

WORLD TRADE ORGANIZATION

RESTRICTED

TN/S/O/GTM

8 September 2003

(03-4685)

**Council for Trade in Services
Special Session**

Original: Spanish

GUATEMALA

Initial Offer

The following initial offer was received from the Delegation of Guatemala on 26 August 2003 with the request that it be circulated to Members of the Council for Trade in Services.

This initial offer is not a legal text and is submitted solely for the purpose of negotiation in the context of paragraphs 47 and 49 of the Doha Ministerial Declaration, especially in the light of the need to achieve an overall balance in the outcome of all World Trade Organization (WTO) negotiations. This preliminary offer may therefore be modified or withdrawn and is conditional upon such a balance.

The contents of this initial offer should be understood as being subject to any horizontal disciplines agreed upon in the framework of the ongoing negotiations of the Working Party on GATS (General Agreement on Trade in Services) Rules and the Working Party on Domestic Regulation and may therefore be revised on the basis of the outcome of these negotiations.

The Republic of Guatemala is submitting this offer as proof of its commitment to making a major contribution to the multilateral system for trade in services, pursuant to Articles IV and XIX.2 of the GATS.

GUATEMALA - INITIAL OFFER OF SPECIFIC COMMITMENTS

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
1. HORIZONTAL COMMITMENTS			
All Sectors	<p>(4) Movement of suppliers</p> <p>Unbound, except for senior and specialized personnel related to a commercial presence and who must contribute to the training of Guatemalan personnel in the specialized fields of activity concerned. In addition, the Labour Code provides the following:</p> <p>(a) “Employers must employ 90 per cent of Guatemalan workers and pay them at least 85 per cent of total company wages. These requirements may be modified for the following reasons:</p> <p>(i) protection and promotion of the national economy;</p> <p>(ii) lack of Guatemalan technical personnel for specific activities;</p> <p>(iii) protection of Guatemalan workers with demonstrated competence.”</p>	<p style="text-align: center;">**</p> <p>(4) Unbound, except for the categories of persons indicated in the market access column.</p> <p>(1), (2), (3) Article 45 of the Income Tax Law, Decree No. 26-92 of 9 April 1992, establishes the following:</p> <p>Tax on natural and 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:</p> <p>(a) 12 per cent on dividends, profit-sharing, earnings and other benefits paid or credited by companies or establishments domiciled in Guatemala.</p>	

** With a view to technically improving its access offer from the technical standpoint, Guatemala has decided not to include taxation measures in its horizontal commitments. However, for the sake of transparency, parties which consider it necessary may obtain the information previously provided at: www.sat.gob.gt.

Modes of supply:

(1) Cross-border supply

(2) Consumption abroad

(3) Commercial presence

(4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>The Ministry of Labour may, at its discretion, reduce these percentages by up to 10 per cent for a period of five years or increase them to eliminate the employment of foreign workers. An authorization to reduce these percentages must include the requirement to train Guatemalan technical staff in the activity concerned over the same period.</p>	<p>(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.</p> <p>(c) — 25 per cent on payments or credit for royalties and other fees for the use of patents and trademarks or for scientific, economic, technical and financial consultancy services.</p> <p>(d) — 25 per cent on payments or credit to an account for other income from Guatemalan sources not mentioned in the preceding paragraphs.</p> <p>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 tax within the first 15 working days of the calendar month immediately following that in which the income is received or earned.</p>	

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
All sectors	<p>(4) Unbound, except as established in the Labour Code, which states that, other than pursuant to special laws on the matter, at least 90 per cent of the workers hired by any employer must be Guatemalan and that they must be paid at least 85 per cent of total company wages.</p> <p>Both proportions may be adjusted:</p> <p>(a) Where required for obvious reasons relating to the protection and promotion of the national economy, the lack of Guatemalan technical specialists in a particular field of activity or the protection of Guatemalan workers with demonstrated competence. In all such cases, the Executive Power may, by means of a reasoned decision issued through the Ministry of Labour and Social Security, either reduce both proportions by up to 10 per cent each for a period of five years per company or increase them to eliminate the employment of foreign workers.</p> <p>In the event of the Ministry of Labour and Social Security authorizing a reduction in these percentages, the companies concerned will be required to train Guatemalan technical specialists in the field of activity concerned over the period of time granted for that purpose; and</p> <p>(b) Where immigration is authorized or controlled by the Executive Power or involves workers which it has hired itself and who are entering or have entered the country to help establish or develop agricultural or livestock settlements or to work for social welfare or</p>	(4) Unbound, except as indicated in the market access column.	

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>cultural institutions; or where the people in question are of Central American origin. In all these circumstances, the scope of the respective adjustment must be determined by the Executive Power on a discretionary basis, but the decision to be issued through the Ministry of Labour and Social Security must clearly state the grounds for and extent and duration of the adjustment.</p> <p>Fractions should be ignored when calculating the percentages given in the first paragraph. Where the total number of workers is five or less, four must be Guatemalans.</p> <p>This measure does not apply to company managers, directors, administrators, supervisors or general executives.</p>		
II. SECTOR-SPECIFIC COMMITMENTS			
1. <u>BUSINESS SERVICES</u> A. <u>Professional Services</u> a. Legal services. Solely advisory services on the legislation of the country of origin (CPC 86190).	(1) None (2) None (3) Unbound (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) Unbound (4) Unbound, except as indicated in the horizontal section.	

