

**Study on Market Access Issues
Re the Export of CARICOM Services to
Canada and the USA**

Prepared for
The Caribbean Regional Negotiating Machinery

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Executive Summary

The objective of this study is to identify and discuss key issues relating to market access to the US and Canada for service providers from CARICOM, and their implications for the FTAA negotiations. The study is divided into six main sections which deal with the following issues:

1. The specific sub-sectors and modes of supply in which CARICOM countries have a market access interest
2. Barriers and constraints to CARICOM services suppliers
3. The relative importance of the different modes of supply to CARICOM services providers and issues regarding access under Mode 4, given the new border measures
4. Assessment of the services requests made to CARICOM States by the U.S. and Canada in the WTO context and their implications for the FTAA negotiations
5. The feasibility of common services requests by CARICOM States to the U.S. and Canada in the FTAA negotiations
6. Recommendations on negotiating options for CARICOM in terms of requests to be made to the U.S. and Canada in the FTAA negotiations for greater market access in specific services

Specific sub-sectors and modes of supply in which CARICOM countries have a market access interest

In dealing with the specific sub-sectors and modes of supply in which CARICOM countries have a market access interest, the consultant found that for all services sub-sectors there was some level of interest, if only for the reason that the US and Canadian markets are large and have large CARICOM Diaspora populations. The following matrix summarizes different criteria that the consultant used as indicators of interest in US and Canadian markets, various service sub-sectors are matched with each criteria.

Criteria to Determine Interest of Service Providers in US and Canadian Markets

Criteria	Services
1. The size of the overall market in the USA and Canada – the USA and Canadian markets are very large	All services
2. The size of the Diaspora/ethnic market originating from CARICOM – this market is quite substantial in both countries, especially in the eastern parts	All services
3. The number of CARICOM service providers – the more service providers the more likely there will be an interest, this varies from sub-sector to sub-sector in CARICOM	<ul style="list-style-type: none"> ▪ Educational services ▪ Tourism Services ▪ Construction related services ▪ Financial services ▪ Distribution services ▪ Professional services ▪ Entertainment services

4. The size of the domestic market relative to the number of service providers – the smaller is the domestic market relative to the number of service providers the more interested the service providers will be in foreign opportunities	<ul style="list-style-type: none"> ▪ Construction services ▪ Professional services
5. The number of potential service providers	<ul style="list-style-type: none"> ▪ IT professional services ▪ Specialized health and care services ▪ Entertainment services
6. The strength of demand by the US and Canadian markets for the particular brand of service from CARICOM service providers	<ul style="list-style-type: none"> ▪ Tourism services ▪ Energy Services ▪ Entertainment services

The above matrix shows just about all service sub-sectors are likely to have a serious market access interest in the US and Canadian markets, but there are certain sub-sectors that of strategic importance because of their current size/earnings (such as tourism and energy related services); other sub-sectors are of interest because there are many such service providers in the Region that are likely to be interested in the opportunities (such as financial and distribution services); and sub-sectors are of interest because they are emerging and have significant prospects (such as certified IT professionals).

The analysis also reveals that depending on the particular service, each of the four Modes of supply could be found to be important for CARICOM. For example, Mode 1 is important for architectural, engineering and some media services; Mode 2 is important for tourism and energy services; Mode 3 is important for medical and certain financial services; and Mode 4 is important for entertainment and most professional services. It is therefore not possible, without a massive quantitative study, to generalize about which Mode is most important or even to rank the Modes in terms of their relative importance to CARICOM.

Barriers to Entry to the USA and Canadian Markets

In terms of barriers to entry into the USA and Canadian markets, based on discussions with Jamaican Trade Missions in the US and Canada as well as the commitments made by these countries in the GATS, numerous examples of actual restrictions were found.

These included:

- Citizenship requirements
- Residency requirements
- In-State or Province requirements
- Slow processing of US H-1B visas
- Ownership restrictions
- Local experience requirements
- Non-mutual recognition of qualifications
- Capital and security requirements
- Differential taxation requirements (national treatment).

One of the very subtle barriers to entry is the requirement for local experience. Service providers in Canada have found this to be a problem. Service providers have also found that the negative labeling that is associated with nationals from certain CARICOM states has been affecting them adversely when trying to provide their services.

The matrix below summarizes the restrictions associated with services sub-sectors in the US and Canada.

Specific Service Sub-Sector	Main Barriers to Entry for USA	Main Barriers to Entry for Canada¹
Business & Professional		
Accountancy	<ul style="list-style-type: none"> ▪ Licensing requirements ▪ Membership of the specified association. ▪ Mutual recognition of qualifications ▪ Need to incorporate ▪ Need for in-state office ▪ Citizenship requirement ▪ Residency requirement 	<ul style="list-style-type: none"> ▪ Requirement for a commercial presence ▪ Citizenship requirement for accreditation ▪ Permanent residence required for accreditation ▪ Residency requirement for accreditation
Architectural & Engineering	<p><u>Architecture</u></p> <ul style="list-style-type: none"> ▪ Local licensing of two thirds of officers, partners and/or directors <p><u>Engineering</u></p> <ul style="list-style-type: none"> ▪ Citizenship requirement ▪ Residency requirement ▪ Mutual recognition of qualifications 	<ul style="list-style-type: none"> ▪ Citizenship requirement for use of title ▪ Requirement for a commercial presence for accreditation ▪ Residency requirement for accreditation ▪ Mutual recognition of qualifications
Related scientific and technical consulting services	No specific restrictions	<ul style="list-style-type: none"> ▪ Citizenship requirement ▪ Permanent resident ▪ Requirement for a commercial presence for accreditation.
Computer & related	Time to process H-1B visa	Mode 4 unbound apart from horizontal restrictions
Employment Agency Services	US citizenship	Commercial presence only
Medical Services	Dentists Mutual recognition of qualifications	No commitments
Legal	<ul style="list-style-type: none"> ▪ In –State residency 	<ul style="list-style-type: none"> ▪ Commercial presence as sole

¹ It is worth noting that in Canada's recent conditional offers in the GATS negotiations certain barriers to trade have been proposed for removal or relaxation.

	<ul style="list-style-type: none"> ▪ Mutual recognition of qualifications ▪ In-State Bar exams 	<p>proprietorship or partnership</p> <ul style="list-style-type: none"> ▪ Permanent resident for accreditation ▪ Citizenship requirement
Management Consultants	Mode 4 unbound apart from horizontal restrictions	Citizenship requirements for certain professions
Real Estate Services	Real Estate Brokerage US citizen requirement	<ul style="list-style-type: none"> ▪ Only commercial presence ▪ Citizenship requirement for use of title ▪ Residency requirement
Convention Services	Mode 4 unbound apart from horizontal restrictions	<ul style="list-style-type: none"> ▪ Commercial presence ▪ Permanent residency ▪ In-Province address ▪ Citizenship requirement for use of title
Investigation and security services	Permanent residence alien status or US citizenship is required to own contract security firms in Maine	<ul style="list-style-type: none"> ▪ Commercial presence ▪ % Foreign ownership ▪ Citizenship requirement for private investigators
Credit reporting and collection services		Only commercial presence
Communication		
Audiovisual	<p>Printing and publishing</p> <ul style="list-style-type: none"> ▪ Restriction on media ownership <p>Electronic Media</p> <ul style="list-style-type: none"> ▪ US citizenship requirements ▪ Discretion in issuing of licences ▪ Restrictions on number of radio frequencies ▪ Discriminatory treatment with respect to grants 	No commitments
Postal, courier, express mail	Ownership restrictions on newspapers	<ul style="list-style-type: none"> ▪ Economic needs test ▪ Ownership restrictions on newspapers ▪ Differential taxes for advertisers in foreign publications
Telecoms	<ul style="list-style-type: none"> ▪ Ownership restrictions 	Several restrictions

	<ul style="list-style-type: none"> ▪ Several Mode 3 restrictions 	
Construction & related	In-state office (Michigan)	Special deposits with the Treasury from non-resident contractors
Distribution	Mode 4 unbound apart from horizontal restrictions	<ul style="list-style-type: none"> ▪ Mobile fish buyers licenses are not issued to foreigners ▪ Itinerant Sellers: Commercial presence required ▪ Direct Sellers: Commercial presence ▪ Indirect tax measures for delivery by mail ▪ Retail petroleum: Public convenience and necessity test
Education	Quantitative restrictions on licenses	Nothing specific
Energy	Unbound Mode 4	Unbound Mode 4
Environmental	Unbound Mode 4	Unbound Mode 4
Financial	<p>Insurance</p> <ul style="list-style-type: none"> ▪ Discriminatory Federal taxes on premiums ceded abroad ▪ Citizenship requirements ▪ Residency for members of the board ▪ Discriminatory licensing fees <p>Banking and other financial services</p> <ul style="list-style-type: none"> ▪ Citizenship requirements for Directors. ▪ Restrictions on public offerings ▪ Restrictions on range of services ▪ Discriminatory registration requirements 	<p>Insurance</p> <ul style="list-style-type: none"> ▪ Direct insurance and reinsurance and retrocession (federal): Citizenship requirements ▪ Residency Requirements ▪ Capital requirements ▪ Adjustment services: restrictions on non-residents to operate independently ▪ An excise tax of 10 per cent is applicable on net premiums paid to non-resident insurers <p>Banking</p> <ul style="list-style-type: none"> ▪ Incorporation requirements ▪ Citizenship and residency requirements for Directors.
Health & Social	Needs testing	None
Tourism	Tour guides: The number of concessions available is limited	<p>Hotels, Restaurants & Bars</p> <ul style="list-style-type: none"> ▪ Residency requirements ▪ Citizenship requirements

		<ul style="list-style-type: none"> ▪ Differential land transfer tax <p>Travel agency, tour operators</p> <ul style="list-style-type: none"> ▪ Travel agencies and travel wholesalers: commercial presence ▪ Residency requirements
Recreational, Cultural and Sporting Services	Sporting and recreational: The number of concessions available is limited	No commitments
Transport		
Air transport	Repairs: Unbound for Modes 1 and 4	Maintenance and repair of aircraft and aircraft engines - unbound
Maritime	No commitments	Unbound

The relative importance of the different modes of supply to CARICOM services providers and issues regarding access under Mode 4, given the new border measures

The relative importance of the different Modes was discussed earlier and has a section of the paper devoted to it. In terms of the new border requirements as a result of 9/11, very few service providers had major complaints, however financial services providers have been affected by the powers granted to US officials under the PATRIOTS Act. In addition, distribution services providers have come under greater scrutiny, which has increased the cost of doing business.

Assessment of the services requests made to CARICOM States by the U.S. and Canada in the WTO context and their implications for the FTAA negotiations

This section has been addressed based on some of the requests made to CARICOM Member States. The analysis shows that on the whole, the horizontal requests are more a) definitional or b) requesting of clarification or c) requesting of the setting of firm time periods. CARICOM Member States should be able to deal with these issues in consultation with the various service sub-sectors.

However, the specific requests, especially where greater market access or national treatment is requested, require serious consultation and analysis in order to make commitments or improve commitments. Regional consultations may be in order in service areas such as tourism, energy, communications insurance and banking.

The feasibility of common services requests by CARICOM States to the U.S. and Canada in the FTAA negotiations

The paper concludes that even though CARICOM countries have submitted their GATS commitments as individual countries, it would be quite feasible and reasonable for CARICOM countries to submit common requests to the US and Canada. Common requests could be submitted whether CARICOM member states are represented as a bloc or as individual countries. CARICOM countries are similar enough in terms of size and market access interests to make the same requests, which are likely to comprise the removal of most of those barriers outlined earlier (most of which are contained in the US and Canadian commitments).

Recommendations on negotiating options for CARICOM in terms of requests to be made to the U.S. and Canada in the FTAA negotiations for greater market access in specific services

The consultants made several recommendations on negotiating options. These include:

- Request mutual recognition (where possible) of qualifications for professionals trained at the University of the West Indies, University of Technology and other accredited tertiary institutions.
- Request the harmonization of licensing requirements (board exams, etc) across all the States of the USA and the Provinces of Canada
- Request the removal of discriminatory federal taxes on insurance premiums paid by foreigners
- Seek to protect CARICOM media services providers that receive government subsidies in order to survive
- Request the removal of differential tax treatment for advertisers in publications owned by foreigners in Canada
- Request that Contractual Service Suppliers (not just professional services but a wide range of services that CARICOM may supply) be granted access to US and Canadian markets. This kind of supplier does not require association with mode 3 or any commercial presence.

On a more general level, the consultant also recommends the following:

- Not being specific in terms of the services or modes of greatest interest until more detailed work has been carried out in the Region
- Request the binding of more of the commitments made by the US and Canada.
- Request the removal of subtle barriers such as those requiring local in-country experience or those that seem discriminating against people from the Caribbean

- Ensure that the USA and Canada do not succeed in using “divide and conquer” tactics by promising favours to certain states in order to make them adopt certain positions.
- CARICOM negotiators should request special and differential treatment for all service sectors based on the Region’s vulnerability (smallness, few economies of scale, openness, lack of trained resources and susceptibility to natural disasters). Special and differential treatment requests should include:
 - Longer time periods to prepare our service sub-sectors and providers in terms of getting the qualifications and knowledge necessary to be internationally competitive
 - Financial and technical assistance to train and develop our service providers and telecommunications and other infrastructure
 - The invoking of the “Enabling Clause”- allowing CARICOM to negotiate as a group and have special arrangements amongst themselves that are not extended to stronger trading partners (no MFN treatment)

1.0. Introduction

In order to satisfy the terms of reference, the Consultant used a combination of primary and secondary research to address the various objectives outlined. The commitments made by the USA, Canada and CARICOM Member states under the GATS provided important baseline (secondary) information. Data collection instruments were designed for interviews with services trade officials at the CARICOM Secretariat, various Ministries of Trade in CARICOM Members States, U.S. and Canadian Officials, and selected CARICOM business associations and business people.

