

Member States are requested to ensure that this text is not made publicly available and is treated as a restricted document

## **GATS 2000**

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

**TO**

**NICARAGUA**

#### **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 the GATS, in particular Article IV and XIX GATS, as well as the negotiating guidelines agreed by the Council for Trade in Services on 29 March 2001, the EC encourages Nicaragua 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.

The request covers horizontal commitments, MFN exemptions and the following services sectors:

- Professional services
- Business services
- Telecommunication services
- Environmental services
- Financial services
- Transport services

The EC proposes that Nicaragua'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 scheduled 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 Nicaragua specific requests concerning regulatory issues.

The EC further requests that commitments are entered in accordance with the scheduling guidelines adopted by the Council for 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) and/or corresponding CPC number. If there is no appropriate classification, 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 proposed in its negotiating proposal with regard to environmental services. While discussions on classification are still ongoing, the EC would like to invite Nicaragua to present its offer in accordance with this approach.
- that any remaining limitation on market access (hereafter "MA") or on national treatment (hereafter "NA") 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](mailto: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 services sector, W120 classification has been followed unless expressly indicated and CPCs refer to the Provisional CPC classification. The precise scope of each sector is without prejudice to the EC's final positions on classification issues and to the EC's classification of their existing commitments.*

## HORIZONTAL COMMITMENTS

### EC REQUEST TO NICARAGUA

#### MODE 3

- MA – Authorisation on the basis of economic needs test. **EC Request:** Remove this horizontal limitation

#### MODE 4

The EC invites Nicaragua to consider increasing the ceiling for foreign workers in enterprises.

The EC wishes to obtain commitments from Nicaragua 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. Nicaragua 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 Nicaragua. **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».

#### **Business Visitors**

A Business Visitor is a representative of a foreign services supplier who is seeking temporary entry into the territory of Nicaragua 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 restrictions 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 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.*

## **PROFESSIONAL SERVICES**

### **EC REQUEST TO NICARAGUA**

Nicaragua has not committed this sector. The EC requests Nicaragua to consider taking the following commitments:

#### **A. LEGAL SERVICES (CPC 861)**

- Commit covering at least consultancy on public international law and on law of jurisdiction where the service supplier or its personnel are qualified lawyers
- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”

#### **B. ACCOUNTING, AUDITING AND BOOKKEEPING SERVICES (CPC 862)**

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

#### **E. ENGINEERING SERVICES (CPC 8672) AND F. INTEGRATED ENGINEERING SERVICES (CPC 8673)**

- Mode 3: Allow foreign presence through different types of legal entities (at least joint ventures with national companies)

## **BUSINESS SERVICES (OTHER THAN PROFESSIONAL)**

### **EC REQUEST TO NICARAGUA**

#### **B. COMPUTER AND RELATED SERVICES**

Nicaragua has partially committed this sector. **EC Request:** Extend sectoral coverage to all of CPC 84 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**

Nicaragua has partially committed this sector. The EC requests that it be committed as follows:

##### **c) Management consulting services (CPC 865)**

##### **d) Services related to management consulting (CPC 866)**

The above two sub-sectors have not been committed. **EC Request** for each of these sub-sectors:

- 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 NICARAGUA

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 the country.

Nicaragua has indeed already committed to open to competition most telecom services except fixed voice services and packet-switched data transmission services.

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 Nicaragua take further commitments in this sector,

- first, by committing to the reference paper of the Basic Telecommunications negotiations, as additional commitments.
- second, by committing to open competition and to foreign investment (i.e. the schedule should read "None" for market access and national treatment), Packet-switched data transmission services (CPC 7523\*\*). Thus, the schedule should read "None" for market access and national treatment overall in the following sub-sector: (CPC 7523) data and message transmission services).

---

The (\*\*) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

# **ENVIRONMENTAL SERVICES**

## **EC REQUEST TO NICARAGUA**

Nicaragua has 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 Nicaragua 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 other means of transport, nor does it imply access to water resources.

