

GENERAL AGREEMENT

ON TRADE IN SERVICES

RESTRICTED

GATS OFFER

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES
Schedule of Specific Commitments

**The European Commission sent this restricted document to the
Member State governments on 6 February 2003.**

**It has been put in the public domain on 18 February 2003:
<http://www.gatswatch.org/docs/EU-draftoffer-1-sum.pdf>**

SUMMARY

EU DRAFT INITIAL OFFER

HORIZONTAL COMMITMENTS

INVESTMENT

The EU schedule includes two limitations at EU level related to the regime of subsidiaries and branches from third countries, and restrictions of A, FIN, I, P, E and S related to the investment regime in those Member States pertaining mainly to prior approval and golden shares.

The initial offer proposes the elimination of the limitation for subsidiaries and branches scheduled under modes 1 (cross border provision of services) and 4 (movement of natural persons) for the only MS that has extended this limitation to these modes.

REAL ESTATE

The EU's schedule contains some horizontal limitations and an MFN exemption relating to the purchase and/or rental of real estate. The restrictions essentially relate to authorisation procedures that have to be pursued by foreign nationals prior to acquiring and/or renting real estate.

11 WTO members have so far requested the EU to either eliminate, narrow the scope or to clarify these restrictions. While requests are primarily being pursued by developed countries, a number of developing countries and emerging economies (Panama, Singapore, Argentina, Brazil, Uruguay) have also made requests.

The proposed initial offer suggests to remove restrictions in three MS and converting an unbound for one MS into an authorisation procedure like that found in the other Member States with restrictions in this area.

LEGAL ENTITIES

For the specific horizontal limitations of two MS in respect of legal entities and law on foreign companies' branches, the draft initial offer introduces a technical adjustment (replace Finnish marks by euros).

SUBSIDIES

No new commitment in respect of subsidies is proposed.

PUBLIC UTILITIES

There are no changes in the draft offer compared to the existing commitments of the consolidated EU list.

MODE 4

The draft offer can be summarised as follows:

1. **Contractual services supplier (CSS):** CSS are employees who work for an overseas company that has obtained a service contract in an EU MS and who come into an EU Member State to deliver the service as part of that contract.

The draft initial offer proposes to improve the EU's commitments in this category by extending the list of sectors to 15 sectors that all MS commit. In addition the following improvements are proposed:

- a. extending the period of the contract to 1 year (now: 3 months), and
- b. extending the period of stay to a cumulative period of 6 months (currently 3 months)

These improvements address DCs requests for longer contract and stay periods.

2. DCs have also expressed a keen interest in improving access for **independent professionals (IPs)** (self-employed persons established overseas and entering the EU to provide services on the basis of a contract). On this, the proposal is to create a new subcategory of contractual services suppliers, covering IPs that have obtained a contract from an EU company. The IPs will be required to:
 - a. Be primarily based in a country outside the EU,
 - b. Hold a relevant university degree or relevant technical qualification,
 - c. Hold professional qualifications where this is required by EU or MS law,
 - d. Have 5 years professional experience in the area,
 - e. 1 year maximum period for the contract with maximum stay of 6 months per year.

3. On intra-corporate transfers (ICTs) and business visitors (BV), an area of great interest to the European industry, the improvements suggested are principally aimed at:

- a. increasing transparency of the EU's existing commitments and
- b. taking commitments on a new category of ICTs for training purposes which is of interest to European industry and the EU has requested its partners to commit.

General: Scheduling language has been changed to improve the clarity.

MFN EXEMPTIONS

With regard to MFN exemptions, the approach proposed involves two tracks.

First, a reformulation/merger of a number of MFN exemptions taken by several MS into single exemptions covering all MS. This would result in a reduction of the overall number of MFN exemptions.

Secondly, for a number of MFN exemptions it is proposed to remove them where developments in the sector indicate a relaxation is possible.

The combination of consolidating a single list of MFN exemption for EC-15 and the elimination of certain exemptions in the initial offer reduces the overall number of MFN exemptions from 56 to 34.