In general it was found that the (in)ability to access to the USA and Canadian markets for trade in services is not yet a major issue in the minds of most CARICOM service providers. Most service providers currently seem to be content with serving the domestic market, apart from those (such as tourism and offshore financial services) that are geared specifically to provide services to foreigners (modes 1 and 2). There is arguably a certain degree of insularity, though understandable, amongst some CARICOM service providers that comes into play even when looking at Regional integration wherein they seem more concerned about threats to their small domestic markets rather than opportunities created by the prospects of a larger and more varied regional or global market. This lack of focus on the bigger picture has contributed to service providers not being aware of many of the important issues (opportunities and limitations) and being unprepared for progressive liberalization that is underway. However, the consultant has found increasingly that service providers are becoming more aware because of efforts being made by the RNM, the CARICOM Secretariat, the relevant government ministries in CARICOM states, and by private sector organizations such as the Chambers of Commerce.

One of the growing concerns of many CARICOM service providers is the easy access that service providers from the USA and Canada have to domestic markets. Architects in Jamaica, Barbados and Trinidad & Tobago complain about this fact. For example, Jamaican architects have faced a severe shortage in demand for their services (unemployment) in recent years due to the decline in the local economy but complain that foreign architects are finding work on the island. However, much of the work that foreign architects do in Jamaica and other CARICOM countries is the result of foreign direct investment wherein foreign investors prefer to use the services of architects with whom they are familiar. In some CARICOM states, efforts have been made to address this situation by putting in place rules that wherever possible joint ventures should be sought with local architects, however this does not always materialize and little is done to enforce it.

The insurance sector in the Region has also raised concerns about foreign “suitcase” insurance vendors that visit the islands and sell insurance policies. These activities are very difficult to detect and monitor so the most that can be done by regional insurance service providers is to attempt to protect the local consumers by informing them of the risks and exposure associated with buying these foreign instruments.

The reality is that in many service areas, such as architecture, engineering, legal and financial services, very little can be done to protect the local market because the trade takes place by cross border trade (Mode 1) via the internet or the telephone. Even trading activities related to the temporary movement of natural persons, Mode 4, goes undetected because it can be easily disguised as a brief visit or a vacation. The focus of most complaints is usually on Modes 3 and 4, however with the improvements and availability of information technology, telecommunications and transport, Modes 1 and 2 are likely to become increasingly important in a more “silent” way.

Coalitions of Service Industries

The CARICOM Secretariat, in conjunction with Member States, is at Phase 1 in the process of setting up National Coalitions of Service Industries in Member States. The model has the Chambers of Commerce at the core in each Member State. All services will then be brought under one Regional Coalition, which will also facilitate Regional networking. The assessment has been completed for about seven Member States who have expressed a willingness to form this body.

The next phase will be the formation stage, which is due to come on stream in the near future and will involve the selection of leaders in various areas of the service sector to drive the process. Member States need initial resources to develop optimal marketing programmes for Regional services.

So far Barbados responded at the end of 2002 by forming a Coalition of Services Industries, which is still just finding its feet but seems to have galvanized over 25 service associations representing over 2,500 service providers. Jamaica is at the pre-formation stage where information is being collected and the key institutions have started working with the Ministry of Foreign Affairs and Trade to establish the coalition. Trinidad & Tobago is still at a similar stage as Jamaica.

These regional and domestic initiatives to establish coalitions of service industries reflect a recognition by leadership that, given the importance of services in regional, hemispheric and global GDP, more focus needs to be placed on international trade in services in a more liberalized trading environment.

The remainder of this paper will deal with the following issues:

- Determination of specific sub-sectors and modes of supply in which CARICOM countries have a market access interest
- Barriers and constraints to CARICOM services suppliers
- The relative importance of the different modes of supply to CARICOM services providers and issues regarding access under Mode 4, given the new border measures
- The feasibility of common services requests by CARICOM States to the U.S. and Canada in the FTAA negotiations
- Recommendations on negotiating options for CARICOM in terms of requests to be made to the U.S. and Canada in the FTAA negotiations for greater market access in specific services.

2.0. Specific sub-sectors and modes of supply in which CARICOM countries have a market access interest

In conducting the analysis in this section of the report, the consultant uses the same listing and definition of services used in the Services section of the WTO website.² These service categories are not as detailed as the UNCP classification, which has about 160 categories, but are sufficiently general to provide adequate coverage for the purpose of this report.

In terms of the specific sectors and modes of supply in which CARICOM countries have a market access interest vis a vis the USA and Canadian markets, it is currently very difficult to answer that question definitively because

- very few service providers have really examined in detail the opportunities that exist outside of the domestic market
- at the industry level service associations are only now in the process of getting themselves informed
- at the national level, only Barbados has established a Coalition of Service Industries, which represents a broad cross section of services, none of which are suggesting that they are not interested in accessing the USA and Canadian markets. Other countries are not yet sufficiently organized at the national level for a national position to be taken on which services sectors have a serious market access interest
- at the Regional level, the Coalition of Services Industries is still in its formative stage so the interests of service providers have not been assembled and assessed
- there may be emerging (sunrise) service areas, especially ICT related, that are not seemingly important at the moment but may become more important in the near future. The training of certified professionals is considered an area of opportunity. In the Revised Treaty of Chaguaramas, the ICT sector has been identified as an area that CARICOM countries should focus on developing.³

CARICOM's market access interest in the USA and Canada should be determined by several factors including:

- The size of the overall market in the USA and Canada – the USA and Canadian markets are very large
- The size of the Diaspora/ethnic market originating from CARICOM – this market is quite substantial in both countries, especially in the eastern parts
- The number of CARICOM service providers – the more service providers the more likely there will be an interest, this varies from sub-sector to sub-sector in CARICOM

² See Appendix 1 at the end of the report

³ A working group has been set up for CARICOM's investment and export promotion agencies to develop the regional policy and plan for the ICT sector. Most Member States have in place computer training programmes, either through private institutions set up for that purpose, community colleges, the University of the West Indies or the University of Technology.

- The size of the domestic market relative to the number of service providers – the smaller is the domestic market relative to the number of service providers the more interested the service providers will be in foreign opportunities – if there is an excess supply of service providers then market access to the large USA and Canada is more important (e.g. architects and other persons in the construction related industries in Jamaica).
- The number of potential service providers – if a CARICOM country is training persons to become service providers in a particular activity then the greater will be interest in the USA and Canadian market e.g. in the provision of IT related services (e.g. the greater focus in training persons in IT related activities such as providing call centre services).
- The strength of demand by the US and Canadian markets for the particular brand of service from CARICOM service providers e.g. tourism – the stronger is the demand the more interest CARICOM will have.
- The relative prices, rates of return in USA and Canada – it is expected that these prices and rates should in most cases be higher in the USA and Canada. A general liking for the way of life, standard of living and market opportunities in the USA and Canada

Methodology

The following matrix looks at the main service areas and provides a rating for the level of interest in terms of market access for the USA and Canada and discusses which modes are most important.

The following combination of approaches will be used to generate this information

- Interviews with the CSME Services specialist at the CARICOM Secretariat
- Interviews with private sector and public sector Services across the Region
- Examination of the GATS schedules of the USA and Canada
- The Consultant’s own knowledge of the Region.

Specific Service Sector	USA	Canada	Mode 1,2,3,4	Explanation/ Justification
Business & Professional				
Accountancy	High	High	1,2,3,4	Interested because <ul style="list-style-type: none"> ▪ Mode 1- there are many aspects of accounting that can be carried out by cross border trade. Financial statements and analyses can easily be moved over the Internet ▪ Mode 2 – there are many foreign investors that currently have a commercial presence or will desire a commercial presence in 2005 and beyond so the local profession would like to be able to offer services to them

				<ul style="list-style-type: none"> ▪ Mode 3 - there is a large population of people of CARICOM origin now living in USA and Canada who represent a good potential market that service providers based in CARICOM could readily serve because of connections and cultural familiarity ▪ Mode 4 – same explanation as for Mode 3 <p>The exporting of these services is also important because the University of the West Indies and other regional institutions offer training in accounting so will want to know if they need to enhance their ability to produce more graduates as well as adjust course content to accommodate important but different features of the US and Canadian accounting profession.</p> <p>On the other side of the equation, the accountancy profession, like most other service industries, are concerned about large US and Canadian entities penetrating the Regional market and taking away some of the domestic markets by charging lower fees and more aggressive overt and covert promotional activities. As a result, in Barbados the Coalition of Services Industries is lobbying for the setting of minimum fees for professional services</p>
Advertising	Medium	Medium	1,2,3,4	<p>On the production side of advertising, service providers would be in a similar position to accountants. To the extent that CARICOM graphic artists and other production people can find US and Canadian customers then Mode 1 could be used to move production work easily. Similarly, the very creative advertisers could provide services by Mode 3 and Mode 4 by offering services directly in the US and Canadian markets.</p> <p>It is worth noting that advertising services may not be as important in and of</p>

				<p>themselves but more so to the extent that they support CARICOM tourism. In this regard, this area might be very important as far as CARICOM hoteliers are concerned.</p>
Architectural & Engineering	High	High	1,2,3,4	<p>What was said above for Accountancy can be applied for Architecture & Engineering. It is worth noting that a significant amount of Mode 1 and Mode 2 trade already takes place in these activities. With respect to Mode 1, Architectural and engineering drawings are readily transferred over the Internet and dealt with electronically rather than on a draughting table. With respect to Mode 2, (future) returning residents and foreign investors often require local professionals to design houses or production facilities. In 2005 and beyond, architects and engineers should be able to pursue these opportunities more aggressively along with Mode 3 and 4. For example, members of the architectural industry in CARICOM are of the opinion that they could design hurricane resistant houses in the Southern USA where severe damage to housing occurs each time a hurricane strikes.</p>
Computer & related	High	High	1,2,3,4	<p>Much of what applies for Accountants applies here too. However, Mode 1 and Mode 2 would be most important because the nature of much of computer related activities in which CARICOM service providers would have a competitive edge would use one of these Modes. This would include software development; telemarketing and data entry/capture type activities. The work could be done in CARICOM and delivered to the US or Canadian client (Mode 1) either electronically (Internet or modem transfer), or with tapes, CD's or diskettes couriered or mailed.</p> <p>For Mode 2, a US or Canadian client</p>

				<p>could visit CARICOM and have the work done and transport it back themselves.</p> <p>There could also be a combination of Mode 1 and Mode 2 where the US or Canadian client delivers or requests the work in person but it is delivered electronically or by mail.</p> <p>Given the competitiveness of the US market and the presence of many IT service providers from India in the US (on the HB1 visa) or Canada, it will be less attractive for the CARICOM service provider to provide IT services in programming by Modes 3 and 4, but new niche developments may occur that can be exploited generally or at least in the Caribbean Diaspora market in the US or Canada.</p> <p>In fact a leading IT professional from UWI and another from the Jamaica Public Service Company concur that an exciting prospect for CARICOM IT service providers is that of becoming Microsoft, Novell, Cisco, NT certified and offering support and training services in the US and Canada. JAVA programming is also considered an area of opportunity.</p> <p>UWI and other technical institutions in the Region should be encouraged to take the certification curricula from MS, SUN & Cisco, infuse it into UWI directly and/or indirectly and certify whosoever will, either as part of the undergraduate program or external to it. With this type of certification, there will be little scope for qualifications becoming an issue as the certification comes from US companies.</p>
Medical Services	High	High	1,2,3,4	Similar reasoning to what was outlined for Accountants earlier.
Legal	High	High	1,2,3,4	Similar reasoning to what was outlined for Accountants earlier.

Management Consultancy	High	High	1,2,3,4	Similar reasoning to what was outlined for Accountants earlier.
Communication				
Audiovisual	High	High	1,2, 3,4	<p>CARICOM radio and TV service providers would be very interested in accessing the US/Canadian markets to service both the large CARICOM ethnic audiences as well as the broader market which is now embracing reggae, dance hall, soca and carnival type music. Radio and video access could lead to great opportunities for CARICOM media services providers.</p> <p>Modes 1 and Modes 3 would be the most important modes for certain audiovisual services because a commercial presence may be required for a Cable TV station or for a radio station. However, given the growing importance of satellite and electronic means of delivering audiovisual services (and the increased delivery of radio over the Internet), there is likely to be a growing demand for Mode 1.</p> <p>For other audiovisual support services, such as motion pictures and sound recording, Modes 2 and 4 may be most important. An example of Mode 2 is the provision of support to foreign film-makers shooting in the Region. An example of Mode 4 is CARICOM support service providers assisting in the production of movies in the US or Canada.</p>
Postal, courier, express mail	High	High	1,3	<p>Courier services will be of interest to CARICOM service providers wishing to provide services especially to the CARICOM ethnic market in the US or Canada. CARICOM service providers would desire a commercial presence (Mode 3) so that these ethnic groups can either a) receive goods from CARICOM senders and pay in the US office or b) send goods to a CARICOM recipient and</p>

				<p>pay in the US office. By using Regional Airlines (Air Jamaica or BWIA), CARICOM service providers could compete with FedEx, DHL & UPS.</p> <p>This category also includes newspapers, commercial presence (Mode 3) would facilitate the production and distribution of print within the US and Canadian markets. However, with the development of Mode 1 and the greater use of the Internet, newspapers can now be accessed over the Internet. Several CARICOM newspapers are already available on the Internet and are often read by people in the US and Canadian markets before CARICOM persons read them.</p>
Telecoms	Medium	Medium	1,2	<p>There is unlikely to be great interest from CARICOM Telecoms providers in providing basic Telecoms service to the US and Canadian markets because of a) the highly competitive nature of the market in the US and Canada; b) the massive infrastructural costs of establishing a Telecoms company; and c) that the main Telecoms service providers in CARICOM are foreign companies anyway.</p> <p>However, trained CARICOM service providers can offer services to foreign companies providing services in the Region.</p> <p>Given the changes in technology, especially in value-added Telecoms services (e.g. on-line data processing or data base storage and retrieval), CARICOM would not want to rule this out as a long-term option for the purposes of FTAA negotiations.</p> <p>However, CARICOM authorities must definitely keep a close eye on Telecoms because of its importance to all other sectors, especially in an environment of</p>

				global trade. There is no doubt that a significant proportion of Mode 1 trade is heavily dependent on Telecoms.
Construction & related	Very High	Very High	3,4	<p>This would be of interest in terms of Mode 3 and Mode 4 whereby CARICOM service providers would be able to go directly into the US and Canadian markets and deal with construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work. These services are distinct from architectural and engineering services, which can be delivered easily by Mode 1.</p> <p>This service sub-sector is of strong interest to CARICOM service providers because of the competitiveness in their labour rates and the understanding of cultural nuances when dealing with CARICOM ethnic groups. The RNM should push hard for market access in this more blue-collar service area.</p>
Distribution	High	High	1,2,3,4	The sector includes commission agents' services, wholesale trade services, retailing services and franchising. These are of interest to CARICOM services providers who may want to provide distribution services by: a) using the internet; b) to visitors/tourists; c) by setting up in the US/Canada and distributing CARICOM or other products; or d) by visiting from time to time with containers, suitcases or briefcases of products to distribute.
Education	Very High	Very High	1,2,3,4	There is definitely a strong Regional interest in this area, especially from the larger low wage countries such as Jamaica and Guyana. The high market access interest is noted by the fact that there is a steady and constant outflow of many of the Region's educational services providers to the US, Canada and other developed countries.

