

GATS 2000

REQUEST FROM THE EC AND ITS MEMBER STATES (HEREAFTER THE EC)

TO

BOTSWANA

GENERAL REMARKS

At the WTO Ministerial Conference in Doha in November 2001, ministers agreed that initial requests for specific commitments should be submitted by 30 June 2002.

In line with this decision, and committed to the objectives and principles stated in GATS, in particular Article IV and XIX GATS, as well as the negotiating guidelines agreed by the Council for Trade and Services on 29 March 2001, the EC encourages Botswana to participate actively in the negotiations.

The EC considers that the progressive liberalisation of services is of benefit for all members, including developing and least developed countries. In this context, the EC recognises the importance of liberalisation being underpinned by domestic regulatory frameworks designed to ensure the achievement of public policy objectives.

This request covers horizontal commitments, MFN exemptions and the following service sectors:

- Business services
- Telecommunication services
- Construction and related engineering services
- Environmental services
- Financial services
- Tourism and travel related services

The EC proposes that Botswana's current GATS commitments are revised in accordance with this request. The EC is both seeking improved commitments and clarification of existing commitments as set out in this Request. The EC is furthermore looking for a reduction in schedules limitations whether these are horizontal or sector specific in nature. In so doing, the EC is not seeking the dismantling of public services nor the privatisation of state owned companies.

In conformity with the objectives set out in the EC's overall approach to services negotiations (document S/CSS/W/15), the EC reiterates its commitments to promote regulatory disciplines in accordance with Article VI:4 of the GATS. The EC, however, reserves its right to address at any time to Botswana specific requests concerning regulatory issues.

The EC further requests that commitments are entered in accordance with the scheduling guidelines adopted by the Council of Trade in Services on 23 March 2001 (S/L/92). In particular, for each commitment or limitation entered the EC requests:

- that the sector and sub-sector are clearly identified in accordance with the classification list in document MTN.GNS/W /120 or other internationally recognised classification (e.g. Financial Services Annex). If this is not possible, the schedule should contain a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment. In that respect, the EC would like to recall the classification or list of activities proposed in its negotiating proposals with regard to energy services. While discussions on classification in these sectors are still ongoing, the EC would like to invite Botswana to present its offer in accordance with this approach.
- that any remaining limitation on market access (hereafter "MA ") or on national treatment (hereafter "NT") are clearly described and only be inscribed in the market access or national treatment columns if the measure is of a nature foreseen by Articles XVI-XVII GATS.

The EC remains available to provide any clarification and answer any question on this request. Questions can be addressed to the European Commission via the EC GATS contact point (mailbox address: TRADE-GATS-CONTACT-POINTS@cec.eu.int), via the Delegation of the European Commission in Geneva, or directly to the European Commission (Directorate-General Trade, Unit D2 (Trade in services, including e-commerce), Brussels, B-1049, Belgium, fax 32-2-299 24 35).

Note: The EC reserves the right to revise and/or supplement this request. For each service sector, W120 classification has been followed unless expressly indicated and CPCs refer to the provisional CPC classification. The precise scope for each sector is without prejudice to the EC's final position on classification issues and to the EC's classification of their existing commitments.

HORIZONTAL COMMITMENTS

EC REQUEST TO BOTSWANA

MODES 1 AND 2

National treatments: Fees payable to non-resident service supplier are subject to approval of the Bank of Botswana. **EC Request:** Specify criteria and conditions to be fulfilled to obtain approval.

MODE 3

Market access: Requirement of a licence for juridical persons. **EC Request:** Specify criteria and conditions to be fulfilled to obtain a licence.

National treatment: When foreign investors sell their interests in resident companies, locals should be given priority to purchase such interests. **EC Request:** Consider removing this requirement.

MODE 4

The EC wishes to obtain commitments from Botswana in relation to intra-corporate transferees and business visitors along the lines indicated below. The EC requests that no quantitative limitations, or measures with a similar effect, be applied to these two groups of Mode 4 supplier. Botswana may wish to enter its Mode 4 commitments either in the horizontal section of its Schedule, or for each individual sector.

Intra-corporate transferees

An intra-corporate transferee (ICT) is an employee of a foreign firm, who is temporarily transferred to an affiliate of that firm (branch, subsidiary, office, joint venture etc.) in Botswana. **EC Request:**

- Make a commitment without requiring an economic needs tests (sometimes also referred to as labour market testing) for Intra-corporate transfers of managers, executives and specialists (terms should be defined in the schedule). The minimum prior length of employment, the maximum length of stay, and the degree of affiliation which must exist between companies should be specified in the schedule.
- Make a similar commitment for « persons with a university degree or equivalent technical qualification who are transferring for career development purposes or to obtain training in business techniques or methods ». The maximum prior employment requirement should be one year.

Business Visitors

A Business Visitor is a representative of a foreign services supplier who is seeking temporary entry into your country for one of the following purposes: (a) to hold meetings and/ or to negotiate the sale of services; (b) to conclude contracts to sell services; or (c) to set up a Mode 3 presence. A Business Visitor does not himself directly provide services or sell to the public. Business Visitors are usually granted entry for 90 days periods at a time. **EC Request:**

- Make a commitment relating to Business Visitors who are not entering to themselves supply a service, but rather to carry out one of the activities listed above. No restriction should apply to the entry of Business Visitors and the maximum length of stay should be at least 90 days in any 12 month period.

Note: Mode 4 is covered horizontally in this part for all service sectors. The sectoral requests in the following pages only refer to mode 4 when specifically related to one particular service sector.