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>B. Computer services</p> <p>B. Computer and related services Consultancy services related to computers and data processing. (CPC 84100-84390) (including: software implementation services, systems analysis, data processing, time sharing services and input preparation or digitization).</p> <p>2. COMMUNICATIONS SERVICES</p> <p>C. Telecommunications services</p> <p>a) Voice telephone services (CPC 7521)</p> <p>b) Packet-switched data transmission services (CPC 7523)</p> <p>c) Circuit-switched data transmission services (CPC 7523)</p> <p>d) Telex services (CPC 7523)</p> <p>e) Telegraph services (CPC 7522)</p> <p>f) Facsimile services (CPC 7521, CPC 7529)</p> <p>g) Private leased circuit services (CPC 7522, 7523)</p>	<p>(1) None</p> <p>(2) Unbound None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section</p> <p>(1) International traffic must be routed through the facilities of an enterprise with a frequency licence and/or a telecommunications registration certificate.</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section</p>	<p>(1) None</p> <p>(2) Unbound None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section</p> <p>(1) None</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>The Government of Guatemala undertakes additional commitments as set out in the Annex.</p>

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>o) Other</p> <p>Paging services (CPC 75291)</p> <p>Mobile telephone services (CPC 75213)</p> <p>Personal communications services</p> <p>Mobile data services</p> <p>Satellite services.</p> <p>6. ENVIRONMENTAL SERVICES</p> <p>D3. Nature and landscape protection services (CPC 94060)</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) None, except that provision of these services must be consistent with national policies on the development and maintenance of natural resources and biodiversity.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) None, except that provision of these services must be consistent with national policies on the development and maintenance of natural resources and biodiversity.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
7. <u>FINANCIAL SERVICES</u>			
A. <u>Insurance services</u>			
A. <u>All insurance and insurance-related services</u>			
Reinsurance of policies (81229)			
c. <u>Reinsurance and retrocession (CPC 81299*)</u>	(1) None (2) None (3) Unbound <i>None</i> (4) Unbound, <i>except as indicated in the horizontal section</i>	(1) None (2) Unbound (3) Unbound <i>None</i> (4) Unbound, <i>except as indicated in the horizontal section</i>	
B. <u>Banking Services</u>			
B. <u>Banking and other financial services (other than insurance)</u>			
k. <u>Advisory and other auxiliary financial services (CPC 8131 or 8133)</u>	(1) None (2) None (3) None. Only foreign financial institutions legally established in Guatemala (4) Unbound, <i>except as indicated in the horizontal section.</i>	(1) Unbound (2) Unbound (3) Unbound (4) Unbound, <i>except as indicated in the horizontal section.</i>	
l. <u>Provision and transfer of financial information and financial data processing (8113) (CPC 8131)</u>	(1) None (2) None (3) Only foreign financial institutions legally established in Guatemala (4) Unbound, except as indicated in the horizontal section.	(1) Unbound <i>None</i> (2) Unbound (3) Unbound (4) Unbound, except as indicated in the horizontal section.	

* Unbound because not technically feasible.

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
9. <u>TOURISM AND TRAVEL-RELATED SERVICES</u> Tourist sector Hotel and other lodging services (6410-6419) (CPC 64110, 64120) (including hotels, motels, apartment-hotels and tourist resorts) (Four- and five-star categories only) Meal-serving services (CPC 64210 - CPC 64290) (including full restaurant service, self-service facilities, caterer services and other food-serving services) Tourist marina operators <i>Travel agency and tour operator services (CPC 74710**)</i>	(1) Unbound* (2) None (3) None (4) Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel. (1) Unbound* (2) None (3) None (4) Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel. (1) Unbound (2) None (3) None (4) Only senior and specialized personnel related to a commercial presence to the extent required for training Guatemalan personnel. (1) Unbound (2) None (3) Unbound (4) Unbound, except as indicated in the horizontal section.	(1) Unbound* (2) None (3) None (4) None (1) Unbound* (2) None (3) None (4) None (1) Unbound (2) None (3) None (4) None (1) Unbound (2) Unbound (3) Unbound (4) Unbound, except as indicated in the horizontal section.	

* Unbound because not technically feasible.

