

## Chapter V

# Temporary migration and its relation to trade in services

Temporary labour migration presents some potential advantages over longer-term migration. Migration policies and programmes have therefore been giving increasing attention to temporary labour migration, and flows of temporary labour have been increasing.

The main categories of temporary migrants are highly skilled professionals, seasonal workers in the agricultural, construction and tourism sectors, and trainees.<sup>1</sup> The temporary worker has a fixed-term contract that specifies the *authorized* occupation, the employer and the geographical area in which the occupation may be carried out. For unskilled workers, the approved duration of stay is often less than one year. Temporary migrants may not be entitled to job-related benefits nor may they have the right to reunite with their family in the host country.<sup>2</sup>

For receiving (host) countries, temporary migration can fill demand-supply gaps that are observed in a particular period or location. The additional benefit of the temporary element is that the turnover of immigrants reduces some of the negative attitudes and reactions of parts of the native population to permanent migration and reduces the difficulties of social integration in the receiving countries. Concerns may be expressed, however, that temporary migrants could acquire a more permanent status.

For origin (home) countries, temporary work has the usual beneficial effects of reducing domestic unemployment and contributing to financial inflows through remittances (see chap. IV). The additional benefit of temporary migration is that it not only reduces the extent of the brain drain (because the migrant returns after an interval) but can also involve a “brain gain” in the form of additional skills (and possibly also a capital gain in the form of repatriated assets) when the migrant returns.

Gains from more extensive use of temporary movements of workers are especially large for unskilled workers, as it is at low levels of skill that the gap in compensations between developed and developing countries is widest (Winters and others 2002; Stiglitz and Charlton, with the Initiative for Policy Dialogue, 2004).

In addition to its benefits, temporary migration has been made more feasible by the development of faster and less expensive means of transportation. Temporary migrants can work in one country and reside, along with their family, in their country of origin. Such transnational communities are increasingly common; apart from seasonal agricultural workers, they tend to comprise mostly highly skilled and highly paid professionals.

The present chapter will first illustrate the magnitude of the temporary movement of workers. Second, it will look at a promising avenue within the trade domain that contemplates trade in services whereby the person who actually provides the service moves, exemplifying so-called Mode 4 under the General Agreement on Trade in Services.<sup>3</sup> Third, a brief digression will take up outsourcing as another area of export potential for developing countries. Finally, conclusions and policy recommendations will be provided.

Temporary labour migration has potential advantages over longer-term migration

Temporary labour migrants come on a fixed-term contract to fill an authorized post

In host countries, temporary labour migration can help meet specific labour-force needs while not adding to the stock of long-term immigrants

In origin countries, temporary migration can reduce unemployment and contribute remittances, and may diminish brain drain losses

Gains may be greatest to low-skilled temporary migrants

## Trends in temporary migration

The United States of America now hosts the largest number of temporary labour migrants

Skill shortages in many developed countries have led to relaxation of entry conditions for migrant workers

Many developed countries are making substantially increased use of unskilled migrant labour, especially in agriculture

There have been steady increases in the flow of temporary migrants to the developed countries in the past decade and a change in the legislation of the most important host countries (see table V.1). In the early 1990s, Germany was host to the largest number of temporary workers and the flow into that country has remained roughly constant. In the meantime, the inflow of temporary workers into the United States has approximately quadrupled since the early 1990s, increasing by some 50 per cent between 1998 and 2001 alone. This increase included the distribution of more than 163,000 temporary visas for highly qualified workers in 2001, an increase of more than 40 per cent from the previous year. Flows of temporary workers into all other developed countries for which there are data, other than Switzerland, also rose, although less dramatically.

Because of the need to meet the tight skill shortages in many developed countries, there has been an increasing trend towards the relaxation of entry conditions for certain categories of foreign workers in these countries. The United Kingdom of Great Britain and Northern Ireland, for example, increased its work permit approvals from 58,200 in 1999 to 85,600 in 2000 and to 115,700 in 2001. Sectors that registered the highest increase were education (100 per cent), health care (over 40 per cent) and computer technology (roughly 25 per cent). In Japan, the number of foreigners (mostly entertainers) obtaining temporary residence for employment reasons in 2001 was 142,000, an increase of almost 10 per cent over 2000 and of almost 40 per cent over 1998. Germany's "green card" programme, instituted in August 2000, has resulted in the tripling of the employment of foreigners in the health-care sector and the granting of more than 13,000 green cards to foreign computer engineers. In the United States of America, the quota of highly qualified temporary visas was raised substantially in 2001. The trend is even apparent in some of the more advanced developing countries. In the Republic of Korea, for example, the number of documented skilled foreign workers rose from 17,700 in 2000 to nearly 28,200 in 2001.

Several developed countries have made considerable use of unskilled foreign labour, particularly in the agricultural sector and on a seasonal basis. In most of the countries for which data are available, there has been a generally steady upward trend in inflows of seasonal workers since the beginning of the 1990s. At present, the agricultural sector of the European Union (EU) employs almost 500,000 seasonal workers from countries outside the EU-15 every year. In Germany, 260,000 seasonal workers obtained work permits

Table V.1.

### Entry of temporary workers into selected developed countries, 1992-2001

	Thousands				
	1992	1998	1999	2000	2001
Australia	40.5	92.9	99.7	115.7	128.5
Canada	70.4	79.4	85.4	93.7	93.1
France	18.1	11.8	13.4	15.4	20.4
Germany	332.6	244.0	274.1	331.6	..
Japan	..	151.7	156.0	183.9	201.1
New Zealand	..	29.5	32.5	43.1	54.6
Switzerland	127.8	40.3	46.1	50.3	56.2
United Kingdom	63.8	98.4	109.0	115.4	132.0
United States	143.0	342.7	422.5	505.1	536.3

**Source:**  
SOPEMI (Continuous Reporting System on Migration) (2004).

**Note:**  
Two dots (..) signify data unavailable.

in 2001; most of them were from Poland and 95 per cent were employed in agriculture. The increase in seasonal workers with temporary work permits has become particularly pronounced in more recent years, even in countries, such as Switzerland, where there was previously a downward trend (see table V.1). One possible exception is the United States where official data show a steep rise in the inflow of seasonal agricultural workers at the end of the 1990s, but a fall, possibly temporary, in 2001 (SOPEMI (Continuous Reporting System on Migration), 2004).<sup>4</sup>

Although less numerous, there are also temporary unskilled migrants outside the agricultural sector. In the United States, such immigration had increased by 50 per cent in 2000 and reached 72,400 in 2001. The admission of temporary workers in the service sector has also increased in other developed countries, particularly in business and household services. Given the ageing populations of those countries, foreign workers are likely to play an increasing role in household services in numerous developed countries in the future. Some developed countries, such as Japan, also grant a significant number of temporary work visas to trainees<sup>5</sup> in industry. In Japan, this category has been increasing and reached 59,100 in 2001. Similarly, in the Republic of Korea there were more than 100,000 trainees in 2000 and 2001.

While most temporary movements are from developing to developed countries, there are considerable flows of temporary workers between developing countries. Most oil-producing countries in Western Asia, for example, rely heavily on temporary foreign labour for low-paid services that are not supplied by the native labour force. Data specifically on these temporary flows are not available, but most legal immigrants in the oil-producing countries in Western Asia are considered to be temporary workers, so that data on total inflows provide an approximation of the number of temporary migrants. Such data suggest that there were about 1 million temporary migrants from Eastern and Southern Asia working in Western Asia in the first half of the 1990s (see table V.2). This figure is large when compared with that for the temporary migrant workers in all developed countries, numbering about 1.5 million. Anecdotal evidence suggests that there has been increasing feminization of these temporary flows in the past decade.

Several existing bilateral and multilateral agreements that encompass not only movements of people but also various economic activities, have proved to be useful in managing temporary migration. For example, a number of countries maintain bilateral labour agreements covering mainly lower-skilled or seasonal workers, especially geographically proximate countries. With the increasing needs for health-care providers, some countries have also

There has also been increasing use of temporary low-skilled migrant workers in the service sector

Most temporary labour migrant flows are from developing to developed countries, but they are also found between developing countries

Temporary labour migration flows are sometimes managed by means of bilateral or multilateral agreements

Table V.2.

