

COMMUNICATION FROM CANADA

Proposal on Transparency of Horizontal Mode 4 Commitments

The following communication, dated 20 June 2005, from the delegation of Canada is being circulated to the Members of the Council for Trade in Services.

1. As many WTO Members are aware, improved transparency of mode 4 commitments has been an issue for discussion for some time in these negotiations - in bilateral meetings, in the Friends of Mode 4, in the Special Session of the Council for Trade in Services and at various mode 4 conferences. This proposal was initially introduced in the Friends of Mode 4 in July 2002 to promote discussion among Members on strengthening the transparency and improving the understanding of horizontal mode 4 commitments. It is now being introduced to the wider WTO membership.

2. This proposal primarily focuses on improving the information on horizontal mode 4 commitments and not on other transparency-related issues.¹ Early in these negotiations, several Members made general proposals on transparency. Transparency has been a key issue of discussion at various WTO/World Bank/OECD/UNCTAD mode 4 seminars in recent years. More recently, a group of Members submitted a specific proposal on mode 4 transparency that builds on aspects of this proposal.

I. TRANSPARENCY PROBLEMS

3. Few would dispute that the existing horizontal mode 4 commitments are not sufficiently transparent. The transparency problems that are often cited, furthermore, show the viewpoints of various users of the specific commitments. For example, business people in general, small and medium-sized enterprises (SMEs), human resources managers or specialists, immigration lawyers and consultants say that many mode 4 commitments, as written in the schedules, are opaque or meaningless. They need more information to understand what they mean. These problems are compounded because Members have not made commitments in a uniform manner and consequently,

¹ For example, the 2002 OECD paper, "Service Providers on the Move: a Closer Look at Labour Mobility and the GATS" (TD/TC/WP(2001)26/Final) addresses transparency issues in relation to GATS Articles VI.4 (Domestic Regulations) and Article XVIII (Additional Commitments). PricewaterhouseCoopers, the European Services Forum and US Coalition of Services Industries, in their similar proposals, have outlined several transparency issues, many of which GATS Article III addresses. These discussions or proposals touch on, besides clearer information on the commitments *per se*, the following subjects: a) prompt publication or public availability of relevant measures, b) prompt or annual notification of new measures or changes to existing measures, c) requests for specific information, d) prior-consultation and comment procedures, e) clear, simple and predictable application procedures, f) information or guarantees on processing times, g) reasons for denials and procedures for reviews or appeals, and h) national enquiry points.

their commitments are difficult to compare. Analysis is complicated as well because Members use different terminology and have different temporary entry systems.

4. GATS mode 4 commitments are made under Article XVI (Market Access) and Article XVII (National Treatment). Apart from the measures covered by these articles, other immigration and labour measures exist in domestic regimes that may affect mode 4 commitments. Some studies on mode 4 have observed that officials often lack the basic or detailed information on the temporary entry regulations or procedures of other Members to clearly assess the real value or the extent to which commitments are liberal or facilitative.² They argue that better analysis of a Member's mode 4 commitments in relation to its domestic regime on immigration and labour market development is crucial in determining the benefits of commitments offered or made.

5. Existing mode 4 commitments often do not provide enough details. For example, the commitments of some Members do not specify clearly if an economic needs test or a labour market test applies, or does not apply, to a certain category of natural person. In some cases, such measures are operating as prerequisites for the issuance of work visas or permits, but the commitment does not say so. Therefore, what appears to be a liberal commitment on paper may not be liberal or valuable in practice, and trade policy officials often do not have necessary information to determine that. It is not just lack of information on ENTs that undermine existing commitments. Supplementary measures or requirements not stipulated in actual commitments (e.g. duration of stay, possibility of extensions, caps, licensing and certification requirements, etc.), undermine commitments as well. This type of transparency would help trade policy officials to determine the actual liberalization value of a commitment.

II. PROPOSAL

6. This paper proposes that Members should discuss and reach a consensus on a common, practical and effective way to improve the information related to their horizontal mode 4 commitments. This proposal is different from, and goes beyond, the obligations in GATS Article III on transparency. It goes beyond these obligations by suggesting that Members provide certain information on a voluntary, rather than a responsive, basis and the information provided would be available to all Members, including their trade policy officials and business people, rather than just to a requesting Member.

