

**INTERNATIONAL
INSTITUTE FOR
LABOUR STUDIES**

Discussion paper

DP/165/2006

Decent Work
Research
Programme

**GATS, Migration, and Labor
Standards**

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Philip L. Martin

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ISBN Print: 92-9014-791-1 & 978-92-9014-791-6
Web/pdf: 92-9014-792-X & 978-92-9014-792-3

First published 2006

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Requests for this publication should be sent to: ILS Publications, International Institute for Labour Studies, P.O. Box 6, CH-1211 Geneva 22 (Switzerland).

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Summary

There are an estimated 190 million international migrants in 2005, persons outside their countries of birth or citizenship, and 95 million are in the labor forces of their host countries. The World Commission on the Social Dimension of Globalization emphasized that more orderly south-north migration could help to reduce the deep-seated imbalances in the global economy. The General Agreement on Trade in Services (GATS) offers one potential mechanism for promoting such migration, especially by facilitating the cross-border movement of professional service providers. If GATS were to liberalize the movement of service providers, there could be “hundreds of millions” of additional migrants.¹

Plans for GATS liberalization are ambitious, but so is the ambiguity of the effects of increased service provider migration. Proponents of more cross-border movement of service providers under Mode 4, what GATS calls the temporary movement of “natural persons,” frequently begin with the estimate that, if OECD countries admitted enough migrants to increase their labor forces by three per cent, global GDP would rise by about US \$150 to \$350 billion, far more than Official Development Assistance. GATS does not define temporary (the range of permissible stays is 3 months to 3 years or more) nor exactly who is covered by its provisions. An Indian IT worker employed by Deutsche Bank in New York City would be covered by GATS Mode 4, but may not be if employed by Citibank, and would not be covered if employed by goods-producing General Motors.

The Doha Development Agenda, the focus of trade liberalization talks under the World Trade Organization, aims to provide more of the economic benefits of globalization to developing countries. However, it is not clear that Mode 4 liberalization would have the desirable effects anticipated by proponents for three reasons: who moves, overgeneralization from Indian IT, and labor standards.

- First, most of the estimated gains from more service provider migration derive from the movement of unskilled workers, where wage gaps between developing and developed countries are largest. However, most Mode 4 movements involve highly-skilled workers. If GATS were to make it easier for professional service providers to cross borders, and some of these professional migrants stayed abroad, the brain drain from developing countries could set in motion vicious circles that slowed their development.
- Second, there is a tendency to generalize from the Indian experience with IT workers in the 1990s, marked by a virtuous circle of migrants going abroad to earn higher wages and some returning to establish businesses that created more jobs for Indians who supplied services to foreigners without leaving India. This Indian experience of service provider migration leading to more trade in services may have reflected one-time conditions, including the IT-bubble economy and worries about Y2k computer problems.
- Third, GATS liberalization may run headlong into the ILO push for more decent work. Differences are the fundamental basis for both trade and migration, while ILO standards rest on equality of treatment. Proponents of more GATS Mode 4 migration sometimes make frontal assaults on laws and norms calling for equal treatment of workers. For example, instead of equal wages for migrant and local workers, they sometimes advocate

¹ In answer to the question “Are we looking at tens of millions of people moving around in the future? [under Mode 4],” Abdel-Hamid Mamdouh, director of trade in services at the World Trade Organization said “Ah, yes – it could be hundreds [of millions] if we liberalize.” John Zarocostas, Migration helps export services, Washington Times, January 3, 2005, p. A10.

allowing foreign-service providers to work for below minimum wages so that developing countries can exploit their comparative advantage.

A simple equation underlies much of the argument for GATS liberalization: more trade is good, Mode 4 is part of trade, ergo, Mode 4 liberalization of service provider is good. But if GATS were to liberalize the migration of service providers, there could be WTO-ILO conflicts, as when GATS commitments violated the bedrock equal treatment principles of Convention 97² and other ILO conventions. There could also be tensions if e.g. developing country service providers arrived in higher-wage countries and were exempted from the taxes and benefits of work-related benefit programs. GATS liberalizers aim to avoid such conflicts by creating separate procedures and regulations for the movement of service providers, which they define as a movement separate from labor migration even though 70 per cent of employment in high-income countries, and all of the growth in employment, is in services.

This paper urges caution in seeing GATS Mode 4 liberalization as a missing engine for development and a guide for managing labor migration. Most Mode 4 liberalization so far involves easier cross-border movements for managers and professionals employed by multinational firms. Expanding movements under Mode 4 could lead to more professional migration, settlement and fewer remittances and returns.

There are dangers in the other major proposals as well. Freeing up the movement of independent contractor service providers such as architects or accountants is likely to lead to the emergence of hard-to-police brokers who capture some or much of the difference in labor costs that motivates migration.³ Broadening GATS to include less-skilled service providers, from domestic helpers to janitors, produces much of the estimated US\$150 billion (1997) gain cited as a justification for liberalization, but also arouses the greatest concern in receiving countries, especially if accompanied by elimination of economic needs tests and wage parity or minimum wage rules that were established to curb worker abuse.

This paper is organized as follows. The introduction lays out the GATS framework and the basis for negotiations and reviews the four modes of trade in services. We next turn to the major demands of developing countries in the GATS Mode 4 negotiations, including a review of estimates of the potential benefits of the larger labor migration flows that could be expected if the demands were accepted. The next section covers the ILO's efforts to promote decent work in a globalizing world, followed by a discussion of the fundamental differences between trade in goods and the migration of labor, including service providers. The conclusion deals with the major question raised by the GATS effort to erect a global regime for one type of labor migration: what is the trade off between migrant numbers and migrant rights?

² Convention No. 97 (1949) defines a "migrant for employment [as] a person who migrates from one country to another with a view to being employed otherwise than on his own account."

³ See *Merchants of Labour*, C. Kuptsch (ed.), International Institute for Labour Studies, ILO, Geneva, 2006.

Introduction

The General Agreement on Trade in Services (GATS) aims to promote trade in services between its 148 member countries. Services are usually defined as items that are produced and consumed simultaneously, as with haircuts. The consumption of services often changes the consumer, as with medical services. There are four major modes or ways to move services over borders—cross-border supply, consumption abroad, foreign direct investment FDI or commercial presence, and migration, as when a self-employed worker who is paid directly by customers or as an employee receives wages while abroad, which the GATS refers to as the temporary movement of “natural persons” over borders.⁴

Mode 4 movements of service providers can be substitutes or complements for the other modes of services trade. For example, accountancy services can be provided on-line (Mode 1) rather than by sending an accountant abroad (Mode 4) or the client can travel to the country where the service provider is located (Mode 2), suggesting substitution possibilities between trade and migration. On the other hand, an IT service provider abroad (Mode 4) may return and provide services on-line (Mode 1), suggesting that Mode 4 movements can complement Mode 1 trade in services or attract clients to travel to receive services, Mode 2. Modes 3 and 4 involve the international movement of factors of production: Mode 3 commercial presence involves the movement of capital and is almost always accompanied by some Mode 4 movements, as key personnel accompany investments in subsidiaries, and Mode 4 is labor migration to provide services.

The WTO notes that “no trade in services data are available broken down by modes of supply,” (WTO, 2004, 61). However, the WTO in 2002 made estimates of trade in services by mode that suggest 85 per cent of trade in services occurs in Modes 1 and 3, cross-border supply and FDI. Mode 4 migration to provide services accounted for one per cent of global services trade, based on workers’ remittances and compensation of employees data that may underestimate financial flows to service providers’ countries of origin. There are no updated Mode 4 estimates, but most experts agreed that Mode 4 could account for 2 to 3 per cent of global trade in services.

Table 1. Global Trade in Services by Mode, 2000

Mode	2000 (\$ mils)	Per Dist (%)
1. Cross-border supply	1,000	28
2. Consumption abroad	500	14
3. Commercial presence	2,000	56
4. Migration-compensation	50	1
Total	3,550	
Source: WTO Statistics, March 14-15, 2002.		

⁴ For details see the section “Trade in Services: Four Modes.” Temporary is not defined in the GATS, but GATS explicitly does not apply to permanent migration. Most WTO members limit service providers to less than five years in their country.

Both GATS and the General Agreement on Tariffs and Trade (GATT) were incorporated into the World Trade Organization in January 1995.⁵ Liberalizing trade in services to promote economic growth is one of the main goals of the current Doha Development round of WTO negotiations aimed at making the international trading system generate more benefits to developing countries. GATS does not include all services: it excludes most air transport services as well as “services supplied in the exercise of governmental authority.”

The WTO Council for Trade in Services began liberalization talks in January 2000 via the “request-offer” approach, with each country requesting that other WTO members liberalize in a particular sector by, for example, making a sector-specific commitment to open themselves to foreign-service providers. When all requests are received, countries announce the liberalizations they are willing to offer to obtain the access to other countries’ service sectors that they requested.⁶ Requests and offers can be horizontal (covering one mode of supply in several or all sectors, such as allowing Mode 3 commercial presence in banking) or be limited to particular modes of supply and sectors⁷ (allow Mode 3 commercial presence in investment but not consumer banking). Most commitments are horizontal, covering the presence of all business visitors rather than only business visitors in banking.

For each service sub-sector, governments make commitments about market access and national treatment. They can choose no access (none), full access (unbound), or partial access (a bound commitment). Partial access restrictions can specify the number of service providers (firms or persons) permitted, the minimum or maximum value of assets or sales that are open to foreign-service providers, or the type of legal entity or joint venture allowed. GATS commitments are unilateral in the sense that they provide access for foreign-service providers; there is no corresponding requirement that sending countries e.g. cooperate to reduce illegal migration or accept the return of their nationals.