**Flows of temporary migrants from selected countries in Eastern and Southern Asia to Western Asia, 1980-1999**

Thousands				
Sending country	1980-1984	1985-1989	1990-1994	1995-1999
Bangladesh	48.8	74.8	145.4	..
China	30.1	29.5	5.0	..
India	206.5	133.9	285.3	..
Indonesia	15.8	49.5	47.9	123.7
Pakistan	121.0	76.7	142.4	..
Philippines	232.4	254.1	290.1	237.2
Sri Lanka	..	17.9	49.9	154.5
Thailand	49.1	64.9	21.2	17.2

**Source:**  
SOPEMI (Continuous Reporting System on Migration) (2004).

**Note:**  
Two dots (..) signify data unavailable.

entered into special recruitment agreements for the movement of nurses and other health professionals. The Recruitment Agreement between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland aims to facilitate the recruitment of Filipino health-care professionals in response to the need for professionals in the health-care sector of the United Kingdom. It provides details of procedure of recruitment (pre-advertising, advertising, actual selection procedure, work permit and visa arrangements, travel arrangements) and outlines the rights and privileges (fees and terms of payment and compliance with United Kingdom law and immigration rules) relating to the employment of Filipino nurses. The contract is valid for three years and is automatically renewed unless revoked by either one of the parties.

A good example of such an arrangement is the Canada and the Caribbean and Mexican Seasonal Agricultural Worker Programme

The Canada and the Caribbean and Mexican Seasonal Agricultural Worker Programme, which involves Canada and Jamaica, Mexico, Trinidad and Tobago, Barbados, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and operates in Alberta, Manitoba, Ontario, Quebec and Nova Scotia, was introduced in response to shortages of available Canadian agricultural workers; thus, some needs test has to be fulfilled before employers are allowed to hire foreign workers. In cases where Canadians are unavailable, employers submit an application specifying the number of workers required, the length and location of the work, and the working and living conditions. The employer can either accept individual applications from specific workers or leave it to the participating Governments to recruit and select the workers in the countries of origin. Work permit applications are then processed by the local Canadian embassy or consulate. The programme is strictly seasonal and allows for a stay in Canada of a maximum of eight months. It does not open any right of access to more permanent status but allows for the possibility of recirculation or re-entry through the programme if the workers demonstrate good behaviour, in other words, if they comply with the requirements. This partly explains the lower number of overstayers compared with those in other similar programmes. While in Canada, workers cannot seek alternative or additional employment or transfer to another farm without government approval.

The North American Free Trade Agreement includes provisions on facilitating the temporary movement of citizens of the parties to the Agreement

Among the regional trade agreements, the North American Free Trade Agreement (NAFTA) includes provisions on facilitating the temporary movement of the citizens of the parties to the Agreement. Access is limited to four higher-skill categories: traders and investors, intra-company transferees, business visitors, and specific categories of professionals. These groups are not limited to those engaged in services and may include persons in activities related to agriculture or manufacturing. Labour certification or labour-market assessment/tests are waived but work permits are required, except for business visitors. Visas and other general immigration requirements apply, and entry may be refused if authorities believe it may adversely affect 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. Under the North American Free Trade Agreement, the United States provides “Trade NAFTA” (TN) visas for professionals, which are valid for one year and renewable. Canadians can be granted TN status at the port of entry upon presentation of a letter from a United States employer. Mexicans must arrange for their employer to file a labour condition application, and then must apply for a visa at the United States Embassy in Mexico.

The Asia-Pacific Economic Cooperation group’s Business Travel Card Scheme facilitates short-term business travel

The Asia-Pacific Economic Cooperation (APEC) grouping provides another example of an arrangement to facilitate the entry of business visitors. APEC does not grant any right of entry but has established a scheme to facilitate the entry of business visitors under the APEC Business Travel Card Scheme. The Card has a validity of three years and permits multiple short-term business visits for a period of two or three months on each

arrival. Card holders are required to present their passports but receive expedited airport processing and are not required to submit separate applications for business visitor visas. Participating economies commit to implementing the Scheme on a best-endeavour basis and are allowed to apply existing visa requirements for business visitors. All economies also retain the right to refuse an individual without providing reasons which includes refusing entry to APEC Business Travel Card holders at the border.

The World Trade Organization, through the General Agreement on Trade in Services, includes provisions for the supply of services through the presence of natural persons of one member of the World Trade Organisation in the territory of another member. The next section elaborates on this particular means of facilitating trade in services, known as Mode 4.

## International regime for the temporary movement of natural persons in the services sector or the temporary movement of service suppliers

### Mode 4 under the General Agreement on Trade in Services

A gain in efficiency is the result of both migration and trade. The difference between them lies in the fact that in the case of migration, a factor of production, labour, moves, while in the case of trade, the output that embodies factors of production moves. More recently, however, an additional link has been established between migration and trade through the arrangement on trade in services. That arrangement had been foreseen as constituting one of the main Agreements within the World Trade Organization when that organization was established and when it was agreed that the World Trade Organization, in contrast with its predecessor, the General Agreement on Tariffs and Trade (GATT), should include trade in services as part of its overall mandate.

To this end, the General Agreement on Trade in Services entered into force on 1 January 1995. The Agreement provides for four modes by which services may be traded. Of relevance in the context of this chapter is Mode 4 (movement of natural persons) which regulates the supply of a service by a supplier in one member country, through the presence of natural persons of that member in the territory of any other member.<sup>6</sup>

The coverage of the General Agreement on Trade in Services is very specific: it refers only to service suppliers as natural persons or as employees of service suppliers who enter a country to provide a particular service. The stay is temporary, although the Agreement does not specify what counts as temporary. The period of stay of temporary service suppliers can range from two months to several years, with renewal of permits allowed, depending on the member's schedule of commitments. However, neither Mode 4, nor any other part of the Agreement, covers individuals seeking general access to a foreign employment market, nor does it contain measures regarding citizenship, residence or employment on a permanent basis.

Paragraph 1 of the Annex on the Movement of Natural Persons Supplying Services under the Agreement (hereinafter referred to as the annex) specifies Mode 4 as covering the movements of two categories of natural persons: (a) natural persons who are *service suppliers* of a member (self-employed contractual service suppliers) and (b) natural

The World Trade Organization General Agreement on Trade in Services provides for temporary labour migration through its Mode 4

The General Agreement on Trade in Services entered into force on 1 January 1995

Mode 4 of the General Agreement on Trade in Services refers specifically to temporary international movement of individuals ("natural persons") or employees of service suppliers

The Annex on the Movement of Natural Persons Supplying Services under the Agreement details precisely the terms and conditions in respect of Mode 4 workers

persons who are *employees of a service supplier* of a member. The latter may be employed either by (a) a foreign company that has a commercial presence in the host country (intra-corporate transferees); or by (b) a company outside the territory of a member<sup>7</sup> whose employee is sent to the other member to supply a service. It must be emphasized that there is no a priori exclusion of any occupation or skill level from the General Agreement on Trade in Services.

The Annex further provides that the General Agreement on Trade in Services does not cover natural persons seeking access to the employment market of a member, nor does it cover measures regarding citizenship, residence or employment on a permanent basis. The Agreement is not an instrument enabling foreign nationals to cross borders in active search of employment. Rather, it aims to create a multilateral framework for the predictable temporary exchange of skills and expertise. Governments are free to regulate entry and temporary stay, provided these measures do not nullify or impair the commitments. Footnote 1 to the Annex further indicates that differential visa requirements should not be regarded as nullifying or impairing benefits under a specific commitment.

Mode 4 trade comprises a very small proportion of all trade in services

Available statistics show that Mode 4 trade is characterized by very limited bindings under the General Agreement on Trade in Services and accounts for a very small fraction of total trade in services. According to the World Trade Organization, Mode 4-related trade in services accounts for just over 1 per cent of world services trade, whereas Mode 3 trade accounts for more than half of world trade in services, Mode 1 for about one fourth and Mode 2 for less than one fifth (WTO, 2002).<sup>8</sup>

Measuring the economic value of Mode 4 trade is difficult

Measuring the economic value of Mode 4 trade is challenging. The proxies used are data on compensation of employees and data on workers' remittances, both of which have their limitations and may overestimate or underestimate the value generated by Mode 4. Mode 4 covers the movement of service providers but not all kinds of worker movements (for example, it excludes workers in the goods sector and the foreign employees of domestic firms) and refers to temporary movements (which could involve a period of anywhere from two months to five years, depending on countries' schedule of specific commitments). On the one hand, data on compensation of employees and workers' remittances may overestimate the economic value of Mode 4, as they do not distinguish between goods-related and services-related activities. On the other hand, these measures may also underestimate Mode 4 movements in that compensation of employees cover only movements of less than a year and exclude business visitors while workers' remittances capture only movements of more than a year and record only remittances that go through official channels.

