CTS Thematic Seminar
“Mode 4 at Work”

Mode 4 –
Scope, commitments, MFN
exemptions

Trade in Services and Investment Division, WTO

Geneva, 10 October 2018
Structure of the presentation

1. The WTO and the temporary movement of persons
2. The scope of mode 4
3. A snapshot of GATS mode 4 commitments and 4 MFN exemptions
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Why is the movement of persons covered by WTO disciplines?

Four modes of supply (GATS Article I):

1. Cross border supply
2. Consumption abroad
3. Commercial presence
4. Presence of natural persons

Only as a means to an end, i.e. to trade services
Mode 4
A “sub-sub-…-subset” of international mobility
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GATS definition - Mode 4 is ... 

The supply of a service by:

Natural person  

Juridical person 

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

[Article I:2(d) and Article XXVIII(j)]
Annex on MNP (1/3) –
Natural Persons may be:

- “Service suppliers of a Member”
  present in the territory of any other Member
  - ‘Independent professionals’
- “Employed by a service supplier of a Member” (= or ≠ Member)
  present in the territory of any other Member
  - ‘Intra-corporate transferees’
  - ‘Business visitors’
  - ‘Contractual service suppliers’
  - ‘Employees of foreign service suppliers’
Annex on MNP (2/3) –

The GATS does not cover:

• natural persons “seeking access to the employment market”

• measures regarding citizenship, residence or employment on a permanent basis
Members are free to apply measures to regulate entry or temporary stay in their territory, provided these measures are not applied in such a manner as to nullify or impair the benefits of commitments*

*Including by applying differential visa requirements
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A snapshot of commitments

- Governed by horizontal conditions … → apply to committed sectors
- Absence of full liberalization: “Unbound except…”
- Categories linked to commercial presence
- High-level of education/training
- Duration of stay: 3 months to 5 years
- Quotas/ENTs
- Residency and nationality requirements
Categories included in mode 4 commitments
(% of total categories scheduled horizontally)

ICT = Intra-Corporate Transferees
E,M,S = Executives, Managers, Specialists
BV = Business Visitors
CSS = Contractual Service Suppliers
IP = Independent Professionals
Source: WTO Secretariat (2018)
Recently acceded Members – Mode 4 commitments

• Overall, little variation compared with “older” Members, both in terms of committed categories, definitions used and limitations scheduled

• Where there are differences, these concern:
  – Inclusion of “graduate trainees” (as ICTs)
  – More frequent recourse to ENTs, at times on top of quotas (also for ICTs)
  – Unanimous 1 year pre-employment requirement
  – Relatively shorter duration of stays (e.g. ICTs: maximum 3 years; BV: 60 days; etc.)
Mode 4 MFN exemptions

• Caveats:
  – MFN exemptions not structured by mode → “all sectors”, but specific sectoral exemptions also potentially relevant (e.g. professional services)
  – Assessment complicated by unspecific references (e.g. to regional agreements), without clear mode 4 indication

• Still, **46 exemptions** with comprehensive sectoral coverage dealing with mode 4, on the part of 25 Members (EU28=1)
  – Preferences relate to work/residence permits, ENTs, nationality requirements, access to certain activities
  – Beneficiaries not always clearly identified (“traditional sources”)
  – Most destined for “indefinite” duration
THANK YOU