

**UNDERSTANDING CARIFORUM'S COMMITMENTS ON
TRADE IN SERVICES & INVESTMENT:
HOW TO READ A SCHEDULE**

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The following step-by-step guide is intended to assist people to interpret a country's trade in services commitments as set out in schedules of commitments to the General Agreement on Trade in Services (GATS) at the WTO and under the CARIFORUM-EC EPA. Trinidad and Tobago is used as the exemplar.

The Importance of Schedules

To understand what binding commitments a government has made under a trade in services agreement it is necessary to look in several places. The main text contains the rules that apply to services. Some rules apply across the board. Others apply only to sub-sectors that a party has agreed to bring under the rules; these are usually the rules that guarantee not to restrict access of foreign service suppliers to a country's market and the rules that guarantee not to discriminate between local and foreign services and suppliers (known as national treatment). Each party will set out which sectors are subject to those rules in its schedule of commitments.

Schedules set out the bottom line to which governments are committed. They can offer more liberal terms, for example for foreign investors or entry of natural persons to deliver a service. But they cannot offer less.

The difference between a Positive and Negative List approach to Schedules

A schedule of commitments can be set out in several different ways. The approach used in the GATS is known as a positive list approach. The same has been followed in some free trade agreements (FTAs or EPAs), but some others use a 'negative list' approach. The CARIFORUM EC EPA uses a combination of positive and negative lists. The US FTAs only use a negative list, and Canada tends to do the same.

In a positive list schedule a party sets out the sectors it has agreed will be covered by the relevant rules. If a sector is not stated, it is not subject to those rules. Usually there is also scope for the government to list limitations on the extent to which a subsector is covered.

In a negative list schedule a party states those sectors or measures that are *not* subject to the relevant rules. If a sector, activity or measure is not listed, then it is automatically covered (unless it has been excluded in the text itself). Negative list schedules usually mean a lot more is covered because the government must identify all sectors, activities or measures that it might want to use in the future (the 'crystal ball' problem) even for new services, forms of investment or technologies that are as yet unknown.

THE GATS 1994

The GATS follows a positive list approach, with one exception.

Exceptions to Most Favoured Nation Treatment

There is a basic GATS rule that prevents a WTO member from treating one country better than the other members (known as Most Favoured Nation or MFN treatment). When the GATS was first signed, each WTO Member was allowed to lodge exceptions to this rule. These exceptions are supposedly temporary and apply for a maximum of 10 years, but in practice many of them are indefinite. The MFN schedule is very simple. Trinidad and Tobago has only two entries:

Sector or subsector	Description of measure indicating inconsistency with MFN	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Maritime Transport	Cargo reservations under the UN Code of Conduct on Liner Conferences	Signatories to the Code	Unlimited	Trinidad and Tobago is a party to the Code
All sectors	Bilateral investment promotion and protection treaties	Co-signatories to existing and future treaties	Unlimited	Privileges accorded to signatories only

It is unusual for schedules of MFN exceptions to be include in FTAs, except for those with the US.

Positive list schedules of sectoral commitments

In the GATS, the core rules on market access and national treatment only apply to sectors that are positively committed in a country's schedule. The basic structure of a WTO Member's GATS schedule of sectoral commitments looks like this:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments

The sector or subsector that has been committed is listed in the left column. Once a sector is listed in that column it is assumed that both the market access and national treatment rules of the GATS apply to it in full, unless the next two columns state otherwise.

In the next two columns headed '**limitations on ...**' a country lists whether it is limiting its commitments for the specific sector or subsector in relation to either market access or national treatment.

The final column is used to list additional commitments, eg to privatize where a country has promised to do so as part of the price of joining the WTO. It is also where a member would note that it is adopting the voluntary pro-market approach to regulation and competition in telecommunications called the Reference Paper on Basic Telecommunications, or the voluntary Understanding on Financial Services. T&T has a separate schedule that sets out its telecommunications commitments, including to the Reference Paper.

Sectoral commitments by each ‘mode’

The GATS recognizes four ‘modes’ of trading in services: 1) across the border (eg internet), 2) consumption abroad (eg a tourist); 3) Establishing a commercial presence (foreign direct investment); 4) temporary presence of a natural person to deliver a service. Governments can make different levels of commitment for each mode, in relation to each of the market access and national treatment rules.

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
	(1) (2) (3) (4)	(1) (2) (3) (4)	

Different entries under the numbers 1–4 indicate the approach the government is taking to each of the four ‘modes of supply’ for each service (eg. to allow mode 3: foreign investment, but not mode 1 internet supply).