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p><i>Tourist guide services (CPC 74720)</i></p>	<p>(1) Unbound*</p> <p>(2) None</p> <p>(3) Unbound</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound*</p> <p>(2) Unbound</p> <p>(3) Unbound</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	
<p>10. <u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)</p>			
<p>A. Entertainment services (including theatre, band and orchestra entertainment and circus services) (CPC 96191 and CPC 96192)</p>	<p>(1) Unbound</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound</p> <p>(2) Unbound</p> <p>(3) Unbound</p> <p>(4) Unbound, except as indicated in the horizontal section. At least one Guatemalan performer must take part in every show.</p>	

** Service specified is only part of the full range of activities covered by the corresponding CPC heading.

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
11. <u>TRANSPORT SERVICES</u>			
C. <u>Air transport services</u>			
Aircraft repair and maintenance services (pursuant to paragraph 3 of the Annex on Air Transport Services)	(1) None (2) None (3) None (4) Unbound, <i>except as indicated in the horizontal section.</i>	(1) None (2) None (3) None (4) Unbound, <i>except as indicated in the horizontal section.</i>	
Sale and marketing of air transport services (pursuant to paragraph 3 of the Annex on Air Transport Services)	(1) Unbound (2) None (3) Unbound (4) Unbound, except as indicated in the horizontal section.	(1) Unbound (2) Unbound (3) Unbound (4) Unbound, except as indicated in the horizontal section.	
(CPC 74710—74720 (including travel agency, tour operator and tourist guide services))			
Computer reservation system (CRS) services (pursuant to paragraph 3 of the Annex on Air Transport Services)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

ANNEX

Reference Paper

Additional commitments by Guatemala with regard to pro-competition regulations.

Scope

The following are definitions and principles relating to the regulatory framework for basic telecommunications services.

Definitions

Users means telecommunications service consumers.

Essential facilities means facilities of a public telecommunications transport network or service that:

- (a) Are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) Control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) Engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

2.2 Interconnection to be ensured

Within the limits to which market access is permitted, interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

- (a) Under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates; and
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and rates that are transparent, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable to interconnection to a major supplier shall be made publicly available.

2.4 Transparency of interconnection arrangements

It is guaranteed that all major suppliers shall make either their interconnection agreements or a reference interconnection offer publicly available only during the period from 18 May 1997 to 18 May 2000.

2.5 Interconnection: Dispute settlement

If, within a period of 40 (working) days, the parties have not reached agreement on access to essential resources, the Superintendency of Telecommunications (SIT) shall issue a ruling under the procedure specified in the General Telecommunications Law.

Only an appeal for review may be lodged against a decision by the Superintendency of Telecommunications, and it shall be resolved by the Ministry of Communications, Transport and Public Works. An administrative appeal shall lie against any decision by the Ministry of Communications, Transport and Public Works resulting from an appeal for review.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations shall not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following shall be made publicly available:

- (a) All the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the refusal of a licence shall be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

GUATEMALA - FINAL LIST OF ARTICLE II (MFN) EXEMPTIONS)

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
ALL SECTORS	<p>Measures stemming from:</p> <p>1. Agreements signed by Guatemala in the framework of Central American integration, including:</p> <p>— Multilateral Treaty on Free Trade and Central American Economic Integration;</p> <p>— Central American Agreement on the Equalization of Import Duties and Charges;</p> <p>— Treaty of Economic Association;</p> <p>— General Treaty on Central American Economic Integration.</p> <p>2. The Central American Exemption Clause does not allow the extension to third countries of bilateral or multilateral concessions between Central American countries.</p> <p>3. Investment Guarantee Agreement with the United States of America (Decree No. 1545 of 22 August 1962).</p> <p>Government Decision No. 693-86, published on 22 September 1986, on rules for the implementation of the United States Investment Guarantee Agreement concluded between the Governments of the United States and Guatemala.</p>	<p>Costa Rica, El Salvador, Honduras and Nicaragua</p> <p>Costa Rica, El Salvador, Honduras and Nicaragua</p> <p>United States</p>	<p>Indefinite</p> <p>Indefinite</p> <p>Indefinite</p>	<p>Maintenance of preferences granted to countries of the region.</p> <p>Maintenance of preferences granted to countries of the region.</p> <p>Promotion of investment.</p>

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Cross-border trade in services and investment	4. Trade and Investment Agreement between Central American countries and Colombia and Venezuela, concluded on 12 February 1993.	Colombia, Costa Rica, El Salvador, Honduras, Nicaragua and Venezuela	Indefinite	Maintenance of preferences granted to countries of the region.
	5. Tuxtla Gutiérrez Agreements concluded on 11 January 1991.	Costa Rica, El Salvador, Honduras, Mexico and Nicaragua	Indefinite	Maintenance of preferences granted to countries of the region.
	<i>Preferential treatment for a range of service providers in the four modes of supply within the framework of Central American economic integration and the scope of the Central American Exemption Clause.</i>	<i>Costa Rica, El Salvador, Honduras and Nicaragua</i>	<i>Indefinite</i>	<i>Need to ensure market access and investment promotion.</i>
	<i>Investment</i>	<i>United States of America</i>	<i>Indefinite</i>	<i>Investment promotion.</i>
Trade and investment	<i>Preferential treatment with regard to the agreed provisions, designed to promote trade and investment.</i>	<i>Colombia, Costa Rica, El Salvador, Honduras, Nicaragua and Venezuela</i>	<i>Indefinite</i>	<i>Need to ensure market access and investment promotion.</i>