

A paper submitted by Canada on 4 March 2013 regarding the Annex on Movement of Natural Persons (Mode 4) and elaborating in great details on Canada's paper of 30.11.2012.

In Canada's Mode 4 paper, dated November 30, 2012, elements of a work plan for Mode 4 were introduced. The following discussion questions are intended to build on these elements, in order to facilitate preparations for the March meeting on Mode 4, as well as for consideration by any participants who will be tabling proposals for Mode 4.

Two Annexes have been attached to the discussion questions, containing background material which may be useful. Annex A contains an overview of Mode 4 issues (temporary entry vs. presence of a natural person) and how they have been addressed in the current GATS obligations and commitments. Annex B contains an overview of Mode 4 categories from participants' current schedules and offers.

Temporary Entry vs. Presence of a Natural Person

- How should Mode 4 commitments for entry and presence be scheduled? Should commitments for entry be scheduled in the same manner as commitments for presence? (Refer to Annex A) To what extent should both entry and presence be subject to the market access and national treatment obligations?
- In a bilateral context, to what extent do participants schedule Mode 4 commitments (entry and presence) by sector, or as horizontal commitments? Outside of the GATS (e.g., bilateral free trade agreements), do participants separate commitments for entry and presence? What are the benefits of scheduling both together, compared to the benefits of addressing them independently?

Transparency of Commitments

- What is the best approach to ensure transparency of commitments? For example, under the GATS, if a Member schedules the category of ICTs, but is silent on the applicability of restrictions, it may be unclear whether or not that Member is reserving flexibility to apply restrictions such as ENTs or quotas. Do participants agree that the applicability (or non-applicability) of restrictions should be transparent? If so, what types of restrictions should be covered? (eg. ENTs, quotas and other numerical restrictions, education requirements, experience requirements, wage floors, etc.)

Types of Measures to be covered

- It will be important to clearly define the types of measures that will be covered by mode 4 commitments. While Turkey has proposed measures to address "business visas" not all members apply visas in the same manner, and in some cases work permits and their conditions are completely separate from the visa (which is applied for reasons such as security, etc.) Is there a way to create a clearer definition or distinction between the two issues (i.e., visas and work authorizations)? Are there other distinctions that need to be

made?

Common Categories of Business Persons

- Participants have noted the value in developing common definitions for key categories of business persons. Would participants support inclusion of common definitions of the five most commonly covered categories in the GATS (ie. Intra-company transferees, short term business visitors, business persons responsible for an establishment, contract service suppliers, and independent professionals)? Are there other categories that would benefit from a common definition for clarity and predictability? What would be the key elements to be included in each definition? (Refer to Annex B)

Standards for Ambition

- What common categories of business persons should form a core commitment under the agreement? It appears that ICTs would be a likely candidate, given that all participants have some degree of familiarity with this category and short term business visitors have a considerable value in enabling other modes of trade. Other categories, such as CSS and IP may be more sensitive for certain members and, outside the GATS, are often based on reciprocity. Should all categories be addressed in the same manner?