**EC Request:**

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

**Wastewater services (CPC 9401)**

**EC Request:**

- Mode 3: The EC invites Nicaragua 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)**

**EC Request:**

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

**Sanitation and similar services (CPC 94030)**

**EC Request:**

- Mode 3: Take 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)**

**EC Request:**

- Mode 3: Take 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)**

**EC Request:**

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

## FINANCIAL SERVICES

### EC REQUEST TO NICARAGUA

#### 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

- Mode 3: MA – Branches of foreign banks are subject to the laws of the country, without recourse to diplomatic channels in any matter relating to their operations in the country. **EC Request:** Clarify the prohibition of recourse to diplomatic channels.
- **EC Request:** Commit provision and transfer of financial information, and advisory and other auxiliary financial services in mode 1.

#### MFN EXEMPTION

- Exemption for monetary and financial integration, including free transfer of capital. **EC Request:** Precise the scope in the light of Article V GATS.

# TRANSPORT SERVICES

## EC REQUEST TO NICARAGUA

Nicaragua has partly committed the transport sector. The EC requests Nicaragua to take the following commitments.

### A. MARITIME TRANSPORT

**EC Request:** Take commitments in accordance with the attached model schedule (Annex 1). In particular for the following areas:

- 1) **International transport** (freight and passengers) CPC 7211 and 7212
- 2) **Additional commitments** for access to and use of ports facilities
- 3) **Maritime auxiliary services** (maritime cargo handling, storage and warehouse services, customs clearance services, container station and depot services, maritime agent services)
- 4) **Multimodal activities:** for inland forwarding of cargoes – commit the ability to rent or lease or to have access to and use of multimodal facilities (as specified in the note to the schedule).
- 5) **Definitions** – commit definitions as specified in the model schedule

The EC also requests the following additional maritime commitments from Nicaragua:

- 6) **Equipment** To facilitate planning of their businesses, operators should be allowed to reposition equipment, such as empty containers, between ports of Nicaragua, when it is not carried against payment. This is requested to be committed in a new footnote:

*“9. Movement of equipment. International maritime transport suppliers can move/reposition equipment (i.e. empty containers, flatbeds etc.) on their vessels between ports of Nicaragua.”*

- 7) **International cargo.** With the development of containerisation and high frequency networking services and with the ever-larger vessels having to limit direct port calls for physical or economic reasons, the feeding of cargoes between main ports and way ports is becoming more important as an integral part of efficient international maritime transport. An international maritime transport supplier should be allowed to operate feeder services for its international cargo between ports of Nicaragua. This is requested to be committed in a new footnote:

*“10. International maritime transport suppliers can operate vessels of any flag for the purposes of pre-and onward carriage of the international cargo between ports of Nicaragua.”*

In this context Nicaragua may wish to take one or more of the following principles into consideration:

- Size of the port
- Binding existing as hoc practices To the extent exceptions are already granted for use of foreign flagged vessels such practices could be bound to explicitly cover pre-and onward carriage of international cargo.
- Geographical limitations Transport of international cargo between ports within the same department [or other relevant entity] remains excluded.