Before the Doha round was launched in November 2001, most GATS commitments dealt with exploratory business visits and moving key personnel across borders within a multinational. In most cases, business visitors are allowed to stay up to 90 days, while managers transferred over borders by multinationals are generally allowed to stay at least three years (Chaudhuri, 2004). The WTO’s services web page lists sectoral requests and offers, such as those liberalizing trade in accountancy services or construction as well as horizontal or multisectoral proposals. As of 2004, 108 of 147 WTO member countries had made horizontal Mode 4 proposals, most covering several sectors, and 70 per cent of the proposals dealt with highly skilled workers accompanying foreign investments, including business visitors, managers, and specialists (WTO, 2004, 54).⁸

Standard analyses of requests and offers in 2004-05 concluded that industrial countries want to liberalize Mode 3 trade in services, since their comparative advantage is investing capital in the form of subsidiaries to provide banking, insurance, and other services in developing countries. Developing countries, on the other hand, want to liberalize Mode 4 movements of natural persons, reflecting their comparative advantage in providing services at lower-wages (Mattoo and Olarreaga, 2004). However, except for some liberalization of intra-company transfers, the Doha round currently looks as if it will not lead to significantly

⁵ GATS was created under GATT, and both were combined in the WTO in 1995.

⁶ Specific requests were to be made by June 30, 2002, with offers due March 31, 2003 in order to reach agreement by January 1, 2005. This has not happened.

⁷ Negotiators can but do not have to use the Services Sectoral Classification List (MTN. GNS.W/120), which lists 12 broad service sectors and 160 subsectors.

⁸ Business visitors are generally limited to 3 month stays, while executives and managers accompanying foreign investment often face no time limits on their stays.

more movements of service providers, which has disappointed many developing country negotiators.

GATS applies to trade in services, not labor migration, and thus does not apply to “measures affecting natural persons seeking access to the employment market” of another country [or] measures regarding citizenship, residence, or employment on a permanent basis” in another country. GATS applies to foreigners providing services as self-employed independent contractors or as foreign employees of foreign firms, which means that most are considered migrant workers under ILO Conventions. Even if GATS negotiators take pains to emphasize that they are concerned with temporary presence movements of service providers, not labor migration, the statement that “temporary presence avoids the deeper economic and social problems associated with migration” (WTO, 2004, ii) is disingenuous, since most of the foreigners under the largest service provider program, the US H-1B program, want to settle in the United States, and many do.

If developed countries make more commitments under GATS to facilitate the entry of foreigners to “provide services,” developing country governments could file trade complaints against the immigration and labor departments of WTO member countries that slow or block the entry and work of their service providers. In an extreme case, a country that agreed to waive, e.g. wage parity or minimum wage protections for Mode 4 service providers could be abiding by its GATS commitments while violating ILO Conventions and norms.

Trade in Services: Four Modes

The GATS has 29 articles covering the four major modes of providing services:

- **Mode 1.** *Cross-border supply* are services provided from the territory of one country to another, such as telephone calls that cross borders and are answered in call centers abroad. Mode 1 service supply is most analogous to trade in goods, since services but not worker-producers or buyer-consumers cross borders.
- **Mode 2.** *Consumption abroad* are services provided inside a country to foreign visitors, such as tourism or educational and health services. In this case, consumers cross borders to reach the service provider and receive the service.
- **Mode 3.** *FDI or commercial presence* include services provided via a subsidiary of a bank, insurance company, or other firm that is established in the country where the service is provided. Mode 3 services are often accompanied by foreign investment and some migration, as when the investor transfers managers or specialized workers to the subsidiary.
- **Mode 4.** *Temporary movement of natural persons* involves services provided by individuals abroad. These migrants can be foreign workers, as when Indian IT workers are employed abroad as wage workers, or self-employed migrants, as when architects or consultants cross borders to supervise construction of buildings they have designed and are paid directly by final consumers.

Liberalization of trade in services is achieved primarily via the most-favored-nation (MFN) principle, which holds that if a country allows foreign firms to enter a sector such as banking, all (foreign) banks from all WTO member countries should be treated equally. However, unlike reciprocal trade liberalization in goods, as when the US and Mexico simultaneously reduce tariffs on auto imports, GATS negotiations may not be reciprocal. For example, the US could allow foreigners to enter and teach in public schools, but other countries may not reciprocate (the US does not require public school teachers to be US citizens, but some other countries have a teacher citizenship requirement). Once a GATS liberalization commitment is made, there is to be no backtracking, e.g. the US committed to 65,000 H-1B visas a year in the first round of GATS negotiations, and if it were to reduce this ceiling, it could

be obliged to compensate other WTO members by offering market access in another area equal in value to the loss of H-1B visas.⁹

The second GATS liberalization principle is national treatment—equal treatment for foreigners (or foreign firms) and nationals (or national firms). Under trade in goods, national treatment means that governments should not place additional taxes on foreign-made cars or provide subsidies for locally produced cars. However, many services are provided by governments, and GATS allows exemptions to favor nationals in providing government services. For example, GATS allows governments to permit only citizens to be employed in the provision of government-provided or funded-services.¹⁰ Since GATS is about trade and not migration, governments are explicitly allowed to cite national immigration policies as a reason to close a particular sector to foreign-service providers and to deny entry to particular individuals.

Services are 70 to 80 per cent of output and employment in the world's high-income economies, and the service sector tends to expand with economic development, as when women work outside the home, generating a demand for day care and restaurant meals. The demand for most services is income elastic, which means that if incomes rise 10 per cent, the demand for tourism or health care services rises more than 10 per cent. Finally, many services that were once considered to be immobile have become mobile with falling telecommunications costs, including back-office jobs processing bank and medical records, which first moved from the inner cities near the headquarters of banks and insurance companies to suburbs within industrial countries and today are often outsourced abroad.

Labor typically accounts for 70 to 80 per cent of the cost of producing services, versus 20 per cent of the cost of producing manufactured goods. Lower wages in developing countries give workers from such countries a “comparative advantage” in providing many labor-intensive services, especially as technologies and training in more occupations becomes globally standardized. Industrial country firms have outsourced some computer-intensive services, as exemplified by call-center operations in India and coupon-redemption centers in the Caribbean, enlarging Mode 1 services trade. Health-care tourism is a rapidly expanding form of Mode 2 trade in services in some countries, and multinationals have expanded Mode 3 FDI-related trade in services, which often leads to Mode 4 movements of key personnel to manage the investments.

The distinction between producing goods and services is blurring, which can make Mode 4 coverage unclear in specific cases. Foreign farm workers picking apples would seem to be excluded from the GATS because they are employed abroad to produce goods, but the WTO noted that temporary migrant workers brought to a farm to pick apples by a labor contractor may be covered by Mode 4 because they are providing “services incidental to agriculture.”¹¹ With many employees in factories supplied by temporary help and employee leasing firms, the

⁹ H-1B visas allow US employers to have admitted and employ foreigners with BA degrees or more for up to six years; the admission process is simplified, and H-1B visa holders can bring their families and adjust to immigrant status while in the US if their US employer sponsors them.

The US reserved 6,800 H-1B visas for nationals of Chile (1,400) and Singapore (5,400) under bilateral free-trade agreements that went into effect in 2003, leaving 58,200 for the rest of the world. So far there have been no complaints, even though the 65,000 limit on H-1B visas was reached in August 2005, before fiscal year 2006 began on October 1, 2005—this is the first time that the annual limit of H-1B visas was used up BEFORE the start of the federal fiscal year.

¹⁰ Countries may also de-regulate the provision of services, but limit competition to national suppliers, e.g. introduce vouchers and charter or private schools, but allow only national firms employing citizens to provide educational services.

¹¹ Aaditya Mattoo of the World Bank said: “It might seem to be a gimmick of nomenclature to call a fruit-picker a provider of fruit-picking services, but perhaps it can be seen instead as the kind of imaginative action that negotiators need to take in order to make Mode 4 match more closely the needs of both the immigration regimes and the business community.” Session 7 of the IOM – World Bank – WTO Seminar on Trade and Migration, October 4-5, 2004.

line between goods and services and the workers employed to produce them can be very blurry (Nielson and Taglioni, 2004, 8).

There are no consistent measures of Mode 4 movements. A recent WTO report used several measures of Mode 4 flows, including a financial measure: compensation of employees (monies transferred to home countries by persons abroad less than one year) and workers remittances (transfers home by those abroad more than one year). Other measures of Mode 4 movements involve counts of foreign workers. In an analysis of the US for fiscal year 2000, the WTO reported that 137,000 new employer requests for H-1B visas were approved, that 75,000 were for computer-related jobs, and that two-thirds of the foreigners requested to fill these computer-related jobs were Indians. The Mode 4 imports associated with these 137,000 H-1B petitions were US\$6.5 billion, or US\$47,500 per foreign worker (WTO, 2004, 60). In this case, Mode 4 analysis appears to be incidental to analysis of foreign worker employment and earnings.

Developing Countries' Mode 4 Demands

The WTO aims to promote cross border flows of goods and services, and GATS aims to increase trade in services and the number of mobile service providers. Mode 4 movements can be affected by both trade and migration policies. A country's Mode 4 trade commitments can affect migration policies by e.g. allowing easier entry to particular types of service providers, while a country's migration policies can affect how easy it is for a service provider to secure the necessary entry and employment documents required to actually become a service provider abroad.