			<p>Given that educational services are delivered by all four modes there would be no need to restrict the modes in which CARICOM is interested.</p> <p>For Mode 1, much training in distance education already takes place over the Internet, UWI uses this approach in some of its courses and this tendency is likely to increase.</p> <p>For Mode 2, there are tertiary level institutions in the Region aimed mainly at individuals from the USA and whose courses are recognized in the USA, such as St. George's University in Grenada or a medical school in St. Kitts & Nevis. There is no reason why this should not increase.</p> <p>For Mode 3, in order to offer specialized training in such areas as tropical medicine it may be optimal for UWI or other CARICOM education services providers to have a commercial presence in the USA and Canada.</p> <p>For Mode 4, it will be necessary to have this option open in order to facilitate service providers traveling to provide lectures where a commercial presence has been established or in US or Canadian institutions that want to offer intermittent or part-time courses.</p> <p>Many of our educational services providers already take advantage of opportunities to go and work in the USA or Canada but freer trade would facilitate more persons.</p> <p>Educational services is a very important area because CARICOM as a whole does produce many persons that can or do provide these services and would like to provide these services by Modes 3 and 4.</p>
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				There would also be cultural opportunities in terms of offering these services to the ethnic CARICOM market.
Energy	High	High	2	<p>In the short run, this is particularly important to those countries that produce or can produce energy such as Trinidad & Tobago, Guyana, Suriname, and Barbados. Regional energy services providers typically use Mode 2 by providing services to the large foreign companies that do the drilling and extraction.</p> <p>In terms of Modes 3 and 4, it is unlikely that there is much scope for CARICOM services providers offering such services to the USA and Canadian markets given their strength and relative capacity in these areas.</p>
Environmental	Low	Low	2	<p>These services are not likely to be of great interest to CARICOM because this is not an area of strength in CARICOM, moreover there would not be great scope for offering these services in USA and Canada which are quite advanced in these areas.</p> <p>There may be some interest in providing environmental services to persons from the US and Canada who operate in CARICOM.</p>
Financial	Very High	Very High	1,2,3,4	<p>The financial services sector is one of the strongest sectors in the Region but, apart from the provision of Offshore Banking services, mainly satisfies local demand. It is a highly regulated sector in the US and Canada and is becoming more regulated in CARICOM. However, the residency and capital requirements as well as limits placed on the range of services offered have tended to act as a deterrent to CARICOM financial service providers, especially as it related to Modes 3 and 4. There are CARICOM financial institutions such as the former Jamaica Citizen's Bank (now under RBTT Bank)</p>

				<p>and Jamaica National Building Society that have established a commercial presence to facilitate the remittance of funds by the CARICOM ethnic market.</p> <p>In terms of Offshore Banking, this brings into play Modes 1 and 2. This is very important for Barbados and the countries of the OECS.</p> <p>CARICOM financial services providers will become increasingly interested in Mode 1 supply as the use of technology in banking becomes more intensive. The ethnic CARICOM market will then be able to take advantage of internet and ATM banking to deal with bank accounts that they hold in CARICOM countries, especially as more US\$ denominated accounts are available in Regional banks.</p> <p>A major concern in this sector is the proliferation of US “suitcase” insurance and investment services providers who are visiting CARICOM countries and selling products and services without the proper prudential measures in place to protect the regional consumer. The concern is two-pronged a) based on the fact that if this trend continues these overseas services will cut into the domestic market share of CARICOM insurance companies, and b) as the trend continues the more Regional consumers are exposed to the risk of not being covered or to unexpected taxes on premiums.</p>
Health & Social	Low	Low	2	<p>These services do not include services provided by doctors, dentists and veterinarians. There is scope for health and social services in terms of providing specialized climate-based health services and medicine. However, this is more likely to be a long-term situation.</p>
Tourism	Very High	Very High	1,2,3	<p>This is one of the areas of greatest interest to CARICOM in that tourism is the largest income earner for most CARICOM</p>

				<p>countries. Currently, this service is supplied mainly by Mode 2. The provision of casino and related services is seen as a major opportunity in the future.⁴ However, there is great scope for offering travel and tour information by Mode 1. There is unlikely to be great demand for Mode 3 and 4 supply because very few CARICOM hoteliers or tour operators would have a competitive edge producing these services in the USA and Canada. However, there may be some scope for CARICOM service providers to provide restaurant services, especially in areas with large CARICOM ethnic populations. This has been attempted by a couple of Jamaican fast food sellers.</p>
Recreational, Cultural and Sporting Services	Very High	Very High	1,2,3,4	<p>The whole area of entertainment is an area in which CARICOM service providers have a competitive edge because of the global appeal of reggae and calypso and the large Diaspora market in the USA and Canada. The most important modes are 2 and 4 but Mode 1 is growing with technological improvements.</p>
Transport				
Air transport	Medium	Medium	1,2,3,4	<p>In terms of aircraft repairs and maintenance this is likely to take the form of Mode 2 supply when international airlines land in CARICOM destinations for servicing and repairs. However, there is no major negotiation issue.</p> <p>Modes 1,3, and 4 could be more important with respect to computer reservation services, selling and marketing of air transport services.</p> <p>It should be noted that traffic rights and directly related activities are excluded from GATS coverage. They are handled by other bilateral agreements.</p>
Maritime	High	High	2	<p>The main services relate to access to and</p>

⁴ At a recent public sector-private sector consultation in Jamaica, casinos were identified as a major potential growth area in which the Government would consider facilitating by changing policies.

				use of port facilities; auxiliary services; and ocean transport. There are no major market access issues and related mainly to foreign vessels visiting CARICOM shores. The rating of high interest with respect to market access is more from the point of view that the services are important to CARICOM given that 90% of trade in goods takes place by sea.
Auxiliary			2	Same as for Maritime services

Conclusion

At this stage, it would be best for the RNM to treat all services as important until the Region is certain which ones are of greatest interest.⁵ It is clear that the Region needs to create opportunities for important service sub-sectors such as:

- The numerous well trained professional services providers by asking for the removal of citizenship and residency requirements
- Education services providers by asking for the removal of residency and citizenship requirement and reducing the processing time for H-1B visas.
- Information communications technology services providers – especially in new “sunrise” activities and opportunities for certified professionals
- Tourism service providers – in most countries
- Financial services providers – especially in Barbados, Bahamas and the OECS where Offshore Banking is a major industry
- Energy services providers in Trinidad & Tobago
- In Maritime Transport - since such a high proportion of the Region’s goods trade takes place by this mode
- Construction related services – since the Region has many services providers in this sub-sector

⁵ A senior person involved in the services negotiations in Barbados explained that services of major interest to Barbados include: Financial services; Tourism; Health services; educational services; and Professional services. They also expressed concerns about the shortage of nurses and teachers in Barbados, which is only likely to be exacerbated if increased liberalization takes place.

3.0. Barriers and constraints to CARICOM services suppliers

The GATS preamble specifically recognizes “the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right”⁶. At the same time, the GATS preamble recognizes “the growing importance of trade in services for the growth and development of the world economy”, and aims “to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization”.

The CARICOM negotiators must bear the GATS preamble in mind when conducting negotiations. Even though CARICOM services providers ultimately desire unlimited access to the US and Canadian markets, in the short to medium run they recognize that certain restrictions must be kept in place to protect the local services sector until

- They can compete effectively with large powerful competitors who may offer lower prices (minimum price restrictions may need to be put in place)
- They are prepared to access these markets and have tested them to ensure that access is readily available.

Our negotiators should request special and differential treatment in order to allow CARICOM economies, based on smallness and vulnerability, to gain maximum access to US and Canadian markets in the short run while only reciprocating when there is less threat.

This remainder of this section of the report focuses on barriers and constraints to CARICOM service providers intending to provide services to the USA and Canadian market. Some of these barriers are horizontal which usually affect Mode 3 and Mode 4 supply. Other barriers are specific and affect a particular sub-sector. Barriers and constraints include:

- Limitations on the number of service providers
- Discriminatory taxes
- Nationality or citizenship requirements
- Restrictions limiting foreign currency transactions
- Local presence restrictions (domicile, local residence)
- Limitations on the total value of services transactions
- Measures that affect national treatment

⁶ This involves the concept of “necessity tests” where barriers are:

(a) **necessary** to protect public morals or to maintain public order;

(b) **necessary** to protect human, animal or plant life or health;

(c) **necessary** to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement ...” (emphasis added)

- Licensing procedures
- Technical standards – such as prudential rules, consumer protection regulations
- Equivalence of qualifications of professionals and technicians
- Discretionary measures – such as needing permission from a Minister or council
- Reciprocity requirements

Methodology

The conclusions reached in this section are based mainly on GATS commitments and to a lesser extent on discussions with representatives of Regional associations representing the business community, (potential) services exporters, trade missions and High Commissions in the USA and Canada, and representatives of the USA and Barbados Coalitions of Service Industries. In most cases, interviewees corroborated what was identified in the GATS schedules. However, given that the Consultant was not able to conduct interviews with all sub-sectors, on the whole most of the specific information was obtained from the GATS schedules.

Horizontal barriers/constraints

Entry requirements into the USA and Canada - The first barrier to entry that mode 3 and mode 4 service providers have to face when entering the USA and Canada officially for work are the entry requirements.⁷ These take the form of different visa requirements for different types of service providers. A major constraint/barrier is the length of time taken to process visas, for example the H-1B visa required by highly qualified and persons trained in specialized areas can take up to four months to process, which restricts the movement of natural persons and may result in the loss of an (unexpected) opportunity. In addition, some of these visas have limitations on the number of persons that can

⁷ Canada in its recently submitted GATS offers (March 31, 2003) has proposed extending temporary entry for business visitors from 90 days to 6 months with the possibility of extensions. Canada has also indicated that work permit requirements for business visitors will not apply, neither labour market tests nor similar procedures. The Canadian initial GATS offer includes improved market access commitments in:

- Financial Services
- Business Services (including accounting services, legal services, architecture services, engineering services, real estate services, management consulting services)
- Communication Services (courier services, telecommunication services)
- Construction Services
- Distribution Services
- Tourism and Travel Related Services
- Transport Services

Consistent with the Government of Canada's previous statements, the offer does not include any commitments for health, public education, social services, or culture. Canada has also paid particular attention to the requests made and concerns raised by developing countries and, in particular, the least developed countries, by including in its initial offer elements of interest to these countries, such as the temporary entry of services suppliers.

receive them each year, which could act as a serious barrier to Mode 4 supply of services. All the USA visa requirements are laid out in Appendix 2.⁸

Purchase of land

There are restrictions on the purchase of land by foreigners in some USA states – this can act as a horizontal constraint/barrier to mode 3 trade. In addition, foreigners have to pay an excise tax if property is transferred to them, which is inconsistent with the principle of National Treatment.

Local experience

This has been identified as a serious barrier to entry to CARICOM service providers attempting to offer their services, especially in Canada.⁹ Many users of services are requiring in-country experience. This is a very subtle but very effective barrier that is often overlooked. This will affect Mode 3 and 4 delivery of services.

Caribbean labeling

With recent problems in terms of violence and drug trafficking in the Caribbean, some services users in the US and Canada are discriminating against service providers from the Caribbean, especially those from Jamaica¹⁰. This is forcing Jamaican service providers to find creative methods of not declaring their heritage in proposals and letters of application.

3.1 Sub-sector Specific Barriers

The following section identifies specific barriers/constraints in different sub-sectors. It should be noted that different States of the USA and different Provinces of Canada have different requirements/barriers. A significant amount of the regulations affecting professionals and services is defined at sub-national level in federal states. Consequently, inter-state or provincial trade in services can potentially meet with problems similar to those of inter-country trade.

Citizenship, residency requirements and (lack of) mutual recognition of qualifications¹¹ are the main barriers. Technically, these barriers affect all Modes of trade for a specific

⁸ It should be noted that CARICOM mode 4 service providers with a regular visitors visa can enter the USA and work (unofficially) and return to their country of origin with little or no problem. However, it is important to note that service providers from several CARICOM countries do not require visas to enter Canada. In fact, visitors to Canada from all OECS countries and Barbados require nothing more than a valid passport to enter Canada. It would therefore be quite easy for mode 4 service providers from these countries to enter Canada and provide services on a temporary basis with little or no problem. Visitors to Canada from Jamaica, Guyana, and Trinidad & Tobago all require visas to enter Canada so face one additional barrier to entry than their CARICOM counterparts.