The Manual on Statistics of International Trade in Services is designed to improve knowledge of comparability and coverage

Efforts at improving the collection and monitoring of data on trade in services has resulted in the joint publication by the World Trade Organisation, the European Commission, the International Monetary Fund, OECD, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations of the *Manual on Statistics of International Trade in Services* (United Nations, European Commission, International Monetary Fund, Organisation for Economic Co-operation and Development, United Nations Conference on Trade and Development and World Trade Organisation, 2002). The Manual sets out an internationally agreed framework to meet the need for more comparable and comprehensive statistics on trade in services. The recommendations in the *Manual* will enable countries to progressively expand and structure information on trade in services in an internationally comparable way.

## Current utilization of the channel provided by Mode 4

In spite of the gains that could be derived from the utilization of Mode 4, countries have made fewer commitments under the General Agreement on Trade in Services to Mode 4 than to the other three Modes. Overall, Mode 4 commitments under the Agreement remain restrictive: commitments refer mainly to a limited set of categories of service providers, mostly high-skilled and linked to a commercial presence. In addition to this limitation, countries also maintain pre-employment requirements, nationality and residency requirements, qualification and registration requirements, and economic needs tests (ENTs), among other restrictions.

The movement of foreign natural persons to another country is limited by a number of barriers in the Schedules of Commitments maintained by each country. The *limited number of categories of workers* for which countries have made commitments and a bias towards movement linked to Mode 3 (which have shaped the “template” for scheduling Mode 4 commitments) are a constraint on expanding countries’ Mode 4 commitments (see table V.3). Currently, countries have commitments on the following: (a) intra-corporate

Countries have made less use of Mode 4 than of the other three Modes

Countries have tended to impose limitations on the sets of worker categories for which they make Mode 4 commitments

Table V.3.

### Types of natural persons supplying services (horizontal commitments), 2003<sup>a,b</sup>

Category	Percentage	Number of countries
Intra-corporate transferees	57	62
Other executive, managerial, specialist <sup>c</sup>	21	23
Business visitors to set up commercial presence	18	19
Business visitors to negotiate the sale of a service	26	28
Other types of business visitors	12	13
Contractual service suppliers (employees of juridical persons)	14	15
Contractual service suppliers (independent providers)	6	7
No categories specified <sup>d</sup>	14	15

Source: World Trade Organization (2002).

- a** World Trade Organization members may schedule their specific commitments under the General Agreement on Trade in Services in two ways: (a) horizontally, whereby limitations/commitments apply to all of the sectors/subsectors on which a particular Member made commitments; and (b) sector-specifically, whereby limitations/commitments apply only to a specific sector/subsector. Most World Trade Organisation members’ Mode 4 commitments have been made on a horizontal basis, and as positive undertaking, that is to say, indicating only the extent of its bindingness with respect to specific categories of persons, the duration of stay, other requirements for entry, etc. Consequently, their sector-specific commitments with respect to Mode 4 normally read as follows: “Unbound, except as provided for in the horizontal section of this schedule”.
- b** For a total number of 108 countries that have included commitments on Mode 4 in the horizontal section of their schedules. The percentages refer to the proportion of countries that have made entries for the above categories in their schedule of commitments. The percentages do not add up to 100 because of multiple entries.
- c** Involving commitments on executive and managerial positions; however, respondents did not specify the category to be that of ICTs.
- d** This being the case for countries that had horizontal commitments on Mode 4 but did not specify any category of personnel. Instead, the commitments referred to regulations and conditions relating to entry, namely, requirements to be fulfilled, economic needs tests (ENTs), administrative procedures, etc.

rate transferees (ICTs), mostly executives, managers and other specialists; (b) other executive and managerial positions (not necessarily specified as ICTs); (c) business visitors; and (d) contractual service suppliers (either as independent professionals or as employees of juridical persons). Close to 60 per cent of the 108 countries with Mode 4 commitments have entries referring to movement of ICTs linked to commercial presence, while only 14 per cent have commitments on contractual service suppliers.

Another barrier to Mode 4 trade is the lack of generally agreed-upon definitions of natural persons

The *absence of generally agreed-upon definitions* or precise descriptions of the types of natural persons to whom access is to be granted under Mode 4 is also a barrier, as the entry of persons is thereby subject to administrative discretion which detracts from the predictability of entry conditions. Subjecting the movement of temporary workers to the general immigration procedures of host countries, that is to say, to a situation where there is *no separation between temporary and permanent movement*, also hampers the processing of entry visas for temporary foreign service providers. Considering that some services are urgently required and have to be provided immediately, any delays caused by visa procedures become barriers to the delivery of services through Mode 4.

Lack of clarity about economic needs tests (ENTs) can also hinder wider use of Mode 4

Some of the more specific limitations contained in countries' schedule include requirements for economic needs tests or labour-market tests (ENTs/LMTs), as conditions for the provision of access to foreign service suppliers. Economic needs test requirements, together with the presence of numerical quotas, monopolies and exclusive service suppliers, are among the limitations that countries are allowed to maintain, if specifically listed in the market access limitation column of their schedule. Paragraph 9 of the Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS) (document S/L/92) of 28 March 2001 states that entries with regard to the economic needs tests "should indicate the main criteria on which the test is based". Countries, however, often list compliance with an economic needs test as a requirement, but do not clearly indicate the criteria for these tests. In the absence of specific criteria, entry conditions become vulnerable to discretionary application and may serve as market access barriers (see box V.1 for a more detailed discussion of economic needs tests).

Other obstacles in respect of Mode 4 commitments can be government procedures to assess professional qualifications, to set pre-employment requirements and to regulate wage parity and social security arrangements

Countries also have the freedom to assess whether a foreign natural person satisfies some educational and professional qualifications before giving that person a licence or permit to work (as part of the *Government's regulatory function*). These procedures for assessing qualifications, skills and experience can be used as a barrier to entry, especially in the area of professional services, as they may either deny market access to service providers from other countries or force service providers to accept job conditions that are below their level of qualification and training. Requirements for *accreditation (or authorization)* by local professional bodies before a practice of profession is allowed also disadvantage foreign workers and impose an undue burden on them.

There are also *pre-employment requirements*, for example, for a person to have been employed by the firm for a specified number of years immediately preceding the transfer, as may be the case for intra-corporate transferees and, to some extent, contractual service suppliers. While the intention is to ensure that the employment with the firm is not being used as an excuse to facilitate access to another country's territory, this requirement may also serve as a barrier to entry. In addition, there are *quota or numerical caps*, through which the entry of foreign natural persons is limited to a specified number or, in some instances, to some percentage of the number of local employees. *Nationality and residency requirements* are also set, specifically regarding the composition of high-level management personnel, such as the membership of a board of directors, or in some speciality occupations (for example, that of chef or ski instructor).

## Box V.1

**Economic needs tests (ENTs)**

Economic needs tests (ENTs) (which, as the name implies, are requirements based on a country's economic needs) are used by World Trade Organization members as a means of restricting market access. For Mode 4, a certain kind of a labour-market test is applied, that is to say, companies have to demonstrate that local skills are not available after an extensive search and publication of need have been undertaken. The General Agreement on Trade in Services sanctions the use of ENTs but requires that the specific criteria for their application be laid out by countries using such measures. That most countries' commitments have failed to do this, opens up possibilities for their discriminatory application and affects the predictability and certainty of market access conditions. For Mode 4, ENTs as a requirement have been attached to some category of movements but not to others, with countries being more lenient on intra-corporate transferees, in general. Experts as well as negotiators acknowledge the need to eliminate or reduce the application of ENTs or, if this is not possible, to provide details for their application. Some have also suggested the use of numerical ceilings as an alternative.

It might be difficult for countries to agree on the elimination of ENTs altogether as they may serve legitimate objectives, especially in view of the economic cycles that countries go through. In this regard, countries may as a first priority seek to ensure that no rollback in policies related to Mode 4 trade is allowed in the negotiations and that the binding of existing conditions should be pursued. ENTs may be a means to undertake commitments that would not otherwise be made; they may not always be discriminatory in nature and may be applied on a national treatment basis.

Exchange of information with a view to enhancing transparency in this area could identify best national practices and further enlighten the debate on how to minimize the burden on service suppliers facing such tests. Transparency could become part of the negotiations on specific commitments as a means of obtaining clear information on all requirements related to Mode 4. Best practices and examples of the removal of ENTs by some developed countries, like Norway, members of the European Union (EU), Canada and Japan, need to be broadened, deepened and replicated in categories of interest to developing countries.

