agreements without having to be bound thereby. The lessons learned from implementation could be raised in the CARIFORUM-EC Trade and Development Committee in the context of an evaluation and further elaboration of the obligations imposed in the intellectual property chapter of the EPA.⁴⁴¹

⁴⁴⁰ See also EPA, Article 164 on cooperation activities which will be very important particularly during the transitional period. Emphasis is placed on, *inter alia*, regional initiatives (regional laws and regional implementation); national laws and regulations; identification of products which could benefit from GI protection taking into account promotion of traditional knowledge and biodiversity; and the development of codes of conduct.

⁴⁴¹ See EPA, Article 230(3).

There is general recognition of the benefits to be derived from the ratification of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. This, it was suggested, would strengthen implementation of the WIPO Performances and Phonograms Treaty by creating a beneficial legal framework for local producers and performers seeking to protect their work from copyright infringement. However, implementation of the Rome Convention would require a higher level of organization in the music and broadcasting sectors than now exists. It was suggested that the strengthening of local broadcasting authorities and the creation of a stronger regulatory infrastructure should be contemplated prior to ratification. It would seem that further work is required on the technical support measures required to create an enabling environment for the implementation of EPA obligations on copyright protection. This is included among as a ‘Track 1’ measure.

- **Trademarks**: Belize is obliged under the EPA to establish a publicly available electronic database of applications and registrations of trademarks. As none now apparently exists an online database should be established. This is included as a ‘Track 2’ measure.

Although the Trade Mark Act is generally compliant with the EPA, it does not preclude registration of a trade mark where this includes a geographical indication as required by Article 145 (2) and (3) the EPA. It is recommended that amendment of the legislation be pursued in conjunction with the development of an appropriate system for the protection of geographical indications. This is included as a ‘Track 2’ exercise.

- **Geographical Indications (GIs)**: The provisions in the EPA on GIs are far broader in scope than the TRIPS Agreement, and it is not clear that Belize has fully implemented its TRIPS obligations on GIs.⁴⁴² This is one of the areas where compliance with the EPA requires the enactment of new legislative measures during the transitional implementation period. More extensive consultations with the Authorities, including BELIPO, private sector, civil society and other stakeholders are recommended as the feedback received

⁴⁴² Note is taken of section 59 of the Trade Marks Act which provides: “The provisions of any international treaty in respect of trade marks, collective marks and certification marks to which Belize is party shall apply to matters dealt with by this Act and, in case of conflict with the provisions of this Act, shall prevail over the latter.”

suggests the absence of a desire to implement a more rigorous regime for GIs at this time. The consultations should also be geared to developing a list of Belizean GIs requiring appropriate protection. This list should be submitted to the CARIFORUM-EC Trade and Development Committee (TDC) within six (6) months of entry into force of the EPA. This is included as a 'Track 2' short to medium term exercise.

- **Industrial designs**: The Industrial Designs Act is designed to fulfil Belize's obligations under the WTO TRIPS Agreement.⁴⁴³ However, the rights conferred by the EPA are arguably broader than those in the WTO. In the EPA, in addition to granting the right holder the authority to prohibit others from making, selling or importing articles involving the design (as required by the TRIPS Agreement), the right holder is granted authority over offering, stocking or using the articles without the design owner's consent.⁴⁴⁴ Also, whereas the TRIPS Agreement prohibits these activities where they are done for commercial purposes, the EPA prohibits these acts if they are not compatible with fair trade practice,⁴⁴⁵ the two proscriptions overlap but are not the same. Also, in accordance with Article 146 C (2), the EPA requires that protection be denied to designs dictated essentially by technical or functional considerations. The additional obligations imposed by the EPA should be addressed through appropriate legislative amendments. This is included as a 'Track 2' measure.
- **Patents**: The EPA requires Belize to accede to, *inter alia*, the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure. It also requires that steps be taken to accept the TRIPS and Public Health amendment (2005) to the WTO TRIPS Agreement⁴⁴⁶ which facilitates access to essential medicines at affordable prices through, *inter alia*, the implementation of a compulsory licensing regime. Sections 35 and 38 of the Belize Patents Act provide for the issuance of non-voluntary licences. Section 35 is particularly relevant to the 2005 TRIPS and Public Health amendment as it provides for the issuance of non-voluntary licences in, *inter alia*,

⁴⁴³ See Industrial Designs Act (CAP 254), section 10.

