



Bart & Associates

A Citizenship and Immigration Law Firm



Mode 4 In Practice

Immigration Perspective:
Canada

Synopsis

- 1) Canada is meeting its GATS commitments and is exceeding them by harmonizing portions of mode 4 into our domestic structure and expanding them.
- 2) Our domestic legislation is more facilitative to employers and foreign workers than GATS.
- 3) Employers are requesting that the GATS be expanded.

Temporary Foreign Worker Program

- ❑ Highly complex, sophisticated
- ❑ Involves both Federal and Provincial Governments
- ❑ About 60 – 70 Provincial work permit categories as any given time (fluid system which is needs based)
- ❑ About 80 Federal Categories
- ❑ Low Skilled and High Skilled (focus is on high skills)



Work Permits To Canada

General Rule:

Immigration Canada requires that HRSDC/Service Canada issue a Labour Market Opinion as a precursor to obtaining a work permit.

Labour Market Opinions

- ❑ Employer Application: Benefits to Canada
- ❑ Canadians Are not Available/Labour Shortage/Advertising
- ❑ Job Creation
- ❑ Training of or transference of skills to Canadians
- ❑ Wages and working conditions (equal or better than Canadians)

LMO-Exempt Categories

- ❑ GATS
- ❑ NAFTA, CCFTA
- ❑ Performing Arts
- ❑ Intra-Company Transfers
- ❑ Research, Educational or Training Programs
- ❑ Information Technology Workers
- ❑ Students, Spouses
- ❑ Various other categories

(Uruguay) GATS Within Canadian Immigration Policy – Commitments

Visitor Entries and After Sales Service (harmonized with Canadian legislation)

9 Professionals: short term work permits (licence generally required for Canada-impractical)

Intra-Company Transfers: Executives and Managers (7 year cap) and Specialists (5 year cap) Harmonization with NAFTA, CCFTA and C-12 (which requires minimum 1 year of employment in similar capacity at company prior to transfer)

Bilateral and Multilateral Treaties

- NAFTA: Canada, USA and Mexico
- CCFTA: Canada and Chile
- Trade Agreement with Peru (implementation scheduled for 2009)

NAFTA and CCFTA

1. Visitors (harmonized);
2. Professionals;
3. Intra-Company Transfers (executives, managers and specialized knowledge workers-harmonized) [Peru: 6 Months]; and
4. Treaty Traders and Investors

Professionals

- ❑ 60 Occupations (Peru: substantial expansion of [NOC] occupations, plus negative occupations)
- ❑ Citizenship in US, Mexico or Chile
- ❑ Qualification to work in that profession;
- ❑ Pre-arranged employment with a Canadian employer in occupation
- ❑ Compliance with existing immigration requirements
- ❑ One year work permits, renewable indefinitely
- ❑ USA Experience

Treaty Traders

- ❑ Applicant has treaty country nationality;
- ❑ Enterprise has treaty nationality;
- ❑ Activities involve substantial trade in goods or services;
- ❑ Trade is principally between treaty nationality and Canada;
- ❑ Position is supervisory, executive or involves essential skills;

Essential Skills: Discretionary

- ❑ No previous employment required with the applying trading company
- ❑ Essential skill must be ‘vital to the effectiveness of the firm’s Canadian operations’;
- ❑ Includes ‘highly trained technician’ to train Canadians, and
- ❑ Does not necessarily have to be essential skills: can include people required to start operation based on familiarity with operations.

Treaty Investors

- ❑ Applicant has treaty country nationality
- ❑ Enterprise has treaty country nationality
- ❑ Substantial investment made or actively being made
- ❑ Entry solely to develop and direct the enterprise;
- ❑ Position is executive, supervisory or essential skills (defined similarly to traders)



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How can GATS be expanded to meet Canadian employers' labour market requirements?



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- ❑ Expand number of professional occupations
 - ❑ Professionals: Allow for one year work permits renewable indefinitely
 - ❑ Reduce licensing requirements for professionals
 - ❑ Introduce treaty trader and investor categories to facilitate foreign trade and investment (to allow entry to employees who have not worked in an intra-company transfer capacity for one year)
 - ❑ Open Spousal Work Permits for higher skill level occupations

Canada: 2005 Mode 4 Offer

- o Offer contains many of the suggestions
- o It is designed to expand our current commitments considerably
- o Expands occupations (MC and IT)
- o Open work permits for spouses
- o One year professional work permits
- o Expands the activities of professionals



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JRB

For More Information Please Contact:



Jacqueline R. Bart, B.A, LL.B., J.D.
Barrister and Solicitor
Certified Immigration Specialist by the Law Society of Upper Canada

Bart & Associates
A Citizenship and Immigration Law Firm
Barristers and Solicitors
Law Chambers
181 University Avenue, Suite 2200
Toronto M5H 3M7

www.canadianrelocationlaw.com

Tel : 1-416-601-1346

Fax: 1-416-601-1357

email: jbart@canadianrelocationlaw.com