Developing countries led by India advocate liberalization of Mode 4. Their requests fall into four major areas that would make it easier for service providers to cross borders:¹² eliminating the economic needs tests receiving countries use to determine if foreign workers are necessary, expediting visa and work permit issuance, facilitating credentials recognition and obtaining needed licenses, and exempting foreign service providers from participating in work-related benefit programs and the payroll taxes that finance them. Ideally, liberalizers would like a "GATS visa" that would be uniform across WTO member countries (Chandra, 2001, 648) and allow multiple visits within a given period of time, say from one to three years.¹³

Most industrial countries have been reluctant to liberalize Mode 4 movements for reasons that range from debates over whether foreign professionals are needed and the effects of their presence on local labor markets to widespread recognition, indeed even encouragement in some countries, that temporary service providers can become immigrants by adjusting their status to settle abroad. Many industrial countries are considering major reforms to their immigration systems, including Canada and the US, or have recently made major reforms and are likely to want to see how these new laws affect migrant inflows before opening additional doors, such as Britain, Germany, Ireland and Spain.

Economic Needs Tests

Economic needs tests (ENTs) require employers seeking to hire foreign workers or service providers to satisfy their governments that local workers are not available. There are two major types of tests: pre-admission and post-admission. Pre-admission tests, sometimes called labor

¹² Chandra (2004, 634) calls these four categories restrictions on entry and stay, recognition of credentials, differential treatment, and regulations on commercial presence, a taxonomy that groups economic needs test and visa-work permit issuance.

¹³ The Coalition of Service Industries says that a "GATS visa" allowing multiple short-term visits would be limited to professionals and highly skilled individuals, and proposed a model of how countries could implement a GATS visa regime. GATS visas would be given to employees of established foreign firms, which would post bonds on each GATS visa holder that would be forfeited if the visa holder did not obey the terms of the visa.

certification, require employers to demonstrate to labor agencies that they tried to find local workers while offering at least prevailing or government-set wages—if they fail to find local workers, they are “certified” to employ foreign workers. To obtain certification, employers place ads seeking local workers for a specified period of time and keep logs that record why local applicants were not hired, which keeps the border gate closed until the government certifies or agrees that foreign-service providers are truly needed.

The alternative is a post-admission test or employer attestation. Under this trust-the-employer approach, the employer seeking to hire foreign workers attests or certifies that the foreigner is needed to fill the job and makes other assurances, such as promising to pay foreigners the higher of the minimum or prevailing wage and guaranteeing that the job is not vacant because of a lawful labor dispute. Government approval of employer attestations in countries such as the US is virtually automatic, and there are generally no inspections unless the labor department receives complaints. Post-admissions tests allow employers to open border gates, often within days of applying for visas for foreign-service providers.¹⁴

Developing countries and most employers prefer few or no economic needs tests, post-admission rather than pre-admission tests, and more transparency in procedures used by government agencies to determine prevailing wages and other factors that are used in both pre-admission and post-admission systems.¹⁵ Labor departments usually consider protecting local workers to be a top priority, so that developing countries and employers often seek systems that minimize the role of labor departments in decisions about foreign workers. Even when labor departments maintain a key role in labor market testing, reductions in data collection and job matching by public employment agencies have reduced their credibility in arguing that employers do not need the foreign workers they are seeking.

Economic needs tests are based on the premise that most jobs can be filled by local workers, including settled immigrants, so that the burden of proof is on the employer to prove that a temporary worker is needed to fill a vacant job. Economic theory spells out how markets adjust to gaps between demand and supply. If the demand for IT-specialists and nurses exceeds supply, wages should rise, which has the effect of reducing the demand for IT-specialists and nurses while increasing the supply. The reduction in demand can involve substitution of capital for labor, restructuring jobs to allow more part-time or off-site work, or increased trade, as when computer work is outsourced abroad or patients are sent abroad for medical care. In some countries, an annual cap or quota is fixed to limit the number of foreign workers that can be admitted in one year and/or for a particular industry and area.

There are three major reasons why governments may decide to allow employers to import foreigners rather than let rising wages bring demand and supply into balance:

- First, education may be required to fill the job, so that the local supply cannot be increased quickly. Importing IT-specialists and nurses in such cases can prevent production bottlenecks that could reduce the employment in the entire sector, as when outsourcing IT jobs also leads to layoffs of local service workers.
- Second, diverse work teams may increase productivity and service quality. Having people of diverse backgrounds on a team may enable it to solve problems faster, just as having a diverse medical staff can make patients from many backgrounds more comfortable.

¹⁴ There are also in-between labor market checks. One strategy, “blanket certification,” involves the government specifying labor-shortage occupations such as nursing and approving employer requests for foreign nurses if the employer makes wage and other assurances. Employers who are requesting workers to fill jobs for which there is not blanket certification must go through the normal certification steps involved with searching for local workers.

¹⁵ In some countries, there is no appeal if a labor agency rejects an employer’s application for a foreign service provider visa.

- The third reason is cost—it is usually cheaper to import foreigners than to have employers undergo wage-induced adjustments. Restructuring work can be costly because it leads to wage adjustments that affect a large group of workers. For example, if there are trained nurses not working as nurses, as in most industrial countries, and there are shortages of nurses in inner-city hospitals and on night shifts, it may be cheaper to import nurses and not adjust the salary scale rather than make the wage adjustments needed to get local nurses back into the profession.

Wages lie at the core of economic needs tests, and the wage equality that is a bedrock principle of ILO Migrant Worker Conventions 97 and 143 is often attacked by those who want to liberalize Mode 4 migration. Chaudhuri et al (2004) assert that “Wage-parity... is intended to provide a nondiscriminatory environment, [but] tends to erode the cost advantage of hiring foreigners and works like a *de facto* quota.” Chanda says that wage parity “negates the very basis of cross-country labor flows which stems from endowment-based cost differentials between countries.” (2001, 635).

Instead of wage parity between local and foreign workers, Chanda argues that the wages of foreign-service providers can be lower but “within a fair margin” of host-country minimum or prevailing wages. She argues that the actual level of these lower-than-average foreign-service provider wages could be “decided mutually by the concerned countries under bilateral wage agreements and [in] discussions between professional or industry associations in these countries.” (2001, 650) Chanda advocates taxing less-skilled foreign-service provider migrants to generate funds to compensate local workers in developed countries who lose their jobs or whose wages may be depressed by the presence of the migrants, that is, Chanda favors more migration even if the result is displacement and wage depression in receiving areas. (2001, 650).

The long-term goal of some governments is a GATS-issued Service Provider Visa that would allow first professionals from architects to zoologists, and later less-skilled workers, to move freely between GATS signatory nations as employees or as self-employed service providers.¹⁶ One model is the Asian-Pacific Economic Cooperation (APEC) Business Travel Card, issued by national authorities to facilitate business travel among APEC countries. In practice, however, the Business Travel Card is simply a three-year multiple entry visa that expedites entry and permits two- to three-month stays in other APEC countries. It does not allow holders to work for wages as a local service provider (Nielson, 2002).

Visas and Work Permits

Economic needs tests and wage rules determine if foreigners are needed, while visa and work permit procedures determine if a particular individual can actually enter the country. After an employer receives permission to hire a foreign service provider, the foreigner must normally be interviewed by a government agency, such as consular staff in the migrant’s country of origin, to determine if she is eligible for entry and work visas. These procedures can be simple and handled by mail, or require in-person interviews that must be scheduled and may involve travel from the migrant’s residence to a consular office. There may also be fees involved in obtaining required visas.

In some countries, separate agencies issue work and residence visas, and there can be conflicts between them over whether a visa should be or should have been issued to a particular individual, which increases costs and uncertainties. Under the US system, for example, a visa

¹⁶ Some countries, including the UK, already allow the admission of “independent service providers.” In the UK they are non-EU foreigners who achieve at least 75 points in five personal areas: education (maximum 30 points for a Ph.D.), work experience (maximum 25 points for five years), past earnings (25 points for \$65,000 a year, 35 points for \$165,000 a year), work achievements (15 or 25 points for publications and honors), and skills in UK “priority areas,” such as general practitioner doctors (www.workpermits.gov.uk/).

issued by the Department of State abroad is technically a “letter of introduction” to the immigration inspector at the port of entry, who may refuse entrance to a foreigner with a valid visa if, for example, the inspector believes the foreigner will violate the terms of the visa. Developing countries do not like this multi-layered system for visa issuance and acceptance, and would like the GATS to lead to “one-stop GATS visa shops,” perhaps outside normal consular and labor agencies, that would issue multiple-entry visas and work permits.

Credentials and Licenses

A major demand of developing countries in the GATS negotiations is faster recognition of qualifications earned in the migrant’s country of origin. Professional migration is facilitated if degrees and credentials earned outside the country of employment are recognized quickly and in a transparent process, and if there are national rather than state or provincial bodies issuing licenses and monitoring the quality of the services provided.¹⁷

There are few national and fewer international bodies vetting individuals who earned their qualifications abroad. Instead, the usual way to facilitate the recognition of an individual’s credentials is via mutual recognition agreements (MRAs), as within the European Union (EU) and between previous mother countries and colonies, as in the British Commonwealth. The basic principle of a MRA is that, if one government issues a credential or license, other governments will do so on a reciprocal basis so that a person recognized as a doctor in France will also be recognized as a doctor in Germany, and vice versa. Despite MRAs within the EU, relatively few professionals move from one country to another, highlighting the importance of factors such as recruitment and language in inducing professionals to cross borders.¹⁸

MRAs are most common when educational systems and credential-issuing processes are similar. Efforts to develop MRAs among countries at different levels of development have been limited largely to accounting and actuarial sciences, perhaps the most global occupation, although there is discussion of also standardizing medical education around the world. Many developing countries would like a global MRA administered by the WTO, so that a WTO-certified doctor would be recognized as a physician in all member countries.¹⁹ However, until there are more MRAs, or a WTO-administered MRA, many developing countries want developed countries to provide temporary licenses to foreign service providers who present credentials earned at home rather than making them wait until they can pass local qualification tests. For example, immigrant doctors in Canada often complain of the time required to take theoretical and practical tests to obtain Canadian credentials, and many engage in work such as driving taxis until they can pass the required local tests.