**Source:**  
United Nations Conference on  
Trade and Development  
(UNCTAD) (2003).

*Wage parity requirements*, or the application of domestic wage legislation<sup>9</sup>, disadvantages foreign natural persons relative to nationals, as such measures nullify the cost advantage that foreign suppliers have. *Social security contributions*, in the absence of their portability, is an additional cost to foreign service providers and serves as a de facto discriminatory measure.

The terrorist attacks of 11 September 2001 in the United States have contributed to a further tightening of border entry measures, which were already very restrictive for some countries. In general, receiving countries maintain entry barriers because of fear that easy access would result in an unregulated flow of, and permanent stay by, foreigners. This gives rise to concerns regarding security, the use of infrastructural services, cultural sensitivities, conditions in the labour market, the impact on the wages of natives and other enforcement-related concerns.

Maintaining bilateral labour arrangements has become more convenient for some countries, as this provides for greater flexibility than does binding commitments multilaterally. Some countries also consider paramount their long-standing historical and cultural ties that resulted in, among others, common linguistic and religious practices and are more relaxed in their policies relating to the movement of people from countries with which they share a common historical heritage. Other countries facilitate the movement of

service providers at the regional level. Nevertheless, in order to ensure predictability and security of market access conditions and to benefit from the progressive liberalization of the movement of natural persons, developing countries still encourage major importing countries to broaden their commitments on Mode 4 at the multilateral level during this round of negotiations.

## Enhancing temporary movement under Mode 4

A strong case can be made for liberalizing Mode 4 trade

The current Doha negotiations offer a useful opportunity to liberalize Mode 4; several issues need clarification

Some initiatives to liberalize Mode 4 have been undertaken, but more are desirable in order to broaden the scope of commitments and to reduce national treatment limitations

There are both political and economic justifications for substantially liberalizing Mode 4 trade. There is already an increasing global movement of workers, mainly from developing to developed countries, and evidence suggests that specific needs remain unmet in key skilled occupations in developed countries, notably in the health and computer-related fields. One means of meeting such needs is to take advantage of the present opportunity to liberalize Mode 4 as part of the Doha trade negotiations. Existing bilateral schemes work well for some countries, but the security and predictability offered by the General Agreement on Trade in Services justify seeking binding commitments multilaterally.

Several issues relating to the coverage of Mode 4 need clarification during the negotiations. The first is employment by foreign nationals in domestically owned firms in the host country. From the practical national policy perspective, there may be no distinction as to whether a person engaged to work for a firm enters under a service contract or an employment contract. This is important for developing countries because most of the current movements are made possible through employment contracts (for example, with respect to the Philippines, it was found that close to 99 per cent of their current outward flows have been effected through employment contracts). It would be useful to clarify this issue, as developing countries have a strong interest in a wide coverage of Mode 4, particularly in respect of contractual service suppliers. Second, there is the related issue of what constitutes a service for this impact on the coverage of the General Agreement on Trade in Services. The case of temporary agricultural labourers and manufacturing workers providing services incidental to agriculture or manufactures is also relevant to Mode 4. Consequently, one suggestion is to expand Mode 4 coverage beyond service suppliers to include workers related to agriculture and manufacturing. The language of the General Agreement on Trade in Services and its Annex on Mode 4 allows the above-mentioned categories. Such broad coverage would also cater to the commercial reality of trade in services through Mode 4 and migration regimes.

In the negotiations in the World Trade Organization, initial offers in respect of liberalizing Mode 4 have not been very promising (see annex to the present chapter). However, some countries have already made offers on categories that are delinked from commercial presence and that can be of benefit to developing countries (see annex for the main issues under negotiation). Some countries have also eliminated nationality requirements and clarified the application of economic needs tests. This suggests there is room for further progress. To this end, the ongoing negotiations should address the following issues:

**Broadening the scope of commitments by:** (a) *Expanding the scope and coverage of commitments* beyond those linked to commercial presence, so as to include commitment on contractual services suppliers (for both employees of juridical persons and independent service providers) covering all levels of skills;<sup>10</sup> (b) *expanding the sectors* to which such commitments

apply. There is a need as well to agree on *common categories* (preferably based on the International Labour Organization (ILO) International Standard Classification of Occupations) and, to incorporate movements involving the less skilled. In cases where the commitment is confined to specific sectors/subsectors, those sectors that would benefit developing countries most (for example, tourism, construction, maintenance work and cleaning services, among others) should be taken into account. *Common definitions* for each category are also desirable, as this contributes to the predictability of commitments and would better facilitate cross references to national legislation and administrative procedures.

**National treatment limitations.** Current schedules also contain additional requirements on nationality and residency, wage parity and social security contributions. The requirements on the latter two, as they are aimed at cost equalization, undermine the comparative advantage of developing-country service providers and should also be addressed. The portability of social security insurance or the refund of payments has been suggested.

**Schemes to facilitate entry.** This includes such suggestions as a model schedule for members' Mode 4 commitments, adopting a General Agreement on Trade in Services or service provider visa,<sup>11</sup> elimination of ENTs, formulating multilateral guidelines on the application of economic needs tests and rationalizing and facilitating developing countries' participation in mutual recognition arrangements (MRAs). Suggestions have also been made relating to deriving lessons from bilateral labour arrangements, particularly on the aspect of extracting obligations/commitments from source (sending) countries to cooperate with regard to assessing and vouching for the character and qualification of the service supplier and ensuring his or her temporary stay in the host country.

**Improving transparency.** To improve transparency, existing regulations, including barriers and limitations relating to the movement of natural persons, should be reflected in countries' commitments, either as a part of market access/national treatment or, if appropriate, as an additional commitment column or in the form of a reference paper. With regard to better operationalizing Mode 4 commitments, suggestions have been made for countries to provide detailed information to the World Trade Organization, in a consolidated form, of all measures (particularly administrative measures) pertaining to the temporary admission of natural persons covered by commitments. The consolidated form could include information on the material or evidence required for an applicant seeking temporary admission as well as a description of the complete process for its submission, consideration and approval, as well as a full description of the manner in which any limitations to market access and national treatment in respect of the temporary entry of natural persons are administered by the country's authorities.

In addition to the above, the following could help lay the groundwork for negotiations on Mode 4 (UNCTAD, 2003):

- Continuing the dialogue on conceptual, policy, legal, institutional and administrative frameworks facilitating movement of natural persons to supply services as a means of regularly exchanging information including research, updating experiences, and sharing best practices. This could involve multiple organizations dealing directly or indirectly with the movement of people or those interested in the issue such as UNCTAD, the International Organization for Migration (IOM), ILO and the World Trade Organization and stakeholders: government representatives (relevant ministries as well as regulators), the private sector, non-governmental organizations, the service providers and, to some extent, academia;

Measures are needed to facilitate entry under Mode 4, possibly in the form of a General Agreement on Trade in Services Visa or the elimination of economic needs tests

Concerned bodies and organizations need to continue their dialogue on Mode 4, and relevant statistics need to be strengthened and harmonized

- Contributing to the improvement of statistics on Mode 4 to ensure that negotiations proceed in an informed manner and based on a common set of measurements. The compilation of the *Manual on Statistics of International Trade in Services* should serve as an initial step in compiling and harmonizing data that are necessary for a meaningful assessment of the liberalization of trade in services;
- Contributing to the strengthening of capacities of developing-country Governments in managing the trade agenda surrounding the issues of Mode 4, including providing support for the following:
  - Sequencing of the implementation of domestic policy reforms, and ensuring a steady supply of healthy members of the population and an educated and skilled workforce by investing in human capital including ensuring access to education, sanitation, clean water and basic health care.
  - Formulation of innovative employment policies and training programmes, including upgrading human resources aimed at strengthening competitiveness and boosting export opportunities that could be realized only with more liberal Mode 4 commitments.
  - Establishment of appropriate structures and framework to properly manage the movement of natural persons, including addressing issues of return migration, brain drain, maximization of the gains from remittances, and cushioning the social and economic effects of such movements on the service provider and his family.
  - Creation of institutional capacities to allow recognition of qualifications at all levels in those services with export potential through this Mode.
- Analyzing national and existing regional experiences in the treatment and liberalization of Mode 4 in schemes relating to integration, free trade areas and bilateral agreements in order to draw lessons for the treatment of the movement of natural persons at the multilateral level.

Much work needs to be done at the national level as well

## Outsourcing: an alternative way of taking advantage of wage differentials

Increase in the scope of operations and the interest in maximizing gains have led some large companies to outsource entire business functions, a practice sometimes called offshoring. Studies have shown that taking advantage of the low-cost quality service offered by skilled and specialized workers can reduce operation costs by up to 60 per cent for some companies. Some developing countries (India, China, the Philippines and some Caribbean States) have taken advantage of this opportunity to emerge as major players in business process outsourcing (BPO), providing services such as software application and development, and finance and account management services. It is estimated that global outsourcing expenditures, currently amounting to \$320 billion (2003) will grow to \$827 in 2008. Expenditure for global outsourcing of computer software and services is expected to increase from \$10 billion in 2003 to \$31 billion in 2008, representing a 26 per cent annual growth rate.