⁴⁴⁴ See EPA, Article 146.4.1.

⁴⁴⁵ See EPA, Article 146.4.1.

⁴⁴⁶ See also EPA, 139(2); compare TRIPS Agreement, Article 8.

“the public interest, in particular, national security, nutrition, health”. The effective implementation of section 35 should be addressed in the context of Belize’s acceptance of the WTO amendment to the TRIPS Agreement. Accession to the Budapest Treaty and 2005 TRIPS amendment is included as a ‘Track 2’ measure.

- **Genetic resources, traditional knowledge and folklore:** The EPA provides a framework for recognition to be accorded to genetic resources, traditional knowledge and folklore. However Belize does not have legislation specifically addressing this. Studies are underway through a regional mechanism, i.e. the WIPO Caribbean Working Group on Traditional Knowledge, Folklore, and Genetic Resources in which Belize participates. It was suggested that this will likely facilitate the enactment of a *sui generis* system of legal and non-legal mechanisms designed to protect genetic resources, traditional knowledge and folklore in Belize and other CARICOM Member States. As such, the development of a suitable legal framework is linked to the progress made in the WIPO Caribbean Working Group. It may be useful, however, for further research to be undertaken to assist in defining Belize’s specific interests in this area. In this regard the emerging Belize Services Coalition of Service Providers could serve as an important consultative tool. The recommendation for further research and an assessment of the progress of the WIPO Caribbean Working Group is included as a ‘Track 1’ exercise.
- **Enforcement of intellectual property rights:** Certain lacunae exist in Belize’s legal framework on the enforcement of intellectual property rights under the WTO TRIPS Agreement. The EPA is ‘TRIPS plus’ and, as such, there are a number of additional obligations which need to be addressed through appropriate amendments to existing legislation or the enactment of new legislation during the transitional implementation period. Action is therefore required of the Attorney General's Ministry (under which BELIPO falls) in consultation with the Ministry of Foreign Affairs and Foreign Trade. In this regard, it may also be noted that the emerging Belize Service Coalition of Service Providers could serve as a useful consultative tool in the development of appropriate regulatory measures. This recommendation is included as a ‘Track 1’ exercise.

- **Public procurement:** The EPA requires Belize to establish and maintain an on-line facility with a view to the effective dissemination of tendering opportunities. Notices of future procurement plans should also be published early in each fiscal year in addition to notices published for intended (covered) procurement. At present, Belize does not have an operational on-line facility. There also appears to be no established practice of giving notice of future procurement plans early in each fiscal year. These transparency concerns should be addressed in the context of other public procurement reforms suggested below.

Current procurement practices are under review and it appears that new legislation will be submitted for the consideration of the National Assembly in the near future. It is recommended that the deficiencies of the Finance and Audit (Reform) Act identified herein are reviewed against the proposed reforms to be introduced. The EPA provides a transitional period of five (5) years from its entry into force to achieve compliance. Belize may not require the full transitional period to implement the necessary reforms to its legislation and practices. Nevertheless, as other areas generally do not benefit from a similarly lengthy transitional period, the reform of Belize's public procurement system is included as a 'Track 3' measure.

- **Selective tendering procedures:** The Finance and Audit (Reform) Act achieves a large measure of compliance with the EPA although it falls short in various areas. Section 20 of the Act governs selective tendering procedures and does not fully conform to the EPA⁴⁴⁷ in so far as it does not provide for the publication of a notice of intended procurement inviting eligible suppliers to submit a request for participation within clear time limits. Additionally, with respect to the qualification of suppliers, the EPA requires that conditions and criteria must be made known in advance and limited to that which is essential.⁴⁴⁸ As such, requirements may not be imposed relating to prior contract awards or work experience in the territory (the exception being for social impact surveys). In

⁴⁴⁷ See EPA, Article 170 on selective tendering provides that a notice must be published inviting eligible suppliers and providing a time-frame for responses. If limits are placed on the numbers of tenders which will be accepted this must be indicated in the tender and objective criteria provided for the limitation. The tender documentation must be given to all qualified suppliers at same time; see also EPA, Article 178 – time limits with respect to all procurement procedures should be reasonable and clearly stated.

