

Collective Request
Mode 4 – Movement of Natural Persons

Introduction

Further to paragraphs 25 through 27 of the Hong Kong Ministerial Declaration, and in accordance with paragraphs 7 and 11 (b) of Annex C of the Hong Kong Ministerial Declaration, the Mission of India is pleased to present the delegation of [recipient Member] with a collective request in Mode 4 on behalf of the following interested Members: Argentina, Brazil, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Morocco, Pakistan, Peru, Thailand, Uruguay.

This request identifies specific objectives for liberalization of Mode 4.

In accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, this collective request is intended to complement, and not supersede, the bilateral request/offer negotiations and the specificity of bilateral requests.

All aforementioned interested Members are willing to consider, with due respect for their national policy objectives and the level of development of individual members' commitments in this mode of supply, taking into account the flexibility provided for individual developing countries in Article XIX:2 of the GATS.

The Mission of India has the further pleasure to invite [recipient Member] to participate in a plurilateral discussion of this request, which will be organized in Geneva during the Services cluster taking place from 27 March to 7 April, 2006.

Please note that eight other Members have received collective requests in Mode 4 from the aforementioned group of interested Members, and have also been invited to this plurilateral meeting.

The aforementioned interested Members reserve the right to modify the content of this request. Additional interested Members may also be identified in the future.

Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, may be addressed to:

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Objectives

Mode 4 or movement of natural persons is one of the key modes of delivery of services. Freer access of natural persons to markets is an essential supplement to other modes of delivery given the growing integration between the different modes of supply. One of the most critical issues relating to Mode 4 is the categories of natural persons for whom commitments are being sought. It is recognized that specific commitments in Mode 4 are primarily horizontal. The coverage of categories is also narrow and restricted mainly to personnel related to commercial presence. The coverage of categories de-linked from commercial presence is extremely low. Substantial improvements in the coverage of such categories and substantial removal of the market access limitations for each of them is the key objective that would lead to improved market access in Mode 4.

Collective Request in Mode 4

New and/or improved market access commitments are being sought in the following categories de-linked from commercial presence. We request the recipients of this request to consider these common categories of interest to Members in this group along with certain common parameters and the market access and national treatment conditions that should be attached to each of them with the objective of practical but effective market access in Mode 4. This draws also on paragraph 1(d)(i) of Annex C of the Hong Kong Ministerial Declaration.

We recognize that it may not be feasible to achieve full harmonization of domestic immigration regimes in respect of these categories, however, it is useful in arriving at a common understanding of these categories and their specific elements. This would also help in greater uniformity and clarity in the scheduling of commitments.

We also fully recognise the appropriate flexibility for individual developing countries while making such new and/or improved commitments.

1. Contractual Service Suppliers (CSS) – Employees of juridical person

Definition and common parameters

Employees of a foreign based company/partnership/firm who enter the territory of another WTO Member temporarily in order to perform a service pursuant to a contract(s) between their employer and a service consumer(s) in the territory of the other Member having the following broad characteristics:

- (a) Restricted to employees of foreign based enterprises with no commercial presence in the territory of the other WTO Member.
- (b) Juridical person has obtained a service contract for the provision of a service in the territory of the other WTO Member.
- (c) Employees of such foreign based enterprise receive their remuneration from their employer.
- (d) Employees have appropriate educational and professional qualifications relevant to the service to be provided.

Market access conditions

- (a) Employees of foreign based enterprises will be restricted to personnel with requisite qualifications to fill positions responsible either for management of operations, or provision of services at a level of complexity and specialty that require, at a minimum, a diploma or a university degree, or demonstrated experience.
- (b) Wage parity will not be a pre-condition of entry. However, this does not preclude fixation of certain minimum wages and/or salary thresholds based on average salaries in the host country.
- (c) List of sectors/occupations to which this category will apply will be clearly specified through a positive listing of all such sectors or alternatively indicating those sectors where it would not apply.

An indicative list of sectors/sub-sectors of interest to this group is enclosed in Annex – A.

- (d) Economic Needs Tests should be removed or substantially reduced. In case of the latter, they should be applied on a non-discriminatory basis. Further, details concerning the following should be specifically mentioned:
 - (i) The service sectors and occupations to which the ENT shall be applied,
 - (ii) The definition, criteria and conditions to be used in applying the ENT,
 - (iii) The duration of application of the ENT.
- (e) Duration of stay for one year or for duration of contract (if longer) with provision for renewal.
- (f) Employees can perform services related only to the service activity which is the subject of the contract.

2. Independent Professionals (IP)

Definition and common parameters

Natural persons who enter the territory of another WTO Member temporarily in order to perform a service pursuant to a contract(s) between them and any service consumer located in the territory of the other Member having the following broad characteristics:

- (a) The natural person supplies the service as a self-employed person.
- (b) The natural person has obtained a service contract in the territory of the Member where the service is to be provided.
- (c) The remuneration for the contract is to be paid solely to the natural person.
- (d) Natural person possesses appropriate educational and other qualifications relevant to the service to be provided.