Business practice outsourcing (BPO) is a leading alternative to Mode 4 trade

One major concern raised with regard to outsourcing relates to employment dislocation and job migration from home countries to host countries, and the increasing wage differential between low-skill and high-skill labour in the home countries. Forrester Research (2002) estimates that offshore outsourcing will displace 3.3 million jobs from the United States to developing countries by 2015 and of these, 2.31 million jobs are expected to go to India. This is equivalent to US\$ 136 billion in wages, a staggering figure compared with that of only US\$ 4 billion in 2000.

However, some other studies have shown that demand for United States services remains high and actually increased between 1997 and 2003. The United States runs a trade surplus in high-value services including financial, legal, engineering and software development. Companies likewise still undertake much at their headquarters, as there are intrinsic limits to the number and types of jobs that can be moved offshore. This means that job growth in white-collar occupations deemed to be at risk from outsourcing (which growth is at present actually expanding) will continue to expand (for example, the number of computer and mathematics-related occupations was up by 6 per cent and the number of business and financial occupations was up by 9 per cent in the period 1999-2003).

Amid concerns on the negative impact of offshoring, studies show that countries could actually benefit from its impact on increasing productivity, reducing inflation and increasing the purchasing power of consumers. Estimates indicate that for every dollar of outsourcing by United States companies to India, the United States gains 67 cents in savings and direct returns and an additional 45 cents in new value from redeploying United States labour (that is to say, \$1.12 or 79 per cent of the total gains), while India gains 33 cents per dollar in terms of increased employment and investment. Moreover, it is estimated that the boost in economic activity arising from improved productivity generated 90,000 net additional jobs in the United States in 2003; this figure is forecast to rise to 317,000 in 2008.

Some sectors of the economy will have to bear losses but gains, on the whole, will be greater, especially for developing countries that are able to take advantage of the opportunities provided by offshoring. Financial and technology transfer gains feed into investments and other productive activities, generating employment and improving developing-country Governments' overall capacity to fulfil their development goals.

## Conclusions

It is widely recognized that a liberalization of the movement of people (workers and services providers) that is not for resettlement purposes would result in gains to the world economy and especially to most developing countries. Some observers have argued that such gains would be greater than the total gains expected from all of the other initiatives under discussion in the Doha work programme.

Improving the way temporary migrant flows are managed is a promising option. A step forward would be to implement such arrangements for the less skilled. This is already being achieved to a certain degree with seasonal workers, mostly in agriculture, who are brought in annually to perform specific tasks that last only a few months. The movement of unskilled workers from developing to developed countries promises to yield the greatest gains because this is where the difference between factor prices is largest and where there is considerable scope for movement. For example, one study computed gains of some \$200 billion annually if a temporary work visa scheme was designed and adopted multilaterally so that skilled and unskilled workers from developing countries (with a quota

There are major concerns that outsourcing can lead to permanent loss of jobs in countries that outsource

However, countries that have come to depend heavily on business process outsourcing continue to enjoy high domestic demand for services

Some analyse projects that countries that use business process outsourcing will gain in terms of economic growth and also in terms of job creation

There are great unrealized potential gains to the world economy in the further liberalization of temporary labour migration

set at 3 per cent of a developed country's labour force) would be allowed employment in developed countries for from three to five years and replaced by a new wave of inflows at the end of their assignment (Rodrik, 2002).

One important deterrent to such liberalization is the concern that temporary labour migrants may become permanent immigrants

Nevertheless, segments of the native population remain cautious as to the effectiveness of existing domestic migration policies and mechanisms to properly manage temporary migration. Indeed, the fear that temporary movements are just the first step towards permanent resettlement in the host country remains. This sentiment tends to be correlated with the vicissitudes of the business cycle; and during downturns, pressures for reducing the entry of foreign workers/service providers increase. However, reducing or shutting down temporary movement of services suppliers would reduce a country's growth potential and is not likely to be the best way forward; furthermore, such an approach is also unlikely to succeed in deterring people from moving (except at considerable cost in terms of enforcement). It may, on the contrary, act as an incentive to illegal migration (which also gives rise to negative reactions but is more difficult to manage).

Participants in temporary labour migration programmes (employers and migrant workers) have strong incentives with respect to a worker's converting to permanent status

Concerns regarding the duration of stay of workers/service providers are partly legitimate. Foreign workers/service providers often have an incentive to shift from a temporary to a permanent status, and employers have an incentive for them to do so. For their part, the employers become dependent on these workers/service providers, who often accept lower wages than natives and are less likely to leave for better alternatives. For their part, with weak enforcement of policies and the existence of a labour market for illegal entrants, these workers/service providers are able to stay beyond the expiration of their permit to obtain maximum benefit from their move. Temporary work programmes must recognize that some immigrants will move from being temporary to becoming more permanent and thus must provide for such an eventuality by channelling otherwise unauthorized migrants into legal status. They have to act, at the same time, in response to the above-mentioned incentives of employers and immigrants.

A crucial issue is how well temporary labour migration programmes are managed

In considering how to improve the management of migration, three principles should be kept in mind. First, government policies make a difference in respect of how migrants arrive and in what numbers, how they are treated within the country, and whether they return or stay. Second, the overall economic benefits of moving workers over borders are positive, since individual migrants and their employers become better off and world gross domestic product (GDP) rises as more workers obtain higher-wage jobs. Third, legal and orderly labour migration is best for all parties.

Both improved enforcement immigration regulations and economic incentives may be used in temporary labour migration programme management

Policy can create incentives for the different parties—employers and migrants in particular—to respect temporary migration programmes. Such mechanisms could either involve improved enforcement or be economic in nature. For example, the bilateral agreement between Canada and Mexico on the provision of seasonal agricultural workers provides an example of how enforcement can be used effectively; most likely neither the Government of Mexico nor the seasonal migrants are willing to take the risk of jeopardizing the future of the programme. In many cases, however, enforcement may be difficult or costly and economic incentives may be preferable.

Economic incentives can apply to either the employer or the migrant. For example, many existing programmes require that the employer provide a justification for why he/she is recruiting abroad rather than domestically, for example, by requesting that the employer prove the non-availability of natives suitable for the job. However, as long as there is an economic advantage for the employer to recruit abroad, he/she will find ways to do so. Alternatively, one could think of measures that reduce such an advantage, for example, a tax on the recruitment of migrants—one that is small enough not to discourage

recruitment abroad if absolutely necessary but high enough to discourage firms from recruiting only from abroad. A caveat is that such a measure would work only if illegal recruitment of migrants was not an option.

Other incentives could be designed to encourage migrants to return to their home country at the end of the contract; for example, certain taxes and other, similar payments levied during their stay (notably those levied for social security and pension purposes) could be wholly or partially refunded or forced savings could be accumulated and held, either in the host country or in the country of origin. Such arrangements would both promote the voluntary return of migrants and provide financial capital for use in the home country. However, such schemes also provide an incentive for immigrants wishing to remain in the host country on a long-term basis to switch to illegal employment early in their stay in order that a smaller amount of savings might be forfeited. As an alternative, the onus of ensuring that workers return could be put on employers, who could also have to show that they are not recruiting illegal workers.<sup>12</sup>

Another approach is to select private contractors to provide the migrant workforce in order to ensure better adherence to the rules of the game and to protect migrants from being exploited.<sup>13</sup> In the Persian Gulf States, for example, more than 1 million workers stayed for short periods of employment during the two decades of the construction boom that followed the oil price increase of 1973.

An alternative way of exploiting gains from trade is through Mode 4 of the General Agreement on Trade in Services which entails the movement of natural persons for the purpose of providing a service. Significant potential gains from relaxing the conditions for movement of persons, especially the less skilled, have been established. Developing countries have also indicated this to be among their key export interests and it is in this regard that realizing a commercially meaningful liberalization of the conditions for movement of natural persons under the General Agreement on Trade in Services would constitute “a litmus test for the development content of the Doha Work Programme” (United Nations Conference on Trade and Development, 2003).