⁹ Information obtained from the Jamaican Trade Mission in Toronto

¹⁰ Information obtained in discussions with staff at the Jamaican Trade Mission in Toronto, Canada

¹¹ GATS Article VI:4 specifies that Members shall develop any necessary disciplines to ensure that “measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services.” Sub-paragraph (b) of Article VI:4

service but are most binding for Mode 3 where failure to satisfy the requirements is unlikely to go undetected.

Other barriers include: requirement to incorporate; requirement of an in-State office; double taxation;¹² and market restrictions (e.g. in media where a single company cannot own several media in the same market or cannot control more than 38% of the market in terms of audience).

It is also worth noting that the USA and Canada have left certain sub-sectors “unbound” which means that barriers could still be introduced in such cases.

Interesting Case Studies

The following two case studies outline the types of challenges that some service providers are likely to face when attempting to access the Canadian and USA markets, if major commitments are not obtained by CARICOM negotiators in the FTAA negotiations.¹³

CASE 1: The Gleaner Company – Jamaica¹⁴

The Gleaner Company has been printing in Canada for decades. Recently, the Gleaner Company decided to establish a new publication called The Canada Extra aimed at the Caribbean Diaspora market in Ontario. The two main barriers/constraints faced by the company were:

1. In order to publish, the company had to obtain special permission from the Heritage Minister because of the cultural implications. A Canadian-owned firm would have only had to inform the said Minister.
2. Advertisers in Canadian-owned newspapers receive a tax break, which is not available when they advertise in non-Canadian owned publications. The Canada Extra had to post a notification to advertisers explaining that this tax benefit would not be forthcoming.

CASE 2: The Barbados Coalition of Service Industries (BCSI)

The BCSI was launched in December 2002 and has been working hard to keep its membership informed and prepared for opportunities and threats posed by regional, hemispheric and global trade liberalization negotiations. The BCSI has a membership of 25 Professional Associations representing over 2,500 persons. In order to test the ease of

further specifies that such disciplines shall aim to ensure that regulatory measures are “not more burdensome than necessary to ensure the quality of the service”.

¹² In the United States, foreign service providers have to pay social security taxes and other taxes for which they do not get adequate tax credits in their home country due to the absence of any treaty between the US and the home country. Further, the service provider also continues to pay taxes in the home country. This leads to double taxation and tends to erode the cost advantage of working in the US.

¹³ The Jamaican Trade Missions in Miami and Washington were consulted and asked for cases of Jamaican service providers having problems accessing the US markets but neither could report any cases. The Miami mission represents over 500,000 Jamaicans living in the southeastern part of the USA. These missions typically deal with issues faced by the Jamaican Diaspora market.

¹⁴ Based on an interview with the Manager of the Gleaner’s North American Division

obtaining work in the USA and Canada, representatives of the different sub-sectors responded to Requests for Proposals advertised by US and Canadian institutions. Proposals were submitted but with zero success because they failed to satisfy the citizenship and residency requirements. *Needless to say, this is an issue that the BCSI would like to be addressed in the FTAA negotiations.*

In the meantime, the BCSI is on a mission to have all professionals that are interested in trading services to get themselves upgraded and meet all the requirements of the respective UK professional charter, which are in most cases internationally accepted. This will prevent qualifications from being used as a barrier going forward.¹⁵

In a study conducted by the BCSI, service providers in Barbados registered the following concerns:

- Barbados could be saturated with foreign professional service providers
- Unqualified persons being allowed to practice in Barbados
- Barbados services providers have little knowledge of export opportunities in the Region
- Barbados service providers face unfair competition from foreign professionals (larger size and lower average costs means they can charge lower prices)
- Stiff entry requirements for the USA and Canada – visa, board exams, license
- Non-accreditation of some of UWI's Engineering Degree Programs
- Local medical professionals unable to claim visitor's insurance
- Prequalification criteria specified in Government contracts, especially CDB funded ones, seem geared towards foreign consultants and construction companies since they bear little resemblance to the scope of work tendered. This ensures limited participation of local firms.
- Bonds/security required to support a bid for a contract are prohibitively expensive to CARICOM services providers e.g. professional services and construction services. The large size and capital base of US and Canadian firms makes these requirements not prohibitive for such firms.

Specific Barriers

The following matrices outline the main barriers that face service providers in various sub-sectors when attempting to access the US and Canadian markets. The information is

¹⁵ Based on interviews with the President and Vice-President of the BCSI

obtained from interviews with representatives from various service groups across the Region as well as the US and Canadian service commitments.

The matrices reveal that the main barriers take the form of:

- Residency requirements
- In-state office requirements
- Citizenship requirements
- Local experience requirements
- Different licensing requirements in each State of the USA or Province of Canada
- Mutual recognition of qualifications

On the whole, the analysis suggests that Canada has more explicit barriers than the USA, however, the USA has left trade in many service areas and in certain modes “unbound”, which means they will be free to introduce barriers later if they can make a good case. This should be nearly as much of a concern as where barriers are stated explicitly.

3.1.1. Specific Barriers to Entry in the US Market

Specific Service Sub-Sector	Mode Affected	Main Barriers to Entry
Business & Professional		
Accountancy ¹⁶	3,4	<p>Licensing requirements in each State as well as membership of the specified association.</p> <p>Mutual recognition of qualifications – persons without USA qualifications or that do not meet the UK Charter will not be granted licences.¹⁷</p> <p>Need to incorporate in Iowa</p> <p>Need to set up an in-state office in several states</p> <p>Citizen requirement in North Carolina</p> <p>Residency requirement in several states</p> <p>Sole proprietorships or partnerships are limited to persons licensed as accountants, except in Iowa where accounting firms must incorporate</p>

¹⁶ At the bilateral level, the American Institute of Certified Public Accountants, the U.S. National Association of State Boards of Accountancy and the Canadian Institute of Chartered Accountants in 1991 concluded an agreement on "Principles of Reciprocity". The agreement was a recommendation to state boards of accountancy in the United States and provincial authorities in Canada to permit an abbreviated examination intended to demonstrate satisfactory knowledge of relevant local and national legislation, standards and practices in the jurisdiction being entered.

¹⁷ According to the GATS, “In principle, all technical standards are meant to serve legitimate policy objectives, a concept that has already been codified in the TBT agreement and is also inherent in the underlying logic of Article VI:4”(11). GATS Article VI:5(b) specifically states that “In determining

Advertising	4	Unbound Mode 4
Architectural & Engineering	3,4	<p><u>Architecture</u> Urban planning and landscape architectural services require local licensing of two thirds of officers, partners and/or directors of an architectural firm in Michigan.</p> <p><u>Engineering</u> Citizenship requirement in District of Columbia</p> <p>Residency requirement in several (12) states – Iowa, Idaho, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia</p>
Computer & related	3,4	The H-1B visa is the main issue in this case. The length of time required to process this visa might represent a significant barrier, especially where timing is important.
Employment Agency Services	3,4	US citizenship is required for licensure as an employment agent, employment agency counsellor and employment agency manager in Arkansas
Medical Services	1,3,4	<p>Dentists Mutual recognition of qualifications is an issue - US training is required in many cases then Board Exams have to be passed in the particular State and then a licence must be applied for and obtained.</p> <p>Many CARICOM dentists are trained in the former Eastern Bloc, they would have to return to dental school and literally have to start the process again – negotiators need to request recognition for their years of experience.</p>
Legal	3,4	<p>In –State residency requirement needed in Michigan, Washington and Texas</p> <p>Mutual recognition of qualifications - In-State Bar exams must be passed in most States. These exams often take place at the same time so it is often not possible to sit them in more than one State in any given year.</p>
Real Estate Services	3,4	<p>Real Estate Brokerage US citizen requirement to be a real estate broker in New York</p>
Communication		
Audiovisual	1,3	<p>Printing and publishing services A single firm is not allowed to own a combination of newspaper, radio and/or T.V. broadcast stations serving the</p>

whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations(12) applied by that Member”.

		<p>same market</p> <p>Electronic Media¹⁸</p> <p>US citizenship requirements in order to own a media house – a US partner can be sought</p> <p>Need to obtain a licences from the FCC in order to operate – certain amount of discretion</p> <p>Virtually impossible to gain market access because all radio frequencies have been allocated</p> <p>Programming content is limited</p> <p>Grants from the National Endowment for the Arts are only available for: individuals with US citizenship or permanent resident alien status, and non-profit companies.</p> <p>Radio and television licences may not be held by: a foreign government; a corporation chartered under the law of a foreign country or which has a non-US citizen as an officer or director or more than 20 per cent of the capital stock of which is owned or voted by non-US citizens</p> <p>Technical barriers are also in place, especially for TV where the USA sets standards for programming (noise levels, digital quality, etc) that can only be met at great cost by CARICOM service providers. On the other side of the coin, the US's cost and technological advantages render it easy to penetrate CARICOM markets and the minds of consumers.</p>
Postal, courier, express mail	3	<p>Printing and publishing services</p> <p>A single firm is not allowed to own a combination of newspaper, radio and/or T.V. broadcast stations serving the same market</p>
Telecoms	3	<p>Direct Ownership of a common carrier radio license cannot be granted to a non-US citizen or company</p> <p>Several restrictions on Mode 3</p>
Construction & related	3,4	<p>An in-state office must be maintained by all contractors in Michigan</p>
Distribution		<p>None</p>
Education	3	<p>The number of licences for cosmetology schools in Kentucky is limited to 48 total licences, with a total of 8 licences allowed for operation of such schools per congressional district</p>

¹⁸ Based on an interview with Lester Spaulding – Chairman of RJR, Jamaica and Chairman of the Caribbean Media Corporation

Energy	4	Unbound Mode 4
Environmental	4	Unbound Mode 4
Financial	3,4	<p>This is a highly technical and regulated sub-sector so requires careful attention from specialists</p> <p>Insurance Discriminatory Federal taxes on premiums ceded abroad (1% reinsurance and life insurance and 4% non-life insurance). There are also some technical types of issues with respect to reinsurance, space risk and insurance of large commercial risks.</p> <p>In direct insurance there is the requirement for citizenship or residency for members of the board or incorporators in some States</p> <p>There is no mechanism for licensing initial entry of foreign insurance company as a subsidiary or branch in some states</p> <p>No agreed national law that would avoid companies being obliged to obtain a licences in each individual State in which they wish to set up a subsidiary or a branch</p> <p>In agency or brokerage services, higher licensing fees may be charged for non-residents</p> <p>In services auxiliary to insurance, licences are not issued to non-residents and are limited to certain types of insurance or are subject to citizenship requirements in some States.</p> <p>Higher licence fees for non-residents may be charged in several states (see commitments)</p> <p>Banking and other financial services¹⁹ All directors of a national bank must be citizens unless a national bank is an affiliate or subsidiary of a foreign bank, in which case only a majority of the board need be citizens.</p> <p>Impossible for foreign mutual funds to make public offerings in the USA</p> <p>Prohibition placed on non-US licensed institutions and brokerage houses on dealing in futures and US options markets for US customers other than on a fully disclosed basis to and through a US broker.</p>

¹⁹ The PATRIOTS Act recently introduced in the USA as an anti-terrorist measure, is likely to have some effect on Mode 1 financial transactions because of the powers that it gives the US authorities to monitor transactions and activities of persons involved in transactions with counterparts from the USA.

		<p>Discriminatory registration requirements for foreign banks under the Investments Advisory Act for engaging in Securities Advisory and Investment Management services</p> <p>Disproportionate asset pledge requirements for foreign banks' branches, either federally-licensed or State-licensed in various States, in particular New York.</p> <p>In various States, no possibility of initial establishment of State-chartered subsidiaries, branches, representative offices, or savings and loan associations.</p> <p>Citizenship requirements, both at federal (directors of national banks) and State level (directors and incorporators of depository financial institutions, collection agency services), and residency requirements at State level (directors and incorporators of depository financial institutions).</p> <p>Requirement that foreign qualified employees of non-US licensed institutions who wish to become National Futures Association Approved persons must be sponsored by a US institution, notwithstanding that they may have met all Commodity Futures Trading Commission and National Futures Association educational requirements.</p>
Security Services	3,4	<p>Security Services</p> <p>Permanent residence alien status or US citizenship is required to own contract security firms in Maine</p>
Health & Social	3	<p>Establishment of hospitals or other health care facilities, procurement of specific types of medical equipment, or provision of specific types of medical procedures may be subject to needs-based quantitative limits.</p>
Tourism	3	<p>Hotels, restaurants, bars: No limitations in the USA</p> <p>Travel operators and tour operators: Official tourism with Diplomats are not allowed</p> <p>Tour guides: The number of concessions available for commercial operations in federal, state and local facilities is limited</p>
Recreational, Cultural and Sporting Services	3,4	<p>Entertainment service, News Agency: Mode 4 – Unbound</p> <p>Sporting and recreational: The number of concessions available for commercial operations in federal, state and local facilities is limited. Apart from horizontal restrictions there have been no real concerns raised by entertainers or sports people.</p>
Transport		
Air transport	1,2,3,4	<p>Repairs: Unbound for Modes 1 and 4</p>
Maritime		<p>No commitments</p>
Auxiliary		<p>No commitments</p>

