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Working Party of the Trade Committee

**SERVICE PROVIDERS ON THE MOVE: A CLOSER LOOK AT LABOUR MOBILITY AND THE
GATS**

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EXECUTIVE SUMMARY

Even by the modest standards of Uruguay Round liberalisation on trade in services, little was achieved on mode 4 (movement of natural persons). Expectations are thus running high for some WTO Members for significant outcomes on mode 4 from the current services negotiations. At the same time, developments in the global economy have created additional drivers for the liberalisation of movement of natural persons. The combination of a range of factors - increased trade and investment, global business networks, skills shortages in developed countries, development of export capacity in skilled labour by developing countries - has meant that interest in greater freedom of labour mobility is now shared to varying degrees by a wide range of WTO Members.

However, while new forces push for changes to labour mobility, traditional concerns remain, related both to the impact of temporary movement on domestic labour markets, including the fear of "flooding" or "brain drain", and to the tension between the fluctuating nature of labour markets and the permanence of GATS commitments. While mode 4 movement is quite different from migration, they are increasingly confused in public debate. This is possibly due in part to the fact that many developed countries are confronting both a short-term skills shortage in particular industries, as well as a longer-term problem with an ever-decreasing ratio of workers to retirees. The debate over importation of temporary labour has thus merged with the debate over longer-term needs for migration. Additionally, while mode 4 is only concerned with a small group of temporary workers, it does touch upon sensitive issues regarding how countries regulate the entry of foreign workers into their territory.

While the paper canvasses a number of the issues and concerns raised, it notes that, overall, the impact of the temporary movement of workers is hard to assess, and is shaped by the particular regulatory frameworks operating in both sending and receiving countries. Generally, it seems that sending countries may experience both gains (remittances) and losses (of skills) in the short-term, but may stand to gain over the longer-term (increased human capital, technology transfer, international business and investment links). For receiving countries, at the margin, temporary programs help to address skills shortages and reduce pressure for illegal migration. There would appear to be little evidence of large-scale transfer of workers from temporary to permanent status.

Regional agreements take a range of approaches to labour mobility. Some provide a relatively high degree of freedom of movement with few special procedures (e.g., the EEA and Europe Agreements, CARICOM). Others provide for some regulated mobility and involve relatively detailed special procedures implemented amongst few parties (e.g., NAFTA). Others are aimed more at facilitating existing mobility, involving some special procedures, but with maximum flexibility for continuing existing national practices (e.g., APEC). Coverage ranges from essentially only intra-corporate transferees and business visitors to the free movement of labour. All provide more favourable treatment for higher skilled workers, with definitional similarities between some of the agreements. A key consideration is the extent to which any of these models could inform the future development of GATS disciplines. The scale of any potential labour movements may be more manageable at the regional level; and the ability to put in place any mitigating programs may be greater. Indeed, the larger and more diverse the membership of a regional trade agreement, the greater the flexibility provided for continuance of existing national migration practices. Administrative capacity is also an important factor, in particular for non-OECD countries.

Defining and Measuring

Mode 4 is defined as the supply of a service by a service supplier of one WTO Member, through presence of natural persons of a Member in the territory of another Member on a temporary or non-permanent basis. While there is no definition of "temporary" for mode 4, and Members' practices vary, permanent migration is explicitly excluded. While there is some debate about what exactly it covers, mode 4 is generally defined in terms of both duration and purpose of stay. That is, mode 4 service suppliers: gain entry for a specific purpose (to fulfil a service contract as self-employed or as an employee of a foreign service supplier); are normally confined to one sector (as opposed to workers who enter under general migration or asylum programs who can move between sectors); and are temporary (i.e., they are neither migrating on a permanent basis nor seeking entry to the labour market).

Measuring mode 4 presents real challenges. Available statistics are incomplete, not readily comparable between countries and often cover a range of workers and activities beyond mode 4. The paper examines both migration and labour market statistics, which count the *number* of service suppliers on the move, and trade in services statistics, which measure the *value* of trade in services transactions undertaken via mode 4. Additionally, the paper draws on figures from a survey undertaken by PricewaterhouseCoopers on the international assignment practices of 270 companies. While all of these statistics can provide some guidance, they must be treated with caution as they both over-estimate (e.g., by including a range of temporary workers beyond those defined under mode 4) or under-estimate (e.g., by focusing only on intra-corporate transferees) mode 4.

Notwithstanding these limitations, some initial observations can be drawn. Temporary movement is increasing, with short-term movements the highest growth area. However, the number of temporary workers remains small for most countries relative to the overall size of the labour market and the trade represented by these workers also remains small relative to overall trade in goods and services, and to other modes of trade in services. Notwithstanding its small scale in total, temporary movement is very important for some industries and for some countries. While available statistics are not sufficient to draw conclusions, the figures do suggest that no easy developed versus developing country picture can be drawn. OECD countries are also major exporters of labour, and some developing countries are significant importers. Labour mobility for skilled workers, often facilitated by special programs, is also increasing and seems to be concentrated in the services sectors.

Possible Improvements

Current commitments for mode 4 are generally more restrictive than for other modes. They tend to be horizontal rather than sectoral, are generally limited to higher skilled categories (managers, specialists) and are often linked to mode 3 (i.e., intra-corporate transferees). Lengths of stay are rarely specified and many commitments are subject to economic needs tests or a range of other measures, such as quotas and pre-employment requirements. Access can be further hampered by the lack of recognition for qualifications obtained overseas and non-transparent or unduly burdensome licensing requirements.

Commitments could be improved by either increasing the effectiveness of existing market access or offering additional market access. Many of the changes suggested below involve moving from a migration to a trade framework; however, outcomes must balance the benefits from fulfilment of GATS commitments with the needs of an overall migration system designed to serve a number of policy objectives. Changes may need to proceed incrementally, building on existing procedures and relying on dialogue and co-operation between all relevant agencies, both at the national and international level.

Common definitions of personnel: While regional agreements may provide some guidance, ISCO-88 could also be used to identify clearly those categories of persons covered by mode 4 commitments and facilitate inclusion of additional categories. However, ISCO-88 may require some updating and refinement and would not provide definitions for categories not based on type of work performed (e.g., intra-corporate transferees).

Stipulations on length of stay: Given the range of current practices, it may be difficult to agree standard durations of stay. Inclusion of duration of stay for various categories by individual Members in their schedules would represent a major advance; however, if this was not possible, greater transparency and availability of information via other means could be an alternative.

Improving market access: (i) *Sectoral, as opposed to horizontal, commitments* could be targeted towards sectors where mode 4 is important or where development or labour market objectives may be met by importing service suppliers. Sectoral commitments could contribute to greater clarity and to more transparent and informed domestic debates on labour mobility. However, sectoral commitments may be difficult to make in the context of labour market fluctuations and migration procedures would need to be adapted to collect information on the sector in which entrants will work. (ii) *Better access for some groups:* It may be easier to provide streamlined processing for intra-corporate transferees either by "blanket" applications by companies or by charging companies for streamlined processing (including via a GATS visa, tailored to mode 4-type entrants). (iii) *Expanding the categories:* better access could also be provided for other types of skilled, but not necessarily highly skilled, personnel such as "technical support personnel" or "non-professional essential personnel". Industry has also expressed interest in better access for trainees (future executives).

Administrative procedures: Even in the absence of new market access, significant liberalisation may be achieved through improving the administrative arrangements governing current market access. (i) *GATS visa:* a GATS visa could greatly facilitate entry and also provide useful statistics for mode 4. However, administrative requirements would need to be kept to a minimum and significant capacity building would be required. Existing schemes, including at the regional level, may be of a higher standard and/or difficult to phase out. (ii) *Transparency:* Additional disciplines on regulatory transparency could be developed for mode 4 including requirements for provision of information, prior consultation, timely responses and appeals procedures. While it may not be appropriate to include changeable administrative information in schedules, Members could provide one-stop information on all relevant procedures via a dedicated website covering all WTO Members; via notifications to the WTO, or by creating a one-stop contact point at the national level.

Moderating measures: (i) *Safeguards-* A number of issues arise with regard to the application of a possible emergency safeguard developed per Article X of GATS to mode 4, including with regard to possible criteria for assessing increase in supply and injury, linkages between mode 4 and other modes and economic needs tests as an existing form of safeguard. Safeguards, or more accurately sanctions, have also been proposed to address the abuse of a possible GATS visa, although practical problems arise. (ii) *Bonds* payable by sponsoring companies can also play a useful role; however it could be difficult to make them available to individual service suppliers if they were to become perceived as de facto payments for permanent entry. Bonds will thus be most useful where mode 4 access is linked to mode 3.

Mode 4 presents particular challenges in terms of the liberalisation of trade in services, not least because it deals directly with global movements of human beings, with all the complexities - economic, political and social - that entails. Labour movement - even of the temporary, limited variety contemplated by GATS mode 4 - raises a number of sensitivities and the debate takes place against the backdrop of ever-changing economic, demographic and technological realities. There are a range of options available to WTO

Members to improve mode 4 commitments; the choice of how to do so will involve careful balancing of a range of factors, in close co-operation with stake-holders at both the national and international level.

INTRODUCTION: THE CHANGING CONTEXT FOR MODE 4

1. This paper responds to a request from the Working Party of the Trade Committee at its meeting held on 15-16 March 2001 for work to explore temporary movement of natural persons in the context of Mode 4 of the General Agreement of Trade in Services (GATS). Mode 4 is concerned with the temporary movement of service suppliers - i.e., persons moving to other countries for limited periods for the purposes of providing services, but with no intention of entering the labour market or migrating permanently. However, while mode 4 is distinct from migration, any movement of people raises migration procedures and issues. Further, in the context of globalisation, issues related to labour mobility are receiving increasing attention, as such movements are perceived to be on the increase (see Box 1). With mode 4 likely to become a major issue in the context of the current GATS negotiations, this paper attempts to contribute to greater understanding of the scope and issues related to mode 4, and to explore options for how progress on mode 4 might be made in the negotiations.

Box 1. Setting the scene

- ◆ While globalisation has focused attention on migration, the largest migration flows in fact took place in the period 1815-1915; the number of immigrants to the United States is less today than in 1914 in both absolute terms (911 000 vs. 1.2 million) and as a percentage of the total population (0.35% vs. 1.5%). Between 1846 and 1939, 59 million people left Europe for the Americas, Australia, New Zealand and South Africa.
- ◆ Despite perceptions to the contrary, overall, international migration of people in search of work has not increased enormously in recent decades. Annual migration flows from developing countries were no greater in 1995 than they were in 1970 relative to population size. Total global migrant stock increased from 75 million in 1965 to 120 million in 1990, an increase of 1.9% per year - set against a population growth rate of 1.8% per year over the same period.
- ◆ The overall effect of international migration is also much smaller than that of capital or trade: only about 2% of people born in low- and middle- income countries do not live in their country of origin. In 1996, global exports of goods represented around 29% of world GDP; global labour migration was limited to around 120 million people - or 2.3% of world population. Additionally, in 1995, migrants sent home about \$75 billion per year, about one-third of net capital flows.
- ◆ However, migrant flows are now more diverse and complex; migrants move back and forth more readily and rapidly. Migrants increasingly come from poor countries and stay for shorter periods in their host countries. The number of highly skilled workers on the move has also increased significantly.
- ◆ Between 1970 and 1992 low- and middle- income countries' share of the worlds' work force rose from 79% to 83% but their share of the world's skilled work force (i.e., workers with at least secondary education) jumped from a third to nearly a half.

- ◆ With huge reductions in transportation costs, the number of both labour sending and receiving countries has increased. Between 1970 and 1990 the number of countries which were major labour receivers increased from 39 to 67; major senders increased from 29 to 55; and the number of countries which were both senders and receivers increased from 4 to 15. Countries that were previously labour exporters (e.g., Spain) have either become labour importers, or now experience a two-way flow (e.g., Ireland).
- ◆ Much labour mobility takes place between developing countries - e.g., South Asians go to the Middle East and East Asia; and South Africa, Nigeria and Côte d'Ivoire together attract half of Africa's migratory flow. Most migrants stay within their regions.

Source: World Bank 1995; Stalker, 2000, *The Economist*, "Unwelcome to Iberia" 10 February 2001; *Financial Times*, "Workers without frontiers", 29 January 2001.

2. It is often said that the Uruguay Round General Agreement on Trade in Services (GATS) was less a market opening agreement than a framework which established rules and laid the groundwork for future liberalisation. The current services negotiations, which began on 1 January 2000 are expected to deepen such liberalisation. The expectations of some WTO Members are running particularly high for GATS mode 4 (movement of natural persons) - the dimension of services trade for which, even by the modest standards of Uruguay Round liberalisation, very little was achieved. Indeed, the outcome on mode 4 towards the end of the Uruguay Round was felt to be so minimalist by those developing countries which had pushed strongly for its inclusion that a special Negotiating Group on Movement of Natural Persons was created, with a negotiating deadline of no later than 6 months after the entry into force of the Agreement Establishing the World Trade Organisation. However, negotiations on movement of natural persons were eventually concluded in July 1995, without significant improvements in commitments.

3. Against this backdrop, and in the context of their increasing activism in the WTO, many developing countries have signalled that they will be seeking substantive outcomes on mode 4 in current GATS negotiations. Indeed, some WTO Members have indicated that their willingness to undertake liberalisation commitments for other modes of supply of services (such as mode 3 dealing with commercial presence) will be determined by outcomes on mode 4. With some developing countries now major exporters of skilled labour, mode 4 has become an important part of those countries' positive agenda for the GATS negotiations.

4. At the same time, developments in the global economy have created additional drivers for the liberalisation of movement of natural persons. In a world of increasingly global business networks and shortening product cycles, companies need to be able to move key personnel around the world at short notice and for short periods to support the production, marketing, sale or after-sale servicing of goods and services. Advances in technology and significant decreases in transport and communication costs have both spurred and enabled greater mobility. More companies - including smaller companies - are participating in international trade and the scope and scale of traded services has grown significantly.

5. The significant growth in cross-border investment has also increased business interest in facilitating temporary movement of natural persons. Companies establishing in new markets want to be able to take key personnel with them to set up the new venture, including before handing over to local appointments. Experienced staff have an important role in passing on company culture, practices and standards; trusted managers are needed to steer business development in the crucial early stages; and specialist technical staff may also be required to ensure that necessary communications and data systems are operating effectively¹. After the initial setting up period, key personnel may be required to carry out

1. *World Trade Agenda*, Number 00/23, 18 December 2000.

special projects. International experience has also become important in career development, and companies competing for skilled employees need to provide the opportunity of foreign postings within the company. Investment liberalisation can also have flow-on effects, creating demand for exports of skilled labour from the host country. Foreign firms in India have played an important role in linking the demand for various services in their home countries with the supply from the host country (India), thus generating awareness of - and trade opportunities for - skilled Indian labour [Panagariya, 2000].

6. At the same time, technological change, as well as economic change, has also created an ever-increasing demand for skilled labour. OECD countries, at the forefront of technological changes, are experiencing skills shortages, particularly in the information and communication technology (ICT) sector. Shortages in the ICT% sector are estimated at 850 000 technical staff in the United States, nearly 2 million in Europe [OECD, 2001] and 12 400 in Japan². This increased demand can be met by temporary foreign workers thanks to lower transportation and communication costs and increased access of skilled people to relevant information on employment opportunities and conditions for international mobility, including via the Internet.

7. In turn, technological developments are also changing work patterns, with skilled workers increasingly being sent abroad for shorter periods to perform certain key tasks. The speed of change and dynamism of markets has resulted in shorter turn-around time on projects and need for expert personnel to be available at short notice to develop rapid solutions to problems. Companies increasingly pull international teams together to work on specific short-term projects, where this was previously impractical. At the same time, longer-term movements have become less practical in the context of the growing number of dual career couples, especially in the highly skilled professions. International movements of skilled people are thus increasingly shorter and more frequent [PricewaterhouseCoopers, 2001], with developments in communication and information technology contributing to both the demand for and supply of this increased mobility (see Box 2).

Box 2. E-commerce and Mode 4

Some WTO Members, in particular developing countries, have expressed concern that the growth of trade in services via ICT will act as a substitute for trade via mode 4. It is certainly true that, in some cases, changes in ICT have meant that, where previously the presence of an individual service supplier might have been required, the service can now be delivered over the Internet. This tends to be more common in the relatively knowledge-intensive fields of activity and can be attractive to companies wishing to pay developing country wages, rather than local (developed country) wages as is generally required for workers temporarily re-located. However, the Internet is not always a good substitute - security and confidentiality requirements can demand the movement of labour (e.g., Y2K contracts), and in some countries the infrastructure is as yet not sufficient to enable all contracts to be supplied over distance.

Replacement of mode 4 service provision by provision over the Internet is also not necessarily to the detriment of developing countries. Trade in services over the Internet may offer service suppliers from developing countries the opportunity to participate in global trade, notwithstanding their lack of commercial presence in foreign markets. While some of this trade may be in knowledge-intensive areas, primarily benefiting those developing countries with a large pool of skilled labour, a range of lower-skilled back-office services are also traded over the Internet (basic data entry, customer call centres).

2. *The Japan Times*, "Foreign workforce movin' on up", 1 January 2001.

Service provision by e-commerce may also complement, not simply substitute for, mode 4, as service suppliers providing services electronically follow up with visits (e.g., an architect whose designs were accepted by email subsequently visits the site of the building to supervise part of the construction). Indeed, in some service sectors (e.g., major financial services contracts), there may still be a preference for personal contact before major deals are finalised.

Technological developments may be changing the nature of mode 4 movement, rather than removing the need for it, with increasing numbers of employees managing their international responsibilities through a combination of regular communication link-ups and frequent, shorter business trips to the local operations, referred to as "virtual assignments"³. Indeed, 65% of the companies surveyed by PricewaterhouseCoopers had employees managing international job responsibilities from their home country, with most expecting this to remain unchanged (53%) or to increase (47%) over the next two years. Replacing longer-term assignments with more frequent shorter ones plus virtual working also helps companies manage the costs of international responsibilities.

ICT may also play a role in encouraging employees to accept longer-term assignments, by reducing the sense of isolation from friends, family and cultural context. Further, as dual career problems are a major reason for international assignment refusal (cited by 59% of companies surveyed by PricewaterhouseCoopers), many companies have begun to provide financial support for distance learning, or training for partners to acquire e-business competencies and careers which can be conducted virtually. In this way, ICT may contribute to increasing the mobility of some service suppliers.

Sources: PricewaterhouseCoopers, 2001; Panagariya, 2000; *Financial Times*, "The incompressible personal touch", 20 February 2001.

8. The combination of these factors - increased trade and investment, global business networks, skills shortages in developed countries, development of export capacity in skilled labour by developing countries - has meant that greater freedom of labour mobility has ceased to be solely a developing country issue. Interest in labour mobility is now shared to varying degrees by a wide range of WTO Members. A number of OECD countries have taken initiatives at the national level to facilitate the movement of skilled people (see Box 3).

Box 3. Some recent national initiatives to facilitate movement of natural persons

Australian immigration authorities have set up service centres for employers who want to petition skilled foreign workers.

Canada has a pilot program related to software development workers under which Human Resources Development Canada pre-identified a general need within the labour market for software development workers. This enabled suitably qualified applicants with a job offer from a Canadian employer and any necessary visa (depending upon country of origin) to be automatically validated (i.e., not subject to labour market needs tests). Under a pilot project, spouses of "highly skilled foreign workers" who are admitted to Canada for at least 6 months are also permitted employment authorisations without being subject to labour market testing.

France published a decree in 1999 permitting companies to hire foreign workers skilled in computer science if a company is able to demonstrate that it is unable to fill the post with a local candidate.

3. Virtual assignment is defined as involving no re-location as international responsibilities (e.g., management of an overseas branch) are conducted from the home country. However, this means frequent business travel plus a heavy reliance on telephone, email, video conferencing, Internet chat rooms and other communications. [PricewaterhouseCoopers, 2001].

Germany is offering 20 000 employment permits ("green cards") for up to 5 years for computer and information technology specialists recruited outside the European Union. At the end of the first three months of the process, 5000 applications had been received, over half from nationals of Central and East European countries and Russia.

Japan announced a plan in November 2000 to recruit 30 000 skilled IT engineers and researchers from overseas by 2005.

The United Kingdom is trialling a program to enable high volume non-immigrant visa employers with a proven track record to have streamlined and fast-tracked visa approval. It now applies simplified fast-track procedures for issuing work permits for certain occupations and has extended the list of shortage occupations. The maximum length of a work permit has been extended from 4 to 5 years.

The United States raised the annual quota of H-1B visas for professional and skilled workers by nearly 70% in 2000, providing temporary admission for 195 000 people over the next three fiscal years. The 7% ceiling on the proportion of visas going to nationals of any given country has also been dropped.

Sources: OECD, 2002; OECD, 2001; Young, 2000; *The Japan Times*, "Foreign workforce movin' on up", 1 January 2001.

9. However, while new forces push for changes to labour mobility, traditional concerns remain, including the impact of temporary movement on domestic labour markets, including the fear of "flooding" or "brain drain", and the tension between the fluctuating nature of labour markets and the permanence of GATS commitments. Additionally, while GATS mode 4 is concerned with a narrow, specific set of workers, debates over labour mobility are increasingly entwined with broader debates over globalisation, migration and development.

10. This paper attempts explore this context for mode 4, to identify both some of the issues at stake in the current GATS negotiations and some of the possible ways forward. The paper has five parts. Part I outlines some of the issues and concerns related to labour mobility for both OECD and non-OECD countries and explores the treatment of labour mobility in selected regional trade agreements. Part II explores the definition and measurement of mode 4 under the GATS, including information available from labour market and migration figures, trade in services statistics and industry surveys. Part III outlines existing GATS commitments related to mode 4 and Part IV undertakes an initial review of some proposals for improving the scope and operation of mode 4 commitments. Part V presents some conclusions.

11. One issue underlies all parts of this paper. As mode 4 refers to the provision of services via movement of natural persons, attempts to think about mode 4 require consideration not just of issues related to trade in services, but also of those related to the movement of people. This duality is evident in many aspects of the paper. Negotiations on mode 4 trade in services are influenced by public concerns about movement of people and migration more broadly. Empirical estimates need to refer to both trade in services data (which may help to identify the value of trade generated by mode 4), and labour market/migration statistics (which may assist in estimating the number of people falling under mode 4 who are internationally mobile). While migration procedures are being adapted to facilitate the movement of service providers per mode 4, initiatives to facilitate trade under mode 4 also need to include safeguards against possible labour market disruption and illegal migration. Yet temporary labour mobility goes well beyond GATS mode 4, including workers in areas classified as goods, not services trade (e.g., seasonal agricultural workers). This paper attempts to take account of these dualities in focusing on how trade in services under mode 4 might be enhanced.

PART I: CURRENT ISSUES AND PRACTICES RELATED TO LABOUR MOBILITY

I. Issues Related to Labour Mobility

12. While mode 4 movement is quite different from migration, they are increasingly confused in public debate. This is possibly due in part to the fact that many developed countries are confronting both a short-term skills shortage in particular industries, notably ICT and nursing, as well as a longer-term problem with ageing populations and an ever-decreasing ratio of workers to retirees. The debate over importation of labour has thus merged with the debate over longer-term needs for migration. Additionally, while mode 4 is only concerned with a small group of temporary workers, it does touch upon sensitive issues regarding how countries regulate the entry of foreign workers into their territory. In view also of security considerations, countries try to balance the facilitation and enforcement aspects of border controls, and to ensure that measures taken to facilitate the entry of foreign workers into their territory do not become conduits for entry by illegal individuals.⁴

13. Further, while GATS deals only with temporary movement, concerns have been raised that, in some circumstances, temporary movement can be a first step to permanent residence (e.g., where visa conditions allow workers to change their status from temporary to permanent). While some see this as a useful pre-selection of candidates for future migration, others view it as a way of circumventing restrictive legislation on permanent migration [OECD/SOPEMI, 1998].

14. While figures are not complete, there does not appear to be evidence of large-scale transfer of workers from temporary to permanent status. While the UK work permit system allows employees to apply for permanent settlement after 4 years of continuous employment, in practice, a relatively small proportion seem to settle permanently in the U.K. (In 1998, only 3 160 work permit holders settled in the U.K, where approximately 70-80 000 work permits are approved each year) [United Kingdom Home Office, 2001]. Similarly, there seems to be little direct evidence that "Trade NAFTA" visas are serving as significant indirect means for Canadians to relocate permanently to the United States.⁵ PricewaterhouseCoopers [2001] notes that, of its international workforce in the US (56% of which hold H1-B speciality occupation non-immigrant visas; 41% hold L-1 intra-company transferee visas; 3% hold Trade NAFTA visas), only 21% of non-immigrant visa holders sought permanent residence in the US through employment with the firm.

15. It is also worth noting that, even where all, or most, barriers to the movement of foreign workers have been removed, floods of such workers have generally failed to materialise. The European Union experience has been that liberalising the movement of service providers and employees has not generated large movements of persons. Less than 2% of European Union citizens work in Europe outside their home

4. The events of 11 September 2001 in the United States, which occurred subsequent to the preparation of this study, are likely to increase such concerns.

5. See Globerman, 2000 which contains an interesting examination of the relationship between trade liberalisation, labour mobility and "brain drain" in the United States/Canada context.

countries and less than 0.5% move between member states each year⁶. Contrary to expectations, even regions with relatively high unemployment are not experiencing significant movement of labour, with the reluctance attributed to, *inter alia*: language and cultural differences; lack of information; bureaucratic obstacles, especially related to recognition of qualifications; limitations on transfer of pension rights; and differences between tax systems.⁷

16. Far from contributing to migration problems, employment of temporary foreign workers is even argued to have positive effects on migration in that availability of temporary foreign workers for seasonal activities experiencing labour shortages can contribute to discouraging employers from using undocumented workers.

