

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

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COMMUNICATION FROM GUATEMALA

Draft Final Schedule of Guatemala Concerning
Initial Commitments on Trade in Services

The following communication is circulated at the request of Guatemala to the members of the Group of Negotiations on Services.

This offer does not imply any binding of the laws, regulations, decrees, agreements, orders and resolutions in force concerning taxation, foreign exchange, monetary, financial and labour matters, immigration, government procurement and environmental protection and conservation of natural resources inter alia.

This offer is conditional upon the global results achieved in the Uruguay Round, and in particular the degree of attention and level of commitments accorded to the service sectors and sub-sectors of priority interest for the achievement of Guatemala's socio-economic development goals.

I. GENERAL CONSIDERATIONS

This document contains the conditional offer of the Government of Guatemala concerning initial commitments in the framework of the General Agreement on Trade in Services. The purpose of this offer is to make a substantive contribution to the negotiations aimed at establishing multilateral disciplines and liberalizing trade in services, as a means of promoting development, particularly that of the developing countries.

This offer concerns and covers exclusively the sectors mentioned in Section III on Specific Commitments and the Horizontal Measures stipulated in this Section refer solely to the sectors and sub-sectors mentioned therein. The sectoral classification is based in general on the classification contained in document MTN.GNS/W/120 and the CPC classification prepared by the United Nations.

Where relevant, international conventions, agreements and treaties signed by and in force for Guatemala which affect trade in services covered by this offer will prevail. In addition, the commitments entered into by Guatemala within the framework of Central American integration and the process of restructuring, improving and reviving it shall be observed.

This offer does not imply any binding of the laws, regulations, decrees, agreements, orders and resolutions in force concerning taxation, foreign exchange, monetary, financial and labour matters, immigration, government procurement and environmental protection and conservation of natural resources inter alia.

In addition, the exceptions stipulated by the Government of Guatemala to Article II of the GATS are listed in Annex I to this offer.

This offer is conditional upon the global results achieved in the Uruguay Round, and in particular the degree of attention and level of commitments accorded to the service sectors and sub-sectors of priority interest for the achievement of Guatemala's socio-economic development goals.

Guatemala reserves the right to maintain, modify or reduce this offer at any time prior to the entry into force of the multilateral agreement, in accordance with the conditions established above.

II. HORIZONTAL MEASURES

The main horizontal measures limiting, conditioning or qualifying in a general manner market access and national treatment for foreign service suppliers are the following:

1. Terms, conditions and limitations contrary to the provisions of Article XVI of the GATS (market access)

All modes of supply of services are subject to the foreign exchange régime and foreign exchange policy management. The Bank of Guatemala has the authority to fix the conditions and mode of operation of the foreign exchange market and foreign exchange operations may be carried out through the Bank of Guatemala and other authorized banking institutions.

(a) Cross-border supply

As this mode of supply requires international trade in goods, the movement of such goods will be governed by the customs provisions in force in Guatemala.

Where cross-border supply requires the use of the national and international telecommunication networks, it will be necessary to comply with the relevant rules established by the Ministry of Communications, Transport and Public Works and the Guatemalan Telecommunications Enterprise (GUATEL).

(b) Consumption abroad

Consumption of services abroad by Guatemalan residents will be governed by the foreign exchange provisions in force in Guatemala, in particular the rules established by the Bank of Guatemala.

(c) Commercial presence

In order to carry out commercial activities in Guatemala, a society established in accordance with foreign legislation must fulfil the requirements and procedures laid down in the Civil Code, Code of Commerce and other regulations governing commercial activities in Guatemala.

(d) Movement of suppliers

The supply of services by suppliers not resident in Guatemala will be limited to higher-level and specialized personnel in connection with a commercial presence and must contribute to the training of Guatemalan personnel in the specialized fields of activity concerned. In addition, the Labour Code provides the following:

"Employers must employ 90 per cent of Guatemalan workers and pay them at least 85 per cent of total wages paid. These requirements may be modified for the following reasons:

- (i) Protection and promotion of the national economy;
- (ii) Lack of Guatemalan technical personnel for specific activities;
- (iii) Defence of Guatemalan workers who demonstrate their capabilities".

