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Movement of Natural Persons:

A Case Study of South Asian Countries

CUTS Centre for International Trade, Economics & Environment

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कटस CUTS
Twenty Years of Social Change
1984 to 2003

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Preface

Economic globalisation has gone far in terms of cross-border flow of goods and capital. Exports of goods and financial flows have increased manifold in the last century. Today, exports of goods have reached almost a third of world's gross domestic product, and financial flows have crossed well above 10 percent of the global GDP. By contrast, movement of people is much below the levels experienced in the late nineteenth century. While the share of services in world GDP has increased to over 60 percent, its share in total world exports (merchandise and services) is a little over one-fifth.

Until the inclusion of General Agreement on Trade in Services (GATS) in the World Trade Organisation in 1995, there hardly existed any international agreement, which could govern or facilitate global trade in services. Services were largely treated as non-tradable across the borders. But, with the advent of information technology revolution supplemented by falling costs of transportation and communication, the international community realised the importance of exploiting the largely unexplored area of trade in services. As a result, trade in services made an entry into the negotiating agenda of GATT (General Agreement on Tariffs and Trade) in the Uruguay Round, launched in 1986.

In the past, movement of people was mainly migratory in nature, but today labour mobility is more diverse and complex. Migrants are moving back and forth more readily and rapidly. Temporary movement, in particular by highly skilled workers, has seen the largest growth in recent years. According to the World Bank's "Global Economic Prospects 2004", most of the developed economies experienced significant growth in certain types of temporary migration during the 1990s. In the United States, for example, the number of temporary foreign workers has increased to almost half a million: more than three-fold increase since 1992.

Several studies show that in case of temporary movement of natural persons (TMNP), potentially large returns would be feasible, if medium- and less-skilled workers, which are relatively abundant in developing countries, were allowed to move and provide their services in developed countries. These gains are widely shared within the world economy. Moreover, as their populations age and their average levels of training and education rise, developed countries will face an increasing scarcity of less-skilled labour, especially in those occupations where there are few substitutes for human labour. Thus, while recognising the formidable political challenges it poses, TMNP actually offers a strong commonality of interests between developing and developed countries.

Despite the potential benefits out of greater mobility of workers, movement of temporary workers supplying services (Mode 4 of GATS)

still account for less than two percent of the total value of services trade. Recent estimates, based on limited empirical information, suggest that 'commercial presence' (Mode 3 of GATS) accounts for more than half of world trade in services and 'cross-border trade' (Mode 1 of GATS) about a fourth, while 'consumption abroad' like tourism (Mode 2 of GATS) contributes less than one-fifth.

South Asian countries, particularly India, are known protagonists of liberalisation of services trade under Mode 4. Now, more and more developing countries are joining them in raising this issue proactively. India is greatly interested in what are known as the Mode 1 and Mode 4 negotiations in the GATS. The first relates to business process outsourcing (BPO), which has already raised a controversy with several States in the US banning shifting of such jobs from their domestic market to countries such as India. The second is what is known as "movement of natural persons" where India has been seeking more liberal rules in granting visas for independent professionals.

Given the situation, this study looks at the case of South Asian countries, which have got huge potential to increase their export of services through Mode 4. It focuses mainly on four countries – Bangladesh, India, Pakistan and Sri Lanka. They not only have large endowments of skilled and unskilled labourers but also have comparative advantage in exporting services under Mode 4. However, there are several constraints that South Asian countries face in exporting their services under Mode 4 to developed countries.

Keeping in view of the above-mentioned facts, it focuses on the significance of Mode 4 for South Asia, the kinds of barriers faced by these countries in supplying services through Mode 4, and how the GATS negotiations can be used to advance their export interests under this particular mode of service supply. Besides, the study also highlights the role of complementary domestic policy reforms and measures, which are equally important for harnessing benefits if trade under Mode 4 is liberalised.

Jaipur, India **Bipul Chatterjee**
Director

Chapter 1

Introduction

There are an estimated 175mn international migrants in the world today. One out of every thirty-five persons in the world is an international migrant, and one out of every 10 persons in the world's more developed regions is a permanent or temporary migrant.[1] Migration flows occur at all skill levels and are primarily from developing to developed countries or between select developing countries and regions. Data on remittances clearly indicate the significance of migration for developing countries. Officially recorded workers' remittances amounted to US$72.3bn in 2001, exceeding the amount of official development assistance in that year.[2] Even the latter is likely to be an underestimate and the actual value of remittances may be 2 or 3 times higher, as a large part of it is effected through informal channels of transmission between the host and home countries.

One out of every thirty-five persons in the world is an international migrant, and one out of every 10 persons in the world's more developed regions is a permanent or temporary migrant.

In recent years, there has been a relative shift towards temporary migration from permanent migration. Temporary migration flows to the main destination countries like the US, Australia, and Canada have grown much more rapidly during the past decade than permanent migration flows. Many of the major host countries have introduced temporary migration schemes and changes in their immigration policies to attract skilled workers from developing countries in areas where they have skill shortage. In addition, there are temporary flows of skilled and unskilled workers among developing countries.

The rise in temporary migration has in large part been driven by the globalisation of services. Rising demand for cheap and efficient support services and outsourcing of many services by firms, establishment-related temporary migration flows of service providers, and increased reliance on imported labour services due to shortages in host markets, have all contributed to this phenomenon. Today, a wide range of services, including construction, engineering, repair and maintenance, health, education, legal, IT, and accountancy, are increasingly being provided across countries through temporary cross border movement of service providers, also known as movement of natural persons (mode 4) under the WTO's General Agreement on Trade in Services (GATS).

Indian health care workers and software professionals provide services that are in short supply in the US and UK

The South Asian region is one of the most important exporters of services through movement of natural persons. The four main countries of South Asia, namely, Bangladesh, Pakistan, India, and Sri Lanka, all have large endowments of labour at all skill levels, and have a comparative advantage in exporting services through this mode of supply. For instance, Indian health care workers and software professionals provide services that are in short supply in the US and UK. Shortage of nurses and doctors in the Middle East and in several developed countries like the UK have led to contractual arrangements

between source and host country governments and establishments to facilitate the temporary entry of foreign medical and nursing personnel. There is also considerable temporary movement of construction workers, technicians, and maids from South Asia to countries in the Gulf region.

According to officially reported statistics, outflow of migrant workers from India, Pakistan, Bangladesh, and Sri Lanka was put at 355,000, 104,000, 268,000, and 158,000, respectively, in 1998.[3] The significance of movement of natural persons from South Asia is also evident from the large volume of remittances received by countries in this region. For instance, remittances amount to over US$2bn in Bangladesh, representing some 4 percent of gross domestic product (GDP) and one-third of gross export earnings.[4] Studies indicate that such remittance flows keep a large number of working class families from slipping into poverty and are used to finance a wide range of consumption and investment needs by the recipients, thus playing an important role in promoting welfare in the region. Research work and surveys on migration in South Asia further indicate that there have been other benefits such as upgrading of skills, increased productivity, technology transfer, and alleviation of underemployment and unemployment and externalities such as the formation of social and economic networks, cross border investment flows, and inducement of incentives for education. Moreover, these studies also indicate that the usual costs associated with permanent migration, such as brain drain and loss of public investment, do not arise in the case of movement of natural persons. There are, however, issues of reintegration and appropriate absorption and utilisation of the knowledge and skills of returning migrants.

According to officially reported statistics, outflow of migrant workers from India, Pakistan, Bangladesh, and Sri Lanka was put at 355,000, 104,000, 268,000, and 158,000, respectively, in 1998

However, the South Asian countries face many barriers that constrain their ability to export services through movement of natural persons. These barriers include border measures in the form of immigration policies as well as non-border measures in the form of domestic regulations concerning recognition of qualifications, taxation, government procurement, and discriminatory treatment of foreign service providers. Such barriers not only erode South Asia's comparative advantage in this mode of supply, but are also likely to be associated with significant welfare losses for this region.[5]

It is in this context that the GATS has significance for South Asian countries. The GATS provides a multilateral framework of rules and disciplines to liberalise trade in services under various modes of supply, including through movement of natural persons or mode 4.[6] It provides a commitment structure to undertake cross-sectoral as well as sector-specific liberalisation of market access and national treatment conditions, with respect to the movement of natural persons,; regardless of the level of skills.[7] Hence, the GATS provides countries such as India, Pakistan, Bangladesh, and Sri Lanka, that have an interest in exporting labour-intensive services, with a negotiating framework to create more liberal, predictable, and secure conditions for market access through the movement of natural persons.

To date, there has been virtually no liberalisation of mode 4. This is the least liberalised of all four modes under the GATS with highly limited commitments in sectors...

To date, however, there has been virtually no liberalisation of mode 4. This is the least liberalised of all four modes under the GATS with highly limited commitments in sectors, skill levels, and occupational

categories that are of interest to developing countries and least developed countries (LDCs). In the ongoing GATS negotiations, the South Asian countries have played a leading role in pushing the liberalisation agenda on mode 4. Some of the South Asian countries have individually and collectively along with other developing countries, submitted detailed proposals and communications for liberalising movement of service suppliers2.[8] These proposals mainly call for wider coverage of sectors and occupational and skill categories that are relevant to developing countries and increased transparency and predictability in mode 4 commitments. These proposals also call for establishing and strengthening certain GATS disciplines so as to facilitate more liberal and operationally meaningful mode 4 commitments.

Some of the South Asian countries have individually and collectively along with other developing countries, submitted detailed proposals and communications for liberalising movement of service suppliers

1.1 Scope, objectives, and outline of the study

This study focuses on the significance of mode 4 for South Asia, the kinds of constraints faced by these countries in supplying services through mode 4, and how the GATS negotiations can be used to secure their export interests in this mode. In keeping with the aforementioned objectives, the study is structured into six sections. Section 2 provides an overview of the magnitude, nature, and key features of mode 4 exports from South Asia to the rest of the world. The main destination markets under focus include the industrialised countries and the Middle East, and where evidence is available, also South East Asia. This section also outlines certain features of emigration policy in some of the South Asian countries. Section 3 outlines the main restrictions that impede mode 4 based exports from South Asia to the aforementioned countries and regions, focusing in particular on immigration and recognition policies in the key host countries for South Asian service providers. Both federal and sub-federal and operational aspects of these regulations are discussed. The section also highlights recent trends in host country policies that are influencing the extent and characteristics of labour flows from this region. Section 4 discusses the coverage of mode 4 under the GATS framework and in the existing commitments and initial offers. It also highlights the key issues that need to be addressed in the mode 4 negotiations. Section 5 outlines the various liberalisation proposals that have been circulated on mode 4 and discusses their feasibility. Section 6 suggests modifications to existing proposals on mode 4 and advances additional or alternative proposals to address the specific interests of the South Asian countries, and for that matter all developing countries, in mode 4. Section 7 discusses ways in which GATS disciplines pertaining to domestic regulation can be developed, strengthened, and made more conducive to mode 4 exports from developing countries. Section 8 concludes by noting some domestic issues that need to be considered to complement the negotiating position on mode 4.

...temporary movement of service suppliers often results in permanent movement and it is difficult on the basis of existing migration and related statistics to clearly separate the two phenomena

It should be noted at the outset that the analysis does not always distinguish between temporary and permanent movement of service suppliers, although from a GATS perspective, one should really be discussing temporary movement. This is because temporary movement of service suppliers often results in permanent movement and it is difficult on the basis of existing migration and related statistics to clearly separate the two phenomena. Also, migration within the region as well as issues relating to trafficking, smuggling, and irregular migration from and within South Asia are not addressed in this paper.

Chapter 2

Mode 4 and South Asia: Recent Trends and Characteristics

It is very difficult to reliably estimate mode 4, at the global, regional, or country-specific levels. Available migration statistics are incomplete, not readily comparable across countries, and club together mode 4 workers with other groups of workers spanning sectors other than services. Moreover, as already noted, it is often not possible to distinguish statistically between temporary and permanent movement of labour. At best, proxies such as remittances can be used to measure mode 4 and industry-specific sources on work permit applications and issuance of visas can be used to gauge the extent of mode 4 that takes place. Notwithstanding such difficulties, rough estimates put the global value of mode 4 at US$30 bn in 1997, much smaller than all the other GATS modes of supply (though this figure is likely to be significantly underestimated).[9]

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Statistics on mode 4 for the South Asian region are subject to similar conceptual and methodological difficulties in measurement. However, there is sufficient evidence to highlight the broad characteristics and trends in temporary labour flows from South Asia. The following discussion provides evidence on each of the four South Asian countries to illustrate the geographic orientation as well as occupational and skill characteristics of labour flows from this region. It is important to understand these factual details in order to appreciate their significance for the South Asian countries and to draw the relevant policies and strategies for the GATS mode 4 negotiations. A point to note, however, is that given the nature of available information, the discussion is most detailed in the cases of India and Sri Lanka where there is considerable factual and statistical evidence on migration. The cases of Bangladesh and Pakistan are provided mainly through summary statistics. In all cases, an attempt has been made to provide evidence from both the source country and receiving sides.

Three facts emerge clearly from the evidence presented. Firstly, in terms of geographic orientation, there are mainly three groups of countries that are important as destination markets for South Asian service providers. These include countries in the Gulf and Middle East, chiefly Saudi Arabia, Kuwait, and UAE, the English speaking industrialised countries, in particular, the UK, the US, Canada, and Australia, and, increasingly, South East Asia, chiefly Singapore and Malaysia. Secondly, the skill and occupational breakdown varies according to the destination market. Temporary labour flows to the industrialised countries are mainly in higher skilled and professional occupations, such as medicine, information technology, engineering, and teaching. Temporary labour flows to the Middle East are dominated by the lower skilled occupational categories, in particular construction

Temporary labour flows to the industrialised countries are mainly in higher skilled and professional occupations, such as medicine, information technology, engineering, and teaching

work, transport operations, and domestic services, although there is some movement of professionals, especially doctors, nurses, and accountants.. Temporary migration to South East Asia is again a mix of skilled and lower skilled occupations, including domestic services, plantation work, as well as doctors and information technology personnel. Thirdly, non-immigrant labour flows to the Middle East and South East Asia are truly temporary, while non-immigrant labour flows to the industrialised countries are often subject to change of status to immigrant categories for permanent residence and citizenship in those countries. Thus, the implications for the source countries are likely to vary depending on the destination market.

2.1 Characterising mode 4 exports from India

There are an estimated 20mn plus Indians living abroad, who generate about US$160 bn in annual income, and account for US$400 bn worth of output (80 percent of the Indian economy)

India has traditionally been a large source country for skilled and unskilled migration. There are an estimated 20mn plus Indians living abroad, who generate about US$160 bn in annual income, and account for US$400bn worth of output (80 percent of the Indian economy).[10] Between 1975 and 2000, remittances to the Indian economy amounted to US$97bn and averaged between 1.5 to 2 percent of GDP during the 1990s.[11] It is estimated that during the 1980s, on an average, more than 100,000 persons left the country each year for employment purpose. This number rose to over 400,000 per year during the 1990s, reflecting the impact of India's economic liberalisation on labour flows.[12]

2.1.1 Geographic orientation

The bulk of labour movement from India is to countries in the Middle East. Table 1 in the Annexe shows the annual outflow of labour migrants from India for the 1976-97 period. The figures show that the Gulf countries accounted for over 90 percent of labour outflows from India throughout the 1980s and 1990s. Indian workers constitute the largest group of migrants in the Gulf. A report by Birks, Sinclair and Associates estimates that the migrant non-native population of the 6 Gulf countries was 7,075,851 in the 1990s, of whom over 20 percent were Indians. According to another estimate, there were over 1.5mn Indian migrant workers in the Middle East in 1991, rising to 4 mn in 1995.[13] The Gulf region became an attractive destination for Indian migrant workers, following the oil-driven boom in these countries in the 1970s and continuing through into the 1980s, with its demand for large numbers of unskilled workers for infrastructure projects and for menial work. According to the Emigration Division of the Indian Ministry of Labour, during the 1991-97 period, Saudi Arabia accounted for about 50 percent or more of these workers, followed by the United Arab Emirates with about 20 percent, and the others including Oman, Kuwait, Bahrain, accounted for the remainder. In 1998 India issued about 100,000 visas for labour overseas, majority of this being for Saudi Arabia followed by the UAE.[14] Table 2 in the Annexe provides a country-wise breakdown of labour flows from India for the 1999-2003 period.

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2.1.2 Skill composition

The skill composition of India's mode 4 exports is diverse and includes skilled, semi-skilled, and low skilled occupational categories. However, it varies by destination. The majority of Indian migrants in the Middle East are engaged in low or semi-skilled occupations. About one in three

of Indian migrants to the Middle East is engaged in construction work. According to ILO sources, there were an estimated 425,000 construction workers of Indian origin working in the Gulf in 1996.[15] In addition, Indian workers in the Middle East are also engaged in other low and semi-skilled occupations, as production workers, transport equipment operators, domestic help, nurses' aids, craftsmen, and technicians, although there is also some movement of professionals, such as engineers and accountants. It is estimated that in 2000, out of a stock of 285,000 Indian workers in Kuwait, around 100,000 were engaged as domestic helps.[16] Most low skilled Indian workers in the Middle East are employed under contractual arrangements.

...Indian workers accounted for nearly 37 percent of Asian immigration to the US and around 17 percent of all immigration to the US under the professional, technical, executive, and managerial categories during the 1994-96 period

Table 3 in the Annexe gives an idea of the volume of India's mode 4 exports to West Asia and the Gulf in 1989 for low skilled service occupations. It clearly highlights the fact that there is a large stock of contract-based Indian service suppliers in the Middle East and Gulf countries, who are mainly engaged in low and semi-skilled occupations.

India is also an important exporter of skilled manpower, mainly to the developed countries. Table 4 in the Annexe provides an idea of the large stock of Indian knowledge workers present in various countries. India's significance as a supplier of skilled and professional manpower is also evident from host country immigration statistics on visas and work permits. Table 5 in the Annexe shows that Indian workers accounted for nearly 37 percent of Asian immigration to the US and around 17 percent of all immigration to the US under the professional, technical, executive, and managerial categories during the 1994-96 period. If one adds to these categories occupations such as sales and administrative support, which also require some level of skills and qualifications, then the share of Indian workers in Asian immigration and in world immigration to the US was 57 percent and nearly 25 percent respectively. Thus, India accounted for over half of qualified and professional immigrants to the US from the whole of Asia and for a quarter of all such immigrants to the US.

Immigration statistics for the US further indicate that India was the single most important source country for skilled and professional foreign service providers in the US. Table 6 in the Annexe shows that India has been the leading recipient country in all H-1 visas (designated for skilled workers in the US) since the mid 1990s and that its importance as a source country has grown considerably in recent years. In 1999, Indian workers accounted for 47 percent of all US H-1 visas issued that year. This was significantly greater than their share of 4.4 percent in 1989, and far greater than the share of the second recipient country, China, which accounted for only 5 percent of these visas that year.[17] In 2002, India accounted for 110,103 visas for skilled workers issued by the US, far more than any other country.[18] Thus, India is clearly the most important supplier of skilled service providers to the US, far more important than any other developing or developed country.

India ranked second among the top ten source countries for foreign labour in Canada, with a share of 10 to 12 percent in overall as well as skilled inflows into Canada for the years 2000, 2001, and 2002

Evidence from Canada also reveals India's importance as a source country for labour inflows and specifically for skilled labour inflows. India ranked second among the top ten source countries for foreign labour in Canada, with a share of 10 to 12 percent in overall as well as skilled inflows into Canada for the years 2000, 2001, and 2002.[19]

2.1.3 Occupational and sectoral composition of labour flows

India's mode 4 exports to industrialised countries are concentrated in certain services and occupations. A decomposition of the H-1 visa scheme provided in Table 7 in the Annexe indicates India's importance as a source country is in three major categories, namely, specialty occupations (H1B), registered nurses (H1A), and entertainers in culturally unique programmes (P3). India is particularly dominant in the H1B category, which is based on professional education, skills, and/or equivalent experience. Indians received over 80,000 visas in specialty occupations and over 200 H-1A visas for nurses in 2002, which is far more than any other Asian country in both these categories.

It was particularly important in providing skilled manpower in computer related services, where Indian professionals accounted for 68 percent of all such H-1B beneficiaries in 2002

Moreover, an examination of the H-1B category by occupation reveals that India is the most important recipient country across almost all specialty occupations that fall under this visa. Table 8 in the Annexe shows that India was the leading beneficiary country in H-1B visas across a wide range of professions, including computer systems design and related services, architectural, engineering and related services, management, scientific and consulting services, general medical and surgical services, accountancy and auditing services, financial services, and telecommunication services. It was particularly important in providing skilled manpower in computer related services, where Indian professionals accounted for 68 percent of all such H-1B beneficiaries in 2002. The two other broad areas where India has been an important source country for professionals are technical and engineering services (including related aspects in other occupational categories) and medical services.

Tables 9 and 10 in the Annexe further corroborate India's importance in mode 4 exports of IT, engineering, and medical services. Table 9 provides details on the volume of temporary movement in H1B occupations for the top five receiving countries in 2002. India clearly emerges as the most important country, with 64,980 H1B visas, the majority of these (47,477 visas or 73 percent) being granted in computer related fields. Table 10 shows that India has been the leading recipient under the H-1B specialty occupation category, overall as well as in Asian immigration to the US. Moreover, Indian professionals have accounted for around 80 percent of all visas issued to Asian countries and 70 percent of H1B visas issued to all countries in 2000 and 2001 in the computer-related occupational category. Tables 9 and 10 also highlight India's significance in overall and Asian immigration to the US in other areas such as engineering, scientific, technical, and medical services.

The rise in India's exports of skilled manpower in IT services has mainly been driven by the IT boom in the US during the late 1990s and the subsequent shortage of such workers relative to demand in that market

The rise in India's exports of skilled manpower in IT services has mainly been driven by the IT boom in the US during the late 1990s and the subsequent shortage of such workers relative to demand in that market. The American Competitiveness and Workforce Improvement Act, passed by the United States in 1999, increased the H1-B quota from 65,000 to 115,000 in 1999 and further to 195,000 in 2000, to meet the growing demand in the US market for IT workers.

Although the US has been the main destination market for India's mode 4 exports in skilled and professional services, India has been an

important supplier of skilled manpower to other markets as well. Evidence from other countries confirms India's importance as a supplier of IT, engineering, and health care professionals to the rest of the world. For instance, Germany, Austria, Singapore, and Japan have introduced special work permits and visa schemes in recent years to attract Indian IT professionals and meet shortages of such workers in those markets. Likewise, India has the largest stock of overseas doctors among all countries and also exports nurses to several developed countries like the UK and Australia.

2.1.4 Characterising India's mode 4 exports in IT and health services

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There is a considerable amount of evidence on migration from India in IT and health services, based on surveys and industry, academic, and government sources, which provides an insight into the significance and nature of India's mode 4 exports in these two key areas.

(i) IT workers[20]

Temporary movement of service suppliers is critical for the Indian IT industry as a large part of India's software services exports is based on on-site delivery of custom application, software development, and maintenance services by Indian IT professionals in overseas markets. These services are provided across a wide range of sectors, especially banking, finance, and insurance. On-site professional services contributed US$3.6bn worth of export revenues in 2001-02, out of total export revenues of Rs. US$7.7bn that year. In most years, on-site services provided by Indian programmers, coders, systems analysts and maintenance personnel, have accounted for close to 50 percent of total export revenues in the IT sector. This share has, however, been declining in recent years as Western companies are increasingly offshoring services to the Indian market. Industry sources in India estimate that out of a supply of 132,986 new IT professionals in 2001-02, about 64,350 left India to provide on-site services that year. Migration for on-site work accounted for 15 percent of the total stock of 428,636 IT professionals in 2001-02.

Surveys of IT companies in India on migration and return migration, indicate that the majority of these professionals who go overseas have backgrounds in engineering or computer applications, from universities, colleges, polytechnics and training institutes. They include graduates, postgraduates and diploma holders. They provide a wide range of services including programming, systems design, administration, and integration, software maintenance, software development and customisation, coding and testing. Most of these professionals are employed at the middle level of their respective organisations and are generally in their twenties and thirties. There is also movement of suppliers who are in managerial, executive, and specialised positions, mainly in the case of the few Indian companies that have a commercial presence overseas and multinational IT companies located in India, but such movement at the higher level is much more limited.

...much of the movement by Indian IT workers is under time bound contracts with duration limits on visas and work permits, the majority of such workers tend to remain overseas and enter the permanent labour market

It is, however, important to note that although much of the movement by Indian IT workers is under time bound contracts with duration limits on visas and work permits, the majority of such workers tend to remain overseas and enter the permanent labour market. Hence, the statistics given earlier for India's mode 4 exports in computer-related occupations

cannot strictly be characterised as mode 4 due to their non-temporary nature. A large number of Indian IT workers adjust their immigration and residence status once they are overseas. The National Association of Software Services Companies (NASSCOM), estimates the extent of return migration to be only around 3 to 4 percent of all migrants in IT services, as shown in Table 11 in the Annexe.

A web-based survey of Indian IT professionals in the Silicon Valley found that about 32 percent of the 769 respondents from India did not intend to return from the US. This percentage was much higher at 50 percent for respondents under the age of thirty-five.[21] Thus, there is a significant amount of brain drain of engineers, computer application graduates and IT specialists from the country, mainly to the US market. However, with the bursting of the tech bubble and the recent slowdown in the US combined with the growing opportunities for IT work in India, the extent of return migration is on the rise and many more Indian software professionals are returning to India.

A web-based survey of Indian IT professionals in the Silicon Valley found that about 32 percent of the 769 respondents from India did not intend to return from the US

(ii) Healthcare workers

Unlike the movement of Indian IT professionals, which is a recent phenomenon starting in the 1990s, movement of Indian health care workers to industrialised countries and to the Gulf region has been a long standing phenomenon, going back several decades. Movement of Indian health care workers to the Middle East and Gulf countries has mainly been under short-term arrangements. As of 1992, there were 33 bilateral agreements between India and six countries in the Middle East for providing doctors on short-term assignments. This number is likely to be an underestimate as it only captures the assignments by government doctors who need to clear a formal process before they can leave the country. Private short-term contractual arrangements between doctors and these countries also exist. There has also been a steady stream of Indian nurses to the Middle East and the Gulf countries on short-term assignments. According to a WHO (1979) study, there were an estimated 4,000 Indian nurses abroad, representing about 5 percent of the total number of nurses in the country, most of them being in countries like Bahrain and Oman.[22] Thus, nurses' migration has been much lower than migration of physicians. There is some migration of Indian technicians and paramedics, mainly to the Gulf countries, but little is known about its magnitude and nature.

According to a WHO (1979) study, there were an estimated 4,000 Indian nurses abroad, representing about 5 percent of the total number of nurses in the country...

Movement of Indian healthcare workers to the industrialised countries has been mostly long-term in nature. The majority of Indian physicians, who are abroad, are based in Commonwealth countries, in particular, the UK, as India is a member of the Commonwealth. There are an estimated 60,000 and 35,000 doctors of Indian origin in the UK and the US, respectively, though more conservative estimates put these numbers at 13,000 in the UK and 20,000 in the US.[23] It is important to note that these numbers are likely to be underestimated as many Indian physicians enter the US or UK markets from countries other than India. Estimates of the total number of physicians that have left the country range between 11 and 15 percent.[24] Most of this movement has been permanent in nature. There has, however, been some movement under short term arrangements to developed countries, for instance, under special visa schemes like the H-1A for registered nurses or under bilateral agreements between institutions in India and in developed

countries such as the US, the UK, Germany, Australia, New Zealand, and Canada.[25] There has also been some short-term movement of nurses and other health personnel from India to developed countries for training purposes. In the past few years, there has been a surge in demand for Indian nurses due to huge shortages in markets like the US and the UK. As a result, many nursing schools and big hospitals are training nurses for working overseas in American and British hospitals and placement agencies and even big hospitals are advertising for nurses.[26]

There has also been migration of Indian medical graduates. It is estimated that on an average, over 50 percent of medical graduates from reputed medical training institutions like the All India Institute for Medical Sciences (AIIMS), migrated from the country during the 1980s, mainly to the developed countries.[27] Although there are no hard statistics on the actual number of medical students leaving the country, there is evidence to indicate that this movement is considerable. For instance, over five thousand Indian medical graduates take the ECFMG exam each year and over 30 percent of these graduates pass the exam. Since the number applying for the exam is an indication of those interested in going abroad, the potential number of medical graduates leaving the country is over a thousand per year. India's most prestigious medical schools figure among the main exporters of medical students to developed countries.