17. Another concern frequently raised in the context of mode 4 movement is "brain drain" - the loss of skilled people by, primarily, but not only, developing countries⁸. Again, much of this is based on the mistaken assumption that mode 4 movement involves the long-term loss of such individuals - i.e., that mode 4 movement is not temporary. However, "brain drain" issues may arise even with temporary loss of skilled people where demand is high and domestic supply limited (as, for example, in skilled health workers or, to a lesser extent, in ICT).

18. However, empirical studies devoted to the issue suggest that the short-term costs of temporary movement of skilled people are offset by the benefits to their home country when they return with enhanced skills and contacts in the international business community (e.g., Indian returnees from Silicon Valley have been the main force behind the growth of the Indian software industry)⁹. Even where they do not return, foreign workers often maintain close links with their home country and can contribute to its development in indirect ways. For example, several groups of successful Indian businesspeople in Silicon Valley have created venture capital funds to finance start-ups in India, with some (e.g., Redwood Ventures, E4E and Accordiant Ventures) raising more than \$US100 million apiece¹⁰. Temporary movement can be an important form of technology transfer and training, as well as helping to reduce pressures in the domestic labour market from skilled workers who cannot be absorbed (each year, Indian universities graduate 115 000 engineers, many of which cannot be absorbed by the domestic economy) [Panagariya, 2000].

19. Indeed, opportunities in the home country market can be an important determinant of whether skilled workers move and when they return to their home countries. The World Bank [1995] has noted that, as the market for skills becomes globalised, countries pay heavily for policy failures, but that migrants

6. Frits Bolkestein and Anna Diamantopoulou, "Workers without frontiers" *Financial Times*, 29 January 2001.

7. *International Herald Tribune*, "For Most Workers, EU's Borders Are Still High", 11 May 2001.

8. The OECD, 2001 has also noted that, in the context of global shortages of skilled and highly skilled labour, a number of OECD countries, including Canada, France and Sweden, are also concerned about emigration of their own specialists. See also Young, 1999.

9. While India may have exported a number of its skilled workers - in Silicon Valley, 30% of software engineers are estimated to be of Indian origin and 750 companies to be Indian-run - the flow has not been one-way. India has also greatly increased its IT exports from \$US150 million in 1990 to \$US4 billion in 2000. *International Herald Tribune*, "Fishing for the best brains in ebbing and flowing global market", 3 April 2001.

10. Almost \$US5 billion in has been raised since February 2000, compared with \$US340 million in venture capital investments in India between 1988-1999. This rise is also attributed to significant changes in the Indian government's attitude towards and regulation of venture capital funds. *Financial Times*, "India lures the high-tech expat dollar", 28 February 2001.

are likely to return home as conditions improve. In addition to broader economic reforms and liberalisation of telecommunications (central to the development of ICT capacity), some developing countries are offering special incentives for ICT workers to return and establish businesses in their home country¹¹. However, some developing countries have argued that it is difficult to create opportunities at home when skilled persons are exported to developed countries (especially as communities of skilled persons tend to attract other skilled persons, leaving weaker communities even further depleted). Some developing country companies argue the work should be out-sourced to them, as opposed to them sending their qualified people abroad (i.e., for the services to be supplied on a cross-border basis, rather than via labour mobility) to enable the development of skills and capacity at the national level.

20. A more short-term benefit for labour exporting developing countries comes in the form of remittances, which can be an important source of national income (although it should be noted that remittances figures include all foreign workers and not simply temporary foreign workers per mode 4). Remittances can represent a sizeable share of GNP and ratios of remittances to exports can be as high as 25-50%¹². Remittances received by India in 1996 were US\$7.6 billion, almost three times as high as net direct investment inflows and almost as high as the contribution of the textile and clothing industry [WTO, 1998a]. In Latin America and the Caribbean remittances have surpassed \$US 20 billion, exceeding aid flows and equal to almost a third of foreign direct investment¹³. Further, international wage differentials mean that remittances can be significantly higher than the amount the worker could have earned at home (e.g., almost double in the case of the Philippines). While in the short term, remittances can increase income inequality in home countries (as it tends not to be the poorest who migrate), over the longer term remittances can have an equalising effect (e.g., remittances increased investment in rural Pakistan, boosting the demand for unskilled workers)[World Bank, 1995].

21. However, it is also important to recall that not all labour exporters are developing countries and not all labour importers are developed countries. In the context of foreign investment, much movement of labour consists of managers and other senior personnel from developed countries moving to establish a commercial presence in another developed country or a developing country market. Some developing countries have argued that this undermines the scope for technology transfer via investment as their nationals confront a "glass ceiling" when senior positions are filled by imported managers. While this need not be a great problem in the context of temporary movement of personnel, concerns may arise if senior positions were continuously filled by expatriates¹⁴.

22. For countries concerned about even the *temporary* loss of their skilled workers, it should be recalled that the GATS does not force countries to allow the movement of their service providers; the GATS deals with commitments to allow entry to mode 4 suppliers from other WTO Members, not commitments to guarantee supply via mode 4 by your own nationals. Indeed, some developing countries currently require some types of workers to obtain prior permission from government authorities to work

11. Taiwan is reported to have lured back 50 000 scientists who had left the country over the past two decades by expanding the scope of its graduate science programs and emphasising the country's growing high-technology industry. *International Herald Tribune*, 3 April 2001, *op cit*.

12. Remittances are 10-50% of GNP in Jordan, Lesotho, Yemen, the West Bank and Gaza, and the ratio of remittances to exports is 25-50% for Bangladesh, Burkina Faso, Egypt, Greece, Jamaica, Malawi, Morocco, Pakistan, Portugal, Sri Lanka, and Turkey [World Bank, 1995].

13. Figures from a study by the Multilateral Investment Fund (Inter-American Development Bank) reported in *Financial Times*, "Migrants spur growth in remittances", 16 May 2001.

14. The GATS provides flexibility for countries to maintain quotas on the representation of their nationals within foreign commercial presence, including at senior levels, and performance requirements related to training.

abroad. This is usually designed either to prevent the loss of certain types of skilled workers or to protect workers perceived to be at risk of exploitation by foreign employers. For example, depending upon their age and whether or not they are accompanied by their husbands, women from Bangladesh, India, Indonesia and Pakistan are not given permission to take jobs abroad as domestic workers [Hoffmann and Lawrence, 1996].

23. While concerns in developing countries have focused on "brain drain", developed country concerns have centred on the potentially negative impact of movement of foreign service providers on the level of employment and wages of their nationals. Concerns include, for example: whether foreign workers help create demand or displace nationals working in the same industry; whether governments should prioritise training their own nationals to meet shortages in particular professions over importing skills; and the perception that foreign workers lower wages and working conditions. For example, some unions in developed countries have argued that temporary employment of foreign nurses undermines the struggle to improve conditions and wages for nurses - i.e., it prevents developed country governments from addressing the root cause of their nursing shortages. It is notable that companies' lobbying efforts to persuade legislators to increase the flexibility for foreign workers often stress their commitment to training and other development programs for the local workforce, including disadvantaged groups.¹⁵

24. The GATS also provides considerable flexibility for countries to address concerns related to the impact on the employment of nationals, a flexibility WTO Members have freely exercised. 50 WTO Members' commitments provide for the application of domestic minimum wage laws, often coupled with other laws regarding conditions and hours of work and social security (the WTO Secretariat [1998a] notes that there could be more of these types of provisions which are not scheduled). Additionally, in response to concerns about the potential for foreign labour to play a "strike breaker" function, 22 WTO Members have also reserved the right to suspend commitments in the event of labour-management disputes.

25. While many WTO Members require foreign nationals to be paid at the same rates as nationals, some developing countries have argued that insistence on wage parity is a major brake on the use of foreign service suppliers. This is a complex and sensitive issue. While some argue that wage parity denies foreign workers their competitive advantage, others argue that that cost advantage is only relevant for work performed in the worker's home country - once in a country with a higher cost of living, foreign workers have the same wage needs as everyone else. Unions in particular have expressed concern that foreign labour imports could be used to undermine hard-won working conditions and wage levels, should wage parity requirements not be enforced¹⁶. Others have argued that it is not the requirement of wage parity that is the problem, but the costly administrative hurdle created by employers having to demonstrate wage parity before receiving work permit authorisation for hiring foreign workers [Chanda, 1999].

26. A number of commentators have also pointed to the anomaly where foreign employees are required to contribute to social security programs from which they receive no, or minimal, benefits. Again, there are considerable sensitivities surrounding this issue. While unions have expressed concern that exemption from such contributions could impact upon the competitiveness of foreign workers compared to nationals, they have also acknowledged the inequity of workers contributing to benefits that they will never be eligible to receive. Possible approaches could include social security charges from short-term migrant

15. See, for example, Testimony of Jennifer Kenney, Director, Global Deployment Shared Services, PricewaterhouseCoopers before the Senate Judiciary Committee on Immigration, 4 April 2001; and the contribution of Scott Mc Nealy, Chairman and CEO of Sun Microsystems to "The Forum: Do high-tech firms really need imported workers?", *USA Today*, 21 September 2000.

16. OECD/SOPEMI, 1998 also notes that where equal treatment of foreign workers with national workers is not the case, or not enforced, this type of migration may be detrimental to enterprises and employment at the local level.

workers being paid into separate funds distributed to either the family or the village/community of the worker, or being reimbursed upon the worker's return to their home country.

27. Overall, the impact of the temporary movement of workers on both the sending and receiving countries is hard to assess, including because liberalisation of temporary movement of people often takes place in the context of larger trade liberalisation initiatives, thereby creating difficulties in establishing causation. The impact will also be shaped by the particular regulatory frameworks operating in both sending and receiving countries. Generally, it seems that sending countries may experience both gains (remittances) and losses (of skills) in the short-term, but may stand to gain over the longer-term (increased human capital, technology transfer, international business and investment links). For receiving countries, at the margin, temporary programs help to address skills shortages and reduce pressure for illegal migration¹⁷.

28. However, while this section has attempted to canvass some of the concerns of sending and receiving countries, further work beyond the scope of this paper would be needed to gain a real understanding of the impacts for both sending and receiving countries of temporary movement of labour¹⁸.

II. Labour Mobility in Regional Agreements

29. A number of regional trade agreements include provisions relating to the movement of natural persons. However, this coverage varies from full freedom of movement under some customs unions to commitments simply to study the issue. All take place in the context of larger liberalisation initiatives, and reflect the degree of ambition in those broader arrangements. Annex I examines several regional initiatives that fall at different points along the continuum. All the schemes outlined (with the exception of the Asia Pacific Economic Co-operation forum - APEC) relate to countries that are geographically proximate or share contiguous borders. Membership of agreements varies from OECD members only (European Economic Area - EEA, North American Free Trade Agreement - NAFTA), a mixture of OECD and non-OECD members (APEC and the Europe Agreements), to only non-OECD members (Caribbean Community - CARICOM). Annex I also includes a description of special travel documentation arrangements under NAFTA and APEC.

30. The regional agreements described in Annex I indicate the range of possible approaches - some provide for a relatively high degree of freedom of movement and thus include fewer special procedures for visas (e.g., the EEA and Europe Agreements, CARICOM). Others provide for some regulated mobility and thus involve relatively detailed special procedures implemented amongst few parties (e.g., NAFTA). Others are aimed more at facilitating existing mobility, involving some special procedures, but with maximum flexibility for continuing existing practices at the national level (e.g., APEC).

31. The coverage of these agreements ranges from essentially only intra-corporate transferees and business visitors to the full free movement of labour and service providers. However, even in liberal agreements, freedom to provide services can be limited on a sectoral basis, and general exceptions (such as for official government services) apply.

17. Note that this is temporary movement, not permanent migration; OECD studies have cast doubt on the efficacy of permanent migration for labour market adjustments.

18. A number of studies have considered the impact of foreign labour on host country labour markets (e.g., OECD/SOPEMI, 1998; OECD, 2001); however, these are usually focused on broader categories of workers than GATS mode 4, including foreign workers who enter the labour market and may be resident in the host country for some years.

32. It is also worth noting that the agreements all provide more favourable treatment for higher skilled workers. There are some definitional similarities for some categories of skilled workers between some of these agreements. For example, "key personnel" under the Europe Agreements contains some similarities to "managers and specialists" under APEC. In the Europe Agreements, "key personnel" are senior employees of an organisation who primarily direct management of the organisation; and persons who possess high or uncommon qualifications referring to a type of work or trade requiring technical knowledge, knowledge essential to the organisation's service, research, equipment, techniques or management. In APEC, executives primarily direct the management of an organisation and exercise wide latitude in decision-making; managers direct an organisation or a department of an organisation; and specialists possess knowledge at an advanced level of expertise of the organisation's product, customer services, research, equipment, techniques or management. Additionally, similar requirements regarding length of prior employment apply.

33. A key consideration is the extent to which any of these models could inform the future development of GATS disciplines. In general, regional agreements tend to be formed against the backdrop of a closer relationship over a longer period and reflect the specificities of that relationship or the markets involved. The scale of any changes may be more manageable (including in terms of the scale of potential labour movements), and the ability to put in place any mitigating programs, may be greater in a regional context.

34. All the agreements included in Annex I are also subject to and form part of existing migration procedures, and all include a range of moderating measures (e.g., transition periods or measures to prevent abuse). However, it could be observed that the larger and more diverse the membership of a regional agreement, the greater the flexibility provided for continuance of existing national practices, including with regard to the implementation of specific travel permits or visas for skilled workers. Resource issues and administrative capacity are also an important factor, in particular for agreements involving non-OECD members. Consideration of ways to facilitate implementation of GATS commitments via the development of common definitions or GATS-specific procedures (e.g., a possible GATS visa or permit) may benefit from a detailed examination of regional experiences.

PART II: DEFINING AND MEASURING MODE 4 TRADE

I. Defining Mode 4

35. Mode 4 relates to the temporary admission of foreign nationals or foreign permanent residents as service providers in the territory of another WTO Member. However, behind this general definition, a number of clarifications need to be made about what is, and is not, covered by mode 4.

36. Mode 4 is defined in Article I.2(d) of GATS as being "the supply of a service... by a service supplier of one Member, through presence of natural persons of a Member in the territory of an other Member". Article XXVIII(k) specifies that this definition applies to nationals as well as, in certain circumstances, permanent residents, of WTO Members seeking to supply services abroad (permanent residents are covered where the Member does not have nationals or accords substantially the same treatment to permanent residents and nationals).

37. Further elaboration is provided in the Annex on Movement of Natural Person Supplying Services under the Agreement. The 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 first category is clear - "natural persons who are service suppliers of a Member" covers self-employed or independent service suppliers who obtain their remuneration directly from customers. However, there is some confusion about what is covered by the second category ("natural persons of a Member who are employed by a service supplier of a Member"). The WTO Secretariat background note on mode 4 [1998*a*] has noted that this wording could be read to suggest that foreigners employed by host country companies are also included under mode 4. However, as Article I.2(d) seems to cover only foreign employees of foreign firms established in another Member, the Secretariat background note concludes that foreigners working for host country companies would fall under GATS mode 4 if they worked on a contractual basis as independent suppliers for a locally-owned firm, but would not seem to be covered if they were employees of that firm. Nonetheless, another member of the WTO Secretariat has observed that some GATS specific commitments actually refer to short-term *employment* and that, as specific commitments also form part of the GATS, there is thus, according to this view, a certain degree of legal uncertainty with regard to coverage [Karsenty, 2000].¹⁹ However, it should also be noted that the WTO Secretariat is not the legal interpreter of the GATS.

38. Additionally, it has been argued that the definition "supply of service by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member" could be taken to include situations where a service supplier and consumer from one Member both move to another Member where the service is supplied. An example of this type of situation would be a tour guide from country A in a bus tour who takes tourists (also from country A) to country B and provides them with

19. Young, 2000, notes that this is a not insignificant issue as it could impact upon both the relevant domestic regulations governing the employment (in terms of tax, wages, collective bargaining agreements), and call into question the GATS distinction between service suppliers and persons deemed to be entering the labour market. As will be seen below, it also impacts upon which workers are included for statistical and measurement purposes.

tourism services. However, such a situation could raise issues related to the relevant commitments which would apply, given that no international transaction has technically taken place, as well as posing some problems for measurement.²⁰

39. Generally, however, GATS mode 4 is seen as covering:

- Persons providing services where a foreign service supplier obtains a contract to supply services to the host country company and sends its employees to provide the services.
- Independent service providers abroad: an individual selling services to a host country company or to an individual.
- Persons employed abroad by foreign companies established in the host country (but excluding nationals of the host country)

This encompasses natural persons providing services at any skill level in any of the services sectors on a "temporary" or non-permanent basis.

40. However, further clarification may also be required on the issue of "temporary". There is no standard definition of temporary in the GATS and, for the purposes of specific commitments, WTO Members are free to interpret the term as they wish, and to set varying definitions for different categories of service providers. In practice, most specific commitments distinguish between:

1. "business visitors" - i.e., short-term stays of a few months (often limited to 3 months), with no remuneration received in the host country;
2. temporary movements of between a few months to a few years, including:
 - existing employees transferred within the same foreign controlled company (intra-corporate transferees, generally limited to 2-5 years)
 - service suppliers on specific term contracts with foreign or nationally owned firms
 - self-employed service providers whose remuneration is wholly or only partly received in the host country [Arkell, 1998].

41. However, while "temporary" may not be defined positively in the GATS, it is defined negatively - i.e., permanent migration is explicitly excluded. The Annex of Movement of Natural Persons Supplying Services under the Agreement states that GATS does not apply to measures affecting individuals seeking access to the employment markets of a Member nor to measures regarding citizenship, residence or employment on a permanent basis. The Annex also states that, regardless of their obligations under the Agreement, Members are free to regulate the entry and stay of individuals in their territory provided that the measures concerned "are not applied in a such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment". The operation of visa requirements for natural persons from some Members but not others is not *per se* regarded as nullifying or impairing such benefits.

42. However, some commentators have queried the GATS' distinction between service providers and persons entering the labour market in a country. They argue that, given that temporary entry under GATS commitments can last for up to 3 years (or in some cases longer), the service provider has in effect entered

20. For a discussion of this situation see Young, 2000.

the local labour market, even though they are not applying for citizenship, as they are providing a service which a local person could probably do [Young, 2000].

43. These arguments demonstrate the difficulty of finding a single, clear definition of mode 4. Current definitions rely on a cumulative approach, defining mode 4 in terms of both duration and purpose of stay. That is, mode 4 service suppliers gain entry for a specific purpose (to fulfil a service contract as self-employed or an employee of a foreign service supplier); are normally confined to one sector (as opposed to workers who enter under general migration or asylum programs who can move between sectors); and are temporary (i.e., they are neither migrating on a permanent basis nor seeking entry to the labour market). These elements help to distinguish mode 4 temporary service suppliers from wider groups of temporary workers. Such distinctions, however imperfect or ambiguous, are important in terms of attempts to gain some sense of the size of mode 4 trade. These measurement issues are addressed in the next section.

II. Measuring Mode 4 Trade

44. Statistics for mode 4 trade are unsatisfactory; they are incomplete and not easily comparable between countries. Neither existing statistical systems for trade in services nor data collection systems for the movement of natural persons across borders can provide separate statistics which exactly capture mode 4 activities. Additionally, as each statistical system was designed with specific purposes in mind, and has its own conceptual framework, some translation can be required to identify GATS-relevant aspects. The same term can have different meanings in each of these systems. For example, for migration purposes, "temporary" workers may enter local labour markets, but such workers are excluded from GATS mode 4. Similarly, GATS mode 4 allows "temporary" stays to last for more than the 12 months limit which defines "temporary" for migration statistics. In the context of trade in services statistics, "temporary" is also defined as stays of less than 12 months. This situation is not helped by the fact that there is no single definition of "temporary" for GATS mode 4. Indeed, GATS mode 4 covers a relatively narrow range of workers for whom nonetheless quite detailed information is required. However, most sources of statistics - labour markets, employment, migration or trade in services - tend to have a wider focus, collecting information on a much broader set of workers and activities, thus hiding information relevant for GATS mode 4 within larger aggregates.

45. Measuring GATS mode 4 requires the identification of workers who are temporarily in the host country - but only those who are not seeking entry to the labour market. Useful information for GATS purposes includes: sector and occupation; country of origin; and duration of stay.²¹ Depending on the definition of mode 4 accepted, information about the type of work contract may also be relevant (e.g., if mode 4 is understood to include only those foreigners providing services on a contract basis, and not foreign employees of local companies). However national labour market statistics include in their concept of temporary workers (where these are identified separately) all those who are employed by domestic companies, i.e., who are authorised to enter the labour market. What distinguishes these workers from GATS mode 4 is not the duration of stay, but the type of work performed and whether or not they are entering the labour market (i.e., the *purpose* of their movement).

46. This section aims to identify what we do know about movement of natural persons pursuant to GATS mode 4, looking at three main types of statistics: labour market/employment/migration statistics; specific statistics on assignments abroad derived from an industry survey; and statistics on trade in services. While the first two types aim to identify *numbers* of mobile workers, statistics on trade in services are concerned with the *value* of trade conducted via GATS mode 4.

21 . For a detailed list of the statistical requirements of mode 4, see Arkell, 1998.

(i) Statistics on Mobility of Labour and Employment of Foreign Workers

47. This section draws on work undertaken by both the OECD²² and the International Labour Organisation (ILO) to illustrate some of the issues that arise in looking at labour market statistics with GATS mode 4 in mind. It begins by comparing the definitions of foreign worker used with GATS mode 4. The second part looks at the sources of statistics and what information is and is not available on temporary workers. The findings of interest from these studies in terms of statistics on foreign workers are presented in Annex II.

a. Definitions of foreign workers and coverage of mode 4

48. OECD work has explored the feasibility of providing statistics on labour migration, specifically on the international mobility of the highly skilled for OECD European countries [OECD, 2002]. This work refers to the standard United Nations (UN) definitions for categories of persons crossing borders, which uses the criterion "duration of stay" to distinguish between migrant and non-migrants (e.g., tourists, short-term business travellers, frontier workers etc). The term migrant is itself further sub-divided into long-term migrants (a person who moves to another country for a period of at least 12 months) and short-term migrants (a person who moves to another country for a period of at least 3 months, but less than 12 months, except in cases where the movement to that country is for reasons of recreation, business, medical treatment or religious pilgrimage). It is clear that much of mode 4 trade would fall under the non-migrant or short-term migrant categories; however, intra-corporate transferees moving abroad for more than 12 months could fall under long-term migrants.²³

49. The ILO [Hoffmann and Lawrence, 1996] has also undertaken a comprehensive review of statistics on labour migration, covering: inflows of foreign workers; outflows of migrant workers; return flows of migrant workers; stocks of foreign workers in the country; and stocks of migrant workers abroad (nationals working abroad). This review defines foreign workers on the basis of citizenship and focuses on those who are "taking up employment" within another country. It does not use "duration of stay" as a criterion, in an effort to pick up mobile workers often excluded under this criterion, such as seasonal workers or persons commuting across international borders on a daily, weekly or monthly basis. However, the focus on persons "taking up employment" excludes "persons who are visiting (or have visited) the country for a short period, whether for work, i.e., as an extension of employment in the country of origin, for example as a sales representative, or during a period of temporary absence from work, e.g., on vacation". This definition excludes many persons who are currently the focus of mode 4, such as most types of business visitors (e.g., an employee assessing a potential new investment in the host country or visiting for short periods to supervise a project). Independent service suppliers providing services on a contract basis are included, however.

22 . OECD work has been undertaken by both the Directorate for Employment Education, Labour and Social Affairs (DEELSA) and by that Directorate in conjunction with the Directorate for Science, Technology and Industry (DSTI). A seminar organised by DSTI/DEELSA on "International Mobility of Highly Skilled Workers: from statistical analysis to the formulation of policies" was held on 11-12 June 2001.

23 . Data is often provided on the basis of permits issued as migrants arrive. Where a person plans to stay for more than 12 months, they are often automatically counted on arrival as a long-term migrant (whether or not they actually end up staying for longer than 12 months).

b. Sources: what information is available?

50. Work by both the OECD and ILO examines the range of possible sources of data on foreign labour flows, including: visa applications; work permit schemes; labour force surveys; population registers; social security registrations; and company or recruitment agency data. The most comprehensive statistics are available on the *inflow* of foreign workers, with few governments devoting scarce resources to mapping corresponding outflows.

51. Many of these sources have limited relevance for statistics on temporary workers - population registers are operated by relatively few countries, tend to focus on permanent migrants and seldom contain relevant information on employment. Social security data is also not relevant for many temporary workers and the usefulness of data also depends on the degree to which foreigners are identified separately. Surveys of graduates may include foreign-born students (the US conducts a relatively in-depth science and engineering graduate survey which breaks down all variables into US and non-US born/citizens) but again do not target GATS mode 4 workers.

52. Many of the statistics on the inflow of foreign workers comes from *visa systems*. However, their usefulness depends upon the scope of visa regulations (i.e., for whom visas are required), as well as the extent to which visa systems distinguish between: visits for business or pleasure, visits of different duration; and visits to work for a local employer and visits to the local representative of the home country employer.

53. *Work permits* can provide a range of useful statistics for GATS purposes, depending upon the extent to which mode 4 type workers can be identified separately from workers seeking to enter the labour market (making this distinction may require the combined use of visa and work permit information). Work permits (and visas) indicate the country of origin of the worker and may indicate the economic sector, but information on occupation or educational level tends to be less frequent. However, where work permit systems are geared towards identifying higher skilled persons, information on occupation and education may be more readily available (indeed, about 80% of the UK work permits go to managerial or professional categories) [OECD, 2002]. Information on the type of contract is also sometimes collected as part of visa or work permit schemes.

