



2nd World Services Congress

Services: The Driver for the Global Economy

Globalization & Liberalization - The China Market - The New Economy

Thursday, 20 September 2001 – 4.00 to 5.30 p.m. –

- Breakout Session II –

Professional Services and Movement of People

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Pascal Kerneis – European Services Forum

20 September 2001





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Summary of ESF position on temporary movement of personnel:

- **Develop a minimum set of Mode 4 requirements which could be applied both horizontally and sectorally;**
- **Create Mode 4 commitments to align with agreed principles;**
- **Create a “GATS Permit” for intra-corporate transfers and contract services providers;**
- **Create a new category of intra-corporate transfer for training and career development**



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**Mode 4 of the GATS deals only with
TEMPORARY MOVEMENT OF NATURAL PERSONS**

« Extract of the GATS Treaty - page 306:

**ANNEX ON MOVEMENT OF NATURAL PERSONS
SUPPLYING SERVICES UNDER THE AGREEMENT**

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.
- The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. (...)
4. SAFEGUARD PROVISION: « The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, ... ».



DRAFT MODEL SCHEDULE FOR MODE 4 OF THE GATS

2 PARTS in the Draft Model Schedule:

- 1st on Market access and National Treatment (see below).
- 2nd: « Best practices » (additional commitments under Art XVIII GATS, like Reference Paper in telecommunications, i.e. on voluntary basis).

The purpose is to improve the transparency of the procedures of the domestic regulatory obligations. WTO members will make available, in a consolidated text, all administrative measures:

- description of the entry and visa process,
- material or evidence required (proof of employment, etc.)
- minimum time needed for approval,
- clear definition of Economic Need Tests (conditions, quantitative and/or qualitative criteria, etc)



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DRAFT MODEL SCHEDULE FOR MODE 4 OF THE GATS

The « GATS Permit » provisions apply to two categories of persons entering countries on a temporary basis:

- ***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;

(Example: A Financial Markets Analyst who goes from Headquarters of Bank of America in the US to their Branch in Singapore for one year to advise a new team of Analysts)

(2) Employees of a company or partnership who are sent to its office in another country for training in business techniques or methods.



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- **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.

(Example: A Consultant from PwC based in UK who comes to Barclays' Branch in Hong Kong for one month to make an Audit)



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I. CONDITIONS AND QUALIFICATIONS TO APPLY FOR A « GATS PERMIT »

- Only for Employees falling under category 1 and 2;
- Obligation to fulfill certain specific requirements:
 - Information necessary to support the application (passport, photos, etc.)
 - Proof of employment with current employer
 - Declaration of intention not to stay for a period of more than twelve months



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II. CONDITIONS AND QUALIFICATIONS TO APPLY FOR A « GATS PERMIT »

- a) For intra-company transfers, GATS permit for 3 years, multiple entry. Renewal for employees of the same company, if no abuse of the system.
- For a contract with a client:
 - 1) Copy of the contract between the employer and the client;
 - 2) Remuneration paid to the employer;
 - 3) Stay in the country for the duration specified in the contract (Max: 365 days)



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SAFEGUARDS AGAINST POSSIBLE ABUSES OF THE SYSTEM

- For category 1 permit holders, abuse of the programme will result in requisite fines and a one year programme prohibition;
- For category 2, the applicant company or partnership will post a programme bond with the local Embassy of the country to which its employees are seeking access (€ 250.000 per company)
- If the practice of the company would lead to fraudulent use or misinterpretation of the GATS permit, suspension or exclusion of the company out of the programme