7. Each Member, in the spirit of Article III and for the purposes of greater transparency and predictability, provide voluntarily and separate from its specific commitments, all relevant information sources for each of its commitments.³ A Member would not be expected to provide the actual wording of relevant laws, regulations, policies, practices or administrative guidelines with respect to each commitment. Rather, Members would simply cite the relevant parts of their laws, regulations, administrative guidelines and other public information.

8. The proposed information could be presented as a table along the lines of the transparency template submitted by Canada (the completed template is attached) at the time its revised offer was tabled (TN/S/W/42). Specific references would be to public documents and include a website address, if available. Experience has shown that it does not take much time to complete this template.

² This is quite evident, for example, in the ongoing bilateral meetings and subsequent bilateral exchanges. Negotiators are not only trying to clarify initial requests on horizontal mode 4, but also spending a lot of time delving into the details of Member's temporary entry and stay regimes.

³ Simply put, this is similar to academics providing footnotes that show readers where to get more information. It would make transparent the regulatory context of a particular commitment or clarify its relationship with corresponding parts of the national administrative rules and regulations.

Members may wish to consider how to link their commitments and this related information. For example, Members could table the related information, bilaterally or multilaterally, as Canada did, during the negotiations. This information would be provided for purposes of transparency only and would neither interpret nor form any part of a Member's specific commitments.

9. The key objective is, however, that all Members agree to be transparent in the same way and that they set forth an explicit transparency relationship between their mode 4 commitments and relevant parts of their temporary entry regimes and other public information. Several Members have already indicated they would complete the template.

10. This information would help trade policy officials and business people understand mode 4 commitments. It would be exactly the same information officials of a Member would expect to receive from the official enquiry point of another Member, if a request were lodged under Article III:4.

III. CONCLUSION

11. Previous discussions regarding transparency of mode 4 commitments have highlighted that Members agree that greater transparency is a high priority in these negotiations and that a common, practical and effective approach to mode 4 transparency is needed. Improved transparency, based on this proposal's suggested approach, would benefit not only business people seeking to work temporarily in our countries, but also trade policy officials negotiating and assessing the commitments that are to result from these negotiations.

<i>Horizontal Mode 4 Commitments</i>	<i>Law</i>	<i>Regulations</i>	<i>Administrative Guidelines</i>	<i>Other Public Information</i>
<p>I. <u>Intra-Corporate Transferees</u></p> <p>A natural person of another Member who has been employed by a juridical persons of another Member for a period of not less than one year <i>within the three-year period immediately preceding the date of application for admission to Canada</i> and seeks temporary entry in order to render services to (i) the same juridical person which is engaged in substantive business operations in Canada or (ii) a juridical person constituted in Canada and engaged in substantive business operations in Canada which is owned by or controlled by or affiliated with the aforementioned juridical person.</p> <p>These comprise:</p> <p>a) <u>Executives</u></p> <p>A natural person employed by a juridical person who primarily directs the management of that juridical person, establishes goals and policies for that juridical person or for one of its major components or functions, and has wide decision-making powers with little senior supervision.</p>	<p>2002 Immigration and Refugee Protection Act at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html</p>	<p>2002 IRPA Regulations, (at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html) Part 11, Division 3, Issuance of Work Permits, Canadian Interests, Regulation 205(a).</p>	<p>Temporary Foreign Worker Guidelines/FW1 Foreign Worker Manual at http://www.cic.gc.ca/manuals-guides/english/fw/fwe.pdf Sections 5.28 and 5.31, p. 25, 28-30, Parts 1 and 3, and Appendix D on GATS.</p>	<ol style="list-style-type: none"> 1. Working Temporarily in Canada www.cic.gc.ca/english/work/index.html and http://www.cic.gc.ca/english/work/exemptions-2.html 2. Publication/brochure called "Temporary Entry to Canada under the General Agreement on Trade in Services" 1996, C&I-155-03-96CIC, p. 4. 3. Publication called "You Asked About...immigration and citizenship" at http://www.cic.gc.ca/english/pub/you-asked/section-18.html