3.1.2 Barriers to Entry in the Canadian Market

Specific Service Sub-Sector	Mode 1,2,3,4	Main Barriers to Entry
Business & Professional		
Accountancy	3,4	<p>Auditing (Saskatchewan, Newfoundland, Nova Scotia, Manitoba, Ontario): Requirement for a commercial presence (Manitoba, Québec): Citizenship requirement for accreditation (Alberta, Ontario): Permanent residence required for accreditation</p> <p>Licensed Public Accountants (Manitoba): Residency requirement for accreditation</p> <p>Some CARICOM accountancy qualifications are not recognized in Canada e.g. CMA from Jamaica</p>
Advertising		No commitments
Architectural & Engineering	1,3,4	<p>Community/Urban Planning (Québec): Citizenship requirement for use of title</p> <p>Consulting Engineers (Manitoba): Requirement for a commercial presence for accreditation</p> <p>Engineers (British Columbia, Newfoundland, Alberta, Ontario, New Brunswick, and Nova Scotia): Must be permanent resident for accreditation (Québec): Citizenship requirement for accreditation</p> <p>Landscape architects (Newfoundland): Residency requirement for accreditation</p>
Computer & related	4	Mode 4 unbound apart from horizontal restrictions
Employment Agency Services	1,3,4	Placement and Supply Services of Personnel (Ontario): Services must be supplied through a commercial presence
Related scientific and technical consulting services	3,4	<p>Free Miner (British Columbia): Applicant must ordinarily be a Canadian citizen and a permanent resident of Canada, a Canadian corporation or a partnership of the foregoing</p> <p>Land Surveyors (Saskatchewan): Requirement for a commercial presence for accreditation. (Manitoba, Nova Scotia, and Québec): Citizenship requirement for accreditation. (Newfoundland): Permanent residency requirement for accreditation.</p> <p>Subsurface Surveying Services (Québec): Citizenship</p>

		<p>requirement for accreditation</p> <p>Professional Technologist (Québec): Citizenship requirement for accreditation</p> <p>Chemists (Québec): Citizenship requirement for accreditation</p>
Medical Services		No commitments
Legal	3,4	<p>Commercial presence must take the form of a sole proprietorship or partnership</p> <p>Lawyers (Prince Edward Island, Alberta, Ontario and Newfoundland): Requirement to be permanent resident for accreditation</p> <p>(Québec): Citizenship requirement</p>
Management Consultants	3,4	<p>None, other than:</p> <p>Agrologists (Newfoundland): Permanent residency requirement for accreditation</p> <p>(Québec): Citizenship requirement for accreditation</p> <p>Professional Administrators and Certified Management Consultants (Québec - Québec Professional Corporation of Administrators): Citizenship requirement for use of title</p> <p>Industrial Relations Counsellors (Québec): Citizenship requirement for use of title</p>
Convention Services	3,4	<p>Credit Reporting (Saskatchewan): Services must be supplied through a commercial presence</p> <p>Credit Reporting and Collection Agencies (Newfoundland, Prince Edward Island and Nova Scotia): Services must be supplied through a commercial presence</p> <p>Consumer Reporting Agencies (Nova Scotia and Newfoundland): For juridical persons, requirement for a commercial presence</p> <p>(Nova Scotia): For natural persons requirement for permanent residency</p> <p>Collection Agency Services (Alberta): Trust funds must remain in Alberta. Must maintain address for service in Alberta.</p> <p>Certified Translators and Interpreters (Québec): Citizenship requirement for use of title</p>
Investigation and security services	1,3,4	<p>Business and Personal Information Investigators (Ontario): Services must be supplied through a commercial presence</p>

		Foreign ownership is restricted to 25 per cent in total and 10 per cent by any individual holding shares (Ontario) Security and investigation services (Québec): Citizenship requirement for private investigators
Credit reporting and collection services	3,4	Credit Reporting and Collection Agencies (Newfoundland, Prince Edward Island and Nova Scotia): Services must be supplied through a commercial presence
Real Estate Services	3,4	Real Estate Services (Ontario, Nova Scotia, Newfoundland, Prince Edward Island and Saskatchewan): Services must be supplied through a commercial presence Real Estate Agents (Alberta, Newfoundland): Services must be supplied through a commercial presence Chartered Appraisers (Québec): Citizenship requirement for use of title Real Estate Agents (Alberta, Québec, Yukon, Manitoba, Nova Scotia, Newfoundland, British Columbia and Prince Edward Island): Residency requirement
Communication		
Audiovisual		No commitments
Postal, courier, express mail	3	Courier Services (Nova Scotia and Manitoba): Economic needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to provide proper service.)
Telecoms	1,3	Several restrictions
Construction & related	3,4	Construction Contractor (Ontario): A non-resident who will be consuming or using tangible personal property in Ontario is required to deposit with the Treasurer 4 per cent of the amount to be paid under the contract or post a guarantee bond for the same. (Newfoundland): A deposit of 6 per cent of the contract amount or a bond equivalent is required from non-resident contractors
Distribution	3,4	Fish Buyers (British Columbia): Mobile fish buyers licenses are not issued to foreigners Itinerant Sellers (Ontario and Québec): Commercial presence required Direct Sellers (Nova Scotia, British Columbia): Services

		<p>must be supplied through a commercial presence</p> <p>Indirect tax measures that result in differences in treatment with respect to delivery by mail of goods in Canada</p> <p>(Alberta): Service suppliers required to designate a place within Alberta where they can be served legal documents</p> <p>Retail petroleum (Prince Edward Island): Public convenience and necessity test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to provide proper service.)</p>
Education		Nothing specific
Energy		Unbound Mode 4
Environmental		Nothing specific
Financial	3.4	<p>This is a technical and highly regulated sub-sector so commitments need to be carefully examined.</p> <p>Direct insurance and reinsurance and retrocession (federal): A minimum of one half of directors must be either Canadian citizens ordinarily resident in Canada or permanent resident ordinarily resident in Canada.</p> <p>(British Columbia): A majority of the directors must be resident in Canada and at least one director must be resident in British Columbia</p> <p>(Ontario): Capital requirements for mutual insurance companies do not apply to certain mutual insurance companies incorporated in Ontario</p> <p>(Québec): Three-quarters of directors must be Canadian citizens and a majority must reside in Québec</p> <p>Adjustment services (Newfoundland): Non-resident adjusters must, as a condition for obtaining a license, agree to act through the facilities of an adjuster, adjusting company, representative, agent or broker licensed under provincial law</p> <p>(Ontario and Prince Edward Island): Non-resident individual adjusters are prohibited from being adjusters in the province</p> <p>Intermediation of insurance relating to commercial aviation, space launching, freight (inc. satellites) and goods in international transit (federal): An excise tax of 10 per</p>

		<p>cent is applicable on net premiums paid to non-resident insurers</p> <p>Banking²⁰</p> <p>Banks: Foreign banks must incorporate subsidiaries in Canada to undertake the business of banking</p> <p>A minimum of one half of the directors must be either Canadian citizens ordinarily resident in Canada or permanent resident ordinarily resident in Canada.</p>
Health & Social		None
Tourism	3,4	<p>Hotels, Restaurants & Bars</p> <p>A variety of residency requirements are in place including:</p> <p>Saskatchewan: The majority of shareholders must be Canadian and manager must be a Canadian citizen or permanent resident</p> <p>Purchase of recreational property (Ontario): Non-residents are required to pay a 20 per cent land transfer tax</p> <p>Sale of alcoholic beverages (Ontario): The majority of the board of directors must be Canadian citizens or landed immigrants and ordinarily resident in Ontario</p> <p>(Alberta): At least one director must be a permanent resident</p> <p>Travel agency, tour operators</p> <p>Travel agencies and travel wholesalers (Ontario, Quebec): Services must be supplied through a commercial presence</p> <p>Residency requirements in several provinces</p>
Recreational, Cultural and Sporting Services		No commitments made by Canada but apart from horizontal restrictions there have been no real concerns raised by entertainers or sports people.
Transport		
Air transport	2	Maintenance and repair of aircraft and aircraft engines - unbound
Maritime		Unbound
Auxiliary	2	Cargo handling: unbound Storage and warehousing: unbound

²⁰ This is a complex sector requiring specialist assessment

3.1.3 Proposed Changes in Market Access to Canada based on Conditional GATS Offers Presented on March 31st, 2003

Since the above matrix on barriers to trade in the Canadian market was developed, Canada has presented its new conditional offers as part of the GATS negotiations. These proposed new offers have increased market access in several sub-sectors. The following discussion summarizes the main improvements in market access.

- Auditing, architectural services and some other professional services - Quebec to remove the citizenship requirement
- Investigation & security services – Ontario to remove foreign ownership limit
- Other business services – Ontario to remove foreign ownership limit
- Courier services – Manitoba to remove the need for economic needs testing
- Telecommunications services – Mode 1 limitations to be removed
- General construction work for buildings – Newfoundland to remove the 6% deposit of contract amount or bond for non-residents
- General construction work for civil engineering – Ontario to remove the requirement for an applicant and holder of a water power site development permit to be incorporated in Ontario
- Wholesale trade services – Nova Scotia to remove the requirement for residents to obtain ministerial approval in order to enter into agreements with non-residents
- Retailing services – Newfoundland is to remove residency requirement in Mode 1 for Direct Sellers
- Financial services – Ontario to remove requirement that “no license is provided to a corporation to act as an insurance broker, agency or adjuster if the majority of the voting rights are in shares owned by non-residents”
- Financial services – there is a proposal to remove the requirement that an authorized foreign bank cannot establish a lending bank branch in conjunction with a full service bank branch, a bank subsidiary, or a trust company that accepts deposits
- Advisory and auxiliary financial services – Ontario to remove the requirement that services must be supplied through a commercial presence in the jurisdiction in which the adviser is providing advice
- Asset management services – Ontario to remove the requirement that services must be supplied through a commercial presence in the jurisdiction in which the adviser is providing advice
- Securities dealers and brokers – Quebec is to remove the requirement that only brokerage firms incorporated under federal, provincial or territorial laws may be members of the Montreal Exchange
- Asset management services – Quebec is to remove the requirement that only brokerage firms incorporated under federal, provincial or territorial laws may be members of the Montreal Exchange
- Tourism & travel related
 - Sale of liquor on premises – Nova Scotia to remove the requirement that new licences require a majority approval in a public vote

- Sale of alcoholic beverages – Ontario to remove the requirement that the majority of the Board of Directors must be Canadian citizens or landed immigrants and ordinarily resident in Ontario
 - Sale of liquor in taverns, restaurants or bars – Nova Scotia to remove the requirement that Agents or managers must be Canadian citizens resident in the province
- Maritime transport services – several categories that were unbound have been proposed to be changed to no restrictions
- Licensed Customs Brokers – for Federal Juridical persons the requirement for a commercial presence is to be removed, and for natural persons the permanent residency requirement is to be removed
- Railways – Newfoundland to remove the need for a majority of the Board of Directors must be residents
- Highway freight transportation – public convenience and needs test to be removed in British Columbia, Ontario, Quebec, Prince Edward Island, and Nova Scotia.

4.0 The relative importance of the different modes of supply to CARICOM services providers and Mode 4 issues

The relative importance of the different modes of supply to CARICOM services providers has been discussed in section 2 of this report so will be summarized in this section. The analysis of section 2 revealed that there are cases where each mode is important, however the level of importance differs between sub-sectors.

The following matrix summarizes the relative importance of all Modes. The analysis is not definitive in most cases because of the following factors:

1. The composite nature of the services categories wherein Mode 2 may be important for one activity but Mode 3 for another. For example in audiovisual communications services, Modes 1 and 3 may be important for the provision of radio and TV related services whereas Modes 2 and 4 may be more important for the provision of motion picture support services.²¹
2. The preferences of the service providers and clients may determine the mode selected. For example, in financial services the client may for security reasons prefer transactions to take place in their home country in a face-to-face situation, as a result Modes 3 or 4 may be preferred, for secrecy reasons another foreign client may prefer certain transactions to take place in the CARICOM country (Mode 2), and for expediency or cost reasons another client may prefer the transaction to take place electronically (Mode 1).
3. The stage in the services transaction. For example, in IT related services, the foreign client may prefer to visit the CARICOM supplier to explain their requirements and mobilize a job (Mode 2) but may be quite happy to have the finished product delivered electronically or by courier (Mode 1), or delivered directly by the service provider (Mode 4).

In terms of Mode 4 Contractual Service Suppliers (not just professional services but a wide range of services that CARICOM may supply) should become very important and negotiators should seek to be granted access to US and Canadian markets. This kind of supplier does not require association with mode 3 or any commercial presence.

It is worth noting that given the improvements taking place in the ICT sector, that Mode 1 is becoming increasingly important, it is therefore critical that electronic means of supplying services should be given equal guarantee and treatment as other means.

²¹ A more extensive study is required to deal with each service industry at the 4-digit UNCPCL level.

Specific Service Sector	Mode 1,2,3,4	Explanation/ Justification
Business & Professional		
Accountancy	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients.
Advertising	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients.
Architectural & Engineering	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients. There is strong case to suggest that on balance Modes 1 and 4 would be the most important.
Computer & related	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients. There is a strong case to suggest that on balance Modes 1 and 4 would be the most important.
Medical Services	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients.
Legal	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients. There is strong case to suggest that on balance Modes 2 would be the most important since clients would typically prefer to deal with lawyers that they perceive to be familiar with the environment in which they operate.
Management Consultancy	1,2,3,4	All modes may be important depending on the nature of the task and the relationship between the service providers and clients. There is strong case to suggest that on balance Modes 1, 2 and 4 would be the most important.
Communication		
Audiovisual	1,2,3,4	This is determined by the nature of the services and the constraints in how they can be provided. Modes 1 and 3 may be more important for radio and TV while Modes 2 and 3 may be more important for motion picture support services. Mode 4 is also relevant for persons wishing to travel to participate in movies, radio and TV programmes, etc
Postal, courier, express mail	1,3	This is determined by the nature of the services and the constraints in how they can be provided. For newspapers as well as courier services, Modes 1 and 3 are likely to be the most important.