Most credentials require earned degrees and tests. Another developing country demand is to allow experience to substitute for formal education in meeting education requirements for licensed occupations. Some developing countries argue that, if the host-country employer deems

¹⁷ In Canada and the US, many of the licenses needed to work in professions such as doctor or nurse are issued at the provincial or state level, and are valid only in the province or state issued. Canada has 15 regulated professions and more than 400 regulatory bodies, and is seeking to reduce the “brain waste” that occurs when an immigrant trained as a doctor drives a taxi because he cannot quickly get a Canadian license by making grants to professional organizations so that they can more quickly determine if foreign-trained doctors, nurses, engineers and other professionals qualify for Canadian licenses. It has been estimated that immigrant earnings would be C\$2 billion higher if they worked in the occupations for which they are educated (Canada: Brain Waste. 2005. Migration News. Vol. 12, No. 3. July).

¹⁸ The EU’s mutual recognition system applies only to EU nationals, so that a Turk recognized as a doctor in Germany does not have to be recognized as a doctor in France.

¹⁹ On May 29, 1997, the WTO Council for Trade in Services adopted guidelines for mutual recognition in the accountancy sector.

an individual qualified to fill a job, the employer's word should suffice. Developing countries note that employer assessments are most common in "new fields" that do not have a credential infrastructure, such as IT, and that there are few checks on the qualifications of managers sent between branches of a multinational. There has been some liberalization in the direction of allowing an employer to vouch for the qualifications of the foreign employee sought. For example, foreigners are generally required to have college degrees to obtain US H-1B visas, but they may substitute at least three years of relevant work experience for the degree if the employer deems them qualified.²⁰

Taxes and Service Providers

The fourth developing country demand centers on social security and related tax issues. Payroll taxes add 20 to 40 per cent to wages in most industrial countries, and developing countries complain that migrant service providers are often required to pay them, even when they have limited or no access to the benefits these taxes finance. Some developing countries have proposed keeping migrant service providers out of work-related programs, with the possible exception of work-related accident insurance.

Exempting migrant service providers from payroll taxes would lower their cost, adding to the comparative advantage of developing country service providers. On the other hand, many migrants find ways to stay abroad even if they were intending to be only temporary migrants. If migrants excluded from work-related benefit programs settle, they might wind up with fewer social security benefits than other workers who have similar employment records, raising equity issues. Exempting migrant service providers from work-related taxes and benefit programs may violate the WTO norm of "national treatment" as well as ILO conventions calling for equality between migrants and local workers.

There are a number of other developing country demands that have received less attention. For example, in most countries, spouses and dependents do not qualify for work permits simply because the household head gets a work permit, which some developing countries consider a barrier to migration. Like other temporary workers, Mode 4 migrants may lose their right to be in the country if they lose their jobs, which may discourage them from filing complaints of labor market rules. There may also be confusion about which country's labor law applies under GATS Mode 4, as in the case of an Indian IT worker employed temporarily by an Indian or European bank in New York.

Mode 4: Big Potential Gains, Limited Liberalization

The usual argument for liberalization of Mode 4 is that "temporary movement can help realize the gains from trade in services while averting social and political costs in host countries and brain drain from poor countries" because temporary service providers, unlike guest workers, will return. (Chaudhuri et al, 2004). The estimates of the gains in global GDP from more migrants moving from developing to developed countries are three to four times Official Development Assistance. For example, Winters et al. (2003) estimated that if OECD countries increased their labor forces by three per cent with migrants from developing countries, the gain would be US\$156 billion in 1997.

²⁰ The US-H1B program allows US employers to temporarily employ a foreign worker in a specialty occupation, defined as an occupation that "requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty." <http://atlas.doleta.gov/foreign/h-1b.asp> In 1999, the US Department of State testified that 20 per cent of the applications for H-1B visas in Chennai (Madras) India included false education and employment credentials. H-1Bs: Visas Run Out. 1999. Migration News. Vol. 6. No. 7. <http://migration.ucdavis.edu>

The WTO in a 2004 report argued that “liberalization of Mode 4 trade...will increase global wealth, favor specialization and a more efficient allocation of resources, foster transfer of technology, encourage innovation, and offer consumers in each country a wider variety of services at lower prices.” (WTO, 2004, 47). The WTO went on to suggest that the benefits of Mode 4 movements range from reducing unemployment and generating remittance flows in sending countries to increasing other forms of services trade and expanding trade in goods. More trade, in turn, raises global output and makes most people in both sending and receiving countries better off.

Projected Gains: US\$150 billion

Migration and trade arise from differences between areas, as people move from one area to another for higher wages, jobs, and opportunities. The greater the differences between areas, as between unskilled workers in developing and developed countries, the greater the potential gains from migration to the migrating person and to global economic output. However, as Chaudhuri et al, (2004) note, “few countries are today willing to assume multilateral commitments on unskilled labor,” such as agreeing to accept a certain number of unskilled migrants each year.

If there were more Mode 4 “temporary labor migration,” the largest gains would come from the movement of low-skilled workers, where the wage gaps are greatest, sometimes 20 to one or more.²¹ Mode 4 liberalization should narrow these wage gaps by putting upward pressure on wages in sending countries and downward pressure on wages in receiving countries.²² Most of those estimating the gains from more Mode 4 migration draw exact parallels to trade in goods, emphasizing that workers can move over borders or labor-intensive goods can cross borders, and that adjustment assistance for workers displaced by increased trade in goods, such as extended unemployment insurance and retraining for new jobs, could also cushion any adverse impacts of more Mode 4 migration (Winters et al 2002).

The starting point for most analyses of the potential gains from moving more workers from lower to higher wage countries is the effort by Hamilton and Whalley (1984) to estimate the effects on global GDP of factor price equalization, or moving enough workers over borders so that wages were equalized in seven multi-country regions. They assumed the world’s labor supply was fully employed to produce a single output and used constant elasticity of substitution production functions to estimate differences in the marginal productivity of labor, assuming that differences between regions were due to migration restrictions. Hamilton and Whalley estimated the increase in output that would result from workers crossing national borders until marginal productivities and wages were equalized within regional groupings of countries, so that workers in receiving areas saw their wages fall while capital owners had higher returns; there were the opposite distributional effects in sending areas.

If there were sufficient movement of labor to equalize wages, Hamilton and Whalley estimated that global GDP could more than double, rising from \$8 trillion in the base year of 1977 to between \$13 trillion to \$24 trillion after the migration was completed (no time period was specified during which the equalizing migration would occur). The magnitude of the potential gain from more migration has led many economists to assert that even small increases in labor migration would significantly raise global GDP, since the first migrants to move gain

²¹ Successive rounds of trade negotiations have reduced differences in goods prices to two to one or less across most countries.

²² According to the WTO, the prices of goods between developed and developing countries are more similar than the prices of services, so that more trade in services would reduce the gaps in the prices of services and the wages of service providers. (WTO, 2004, 50).

the most because the wage gaps are largest at the beginning of the convergence process set in motion by migration.²³ Of course, the estimated gains from more migration depend on the assumptions, such as full employment and wages are determined by marginal productivity and that the ratio of wages to profits is one in both rich and poor countries before migration barriers are lifted. Finally, it is assumed that capital does not move even as labor migrates.

Complex models are not needed to grasp the basic point that, if a person crosses a border and earns \$10,000 a year more, the personal gain of \$10,000 also increases global GDP, even if individual and global gains are adjusted for purchasing power. Given such potential gains from more migration, why are there migration restrictions? The restrictions are especially surprising when it is remembered that the benefits of labor migration tend to be immediate, measurable, and concentrated, as migrants go to work abroad and generate higher wages that are measurable in monetary terms.²⁴ The costs of migration, if any, tend to be deferred, diffused, and harder to measure, as when wages in destination areas rise slower due to the presence of migrants, or if settled migrants send for their families and increase tax-funded schooling and health care costs. There are also more difficult to measure integration and diversity issues that can arise with settlement, ranging from bilingual education, distributing scarce resources such as housing, and maintaining unity in a more diverse population.

Winters et al. (2003) produced the estimates that figure most prominently in the debate over liberalizing Mode 4. Using a computable general equilibrium (CGE) model of the global economy, they asked how much higher GDP would have been in 1997 if there had been three per cent more migrants in OECD countries from developing countries. The Winters model relies on assumptions that range from perfect competition to market-clearing prices, and assumes that migrants move from lower to higher wage areas and remit some of their earnings. Winters et al assume that migrants have a lower productivity than local workers in receiving countries.

Adding 8 million skilled and 8.4 million unskilled workers to OECD labor forces would, according to the Winters model, have increased global GDP of US \$26 trillion in 1997 by US \$156 billion or 0.6 per cent, with the migrants getting 63 per cent of the gain and the owners of capital in receiving countries 44 per cent (Winters et al, 2003, 1145). As expected, wages decline in receiving countries and rise in sending countries, while output rises in receiving countries from the presence of more fully employed workers and falls in sending countries, as some of their fully employed workers emigrate. Winters et al emphasize that losses to developing countries are minimized if unskilled rather than skilled workers move (2003, 1148).