...over 50 percent of medical graduates from reputed medical training institutions like the All India Institute for Medical Sciences (AIIMS), migrated from the country during the 1980s, mainly to the developed countries

Thus, if one combines the statistics for doctors migrating for short or long-term assignments, with the statistics for nurses, technicians, and medical graduates, the extent of movement of service suppliers in India's health sector is huge. It is therefore not surprising that according to a 1979 WHO study, India emerged as the world's largest donor of medical manpower.

It is also important to note that although much of the movement has been permanent in nature, especially in the case of the developed countries, surveys suggest that there is a high interest in return, especially among graduates from some of the best institutions. A survey of the All India Institute of Medical Sciences' graduates settled abroad found that about 40 percent of the respondents were ready to return, mainly for personal reasons followed by their desire to give back to the country.

Table 12 in the Annexe provides the findings of a survey on returnee doctors. The survey found that on an average about 43 percent of those trained and practicing abroad in selected developed countries, actually returned to India. For example, of the 3,708 doctors trained in the UK, 48 percent returned. Of the 1,080 trained in the US, close to 50 percent returned. The absolute numbers were smaller for the other developed countries and the corresponding shares were comparable to those for the UK and the US.[28] These doctors were trained in general medicine, surgery, veterinary sciences, and paediatrics.

A survey of the All India Institute of Medical Sciences' graduates settled abroad found that about 40 percent of the respondents were ready to return, mainly for personal reasons followed by their desire to give back to the country

The profile of health care personnel moving abroad from India has varied depending on the occupational and skill category. Within the category of physicians, most of the movement is by specialists, probably reflecting the fact that the effective market demand for persons with

very specialised skills is low in a country like India and the opportunities are much better in overseas markets. Within the category of medical graduates, most of the movement is from the best medical training institutions in the country. Little is known about the profile of the migrating service suppliers in the case of nurses and health technicians.

2.1.5 Government policy on emigration[29]

There has been some regulation of mode 4 in the lower skilled categories, by the Indian government. There is an emigration clearance requirement for low and semi-skilled Indian service providers going to the Middle East, Africa, and other selected countries, which are mainly destinations for lower skilled mode 4 exports from India. The government started the Overseas Manpower Corporation in the state of Kerala in 1978. Similar agencies were founded in Delhi and Madras to send qualified and skilled workers based on requests and requirements of foreign employers. The government has also initiated contractual arrangements with countries in the Middle East, Africa, and South Asia, in sectors such as health, education, and technical services, for exporting manpower. It also enacted a new Emigration Act in 1983 under the jurisdiction of the Ministry of Labour to regulate the deployment process, which is handled by recruiting agents engaged in manpower exports. Under this Act, only those recruiting agents who are registered with the Ministry of Labour are allowed to recruit for overseas employment. This Act is also aimed at safeguarding the interests and welfare of overseas Indian workers.

The government started the Overseas Manpower Corporation in the state of Kerala in 1978. Similar agencies were founded in Delhi and Madras to send qualified and skilled workers...

India's mode 4 exports in the high skill categories have not been regulated through institutional or other arrangements and have been driven by market forces. Skilled service providers are not required to get emigration clearance from the Indian government. Despite long standing concerns about loss of human capital and public investment associated with skilled labour outflows, there has not been any coherent policy to either regulate or to benefit in any directed manner from such labour flows.

2.2 Characterising mode 4 exports from Sri Lanka

There are an estimated 1.2mn Sri Lanka workers abroad. Around 70 percent of this stock of workers is estimated to be in the Middle East and over 60 percent of this stock of workers consists of female migrants.[30] The following discussion highlights three main features of Sri Lanka's mode 4 exports, in terms of their gender composition, geographic orientation, and their occupational and skill profile.

The first striking feature of labour flows from Sri Lanka is the high share of female workers. Females account for over 60 percent of total outflows from Sri Lanka

2.2.1 Gender composition

The first striking feature of labour flows from Sri Lanka is the high share of female workers. Females account for over 60 percent of total outflows from Sri Lanka. Table 13 in the Annexe highlights the gender wise composition of annual labour outflows from Sri Lanka for employment purposes.

2.2.2 Geographic orientation

The second key feature of labour flows from Sri Lanka is the significance of the Middle East as a destination market. Tables 14 and 15 in the Annexe illustrate that the Middle East accounts for more than 90 percent of all departures for foreign employment from Sri Lanka. These tables further reveal that within the Middle East, Saudi Arabia receives more than one-third of all migrants from Sri Lanka, followed by Kuwait and the UAE, with around 19 percent and 15 percent, respectively, in 2001. Saudi Arabia had a stock of 300,000 Sri Lankan workers in 2001, followed by Kuwait and UAE with 161,700 and 130,500 workers, respectively.[31]

...Middle East accounts for more than 90 percent of all departures for foreign employment from Sri Lanka within the Middle East, Saudi Arabia receives more than one-third of all migrants from Sri Lanka...

This country-wise composition of labour flows from Sri Lanka also holds in the case of female migrant workers, as shown in Table 16 in the Annexe. Saudi Arabia accounts for around 30 per cent of the total female worker outflows followed by Kuwait and the UAE with shares of 23 percent and 15 percent, respectively.

In addition to the Middle East, other destination markets include Singapore, Malaysia, Canada, the US, the UK, and Australia. The number of overseas contract workers in Italy, Singapore, South Korea and Hong Kong was estimated at 60,000, 14,000, 4,000 and 2,500, respectively.[32]

Data on remittances, which is a proxy for both temporary and permanent migration, provided in Table 17 in the Annexe, confirm the importance of markets other than the Middle East for Sri Lankan labour.

These include North America, the EU (mainly the UK), South East and Far East Asia, and Australasia that are all important sources for private remittance flows to Sri Lanka. Other evidence from host countries also supports this fact. For instance, Sri Lanka was among the top ten source countries for foreign workers in Canada in the years 2000, 2001, and 2002, with a share of 2 to 2.5 percent (though the latter includes both temporary and permanent migrants).[33] Figure 1 in the Annexe also highlights the significance of regions other than the Middle East as sources of remittance flows to Sri Lanka and thus, for the country's mode 4 exports.

2.2.3 Skill composition

Sri Lanka's labour exports consist of both skilled and unskilled categories of workers. Prior to the oil boom, the majority of migrating Sri Lankans were professionals and skilled workers who traveled mostly to developed countries for employment and to obtain permanent residency. After the oil boom, the nature of migration from Sri Lanka has changed and the Middle East has become the primary destination for Sri Lankan workers. These included construction workers, drivers, mechanics, and domestic maids. Since the 1990s, professionals and low skilled Sri Lankans have increasingly been going to South East Asia.

...Sri Lanka was among the top ten source countries for foreign workers in Canada in the years 2000, 2001, and 2002, with a share of 2 to 2.5 percent...

Table 18 in the Annexe shows the occupational and skill composition of Sri Lankans going overseas for employment in 2001. There were

close to 37,000 departures by skilled workers, i.e., those in trade-based occupations like technicians and mechanics or nurses, for employment overseas. The number of professional migrants is small. Skilled workers constituted 20 percent of all migrant workers in 2001. An important occupational group within skilled workers has been nursing, with a large number of Sri Lankan nurses going to the Middle East, the UK, and also to Canada. The unskilled category, which essentially includes construction and production workers, is large, at over 33,000 in 2001, accounting for 18 percent of all migrant workers. If one combines with this the housemaid category (which also falls under the unskilled group), then the number comes to over 130,000, or over 70 percent of all migrant workers.

The most striking feature of migration from Sri Lanka is the dominance of the housemaids category. This is the single largest occupational group, constituting 56 percent of all departures in 2001...

The most striking feature of migration from Sri Lanka is the dominance of the housemaids category. This is the single largest occupational group, constituting 56 percent of all departures in 2001, and is consistent with the high share of female migrants in Sri Lanka's labour outflows noted earlier. Saudi Arabia, Kuwait, and the UAE are the three most important markets for all kinds of workers, with Saudi Arabia accounting for around one-third of migrant workers in the skilled, unskilled, and housemaids categories. More recently, Singapore, Malaysian and Brunei are also emerging as important markets for Sri Lankan maids.

Table 19 in the Annexe further indicates that there has not been much change in the basic skill and occupational mix of labour outflows from Sri Lanka over the past few years. Number of departures under the housemaids category has been around 80,000 to 100,000 per year during the late 1990s, the number of unskilled migrants has been around 30,000 per year, and the number of skilled migrants has been around 47,000 per year.

2.2.4 Government policy on emigration[34]

The Sri Lanka government has taken several initiatives to facilitate and promote foreign employment. Its overseas labour programme consists of training programmes for groups such as hotel workers and maids, setting up of foreign employment extension centres in the country, loan schemes, help in accessing new markets, and protective measures for migrant workers, especially female migrant workers. Overseas workers in the unskilled categories are required to register with the Sri Lanka Foreign Employment Bureau and pay specified fees. These fees are used for meeting the welfare needs of unskilled migrant workers. The registration programme also ensures that Sri Lankan workers abroad are treated as regular migrants and that their interests are protected by foreign employers. Foreign employment agencies are also required to register with the Sri Lanka Foreign Employment Board.

...the number of legal Pakistanis registered with the Overseas Pakistani Foundation has been put at 4mn

2.3 Characterising mode 4 exports from Pakistan

Estimates from the government indicate that there were 3,180,973 Pakistanis abroad in 1999. More recently, the number of legal Pakistanis registered with the Overseas Pakistani Foundation has been put at 4mn. Temporary migration from Pakistan has mainly been to the Middle East, for contract-based work. Since the 1970s, both skilled

and unskilled Pakistanis, but predominantly unskilled workers, have been migrating to the Gulf region for work. By the mid 1980s, there were an estimated 2mn Pakistanis in the Persian Gulf states, making up the largest group of foreign workers, and remitting more than US$3bn every year to Pakistan, or nearly half of Pakistan's foreign-exchange earnings. Typically, these workers stay overseas for five to ten years following which they return home. This movement has been regulated by Pakistan's Ministry of Labour under its programme for Overseas Pakistanis.

By the mid 1980s, there were an estimated 2mn Pakistanis in the Persian Gulf states, making up the largest group of foreign workers, and remitting more than US$3bn every year to Pakistan...

Table 20 in of the Annexe highlights the magnitude and geographic orientation of migrant workers from Pakistan to selected countries in the Gulf region. The breakdown across countries is quite similar to that for Sri Lankan migrant workers, discussed earlier. Saudi Arabia has been the main destination market, although its relative importance has declined since the mid 1990s. The UAE is the second most important destination market, followed by Kuwait.

The bulk of this movement to the Middle East is in unskilled categories, as shown in Table 21 in the Annexe. Professional migrants constituted less than 10 percent of all migrants to the region in the 1990-96 period, while migrants engaged in services and production, which basically cover menial occupations, contributed to 80 percent of all migrants to the region.

Pakistan also exports labour to other parts of the world like North America, Europe (especially the UK), the Far East and Australia, and parts of Africa. Pakistanis have been going to the US and the UK since the 1960s, though most of these outflows have been permanent in nature, unlike the flows to the Middle East. In 1998, there were an estimated 934,068 Pakistani nationals working in Europe, of which 720,000 were in the UK. There were 605,000 Pakistanis working in the US, close to 73,000 in South East Asia, Australia, and the Far East, and around 18,000 in Africa. The bulk, over 1.5mn, were working in the Middle East.[35] Thus, although the Middle East dominates as the destination market, other countries, including industrialised countries in North America and Europe are also important markets for Pakistani labour. Evidence from host countries confirms the importance of Pakistani workers in total labour inflows. For example, Pakistan ranks as the third most important source country for overall foreign labour inflows as well as for skilled labour inflows into Canada for the years 2000, 2001, and 2002, with a share of around 6 percent of all such inflows.[36] The data suggests that most of Pakistani labour flows to developed countries has been in the skilled and professional categories.

...Pakistan ranks as the third most important source country for overall foreign labour inflows as well as for skilled labour inflows into Canada for the years 2000, 2001, and 2002, with a share of around 6 percent of all such inflows

2.4 Characterising mode 4 exports from Bangladesh

The basic pattern of migration from Bangladesh is broadly similar to that for the other South Asian countries in terms of its primary orientation towards the Middle East and the concentration of semi-skilled and unskilled categories in these flows. Bangladeshi service providers are mainly engaged as construction labour, domestic maids, and nurses (in addition to working as fish and vegetable sellers and in garment production) in overseas markets. The most important market is Saudi Arabia. Increasingly, Bangladeshi maids and nurses are also

going to countries in South East Asia. There is an estimated stock of around 250,000 Bangladeshi workers in Malaysia, mostly engaged in low skilled work but increasingly also in skilled occupations such as engineering, health, and nursing. Labour flows to industrialised countries are mostly permanent in nature and are mostly concentrated in semi-skilled categories of work. Tables 22 and 23 in the Annexe highlight the nature of labour outflows from Bangladesh by country of destination and by occupation.

The Bangladeshi government regulates the outflow of workers through the Bureau of Manpower, Employment, and Training

The Bangladeshi government regulates the outflow of workers through the Bureau of Manpower, Employment, and Training. An overseas worker who has been recruited by a foreign employer can complete all formalities through this bureau. The government has also adopted policies to protect the welfare of unskilled migrant workers overseas, especially female workers, by enforcing requirements such as proof of employment and registration, and even introducing occasional bans on outflows of workers in certain occupations such as domestic services.[37]

2.5 The UK as a destination market

The UK has been an important market for mode 4 exports from South Asia. All four countries have a sizeable presence in the migrant worker population in the UK, in skilled and professional categories. Table 24 of the Annexe highlights the significance of skilled migration in overall labour flows from the Indian subcontinent to the UK. It indicates that two-thirds of all migrant workers from the Indian subcontinent in the UK were engaged in professional and managerial occupations in the 1995-99 period.

Evidence on the number of work permit approvals by the UK authorities by the nationality of workers again reveals the importance of the Indian subcontinent. India was the leading recipient country with 12,292 work permit approvals during the October 2000 to March 2001 period, while Pakistani and Bangladeshi workers accounted for around 1200 and close to 400 work permit approvals, respectively, during this same period. Over 60 percent of the over 12,000 work permits granted to Indians were in computer services followed by health and medical services with a share of 9 percent in total work permits issued to Indians. A detailed account of the work permits by occupational group shows that Indians received admission in the engineering, computer science, health, teaching, management and administration, business, and finance professions.[38]

India was the leading recipient country with 12,292 work permit approvals during the October 2000 to March 2001 period

However, as noted earlier, most of the "temporary" movement from South Asia to the developed countries, including the UK, has tended to be permanent in the long run. Evidence from the UK shows that professional and managerial workers from South Asia as well as other developing countries are relatively unlikely to leave after a few years of working in the UK, as outflows are very small. For instance, in the 1995-99 period, there were recorded outflows of only 4,900 South Asian migrant workers in the professional and managerial occupations from the UK, barely a quarter of all such workers in the UK.[39]

Chapter 3

Barriers Affecting Mode 4 Exports from South Asia

The very small value of trade in services under mode 4 is probably indicative of the highly regulated and protected nature of this form of services trade relative to all others. International migration is highly regulated due to sensitivities associated with opening up of labour markets to foreign labour, particularly at the lower skill levels, and the potential impact on local jobs, wages, quality, social stability and national security.

International migration is highly regulated due to sensitivities associated with opening up of labour markets to foreign labour...

There are broadly two types of impediments to mode 4 exports by developing countries, including the South Asian countries. These can be classified as either border measures or as domestic regulatory barriers. The two are not completely distinct as domestic regulations affect the implementation of border measures while border measures have a bearing on the nature and use of domestic regulations.

The main border measure is immigration regulation. The main domestic measures are recognition requirements and economic needs tests. In addition, there are discriminatory measures and other policies, which may implicitly constrain entry of foreign workers. The following discussion highlights some of the most common barriers to mode 4. A point to note is that these barriers are not specific to South Asia and thus are presented in a general context as barriers affecting many developing countries. Where warranted, specific reference is made to South Asia.

3.1 Immigration regulations: Administrative and procedural barriers

One of the main restrictions on movement of natural persons is visa and work permit related procedures. Mode 4 is regulated by highly developed visa systems in the major recipient countries. These visa systems differentiate among a large number of categories in terms of length and conditions of stay. Most host countries retain flexibility to target areas of shortage through temporary migration, exclude areas of oversupply, and minimise any negative impact on the domestic labour market. Usually, these schemes also specify minimum salary requirements and skill levels and subject foreign workers to a wide range of local labour laws and sub-federal and provincial regulations.

One of the main restrictions on movement of natural persons is visa and work permit related procedures

The main problem is that such procedures do not distinguish between temporary and permanent movement of labour and treat mode 4 under usual immigration legislation and labour market regulations, which are applicable to migrant workers, though in principle mode 4 is supposed to be distinct from permanent migration. Moreover, such

regulations are often quite cumbersome, non-transparent, costly and arbitrary. They include strict eligibility conditions for applications of work permits/visas, cumbersome procedures for actual application and processing of these visas and permits, and limitations on the length of stay and transferability of employment in the overseas market. All of these restrictions raise the direct and indirect costs (due to delays and uncertainty) of entering the foreign market, thereby often eroding the cost advantage of the foreign service supplier and curtailing the scope for trade in services via mode 4.

A case in point is that of software professionals who require work permits/visas to provide on-site software services in overseas markets such as the US. Time consuming and burdensome procedural requirements are involved in obtaining work permits and visas. Employers filing for such work documents on behalf of foreign workers must meet certain preconditions such as providing evidence of an extensive search for a local person before hiring a foreign national, meeting stringent advertising requirements and search specifications, and demonstrating the unfeasibility of training a local person. Failing all these other avenues, only then can an application be submitted for a foreign worker. There may also be additional requirements specifying that the foreign worker must train a local person for replacement within a certain time period, or age and residency based restrictions.

Often temporary workers may be subject to a two-permit entry procedure, one for an entry visa and another for a work permit

The application process itself can be quite burdensome. A typical application requires exhaustive details about the employer, the job, efforts to find local personnel and evidence of failure to do so, details of the candidate in terms of his experience, skills, and training, and verification of other personal details. The filing and processing of information may take anywhere from 2 weeks to over two months, or even longer, at times almost a year, due to the application requirements. Often temporary workers may be subject to a two-permit entry procedure, one for an entry visa and another for a work permit. It may be necessary in some cases to leave the passport in the embassy during the processing period, anywhere between a week to one month, during which time the service provider or business visitor is unable to travel to another country as he does not have his travel documents. Such long and tedious processes hurt service sectors where personnel need to be shipped overseas at short notices and where delays mean a loss of opportunities and business. This is a major impediment to the smooth flow of exports of many services.

The principle underlying the wage parity requirement is that overseas nationals are to be hired to address the shortage of suitably qualified service providers in the host country...

There are also conditions that are attached to entry, especially for contractual and employment based service providers, which can delay the labour certification process and issuance of the visa/work permit. One such condition is wage parity. It is required that wages paid to foreign service providers be at par with those that would have been paid for a local person in the same position and with similar qualifications. The principle underlying the wage parity requirement is that overseas nationals are to be hired to address the shortage of suitably qualified service providers in the host country and not to save money by hiring cheap labour from abroad. However, the wage parity requirement also acts to negate the cost based advantage of many developing countries in exporting labour-intensive services and works against the very concept of comparative advantage based on cost differentials.[40]

There are also numerical ceilings on visas and work permits in major host countries. For instance, the US puts a cap on the number of H-1B visas, its employment based visa for temporary workers, and varies this ceiling depending on economic conditions and lobbying by its domestic industry associations. The cap on the H1B visa was raised from 65,000 to 110,000 and further to 195,000 at the time of the IT boom in the late 1990s. This ceiling has now reverted to the original ceiling of 65,000, following the recent downturn in the US economy. Such cyclical changes in quantitative ceilings on entry create uncertainty. Moreover, they tend to hurt certain service sectors such as software more than others, as the majority of temporary contract-based employment in this sector occurs under the H1B visa. Such limits also result in efforts to circumvent the visa cap by sending persons under other visas, such as the intracompany transferee (ICT) visa category (L-1 visa in the US), where conditions are less stringent, processing is faster, and various conditions like wage parity are not applicable. Many companies are known to have brought in service providers under L-1 and then subcontracted them to perform activities, which would normally qualify for H1B visas. Thus, such administrative barriers result in manipulation of the visa system, and cause a blurring of boundaries between different categories of visas, and may ultimately not be that effective in achieving their actual purpose.

The work permit usually pertains only to the specific job detailed in the application and does not permit the individual to take up any other work in the host country

Restrictions also apply to natural persons after they enter the foreign market. For instance, there are limitations on the transferability of work permits and mobility of the provider after he enters the host country. The work permit usually pertains only to the specific job detailed in the application and does not permit the individual to take up any other work in the host country. To transfer, the entire application process may have to be repeated. While such provisions are intended as safeguards to prevent foreign labour from entering the host country's permanent labour market, they limit the flexibility of moving service personnel to various client sites to render the service and act as a disincentive to hiring foreign nationals.

There are also difficulties that temporary service providers experience with extensions and renewals of their visas and work permits, which may be subject to stringent conditions, re-application requirements, and high fees. Often, after the long wait in filing and processing information, only a single entry permit may be granted, thus requiring the service provider or company to undergo the same cumbersome process once again. Such procedures may discourage companies, typically smaller ones, from hiring foreign nationals and may force them to use local persons who may be in short supply and costlier.

Employers who hire workers under certain visa categories, such as the H1B, H1C, H2A, and H2B categories, are first required to seek labour certification through the US Department of Labour (DoL)

3.1.1 Case of the US[41]

The administrative requirements for issuance of non-immigrant visas in the US help illustrate the preceding points. The hiring of foreign workers for employment in the US normally requires approval from several government agencies. Employers who hire workers under certain visa categories, such as the H1B, H1C, H2A, and H2B categories, are first required to seek labour certification through the US Department of Labour (DoL). However, this does not guarantee issuance of the visa. The employer must petition the Bureau of Citizenship and Immigration Services (BCIS) for a visa, after receiving

the DoL's approval. Only following this petition does the Department of State (DoS) issue a visa number to the foreign worker for entry into the US. Thus, multiple departments and agencies are involved in regulating the immigration process.

There are five steps that must be met to obtain labour certification. First, the employer must ensure that the position meets the qualifying criteria for the requested programme (e.g., H1B's need to have a bachelor's degree in a specific specialty). Second, the employer should complete the Employment and Training Administration (ETA) form designated for the requested programme. This includes obtaining supporting documentation. Third, the employer must ensure that the wage offered equals or exceeds the prevailing wage for the occupation in the area of employment. Fourth, the employer must ensure that the compliance issues concerning hiring of foreign workers are completely understood. And fifth, the completed ETA form has to be submitted to the designated DoL office for the requested programme.

...the process to obtain an employment based temporary labour certification (H2A, H2B) usually takes months through the state agency and the DOL's regional office

The processing time for labour certifications can vary from several months to even several years, due to the large number of administrative requirements that are involved.[42] Currently, the process to obtain an employment based temporary labour certification (H2A, H2B) usually takes months through the state agency and the DOL's regional office. There are two main reasons for the delay in the labour certification process. One main reason is the wage parity condition. The time needed to determine the prevailing wage varies from state to state, from anywhere between one to four weeks. The second main reason is the employer search requirement. Employers are required to post a notice to hire H1B's for at least 10 days in the workplace. They have to place a job order with the local employment office, and an advertisement in a publication for at least three days. Such burdensome procedures and documentation requirements certainly make it less attractive for employers to hire foreign workers.

Apart from these formalities, employment for certain categories of temporary workers is subject to numerical limitations. As noted earlier, there are annual ceilings on the number of H1B (specialty occupations) and H2B (occupations in which persons providing services cannot be found in US) and H1C categories. For instance, currently there is an annual quota of 65,000 visas under the H1B category, of 500 visas under the H1C programme for registered nurses, and 66,000 visas per year for H2B workers.[43] The annual cap of 65,000 new H1B workers was reached in mid-February of 2004, within less than five months into the fiscal year, with 22,000 H1B applications still pending from the previous year.[44] In addition, due to the setting aside of nearly 7,000 H1B visas for Chile and Singapore as part of recent US free-trade agreements with those countries, effectively only 36,000 new H1B visas were available in 2004.[45] Indian IT professionals were prevented from entering the US market (on a new H1B visa) until October 2004 due to the early exhaustion of such visas in that year.

The annual cap of 65,000 new H1B workers was reached in mid-February of 2004, within less than five months into the fiscal year, with 22,000 H1B applications still pending from the previous year

There are also domestic regulations concerning length and extension of stay, accompaniment by family members, travel within the US, and change of admission status. In addition to these federal level regulations, in some sectors there are also regulations by state

governments and professional associations at the sub-federal level. Thus, there are multiple layers of administrative requirements, which constrain mode 4 exports to the US market, by limiting numbers and by raising the costs of entry.

3.1.2 Biases and discretion in admission of foreign workers

There are also biases in migration regimes towards higher skilled categories of workers. For instance, work permit applications and visas for higher skill and functional levels, such as intracompany transferees (ICTs), are easier to obtain than permits for personnel such as coders or systems analysts. In particular, migration regimes are liberal towards movement which is associated with the establishment of commercial presence while middle and lower level service professionals moving on contracts or in an independent capacity face stringent admission requirements and procedures with respect to conditions on wages and prior employment. Entry is even more difficult for service providers at lower skill levels, such as artisans and tradesmen, who may be technically competent in their trade and qualified on the basis of work experience, but are not highly educated or qualified professionally. Since most developing countries, including the South Asian countries, have a comparative advantage in contract based and independent movement of workers and are typically not in a position to establish commercial presence overseas given the high capital requirements, such biases constrain their ability to export through mode 4.

...middle and lower level service professionals moving on contracts or in an independent capacity face stringent admission requirements and procedures with respect to conditions on wages and prior employment

In recent years, these biases have been accentuated with the introduction of new migration schemes to encourage entry of skilled workers into the industrialised countries. These schemes target particular occupations and thus create an uneven playing field between different sectors and categories of workers. The Australian and US visa systems are cases in point.

Both Australia and the US focus on temporary entry by the highly skilled.[46] In Australia, 73.5 percent of entrants under the temporary business category fall under the two highest skill groups of managers/ administrators or professionals compared to 38.8 percent of the total Australian population. In addition to managers, executives, and specialists, Australia's visa schemes cater to those with recognised skills in specific areas or those associated with investment. In recent years, temporary residence business visas have been issued in large numbers to meet shortages of computing professionals and there has been priority processing for nurses, another key area of high demand. For the year 1999-2000, Australia issued an extra quota of 5,000 places in addition to the 35,000 places already designated for skilled workers. Immigration statistics for the US similarly reveal the relative importance of skilled workers in overall temporary admissions into the US. For instance, temporary business visitors constitute the largest class of admissions (1.3 mn entrants between 1995 and 1999) followed by specialty occupations (H-1Bs) across industries as wide ranging as IT, engineering, consulting, accounting, and architecture (384,191 admissions in 2001), and intracompany transferees (L-1s) (328,480 admissions in 2001). All three categories fit under the highest skill groups. In the recent past, the US increased the number of specialty occupation visas, as noted earlier, to enable more skilled workers,

For the year 1999-2000, Australia issued an extra quota of 5,000 places in addition to the 35,000 places already designated for skilled workers

especially in the IT profession, to enter the US market. In addition to the bias towards managerial and professional groups, the US also has special visa schemes to address shortages in specific skilled occupations like nursing.