Horizontal limitations that apply to all sectors

Where a government will want to repeat the same limitation for most or all sectors it is simpler to set it out at the beginning of the schedule. This is known as the ‘horizontal’ section of the schedule. It follows the same structure as set out above. These are the horizontal entries in T&T’s GATS 1994 schedule:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
All sectors included in this schedule	3) A licence is required for the acquisition of land, the area of which exceeds five acres for trade or business or one acre for residential purposes.		
	A licence is required for the acquisition of shares in a local public company where the holding of such shares either directly or indirectly results in 30 per cent or more of the total cumulative shareholding of the company being held by foreign investors.		
	A foreign investor wishing to invest in Trinidad and Tobago must register with the Registrar of Companies.		
	4) The entry and residence of foreign natural persons is subject to Trinidad and Tobago's Immigration Laws.		
	The employment of foreign		

	<p>natural persons in excess of thirty days is subject to the obtention [sic] of a work permit, which is granted on a base-by-case basis.</p> <p>Foreign natural persons shall be employed only as managers, executives, specialists and experts.</p>		
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The word ‘commitments’ for the heading of the horizontal section is slightly confusing, as this part of the schedule can list either **limitations** or **commitments** that apply across the board.

Defining Sectors and Sub-sectors

It is essential that the government making the commitment and the other parties to the agreement are clear about the definition of the service subsector that is being committed in the schedule. ‘Services Sectoral Classification List’ (1991) was used for composing schedules of commitments in the GATS. This document is often referred to as ‘W/120’ (see the end of this guide). It has 12 major headings of service sectors:

1. Business services
2. Communications services
3. Construction and related engineering services
4. Distribution services
5. Education services
6. Environmental services
7. Financial services
8. Health-related and social services
9. Tourism and travel-related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not provided elsewhere

This list is broken down into more than 160 sub-sectors that are also set out in W/120.

The heading under which a service is described in W/120 may not be obvious because the classification reflects the commercial activity of the suppliers, not the way that users or communities might view the service. A midwife comes under a business service; cruise ships are under maritime transport; television comes under communication services, supermarkets are a retail distribution service, etc.

Each GATS sector and sub-sector in the W/120 document has a corresponding ‘CPC’ number. This number refers to the internationally recognized United Nation’s Central Product Classification (CPC) and is based on the Provisional CPC (CPCprov) list, which dates back to 1989.

Unfortunately, the main sectoral headings in the W/120 document are not the same as those used in the CPC. It is necessary to go beyond W/120 and look up the UN’s CPC list to find out which services activities are included under those numbers:

<http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>

The main CPC classification of a service has just two numbers, which is broken down into progressively more specific descriptions identified by three, four or five numbers. Each of these four or five digit classifications usually has a more detailed explanatory note of what is covered. For example, T&T's schedule includes the W/120 heading Health-Related Services and a commitment in the sub-sector Hospital Services denoted by CPC 9311:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
8.HEALTH-RELATED SERVICES			
Hospital Services (9311)			

To find out what exactly CPC 9311 covers it is necessary to go to the UNCPC webpage and dig down several layers, starting with the first digit '9':

Hierarchy

Section: 9 - Community, social and personal services

Division: 93 - Health and social services

Group: 931 - Human health services

Class: 9311 - Hospital services

Subclass: 93110 - Hospital services

Explanatory note

Services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services, etc.

Exclusions: Services delivered by hospital out-patient clinics are classified in subclass 93121 (General medical services) or 93122 (Specialized medical services).

Dental services are classified in subclass 93123.

Ambulance services are classified in subclass 93192.

The UN CPC list has been revised twice since the W/120 document was drawn up in 1991, in 1997 and 2002. These later lists reflect the emergence of new services and the different ways in which they can be delivered. However, W/120 has not been updated to avoid the confusion of GATS schedules that use several different classifications systems. The EPA uses a mixture of UNCPC Prov 1 and more recent versions.

How Commitments are recorded

A full commitment

When a country does not wish to limit or restrict market access or national treatment

in a sector or subsector in any of the four modes of supply it uses the word ‘NONE’, which indicates that there are ‘no limitations’.

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
8.HEALTH-RELATED SERVICES			
Hospital Services (9311)	(1) <i>None</i> (2) <i>None</i> (3) (4)	(1) <i>None</i> (2) <i>None</i> (3) (4) <i>None</i>	

A full commitment using ‘NONE’ means the country cannot restrict access to its market for foreign suppliers who want to supply any aspect of CPC9311 through modes 1 and 2 by using any of the market access measures that are specifically prohibited; nor can it discriminate in favour of its own service providers. It also promises not to discriminate against foreign individuals who enter the country temporarily to supply hospital services (mode 4).

It is important to check whether there are any ‘horizontal limitations’ that apply to these commitments. For example, the horizontal section might restrict the categories of people who are allowed temporary entry under mode 4. To avoid confusion about horizontal limitations it is usual to say that the particular mode is ‘UNBOUND, except as provided in the horizontal commitments’.