To date, however, exploiting trade gains through Mode 4 remains among the more neglected aspects of globalization. Progress in the negotiations on Mode 4 is moving at a very slow pace. However, small and positive developments are being observed as reflected, for example, by the offers being made related to contractual service suppliers and the continuous engagement in discussions on how best to reconcile domestic immigration concerns and the pressure to liberalize the movement of people. The growing involvement of immigration officials in discussions relating to the movement of natural persons is a positive step and contributes significantly to building confidence and assuaging fears relating to domestic pressures and concerns associated with migration (especially permanent migration).

Moreover, there is interest among both developed and developing countries in easing some administrative hurdles relating to the entry of foreign service providers through greater transparency of rules and regulations. There are also exchanges pertaining to adopting within the framework of the General Agreement on Trade in Services some elements of bilateral and regional arrangements on facilitating movement of people. Key to the success of these arrangements is the sharing of responsibility by both the sending and the receiving countries with respect to the orderly movement of people (which would include pre-deployment screening and ensuring return). If such sharing of responsibility could be effected within the context of the General Agreement on Trade in Services (and if, at the same time, issues related to most favoured nation status could be satisfactorily tackled), more significant progress with regard to extracting more liberal Mode 4 commitments would be foreseeable.

There is a range of economic incentives available to encourage migrants to return to their country of origin

Another way of exploiting gains from trade is through General Agreement on Trade in Services Mode 4

Progress in negotiations on Mode 4 has moved slowly

The potential of Mode 4 remains very great

Ultimately, the goal is to create an international framework for trade in services that is fair, equitable, balanced, more open, more predictable and more transparent. With the liberalization of temporary movement of service workers, especially movements of semi- and less-skilled personnel, globalization could claim to have been a “force for good” (Department of Trade and Industry, United Kingdom, 2004) for both developing and developed countries.

## Notes

- 1 Students are also considered temporary migrants, but this category will not be analysed. Another category, which includes working holidaymakers, permits partial access to the labour market and generally does not require a minimum level of education. Several countries members of the Organisation for Economic Cooperation and Development (OECD) have bilateral agreements relating to this type of temporary entry in order to increase mobility among member countries (see SOPEMI (Continuous Reporting System on Migration), 2004).
- 2 Unauthorized international migrants who stay in a host country for a short duration of time are not considered here.
- 3 The full text of the General Agreement on Trade in Services is available from [http://www.wto.org/english/tratop\\_e/serv\\_e/gatsintr\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm) (accessed 15 November 2004).
- 4 These data record only documented migrants; there are also unskilled workers who cross national boundaries to work for temporary periods without going through formal channels. In some countries, these flows probably exceed the number of officially recorded temporary unskilled migrants.
- 5 Anecdotal evidence from sending countries reveals, however, that some receiving countries use the “trainee” category as a backdoor through which to take in more foreign workers who are then made to perform menial tasks, or work as “entertainers”. This constitutes a violation of their contract but the foreign workers remain silent because they have an interest in working in the foreign territory.
- 6 The other modes are: Mode 1 (cross-border supply), covering the flow of a service from the territory of one member into the territory of any other member; Mode 2 (consumption abroad), covering the situation where a service consumer of one member moves into the territory of another member to obtain a service; and Mode 3 (commercial presence), covering the establishment by the service supplier of one member of a commercial presence in the territory of another member (see World Trade Organization (1999), pp. 286-287).
- 7 The contract is between the home country company and a host country consumer (juridical contractual service supplier).
- 8 However, services delivered through Mode 3, by their very nature, generate more economic value because of the sheer bulk of upstream and downstream activities involved in setting up a commercial presence.
- 9 Some countries’ schedule of commitments makes access of foreign suppliers conditional on the employer’s paying the same level of wage he would give to locals/residents. Analysts have contended that this erodes the comparative advantage of developing countries in providing low-cost but high-quality service and thus diminishes the motivation of employers to seek for alternative sources of service providers (unless there is clearly an absence of any local who could provide the same service).
- 10 Commitments on contract service suppliers (CSS) can actually be made to apply horizontally, as services provided by service suppliers on the basis of a contract can cut across activities (including those incidental to agriculture and manufacturing) and sectors. This category can also be genuinely temporary, as the contract is tied to specific duration.
- 11 Driven by regulatory and security concerns associated with the freer mobility of service providers, such a scheme would seek to differentiate between permanent and temporary movement and would relax entry conditions for the latter. Some countries have been undertaking reforms in facilitating the processing of work permits. The United Kingdom is a good example and, lately, Switzerland has announced that the canton of Zürich is now implementing an e-permit system that allows the processing of work permits within 48 hours, provided that the required documentation is complete.
- 12 As is the case, for example, in Greece and Israel (ILO, 2004).
- 13 As this channel of recruitment has allowed exploitation of migrants, the selectivity of organizations is recommended.

## Annex

# Status of negotiations in the World Trade Organization on Mode 4 of the General Agreement on Trade in Services

### Current negotiating proposals: a brief overview<sup>a</sup>

Seven negotiating proposals relating to Mode 4 have been discussed in the negotiations in the World Trade Organization. A summary of the major points raised in these submissions are presented below.

The papers from the United States of America (World Trade Organization, 2000b), the European Communities (World Trade Organization, 2001a) and Canada (World Trade Organization, 2001b) all recognize the sensitive nature of the movement of natural persons and thus call for strengthening regulatory disciplines and enhancing transparency to ensure the implementation of market access commitments. The United States proposal stresses the need for improved access to information and ensuring procedural transparency which it believes could affect the ability of natural persons to compete as service suppliers in the potential host-country market. The United States also suggests the adoption of a “tailored approach” to the horizontal restrictions on the movement of natural persons which is a highly regulated area of trade in services.

In various communications, the European Communities has established parameters for discussions on Mode 4 liberalization, that is to say, it would limit discussions to only those that relate to the temporary movement of intra-corporate transferees, as well as contract suppliers.<sup>b</sup> It equally stresses that discussions on the temporary movement of service suppliers is a sensitive subject because of the importance countries attach to regulating the presence of foreigners in their territory (World Trade Organization, 2001a). The European Communities paper also suggests the following: harmonization of definitions and/or description of the Mode 4 categories specifically in the context of intra-corporate transferees; specification of unspecified labour-market tests from future commitments to ensure effective application of Mode 4 liberalization; and rendering economic needs tests more specific, transparent and non-discriminatory.

Canada’s proposal expresses the need to strengthen the transparency obligations of the General Agreement on Trade in Services which it perceives would benefit, in particular, individual service suppliers and small and medium-sized enterprises (SMEs). It suggests that countries should improve their Mode 4 commitments, both horizontal and sectoral, and that countries should make commitments on general business visitors and on professionals including those entering on a contractual basis and not linked to commercial presence. Specifically to improve transparency and predictability of existing and new Mode 4 commitments, countries should look into: immigration laws and regulations, including procedural information related to temporary movement; available foreign worker programmes and their entry criteria; applicable conditions for economic needs tests; and maximum duration of stay and market access limitations as cited in commitments (World Trade Organization, 2001b).

In current negotiations on Mode 4, the United States of America, the European Communities and Canada all call for strengthening regulatory disciplines and greater transparency

The European Communities has focused on intra-corporate transferees and contract suppliers

Canada suggested a broad improvement in Mode 4 commitments

Japan focused on  
intra-corporate  
transferees

The Japanese proposal, which focuses on the reduction of limitations on intra-corporate transferees, calls for greater transparency and better facilitation of immigration procedures relating to the movement of temporary workers. It also calls upon countries to endeavour to limit the use of economic needs tests or, if this is unavoidable, to specify clear criteria for their application (World Trade Organization, 2001c).

Among other things,  
India proposed the  
introduction of a  
special General  
Agreement on Trade  
in Services visa

The communication from India (World Trade Organization, 2000a) proposes the inclusion of a separate category on individual professionals and delinking their movements to Mode 3. India also suggests the introduction of a special General Agreement on Trade in Services visa to cover the movements of temporary service providers and to differentiate them from permanent flows which should be the only ones that go through the normal immigration procedures. The Indian proposal has also recommended the following: developing more specific, finer classifications and wider coverage of personnel categories; using the International Standard Classification of Occupations as a basis for expanding the coverage of foreign worker movement (in other words, for including mid- and lower-level professionals); and establishing disciplines relating to economic needs tests as well as multilateral norms on recognition of academic and work-related qualifications to ensure transparency, minimize discretion and maintain a greater degree of certainty. India also reiterated the need for an assessment of Mode 4 liberalization to determine the extent to which the objectives of article IV of the General Agreement on Trade in Services have been met.

These negotiating proposals all seek to address certain aspects of liberalizing Mode 4 trade. Some specifically address issues relating to the broadening and deepening of Mode 4 commitments, while others suggest means by which movements could be better facilitated including through delinking Mode 4 from commercial presence (Mode 3). In the offers stage of the services negotiations,<sup>c</sup> countries are expected to address these concerns, including requests put forward by developing countries in particular.