In recent years, many other host countries have also changed their immigration regulations to encourage temporary migration, particularly by skilled workers, mainly to address shortages in various skilled professions like computer-related services and medicine. For instance, Singapore changed its regulations for the issuance of work permits to encourage larger numbers of foreign entrepreneurs and foreign skilled workers. The UK created a new type of visa to select highly qualified persons on the basis of a point system, for employment in the country. Canada amended its point-based selection system in June 2002 in order to better identify candidates who were required by the Canadian labour market.[47] In August 2000, Germany introduced a policy to hire 20,000 information technology specialists for a period of five years. And, even a nontraditional host market like Japan recently altered its policy to encourage entry by skilled workers, by extending the initial duration of stay from six months to one year.[48]

...Singapore changed its regulations for the issuance of work permits to encourage larger numbers of foreign entrepreneurs and foreign skilled workers

In contrast, entry by low-skilled and semi-skilled workers is mainly governed by bilateral Labour Agreements and seasonal and guest worker programmes, usually between governments, employers, and industry representatives. These agreements are typically for shorter periods, usually less than one year, with strict conditions to prevent renewals and extensions and transferability between employers. They are also subject to quantitative ceilings on the number of visas per year and require some form of certification before admission is granted. There are requirements to return to the source country upon completion of work and a specified gap of some period before readmission is allowed. There are also specifications regarding terms and conditions of operation, such as on wages and hours of work within the host country, to ensure worker welfare and address employers' concerns. For example, the US H-2B scheme for temporary non-agricultural workers performing services that are not available in the US is subject to a quantitative ceiling of 66,000 per year. It requires certification from the US DoL attesting to the need for such workers from overseas and that such entry will not result in any adverse local labour market effects. Moreover, the employer's need cannot be continuous and must be one time, seasonal, peak load, or intermittent and any extensions are subject to recertification. South Asia has only a few bilateral arrangements with other countries, for select categories of workers, such as nurses. On the whole, low skilled movement from South Asia does not benefit from predictable immigration regimes. There have been occasions when major host countries, such as the UAE, have stopped issuing visas to low skilled service providers from the subcontinent in view of changing domestic market conditions and requirements.[49] Such unpredictability in migration regimes is another constraint to mode 4 exports from South Asia.

...the US H-2B scheme for temporary non-agricultural workers performing services that are not available in the US is subject to a quantitative ceiling of 66,000 per year

Another increasingly important source of discretion in immigration regimes is the need to defend national security, particularly after the September 11 attacks. In November 2001, the US State Department announced that there would be increased security checks on all male

non-immigrant visa applicants between ages 16-45 from Arab or Muslim countries. This has resulted in an additional 20-day waiting period, which enables name checks against FBI databases. From January 5, 2004, every person entering the US with a visa at US commercial international airports, and in 14 major seaports, is being electronically fingerprinted and photographed at immigration inspection stations. Non-immigrant workers have to notify the INS of any change of address or employment. While such anti-terrorism measures may be necessary for US security, the operational modalities of such regulations have tended to be discretionary and biased against workers from certain countries, including those from South Asia.

...in March 2003, over 200 Indian IT professionals were rounded up detained, and ill-treated by the Malaysian police in Kuala Lumpur

There have also been ethnic and nationality related biases in the treatment of foreign workers, including workers from South Asia, in several host countries. For instance, in March 2003, over 200 Indian IT professionals were rounded up (along with other Indians), detained, and ill-treated by the Malaysian police in Kuala Lumpur.[50] Although the Malaysian government ordered an investigation into this incident, the actions were explained as being part of constant efforts by Malaysian authorities against illegal immigrants. However, there appeared to have been an ethnic bias to this raid and no irregularity was found among the IT professionals who were detained.[51] A similar incident occurred in 2002 against Indian IT professionals in the state of Texas in the USA. Several Indian IT workers were rounded up, handcuffed, and made to parade publicly. There have also been instances of bans imposed on recruitment of certain kinds of workers and sudden repatriation of South Asian workers, such as Bangladeshi migrants from Malaysia, following the economic crisis in that country in 1997.[52] These incidents indicate that in addition to discretion and biases in entry norms, there is also a lack of transparency and fairness and a lot of arbitrariness in post-entry norms and conditions concerning foreign workers.

3.2 Economic Needs Test[53]

One of the most pervasive measures affecting movement of natural persons (and also commercial presence by foreign service providers) is the economic needs tests (ENTs). The latter may take the form of labour market tests, management needs tests, or manpower planning requirements, or other types of tests and conditions. In the context of mode 4, ENTs are most prevalent in areas like medical and dental services and professional and business services like engineering. They tend to cover categories like contractual and employment based temporary workers such as specialists, technicians, and other professionals, while often excluding the category of ICTs. ENTs also apply to some lower skilled occupations such as construction work, tour operator services, and taxi services.[54]

...the ultimate objective of the ENT is to restrict market access to foreign service providers based on some assessment of the necessity of allowing entry into the host market...

While the ultimate objective of the ENT is to restrict market access to foreign service providers based on some assessment of the necessity of allowing entry into the host market, its application varies across countries. In some cases, it is conducted on a case-by-case basis, for instance, as each application for licence or permit is submitted, while in other cases, such tests may be conducted periodically. The purpose of the test may also vary. For instance, the test may be applied to

determine the issuance of a licence or permit or authorisation to a foreign service provider, or it may be applied to determine the need to allow entry to additional service suppliers based on local market supply and demand conditions, or it may be used to determine the number of foreign service suppliers to be allowed entry. The US applies ENTs in the form of pre-admission and post-admission checks, where the most rigorous measure is the pre-admission check, which may take as long as two years to complete. In some cases, ENTs are combined with quantitative restrictions and the total number of service suppliers allowed to enter in a specific sector may be subject to an ENT.

The main problem with ENTs is their lack of clearly established criteria and procedures for application, making them unpredictable, non-transparen, and arbitrary barriers to mode 4

The main problem with ENTs is their lack of clearly established criteria and procedures for application, making them unpredictable, non-transparen, and arbitrary barriers to mode 4. The substantive content of ENTs and how the findings of these tests are translated to undertake decisions on mode 4, either in quantitative terms or otherwise, is not generally known to affected countries. There is also no clear definition of what constitutes an ENT. In particular, there is no uniformity in the objective of an ENT with some countries using the concept of needs tests, others referring to labour market tests, others to local unavailability of a service, and yet others to needs based quantitative limits. Hence, the meaning of ENT is quite broad. Moreover, there is also some lack of clarity on whose perspective an ENT should be administered from, whether it is to be administered from the point of view of consumers or that of market incumbents, whether it should take into account considerations of overall economic efficiency, or equity. Such lack of precision in the definition, objective, criteria, and administration of ENTs makes them potentially discriminatory.

3.3 Recognition related barriers

Lack of recognition of qualifications, skills, or experience is one of the most common barriers affecting movement of natural persons. It either denies market access altogether to foreign service providers or induces such suppliers to perform in a capacity that is below their level of qualifications (academic or otherwise).

MRAs are mostly used in certified and licensed professions like medical and accountancy services where there are established international standards and practices...

There are several different mechanisms that are used to assess qualifications and skills for entry purposes. One important mechanism is mutual recognition agreements (MRAs), which are signed between two countries or groups of countries, at the national or the sub-federal levels for specific sectors and occupations and are typically administered by relevant professional bodies and associations. MRAs are mostly used in certified and licensed professions like medical and accountancy services where there are established international standards and practices, and benchmarking and determining cross-country equivalence is feasible. Another mechanism for according recognition is a test of competence. The latter may take various forms, including an employer interview or test; an on-the-job competency assessment – during or after a period of service, a probationary or trial period of supervised work, an examination of knowledge, skills, and language abilities, and an assessment of credentials or paper qualifications, where institutions or individuals are assessed for comparability, 'substantial' equivalence or equivalence. Such tests may be implemented by employers, by government agencies, or by professional bodies and associations.

Although recognition schemes, whether formal ones like MRAs or otherwise, have public policy objectives like ensuring quality and standards of services and protecting consumer and national interests, and thus are not *per se* protectionist, it is in their implementation and procedural aspects that they may act as market entry barriers. They may impose additional costs or curtail the scope for practice. A few cases from selected services that are commonly subject to such requirements help illustrate the point.

...MRAs have public policy objectives like ensuring quality and standards of services and protecting consumer and national interests, and thus are not per se protectionist...

For example, in the absence of MRAs in areas such as nursing and dental services between the host and source country, the foreign worker may be required to take host country examinations and undergo tests of competence in order to qualify for practice in these host markets. This applies to Indian health care professionals who wish to practice in countries such as the US, the UK, and Australia, as their qualifications are not recognised in the latter markets. These recertification and competence tests are subject to various problems of administration and bias (discussed at length later in this paper). Moreover, they impose financial and time related costs, and tend to create an uneven playing field between countries that are party to such MRAs and those that are not, or between preferred source countries (for historical, cultural, or other reasons) and others. This problem of certification and verification of qualifications is even more difficult in the case of lower skilled occupations such as repair and maintenance services, masonry and construction work, where there may be no formal paper qualifications. Actual demonstration of work quality may be the only means of judging competence. Further, lack of clearly specified criteria for judging uniformity between qualifications of different countries may lead to discretion in granting entry.

There may also be procedural requirements such as registration with local bodies or associations in order to be able to practice, but registration may not be possible without passing the certification exam. Thus, multiple layers of eligibility and prior conditions may apply. Moreover, even multiple levels of certification may be involved, such as at the sub-federal and provincial levels. For example, in the case of legal services in the US, one is required to pass the local state bar exam in order to register with the state bar association. This process would need to be repeated if the person wants to practice in another state. Similarly, in a sector like architectural services, state and provincial licensing requirements are present, thus effectively curtailing the geographic scope of practice or forcing the service provider to undergo multiple certifications in order to have geographic mobility within the host market.

Recognition accorded through registration or licensing may also be subjected to discriminatory requirements, like residency and nationality conditions

Recognition accorded through registration or licensing may also be subjected to discriminatory requirements, like residency and nationality conditions. Non-residents or foreign nationals may not be allowed to practice in certain sectors or may be restricted to practice only certain types of activities within the sector. For instance, in the legal services sector, non-resident or non-national legal professionals are often only allowed to acts as counsellors and consultants, but are not allowed to represent clients in court or sign any legal documents.

In addition to outright rejection or acceptance of foreign service personnel on the basis of various recognition requirements, there are

also sectors where the application of such measures is highly discretionary. The latter problem is common in services where there may be no clearly specified international or other criteria for judging equivalence between home and host country qualifications and work experience, where there may be no established licensing and certification mechanisms, where non-academic qualifications and work experience may be important, and where there may be no institutional and regulatory mechanisms. Thus, self-employed, independent movement or contractual movement in non-accredited professions and trades, tend to be most subject to such discretion. Services in point include IT and engineering services, and trades like plumbing, welding, and carpentry. In the software services area, for instance, the US requires software professionals to have three years post-graduation experience in the occupation and a degree directly related to it.[55] However, as pointed out by the Indian IT industry, software personnel from developing countries such as India may have the skills to deliver the service even with 1 to 2 years of experience due to their strong engineering base and background. The discretion and uncertainty in recognising previous experience and qualifications amounts to a barrier for developing countries.

...an assessment approach may fall short of truly assessing a person's knowledge and skills as it may only take into account formal qualifications, or have a bias towards assessing local knowledge and domestic regulations...

There may also be inherent problems with the implementation of recognition requirements due to lack of clarity on substantive elements of recognition and inherent biases that may be present in implementation, especially against certain types of service providers more than others. For instance, an assessment approach may fall short of truly assessing a person's knowledge and skills as it may only take into account formal qualifications, or have a bias towards assessing local knowledge and domestic regulations, or may use unfamiliar examination formats. Assessment can also involve prohibitive fees for the applicant or heavy administrative costs. Furthermore, the assessment of paper qualifications may not be the optimal way of measuring true competencies of the persons involved. Lack of clarity on issues such as what constitutes competence, how non-academic qualifications like work experience are to be judged and their comparability with academic qualifications, what constitutes comparable training and standards across countries and how to bridge such differences, create scope for discretionary application of recognition schemes. It is also important to note that developing countries are at a particular disadvantage with regard to recognition arrangements due to the absence of national recognition systems and professional bodies or industry associations for many services in developing countries, the dissimilarity of their training systems and regulatory regimes from those of developed countries, and their lack of technical and regulatory capacity to undertake negotiations on mutual recognition. In sum, although recognition requirements may be justified on public interest grounds, they may in practice create significant obstacles to free flow of service providers across countries.

...developing countries are at a disadvantage with regard to recognition arrangements due to the absence of national recognition systems and professional bodies for many services in developing countries...

3.3.1 State and subfederal requirements[56]

Recognition requirements in licensed professions like accountancy, legal, and health services are also subject to subfederal regulations at the state and provincial levels in countries such as the US and Canada. The licensure is often the responsibility of each individual state/ territory/province.

Take the case of accountancy services, where, as shown in Table 8 of the Annexe, there is movement of Indian professionals to the US. The main licensing organisations of the accounts profession in the US are the 54 State Boards of Accountancy, the American Institute of Certified Public Accountants (AICPA) and the 54 state societies of CPAs. The State Boards of Accountancy are agencies of state governments and each state board operates under legislation enacted by the concerned state. As India does not have a mutual recognition agreement with the US in the accountancy services sector, Indian accountants who plan to work in the US must apply to the licensing board in the state or territory in which they wish to practice. They must not only meet the requirements of that licensing board with respect to education and experience, but must also pass licensing examinations.

The main licensing organisations of the accounts profession in the US are the 54 State Boards of Accountancy, the American Institute of Certified Public Accountants (AICPA) and the 54 state societies of CPAs

The process involves three steps in most US states. Firstly, service providers must apply to the state board of accountancy for the state in which they wish to register. They must provide details of their qualifications, which are then assessed by a foreign credentials evaluator, at a fee ranging from US$90 to US$160 for academic credentials, along with extra fees for shipping costs. The minimum eligibility condition is the equivalent of a US Bachelor's degree.[57] Secondly, once the application to the state board is accepted, the applicant must pass the AICPA Uniform Final Examination, which is a professional licensing examination used by all state accountancy boards to ensure that CPA applicants possess a mastery of technical knowledge needed to enter the CPA profession. Foreign professionals must take tests in four subjects, auditing and attestation, business environments & concepts, financial accounting and reporting and regulation. The cost of taking the exam varies across state jurisdictions, but the estimated costs for first-time candidates applying to take all four sections is huge, in the range of US$575-US$800.[58] Thirdly, after passing the CPA exam, applicants in most states need to satisfy additional requirements for receiving a license, such as passing an ethic exam of the respective state. They must meet work experience requirements, which are typically specified at around 12 to 24 months. They must also pay the appropriate license fee for the state. These fees vary across states, costing around US$100-200 in California as opposed to US$330 in Washington State. Some states may also require an in-state office or in-state residency for licensure purposes. The US's GATS commitment schedule in accountancy services highlights the fact that 14 US states require an in-state office and 25 states require in-state residency for licensing foreign accountancy professionals.[59] Further, one state also requires US citizenship for licensing.

The US' GATS commitment schedule in accountancy services highlights that 14 US states require an in-state office and 25 states require in-state residency for licensing foreign accountancy professionals

Thus, foreign accountancy professionals face a time consuming and costly licensing process in the US. Nationality, establishment and residency conditions constrain market access even if other qualification requirements are met. In addition, there are also requirements in some states that a specified number or fraction of the owners of an accounting firm be local citizens/ residents and members of an approved professional organisation, which implicitly curtail the scope for provision of such services by foreign professionals. It is also important to note that even if restrictions appear to affect domestic incumbents and foreign entrants similarly, the foreign service provider is likely to be more adversely affected, as he/she is at an initial disadvantage in entering a market that is dominated by domestic incumbents.

Similarly, in the legal profession, since qualifications from South Asian countries are not recognised in the US, professionals from South Asia who wish to practice in the US must obtain an additional degree from an approved law school in the US. They must also pass a bar examination, and satisfy the bar's other eligibility requirements. Even after satisfying these requirements, some jurisdictions in the US may permit them only to work as foreign legal consultants and, further, only to advise on the law of their home country

Likewise, health professionals from South Asia must recertify in the US and the UK. In the US they must pass the Educational Council for Foreign Medical Graduates (ECFMG) exam for doctors and in order to be recognised as a specialist, certification is required by a specialty board following a three to five year programme that includes work in a recogniserecognised hospital. Moreover, as the requirements vary across states in the US, these professionals must meet the specific requirements of the state where they plan to work. Indian medical graduates wanting to go to the US have to clear the US Medical Licensing Examination (USMLE) in order to be certified and be able to practice. This examination, which is also applicable to US medical students, assesses knowledge and understanding of basic biomedical science as well as clinical science.[60] In the UK, medical graduates and postgraduates from South Asia are subject to stringent certification requirements. They are required to take a PLAB (Professional and Linguistic Assessment Board) examination. Only after clearing the PLAB are they entitled to registration, and to a job in the UK. However, here again there are limitations, as the registration is for only a limited period of five years and the PLAB exam can be taken only in the UK. Postgraduates are subject to further requirements in order to be eligible to practice, despite holding a MD or MS degree from their source country. They are required to clear the fellowship or membership and only after clearing an open general examination are they eligible for selection to a consultant's post.[61] Similar procedures for certification and registration apply to foreign medical graduates seeking to practice in Canada and Australia.

Indian medical graduates wanting to go to the US have to clear the US Medical Licensing Examination (USMLE) in order to be certified and be able to practice

Even in countries where medical qualifications of South Asian health care professionals are recognised, such as in the Middle East, Africa and parts of Asia, some of these host countries are now beginning to require South Asian medical graduates and postgraduates to undergo examinations to qualify for practice. In addition, there is also reported discrimination against medical graduates from the subcontinent in the Middle East, in terms of the compensation they receive relative to professionals holding equivalent English or US medical degrees.[62]

South Asian nurses are required to pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) exam in order to practice in the US

There are similar problems of recognition in the case of nurses, technicians and other paramedical staff from the subcontinent. Nursing and technical qualifications from Indian institutions are not recognised in the developed countries. South Asian nurses are required to pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) exam in order to practice in the US. In addition, there are stringent documentation requirements for processing the application and for visa and placement, which can cause major delays in going overseas.[63]

3.4 Other barriers

Trade through movement of natural persons may also be adversely affected by domestic policies, which tend to favour domestic service providers over foreign suppliers of services. One common source of discrimination against foreign service providers is government procurement and sourcing policies. Some commonly affected sectors include education, data processing, construction, and consultancy services. Governments may give procurement preferences to domestic suppliers of services in tendering processes for sectors like construction and consultancy services. They may also reserve or prefer to contract government work to domestic as opposed to foreign service suppliers. They may also grant price-based preferences to domestic suppliers.

Another policy-based source of discrimination between foreign and domestic service providers is the requirement of government approval or authorisation for entering certain service activities

Another policy-based source of discrimination between foreign and domestic service providers is the requirement of government approval or authorisation for entering certain service activities. These approval procedures not only tend to favour domestic service providers, but in some cases may also altogether preclude entry by foreign service providers. The criteria for authorisation and failure to grant permission are often not defined and thus entry is subject to discretionary approval by government authorities.

Government subsidisation policies also create an uneven playing field between domestic and foreign service persons. There are often explicit and implicit subsidies given to domestic service suppliers in sectors like construction and engineering services. For instance, some governments subsidise pre-feasibility studies for construction and engineering projects to domestic service providers. In addition, rules with regard to accounting or advertising practices, and consumer protection laws may also potentially discriminate against foreign service providers. Foreigners are not eligible for many subsidy schemes, and cannot buy real estate in many states of the United States. Loans by the Federal Small Business Administration are restricted to US citizens or companies that are 100 percent owned by US citizens and whose directors are all US citizens.[64] Such differences in treatment, although often guided by national interest and public policy objectives, put foreign service providers at a disadvantage.

Apart from policies, which may affect the competitiveness of foreign service suppliers and thus their ability to enter another market, policies, which affect earnings and conditions of stay, can also act as non-tariff barriers. One such constraining factor is taxes. In the US, a non-immigrant working temporarily may be subject to a heavy tax burden due to the structure of taxes and benefits available to resident versus non-resident aliens. There are four major components of tax for any worker in the US, namely, federal income tax, state tax, social security tax, and Medicare tax. In the absence of a double taxation avoidance treaty, income from any US source is taxable whether it is received while the foreign worker is a non-resident alien or a resident alien. The amount of tax depends on a foreign workers filing status and is important for determining the deductions and credits he can avail. For instance, resident aliens can claim personal exemptions and exemptions for dependents in the same way as US citizens, while non-resident aliens generally can claim only one personal exemption. Thus, a temporary worker who is in the US for a short time period may be subject to a high tax burden.[65]

In the US, a non-immigrant working temporarily may be subject to a heavy tax burden due to the structure of taxes and benefits available to resident versus non-resident aliens

Service providers are also required to make social security and other contributions in the absence of totalisation agreements between the source and host country governments. However, they are not eligible for receiving the associated benefits. For example, South Asian professionals must make social security and Medicare contributions to the US government. These contributions are required despite the fact that the service provider is on deputation abroad for a period, which is less than the period of stay required to avail of social security benefits in the future (ten years in the case of the US). The service provider not only pays social security taxes in the US, but may also be making equivalent contributions back home, and also does not recover his contributions upon returning to the home country. In effect, the application of the national treatment (NT) principle to social security taxes effectively amounts to double taxation of the foreign service provider's earnings, and is akin to a trade tax or disguised tariff that erodes his earnings. The current contribution rate, also known as the FICA tax rate, is 7.65 percent for employees and 15.30 percent for self-employed workers. The social security tax rate is 6.2 percent on earnings of up to US$87,900 and the Medicare rate is 1.45 percent on all earnings.

...the application of the national treatment (NT) principle to social security taxes effectively amounts to double taxation of the foreign service provider's earnings...

Likewise, other policies of national treatment, such as insistence of minimum wages or wage parity may have the effect of nullifying cost-quality based competitive advantage of developing country service suppliers. While it can be argued that such conditions, especially the payment of minimum wages to unskilled or semi-skilled foreign suppliers, are required to ensure labour standards and are in the interests of such workers, they are analogous to conditions of price equalisation or minimum prices in the case of merchandise exports.

In sum, there are numerous explicit and implicit barriers to services trade through movement of natural persons. Although such measures are not necessarily motivated by protectionist reasons, in practice they have the effect of inhibiting such trade by raising costs, creating opaqueness, uncertainties and discretionary scope, reducing earnings, and ultimately even undermining the very basis for such trade.

3.5 Domestic constraints to South Asia's mode 4 exports

It is important to recognise that there are also domestic constraints to mode 4 exports from South Asia. Chief among these constraints is the standard and quality of service providers. For instance, in the case of healthcare services, there is a lot of disparity in standards of training for doctors in the region. In India, for example, degrees recognised by the Medical Council of India (MCI) are based on examinations that are set by individual states with very different standards of training and institutions. This is unlike the case in the US or the UK where degrees are conferred on the basis of a common countrywide examination ensuring uniform standards for all those who qualify. In India, degrees from different institutions and regions of the country are not equivalent. A degree from the All India Institute of Medical Sciences is not equivalent to a degree from a regional university, though both institutions may be recognised by the MCI. The problem of non-uniform training standards and the current certification system is in turn one of the major impediments to the recognition of Indian medical professionals abroad, as graduates from reputed institutions carry the burden of being clubbed together with poorly trained graduates from lower rung institutions.

In India, degrees recognised by the Medical Council of India (MCI) are based on examinations that are set by individual states with very different standards of training and institutions

In the case of nurses and technicians also, there is a lot of disparity in domestic training standards. Degrees or diplomas conferred by different institutions are not necessarily equivalent. In India, nursing degrees or diplomas are under the purview of individual state nursing councils giving rise to divergent standards across states. In the case of technicians, the problem of standards is all the more severe as there are no regulatory bodies in the region to ensure minimum standards and training via a common curriculum and examination.

These shortcomings in training and certification are exacerbated by infrastructure and technical constraints in the health care sector in South Asia. For instance, there is inadequate quality and availability of medical supplies and equipment in training institutions and lab and clinical facilities are often of poor standards. There is also lack of coordination between private and public sector medical colleges and hospitals in the present educational framework. For instance, trainees in medical colleges may have adequate clinical material but may not have adequate supply of high-tech equipment, while trainees in private and public sector hospitals may have sufficient high-tech equipment but not enough supply of clinical material. Such constraints adversely affect the quality of medical training in the region and thus the quality of health care providers and their prospects for recognition and market access to other countries.

In India, nursing degrees or diplomas are under the purview of individual state nursing councils giving rise to divergent standards across states

Similar issues of quality and standardisation of services are becoming important in the IT services sector. Due to the surge in demand for IT professionals, there has been a rapid growth in the number of IT training institutions within the country. However, there has not been sufficient standardisation of these institutes, many of which are in the non-formal sector. There is growing concern in the industry and in the government about possible dilution of quality and standards of training in this sector, which could hurt mode 4 exports of such services.

Chapter 4

GATS and Mode 4: Significance for South Asian Countries

The preceding discussion has clearly highlighted the significance of mode 4 for South Asian countries. It has also indicated that South Asia has an interest in securing more open and predictable entry into certain industrialised as well as developing country markets, in both highly skilled, semi-skilled and low skilled services. Thus, the region's negotiating strategy has to be multi-pronged, both in terms of markets as well as sectors, skill levels, and occupational categories. To the extent that some of the destination countries, mainly some in the Middle East (Saudi Arabia, UAE), are not yet members of the WTO, mode 4 issues would need to be tackled bilaterally with the concerned host country governments and establishments.

...South Asia has an interest in securing more open and predictable entry into certain industrialised as well as developing country markets, in both highly skilled, semi-skilled and low skilled services

The following discussion provides an overview of mode 4 and its treatment under the GATS framework. It also outlines the key features of the existing GATS commitments and offers in mode 4, across all countries and specifically for countries that are important destination markets for South Asia and the IT and health services sectors which are important for South Asia's mode 4 exports. The discussion shows the limited nature of liberalisation that has occurred so far in mode 4, both generally as well as in the markets, sectors, and skill categories that are of interest to South Asia.

4.1 An overview of the GATS framework

The GATS divides services trade into four modes of supply. These include cross-border supply or mode 1, consumption abroad or mode 2, commercial presence or mode 3, and movement of natural persons or mode 4. Members make market access and national treatment commitments in each of these four modes of supply, i.e., a total of 8 commitments for each activity. These commitments are sectoral, made in sectors which members are willing to table for negotiations, and horizontal, made across all sectors that have been committed. There are three types of commitments, namely, full commitments, which means that no restrictions are imposed, partial commitments, which means that some limitations are imposed, and unbound commitments, which means no commitments are made. The GATS also consists of various provisions and annexes, which provide the overall framework and disciplines to guide the negotiations and the liberalisation process in the service sector.

The GATS also consists of various provisions and annexes, which provide the overall framework and disciplines to guide the negotiations and the liberalisation process in the service sector

The GATS provides member countries with a lot of scope for flexibility in the commitment process and in interpreting its various disciplines and definitions. Many of its provisions are rather general and subject to varying interpretations. These limitations are pertinent to the mode 4 negotiations as they result in ambiguities about the coverage of GATS

mode 4, the nature of commitments in this mode, and the application of provisions to regulate as well as facilitate this mode. The following discussion highlights some of these ambiguities, which are also relevant to many of the issues and proposals discussed later in this paper.

4.2 Definition and scope of mode 4

Movement of natural persons is defined in Article 1:2 (d) of GATS as "Supply of a service by a service supplier of a member, through presence of natural persons of a member in the territory of any other member." The GATS Annexe on Movement of Natural Persons Supplying Services provides further elaboration on the scope of GATS mode 4. The Annexe applies to "measures affecting natural persons who are service suppliers of a member, and natural persons of a member who are employed by a service supplier of a member, in respect of the supply of a service." The Annexe further notes that countries can regulate entry and stay of natural persons provided they do not apply these measures in such a manner as to nullify or impair the benefits granted to members under their specific commitments. The important point to note about the scope of mode 4 under the GATS is that it does not exclude any level of skill. Thus, low skilled service providers such as construction workers and domestics, semi-skilled service providers such as repairmen and technicians, skilled professional service providers such as doctors and engineers, and services delivered to manufacturing and agricultural sector activities such as distribution, transport, technical analysis type services, are all covered by the GATS.

Movement of natural persons is defined in Article 1:2 (d) of GATS as "Supply of a service by a service supplier of a member, through presence of natural persons of a member in the territory of any other member

The GATS Annexe on movement of natural persons specifies that there are two categories of service suppliers covered under mode 4. The first category, i.e., natural persons who are service suppliers of a member, is unambiguous and refers to self-employed or independent service suppliers who get their remuneration directly from customers. The second category, i.e., natural persons of a member who are employed by a service supplier of a member, in respect of the supply of a service, is subject to interpretation as it is unclear whether foreigners employed by host country companies are also covered under mode 4. In the latter case, it has been suggested that GATS Article I: 2 (d) only covers foreign employees of foreign firms established in another member and that foreigners working for host country companies would fall under GATS mode 4 only if they work on a contractual basis as independent suppliers for a host country firm. They would not be covered if they were employees of the host country firm.

