



# Negotiating mode 4 access

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# Structure of the presentation



- Current mode 4 commitments
- State of (non-)play in the WTO mode 4 negotiations
- Mode 4 in Economic Integration Agreements (EIAs)



# **Current mode 4 commitments**



# Starting point

In comparison to the other three modes of supply, mode 4 commitments are the least liberal, due to “positive” listing of categories and proliferation of limitations



# Why less liberal commitments in mode 4?

- Political sensitivity?
- Regulatory concerns?
- Enforcement concerns (temporary entry leading to permanent entry)?
- Effect on labour market?
- Impact on wages of locals?
- Bilateral arrangements providing for greater flexibility?



# Mode 4 issues identified

- Structure and coverage of existing commitments
- Economic Needs Tests (ENTs)
- Definitional problems
- Administrative practices: no access to information and lack of transparency
- Lack of recognition of qualifications and other “domestic regulation” issues

# Some of the solutions proposed...



- More and better commitments
  - more categories, improved definitions, finer classification, “sector-specific” commitments
- Removal of barriers
  - multilateral criteria for ENTs - more specific, transparent and non-discriminatory
- Greater transparency and predictability
- GATS visa



# Mode 4 negotiations





## Mode 4 “offers”...

- In 2005, out of around 70 offers submitted by WTO Members, only 30 (half by developed, half by developing countries) proposed some improvement to mode 4 commitments

# Mode 4 improvements in offers



- Addition of categories, more broadly defined
- Expanded list of sectors (to which the horizontal commitments apply)
- Extended periods of stay; possibility of renewal
- Clarification of the application/reduction of the scope of ENTs
- Reduction of discriminatory measures
- Some improvements in transparency

# Overall assessment of “offers”

- Number and quality of offers **unsatisfactory**, including on mode 4

“Few, if any, new commercial opportunities would ensue for service suppliers. Most Members feel that the negotiations are not progressing as they should.”

[Chair of CTSS, July 2005 (TN/S/20)]
- **Since 2005 ...**
  - Collective requests
  - 2008 Signalling conference

# Collective Requests - Mode 4

## Collective request on mode 4

- From 15 developing to 9 developed countries
- Seeks commitments on CSS and IP
- Commitments are called for in a number of sectors, falling under business, construction, environmental, tourism and recreational services
- Asks for the removal/clarification of Economic Needs Tests

**Least-developed countries have also submitted a mode 4 request, with a largely similar focus**

# July 2008 “Signalling Conference”



- Members exchanged indications on own new and improved commitments as well as on the contributions expected from others
- Overall, positive indications were given about commitments across all major services sectors and modes of supply
- “Most participants indicated their **readiness to improve access conditions for mode 4**. In several statements, these signals were expressly linked to the development character of this [negotiation].”

[Report by the Chairman of the TNC, 30 July 2008 (JOB(08)/93)]



# **Mode 4 in Economic Integration Agreements (EIAs)**

# Are Economic Integration Agreements (EIAs) an alternative avenue for liberalisation?



- Between 2000 (start of services negotiations) and October 2012, over **90 EIAs** covering services trade have been concluded (and notified to the WTO)
- Nearly **half** have been concluded between just 2009-2012
- **All cover mode 4**, and a few include also a separate chapter dealing with the “temporary entry of business persons”

# Mode 4 and EIAs\* – An assessment



- EIAs grant some **advances** over GATS commitments, but if compared to current GATS offers, these are **not very significant**
- Most **progress achieved** in the “**other**” category, which includes “employees”, “traders and investors”, “spouses” (effect of separate chapter on temporary entry?) and “**business visitors**”
- Progress on “**contractual service suppliers**” and “**independent professionals**” more **limited**, mainly on the part of developing countries, especially in EIAs with each other

\* EIAs concluded between 2000 and 2008



# Why are EIAs not offering much greater mode 4 access?



- Political sensitivity?
  - Enforcement concerns?
  - Binding nature of concessions?
  - Insufficient coordination between trade and migration/labour ministries?
  - Or just good old protectionism...?!? (≠BLAs..)
- **WTO would still offer some potential advantages:**
- increased scope for trade-offs
    - greater credibility of bindings
    - forum for regulatory policy cooperation



**THANK YOU**