SECTORAL COMMITMENTS

PROFESSIONAL SERVICES

The main proposed improvements to the EU commitments concern the sub-sectors of legal services, accounting and bookkeeping services, architectural services, engineering & integrated engineering services, urban planning & landscape architectural services. For these sub-sectors, the initial offer removes some of the current limitations in modes 1 (cross-border), 3 (commercial presence) and 4 (movement of natural persons). In respect of mode 4, commitments on contractual service suppliers are extended to all Member States, and the category of independents is added for architectural, engineering & integrated engineering and urban planning & landscape architectural services.

COMPUTER SERVICES

This sector is already fully committed in Modes 1,2 and 3, for Market Access and National Treatment, with the only exception of sub-sector CPC 8499 (other computer services not elsewhere classified) that has not been committed by one MS.

The initial offer nevertheless innovates as it presents the EU commitments at two-digit level (CPC 84) rather than three-digit level (CPC 841 etc.), since distinction between sub-sectors is not really relevant anymore due to technological developments. The EU initial offer also includes a reference to the "Understanding on the scope of coverage of the Computer Services sector – CPC 84" recently proposed by the EU. Through this offer, the EU shows how commitments should be scheduled to take into account technological evolutions and give legal certainty to the scope of commitments made.

In Mode 4, the initial offer extends CSS commitments to all MS and to independent service providers.

BUSINESS SERVICES

The proposed initial offer improves current EU commitments by building on the following pillars:

1. Build on existing mode 4 commitments for the defined categories of persons:
 - Business visitors and intra-corporate transferees, by eliminating conditions of nationality, and requirements of commercial presence and residence in some sectors: real estate services,

technical testing and analysis, translation and interpretation, and related scientific and technical consulting.

- Contractual service suppliers, by proposing for some sectors that all Member States take commitments in addition to the ones already committed; management consulting, services related to management consulting, technical testing and analysis, translation and interpretation, advertising, maintenance and repair of equipment, related scientific and technical consulting.
 - Independent professionals: by proposing that all Member States take commitments on a limited number of sectors, namely: management consulting, services related to management consulting, translation and interpretation.
2. Additional commitments on an individual country basis:
- i) two MS to take commitments on services incidental to hunting and on packaging services,
 - ii) one MS to remove 49% ceiling on foreign share of capital for printing and publishing on a fee or contract basis.

This proposal reflects in a balanced way the requests of industrialised and developing countries.

POSTAL AND COURIER SERVICES

The EU currently has no commitments in postal and courier, except one MS, which took full commitments in courier for "special delivery services". The opening up of this sector was requested by several countries and is already partly enacted within the internal market.

It is proposed to make a reasonably ambitious initial offer in this sector. The offer would be based on the EU's classification proposal. It would reserve the possibility of a licensing system for universal service operators in the subcategories mentioned by directive 97/67. In addition, for written communication, registered/insured mail and express, commitments would only be taken within the monopoly limits determined by directive 97/67 (350gr, 5 times basic tariff).

This offer would address, totally or partly, requests made in the sector, including from DCs.

TELECOMMUNICATION SERVICES

In a sector where EU commitments are already very far reaching, the initial offer still addresses many requests made by third countries: it removes from the schedule all transition periods that corresponded to the internal EU calendar of introduction of competition; it includes one sub-sector (enhanced facsimile

services) that was not included so far, and it removes some national restrictions (on the cross border supply of services in one MS, on the ability of a telecom company to engage in other activities in one MS, on the legal form of telecom companies in one MS).

This offer answers evenly requests from developed and developing countries as these have requested the same things.

AUDIOVISUAL SERVICES

No draft initial offer is proposed.

CONSTRUCTION SERVICES

EU commitments in this sector are already very broad. The initial offer includes the elimination of the mention of exclusive rights for the construction, maintenance and management of highways in two MS in Mode 3, a nationality requirement in one MS in Mode 4 and a limitation in Mode 4 in one MS imposing commercial presence.

Through this offer the EU would address requests from both DCs and industrialised countries.

