



International Chamber of Commerce

The world business organization

ICC Policy Statement

ICC recommendations on the movement of natural persons

Prepared by the Commission on Trade and Investment Policy

ICC strongly supports the objectives adopted at the 4th WTO Ministerial Conference at Doha in November 2001 regarding negotiations on trade in services including movement of natural persons, as provided for under article 1 paragraph 2(d) of the General Agreement on Trade in Services (henceforth referred to as "mode 4" of service delivery in this statement). Businesses across the globe consider that the cross-border movement of key personnel to provide services in foreign markets is an essential component of business strategy in international operations. However, most countries impose administrative requirements such as visa, residence and work permit restrictions, which impede or delay the movement of natural persons for the conduct of business in foreign markets.

ICC therefore notes with satisfaction that Paragraph 15 of the Doha Ministerial Declaration states "The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003."

ICC considers that the need to move professional, technical and managerial personnel across national borders for purposes linked to international trade and investment should be treated as a major issue in the GATS negotiations, and that further progress should be made towards the mutual recognition of professional qualifications.

Present state of negotiations

Since Doha, several WTO members have made their initial offers. However, the quality of the offers is less than satisfactory and often disappointing; many provide little liberalization, and merely bind existing regimes, sometimes failing even to reflect current levels of access. Moreover, some WTO members have not yet submitted an initial service offer even though the deadline for service offers was 31 March 2003. Progress in the negotiations on mode 4 will require the full engagement of all WTO members in the exchange of requests and offers. The offers will also need to be greatly improved as they come under scrutiny in the bilateral negotiations.

ICC recommendations

ICC is of the view that broader and deeper commitments under mode 4 should be an important element in the liberalization process for trade in services in general. ICC urges all WTO members to submit ambitious offer, and presents the following recommendations to bring about effective market access under mode 4:

Improve and clarify commitments

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The existing commitments under mode 4 often lack clarity and uniformity. They are generally confined to small subsets of service personnel related to commercial presence, with only a few extending to independent movements. Also, most sectoral commitments are still unbound.

- There should be more uniformity in the definitions and coverage of broader service personnel categories in horizontal commitments by WTO members, in order to bring about greater certainty in these commitments and their application.
- WTO members should make further commitments to liberalize the temporary movement of 1) intra-corporate transferees and 2) contract service suppliers. In particular, intra-corporate transfers "for training and career development" should be facilitated.
- ICC supports horizontal commitments to specifically include a well defined category of individual professionals, apart from categories that already exist.
- More sectoral commitments also need to be made in addition to horizontal commitments. These sectoral commitments should be bound.
- The WTO Committee on Specific Commitments should continue to assist WTO members in improving and clarifying their commitments under mode 4.

Distinguish between temporary and permanent movement

In most countries, temporary movement comes under the purview of immigration and labour regulations and is not treated separately from permanent movement. Market access for professional persons is in effect restricted by administrative and procedural barriers. As a result, procedures to obtain visas and work permits for short-term assignments are unnecessarily slow and cumbersome. For businesses, this can mean lost contracts and higher costs for entering foreign markets, thereby eroding the competitiveness of foreign service suppliers. Quantitative limits on visas and other restrictive policies and eligibility conditions negate the competitive advantage of developing country service providers in particular.

- A distinction should be established between permanent and temporary movement so that procedures and requirements that apply to permanent movement do not hinder the commitments made for temporary movement. Conditions of entry and stay for temporary movement should be less stringent than for permanent immigration.
- ICC encourages WTO members to provide a more transparent, predictable and objective issuing of visas and work permits.
- Procedural aspects should be simplified by way, for example, of shorter time frames for the granting of visas for temporary movement, transparent application processes, simplified renewal and transfer procedures, and recourse mechanisms to ascertain the status of an application and reasons for rejections.
- special GATS permit could be introduced to facilitate temporary movement of personnel covered by horizontal and sectoral commitments. Such a GATS permit would be subject to accelerated and simplified approval procedures.

Clarify application of "economic needs tests" to mode 4

Clarification of the conditions of application of an "economic needs test" (ENT) with regard to Mode 4 (as provided for under article XVI, paragraph 2d of the GATS) would increase the predictability and certainty of commitments undertaken by WTO members. A more limited use of ENTs would allow for greater mode 4 liberalization, thereby contributing to more efficient services sectors in both importing and exporting countries.

- ICC suggests that WTO members should endeavour to eliminate/reduce limitations imposed by the requirements of an ENT on the number of service suppliers.
- There should be fewer occupational categories subject to such tests and consensus achieved on such categories.
- As a first step and to improve transparency, WTO members should clearly identify and make publicly available the criteria for an ENT. For example, written criteria could be laid down for applying



such tests, establishing guidelines for administrative and procedural formalities, also specifying how the results of such tests would restrict entry to foreign service providers.

- In sectors where an ENT applies, such application should be based on multilateral principles, which would include definition of an ENT, criteria for introduction of an ENT, procedures for the application and guidelines for the administration of an ENT, transparency and full availability of information, duration and review of the application of an ENT.

Mutual recognition

Licensing requirements and the lack of recognition of professional qualifications and experience in third countries are frequent causes for rejection of work permits and visa applications, thereby limiting or preventing market access for foreign service providers under mode 4. Article VII of the GATS provides for mutual recognition agreements (MRAs) and the opportunity for any interested WTO member to participate in the negotiation of such agreements. However, the provisions of Article VII remain largely unused.

- ICC encourages WTO members to engage in bilateral and plurilateral MRAs - both at sectoral and horizontal levels - to ensure that effective market access is granted.

- Effective opportunities should be given to developing countries to participate in the negotiation of MRAs.

- ICC strongly recommends that WTO members implement the existing Notification Requirements under Article VII of GATS providing for MRAs between WTO members.

- The WTO Council for Trade in Services should continue to monitor the effective implementation of article VII of GATS.

- Wherever appropriate, WTO members should consider the establishment of multilateral norms to facilitate MRAs among member countries. The "guidelines for mutual recognition agreements in the accountancy sector", adopted by the WTO in 1997, are an encouraging example of non-binding multilateral norms designed to facilitate the negotiation of MRAs.

- ICC recognizes however that addressing the issue of mutual recognition of qualifications at a multilateral level can be particularly complex and time-consuming. This should not prevent progress on market access offers.

Social security contributions

Temporary professionals may be subject to the payment of social security contributions in the host country even though they are not entitled to the benefits from such contributions, since their period of stay under GATS is usually lower than the minimum period required to be eligible for such benefits. Many countries have already negotiated bilateral agreements that enable temporary professionals to continue making social security contributions in their country of permanent residence. In the context of their commitments under mode 4, ICC encourages WTO members to consider such provisions at multilateral level, or alternatively to exempt temporary professionals from social security contributions in the host country, or entitling them to a refund of such contributions after their stay.

Conclusion

ICC urges WTO members to make further commitments to improve market access for services under mode 4. ICC understands that due to current security concerns, many WTO member governments may not be disposed to consider more flexible entry conditions at this time. However, ICC also believes that an agreement by WTO members to further liberalize the movement of natural persons would show that industrialized countries and developing countries are able to work together to ensure that the benefits of globalization are spread more widely.

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About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 130 countries.

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