The analyses of Winters and others are the basis of WTO assertions that there would be substantial gains from more Mode 4 movements. The WTO asserts that more migrants should also increase imports and exports of goods²⁵ and “may help to alleviate problems caused by ...an aging population...[as] the temporary movement of young foreign workers to developed countries may re-equilibrate the share of the working population...[and] may reduce the size of the illegal labor market.” (WTO, 2004, 49). The WTO stresses that Mode 4 migration involves temporary service providers, thus avoiding “additional costs in terms of infrastructure (such as schools and housing) and social and cultural integration” associated with permanent migration (WTO, 2004, 49, footnote 13).

²³ Harvard economist Dani Rodrik asserts that “even a marginal liberalization of international labor flows would create gains for the world economy” far larger than prospective gains from trade liberalization.

²⁴ Owners of capital in receiving areas also benefit.

²⁵ A US study found a 10 per cent increase in temporary service providers was associated with a 2.5 per cent increase in imports and exports from the migrants’ country of origin as well as more Mode 1 trade in services and more FDI. Most of these effects were from Indian IT workers arriving in the US to provide IT services. (WTO, 2004, 53).

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Potential Losses

There are also potential losses from more Mode 4 migration, many analogous to the costs that arise from trade in goods. The arrival of foreign-service providers can depress the wages of local service providers or increase their unemployment, just as more imports of labor-intensive goods can lead to factory closures and job losses. If countries make binding commitments to admit IT workers or nurses, these GATS commitments may affect the education and career choices of local youth, as they avoid training for occupations attracting more foreigners, raising issues about long-term competitiveness.

For example, as the share of foreign-born science students increased in the US over the past several decades, more employers began to require lengthy post-doc periods of experience before offering graduates “real jobs:” post-docs are typically low-paid work in the labs of senior scientists. The resulting lower lifetime earnings discouraged many US students from getting doctorates in the basic sciences. One estimate is that bioscientists earn US\$1 million less than MBAs graduating from the same university in their lifetimes, in part reflecting the much longer period of low-paid training (Teitelbaum, 2003).

In sending countries, the costs of more Mode 4 migration may include loss of skills and investments in education. Because of the potential for settlement abroad, the WTO acknowledges that the “overall impact of liberalization of Mode 4 mobility on the level of human capital of a country is ambiguous,” with the balance depending on whether the extra skills acquired by returning service providers exceed the skills lost due to the settlement of stayers. If the best and brightest from a country migrate to a higher-wage country, and the most successful migrants stay abroad, the skills balance is likely to be negative.

Virtuous or Vicious Circles

The effects of labor or service provider migration on sending countries can be summarized by the extremes of virtuous or vicious circles. Virtuous circles can arise when young workers who would have been unemployed at home find jobs abroad, send home remittances that reduce poverty and are invested to accelerate economic and job growth, as when they return with new skills and technologies that lead to new industries and jobs. As a result, there can be convergence in economic conditions and opportunities between sending and receiving areas.

The alternative vicious circle can unfold if employed nurses, teachers or engineers emigrate so that quality and accessibility in health and schooling decline and factories lay off workers for lack of key managers. In this scenario, migrants abroad do not send home significant remittances, or send home remittances that fuel inflation rather than generate jobs. If migrants return, they rest and retire, so that there is only a limited transfer of new ideas, energies, and entrepreneurial abilities.

It is an empirical question whether virtuous and vicious circles are more common. Much of the push for Mode 4 liberalization comes from India, which in 2003 had about US\$10 billion in revenues from exports of computer-related products. The Indian IT success story began in the mid-1980s, when there were only 7,000 IT specialists whose skills were recognized by multinationals that sent them to subsidiaries outside India. Independent brokers soon emerged to recruit and deploy Indian IT workers to firms that did not have operations in India.

The virtuous development circle was set in motion by IT workers who returned with contracts to provide computer services to foreign firms. The Indian government bolstered this nascent computer outsourcing industry by reducing barriers to imports of computer-related goods and upgrading the communications network. Employing Indians in India to do computer work had important spill-over effects: more government emphasis on improving the electricity and telecommunications infrastructure, wider acceptance of merit-based selection systems in schools and businesses, and better IT services in India, since it made economic sense to offer

Indians the same world-class level of services that were being offered to foreign firms. The virtuous circle was completed with a sharp jump in enrollment in science and engineering schools, pushing the number of IT specialists to 700,000 and making India a leading provider of low-cost, high-quality IT specialists and services.

By contrast, the recruitment of African doctors and nurses by hospitals in high-income countries such as the UK may have set in motion a vicious circle of poorer health care that retards economic development. In many ex-colonies, doctors and nurses are trained to colonial-power standards, but financially strained and government-funded health-care systems often find it hard to lure doctors and nurses to poorer rural areas in sending countries. Many governments assign new graduates to rural areas, and enforce these assignments by withholding licenses until a year or two of service is completed. The result is often a bad experience that prompts emigration. In South Africa, for example, about 40 per cent of the 1,300 doctors and 2,500 nurses who graduate each year plan to emigrate as soon as possible.

Health care is a peculiar sector, with government strongly influencing demand via the provision of clinics and charges for patients and drugs, and influencing supply by subsidizing training and setting salaries and working conditions. However, attempting to limit the emigration of health care professionals may not be the best long-run response to an inadequate wage premium to draw health professionals to rural areas. In South Africa, for example, there were 32,000 unfilled nursing jobs and 7,000 South African nurses abroad in 2002. Even if all those abroad returned, there would be unfilled vacancies. There were also 35,000 persons in South Africa with nursing credentials not working as nurses, and inducing them to return to nursing could fill more vacant jobs than stopping emigration. The experiences of India and the Philippines suggest that there are private sector ways of financing health education, especially for nurses, so that limited tax revenues are not subsidizing health care training for richer countries.²⁶

Other Effects

There are also other effects of more Mode 4 migration that raise questions with no easy answers. For example, global health care chains can be created when doctors and nurses go abroad to be temporary service providers, and the country they leave behind imports nurses to replace them, as with South African doctors and nurses going to the UK and being replaced at home by Cubans. In this case, trade in services has increased, but what has happened to welfare in the affected countries? Much the same question could be asked about global care chains for domestic helpers, as some of the women going abroad to care for children in higher-income countries hire local or migrant women to care for their own children. In such cases, do the remittances sent home by mothers compensate for loss of maternal care?

One way to think about the gains and losses from more labor migration, which is what GATS Mode 4 is about, is to think about what would happen if there were one country with free internal movement instead of 200-plus nation states. Under a one-country regime with no internal barriers to the movement of people and goods, there would undoubtedly be significantly more flows of people from lower to higher wage areas, likely accompanied by private and government policies to cushion the effects of the increased migration, either by slowing it with barriers or by providing incentives to stay at home.

²⁶ In the Philippines, some 6,500 to 7,000 nurses graduate each year, and many plan to go abroad for better pay, more professional opportunities, and because of ties to relatives abroad. The Philippines Nurses Association Inc. (PNA) estimated in 2002 that 150,885 Filipino nurses were abroad. Most nurses are trained in private, tuition-charging schools, with students taking out loans to pay for their education. Private recruitment firms find jobs abroad for graduates, and they compete with each other on the promises they make regarding wages, working conditions, and eventual immigrant status.

For example, the prevailing wage laws common in many countries for publicly supported construction projects can sometimes be traced to contractors recruiting workers in poorer rural areas, as with contractors in northern US states recruiting Black workers for construction projects. Northern state unions got prevailing wage laws established in the 1930s requiring all workers to be paid the local prevailing wage to reduce the incentive to recruit workers from lower-wage areas inside the country who were willing to work for lower wages.

GATS Negotiations and Alternatives

The standard analysis in summer 2005 is that the Doha development round of trade negotiations that aims at maximizing benefits for poorer countries is “in trouble” because industrial countries refuse to reduce farm subsidies and that the so-called “Singapore issues” related to intellectual property and government procurement are unresolved. However, there has also been little progress in GATS negotiations, especially in making offers and commitments to liberalize Mode 4 movements.²⁷

A 2004 analysis of the negotiations complained that many service sectors remain off limits to foreign service providers, and that the “liberalization commitments” made by developed countries often limit the access of foreign service providers to jobs and earnings by establishing economic needs tests or placing quantitative limits on entries. (WTO, 2004, 46-71). Most countries’ GATS offers simply reflect current policies, which tend to limit the movement of service providers to professionals, managers, and highly skilled workers. In some cases, current policies are more liberal than GATS commitments. For example, most countries that admit unskilled service providers via guest worker programs have excluded these programs from their GATS commitments.²⁸

The firmest liberalization commitments in the GATS negotiations are for business visitors, intra-company transfers, and professionals. A third of Mode 4 commitments refer to intra-company transfers, such as managers and specialists being moved over national borders within a multinational, that is, the country of residence changes, but not the employer. Many of these commitments permit managers to enter and work without tests of the local labor market or wage tests, but most include conditions, such as requiring that the worker being transferred was employed at least a year in the multinational’s home country or a third country²⁹ (WTO, 2004, 55). Developing country representatives have called for extending current commitments that give relatively free entry to managers and professionals to workers who are not employed a year or more by the transferring firm and to allow the entry of less-skilled workers (Chandra, 2001, 647-48). They would also like entire sectors to be open to foreign-service providers, such as professional and business services.³⁰

²⁷ “WTO Chair Cites Absence of Initial Offers As Major Problems Facing Services Talks,” WTO Reporter, September 5, 2004.