⁴⁴⁸ See EPA, Article 174.

certain circumstances a ‘multi-use list’ of suppliers may be utilized. Section 20 of the Finance and Audit (Reform) Act permits the use of selective tendering in relation to some covered procurement (i.e. services and supplies) and does not provide for this. Aligning the provisions on selective tendering with those of the EPA is included as a ‘Track 3’ measure.

- **Technical specifications in tender documents:** The EPA addresses the technical specifications that must be included in the notice and/or tender document.⁴⁴⁹ It is explicitly provided that the procuring entity must not seek or accept advice in the preparation of specifications from persons with a commercial interest in the procurement. International standards should be used where these exist or national regulations or standards; references should not be made to trademarks etc unless words such as ‘as equivalent’ are included. Section 19(1)(c) of the Finance and Audit (Reform) Act partially addresses the aforementioned concerns but does not provide for this level of detail. The Act provides for the promulgation of new financial and stores regulations by the Minister.⁴⁵⁰ More robust administrative instructions incorporating modern best practices should be drafted; indeed, it appears that this will likely be done in the first six (6) months of 2011. This is an important good governance measure which, nevertheless, in the context of prioritizing activities in the context of EPA implementation is treated as a ‘Track 3’ exercise.
- **Tender procedures:** All tenders solicited under open or selective procedures must be received and opened under conditions guaranteeing fairness and transparency. Additionally, the contract must be awarded to the lowest and/or ‘most advantageous’ tender.⁴⁵¹ Section 19 of the Finance and Audit (Reform) Act provides that the contract is to be awarded to “a suitable supplier or suppliers” which need not be equated to the ‘lowest’ or ‘most advantageous’ tender. Section 20 of the Act (on selective tendering) is silent on the matter. The Act also does not expressly address procedures on the opening of tenders though long-standing practice confirms that tenders are opened under

⁴⁴⁹ See EPA, Article 173.

⁴⁵⁰ See Finance and Audit Act, section 23 (2), (3) & (4).

⁴⁵¹ See EPA, Article 176; note that this provision need not be applied with respect to limited tendering procedures.

supervision in circumstances designed to promote transparency and fairness. Many of the details specified in the EPA could be incorporated in regulations under the Act establishing general rules and guidelines governing procurement practices across-the-board. The importance of establishing such guidelines is highlighted by the decentralization of public procurement to individual Ministries. The preparation of appropriate guidelines is proposed as a ‘Track 3’ measure.

- **Post-contract award procedures**: The EPA requires procuring entities to promptly inform suppliers of decisions regarding the award of the contract and upon request, inform any eliminated supplier of *the reasons for the rejection* of its tender and of the relative advantages of the successful supplier's tender.⁴⁵² Section 19(3)(c) of the Finance and Audit (Reform) Act states that the Government shall, through the appropriate Ministry- ‘notify the unsuccessful suppliers or purchasers in writing’. Section 19(4) further specifies that “[a] notice under subsection (3) (c) shall **not** state reasons why a supplier was unsuccessful in the opening tendering procedure.” Section 19(4) of the Finance and Audit (Reform) Act should therefore be amended to conform to the EPA.⁴⁵³ This is proposed as a ‘Track 3’ exercise.
- **Data protection**: Belize does not appear to have in place a well developed framework on data protection; there is no specific legislation addressing undisclosed information and reliance is generally placed on the provisions of the common law. The EPA provides a transitional period of seven (7) years from its entry into force for the development of the necessary legal and regulatory regime and administrative capacity to effectively implement agreed-on principles and enforcement mechanisms. The establishment of a comprehensive data protection regime in Belize is one of those areas where significant work is required. This is proposed as a ‘Track 3’ exercise.

⁴⁵² See EPA, Article 177.

⁴⁵³ Section 20 of the Finance and Audit (Reform) Act on selective tendering procedures imports section 19(4) by way of cross-reference and any amendment should also address this.