54. In principle it should also be possible to use *labour force surveys* as a source of statistics for GATS mode 4, as they include variables such as the sectors, occupation and education levels of persons employed, generally in a form which allows for classification according to standard international definitions. It should be possible to collect information on the duration and purpose of any movements abroad during a particular reference period (e.g., the previous year), thereby providing some information on exports (movements by residents) under mode 4. However, such surveys provide little, if any, information on foreigners in the country undertaking the survey (i.e., mode 4 imports). Additionally, such surveys are based on a sample of the population and therefore do not provide the types of precise statistics useful for describing trade in services through mode 4. Depending on the size of the sample (within the European Union this ranges from 5% of the labour force in smaller countries to 0.5% in the larger ones), small figures may be statistically unreliable.

55. Finally, while many OECD countries provide some reasonably useful statistics, few countries have comprehensive statistics and many non-OECD countries struggle to provide even the most basic statistics on migration and presence of foreign workers [Hoffmann and Lawrence, 1996]. Providing more complete and detailed statistics is a serious challenge; and the difficulty in isolating information on one particular group (e.g., temporary foreign workers) increases with the relative size of the group of non-relevant persons (e.g., tourists) to the size of the target group. Other issues for mode 4 in statistics on foreign workers are outlined in Box 4.

Box 4: Issues for mode 4 in statistics on foreign workers

There are several general issues related to statistics on foreign labour worth highlighting in the mode 4 context:

Bilateral or regional agreements: Some migratory movements are not recorded by visa and work permit registrations - e.g., for those nationalities which benefit from regional or bilateral agreements (e.g., within the EU or between the Nordic countries). Paradoxically, this means that the more liberal the regime for labour mobility, the lower the likelihood of getting reasonably accurate statistics reflecting the extent of labour mobility.

Definition of migrant: Comparability of statistics will also be affected by the definition of "migrant" used. Some OECD countries (e.g., European countries, Japan, Korea) refer to *nationality*, as citizenship laws have created a large number of people born in the country but with foreign citizenship (these people are not relevant for statistics on either migration of GATS mode 4). Countries of settlement, such as Australia, Canada and the United States, tend to use *country of birth* when producing statistics on foreign workers. The results can mislead: it was recently reported that Australia depended upon foreign labour for a full 25% of its workforce, but this figure is based on the definition of migrant as foreign born, and reflects Australia's status as a major country of settlement.

Education/Qualifications: While information on educational attainment/formal qualification is frequently collected by migration authorities to determine whether a potential migrant worker satisfies the criteria for different types of visas/work permits, the classification systems used vary. Only a few countries have national classifications of education based directly on the International Standard Classification of Education (ISCED). International comparisons are therefore complicated.

Occupation: Information on occupation may not be collected, and when it is, the classifications used tend to vary between countries, again making international comparisons difficult. A number of countries have linked their classifications of occupation to the International Standard Classification of Occupations (ISCO-88); however, even where national statistics use classifications that correspond to ISCO-88, the classification schemes used by immigration authorities may differ from those used by statisticians.

Sector: Information on economic sector may not be collected or may be based on very broad categories (e.g., mining and oil, transport and communications, professional services, miscellaneous services). These categories do not necessarily correspond to the "GATS Services Sectoral Classification List - MTN.GTS/W/120 (known as "W/120"), making attribution for GATS purposes difficult.

Duration of stay: there is no common understanding in GATS of the period after which a worker becomes part of the stock of the host country (i.e., no longer considered mobile/temporary). The UN recommendations on migration statistics as well as on economic statistics (e.g., balance of payments and national accounts) consider 1 year to be the borderline, but others may use 2 years or longer periods.

Family members: While the situation varies between countries, the statistics from some sources (e.g., visas and work permits) may include family members.

56. Against this backdrop, Annex II presents some of the relevant findings from statistics on the mobility and employment of foreign workers and examines what they do - and don't - show about the scale of mode 4 trade. It includes data drawn from OECD studies on the international mobility of the highly skilled [OECD, 2002] and studies on trends in international migration [OECD/SOPEMI, 1998 and 2000], as well as some initial figures for non-OECD countries in Asia [Arkell, 1998].

(ii) Figures on International Assignments in Firms: Survey by PricewaterhouseCoopers

57. Some information of relevance to mode 4 can also be gathered from industry surveys. PricewaterhouseCoopers has recently undertaken a further survey of how 271 companies from 24 countries

organise their international assignments.²⁴ The survey covered a range of types of assignments, ranging from short-term business trips to temporary or long-term assignments of between 6 months to 3 years.

58. Although the majority of the companies surveyed were multinationals (of which only 2.6% have their headquarters in developing countries), the focus of the study was on expatriates from Europe from companies based (but not necessarily headquartered) in the European Union. The next version of the survey will evaluate the experience of companies on a global basis. Companies surveyed ranged from large multinationals to small and medium-sized companies, all of which were highly internationalised. While the survey was not restricted to companies in services sectors (a breakdown by industry group is provided), it could be argued that most employees moved abroad as service providers.

59. The survey breaks down international assignments by geographical distribution, purpose (e.g., management or career development); and type or length of assignment (e.g., short- or long-term). The survey also notes whether the figures collected represent an increase or decrease over the previous two years, and includes predictions for the next two years. Overall, the survey indicated a growth in international assignments, particularly short-term assignments of 6 months to one year. The length of assignments tended to vary according to their purpose (e.g., training and career development assignments tended to be short-term, while management assignments tended to be longer term). Nonetheless, most overseas assignments were broadly related to management functions. All geographic regions experienced a growth or no change in the number of assignments, with no clear divide between developed or developing country destinations in terms of those which had increased and those which remained unchanged. Just over half the current expatriate population was in Europe or North America, and around one third were in developing countries. Detailed results from the survey are presented in Annex III.

(iii) *Trade in Services Statistics*

60. While previous sources have attempted to identify the number and type of workers crossing international borders, statistics for trade in services are concerned with the monetary value of trade in services. While previous statistical sources were explored to see what they could tell us about the *numbers* of people falling under GATS mode 4 who are internationally mobile, trade in services statistics attempt to estimate the *total value* of trade in services (i.e., including all modes of supply). However, statistics on trade in services have not traditionally been broken down by modes and measuring the value of trade under mode 4 in particular poses some significant measurement challenges.

61. The central reference in the international development on statistics on the value of trade in services is the recently approved *Manual on Statistics for Trade in Services* (the *Manual*), prepared by the OECD, United Nations Conference on Trade and Development (UNCTAD), WTO, UN Statistics Division, International Monetary Fund (IMF) and Eurostat, with input on mode 4 from the ILO. The *Manual* notes that mode 4 is not well defined in the GATS and that there is no clear existing statistical framework for its measurement. Furthermore, the information required goes, at least in part, beyond what is currently or likely to be available from balance of payments data or from foreign affiliate trade in services statistics (BPM5 and FATS²⁵) and requires supplementing by, for example, immigration and labour market figures.

24. See PricewaterhouseCoopers, 2001; a previous survey was undertaken in 1997. PricewaterhouseCoopers is also greatly improving its in-house collection of data related to movement of people within the company. As a professional services company, employing 160 000 people in 150 countries, the company has, at any one time, 5 000 employees working outside their home country. The company is now systematically collecting monthly figures on inbound and outbound assignees in different areas of its operations.

25. BPM5 refers to the IMF Balance of Payments Manual - Fifth Edition and FATS to the Foreign Affiliates Trade in Services statistics.

Notwithstanding these limits and the need for more research, within the *Manual*, a number of relevant measures of the value of mode 4 trade in services are identified: trade in services transactions; compensation of employees; and workers remittances.

62. Trade in services transactions (between residents and non-residents) capture some parts of mode 4 trade (sales of services by movement abroad of independent service suppliers or by employees of foreign firms); however, these statistics are only available for some service sectors and have not been traditionally broken down by mode of supply (although the *Manual* has developed simplified rules to enable a first approximate allocation of services across modes of supply). Compensation of employees (earnings of natural persons established abroad as employees for less than one year) is a very rough indicator of mode 4 trade, as it includes workers engaged in manufacturing and agriculture, as well as foreign employees of local firms and is limited to stays of less than one year. Nonetheless, these figures suggest that mode 4 trade is quite small in comparison to other modes of supply, but that this trade can be very important for some countries. Indeed, the figures indicate a high degree of concentration, with 10 countries accounting for the overwhelming proportion of both imports and exports. Workers' remittances (transfers of money by workers who stay abroad for more than one year) demonstrate a similar degree of concentration (10 countries account for a large and growing share of remittances). However, workers' remittances are also only an approximate measure of mode 4 as they include all foreign workers beyond the limited category falling under mode 4. Figures derived from, and more detailed information on, all these indicators is provided in Annex IV.

(iv) Lessons for the GATS

63. There are several problems with dealing with employment and migration statistics for GATS mode 4 purposes. Firstly, labour market statistics currently cover a much broader category of workers than the relatively narrow type of worker captured under GATS mode 4. The statistics rarely differentiate between those foreign workers seeking, or having, access to the labour market, and those (per GATS mode 4) simply there on a short term basis to fulfil a particular contract or undertake the supply of a particular service. Secondly, as these statistics were developed for labour market or demographic purposes, they tend to focus on categories and information of less relevance to GATS. Finally, there are problems with the statistics themselves in terms of their international comparability, due to the lack of standard terms and definitions. Additionally, while some individual OECD members have sound statistical collection on the stock and inflow of foreign workers, this is by no means the norm for all, and even less so world-wide. Further, GATS mode 4 service suppliers represent a small sub-set of a larger migratory trend and the resource implications of collecting this more precise information may not be justified for the purposes of being able to identify a relatively small group of people.

64. Trade in services statistics offer some useful proxies, although these figures should also be treated with caution given their approximate fit to mode 4. Differing definitions and the allocation of certain transactions to the dominant mode of supply means that there is considerable scope for under-estimation of mode 4 trade. Conceptual and practical problems also remain, not least the resource intensive nature of collecting the necessary statistics for mode 4. Many countries collect statistics for only a limited number of service sectors, and not necessarily those for which mode 4 trade is most significant (such as business or computer services). These are issues that cannot be readily solved in the short-term.

65. Results from specialised industry surveys such as that conducted by PricewaterhouseCoopers are very helpful, but have some limitations. While more closely targeted at GATS mode 4 workers, the survey covers only those which may be classified as intra-corporate transferees, excluding other GATS mode 4 workers such as independent service suppliers. Additionally, definitions of temporary movement vary. Equally, industry sectors are defined broadly and also not in a manner directly comparable with GATS

W/120. There is also no distinction between service suppliers and those who might be deemed to be working in the manufacturing or other industries. However, it could be argued that these people, notwithstanding that they working in manufacturing, should, (in the world of out-sourcing) be considered service suppliers, or suppliers of services incidental to manufacturing.

66. Against this backdrop, and bearing in mind all aforementioned caveats, some initial observations might be drawn.

- Temporary movement is increasing, with short-term movements the highest growth area.
- Nonetheless, the number of temporary movement of workers remains small for most countries relative to the overall size of the labour market (with the possible exception of the Gulf Arab countries).
- The trade represented by these workers also remains small compared to overall trade in goods and services, and to other modes of trade in services.
- Notwithstanding its small scale in total, temporary movement is very important for some industries and for some countries.
- Labour mobility for skilled workers is also increasing and seems to be concentrated in the services sectors. Additionally, movement of highly skilled workers is generally facilitated by special programs. It is difficult to draw any conclusions about the share of highly skilled versus lower skilled service suppliers in terms of mode 4 in overall temporary movement as available data also includes workers who have entered the labour market.
- Both OECD and non-OECD countries are importers as well as exporters of temporary workers. OECD countries seem to account for the majority of both exporters and importers by some value indicators (e.g., compensation of employees) but not others (the major receivers of remittances are mostly developing countries). However, this may not be the case in terms of the number of workers (statistics are not sufficient to judge). Additionally, labour exports are very significant compared to other forms of trade for some developing countries.
- While available statistics are not sufficient to draw conclusions about who the primary mode 4 traders are, the figures do suggest that no easy developed versus developing country picture can be drawn. OECD countries are also major exporters of labour, and some developing countries are significant importers.
- While overall the available statistics are poor, slightly better statistics are generally available for highly skilled workers, as these tend to be the focus of both specialised industry surveys and government special work permit/migration policies.
- It is clear that much more work is required on mode 4 trade statistics: at the moment, observations must be drawn from a general picture derived from a combination of several sources, themselves consisting of indicators of varying degrees of accuracy.

PART III: GATS COMMITMENTS

I. What is Scheduled?²⁶

67. Commitments on mode 4 from the Uruguay Round essentially bound the *status quo* and, in some cases, less. Overall, commitments for mode 4 are restrictive, in terms of the number of commitments made, the types of mode 4 service suppliers workers covered and the degree of liberalisation undertaken.

68. An overall picture of the existing commitments for mode 4 is presented below, drawing on results compiled by the WTO Secretariat [1998a]. However, the WTO notes that its results are imprecise. There is some multiple counting given the number and type of limitations made (i.e., several limitations applied to the same group of persons). Additionally, vague and non-standardised definitions - the same term may be used differently by different members or other terms may be used - resulted in problems of interpretation and some grouping was undertaken (e.g. placing "administrators" under "executives"). Finally, these figures are not based on all WTO Members' schedules, but on the 100 Members that made horizontal commitments for mode 4.

69. Additionally, it is somewhat artificial to consider mode 4 commitments in isolation from other modes. The commercial reality in many cases is that services are supplied through a variety of modes, and that supply via one mode may be closely linked to supply via other modes. In particular, the value of mode 4 commitments, given their emphasis on intra-corporate transferees or persons establishing a commercial presence, can be heavily conditioned by commitments for mode 3. In turn, mode 3 performance requirements or minimum investment thresholds for commercial presence may also impact upon mode 4. Some commentators have noted that commitments linked to mode 3 tend to favour OECD service suppliers (as OECD countries account for the majority of FDI-originating countries); whereas those services which can be delivered exclusively by mode 4 (independent service providers in, for example, computer or health services) tend to be dominated by non-OECD suppliers [Young, 2000].

(i) *More Restrictive Than Other Modes*

70. In general, developed countries have scheduled commitments in 50% of service sectors and developing countries in 11% of service sectors. There is a particularly low incidence of commitments scheduled in those sectors of particular importance to mode 4 - e.g., health, legal and accountancy services. Generally, commitments for mode 4 are restricted compared to other modes. Limited commitments for mode 4 are not only found in developed countries; "unbound" also dominates in LDC schedules. Table 1 presents mode 4 commitments for some selected sectors where mode 4 is particularly important (i.e., accountancy, legal, medical and dental, professional services)²⁷. For these sectors, there are very few cases of full commitments, and fewer cases of partial commitments, than for other modes of supply.

71. Mode 4 also differs from other modes in that the majority of commitments are not sectoral, but horizontal. Horizontal commitments generally take the form of "unbound except for..." and then state special access conditions for particular types of labour (level of skill, type of occupation) and purpose of

26. This section draws upon material from the WTO Secretariat, 1998 and 1998a; Chanda, 1999; and Young, 2000.

27. Mode 4 trade takes place mainly in professional services such as accounting and auditing, legal, taxation, architectural, medical and dental, and engineering services [Chanda, 1999].

their movement (e.g., establishing a commercial presence). Most commitments thus state what they are offering rather than specifying the barriers. Additionally, it can be difficult to ascertain exactly what is being offered if a horizontal limitation is then accompanied by different sector specific entries. For example, a horizontal commitment stating "unbound except for the following categories..." can be accompanied at the sectoral level by a commitment of "unbound" or "none" and it is not clear whether this means a full commitment, no commitment or a commitment only to the extent foreshadowed in the horizontal section.²⁸

28 . Some guidance is provided on this issue in paragraphs 36-38 of the Scheduling Guidelines [WTO, 2001]. Paragraph 37 of the Guidelines notes that horizontal commitments condition all other entries in the schedule unless otherwise specified. That is, a "none" in the sectoral section must be read as meaning "none except the conditions set out in the horizontal section". If no restrictions are to be imposed in a certain sector the Member must make clear in the horizontal section or in the relevant sectoral section that the horizontal restrictions do not apply to that sector. Further, sector-specific restrictions must be read in combination with the horizontal restrictions unless explicitly stated otherwise. However, not all WTO Members made their commitments in accordance with the scheduling guidelines.

Table 1. Percentage of commitments by sector and mode of supply (professional services)

(Percentages in each activity)

I. Market Access	Cross-border			Consumption Abroad			Commercial Presence			Natural Persons		
	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.
Legal Services	18%	67%	16%	24%	67%	9%	4%	87%	9%	2%	91%	7%
Accounting, Auditing and Bookkeeping Services	29%	41%	30%	41%	45%	14%	9%	89%	2%	2%	86%	13%
Taxation Services	44%	44%	12%	53%	44%	3%	15%	82%	3%	0%	88%	12%
Architectural Services	52%	26%	22%	68%	20%	12%	24%	72%	4%	0%	92%	8%
Engineering Services	50%	28%	22%	55%	28%	17%	24%	72%	3%	0%	85%	5%
Integrated Engineering Services	59%	22%	19%	66%	22%	13%	31%	59%	9%	0%	94%	6%
Urban Planning and Landscape Architectural Services	45%	36%	18%	52%	36%	12%	24%	73%	3%	0%	97%	3%
Medical and Dental Services	34%	29%	37%	61%	34%	5%	21%	68%	11%	0%	87%	13%
Veterinary Services	54%	19%	27%	69%	23%	8%	31%	58%	12%	4%	81%	15%
Services provided by Midwives, Nurses, Physiotherapists	33%	33%	33%	47%	53%	0%	20%	80%	0%	0%	93%	7%
Other	33%	67%	0%	33%	67%	0%	0%	100%	0%	0%	100%	0%
II. NATIONAL TREATMENT	Cross-border			Consumption Abroad			Commercial Presence			Natural Persons		
	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.
Legal Services	22%	60%	18%	31%	58%	11%	16%	76%	9%	2%	91%	7%
Accounting, Auditing and Bookkeeping Services	34%	36%	30%	50%	36%	14%	32%	64%	4%	4%	80%	16%
Taxation Services	41%	41%	18%	56%	35%	9%	35%	56%	9%	12%	71%	18%
Architectural services	52%	30%	18%	64%	22%	14%	56%	38%	6%	8%	80%	12%
Engineering Services	45%	31%	24%	60%	21%	19%	52%	43%	5%	9%	79%	12%
Integrated Engineering Services	63%	19%	19%	72%	13%	16%	72%	13%	16%	9%	78%	13%
Urban Planning and Landscape Architectural Services	52%	30%	18%	61%	24%	15%	58%	33%	9%	9%	85%	6%
Medical and Dental Services	47%	18%	34%	66%	24%	11%	45%	45%	11%	3%	87%	11%
Veterinary Services	62%	12%	27%	81%	8%	12%	58%	35%	8%	8%	77%	15%
Services provided by Midwives, Nurses, Physiotherapists	40%	27%	33%	53%	47%	0%	53%	47%	0%	0%	93%	7%
Other	33%	50%	17%	33%	50%	17%	33%	67%	0%	17%	67%	17%

Note: Full = Full commitment (indicated by "None" in the market access or national treatment column of the Schedule)
 Partial = Partial commitment (limitations are inscribed in the market access or national treatment column of the Schedule)
 No = No commitment (indicated by "Unbound" in the market access or national treatment column of the Schedule)
 Percentages may not add up to 100 due to rounding. Basis of total is listed sectors.

Source: WTO Secretariat, 1988.

(ii) Bias Towards Qualified Labour/ Unclear Definitions

72. 240 out of 328 entries concern executives, managers and specialists. Of these, 135 relate explicitly to intra-corporate transferees (see Table 2). Only 17% of all horizontal entries cover low skilled personnel (e.g., "business sellers") and only 10 countries have allowed some form of restricted entry to "other level" personnel [Chanda, 1999]. Additionally, general terms such as "managers" or "business visitors" are not defined, leaving considerable scope for interpretation and discretionary action by officials.

Table 2. Types of natural persons supplying services (horizontal commitments)

		No. of entries	No. of aggregate entries	% of total entries	% of aggregate entries
Intra-company transferees	Executives	45	135	13.7%	41.1%
	Managers	44		13.4%	
	Specialists	45		13.7%	
	Others	1		0.3%	
Executives		22	104	6.7%	31.7%
Managers		40		12.2%	
Specialists		42		12.8%	
Business visitors	Commercial Presence	30	70	9.1%	21.3%
	Sale Negotiations	40		12.2%	
Independent Contract Suppliers		3	3	0.9%	0.9%
Other		3	3	0.9%	0.9%
Not Specified		13	13	4.0%	4.0%
Total ^a		328	328	100.0%	100.0%

a. Total number of entries by those 100 WTO Members that have included commitments on Mode 4 in the horizontal section of their schedules.

Source: WTO, 1998a.

(iii) Length of Stay

73. There is no standard definition on what classifies as "temporary" movement. While for most countries, short-term business visitors are limited to 3 months, and intra-corporate transferees generally to 2-5 years (including extensions). Only about one third of commitments include any specified duration of stay and these are mostly for intra-corporate transferees and business visitors (see Table 3).

Table 3. Duration of stay by type of natural persons

	Intra-corporate transferee				E	M	S	Business visitor		ICS	Other	NS	Total
	E	M	S	O				CP	SN				
0-3 months				1	1	1	1	11	20	1			36
6 months								1	1	1			3
12 months			1	1									2
	(2) ^b	(2)	(3)		(2)	(1)	(2)		(1)				(13)
24 months	1	1	1		1	1	1	1					7
	(1)	(1)	(1)			(1)	(1)						(5)
36 months	6	6	5	1	1	1	1	1					22
	(1)	(1)	(1)			(1)	(1)						(5)
48 months	5	4	4				1						14
60 months	4	5	5		1	1	2						18
72 months												1	1
Unspecified	25	24	24		16	33	32	16	18	1	3	12	204

a Unless otherwise indicated, the following periods are maximum periods which may be reached after an extension of the initial stay.

b Entries in parenthesis indicate the possibility of an extension where the Schedules concerned have not specified a timeframe.

Legend:

E = Executives

M = Managers

S = Specialists

O = Others

CP = Commercial presence

SN = Sale negotiations

ICS = Independent contract suppliers

NS = Not specified

Source: WTO, 1998a

(iv) Economic Needs Tests (ENTs)

74. Economic needs or labour market tests are found in 50 cases. They are mostly scheduled as part of horizontal commitments (sector-specific ENTs appear in medical, dental and hospital, entertaining and financial services) and generally apply to specialist personnel, or highly qualified professionals, managers and executives). 23 countries have made commitments that, for certain categories of natural persons, ENTs will *not* apply (generally those related to mode 3 establishment, and to persons holding management positions or experts with specialised knowledge of the company). Few countries comply with the requirement for information as to ENT criteria [OECD, 2000 and 2001*a*].

(v) Other Restrictions

75. These include:

- quantitative restrictions or quotas on number of foreign suppliers, the proportion of total employment met by foreigners or the proportion of senior staff (80 cases);
- pre-employment requirements (i.e., person must already be employed, over 100 cases);
- requirement of government approval or work permits (mostly linked to ENTs);
- technology transfer requirements (i.e., training of local staff, mainly included by developing countries, 32 cases);
- restrictions on geographic and sectoral mobility or mobility between firms (10 cases);
- restrictions on real estate - (46 cases, more likely to affect mode 4 movements of longer duration, more than business visitors).

76. As noted previously, 50 countries have scheduled conditions relating to domestic wage legislation, working hours and social security (this does not include general references to domestic legislation, and there may be more Members with such requirements in practice). In 22 cases, countries have reserved the right to suspend commitments in the event of a labour dispute (this seems to apply mainly to intra-corporate transferees at senior levels).

77. Table 4 provides an overview of the main types of restrictions applying to categories of mode 4 workers. It should be noted [see Chanda, 1999] that some measures may have a particularly restrictive effect in combination - for example, the application of ENTs to the category of "other persons" where this category is not defined leaves considerable discretion as to when and how this test is applied.

Table 4. Entry conditions/restrictions by type of natural persons^a

	Intra-corporate transferees				E	M	S	Business visitors		ICS	Other	NS	Total
	E	M	S	O				CP	SN				
ENT no criteria	1	4	5	1	2	14	17	1				6	51
ENT with criteria	1	1	1										3
Approval	1	1	1		3	8	5		1	1		2	23
Residency	3	1	1		3	4	3						15
Work permit		1	1		4	4	4	1	1	1		2	19
Pre-employment ^b	34	32	35					3	2				106
Link to Mode 3					7	12	12						31
Qualification						2	1						3
Recognition					1	1	1						3
Numerical Limits													
Total staff 10%	1	1	1		2	3	4		1		1	3	17
≤20%	1		1		2	2	2					1	9
>20%	1	1			2	2	2						8
figure			2		3	3							8
Senior staff 15%	1		1										2
20%						1	1				1		3
50%	2	1	1										4
figure						2	2						4
Ordinary staff 10%					1	1	1						3
Payroll 15%					1	1	2					1	5
20%					1	1	2		1				5
30%												1	1
Workforce ^c 50%							1						1
Unspecified	2	2	2					1	1				8
Minimum wage	15	15	15							1		1	47
Disputes ^d	4	5	4			2	2	2	2	1			22
Technology transfer	1	1	1		7	8	12					2	32

a See Table 3 for the legend. b The person seeking access must have already worked for the current employer; the minimum period specified in Schedules is generally one year; c Total workforce of the country concerned; d Absence of labour-management disputes.

Source: WTO, 1998a.