...foreigners working for host country companies would fall under GATS mode 4 only if they work on a contractual basis as independent suppliers for a host country firm

There are, however, some limitations to the way in which mode 4 is defined under the GATS and some ambiguities regarding the scope and definition of this mode. Firstly, the distinction between foreign temporary workers whose services are contracted by the host country firm and foreign temporary workers who are employees of the host country firm may not be applicable in practice. For instance, host country firms may treat contract-based foreign temporary workers as employees of their firm for the sake of bringing them under domestic labour laws. Under the GATS, some countries have made commitments on short-term employment. Thus, there is some discrepancy between the definition of GATS mode 4 in principle and the definition of GATS mode 4 in practice as well as its legal interpretation under the commitments.

A second source of ambiguity is the problem of defining "supply of a service". While GATS mode 4 only covers services and service suppliers, it is often not so easy to know what constitutes the supply of a service. For example, are fruit pickers to be viewed as temporary agricultural workers or as suppliers of fruit picking services. Similarly, with increased outsourcing of activities by sectors like manufacturing, it is often difficult to classify activities by sectors. Thus, there is lack of clarity about who is covered under mode 4 from a sectoral perspective. Much depends on how countries interpret what constitutes a service as opposed to an agricultural or manufacturing activity and how broadly they define mode 4.

...business visitors are usually subject to short term stays of a few months, while intracompany transferees and contractual service suppliers are subject to stays ranging from a few months to several years

A third important limitation of mode 4 as defined under the GATS is the ambiguity about the term "temporary". There is no positive definition of temporary under the GATS. Instead, temporary is negatively defined as excluding permanent migration, i.e., individuals seeking access to the host country's employment or to measures regarding citizenship, permanent residence, or employment on a permanent basis. Given such ambiguity, member countries are free to interpret the word "temporary". This discretion is reflected in their commitments whereby they have used varying definitions for different categories of service providers. For instance, business visitors are usually subject to short term stays of a few months, while intracompany transferees and contractual service suppliers are subject to stays ranging from a few months to several years. It can be argued that the GATS' distinction between service providers and persons entering the labour market is not clear cut, as persons staying for periods as long as 5 years have effectively entered the labour market and are providing a service which otherwise would be supplied by a local person, even if they are not applying for permanent residence or citizenship. Thus, as with the definition of natural persons, there is again a lack of clarity with the definition of temporary, creating scope for divergence between mode 4 in principle and mode 4 as it is legally interpreted in the context of commitments.

However, notwithstanding such limitations in defining mode 4, broadly, GATS mode 4 can be viewed as covering three types of service suppliers. The first category consists of independent service providers abroad who sell services either to a host country company or to an individual. The second category consists of foreigners employed by home or third country companies established in the host country. The third category consists of persons who are contracted out by home or third country companies to provide services to a host country company.[66]

Article VII gives members the discretion to recognise the education, experience, and licensing and certification of a foreign service provider but subject to certain conditions

4.3 GATS disciplines and guidelines relevant to mode 4

There are two main GATS provisions (Articles), which have a bearing on mode 4 commitments and negotiations. One of these is Article VII on recognition. This article is important given the fact that mode 4 is constrained by recognition related barriers in a variety of professions. Article VII gives members the discretion to recognise the education, experience, and licensing and certification of a foreign service provider but subject to certain conditions. For instance, Article VII.1 states that, "For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, ... a member may recognise the education or experience

obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously." Thus, this provision allows members to deviate from MFN requirement in order to extend recognition to some WTO members and not others, based on the fact that recognition is more likely to occur bilaterally or plurilaterally than multilaterally. However, the other sub-provisions of Article VII balance this discretion. Article VII.2 requires members who enter into an MRA to provide adequate opportunity to other interested countries to negotiate their accession to such an agreement or to negotiate comparable ones. Furthermore, under Article VII.4, countries are required to notify the WTO's Council for Trade in Services (CTS) when they negotiate and enter into MRAs or significantly modify existing ones and also to provide other countries with an opportunity to indicate their interest in participating in such negotiations before they enter a substantive phase. And Article VII.3 stipulates that a member must not grant recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services. Thus, Article VII balances the reality of bilateral and plurilateral agreements on recognition with disciplines to provide some element of MFN treatment and transparency in recognition. However, as such this article says little on the substance of recognition itself, how this should be realised and with what kinds of benchmarks. It leaves much to the discretion of member countries, calling only for inter and non-governmental co-operation in this regard.

...Article VII balances the reality of bilateral and plurilateral agreements on recognition with disciplines to provide some element of MFN treatment and transparency in recognition

There are also "Guidelines on Mutual Recognition Agreements or Arrangements in the Accountancy Sector" which provide advice to governments and negotiating entities entering into mutual recognition negotiations in this sector. These guidelines are comprehensive and cover the process of negotiations on MRAs and the substantive aspects of MRAs, including transparency requirements, criteria for according recognition, procedural requirements, etc. There are also Accountancy sector disciplines that have been developed, which are concerned with the procedures for licensing, certification, and technical standards and provide details on qualification and other requirements. Although these guidelines and disciplines are so far limited to the accountancy sector, the aim is to extend these to other sectors where recognition issues are important and to use these towards addressing some of the aforementioned limitation in Article VII.

The second GATS provision, which is relevant to mode 4, is Article VI on domestic regulation. This article is important since mode 4 is mainly constrained by various kinds of domestic regulations, ranging from labour market and immigration policies to tax and government procurement policies. Article VI requires members to ensure that "measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner." Thus, effectively, while the GATS recognises the need for member countries to regulate services trade through domestic policies, it requires that this be done in a fair, transparent, and non-discriminatory manner.

Article VI requires members to ensure that "measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner"

There are also sub-provisions in Article VI, which have a bearing on recognition, although they do not explicitly relate to recognition. Article VI.4, for example, mandates the development of any necessary disciplines to ensure that non-discriminatory measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. Hence, such measures have to be based on objective and transparent criteria, such as competence and ability to supply the service. They should not be more burdensome than required to ensure the quality of the service. In the case of licensing procedures, these measures should not in themselves act as a restriction on the supply of the service. However, these disciplines are in the process of negotiations and do not exist as yet. Progress in developing such disciplines under Article VI.4 has been slow due to differences of opinion among member countries, especially on the issue of necessity tests and their desirability and administration, and also on the issue of transparency in the application of domestic regulations. Article VI.6 also has a bearing on the issue of recognition. It states that "in sectors where specific commitments regarding professional services are undertaken, each member shall provide for adequate procedures to verify the competence of professionals of any other member." However, it does not define what is meant by adequate procedures to verify competence and the criteria for assessing competence.

There are other GATS provisions which have significance for mode 4, including those on subsidies (Article XV), government procurement (Article XIII), and emergency safeguards (Article X)

There are other GATS provisions which have significance for mode 4, including those on subsidies (Article XV), government procurement (Article XIII), and emergency safeguards (Article X). To the extent that government procurement or differential subsidy policies affect market access under mode 4 and to the extent that mode 4 is deemed to cause displacement of domestic workers and disruption and injury to the host country's market, emergency safeguards would also be relevant. However, negotiations on these rules have progressed slowly and relevant disciplines are yet to be developed.

4.4 Characterising the commitments in mode 4

Under the GATS, horizontal as well as sectoral commitments filed by countries have been the most limited in the case of movement of natural persons (mode 4) relative to all other modes of supply. They are limited in various ways.[67]

4.4.1 Horizontal versus sectoral commitments

Under the GATS, horizontal as well as sectoral commitments filed by countries have been the most limited in the case of movement of natural persons (mode 4) relative to all other modes of supply

Commitments in mode 4 are horizontal rather than sectoral, which means that the commitments and attached conditions apply to all service sectors, with no greater access given in sectors like professional services of particular relevance to mode 4. Moreover, most of these horizontal commitments are "unbound" except for specified categories of service providers, based generally on the level of skill, type of occupation, and purpose of movement. The sectoral commitments are unbound for mode 4 and refer to the horizontal commitments. This implies that sectoral needs and interests are not addressed by the mode 4 commitments and very general commitments are forthcoming. Table 25 in the Annexe illustrates the very low share of full commitments in mode 4 across a wide range of sectors where mode 4 is an important form of trade.

4.4.2 Bias towards higher skill categories

Current mode 4 commitments are biased towards higher skill categories of service providers. Although mode 4 technically covers all skill levels, entry requirements are bound for three main categories of service providers. Table 26 in the Annexe indicates the skewed nature of mode 4 commitments towards higher skill and functional categories of service providers. These include business visitors, personnel engaged in setting up commercial presence, such as intracompany transferees (ICTs), and personnel in " specialty occupations". The commitments on ICTs come closest to full bindings. More than one third of mode 4 entries refer to intracompany transferees. Out of a total of 328 total entries, 240 relate to executives, managers, and specialists and 135 deal explicitly with intracompany transferees. These are all categories that are typically linked to some form of commercial presence, i.e., movement of capital. Only 17 percent of all horizontal entries cover low skilled personnel and only 10 countries have allowed some form of entry to "other personnel". Very few schedules (some 15percent) refer to the category of contractual service suppliers (CSS). Within this category the commitments mostly cover contractual employees of a foreign establishment. They rarely cover self-employed or independent service suppliers, usually specified as qualified specialists or independent professionals in the schedules. Thus, once again, the commitments are typically linked to commercial presence and do not facilitate movement in an independent capacity. Overall, for the most part, the existing commitments exclude categories of interest to developing countries.

...the commitments are typically linked to commercial presence and do not facilitate movement in an independent capacity

4.4.3 Lack of clarity and definitions[68]

A third limitation with the mode 4 commitments is the lack of clarity and definition at various levels. For instance, there is no definition of the different service provider categories across countries, although there are some common features across the schedules in each category. While some schedules contain descriptions of executives, managers, and specialists, without explicitly indicating that these refer to ICTs, others combine elements of executives and managers in a category of "senior managerial position", and yet others refer to ICTs as inclusive of executives and managers, though not necessarily specialists. In the case of business visitors and service salespersons, there is an overlap in definitions. Some schedules describe business visitors as foreign persons seeking entry into another member's territory for purposes of setting up a commercial presence and service salespersons as persons seeking entry for purposes of negotiating sales of a service on behalf of an enterprise. Other schedules provide the opposite definition. A third group of schedules merges these two categories, combining elements that are common across the two. Thus, the definitions of the categories are either too broad, or overlapping, or unclear in terms of their boundaries.

Some schedules describe business visitors as foreign persons seeking entry into another member's territory for purposes of setting up a commercial presence

Similarly, there is also lack of definition of what constitutes temporary and permissible length of stay for individual service provider categories across different countries. This ambiguity enables countries to leave unspecified the period for entry and stay for the more restricted categories of persons such as specialists and "other persons" where in any case the commitments are fewer and subject to more conditions. Most countries have specified the "temporary period" only in the case

of ICTs and business visitors, but here too the length of stay varies, ranging from 90 days for business visitors to 2 to 5 years in the case of intracompany transferees. Table 27 in the Annexe shows the different lengths of stay accorded to different groups of service providers under the mode 4 commitments. The ambiguity about the term "temporary" has also resulted in the use of restrictions and conditions that fall under the purview of general immigration legislation and labour market regulations and thus measures affecting permanent movement of labour. Hence, there is a discrepancy between mode 4 in principle under the GATS and mode 4 in its legal interpretation under the commitments, as also noted earlier, stemming from this basic lack of definition of temporary stay.

The ambiguity about the term "temporary" has also resulted in the use of restrictions and conditions that fall under the purview of general immigration legislation and labour market regulations...

Likewise, there is lack of clarity about additional requirements such as economic needs and labour market tests in terms of the criteria based on which they would be applied, how they would be administered, and whom they would target. For instance, while economic needs test has been required by most countries for the category "other persons", it has not been specified in the schedules as to what kind of service providers fall under "other persons".

Thus, definitional problems and lack of clarity on aspects like coverage, duration of stay, and application of restrictions, provide considerable scope for interpretation and discretionary action by immigration officials. Such ambiguities create possibilities for undermining the value of any commitments made in mode 4 in practice.

4.4.4 Restrictions attached

A fourth important limitation of the existing mode 4 commitments is that they are very restrictive. Horizontal commitments in mode 4 are subject to limitations in the case of 100 countries as opposed to only 4 countries for mode 2 (consumption abroad), for example. There are very few cases of full commitments and fewer cases of partial commitments than for other modes of supply. A variety of restrictive conditions are attached to the mode 4 commitments. The most common among these include.[69]

Horizontal commitments in mode 4 are subject to limitations in the case of 100 countries as opposed to only 4 countries for mode 2 (consumption abroad)...

a) Entry restrictions for certain sectors and categories of personnel;
b) Restrictions on the duration of stay of natural persons;
c) Pre employment conditions and other related requirements;
d) Economic needs, labour market, and management needs tests;
e) Quantitative restrictions by numerical quotas for persons who can enter, specifications on the proportion of total employment that can be met by foreigners, specifications on the proportion of total wages;
f) Requirements for technology and skill transfer (training local staff);
g) Discriminatory tax treatment;
h) Requirement of government approval;
i) Requirement of work permits, residency, and citizenship in certain sectors;
j) Recognition of professional qualifications by the importing country; and
k) Restrictions via minimum investment requirements;

The most prevalent market access and national treatment limitations relate to the type of service provider and the reason for his movement

(such as negotiating sales, delivery of specialised skills, or commercial presence, etc.) and corollary restrictions on duration of stay, eligibility conditions, and additional requirements that the foreign service supplier must satisfy. Pre-employment is the most important criterion and is referred to in over 100 cases. There are some 80 cases where there are limitations in the form of numerical quotas and 50 cases where there is a requirement of an economic needs test. Fifty countries have scheduled conditions relating to domestic minimum wage legislation along with additional conditions on work hours and social security. There are also horizontal limitations with respect to geographic and sectoral mobility, mobility across firms, foreign exchange related restrictions, non-eligibility of foreign service providers for subsidies, and other government regulations. In the case of 46 countries there are horizontal limitations with respect to real estate. Many countries have also indicated that their commitments would be suspended in the case of labour-management disputes. Industrialised countries have also subjected their offers in business services to various conditions relating to labour and technical standards, specified educational and other qualifications, membership of associations, and specifications on technical experience.[70] Tables 28 and 29 summarise the various kinds of restrictions or conditions attached to the mode 4 commitments.

Fifty countries have scheduled conditions relating to domestic minimum wage legislation along with additional conditions on work hours and social security

Finally, in addition to the existing limitations on commitments, there are also MFN exemptions by countries in selected sectors. Thirty-eight of these exemptions are relevant to mode 4, of which 32 are preferential agreements and the rest are reciprocal. Where measures have been specified in detail, they mostly relate to granting of work permits, waiving of ENTs, or improved access for certain countries. Factors listed include traditional sources of supply, regional organisations, and language, among others.

4.5 Commitments by selected countries[71]

The broad characterisation of commitments given above also holds for the countries that are important destination markets for South Asia in mode 4. The EC's horizontal commitment in mode 4 states "unbound except for measures concerning the entry into and temporary stay within a member state, without requiring compliance with an economic needs test" for specified categories of natural persons. These specified categories include intracorporate transferees, persons working in a senior position within a juridical person, primarily engaged in managerial and supervisory duties, and persons with specialised skills and knowledge and with commensurate qualifications, accreditation, and membership in professional associations. Thus, the bias towards very highly skilled service providers, typically linked with commercial presence, is apparent. Moreover, the horizontal national treatment commitment on mode 4 is also unbound and subject to recognition conditions.

The US' horizontal commitment in mode 4 is similarly unbound except for service salespersons, intracorporate transferees personnel engaged in establishments, fashion models and specialty occupations

The US' horizontal commitment in mode 4 is similarly unbound except for service salespersons, intracorporate transferees (executives, managers, and specialists), personnel engaged in establishments, fashion models and specialty occupations. But even these categories are subject to various conditions on prior employment, qualifications, nature of work, visa duration and extensions. The national treatment commitment on mode 4 is unbound and subject to differential conditions

for foreign service providers for real estate acquisition, subsidies, and tax treatment. Kuwait, which is an important destination for mode 4 exports from South Asia and also one of the few Middle Eastern countries that are members of the WTO, has also made very limited commitments in mode 4. Its horizontal commitment in mode 4 is unbound except for managers, specialists, and skilled technicians and national treatment is also unbound for all but these specified categories. Hence, national treatment is not guaranteed to low and semi skilled service providers, who form the bulk of mode 4 exports from South Asia to Kuwait. Thus, there is no binding and security in post-entry conditions for South Asian workers in this market.

4.6 Commitments in selected services[72]

...among the 55 countries that have committed on medical, dental, and/or veterinary services under mode 4, only 2 countries have not made any limitations on this mode

An analysis of the GATS mode 4 commitments in two key services that are of interest to South Asian countries, namely, health and computer related services, again illustrates that there has been virtually no liberalisation in this mode. The majority of countries have left this mode unbound in their sector-specific commitments for market access and national treatment. In addition, countries have also applied sectoral and horizontal limitations. For instance, among the 55 countries that have committed on medical, dental, and/or veterinary services under mode 4, only 2 countries have not made any limitations on this mode. Of the remainder, 32 have maintained horizontal limitations, and 16 have made sector-specific limitations. The most common limitations include nationality or residency requirements, recognition and qualification requirements as stipulated by relevant professional bodies, and economic needs and labour market needs tests, manpower planning requirements, and requirement of commercial presence. Table 30 of the Annexe illustrates the nature of specific commitments in health services under mode 4.

...the commitments made on the limited categories of service suppliers are further undermined by a variety of horizontal limitations on mode 4, including quantitative restrictions on entry, labour market conditions, wage parity conditions...

The characterisation of the mode 4 commitments in computer and related services is broadly similar to that for health services. This is a sector which has been scheduled by many countries, unlike health services where scheduling itself has been limited. However, while the sector-specific commitments in computer related services are very liberal in the case of modes 1, 2, and 3, they are mostly partial or unbound in the case of mode 4. Only 5 per cent of the countries have made full commitments in mode 4. As many as 91 per cent of the countries have made partial commitments in this mode, with the remaining 4 per cent of the countries leaving this mode unbound. Moreover, as with health services, most of the sectoral commitments in mode 4 refer to the horizontal commitments in this mode. The latter in turn are also very limited in terms of the scope and extent of liberalisation undertaken. For instance, most countries have covered only certain categories of service providers, namely, managers, executives, specialists, and professionals. The schedules do not cover middle and lower level service providers, where India's interests lie, in exporting software services. In addition, the commitments made on the limited categories of service suppliers are further undermined by a variety of horizontal limitations on mode 4, including quantitative restrictions on entry, labour market conditions, wage parity conditions, and limits on stay and transferability of employment. As in the case with health services, there is a lot of discretionary scope and lack of transparency in the use of these limitations. Table 31 of the Annexe

illustrates the limited extent of liberalisation under mode 4 in computer and related services and the highly asymmetric nature of these commitments when compared to those in the other modes.

Thus, overall, virtually no meaningful liberalisation has been undertaken in mode 4 from the point of view of South Asian countries. Relevant categories of service providers have been excluded or have been subjected to numerous restrictions. The commitments lack transparency, which creates possibilities for discrimination and arbitrary interpretation.

...asymmetric treatment of skill categories reflects the fact that there is already significant amount of intra-firm movement of employees due to the globalisation of production operations

The commitments reveal two basic shortcomings. The first is that they do not distinguish between temporary movement and permanent migration in terms of the associated administrative modalities and mechanisms. Most countries treat movement of natural persons as a migration rather than a trade issue in their commitments, thus complicating the mode 4 negotiations with considerations of labour displacement, national security, and cultural assimilation that relate mainly to permanent migration flows. The second shortcoming is that there is too much emphasis on higher skilled and professional service providers and no commitments on low and semi-skilled service provider categories. This asymmetric treatment of skill categories reflects the fact that there is already significant amount of intra-firm movement of employees due to the globalisation of production operations. Hence, there already exists some momentum in this area. But this momentum has been lacking in the case of lower skilled service providers as there are inherent difficulties in expanding market access for lesser skilled and less formally qualified service providers with whom concerns of labour displacement, illegal migration, and social integration, tend to be more prevalent. Hence, to the extent that a large part of South Asia's mode 4 exports consist of low and semi-skilled labour, the countries in this region need to actively push the mode 4 negotiations in categories other than skilled and professional occupations.

4.7 Ongoing negotiations in mode 4

Services negotiations commenced on January 1, 2000 as mandated under the agreements reached in the Uruguay Round. The GATS 2000 negotiations are based on a request-offer approach. Under this process, each member country submits requests to its trading partners, either to individual countries or to groups of members, with some tailoring their requests to specific trading partners and others submitting almost identical and rather general requests across different countries. The requests can take the form of asking a trading partner to make commitments in a new sector, to remove/reduce an existing restriction, to remove an existing MFN exemption, and to make an additional commitment in an existing schedule with regard to regulatory practices. The deadline for the submission of requests was June 30, 2002. In the subsequent stage, members submit offers in response to the requests they have received. Usually, this takes the form of a single offer. Countries are free to decide their offers and may or may not accede to all requests made. The offers are circulated multilaterally owing to the MFN principle, while requests are circulated bilaterally. Following the offers, further requests and consultations may continue until some final consensus evolves on the commitment to be made by each member country. The deadline for submission of initial offers was March 31, 2003.

The GATS 2000 negotiations are based on a request-offer approach. Under this process, each member country submits requests to its trading partners, either to individual countries or to groups of members...

4.7.1 Initial communications on mode 4

Mode 4 has been an important part of the GATS 2000 negotiations. In the initial phase of these discussions and prior to the request-offer stage, six proposals were tabled on mode 4. These were by Canada, Colombia, the EC and its member states, India, Japan, and the US. The proposals outlined some ideas for improving mode 4, either by increasing market access or by increasing the effectiveness of existing market access, and addressing several of the aforementioned limitations of the GATS in the context of mode 4. The main ideas proposed in these communications from member countries included:[73]

The proposals outlined some ideas for improving mode 4, either by increasing market access or by increasing the effectiveness of existing market access, and addressing several of the aforementioned limitations of the GATS in the context of mode 4

- Introducing greater clarity and predictability in mode 4 commitments, for instance, through agreement on common definitions on service provider categories and by providing information on restrictions like economic needs tests;

- Improving transparency of commitments, for instance, through greater use of notification procedures and transparency guidelines for providing information on all relevant requirements and procedures and changes to the latter;

- Introducing a special system of administrative procedures such as a GATS visa, separate from usual immigration visas, which would be more streamlined and liberal and backed by appropriate safeguards and legal procedures under the WTO; and

- Granting more market access under mode 4, for instance, by covering more mode 4 relevant service sectors in the scheduling process, by covering a wider range of service provider categories, and by reducing or removing some of the associated conditions on mode 4.

4.7.2 Requests on mode 4

In the request-offer process, several requests from developing as well as developed countries have made reference to mode 4. The thrust of the requests in mode 4 by the developing countries is to expand market access beyond higher skill categories like ICTs and business visitors to include categories like contractual service suppliers and independent service providers explicitly in the commitments, and essentially to de-link mode 4 from commercial presence. For instance, the horizontal request on mode 4 by one developing country proposes the introduction of a GATS visa that is distinct from usual immigration visas and calls for a general improvement of administrative procedures for entry, and removal of wage parity requirements and social security taxes.[74] The horizontal request by another developing country calls for the elimination of all economic needs tests, nationality and residency requirements, and of all requirements for residency and work permits that must be applied for separately from petitions for admission under mode 4.[75] Several requests also call for coverage of a wider range of service provider and skill categories as well as for a better application of GATS recognition norms to prevent discriminatory use of recognition barriers on mode 4. Several requests also call for greater transparency in the work permit/visa issuance process and clarity in defining different service provider categories and various terms used in the commitments.

The thrust of the requests in mode 4 by the developing countries is to expand market access beyond higher skill categories to include categories like contractual service suppliers and independent service providers explicitly in the commitment...

The sectoral requests in mode 4 not only echo the horizontal proposals outlined above but also refer to sector-specific barriers and issues of concern. For instance, one developing country request in the computer and related services sector calls for a full commitment in mode 4. In addition to the aforementioned proposals like the GATS visa and exemption from social security taxes, this request also calls for due recognition of training and educational qualifications and experience for software professionals. The sectoral request of this same country in architectural services similarly echoes the horizontal requests but in addition requests the removal of residency or citizenship requirements for practice and entry into MRAs, to facilitate practice by its architects in other countries.[76]

The thrust of developed country requests on mode 4 is to expand market access and in some cases also the length of stay for ICTs and business visitors

The thrust of developed country requests on mode 4 is to expand market access and in some cases also the length of stay for ICTs and business visitors. In addition, there are requests for improving market access for contractual service suppliers in selected services like engineering, insurance, and consulting. The requests also call for greater transparency in visa and administrative procedures and for clarity in coverage and definition of service provider categories. The key difference between the developed and developing country requests is the former's relative emphasis on higher skilled and commercial presence-linked service provider categories or sectors. However, both sets of requests refer to issues of transparency, definition, and improving administrative procedures for entry.

4.7.3 Initial offers in mode 4

To date, over 50 members have submitted initial offers.[77] These mostly include developed countries, though a few developing countries like Argentina, Bolivia, Thailand, and Turkey have submitted their offers. Although there has been limited progress in improving commitments on mode 4 and in addressing the various issues raised in the requests, there are a few changes in some member country commitments in this mode. These changes include extending the commitments to cover more service provider categories and service sectors, including some that had been requested by developing countries in the request process, clarification of definitions of some service provider categories, and increases in the length of stay and removal/relaxation of some restrictive conditions for certain categories.

To date, over 50 members have submitted initial offers. These mostly include developed countries, though a few developing countries like Argentina, Bolivia, Thailand, and Turkey have submitted their offers

For instance, the EC has made additional horizontal and sector specific commitments in mode 4. It has clarified the definition of ICTs as covering managers, specialists, and a new category, that of graduate trainees, i.e., persons with a university degree transferring for career development or training purposes. There is further elaboration in the EU offer for the contractual service suppliers (CSS) category, which is broken down into employees of juridical persons, which has no commercial presence in the EC, and a new CSS subcategory, which is that of independent professionals. Thus, there is an extension to categories like graduate trainees and independent professionals, and movement, which is not necessarily linked to commercial presence, though still catering to relatively skilled and specialised service providers. Another improvement in the EC offer is its removal of restrictions like the economic needs test in the case of ICTs and business visitors and greater flexibility in duration of stay for certain categories.

For instance, business visitors in certain categories are permitted to stay up to 90 days in any 12 months while contractual service suppliers who are engaged as employees of juridical persons can stay up to 6 months cumulative in any 12-month period. There is also more elaboration on market access conditions for various subgroups, particularly for the two CSS subcategories, in terms of prior employment, nature and duration of the contract, length of stay, required qualifications, and associated sectors.

Canada has similarly expanded the scope of its mode 4 commitments, removed some associated restrictions, and clarified certain definitions. For instance, in the case of business visitors, it has expanded the scope of services this group can supply and has extended the permissible length of their stay. Under the ICT category, it has clarified the definitions of executives, managers, and specialists. It has also clarified the conditions for professionals. Moreover, Canada has removed the labour market test requirement for all of these service provider categories. Similar improvements in terms of scope, greater clarity, and reduced restrictions, are also present in some other developed country offers.

...business visitors in certain categories are permitted to stay up to 90 days in any 12 months while contractual service suppliers who are engaged as employees of juridical persons can stay up to 6 months cumulative in any 12-month period

The few developing countries, like Argentina, which have submitted initial offers on mode 4, have likewise included additional categories, such as businessmen, professionals and specialists, and representatives of foreign enterprises, and these have been defined in some detail in terms of functions performed, remuneration, and length of stay. The category of ICTs has been clarified as including managers, executives, and specialists. Additional commitments have also been made for all these groups, with the possibility of multiple entries being granted.

Some improvement is also reflected in a few sectoral offers, though typically in the less sensitive and already more open sectors. For instance, the Australian offer in computer and related services removes the economic needs test requirement on mode 4 and removes the specification on number of years of experience or qualification for mode 4.