Telecoms	1 and 2	Mode 1 would include the provision of value added telecom services (such as on-line data processing) over the telephone or internet and Mode 4 the provision of support services to foreign companies such as Cable and Wireless.
Construction & related	2,3,4	Determined by the nature of construction related activities. Mode 2 services are provided when foreigners come to the Region to do construction. Modes 3 and 4 are where CARICOM service providers travel to provide services, especially to meet the needs of the CARICOM Diaspora market.
Distribution	1,2,3,4	All modes may be important depending on the specifics of the activity
Education	1,2,3,4	All modes may be important depending on the specifics of the activity
Energy	2,4	The Region's strength in this area lies in supporting foreign companies that extract its energy and mineral resources. However, given that this knowledge exists, there is a strong likelihood that Mode 4 may become more important.
Environmental	2	To the extent that this is important it is likely to be only supporting foreigners who visit. Unless CARICOM is prepared to develop skills in environmental protection for small coastal states, e.g. in innovative approaches to garbage disposal and coastal protection.
Financial	1,2,3,4	All modes can be important depending on the type of financial service, the nature of the transaction and the preferences of those involved.
Health & Social	2, 4	This could be an industry of the future – the provision of specialized health services to persons from North America or returning residents. This is most likely to be important for Mode 2 but possibilities for Mode 4 are likely to increase.
Tourism	1,2,3,4	Mode 2 is definitely the most important for tourism and may be as important to CARICOM as the total of all other services trade put together.
Recreational, Cultural and Sporting Services	1,2,4	Mode 4 is likely to be the most important because entertainers and sports persons tend to travel to the USA and Canada to perform. However, Modes 1 and 2 are not trivial.
Transport		
Air transport	1,2,3,4	All Modes could be important depending on the specifics of the activity
Maritime	2	This relates mainly to the use of CARICOM ports
Auxiliary	2	This relates mainly to the use of CARICOM ports

The impact of 9/11 has not seemed to affect CARICOM services providers in any significant ways apart from the greater scrutiny during travel. There is one service supplier from Barbados who complained that he now has difficulty getting into the USA to buy clothes to sell in Barbados (distribution services). He experienced problems because he declared that he had a business, which attracted more attention than if he had just entered as a visitor.

The major impacts of 9/11 are indirect in that natural persons are more reluctant to travel (tourism, business trips, etc) and the consequent economic impact of the downturn in the US economy. Providers of tourism and media services have complained that their revenues have been adversely affected. Financial services providers have also felt additional pressure as a result of the PATRIOTS Act and greater monitoring of international financial transactions. The US's Homeland Security Department have also put in place additional security measures.

5.0 Assessment of the services requests made to CARICOM States by the U.S. and Canada in the WTO context and their implications for the FTAA negotiations

The analysis in this section will focus on some requests made to CARICOM countries by the USA and Canada. The requests will be outlined and brief comments will be made, where necessary, about the implications for the FTAA negotiations. Canada prefaced its requests by asking that Member States' ensure that:

- The sector and sub-sector be clearly identified in accordance with the Services Sectoral Classification List and for Financial services, according to the Annex on Financial Services, along with the corresponding CPC number, and
- Any remaining market access or national treatment limitation be clearly described.

This request by Canada (which is also echoed by the USA with respect to Mode 3) is reasonable but will require some detailed effort by Member States. The process may be expedited by securing the services of consultants to assist.

Horizontal requests made by the USA and Canada

1. In terms of Transparency in the Regulation of Services, the USA requested the adoption of GATS disciplines addressing the following²²:
 - Clear publicly available domestic procedures for application for licenses or authorizations, and their renewal or extension
 - Established deadlines for processing of applications under normal circumstances
 - Established procedures for notifying violations of the terms and conditions of a license
 - Mechanisms to respond to inquiries on regulations and applications from service providers as well as appeals from service providers if applications are denied or they are found in violation of public regulations
 - Examinations required as part of the application process for a license or authorization offered at reasonable intervals and not at a cost designed to limit the number of applications
 - Domestic procedures providing for a standard formal process of informing the public of regulations, or changes to the existing regulations, prior to their final consideration by the relevant authority and entry into effect; procedures should provide meaningful opportunities for comments and questions by interested parties
 - Ensuring that all aspects of the above procedures apply to foreign individuals and parties in the same manner as they apply to domestic individuals and parties

²² Canada makes essentially the same requests but in more general terms

These requests are reasonable and basically call for clarity, transparency, clear processes and non-discrimination. Each CARICOM Member State must ask its service providers to ensure that these aspects are in place, to the extent that they are not. The CARICOM Secretariat is in the process of conducting a study to identify and remove legislative and administrative restrictions to the free movement of services, capital and the rights of establishment amongst Member States.

2. In terms of Mode 3, the USA requested “clarification and removal of the GATS-inconsistent aspects of the listed market limitation”. *Canada requested clarification of what is meant by the requirement that branches of companies incorporated outside of the Member State are required to register their “instruments of incorporation” before they can carry on business.*

Comment: This US request itself needs clarification because it is very general and vague in nature. However, CARICOM Member States must take the time to examine their commitments and ensure that they are consistent with the GATS. The Canada clarification should not be a major concern to those Member States to which it applies.

3. In terms of Mode 4, the USA (*and Canada*) has requested the following:
 - Economic needs tests and labour tests pertaining to Mode 4 admission requirements should be addressed. (*The US’s request is vague whereas the Canadians request the removal of such tests.*)²³
 - Remove all requirements for residency and/or work permits that must be petitioned/applied for separately from petitions for admission under certain Mode 4 categories. *Canada also makes this request.*
 - Adopt disciplines specifying that means will be available for the expedited processing of petitions (and applications for work permits where still necessary), for a fee not set so high as to constitute a barrier to market access, when needed for temporary admission by the petitioner
 - Make commitments confirming that foreign natural persons admitted under the categories specified in the market access commitments may make multiple entries for the duration of stay initially granted to that same person.
 - *Canada also requests a maximum period of stay for 90 days.*²⁴

Comment: Apart from some degree of vagueness on the part of the US, these requests seem reasonable and CARICOM Member States should aim to be definitive in the above-mentioned areas.

4. In terms of Service Salespersons, the USA has requested the following:

²³ Canada in its recently submitted GATS offers has removed the need for labour market tests for professionals and has also removed labour market tests for spouses or partners of intra-corporate transferees.

²⁴ Canada in its recently submitted conditional GATS offers has removed entry and stay in Canada for an initial period of one year with extensions possible.

- Market access commitments should be made providing for the entry and temporary stay of Service Salespersons, defined as persons not based in the territory of the Member State and receiving no remuneration from a source within the Member State, who are engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service, as Service Salespersons for initial periods of at least 90 days, with provisions that allow for the extensions of stay.
- *Canada requests a definition of business visitors including service sales persons and provides suggested definitions.*

Comment: The US request is reasonable and poses little threat to the local service sector. Canada’s request for definitions is no real problem and, in fact, may assist in the process.

5. In terms of intra-company Transferees, the USA has requested the following:
 - That commitments be made to provide for the entry and temporary stay of Intra-company Transferees for an initial stay of at least three years, providing the person has been in the continuous employ abroad of their current employer for a period of at least one year, and allow multiple entries and the possible extension of stay for at least another two years. *Canada’s request, though differently stated amounts to the same thing*²⁵.
 - Both the USA and *Canada* request clarification of the meaning of executives, managers and specialists, however, both provide what they consider to be standard definitions.^{26 27}

Comment: There seems to be no real problem associated with these requests and CARICOM countries should have little problems dealing with them. The standard definitions of executives, managers and specialists seem reasonable and should not be a cause of great concern.

6. In terms of Professionals (or Contractual Service Suppliers), the USA has requested the following:
 - Commitments should be made providing for entry and temporary stay of foreign professionals, for a period of three years (*Canada requests 90 days*) or the duration of the contact, whichever is shorter, which may be extended and during which multiple entries will be permitted. The presence of these professionals is required in the Member State in order to fulfill a service or

²⁵ It is worth noting that Canada, in its most recent GATS conditional offers has removed limits on the time executives and managers can stay but specialists' time limit including extensions is 5 years.

²⁶ It is worth noting that Canada, in its most recent GATS conditional offers has redefined executives, managers and specialists. Labour market tests are not required for intra-corporate transferees but work permits remain for executives, managers and specialists.

²⁷ It is worth noting that Canada, in its most recent GATS conditional offers has removed the 3-year limit on stay for Intra-Corporate transferees.

contract obtained by a foreign juridical person with no commercial presence in the Member State.

- *Canada has requested definitions of professionals and has provided standard definitions²⁸.*
- *Canada also requests commitments on work permits for spouses and common-law partners of professionals, but no requirement for labour market tests or similar procedures.*
- *Canada has also provided a list of nine professions and has requested the minimum education requirements and alternative credentials for each*

Comment: The general set of requests seem reasonable, however, CARICOM countries will have to deal with differences in the period of stay requests for the US versus Canada (3 years versus 90 days). The fact that standard definitions have been provided should be of assistance to the process.

7. For Personnel Engaged in Establishment, the USA has requested the following:
 - Commitments should be made providing for the entry and temporary stay of Personnel Engaged in Establishment, defined as a person who has been employed in the preceding year by a foreign juridical person, receiving remuneration from that source, who occupies an executive or managerial position in that juridical person and is entering the Member state to establish a branch, subsidiary or affiliate that will support employment of the persons admitted as Intra-company Transferees. Proof should be provided of acquisition of physical premises for the branch or subsidiary that shall commence business operations within one year from the date of entry of the person.
 - *Canada basically lumps this category together with other business visitors and requires a definition, no work permit or labour market tests, and a maximum stay of 90 days.*

Comment: The US request, in and of itself, is reasonable, however it may be difficult to monitor the activities of the persons during the one-year period. Persons engaged in establishment should be operating only in sectors where there are no limitations on entry. Canada's request is more straightforward, however, an appropriate period of maximum stay, bearing in mind both requests, needs to be determined.

²⁸ It is worth noting that Canada, in its most recent GATS conditional offers has changed its definition of professionals. Professionals are now defined as follows: "Natural persons who seek to engage, as part of a services contract granted by a juridical person or a services consumer in Canada and obtained by a juridical person or a service supplier of another Member (other than agencies as defined by CPC 872), in an activity at a professional level in certain listed occupations, provided that the person possesses the necessary educational requirements and alternative credentials as listed for that profession, which have been duly recognized, where appropriate, by the relevant professional licensing body in Canada."

Specific requests made by the USA and Canada

Legal services

The US requests full market access and national treatment for lawyers and law firms in Modes 1-3. Foreign law firms should be permitted to establish enterprises within their territory and form partnerships and joint ventures with local firms. Foreign law firms and foreign lawyers should be permitted to hire local lawyers. (Additional comments were made on Foreign Legal Consultants).

Comments: Given the smallness of CARICOM markets, some research and consultation needs to take place with the legal services sub-sector in member states in order to determine the extent to which they could bear the burden of this US request. CARICOM countries are having problems opening up to regional services providers so it would be a difficult step to open up to the US. For the FTAA negotiations, it is unlikely that this request can be granted by any CARICOM member state, at least in the short run.

Accounting, auditing and bookkeeping service; engineering services; integrated engineering services; Computer and related Services

The US requests full commitments in Modes 1-3 for market access and national treatment for all the above services.

Comments: To the extent that the commitments are not full, CARICOM countries should move to improve them but to clearly outline any limitations to be retained and leave unbound any areas where there is uncertainty.

Architectural services

The US requests full commitments in Modes 1-3 for market access and national treatment for architectural services.

Canada requests clarification on whether the “preference for joint ventures” in Architectural services is a strict requirement or whether there is any discretion involved in establishing a sole proprietorship. They also require member states to specify whether there are any requirements tied to the joint venture as regards foreign ownership and control of an architectural firm.

Comments: To the extent that the commitments are not full, CARICOM countries should move to improve them but to clearly outline any limitations to be retained and leave unbound any areas where there is uncertainty. *The Canadian request for clarification with respect to joint ventures is also a fair one.*

Research and Development Services

Canada requests, with respect to social sciences and humanities (except linguistics and language), clarification on how the registration and licensing requirement limits market access.

Comments: This is a fair request that CARICOM countries should be able to deliver. However, some consultation will be required with the University of the West Indies and other Regional educational institutions.

Communication Services

With respect to Express Delivery Service, the US requests that CARICOM countries make commitments for market access. They also request commitments to deal with any cross-subsidization of these services by Government.

Comments: CARICOM countries need to make the necessary consultations to determine the importance of these services to local and potential service providers. In Jamaica and Trinidad & Tobago, there is a growing interest in the provision of such services by locals so commitments must give full consideration to these developments. However, FEDEX, DHL and USP operate freely within CARICOM already so this should also be taken account when commitments are being made.

With respect to Telecommunications services, the USA requests that (some) Member States should remove the limitations on market access in the existing schedule of commitments

Comments: This is a very technical area that requires specific expertise so member states should ensure that they are properly informed prior removing restrictions.

Distribution Services; Educational Services; Environmental services

The US requests full commitments in Modes 1-3 for market access and national treatment for these service areas

Comments: To the extent that the commitments are not full, CARICOM countries should move to improve them but to clearly outline any limitations to be retained and leave unbound any areas where there is uncertainty.

Financial Services

The US submitted a detailed request on financial services, requesting commitments in insurance and banking and the adoption of an Annex on Transparency and other Principles for Regulation of Financial Services.

Canada requests that CARICOM States schedule commitments in all modes of supply and in all 16 sub-sectors listed in the Annex on financial Services. They would also like commitments made to bind fully the current level of liberalization (Jamaica), and improvements in transparency around the processes of licensing of banks, work permits and restrictions on foreign ownership of property.

In Banking, Canada requests that differential capital requirements between foreigners and nationals be eliminated.

Comments: This is another sub-sector that requires specialist/expert treatment. CARICOM Member States will have to examine their prudential requirements as well as the threats to the local financial sector of further liberalization and the provision of the same capital requirements to foreigners.