II. Other Measures Affecting Mode 4 Commitments

(i) *MFN Exemptions*

78. While these are not scheduled as restrictions upon mode 4, they can impact upon mode 4, as well as mode 3. There are 38 MFN exemptions relevant to mode 4, of which 32 are preferential agreements and the rest are reciprocal (or, in 2 cases, preferential and reciprocal - see Annex V). Where measures have been specified in detail, they relate to, for example, granting of work permits, waiving of ENTs or improved access for certain activities. Beneficiary countries covered are not always identified, but references include traditional sources of supply, general geographical zones, regional organisations and language.

(ii) *Recognition of Qualifications*

79. Participation in many professions for which mode 4 trade is important (e.g., accountancy, legal and health services) is subject to considerable regulation, and lack of recognition of qualifications remains an important obstacle to labour mobility. Particular problems can arise for services where there are no formal accreditation or licensing procedures (e.g., while most developed countries have licensing programs for engineers, some developing countries do not). Other problems result from the lack of international standards for services, or, where such standards exist, there is a significant gap between national and international standards or no uniformity of standards within a country. Additionally, in some services (e.g., software services) it can be difficult to assess the equivalence of work experience or work-related training with academic qualifications²⁹. Article VII of the GATS covers recognition and includes provision that a member that is party to a mutual recognition agreement (MRA) shall afford adequate opportunity for other interested members to negotiate their accession to such an agreement or to negotiate comparable agreements. Article VII:4 requires notification of these agreements. A number of countries have questioned the degree to which these articles are being observed, in particular they have argued that developing countries have insufficient access to MRAs negotiated by developed countries amongst themselves.

(iii) *Licensing Requirements and Other Domestic Regulations*

80. Article VI (Domestic Regulation) requires that in sectors where specific commitments are undertaken, measures of a general application affecting trade in services shall be administered in a reasonable, objective and impartial manner. In particular, Article VI.4 provides for the negotiation of any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade. However, as work in the WTO Working Party on Domestic Regulation has indicated, determining the way in which this requirement should be interpreted and enforced raises difficult and sensitive issues in relation to WTO Members' right to regulate, including to ensure standards of performance for professionals.³⁰

29 In 1995 India asked for a special category of entry into the United States for software service providers. However, the United States was reluctant to create this given the difficulty of assessing qualifications when occupations in the software industry remained largely unregulated. [Young, 2000].

30. It is worth noting that the only disciplines developed to date, on accountancy services, do not focus on the substantive content of the relevant professional qualifications but seek only to ensure procedural transparency in matters of licensing and qualification. These Draft Disciplines for the Accountancy Sector

81. It can also be difficult to find the dividing line between measures falling under Articles XVI (Market Access) and XVII (National Treatment) and those falling under Article VI. One general rule is that if a licensing requirement is designed to implement restrictions affecting market access and national treatment, then such restrictions must themselves be scheduled [WTO, 1998*a*]. However, it is not always clear when a measure actually limits market access or national treatment. Further, the scheduling of a measure under Article XVI or XVII does not mean that Article VI ceases to have any relevance. While a measure establishing a quota on the number of licenses to be issued must be scheduled as a market access restriction under Article XVI, measures relating to the administration and allocation of those licenses which are actually issued would still be subject to Article VI. The complex issue of the relationship between Articles VI, XVI and XVII is the subject of ongoing discussions amongst WTO Members in the Working Party on Domestic Regulation.

were adopted in December 1998 and are due to be integrated into the GATS at the end of the current negotiations [OECD, 2001*b*].

PART IV: SCOPE FOR IMPROVEMENTS

82. This section outlines some of the ways in which commitments for mode 4 under the GATS could be improved. It focuses in turn on (i) ways to improve the effectiveness of existing access; (ii) ways in which further market access might be expanded, and (iii) how best to address the tension between permanent GATS commitments on access for labour and fluctuating labour market needs. Notwithstanding their importance for mode 4, this paper does not cover ENTs as this is the subject of separate OECD work [OECD, 2000 and 2001*a*]. Additionally, given the scope of the issues involved, mutual recognition of qualifications has also not been covered here.

83. In assessing the scope for possible improvements to commitments on mode 4, it is important to recall that not all OECD countries have defensive interests, and not all non-OECD countries have offensive interests, in labour mobility. Many non-OECD countries also retain restrictive conditions for entry of natural persons³¹. It is also not always the case that all non-OECD countries are interested only in the supply of relatively less skilled labour; while developing countries may be better endowed with unskilled labour relative to skilled labour, they may still have a comparative advantage in certain skilled services areas (e.g., computer and professional services). Some developing countries, such as India, are exporters of both skilled and unskilled labour.

84. A further consideration is the link between mode 4 and immigration procedures. Current GATS commitments for mode 4 largely reflect immigration systems - horizontal commitments based on general categories of entrants rather than specific service providers. Many of the changes suggested below involve moving conceptually from a migration to a trade framework, from horizontal commitments reflecting a migration approach to sectoral commitments varying according to particular sectoral needs. One proposal in particular - for a GATS visa - explicitly seeks to carve out a special trade regime from general immigration practices.

85. However, as noted in Part II, GATS type movements represent a small fraction of overall migration, or even of temporary labour. Outcomes must balance the benefits from fulfilment of GATS commitments with the needs of an overall migration system designed to serve a number of policy objectives. As indicated in Part I, countries have explored a range of approaches to adding a trade facilitative role to the more defensive traditional role of their immigration systems. In some, but not all respects, the situation may be analogous to the changing role of customs services in facilitating, as well as "gate-keeping", trade in goods. As in that context, successful changes tend to proceed incrementally, building on existing procedures and relying on dialogue and co-operation between all relevant agencies, both at the national and international level.

86. One final issue is that migration systems do not generally distinguish between workers in goods and services activities and, as technological, regulatory and economic changes re-define production, the line between activities related to manufacturing and services becomes harder to distinguish. While beyond

31 . See Young, 2000 for an outline of restrictions maintained by the Philippines, Mexico and India.

the scope of this paper, it is perhaps worth considering whether future improvements on labour mobility should apply only in the GATS (i.e., services) framework (both NAFTA and APEC apply not just to service providers, but also to providers of goods and investors). It has been questioned whether it makes sense, including in terms of the commercial reality of integrated firms supplying both goods and services, to limit labour mobility solely to service suppliers [Feketekuty, 2000].

I. Improving the Coherence of Existing Commitments - Common Terminology

(i) Definitions of Personnel - Possibility of Using the ILO Standard Classification of Occupations

87. The lack of common definitions for different categories of personnel has been identified as a major problem for mode 4 commitments, leading to both uncertainty as to the meaning of commitments and considerable scope for administrative discretion. This lack of clarity can also result in regulatory precaution, with undefined terms interpreted narrowly.

88. In addition to increasing the clarity and predictability of existing commitments, development of greater precision regarding categories of personnel could enable WTO Members to make more liberal commitments for some categories and to pinpoint for request-offer those areas where they enjoy a comparative advantage as service suppliers. The EU has proposed³² that WTO Members try to agree on common terms and definitions for intra-corporate transferees, executives, managers, specialists and contractual service providers. It has also been suggested [Chanda, 1999] that WTO Members develop further sub-categories of service providers under these existing categories, agreeing on both definitions for these categories as well as on minimum criteria for establishing whether an individual service providers fits into a particular category.

89. Regional agreements may also provide some guidance. NAFTA contains detailed descriptions of which occupations count as business persons for the purpose of temporary entry to provide a service [Young, 2000] and there are some definitional similarities (e.g., for intra-corporate transferees who are managers, executives or specialists) between the Europe Agreements and APEC (see Annex I). Further work could map the extent of existing complementarities between these definitions, and the scope for developing common categories amongst WTO Members. Additionally, account could be taken of those existing GATS commitments that already contain rudimentary lists of the types of occupations afforded temporary entry. For example, Canada's schedule mentions engineers, agrologists, architects, forestry professionals, geomatic professionals, land surveyors, foreign legal consultants, urban planners and senior computer specialists [Young, 2000].

90. A further proposal³³ has been to refer to the International Labour Organisation's International Standard Classification of Occupations (ISCO-88), which already provides definitions of categories of personnel, for the purposes of making GATS commitments. ISCO-88 is outlined in Box 5.

32. See WTO Council for Trade in Services in Special Session "Communication from the European Communities and their Member States: GATS 2000: Temporary Movement of Service Suppliers" S/CSS/W/45, dated 14 March 2001.

33. See, for example, Council for Trade in Services in Special Session "Communication from India: Proposed Liberalisation of Movement of Professionals under the General Agreement on Trade in Services (GATS)" S/CSS/W/12, dated 24 November 2000.

Box 5: What is the International Standard Classification of Occupations (ISCO-88)?

ISCO-88 revised and superseded ISCO-68 and has three main aims: to make national occupation information internationally available; to enable the production of international occupation statistics as the basis for research and decision-making; and to serve as a model for countries revising or developing national classification systems. ISCO-88 does not aim to replace existing national classifications, as they more fully reflect the national labour market.

To create its structure, ISCO-88 uses two main concepts: *job* and *skill*. *Job* is defined as the set of tasks or duties executed by one person; a set of jobs whose main tasks are characterised by a high degree of similarity constitutes an occupation. Occupational groups are then delineated and aggregated on the basis of similarities in the *skills* required to carry out the tasks and duties of a given job. Such skills have two aspects:

Skill level: a function of the complexity and range of the tasks and duties involved; and

Skill specialisation: defined by the field of knowledge required, the tools and machinery used, the materials worked on or with as well as the kinds of goods and services produced.

Four broad skill levels are defined in ISCO-88, for practical reasons defined with reference to the International Standard Classification of Education (ISCED-76). These are:

- 1st ISCO skill level (ISCED category 1) - primary education
- 2nd ISCO skill level (ISCED categories 2 and 3) - the first and second stages of secondary education; can include apprenticeships or on-the-job training
- 3rd ISCO level (ISCED 5) - education beginning at 17 or 18, lasting for about 4 years and leading to an award not equivalent to a first university degree
- 4th ISCO skill level (ISCED 6 and 7) - university or postgraduate university degree or equivalent

Inevitably, some subjective judgement is involved in attributing these levels to the main ISCO-88 occupations. Annex VI sets out the main ISCO occupational categories and indicates the number of sub- and unit groups into which they are further disaggregated, as well as the corresponding skill level. The 10 major groups and 28 sub-major groups are broken down at the most detailed level into 390 unit groups. In most cases, these unit groups consist of more than one occupation. At the national level, the number of, and delineation between, occupations depend, *inter alia*, on the size and structure of the economy and level of economic development. For this reason, ISCO-88 does not include detailed occupational descriptions below the unit group level (although those among the 1 506 descriptions at this level used in ISCO-68 which are considered to be still relevant have been coded to ISCO-88 and are made available to users on demand). For each occupational group at each of the four skill levels, ISCO provides a code number, a title and a brief definitional description of the content. Annex VII sets out the breakdown into sub-major and minor group titles for the first three major groups of occupations.

There can be some important variations at the national level. While ISCO skill levels are broad, in some cases the presumed skill level for an occupation does not correspond to that determined by the educational requirements of some countries. For example, to reflect differences in tasks and levels and responsibility which have resulted in differences in formal education requirements in some teaching, health and social services occupations, categories for these jobs appear in ISCO-88 major groups for both "professionals" and "technicians and associate professionals". Additionally, some of the tasks belonging to jobs usually considered to be in the same "occupation" can vary between countries (largely due to differences in economic development), causing problems given that occupations in ISCO are defined by tasks. For example, due to the differences in the levels of mechanisation, a garbage collector in Switzerland may be classified in ISCO-88 as a "machine operator", whereas one in Guatemala working manually may be classified in ISCO-88 to major group 9 "elementary occupations". Rules for interpretation provide that jobs should be classified according to the tasks requiring the highest skill level, and that where tasks are associated with different stages of the production and distribution of goods, those related to the production stage should take precedence (i.e., a baker who bakes and delivers is a baker, not a delivery person). In addition, where national classifications vary greatly from ISCO-88, they can be mapped onto an ISCO-88 category if approximately 80% or more of the jobs classified in the national classification fall under that ISCO-88 category.

Updating ISCO-88³⁴

ISCO-88 was designed to provide an enduring basic framework, whose structure and principles would remain stable over a long period while the detailed content of the defined groups could be updated and extended to include any new occupations emerging from changes in technology or work organisation. However, resources devoted to systematically updating ISCO-88 have been limited and progress has thus been modest. In addition, the difficulties faced by the ILO are not simply related to resources. As custodian of ISCO-88, the ILO is also reliant on input from national authorities (the custodians of National Standard Classifications of Occupations - NSCOs) for updates. However, few national authorities have systematic procedures for updating their NSCOs and those that do, do not always inform the ILO of their changes. Even where changes are reported, it is not always easy to judge whether a reported change is sufficiently significant or widespread to warrant changes to ISCO-88.

Generally, additional sub-divisions of existing occupational classes may be proposed where it is clear that international exchange of information, including statistics on these new groups warrants a separate identification within the ISCO-88 structure. Such changes may happen: (i) at the initiative of international federations for particular professions; (ii) to reflect new occupations which have emerged as a result of technological changes common to a number of countries; (iii) because information exchange between several countries (i.e., on recruitment, job placement and international migration of workers) would be facilitated by references to a more detailed occupational category. Evaluation of whether developments warrant a change remains problematic; networks of national specialists to assess proposed changes have been considered, although even specialists have problems evaluating proposals which do not closely correspond to their national experience.

Some measures have been taken to address the need for additional information to assist the ILO in updating ISCO-88. A new web-site is being created to answer queries on the use of ISCO-88 and to provide information on proposals for updates or extensions. This will also be accompanied by new requests to national authorities for information about the current situations with regard to NSCOs and statistical offices and employment services, with a view to building a database on NSCOs.

91. ISCO-88 has been adapted to create a standard for community-wide occupational statistics at the regional level within the European Community, where some additional categories or descriptions have been added to reflect individual labour markets (e.g., relating to the categorisation of managers and generic titles for jobs in public administration). Additionally, a classification system was developed specifically to respond to the need for standard occupation references for better job classification and recruitment, in addition to statistical collection, for contract workers from South Asia to the Middle East. The Occupational Classification of Workers in Migration (OCWM) was prepared around the same time as ISCO-88 and consists of 908 occupational titles and their descriptions (with a correspondence chart for

34. This section draws on Hoffmann, 2000.

ISCO-88). The OCWM includes both less and more skilled occupations, although the former predominate. For example, "Managers" covers a wide range and is defined by the type of activity managed (e.g., general, hotel, plant, supermarket, bar, food and beverage). Like ISCO-88, the OCWM is in need of updating and further refinement of some categories is required (e.g., between technicians and mechanics, and analysts and clerks, managers and supervisors). The OCWM has not been as widely adopted as ISCO-88.

92. OECD work [OECD, 2002] has also considered the question of how particular categories of workers might be defined, in particular, skilled human resources in science and technology (HRST). Two possibilities (or a combination of both) are suggested: level of education³⁵ or occupation. On occupation, two benefits in using ISCO-88 are identified: it contains a level of detail which allows reasonable scope to categorise individuals and it is compatible with many national classification systems. HRST is seen as including all of ISCO-88 Major Groups 2 (professionals) and 3 (associate professionals). However, the latter category is seen as including some less relevant workers, and Major Group 1 (legislators, senior officials, managers) may include relevant personnel covering management responsibilities related to scientific, technological and business functions. While not an exact fit, ISCO-88 is seen as a potentially useful tool.³⁶

93. While ISCO-88 offers some real benefits, systems devised for statistical purposes may not be immediately transferable to trade policy purposes. Members may wish to consider some of the following issues on the possible use of ISCO-88 in a GATS context:

- Classification by occupation can become outdated, especially as job tasks are changing very fast in the ICT and consulting industries (what would a "systems architect" have meant 5 years ago?). (The need for faster procedures for updating the professionals list has also been identified in the NAFTA context).
- ISCO-88 might not provide definitions for all GATS categories, especially those based on other criteria than type of work to be performed (such as "business visitor" or "intra-corporate transferee"). WTO Members would also need to agree to definitions for these categories.
- The level of aggregation required for statistics may differ from that required for trade policy. For example, ISCO-88 groups together one occupational group "3472 - radio, television and other announcers (news announcer, radio announcer, television announcer, compere, disc jockey, media interviewer, newscaster)"; however, trade commitments may wish to distinguish between these professions. WTO Members could, however, still use the category in combination with an "except for...", or relevant sub-categories could be defined and given separate codes.

35. There are problems in making international comparisons on education, as data tend to reflect differences in national education systems (including numbers of persons with particular levels of attainment). In particular, technical and diploma type programs tend to vary greatly between countries in terms of nature and content. It has also been noted that education is not always a reliable guide. While it is generally assumed that highly skilled equates to a tertiary qualification or equivalent, many graduates are not in highly skilled work and many in highly skilled work are not graduates. See Salt, 1997.

36. It should perhaps be noted that earlier attempts to define HRST within the OECD - the 1995 "Canberra manual" - noted that cultural differences across countries and diverse range of policy interests meant that no single specific definition of HRST was possible. The report opted for a wide initial coverage which included all people with third level education (i.e., first or second stage tertiary education) or a job requiring similar skills. ISCO-88 was then used to provide greater precision - e.g., all persons in occupations classified under ISCO-88 major groups 2 and 3 or in sub-groups of Major Group 1 were considered to be HRST, even without third level qualifications. See OECD, 2002.

- Adapting the ISCO categories to existing, as opposed to new commitments, may raise issues about what members intended as the scope of a given commitment. Further work would need to be undertaken to map correspondences between W/120 and the UN Central Product Classification (CPC) and ISCO-88³⁷.
- ISCO-88 may not always be an easy fit with national or regional systems. Qualifications required to undertake certain work may vary between countries, thus certification requirements may have to be defined and agreed upon. Also, categorisation may vary depending on the level of economic and technological development within a country - although this may be less likely for higher skilled professions which are the majority of mode 4.
- Not all countries currently use ISCO-88 as the basis of their national occupation statistics (some countries do not have a system for collecting such data). Use of ISCO-88 as a reference tool may thus require some capacity-building at the national level, for labour authorities and statisticians, as well as trade policy-makers.
- Nonetheless, ISCO-88 presents a ready-made international source of agreed definitions that could be treated, like the CPC or W/120, simply as a tool for negotiating and scheduling commitments. Classification of occupations could be treated as a procedural, not a substantive issue - for imparting precision, specificity and predictability [Zutshi, 2000].
- ISCO-88 could facilitate expansion of the types of service suppliers currently covered by GATS commitments as additional levels (e.g., technical support personnel) could be identified and defined with greater precision.
- Use of ISCO-88 may also facilitate linkages between statistical collection and GATS negotiation, enabling over time, the provision of better quality, more comparable data³⁸.

94. These are simply some initial observations which WTO Members may wish to consider further. Information on the EU experience of adapting ISCO-88 at the regional level may also provide some useful insights, as could experience with the OCWM. Consideration of possible use of ISCO-88 in a WTO context should also be based upon close consultation and co-operation with the experts in ISCO-88 at the ILO.

(ii) *Stipulations of Length of Stay*

95. In general, the period for which entry may be granted is not indicated in schedules. While there may be benefits in reaching a common understanding on the length of time granted to particular categories of service suppliers, agreement may be difficult, due to the wide variety of practices amongst WTO Members. OECD/SOPEMI [1998] has outlined the range of practices and rules applying to the duration of stay for highly skilled temporary workers amongst selected OECD countries, with lengths of stay varying

37. Some examples of the CPC categories that correspond to ISCO-88 are: legal professionals (ISCO242 and CPC 861); accountants (ISCO 2411 and CPC 862); engineering professionals (part of ISCO 214 and CPC 8672); architectural professionals (ISCO 2141 and CPC 8671) and medical professionals (ISCO 222 and 223a.o. and CPC 9312). See European Commission, IMF, OECD, UN, UNCTAD, WTO, 2000.

38. The *Manual on Statistics of International Trade in Services* notes that ISCO-88 provides a sound basis for international comparability of statistics on the categories of foreign persons participating in the delivery of traded services and suggests that it may be useful for mode 4 negotiations.

considerably depending upon the category of skilled worker and the type of work permit to which they are entitled³⁹. Additionally, as indicated in Annex III, there are no standard industry definitions for the duration of stay for various types of foreign assignment. Maintaining the flexibility for countries to set their own time limits for duration of stay for given categories of service suppliers may in the short-term result in more liberalisation than imposition of standard time periods, which may result in more cautious and limited commitments.

96. It must also be recalled that many WTO Members have not agreed to include even their current practices within their schedules, possibly reflecting the desire to maintain maximum flexibility to alter the time periods for work permits or visas as conditions require. Whether Members should undertake to include duration of stay was the subject of extensive discussions in the WTO Committee on Specific Commitments in the context of the revised scheduling guidelines [WTO, 2001]. While the original guidelines stated that "in the absence of a reference to a specific duration for the temporary stay of a service supplier, no binding is being undertaken in this respect", the revised guidelines state: "in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, it could be understood that no binding is being undertaken in respect of the duration of that stay" [WTO, 2001, paragraph 34].

97. The revised guidelines then state: "It is noted in this regard that, according to Article XX:1(a) of the Agreement, with respect to sectors where commitments are undertaken, each schedule shall specify the terms, limitations and conditions on market access. Commitments should include the duration of temporary stay of natural persons for the purpose of supplying a service. In any event a Member's regulatory measures would still be subject to the general requirement, in paragraph 4 of the Annex on the Movement of Natural Persons, that they do not nullify or impair the benefits accruing to any other Member under the terms of a specific commitment" [WTO, 2001].

98. It is clear that inclusion of the time limits established for various categories of service provider at the national level in Members' schedules would represent a significant advance in the clarity and certainty of mode 4 commitments. However, it appears that WTO Members were unable to reach agreement on this issue at this time. But while some Members may not be prepared to include stipulations on duration of stay in their schedules, many problems may be addressed by greater transparency and availability of information on visa and work permit terms and conditions via other means. There may also be more scope for standard durations of stay to be agreed in the context of more restricted, specific initiatives, such as a GATS visa for particular types of service supplier, or perhaps in the context of more specific sectoral commitments. Proposals in all these areas are explored below.

II. Improving Market Access

99. There are three main ways that market access could be improved: (i) by expanding into sectoral, as well as horizontal commitments; (ii) by providing better treatment for some categories of workers; or (iii) by expanding the categories of service suppliers currently covered by GATS commitments.

39. For example, length of stay and procedures for obtaining work permits vary considerably in Australia depending upon the category of skilled workers, but they are usually granted for 2 years and may be renewed once (up to 4 years). In France, provisional work permits are issued for a 9-month period and may be renewed once for a further 2 years on an exceptional basis. Permits for specialised technicians are only valid for 6 months. In the US, the permitted stay varies according to the category of visa, but ranges from 1 to 10 years [OECD/SOPEMI, 1998].

(i) Sectoral vs. Horizontal Commitments

100. Sectoral commitments would enable WTO Members to identify and target those sectors where mode 4 is most prevalent and provide for more liberal treatment. Given that mode 4 tends to be concentrated in certain services sectors (see Part III), in particular professional services, there may be scope to focus liberalisation efforts in these sectors. It may also help to target access towards identified areas of skills shortage in importing countries, or where importation of particular types of service supplier would contribute to development objectives. Sectoral commitments could also enable sector-specific types of suppliers to be targeted in each commitment, such as "programmer" and "systems analyst" for software services (although there would need to be a common understanding on the range of activities covered by these occupations). In this sense, sector-specific commitments could imply greater scope to provide for access for individual service suppliers; as the precise sector is less important for intra-corporate transferees (where sector is less important than function - i.e., manager or specialist - within the company).

101. Sectoral commitments may also provide for greater clarity on the level of access being offered, in particular in situations where service provision via mode 4 is heavily conditioned by the access offered under mode 3. More precise sectoral commitments, with horizontal commitments restricted to general definitions, could also reduce the current confusion regarding the relationship between horizontal and sectoral commitments. Sectoral commitments could provide WTO Members with the scope to set out detailed information on conditions applying to the sector and types of service supplier, enabling more targeted restrictions and greater transparency regarding the restrictions applying in each area.

102. While representing a more targeted response to particular labour market or industry needs, negotiation of sectoral commitments will also concentrate attention on those sectors where increased access for foreign workers is to be allowed. While in reality, foreign workers tend to be concentrated in certain areas of high demand in any event, scheduling sector-specific commitments may increase domestic lobbying by affected industries. However, this may be beneficial in enabling a transparent and informed domestic policy debate over industry requirements, labour concerns, longer-term planning on the education and training programs and the country's role in the global economy.

103. Sectoral commitments may also pose particular problems for labour market fluctuations - areas of high demand today, may not be so next year.⁴⁰ In exchange of more liberal sectoral commitments, WTO Members may look to the operation of a safeguard (including at the level of sectoral commitments) or the continued use of ENTs (see *Moderating measures* below). While sectoral commitments have been proposed as a means of limiting the scope for ENTs (i.e., by specifying certain professions in certain sectors to which ENTs would not apply), in practice, given fluctuating labour market conditions, more precise commitments are likely to increase the desire for some form of safeguard. ENTs may thus still be a feature of sectoral commitments, perhaps with the specific criteria and conditions for applying the ENT included in the scheduled commitment, rather than horizontally. (At present, the majority of ENTs for mode 4 are horizontal and do not specify sectors, with the exception of some Member States of the European Union which specify medical or entertainment/sporting services). Were commitments to take the form of quotas, ENTs could operate only in excess of the stated number (e.g., a commitment to allow 200 accountants, after which ENTs will apply). However, WTO Members are likely to set any numerical binding cautiously low.