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<p>b) <u>Managers</u></p> <p>A natural person employed by a juridical person who directs that juridical person or one of its departments or subdivisions; supervises and controls the work of other supervisory, professional or managerial employees; and has discretionary control of the juridical person's daily affairs and can make employment decisions.</p> <p>c) <u>Specialists</u></p> <p>A natural person employed by a juridical person who possesses specialized knowledge at an advanced level of expertise and proprietary knowledge of the juridical person's product, service, research equipment, techniques or management.</p> <p>d) <u>Persons entering for career development purposes]</u></p> <p>A natural person employed by a juridical person for not less than one year within the period immediately preceding the date of application for admission to Canada and who seeks temporary entry and stay for career development purposes or to obtain training in business techniques or methods.</p>				

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<p>2. <u>Business visitors (including service sellers and persons responsible for setting up a commercial presence)</u></p> <p>A natural person who stays in Canada without acquiring remuneration from within Canada and without engaging in making direct sales to the general public or supplying services, for the purposes of participating in business meetings, business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing a commercial presence in Canada and to supply after-sales or after-lease services.</p>	<p>2002 Immigration and Refugee Protection Act at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html</p>	<p>2002 IRPA Regulations, (at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html Part 9, Division 3, Work without a permit, Regulations 186a & 187.</p>	<p>Temporary Foreign Worker Guidelines/FW1 Foreign Worker Manual at http://www.cic.gc.ca/manuals-guides/english/fw/fwe.pdf Section 5.2, p. 9 and Appendix D on GATS.</p>	<p>1. Working Temporarily in Canada www.cic.gc.ca/english/work/index.html</p> <p>2. Publication/brochure called "Temporary Entry to Canada under the General Agreement on Trade in Services" 1996, C&I-155-03-96CIC, p. 4.</p>
<p>3. Contract Service Suppliers (CSS)</p> <p><i>A natural person who is an employee of a juridical person of another Member and seeks to engage, as part of a services contract granted by a juridical person or a services consumer in Canada and obtained by that juridical person of the other Member (other than agencies as defined by CPC 872), in an activity at a professional level in an occupation listed in the chart below, provided that the person possesses the necessary education and accreditation requirements as stipulated in the chart below.</i></p>	<p>2002 Immigration and Refugee Protection Act at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html</p>	<p>2002 IRPA Regulations, at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html Part 11, Division 3, Regulation 204(a) on international agreements.</p>	<p>Temporary Foreign Worker Guidelines/FW1 Foreign Worker Manual at http://www.cic.gc.ca/manuals-guides/english/fw/fwe.pdf Section 5.26, p. 19 on the labour market test exemption for GATS professionals, Section 5.27, p. 20 and Appendix D on GATS.</p>	<p>1. Working Temporarily in Canada www.cic.gc.ca/english/work/index.html</p> <p>2. Publication/brochure called "Temporary Entry to Canada under the General Agreement on Trade in Services" 1996, C&I-155-03-96CIC, p. 4.</p>

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<p>4. Independent Professionals</p> <p><i>A natural person who is a self-employed professional in another Member and seeks to engage, as part of a services contract granted by a juridical person or a services consumer in Canada and obtained by that professional in an activity at a professional level in an occupation listed in the chart below, provided that the person possesses the necessary education and accreditation requirements as stipulated in the chart below.</i></p>	<p>2002 Immigration and Refugee Protection Act at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html</p>	<p>2002 IRPA Regulations at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html Part 11, Division 3, Regulation 204(a) on international agreements.</p>	<p>Temporary Foreign Worker Guidelines/FW1 Foreign Worker Manual at http://www.cic.gc.ca/manuals-guides/english/fw/fwe.pdf Section 5.26, p. 19 on the labour market test exemption for GATS professionals, Section 5.27, p. 20 and Appendix D on GATS.</p>	<p>1. Working Temporarily in Canada www.cic.gc.ca/english/work/index.html</p> <p>2. Publication/brochure called "Temporary Entry to Canada under the General Agreement on Trade in Services" 1996, C&I-155-03-96CIC, p. 4.</p>
<p>5. Other</p> <p><i>Spouses and common-law partners of qualifying intra-corporate transferees or professionals</i></p>	<p>2002 Immigration and Refugee Protection Act at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html</p>	<p>2002 IRPA Regulations at http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html Part 11, Division 3, Regulation 205(c)ii, spouses and common-law partners of skilled workers.</p>	<p>Temporary Foreign Worker Guidelines/FW1 Foreign Worker Manual at http://www.cic.gc.ca/manuals-guides/english/fw/fwe.pdf Section 5.39, p. 35.</p>	<p>1. Working Temporarily in Canada www.cic.gc.ca/english/work/index.html</p> <p>2. News Release November 2001 at http://www.cic.gc.ca/english/press/01/0125%2Dpre.html</p>

