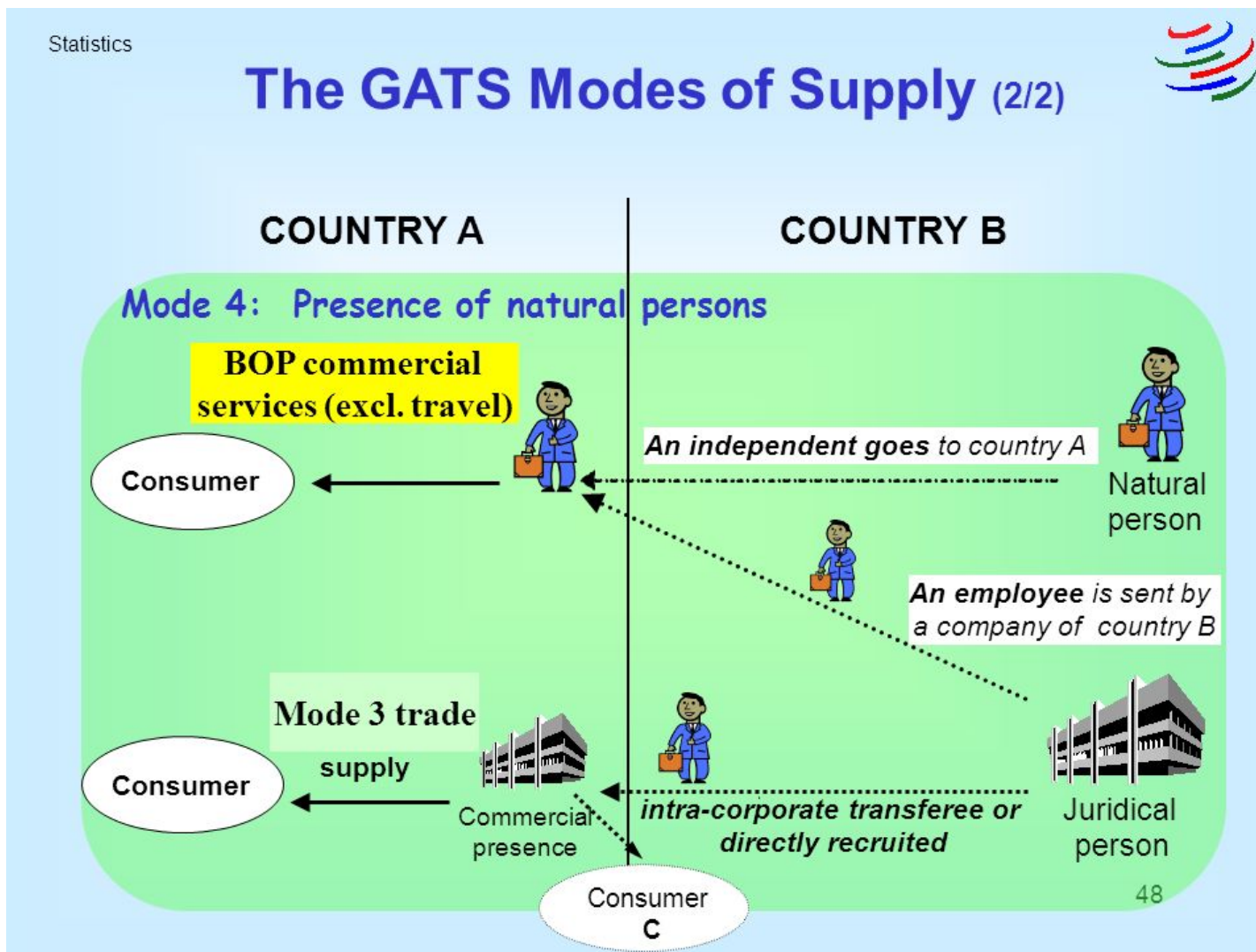


Why do we need improved disciplines in Mode 4?



Turkey's
experience

OUTLINE

- Reason of Turkey's interest in Mode 4
- The provisions Turkey proposes in Mode 4 texts of its FTAs
- Arguments and Counter-Arguments for Mode 4 Negotiations
- Market Access
- Conclusion

How did we get involved?

- High number of complaints.
- Mainly related to the procedure of entry, temporary stay and work permit applications.
- Primary categories of complainants are business people, investors, business visitors travelling for networking and establishing a new company, doctors, academics, professionals, logistics personnel, architects and engineers. (i.e. inflexible destination)
- Studied the complaints with a view to see whether there are any real economic impact. (i.e. barrier to trade)
- Studied whether the complaints are stemming from abuse of power. (i.e. unnecessary burden)



What were the complaints?