However, T&T did not do this for mode 4 anywhere in its GATS schedule and simply used the word ‘NONE’. That could be interpreted to mean that the restriction in the horizontal section does not apply for hospital services or any other sector where ‘NONE’ is used – even though that would make the mode 4 entry in the horizontal section pretty meaningless. These kinds of inconsistencies were not uncommon in 1994. When T&T drafted its EPA schedule, it seems to accept that the horizontal limitation does not apply, as the only mode 4 limitation for hospital services requires foreign individuals entering T&T to deliver the service to meet certification and registration requirements:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
8.HEALTH-RELATED SERVICES			
Hospital Services (9311)	(1) <i>None</i> (2) <i>None</i> (3) <i>Unbound</i> (4) <i>None (Registration & Certification)</i>	(1) <i>None</i> (2) <i>None</i> (3) <i>Unbound</i> (4) <i>None</i>	

Commitments with limitations

If a country wants to commit to a sector to the GATS rules, but only under certain circumstances or in a particular way, it needs to spell out very clearly the limitations that it wants to maintain. A different example from T&T's GATS schedule is used to show how this might operate (although the wording is again unorthodox):

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
9. TOURISM & TRAVEL-RELATED SERVICES			
Tour operators (7471)	(1) None (2) None (3) Inbound passengers only (4) None	(1) None (2) None (3) Inbound passengers only (4) None	

In this case T&T is fully committed to apply the market access and national treatment rules in the tour operators sector (look up CPC7471 to see what that actually covers) for all four modes of supply, except that foreign investors are guaranteed the right to establish a commercial entity that supplies tour operator services for inbound passengers only.

No commitments in a sector or subsector

Under a positive list approach, there are four ways that a country can *not* make a commitment in a sector or subsector.

First, when a government wants to exclude a whole sector from the schedule it simply makes no reference to that sector in its schedule.

Second, when a government wants to exclude one or more sub-sectors from the broader sector it can either state that the sectoral commitment does not include those subsectors, or specify the subsectors that are covered (either in words or by referring to the CPC number). A hypothetical example is used here to exclude laboratory testing from hospital services:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
8.HEALTH-RELATED SERVICES			
Hospital services (9311) (except laboratory testing)	(1) None (2) None (3) Unbound (4) None (Registration & Certification)	(1) None (2) None (3) Unbound (4) None	

Third, a country may make a commitment in only some of the modes of supply or only for market access or national treatment, not both. In order to make this clear the word UNBOUND is entered in the relevant columns. 'Unbound' is used because commitments are often referred to as 'bindings' - they bind the country under the

agreement. UNBOUND in a mode therefore indicates that no binding commitments are being made and the country remains free to introduce regulations and laws that are inconsistent with the particular rules for that mode.

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
8.HEALTH-RELATED SERVICES			
Hospital services (9311)	(1) None (2) None (3) Unbound (4) None (Registration & Certification)	(1) None (2) None (3) Unbound (4) None	

In this example, the government has not bound itself to allow foreign investors to establish themselves in T&T to supply hospital services or guaranteed that those who do establish a commercial presence will be treated as favourably as locals, eg by access to subsidies.

The fourth basis on which a country might make no commitment is that it is technically not feasible to supply the service in a particular mode. This is most common for cross-border supply (mode 1). In this situation the country enters UNBOUND* (and the asterisk refers to a footnote explaining that it is “due to lack of technical feasibility”). However, new technologies are arriving all the time. What was not considered technically feasible 10 years ago often can be supplied by remote delivery now.

EPA SCHEDULES

The structure of the EPA and its schedules is different from the GATS. That makes it hard to be precise about how countries' EPA commitments relate to the GATS. Other FTAs, eg with Canada or the US, are likely use a different approach again.

The text of the CARIFORUM-EC EPA requires three separate schedules for:

- commercial presence (foreign investment in services (mode 3) plus non-services) under Title II Chapter 2;
- cross border supply (modes 1 and 2) under Title II Chapter 3; and
- temporary presence of natural persons for business purpose (a more restricted version of mode 4) under Title II Chapter 4.

The EPA text specifies a positive list approach for the schedules on commercial presence and cross border supply. However, it effectively requires a negative list for the temporary movement of business personnel. It has split this into two: Annex 4:III on 'key personnel and graduate trainees' is tied to the parties' schedules on commercial presence and cross border supply; Annex IV covers contract service suppliers and independent professionals and is limited to the occupations specified by the EU in Article 83 of the EPA text.

The EPA schedules are also confusing because they use a combination of W/120, more recent CPCs and another list called ISICRev 3.1,¹ which overlap and contain some inconsistencies. This makes it especially difficult to cross-reference between EPA and GATS schedules.

