



**DRAFT  
MODEL SCHEDULE  
COVERING THE  
TEMPORARY ENTRY OF NATURAL PERSONS  
UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES**

**I. Introduction**

1. This draft "model schedule" is put forward as a basis to focus negotiations on the temporary entry of natural persons on a single document. It is divided into two parts. The first deals with market access and national treatment commitments under Part III of GATS. It is designed to supplement and improve the existing commitments WTO Members have already undertaken in the Uruguay Round and the extended negotiation thereafter. As a "model schedule", it is not designed as a "formula" of commitments that all parties are to assume. Rather, it is a specific proposal that is designed to generate improved commitments in this mode of supply, recognising that Members may adopt different levels of obligations.
2. Existing obligations by nearly all WTO Member countries in the category of temporary entry of natural persons are structured to apply to all services sectors, and are therefore entered as "Horizontal Commitments" that either leave out no service sector, or otherwise apply to those sectors listed in their schedules of specific commitments. This follows the pattern of regulation in nearly all Member countries, where, with a number of exceptions, government measures governing the temporary entry of natural persons apply to all sectors. This model schedule follows the same structure, thus envisioning further entries in horizontal commitments pertaining to all sectors. However, it is recognised that it may be necessary for Members to schedule these commitments for a more limited set of services sectors, since they would entail a higher level of obligation. Nonetheless, the underlying presumption in the elements of the model schedule is that the obligation is assumed for professional skill levels, and that such a standard exists in virtually every service sector.
3. The second part of the model schedule, which is entitled "best practices", represents a set of proposed additional commitments under Article XVIII. This part essentially encompasses domestic regulatory obligations that relate to the improvement of transparency of procedures. The objective of the second part would be for an acceptable number of Members to enter identical undertakings pursuant to Article XVIII, similar to the "reference paper" obligations in basic telecommunications. Some may question whether such regulatory obligations are "non-discriminatory", since they pertain solely to foreign persons entering the country, not nationals. However, this issue of placement is a comparatively technical one, particularly at this early stage of the process. Of much greater importance is that they are inscribed in GATS Schedules of Commitments, and they are deliberately set apart from the obligations to Part 1 because there would be no discretion to take reservations from this particular set of obligations among those willing to make such commitments.
4. Finally, this proposed model schedule addresses exclusively the temporary entry of natural persons. As is clearly set forth in its "Annex on Movement of Natural Persons

Supplying Services Under the Agreement", the GATS does not cover permanent residency or nationality.

## **II. Market Access and National Treatment**

Note: To be applied in the "Horizontal Commitments" section of a Member's schedule.

A. The following provisions apply to two categories of persons entering countries on a temporary basis:

1. *Short-term, intra-company visits.* This category covers: (1) Employees of a subsidiary or branch of a company or a partnership or its affiliate in another country, and who enter that country for short periods of stay, up to 365 days, to provide assistance and advice to its foreign office, or otherwise directly provide a service to a foreign client; and (2) Employees of a company or partnership who are sent to its office in another country for training in business techniques or methods.
2. *Short-term visits to fulfil contracts.* Persons who are employees of a foreign-based company or partnership, who travel to another country for short periods of stay, up to 365 days, in order to perform a service pursuant to a contract between their employer and a foreign client located in a country where the employer does not have an affiliate office, and where remuneration must be paid solely to the employer.

B. Conditions and Qualifications.

1. Visas and work permits will be subject to the laws and regulations that apply to the temporary entry of natural persons in the host country, subject to the provisions specified below.
2. A special permit, entitled a "GATS Permit", can be obtained by nationals of one WTO Member country from another WTO Member country, when the applicant falls under the categories listed under A above.
  - a. For employees falling under Category 1 and Category 2 above, the GATS permit will be extended strictly to personnel with requisite qualifications to fill a professional-level position, or a position that requires unique and specialised knowledge of the company or firm's technology or operations on the basis of technical training or extensive experience in working with the enterprise. Employees should be responsible either for management of operations, or provision of services at a level of complexity and specialty that require, at a minimum, a university degree, or demonstrated experience.
  - b. Applicants seeking a GATS permit under both categories must fulfill certain specific requirements ordinarily imposed under existing procedures for intra-firm transferees intending to reside temporarily in the company's foreign office, such as information necessary to support the application, proof of employment with current employer, and declaration of intention not to stay for a period of more than twelve months.
  - c. For persons falling under Category 1, Members will authorise the GATS permit for a period of 3 years, allowing for multiple entry.