CRITICAL FACT!!

MOST OF THE COMPLAINTS ARE NOT ABOUT THE REJECTION OF AN APPLICATION BUT THE PROCEDURES!!!

IN OTHER WORDS, TURKISH SERVICE SUPPLIERS ARE NOT DENIED; ON THE CONTRARY THEIR APPLICATIONS ARE MOST OF THE TIME APPROVED:

BUT
(a very big one)



What were the complaints?

- Long processing time
- Visas issued after the date of departure (after the start of the service contract or after the conference, fairs&exhibitions, meeting day etc.)
- Excess of required documents and information, some of which irrelevant to the application
- Issuance of short-term single entry rather than long term multiple entry (even though there is no difference from the perspective of security and immigration concerns)
- High application fees
- Compulsory face-to-face interviews (Interviews are held only in the Capital or couple of cities)
- Absence of an informing system for incomplete applications (Rejection of application because of missing document which re-starts the whole process with additional fees)
- No apparent appeal procedures
- Requirement of original documents rather than accepting authenticated ones
- Authorized length of stay is shorter than requested
- Procedures for renewal are as burdensome as those for the new application
- Poor communication in the case of rejection



What were the complaints?

- ~~Temporary stay of 90 days in 180 days is not enough for logistics personnel~~

Dealt with in Logistics Annex

- ~~Procedures of recognition of qualification are too burdensome or impossible~~

Dealt with in Recognition Annex

- ~~Procedures of authorization, licencing and certification are too burdensome~~

Dealt with in DR Annex

- ~~Mobility of health insurance~~

Dealt with in Health Services Annex

Let's take a closer look at the complaints

- COST OF APPLICATION (Time=Money as well)
 - ~~Travel to interview city~~
 - Application fee (not proportionate to services rendered)
 - ~~Travel itinerary, Hotel reservation~~
 - Translation of documents / original documents (notary approval, apostille, translation, invitation letter etc.)
 - Bank guarantee/blockage



Let's take a closer look at the complaints



Excessive documentation and information requested

- Personal data (bank accounts, credit cards, real estate ownership, vehicle licenses, CV information etc.)
- Commercial data (Company's list of authorized signatures, chamber of commerce registration, operation certificate, tax registration, financial strength proof etc.)
- Irrelevant information (name of the primary school of applicant's parents? IDs of family members even if they don't travel with the applicant?)
- Inaccessible data/ information (original of tax registration certificate of a ministry)
- Additional documents (lack of transparency, lost time)

Let's take a closer look at the complaints



- Processing Time/Length of Stay/Multiple Entry
 - No fixed time frame for processing of applications.
 - Late issuance of visas.
 - Authorized length of stay barely covers or doesn't cover the stay.
 - Applied for multiple entry but single entry granted.

Provisions to tackle complaints: Transparency

- Members shall make publicly available, in a consolidated form, all measures that pertain to the entry, temporary stay and work. The authorities of the Members shall make this information available electronically.
- Members shall make publicly available information on the documents or evidence required of an applicant seeking temporary admission into their territories. Such information shall be kept updated and include the following information relevant to the entry, temporary stay and work, *inter alia*:
 - a) categories of visa, permits or any similar type of authorization regarding entry and temporary stay;
 - b) documentation required and conditions to be met;
 - c) method of filing an application and options on where to file, such as consular offices or online;
 - d) application fees and indicative processing time;
 - e) the maximum period of stay under each type of authorization described in subparagraph (a);
 - f) conditions for any available extensions or renewal;
 - g) rules regarding accompanying dependents;
 - h) available review and/or appeal procedures;
 - i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.



Provisions to tackle complaints: Avoid excessive documentation/fees



- Documents required from the applicants for applications for the grant of entry, temporary stay and work shall be commensurate with the purpose for which they are collected.
- Members shall accept and process applications in electronic format.
- Fees imposed in respect of the processing of an application for the grant of entry, temporary stay and work, including those in respect of visa, shall reflect no more than the approximate administrative costs incurred.
- Each Member shall issue multiple entry visas when the respective requirements are fulfilled.