Finally, there is an introductory commentary to each schedule that contains important qualifications on what is covered. It is essential to read this explanatory note carefully before looking at the table.

The EU's schedules on commercial presence and cross-border supply

The EU followed the approach set out in the EPA text, so the schedules for commercial presence (Annex 4: I) and cross-border supply (Annex 4: II) use a positive list approach, meaning they only apply to the sectors and subsectors that are specified.

Because the separate schedules correlate to the various GATS modes, there is no reference to modes 1-4 in these schedules. The explanatory note makes it clear that these commitments and reservations only apply to the market access and national treatment rules that are cross-referenced to the schedules in the EPA text. It also reiterates that subsidies are excluded from coverage (as per Article 60(3)).

Each of these two schedules has a horizontal section and sector specific entries. The EC can enter reservations that apply to all Member States. Each EU member state can

¹ <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=17>

also enter its own reservations. For example, the horizontal section of the EU's schedule on commercial presence includes:

Sector or Sub-sector	Description of Reservations
ALL SECTORS	AT, BG, CY, CZ, DK, EE, ES, EL, FI, HU, IE, IT, LT, LV, MT, PL, RO, SI, SK: Limitations on acquisition of land and real estate by foreign investors

The EU's schedules on Temporary Movement of People for Business Purpose

The EU's two schedules for temporary movement of people apply only to the categories of persons stated in Article 80 of the EPA text. Those categories are key personnel, graduate trainees, business services sellers, contractual services suppliers, independent professionals and short-term visitors for business purposes. However, there is no schedule for short-term visitors as the obligation under Article 84 only requires EU states to make 'best endeavours' to allow entry on the terms it describes.

Annex 4: III. There is presumption that T&T investors in Europe and suppliers of services across the border into Europe can employ their nationals as key personnel and graduate trainees in those sectors that the EC has committed under 'commercial presence' and cross-border supply. (The same applies for EU investors and cross-border service suppliers in T&T.) However, that right is subject to any reservations listed in Annex 4.III.

In other words, this is a negative list approach that is linked to each party's schedule on commercial presence and cross-border supply. So the first step for T&T is to look at the EC's commitments on commercial presence and cross border supply and any reservations that are EC-wide or by individual states. That defines the scope of the commitments on movement of key personnel, business trainees and business visitors. The next step is to see if any Member States have made reservations at either the horizontal or sectoral levels in their schedule for business personnel. If they have not, then there are full rights of entry on the terms set out in the text, but only for the sectors on which the particular EU Member State has made a commercial presence or cross border supply.

The schedule on contractual service suppliers and independent professionals (Annex 4: IV) applies only to those categories that the EU has set out in Article 83. The explanatory note defines the main criteria for an economic needs test where that is referred to in a reservation.

Both schedules follow a similar format. The EC and individual states can make reservations at the horizontal level, eg.

Sector or subsector	Description of reservations
ALL SECTORS	<p>AT: Managing directors of branches of juridical persons have to be resident in Austria; natural persons responsible within a juridical person or a branch for the observance of the Austrian Trade Act must have a domicile in Austria.</p> <p>FI: A foreigner carrying on trade as private entrepreneur needs a trade permit and has to be permanently resident in the EC. For all sectors, except telecommunications services, nationality condition and residence requirement for the managing director of</p>

	<p>a limited company. For telecommunications services, permanent residency for the managing director.</p> <p>FR: The managing director of an industrial, commercial or artisanal activity, if not holder of a residence permit, needs a specific authorisation</p> <p>RO: The majority of the commercial companies' auditors and their deputies shall be Romanian citizens</p> <p>SE: The managing director of a juridical persons or a branch shall reside in Sweden</p>
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This is followed by sector specific entries, again relating to the EC or individual Member States, eg.

<p>h) Medical (including psychologists) and Dental services (CPC 9312 and part of CPC 85201)</p>	<p>CZ, IT, SK: Residence requirement</p> <p>CZ, EE, RO, SK: Authorization by the competent authorities required for foreign natural persons.</p> <p>BE, LU: For graduate trainees, authorization by the competent authorities required for foreign natural persons</p> <p>BG, CY, MT: Condition of nationality</p> <p>DE: Condition of nationality which can be waived on an exceptional basis in cases of public health interest</p> <p>DK: Limited authorization to fulfil a specific function can be given for maximum 18 months and requires residence.</p> <p>FR: Condition of nationality. However, access is possible within annually established quotas.</p> <p>LV: Practice of medical profession by foreigners requires the permission from local health authority, based on economic needs for medical doctors and dentists in a given region.</p> <p>PL: Practice of medical profession by foreigners requires the permission. Foreign medical doctors have limited election rights within the professional chambers</p> <p>PT: Residence requirement for psychologists.</p>
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CARIFORUM'S SCHEDULES

Even though the EPA text said there should be separate schedules for chapters 2, 3 and 4, the CARIFORUM states continued with the approach they had used in their GATS schedules, which covers everything except for non-services investment. This was probably a practical attempt to reduce the workload.