BUSINESS SERVICES (OTHER THAN PROFESSIONAL)

EC REQUEST TO BOTSWANA

B. COMPUTER AND RELATED SERVICES

Botswana has partially committed this sector. **EC Request:** Extend sectoral coverage to include CPC 849 and schedule commitments at the two-digit level as follows:

Computer and Related Services (CPC 84)

- Modes 1, 2, 3: Take full commitments, i.e. schedule "none" under MA and NT;
- Mode 4: Commit as referred to in the section "Horizontal Commitments".

F. OTHER BUSINESS SERVICES

Botswana has partially committed this sector. **EC Request:**

c) Management consulting service (CPC 865)

d) Services related to management consulting (CPC 866)

The above two sub-sectors have yet to be committed. For each sub-sector:

- Modes 1, 2, 3: Take full commitments, i.e. schedule "none" under MA and NT;
- Mode 4: Commit as referred to in the section "Horizontal Commitments".

TELECOMMUNICATION SERVICES

EC REQUEST TO BOTSWANA

A competitive telecommunications market reduces costs for industry and private users, and facilitates and improves communication between both businesses and individuals. This enables companies in all sectors to react more quickly and adequately to the needs of consumers, to gain efficiency, raise their productivity and provide more goods and services more efficiently and at a better price. In particular, investments in this sector stimulate the development of electronic commerce, which can spur growth in almost all services sectors, regardless of the level of development of Botswana.

However, in order to achieve a really competitive telecommunications market in terms of price and supply, an adequate regulatory framework must be put in place, along the lines of the reference paper drafted during the telecommunications negotiations concluded in 1997. Such a regulatory framework is the necessary catalyst, if properly enforced, for competition to bear fruit where it is allowed.

Accordingly the EC suggests that Botswana take commitments in this sector

- first, by committing to open a number of sub-sectors to full competition and to foreign investment, particularly data transmission related services which provide the key infrastructure that benefits the rest of the economy. Thus, the schedule should read “None” for market access and national treatment in the following sub-sector: (CPC 7523) data and message transmission services.

As regards voice services, the EC suggests to allow competition (i.e. the schedule should read “None” for market access and national treatment) at least in mobile services.

- second, by committing to the reference paper of the Basic Telecommunications negotiations, as additional commitments.

CONSTRUCTION AND RELATED ENGINEERING SERVICES

EC REQUEST TO BOTSWANA

Botswana has not committed this sector. The EC requests Botswana to consider taking the following commitments in this sector.

A. GENERAL CONSTRUCTION WORK FOR BUILDINGS (CPC 512)

B. GENERAL CONSTRUCTION WORK FOR CIVIL ENGINEERING (CPC 513)

C. INSTALLATION AND ASSEMBLY WORK (CPC 514+516)

D. BUILDING COMPLETION AND FINISHING WORK (CPC 517)

E. OTHER (CPC 511+515+518)

EC Request for each of the above sub-sectors:

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred in the section “Horizontal commitments”

ENVIRONMENTAL SERVICES

EC REQUEST TO BOTSWANA

Botswana has not committed this sector. This request is based on the EC proposal for the classification of environmental services. While discussions on classification in this sector are still ongoing, the EC would like to invite Botswana to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of environmental services:

A. WATER FOR HUMAN USE & WASTEWATER MANAGEMENT

Water collection, purification and distribution services through mains, except steam and hot water.

This sub-sector only concerns the distribution of water through mains' (i.e. urban sewage systems). This excludes any cross-border transportation either by pipeline or by any other means of transport, nor does it imply access to water resources.

- Mode 3: The EC invites Botswana to consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section "Horizontal commitments"

Wastewater services (CPC 9401)

- Mode 3: The EC invites Botswana to consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section "Horizontal commitments"

B. SOLID/HAZARDOUS WASTE MANAGEMENT

Refuse disposal services (CPC 94020)

- Mode 3: Consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section "Horizontal commitments"

Sanitation and similar services (CPC 94030)

- Mode 3: Consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section "Horizontal commitments"

C. PROTECTION OF AMBIENT AIR AND CLIMATE

Services to reduce exhaust gases and other emissions and improve air quality (CPC 94040)

- Mode 3: Consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section "Horizontal commitments"

D. REMEDIATION AND CLEANUP OF SOIL & WATER

Treatment, remediation of contaminated/polluted soil and water (part of CPC 94060)

- Mode 3: Consider taking commitments for MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”

FINANCIAL SERVICES

EC REQUEST TO BOTSWANA

GENERAL

- **EC Request:** Follow the classification of the Annex on Financial Services.

INSURANCE

- **EC Request:** Commit direct insurance (life and non-life) in mode 3.
- **EC Request:** Commit reinsurance and retrocession in mode 1.

BANKING AND OTHER FINANCIAL SERVICES

- **EC Request:** Commit acceptance of deposits, lending of all types, financial leasing, all payment and money transmission services, and guarantees and commitments in mode 3.
- **EC Request:** Commit provision and transfer of financial information, and advisory and other auxiliary financial services in mode 1.

TOURISM AND TRAVEL RELATED SERVICES

EC REQUEST TO BOTSWANA

Botswana has committed this sector partially. The EC requests Botswana to consider taking the following commitments in this sector.

A. HOTELS AND RESTAURANTS (INCL. CATERING)(CPC 641-643)

Mode 3, market access: The services should be supplied through commercial presence. The EC understands this entry to cover all forms of commercial presence as defined in Article XXVIII GATS. National treatment: The services supplier should meet all residency requirements. **EC Request:** Clarify the requirements which a foreign service supplier must meet and to what extent they constitute a limitation to national treatment.