Overall, however, there is little substantive improvement in the initial offers in mode 4. Key host countries like the US have not made any improvements at all to their original commitments in mode 4. Extensive use of restrictions and conditions continue to characterise the commitments, including prior employment and functional and hierarchical criteria for entry, wage parity, numerical ceilings and quotas, and discretion in according due recognition to qualifications and experience. Moreover, some of the horizontal offers, such as the EC's, note that any additional conditions listed in the sectoral schedules would be applicable, thus potentially undermining some of the improvements and liberalisation undertaken in the horizontal offer. For instance, in the case of the EU, conditions such as nationality and residency requirements, language barriers, and exclusion of certain regions, would be applicable to CSS in selected sectors, thus partly diluting the liberalisation undertaken in this category under the horizontal offer. Several members would also continue to apply restrictions like numerical ceilings and quotas. Finally, and most importantly, the basic structure and framework of the mode 4 commitments remains flawed. There is still no clear separation of mode

...the Australian offer in computer and related services removes the economic needs test requirement on mode 4 and removes the specification on number of years of experience or qualification for mode 4

4 from immigration rules and procedures and the distinction between permanent and temporary movement is still not evident from the commitments. The basic problem of unbound sectoral entries in mode 4 remains, with reference to only horizontal and thus generic liberalisation in mode 4, and thus failure to address sector-specific needs and interests, also continues.

Chapter 5

Current Proposals to Liberalise mode 4[78]

In view of the limited liberalisation in mode 4 during the Uruguay Round, developing countries have taken a keen interest in improving the commitments on mode 4 and also in strengthening and enforcing related disciplines to make the mode 4 commitments operationally meaningful. Developing countries view progress in mode 4 negotiations and developed country willingness to liberalise mode 4 as the key to facilitating their increased participation in the services discussions and ensuring greater symmetry in benefits between developed and developing countries from the GATS. The South Asian countries have been active participants in the mode 4 discussions.

...developing countries have taken a keen interest in improving the commitments on mode 4 and also in strengthening and enforcing related disciplines to make the mode 4 commitments operationally meaningful

Several innovative proposals and ideas have been put forward, through official communications by certain member countries which have a strong interest in advancing the mode 4 negotiations, as well as in meetings of the Special Council for Trade in Services and various non-WTO fora.[79] These proposals basically address the various limitations of the GATS framework and commitments with regard to mode 4 and the main barriers to this mode. These proposals derive from the fact that existing systems for temporary entry in many countries are broader and more detailed and flexible than indicated by their GATS commitments and also the fact that there are bilateral and regional arrangements on temporary movement whose features could be incorporated into the multilateral framework.[80] These proposals also take a long-term view by recognising that there is likely to be a future convergence of interests on mode 4 between developing and developed countries due to impending demographic and cost pressures in developed countries.

These proposals can be broadly categorised under the following headings:

...there is likely to be a future convergence of interests on mode 4 between developing and developed countries due to impending demographic and cost pressures in developed countries

(1) Administrative procedures
Streamlining and improving procedures for entry and stay, particularly with regard to the issuance of visas and work permits;
(2) Framework of commitments in mode 4
Widening and deepening the horizontal and sectoral commitments in this mode;
(3) Recognition
Reducing the scope for discretion and non-transparency in the application of such requirements, facilitating participation by countries in such arrangements, and enforcing and clarifying associated GATS disciplines
(4) Economic Needs Tests
Reducing the scope for such tests and clarifying their use and administration;

(5) Domestic regulation
Strengthening associated GATS disciplines and developing sub-provisions relevant to mode 4
(6) Other limitations and policies
Reducing the scope for policies that discriminate between domestic and foreign service suppliers (social security, government procurement, subsidy, and other national treatment issues)

There are thus two broad sets of issues addressed by these proposals. The first pertains to issues of market access and how temporary movement can be separated from permanent migration by improving administrative procedures for entry and stay and also how these procedures can be reflected in the framework of mode 4 commitments. The second pertains to domestic policies and measures whose use can be shaped by stronger GATS disciplines so as to increase transparency in their application and prevent such policies from becoming undue barriers to mode 4. It is important to note that the above issues are not independent of one another. The proposals on administrative procedures are only useful if they are appropriately reflected in modified commitment structures and backed by relevant disciplines on domestic policies. Likewise, the development of disciplines on domestic regulatory issues such as recognition of qualifications can only have meaning if they are captured in the framework of mode 4 commitments.

The proposals on administrative procedures are only useful if they are appropriately reflected in modified commitment structures and backed by relevant disciplines on domestic policies

5.1 Improving market access

As highlighted earlier, one of the main criticisms with the mode 4 commitments is that they remain subject to cumbersome, nontransparent administrative procedures and regulations that fall under the purview of usual immigration and labour market policies. Thus, streamlining of administrative procedures for entry and a clear distinction between temporary and permanent entry is essential for any progress in the mode 4 negotiations. In this regard, two main proposals that have been made is to introduce a Service Provider Visa (SPV) (originally proposed as a GATS visa) to cover temporary service suppliers falling under selected categories and to make this operational through a model schedule of commitments. The main features of this proposed visa and model schedule are outlined below.

5.1.1 An overview of the proposed Service Provider Visa[81]

As currently proposed, the Service Provider visa would include natural persons with professional skills and a specified minimum level of educational and other qualifications, who are on short-term intra company visits (category 1) and on short-term visits to fulfil contracts either as part of juridical entities (category 2) or independently (category 3). The SPV would thus cover ICTs, establishment-based, and independent contractual service suppliers (CSS), but it would not cover employment-based movement.[82] Short term is uniformly defined as a stay of less than one year for all three categories.

...streamlining of administrative procedures for entry and a clear distinction between temporary and permanent entry is essential for any progress in the mode 4 negotiations

The rationale for focusing on the above categories and exclusion of others stems from two reasons. The proposal notes that while employment-based movement is important (and countries like the US and Australia have included employment-based movement in their GATS offers), this category is not suited to the discussions on mode 4. This is because of the long duration of stay permitted for such movement

(upto six years in the US for H-1B visas) and the possibility of adjusting status to permanent residence. Hence, concerns relating to labour displacement and entry into the permanent labour market are likely to be much greater for such movement. As noted in Chaudhuri et. al (2003), visas for employment based categories often work less as temporary migration schemes and more as selective permanent migration schemes, with the employing firm performing a screening function, putting forward selected foreign employees for permanent resident status. As a result, liberal MFN commitments are less likely if one covers employment-based movement.

...visas for employment based categories often work less as temporary migration schemes and more as selective permanent migration schemes, with the employing firm performing a screening function...

On the other hand, the coverage of ICTs under the SPV is justified by the fact that this category has received the most liberal commitments thus far under the GATS, making further liberalisation of market access terms and conditions much more feasible for this category than any other. Although the ICT category is most relevant to developed country multinationals as movement by ICTs is linked to commercial presence, it is of some significance to several developing countries like India and Brazil, which are increasingly establishing commercial presence overseas in sectors like IT, construction, and health services. Thus, to the extent that some developing countries may also be emerging as exporters of capital, liberal conditions for movement of associated service suppliers, such as executives, managers, and specialists, would be of significance to them.

The inclusion of CSS under the SPV is due to the importance of such movement, which is not linked to commercial presence in the host country, for developing countries. Such movement is more likely to be temporary than employment based movement of the H-1B type, for the reasons given earlier. Moreover, contract based movement can be more closely identified with trade in services while employment based movement is perceived more as economic migration to enter the labour market (although, as noted earlier, it may at times be difficult to distinguish between the two in practice). Thus, host country concerns of labour displacement and assimilation, and home country concerns such as brain drain, are less likely with contractual movement. Given developing country interest in sending both employees of juridical persons as well as independent professionals who provide services under a contract, the CSS covers both types of contractual movement. It is this latter category of CSS, which may prove conducive to cover temporary movement of lesser skilled service providers (an issue discussed at length later in the paper).

...contract based movement can be more closely identified with trade in services while employment based movement is perceived more as economic migration to enter the labour market...

The proposal also specifies various administrative elements and criteria for operationalising the SPV.[83] For instance, the scheme would be extended strictly to persons with requisite qualifications to fill positions responsible either for management of operations, or provision of services at a level of complexity and specialty that would require at a minimum, a diploma or university degree, or demonstrated experience. Hence, this visa would apply only to persons with some minimum level of educational/other qualification, mainly due to practical considerations of acceptability and enforcement and would not, as presently proposed, extend to lower skill categories (though with modifications it potentially could, as discussed later).[84]

Applicants seeking a SPV would have to meet all requirements to provide all information necessary to support their applications. This would include proof of employment with current employer in the case of categories 1 and 2, a copy of the service contract and/or invitation and declaration of intent not to stay for a period of more than 12 months in the case of categories 2 and 3 along with information on the terms and conditions and monetary value of this contract, and information pertaining to level of education and qualifications, and proof of citizenship for all categories. The SPV fees would reflect actual administrative costs. The wage parity condition would not apply for the issuance of such visas. Moreover, the SPV would be issued without unreasonable delay, and in any case, no later than 3 weeks following the satisfactory submission of required documentation. For all three categories, the SPV would be authorised for a period of 3 years, allowing for multiple entry, but with no single stay exceeding one year. Applicants would also have the opportunity to appeal in case they are denied the SPV and would have the right to obtain a reply within one month of appeal.

The provisions for renewal of the visa for all three categories would be based on continued status and absence of abuse of any of the conditions governing the permit

The provisions for renewal of the visa for all three categories would be based on continued status and absence of abuse of any of the conditions governing the permit. Renewal would have to be sought within one month of the date of expiry of the permit, and no later. Recourse to appeal in case of denial would also be available in the case of renewals.

The current proposal also calls for several levels of safeguards to help maintain the distinction between temporary and permanent movement. These safeguards would include preventing SPV holders from changing their status to another non-immigrant visa category while they are on the SPV, penalties for abuse of the scheme through a one-year prohibition, and even temporary suspension of the scheme for upto one year where a systematic pattern of misrepresentation and fraudulent use is detected among a number of companies.

5.1.2 An overview of the proposed model schedule of commitments[85]

Any improvements in administrative procedures would need to be supported by an improved framework of commitments in mode 4. The proposal for a model schedule on mode 4 is significant in this regard as it facilitates the introduction of the SPV as well as a broader and deeper level of commitment in mode 4.

One part of the model schedule deals with market access and national treatment commitments for selected categories of service providers who would be subject to the Service Provider Visa. The model schedule proposes broad horizontal commitments in mode 4 so as to ensure a basic minimum level of access across all sectors. The focus on horizontal commitments stems from the fact that this has thus far been the main form of commitment in mode 4 and thus can be built upon. It is also driven by the fact that regulations concerning temporary stay are not sector specific but generally apply across all sectors and thus the fact that horizontal commitments would be easier to administer for immigration authorities while administering sector-specific commitments would be cumbersome. The latter would, however, be supplemented by sector specific commitments where further liberalisation is desired and feasible. While the horizontal commitments

The model schedule proposes broad horizontal commitments in mode 4 so as to ensure a basic minimum level of access across all sectors

might apply only above a threshold minimum skill level, such as a bachelor's degree or high school graduation, the sectoral commitments could lower the acceptable skill threshold in certain sectors, for instance by covering diplomas or shorter duration training programme certificates in sectors like IT or maintenance services. Thus, instead of horizontal commitments substituting for sectoral commitments, the two would supplement one another, with the sectoral commitment addressing sector-specific characteristics and interests

The second part of the model schedule represents a set of additional commitments that would be made under Article XVIII of the GATS, akin to the reference paper on telecommunications. This part would cover obligations relating to domestic regulations and transparency of procedures, so as to make the commitments in mode 4 and the associated changes in administrative and other regulations, operationally meaningful. Transparency and due process regarding the granting of entry visas or permits could be a positive way to ensure that market access concessions are not nullified or impaired by onerous and non-transparent criteria and procedures.

Transparency and due process regarding the granting of entry visas or permits could be a positive way to ensure that market access concessions are not nullified or impaired by onerous...

5.2 An assessment of existing proposals

The proposal for a SPV is a good step forward in the mode 4 negotiations, albeit with some limitations in the near term for moving forward on lower skill levels, the main category of interest for developing countries and least developed countries (LDCs), for reasons of expediency and feasibility. However, for the skilled categories that are covered, the proposal is practical and easily implementable, given the existing framework of mode 4 commitments. For instance, the proposal builds upon areas where commitments have been forthcoming in mode 4 by focusing on ICTs, a category where entry is most liberal and length of stay tends to be longer, and hence where progress in the GATS 2000 negotiations is more likely. The proposal is practical in recognising that the ICT avenue may be a predictable and efficient way of servicing foreign markets as opposed to seeking new employment based movement. Likewise, the focus on CSS again addresses the interests of developing countries and LDCs in serving foreign markets through subcontracting arrangements between two companies or between an individual and a company.

The proposal is practical in recognising that the ICT avenue may be a predictable and efficient way of servicing foreign markets as opposed to seeking new employment based movement

However, the proposal is subject to some major shortcomings. The first and most important shortcoming is the limited coverage of the SPV with its relative emphasis on the highly skilled and its virtual exclusion of lower skilled and non-professional service provider categories. This relatively narrow focus is of course practical given concerns such as illegal migration, burden to the host country, and threat to local workers, that are typically associated with liberalising movement of unskilled persons. It can be argued that it is best for now to focus on higher skilled persons if any progress is to be realised. Lowering the skill level too far might preclude liberalisation even in categories like ICTs and professionals where progress is more feasible. There is thus a tradeoff between breadth and level of liberalisation that can be attained.

However, from the point of view of most developing countries and LDCs, this coverage is proposal as it currently stands mainly caters to the

interests of a few large developing countries which are in a position to exploit market access opportunities in highly skilled occupations such as engineering, health, IT, and the like. The threshold specifications of the SPV proposal effectively exclude lower skilled and non-formally qualified personnel such as carpenters, technicians, repairmen, and domestics, who constitute categories of export interest under mode 4 for many smaller LDCs. Thus, it is important to consider whether the existing SPV proposal can be modified or improved upon or whether alternative schemes can be proposed which would cover additional categories and skill levels.

...it is important to consider whether the existing SPV proposal can be modified or improved upon or whether alternative schemes can be proposed which would cover additional categories and skill levels

A second drawback of the existing SPV proposal concerns the feasibility of distinguishing between the various categories that are covered by this scheme in actual practice and in the framework of mode 4 commitments. For instance, some countries may treat CSS as employees for the purposes of bringing them under the purview of domestic labour laws, such as the labour condition application including the wage parity requirement in the US or social security taxation. Even when a person is treated like an employee by the host country, he may technically be outside the permanent labour market as long as he is not able to change employers without permission. This distinction between employment based and contract based movement creates economic distortions in that it would cause workers to be treated differently under the two arrangements and thus induce service delivery to take a particular form when it should actually be delivered in another form. It may also be difficult in practical terms to exclude the employment based category as some of the main immigration schemes working in countries like the US and Australia, cater to this category. So, countries would need to undertake some major modifications in their migration regimes, including in the application of various domestic laws, to enforce this distinction. There may not be willingness to undertake such major changes in legislation.

What may also complicate the separation of employment based from the SPV categories is the fact that the latter would not be subject to conditions like wage parity, economic needs tests, and quantitative ceilings. In operation, this may create possibilities for entering into the regular labour market and competing for local jobs (which is not the purpose of the SPV) due to the cost advantages that may arise from the removal of these restrictions. For instance, if wage parity requirements are not applied to ICTs, then foreign established firms could benefit by bringing in such suppliers and bidding at lower costs for outsourced work in the domestic market. Similarly, in the absence of wage parity requirements, foreign companies that engage CSS, establishment based or independent suppliers, could have a cost advantage in bidding for outsourced work in the host country market. Thus, although the ICT and CSS categories under the SPV are meant to be distinct from employment-based movement, in practice, suppliers in these categories could still compete for jobs in the regular labour market unless there are post-entry conditions attached.

...if wage parity requirements are not applied to ICTs, then foreign established firms could benefit by bringing in such suppliers and bidding at lower costs for outsourced work in the domestic market

On a related note, the SPV proposal also does not address the issue of clarifying the definitions of the various service provider categories as well as of more finely delineating and classifying different types of service providers in order to cover a wider range of occupational and

skill categories. For the SPV scheme to be meaningfully implemented through the model schedule, it is essential to have greater clarity, uniformity, and disaggregation of service provider categories and some discussion of ways in which this can be done.

For the SPV scheme to be meaningfully implemented through the model schedule, it is essential to have greater clarity, uniformity, and disaggregation of service provider categories...

The third major shortcoming of the existing proposals on mode 4 is their lack of discussion of enforcement issues and regulatory mechanisms that would be required to implement such a scheme and ensure its viability. An important point in this context is whether enforcement mechanisms can be uniform or whether they would need to vary across categories, especially if one were to expand the scheme to cover lower skilled categories.

All of these aforementioned limitations need to be addressed if the mode 4 negotiations are to move forward and effectively address developing countries' and LDC interests, including the interests of the South Asian countries.

Chapter 6

Moving Forward on Market Access[86]

Developing countries and LDCs have been calling for the formulation of new skills categories and expansion of occupation lists to include middle and lower skilled workers...

Any progress in the mode 4 negotiations requires initiatives to further liberalise market access, especially for lower skilled categories. Developing countries and LDCs have been calling for the formulation of new skills categories and expansion of occupation lists to include middle and lower skilled workers and for mechanisms to broaden classifications and/or extend the commitments to new categories of workers. It is thus worth considering if a wider coverage of service suppliers, in terms of skill, occupational, and functional levels is possible, and if so, how far down the skill chain it is feasible to go, and through what kinds of administrative schemes and supporting measures. In addition, this expanded coverage would also need to be supported by adopting appropriate definitions and classification of service provider and skill categories and addressing the limitations of the GATS W/120 occupational classification. The following discussion suggests ways to move forward in both these regards.

6.1 Including the less skilled under CSS

It is possible to work within the framework of the proposed SPV and model schedule discussed earlier, to include lower skilled service provider categories. By working within this framework, developing countries and LDCs can build upon the momentum and negotiating environment already generated by these proposals and tailor them to suit their own interests, rather than initiating a new set of proposals and creating the requisite environment for their acceptability.

One possibility is to use the existing SPV categories of ICT, CSS, and independent professionals, and to try and include a wider range of service suppliers within these categories. In particular, the existing service provider categories and associated criteria under the SPV could be interpreted more liberally so as to cover lesser skilled service providers. Such an approach has already been explored to some extent in the proposed model schedule for mode 4. For instance, the ICT category normally includes managers, executives, and specialists. This category could be expanded to cover employees who provide assistance, advice or service to a foreign client, or receive business training, regardless of their status in the organisation, and without requirement of a period of prior employment, as proposed in the model schedule. Thus, the functional or hierarchic bar could be lowered and a wider class of skilled suppliers can be included under the relatively liberal route of ICTs. But this, of course, would still mostly apply to educated and relatively higher level service providers, and would therefore be of limited interest to most developing countries and LDCs.

...the functional or hierarchic bar could be lowered and a wider class of skilled suppliers can be included under the relatively liberal route of ICTs

However, this approach can be extended to include the less skilled by using the CSS category and relaxing the minimum eligibility

requirements of the SPV. For instance, it might be possible to expand the list of persons qualifying under the CSS category, to include persons who are skilled in terms of their work experience or technical competence but not necessarily academically qualified in terms of having a bachelor's degree or diploma. The horizontal commitment would thus refer to persons with some specified threshold of educational qualifications like a bachelor's or work experience, or related qualifications. The inclusion of additional criteria for assessing skills could potentially enable lower skilled suppliers in trades like carpentry, masonry, welding, repair and maintenance, and the like to also be covered by the CSS category.

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There are, however, two operational issues, that would need to be addressed if (a) the CSS category is used to expand the coverage of skill sets under the SPV and (b) if the minimum eligibility criterion is relaxed to include non-formal qualifications. Firstly, to what extent are lower skilled workers covered in reality by contractual arrangements? Are service suppliers in trades like masonry, carpentry, repair work affiliated with entities, which send them to other countries as contract workers? The answer here is that most such workers do not fall under establishment based contractual suppliers, unlike the professional and skilled persons covered by CSS. They are often sent abroad by overseas manpower export agencies, which are basically recruitment agencies that perform screening and facilitation tasks for foreign employers. Thus, the affiliation is not with an organisation that deals specifically with the trade or occupation in question but with a cross-sectoral organisation dealing with such skill and occupational levels. If such workers are to be brought into the category of CSS, then the very concept of what is a CSS needs to be expanded to include other types of contracts and overseas deployment mechanisms. One possibility is to consider whether such recruiting firms or manpower agencies can be designated by the government or by the concerned guilds, to act as the contracting establishment which then deploys independent and self-employed service providers to the client premises overseas. The contract would then be between the client (firm/individual) and such establishments and the latter would be responsible for monitoring contract terms and conditions, screening of qualifications, and enforcement issues, along with other regulatory enforcement mechanisms that would normally operate in the host country. It is important to note, that if progress is to be made with the lesser skilled categories through the CSS avenue, then the contract needs to be with a juridical entity (government or otherwise) rather than directly between the client and the self-employed independent service provider. Concerns of overstay, illegal migration, and security are more likely when there is no juridical backing to the presence of such categories of service providers.

...if progress is to be made with the lesser skilled categories through the CSS avenue, then the contract needs to be with a juridical entity rather than directly between the client and the self-employed independent service provider

Thus, under the proposed SPV scheme, lower skilled workers can be classified as falling under temporary contract based movement that is affiliated with a juridical entity (with an expanded definition of such an entity to include manpower export agencies). In the absence of such agencies, it might be worth considering the role of government ministries/departments of labour or employment, which often do deal with migrant workers and conduct emigration clearance checks, to provide this institutional affiliation. It was noted earlier that there

are special departments and agencies in the Ministries of Labour as well as Overseas Labour Export agencies that regulate emigration in the South Asian countries. Such agencies can serve as the nodal juridical bodies for low and semi-skilled workers going overseas on contracts. The main point is that if lower skilled workers are to be categorised as contractual service suppliers, then they must not be independent or unaffiliated workers, as that would raise concerns over enforcement of temporary stay and difficulties in tracking in the host country. Of course, a question that arises is to what extent such alternative institutions and agencies can be seen as equivalent to a trade body or association or a company, as in the case of professional and skilled contract based movement.

...if lower skilled workers are to be categorised as contractual service suppliers, then they must not be independent or unaffiliated workers, as that would raise concerns over enforcement of temporary stay...

Provided that the aforementioned modification to the SPV scheme is implemented under the CSS category, a second issue that needs to be addressed is that of assessment of work experience or related qualifications for the lesser skilled categories. The latter typically include trades and occupations, where there are no international benchmarks or standards for assessing skills or competence and thus little or no scope for multilateral recognition. However, there are two possible approaches to addressing this problem.

The first approach would be to require some form of approval by an appropriate trade or industry association in the home and/or host country, which can attest to the competence and skills of the concerned service supplier. The latter may of course be difficult to do, if there is no such body to determine competence or if it is not possible to agree on a set of objective criteria, like number of years of work in that trade or fulfillment of some form of apprenticeship equivalent programme in that trade. The absence of such associations or assessment criteria like training and other programmes in certain trades, especially for lower skilled occupations, would then become a barrier to such movement. This goes back to the issue of institutional or juridical affiliation discussed above. In the absence of such associations, one possibility may be to assign the task of certification to the entity, which takes responsibility for contracting out the worker, such as the manpower export agency, or a concerned government department. The second and perhaps better approach may be to leave this task to the host country employer, recognising that the employer would be the best judge of skills and competence in keeping with his requirements. It is perhaps best to leave such assessment to private parties in the home and host countries. (This issue is discussed in more detail in the section on recognition issues).

...instead of clubbing different skill sets and qualification criteria together, the CSS category would be divided into CSS-1 and CSS-2...

6.2 Including the less skilled under a new CSS subcategory

A second approach would be to carve out from within the existing CSS category under the SPV, a subcategory that is pertinent to lower skilled service providers, with different terms and conditions. Under this approach, instead of clubbing different skill sets and qualification criteria together, the CSS category would be divided into CSS-1, those who are formally qualified with academic and paper qualifications and CSS-2, those who are non-formally qualified, such as through work experience and exposure to their occupation. The latter subcategory would be suited to cover less skilled service providers. This breakdown of the CSS category would be in line with the eligibility criterion under

the SPV outlined earlier, i.e., that the person must at a minimum, have a diploma or university degree or demonstrated experience. It is the latter, "demonstrated experience" requirement than can be used to facilitate market access for lesser skilled persons, who have proven and certified non-formal qualifications such as through vocational training, apprenticeships, and on-the-job experience. Their services would be contracted out and their competence certified by some recruiting or manpower agency type organisation, as suggested earlier. An important point to note is that while CSS-1 would cover independent professionals with the possibility of a direct contract between the self-employed individual and the host country client, CSS-2 would not cover direct contractual arrangements between independent workers and host country clients. Instead, the contract would be between some kind of juridical entity that deploys or certifies the competence of such workers and the host country client, as outlined earlier. This is because it is unlikely that any countries would make commitments to cover independent unskilled workers, given the inherent difficulties in ensuring return and monitoring stay.

...CSS-1 would cover independent professionals with the possibility of a direct contract between the self-employed individual and the host country client...

It may also be important to differentiate between the CSS-1 and CSS-2 subcategories in terms of the SPV terms and conditions for entry and stay. For instance, the CSS-2 subcategory would need to be framed keeping in mind labour market and trade union type concerns of host countries without negating altogether market access for lower skilled suppliers from developing countries. More stringent conditions may need to be attached to the issuance of the SPV for the CSS-2 category. Restrictions such as quantitative ceilings and minimum wage type conditions, coupled with shorter duration of stay such as 3 to 6 months compared to 1 year for the CSS-1 and ICT categories, may need to be applied to the CSS-2 category. Hence, in terms of the proposed model schedule, the horizontal commitments for lower skilled categories of service suppliers or CSS-2, would include such limitations. If countries want a further level of safeguard in the lower skilled categories, then they could further inscribe in their horizontal schedules a small negative list of service sectors where the CSS-2 would not be applicable. The aim would be to progressively reduce this negative list so as to include a growing range of skills and occupations over time and also to progressively undertake deeper sectoral commitments in the schedules where they do cover the CSS-2 lower skilled category. So, even if the horizontal commitments include restrictions such as quotas or needs based tests for the lower skilled, these restrictions could be relaxed or removed in the sectoral schedules, in keeping with member country interests and needs in individual services. Thus, if a country has a severe shortage of construction workers, it could choose to make a more liberal commitment under mode 4 under construction services, by relaxing/waiving some of the horizontal limitations subject to specified economic and sectoral conditions. There may also be some merit in drawing upon relevant elements of existing bilateral, seasonal, and guest worker arrangements, in framing the requirements and conditions for the CSS-2 subcategory of suppliers.

...if a country has a severe shortage of construction workers, it could choose to make a more liberal commitment under mode 4 under construction services, by relaxing/waiving some of the horizontal limitations...

6.3 Addressing definitional and classification issues

The introduction of additional skill categories and occupations under the SPV and model schedule would make it all the more necessary to address definitional issues and classification of service providers under

the GATS. As noted earlier, it may not always be possible to distinguish between CSS and employment based movement. To address this problem, it may be worth considering some form of curbs on SPV categories, such as preventing outsourcing and further sub-contracting once entry is granted, or stipulations on ICTs in terms of the size and operations of the establishment, or on CSS in terms of the contracts they are eligible to service, so as to maintain the distinction between SPV suppliers and employment based movement. These would either have to be specified under the SPV conditions themselves or listed as limitations under the commitments. It is also worth noting that the removal of conditions such as wage parity and quantitative ceilings for those entering under SPV implicitly suggests that usual economic considerations and business cycle related pressures on entry schemes would not apply in the case of this special visa. The latter may, however, be a difficult point to impress on host country governments and to implement through MFN commitments.