²⁸ There are often two reasons cited to explain why e.g. the Germany-Poland and Canada-Mexico seasonal agricultural worker programs are not part of GATS. First, as bilateral programs, they violate WTO non-discrimination policies: although countries can limit benefits to certain countries, the basis of the WTO is a level playing field or treating all member countries equally. Second, bringing seasonal worker programs under GATS would limit the flexibility of governments to adjust numbers and program rules.

²⁹ One of the EU’s liberalizing offers is to allow multinationals to transfer recently hired university graduates to their EU subsidiaries for one-year of training.

³⁰ The *North American Industry Classification System* (NAICS) defines professional and business services to encompass scientific and technical services (54), management of companies and enterprises (55), and administrative and support and waste management services (56).

Industrial countries say that it is hard for them to liberalize the entry of foreign-service providers because of high unemployment rates, especially in the sector that symbolized Mode 4 movement in the 1990s, information technology. For example, the unemployment rate of IT workers in the US was 5.7 per cent in 2004, higher than the 5.5 per cent unemployment rate of all US workers, marking the first time in which a group of professionals who had been in short supply as recently as 1999 and 2000 had a higher than average unemployment rate. Security concerns and fears of illegal migration make most industrial countries reluctant to open new sectors, beyond IT and health care, to foreign-service providers.

The best alternative to the Mode 4 movement of service providers may be more Mode 3 migration. Most countries, developing and developed, allow multinational firms to move managers and specialists over borders between subsidiaries fairly easily. Indian IT firms have demonstrated that developing country multinationals can use intra-company transfers to move IT workers over borders, which is Mode 3 service provision.³¹ Chaudhuri et al. (2004) offer a compromise: allow less-skilled employees to move over borders within a multinational firm, but restrict such intra-corporate transfers to one year abroad. If this proposal were adopted, an Indian multinational could establish a US subsidiary and move managers, IT professionals, and janitors to the US without testing the US labor market or paying these transferred workers US wages so long as their stay was a year or less.

What about independent service providers, such as architects and translators, who often work in a non-employee relationship with their client-consumers? Most industrial countries require self-employed migrants to provide the service to a final consumer, but developing countries say their service providers do not have contacts to find consumers abroad. Developing countries would thus like industrial countries to allow their professionals to enter and work as employees for architectural or accounting firms, movements that are currently subject to guest worker rules.

If GATS liberalized the entry of foreign-service providers arriving to fulfill contracts with final consumers, a new class of brokers or recruiters would likely emerge to match customers in receiving countries with service providers in sending countries. Receiving country brokers would obtain contracts from customers, sending country brokers would find service providers to fulfill them, and both would charge fees whose size would reflect the wage gap between the countries. With no labor market tests or wage parity requirements, developing country architects, accountants, and others could sign contracts providing very low wages, with brokers, migrants, and perhaps governments justifying them as imparting “experience” in addition to income.

One way to try to police abuse under such a scheme would be to require all service provider-customer contracts to be registered with a government agency, so that fees and thus wages are publicly known. However, even apparent “normal prices” in registered contracts could be evaded by brokerage fees paid to get the contract, transportation and housing fees, or the many other ways that labor brokers can take away some of the wage difference that motivates migration in the first place, suggesting that any new brokerage industry created by Mode 4 liberalization of independent contractor service providers would eventually require regulation. Chaudhuri et al. (2004), in advocating the easier movement of independent contractor service providers, acknowledge that it is one thing to define a subcontract for an architectural or IT project and another to define a subcontract for a nursing project.³²

³¹ Winters et al. (2002, 57) conclude that subcontracting and using intra-company transfers “offers the greatest chance of extending Mode 4 to lower-skilled workers.”

³² The GATS schedules of the European Union and Canada have a special category for temporary entry by contractual service suppliers, with the EU allowing them to stay for up to six months while Canada allows one year or the time necessary to complete the project.

There is also a possibility of linking trade in goods and the migration of service providers. Mattoo and Olarreaga (2004, 16) propose reciprocity between different areas of trade, so that India would reduce its tariff on cars if the US made it easier for Indian IT service providers to enter and work. In their example, lowering tariffs so that the US sold 1,000 more US\$15,000 cars in India would be reciprocated by the US permitting the entry of 375 more Indian IT workers earning US\$40,000 a year. They urge such a formula to make progress in the Doha round but, as the example makes clear, in a trade negotiation that does not allow countries to favor one country over another, opening up the IT entry avenue may benefit Indian IT workers, but lowering Indian auto tariffs may benefit Asian rather than US auto producers.³³

Specialty Workers and Intra-Company Transfers

Some proposals to get Mode 4 negotiations moving faster toward liberalization suggest “scheduling” or putting the current guest worker programs of developed countries into the GATS, thereby locking current numbers and entry criteria into place and providing a basis for further liberalization (Winters et al. 2003, 1154). Most countries with guest worker programs, on the other hand, do not want to lock current numbers and entry criteria into an international trade commitment, since that could limit their ability to reduce numbers or tighten entry criteria when unemployment rises.

One program that is locked into GATS is the US H-1B program, which permits up to 65,000 foreign professionals a year to enter the US and fill jobs in an easy-entry procedure for employers (foreigners inside the US such as foreign students may get H-1B visas without leaving).³⁴ The initial visa can be up to three years, renewable once, and H-1B visa holders may bring their families with them. Foreigners seeking H-1B visas may assert that they intend to settle in the US, although to do so they must qualify for an immigrant visa by e.g. marrying an American or immigrant or finding a US employer to sponsor them for an immigrant visa. Chaudhuri et al. (2004) consider the H-1B program a model for GATS liberalization.

Complaints about the H-1B program center on the displacement of US workers, depressed wages, and unscrupulous intermediaries. In 1990, employers, unions and the government made an agreement that employers could have easy access to foreign professionals, something they wanted, but there would be a cap on annual admissions, something unions wanted. Employers, unions and the government assumed that, unlike unskilled workers, US professionals with college degrees would complain loudly against abuses such as unfair competition from H-1B foreigners, so the H-1B program did not prohibit US employers from displacing US workers in order to hire H-1Bs. Some did just that, as when American International Group in September 1994 laid off 130 US programmers and outsourced the work they did to H-1B workers employed by Syntel, an Indian-American firm. This prompted vocal complaints from the laid-off US programmers, who had to train their replacements in order to get severance pay. Only a handful of H-1B-dependent employers, those with 15 per cent or more H-1B workers, must certify that they did not lay off US workers to hire H-1B workers.

There are also complaints about the intermediaries who recruit H-1B workers for US jobs. These so-called body brokers aim to maximize their revenues, which are obtained from migrants and employers. Many charge migrants fees to bring them to the US and charge US employers

³³ Mattoo and Olarreaga note that it would be better to make linkages sector specific, so that lowering barriers to software exports was linked to easier entry for software engineers, but such sector-specific trade-offs are likely to be less liberalizing for service provider movements.

³⁴ An additional 20,000 foreign graduates of US universities with at least a Masters degree may obtain H-1B visas outside this cap each year, and H-1B visas obtained by non-profit organizations such as universities do not count against the cap.

more for their services than the migrant receives. However, the major disputes arise between jobs, when the migrant is incurring living expenses, and may be technically illegal, but has no earnings. Atlanta-based Deep Sai Consulting Inc in November 1999 was charged with harboring illegal migrants after bringing 43 Indian programmers to the US for jobs that did not materialize. Deep Sai said it was the victim of an unfortunate change in business; US prosecutors said it was “white-collar alien smuggling.” Indian-owned ChristAm collected fees from H-1B workers it brought to the US, but went bankrupt after they arrived and before they were placed in jobs, leaving the H-1B workers in debt and with no legal prospect for earning US wages.

H-1B workers are employees of foreign or US firms who can remain up to six years. L-1 visa, on the other hand, are managers, executives and specialists³⁵ brought to the US by a multinational, including non-profit, religious, or charitable organizations, with operations in the US and abroad who may stay for up to seven years with their families. Some Indian IT firms have used L-1 rather than H-1B visas to bring workers into the US, thereby evading the ceiling on H-1B visas, since there is no ceiling on L-1 visas. US unions tend to oppose both H-1B and L-1 visas, arguing that they permit employers to displace US workers.

One of the most important and overlooked entry doors that could be affected by GATS negotiations is that for foreign students (OECD, 2004). The number of foreign students in the OECD countries doubled between 1980 and 2000 to almost 1.8 million, and their number is projected to quadruple to 7 million by 2025.³⁶ The rise of for-profit higher education institutions, and public universities seeking (full) fee-paying students, is matched neatly by the Asian economic miracle that enables many middle-class families to pay for a foreign education for their children. In most cases, the Chinese and Indian students who dominate developing to developed country flows intend to return, but for others student migration is a prelude to immigration.

The globalization of higher education bolstered by GATS has been accompanied by rising fraud on the part of institutions and students, exemplified by the rise of so-called diploma or degree mills that sell degrees based on the “experience” of students rather than study, and students who sign up for language or other classes in order to work. Some degree mills have classrooms and libraries, and some ask “students” to prepare “theses” based on their lifetime experiences, but most give diplomas in exchange for payments. Customers in developed countries usually realize that the degrees they are buying are not the same as those earned in accredited institutions, but some students in developing countries who thought they would get an education as well as a diploma are cheated.