## Offers

As of September 2004,  
12 members of the  
World Trade  
Organization had  
made public offers on  
liberalizing trade  
in services

As of September 2004, 48 members of the World Trade Organization (62 countries if members of the European Communities are counted individually) had submitted initial offers relating to the liberalization of trade in services. Of the 47, only 12 had made their offers public. Some preliminary analysis of the publicly available offers indicate improvements of the following nature: inclusion of additional categories of natural persons or provision of detailed definitions for each category; extension of the duration of stay; providing criteria for the application of economic needs test requirements; and eliminating previously existing limitations (for example, those relating to work permit, qualification, educational requirements, nationality requirements, etc.).

Some countries made  
new or improved  
commitments on  
contractual service  
suppliers

Some countries have made new commitments or improved existing commitments on contractual service suppliers (CSS), both for independent providers and for employees of service suppliers, by providing extensions for their length of stay, allowing for the renewal of permits or including more subsectors where CSS commitments apply. Commitments on CSS are of interest, especially to some developing countries, as CSS movements are delinked from Mode 3 and movements of semi- and low-skilled workers may be negotiated under CSS (depending on the sectors/subsectors that countries are willing to commit on). Criteria for the application of economic needs tests have also been indicated in some of the offers.

In an initial assessment of offers, a group of 18 developing countries argue that current offers do not present significant improvements over existing Mode 4 commitments. Only a few of the offers presented new categories delinked from commercial presence, whereas developing countries have consistently reiterated that they could benefit more if countries opened up their markets to categories such as contractual service suppliers and independent service providers. In addition, a significant number of horizontal and sectoral limitations that countries maintain have not been removed. The issuance of work permits and visa procedures have not been addressed in any of the offers, even amid requests from some developing countries that this concern be addressed through improved transparency in countries' regulations (which could be scheduled under the Additional Commitments column) or the introduction of a General Agreement on Trade in Services visa or a service provider visa.

In general, developing countries have viewed the new offers as affording little improvement

## The outlook for Mode 4

### Discussions in the Council for Trade in Services

In July 2003, 15 developing country countries circulated to the Council for Trade in Services a paper on "Proposed liberalization of Mode 4 under GATS negotiations". The paper highlighted the bias in current commitments in favour of movements linked to commercial presence and the need for countries to remedy this imbalance by making meaningful commitments on other categories of service providers delinked from commercial presence (for example, independent professionals and other contractual service suppliers). The paper also stressed the need to complement countries' horizontal commitments with specific sectoral commitments for deeper liberalization or the inclusion of categories of persons not covered in the horizontal section. Other elements included:

In the Council for Trade in Services, 15 developing countries have called for greater liberalization of Mode 4, beyond services linked to a commercial presence

- Addressing administrative procedures relating to visas and work permits, transparency of regulations and economic needs tests, with the aim of facilitating rather than impeding the entry of foreign service providers.
- Dealing with the recognition of qualifications through any of the following: (a) the development of disciplines under article VI, paragraph 4, of the General Agreement on Trade in Services; (b) undertaking additional commitments under article XVIII; (c) strengthening the framework for recognition agreements under article VII of the Agreement; and (d) considering a model schedule to provide a framework for uniformity in commitments.

In addition to this formal venue, there is also a group organized by some countries called Friends of Mode 4 where Mode 4-related issues are discussed.

## Where can progress be made?

Both developed and developing countries in the World Trade Organization recognize the importance of facilitating Mode 4 trade and the interest on both sides in moving the negotiations forward.

### *Additional commitments on categories of persons covered*

Most developed countries wish to broaden commitments on employees of service suppliers, whereas developing countries seek more meaningful commitments on movements that are not linked to commercial presence for example, those of contractual service suppliers (especially independent service suppliers), and on the inclusion of semi- or low-skilled persons. However, demand for such lower-skilled services as construction services, caregiving and household help from both developed and developing countries is currently met through bilateral or regional arrangements. One reason for not binding such commitments under the General Agreement on Trade in Services is flexibility: bilateral arrangements are easier to manage and negotiate and countries do not face the danger of being subjected to the Dispute Settlement Body of the World Trade Organization. Some countries are also more open to making binding commitments on professionals or highly skilled persons because there is a higher probability that they will return to their home country rather than become permanent immigrants.

It has been suggested that there should be a template for the categories of persons covered and the International Labour Organization (ILO) International Standard Classification of Occupations has been suggested as providing a means of broadening those categories and skill levels that could be negotiated. A concern was expressed that using the classification would complicate matters, given the lack of concordance with existing national classification systems. A common understanding needs to be developed in establishing clear definitions of categories of persons covered, including those covered in the horizontal commitments (for example, business visitors, intra-corporate transferees and contractual service suppliers), and establishing their correspondence with national immigration regimes.

Movements towards meaningful commitments for contractual service suppliers is possible<sup>d</sup> but there is a need for a unified stance and further concrete requests by developing countries in respect of seeking real and effective market access.

### *Eliminating/reducing other forms of limitations*

Countries in their offers had, to some limited extent, responded to the call to reduce other Mode 4 trade barriers (including nationality and citizenship requirements, application of economic needs tests, compulsory hiring of local staff, and quotas). Other areas where countries could seek improvements include: pre-employment requirements and the duration of stay for each category of service providers; discriminatory taxes; wage parity conditions; and compulsory social security contributions.

### *Mutual recognition arrangements (MRAs)*

The assessment of qualifications and skills may facilitate or impede entry. Depending on the approach used, the service provider may obtain a job commensurate with his/her qualifications or end up in a less desirable position.

Article VII of the General Agreement on Trade in Services permits countries to enter into bilateral or plurilateral mutual recognition arrangements and to deviate from the most-favoured-nation (MFN) principle in this matter. However, article VII also obliges countries to notify of existing mutual recognition arrangements and those under negotiation and to provide an opportunity for other countries to negotiate their accession or nego-

There is need to broaden the categories of persons covered under Mode 4 trade, and to reach common agreement on the definitions of categories of persons covered

In their offers, countries have made limited progress in reducing such barriers to Mode 4 trade as citizenship requirements and use of economic needs tests

It would be highly beneficial to enhance arrangements for the mutual recognition of educational qualifications

tiate comparable agreements. So far, there have only been 39 notifications by 19 countries of the World Trade Organization, but this number does not reflect the total number of mutual recognition arrangements negotiated. The overall objective of notifications is to increase transparency in this area; and achieving timely and comprehensive notifications is in the interest of developing countries. The development of disciplines under article VI, paragraph 4, of the Agreement to determine the discriminatory nature of a domestic regulation would also enhance the possibilities for the recognition of qualifications, but only when basic definitions had been agreed upon.

Mutual recognition arrangements are most often concluded between countries with relatively similar training systems and regulatory regimes and to date have been forged mainly by developed-country partners. The fact that acceding to an existing mutual recognition arrangement could be difficult for countries that lack national recognition systems, professional bodies and/or industry associations, explains the call by developing countries for multilateral guidelines on mutual recognition arrangements. While the current issue relates to the recognition of earned degrees (or diplomas), it would benefit developing countries if the recognition of experience and other non-educational aspects, as well as qualifications for groups other than those of highly skilled professionals, was tackled at the multilateral level. In line with this, developing countries could benefit from obtaining information at the multilateral level on qualification requirements and procedures and information specifying the hierarchy of measures required to obtain such recognition, and the ways to expedite the processing of licences, authorizations and the recognition of qualifications, and associated fees.

### *Transparency*

Some countries have highlighted (in their proposals relating to Mode 4, or in separate papers) the need to provide for full transparency regarding the domestic regulatory framework in order to facilitate the movement of service providers. Canada has suggested that countries provide footnotes in their commitments on where to obtain information for each category of person with commitments in the schedule in order to make the regulatory context of a particular commitment transparent and to clarify its relationship with the corresponding parts of the national administrative rules and regulations (Government of Canada, 2003).<sup>e</sup> This would be the same information that a country could expect to receive from the official inquiry point of another country if a request was lodged under paragraph 4 of article III of the General Agreement on Trade in Services (Transparency).