## **H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT**

### **b) Storage and Warehouse Services (CPC 742)**

#### **EC Request:**

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

### **c) Freight Transport Agency/Freight Forwarding Services (CPC 748) and Pre-Shipment Inspection (part of CPC 749)**

#### **EC Request:**

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

**ANNEX 1: SCHEDULE ON MARITIME TRANSPORT SERVICES**

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>TRANSPORT SERVICES MARITIME TRANSPORT SERVICES International Transport (freight and passenger) CPC 7211 and 7212 <u>less</u> cabotage transport (as defined below – 1)</p>	<p>1) (a) <u>Liner Shipping</u>: none (b) <u>Bulk, tramp, and other international shipping, including passenger transportation</u>: none</p> <p>2) None</p> <p>3) (a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound (b) Other forms of commercial presence for the supply of international maritime transport services (as defined below – 2): none</p> <p>4) (a) Ships’ crews: unbound (b) Key personnel employed in relation to a commercial presence as defined under mode 3b above: Unbound except as in horizontal section</p>	<p>1) (a) None (b) None</p> <p>2) None</p> <p>3) (a) Unbound  (b) None</p> <p>4) (a) Unbound (b) Unbound except as in horizontal section</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions</p> <ol style="list-style-type: none"> <li>1. Pilotage</li> <li>2. Towing and tug assistance</li> <li>3. Provisioning, fuelling and watering</li> <li>4. Garbage collecting and ballast waste disposal</li> <li>5. Port Captain’s services</li> <li>6. Navigation aids</li> <li>7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies</li> <li>8. Emergency repair facilities</li> <li>9. Anchorage, berth and berthing services</li> </ol>

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
MARITIME AUXILIARY SERVICES Maritime Cargo Handling Services (as defined below – 4)	1) Unbound* except for – no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* except for no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None 4) Unbound except as in the horizontal section	
Storage and warehousing Services CPC 742	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Customs Clearance Services (as defined below – 5)	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Container Station and Depot Services (as defined below – 6)	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in the horizontal section	
Maritime Agency Services (as defined below – 7)	1) None 2) None 3) None 4) Unbound except as in horizontal section	1) None 2) None 3) None 4) Unbound except as in the horizontal section	
(Maritime) Freight Forwarding Services (as defined below – 8)	1) None 2) None 3) None 4) Unbound except as in horizontal section	1) None 2) None 3) None 4) Unbound except as in the horizontal section	

\* A commitment on this mode of delivery is not feasible.

\*\* Public utility concession or licensing procedures may apply in case of occupation of the public domain.

## NOTE TO THE SCHEDULE

Where road, rail, inland waterways (and) (related) (auxiliary) services are not otherwise fully covered in (this) (a Member's) schedule, a multimodal transport operator (as defined below - 3) shall have the ability to rent or lease trucks, railway carriages or barges and related equipment, for the purpose of inland forwarding of cargoes, or have access to, and use of, these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations. (« Reasonable and non-discriminatory terms and conditions» means, for the purpose of (multimodal transport operations), (this additional commitment), the ability of the multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which has entered the port at a later date).

### DEFINITIONS

1. Without prejudice to the scope of activities which may be considered as «cabotage» under the relevant national legislation, this schedule does not include «maritime cabotage services », which are assumed to cover transportation of passengers or goods between a port located in ... [name of country] ... and another port located in ... [name of the country], traffic originating and terminating in the same port located in [name of country] provided that this traffic remains within ... [name of country]'s territorial waters and transportation of passengers and goods between a port located in ... [name of the country] ... and installations or structures situated on the continental shelf of [name of the country].

2. « Other forms of commercial presence for the supply of international maritime transport services » means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be constituted as limiting in any manner the commitments undertaken under the cross-border mode of delivery).

These activities include, but are not limited to:

(a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;

(b) the acquisition, on their own account or on behalf or their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated services;

(c) the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;

(d) the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the annex on telecommunications);

(e) the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency;

(f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

3. « Multimodal transport operators » means the person on whose behalf the bill of lading /multimodal transport document, or any other document evidencing a contract of multimodal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.
4. « Maritime cargo handling services » means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operation companies. The activities covered include the organisation and supervision of:
- the loading/ discharging of cargo to/from a ship;
  - the lashing/unlashing of cargo;
  - the reception/ delivery and safekeeping of cargoes before shipment or after discharge
5. « Customs clearance services » (alternatively « customs house brokers' services ») means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.
6. « Container station and depot services » means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/ stripping, repairing and making them available for shipments.
7. « Maritime agency services » means activities consisting in representing within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
  - acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
8. « Freight forwarding services » means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).

## **MFN EXEMPTIONS**

### **EC REQUEST TO NICARAGUA**

- MFN exemption in financial services. **EC Request:** Refer to the request in the sector of “Financial services” in this respect.