40. The United States' demand for technology workers is estimated to drop by 44 % in 2001 according to a study by the Information Technology Institute of America (reported in *Financial Times*, "U.S. need for tech staff is forecast to slide 44%", 3 April 2001). Further, many foreign workers who entered under H1-B visas to meet demand for high skilled programmers in ICT are now being laid off in the aftermath of the dot-com crash [*Newsweek*, 14 May 2001].

104. Monitoring and enforcing mode 4 flows by sector would also require changes in the current conduct of entry procedures for many WTO Members - existing entrance systems by and large pay little attention to the precise sector in which migrants will work. As Part II indicated, where information on the sector of employment is collected, it is normally at a highly aggregated level. Effective sectoral commitments in GATS would seem to pre-suppose a separation of GATS mode 4 entry from other temporary labour entrants (per the GATS visa below).

(ii) Providing Better Access for Some Groups

105. Another approach to increasing market access under mode 4 would be to provide better access for certain categories of service suppliers. Such access could be provided horizontally or in the context of sector-specific commitments. Intra-corporate transferees have been highlighted as a group where more favourable treatment could be provided. Additionally, some countries already exclude intra-corporate transferees from the operation of ENTs or labour market tests, or provide other streamlined entry processes (APEC has identified intra-corporate transferees as a priority for streamlined processing).

106. One such form of streamlined processing is to allow approved companies to file "blanket" requests for their transferees. Under this model, companies aim for a type of pre-approval, by providing lists of their named parent, branches, subsidiaries and affiliates to enable streamlined processing of their key personnel. Other examples include:

- The "pre-qualified sponsor" program in Australia, where companies of good standing whose activities are of benefit to Australia are allowed to sponsor any number of individuals under streamlined procedures. The personnel must be required to perform a key activity in the business and the employer must meet certain responsibilities such as health cover and compliance with labour laws.
- The UK launched the trial of a pilot certification scheme for certain major companies in November 2000. Under the scheme, qualifying companies receive streamlined processing of work permits for foreign nationals transferring to the UK from other offices of the same company abroad. Companies must document each file with evidence that the foreign national meets the criteria, including that they have at least 6 months' experience with the firm. As well as documenting each file, companies keep a copy of the permit electronically (spoilt permits are cancelled and returned to the government) under secure storage. The pilot has been extended until 27 July 2001.

107. Other suggestions for facilitating access for intra-corporate transferees include requiring companies to contribute to the cost of improving processing for their mode 4 workers, by paying a fast-track fee for their processing under existing channels. However, while many large corporations are in a position to pay fees, it may be more difficult to ask small- and medium-sized enterprises (SMEs) or other employers such as education or health authorities to pay. Nonetheless, revenue from the fees could be put towards improving administration of mode 4 workers, including possibly the development of a GATS visa administration system. Indeed, some proposals for GATS visas either apply only to intra-corporate transferees or offer them additional, favourable treatment (see Box 6 below).

108. However, one problem in providing better access for intra-corporate transferees may relate to definition. Industry has indicated that a problem with the current approach is the requirement to have a contract between the intra-corporate transferee and the local branch of the company (e.g., under the United Kingdom scheme, self-certification cannot be used for foreign nationals transferring to the UK who will be assigned to work at a client site on a project). Industry notes that in the case of short-term projects carried

out by international teams, such requirements may not be appropriate - the contract may be between the international parent and the company, the local office may not have any involvement in the project⁴¹. Similarly, requirements to provide contract of employment between the mode 4 service supplier and the host employer may not be appropriate for consultancy services. Industry has called for similar conditions to be applied to both intra-corporate transferees and key personnel who are fulfilling a contract between two businesses.

109. In the same way, streamlined procedures could perhaps also be applied to independent service suppliers, where the supplier already had a contract to provide services to a local company. This may broaden the category of mode 4 suppliers who might benefit, while maintaining the basic framework of operating through reputable companies for the purpose of fast-tracking mode 4 entries. While it could be argued that having to play this "guarantor" role might discourage companies from hiring foreign service suppliers on a contract basis, the benefit of fast-track processing may outweigh the burdens.

110. While intra-corporate transferees account for some mode 4 exports of some developing countries, and better treatment for this category could be a model for other categories in future, some developing countries are unlikely to view increased access for this group as contributing to "win-win" outcomes in the negotiations unless accompanied by access for service suppliers not tied to mode 3.

(iii) Expanding the Categories

111. Consideration could be given to expanding access under mode 4 commitments for categories beyond managers and specialists. A new category of "technical support personnel" could be created or, alternatively, existing categories such as "specialist" or "other persons" could be expanded to include middle and lower level personnel. Common definitions and coverage of any additional categories would need to be agreed, but ISCO-88 may be useful in this regard. Expanded market access in these categories would be of particular interest to developing countries, a number of whom have a surplus of middle/lower level skilled service suppliers of this type [Chanda, 1999]. However, importing country sensitivities increase with the inclusion of lower-skilled service suppliers, as they are perceived to be more likely to displace nationals, and importing countries may also have concerns about potentially wide categories such as "technical support personnel". Nonetheless, it would be useful to explore whether there are some sectors where additional categories might be considered.

112. A further category could be "non-professional essential personnel" (e.g., aircraft repair and maintenance crews). Such personnel would have specialised skills but need not meet the types of qualification requirements usually applied to specialists or highly skilled workers (i.e., there could be greater flexibility with regard to requirements for university degrees). Some OECD countries currently have some special cases of this type. For example, in Canada, foreign workers who come to oversee the installation or maintenance of special equipment purchased or leased abroad are not required to have their employment validated (i.e., are not subject to tests to ensure that their employment is beneficial to the Canadian economy and not detrimental to employment opportunities for Canadians). In Germany, workers who install or carry out maintenance repair work to tests on equipment supplied by a foreign enterprise are not required to have work permits provided that they do not remain in Germany for more than 3 months. NAFTA has also considered the inclusion of this category (see Annex I). More Members could be encouraged to make horizontal commitments for this category of personnel. As such personnel may also be more relevant for some sectors than others (e.g., energy, transport) they could also be scheduled as sector-specific commitments.

41. Arguably, in this case - and in cases where there is no local commercial presence by the company - the person could be considered as a contractual service supplier, rather than an intra-corporate transferee.

113. There is also some industry interest in broadening the categories of persons under mode 4 commitments, with companies increasingly interested in sending employees abroad for training purposes at earlier stages of their careers, prior to reaching management levels. As international experience becomes more important for promotion, pressure to allow promising employees who have not yet reached management ranks overseas postings will grow. Companies also report that ability to offer overseas experience at an early stage of their career is an increasingly important factor in competing for the best graduates (graduate training/development accounted for 3.7% of expatriates in the PricewaterhouseCoopers survey).⁴² Access at this type of "potential key business personnel" level may also be of interest to some developing country service suppliers.

III. Administrative Procedures

114. Even in the absence of significant expansion of market access commitments, considerable liberalisation may be achieved through addressing the administrative arrangements governing current market access. Reforming these procedures could enable countries to take full advantage of market access stymied at present by administrative delays or non-transparent and non-user friendly procedures. Two suggestions for improving procedures are explored in this section. The first involves the establishment of a new procedure, a GATS visa, to tailor administrative requirements to mode 4 needs. The second relates to improving the transparency of existing administrative requirements.

(i) *GATS Visa*

115. Visa and work permit systems vary widely between countries and opaque and cumbersome administrative procedures for entry can undermine market access granted under mode 4. Time-consuming and costly administrative procedures can cause particular problems for short-term assignments, the largest growth area of mode 4 movement⁴³. Common complaints include:

- processing delays in visa applications (particularly important in time-sensitive areas of professional services, such as tax);
- documentation requirements, including problems related to legalisation of documents such as birth certificates which, in some countries, are neither automatic nor common;
- in some cases work permits do not exist and the appropriate visa for undertaking short-term projects is not clear (including because of confusion between the definitions of business and work permits);
- the need to obtain a residence permit before a work permit is validated; hotel addresses not being accepted for residence permits (a problem for short-term missions lasting 1-3 months);
- visas granted for short-term periods only (less than 3 months) with renewal time-consuming and/or only available from outside the country; single entry visas only granted;

42. OECD/SOPEMI, 1998 indicates that a number of countries already have a recognised category of trainees, although these tend not to cover intra-corporate transferees (except for senior staff). Most are also subject to quotas under bilateral agreements.

43. PricewaterhouseCoopers, 2001 found that 42% of companies out-sourced management of work permits for internationally assigned staff, in a view to increasing efficiency and reduce costs.

- inability or delays in enabling foreign nationals to move from one company to another in the host country, also involving restrictions on their ability to undertake short business trips outside the host country.

116. A number of commentators have attributed these difficulties to the lack of separation in procedures between temporary and permanent labour, forcing applicants for temporary labour to meet and undergo the strict conditions and procedures associated with permanent migration, when this may neither be warranted nor efficient. Proposals have been developed for a GATS visa, tailor-made to mode 4 entry. It should be noted, however, that, while labour market regulations governing the issuance of work permits and regulations defining foreigners' ability to work in individual areas fall under the GATS, general immigration legislation (visa requirements etc) does not [WTO, 1998a].

Box 6: Elements of a possible GATS visa/permit regime

The following outlines those elements identified as being important in a possible GATS visa by both industry and commentators on the GATS, along with the main proposals as to how they should be addressed.

Coverage: either all categories of service providers covered by sectoral and horizontal commitments under modes 3 and 4 (visas), or only intra-corporate transferees (including at trainee level) and key personnel providing services pursuant to a contract between two businesses (permits).

Duration of stay: less than 12 months; no single visit to exceed 365 days; 3 years for intra-corporate transferees. Stays of less than 3 months (but possibly multiple entries over the course of a year) would not require a visa.

Procedure: a separate body dealing with GATS visas as contact point within the overall immigration framework; a one-source availability of all relevant rules and regulations; information to be available upon request on the status of applications; authorities required to notify delays; consultation mechanism for any changes to the rules.

Time for issuance: 2 to 4 weeks from filing of application to issuance of visa, but with procedures for issuance in one day or at port of entry under special circumstances.

Conditions: for intra-corporate transferees, proof of employment with current employer for a defined period (6 months); demonstrated experience of performing services at senior level; proof of qualifications for some senior levels of personnel; contracts above a certain value not subject to ENTs.

Role of companies: A company-specific GATS visa for personnel working for well-known and reputable companies. Following certification by immigration authorities, companies could self-administer transfers.

Appeal rights: appeal against rejection, with a decision within one month.

Renewal: simple procedures with fees reflecting administrative costs.

Prevention of abuse: declaration of intention not to establish a permanent residence; inability to change to another visa category during the life of the GATS visa; payment of bonds by the sponsoring company to the local embassy or consulate; imposition of special safeguard of one year's duration against any WTO member whose companies have a pattern of abuse of the visa.

Sources: Chanda, 1999; Zutshi, 2000; European Services Forum, 2000 and 2001.

117. A further issue may be the transferability of visas between jobs for service suppliers who are not intra-corporate transferees, or allowing intra-corporate transferees also to service client site projects, as well as being attached to the local branch (per section II(ii) above). Indeed, as with other streamlined

procedures for intra-corporate transferees, a possible GATS visa/permit could apply also to both key personnel servicing a contract between two businesses and individual service suppliers with an existing contract to supply services to a local firm. It might be difficult, however, for the visa to apply to all mode 4 entrants covered by commitments, as these would represent a wide range of groups all subject to different entry conditions and time limits. A GATS visa to accommodate all mode 4 commitments would thus be more administratively complex.

118. While a GATS visa/permit could be very helpful in addressing the sorts of problems outlined above, it is an ambitious proposal, given the experience with implementation of standardised procedures at the regional level. Taking into account experience with existing regional initiatives under NAFTA and APEC, there are a number of issues WTO Members may wish to consider:

- While a GATS visa could facilitate uniformity, considerable capacity building may be required for many WTO Members to enable them to operate such a scheme (including training of border officials and investment in new technology).
- In the case of intra-corporate transferees, governments may be able to draw on the resources of large companies to contribute to the burden - either through self-certification or fees for service. However, government oversight would still be required.
- Some countries with existing streamlined or high technology procedures may be reluctant to join programs they perceive as being less advanced than their current regime⁴⁴.
- Members may also have difficulty in phasing-out, or accommodating, any existing programs, including those offered on a regional basis.
- Depending upon their coverage (i.e., only intra-corporate transferees or broader), GATS visas could be an important source of statistics on mode 4 - statistics which could be useful for negotiations, implementation, and the operation of possible safeguard measures.
- Creation of a GATS visa could raise a host of new regulatory issues which may not arise in the absence of a visa requirement, including approval of, and compliance with, conditions and management of quotas [Young, 2000].
- The requirements for the GATS visa itself (e.g., proof that meet the criteria) would need to be kept as minimally burdensome as possible for real benefits to be derived, including because the visa would have to operate in addition to existing migration procedures and would thus require additional resources.
- The broader the range of service suppliers for which the GATS visa would operate, the more administratively complex the visa would become and the greater the difficulty in establishing standard conditions for each of the different categories of entrants.

44. Young, 2000 notes that neither Canada nor the United States are planning to join the APEC Business Travel Card program because their existing systems (CANPass and INSPass respectively), which are biometric, are more advanced than the APEC system.

(ii) Transparency and Information on Any Necessary Procedures for Entry

119. Lack of information as to opportunity and conditions for entry can be a major obstacle to improved mobility. Such obstacles may particularly affect individual service suppliers (or SMEs), who lack the resources of large companies to find out conditions across a range of WTO Members and to interact with regulators in the case of difficulties. Additionally, some mode 4 entrants, such as business visitors, may make frequent, short trips to other WTO Members and will thus require up-to-date information on any changes to entry procedures or requirements. The scope for improved transparency on procedures related to entry features in a number of proposals made by WTO Members in the current negotiations.

120. Two forms of increasing transparency have been suggested: the development of additional disciplines on regulatory transparency for mode 4 (or as part of horizontal disciplines for greater regulatory transparency), and specific initiatives to increase the information flow on mode 4 conditions and requirements.

121. Additional disciplines on transparency of relevance to mode 4 could build upon existing GATS requirements regarding transparency⁴⁵, as well as Article VI disciplines on domestic regulation. They could take the form of a Reference Paper onto which countries would sign on a voluntary basis, or could be part of any broader additional disciplines on transparency developed in the context of GATS Article VI.4. Such disciplines could cover, for example:

- provision of all information related to the fulfilment of temporary entry commitments under mode 4 of the GATS to be made publicly available in a transparent manner, including both substantive requirements and criteria and procedures for applications;
- procedures allowing for prior consultation and opportunity for comment by interested parties before changes to regulations affecting mode 4 entry enter into force (given that the GATS does not cover general immigration legislation, the scope of this requirement would need to be carefully identified);
- development of clear, simple and predictable application procedures;
- guarantees of timely responses for applications, or notification in the event of any delay;
- provision of statement of reasons for denial of application and availability of review/appeals process;
- creation of dedicated contact points for complaints within the trade or immigration ministries (or as a joint operation). These contact points could perhaps also produce an annual report outlining the reports received of problems relating to mode 4 access (which could assist in future refinement of procedures).

122. From this, specific initiatives could also be adopted to improve information flow related to mode 4. Schedules may not be the most appropriate vehicle for this transparency, given that schedules represent

45. Article III requires Members to publish promptly all measures of a general application which pertain to or affect the operation of the GATS. Members are also obliged to notify annually any new or changed laws, regulations or administrative guidelines which significantly affect trade in services covered by specific commitments. Members are also obliged to establish enquiry points to respond to request for information by other WTO Members.

binding legal commitments and WTO Members may be reluctant to bind administrative procedures, including undertakings regarding processing times for, or costs of, applications. While Members may not bind their immigration procedures, they should nonetheless be prepared to provide the necessary information by notifications for transparency purposes.

123. One option would be to follow the APEC model for information by creating a web-site dedicated to providing information on the conditions applying to temporary entry of service providers in WTO Members. Each WTO Member could provide information on the basic eligibility criteria, procedures for applying for visas and the terms and conditions that apply to all permitted categories of mode 4 entrants. As with the APEC web-site, Members would be responsible for the accuracy of their information and for ensuring that it is updated on a regular basis. Participation in this exercise may also provide useful spin-offs at the national level, as key agencies co-ordinate to provide the information, increasing understanding of policy-makers of the relationship between trade commitments and immigration/labour market requirements. Information provided could include:

- categories of permit and their requirements;
- documentation required;
- method of lodgement;
- processing time and application fees (if any);
- length and validity of stay;
- sectors where any special conditions apply - including ENTs and their criteria;
- possibility and conditions for extensions (including availability of multiple entry visas);
- rules regarding accompanying dependants;
- review and/or appeal procedures (if any);
- details of relevant contact points for further information (e.g., links to relevant government web-sites which provide more detailed information on embassies, consulates and other issuing bodies).
- reference to any relevant immigration laws of general application (laws need not necessarily be included in full, but details of where information can be found on them).

124. Alternatively, a system of notifications to the WTO could be developed (information would thus be available via WTO documents on the public web-site). Standard form notifications could be developed (along the lines of the WTO Agreements on Sanitary and Phytosanitary Measures- SPS - and Technical Barriers to Trade -TBT) covering, for each type of entry program related to GATS mode 4 entry, information similar to that outlined above (or a shortened version).

125. As a further option, Members could simply be asked to create a one-stop information point (e.g., a web-site, government office) for information on mode 4 entry (note that this only has to be an information point, not necessarily the collection point for applications; for this, and information in a variety of languages, contact points may refer back to embassies). Contact details of this web-site or office would

be notified to the WTO, and perhaps listed on the WTO web-site. Links could also be made to Members' electronic schedules (once they are fully available via the WTO).

IV. Moderating Measures

126. Given the sensitivities surrounding mode 4, it is not surprising that all initiatives to facilitate labour mobility tend to be accompanied by a range of moderating measures. These measures are designed to address genuine concerns about the impact of temporary foreign labour on the domestic labour market and on permanent immigration, and fall into two main categories explored below:

- ways to reconcile the permanency of GATS commitments with the cyclical nature of labour markets (e.g., possible emergency safeguards);
- and ways to satisfy legitimate concerns that temporary workers do not become illegal immigrants (e.g., use of standing bonds between the applicant company and the receiving country).

i) Safeguards

127. There are two different contexts for, and types of, safeguards that have arisen in discussion of mode 4. The first is the negotiation on the question of an emergency safeguard for trade in services under GATS Article X. The second is a "safeguard" (or, more accurately, sanction) specifically developed in the context of proposed GATS visas. It should be noted that while the first safeguard (per GATS Article X) is designed to deal with the consequences of legitimate or legal market entry, the second is designed to address the situation of illegitimate use, or abuse, of a possible GATS visa.

(a) Negotiations under GATS Article X

128. GATS Article X mandates negotiations on the question of emergency safeguard measures based on the principle of non-discrimination (Article X.1). These negotiations have been underway in the WTO Working Party on GATS Rules since 1995, and have a deadline of March 2002.

129. While the possible application of a safeguard to mode 3 has been the subject of detailed discussion in the Working Party (in particular in the context of the definition of domestic industry and the issue of acquired rights), there has been less detailed exploration of the operation of a safeguard on other modes, including mode 4. However, there are a number of issues which arise in the context of the possible application of a safeguard to mode 4. While a number of these relate to the application of a safeguard more generally, others are more particular to mode 4. Some of these issues are set out below.

Impact of a safeguard

130. In practical terms, it may be easier to apply a safeguard to mode 4 trade than other modes of trade in services as it is arguably the most analogous to goods in terms of the ability to impose and enforce quotas at the border. Further, while the Working Party has considered the possible chill effect on

investment of a safeguard applied to mode 3, it has also been argued⁴⁶ that the forcible expulsion of visa-holders under mode 4 could have a similar chill effect on would be investors and traders. Given that mode 4 can involve individuals moving internationally for a defined period - a decision which can impact upon many aspects of their lives - additional uncertainty may result in a chill effect.

Criteria for determining increase in supply and injury

131. Three elements can be seen as necessary for a safeguard: (i) demonstration of an increase in trade in services; (ii) demonstration of injury or threat thereof for the domestic industry; and (iii) establishment of a causal link between (i) and (ii). For each of these elements, issues arise for mode 4.

132. Some indicators which have been proposed to assess whether there has been an increase in the supply of a service by suppliers of another Member relevant to mode 4 include: statistics provided by immigration authorities; statistics on employment in the sector or sub-sector concerns and statistics on cross-border movement of persons. However, as described in Part II, mode 4 workers cannot be readily separated from other forms of temporary migration or from the broader labour market and thus these statistics may not provide a reliable indicator of whether there has been an increase in mode 4 trade. Present data are generally not sufficient to enable authorities to identify with sufficient accuracy the sector and number of temporary entry service providers. The creation of a mechanism such as a GATS visa may allow for the easier identification of mode 4 entrants, but a GATS visa may not cover all mode 4 suppliers.

133. It could also be difficult to ensure that any safeguard applied was actually aimed at addressing the problem causing the injury, and indeed, to determine the nature of the claimed injury itself. While these are general problems for safeguards in services, arising for all modes of supply, it is worth considering how one could assess "injury" related to mode 4. One suggested criterion, the level of unemployment amongst nationals, assumes that temporary foreign workers under mode 4 are substitutes for permanent employment of nationals and this is neither the purpose of mode 4 nor demonstrated to be its effect. Changes in working conditions and pay of nationals are also suggested as possible indicators of injuries associated with increased mode 4 entry, but establishing causation may again be difficult. While there is considerable research on the impact of permanent migration on the labour market, to date there has been little research on the effects of temporary foreign workers as defined by GATS mode 4. In any event, research to identify injury would need to address effects at the sectoral level, not across the economy generally, as safeguards are generally seen as instruments to address injuries that have occurred in particular service sectors.

134. A related issue may also be the definition, or exact coverage of mode 4. If it is assumed that foreign employees of local companies are not covered by mode 4 (unless they are working on a contract basis as individual service suppliers - see paragraph 37), then the application of a safeguard to mode 4 would not capture this group. The question could then arise as to whether this would be in keeping with the purpose of invoking the safeguard; i.e., to limit foreign workers in the sector. Such workers would also not be affected by the application of a safeguard to mode 3, as local companies would not be affected by a mode 3 safeguard.

Linkages between mode 4 and other modes

⁴⁶ See WTO Working Party on GATS Rules "Communication from the United States: Desirability of a Safeguard Mechanism for Services: Promoting Liberalisation of Trade in Services", S/WPGR/W/37, dated 2 October 2001.

135. While the GATS divides services into four modes of supply, real world transactions may involve several modes of supply. As noted in Part II, mode 4 is often closely linked to other modes, in particular mode 3 (although it can also be linked to mode 1 - e.g., an architect provides building designs via mode 1 but may also travel to the country to supervise construction per mode 4). Such linkages might be worth considering in the context of the need to target the safeguard remedy as closely as possible to the source of the injury - including the question of whether a safeguard should cover all modes or only the mode where the injury was found.

Special and differential treatment and "rules of origin"

136. There has also been some discussion about whether any safeguard mechanism should include special and differential treatment for developing and least developed countries. One proposal⁴⁷ would prohibit the imposition of a safeguard against the temporary entry of natural persons from developing countries if they accounted for less than a certain percentage of the labour market. However, it may be difficult to determine whether a service supplier is from a developing country - as noted in Part II, available statistics do not provide sufficient detail on nationality and sector of employment. Further, "rules of origin" questions may arise. For example, would an intra-corporate transferee of an Australian company being sent to that company's operations in the United Kingdom, who was herself an Indian national, be counted as an Australian or an Indian for the purpose of the application of any safeguard? GATS commitments can suggest that the service supplier is in fact the company (providing the service via movement of natural persons), in which case it is the nationality of the company that would be relevant.

137. If so, two further issues arise. Firstly, would a safeguard disproportionately target individual service suppliers? While intra-corporate transferees would be attributed to the nationality of their company for the purposes of a safeguard, individual service suppliers would not. Individual service suppliers could thus be most affected by any safeguard applied to mode 4. Developing countries may argue that this would tend to disproportionately target their service suppliers. Secondly, as with the issue of the application of a safeguard to mode 3 more broadly, questions could arise about the nationality of the foreign service supplier taking the form of a locally incorporated company - i.e., could the Australian company be considered a domestic (UK) not foreign (Australian), supplier in the UK market for the purposes of a safeguard? If so, would the foreign employees of this company be excluded from calculations of the percentage of nationals from developing countries for the purposes of applying special and differential treatment?

Safeguards and ENTs

138. While some of the problems of calculating increase in the supply of a service for mode 4 have been outlined above, it could be argued that if Members can assess the level of service supply sufficiently to determine whether to allow foreign entry for the purposes of an ENT, they must be able to use the same calculations for the purpose of a safeguard. However, many Members have complained that ENTs currently provide very wide discretion for authorities to make determinations on the basis of subjective criteria. It may not be desirable to replicate this situation for safeguards, bearing in mind that safeguards also require the calculation of injury (or the threat thereof) and causation.

139. Indeed, it could be argued that ENTs, while technically a market access barrier (per GATS Article XVI), actually already operate as a form of safeguard widely used in relation to mode 4. ENTs

⁴⁷ See WTO Working Party on GATS Rules, "Communication from ASEAN: Concept Paper: Elements of a Possible Agreed Draft of Rules on Emergency Safeguard Measures for Trade in Services (GATS Article X)" S/WPGR/W/30, dated 14 March 2000.

allow for the supply of foreign labour to be restricted in cases where it is determined not to be necessary to supplement existing domestic supply. It could be argued that, in the absence of a development of a services safeguard, there could be a proliferation of ENTs in mode 4. In this case, the advantage of developing a safeguard may be to ensure a more restrictive application than currently provided for by ENTs. However, given the difficulties with developing and applying safeguards, and the existing level of ENTs, it may be preferable to focus on achieving greater transparency for the criteria and operation for ENTs, as well as a reduction in their use.