The student door is often the easiest one to enter for developing country youth looking abroad for opportunity. Most countries allow educational institutions to select their incoming students and, so long as the student can demonstrate an ability to pay, a visa is issued that allows entry to study and usually to work part time. After graduation, most countries allow students to remain as guest workers or immigrants, meaning that what began as a short-term study trip can turn into immigration as foreigners “adjust” their status from one category to another.

Globalization and Decent Work

The World Commission on the Social Dimension of Globalization, created under ILO auspices, released a report in February 2004 acknowledging that globalization’s “potential for good is immense...[but concluded] there are deep-seated and persistent imbalances in the current workings of the global economy, which are ethically unacceptable and politically

³⁵ Specialists have specialized knowledge of the company’s products or processes and were employed at least one year abroad by the multinational.

³⁶ Half of the foreign students in 2025 are projected to be Chinese and Indian when China and India are expected to account for 35 per cent of the world’s 7.9 billion residents.

unsustainable...[so that for] the vast majority of men and women, globalization has not met their simple and legitimate aspirations for decent jobs and a better future for their children.” To remedy unequal globalization, the report recommended “fairer rules for international trade, investment, finance and migration, which take account of all interests, rights and responsibilities; measures to promote core labor standards and a minimum level of social protection in the global economy; and new efforts to mobilize international resources to raise capabilities and meet the Millennium Development Goals (MDGs).”³⁷

The World Commission addressed six policy topics, including values and goals, inclusive globalization, local markets, decent work, international governance, and migration. The Commission noted the asymmetry between progressively more liberal trade and capital flows and more restrictive migration regimes, and attributed the fact that many migrant workers end up in an irregular status to this asymmetry. With many developing countries “maintain[ing] that freer migration to the industrialized world would be a swift and powerful means of increasing the benefits they receive from globalization,” the Commission called for a new migration regime that would make more labor migration legal by expanding temporary worker programs in ways that protect the rights of migrants, maximize the development impacts of migration, and reduce trafficking.

More south-north labor migration could have multiple benefits, according to the Commission, including helping industrial countries to deal with aging populations, stable or shrinking work forces, and pay-as-you-go social security systems. Meanwhile, individual migrants could earn higher wages and their countries of origin could benefit from remittances and the return of skills. However, simply increasing south-north labor migration without a new regime, the Commission warned, could lead to a brain drain and more smuggling and trafficking. Thus the call for a “multilateral framework that provides uniform and transparent rules for the cross-border movement of people and balances the interests of both migrants themselves and of countries of origin and destination.”

Concretely, the Commission urged “skills circulation” to mitigate the impacts of the brain drain. This would involve developing country professionals migrating to developed countries to work, but they would be encouraged to maintain ties to and return at least temporarily to their countries of origin because they had dual citizenship or a status that permitted easy re-entry to the developed country after a period of time in their country of origin. Sending countries can tap their Diasporas for development by keeping in touch as well as using tax and other incentives to encourage returns. In sectors such as education and health care, where emigration can reduce the quantity and quality of essential services, the Commission recommended that industrial countries “coordinate their hiring policies with developing countries facing ...skill shortages in essential services” by not aggressively recruiting health care workers such as nurses (p. 98).

The ILO is focused on the creation of good jobs, or “decent work for all.” Noting that there were 185 million unemployed around the world (equivalent to the global stock of migrants), the Commission noted that labor migration can help to achieve this decent work goal.³⁸ To maximize the benefits of the labor migration that is occurring, the Commission recommended reducing the costs of sending remittances, developing tax and other incentives to foster migrant investments in their countries of origin, and refunding some migrant social

³⁷ The MDGs include, by 2015, achieving a 50 per cent reduction in hunger and poverty; universal primary education; reduction in child mortality by two-thirds, cutbacks in maternal mortality by three-quarters and the promotion of gender equality; and the reversal of the spread of HIV/AIDS and other deadly diseases. In addition, the MDGs call for environmental sustainability and new global partnerships to accelerate development, including having developed countries contribute 0.7 per cent of their GDP in foreign aid.

³⁸ Achieving decent work also requires bringing the informal economy into the economic mainstream by establishing and respecting property rights and the rights of workers.

security taxes or contributing some of the income taxes paid by migrants to a development fund. (p. 98)

The Commission's call for action asks for a renewed commitment to existing ILO and other international conventions, such as those that protect migrants and discourage trafficking and discrimination, new and expanded dialogues between sending, transit and receiving countries to deal with the problems and opportunities offered by more labor migration, and "a more general institutional framework for the movement of people across national borders... similar to multilateral frameworks... concerning the cross-border movement of goods, services, technology, investment, and information." (p. 99). Better migration management, in turn, requires "strengthening the existing institutions" such as ILO, IOM, UNHCR and "improving coordination among them" (p. 99) so that they can ensure that generally accepted international principles are reflected in national policies.

The International Labour Conference (ILC) in June 2004 called for a similar "non-binding multilateral framework for a rights-based approach to labor migration," and identified 20 key components of a plan of action to implement such a framework.³⁹ Like the World Commission, the ILC emphasized that more labor migration can be mutually beneficial, but warned that without adherence to a rights-based framework there could be more labor migration and more exploitation of workers rather than more decent work and faster development. The ILC recognized that international labor migration is more likely to increase than decrease, but noted that many receiving governments develop their migration programs unilaterally rather than negotiating bilateral and multilateral agreements with sending countries. Within receiving countries, many governments consult only employers when designing or modifying guest worker programs, tending to minimize concerns for worker protections.

The ILC recognized that calls to stop or reduce international labor migration are unrealistic, and instead called for best practices in three major areas: migration policy and management, protection and promotion of migrant rights, and migration and development.

Migration Realities and Mode 4

GATS Mode 4 discussions often seem to be divorced from much of the international labor migration that is occurring. GATS contributes to this sense of separation by emphasizing repeatedly that GATS covers international service providers, not "natural persons seeking access to the employment market [and] measures regarding citizenship, residence or employment on a permanent basis." (Annex 1).

The apparent separation between trade in services and labor migration prompts misleading assertions such as the following: "Temporary movers [from developing to developed countries] hardly pose any cultural or integration threats and make virtually no call on public services...[their] threat to indigenous low-skilled workers ...is neither more nor less than the

³⁹ The June 2004 ILO resolution concerning a fair deal for migrant workers in the global economy emphasized that labor migration is not likely to disappear, that the many irregular migrants do not have their rights protected, and that the relationship between migration and development is unclear. National sovereignty is highlighted and the resolution notes that ILO Conventions call for fundamental rights for *all* workers, and that ILO Migrant Conventions encourage bilateral agreements that provide migrants with rights in the host country equal to those of local workers. There is an ILO plan of action for migrant workers that calls for a rights-based approach to labor migration which includes international guidelines on best practices, e.g. on determining the need for regular migrants in consideration of aging populations; promoting bilateral and multilateral agreements; promoting decent work for migrants by licensing and supervising recruitment agencies, minimizing smuggling and trafficking, and promoting awareness of migrant rights with education and improved inspections as well as measures to combat discrimination. There is also a call for policies to promote the development impacts of recruitment, remittances, and returns on sending countries by promoting ethical recruitment, maximizing remittances and their development impacts, and promoting returns and the re-integration of migrants. For details see:

http://www.ilo.org/public/english/protection/migrant/download/ilcmig_res-eng.pdf

challenge posed by imports of labor-intensive goods ...[which have] been significantly overcome in the past by the weight of economic gain that trade could deliver and by policies to ease adjustment among the local unskilled.” (Winters et al., 2003, 1142).

To emphasize that migrant service providers are expected to rotate in and out of the country, Winters et al assert that “the jobs are permanent, the workers not.” (2003, 1143). In one recent discussion, Mode 4 was offered as a way to provide health and personal care workers for aging populations “without imposing the burden of pension payments onto the host country at a later stage, since all migration under this scheme is temporary.”⁴⁰

However, the distinction between international service providers and migrant workers is absent from the major WTO review of Mode 4, which concludes that most migrant workers are covered by Mode 4 (WTO, 2004, 65-66).⁴¹ Similarly, ILO Conventions Nos. 97 and 143 define most GATS Mode 4 service providers as migrant workers, since most are nationals of one country who are wage and salary employees in another.

Negotiators whose experience has been with trade in goods may not appreciate the fundamental differences between goods and workers. Many advocates for liberalization of Mode 4 argue that the logic of moving more people over borders exactly parallels the logic of moving more goods over borders. With countries specializing in the production of the commodity in which they have a relative cost advantage, most residents of the two countries involved benefit from trade and the value of global output rises with freer trade.⁴² This reasoning leads Bhatnagar (2004) to conclude that “economic arguments against the free movement of natural persons are based on the narrow perspective of the welfare of domestic workers while ignoring the benefit it brings to the economy as a whole.” Countries that do not admit migrant service providers willing to work for lower wages, Bhatnagar asserts, are giving up economic output they could have in order to protect the wages of domestic workers who might be displaced or have their wages lowered.

The theory of comparative advantage assumes full employment. Comparative advantage theory asserts that, to maximize global output, all resources should be fully employed, resources should be allocated within countries to reflect each country's comparative advantage, and there should be free trade. In the absence of full employment, the case for comparative advantage-based free trade is weakened, and can be weakened further by highlighting the differences between people and goods.

Goods versus People

People are different from goods. Workers cannot be separated from their work, which means that people are “hired” rather than bought, and there is continuous bargaining in the workplace over the pace and quality of work that must be performed for a worker to keep a job paying a particular wage. Most individuals have only one asset, their own time. It cannot be stored, while makers and sellers of goods usually have multiple products that can be stored. Goods such as autos are one-dimensional (a car remains a car), have predictable impacts wherever they are

⁴⁰ Quoted in the discussion at Session 1 of the IOM – World Bank – WTO Seminar On Trade And Migration, October 4-5, 2004.