...removal of conditions such as wage parity and quantitative ceilings for those entering under SPV implicitly suggests that usual economic considerations and business cycle related pressures on entry schemes would not apply in the case of this special visa

More generally, the mode 4 discussions need to be supported by a finer classification of service provider categories and greater clarity and uniformity of definitions for individual categories. Without addressing such classification and definitional issues, widening of the SPV or for that matter any scheme to include lesser skilled categories and their implementation through commitments, would not be meaningful. Agreement on a common list of occupations and definitions would ensure predictability and comparability in commitments and also enhance the value of the commitments made. Developing countries have noted a number of occupations where they already are supplying services internationally and have specific interests in liberalising market access in the context of the GATS. It should be possible to make use of the International Standard Classification of Occupation (ISCO-88) of ILO to arrive at the list of categories and skill levels that can be negotiated and to incorporate these into the WTO Services Sectoral Classification List.[87] For instance, one of the 9 major occupational groups under the ISCO is that of professionals. The latter are included in two major groups covered under ISCO-88. These are Major Group 2 for professionals and Major Group 3 for technicians and assistant professionals. Under each group there is an elaborate list of different types of professionals falling under specific services. For example, in the engineering services sector, the major group 2 for professionals includes civil, electrical, electronics and telecommunications, chemical, mechanical, and mining engineers, metallurgists, cartographers and surveyors, and other related professionals. Similarly, in the case of medical and dental services, a long list of specific and detailed professionals is contained in the ISCO-88 classification. Thus, it may be useful to make commitments with respect to the specific sectors or subsectors as contained in the GATS W/120 list but supported by specific occupational categories relevant to these sectors or subsectors, based on the ISCO-88 list.

Developing countries have noted a number of occupations where they already are supplying services internationally and have specific interests in liberalising market access in the context of the GATS

Progress in the area of classification would of course require close cooperation between professional and regulatory bodies and associations between countries in order to arrive at a common understanding of different service provider categories and what would constitute an appropriate disaggregation of broader categories like professionals or specialists. As a first step, these bodies could provide

a detailed listing of categories of service providers for their respective sectors, along with the qualifying work-related and educational criteria for designation under this category. Discussions could then take place to determine equivalence of categories across countries and come to some consensus on definitions, terminology, and breakdown into finer categories.

6.4 Addressing enforcement issues

The preceding discussion clearly indicates that if a wider range of workers and skill levels is to be covered, then the enforcement of a scheme such as the SPV and its legal interpretation through GATS commitments, cannot be uniform across categories. Hence, the requisite enforcement and regulatory capacity for implementing the SPV would also need to vary across different types of service suppliers

But this in turn raises a larger question of feasibility in administration. Would immigration officers and establishments be able to administer special rules for particular groups within temporary entry? For instance, where countries have no existing visa scheme for temporary business entrants, this category would then be introduced under the SPV. But how capable would all members be to introduce and administer such a scheme, what administrative and other costs would this impose, and would these costs be commensurate with the benefits realised? Would they be able to arrive at a common definition and classification of different types of service providers that also enables clear distinctions across categories. Would host country immigration officials be unduly burdened in trying to administer not only a special type of visa but also subcategories of visas within the SPV and might this expose those entering to more scrutiny than at present? Would source country governments or manpower agencies, especially in LDCs, have the regulatory capacity to certify and track lower skilled workers that they contract out to other countries? The implementation of the SPV would also require institutional changes in the administration of visas and work permits. But would a "one stop shop" for such visas be possible to implement in countries where different departments, agencies, and regulatory bodies may be dealing with visa and work permit matters?[88]

...absence of adequate regulatory frameworks and enforcement capacity in both host and source countries could be a major constraint to implementing the SPV, especially in the case of the lower skilled workers

There are no clear answers to these questions, but they do highlight the fact that absence of adequate regulatory frameworks and enforcement capacity in both host and source countries could be a major constraint to implementing the SPV, especially in the case of the lower skilled workers. Administration of a new set of visas could prove costly if it imposes an additional burden on scarce institutional and human resources.

Chapter 7

Moving Forward on Domestic Regulation[89]

...any additional market access gained through improvements in mode 4 commitments would be of limited use without strong GATS disciplines to govern the use of domestic policies...

It has been argued that any additional market access gained through improvements in mode 4 commitments would be of limited use without strong GATS disciplines to govern the use of domestic policies on matters such as recognition, necessity tests, and labour market practices. Thus, progress is required on a wide range of domestic regulatory issues to make any improvements in market access operationally meaningful.

7.1 Recognition requirements

Perhaps the most important domestic policy issue to be addressed is that of recognition of qualifications. As noted earlier, the latter often constitute a major barrier to entry by LDC and developing country service suppliers, who are largely outside existing recognition initiatives and thus at a disadvantage in various services where licensing and certification requirements apply for entry.

Any progress on the issue of recognition requires initiatives to be taken simultaneously at three levels. The first is to try and improve the framework for MRAs. The second is to address more broadly the entire concept of recognition, such as the assessment of competence and determination of equivalence. The third is to try and address the operational difficulties facing developing countries and LDCs in negotiating recognition agreements, given institutional, technical, and financial constraints and mode 4 interests that tend to fall outside the purview of most MRAs.

7.1.1 Facilitating access under MRAs

One of the main steps to take in the context of MRAs is to facilitate access to existing agreements by other member countries, in particular, developing countries

One of the main steps to take in the context of MRAs is to facilitate access to existing agreements by other member countries, in particular, developing countries. In this regard, it would be important to implement the notification requirements under Article VII, such as making the full texts of all existing MRAs available immediately to the WTO Secretariat and for circulation among all members, and providing adequate opportunities to developing countries to join in negotiations for the establishment of MRAs, and for regular monitoring by the CTS of all these notification requirements.

The overall objective of enforcing notification requirements would be to increase transparency in this area. These proposals on notification and better implementation of Article VII were made in India's negotiating proposal on mode 4.

Evidence on notifications under Article VII suggests that there is poor enforcement of this provision thus far. Most notifications are for MRAs

that have already been concluded and thus the provisions for allowing other countries to join in the negotiations have not been implemented. There have only been 39 notifications by 19 WTO members, far less than the total number of MRAs actually negotiated. Moreover, some agreements have been notified under other GATS Articles, while others have not been notified at all. There is thus ample scope to improve information flow on MRAs, such as through informal reporting of any negotiations on MRAs to the CTS so as to enable expression of initial interest to participate in these negotiations by other member countries. It may be even better to make such agreements publicly available rather than just circulating it within the Council. There also need to be mechanisms to facilitate accession and extension of MRAs to third parties. Most of the agreements that have been concluded do not provide easy avenues for accession or for handling requests for reciprocal treatment by third countries. Mechanisms such as clear accession clauses or to allow third countries to demonstrate equivalent training to that obtained in a country which is a party to an MRA, could help encourage transitivity and spread of such agreements.

Most of the agreements that have been concluded do not provide easy avenues for accession or for handling requests for reciprocal treatment by third countries

It must be noted, however, that such mechanisms to facilitate extension of MRAs to other countries could also inhibit the very establishment of MRAs and that technical and financial support may need to be extended to developing countries in this process.

7.1.2 Developing a general model for MRAs

Another possibility would be to develop a model plurilateral WTO agreement on recognition under the GATS. This would take the form of general rules and principles based on which bilateral and sectoral commitments could be undertaken. The benefit of such an agreement would be to embed MRAs in the WTO system and give it a legal status, which it lacks currently. This agreement would include precise rules on accession, enable the scheduling of mutual recognition commitments, and include other necessary provisions on definitions, safeguards, and institutions. Under this proposal, recognition would include waiving of domestic licensing, qualification, and other requirements where it is judged that there is regulatory equivalence, even if the regulatory systems are different. There would also be provisions for consultation and cooperation between regulatory authorities and there would be agreed compensatory requirements to ensure quality of service and fulfillment of public policy objectives in the host country.

...it may be easier to try and apply the Accountancy Sector Guidelines broadly as a template for MRAs in other professional services, as has been proposed by some authors

The model agreement proposal is an ambitious one. While it covers many of the Guidelines for MRAs in the Accountancy Sector and uses these to establish a general framework for MRAs, it goes beyond those guidelines in making them legally binding. Hence, it is unlikely that countries would be forthcoming in accepting such a model agreement. Instead, it may be easier to try and apply the Accountancy Sector Guidelines broadly as a template for MRAs in other professional services, as has been proposed by some authors. Industry and professional associations could use these guidelines not only to initiate negotiations on MRAs but also to tailor the framework from the Accountancy sector in accordance with sectoral needs and interests. Generalisation of the Accountancy sector guidelines for MRAs would enable agreement on similar formats and procedures for all MRA negotiations and thus help in establishing a more transparent system

of MRAs. Eventually, this step would lead to the development of a multilateral framework for MRAs, which would include guidelines on rule making, enforceable standards of non-discrimination and transitivity, and provision of institutional infrastructure for accreditation.

7.1.3 Establishing multilateral norms for recognition[90]

It has been proposed in one developing country communication that multilateral norms be established which deal with four specific aspects of recognition.[91] The first concerns norms for professional services where there are no formal accreditation or licensing procedures, such as software services. The proposal suggests that criteria be laid down for minimum professional experience and education to reduce the scope for discretion in according due recognition in such services. The second relates to norms for assessing equivalence of work related and academic qualifications. The third concerns norms for temporary licensing to enable suppliers to practice in sectors where licensing procedures are absent in the home country. The fourth relates to norms concerning broad-based equivalence of qualifications and standards for purposes of granting recognition. The latter would require establishment of bridging mechanisms where requirements and standards diverge between home and host countries and compensatory systems based on local adaptation periods and aptitude tests would need to be developed without requiring actual harmonisation of standards.

...the proposal is useful for highlighting the need to go beyond recognition in terms of established degrees and licensing systems to include more flexible forms of recognition arrangements

Although the latter proposal is highly detailed and gets into the specifics of various types of recognition, it is much too ambitious for a wide range of countries with differing levels of development to adopt. Establishment of such norms would involve very difficult negotiations with active involvement by professional associations and concerns about loss of domestic regulatory autonomy. It is not clear whether the benefits would be commensurate to the costs involved in such negotiations. However, it would be worth including reference to these issues in any multilateral or plurilateral agreement on MRAs, though not necessarily to get into discussions at this time on the norms and practices. This proposal is useful for highlighting the need to go beyond recognition in terms of established degrees and licensing systems to include more flexible forms of recognition arrangements.

7.1.4 Greater use of recognition-related GATS provisions

It would also be important to make more effective use of some of the GATS provisions which do not directly relate to recognition but have a bearing on some aspects of recognition. One such provision is Article VI.6 that requires members making specific commitments on professional services to provide adequate procedures for verifying the competence of professionals, although this article does not require recognition or negotiation of MRAs. In this regard, Article VI:6 provides a means to facilitate the provision of services by suppliers of countries that are not party to MRAs. Thus, members can obtain information from their trading partners on the procedures they use for verifying competence where a market access commitment has been made and also to push for an improvement in these procedures. The main drawback of using Article VI.6 is that it is not a general provision but is applicable only to cases where commitments have been made. It also does not lend itself to use in services where technical competence

...Article VI:6 provides a means to facilitate the provision of services by suppliers of countries that are not party to MRAs

and non-formally acquired skills have to be assessed, and generally where the service supplier cannot be categorised as a professional. Thus, it would be less relevant to lower and semi-skilled occupations and categories of service providers.

Another important GATS discipline which could be developed is Article VI:4. As discussed earlier, this provision covers issues of qualification and licensing requirements and procedures and technical standards. The development of disciplines under this provision would be to determine the discriminatory nature of a given domestic regulation and thus enhance the possibilities for recognition of qualifications. However, progress in this regard would only be possible if basic definitions are agreed upon by all members. (Discussion of Article VI:4 is taken up in more detail later in this paper).

Issues such as transparency and objectivity in recognition procedures could be addressed through the GATS' commitment structure by undertaking additional commitments under Article XVIII of GATS

Issues such as transparency and objectivity in recognition procedures could be addressed through the GATS' commitment structure by undertaking additional commitments under Article XVIII of GATS. These commitments would be aimed at establishing a transparent and least burdensome procedure for verifying the foreign service provider's competence. The idea underlying these additional commitments would be to introduce a hierarchy of measures, with the burden of proof being placed on the domestic regulator to move from a less burdensome measure to a more burdensome procedure. For example, if it is accepted that administering a test of service provider's competence and/or educational attainment is the least burdensome way of verifying a foreign service provider's competence, then a foreign service provider would be required to make up any objectively verifiable deficiencies in education, training, and experience, only where it is necessary. The onus of proving this necessity would fall on the host country regulator. Moreover, sectoral guidelines on recognition, such as those developed for the accountancy sector and proposed for other professional services, could be included in the Additional Commitments.

7.1.5 Addressing broader conceptual issues in recognition

There are several conceptual and definitional issues that need to be clarified for developing the GATS framework on recognition.[92] Firstly, how is equivalence to be defined? Would it mean the same, or substantially the same, equal, or comparable? As Iredale notes, a strict interpretation of the term equivalence as meaning the same would tend to prohibit recognising other qualifications. If recognition is to be facilitated, it may be better to define equivalence in terms of comparability of qualifications so as to allow some flexibility in skills, professional and regulatory approaches, and content. Secondly, what is meant by qualifications? Does it include education, experience, exams passed, and all other means through which competence is acquired or a more limited set of means? It can be argued that qualifications should include a broad range of mechanisms through which competence is developed. For instance, in services like IT where competence is acquired on the job and where constant upgrading of skills and knowledge occurs on the job or through informal training mechanisms, it is important to go beyond formal educational mechanisms in according recognition.

If recognition is to be facilitated, it may be better to define equivalence in terms of comparability of qualifications so as to allow some flexibility in skills, professional and regulatory approaches, and content

7.1.6 Operational issues in recognition

There are several difficult operational issues that need to be addressed if negotiations on recognition are to progress. The first concerns the institutional apparatus for negotiations, i.e., the question of what would be an appropriate body to undertake the overall GATS negotiations on recognition and more specifically the negotiation of MRAs in specific sectors. The difficulty here is that although it may not be feasible to establish a single national body to deal with the GATS negotiations on recognition, given the need to involve individual professional bodies, leaving individual professional groups to negotiate would also not work. Thus, some combination of an independent outside body with regular inputs from professional associations would be required. At the sectoral level, it might be better to leave the negotiation of agreements to the concerned regulating bodies in the host and home countries rather than relying on government intervention.

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A second set of operational issues concerns the feasibility of recognition agreements between countries with very different systems of training, codes of ethics, professional structures, standards, and practices. Given the wide divergences that currently exist, it seems unlikely. Moreover, many developing countries and LDCs do not even have professional bodies comparable to those in developed countries with which to negotiate agreements. Hence, they are likely to be excluded from the establishment of MRAs, except with other countries of a similar level of development and standards.

A third set of issues concerns the possibilities for according recognition to specific groups of service providers. For example, creation of fast track procedures for recognition of specialised service suppliers, such as nurses or medical assistants, who may be in high demand in some host countries, could be of significance to some developing countries. These fast track procedures could consist of streamlined and standardised competence tests. However, the risk here is that such tests may be biased towards locally trained persons and may also set unduly high standards for foreign suppliers. Thus, to the extent possible, one would need to have similar tests for domestic and foreign service suppliers, if the fast track procedure is to be operationally meaningful.

...many developing countries and LDCs do not even have professional bodies comparable to those in developed countries with which to negotiate agreements. Hence, they are likely to be excluded from the establishment of MRAs...

Similarly, it would be important to develop mechanisms for recognition of service suppliers who fall between being professionals and tradesmen, whose qualifications need to be assessed at a technical level. Since such occupations are not always licensable in all countries, formal mechanisms of certification would not be useful as they would tend to deny entry. Thus flexible alternatives would be required to adequately assess non-academic and other credentials which create competence in the concerned activity. Here, however, issues such as who certifies technical competence, whether this is done by a host country employer/ regulatory body/association or by a home country institution, would need to be decided. In the absence of MRAs, agreed means of assessing competency would be required. It can be argued that the assessment of a combination of qualifications and skills acquired through work experience or training should be left as far as possible to employers, recruitment agencies, and entities that are responsible for hiring workers. This is because such private parties

would be in the best position to know their own requirements and judge competence in accordance with their needs and specifications for the task in question, a point also made earlier when discussing the SPV2 category. The case of the IT sector, where both academic and non-academic qualifications are important, shows clearly that a system which leaves assessment and screening to firms in host and home countries, is conducive to mode 4. Thus, there may be a case to minimises intervention by government and formal regulatory bodies in the case of sectors and occupations where a more comprehensive assessment of abilities is required than looking at formal qualifications. Needless to say, there is likely to be more discretion in according recognition to such suppliers, especially where one cannot apply some minimum threshold level of education. So, operationally, recognition mechanisms are likely to have an inherent bias against lower skilled and non-formally qualified service suppliers.

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7.2 Economic Needs Tests

The concept of ENTs and the various limitations in their use and administration, have been highlighted earlier. Basically, two sets of issues need to be addressed in the context of ENTs. The first is to limit the number of service categories permitted for their use and to reach an agreement across member countries on the criteria for selection of these categories. As proposed in the model schedule, one possibility is to eliminate ENTs for only those covered by the SPV as across the board elimination of ENTs is not likely to be feasible. Insisting on very broad elimination of ENTs would only result in fewer sectors being scheduled, particularly those sectors where mode 4 is involved at a lower level of skills and occupational categories.

However, a more conservative approach to ENTs may be more realistic than even what is proposed under the model schedule. This more limited approach is driven by the fact that developing countries are interested in extending the SPV to cover a wider range of skills and occupations. Thus, the wider the coverage of SPV, the less realistic is such a blanket exemption of SPV categories from the economic needs test. In light of the modified SPV scheme outlined earlier, one possible approach is to eliminate ENTs for SPV1 categories, while retaining them for SPV2 categories under the horizontal commitments. Countries would retain the discretion of eliminating ENTs for SPV2 categories in their sectoral commitments, if they are willing to commit to deeper liberalisation in a particular sector or occupation. Thus, agreement would be required on the SPV categories, not only to implement the scheme administratively but also to clarify the scope of ENTs. Meanwhile, the process of progressively removing ENTs, as is reflected in the initial offers by Canada, the EU, and some other developed countries, can be encouraged through negotiations and can be progressively extended to categories of interest to developing countries.

...the process of progressively removing ENTs can be encouraged through negotiations and can be progressively extended to categories of interest to developing countries

The second issue to be addressed is the development of some multilateral standards to reduce the arbitrariness and disciminatory scope in the application of ENTs. As noted earlier, there is no common definition of an ENT, no clearly set criteria for their use, and no clearly established procedures for their administration. Thus, some guidelines need to be set up for applying ENTs, starting perhaps with a sector where such measures are commonly used (in a manner similar to the

establishment of guidelines for the accountancy sector). The aim would be to extend these guidelines to additional sectors and to eventually develop a multilateral framework for use of ENTs. These guidelines could, for instance, specify when ENTs are to be conducted periodically and when on a case by case basis, whether ENTs should be used to solely determine the need to allow foreign service suppliers or to also go beyond this to determine the actual number of such suppliers to be permitted entry, whether such tests should be pre or post admission, or both, and what would constitute a reasonable time frame for conducting and completing such tests. Some narrowing of the meaning of ENT in terms of its objective and how it is translated into a market access barrier is required.

Since part of the problem with ENTs is the lack of information on such measures, it would be important to promote transparency and greater availability and exchange of information on ENTs and national practices

Since part of the problem with ENTs is the lack of information on such measures, it would be important to promote transparency and greater availability and exchange of information on ENTs and national practices. Transparency requirements could be included under additional commitments, with specific reference to ENTs. It would also be important to obtain binding commitments on the use of ENTs to prevent discretionary rollback through widening and tightening of ENTs when economic conditions so warrant. Thus, the scope for using ENTs as some kind of safeguard mechanism depending on economic conditions would need to be curbed.

7.3 Disciplines on domestic regulation

Fairness and transparency are essential for the successful implementation of any of the aforementioned proposals to liberalise mode 4. In this respect, Article VI on domestic regulation is highly significant for progress in any discussions on mode 4. Article VI:1 states that, "In sectors where specific commitments are undertaken, each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner." In the case of mode 4, the latter would mean that all administrative procedures concerning issuance of work permits and visas or all recognition related measures such as licensing and certification requirements, or the application of ENTs, should be done in a fair and reasonable manner. Article VI:2 further requires members to allow for review of procedures and decisions affecting trade in services, while Article VI:3 requires timely notification of the decision. Hence, these provisions have a direct bearing on the proposals made above for the administration of the SPV, such as timely issuance, recourse to appeal rejections, and justification for rejections.

...In sectors where specific commitments are undertaken, each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner

In particular, development of disciplines under Article VI:4 has significance with regard to mode 4 negotiations. Article VI:4 calls for the adoption of disciplines to ensure that "qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services", that such requirements are "based on objective and transparent criteria", "not more burdensome than necessary to ensure the quality of the service", and that licensing procedures are "not in themselves a restriction on the supply of the service." As highlighted earlier, domestic regulations concerning administrative procedures for entry and recognition, are among the main impediments to mode 4. For example, the qualification procedures in many countries may involve long delays in the verification

of an applicant's qualifications, unreasonable intervals for examination of applications, and may impose exorbitant financial and other costs on applicants. Similarly, domestic regulations concerning licensing procedures may be overly burdensome, with unreasonable time frames and requirements, unclearly specified criteria, high registration and licensing costs, and multiple levels of requirements to be fulfilled at the federal and sub-federal/provincial levels. Thus, development of disciplines on the various elements of Article VI:4, in particular on administrative procedures, qualification requirements and procedures, technical standards, and licensing requirements, is of significance to the mode 4 negotiations as such domestic regulations impinge greatly on the scope for mode 4. In fact, implementation of the various proposals outlined can only be possible if backed by appropriate disciplines in each of these areas under Article VI:4.

...development of disciplines on the various elements of Article VI:4 is of significance to the mode 4 negotiations as such domestic regulations impinge greatly on the scope for mode 4

However, two basic issues need to be resolved with regard to the scope of Article VI:4. The first issue concerns the type of regulations that fall under Article VI:4 as opposed to Articles XVI and XVIII on Market Access and National Treatment, respectively, or any other GATS provisions. Disciplines for domestic regulation are to apply to regulations that fall outside the scope of other GATS provisions. However, such a distinction is not always possible. For example, licensing systems have separate components that can fall under Market Access, National Treatment and Article VI:4 measures. It is not always possible to distinguish the particular requirements and procedures that fall exclusively under Article VI:4. Similarly, there is some ambiguity about the coverage of residency requirements and whether all such requirements should fall under National Treatment and thus be subject to scheduling under specific commitments or whether there are aspects of residency requirements, which can be covered under Article VI:4. Hence, the extent to which Article VI:4 can address mode 4 related issues depends greatly on the scope of this provision. For instance, if all residency requirements are seen as falling under National Treatment, then issues relating to the process by which a foreign service provider obtains residency can be covered under Article VI:4. However, if all residency requirements are not seen as falling under National Treatment, then the requirement of residency for the purposes of licensing and the process by which residency is obtained can both be subject to Article VI:4 disciplines.

The second issue relates to the question of whether Article VI:4 disciplines should apply only to measures where commitments have been undertaken or more generally, regardless of what commitments or initial offers have been made. In the former case, Article VI:4 would have a bearing on mode 4 only with regard to regulatory measures that are applicable to existing commitments and offers. In the latter case, the linkages between Mode 4 and Article VI:4 would be extensive and any mode 4 related barrier could be disputed under this provision.

The Working Party on Domestic Regulation will need to determine the scope of various provisions and to what extent the various GATS Articles are mutually exclusive

The Working Party on Domestic Regulation will need to determine the scope of various provisions and to what extent the various GATS Articles are mutually exclusive. It would be in the interests of developing countries to specifically include administrative procedures for work permits and visas, residency, licensing, and qualification under Article VI: 4 as opposed to commitments under market access and

national treatment provisions. It would also be useful to assess if certain skill levels and occupations are subject to more regulatory barriers than others and to address these through Article VI:4 disciplines. However, developed countries are likely to resist the application of Article VI:4 disciplines to a wide range of domestic regulations and to measures that are outside the scope of their commitments. This opposition is evident from recent proposals by Japan and the EC for treating regulations such as licensing procedures outside Article VI:4, such as through a separate annexe of disciplines. It is also important to recognise that development of Article VI:4 disciplines alone will not result in improved commitments in mode 4, particularly in lower and middle skill levels and occupational categories. Thus the gains realised by developing countries from widening the scope of Article VI:4 may not be commensurate to the loss in their autonomy over domestic regulation. Given such tradeoffs and different positions, progress in developing such disciplines is likely to prove difficult. It is in this respect that the additional commitments on transparency and domestic regulation suggested in the model schedule, take on importance. Such commitments would take less time to obtain than developing horizontal disciplines on Article VI, and could broadly achieve the same objectives as Article VI:4 disciplines.

...developed countries are likely to resist the application of Article VI:4 disciplines to a wide range of domestic regulations and to measures that are outside the scope of their commitments

7.4 National treatment related issues

While most of the proposals for liberalising mode 4 deal with market access issues, there is a range of measures, which fall under national treatment commitments, which are also worth considering. These measures affect the conditions of stay and the returns associated with mode 4. Chief among these is social security tax, which is imposed on temporary service suppliers while they are in the host country, without providing the associated social benefits in the future. The main issue here is whether temporary service providers can be relieved of such payments or if mechanisms can be worked out to ensure that they can receive social benefits in return.

The most practical approach would be to exempt those covered under SPV from social security taxes on their earnings and to exclude them from coverage under social security benefits, regardless of the total length of their stay (cumulatively across multiple entries). Therefore, even if a CSS spends more than 10 years under the SPV in the US, (10 years being the period required to avail of social security benefits in future) under multiple contracts in the US, with no single contract lasting more than one year, he would not be subject to social security taxes or eligible for such benefits, as long as he remains on the SPV. This would of course require agreement on the SPV categories and would probably need to be supported by some type of bilateral totalisation agreement. Thus, if the service supplier were to later enter the US on a different visa, like a regular employment visa such as H-1B, he would be subject to social security taxes from that point onwards and his preceding years of work in the US would not qualify him for receiving social security benefits. Any scheme which allows for retroactive calculation or payment of past contributions, as has been suggested in some proposals, would be burdensome and administratively difficult to implement. It is thus best to keep the demarcation between the SPV and other visa schemes distinct, both in terms of payment of social security taxes and eligibility for social security benefits.

The most practical approach would be to exempt those covered under SPV from social security taxes on their earnings and to exclude them from coverage under social security benefits, regardless of the total length of their stay...

It would also be useful to consider the possible extension of bilateral agreements on social security payments, multilaterally. In this regard, transparency and timely notification of existing totalisation agreements or negotiations of new agreements would be important, so as to facilitate participation by more countries. As in the case of recognition, it may be useful to draw upon common aspects of existing bilateral agreements, such as eligibility conditions, regulatory cooperation, and administrative arrangements, in order to develop a multilateral framework for social security and other taxes.

...transparency and timely notification of existing totalisation agreements or negotiations of new agreements would be important, so as to facilitate participation by more countries

It was noted earlier that government procurement policies can create a disadvantage for foreign service persons. Here, the approach should be to allow countries to inscribe such measures as national treatment limitations, thus giving them the autonomy to use such measures to address public policy objectives, and also to insist on greater transparency in applying such measures and proper notification of the existence of such measures. For instance, countries could be required to make explicit the existence of government procurement policies and subsidies in all relevant sectoral commitments schedules and to provide information on their nature and magnitude, how they operate, and other relevant parameters. It may also be useful to try and limit the scope of such limitations in the schedules. For instance, government procurement limitations could be restricted to taking the form of ceilings on the percent of contracts or value of transactions to be procured from domestic sources, the number of local service persons employed, and the extent of preference to be accorded to domestic contracts. Enforcement of transparency provisions backed by some consensus on the permissible forms these measures would be essential for, reducing the discriminatory scope and impact of such policies. Much would of course depend on the progress in the discussions on such disciplines. An important point to note, however, is that some major developing countries are not signatories to the Government Procurement Agreement and are resisting discussions on transparency in government procurement. Many were proponents of a carve-out of government procurement policies from the scope of the GATS. A re-think on this issue may be warranted on the part of some developing countries and LDCs, as their service providers are likely to face growing market access restrictions to procuring government contracts and sub-contracts.[93]

While wage parity requirements attached to mode 4 erode the cost advantage of foreign service providers, wage parity and insistence on payment of minimum wages is in the welfare interests of foreign suppliers, particularly lower skilled workers

Wage parity is a difficult national treatment issue concerning mode 4. While wage parity requirements attached to mode 4 erode the cost advantage of foreign service providers, wage parity and insistence on payment of minimum wages is in the welfare interests of foreign suppliers, particularly lower skilled workers. One possibility is to distinguish between treatment of different classes of service providers in the application of wage parity measures. Those covered under the the CSS-1 subcategory can be exempt from wage parity requirements, the reason being that the reservation wage for such suppliers is likely to be much higher. Moreover, host market demand and supply conditions are likely to result in sufficiently high wages, so differences between foreign and domestic service provider wages are unlikely to be very large. The difficulty here may be with professionals in fields like IT where there are job displacement concerns in the host country and fears about "body shopping" by developing country firms and agents

if there is no wage parity requirement. In the case of CSS-2 service providers, it would be practical to allow for wage parity requirements, unless a country wished to remove this condition in its sectoral commitment. For such categories, associated welfare concerns are likely to be more important. So, assurance of minimum wages is in the interests of both developed and developing countries and of the worker. But what is most important is to ensure that wage parity requirements do not impose a cumbersome condition for screening of foreign service providers and the issuance of entry visas. Hence, the earlier proposals regarding the time frame for issuance of the SPV and notification requirements for delays and additional conditions should be inclusive of any wage related requirements. Delays and rejections on account of failure to meet wage parity requirements should be open to appeal and review under the SPV procedures. Development of Article VI:4 disciplines on administrative procedures for entry could also cover the administration of wage parity requirements as a part of domestic labour market regulations applicable to mode 4.