(b) "Safeguards"/ Sanctions under a GATS visa

140. Safeguards have also been proposed to prevent the abuse of GATS visas. One proposal (see Box 6) is that, where a WTO Member can establish that a pattern of practice among a number of companies of a WTO Member has led to a widespread abuse of the GATS permit, recognition of the permit may be suspended by any WTO Member country for not more than one year. It should be noted that, while this has been termed a "safeguard", it is not technically a safeguard as it not a measure designed to address an unforeseen injury or threat of injury to domestic injury resulting from an increase in legitimate market entry. Rather, it is the suspension of a benefit on the grounds of misuse/abuse of that benefit and thus might more properly be termed a "sanction".

141. In any event, such a "sanction" for GATS visas is not without its difficulties. Issues include:

- how to establish the pattern of abuse;
- how to hold governments responsible for the actions of companies (although a precedent exists with the WTO Agreement on Pre-shipment Inspection);
- the problem of punishing all companies from a country in response to the actions of a few (although this would obviously create political pressure for the government to rein in the offending companies);
- whether such a sanction would apply to all GATS visas issued by the offending Member or only those for the sectors where abuse was discovered;

142. Further, it may also be difficult in some circumstances to attribute nationality to the companies involved - if transgressions are committed by the overseas branches of a company, does the sanction nonetheless fall in the country of its head office or place of incorporation (e.g., the Cayman Islands?). Questions might also arise about the nationality of foreign service suppliers taking the form of locally incorporated companies. Should locally incorporated branches of foreign companies be treated as foreign companies for the purposes of a GATS visa sanction, it may also be questioned whether this would be consistent with a possible decision to treat them as domestic industry for the purposes of any possible safeguard developed pursuant to GATS Article X.

(ii) Bonds

143. Another way to satisfy legitimate concerns that temporary workers do not become illegal immigrants, may be the use, in the case of intra-corporate transferees, of standing bonds between the applicant company and the receiving country (via the embassy). Industry has already made several proposals in this regard. The European Services Forum [2000] suggests that, for intra-corporate transferees, to minimise potential abuse, expedited GATS Permits could be backed up by a standing bond

made between the applicant business on behalf of their transferred employees and the local Embassy or consulate of the recipient country. The European Services Forum's draft model schedule [2001] also includes provisions for a bond of Euros250 000 with the local embassy of the GATS country to which access is being sought.

144. While such bonds may be useful in facilitating access for intra-corporate transferees, they are essentially only available to this category of mode 4 worker. Individual service suppliers with a contract to supply to a local company may be included, if that local company was prepared to pay the bond, although this would of course add to the costs and decrease the attractiveness of hiring a foreign service supplier. Even where individuals could afford the bond, governments may be reluctant to accept them from individual service suppliers if there was a risk that such bonds could become de facto payments for permanent entry. Companies hiring a foreign service supplier on contract may also be reluctant to assume the responsibility of paying the bond, or the necessity of lodging the bond could serve as a financial disincentive to hiring foreign service suppliers. However, this disincentive might be offset to some extent where such bonds were the "price" for streamlined entry in terms of other requirements. Bonds will be most useful where mode 4 access is linked to mode 3 (arguably where it is least problematic in any event).

PART V: CONCLUSION

145. Proposals related to mode 4 tabled to date in the current services negotiations by both developed and developing countries include many of the issues discussed above. Some specifically relate to mode 4, others raise mode 4 in the context of sectoral proposals⁴⁸. Some propose ways to expand existing market access, either through the development of sectoral commitments or by expanding either the access available to one group (e.g., intra-corporate transferees) or the categories of personnel which benefit from favourable mode 4 access. Other proposals seek to improve the level of access by removing obstacles to the utilisation of existing commitments, such as lack of information or cumbersome and inappropriate administrative procedures. Some make links to the development of broader regulatory disciplines under GATS Article VI.4, or raise specific barriers such as ENTs or recognition of qualifications. Table 5 provides an initial summary of the issues raised in the proposals tabled to date (note that the table indicates only whether issues were raised; i.e., a "NO" does not indicate a lack of support, but simply that the issue was not included in a particular proposal).

146. Mode 4 presents particular challenges in terms of the liberalisation of trade in services, not least because it deals directly with global movements of human beings, with all the complexities - economic, political and social - that entails. Labour movement - even of the temporary, limited variety contemplated by GATS mode 4 - raises a number of sensitivities and the debate takes place against the backdrop of ever-changing economic, demographic and technological realities. There are a range of choices available to WTO Members to improve the implementation of mode 4 commitments and the commitments themselves, ranging from practical steps to make existing procedures more transparent to more ambitious proposals to create procedures, and commitments more tailored to the trade requirements of mode 4. The choice of where to come out along this continuum will require balancing a range of complex factors and close co-operation with a range of stake-holders at both the national and international level.

48. As of 26 October 2001, 105 proposals had been tabled by 42 WTO Members. 6 proposals are directly concerned with mode 4, but mode 4 is also raised in a number of general or sectoral proposals (see Table 5).

Table 5. Summary of GATS negotiating proposals related to mode 4

WTO Member	Issues raised in proposals									
	<i>Mode 4 or sectoral proposal</i>	<i>Common definitions</i>	<i>Horizontal vs sectoral commitments</i>	<i>Specify intra-corporate transferees</i>	<i>Other categories (not linked mode 3, non-professional)</i>	<i>Transparency</i>	<i>Visa procedures</i>	<i>ENTs</i>	<i>Recognition</i>	<i>Art. VI.4</i>
Australia	Sectoral (architecture, legal, accountancy, construction and related engineering, financial)	NO	NO	YES	NO	YES	YES	NO	YES	YES
Brazil	Sectoral (construction and related)	NO	NO	NO	NO	NO	NO	NO	YES	YES
Canada	Mode 4 and sectoral (computer, business, professional, SMEs, oil and gas)	NO	YES (improve both)	NO	YES (independent or contract suppliers)	YES	YES	NO	NO	YES
Chile	Mode 4 and sectoral (professional, construction engineering, distribution) and	NO	YES		YES	NO	NO	YES	YES	YES
Colombia	Mode 4 and sectoral (professional)	NO	YES (sectoral)	NO	NO	NO	NO	NO	YES	YES
EU	Mode 4	NO	YES (focus on horizontal)	NO	NO	YES	YES	YES	NO	NO
India	Mode 4	YES	YES (both)	NO	YES (independent suppliers; middle/lower level personnel)	YES	YES (GATS visa)	YES	YES	NO

contd..

Table 5. Summary of GATS negotiating proposals related to mode 4

WTO Member	Issues raised in proposals									
	Mode 4 and sectoral (tourism, transport)	NO	YES (focus horizontal, also sectoral)	YES	NO	YES	YES	YES	NO	NO
Japan	Mode 4 and sectoral (tourism, transport)	NO	YES (focus horizontal, also sectoral)	YES	NO	YES	YES	YES	NO	NO
Kenya	General negotiating proposal	NO	YES (selected sectors and occupations)	NO	NO	NO	NO	YES	YES	YES
Mercosur	Sectoral (computer and related)	NO	NO	NO	NO	NO	NO	NO	YES	YES
New Zealand	Sectoral (sporting)	NO	NO	NO	NO	YES	YES	YES	YES	YES
Switzerland	Sectoral (professional, environmental, tourism)	NO	NO	NO	NO	NO	NO	NO	NO	NO
United States	Mode 4	NO	NO	NO	NO	YES	YES	NO	NO	YES

ANNEX I: REGIONAL TRADE AGREEMENTS

North American Free Trade Agreement (NAFTA)⁴⁹

Chapter 16 of NAFTA deals with the Temporary Entry for Business Persons and facilitates movement by eliminating requirements for job validation, labour certification or other forms of labour market tests. Temporary entry is not defined positively, but only negatively "without the intent to establish permanent residence". NAFTA provides for entry for four categories of workers, basically limited to those in higher skills categories: business visitors; traders and investors; intra-company transferees; and professionals.⁵⁰ Detailed definitions (in particular for business visitors and professionals) are provided in the agreement, but basically the categories are:

- *Business visitors* engaged in international business activities for the purpose of conducting activities related to research and design, growth and manufacture and production, marketing, sales, distribution, after-sales service and other general services;
- *Traders and investors* who conduct substantial trade in goods and services between their own country and the potential host country, or who commit a substantial amount of capital to that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;
- *Intra-company transferees* employed by a company in a managerial or executive capacity or one that involves specialised knowledge, and who are transferred within that company to another country. Intra-corporate transferees should have been with the company for at least one year out of the previous three years.
- *Certain categories of professionals*, defined by minimum education requirements (e.g., a Baccalaureate or Licenciatura degree) or who possess alternative credentials and who seek to engage in business activities at a professional level. Such professionals may also perform training functions related to the profession, such as conducting seminars.

While traders and investors, intra-company transferees and professionals are exempt from labour certification or labour market tests, they still require a work permit. Business visitors are exempt from both labour certification and work permit requirements, on the basis that part of the qualifying criteria for business visitors is that they do not enter the labour market and do not receive remuneration for services provided in a Member country. However, all entry is subject to the candidate meeting existing immigration measures applicable to temporary entry. Entry can be refused if it may adversely affect

49 . See Sauvé, 1995.

50 . Note that entry is limited to citizens of NAFTA countries (the United States, Canada and Mexico). This means that, for example, a European national employed by a firm established in a NAFTA country does not fall under NAFTA temporary entry provisions. Permanent residents of NAFTA countries are also excluded.

settlement of a labour dispute in progress at the intended place of employment; or the employment of any person who is involved in such a dispute. In these cases, reasons for refusal are provided to the candidate and party concerned in writing. Fees for processing applications are limited to the approximate cost of services rendered.

Additionally, a quota of 5 500 applies to the number of Mexican professionals who can avail themselves of Chapter 16 privileges for the purposes of entry to the United States. This quota is in addition to the world wide quota of 65 000 professionals granted temporary entry to the United States each year and is due to expire in 2004. Canada does not apply any quotas on Mexican professionals under NAFTA.

NAFTA also includes a number of transparency requirements. Parties are required to prepare and publish consolidated information explaining requirements for temporary entry within one year of NAFTA's entry into force. In the interests of future negotiations, parties are also required to undertake data collection on the granting of temporary entry, including by occupation, profession or activity.

NAFTA also established a Working Group on Temporary Entry to implement, administer and modify Chapter 16. Issues which the group has considered include: the need for faster procedures for updating the list of professionals covered by Chapter 16; the possibility of waiving labour certification requirements for accompanying spouses of traders and investors, intra-company transferees and professionals who are entering for one year or more; and the establishment of an additional category to cover business persons who do not fall under the existing categories but whose movement is essential to the liberalisation benefits granted under the Agreement. (An example of this last category is the need to liberalise movement of pilots and aircraft repair engineers to realise the full benefits of liberalisation of speciality air services such as aerial mapping, surveying, construction and fire-fighting).

Agreement on the European Economic Area (EEA)

In 1992 the Agreement on the European Economic Area (EEA) was signed between the European Union and Austria, Finland, Norway, Switzerland, Sweden, Iceland and Liechtenstein (however, Austria, Finland and Sweden subsequently became members of the European Union; and Switzerland subsequently withdrew from the EEA). The Agreement goes beyond temporary entry for service providers, allowing nationals of these countries to enter any Member State of the EU as workers, self-employed, service providers or recipients. However, EEA nationals are supposed to have sufficient funds to support themselves without recourse to public funds.

There are no restrictions on the freedom to provide services, with services defined as activities provided for remuneration not governed by the provisions relating to freedom of movement of goods, capital and persons, and including activities of an industrial and commercial character and activities of craftsmen and professionals. Temporary service providers are entitled to national treatment, but a general exception exists for activities connected with the exercise of official authority. Special conditions are also set out for transport (covered by Chapter 6 of the EEA Agreement) and financial, audio-visual and telecommunications services (covered by Annexes).

The EEA Agreement also covers the movement of workers more broadly and provides for the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. It enables workers to accept offers of employment; to stay or move freely within EU and EFTA states for the purpose of employment and to remain in the territory of EU and EFTA states after having been employed there⁵¹. However, employment in the public service is excluded. Rights of

51 . European Free Trade Association (EFTA) states are Iceland, Liechtenstein, Norway and Switzerland. However, note that Switzerland is not a member of the EEA.

establishment are also guaranteed, including the right to take up and pursue activities as self-employed persons or to take up and manage companies or firms. Exceptions are provided for the exercise of official authority and for special treatment for foreign nationals on grounds of public policy, public security or public health.

Europe Agreements⁵²

The Europe Agreements are those agreements signed between the European Community and the Central and East European countries (CEECs), the Baltic States, Slovenia and some Balkan countries (e.g., Croatia and the Former Yugoslav Republic of Macedonia). All include provisions on the movement of persons. The Agreements also reference and supersedes previous bilateral labour agreements between some European Union Member States - in particular Germany - and CEECs).

The Agreements provide for the parties to take the necessary steps to allow progressively the supply of services by nationals of, or companies established in, the parties, taking into account the development of the services sectors in the parties. They allow for the temporary entry of natural persons providing a service or who are employed by a service provider as key personnel. Key personnel are defined as senior employees of an organisation who primarily direct management of the organisation; and persons who possess high or uncommon qualifications referring to a type of work or trade requiring technical knowledge, knowledge essential to the organisation's service, research, equipment, techniques or management. These employees must have been employed by the organisation concerned for at least one year prior and must be nationals of the country where they work. These provisions also apply to natural persons who are representatives of a Community or CEEC company or national who are seeking temporary entry for the purpose of negotiating for the sale of services of entering into agreements to sell services (provided that these representatives are not engaged in direct sales to the public or supplying services themselves). All these provisions are subject to a horizontal transition period in the Agreements of a maximum of ten years.

General exceptions can apply for limitations justified on grounds of public policy, public security or public health, and for activities connected (even occasionally) with the exercise of official authority. Additionally, sectoral exclusions can apply to the above arrangement (in the case of Poland, differing conditions are specified with regard to transport services). General provisions also ensure that parties do not apply their relevant laws and regulations in such a way as to nullify or impair the benefits accruing to the other Party; or that (pending the outcome of the Uruguay Round) they did not grant the other Party treatment less favourable than that accorded under the provisions of the (then future) GATS Agreement.

There is no general freedom of movement for workers; however, rights of establishment (including for natural persons) are extended without discrimination. This includes: the right for CEEC nationals as self-employed persons to enter any Member State to set up and operate business on a self-employed basis. Companies may also establish in the EU and, if they can establish a real and continuous link with their home country, can send key personnel to a Member State on a long -term basis to carry out activities. Again, sectoral exclusions exist to this right and vary between countries and general exceptions (see above) also apply.

52 . See Garnier, 2001.

Asia Pacific Economic Co-operation Forum (APEC)⁵³

In the APEC Action Agenda adopted in Osaka in November 1995, APEC leaders agreed to enhance the mobility of business people engaged in the trade and investment in the region. This had four main components: exchanging information on regulatory regimes; streamlining the processing of short-term business visitor visas and procedures for temporary residency⁵⁴ of business people; and maintaining a dialogue on these issues with the business community. Australia is Convenor on business mobility and an extensive work program is underway, of which the focus is the APEC Business Travel Card (see below).

APEC economies have also agreed in principle to improve service standards for processing applications for temporary residence permits for intra-corporate transferees who are executives, managers and specialists (self-employment is excluded). Guideline definitions of these categories have been developed: an executive primarily directs the management of the organisation and exercises wide latitude in decision-making; managers direct the organisation or a department of the organisation; and specialists possess knowledge at an advanced level of expertise of the organisations product, customer services, research, equipment, techniques or management. As with the Europe Agreements, these individuals must have been continuously employed in one of these capacities for one year within the 3 preceding years. The period of temporary entry for intra-corporate transferees varies between economies but is usually up to 2 years. Economies are free to maintain existing visa requirements for temporary residents (such as mandatory labour market tests), although some economies are acting individually to expand visa waiver programs.

APEC has also undertaken work on improving the transparency of existing regimes. The APEC Business Travel Handbook, which is available on the APEC web-site (www.apecsec.org.sg), is a quick reference guide to the visa and entry requirements for APEC member economies. It lists the basic eligibility criteria and procedures for applying for visas and the terms and conditions that apply to business travellers. For each economy, information is provided for both short-term business visits and temporary business residence. For each of these, information is provided on: permit requirements; categories of permits; documentation required; method of lodgement; processing time; length and validity of stay; application fee; possibility and conditions for extensions (including availability of multiple entry visas); rules regarding accompanying dependants; and review and/or appeal procedures. Contact details for embassies, consulates and other visa-issuing agencies are also provided. Information is provided by the member economies themselves and it is also their responsibility to ensure that the information is up to date.

Given the membership of APEC, the work program has also involved a technical co-operation program to help members implement more advanced border management techniques. Programs to date, organised by Australia, the United States, Canada and Hong Kong China, have focused on raising members' capacity to detect document fraud and necessary standards for transparent and open immigration systems.

Caribbean Community (CARICOM)⁵⁵

Protocol II: Establishment, Services and Capital, signed in 1998 and provisionally applicable to CARICOM member states, greatly increased the scope of members' commitments related to the free

53 . APEC member economies are: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States and Viet Nam.

54 . Note that the term "temporary residency" used in APEC is equivalent to "temporary entry" under GATS or NAFTA.

55 . See Coke Hamilton, 2000.

movement and provision of services, the establishment of enterprises and the free movement of capital and skilled labour⁵⁶. In particular, the protocol provides for:

- Free movement of university graduates, other professionals and skilled persons and occupations as follows: graduates of universities (several regional universities are named, but others are also included); media workers; sports persons; musicians and artists; and workers in the entertainment and tourism industries.
- Freedom of travel and exercise of a profession: elimination of passport requirements within the region, facilitation of entry at immigration points, elimination of work permit requirements for CARICOM nationals.

The agreement also contains far-reaching supporting measures, including: the harmonisation and transferability of social security benefits; mechanisms for certifying and establishing equivalency of degrees; completion of a skills register; co-ordination of social policy; and the development and promotion of a public education program on the free movement policy. The Protocol also provides for national treatment (although specific reservations can be made) and contains general exceptions (along the lines of GATS) excluding activities involving the exercise of governmental authority and limitations on rights under the treaty taken to protect public morals, maintain public order and safety, protect human, animal or plant life, or to secure compliance with the laws of a member states, or to protect national security. There is currently no MFN provision.

To date, 11 members have enacted legislation on the free movement of university graduates within the region, and progress on the free movement of labour has been solid, although more remains to be undertaken. In aiming for a single market, CARICOM's agreement on free movement of persons is the most advanced in the region. While all regional FTAs in Latin America include mode 4, the extent and scope of coverage varies - for example, under MERCOSUR, during a 10-year transition period, movement of natural persons is dependent (as in the GATS) on specific commitments made by Parties to the Agreement. The Andean Community agreement requests members to facilitate the free movement and temporary presence of natural or physical persons for the provision of services, however, no specific provisions have been developed [Stephenson, 2001].

Special Travel Documentation Arrangements Under NAFTA and APEC

For professionals, "Trade NAFTA" (TN) visa are available to citizens of Canada or Mexico for entry to the United States provided that: the profession is on the NAFTA Chapter 16 list; the candidate meets the specific criteria for that profession (typically a university degree in a relevant field of study); the prospective position requires someone in that capacity; and the candidate is going to work for a United States employer.⁵⁷ TN status lasts for one year and is renewable. However, the requirements for entry to the US differ between Mexican and Canadian nationals. Canadians do not require a visa or prior approval,

56 . CARICOM members are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Republic of Suriname, and Trinidad and Tobago the Bahamas does not participate in the common market and Haiti is not yet a full member.

57 . H-1B visas are also available for professionals entering the United States. Some main differences between H-1B and TN visas include: H-1B visas include requirements to show that temporary hires will not hurt US workers; TNs are granted for one year, but renewals are unlimited, whereas H-1B visas have a 3-year duration with one renewal (up to 6 years). Similar conditions to TNs are applied to traders and investors and intra-company transferees under E1/E2 and L1 visas respectively. See Globerman, 2000.

but can receive TN status at the port of entry. The candidate must have a letter from a US employer offering a job, or requesting an intra-company transfer, with a job description. For Mexicans, the employer must file a labour condition application (I-29 Petition for Non-Immigrant Workers), then the candidate must apply for a visa at the US Embassy in Mexico.

Anecdotal evidence suggests that industry experience with TN visas has been positive, with evidence of difficulties confined to some confusion amongst some border officials as to how the TN operates and the need for the NAFTA professions list to be updated (but the difficulty of doing so).

The APEC Business Travel Card offers accredited business travellers visa-free travel and expedited airport processing when visiting participating economies. After an initial pilot, the scheme was made permanent in March 1999. Current participants are: Australia, Brunei Darussalam, Chile, Chinese Taipei, Hong Kong China, Korea, Malaysia, New Zealand, Peru, the Philippines and Thailand.

The scheme allows considerable flexibility for individual economies. Its Operating Framework is not binding and member economies commit to implement them on a best endeavours basis. Each economy undertakes a pre-clearance of applicants (which can include formal sponsorship by a business organisation to confirm that the person is a genuine business traveller, as each economy is free to modify the application form to meet their own requirements). Once home economy authorities have given clearance, details of the candidate are sent to all participating economies, which must give an answer within 2 weeks. Economies can refuse clearance for an individual without providing reasons; however, this will only restrict travel to that particular economy and does not function as a veto. Following responses from other economies, the card is issued by the home economy authorities (who also have the sole right to cancel the card). Fees can be charged for issuance of the card and can vary between participating economies.

The card is valid for three years from the date of issue and provides: multiple short-term business entries; stays of two or three months on each arrival; and access to special immigration processing counters on arrival and departure. The cards are the size of a credit card, are manually or machine-readable and must contain the signature and photograph of the cardholder, as well as the list of economies for which entry has been approved. Cardholders are still required to present their passports. Separate applications for visas and work permits are not required. Additionally, all economies retain the right to refuse entry to cardholders at the border.

Some 3 400 cards have been issued to date, with initial assessments indicating that the scheme is working effectively, with strong support from the business community and only a small percentage of applicants refused. There is no limitation on the number of cards that can be issued.

The scheme is open to citizens of APEC economies (or permanent residents of Chinese Taipei and Hong Kong China), who hold a valid passport (or equivalent for Chinese Taipei and Hong Kong China), who have never been convicted of a criminal offence and who are bona fide business persons who may need to travel frequently on short-term visits within the APEC region to fulfil business commitments. This does not include the business person's spouse and children; persons who wish to engage in paid employment or working holidays; or professional athletes, news correspondents, entertainers, musicians, artists or persons engaged in similar occupations. It is generally agreed amongst participating economies that facilitating entry of key business people should not provide an avenue for the recruitment of unskilled or semi-skilled labour.

ANNEX II: FIGURES ON THE MOBILITY AND EMPLOYMENT OF FOREIGN WORKERS

Measuring Human Resources in Science and Technology (HRST)⁵⁸.

OECD work on measuring HRST in European Union countries has drawn on the European Labour Force Surveys, which allow for comparisons between countries as relatively standard concepts, categories and procedures are used. These statistics are based on occupation, using ISCO-88 groupings - Major Group 1 (legislators, senior officials and managers etc), Major Groups 2 and 3 (professionals and associate professionals) and Major Groups 4 to 9 (which includes all other occupations). (See Table A1). However, several important caveats apply to these statistics for GATS purposes:

- The statistics include some, but not all, temporary service suppliers defined under mode 4 of the GATS. They also include workers who have entered the labour market, as well as those working for domestic companies as employees and not on a contract basis. The statistics are not confined to services sectors (although it should be noted that persons in sectors classified as goods can also provide services).
- The statistics include only those workers who satisfy a residency criterion (i.e., usually who have been in the country for over 12 months) and who live in private households and thus exclude many short-term movements under the GATS.

Bearing in mind these issues of coverage, Table A1 indicates that developing country entrants are predominantly in the lower skilled ISCO-88 categories, with the ratio of low to high skilled developing country entrants greater than the same ratio for other European Union countries. There are roughly twice as many entrants from other developed countries (or countries in transition) than from developing countries. Overall, foreign entrants constitute a small percentage in all occupation groups compared to nationals (note also that the sample size of the survey will not pick up these foreign workers who constitute a statistically small proportion of the category).

58. It was understood that "science and technology" should be interpreted to cover a wide range of activities including not only the physical and life sciences and engineering etc, but also a wide range of activities in the social sciences, health, education and business. See OECD, 2002.

Table A1. Total Employment in 14 EU Countries in 1998 classified by Nationality and Occupational

Occupation	Austria	Belgium	Germany	Denmark	Spain	Finland	France	Greece	Italy	Lux	Netherlands	Portugal	Sweden	UK	Total
Nationals															
ISCO 1	267	381	1879	178	1103	178	1652	437	665	5	838	335	190	3851	11960
ISCO 2&3	822	1070	11193	795	2649	723	6017	759	4778	39	2493	628	1346	6139	39450
ISCO 4-9	2194	2132	19640	1639	9272	1262	13590	2626	14721	58	3834	3741	2261	15849	94267
<i>Total</i>	3282	3583	32712	2612	13024	2163	21260	3822	20165	102	7165	4703	3797	25839	145677
Other EU and Developed Countries															
ISCO 1	12	38	120	-4	13	-	47	-3	-6	4	15	-3	4	136	408
ISCO 2&3	49	51	366	19	20	-4	108	6	28	19	59	6	42	225	1002
ISCO 4-9	208	137	1376	27	34	7	520	122	66	43	69	13	86	387	3143
<i>Total</i>	269	226	1862	51	66	12	675	132	99	67	143	23	132	748	4553
Developing Countries															
ISCO 1	-	5	37	-	5	-	35	-	-	-	-6	-2	-	32	126
ISCO 2&3	4	5	95	-	6	-	54	-	-7	-	-8	-4	-	65	254
ISCO 4-9	70	38	830	14	59	3	446	12	85	2	78	32	14	199	1881
<i>Total</i>	75	48	963	15	70	4	534	13	94	2	92	38	17	296	2261
All Nationalities															
ISCO 1	280	424	2037	183	1120	179	1735	441	672	9	860	340	195	4019	12493
ISCO 2&3	874	1126	11654	815	2675	728	6179	766	4813	58	2561	639	1390	6429	40706
ISCO 4-9	2472	2307	21846	1680	9365	1273	14555	2760	14872	103	3980	3786	2361	16435	99291
<i>Total</i>	3626	3857	35537	2678	13161	2179	22469	3967	20357	171	7401	4764	3946	26882	152490

Source : EU Labour Force Survey. Special Tabulations provided by EUROSTAT.