Market Access conditions

- (a) Natural persons will be restricted for provision of services at a level of complexity and specialty that require, at a minimum, a diploma or a university degree, or demonstrated experience.
- (b) Wage parity will not be a pre- condition of entry. However, this does not preclude fixation of certain minimum wages and/or salary thresholds based on average salaries in the host country.
- (c) List of sectors/occupations to which this category will apply will be clearly specified through a positive listing of all such sectors or alternatively indicating those sectors where it would not apply.

An indicative list of sectors/sub-sectors of interest to this group is enclosed in Annex – A.

- (d) Economic Needs Tests should be removed or substantially reduced. In case of the latter, they should be applied on a non-discriminatory basis. Further, details concerning the following should be specifically mentioned:
 - (i) The service sectors and occupations to which the ENT shall be applied,
 - (ii) The definition, criteria and conditions to be used in applying the ENT,
 - (iii) The duration of application of the ENT.
- (e) Natural person can perform services related only to the service activity which is the subject of the contract.
- (f) Duration of stay for one year or for duration of contract (if longer) with provision for renewal.

National Treatment conditions for both CSS and IP

None other than the requirement for grant of visas/work permits to service providers under GATS for the various categories mentioned in the schedule of commitments subject to the specific conditions against each such category.

Note:

Other national treatment limitations may also be specifically scheduled. In case there are no other limitations other than the requirement for grant of visas/work permits, this may be committed.

Transparency in Mode 4 commitments

The members of this group would also like to mention their interest in Transparency of Mode 4 commitments in these categories as this can be a useful supplement to the market access mentioned above. However, it may be noted that the main request of the group is for new/improved market access commitments as mentioned above and the transparency elements are no substitute for them.

The group also recognizes the ongoing work on Transparency in the Working Party on Domestic Regulations (WPDR) and the mandate for developing disciplines on domestic regulations contained in the Hong Kong Ministerial Declaration. As part of this, we hope that disciplines will also be developed for addressing Mode 4 transparency issues. At this stage we would like to indicate our interest in this area and await the results in the WPDR.

Broadly, the interests in Transparency relate to the following:

1. Members shall provide information through a single window on the materials or evidence required of an applicant in such categories seeking temporary admission into their country as well as a description of the complete process for its submission, consideration, and approval. Information provided shall include, inter alia:

- Categories of permit and their requirements;
- Documentation required;
- Method of filing;
- Processing time and application fees (if any);
- Length and validity of stay;
- Possibility and conditions for extensions (including availability of multiple entry visas/permits);
- Rules regarding accompanying dependants;
- Review and/or appeal procedures (if any);
- Details of relevant contact points for further information (e.g. links to relevant government web-sites which provide more detailed information on embassies, Consulates and other issuing bodies).
- Any relevant immigration laws of general application should also be referenced (not necessarily included in full, but details of where information can be found on them).
- Any exceptions to these rules, be it due to bilateral or plurilateral arrangements

2. Members shall also provide a full description of the manner in which the scheduled limitations to market access and national treatment for the temporary entry of natural persons in such categories are administered by their authorities through the same single window.

Indicative List of Sectors/sub-sectors for CSS and IP

Contractual service suppliers

- Accounting & bookkeeping (CPC 862)
- Architectural services (CPC 8671)
- Engineering services (CPC 8672)
- Integrated engineering services (CPC 8673)
- Urban planning and landscape architectural services (CPC 8674)
- Medical & dental services (CPC 9312)
- Veterinary services (CPC 932)
- Services provided by midwives, nurses, physiotherapists and paramedical personnel (CPC 93191)
- Computer & related services (CPC 84)
- Research and Development services (CPC 851 + 852 +853)
- Advertising services (CPC 871)
- Market research and public opinion polling services(CPC 864)
- Management consulting services (CPC 865)
- Services related to management consulting (CPC 866)
- Technical testing & analysis services (CPC 8676)
- Related scientific and technical consulting services(CPC 8675)
- Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 + 8861-8866)
- Specialty design services (CPC 87907)
- Construction and related engineering services (CPC 511-518)
- Environmental services (CPC 9401 + 9402 + 9403)
- Hotels and Restaurants (CPC Ex. 641)
- Travel Agencies and Tour Operators services (CPC 7471)
- Tourist Guides services (CPC 7472)
- Sporting and other recreational services (CPC 964)

Independent Professionals

- Accounting & bookkeeping (CPC 862)
- Architectural services (CPC 8671)
- Engineering services (CPC 8672)
- Integrated engineering services (CPC 8673)
- Urban planning and landscape architectural services (CPC 8674)
- Medical & dental services (CPC 9312)
- Veterinary services (CPC 932)
- Services provided by midwives, nurses, physiotherapists and paramedical personnel (CPC 93191)
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