As a result, all the CARIFORUM's Title II commitments are contained in two schedules: Annex 4: VI deals with services from modes 1 to 4, as with the GATS; Annex 4: V covers non-services investments.

As with the EU, each CARIFORUM state could enter its own commitments and limitations. Limitations could also be made at the CARIFORUM level.

The classification system for the services schedule used to identify subsectors is also based on the W/120 categories, but is supplemented in several places by sub-sectors that had no external reference to determine their meaning. The ISIC Rev 3. classification is used for the non-services investment Annex 4: V.

The number of sectors that CARIFORUM states have committed in the EPA far

exceeds the GATS, presumably as a consequence of the GATS Article V requirement that FTAs that are entered into by WTO Members should contain ‘substantial sectoral coverage’.

Explanatory Note TO CARIFORUM’S Services Schedule

The most important paragraph in the explanatory note to Annex 4: VI reads:

With regard to the economic activities covered in chapters 2 [commercial presence] and 3 [cross-border supply] of Title II on Investment, Trade in Services and E-commerce of this Agreement, other than public services, without prejudice to the content of the list of commitments on commercial presence and on cross-border supply in this Annex, *the signatory CARIFORUM States shall maintain the conditions of market access and national treatment* in the meaning of articles 6 and 7 and articles 15 and 16 *applicable according to their respective legislation* to services, service suppliers, investors and commercial presences of the EC Party *at the time of the signature of this agreement*.

This kind of commitment is known as a ‘standstill’ – all CARIFORUM states, including T&T, have promised never to make their policies or laws on market access and national treatment any more restrictive to EC service firms than they are now (unless they can rely on one of the limited exceptions in Part IV of the EPA). There explanatory note placed two limits on this commitment.

The first limit is that it does not apply for ‘public services’. Unfortunately that is a term that is never used in trade in services agreements and its scope definition would be vigorously disputed. The equivalent term in the text is services supplied in the exercise of governmental authority’ and does not extend to any service that is commercial or can be supplied in a competitive market.

The standstill commitment can also be limited by reservations in the CARIFORUM schedule.

In other words, no CARIFORUM state, including T&T, will be able to adopt new more restrictive laws or policies in the future that fall within the market access or national treatment rules, unless it can convince the EU that it is a ‘public service’ or it has explicitly reserved the right to do so in this schedule. This standstill applies even where a sector has not been explicitly committed.

The explanatory note contains several other contestable interpretations. For example, it notes that the schedule may not have referred to measures relating to qualification requirements and procedures, technical standards and licensing requirements; the EU has a similar note.

However, examples given by CARIFORUM include a ‘non-discriminatory requirement that certain activities may not be carried out in environmental protected zones or areas of particular historic and artistic interest’; that is incorrect, as the *US-Gambling* case decided that a ban equates to a zero quota and is government by rules on market access. This would apply even where the ban only applies to part of a

territory.

There is also potential for dispute over the statement in the explanatory note that these commitments cannot be construed as preventing any CARIFORUM state from regulating any sector or economic activity in order to meet ‘national policy objectives’. Article 60:4 in the EPA text refers to ‘legitimate policy objectives’.

The majority of the explanatory note explains how commitments on movement of business personnel are dealt with, as discussed below.

T&T’s EPA Services Schedule

The services commitments made by T&T in Annex 4: VI greatly expands on its GATS commitments.

The schedule has a horizontal section where each CARIFORUM state could enter its own horizontal reservations or commitments. T&T repeated the same horizontal restrictions on foreign investors in mode 3 that it used in the GATS. The mode 4 commitment changed the language to reflect the categories specified in Title II Chapter 4 of the EPA.

The example used hereto assist in interpreting the schedule is the subsector ‘Waste and Waste Water Management (CPC94090). Waste and waste water management is part of a raft of environmental services under 6. *Environmental Services* in the W/120 document that also includes sewage and refuse disposal, sanitation, and other environmental services. The related CPC numbers are listed in the UN classification as follows:

9. Community, Social and Personal Services

94 Sewage and refuse disposal, sanitation and other environmental protection services

940 Sewage and refuse disposal, sanitation and other environmental protection services

9401 - Sewage services*

9402 - Refuse disposal services

9403 - Sanitation and similar services

9404 - Cleaning services of exhaust gases

9405 - Noise abatement services

9406 - Nature and landscape protection services

9409 - Other environmental protection services n.e.c.