Note: Figures are in thousands. Nationals of other developed countries includes: EEA, Central and Eastern Europe, other European countries (except Turkey), USA, Canada, Japan, Australia and New Zealand. This categorisation is used in the annual series of Eurostat Reports on Migration Statistics.

Source: OECD, 2002.

Table A2 indicates that for all fourteen countries studied, the overall non-national share of employment was 4.5% in 1998 (see totals). For managers and executives, the figure was 4.3%, with 3.1% for professionals and associate professionals and 5% in all other occupations.

Table A2. Proportions of Non-Nationals in Employment in Different Occupations in EU Countries in

	Austria	Belgium	Germany	Denmark	Spain	Finland	France	Greece	Italy	Lux	Netherlands	Portugal	Sweden	UK	Total
ISCO 1	5	10.1	7.7	2.7	1.5	0.4	4.7	0.9	1.1	44.7	2.5	1.4	2.3	4.2	4.3
ISCO 2&3	6	5	4	2.4	1	0.6	2.6	0.9	0.7	33.4	2.6	1.7	3.2	4.5	3.1
ISCO 4-9	11.3	7.6	10.1	2.5	1	0.8	6.6	4.8	1	43.6	3.7	1.2	4.3	3.6	5.1
<i>Totals</i>	9.5	7.1	7.9	2.5	1	0.7	5.4	3.7	0.9	40.2	3.2	1.3	3.8	3.9	4.5

(Proportions in percent of the Non-Nationals)

Source: OECD, 2002.

These figures were then used to attempt to generate a measurement of inflows of HRST. It was not considered useful to provide this for each individual country as some of the country specific estimates were tentative. The total migration inflow into employment represented about 0.5% of the total number of persons at work in the EU, with the corresponding proportions for the three ISCO-88 occupational groups not varying much from this figure (see Table A3). It should be noted that these represent rounded up figures for small numbers of people and that inflow figures may include nationals of the countries involved returning from abroad.

Table A3. Estimated Employment Stocks and Gross Migratory Inflow for EU

Occupation	Total Employment 1998	Migratory Employment Inflow 1997	% Inward Migration
ISCO 1	12493	57	0.5
ISCO 2&3	40706	213	0.5
ISCO 4-9	99291	436	0.4
<i>Total</i>	152490	705	0.5

Note: Estimated figures for all EU countries are included in the calculations in Table 3.

Source: OECD, 2002.

Studies on Trends in International Migration

The OECD/SOPEMI [1998] explored policies and practices towards temporary employment of foreigners. "Temporary work" was defined as work which is not considered a preliminary step for foreign workers to settle permanently in the host country. Generally, this means that: the temporary worker has a fixed term contract (usually less than one year); the contract often specifies the occupation, employer and geographical area; and that the temporary worker must leave the country on expiration of the contract, may not seek other employment and is not entitled to family reunion. This definition generally corresponds closely to GATS mode 4 (although it will include seasonal workers in fields other than services).

However, the study, which is based on case studies of eight OECD Member countries (Australia, Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States) indicates a great diversity of practices with regard to foreign workers. There are large variations both between countries and categories of workers regarding conditions for admission and recruitment (including existence of quotas), duration of stay, renewability of permits, change of status, entitlement to family reunion (and whether family members are also entitled to work); and labour market/economic needs testing. Additionally, the administrative procedures vary between countries (e.g., whether workers require a work permit in addition to a visa, or a special category of employment visa). These differences render international comparisons difficult.

For each of the countries studied, temporary workers came predominantly from certain countries or regions. For example, half of the temporary residents in Australia were from APEC members, particularly the United States and Japan; in the Netherlands, temporary workers came primarily from the United States, Japan, the Philippines, China, Turkey and Morocco; and in Germany, nationals of Central and East

European countries predominated. Four main categories were considered: skilled and highly skilled workers; seasonal workers; trainees; and students. The findings for skilled and highly skilled workers are summarised below.

"Skilled and highly skilled workers" was not always precisely defined, with categories and sub-categories varying between the countries studied (e.g., independent executives, senior managers; specialised technicians; researchers, investors, physicians, business people and "keyworkers"/staff with specialised skills). Table A4 indicates that from the period 1992-1995, the share of skilled and highly skilled workers in the total of temporary worker flows grew in most of the countries studied. For the United States, skilled workers (not including intra-corporate transferees and treaty traders and investors) represented more than 80% of temporary workers; for Canada and the United Kingdom, the figure was close to 40%. For the Netherlands, Australia and France the figure ranged between 15 and 30%.

While this study targets groups more closely identified with mode 4, several caveats apply to these figures: data may not be comparable due to differences in definitions between countries; the definition of temporary worker may include workers with access to the labour market; data is not restricted to service sectors (although those working in areas classified as goods producing may still be providing services); and data drawn from work permit schemes are subject to limitations, such as the exclusion of workers from countries where permits are not required under the terms of a bilateral/regional agreement, possible inclusion of family members (Australia) and multiple authorisations for individuals (Canada).

Table A5 indicates the number of temporary workers for the same countries, plus Japan, Korea and Switzerland (but excluding the Netherlands) for 1992, and 1996-1998. It includes data on the number of entries of permanent workers by way of comparison. The temporary employment of foreigners appears to have become more widespread, with entries of temporary workers increasing significantly between 1996-1998 for Australia, Japan, the United Kingdom and the United States, but decreasing for France, Germany, Korea and Switzerland (Canada experienced a small increase). Again, caveats apply. Data may not be comparable due to differences in definitions between countries; the definition of temporary worker may include workers with access to the labour market (beyond the scope of GATS mode 4); and data may include accompanying persons or multiple entries by the same individual.

Table A4. Inflows of temporary skilled workers by main category in selected OECD countries, 1992-1996

	(thousands and percentages)				
	1992	1993	1994	1995	1996
Australia					
Skilled temporary resident programme ¹	14.6	14.9	14.2	14.3	15.4
% of total temporary workers ²	17.1	20.3	18.0	18.4	20.5
Canada ³					
Workers obliged to validate their job ⁴	66.4	52.0	43.4	42.2	..
Professionals ⁵	5.3	6.3	7.4	7.8	..
Reciprocal employment ^{5, 6}	5.6	5.3	4.4	5.0	..
Workers with significant benefits for Canada ⁵	4.6	4.6	5.4	5.0	..
Total for the above four categories of workers	81.8	68.1	60.6	59.9	..
% of total temporary workers	35.5	37.0	35.0	43.7	..
France					
Workers on secondment ⁷	0.9	0.9	0.6	0.8	0.8
Researchers ⁷	0.9	1.0	1.4	1.3	1.2
Total for the above two categories of workers	1.8	1.9	2.0	2.2	2.0
% of total temporary workers ⁸	5.0	5.6	6.5	7.3	6.7
Germany					
Workers employed under a contract for services ⁹	115.1	63.3	48.4	56.2	47.3
% of total temporary workers	..	25.2	23.1	22.1	17.3
Netherlands ¹⁰					
% of total temporary workers	1.9	1.8	2.0	1.5	..
	26.4	25.7	29.4	27.8	..
United-Kingdom					
Long-term permits ¹¹	12.7	12.5	13.4	15.5	16.9
% of total temporary workers	42.2	42.7	44.6	43.7	44.8
United States ¹²					
Professionals (visa H-1B)	110.2	92.8	105.9	117.6	144.5
North American Free Trade Agreement workers (visa TN) ¹³	12.5	16.6	19.8	23.9	27.0
Workers of distinguished abilities (visa O)	0.5	3.1	5.0	6.0	7.2
Total for the above three categories of workers	123.2	112.5	130.7	147.5	178.6
% of total temporary workers ¹⁴	70.1	61.7	62.0	66.8	70.2

Note: The categories of temporary workers differ from country to country. Data and percentages are therefore not fully comparable. The figures for total temporary workers refer to the total work or residence permits issued in Canada, the Netherlands, the United Kingdom and the United States, to the sum of temporary programmes in Australia (excluding students), to the total provisional work permits issued plus seasonal workers in France and to guestworkers, contract workers and seasonal workers in Germany.

1. Data refer to fiscal years (July to June of the given year) and include accompanying dependants.

2. As a per cent of temporary residents programmes (Skilled Employment, Social/Cultural and International Relations Programmes).

3. Data refer to the number of employment authorisations issued. Data may be overestimated because migrants can obtain several authorisations over the given year.

4. The list of jobs that can be validated excludes unskilled jobs, those restricted to Canadian citizens and those with a high rate of unemployment.

5. These workers are exempt from validation by an employment service of the Government. The authorisations are usually delivered for 9 months.

6. This category concerns professors and researchers admitted under bilateral agreements and some specialists.

7. Holders of a provisional work permit (APT).

8. As a per cent of total holders of a provisional work permit, students, trainees and seasonal workers.

9. Workers recruited under bilateral agreements usually for 2 years.

10. Figures include intra-company transferees and managers. Authorisations are usually granted for the duration of the contract with a maximum of three years.

11. Long-term permits (one year or more) are mainly approved for highly skilled and qualified workers.

12. Data refer to fiscal years (October to September of the given year). Data may be overestimated because they include multiple entries by the same person over the given year.

13. Figures include family members.

14. As a per cent of total temporary workers (excluding intracompany transferees – 140 460 in 1996 – and treaty traders/investors – 138 570 in 1996 including dependants).

Sources: Australia: Department of Immigration and Ethnic Affairs (DIEA); Canada: Citizenship and Immigration Canada; France: Office des migrations internationales, Annuaire des migrations 1996; Germany: Bundesanstalt für Arbeit; Netherlands: Centraal Bureau Arbeidsvoorziening, Rijswijk (Z-H); United Kingdom: Department of Employment; United States: United States Department of Justice, 1996 Statistical Yearbook of the Immigration and Naturalization Service. Source: OECD/SOPEMI, 1998.

Table A5. Entries of temporary workers in certain OECD countries by principal categories, 1992, 1996-1998

	Thousands					Thousands			
	1992	1996	1997	1998		1992	1996	1997	1998
Australia					Japan				
Skilled temporary resident programme (Offshore and onshore) ^a	14.6	31.7	31.7	37.3	Highly skilled workers	108.1	78.5	93.9	101.9
Working Holiday Makers (Offshore)	25.9	40.3	50.0	55.6	Trainees	..	45.5	49.6	49.8
Total	40.5	72.0	81.7	92.9	Total	..	124.1	143.5	151.7
	(40.3)	(20.0)	(19.7)	(26.0)					
Canada^b					Korea				
Total	..	60.0	62.3	65.1	Highly skilled workers	3.4	13.4	14.7	11.1
	(252.8)	(226.1)	(216.0)	(174.1)	Trainees	4.9	68.0	90.4	64.2
France					Total	8.3	81.4	105.0	75.4
Employees on secondment	0.9	0.8	1.0	1.2					
Researchers	0.9	1.2	1.1	1.0	Switzerland				
Other holders of an APT ^c	2.8	2.8	2.6	2.2	Seasonal workers	126.1	62.7	46.7	39.6
Seasonal workers	13.6	8.8	8.2	7.5	Trainees	1.6	0.7	0.7	0.7
Total	18.1	13.6	12.9	11.8	Total	127.8	63.4	47.4	40.3
	(42.3)	(11.5)	(11.0)	(10.3)		(39.7)	(24.5)	(25.4)	(26.8)
Germany					United Kingdom				
Workers employed under a contract for services	115.1	45.8	38.5	33.0	Highly skilled workers (long-term permits) ^d	12.7	19.1	22.0	25.0
Seasonal workers	212.4	220.9	226.0	201.6	Short term permit holders	14.0	17.0	20.4	23.5
Trainees	5.1	4.3	3.2	3.1	Working Holiday Makers	24.0	33.0	33.3	40.8
Total	332.6	272.5	271.2	237.6	Trainees	3.4	4.0	4.7	..
	(408.9)	(262.5)	(285.4)	(275.5)	Total	54.1	73.1	80.4	89.3
					United States^e				
					Highly skilled workers				
					Specialists (visa H-1B)	110.2	144.5	..	240.9
					Specialists (NAFTA, visa TN) ^f	12.5	27.0	..	59.1
					Workers of distinguished abilities (visa O)	0.5	7.2	..	12.2
					Seasonal workers (visa H-2A)	16.4	9.6	..	27.3
					Industrial trainees (visa H-3)	3.4	3.0	..	3.2
					Total	143.0	191.2	..	342.7
						(116.2)	(117.5)	(90.6)	(77.5)

Note: The figures in brackets indicate the number of entries of permanent workers.

a) The data cover the fiscal year (from July to June of the indicated year) and include accompanying persons. From 1996 on, the data are on and offshore.

b) Total of persons issued employment authorisations to work in Canada temporarily excluding persons issued employment authorisations on humanitarian grounds. Persons are shown in the year in which they received their first temporary permit.

c) Beneficiaries of provisional work permits (APT).

d) Long-term permits (one year and over) are mostly accorded to specialists and senior managers.

e) The data cover the fiscal year (October to September of the indicated year). A person is counted as many times as he enters the country over the course of the same year. The data may well therefore be over-estimates.

f) The figures include family members.

Sources: Australia: Department of Immigration and Ethnic Affairs (DIEA); Canada: Citizenship and Immigration Canada; France: Office des migrations internationales,

Annuaire des migrations 98; Germany: Bundesanstalt für Arbeit; Japan: Ministry of Justice; Korea: Ministry of Justice; Switzerland: Office fédéral des étrangers;

United Kingdom: Department of Employment; United States: United States Department of Justice *1998 Statistical Yearbook of Immigration and Naturalization Service*.

Source: OECD/SOPEMI, 2000.

Table A6 indicates that foreign workers are concentrated in the service sector, notably in construction, commerce, catering, education, health care, services to households and other services. In some countries they are also heavily represented in mining and manufacturing.

Table A6. Sectoral breakdown of foreign employment

% of total foreign employment, 1998-1999 average^a

	Agriculture and Fishing	Mining and Manufacturing	Construction	Wholesale, Retail and Accommodation	Health, Education and Social Services	Households	Public Administration and ETO	Other Services	Total
Austria	1.2	27.9*	12.3	25.0*	13.5	0.9	1.7	17.6*	100
Belgium	1.7	23.4*	8.9	22.6*	16.3	0.7	8.8	17.7*	100
Czech Republic	2.8	31.2*	12.3	21.6*	17.4*	0.0	3.8	10.9	100
Denmark	5.0	16.2	3.3	21.7*	30.3*	0.0	3.5	20.0*	100
Finland	4.2	15.8	5.3	24.6*	31.1*	0.0	0.4	18.7*	100
France	2.9	20.5*	16.7	18.3*	12.3	7.2	2.6	19.3*	100
Germany	1.6	35.3*	8.7	23.0*	15.0*	0.6	2.0	13.8	100
Greece	3.5	19.3*	26.6*	19.0	5.9	19.9*	0.8	5.0	100
Iceland	6.2	33.0*	1.1	14.8*	28.6*	0.0	5.4	10.9	100
Ireland	2.8	20.5	5.9	21.9*	22.5*	1.9	1.3	23.2*	100
Italy	6.0	29.0*	9.4	17.7*	11.1	10.4	3.0	13.4*	100
Japan	0.3	62.2*	2.0	8.2*	27.3*	100
Luxembourg	1.1	10.9	15.4*	20.5*	11.5	3.7	11.7	25.2*	100
Netherlands	2.7	24.1	4.4	20.7*	17.8	0.3	5.0	25.1*	100
Norway	1.6	16.9*	4.7	20.8*	33.3*	0.5	1.9	20.3*	100
Portugal	3.3	17.4	18.6*	24.3*	17.9*	6.1	1.8	10.6*	100
Slovak Republic	13.6	26.7*	7.8	15.4*	18.3*	0.0	5.9	12.2	100
Spain	9.0	11.6	8.8	26.1*	14.2*	16.4*	1.3	12.5	100
Sweden	2.3	21.3*	2.1	22.0*	32.4*	0.0	1.9	18.1	100
Switzerland	1.0	23.5*	8.8	22.4*	21.9*	1.6	3.6	17.1	100
United Kingdom	1.6	19.3	7.1	19.8*	24.1*	0.5	6.0	21.6*	100
Australia	2.1	18.8	7.9	22.4*	16.1	3.2	3.1	26.4*	100
Canada	2.4	19.6	5.0	24.1*	24.6*	..	3.8	20.4*	100
Hungary	3.1	23.2*	6.2	25.7*	22.5*	0.0	3.4	16.0	100
United States	3.6	18.6	6.1	22.9*	2.2	2.0	20.8	23.7*	100

Note: The numbers in **bold** signify the sectors where foreigners are over-represented. The asterix (*) identifies the top three sectors of foreign employment.

a) For Australia, Canada, Hungary and the United States, the data refer to the foreign-born population.

Sources: EU labour force survey, results supplied by Eurostat and the Australian Bureau of Statistics; Japan Statistics, 1996 Census, Statistics Canada; and Current Population Survey, US Bureau of the Census.

Source: OECD, 2001.

Non-OECD Countries

In 1998, there were some 10-15 million Asian migrant workers, mostly in the Middle East, North America, Europe and within the Asian region (see Table A7). Some non-OECD countries were themselves substantial importers of labour within the region, such as Hong Kong China, Malaysia, Singapore and Chinese Taipei. Many of the general caveats also apply to these figures, in particular regarding the comparability of data between countries and to coverage/definition of temporary workers. Additionally, gaps indicate that data was not collected and some figures may include estimates of illegal workers.

Table A7. Asian Migrant Workers 1998

Country	Workers abroad	Year	Migrant Worker population	Year	Worker outflow	Year	Major Destinations
Bangladesh	1 600 000	1995			210 000	1996	SA, M, UAE, KT
China	270 000	1994			219 000	1994	J, HKC, K
Hong Kong China			438 000	1996			
India					438 000	1995	SA, UAE, O, KT
Indonesia	900 000	1997			172 000	1993	Middle East, M, S
Malaysia			2 000 000	1997			
Philippines	5 500 000	1996			489 000	1995	SA, CT, HKC, J
Singapore			560 000	1996			
Sri Lanka	500 000	1995			163 000	1996	SA, KT, UAE
Chinese Taipei			296 000	1995			
Thailand	1 020 000	1995	1 028 000	1997			

Key: HKC - Hong Kong China; J - Japan; K - Korea; KT - Kuwait; M - Malaysia; O - Oman; S - Singapore; SA - Saudi Arabia; CT - Chinese Taipei; UAE - United Arab Emirates.

Source: Arkell, 1998.

ANNEX III: RESULTS OF THE SURVEY BY PRICEWATERHOUSECOOPERS

Over 50% of the companies surveyed by PricewaterhouseCoopers reported growth in the number of international assignments overall, with the proportion of intra-Europe assignments or from Europe to the U.S. ahead of assignments to developing country markets, but with growth in China, South East Asia and South America also strong. Growth in Western Europe and North America was attributed to the need for internationally mobile employees in established markets as companies attempted to make global organisation a reality. Growth in China and Central and Eastern European countries was lower than expected.

In terms of geographical distribution (see Table A8), just over half of the current expatriate population is located in Western Europe or North America and approximately 34% are in developing countries (not including countries in transition). Companies reported either an increase in expatriate numbers (for assignments to Western Europe, North America, South East Asia, Central and Eastern Europe) or no change (South America, Africa, Middle East, China, Japan and Korea, Australasia and the Indian Subcontinent) over the 1997 survey. There is no clear developed/developing country divide between those destinations that have increased and those that remain unchanged. No region recorded a net fall in expatriates. In addition, most companies foresee no significant change to the distribution of their expatriate populations by region over the next two years. Greatest increases are expected for Western Europe, Central and Eastern Europe, South East Asia and China.

The total number of expatriates in the firms surveyed was 64 831 (up from 33 418 from the 1997 survey - a 97% increase). These firms' expatriate populations range from 1 to 4000, with an average of approximately 250. Women account for only 9% of expatriates (although this is an increase from 6% in 1997). Most expatriates are sent from company headquarters, although 22% reported that this is declining, possibly due to the desire to increase the diversity of nationalities in expatriates in line with local employee mix world-wide.

Most expatriates (39%) were categorised as having a management function, only slightly ahead of those being sent abroad for skills transfer (35%). Other categories included management/development or career development (12%), international cadre (i.e., mobile individuals who will complete several consecutive international assignments as part of their career with the company - 9.7%) and graduate training and development (3.7%).

In terms of the types of assignments taken by each category of expatriate, those with management functions overwhelmingly had long-term assignments (82%), while skills transfer tended to take the form of either long-term assignments (59.4%) or short-term assignments (39.8%). Similarly, management development took the form of long-term (57.8%) or short-term assignments (33.9%). While long-term assignments dominated for international cadre workers (60.2%), short-term assignments were favoured for graduate training/development (70.9%).

However, there is no single, consistent definition of any of the above categories of assignment type used by all the companies. For example, 39% defined a business trip as up to one month, while 30% defined it as up to three months and a further 12% defined it as up to 6 months. Similarly, short-term assignments were

considered to be up to one year by 53% of respondents, but only up to 6 months by 29%. Temporary/long term assignments were considered to be over one year by 42% over two years by 24% over 3 years by 17% and over six months by 15%.

Table A8. Expatriate Populations by Region of assignment, including changes over the last two years

Region	Percentage of total expatriates	Number of expatriates*	% companies reporting an increase over last two years	%companies reporting no change over last two years	%companies reporting a decrease over last two years**
Western Europe	34%	16 937	52.2%	29.7%	14.9%
North America	18%	9 174	47.1%	32.1%	14.9%
South East Asia (Brunei, Cambodia, Hong Kong, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Chinese Taipei, Thailand and Vietnam)	10%	5 010	37.2%	33.7%	20.6%
South America	9%	4 563	38.5%	42.6%	9.7%
Central and Eastern Europe	9%	4 356	43.1%	40.8%	9.9%
Africa	6%	3 150	17.5%	59.8%	13.4%
Middle East	4%	1 866	23%	53.5%	13.3%
China	4%	1 784	39.3%	42.6%	7.7%
Japan and Korea	3%	1 650	25.3%	52.2%	12.6%
Australasia (Australia and New Zealand)	2%	793	26.1%	57.4%	7.4%
Indian Subcontinent (Bangladesh, India, Nepal, Pakistan and Sri Lanka)	1%	682	16.9%	59.7%	12.9%

* Regional information was not provided for 14 866 individuals.

** Additional percentage were "don't know"

Source: PricewaterhouseCoopers, 2001

Notwithstanding this, some general observations could be made about changes to the type of assignments. While there has been an increase in all types of assignments, short-term assignments and business trips recorded higher increases than longer-term assignments or permanent transfers. 53% of companies surveyed reported a net increase in short-term assignments; 42% reported a net increase in business trips; 40% reported a net increase in commuter assignments; 17% reported a net increase in long term assignments and 26% reported a net increase in permanent transfers⁵⁹. Predictions for the next two years

59. Definitions of these terms as used in the PricewaterhouseCoopers report.

Commuter assignments: employee commutes from the home country to a place of work in another country, usually on a weekly or bi-weekly (but not daily) basis.

follow a similar pattern, with the majority of companies predicting either an increase or no change for all categories, with increases in particular predicted for short-term assignments, business trips and commuter assignments.

Projections for the next to years also indicate growth, including to developing regions (see Table A9).

Table A9. Predicted changes over the next two years by region of assignment

Region	Predicted net change (increase over decrease) for the next two years in number of persons assigned	Net change (increase over decrease) experienced over the past two years in number of persons assigned
Western Europe	33%	37%
Central and Eastern Europe	35%	33%
North America	20%	32%
South America	26%	29%
Indian Subcontinent	10%	4%
Middle East	14%	10%
South East Asia	26%	16%
Japan and Korea	11%	12%
China	27%	31%
Australasia	12%	19%
Africa	7%	5%

Source: PricewaterhouseCoopers, 2001.

Companies Surveyed

The survey was compiled on the basis of questionnaires sent to named individuals responsible for managing the administration of expatriate assignments. While the majority of the companies surveyed were sizeable, a range of smaller and medium-sized companies also responded to the survey (Table A10). Not surprisingly, the companies were highly internationalised, with 38% operating in over 40 countries world-wide (Table A11).

Contract assignments: can be employees or external hires offering specific skills (e.g., IT, power plant site development, telecommunications) which are vital to specific projects, for a limited duration, perhaps 6 to 12 months. These workers are required to be almost continually internationally mobile.

Rotational assignments: Employees commute across borders for short set periods, notably isolated or hardship postings like oil rig personnel working 4 weeks on and 4 weeks off.

Short-term assignments: usually classified as between 1-12 months.

Table A10. Profile of companies surveyed by number of employees

Number of employees	Percentage of respondents
Over 10 000	53%
5 001 - 10 000	13%
1 501 - 5 000	17%
501 - 1 500	6%
101 - 500	7%
51 - 100	1%
Less than 50	3%

Source: PricewaterhouseCoopers, 2001.

