

A paper by Canada 30.11.2012 regarding the Annex (or Chapter) on Movement of Natural Persons.

Framework for a Working Group on Mode 4
Discussion Paper submitted by Canada
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In order to ensure an ambitious and meaningful outcome of a plurilateral agreement on services, negotiations on mode 4 will play an important role. This paper proposes a framework for a Working Group on mode 4 in the context of these negotiations. Mode 4, the movement of natural persons, is one of the four modes of service supply in the GATS and an important complement to trade in goods, trade in services by other modes, government procurement and investment.

Objectives

While each participant will have specific objectives in the negotiations, including in the area of mode 4, there are some horizontal objectives that could guide the Working Group. In particular, commitments on Mode 4 need to be:

- Clear and transparent: a well-defined scope of commitment and a clear meaning of the level of obligation bound by the commitment;
- Predictable: binding access, resulting in increased predictability and, in some cases, improved access, in areas that facilitate trade in services, trade in goods, and investment;
- Ambitious: a broad coverage for commitments that reflect current access, and, where possible, offer new market access on a preferential basis;
- Balanced: across a comprehensive agreement with ambition in all modes of supply;
- Mindful of sensitivities: While participants have agreed to an overall high level of ambition for the Agreement, any approach to mode 4 must provide sufficient flexibility to address participants' legitimate sensitivities.

Work Plan

Temporary Entry vs. Presence of a Natural Person

One important issue to be dealt with early in the negotiations on mode 4 will be the question of commitments for temporary entry vs. the commitments for presence of a natural person. The former captures "at the border" measures such as work permit requirements, while the latter captures treatment that is afforded to the business person once they are in the territory of the other Party. Both of these elements are captured under mode 4 in the GATS, however, many participants address them separately in their bilateral free trade agreements. The Working Group should discuss how to handle each.

Common Categories of Business Persons

One of the challenges under the GATS is the lack of common definitions for the categories of covered persons. In order to increase transparency and clarity of commitments, participants could develop a set of common definitions that could include categories such as intra-company transferees, business visitors, investors, contract service suppliers and independent professionals. Definitions should also include general conditions to be applied to a category (eg. Education requirements, length of stay, remuneration, etc.)

Building a Meaningful Chapter

Any text on mode 4 could establish general obligations such as transparency and information sharing, and exceptions such as in the event of domestic labour disputes. In addition, participants may wish to discuss specific sensitivities on mode 4 (eg. fraud), with a view to developing proposed text to address these concerns, allowing Members to undertake commitments that are more ambitious.

Transparency of Commitments

Participants will need to seek agreement on the types of measures that are to be covered in mode 4 commitments. For entry, this could include Economic Needs Tests, Proportionality Requirements, Quotas, etc. For presence, this could include limitations on national treatment, most-favoured nation, etc.

To further increase transparency and clarity, the working group will need to determine how commitments will be scheduled in order to clearly demonstrate their value. Often times, in current GATS commitments, it is unclear if numerical restrictions continue to apply to a committed sector. The Working Group should establish common scheduling guidelines that clearly describe the commitment.

Standards for Ambition

The Working Group could then discuss the level of commitments including any core elements. Some categories are generally less sensitive, such as intra-company transferee, and short-term business visitors. Others would be handled by bilateral negotiation. The Working Group could explore ways to top up commitments to maximize ambition while taking into account sensitivities.

Accessions

The Working Group should also look at specific needs for Mode 4 related to any accession process to the agreement.