DISTRIBUTION SERVICES

The EU has already extensive commitments in the distribution sector. The proposed initial offer improves upon these commitments in line with some of the most frequent requests made by both industrialised and developing countries. The draft initial offer builds on the following pillars:

1. Removal of residence requirements in mode 4 (commission agents and wholesalers in three MS).
2. The addition of non-discriminatory language on economic needs tests (ENTs) affecting large departments stores.
3. Additional commitments on an individual country basis: i) one MS to take commitments on commission agents mode1; ii) one MS to remove state monopoly on matches, and iii) one MS to take commitments on franchising.

This proposal responds in a balanced way to the requests of industrialised and developing countries.

EDUCATION SECTOR

The initial offer proposes no improvements compared to the existing commitments of the EU.

ENVIRONMENTAL SERVICES SECTOR

Although EU's commitments in this sector are already quite comprehensive, the initial offer is still relatively substantial. The initial offer is based on the EU proposal for a new classification.

The draft initial offer proposes to improve commitments for one MS in mode 2 and 3 for waste water services, and sanitation and similar services (as all other MS have fully committed in the UR). Noise and Vibration abatement services (which have only been committed by three MS) will be committed fully. For Protection of biodiversity and landscape, mode 1 would be bound for 'advisory services'. For mode 4, contractual service suppliers would be committed for all MS in all subsectors.

FINANCIAL SERVICES SECTOR

EU commitments are already of high quality, given that they are based on the Understanding on commitments in financial services. However, certain cross-border activities are not covered, and a range of national restrictions are listed. The initial offer in financial services is substantial, insofar as it abides by the standstill contained in the Understanding.

HEALTH RELATED AND SOCIAL SERVICES SECTOR

There are no proposed improvements in the draft initial offer.

TOURISM AND TRAVEL RELATED SERVICES SECTOR

EU commitments in this sector are already quite comprehensive. The draft initial offer includes the elimination of one MS' ENT for opening of new bars, cafes and restaurants, as well as travel agencies, in mode 3, one MS' nationality requirement for cafes and bars in mode 4, two MS's nationality requirements to obtain a licence for travel agencies in mode 3, and one MS' limitation of two (natural) persons per entity in travel agencies in mode 4. For tourist guides, mode 1 has been bound for three MS.

RECREATIONAL, CULTURAL AND SPORTING SERVICES SECTOR

This sector covers the following sub-sectors:

- entertainment services
- news agencies services
- libraries, archives, museums and other cultural events
- sporting and other recreational services

The EU has already taken quite wide-ranging commitments in this sector with the exception of sub-sector "Libraries". A few national restrictions have been scheduled in some sub-sectors and modes of supply.

In "Entertainment services", it is proposed to offer commitments in modes 2 and 3 for one MS, which is the only MS that has not committed this sector (mode 1 is not committed due to technical unfeasibility with the exception of two MS).

In "News agency services", it is proposed to lift the market access limitations in mode 3 for three MS, in mode 4 for one MS and the national treatment limitations in modes 1, 3 and 4 for one MS.

In "Libraries" no offer is made.

In "Sporting and other recreational services", no offer is made. However, the language of the mode 4 ENT by one MS will be improved and made clearer.

The EU has offensive interests in this sub-sector, which is the only sub-sector of recreational, cultural and sporting services where the EU has made requests. The offer would address partly the requests made in the sector.

TRANSPORT SERVICES SECTOR

The main improvement in the draft initial offer compared to the existing commitments of the EU is for following areas: Maritime transport – where the offer re-introduces the 1996 offer of the EU (withdrawn at the end of the extended maritime negotiations). In addition, the offer includes two important additional elements: "feeder of international cargo" and "free movement of empty containers". On air transport, the offer includes "groundhandling" and "airport management". The four issues are new and mainly promoted by the EU. They all reflect offensive European business interests.

For the other modes of transport, such as road and rail transport, the offer includes new commitments by one or two MS if that brings them in line with the rest of MS. New language is included for ENTs related to road transport (passengers) to make the schedule more coherent.

ENERGY SERVICES SECTOR

There are no improvements in the draft initial offer compared to the existing commitments of the EU. In order to present an offer in the activities covered under energy services, it is preferable to have the ongoing work on the classification of energy services completed.