Table A11. Profile of companies surveyed by number of countries of operation world-wide

Number of countries of operation world-wide	Percentage of respondents
More than 60	24%
40-59	14%
20-39	24%
10-19	21%
6-9	8%
1-5	9%

Source: PricewaterhouseCoopers, 2001.

The survey was not restricted to companies operating in service sectors, although it could be argued that the individuals involved moved abroad as service providers. The profile of companies surveyed by industry group is depicted in Table A12 below.

Table A12. Profile of companies surveyed by industry group

Industry Sector	Percentage of respondents
Tobacco, food, beverage and retail	6.3%
Banking	9.6%
Legal, finance, insurance	9.6%
Pharmaceuticals, chemicals, personal products, healthcare, rubber	14.4%
Telecommunications	5.9%
Electronics, computers, computer software, semiconductors	9.2%
Oil, gas and mining	7.0%
Engineering, construction, aeronautics/aerospace	6.3%
Miscellaneous (includes companies related to transport, including air transport, real estate, utilities, hotels and resorts, consulting)	19.5%
Manufacturing, Metals, textiles	12.2%

Source: PricewaterhouseCoopers, 2001.

ANNEX IV: TRADE IN SERVICES STATISTICS

Trade in Services Transactions

Some parts of mode 4 trade (e.g., sale of services by movement abroad of independent service providers or by employees of foreign firms) are covered in BPM5 trade in services (transactions between residents and non-residents) figures. However, such statistics are not currently available for all sectors (only parts of computer and information services; other business services; personal, cultural and recreational services and construction services) and the mode 4 element of these trades in services is not separately identified.

Indeed, until now, modes of supply have not been itemised in services statistics; however, simplified rules have been developed in the *Manual* to enable in future a first approximate allocation of services across the modes of supply. While a detailed correspondence is not possible (given the need to ensure compatibility with existing international statistics systems), this represents, from a trade policy point of view, a major advance in trade in services statistics. The *Manual* nonetheless acknowledges that further research and empirical information will be required to refine the estimates.

The simplified approach to allocating modes to transactions is based on the territorial location of the consumer and supplier at the time the service is supplied, as well as the type of supplier (an individual or business enterprise). Transactions supplied in the territory of the consumer through the presence of natural persons are attributed to mode 4 (including self employed, temporary employment or intra-corporate transferees). However, given that most services transactions involve several modes of supply, two simplification rules are used. Firstly, relatively marginal modes of supply within a service category are not to be separately identified, resulting in most service categories corresponding to only one or two modes of supply. Secondly, where several modes are involved (such as an architect who emails designs and then makes several visits to supervise the project), and if subdivision of the transaction by mode cannot be estimated, the transaction is allocated to the most important mode in terms of time and resources.

While the simplification rules are sensible, there are real constraints on identifying the contribution of various modes or the dominant mode. As such sub-divisions do not always correspond to the commercial reality for many service suppliers, estimates of resources allocated by various modes may be difficult to garner and judgements subjective. There is scope, in particular, for underestimation of mode 4 trade; while mode 4 components are likely to appear as part of many services, it may not often appear as the dominant mode. In any event, such allocation is highly resource intensive and the *Manual* acknowledges that its implementation in actual data collection programs may be a longer-term objective for many countries.

Compensation of Employees

Earnings of some service suppliers can be found under the BPM5 category "compensation of employees", which includes the earnings of all natural persons established abroad as employees for less than one year. However, this indicator has some important limitations. The figures include workers engaged in agriculture and manufacturing as well as in services (as well as personnel in embassies); they are limited to persons staying for less than one year (after that they are considered domestic transactions, and not

included in balance of payments accounts); they cover not only foreigners employed by foreign companies established in the host economy, but also include those working for local firms; and they include other types of payments (such as pensions, social security and insurance). Additionally, if mode 4 is also taken to include services supplied by a national and consumer of one Member in the territory of another Member, such transactions will not be considered international and therefore will not be reflected in balance of payments data. Hence these figures may both under- and over-estimate mode 4 trade.

If compensation of employees is taken as a very rough indicator of mode 4, it would seem that this mode is quite small in comparison with other modes of supply, representing (at \$30 billion) less than 4% of cross-border (mode 1) trade in services (valued \$890 billion in 1997) (see Tables A13 and A14 below).

Table A13. World income in compensation of employees, share in GDP, and in exports of goods and services, 1985 and 1997

<i>Value, share, ratio</i>	<i>1985</i>	<i>1997</i>
Value (billions of dollars)	10	30
Share in GDP (percent)	0.09	0.11
Ratio to exports of goods and services (percent)	0.5	0.5

Source: Karsenty, 2000.

Table A14. Trade in services by mode of supply, share in GDP and in exports of goods and services 1997

Mode	Proxy used	Value (billions of dollars)	Total share in all	Share in GDP (Percent)
Mode 1	Balance of payments (commercial services minus travel)	890	41.0	3.1
Mode 2	Balance of payments (travel)	430	19.8	1.5
Mode 3	FATS gross output in services	820	37.8	2.9
Mode 4	Balance of payments (compensation of employees)	30	1.4	0.1
Total		2 170	100.0	7.6

Source: Karsenty, 2000.

Broken down by region, it is apparent that developed countries account for the largest importers (debtors), with the European Union accounting for 44% of imports, and other European countries accounting for 21%. Europe is also a major exporter (creditor), followed by Asia (Table A15).

Table A15. Share in exports and imports of compensation of employees, selected country groups, 1985 and 1997 (in per cent)

Country group	Exports		Imports	
	1985	1997	1985	1997
World	100	100	100	100
Developed countries	64	64	82	88
Other countries	36	36	18	12
North America	0	0	9	12
Latin America	9	3	0	3
Western Europe	55	55	64	65
European Union (15)	55	52	45	44
Africa	0	3	9	3
Asia	18	30	9	9

NOTE: Figures do not total 100 as the Middle East and Eastern Europe are excluded.
Source: Karsenty, 2000.

Focusing on major importers and exporters by country, it is clear that there is a high degree of concentration, with the top 10 countries accounting for the overwhelming proportion of both imports (debit) and exports (credit) of compensation of employees (see Table A16). The Philippines remains the largest creditor (decreasing) and the US the largest debtor (increasing). OECD countries predominate in both categories, with only four non-OECD members (the Philippines, Thailand, Russia and Lesotho) in the top 20 creditors. Four non-OECD countries also count amongst the top 20 debtors (Israel, Russia, South Africa and Brazil).

However, while the volumes may be small for non-OECD countries, the trade can be very important for their economies. Indeed, non-OECD dominate the list of countries for whom compensation of employees is a major source of revenue. In Table A17, the specialisation ratio refers to the ratio of compensation of employees - mode 4 proxy- to the total value of exports in goods and services combined (i.e., in Lesotho this revenue represented 1.6 times the total value of goods and services exported).

Table A16. Compensation of employees in 1994-1998 (million dollars and percentage)

Rank	Credit	1994	1997	1998	% change 98/97	Rank	Debit	1994	1997	1998	% change 98/97
1	Philippines	3009	5742	4926	-14.2	1	United States	5952	6756	7106	5.2
2	Belgium-Luxembourg	3524	3983	3898	-2.1	2	Switzerland	6078	5565	5528	-0.7
3	Germany	4394	3831	3879	1.3	3	Germany	4199	4787	4822	0.7
4	France	2336	2365	2493	5.4	4	Belgium-Luxembourg	1712	2508	2712	8.1
5	United States	1543	1802	1857	3.1	5	Israel	919	2116	2304	8.8
6	Italy	1901	1844	1745	-5.4	6	Italy	1905	1698	1822	7.4
7	Thailand	1281	1658	1424	-14.1	7	United Kingdom	1306	1513	1409	-6.9
8	United Kingdom	1045	1649	1392	-15.6	8	France	1445	1146	1171	2.2
9	Switzerland	1060	1064	1038	-2.4	9	Netherlands	760	962	986	2.4
10	Austria	845	915	937	2.4	10	Sweden	202	356	541	52.1
11	Mexico	647	681	876	28.6	11	Norway	475	526	502	-4.6
12	Denmark	439	852	765	-10.2	12	Australia	235	447	498	11.4
13	Netherlands	511	660	630	-4.6	13	Russia	221	568	465	-18.1
14	Australia	387	527	490	-4.6	14	South Africa	572	492	419	-14.8
15	Korea	785	706	446	-7.1	15	Austria	292	343	374	9.1
16	Finland	67	235	375	-36.8	16	Czech Republic	55	340	350	2.8
17	Japan	874	353	331	59.6	17	Denmark	200	370	346	-6.3
18	Spain	104	240	310	-6.1	18	Japan	1583	341	313	-8.3
19	Russia	108	227	301	29.1	19	Spain	101	243	307	26.6
20	Lesotho	320	378	293	32.6	20	Brazil	190	203	177	-12.8

Source: WTO, 2000.

Table A17. Specialisation in mode 4 trade

Country	Specialisation ratio 1997
Lesotho	160
Armenia	39
Albania	16
Djibouti	16
Rwanda	15
Philippines	14
Kiribati	14
Mozambique	12
Moldova	8
Swaziland	8
Syrian Arab Republic	4
Côte d'Ivoire	3
Fiji	3
Thailand	2
Iceland	2
Slovenia	2

Source: Karsenty, 2000.

Workers' Remittances

While figures for compensation of employees relate to those who have been abroad for less than one year, statistics for workers who have been abroad for more than one year can be found by looking at workers' remittances. However, these figures may both under-estimate mode 4 trade (as remittances refers to residual income earned after expenditure and savings in the host economy) and over-estimate mode 4 trade (as they can include all resident foreign workers, beyond those covered by the mode 4 concept of temporary). Additionally, a significant proportion of remittances does not flow through official channels and thus may not be included in the figures. Figures for remittances for 1990-1996 (see Tables A18 and A19) indicate that ten countries accounted for a large and growing share of the world' remittances. In 1996, the top ten paying countries accounted for 94% of total recorded remittances, and the top ten receiving countries for 74% of this total. Of the payers, Saudi Arabia ranks first, followed by the United States and Germany. The largest three recipients were India (by some margin), followed by Mexico and Portugal. While there has been little change amongst the payers, of the recipients, India and Mexico have gradually overtaken Egypt, Portugal and Turkey, with China also showing considerable growth.

FATS

The *Manual* notes that data on intra-corporate transferees may be available through the FATS framework (FATS statistics measure the commercial presence abroad of service suppliers through affiliates in foreign markets). However, it might be worth considering the uncertainties raised by the WTO Secretariat regarding the demarcation between mode 3 and mode 4 in terms of assessing the value of trade generated. On one hand, it might be argued that movement of persons directly related to the exercise of rights conferred under mode 3 (e.g., temporary presence of CEO to recruit and instruct local management) would fall under mode 3 and not mode 4 trade [WTO, 2000]. Alternatively, it could be argued that the value generated by mode 3 firms cannot readily be separated from the value generated by intra-corporate transferees working there under mode 4 [WTO, 1998a].

Table A18. Top ten payers of workers' remittances, 1990-96

(US\$ million)

	1990	1991	1992	1993	1994	1995	1996
Saudi Arabia	11236	13746	13397	15717	18102	16616	15513
United States	8390	9050	9440	10190	10930	11850	12860
Germany	4380	3860	4380	4130	4630	5310	4920
France	2787	2754	3108	2761	2704	3146	3067
Japan	-	-	-	-	-	-	2790
Switzerland	2116	2195	2276	2135	2311	2679	2480
Oman	856	910	1220	1423	1365	1537	1709
Kuwait	770	426	829	1229	1331	1354	1376
Côte d'Ivoire	458	429	457	420	395	522	580
Spain	148	195	372	382	387	481	552
Total top ten	31141	33565	35479	38387	42155	43495	45847
% of total world	87	89	88	88	88	92	94

Source: WTO, 1998a.

Table A19. Top ten recipients of workers' remittances, 1990-96

(US\$ million)

	1990	1991	1992	1993	1994	1995	1996
India	2352	3275	2891	3495	5782	6139	7603
Mexico	2492	2414	3070	3332	3475	3673	4224
Portugal	4263	4517	4650	4179	3669	3793	3715
Turkey	3246	2819	3008	2919	2627	3327	3542
Egypt	4284	4054	6104	5664	3672	3226	3107
Greece	1775	2115	2366	2360	2576	2982	2894
Spain	1886	1792	2173	1926	2167	2603	2747
Morocco	2006	1990	2170	1959	1827	1904	2010
France	807	968	1300	1231	1413	1782	1730
China	124	207	228	108	395	350	1672
Total top ten	23235	24151	27960	27173	27603	29779	33241
% of total world	50	61	66	64	62	61	74

Source: WTO, 1998a.

ANNEX V: MFN EXEMPTIONS AFFECTING MOVEMENT OF NATURAL PERSONS

A. EXEMPTIONS WITH COMPREHENSIVE SECTORAL COVERAGE

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
1. Austria	Switzerland	Waiving of visa requirement and other measures	Indefinite	
2. Brunei	Traditional sources	Preferences for entry and stay	Indefinite with periodic national review	
3. Cyprus	EU Member States	Permission for limited numbers of EU nationals to be employed or to exercise professions in specific occupations in accordance with criteria to be established unilaterally or in future agreements with EU	Until the time of full EU membership	
4. Portugal	Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Sao Tome and Principe	Waiving of the nationality requirement for the exercise of certain activities and professions	Indefinite	
5. France	Francophone African countries, Algeria, Switzerland and Romania	Facilitation of access procedures for the exercise of certain services activities	10 years	
6. United Kingdom	Members of the British Commonwealth	Waiving of the requirement of a work permit for citizens having a grandparent born in the UK	Indefinite	
7. EC and/or Member States	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
8. EC and certain	San Marino, Monaco, Andorra, Vatican State city	Right of establishment for natural (and legal) persons, waiving the requirement of work permits	Indefinite	

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WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
9. EC Member	States in Central, Eastern and South-Eastern Europe including Russia, Ukraine, Belarus and Georgia, and in the Mediterranean basin	Guarantee of work permits in limited number for temporary contract work	Indefinite or, for certain countries, until an economic integration agreement is concluded or completed	All sectors (principally construction, hotel and catering). Reference to a broader initiative
10. Italy	States in Central Eastern and South Eastern Europe and in the Mediterranean Basin	Guarantee of work permits for seasonal workers	Indefinite	
11. Egypt	Greece, Iraq, Jordan, Libya, Qatar, Sudan, United Arab Emirates, Yemen and possibly other countries	Full national treatment	As long as the agreements remain in force	
12. Indonesia	Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, Australia	Measures concerning movement of personnel (semi-skilled workers). Limited access to low level occupations	Indefinite	
13. Jamaica	Caricom Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago	Waiving of work permits	Indefinite	
14. Liechtenstein	Switzerland	Mutual granting of temporary stay and permanent residency	Indefinite	
15. Liechtenstein	EC and EFTA countries	Preferential treatment of persons from traditional recruiting areas with regard to permits for entry, stay and work (applies to persons other than the essential persons appearing in the schedule of commitments).	Indefinite	
16. Liechtenstein	All countries	Reciprocity concerning the "right of presence of natural persons"	Indefinite	
17. Malaysia	All countries	Differential treatment for measures affecting the movement of semi-skilled and unskilled workers on a regional, religious and cultural basis	Indefinite	
18. Malta	European Union Countries	Preferential treatment in the granting of licences and permits to provide services	Indefinite	Reference to the integration process into the EU
19. New Zealand	Kiribati	Most favourable entry conditions possible for up to 20 nationals each year	Indefinite	
20. New Zealand	Tuvalu	Most favourable entry conditions possible for up to 80 nationals each year	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
21. Panama	Guatemala, El Salvador, Nicaragua, Costa Rica, and Honduras	Preferential treatment for suppliers of services of different kinds	Indefinite	
22. Panama	United States	Preferential treatment for suppliers of services under the Panama Canal Treaties	Indefinite	
23. Peru	All countries	Waiving the limitations of: three years as maximum duration, 20% of the total number of employees and 30% of the payroll	Indefinite	
24. Philippines	"All countries" /countries with whom a treaty on entry rights for traders and investors has been concluded	Waiving labour market test and simplifying entry procedures	Expiry or termination date of the bilateral treaties	
25. Sierra Leone	Mano River Union and ECOWAS countries	Full national treatment	As long as agreements remain in force or are extended	
26. Singapore	"Traditional sources"	Measures regarding unskilled, semi-skilled, and skilled persons except specialists and professionals. (Purpose: prevent overpopulation and maintain social order)	Indefinite (periodic national review)	
27. Solomon Islands	Members of the Melanesian Spearhead Group: Vanuatu, Papua New Guinea	Waivers for measures affecting the entry and temporary stay of natural persons	Indefinite	Reference to an ongoing process
28. Sweden	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
29. Switzerland	Liechtenstein	See 14.	Indefinite	
30. Switzerland	EC and EFTA countries	See 15.	Indefinite	
31. Tunisia	"All countries" (probably with whom Tunisia has or will have agreements)	Bilateral social security agreements: extension of social security and health benefits to citizens of other countries	Not specified	
32. Turkey	Libya	Restrictions on the transfer of premiums for long-term insurance schemes and on employment of foreign-workers by foreign companies is waived (not applied de facto).	Indefinite	
33. Turkey	All countries	Consulate duties: if the amount of the consulate duties collected from Turkish nationals by any country is higher than the amount written in the tariff list, the consulate duties collected from the nationals of that country will be increased reciprocally.	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
34. USA	All countries with whom the United States has a friendship, commerce and navigation treaty, a bilateral investment treaty; or certain countries described in Section 204 of the Immigration Act of 1990	Movement of persons for trade and investment: issuance of "treaty trader or treaty investor non immigrant visas" to nationals of the countries concerned engaged in substantial trade in services or in developing an investment.	Indefinite	

B. SECTOR-SPECIFIC EXEMPTIONS

WTO MEMBER	SECTOR CONCERNED	BENEFICIARIES	TREATMENT COVERED	DURATION
1. New Zealand	Interpretation services	Japan and other countries with whom such arrangements may be desirable	Most favourable entries conditions if employment for up to two years as interpreters in tourism related industries.	Indefinite
2. Switzerland	Distribution services	EFTA members	Granting of work permits without certain limitations to employees of companies (commerce in goods) from EFTA countries	Indefinite
3. Thailand	Services mentioned in the US -Thailand Treaty of Amity and Economic Relations	USA	National treatment to U.S. citizens to provide the services mentioned in the Treaty	10 years
4. USA	Maritime transport	Countries that prohibit longshore work by crew members aboard U.S. vessels	Restrictions on performance of longshore work when making U.S. port calls by crews of foreign vessels owned or flagged in countries that similarly restrict U.S. crews on U.S. flag vessels.	Indefinite

Source: WTO, 1998a

ANNEX VI: STRUCTURE OF ISCO-88

Major Groups	Submajor groups	Minor groups	Unit groups	ISCO skill level
1. Legislators, senior officials and managers (main tasks consist of determining and formulating government policies, as well as laws and public regulations, overseeing their implementation, representing governments and acting on their behalf, or planning, directing and co-ordinating the policies and activities of enterprises, or departments)	3	8	33	--
2. Professionals (main tasks require a high degree of professional knowledge and experience in the fields of physical and life sciences, or social sciences and humanities. Main tasks consist of increasing the existing stock of knowledge, applying scientific and artistic concepts and theories to the solution of problems and teaching about the foregoing in a systematic manner)	4	18	55	4th
3. Technicians and associate professionals (main tasks require technical knowledge and experience in one or more fields of physical and life sciences, or social sciences and humanities. Main tasks consist of carrying out technical work connected with the application of concepts and operational methods in the above-mentioned fields, and teaching at certain educational levels).	4	21	73	3rd
4. Clerks (main tasks require the knowledge and experience necessary to organise, store, compute and retrieve information. Main tasks include performing secretarial duties, operating word processors and other office machines, recording and computing numerical data, and performing a number of customer-oriented clerical duties, mostly in connection with mail services, money-handling operations and appointments).	2	7	23	2nd
5. Service workers and shop and market sales workers (main task require the knowledge and experience necessary to provide personal and protective services, and to sell goods at shops or at markets. Main tasks include providing services related to house-keeping, catering, personal care, protection of individuals and property, and to maintaining law and order, or selling goods in shops or at markets.)	2	9	23	2nd
6. Skilled agricultural and fishery workers	2	6	17	2nd
7. Craft and related trades workers	4	16	70	2nd
8. Plant and machine operators and assemblers	3	20	70	2nd
9. Elementary occupations	3	10	25	1st
10. Armed forces	1	1	1	--
Total	28	116	390	

Source: ISCO-88 (amended to include definition of categories). NOTE: no skill levels have been attributed to either category 1 (legislators, senior officials and managers) nor major group 0 (armed forces) as skills for executing task and duties of occupations belonging to each of these groups vary too much to be linked to ISCO skill levels.

ANNEX VII: BREAKDOWN OF ISCO-88 MAJOR GROUPS 1, 2 AND 3

MAJOR GROUP 1

LEGISLATORS, SENIOR OFFICIALS AND MANAGERS

11 LEGISLATORS AND SENIOR OFFICIALS

- 111 LEGISLATORS
- 112 SENIOR GOVERNMENT OFFICIALS
- 113 TRADITIONAL CHIEFS AND HEADS OF VILLAGES
- 114 SENIOR OFFICIALS OF SPECIAL-INTEREST ORGANISATIONS

12 CORPORATE MANAGERS

- 121 DIRECTORS AND CHIEF EXECUTIVES
- 122 PRODUCTION AND OPERATIONS DEPARTMENT MANAGERS
- 123 OTHER DEPARTMENT MANAGERS

13 GENERAL MANAGERS

- 131 GENERAL MANAGERS
-

MAJOR GROUP 2

PROFESSIONALS

21 PHYSICAL, MATHEMATICAL AND ENGINEERING SCIENCE PROFESSIONALS

- 211 PHYSICISTS, CHEMISTS AND RELATED PROFESSIONALS
- 212 MATHEMATICIANS, STATISTICIANS AND RELATED PROFESSIONALS
- 213 COMPUTING PROFESSIONALS
- 214 ARCHITECTS, ENGINEERS AND RELATED PROFESSIONALS

22 LIFE SCIENCE AND HEALTH PROFESSIONALS

- 221 LIFE SCIENCE PROFESSIONALS
- 222 HEALTH PROFESSIONALS (except nursing)
- 223 NURSING AND MIDWIFERY PROFESSIONALS

23 TEACHING PROFESSIONALS

- 231 COLLEGE, UNIVERSITY AND HIGHER EDUCATION TEACHING PROFESSIONALS
- 232 SECONDARY EDUCATION TEACHING PROFESSIONALS
- 233 PRIMARY AND PRE-PRIMARY EDUCATION TEACHING PROFESSIONALS
- 234 SPECIAL EDUCATION TEACHING PROFESSIONALS
- 235 OTHER TEACHING PROFESSIONALS

24 OTHER PROFESSIONALS

- 241 BUSINESS PROFESSIONALS
 - 242 LEGAL PROFESSIONALS
 - 243 ARCHIVISTS, LIBRARIANS AND RELATED INFORMATION PROFESSIONALS
 - 244 SOCIAL SCIENCE AND RELATED PROFESSIONALS
 - 245 WRITERS AND CREATIVE OR PERFORMING ARTISTS
 - 246 RELIGIOUS PROFESSIONALS
-

MAJOR GROUP 3**TECHNICIANS AND ASSOCIATE PROFESSIONALS****31 PHYSICAL AND ENGINEERING SCIENCE ASSOCIATE PROFESSIONALS**

- 311 PHYSICAL AND ENGINEERING SCIENCE TECHNICIANS
- 312 COMPUTER ASSOCIATE PROFESSIONALS
- 313 OPTICAL AND ELECTRONIC EQUIPMENT OPERATORS
- 314 SHIP AND AIRCRAFT CONTROLLERS AND TECHNICIANS
- 315 SAFETY AND QUALITY INSPECTORS

32 LIFE SCIENCE AND HEALTH ASSOCIATE PROFESSIONALS

- 321 LIFE SCIENCE TECHNICIANS AND RELATED ASSOCIATE PROFESSIONALS
- 322 MODERN HEALTH ASSOCIATE PROFESSIONALS (except nursing)
- 323 NURSING AND MIDWIFERY ASSOCIATE PROFESSIONALS
- 324 TRADITIONAL MEDICINE PRACTITIONERS AND FAITH HEALERS

33 TEACHING ASSOCIATE PROFESSIONALS

- 331 PRIMARY EDUCATION TEACHING ASSOCIATE PROFESSIONALS
- 332 PRE-PRIMARY EDUCATION TEACHING ASSOCIATE PROFESSIONALS
- 333 SPECIAL EDUCATION TEACHING ASSOCIATE PROFESSIONALS
- 334 OTHER TEACHING ASSOCIATE PROFESSIONALS

34 OTHER ASSOCIATE PROFESSIONALS

- 341 FINANCE AND SALES ASSOCIATE PROFESSIONALS
- 342 BUSINESS SERVICES AGENTS AND TRADE BROKERS
- 343 ADMINISTRATIVE ASSOCIATE PROFESSIONALS
- 344 CUSTOMS, TAX AND RELATED GOVERNMENT ASSOCIATE PROFESSIONALS
- 345 POLICE INSPECTORS AND DETECTIVES
- 346 SOCIAL WORK ASSOCIATE PROFESSIONALS
- 347 ARTISTIC ENTERTAINMENT AND SPORTS ASSOCIATE PROFESSIONALS
- 348 RELIGIOUS ASSOCIATE PROFESSIONALS

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