The Ministry of Labour may, at its discretion, decrease these percentages by 10 per cent for a period of five years or increase them to eliminate the employment of foreign workers. An authorization to decrease the percentage must include the requirement to train Guatemalan technical staff in the activity concerned over the same period.

2. Conditions and qualifications contrary to Article XVII of the GATS (national treatment)

The conditions and qualifications applicable concerning "national treatment" for all modes of international supply of services are the following:

Article 45 of the Income Tax Law, Decree No. 26-92 of 9 April 1992, establishes the following:

Tax on natural or legal persons not domiciled in Guatemala is calculated by applying the following percentages as final payment to income from Guatemalan sources whether received or credited to an account:

- (a) 12 per cent on dividends, participation in profits, earnings and other benefits paid or credited by companies or establishments domiciled in Guatemala.
- (b) 12 per cent on payments or credit in the form of interest, fees, allowances, commissions, bonuses and other services subject to tax, including wages and salaries; interest on loans granted by financial institutions is exempt provided that the corresponding foreign exchange has been negotiated through the national banking system.
- (c) 25 per cent on payment or credit for royalties and other payments for the use of patents and trade marks, as well as for scientific, economic, technical and financial consultancy services.
- (d) 25 per cent on payment or credit to an account for other income from Guatemalan sources not mentioned in the preceding paragraphs.

Agents or representatives in Guatemala of taxpayers not domiciled in Guatemala or natural and legal persons dealing directly with them must withhold and pay the taxes within fifteen working days in the calendar month immediately following that in which the income has been received or earned.

SPECIFIC COMMITMENTS BY GUATEMALA

- (1) Cross-border supply
(2) Consumption abroad
(3) Commercial presence
(4) Movement of natural persons

Activity or Sub Activity	Mode of Delivery	Market Access	National Treatment
1. BANKING SERVICES			
(i) Supply, transfer and processing of financial information (8113)	(1) (2) (3) (4)	None None Only foreign financial institutions legally established in Guatemala None	Not bound Not bound Not bound Not bound
(ii) Financial advisory services	(1) (2) (3) (4)	None None Only foreign financial institutions legally established in Guatemala Not bound	Not bound Not bound Not bound Not bound
2. AIR TRANSPORT SERVICES			
(i) Repair and maintenance services	(1) (2) (3) (4)	None None None Not bound	None None None Not bound
(ii) Sale or marketing of transport services (74710-747120) (including travel agency, tour operator and tourist guide services)	(1) (2) (3) (4)	Not bound None Not bound Not bound	Not bound Not bound Not bound Not bound
(iii) Computer reservation services	(1) (2) (3) (4)	None None None None	None None None None

Activity or Sub Activity	Mode of Delivery	Market Access	National Treatment
3. TOURISM			
(i) Hotel and lodging services (6410-641094) (including hotels, motels, apartment-hotels, tourist centres), only in the four and five star categories	(1) (2) (3) (4)	Not bound None None Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel	Not bound None None None
(ii) Meals services (64210-64290) (including restaurant services, self-service, commissaries and other meals services)	(1) (2) (3) (4)	Not bound None None Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel	Not bound None None None
(iii) Tourist marina operators	(1) (2) (3) (4)	Not bound None None Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel	Not bound None None None
4. COMPUTER SERVICES			
(i) Consultancy services related to computers and data processing (84100-84390) (including software implementation services, systems analysis, data processing, time sharing services, preparation of inputs or digitalization)	(1) (2) (3) (4)	None Not bound None None	None Not bound None None
5. INSURANCE SERVICES			
(i) Reinsurance of policies (81229)	(1) (2) (3) (4)	None None Not bound Not bound	Not bound Not bound Not bound Not bound