Note: The categories listed in this template reflect both Canada's current commitments and elements of its initial and revised mode 4 offers.
a) Plain text – Canada's current commitments b) Bold/Italics/Shaded – Canada's initial offer c) Bold/Shaded – Canada's revised offer

Occupation ⁴	Minimum Education Requirements/Alternative Credentials	Other Requirements
<u>Engineers</u>	Baccalaureate degree. ⁵	Provincial license. ⁶
<u>Agrologists</u>	Baccalaureate degree in agriculture or related science plus four years of related experience.	Licensing is required in New Brunswick, Alberta and Québec. Temporary licensing is required in British Columbia.
<u>Architects</u>	Baccalaureate degree in architecture.	Provincial license and certificate required to practice.
<u>Forestry Professionals</u>	Baccalaureate degree in forestry management or forestry engineering, or a provincial license.	Licensing as a forester or forestry engineer is required in Alberta, British Columbia and Québec.
<u>Geomatics Professionals</u>	Baccalaureate degree in surveying, geography or environmental sciences plus three years related experience.	
<u>Land Surveyors</u>	Baccalaureate degree.	Provincial license.

⁴ In May 2005, the definitions of these professions could be found in Canada's National Occupation Classification (NOC) at http://www.hrsdc.gc.ca/en/hip/hrp/noc/noc_index.shtml

⁵ The term "Baccalaureate degree" means a degree from an accredited academic institution in Canada or equivalent. Academic equivalencies will be determined by the relevant equivalencies services in Canada.

⁶ The term "Provincial license" means any document issued by a provincial government, or under its authority, which permits a person to engage in a regulated activity or profession.

Occupation	Minimum Education Requirements/Alternative Credentials	Other Requirements
<p data-bbox="136 261 456 293"><u>Foreign Legal Consultants</u></p> <p data-bbox="136 325 338 357"><u>Urban Planners</u></p> <p data-bbox="136 389 546 453"><u>Information and Communications Technology Professionals</u></p> <p data-bbox="136 788 450 820"><u>Management Consultants</u></p>	<p data-bbox="562 261 904 293">Baccalaureate degree in law.</p> <p data-bbox="562 325 1039 357">Baccalaureate degree in urban planning.</p> <p data-bbox="562 389 1267 485">Baccalaureate degree in computer sciences or related a discipline and two (2) years of experience in computer sciences; or</p> <p data-bbox="562 517 1267 580">Baccalaureate degree and five (5) years of experience in computer sciences; or</p> <p data-bbox="562 612 1267 724">A Canadian I.S.P. designation (Information Systems Professional of Canada) or a licence or designation from a recognized foreign certification body.⁷</p> <p data-bbox="562 756 1267 852">A designated Certified Management Consultant (CMC) or equivalent designation recognized by the International Council of Management Consulting Institutes (ICMCI); or</p> <p data-bbox="562 884 1267 1011">A management consultant certified by an accreditation body that is not recognized by the ICMCI but having a Baccalaureate degree and 5 years experience in a field directly related to the nature of the service contract.</p>	<p data-bbox="1279 229 1503 261">Provincial license.</p> <p data-bbox="1279 293 1503 325">Provincial license.</p>

⁷ Current list of recognized certification bodies: United Kingdom - British Computer Society (BCS); United States - Institute for the Certification of Computing Professionals (ICCP); Canada - Canadian Information Processing Society (CIPS); New Zealand - New Zealand Computer Society (NZCS); Australia - Australian Computer Society (ACS).