- Subclass: 94090 - Other environmental protection services not elsewhere classified

Explanatory note

Other environmental protection services not elsewhere classified, e.g. acidifying deposition ("acid rain") monitoring, controlling and damage assessment services.

The CPC code cross-references to an ISIC classification number: ISIC Rev.3 code(s) 9000. Even though the ISIC reference is not referred to in the T&T schedule it would be used to assist interpretation.

Hierarchy

Tabulation Category: 0 - Other community, social and personal service activities

Division: 90 - Sewage and refuse disposal, sanitation and similar activities

Group: 900 - Sewage and refuse disposal, sanitation and similar activities
Class: 9000 - Sewage and refuse disposal, sanitation and similar activities

Explanatory note

This class includes the collection of garbage, trash, rubbish and waste whether from households or from industrial or commercial units, its transportation and disposal by incineration or by other means, and the removal, whether via drains, sewers or by other means, of human waste products and their treatment and disposal. This involves also waste reduction, ash collection, the collection of refuse in litter boxes in public places, the removal of building debris, dumping of refuse on land or in water, burial or ploughing-under of refuse and storm sewerage, emptying and cleaning of cesspools and septic tanks, servicing of chemical toilets, dilution, screening and filtering, sedimentation, chemical precipitation, activated sludge treatment and other processes for sewage disposal and also the maintenance of sewers and drains. Also included are outdoor sweeping and watering of streets, paths, parking lots, etc., and snow and ice cleaning on highways (including spreading of salt or sand), airport runways, etc.

Exclusions: Pest control in connection with agriculture is classified in class 0140 (Agricultural and animal husbandry service activities, except veterinary activities). Recycling of waste is classified in the appropriate class of division 37 (Recycling). Collection, purification and distribution of water are classified in class 4100. Construction and repair of sewerage systems is classified in class 4520 (Building of complete constructions or parts thereof; civil engineering). Disinfecting and exterminating activities in buildings are classified in class 7493 (Building-cleaning activities).

T&T's EPA scheduled the following commitment on Waste & Waste Water Management. Unfortunately, the schedule contains an error, as T&T appears under two inconsistent entries. It is therefore not clear whether T&T intended to make a full market access commitment in mode 2 or leave it unbound, and more importantly whether it meant to allow foreign investors to establish only through a joint venture or with no restriction on its legal form. The more liberalizing of these entries will have legal effect.

Sector or sub-sector	Limitations on market access	Limitations on national treatment
Waste and Waste Water Management (CPC94090)	GRD, LCA, VCT, TTO: 1) Unbound; 2) <i>None</i> ; 3) <i>Joint venture required</i>	GRD, KNA, TTO: 1), 2) Unbound; 3) None
	KNA, TTO: 1), 2) <i>Unbound</i> ; 3) <i>None</i>	
	ATG, BEL, DOM, GRD, KNA, LCA, VCT, SUR, TTO: 4) Unbound except as indicated in the horizontal commitments	ATG, BEL, DOM, GRD, KNA, LCA, VCT, SUR, TTO: 4) Unbound except as indicated in the horizontal commitments

T&T's Mode 4 Commitments

There is no separate schedule for temporary movement of natural persons; it is covered by the horizontal and sectoral commitments and reservations for mode 4 in

Annex 4: VI. The explanatory note recognises the presumption mode 4 automatically covers all subsectors committed for mode 3 commercial presence (but does not refer to cross border supply), unless a reservation is made in the ‘temporary movement’ schedule. However, this right of temporary entry is limited by an economic needs test.

By contrast, commitments for contract service suppliers and independent professionals only apply where there is an entry in the schedule. (CARIFORUM did not set out in the EPA text which occupations were covered by these categories, as the EU did). Use of the word ‘none’ does not include contract service suppliers and independent professionals.

The main criterion that will be used where the right to apply an ‘economic needs test’ is reserved is ‘availability of persons with the requisite skills in the local labour market.’

The ‘standstill’ commitment in the explanatory note that prevents CARIFORUM states from introducing any less liberal measures only applies to commercial presence and cross border supply; it does not extend to movement of natural persons.

T&T has adapted the Mode 4 horizontal limitation from its GATS schedule:

The entry and residence of foreign natural persons is subject to Trinidad and Tobago's Immigration Laws. The employment of foreign natural persons in excess of thirty days is subject to the obtainment of a work permit, which is granted on a case-by-case basis. Unbound except for Key Personnel (Business visitors, Managers and Specialists) and Graduate Trainees not available locally.

So all T&T's EPA commitments apply only to key personnel and graduate trainees and only where such personnel are not available locally. That is consistent with the CARIFORUM explanatory note that says entry of key personnel and graduate trainees automatically extends to sectors where there is a mode 3 commitment, subject to an ‘economic needs test’.

The schedule has a very long list of personnel that are allowed entry on these ‘horizontal’ terms.

