

The new tourism regulations

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The new tourism regulations, 2006, state that the following tourist enterprises are reserved for citizens of Botswana or companies which are wholly owned by citizens of Botswana:

Camping sites including caravan sites, Guest houses, Mekoro operations, Mobile safaris, Motorboat safaris and Transportation. Does this regulation counter past GATS commitments by Botswana?

In fact, Botswana has already made commitments in 1995 in modes 1–3 including in the following sub-sectors:

9a Hotels & Restaurants (UN classification CPC641–643) and 9b Travel agencies and tour operators. CPC641–643 includes services such as camping and caravanning, which would be reserved for nationals under the new regulations. GATS tourism sector 9b could include CPC 7471 travel agency and tour operator services. Thus, some operations in the new regulations might be included in CPCs for which Botswana has already made commitments. On this account the new regulations go against existing GATS commitments unless the newly reserved operations were classified as:

- tourist guide services (for which there are currently no commitments in GATS)
- mode 4 supply of services (it could have classified this as a mode 4 market access limitation, which is ‘unbound except as indicated in the horizontal commitments’.)

There are three options for the future of Botswana’s tourism regulations.

1. Rewrite tourism regulations

Restricting services companies to citizens is not conducive to a vibrant services sector and would go against Botswana’s policy to develop tourism. It would be more efficient to promote domestic capabilities first, and then use immigration procedures rather than blunt restrictions on enterprises. A particular concern is the lack of access to credit for independent (indigenous) tour operators to set up their own business. The new regulations could limit the ability of foreign-owned tourist enterprises to operate even if they brought new skills, marketing methods, finance, attracted new tourists and employed citizens. The impact of the new regulations has so far been limited as the number of nationally-owned tourism enterprises increased to only 247 last year. FDI has been limited so far, so a more enabling environment would be useful.

2. Adequate interpretation of law

Another option for Botswana would be to clarify the new tourism legislation. It might be possible to regard the classified operations by non-citizens tourist enterprises as *self-employed* or *independent professionals* under mode 4, as in other mode 4 schedules.

3. Revoke GATS commitments

Pursuant to GATS article XXI, a country wishing to reverse or add a further limitation can do so after a period of three years of the commitment being in place (this includes tourism commitments as well). Further, it needs to negotiate compensation with all affected parties. This might be against the development of the sector.

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