Tourism and Travel Related Services

The US has requested full commitments for market access and national treatment in Modes 1-3 for Hotels and Restaurants; Travel Agencies and Tour Operator Services; Tour Guide Services and others.

Comments: To the extent that the commitments are not full, CARICOM countries should move to improve them but to clearly outline any limitations to be retained and leave unbound any areas where there is uncertainty. Time, thought and caution should be given to this exercise because this sub-sector is important to nearly all CARICOM Member States. A Regional consultation should also be considered to get a complete set of ideas.

Recreational, Cultural and sporting Services (not audiovisual services)

The US requests full commitments for market access and national treatment in Cinema ownership and operation.

Comments: Same as for Tourism and Travel related above

Energy Services

The US requests full commitments for energy services in Modes 1-3 under market access and national treatment.

Comments: This sub-sector is very important to Trinidad & Tobago, Suriname, Guyana and Barbados from a production perspective and important to all Member States from a consumption perspective. The US energy service request is very detailed so important consultations must be taken with persons in this sector in each Member State – it may even require a Regional consultation.

Conclusion

On the whole, the horizontal requests are more a) definitional or b) requesting of clarification or c) requesting of the setting of firm time periods. CARICOM Member States should be able to deal with these issues in consultation with the various service sub-sectors.

However, the specific requests, in some cases, require serious consultation and analysis in order to make commitments or improve commitments. In service areas such as tourism, energy, communications and financial, Regional consultations may be in order.

6.0. The feasibility of a common services requests by CARICOM States to the U.S. and Canada

The position with respect to requests and offers in the WTO negotiations can be summarized by a statement by Vicente Paolo B. Yu III.²⁹

“WTO Members started submitting their initial GATS negotiating requests to other selected WTO Members on 30 June 2002. These requests specify the services sectors of their trading partners that they wish to see liberalized and the extent of GATS commitments that they wish their trading partners to undertake with respect to those sectors. However, WTO Members are under no legal obligation to make requests under the GATS negotiations to their trading partners.

The submission of the initial offers, or responses, to those requests will commence on 31 March 2003. The WTO Members to whom requests have been made are not under any legal obligation to make any offers that directly correspond to the requests that they have received. In fact, they do not need to make any offers at all. However, as in the making of commitments, the existing power imbalances in the WTO and the economic pressures from developed countries can mean that developing countries will effectively have to make offers that they are neither willing nor ready to provide.”

As far as the WTO negotiations are concerned, CARICOM countries have made commitments as individual countries rather than as a group. In this light, it could be a challenge for CARICOM countries to now approach the FTAA negotiations as a group because other countries would have made individual requests in response to individual commitments. However, as far as making common requests to the US and Canada is concerned, this is quite (technically) feasible whether countries negotiate on an individual basis or as a group. In other words, as long as all CARICOM countries agree on all the requests that are made to the US and Canada it does not intrinsically matter whether they are made on an individual basis or as a group.

The CARICOM situation has similarities to that of the USA (or Canada), which is a country with states (like CARICOM has states) with individual limitations as was reflected in the USA’s commitments. US negotiators have to deal with the heterogeneity of states in the negotiations, however they are likely to have the technical resources to effectively do so. Even though it comprises a set of states that are arguably more heterogeneous than the states comprising CARICOM, the USA has submitted one set of requests to each country and will receive one set of offers (not 50) from them.

The compelling reasons for CARICOM countries to make common requests include:

²⁹ Vicente Paolo B. Yu III, “How to Read GATS Negotiating Requests and Offers”, WTO Program Officer, Friends of the Earth International

- The fact that the RNM will be negotiating on behalf of all CARICOM countries and would find it challenging to deal with a set of different requests
- Most CARICOM countries have resource constraints (technical and financial) so economies can be gained by having as much in common as possible
- Most CARICOM countries are quite similar in that they are small and open - the special needs of the OECS countries may have to be considered in light of their greater vulnerability
- CARICOM countries are in the process of implementing the CSME, which suggests that they should be aiming, where possible at common positions with respect to third countries
- It is not unlikely that each CARICOM country would want to make the same requests to the USA and Canada given their commitments.

From observing the US and Canadian commitments, most CARICOM countries are likely to request the following from these two countries:

- Easier visa processing especially for H-1B visa – mainly affects Mode 4
- Removal of citizenship requirement –effectively affects Modes 3,4
- Removal of residency requirement – effectively affects Modes 4
- Removal of incorporation requirement – effectively affects Modes 1,3,4
- Removal of In-State office requirements – effectively affects Modes 3,4
- Mutual recognition of qualifications - effectively affects Modes 3,4
- Removal of discriminatory taxes – effectively affects Mode 1,2,3,4
- The binding of commitments or explicit statement of barriers wherever “unbound” is recorded – affects all Modes for Canada and mainly Mode 4 for the USA.

The sub-sectors where the issue of common requests might be most challenging are:

- Energy services – where Trinidad & Tobago may have special requirements given the relative importance of this sector
- Transport services – where Jamaica and Trinidad & Tobago, which have national airlines, may have special requirements
- Offshore financial services – where Barbados, Bahamas and certain OECS countries may have special requirements
- Telecommunications services – there are several areas for concern here including: a) Jamaica is more liberalized than most other states; b) the monopoly ownerships are from different countries (US company has control in Guyana and UK company (C&W) in most others); and in the OECS they are addressing many of their Telecoms issue as a group.

Apart from these four sub-sectors, which typically require specialist treatment, there is very little reason why all CARICOM countries cannot make common requests whether horizontally or in the specific sub-sectors. Even in these four sub-sectors it may be possible to make common requests because the requests are in response to the US and Canadian commitments and not to the individual CARICOM countries' commitments. However, in terms of each CARICOM States' overall negotiating position, they may want to request less in some sub-sectors (those in which it has little interest) in order to justify a stronger request in other sub-sectors (where they have greater interest).

7.0. Recommendations on negotiating options for CARICOM

Recommendations on Requests to the US and Canada in Specific Services

Professional services

- Request mutual recognition of qualifications for accountants, engineers, architects, lawyers, medical practitioners, and other professional service providers for persons trained at the University of the West Indies, University of Technology and other accredited tertiary institutions.
- Request the removal of citizenship, residency, In-State office and incorporation requirements
- Request the harmonization of licensing requirements (board exams, etc) across all the States of the USA and the Provinces of Canada

Financial services³⁰

- Request the removal of citizenship or residency requirements for Directors or incorporators, where applicable.
- Request the removal of incorporation where applicable
- Remove discriminatory federal taxes on insurance premiums paid by foreigners
- Request the putting in place of mechanisms for licensing only once for entrants into the insurance industry in the USA
- Request the removal of all other discriminatory requirements (see section on barriers)

Audiovisual/electronic media services³¹

The regional leaders in audiovisual/electronic media services consider this issue to be a complex one in which the US is seeking to treat audiovisual and media as commercial services and hence an open commercial trade market, while the EU countries and Canada feel that it is significantly a cultural industry and therefore should be treated specially and not widely opened up. Leaders of the CARICOM audiovisual services sub-sector favour this culturally oriented position, since the regional industry is too young and fragile to withstand a US invasion.

It is also recognized that there are some countries in which Governments subsidize state broadcasters and also where public funds may support public service broadcasting. These may find themselves to be considered as discriminatory practices if the US gets its way. The support of the public sector is critical to the survival of the sub-sector in some of

³⁰ Based on opinions advanced at a meeting of the leaders in the Jamaican Insurance sub-sector – a study is being conducted on behalf of this group by UWI.

³¹ Based on the opinions of Patrick Cozier who is the Secretary General of the CBU

these countries, especially where the market size is not large enough to generate sustainable profit.

There is a suspicion that the USA is attempting a “divide and rule approach”, by trying to do bilateral negotiations with individual countries, on a “cherry-picking basis”. It is therefore vital to fashion a consolidated regional position, other wise it could have lasting and devastating implications for broadcasting businesses in the region.

Newspapers/publication services

- Negotiators should request the removal of the need for the discretion of the Heritage Minister in approving the launching of a publication in Canada
- Request the removal of differential tax treatment for advertisers in publications owned by foreigners in Canada

Construction and Related Services

Request the removal of any in-State office requirements (e.g. in Michigan)

General recommendations

- The CARICOM Negotiating Team will have to redouble its efforts to ensure that Member States hold all the national and Regional level consultations required to make the necessary commitments or improve those already made. The requests from the USA and Canada reflect the fact that most CARICOM Member States have made no commitments in many areas.
- CARICOM’s negotiating team should not be too specific in terms of the services until more detailed work has been carried out in the Region to determine which service areas are most important in the short run and those which will be more important in the long run.
- CARICOM’s negotiating team should not be too specific in terms of Modes with respect to requests or offers because new opportunities could arise as a result of the development of new services and new technologies for delivery.
- The USA and Canada have left many service areas and modes unbound (especially for Mode 4), which means they can still put in place barriers to the movement of natural persons. CARICOM negotiators should ask for commitments to be bound with no barriers.
- Negotiators should request that Contractual Service Suppliers (not just professional services but a wide range of services that CARICOM may supply) be granted access to US and Canadian markets. This kind of supplier does not require association with mode 3 or any commercial presence.

- Negotiators should ask for the removal of subtle barriers such as those requiring local in-country experience or those that seem discriminating against people from the Caribbean because of social and other problems with which applicants are not in anyway connected (drug trafficking and violence).
- Negotiators should bear in mind the fact that there is a perception amongst some Regional service providers that there will be no significant demand to enter the US and Canadian markets, at least in the short-term, because of the costs associated with distance and unfamiliarity. However, this is not likely to be reciprocated by service providers from the US and Canada who will not find these costs such a deterrent and will attempt to exploit opportunities in CARICOM markets thereby crowding out local service providers.³² There are signs that this process has already started, for example, in Barbados where a Canadian engineering firm has bought out a local firm and is competing with local service providers by undercutting their prices.
- Since CARICOM service providers have not made commitments in numerous service areas because of lack of resources and organisation, amongst other factors, negotiators should encourage greater regional coordination in these sub-sectors just in case developed countries apply economic or other pressures. However, they still should not rush to make commitments until the benefits and costs are clear.
- Given that CARICOM countries have started the WTO negotiations as individual states, the negotiators must ensure that the USA and Canada do not succeed in using “divide and conquer” tactics by promising favours to certain states in order to make them adopt certain positions.

CARICOM negotiators should request special and differential treatment for all service sectors based on the Region’s vulnerability (smallness, few economies of scale, openness, lack of trained resources and susceptibility to natural disasters). Special and differential treatment requests should include:

- longer time periods to prepare our service sub-sectors and providers in terms of getting the qualifications and knowledge necessary to be internationally competitive
- financial and technical assistance to train and develop Regional service providers and telecommunications and other infrastructure
- the invoking of the “Enabling Clause”- allowing CARICOM to negotiate as a group and have special arrangements amongst themselves that are not extended to stronger trading partners (no MFN treatment)

In the mean time CARICOM countries should be strongly encouraged to become more efficient and more compliant with international training and standards.

³² These opinions are based on an interview with the President of the Barbados Coalition of Service Industries

Appendix

Appendix 1: Definition of Services Listed on the WTO Website

Business and professional services

Accountancy services - The sector includes accounting, auditing and bookkeeping services.

Advertising services - The sector includes sale or leasing of advertising space or time; planning, creating and placement services of advertising; outdoor and aerial advertising and delivery of samples and other advertising materials.

Architectural and engineering services - The sector includes work by engineering firms to provide blueprints and designs for buildings and other structures and by engineering firms to provide planning, design, construction and management services for building structures, installations, civil engineering work and industrial processes.

Computer and related services - This sector includes consultancy services related to the installation of computer hardware, software implementation services, data processing services, and database services.

Legal services - The sector includes advisory and representations services for host country law, home country and/or third country law, international law, legal documentation and certification, other advisory and information services.

Communication services

Audiovisual services - The sector includes motion picture and videotape production and distribution services, motion picture projection services, radio and television services, radio and television transmission services, sound recording.

Postal and courier, express mail services - The sector includes postal services related to letters consisting of pick-up, transport and delivery services of letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matter whether for domestic or foreign destinations; postal services related to parcels consisting of pick-up, transport and delivery of parcels and packages whether for domestic or foreign destinations; post

office counter services rendered at counters (sales of stamps etc); other postal services such as mailbox rental.

Telecommunications – There are two types of telecommunications services 1) basic and 2) value-added

Basic telecommunications include all telecommunication services, both public and private that involve end-to-end transmission of customer supplier information for example, simply the relay of voice or data from sender to receiver;

Basic telecommunication services are provided:

- through cross-border supply
- and through the establishment of foreign firms or commercial presence, including the ability own and operate independent telecom network infrastructure

Examples of basic telecommunication services:

- (a) Voice telephone services
- (b) Packet-switched data transmission services
- (c) Circuit-switched data transmission services
- (d) Telex services
- (e) Telegraph services
- (f) Facsimile services
- (g) Private leased circuit services
- (o) Other
 - Analog/digital cellular/mobile telephone services
 - Mobile data services
 - Paging
 - Personal communications services
 - Satellite-based mobile services (incl. e.g. telephony, data, paging, and/or PCS)
 - Fixed satellite services
 - VSAT services
 - Gateway earthstation services
 - Teleconferencing
 - Video transport
 - Trunked radio system services

Categories covered by basic telecommunication commitments, unless otherwise specified

- local
- long distance
- international
- wire-based (including, e.g. all types of cables and, usually, radio portions of fixed infrastructure)

- radio-based (all forms of wireless, including satellite)
- on a resale basis (non-facilities based supply)
- facilities-based supply
- for public use (i.e., services that must be made available to the public generally)
- for non-public use (e.g. services provided for sale to closed user groups)

Value-added telecommunication services

Value-added telecommunication services are telecommunications for which suppliers “add value” to the customer’s information by enhancing its form or content or by providing for its storage and retrieval.

