

GATS 2000

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

TO

BENIN

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 in 29 March 2001, the EC encourages Benin 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. Liberalisation of trade in services, in particular infrastructure-related services, allows better access to high-quality services which benefit the whole economy by increasing productivity in all sectors. This will contribute to achieving the objectives of Article IV of GATS, through strengthening the domestic services capacity to increase the efficiency and competitiveness of the services sector. This will benefit both domestic producers and consumers, and will help to build up productive and export capacity throughout the economy.

The EC therefore proposes that Benin's current GATS commitments are revised so as to improve commitments and reduce 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.

The EC suggests that Benin undertakes or improves its commitments for market access and national treatment in the following sectors:

- Business services
- Telecommunication services
- Transport services

For ease of reference, we attach a list of specific requests for these sectors. The EC is ready to discuss these requests with Benin's delegation.

The EC also invites Benin to take horizontal commitments for the supply of services under mode 4. For this purpose, we attach a specific request for this mode of supply.

The Negotiating Guidelines stipulate that there shall be 'flexibility for individual developing country Members (...) progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV'. The EC is prepared to discuss the attachment to market access and national treatment commitments, which will be offered by Benin as a result of this request, of such conditions. The EC is also willing, in appropriate cases, to consider transitional periods for implementing liberalisation commitments, provided they are clearly recorded in schedules of commitments.

The EC suggests 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 proposes:

- 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.
- 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.

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

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 BENIN

MODE 4

The EC wishes to obtain commitments from Benin 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. Benin 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 Benin. **EC request:**

- Make a commitment without requesting 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 Benin 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 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 BENIN

B. COMPUTER AND RELATED SERVICES

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

Benin has not committed this sector. **EC requests:**

c) Management consulting service (CPC 865)

d) Services related to management consulting (CPC 866)

The above two sub-sectors have not been 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 BENIN

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.

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 Benin take further 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 for mobile services.

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

TRANSPORT SERVICES

EC REQUEST TO BENIN

Benin has not committed this sector. The EC request that it be committed as follows:

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 agency 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 Benin:

- 6) **Equipment:** To facilitate planning of their businesses, operators should be allowed to reposition their equipment, such as empty containers, between ports of Benin, 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 Benin."

- 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 Benin. 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 Benin."

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

- Size of the port.
- Binding existing ad 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 ports within the same division [or other regional entity] remains

H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT

b) Storage and Warehouse Services (CPC 742)

EC Request:

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

MFN EXEMPTIONS

Benin has an MFN exemption relating to measures for various aspects maritime transport and based on bilateral or multilateral agreements. **EC Request:** Remove the exemption.

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</p> <p>(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"> 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain’s services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies 8. Emergency repair facilities 9. Anchorage, berth and berthing services |

| 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 of their customers (and the resale to their customers) of any transport and related services, including inland 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 EXEMPTION

EC REQUEST TO BENIN

MFN exemption in transport services (see transport section)