...the earlier proposals regarding the time frame for issuance of the SPV and notification requirements for delays and additional conditions should be inclusive of any wage related requirements

7.5 Welfare and equity issues

There are a number of other issues that have received much less attention in the negotiations on mode 4. These include issues such as worker abuse, illegal trafficking, and brain drain. A combination of approaches would be required to address these issues. For instance, on the matter of brain drain, it would be important to introduce safeguards and mechanisms for intergovernmental cooperation to prevent any liberalisation of mode 4 from aggravating brain drain in developing countries. Proper implementation of the SPV through tracking procedures, preventing adjustment of status for SPV holders, and enforcement of penalties for violations of the conditions, combined with the possibilities for multiple entry should reduce the incentive to overstay and encourage return. The SPV and model schedule framework can stem brain drain by encouraging a circular flow of temporary service suppliers. However, in addition to implementing such proposals, it would also be useful to expand the scope of the mode 4 discussions to address aspects relating to mode 4 that would enable a better distribution of benefits in receiving and sending countries and realisation of larger developmental and social goals. These include aspects such as the channeling of remittances, facilitating the transfer of skills and technology from the host to source countries, and creating avenues for brain circulation through greater intergovernmental and other forms of cooperation between countries.

Proper implementation of the SPV through tracking procedures, preventing adjustment of status for SPV holders, and enforcement of penalties for violations of the conditions, should reduce the incentive to overstay and encourage return

On issues such as worker abuse and exploitation, national treatment conditions have to be invoked and any violations taken to dispute on national treatment grounds. It may also be useful to explicitly state in the horizontal national treatment commitments on mode 4 that there would be no abuse of mode 4 (forced labour, misrepresentation of services, illegal subcontracting) on the basis of wages, gender, race, etc. and that any such violations would be subject to appeal, review, and heavy penalties on the employing party. In this regard, it would also be useful to define the scope of domestic labour laws and regulations with regard to mode 4 and to bring such aspects relating to worker welfare under the purview of Article VI disciplines.

In addressing all of these issues, there is a need to go beyond a commercial and largely trade-oriented perspective in the mode 4 negotiations. A more comprehensive perspective is required, which takes into account the larger social and development related benefits and issues associated with mode 4. However, this would require much greater cooperation between countries and greater involvement of a wider range of institutions dealing with trade, migration, and development in the mode 4 negotiations.

7.6 Developing a model schedule of commitments[94]

The various proposals and suggestions regarding market access and domestic regulations would need to be reflected in revised horizontal commitment schedules and offers, building upon the approach endorsed by the European Services Forum (ESF) and the US Coalition of Service Industries. The main additional feature of this model schedule would be the expanded coverage to include lower skilled service providers under a separate subcategory of contractual service suppliers, as proposed earlier. The latter could then be supplemented by sectoral schedules where more liberal commitments are possible in mode 4 for select services and categories. Or the sectoral schedule can provide a detailed listing of restrictions that may apply to selected categories, otherwise not listed in the horizontal schedule. Thus, depending on individual member country sectoral and category-wise interests and depending on their capacity for the negotiations, the horizontal and sectoral schedules can be used in conjunction to address both their offensive and defensive trade interests in mode 4. LDCs and developing countries, including those in South Asia, could focus on those sectors and occupational categories that are of most interest to them and could try to negotiate mode 4 commitments in such sectors in a manner that reflects the various proposals outlined earlier.

...the mode 4 negotiations would also need to take into account inter-modal spillover effects of mode-specific restrictions and the wider benefits that can be realised from broad-based liberalisation across modes

It may also be worth exploring the possibility of setting specific benchmarks in terms of years of stay, percentages of categories eligible for liberalisation, either across all skill levels or within specific categories such as CSS-2 and independent professionals where liberalisation is likely to be slower. The latter would help provide some yardsticks for measuring progress in the negotiations. In addition, cross-modal issues, such as restrictions on mode 3 in the form of local staffing requirements or restrictions on mode 1 such as outsourcing bans, which curtail the scope for associated complementary movement of service providers, would also need to be addressed. Thus, the mode 4 negotiations would also need to take into account inter-modal spillover effects of mode-specific restrictions and the wider benefits that can be realised from broad-based liberalisation across modes.

Chapter 8

Some Domestic Issues for Consideration

The negotiations on mode 4 and the various proposals highlighted in this paper will also need to be supported by initiatives and policy efforts at the domestic level. More liberal commitments in mode 4 or strengthening of mode 4 related disciplines under the GATS framework will not automatically translate into benefits for sending countries unless they are supported by domestic reforms and measures. One of the most important areas for domestic reform is that of training and standards. For instance, greater market access under mode 4 will only be meaningful if the South Asian countries can exploit this access through the provision of low cost but high quality service providers. Hence, there has to be adequate investment in training, related infrastructure, and establishment of standards so that developing country suppliers can meet host country requirements. This is particularly true in the low and semi-skilled trades like construction work, welding, and plumbing, where technical rather than academic proficiency is important, but where there are often no regulatory bodies or formal training or apprentice programmes to ensure minimum standards and quality. And as noted earlier, divergence in training standards in services like nursing and medicine will also need to be addressed in order to facilitate entry into mutual recognition agreements by the South Asian countries.

...greater market access under mode 4 will only be meaningful if the South Asian countries can exploit this access through the provision of low cost but high quality service providers

It will also be important for the South Asian countries to improve their institutional and regulatory capacity with regard to labour market and immigration policies. Most of the above proposals require adequate institutional and regulatory capacity in the sending as well as receiving countries to undertake tracking, screening, and certification responsibilities, to provide timely information under the transparency and notification requirements, and to ensure return and successful integration of temporary service suppliers. Thus, negotiating strategies to facilitate mode 4 must be embedded within a larger national policy and institutional framework to deal with temporary migration and trade.

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1 IOM (2003).

2 IOM (2003).

3 See, Wickramasekara (August 2002), Table 1, p.15.

4 OECD Observer (2003).

5 According to Winters (2003), if industrial countries increase their quotas on movement of skilled and unskilled temporary workers by an equivalent of 3 percent of their work force, world welfare would rise by more than US $150 bn a year, with these gains being widely shared within the world economy. Moreover, the greater the differences in wages or factor returns between the source and host countries, the greater would be the potential for gains, implying that the greatest gains would arise in the context of temporary movement of unskilled or less skilled workers. Thus, to the extent that the South Asian countries have considerable potential to export both skilled and unskilled services through mode 4, and the large wage differentials between South Asia and the industrialised countries, the welfare losses due to barriers to mode 4 exports, are likely to be significant. See Winters in (eds.) Mattoo and Carzaniga (2003), p.59

6 The other three modes of supply are modes 1, 2, and 3. These are respectively defined as: cross-border supply, which pertains to the physical movement of the service across borders; consumption abroad, which refers to the consumption of the service in the overseas market; and commercial presence, which is the establishment of juridical presence by a legal entity in an overseas market. This mode-wise breakdown of trade in services captures the various ways in which services can be traded, through the movement of consumers, producers, information flows, labour, and capital.

7 There are eight entries in each schedule, one entry each for market access and national treatment for each mode of supply. Countries can make a full commitment, i.e., place no restrictions on market access and/or national treatment for a mode of supply ("none"), or a partial commitment by limiting market access and national treatment in line with various conditions listed in their schedule, or an "unbound" commitment, i.e., make no commitment. For more details, see the GATS text.

8 See, Communication from India (Nov. 24, 2000) and Joint Communication on Mode 4 (July 3, 2003).

9 OECD Observer (2003).

10 India Today (October 2002).

11 India Today (January 2003).

12 Nangia and Saha (2002).

13 See, D'Sami (2001).

14 See, http://www.scalabrini.asn.au/atlas/india99.htm

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16 See, Wickramasekara (August 2002).

17 Commander et. al (2001).

18 Based on US INS statistics, 2002.

19 http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html

20 The discussion in this section is mostly based on NASSCOM (2002).

21 Saxenian (2002).

22 Mejia et. al (1979).

23 The estimates of migration in India's health sector vary. The figures given here are from UNCTAD/WHO (1998) and the Commonwealth Secretariat (1996).

24 Meija (1979).

25 Even as early as the 1960s, India was one of the main source countries for doctor migration to the UK. There were about 6,000 registered civilian doctors in the UK between 1962-67, who were born in India. While some of these doctors also returned to India, the number of doctors arriving from India to the UK was double the number of those who left the UK for India, during this period. Hence, concerns about brain drain and labour market shortages for doctors, have been long standing in India. See, Gish (1971).

26 Conservative estimates put the shortage of nurses in the US at 100,000. It is projected that by the year 2008, there will be a demand for 450,000 nurses, a large part of which can be met by India. See, Economic Times (May 5, 2004).

27 See, Sukhatme (1994) and Khadria (1999).

28 Ganguly (2003).

29 Discussion of government policy is based on an unpublished note by the Protectors of Emigrants, Ministry of Labour, Government of India.

30 See, Jayanetti (2003).

31 Ibid 30.

32 Ibid 30.

33 http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html

34 Further details on government initiatives to promote labour exports are available at http://www.scalabrini.asn.au/atlas/srilanka98.htm, http://www.scalabrini.asn.au/atlas/srilanka99.htm, and

http://www.scalabrini.asn.au/atlas/srilanka00.htm

35 See, ILO's International Labour Migration Statistics, 1986-2001 Tables 11 and 13 for Pakistan.

36 http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html

37 See, http://www.scalabrini.asn.au/atlas/bangladesh00.htm for details on the measures introduced by the Bangladeshi government on emigration by unskilled and women workers.

38 These statistics are based on Findlay (December 2001).

39 See, Findlay (December 2001).

40 In the US, the employer is required to obtain prevailing wage information from authorities or other sources and pay at least 95 percent of this wage rate to foreign candidates. In the EEA countries, wage rates paid to foreign candidates must be in line with the rates that have been set by collective labour agreements. Work permit applications are normally refused if the candidate is shown to be earning less than the minimum agreed wage for the type of work specified. Failure to comply with the wage legislation can create problems in receiving future work permits, rejection of work permit applications, and penalties if there is a violation. Moreover, there may also be stipulations on how the salary must be paid, such as under specified schemes, in order to prevent misuse of the provisions.

41 Much of the discussion in this section is based on a draft note by Ganguly (July 2004) on barriers to movement of natural persons from India in the US.

42 Current Processing time for labour certification by DOL can be found at http:/workforcesecurity.doleta.gov/foreign/times.asp

43 The yearly number of H1B visas for foreign workers and professionals dropped by two-thirds for fiscal 2004 from 195,000 in the years 2001-2003.

44 The notice from the BCIS (INS) is at http://uscis.gov/graphics/publicaffairs/newsrels/h1bcap_NR.pdf.

45 Computer World, Sept 2003.

46 All statistics provided in this section for the US and Australia are based on Nielson and Cattaneo in (eds.) Mattoo and Carzaniga (2003).

47 SOPEMI (2002)

48 OECD (2002) and SOPEMI-OECD (2001).

49 See, http://news.bbc.co.uk/1/hi/world/middle_east/422161.stm

50 According to news reports, several of the professionals were slapped and kicked, handcuffed, made to kneel or sit in a police car, and confiscated of their personal belongings. Their passports and visas were allegedly defaced and they were asked to apply for fresh visas. The detained IT professionals had gone at the invitation of Malaysian companies.

51 See, Hindu (March 15, 2003) for more details.

52 http://www.scalabrini.asn.au/atlas/bangladesh99.htm

53 Much of the discussion in this section is based on WTO (S/CSS/W/118), (November 30, 2001).

54 See, WTO (S/CSS/W/118), (November 30, 2001) for a list of occupations where such tests are applicable across different member countries.

55 Computer Programmers and systems analysts applying to enter the UK are required to have five years or more of experience in a high-level (managerial, analytical, or executive) position or a graduate degree plus two or more years of senior post-graduation work experience. For further details see Chanda (1999).

56 Much of the discussion in this section is based on Ganguly (July 2004).

57 This is based on the fees charged by a popular evaluation agency, Academic Credentials Evaluation Institute, Inc.

58 Applicants pay fees based on their application status (first-time applicants/re-examination applicants) and the number of examination sections to be tested. For instance, in Washington State, the administrative fee for a first time applicant ranges from $ 83 to $ 124.50, depending upon the number of sections the applicant is taking and a section fee that varies from $ 100.50 to $ 134.50. For further details on fees and application process for CPA, see http://www.cpa-exam.org/

59 An in-state office must be maintained for licensure in Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, and Wyoming. An In-state residency is required for licensure in Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, and West Virginia.

60 There are three steps to the USMLE. The first step assesses knowledge and understanding of key concepts of basic biomedical science with stress on principles and mechanisms of health, disease, and modes of therapy. The second step assesses medical knowledge and understanding of clinical science considered essential for patient care under supervision, including stress on health promotion and disease prevention. The third step assesses medical knowledge and understanding of biomedical and clinical science considered essential for the unsupervised practice of medicine with stress on patient management in ambulatory settings. The first two steps can be taken in any order but the third one can only be taken once the first two have been cleared.

61 The Open General Examination consists of five papers: Paper A—a multiple choice question paper, paper B—a comprehensive English paper, paper C— a medical short answer paper, paper D— a written English paper, and paper E —an oral examination.

62 There is even further discrimination in that an Indian holding an English medical degree is still paid less than a westerner holding the same degree. However, this is more a case of racial discrimination than a direct recognition issue per se.

63 See, Economic Times (May 4, 2004).

64 See, Ganguly (July 2004).

65 Ibid 64.

66 See OECD Observer (2003) and Nielson and Taglioni (2003).

67 See, Chanda (1999) for a detailed assessment of the GATS commitments in mode 4.

68 See informal note on categories of natural persons, WTO (October 3, 2003) for a detailed discussion of classification and definitional issues in mode 4.

69 This discussion is based on a review of a sample of about 30 existing horizontal schedules of commitments covering a wide range of countries.

70 Such limitations are in contrast to commitments on commercial presence where few countries have placed a blanket denial to capital mobility although there are some limitations in the form of foreign equity ceilings, requirements on the nationality of board members, sector-specific conditions on foreign investment, and economic needs test requirements for establishing commercial presence. However, on the whole, commitments are far more liberal for capital movement in services.

71 Analysis of the commitments is based on the horizontal commitment schedules.

72 Analysis is based on the WTO Background Reports on the Health and Computer Related Services sectors, and UNCTAD/ WHO (1998).

73 The detailed proposals pertaining to each of these ideas as well as other suggestions are discussed at length in Sections 5 and 6. Only a summary of the main issues and proposals made is provided here.

74 See the horizontal request made by India on mode 4.

75 See the horizontal request made by Colombia on mode 4...

76 See the sectoral requests made by India in computer and related services and in architecture services.

77 See, WTO, WT/TPR/OV/9 (Feb 20, 2004).

78 Much of the discussion in this section is adapted from Chanda, "Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations", South Centre, Geneva, 2004.

79 See, Joint Communication TN/S/W/14 (3 July 2003) and Communication from India, S/CSS/W/12, (24 November, 2000).

80 Some of these arrangements were discussed earlier in Section 2.3.1. These include regional agreements like NAFTA, APEC, and US-Chile FTA.

81 Much of the discussion in this section is based on Chaudhuri et. al (2003).

82 An establishment-based contractual service providers is a person who is a regular employee of a home or third country establishment and is deputed abroad by this firm to render services for a short period of time, on the basis of a contract signed between the host country client and the sending firm and where remuneration is paid to the employer. Independent contractual service providers includes self-employed, independent professionals (such as free lancing architects or consultants) whose services are contracted or solicited by a client firm, individual, or professional organisation based in the host country. See the model schedule in Section 8 of this paper for the definition of the various SPV categories.

83 See, Chaudhuri et. al (2003) for details on the administrative and other operational aspects of the Service Provider Visa.

84 The latter is a noteworthy limitation of the SPV scheme, given the interest on the part of developing countries and LDCs to cover a wide range of skill levels, especially lower skill categories of service providers. This issue is discussed at length later in the paper.

85 See Hatcher (2003) and Chaudhuri et. al (2003) for further details and an indicative model schedule.

86 Discussion in this section is adapted from Chanda, "Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations", South Centre, Geneva. 2004.

87 See S/CSS/W/12, Communication from India (November 24, 2000).

88 Some experts have noted that the UK's experience could be worth replicating in other developed countries. The UK has established a GATS visa to facilitate the implementation of its commitments under the GATS, for contractual workers. The procedure is simple, efficient and transparent and facilitates quick decision-making that can be done by one person in cases where the requesting party meets all the requirements.

89 The discussion in this section is adapted from Chanda, "Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations", South Centre, Geneva, 2004.

90 See, Chanda (1999) for a detailed discussion of these multilateral norms.

91 See the Communication by India (24 November, 2000).

92 Iredale (2003) provides a good summary of these issues.

93 The recent offshoring ban on US government contracts is a case in point. This would affect not only mode 1 but also mode 4.

94 See Section VIII of Chanda (May 2004) for a model schedule of commitments to facilitate the negotiations on mode 4 for developing countries.

Annexe

India

Table 1: Annual Outflow of labour migrants from India, 1976-97					
Year	Number of emigrants	Percent of emigrants to the Middle East	Year	Number of emigrants	Percent of emigrants to the Middle East
1976	4,200	n.a.	1987	125,356	97.2
1977	22,900	n.a.	1988	169,844	97.7
1978	69,000	n.a.	1989	126,786	95.1
1979	171,000	n.a.	1990	141,816	94.2
1980	236,200	n.a.	1991	192,003	96.0
1981	276,000	n.a.	1992	416,784	96.7
1982	239,545	93.6	1993	438,338	95.5
1983	224,995	96.9	1994	425,385	95.1
1984	205,922	96.4	1995	415,334	93.0
1985	163,035	98.4	1996	414,214	93.7
1986	113,649	96.1	1997	416,424	92.8

Source: Nangia and Saha (2002), Table 1, p.14.
Note: n.a. = not available

Table 2: The distribution of annual labour outflows from India by destination, 1999-2003						
Number	Country	1999	2000	2001	2002	2003
1.	UAE	79,269	55,099	53,673	95,034	143,804
2.	Saudi Arabia	27,160	58,722	78,048	99,453	121,431
3.	Kuwait	19,149	31,082	39,751	4,859	54,434
4.	Oman	16,101	15,155	30,985	41,209	36,816
5.	Malaysia	62	4,615	6,131	10,512	26,898
6.	Bahrain	14,905	15,909	16,382	20,807	24,778
7.	Singapore	19,468	18,399	27,886	24,399	23,438
8.	Qatar	—	—	13,829	12,596	14,251
9.	Libya	1,129	1,198	334	1,339	2,796
10.	Others	22,309	32,003	11,645	13,765	17,810
	Total	199,552	243,182	278,664	367,663	466,456

Source: Emigration Division, Indian Ministry of Labour, various years.

Table 3: Indian Contract Workers in Service Jobs in West Asia and the Gulf	
Country	Number
Bahrain	110,000
Kuwait	150,000
Oman	280,000
Qatar	80,000
Saudi Arabia	700,000
UAE	500,000
Yemen	103,000
Libya	36,000
Source: D'Sami (2001), p.3.	

Table 4: Indian Emigrants to Europe, America, and Oceania (knowledge workers)	
Country	Number
France	42,000
Germany	32,000
Netherlands	103,000
UK	790,000
US	815,000
Portugal	102,000
Canada	250,000
Australia	200,000
New Zealand	30,000
Indonesia	30,000
Source: D'Sami (2001), p.3.	

Table 5: India's Share in Asian and World Immigration of Workers 1994-1996					
Occupation	Indian Immigration	Asian Immigration	World Immigration	Indian as % of Asian	Indian as % Of world
Overall Occupational	114,528	688,327	2,440,777	13.2	4.7
Total Occupational	38,395	295,516	851,507	13.0	4.5
Professional, Technical	19,603	89,917	201,568	22.0	9.7
Executive, Managerial	6,246	41,841	83,631	14.9	7.5
Sales	1489	14,581	39,950	10.2	3.7
Administrative Support	2,390	20,816	61,610	11.5	3.8
Production, craft and repairs	767	17,775	66,780	4.3	1.1
Operator, Fabricator and Labour	846	43,543	195,861	1.9	0.4
Family, Forestry and Fishing	3,567	20,366	42,698	17.5	8.4
Service	3,467	47,406	159,409	7.4	2.2
No Occupation Reported	76,133	572,811	1,589,270	13.3	4.8
Source: Khadria (1999), based on Statistical Yearbook of the Immigration and Naturalisation Service, various years.					

Table 6: Total Issue of USA H-1 Visas & Sending Country Shares. 1989-1999											
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
India	4.4	4.6	6.9	10.7	18.0	22.9	26.3	32.0	39.3	44.0	47.2
China	1.7	1.0	1.9	1.7	2.4	2.5	3.2	3.9	4.0	4.2	5.0
Philippines	12.4	12.4	12.2	14.6	18.0	17.8	17.0	7.7	3.3	3.0	2.6
Mexico	6.0	6.4	5.4	4.8	3.1	2.3	2.5	3.2	3.5	2.5	2.1
Russia	4.6	6.3	6.6	3.2	4.5	2.5	2.0	2.1	1.7	1.5	1.4
Total LDCs	29.2	30.8	33.1	35.1	46.0	48.1	50.9	48.8	51.8	55.4	58.2
UK	13.6	12.2	14.8	13.0	9.5	8.6	8.1	9.3	8.6	6.9	5.7
Japan	7.5	6.5	8.7	5.4	5.1	4.5	3.5	4.0	3.6	3.1	2.9
France	4.7	3.9	4.1	3.3	2.1	2.0	2.1	2.4	2.3	2.3	2.3
Germany	3.7	2.8	3.2	2.9	2.4	2.2	2.5	2.5	2.6	2.5	2.1
Australia	1.8	1.4	1.9	1.9	2.0	2.1	1.8	1.9	1.8	1.8	1.4
Total Developed Countries	31.4	26.8	32.6	26.5	21.1	19.5	17.9	20.2	19.0	16.7	14.3
Others	39.4	42.4	34.3	38.4	32.9	32.4	31.2	31.1	29.3	27.9	27.4
Total no. of Visas	48820	58673	59325	51667	42206	49284	59093	60072	80608	91378	116695
Source: Commander et al (2002), based on Statistical Yearbook of the Immigration and Naturalisation Service, various years.											

Table 7: Category-wise breakdown of temporary workers from Asian Countries, 2002						
Country/ Class of Admission	**China**	**India**	**Japan**	**Korea**	**Philippines**	**Israel**
Registered nurses (H1A)	57	228	32	25	21	13
Specialty occupations (H1B)	15,838	81,091	13,287	8,000	5,509	5,357
Nurses, Nursing Relief Act, 1999(H1C)	-	2	-	-	84	-
Services Unavailable in US (Non-agriculturalworkers) (H2B)	108	310	461	128	221	31
Industrial trainees (H3)	94	96	529	25	17	24
Exchange visitors (J1)	9,795	4,866	12,684	9,951	1,333	4,039
Intracompany transferees (L1)	4,572	20,413	31,044	4,769	2,077	4,440
Workers of extraordinary ability/achievement (O1)	282	523	741	227	191	510
Workers accompanying performance of O1 workers (O2)	117	138	40	72	73	34
Internationally recogniserecognised athletes or entertainers (P1)	795	95	395	166	117	246
Artists/entertainers in reciprocal exchange programmes (P2)	50	41	16	40	25	32
Artists/entertainers in culturally unique programmes (P3)	509	946	367	234	61	77
International cultural exchange programmes(Q1)	77	6	303	10	2	1
Total	32,911	110,103	60,631	24,487	10,417	15,335

Source: Statistical Yearbook of the Immigration and Naturalisation Service, 2002
Notes: 1. The figures for China include People's Republic of China and Taiwan.

Table 8: H1B Beneficiaries in the Top 10 Industries, United States, Fiscal 2002					
Industry (NAICS Code)	**Total Number of Beneficiaries**	**Median Age (years)**	**Master's Degree or higher (%)**	**Median Income**	**Leading Country of Birth (%)**
All industries	197,537	30	48	55,000	India (34)
Computer systems design and related services (5415)	50,776	29	36	60,000	India (68)
Colleges, universities, and professional schools (6113)	18,401	34	93	37,000	PRC (26)
Architectural, engineering, and related services (5413)	8,963	31	44	48,000	India (21)
Management, Scientific, and Technical Consulting Services(5416)	7,458	29	43	55,000	India (39)
Scientific research and development services (5417)	6,695	33	82	54,000	PRC (24)
Telecommunications (5133)	4,357	30	48	70,000	India (38)
Elementary and secondary schools (6111)	3,983	33	31	33,000	India (18)
Accounting, tax preparation, bookkeeping, and payroll services(5412)	3,507	30	36	42,000	India (16)
General medical and surgical hospitals (6221)	3,442	32	81	42,000	India (24)
Securities and commodity contracts intermediation and brokerage (5231)	2,917	28	45	75,000	India (21)

Source: Statistical Yearbook of the Immigration and Naturalisation Service, 2002

Notes: 1. Industry data is collected using the North American Industry Classification System (NAICS).

2. Total number of beneficiaries is the sum of initial and continuing beneficiaries.

Table 9: H1B Beneficiaries in the Top 5 H1B receiving countries, 2002					
Category	India	China	Canada	Philippines	United Kingdom
Computer-related	47,477	5,357	2,770	1,561	1,250
Fashion Models	5	4	92	1	50
Managers and Officials	1,212	388	1,204	315	908
Miscellaneous, professional, technical and managerial	690	349	379	115	283
Administrative Specialisation	2,689	1,660	1,342	2,186	795
Architecture, engineering and surveying	5,780	2,633	1,629	993	1,235
Art	113	76	133	65	245
Education	1,908	3,593	1,507	957	893
Entertainment and Recreation	69	28	77	9	89
Law and jurisprudence	72	93	165	34	99
Life Sciences	727	1,965	415	63	360
Mathematics and Physical Sciences	693	1,401	446	76	272
Medical and Health	2,530	674	949	2,524	297
Museum, library and archival sciences	11	30	56	5	31
Religion and Theology	7	2	14	6	7
Social Sciences	738	413	365	257	206
Writing	77	91	133	44	83
Unknown	182	84	84	84	68
Total	64,980	18,841	11,760	9,295	7,171

Source: Statistical Yearbook of the Immigration and Naturalisation Service, 2002

Table 10: India's Share in H1B visas, Asia and World, 2000-2002						
	2000		2001		2002	
Category	India % Share in Asia	Indian % Share in World	India % Share in Asia	Indian % Share in World	Indian % Share in Asia	Indian % Share in World
Computer-related	79.62%	68.18%	81.53%	71.39%	76.43%	63.21%
Fashion Models	10.53%	0.33%	2.00%	0.11%	11.63%	0.67%
Managers and Officials	32.45%	12.28%	37.16%	13.92%	31.79%	11.42%
Miscellaneous, professional, technical and managerial	27.62%	11.49%	33.63%	15.98%	30.82%	13.97%
Administrative Specialisation	23.69%	13.88%	28.98%	17.14%	22.26%	12.74%
Architecture, engineering and surveying	39.47%	26.01%	42.36%	27.87%	38.10%	22.94%
Art	6.09%	3.36%	8.81%	4.64%	7.62%	3.90%
Education	17.26%	8.36%	19.99%	9.45%	18.64%	9.26%
Entertainment and Recreation	38.42%	17.37%	19.26%	6.74%	23.08%	8.89%
Law and jurisprudence	12.90%	4.77%	15.31%	5.02%	14.40%	5.01%
Life Sciences	19.76%	11.06%	19.03%	10.52%	18.85%	10.52%
Mathematics and Physical Sciences	18.40%	10.03%	21.95%	12.21%	22.33%	12.73%
Medical and Health	27.86%	18.00%	31.86%	20.34%	30.50%	19.58%
Museum, library and archival sciences	18.99%	8.06%	14.18%	5.65%	9.48%	3.49%
Religion and Theology	10.34%	4.41%	14.71%	6.02%	15.56%	5.93%
Social Sciences	29.64%	16.37%	26.01%	13.46%	25.47%	13.30%
Writing	12.12%	6.18%	15.38%	7.73%	10.24%	5.23%
Unknown	38.93%	18.88%	50.00%	23.66%	31.71%	13.22%
Total	61.64%	44.42%	65.82%	48.78%	50.91%	32.89%
Source: Statistical Yearbook of the Immigration and Naturalisation Service, various years.						