Examples:

- on-line data processing
- on-line database storage and retrieval
- electronic data interchange
- email
- voice mail

Construction and related services - The sector, distinct from architectural and engineering services, includes construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work.

Distribution services - The sector includes commission agents' services, wholesale trade services, retailing services and franchising.

Educational services - The sector includes primary, secondary, post-secondary and adult education services, as well as specialized training such as for sports.

Energy services – Exploration, drilling, extraction, pipeline construction, oil & gas transmission & distribution, operation of power tools, energy trading & brokerage, energy management

Environmental Services- includes sewage services, refuse disposal services, sanitation and similar services, cleaning of exhaust gases, noise abatement services, nature and landscape protection services

Financial services – banking and insurance services, including lending and deposit taking and other foreign currency transactions

Health and social services - includes hospital services, services delivered under the direction of medical doctors chiefly to in-patients aimed at curing, reactivating and/or maintaining the health status; other human health services, ambulance services, residential health facilities services other than hospital services; social services with or without accommodation. The definition of health-related and social services does not

include medical and dental services, veterinary services and the services provided by nurses, midwives etc., which have been grouped separately under professional services.

Tourism services - includes services provided by hotels and restaurants (including catering), travel agencies and tour operator services, tourist guide services and other related services.

Transport services

Air transport - focusing on aircraft repair and maintenance services, computer reservation services, selling and marketing of air transport services.

Maritime transport - access to and use of port facilities; auxiliary services; and ocean transport.

Services auxiliary to all modes of transport - includes cargo handling services, storage and warehouse services, freight transport agency services including other auxiliary transport services, and other supporting and auxiliary transport services (freight brokerage services; bill auditing and freight rate information services; transportation document preparation services; packing and unpacking services; freight inspection, weighing and sampling services; and freight receiving and acceptance services).

Appendix 2: U.S. Visas for Temporary Workers

CLASSIFICATIONS

The Immigration and Nationality Act provides several categories of nonimmigrant visas for a person who wishes to work temporarily in the United States. There are annual numerical limits on some classifications which are shown in parentheses.

H-1B classification applies to persons in a specialty occupation which requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. This classification requires a labor attestation issued by the Secretary of Labor (65,000). This classification also applies to Government-to-Government research and development, or coproduction projects administered by the Department of Defense (100).

H-2A classification applies to temporary or seasonal agricultural workers.

H-2B classification applies to temporary or seasonal nonagricultural workers. This classification requires a temporary labor certification issued by the Secretary of Labor (66,000).

H-3 classification applies to trainees other than medical or academic. This classification also applies to practical training in the education of handicapped children (50).

L classification applies to intracompany transferees who, within the three preceding years, have been employed abroad continuously for one year, and who will be employed by a branch, parent, affiliate, or subsidiary of that same employer in the U.S. in a managerial, executive, or specialized knowledge capacity.

O-1 classification applies to persons who have extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievements in the motion picture and television field.

O-2 classification applies to persons accompanying an O-1 alien to assist in an artistic or athletic performance for a specific event or performance.

P-1 classification applies to individual or team athletes, or members of an entertainment group that are internationally recognized (25,000).

P-2 classification applies to artists or entertainers who will perform under a reciprocal exchange program.

P-3 classification applies to artists or entertainers who perform under a program that is culturally unique (same as P-1); and

Q-1 classification applies to participants in an international cultural exchange program for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien's home country.

PETITIONS

In order to be considered as a nonimmigrant under the above classifications the applicant's prospective employer or agent must file Form I-129, Petition for Nonimmigrant Worker, with the United States Bureau of Citizenship and Naturalization Services in the Department of Homeland Security (BCIS). Once approved, the employer or agent is sent a notice of approval, Form I-797. It should be noted that the approval of a petition shall not guarantee visa issuance to an applicant found to be ineligible under provisions of the Immigration and Nationality Act.

VISA INELIGIBILITY/WAIVER

The nonimmigrant visa application Form DS-156 list classes of persons who are ineligible under U.S. law to receive visas. In some instances an applicant who is ineligible, but who is otherwise properly classifiable as a temporary worker, may apply for a waiver of ineligibility and be issued a visa if the waiver is approved.

APPLYING FOR THE VISA

Applicants for temporary work visas should generally apply at the American Embassy or Consulate with jurisdiction over their place of permanent residence. Although visa applicants may apply at any U.S. consular office abroad, it may be more difficult to qualify for the visa outside the country of permanent residence.

Required Documentation

Each applicant for a temporary worker visa must pay a nonrefundable US\$100 application fee and submit:

- 1) An application Form DS-156E, completed and signed. Blank forms are available without charge at all U.S. consular offices;
- 2) A passport valid for travel to the United States and with a validity date at least six months beyond the applicant's intended period of stay in the United States. If more than one person is included in the passport, each person desiring a visa must make an application;
- 3) One photograph 1 and 1/2 inches square (37x37mm) for each applicant, showing full face, against a light background; and
- 4) A notice of approval, Form I-797.

Other Documentation

With the exception of the H-1 and L-1, applicants may also need to show proof of binding ties to a residence outside the United States which they have no intention of abandoning. It is impossible to specify the exact form the evidence should take since applicants' circumstances vary greatly.

U.S. PORT OF ENTRY

Applicants should be aware that a visa does not guarantee entry into the United States. The U.S. Bureau of Citizenship and Naturalization Services in the Department of Homeland Security (BCIS) has authority to deny admission. Also, the period for which the bearer of a temporary work visa is authorized to remain in the United States is determined by the BCIS, not the consular officer. At the port of entry, a BCIS official

validates Form I-94, Record of Arrival-Departure, which notes the length of stay permitted. Those temporary workers who wish to stay beyond the time indicated on their Form I-94 must contact the BCIS to request Form I-539, Application to Extend Status. The decision to grant or deny a request for extension of stay is made solely by the BCIS.

ADDITIONAL INFORMATION

Family Members

With the exception of "Q-1 Cultural Exchange Visitors," the spouse and unmarried, minor children of an applicant under any of the above classifications may also be classified as nonimmigrants in order to accompany or join the principal applicant. A person who has received a visa as the spouse or child of a temporary worker may not accept employment in the United States. The principal applicant must be able to show that he or she will be able to support his or her family in the United States.

Time Limits

All of the above classifications have fixed time limits in which the alien may perform services in the United States. In some cases those time limits may be extended by the BCIS in order to permit the completion of the services. Thereafter, the alien must remain abroad for a fixed period of time before being readmitted as a temporary worker under any classification. The BCIS will notify the petitioner on Form I-797 whenever a visa petition, an extension of a visa petition, or an extension of stay is approved under any of the above classifications. The beneficiary may use a copy of Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The approval of a permanent labor certification or the filing of a preference petition for an alien under the H-1 or L classifications shall not be a basis for denying a visa.

*Source: Visa Services, State Department
November 2002*

Appendix 3: Entry Requirements for Canada

Citizens of the following countries require a visa:

Required by all except the following:

- (a) nationals of EU countries, Australia, Canada, Japan and US
- (b) nationals of Andorra, Antigua & Barbuda, Bahamas, Barbados, Botswana, Brunei, Costa Rica, Cyprus, Dominica, Grenada, Hong Kong (SAR), Hungary, Iceland, Israel (blue passports), Kiribati, Korea (Rep. of), Liechtenstein, Malaysia, Malta, Mexico, Monaco, Namibia, Nauru, New Zealand, Norway, Papua New Guinea, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Samoa, San Marino, Saudi Arabia, Singapore, Slovenia, Solomon Islands, Swaziland, Switzerland, Tuvalu, Vanuatu, Vatican City and Zimbabwe;
- (c) those visiting Canada who, during that visit, also visit the USA or St Pierre & Miquelon (a French Overseas Territory) and return directly to Canada as visitors within the period authorized on their initial entry (or any extension thereto).

Citizens of the following countries require a passport:

Passport valid for at least 1 day beyond the intended departure date from Canada required by all except the following:

- (a) Canadian citizens holding a Canadian Certificate of Identity, Canadian birth certificate or a certificate of Canadian citizenship;
- (b) permanent residents of Canada with proof of status, i.e. Permanent Resident Card, Record of Landing, Returning Resident Permit (IMM 1288) or a Refugee Travel Document issued by the Government of Canada to refugees who have been resettled in Canada;
- (c) Convention Refugees and Members of Designated Classes who have been accepted for resettlement in Canada and are in possession of valid and subsisting Canadian Immigrant Visas (IMM 1000) where the immigrant category is coded CR or DC;
- (d) citizens of the USA holding proof of citizenship (e.g. US birth certificate or US naturalization papers);
- (e) persons entering from St Pierre & Miquelon or the USA who are legal permanent residents of the USA and hold a US alien registration card (Green Card);
- (f) citizens of France who are residents of and entering from St Pierre & Miquelon;
- (g) nationals who are residents of and entering from Greenland.

Note:

Identity/travel documents issued to non-national residents of the country of issue, refugees or stateless persons are recognized for travel to Canada.

Interns: When doing an internship in Canada, a work permit is required.

Documents required for a visa

- (a) Valid passport.
- (b) Proof of immigration status in country of residence.

- c) Application form.
- (d) 2 passport-size photos.
- (e) Proof of sufficient funds for length of stay (this may entail providing a letter from one's employer, mortgage statements or bank statements or letter of invitation from a Canadian resident).
- (f) Private medical insurance.
- (g) Evidence of employment (in some cases).
- (h) Details of travel plans.

Time required for visa: 6-10 days

Note:

If submitting a postal application, payment must be in the form of a bank draft in Canadian Dollars payable to the Receiver General of Canada. Temporary residence: A work permit is required for temporary residence in Canada.

Persons who wish to proceed to Canada for the purposes of study or temporary employment should contact the nearest Canadian High Commission, Embassy or Consulate, as authorization is normally required prior to arrival.

Those taking up temporary employment will require an Employment Authorization, for which a fee is charged. Persons going for study purposes must obtain a Student Authorization; a charge is made for this service

Costs of visa

Visitor:

Can\$75 (approximately £33) for a single entry;
Can\$150 (approximately £67) for multiple entries.

Transit:

Necessary for all nationals who require a Visitor visa.

Although British citizens do not require Transit visas, foreign nationals with British passports may require them; check with the Embassy or High Commission for details.

Validity of visas

Up to 6 months depending on circumstances of individual applicant.

The determination regarding length of stay in Canada can only be decided by the examining officer at the port of entry. If no actual departure date is indicated within the visitor's passport, then the visitor will be required to depart **within 3 months** from the date of entry. Visitors must effect their departure from Canada on or before the date authorized by the examining officer on arrival. If an extension of stay is desired, an application must be made in writing to the nearest Canada Immigration Centre well before the expiry of the visitor visa.

Restricted entry and transit:

The Government of Canada refuses admission to holders of passports, identity or travel documents issued by Bophuthatswana, Ciskei, Transkei, Venda or the Palestine

government.

Note:

(a) Visitors to Canada must satisfy an examining officer at the Port of Entry that they are genuine visitors and have sufficient funds to maintain themselves during their stay in Canada and to return to their country of origin, as well as evidence of confirmed onward reservations out of Canada. Persons under 18 years of age who are unaccompanied by an adult should bring with them a letter from a parent or guardian giving them permission to travel to Canada.

(b) Passport and visa regulations are subject to change at any time; it is advisable to check with the nearest Canadian Consulate, Embassy or High Commission prior to travel.

Appendix 4: List of Persons Contacted or Interviewed

Organization	Position
1. Caribbean RNM	R. Chaitoo, Services Negotiator
2. CARICOM Secretariat	T. Odle, Services Specialist
3. Barbados Coalition of Services Industries	G. Phillips, President
4. Barbados Coalition of Services Industries	L. Eastmond, Vice-President
5. International Business Unit, Ministry of Economic Development	C. Wharton, Officer
6. U.S. Coalition of Services Industries	R. Vastine, President
7. American Bar Association	P. Ehrenhaft, Chairman
8. Ministry of Foreign Affairs and Foreign Trade, Jamaica	G. Mathurin, Ambassador
9. Ministry of Foreign Affairs and Foreign Trade, Jamaica	W. McCook, Senior Director Foreign Trade
10. Ministry of Foreign Affairs and Foreign Trade, Jamaica	E. Reid, Trade Officer
11. Ministry of Foreign Affairs and Foreign Trade, Jamaica	A. Morris, Trade Officer
12. Canadian High Commission, Jamaica	R. Farrell, Commercial Counselor
13. Private Sector Organisation of Jamaica	G. Bogues, Executive Director
14. Private Sector Organisation of Jamaica	Marlene Parker, Services
15. Jamaican Embassy, Washington D.C.	C. Rattray, Deputy
16. JAMPRO	B. Josephs, Director Media Services
17. Jamaican Consulate, Miami	R. Allicock, Consular General
18. Jamaican Trade Mission, Toronto	S. Girvan-Campbell, Trade Commissioner
19. CBU	P. Cozier, Secretary general
20. RJR Group (Media), Jamaica	L. Spauldings, CEO
21. CARIMAC, University of the West Indies	Dr. A. Brown, Chairman
22. Mona Institute of Technology, UWI	C. Samuels, President
23. Chamber of Commerce, Trinidad & Tobago	Larry Placide, President
24. Ministry of Trade, Trinidad & Tobago	J. Charles, Trade specialist
25. Jamaican Gleaner	K. Cooper, Head of Overseas Division
26. OECS Secretariat	V. Paul, Common Market Affairs Officer and Services Specialist
27. Jamaica Dental Association	H. Lawson-Myers, President
28. Jamaican Bar Association	C. Miller, Attorney-at-Law
29. School of Architecture, U-Tech, Jamaica	N. Isaacs, President
30. A. Phidd & Associates, New York	A. Phidd, President
31. Jamaican Association of General Insurance Companies	E. Thwaites, President