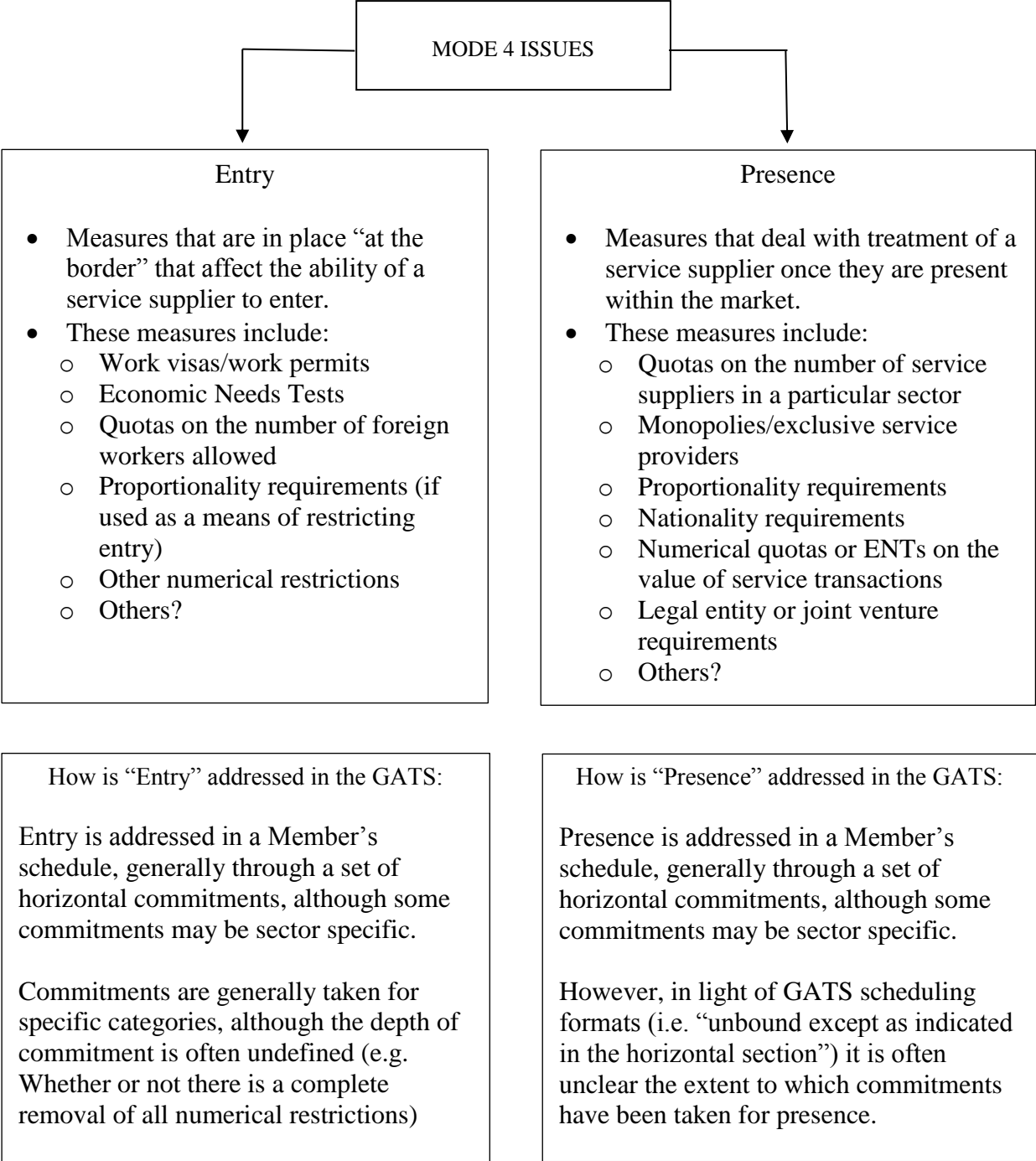
Building a Meaningful Chapter

- Under the GATS, Mode 4 obligations are addressed under the "Annex on Movement of Natural Persons Supplying Services Under the Agreement". To what extent should the text of the Annex be replicated in a plurilateral agreement? Are there any modifications that could improve the current text? For example, should the phrase "access to the employment market of a Member" be clarified?
- Switzerland, in its December 2012 proposal, has included obligations on transparency, contact points, and application procedures. Which other obligations would be beneficial to include under Mode 4 (e.g. additional transparency and information sharing issues, other types of obligations)?
- Are there any specific sensitivities that may need to be addressed in the text (e.g. potential abuses of the system such as fraud)? To what extent would these sensitivities need to be addressed in the text in order to facilitate maximum ambition?

Accessions

Although the issue of accessions will generally be addressed in the broader context, are there any sensitivities specific to Mode 4 that will need to be taken into consideration? What impacts could the accession process have on the overall level of ambition for Mode 4?

ANNEX A: TYPES OF MODE 4 ISSUES¹



¹ An additional element of Mode 4 deals with the Recognition of Qualification which is already being addressed in the broader negotiations (e.g. Australia's proposal on professionals)

ANNEX B: COVERED CATEGORIES IN THE GATS

The following compilation is meant to highlight elements of common mode 4 categories used in the GATS. This list is not exhaustive, and does not include the definitions used by participants in their bilateral FTAs.

Intra - Company Transferees

- All participants have offered some form of commitments for intra-company transferees.
- These commitments are an important enabler of Mode 3.
- Most common categories include executives, senior managers and specialists. The category of graduate trainees has also been included.
- Provides services to a branch, subsidiary or affiliate.
- Some instances of pre-employment requirements.
- Other limitations include proportionality tests, a test of “reasonableness” and requirement to train local nationals.
- Duration of stay ranges from 1-4 years, with most commitments for 3 years with often times the possibility to extend.

Short term business visitors

- A considerable majority of participants have offered some form of commitment for short term business visitors.
- These commitments are an important complement to trade in services, investment, trade in goods, and government procurement.
- Scope of activities – many participants have only scheduled service sellers, while others included activities such as meetings negotiations, activities associated with establishment, and after sales/lease (aka installers and maintainers).
- Remuneration comes from a source outside the host market.
- Not engaged in direct sales to the public.
- Duration of stay is generally 3 months, with some participants offering longer periods.

Business Persons Responsible for an Establishment

- Approximately ½ of the participants have offered some form of commitments for investors/entry for establishment purposes
- For some participants, this commitment falls under the short-term business visitor category, while for others it is a longer commitment.
- This commitment may cover pre-establishment, post-establishment or both.

CSS/IP

- Approximately ½ of participants have offered some form of commitments for contract service suppliers or independent professionals but definitions vary widely.
- Some commitments are broad, while others are linked to specific sectors.
- In FTAs, many participants have been able to undertake more ambitious commitments than in the GATS, but often the commitments are under a framework of strict reciprocity.