There are also a number of sectors to which the horizontal limitation does not apply - mainly those that were designated “4): ‘None’” in the T&T GATS schedule.

Contract service suppliers and independent professionals are specifically allowed entry subject to an economic needs test for R&D in natural sciences and interdisciplinary research and insurance retrocession, and contract service suppliers in courier services and cleaning services for exhaust, gas and noise abatement.

CARIFORUM's Schedule on Investment in Non-Services Activities

The CARIFORUM schedule for investment in non-services sectors (Annex 4: V) takes a very different approach. It refers to the ISIC Rev 3.1 list in five sectors:

- A. Agriculture, hunting and forestry
- B. Fishing
- C. Mining and quarrying
- D. Manufacturing

- E. Production, transmission and distribution on own account of electricity, gas, steam and hot water

The reference to these sectors is prefaced by the word ‘includes; in legal terms, that means the schedule may cover more than those five sectors – potentially the entire ISIC classification - even though that was clearly not the intention.

The entire classifications in sectors A to D are committed, except to the extent that a CARIFORUM state has identified a sub-sector that is not covered or listed a limitation on coverage. In other words, this is a negative list approach within those four sectors. Where T&T has not made an entry, it has automatically committed that sector to the relevant rules on Title II Chapter Two on commercial presence.

Sector E is treated differently. The heading restricts its scope to ‘the activity of providing electric power, natural gas, steam supply, and water supply through a permanent infrastructure (network) of lines, mains and pipes’. In the schedule this sector is ‘unbound’ for all states except the Dominican Republic.

The use of different schedules for services and non-services investments creates a major problem of interpretation, as the five ISIC headings combine services and non-services activities in ways that are impossible to separate. It is very difficult to isolate the non-services elements of those five sectors and relate them to commitments made under the W/120 classifications used in the services schedule.

Importantly, CARIFORUM reserved the right to set out any *existing* measure that has not been listed, provided it does so within two years –**16 December 2010**. However, this only relates to current measures that are not listed. It does not allow the government to list activities where may wish to preserve its future policy options.

The schedule has two columns and contains horizontal and sector specific entries. Examples of T&T entries are listed below:

Sector or sub-sector	Description of reservations, limitations or exclusions
ALL SECTORS	<p style="text-align: center;"><u>Land holding</u></p> <p>TTO: A licence is required by non-nationals for the acquisition of land, the area of which exceeds five acres for trade or business or one acre for residential purposes.</p> <p style="text-align: center;"><u>Types of commercial presence</u></p> <p>TTO: Foreign investors have to incorporate or establish the business locally. Companies not incorporated locally must be registered and powers and activities may be restricted, in accordance with relevant legislation.</p> <p style="text-align: center;"><u>Investment</u></p> <p>TTO: A licence is required for the acquisition of shares in a local public company where the holding of such shares either directly or indirectly results in 30 per cent or more of the total cumulative shareholding of the company being held by foreign investors.</p>
[EXAMPLE FROM THE SECTORAL PART OF THE SCHEDULE]	

<p>C. MINING AND QUARRYING</p>	<p>CAF: Certain activities in small scale mining may be reserved to nationals.</p> <p>CAF (except DOM and GUY): The State reserves the right to grant approval for private or public exploration, mining, processing, importation and exportation of minerals.</p>
<p><u>Extraction of crude petroleum and natural gas</u> (ISIC rev 3.1: 11)</p>	<p>TTO: No sovereign foreign government may be granted the right to explore, exploit or benefit from oil and other hydrocarbon substances, nor shall any natural person or enterprise enjoying these rights allow a sovereign foreign government as a partner, associate, or shareholder. The State reserves the right to grant all mining concessions.</p> <p>[cf. BRB, JAM: The State reserves the right to adopt or maintain measures concerning activities pertaining to onshore and offshore drilling of petroleum.]</p>
<p><u>Manufacture of refined petroleum products</u> (ISIC rev 3.1: 232)</p>	<p>TTO: The State reserves the right to adopt or maintain measures on investment in this sector.</p>

As noted above, the meaning requires a close reading of the ISIC categories not just for the subsector mentioned as subject to reservations, but to the entire category. The negative list means every activity referred to is committed unless explicitly mentioned. D. Manufacturing, for example, includes ‘stilling, rectifying and blending of spirits; ethyl alcohol production from fermented materials’, manufacture of tobacco products, and Publishing, printing and reproduction of recorded media.

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Please feel free to contact Jane Kelsey at j.kelsey@auckland.ac.nz with any corrections or suggestions on how to improve this guide.