Table 11: Return Migrants in the Indian IT Industry, 2000-2005					
Category	2000-01	2001-02	2002-03	2003-04	2004-05
India new IT Labour		132,986	158,099	172,977	192,194
Number of Professionals live in India (onsite work)		64,350	64,350	64,350	21,450
Number of IT Professionals returning to India		-	20,109	24,131	29,250
Number of IT Professionals	360,000	428,636	542,495	675,233	875,248
Percentage of Migrants		15.01%	11.86%	9.53%	2.45%
Percentage of return Migrants			3.7%	3.57%	3.34%
Source: NASSCOM (2002)					

Table 12. Estimates of Indian Doctors who have returned from overseas, 1998

Country of Destination	Total Trained %	% Returned	Major Specialties
United Kingdom	3,708	48.03	General Medicine,Surgery, Veterinary Science and Pediatrics
USA	1,080	49.7	-Do-
Germany	82	41.46	-D0-
Other European Countries	284	52.46	-Do-
Australia & New Zealand	60	23.33	-Do-
Canada	176	42.04	-Do-
Other	694	47.55	-Do-
Total	6,084		

Source: Ganguly (2003) (obtained from the Health Information of India)

Annexe

Sri Lanka

Table 13: Departures for Foreign Employment, 1990-2001					
Year	**Male**	**Male as % of total**	**Female**	**Female as % of total**	**Total**
1990	15,377	36%	27,248	64%	42,625
1991	21,423	33%	43,560	67%	64,983
1992	15,493	35%	29,159	65%	44,652
1993	17,153	35%	31,600	65%	48,753
1994	16,377	27%	43,791	73%	60,168
1995	46,021	27%	126,468	73%	172,489
1996	43,112	27%	119,464	73%	162,576
1997	37,552	25%	112,731	75%	150,283
1998	53,867	34%	105,949	66%	159,816
1999	63,504	35%	115,610	65%	179,114
2000	59,725	33%	121,645	67%	181,370
2001	59,751	32%	124,137	68%	183,888
Source: Statistical Hand Book on Migration, 2001, Bureau of Foreign Employment.					

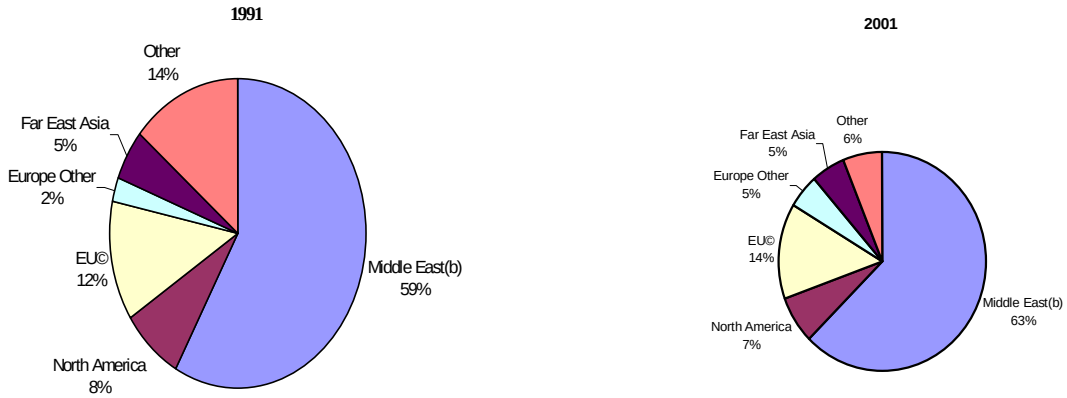
Table 14: Departures for Foreign Employment by Country, 1999-2001					
		1998	1999	2000	2001
Saudi Arabia	48,171	59,397	63,368	61,141	66,644
Kuwait	37,969	28,834	33,505	33,419	35,093
UAE	23,944	21,883	30,047	32,712	28,284
Lebanon	11,793	13,646	6,841	13,132	15,430
Qatar	9,364	12,576	11,523	12,088	14,046
Oman	4,278	4,294	10,452	4,945	3,669
Jordan	3,674	3,882	6,982	7,289	8,028
Bahrain	3,329	7,116	5,634	6,467	3,740
Maldives	2,344	2,798	3,432	3,047	2,392
Singapore	2,200	1,837	2,027	1,603	1,507
S. Korea	1,069	441	510	855	353
Cyprus	915	1,607	1,965	1,333	3,090
All other Countries	1,233	1,555	2,821	2,357	1,547
Total	150,283	159,816	179,114	181,393	183,888
Source: Statistical Hand Book on Migration, 2001, Bureau of Foreign Employment.					

Table 15: Nationals Leaving Sri Lanka as Temporary Migrants by Destination, 1992-99														
Destination	1992	%	1993	%	1994	%	1996	%	1997	%	1998	%	1999	%
Bahrain	6,225	5	5,684	4	5,624	4.3	3,635	2.2	3,317	2.2	7,111	4.5	5,609	3.1
Jordan	3,511	3	3,329	3	4,830	3.7	3,845	2.4	3,657	2.4	3,828	2.4	6,984	3.9
Kuwait	32,368	26	30,362	24	33,273	25.5	41,023	25.2	37,907	25.2	28,636	17.9	33,140	18.5
Lebanon	3,145	3	4,389	3	7,953	6.1	9,623	5.9	11,719	7.8	13,604	8.5	6,822	3.8
Maldives	2,490	2	2,309	2	2,391	1.8	2,267	1.4	2,342	1.6	2,793	1.7		
Oman	8,715	7	5,520	4	4,523	3.4	4,843	2.9	4,253	2.8	4,271	2.7	10,406	5.8
Qatar	1,655	1	3,114	2	4,121	3.1	9,173	5.6	9,329	6.2	12,549	7.9	11,410	6.4
Saudi Arabia	41,083	33	51,413	40	45,005	34.6	57,255	35.2	48,130	32.0	59,321	37.1	63,102	35.2
Singapore	1,775	1	2,065	2	1,975	1.5	2,596	1.6	2,175	1.4	1,815	1.1	1,985	1.1
United Arab Emirates	22,409	18	19,901	15	17,982	13.8	22,393	13.7	23,838	15.9	21,805	13.7	29,879	16.7
Others	1,118	1	990	0.2	2,530	2.2	5,919	3.6	3,602	2.4	3,947	2.5	9,777	5.5
Total	124,494		129,076		130,027		162,572		150,269		159,680		179,114	
Source: http://www.scalabrini.asn.au/atlas/data/Sri3.htm														

Table 16: Estimated Stock of Sri Lankan Employees by Gender and Country, 1994.						
Country	1994			1996		
	Male	Female	Total	Male	Female	Total
Africa	3,500	11,500	15,000	3,000	12,000	15,000
Bahrain	5,250	29,750	35,000			
Jordan	3,750	11,250	15,000	5,000	15,000	20,000
Kuwait	10,000	65,000	75,000	14,960	70,040	85,000
Lebanon	1,000	24,000	25,000	1,000	24,000	25,000
Oman	11,250	13,750	25,000	5,000	20,000	25,000
Qatar	2,500	7,500	10,000	3,750	11,250	15,000
Saudi Arabia	90,000	110,000	200,000	90,000	110,000	200,000
UAE				15,000	60,000	75,000
Other Middle East	3,500	6,500	10,000	5,000	10,000	15,000
Italy				5,000	10,000	15,000
East Asia	750	14,250	15,000	6,500	18,500	25,000
Other Asia	1,500	13,500	15,000	2,505	12,495	15,000
Total	148,000	352,000	500,000	156,715	373,285	530,000
Source: http://www.scalabrini.asn.au/atlas/data/Sri4.htm						

Table 17: Private Remittances (value in US$ Mn), 1991-2001											
Origin	**1991(c)**	**1992(d)**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**
1. Middle East(a)	230	301	347	398	423	484	562	611	651	730	703
2. North Ame3rica	91	79	76	62	58	70	72	76	77	78	81
3. South and Central America	...	...	...	9	7	8	9	10	11	11	12
4. EU(b)	55	77	94	101	108	122	127	135	144	156	190
5. Eastern Europe	...	2	2	1	4	3	4	4	4	4	4
6. Europe Other	11	23	28	34	37	43	45	53	55	59	60
7. South Asia	6	6	11	4	5	7	8	8	8	8	7
8. South East Asia	22	9	10	14	15	17	16	19	20	22	22
9. Far East Asia	23	46	48	51	55	61	61	62	64	68	61
10. Australasia	3	4	6	6	7	8	9	10	11	12	14
11. North Africa	...	...	...	...	...	...	...	...	...	...	...
12. Central Africa	...	...	...	...	...	...	...	...	...	...	...
13. South Africa	...	...	...	...	0	...	...	...	...	...	...
14. Other	...	4	5	7	8	9	8	11	11	12	11
Total	442.6	548.4	627	690	727	832	921	999	1,056	1,160	1,155
Source: Central Bank of Sri Lanka											
(a) Includes US$64Mn., US$78Mn., US$85Mn. and US$45Mn received in 1997, 1998, 1999 and 2000 as compensation of US$2,500 per person to 26,101, 31,279, 37,343, and 29,323 Sri Lankan, respectively, who lost employment in Kuwait due to the Gulf war in 1990. In addition, US$27 Mn was also received as second round payment of US$1,500each to 18,244 Sri Lankans in 1999.											
(b) EU was earlier named EEC											
(c) Sri Lankan rupee converted into dollar by using average annual US$/Rs exchange rate for 1991											
(d) Sri Lankan rupee converted into dollar by using average annual US$/Rs exchange rate for 1992											

Figure 1: Private remittances: Relative Importance of Regions, 1991 – 2001



Source: Based on data provided in Table 17 of the Annexe.

Table 18: Departures for Foreign Employment by Country & Manpower Level -2001							
Country	Professional	Middle Level	Clerical & Related	Skilled	Unskilled	Housemaid	Total
Saudi Arabia	379	1,604	1,689	12,037	13,474	37,461	66,644
Kuwait	54	171	703	4,887	2,957	26,321	35,093
UAE	224	665	1,868	8,574	5,747	11,206	28,284
Lebanon	3	24	21	1,038	2,274	12,070	15,430
Qatar	141	370	621	4,872	5,843	2,199	14,046
Oman	81	254	224	987	317	1,806	3,669
Jordan	17	26	115	1,936	214	5,720	8,028
Bahrain	47	129	142	906	465	2,051	3,740
Maldives	70	275	434	855	645	121	2,400
Singapore	27	52	36	82	291	1,019	1,507
S. Korea	-	-	-	-	353	-	353
Cyprus	8	46	41	118	561	2,316	3,090
All other Countries	88	154	117	416	308	521	1,604
Total	1,139	3,770	6,011	36,708	33,449	102,811	183,888
Source: Statistical Hand Book on Migration, 2001, Bureau of Foreign Employment							

Table 19: Departures for Foreign Employment by Manpower Levels, 1996-2001				
Year	House Maid	Unskilled	Other	Total
1996	110,479	21,929	30,168	162,576
1997	99,429	20,565	30,289	150,283
1998	85,349	34,304	40,163	159,816
1999	87,710	43,649	47,755	179,114
2000	98,363	35,905	47,102	181,370
2001	102,811	33,449	47,628	183,888
Source: Statistical Hand Book on Migration, 2001, Bureau of Foreign Employment.				

Annexe

Pakistan

Table 20: Migrants from Pakistan to selected countries: 1990-99									
	KSA	UAE	Oman	Qatar	Kuwait	Bahrain	Iraq	Others	Total
1990	79,435	20,083	8,364	1,367	1,338	2,516	2,076	341	115,520
1991	113,291	15,286	9,947	1,471	4,083	2,741	40	485	147,344
1992	137,694	23,816	11,664	1,935	16,812	3,551		621	196,093
1993	99,027	28,347	6,511	1,263	18,940	2,013		1,632	157,733
1994	70,444	28,750	4,248	1,492	6,124	1,735		1,247	114,040
1995	77,373	28,681	934	632	3,898	1,424	10	1,268	122,620
1996	79,036	30,851	3,724	1,453	5,574	1,583		5,563	127,784
1997	78,982	39,823	4,809	2,528	4,748	1,212		1,827	153,929
1998	44,667	44,761	2,713	2,070	3,851	2,102		3,880	104,044
1999*	11,082	33,763	1,084	1,301	2,525	985		842	41,582
* Up to June only									
Source: http://www.scalabrini.asn.au/atlas/data/Pak3.htm									

Table 21: Pakistani migrants to the Middle East by occupation					
	Professional	Service	Production	Other	Total
1990	9.5	21.3	63.2	6.0	100
1991	8.6	19.1	68.3	4.0	100
1992	10.3	19.7	66.5	3.5	100
1993	6.9	20.2	62.3	10.7	100
1994	6.9	19.2	64.8	9.1	100
1995	6.2	19.7	62.7	11.4	100
1996	7.1	19.7	60.0	13.2	100
Source: http://www.scalabrini.asn.au/atlas/data/Pak4.htm					

Annexe

Bangladesh

Table 22: Outflows of Bangladeshi Workers by Country of Destination						
Year	Middle East	Malaysia	Korea	Singapore	Others	Total
1991	144,276	1,628	-	642	585	147,131
1992	176,981	10,537	-	313	293	188,124
1993	174,104	67,938	-	1,739	724	244,508
1994	134,539	47,826	1,558	391	2,012	186,326
1995	141,317	35,174	3,315	3,762	3,975	187,543
1996	132,116	66,631	2,759	5,304	4,904	211,714
1997	197,181	2,844	889	27,401	2,762	231,077
1998*	79,359	551	181	12,017	753	92,861
* Up to May only						
Source: http://www.scalabrini.asn.au/atlas/data/Bang1.htm						

Table 23: Annual Flow of Bangladeshi Migrants by Occupation					
	Professional	Skilled	Semi-Skilled	Unskilled	Total
1990	6,004	35,613	20,792	41,405	103,814
1991	9,024	46,887	32,605	58,615	147,131
1992	11,375	50,689	30,977	95,083	188,124
1993	11,112	71,662	66,168	95,566	244,508
1994	8,390	61,040	46,519	70,377	186,326
1995	6,352	59,907	32,055	89,229	187,543
1996	3,188	64,301	34,689	109,536	211,714
1997	3,797	65,211	193,558	118,511	381,077
1998	9,574	74,718	51,590	131,785	267,667
Source: http://www.scalabrini.asn.au/atlas/data/Bang2.htm					

Annexe

UK

Table 24: Net inflow of professional and managerial workers by citizenship group in the UK, 1995-99

Citizenship group	Professional and managerial	All migrant workers	Professional and managerial as % of net inflows
Old Commonwealth	56,000	73,000	77%
EU/EFTA	20,000	34,000	59%
East/Other Europe	8,000	10,000	80%
Other Foreign Developed countries	28,000	35,000	80%
Bangladesh/Pakistan/ India/Sri Lanka	19,000	29,000	66%
Rest of the developing world	43,000	57,000	75%

Source: Findlay (2001), Table 5, p.16. Based on Migration Research Unit report (2001)

Annexe

GATS Commitments on Mode 4

Table 25: Types of natural persons supplying services (horizontal commitments)

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

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

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 9, p. 27.

Table 26: Commitments Percentage by Sector and Mode of Supply (Professional Services)

(Percentages in each activity)

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

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

Source: WTO Secretariat. Background Note on Accountancy Services, Geneva, Dec 1998.

Table 27: Duration of stay by type of natural persons[a]

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

[a] Unless otherwise indicated, the following periods are maxiums periods which may be reached after an extension of the initial stay
[b] Entries in parenthesis indicated the possibility of an extension where schedules concerned have not specified a timeframe.

E • **Executives** **CP** • **Commercial presence**
SN • **Sale negotiations** **NS** • **Not specified**
ICS • **Independent contract suppliers**
M • **Managers**
S • **Specialists**
O • **Others**

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 10, p. 28.

Table 28: Entry conditions/restrictions by type of natural persons[a]

	Intra-corporate transferees							Business visitors		ICS	Other	NS	Total
	E	M	S	O	E	M	S	CP	SN				
ENT no criteria	1	4	5	1	2	14	17	1				6	51
ENT with criteria	1	1	1										3
Approval	1	1	1		3	8	5		1	1		2	23
Residency	3	1	1		3	4	3						15
Work Permit		1	1		4	4	4	1	1	1		2	19
Free employment[b]	34	32	35					3	2				106
Link to Mode 3					7	12	12						31
Qualification						2	1						3
Recognition					1	1	1						3
Numerical Limits													
Total Staff 10	1	1	1		2	3	4		1		1	3	17
£ 20	1		1		2	2	2					1	9
> 20	1	1			2	2	2						8
Abs .figure			2		3	3							8
Senior Staff 15	1		1										2
20						1	1				1		3
50	2	1	1										4
Abs.figure						2	2						4
Ordinary Staff 10					1	1	1						3
Payroll 15					1	1	2					1	5
20					1	1	2		1				5
30												1	1
Workforce[c] 50							1						1
Unspecified	2	2	2					1	1				8
Minimum Wage	15	15	15							1		1	47
Disputes[d]	4	5	4			2	2	2	2	1			22
Technology Transfer	1	1	1		7	8	12					2	32

[a] See Table 5 for the legend
[b] The person seeking access must have already worked for the current employer, the minimum period specified Schedules is generally one year.
[c] Total workforce of the country concerned
[d] Absence of labour-management disputes

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 11, p. 29.

Table 29: Other discriminatory treatment affecting work and living conditions							
		Real Estate	Subsidy	Foreign Exchange	Borrowing	Taxation	Mobility Restrictions
Intra-company transferees	Executives	7	22			1	2
	Managers	7	22			2	2
	Specialists	8	22			2	2
	Others						
	Executives	3	3	1		3	
	Managers	4	4	1		4	
	Specialists	2	4	1		5	
Business visitors	Commercial Presence	3	17			1	2
	Sales Negotiations	7	22			1	2
Independent Contact		1	1				
Suppliers							
Other		1					
Not Specified		3	1			1	1
Total[a]		46	118	3	1	20	10

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

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 12, p. 30.

Table 30: GATS Commitments in Health and Related Services For Movement Of Natural Persons					
	MARKET ACCESS			NATIONAL TREATMENT	
	Unbound	None	Measures	Unbound	None
Movement of Natural Persons					
Medical and dental services	32	1	11	39	5
Services provided by midwives, nurses, physiotherapists, and paramedicals	23	0	8	21	2
Hospital services	22	2	7	31	7
Other human health Services	10	0	1	10	0

Source: UNCTAD/WHO (1998), International Trade in Health Services: A Development Perspective, Geneva.

Table 31: Analysis of Market-access Commitments on Computer and Related Services (by mode of supply, as percentages of the number of schedules including each sub-sector)

	No. of schedules	Cross-border			Consumption abroad			Commercial presence			Natural persons		
		F	P	N	F	P	N	F	P	N	F	P	N
A. Consultancy related to the installation of computer hardware	52	63	13	23	73	12	15	77	21	2	6	90	4
B. Software implementation services	57	60	21	19	70	19	11	68	30	2	7	88	5
C. Data processing services	55	60	20	20	71	18	11	69	29	2	5	89	5
D .Data base services	49	63	14	22	76	14	10	71	27	2	4	92	4
E. Other	30	53	40	7	57	37	7	53	47	0	0	97	3

F: Full commitment (indicated by "none" in the market access column of the Schedule)
P: Partial commitment (limitations inscribed in the market access column of the Schedule)
N: No commitment (indicated by "unbound" in the market access column of the Schedule)
Note: The figures in this table reflect only those entries inscribed under the computer services commitments in the schedules. It should, however, be borne in mind that entries made in the horizontal section of the Schedule relate to commitments made in this and all other scheduled sectors. Per centages may not add up to 100 due to rounding.

Source: WTO (1998), "Computer and Related Services", Background Note, Geneva.

CUTS' PUBLICATIONS
TRADE, ECONOMICS AND ENVIRONMENT

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This study also examines pros and cons of Carrots and Sticks approaches, and analyses incorporation of these approaches in three major MEAs, the Montreal Protocol, The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention, to find out which approach has been more successful in ensuring enforcement and compliance. *(Rs. 100/US$25, ISBN 81-87222-58-1)*

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This research report intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.

(Rs. 100/US$10, ISBN 81-87222-69-7)

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Since the early 1990s, globally there has been a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. The idea is that companies voluntarily adopt codes of conduct to fulfil their social obligations and although these companies are responsible only for a fraction of the total labour force, they set the standards that can potentially lead to an overall improvement in the working conditions of labour.

Given this background, this paper examines how the failure of 1980s codes, regulated by international bodies, resulted in the proliferation of corporate codes of conduct and an increased emphasis on corporate social responsibility.

This paper further tries to explore whether voluntary codes of conduct can ensure workers' rights in a developing country like India.

(Rs.100/US$25, ISBN 81-87222-76-X)

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South Asian Countries have the highest rates of child labour practices in the world. As a result of the advocacy by powerful political lobbying groups supported by Europe and the US, the trade sanction approach to encounter the issue of child labour has gained influence, since the nineties.

These sanctions were exercised to alleviate the problem of child labour by US policy-makers and also by some countries in the EU. But, the question arises – have the trade sanctions imposed by these countries in any way helped eliminate this problem? This research report of CUTS Centre for International Trade, Economics & Environment tries to address this question.

It has explored the impact of these trade sanctions and finds that these sanctions resulted in the contradiction of the basic objective, i.e., elimination of child labour.

Besides highlighting the causes of child labour, the report makes some very useful recommendations on how the issue of child labour can be addressed best at the domestic as well as international level.

(Rs.100/US$25, ISBN 81-87222-82-4)

17. TRIPs and Public Health: ***Ways Forward for South Asia***

Trade Related Aspects of Intellectual Property Rights — or TRIPs — has always been one of the most contentious issues in the WTO.

This research document tries to find an answer to one specific question: what genuine choices do policymakers in South Asian developing nations now have, more so after the linkage between the trade regime

and pharmaceuticals? Starting with a brief overview of the key features of the corporate model of pharmaceuticals, the paper provides some insight into the challenges faced by the governments in South Asian countries. The aim is to anchor the present discussion of public health and the impact of TRIPs in the socio-cultural environment of this region.
(Rs.100/US$25, ISBN 81-87222-83-2)

18. Bridging the Differences: *Analyses of Five Issues of the WTO Agenda*

This book is a product of the project, EU-India Network on Trade and Development (EINTAD), launched about a year back at Brussels. CUTS and University of Sussex are the lead partners in this project, implemented with financial support from the European Commission (EC). The CUTS-Sussex University study has been jointly edited by Prof. L. Alan Winters of the University of Sussex and Pradeep S. Mehta, Secretary-General of CUTS, India.

The five issues discussed in the book are Investment, Competition Policy, Anti-dumping, Textiles & Clothing, and Movement of Natural Persons. Each of these papers has been co-authored by eminent researchers from Europe and India.
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This research report is a sincere attempt to fathom the relevance of SPS and TBT Agreements, their necessity in the present global economic scenario and, of course, the development of case law related to the Agreements, along with a brief description of the impact of this case law on developing countries.
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This research report attempts to emphasise on the relevance of GATS for developing economies, particularly in South Asia. It also examines the potential gains from trade liberalisation in services, with a specific focus on hospital services, and raises legitimate concerns about increases in exports affecting adversely the domestic availability of such services. It highlights how the ongoing GATS negotiations can be used to generate a stronger liberalising momentum in the health sector. *(Rs.100/US$25, ISBN 81-8257-000-X)*

21. Demystifying Agriculture Market Access Formula: *A Developing Country Perspective After Cancun Setback*

At the Cancún meeting, a draft ministerial text on agriculture emerged, known as the Derbez Text. It was not surprising that at Cancún the WTO members failed to accept a ministerial text on agriculture. The Derbez Text had made the framework very complex, which the paper, "Demystifying Agriculture Market Access Formula" tries to demystify.
(#0417, Rs. 100/US$25, ISBN 81-8257-033-6)

22. Trade-Labour Debate: *The State of Affairs*

The purpose of the study is not to rehearse the never-ending story on the pros and cons of the trade-labour linkage. It not only seeks to assess the current and possible future direction of the debate from the developing countries' perspective. It is hoped that this approach will provide developing countries with concrete policy suggestions in terms of the way Forward
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The importance of rules of origin (RoO) has grown significantly over the years. RoO can be divided into two categories: non-preferential and preferential.

The paper tries to critically examine the WTO proposal on the harmonised rules of origin. The study has looked at its implications on South Asian countries, especially India. Further, in view of the contentious nature of the RoO pertaining to textiles, and the big stakes involved for South Asia, the study places special emphasis on textiles and clothing.
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27. WTO Agreement on Agriculture and South Asian Countries

Agriculture, in all its manifestations, has always been a sensitive and emotional issue for all countries, but it is more so for the poor countries of the South.

This paper looks into various commonalities in the economic situation of South Asian countries, their sensitivity attached to agriculture, and above all, a common approach to globalisation. In view of these realities, the paper tries to explore a common agenda that South Asian countries can follow during future negotiations on the WTO Agreement on Agriculture. Now the Doha Round of trade negotiations has entered into a crucial phase after the July developments. The "July Package" has resulted in agreement over the framework for establishing modalities in agriculture. In light of this, there cannot be a more opportune time for publishing this paper.
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One of the major objectives of this study is to sensitise various stakeholders (state as well as non-state actors) on the need for better regional cooperation, as it has been proved that such cooperation gives huge peace dividends. It provides a good account of existing trade between SAARC countries and highlights lessons learnt from the efforts so far made for better intra-regional trade within South Asia. It also discusses possible implications of SAFTA on South Asian countries.
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This paper tries to bring to the fore some practical political, economic and operational issues from the point of view of South Asian countries in particular and which may arise as a result of future multilateral agreement on trade facilitation. It throws light on some of the major policy issues and recommends approaches that would fit with the interests and priorities of South Asian countries. One of the major issues the paper tries to emphasise upon is that the problems of improving customs administration in the region are only a small part of a much greater problem relating to border management and domestic tax and revenue enforcement issues.
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A much appreciated paper written by Pradeep S Mehta and presented at the GATT Symposium on Trade, Environment & Sustainable Development, Geneva, 10-11 June, 1994 which highlights the inconsistencies in the contentious debates around trade and environment.
(10pp, #9406, Rs 30/US$5)

2. Ratchetting Market Access

Bipul Chatterjee and Raghav Narsalay analyse the impact of the GATT Agreements on developing countries. The analyses takes stock of what has happened at the WTO until now, and flags issues for comments. *(#9810, Rs.100/US$25)*

3. Domestically Prohibited Goods, Trade in Toxic Waste and Technology Transfer: *Issues and Developments*

This study by CUTS Centre for International Trade, Economics & Environment attempts to highlight concerns about the industrialised countries exporting domestically prohibited goods (DPGs) and technologies to the developing countries that are not capable of disposing off these substances safely, and protecting their people from health and environmental hazards. *(ISBN 81-87222-40-9)*

EVENT REPORTS

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publication will assist people in understanding the domestic as well as international challenges in respect of competition law and policy.
(48pp, #0202, Rs.100/US$25)

2. **Analyses of the Interaction between Trade and Competition Policy**
This not only provides information about the views of different countries on various issues being discussed at the working group on competition, but also informs them about the views of experts on competition concerns being discussed on the WTO platform and the possible direction these discussions would take place in near future. It also contains an analyses on the country's presentations by CUTS.
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3. **Is Trade Liberalisation Sustainable Over Time?**
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