Provisions to tackle complaints:

Processing Time/Notification of the Applicant



APPROVED

REJECTED

- Members shall, within a reasonable period of time that should not exceed 10 working days for entry and 30 days for work permit and extension requests, after an application is considered complete under its domestic laws and regulations, notify the applicant of the decision concerning the application.
- If the application is approved, the competent authorities of each Member shall notify the applicant of the period of stay and other relevant terms and conditions.
- If the application is denied, the competent authorities of a Member shall, upon request or upon their own initiative make available to the applicant information on any available review and/or appeal procedures.

Provisions to tackle complaints:

Notification of the Applicant

- Upon the applicant's request, the Member concerned shall, without undue delay, provide information concerning the status of the applicant's application. This information shall be provided free of charge.
- If a Member requires additional information from an applicant in order to process the application for temporary stay and work, the authority shall notify the applicant without undue delay and provide the applicant with the opportunity to correct any deficiencies within a reasonable period of time.

Provisions to tackle complaints:

Renewal & Compatibility of Multiple Permits

- Applicants shall be given an opportunity to apply for renewal or extension of authorisation for temporary stay and work. Members shall ensure that the procedures for application for the renewal or extension of authorisation for temporary stay and work are pre-established and clearly specified.
- If a Member approves an application covering both temporary stay and work, it shall ensure that the respective time periods granted are compatible.

Arguments and Counter-Arguments for Negotiations

- **Negotiating Partner: «Visa issues are outside the scope of trade agreements» → FALSE!**
 - *This Agreement applies to measures by Members affecting trade in services.* Panel Report (EC-Bananas): There is no a priori exclusion of any measure from the GATS.
 - 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.
 - In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
 - 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, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.
 - The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Arguments and Counter-Arguments for Negotiations


Example of a Scope Article:

- 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.
- 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, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under this Annex and the terms of a specific commitment.
- The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Arguments and Counter-Arguments for Negotiations

- **This is an issue of negotiation between MFAs**  **FALSE!**
 - This is not about visa exemption.
 - This is not about whether visas are granted. It's about the procedures up to the point of the grant of visas or work permits.
 - This also covers work permit application procedures.
 - Members keep full sovereignty as to decide whether a natural person is allowed into their territory or not.
 - We need this Annex even if we have a visa exemption agreement in force.
 - It does not cover all natural persons but only service suppliers.
 - It is all about the procedures if a service supplier needs to apply for entry, temporary stay and work permit regardless of whether or not the outcome is positive.

Arguments and Counter-Arguments for Negotiations

- **All these disciplines are already in place, so we don't need this annex**  **FALSE!**
 - Great! We can fix the time frames for application processing etc.
 - Give business community a positive message
 - Simply set a minimum standard
 - Commitment for the future

WHAT ABOUT Market Access



1. In scheduling commitments pursuant to Articles .. (Market Access) and .. (National Treatment) of the Agreement, each Member shall set out in its schedule the commitments it undertakes for the entry and temporary stay in its territory of natural persons of the other Party. These schedules shall specify the terms, limitations and conditions governing those commitments for each category of service supplier, including the period of stay and any possibility for multiple entry or extension of stay, any numerical limitations such as quotas and any requirements of an economic needs test.

2. Members shall grant entry and temporary stay to natural persons of the other Member in accordance with this Annex including the terms and conditions of the categories in [Specific Commitments], provided that the natural persons comply with immigration laws and regulations applicable to entry and temporary stay which are not inconsistent with the provisions of this Annex.

3. Unless otherwise specified in [Specific Commitments], no Member shall impose or maintain:

(a) any limitations on the number of natural persons of the other Member to be granted entry and temporary stay under paragraph 2 whether in the form of numerical quotas or the requirements of an economic needs test; or

(b) any mandatory requirements for employment of certain number of domestic labors in connection with granting entry and temporary stay of natural persons of the other Member under paragraph 2.

WHAT ABOUT Market Access.

Additional Categories of Natural Person Service Suppliers



Service providers that are business visitors for the purposes of attending conferences and trade fairs.

Truck Drivers



Seafarers



Maintenance
and Repairers



CONCLUSION

- Mode 4 is complex, sensitive but also essential for Trade in Services
- Application procedures for natural person service suppliers constitute a trade restriction.
- This needs to be addressed for the development of trade for ALL parties involved.
- Bilateral and regional agreements are only partial solutions.
- The WTO framework must remain as the basis of any new disciplines introduced in the area.
- Mode 4 is a balancing element for Trade in Services negotiations in WTO.

Thank you!

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