**WORLD TRADE
ORGANIZATION**

RESTRICTED
MTN.GNS/W/120
10 July 1991
(98-0000)

SERVICES SECTORAL CLASSIFICATION LIST

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
1. <u>BUSINESS SERVICES</u>	<u>Section B</u>
A. <u>Professional Services</u>	
a. Legal Services	
b. Accounting, auditing and bookkeeping services	862
c. Taxation Services	863
d. Architectural services	8671
e. Engineering services	8672
f. Integrated engineering services	8673
g. Urban planning and landscape architectural services	8674
h. Medical and dental services	9312
i. Veterinary services	932
j. Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k. Other	
B. <u>Computer and Related Services</u>	
a. Consultancy services related to the installation of computer hardware	841
b. Software implementation services	842
c. Data processing services	843
d. Data base services	844
e. Other	
C. <u>Research and Development Services</u>	
a. R&D services on natural sciences	851
b. R&D services on social sciences and humanities	852
c. Interdisciplinary R&D services	853
D. <u>Real Estate Services</u>	
a. Involving own or leased property	821
b. On a fee or contract basis	822
E. <u>Rental/Leasing Services without Operators</u>	
a. Relating to ships	83103
b. Relating to aircraft	83104
c. Relating to other transport equipment	83101+83102+
d. Relating to other machinery and equipment	83106-83109
e. Other	
F. <u>Other Business Services</u>	
a. Advertising services	871
b. Market research and public opinion polling services	864
c. Management consulting service	865
d. Services related to man. consulting	866
e. Technical testing and analysis serv.	8676
f. Services incidental to agriculture, hunting and forestry	881
g. Services incidental to fishing	882
h. Services incidental to mining	883+5115
i. Services incidental to manufacturing	884+885

j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*
t.	Other	
2.	<u>COMMUNICATION SERVICES</u>	
A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.
n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	
D.	<u>Audiovisual services</u>	
a.	Motion picture and video tape production and distribution services	9611
b.	Motion picture projection service	9612
c.	Radio and television services	9613
d.	Radio and television transmission services	7524
e.	Sound recording	n.a.
f.	Other	
E.	<u>Other</u>	
3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512

The () indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	
5.	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u>	923
D.	<u>Adult education</u>	924
E.	<u>Other education services</u>	929
6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401
B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
D.	<u>Other</u>	
7.	<u>FINANCIAL SERVICES</u>	
A.	<u>All insurance and insurance-related services</u>	812**
a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	<u>Banking and other financial services</u> (excl. insurance)	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter	

	market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
	- other negotiable instruments and financial assets, incl. bullion	81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h.	Money broking	81339**
i.	Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119+** 81323*
j.	Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments	81339** or 81319**
k.	Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 or 8133
l.	Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131
C.	<u>Other</u>	
8.	<u>HEALTH RELATED AND SOCIAL SERVICES</u> (other than those listed under 1.A.h-j.)	
A.	<u>Hospital services</u>	9311
B.	<u>Other Human Health Services</u>	9319 (other than 93191)
C.	<u>Social Services</u>	933
D.	<u>Other</u>	
9.	<u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A.	<u>Hotels and restaurants (incl. catering)</u>	641-643
B.	<u>Travel agencies and tour operators services</u>	7471
C.	<u>Tourist guides services</u>	7472
D.	<u>Other</u>	
10.	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)	
A.	<u>Entertainment services</u> (including theatre, live bands and circus services)	9619
B.	<u>News agency services</u>	962

C.	<u>Libraries, archives, museums and other cultural services</u>	963
D.	<u>Sporting and other recreational services</u>	964
E.	<u>Other</u>	
11.	<u>TRANSPORT SERVICES</u>	
A.	<u>Maritime Transport Services</u>	
a.	Passenger transportation	7211
b.	Freight transportation	7212
c.	Rental of vessels with crew	7213
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7214
f.	Supporting services for maritime transport	745**
B.	<u>Internal Waterways Transport</u>	
a.	Passenger transportation	7221
b.	Freight transportation	7222
c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	<u>Air Transport Services</u>	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
D.	<u>Space Transport</u>	733
E.	<u>Rail Transport Services</u>	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	<u>Road Transport Services</u>	
a.	Passenger transportation	7121+7122
b.	Freight transportation	7123
c.	Rental of commercial vehicles with operator	7124
d.	Maintenance and repair of road transport equipment	6112+8867
e.	Supporting services for road transport services	744
G.	<u>Pipeline Transport</u>	
a.	Transportation of fuels	7131
b.	Transportation of other goods	7139
H.	<u>Services auxiliary to all modes of transport</u>	
a.	Cargo-handling services	741
b.	Storage and warehouse services	742
c.	Freight transport agency services	748
d.	Other	
I.	<u>Other Transport Services</u>	
12.	<u>OTHER SERVICES NOT INCLUDED ELSEWHERE⁹⁵⁺⁹⁷⁺⁹⁸⁺⁹⁹</u>	