

Mode 4 of Trade in Services

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Good afternoon

Firstly I make these points: that I am not based in Ireland, I am based in London and in fact am speaking particularly from a UK perspective today; and if I have any factual information wrong I make no apologies for that, as lack of transparency and lack of public information are key points I want to raise here.

Mode 4 is, in the language of the WTO, 'the temporary movement of natural persons [in contrast to corporate entities], across borders for the purpose of supplying services'

The language of workers, labour, employment and migration are all avoided in the trade context, though I do observe that it is sometimes quite difficult for trade professionals to avoid this real life language when this is in fact what it is.

Here is where Mode 4 has been fitted into trade in services, as another mode of cross border service delivery:

Mode 1: Cross border supply (eg via internet)

Mode 2: Consumption abroad (e.g. tourism, foreign student market)

Mode 3: Commercial presence (e.g. corporate subsidiary)

Mode 4: Presence of natural persons (e.g. workers moved across borders by a company, as intracorporate transferees. Three other categories exist)

Note that I've used more realistic language in relation to Mode 4.

The EU is offering Mode 4 access in all the trade agreements it is negotiating. In the WTO General Agreement on Trade in Services, in the Doha Round, the EU Revised GATS offer, tabled in June 2005, includes Mode 4 offers across service sectors. The EU is including Mode 4 offers in all the bilaterals and Economic Partnership Agreements under negotiation, where there is actually much more progress than in the Doha negotiations. The EU requirement is for skilled workers.

Developing countries have been encouraged to see Mode 4 as their legitimate demand area in service negotiations, and as their comparative advantage.

India has been the main demandeur for Mode 4 access, though of course within the WTO context the Most Favoured Nation rule applies, so that is what is offered to one member state is offered to all. The texts of bilateral agreements such as the EU/India bilateral agreements are secret until negotiations are completed - which is a major concern in itself. However, the EU Trade Commission negotiator on this agreement has stated definitively, in a meeting here, that India will not sign that agreement without the inclusion of Mode 4 offers.

Therefore Mode 4 cannot be insignificant; otherwise services agreements would not rest on it. It seems, in fact, that it is essential to the completion of services negotiations.

The secrecy is a major issue. There is comparatively little written on Mode 4. When it is mentioned though, not only is it usually conceded that Mode 4 is essential, as I have pointed out, but Mode 4 is also inevitably referred to as 'sensitive'.

But what is the sensitivity? And is this not a good reason for it to be in the public sphere?

It is sensitive because the movement of people is a very much bigger deal than the movement of goods or services investment, or capital. I think we can presume that the main sensitivity is the potentially negative labour effects within host countries.

The 'intra-corporate transferee' category is a major part of Mode 4, allowing transnational companies to bring workers across borders and to capitalise on wage differentials. The intra-corporate transferee category already exists within UK labour migration provision. It is being used that way now, and is causing concern.

It appears that Member States' current national labour migration policies have relevance to the Mode 4 commitments that the EU is making on their behalf, and that Mode 4 openings vary across member states.

The Posted Workers situation is the internal EU parallel to Mode 4, with similar language and concepts e.g. 'cross border establishment', and of 'movement of service suppliers'. The Posted Worker situation is proving problematic for workers, and when this has gone to law, the European Court of Justice decisions Laval/Viking/Ruffert/Luxemburg have clearly indicated that the tide is against workers' rights to protect their wages and conditions.

So we can look to the 'Posted Worker' situation as a further model for the potential effects of Mode 4.

The EU Mode 4 offers are without quotas and without Economic Needs Tests (ENT).

So I highlight first and foremost the lack of public information on Mode 4 overall, and the lack of transparency,

Secondly, there are different working conditions and wage levels across countries and there are places where workers have achieved much more in working conditions than other places.

There are not so many parts of the world where the balance of labour and capital is such that it has allowed for the development of labour rights. Those achievements are fragile and can be lost.

Insofar as Mode 4 allows corporations to bring cheaper labour into EU countries and capitalise on the wage differential, workers in the host countries have a great deal to lose.

The argument that Mode 4 is for temporary labour movement does not lessen this because temporary workers are overall less likely to be unionised, would not be allowed to join unions, and their comparative advantage or the comparative advantage that transnational corporations can offer through Mode 4 would be lost if they did.

I point out that EU countries are differently affected by EU policy, not least in labour issues, and that there should be particular attention, and caution, in countries likely to be most affected.

Thirdly, I raise the issue not only of whether the structures are there to protect labour rights but also whether they would be likely to be monitored and enforced.

Fourthly, it is a very significant shift when any policy making is lost from the arena of the democratic process and put instead into the hands of corporations, particularly when that shift is irreversible, as is effectively the case with trade commitments. In this case it is the policy area of labour migration. Mode 4 commitments, once made, are there for corporations to use, to raise disputes and to seek compensatory measures either through their governments or directly, depending on the agreement.

I expect that the people here not only have a varying awareness of Mode 4, but also have very different perspectives.

Some people will share my concerns for the labour standard implications within EU countries, with varying effects across different Member States.

Some people will consider Mode 4 from a developing country perspective and see some gains for some workers, as a consequence of transnational corporations utilising Mode 4 for the wage differential across countries. I would say to you that when labour standards are lost in the few places that they exist, the model of labour standards will no longer there to strive for, because surely ILO (International Labour Organisation) standards are derived from the places in which they have been achieved.

And to the people, perhaps among businesses, whose eyes light up at the thought of cheap and flexible, just-in-time labour supply, through Mode 4, I would say that the EU comparative advantage for business, and its advantage in lots of ways, stems not only from its earn/spend cycle, but more deeply from its stability, predictability and rule of law. And when people are undermined to the point where they feel betrayed, that stability can not be taken for granted. So - be careful what you wish for.

Mode 4 should not be included in trade negotiations, especially when those negotiations do not involve those who are most connected to the areas of high concern.

The main objections that I raise to the inclusion of Mode 4 in EU trade negotiating are:

- That the EU is negotiating on Mode 4 and making offers without the knowledge of EU Member State publics or public debate; that this is an issue particularly for those states most likely to be most affected, and is on an issue, labour migration, where there is already a great deal of concern, at least in my country.
- The potential negative effects on labour standards as a global public good
- The loss of democratic process when labour migration policy goes out of the hands of national governments and becomes the preserve of corporations.

Thank you for your attention.