### *Other possible approaches*

A model schedule for adoption by countries making Mode 4 commitments has been suggested, one that might embody the following key elements (Mattoo Chauduri and self, 2003):

- (a) Full market access and national treatment commitments for: (i) short-term intra-company visits; (ii) short-term visits to fulfil contracts as an employee and; (iii) short-term visits to fulfil contracts independently;
- (b) A General Agreement on Trade in Services visa<sup>f</sup> with the following key elements: (i) limited to persons with demonstrated qualifications; (ii) proof of contract and citizenship; (iii) fees that reflect costs; (iv) three-year validity, for no more than one year at

Other approaches proposed include specific arrangements for short-term visits for trade in services, a General Agreement on Trade in Services visa and standardization of transparency commitments

a time; (v) no wage parity conditions; (vi) stays under categories (ii) and (iii) above may be subject to renewal, but upon proof of terms and conditions, value or invitation; (vii) no change of status to another non-immigrant visa category; (viii) issuance of visa under categories (i) and (ii) without unreasonable delay; (ix) special safeguards against fraudulent use by companies; and (x) a penalty (for example, a one-year suspension for abuse under categories (i) and (ii)).

(c) An annex or additional commitments on transparency and regulation with the following elements: (i) publication in consolidated form of all pertinent measures; (ii) opportunity for prior comment on proposed changes in regimes; (iii) use of international standards for qualifications, as available, unless departure is justified, or alternatively, some tests of competence; (iv) training and experience, where necessary, to make up objectively verifiable deficiencies in education.

The model schedule addresses concerns relating to existing barriers to the movement of natural persons and suggests ways of facilitating such movement. Since the model schedule is intended for acceptance by the entire World Trade Organization membership, it is expected to be “balanced” in terms of its expectations or requirements from countries. For instance, in terms of categories, full market access and national treatment are limited to three sets of service providers (and these do not directly pertain to low-skilled movements as well). The General Agreement on Trade in Services visa to facilitate entry and transparency were also included as key elements. It remains to be seen how countries will respond to the suggested model when it is formally proposed.

## Linkages between Mode 4 and other Modes

Mode 4 trade is important not only in its own right but also because of the interlinkages with other Modes (Chanda, 2003).

A study of the relationship between trade in services under Mode 4 and under the other modes (World Trade Organization, 2004)<sup>9</sup> found that a 10 per cent increase in the temporary movement of people increased imports of services under Mode 1<sup>h</sup> by 3.1 per cent and increased exports by 2.9 per cent, and was correlated with an increase of 8 per cent in inflows and 3.5 per cent in outflows of foreign direct investment (FDI) (a proxy for trade in services under Mode 3). The magnitude of the estimated impact of the movement of persons on FDI flows can be explained in part by the fact that the relationship between FDI and Mode 4 runs in two directions: larger temporary movements of persons lead to larger flows of FDI and vice versa. No significant relationship was found between services trade under Mode 2 and that under Mode 4.

The linkage between Mode 4 and Mode 3 is well-documented, with increasing intra-corporate movements serving as proof that countries wish to encourage FDI flows into their economies and thus want to facilitate corporate transfers and entry of business visitors to establish commercial presence. Mode 3 trade has limited value for developing countries given that, generally, they do not have the financial strength to set up commercial presence. As to the Mode 2-Mode 4 connection, the circulation of a country’s nationals in other countries is a marketing opportunity that could lead to increased tourism and consumption of health services, for instance.

An increase in trade under Mode 4 tends to bring about increases in trade under Mode 1 and in foreign direct investment (FDI)

FDI may be viewed as a proxy for Mode 3 trade

The growing trend towards outsourcing of services and the current and projected shortage of workers in most developed countries (10 million in the United States in 2001) provide opportunities for the expansion of both Mode 4 and Mode 1 trade, while outsourcing has given rise to increased interest in the linkages between the two Modes, since developing countries host most of the services that are currently outsourced by developed countries. Host economies benefit from outsourcing in a number of ways including, among others, employment creation and diversification, higher wage rates, and increased possibilities for strategic investments (including local subsidiaries, joint ventures and the establishment of research and development (R&D) centres), and there are other spillover benefits from the transfer and upgrading of skills and technology and gains from consumption by outsourcing firms.

Countries that outsource activities also benefit, mostly through reduced costs, estimated to range from 40 to 60 per cent for developed-country firms. Banking and financial services in the United States are reported to have benefited by about \$8 billion in 2001-2003 from outsourcing in India. Outsourcing activities lead to increased productivity, for example, increased average speed of response at call centres, reduction in the number of errors in data processing, and better quality of transcription.

There are also concerns about job displacement resulting from outsourcing. The validity of such concerns, however, is not borne out by employment data which show that the highest job losses are still in manufacturing and “management occupations”.

Linkages between Mode 4 and Mode 1 should be viewed in the context of whether the two modes are substitutable or complementary (Chanda, 2003). Substitutability or complementarity depends in large part on the activity that is being outsourced and the level of the service provider that is involved. As one moves up the value chain in Mode 1 supply of services, the relationship between Modes 1 and 4 becomes more complementary.

Low-value outsourcing activities (involving call centres, billing, processing, and transcription typing services) are expected to substitute (but not completely) for local jobs in the outsourcing country; this therefore indirectly affects the movement of natural persons, if there are shortages in the latter. Some personnel movement is still expected, with companies sending some staff, usually at the managerial and technical levels, to the client site for familiarization with client procedures and work processes.

As countries move up to higher-value outsourcing and business process outsourcing activities, their need for cross-border mobility of labour will not diminish, but rather shift towards higher-level service providers (for example, business visitors and intra-company transferees). Countries engaged in outsourcing activities may strive to move towards higher-end services, as they are likely to face fewer restrictions on the movement of such service providers. They are also less likely to face opposition in terms of their perceived threat to local jobs in the outsourcing economy, as the volumes involved will be smaller and will concern only specialized and niche services. The threat of unemployment arising from both Modes 1 and 4 is likely to be greatest for low-value outsourcing, where the volumes are larger and job relocation to low-cost centres is directly visible.

In a broader context, it was recognized that liberalization of Mode 4 would be beneficial to all trading partners and, under certain conditions, would also be beneficial because of its linkages with Modes 1, 2 and 3. Consequently, market access barriers to Mode 4 affect the development of Mode 1 trade and the execution of some types of outsourcing contracts (those with higher value added). Limitations across Modes include

Growth in outsourcing provides opportunities for expansion of Mode 4 trade

Higher-value outsourced activities are more complementary to Mode 4 trade

In the broader context, liberalization of Mode 4 would benefit all trading partners

recognition requirements, licensing, nationality and residency requirements, commercial presence requirements and other requirements related to security (data protection, liability, privacy).

In order to facilitate trade related to Modes 1 and 4, it has been suggested that developing countries should seek unrestricted Mode 1 commitments on a formula basis or a positive sectoral list basis. They should prevent efforts to ban outsourcing through government and industry-level discussions, clarify categories and requirements for different visas, seek liberal market access conditions for intra-corporate transferees (in addition to independent professional and contractual service suppliers), delink Modes 1 and 4 from commercial presence, and seek transparency in the recognition and facilitation of mutual recognition arrangements.

## Notes

- a** The countries included in this discussion are those that had submitted proposals specifically on the movement of natural persons. Kenya and Colombia, had also submitted proposals but they were very limited in scope and mostly focused on reiterating those countries' support for the broadening of Mode 4 commitments by members.
- b** Defined as employees of a company not established in the member's territory who supply services on the basis of a contract.
- c** The members of the World Trade Organization have adopted the request-offer process for this round of services negotiations where members are to submit confidential requests for liberalization to their choice of bilateral partner(s), after which offers will then be tabled. The indicative deadlines for requests and offers were June 2002 and July 2003, respectively, but members could still submit requests/offers as the negotiations continued.
- d** Most commitments on CSS apply only to a limited category of persons or subsectors, mostly under professional services (engineering, architectural services, urban planning) and computer-related services.
- e** The Mode 4 paper submitted by 15 members of the World Trade Organization to the Council for Trade in Services also mentioned transparency as one of the elements needed to facilitate the movement of natural persons.
- f** This idea originated in a suggestion by Mark Hatcher of the European Service Forum but was later picked up by other authors, including Aaditya Mattoo, Richard Self and Sumantha Chauduri. Because there is no differentiation with regard to the requirements for permanent and temporary movements, applications for short-term/temporary service providers become cumbersome and costly, especially for service providers who are entering only for short business visits. A General Agreement on Trade in Services visa is meant to tackle this problem.
- g** Bilateral trade in services under the various modes is modelled on the basis of the traditional gravity equation augmented by a measure of temporary movement of workers. Due to the lack of data, this study only refers to the United States and the United Kingdom.
- h** The value of commercial services imports under Mode 1 is calculated by subtracting the value of imports of travel services (Mode 2) from the value of total commercial services imports.