- d. For Category 1 and 2, the provisions for renewal of the permit shall be based on the permit holder's continued status, as defined in B 2 (a) above, as an employee of the same company or partnership, and the absence of abuse of any of the conditions governing the use of the permit. GATS permit holders must seek renewal no later than one month from the date of expiration of the permit.
- e. Wage parity or labour certification requirements (testing of the market), as well as economic needs tests, will not apply for Category 1 holders of a GATS permit.
- f. The GATS permit for both Category 1 and Category 2 persons will be issued without unreasonable delay and in any event no later than three weeks following the satisfactory presentation of documentation required by host country authorities. Where the GATS permit is denied, the applicant will have an opportunity to appeal the decision and obtain a determination within one month from the time he has lodged the appeal. GATS permit renewal procedures will follow the same conditions and maximum time frame for issuance or denial.
- g. Category 2 permits are subject to the following conditions and are subject to renewal every 3 years:
  - (i) A copy of a contract or service made between the employer and a foreign client must accompany all applications between the permit holder's employer and the foreign client, demonstrating terms and conditions of the contract, as well as its monetary value.
  - (ii) The permit holder would be permitted to stay in the country where the contract is being performed for no longer than the duration of each contract, or 365 days, whichever is less. Remuneration provided under the contract must specify payment to the employer alone as a condition for issuing the GATS permit.
  - (iii) Contracts in excess of Euros € 50,000 will be exempt from labour certification requirements, wage parity rules, and economic needs tests. Return visits, i.e. after sales service, will be permitted under the contract and will not be subject to economic needs tests or labour certification requirements, provided they are covered under the terms and conditions of the contract, and the contract exceeds Euros € 50,000.
- h. Applicants under Categories 1 and 2 must submit information pertaining to level of education, qualifications (including professional accreditation when required in the home country), proof of citizenship, and wage statements showing the applicant has been an employee of his or her company for at least six months.
- i. For services that require the GATS permit holder under Categories 1 and 2 to be accredited in the host country in order to provide the service, any such limitations and conditions will be governed by specific commitments undertaken by the host country in the pertinent services sector.
- j. Holders of GATS Permits would not be authorised to change their status to another non-immigrant visa category while using the GATS permit.

- k. **Performance Bond.** For Category 2 permit holders, the applicant company or partnership will post a programme bond with the local Embassy of the GATS country to which its employee is seeking access in the amount of Euros € 250,000 (*i.e.* € 250 000 *per company*).
- l. **Fines and Penalties.** For Category 1 permit holders, abuse of the programme will result in requisite fines and a one year programme prohibition.
- m. **Special Safeguards.** Notwithstanding (g) above, where a Member can establish that a pattern of practice among a number of companies of a Member country has led to fraudulent use or misrepresentation of the GATS permit, its recognition may be suspended by any WTO Member country for a temporary period of time, not to exceed one year.

### III. Best Practices

1. For all forms of temporary entry, Members will:
  - a. Make available, in a consolidated text, all measures, in particular administrative measures, and any descriptive material accompanying such measures that pertain to the temporary admission of natural persons (defined as entry, stay, and work authorisation). Where possible, Members should provide this information electronically, on websites or otherwise.
  - b. As part of the consolidated text, provide information on the materials or evidence required of an applicant seeking temporary admission into their territories, as well as a description of the complete process for its submission, consideration, and approval.
  - c. Grant approval of applications for temporary admission within a defined period of time, and provide notice when any such deadlines cannot be achieved.
  - d. As part of the consolidated text, provide a full description of the manner in which any limitations to market access and national treatment<sup>1</sup> for the temporary entry of natural persons are administered by their authorities.
2. **Prior Comment.**
  - a. For new measures or alterations to existing measures that are being proposed by a Member country, interested parties will be given a reasonable period of time to comment on any such proposed measures that would govern the temporary entry and stay of natural persons. Procedures will be followed that provide for public notice, on a timely basis, to any interested party who wishes to make comments, with a reasonable period of time allowed for the submission of views. Measures that would be subject to prior comment would include visa conditions and procedures to obtain them; changes or additions to worker categories covered by visa procedures; work permit conditions and economic needs tests; and any other proposed measure directly affecting the temporary entry and stay of natural persons. Provided: that the prior comment procedure can be waived when a measure is needed to address urgent problems of safety, health, environmental protection, and national security.

- b. Except for the urgent circumstances in (a) above, Members will allow a reasonable interval between the publication of the measure in proposed form, and its subsequent entry into force, in order to allow time for affected parties to become acquainted with it.
  3. Economic Needs Tests. For Members who place conditions on the temporary entry of natural persons on the basis of domestic economic needs, they will assume the following obligations with the objective of making this condition more transparent and predictable:
    - a. The economic needs test will be defined under a government measure.
    - b. Members will establish and make available the conditions for granting or denying temporary entry and stay on the basis of economic needs, providing quantitative and/or qualitative criteria for making determinations, and by specifying how the results of such tests are to be used in restricting entry of foreign services suppliers under Mode 4.
    - c. Members will establish and make publicly available all procedures associated with the application of an economic needs test.
    - d. Members will establish time limits on the duration or review of the application for an economic needs test.
  4. Member countries will establish a contact point at authorised departments for both trade and immigration, allowing business persons to report on examples where they have encountered special difficulties in the process of seeking temporary entry and stay in another country. The Council for Trade in Services, or any body it so designates, shall periodically assess the effectiveness of the GATS permit system as well as "best practices" undertakings, and consider possible adjustments on the basis of information drawn from regulators and users.
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List of ESF Members Supporting the  
Third ESF Position Paper on  
The Temporary Movement of Key Business Personnel

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