



MOVEMENT OF NATURAL PERSONS UNDER THE GATS

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Article I – Scope and Definition

Definition of Trade in Services:

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

Mode 4 - Article I definition



- The supply of a service by:

“a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”

What natural persons?



- Natural persons who are service suppliers of a Member
 - Self-employed
- Natural persons of a Member who are employed by a service supplier of a Member and sent abroad to supply a service
 - For the ‘same’ company which has commercial presence in another Member’s territory (Intra-corporate Transferees)
 - To a consumer in the territory of another Member. The contract is made between the home and host companies (juridical contractual service supplier)

The Annex on the Movement of Natural Persons



- The GATS does **NOT** cover:
 - natural persons seeking access to the employment market
 - measures regarding citizenship, residence or employment on a permanent basis
- Governments are free to regulate entry and temporary stay, provided these measures do not nullify or impair the commitments
 - footnote 1: differential visa requirements, not to be regarded as nullifying or impairing benefits under a specific commitment

A snapshot of Mode 4 commitments



- Governed by horizontal commitments
- Positive listing of measures:
“Unbound except ...”
- Absence of full liberalization
- Access mostly for those with high-level of training and expertise, often as intra-corporate transferees
- Specified duration of stay: 3 months to 5 years

Main limitations scheduled



- Limited Categories of workers included
- Pre-employment requirements
- ENTs/LMTs
- Quotas
- Technology Transfer
- Residency and Nationality req.
- Training/Education/Qualification
- Authorisation and registration req.
- Local Content

Structure of Horizontal Commitments (110 Members, as of 2004)



- Movements linked to Mode 3: ~60%
- Contractual Service Suppliers (employees of juridical persons): ~13%>
- Independent suppliers: ~6%>
- Length of stay: 3-5 years for ICTs; shorter for CSS: 3 months - 1 year (very few with > 2 years)

Possible reasons for the less liberal commitments in Mode 4



- Political and Regulatory concerns profoundly affected levels of commitments under Mode Four for all Members
- Enforcement concerns and the problem of temporary entry leading to permanent entry
- Protection of labour markets associated with lower pay foreign services suppliers.



Negotiating Proposals

- 7 specific proposals
 - Developing economies- India, Colombia, Kenya
 - Developed economies - EC, US, Japan, Canada
- Other sector-specific proposals relate to Mode 4, e.g., professional services

Some of the barriers identified in the negotiating proposals



- Structure and coverage of existing commitments
- ENTs
- Definitional problems
- Administrative practices, access to information and transparency
- Recognition of qualifications

Some of the solutions proposed.

- **More and better commitments**
more categories, improved definitions, finer classification, “sector-specific” commitments
- **Removal of barriers**
multilateral criteria for ENTs - to be more specific, transparent and non-discriminatory
- **Greater transparency and predictability**
- **Model Schedule/“GATS visa”**
- **Additional Commitments on transparency and regulation**
- **Strengthened disciplines on MRAs**

Mode 4 in Offers so far...*



- Horizontal commitments: 17 of the 45 offers include changes to the horizontal section.
- 2 Members did not include Mode 4 commitments in their horizontal section
- In addition, 122 existing sector-specific commitments (14 Members) improved, mostly in business services

* 2 offers will be submitted today, thus bringing the total to 47.

Types of Improvement



- Inclusion of new categories of natural persons/broadening coverage of definition
- Expansion of sectoral coverage/additional sectors to which the service could be provided
- Defining/extending the period of stay; providing for renewability of permits
- Clarification of the application/reduction of the scope of ENTs/LMTs
- Some improvements in the NT column
- Some entries in the AC column

State of play of negotiations

- Number and quality of offers is thus far unsatisfactory including on Mode 4
- New initial offers to be submitted as soon as possible
- Revised offers to be submitted by May 2005
- CTS to conduct review of progress in negotiations before the 6th Ministerial
- Sixth Ministerial Conference to be held in Hong Kong in December 2005.

The Mode 4 debate



- Informal discussions concerning Mode 4 issues have been held within the Special Session of the Services Council in the “September cluster”
- The work of other Services negotiating bodies (WPDR) is also touching upon issues of relevance to Mode 4

The Mode 4 debate



- Some issues currently being discussed:
 - Categories of natural persons used in GATS schedules of commitments and their consistency with domestic measures
 - Complementarity of horizontal and sectoral commitments on Mode 4
 - The need to improve the transparency of Mode 4 commitments and domestic regulatory frameworks
 - Recognition of qualifications
 - Administrative procedures relating to visa and work permits



The Way Ahead

- The GATS reality as a treaty among governments
- Importance of pursuing liberalization of Services trade
- Mode 4 – a trade concept part of a much broader picture
- The need to bridge the conceptual gap between trade and migration
- The need to take account of non-trade policy concerns.
- Pursue negotiations on Mode 4 on multiple fronts under the GATS (commitments, additional commitments on transparency and regulatory issues, rules)



THANK YOU