PROPOSED INDICATIVE TIMETABLE

TRACK 1 (immediate measures)

- Regulations should be drafted to implement phased tariff reductions (2009-2033) and establish preferential rules of origin for goods originating in the EC and Dominican Republic.
- Review and reform duties and other charges on imports; reference is made, in particular to the customs service charge, environmental tax, revenue replacement duty (RRD), general sales tax (GST), and export taxes.
- Review and reform the Supplies Control Act and regulations thereto; particular attention should be paid to the licensing regime and differential application of price controls.
- Repeal of section 17 (3)-(35) of the Customs Regulations Act.
- A detail review of EPA Protocols 1 and 2 should be undertaken by Customs Officials with a view to highlighting areas of perceived weakness or non-compliance.
- Include in the ongoing review of telecommunications licences the fee structure with a view to ensuring that this remains commensurate with administrative costs.
- Initiate a review of the role played by the Belize Marketing and Development Corporation (BMDC) with a view to eliminating practices which distort trade contrary to Article 129 of the EPA.
- Attorney General's Ministry should consult with the Directorate for Foreign Trade and relevant stakeholders on the enactment of new legislation or amendment of existing legislation on the enforcement of intellectual property rights.

- Commission studies on the technical support measures required to create an enabling environment in Belize for the implementation of EPA obligations on intellectual property protection.
- Assess the progress made in the WIPO Caribbean Working Group on Traditional Knowledge, Folklore, and Genetic Resources (TKFGR) with respect to the development of a *sui generis* system of legal and non-legal mechanisms to protect TKFGR and undertake further consultation and research with a view to defining Belize's specific interests in this area.
- Technical corrections should be made to Annex IV.F of the EPA as regards Belize's telecommunications commitments and tunnel construction commitments, if these have not already been made.

TRACK 2 (short to medium term measures)

- Steps should be taken to implement the basic special safeguard mechanism available under Article 25 of the EPA.
- Familiarization exercises should be arranged for the private sector to raise awareness and encourage full exploitation of the market access opportunities available under the EPA.
- Standards – review of the use of the “Belize Market” label.
- Develop an appropriate regulatory framework to govern courier services.
- Establish a publicly available electronic database of applications and registrations of trademarks.

- Undertake consultations with all relevant stakeholders on the implementation of a more robust regime to protect geographical indications (GIs) with a view to developing a list of Belizean GIs requiring protection and an appropriate legislative framework in accordance with Article 145 of the EPA.
- Amend the Industrial Designs Act to accord with Article 146 of the EPA.
- Accede to the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure.
- Accept the TRIPS and Public Health amendment (2005) and in this context review the implementation of section 35 of the Belize Patents Act.
- **TRACK 3 (medium term measures)**
- Consultations should be organized with the private sector on development of common professional standards to facilitate mutual recognition and trade in professional services.
- A review of the fee structure for medical practitioners as prescribed in the Medical Practitioners Registration (Fees) Regulations should be undertaken.
- A review of the Trade Licensing Act and/or issuance of appropriate regulations for administrative entities should be undertaken with a view to discouraging *de jure* or *de facto* discriminatory practices.
- Measures should be taken to promote the implementation of an effective competition law and policy.
- Review the list of conventions and WIPO recommendations for which Belize has undertaken to make ‘best endeavour’ efforts to accede to.

- Establish an on-line facility to effectively disseminate tendering opportunities and establish a practice of giving notice of future procurement plans early in each fiscal year.
- Review the deficiencies of the Finance and Audit (Reform) Act identified herein against the draft bill in preparation for presentation to the National Assembly; reference is made, in particular, to the proposal to amend sections 19 and 20 of the Finance and Audit (Reform) Act to accord with Articles 170, 174 and 177 of the EPA.⁴⁵⁴
- Prepare more robust administrative instructions incorporating modern best practices on public procurement to be issued under the Finance and Audit (Reform) Act.
- Establish a comprehensive data protection regime.

⁴⁵⁴ Although this is listed as a ‘Track 3’ exercise (given the transitional period provided under the EPA) it would seem logical that this activity is undertaken earlier as the draft Bill is apparently quite far advanced in preparation.