⁴¹ The WTO report acknowledges that most workers engaged in the production of goods, as in agriculture and manufacturing, are not covered by GATS.

⁴² Comparative advantage is the economic theory that, if countries specialize in producing the goods in which they have a relative cost advantage because of differences in endowments or economies of scale and engage in trade, both countries will have higher economic output. Relative cost advantage means that one country uses less of a scarce resource such as capital or labor (or another good) to produce the good in question, so it should specialize and trade.

used, and their movement over borders can be regulated reasonably effectively by border controls.

People are multi-dimensional, since workers are also consumers and residents who have an interest in how a society is organized and managed. People can change their status, as when migrants who intended to be temporary residents wind up settling. Finally, people can reproduce, and the status and rights of their offspring may be different from their own. These differences between people and goods make it hard to heed calls for treating Mode 4 temporary service providers “outside the domain of immigration-related laws and labor market regulations.” Such arguments imagine a separation between workers and people that does not exist.

Trade negotiators focused on increasing flows of goods and services over borders think of the movement of people as somewhat incidental to their larger goal of increasing cross-border flows. Those charged with managing migration, on the other hand, tend to focus on the movement of workers more than the services the migrants may be providing.

Migrant service providers are in fact migrant workers who are covered by ILO conventions. The bedrock principle of ILO Migrant Worker Conventions 97 and 143 is equality of treatment in the labor market, meaning that migrants earn equal wages and have the same rights and obligations of local workers. ILO Convention 97⁴³ aims to protect migrants and ensure their equal treatment by encouraging countries to sign bilateral agreements⁴⁴ governing labor migration. In an ideal world, these bilateral agreements would spell out procedures for private and public recruitment, lead to the exchange of information on migration policies and regulations, and foster cooperation to ensure that employers have accurate information on migrants and migrants have complete information on wages and working conditions abroad.

The ILO’s second migrant-specific Convention is No. 143 (1975), and was enacted after oil-price hikes led to recessions in the European countries that had been importing large numbers of guest workers. Convention 143 emphasizes steps governments can take to minimize illegal migration and to promote the integration of settled migrants. For example, Convention 143 calls for sanctions on employers who hire unauthorized migrants and encourages international cooperation to reduce the smuggling of migrants, including prosecution of smugglers in both source and destination countries. Convention 143 also calls for “equality of treatment” in wages and other benefits for employed migrants, regardless of legal status.⁴⁵

Both ILO migrant worker conventions⁴⁶ have fewer-than-average ratifications, which is often attributed to provisions that conflict with national legislation, as when sectors such as agriculture and domestic help that employ significant shares of migrants are not covered by national labor laws.⁴⁷ However, migrants may still be protected by other ILO conventions and

⁴³ Convention 97, ratified by 42 mostly emigration countries, excludes border-crossing commuters (frontier workers), seamen (covered by other ILO conventions), and artists and similar professionals abroad for a short time.

⁴⁴ ILO Recommendation No. 86 includes a model bilateral agreement for migrant workers, and has been used as a model for many of the bilateral agreements that were established.

⁴⁵ Conventions Nos. 97 and 143 exempt seafarers, frontier workers, the self-employed, artists and trainees.

⁴⁶ Many other ILO conventions cover migrants (e.g. Freedom of Association and Protection of the Right to Organize Convention, No. 87 (1948)) or consider migrants as a group of special concern, as in the equal treatment under social security convention (118). The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) calls for equality of treatment of all workers and for special measures to support certain workers, including regular migrant workers, and calls attention to the difficulties of returning migrants who would be unemployed in their home country. The Private Employment Agencies Convention 181, approved in 1997, calls for member states to penalize private employment agencies that defraud or abuse migrant workers, and urges bilateral agreements to prevent such abuses.

⁴⁷ For example, Article 8 of Convention No. 97 says that foreign workers injured at work should not be subject to removal just because they are not employed, but most countries tie legal residence to legal employment. Article 8 of Convention No. 143 calls for protection for migrants who lose their jobs, and Article 14(a) says that migrant workers should have the right to occupational mobility—most countries do not allow migrants to change employers.

national laws that conform to them, including Convention No. 87, Freedom of Association and Protection of the Right to Organize (1948), Convention 98, the Right to Organize and Collective Bargaining (1949), and others that provide fundamental rights to workers, including Convention 111, which seeks to eliminate Discrimination in Respect of Employment and Occupation.

On December 18, 1990 the United Nations General Assembly approved the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. This 8-part, 93 article UN convention,⁴⁸ which went into force in July 2003, aims to “contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families.” The UN Convention, ratified as of 2004 only by net emigration countries, includes most of the protections of ILO Conventions and goes beyond them to cover all migrants, including seafarers and the self-employed. It calls on states to adhere to basic human rights standards in their dealings with authorized and unauthorized migrants, including guaranteeing migrants freedom of religion and freedom from arbitrary arrest or imprisonment.

The major employment-related protections are in Part III of the UN Convention, particularly Articles 25-27, which prescribe equality in wages and working conditions for authorized and unauthorized migrant and national workers, assert that migrants should be allowed to join unions, and call for migrant workers to receive benefits under social security systems to which they contribute, or to receive refunds of their social security contributions on departure. Authorized migrants should have additional rights set out in Part IV, including the right to information about jobs abroad as well as a list of “equal treatments” including freedom of movement within the host country, freedom to form unions and participate in the political life of the host country, and equal access to employment services, public housing, and educational institutions.⁴⁹

Regional Migration, Global Trade

Instead of trying to liberalize the movement of service providers on a global scale, does it make more sense to promote liberalization on a regional level? There are many regional agreements that facilitate cross-border movements of migrant workers and service providers, from the European Economic Area (EEA) to the Trans-Tasman Travel Arrangement between Australia and New Zealand to the North American Free Trade Agreement (NAFTA), which includes provisions permitting professionals from Canada, Mexico, and the US to cross borders in response to job offers in other member countries.⁵⁰

Nafta’s Chapter 16 covers four types of business travel: business visitors, traders and investors, intra-company transferees, and professionals. Under US immigration law, the first three groups of trade-related migrants enter with visas that existed before Nafta went into effect on January 1, 1994, e.g. business visitors use B-1 visas, treaty traders and investors use E-1 and E-2 visas, and intra-company transferees use L-1 visas. Nafta created a new visa for the fourth

⁴⁸ ILO Convention No. 97 is about 5,600 words, Convention No. 143 is 3,000 words, and the UN Convention is over 14,000 words.

⁴⁹ Part IV, Article 44 was one of the most contentious parts of the Migrant Convention. It says that “recognizing that the family is the natural and fundamental group unit of society,” obligates states to “take appropriate measures to ensure the protection of the unity of the families of migrant workers...to facilitate the reunification of migrant workers with their spouses... as well as with their minor dependent unmarried children.” Migrant family members are to have “equality of treatment with nationals” in access to education, social and health services, and “states of employment shall endeavor to facilitate for the children of migrant workers the teaching of their mother tongue and culture.”

⁵⁰ Julia Nielson said that “NAFTA provided a model for the GATS.” Presentation in Session 4 of the IOM – World Bank – WTO Seminar On Trade And Migration, October 4-5, 2004.

group, allowing employers in the three Nafta countries to offer an unlimited number of jobs requiring college degrees to Nafta nationals with college degrees and, in the US, there is no requirement that a Nafta employer pay at least the prevailing wage, unlike the H-1B program. These written job offers, plus proof of the requisite education, suffice to have indefinitely renewable TN-visas issued at ports of entry. The number of Canadian professionals entering the US with Nafta-TN visas almost tripled since 1995, from about 25,000 entries a year to 70,000 entries, but the number of Mexican entries remains low, generally less than 2,000 a year.⁵¹

Table 2. US Admissions of Nafta Professionals, 1994-2002

	Canadians	Mexicans	Total
1994	25,104	16	25,120
1995	25,598	63	25,661
1996	28,237	229	28,466
1997	48,430	436	48,866
1998	60,742	785	61,527
1999	60,755	1,242	61,997
2000	89,864	2,354	92,218
2001	70,229	1,806	72,035
2002	71,082	1,732	72,814
2003	58,177	1,269	59,446

Source: Roger Kramer, *Developments in International Migration to the US, 2003*, Calendar year data.

There are even more plans for free migration areas in developing countries, from Africa to the Caribbean to Latin America. Most of these are works in progress, often consisting of a very ambitious plan for freedom of movement signed by government leaders and limited implementation. For example, Caricom (www.caricom.org/) has been committed to “freedom of movement within the Caribbean Community” for over a decade, but only five categories of workers had freedom of movement rights in 2005: graduates of the University of the West Indies, media workers, musicians, artists and sports persons. Governments are still in the process of harmonizing and making transferable migrant social security rights and Caricom is still trying to establish mechanisms for certifying and establishing equivalency of degrees. To expand migration, there are calls to allow migrants to have their families join them and to give migrant dependents equal access to local education, health care and housing services.

The Asia-Pacific Economic Cooperation (APEC) Business Travel Card (BTC) program has facilitated the cross-border movement of business visitors since 1997, and included 16 countries in 2004 (www.businessmobility.org). When the BTC holder shows up in another APEC country, she receives expedited admission. As the number of countries grows, so does the number of cards—6,000 were issued in 2004, half to Australians. Applicants apply to their home governments, which submit information on approved business visitors to other APEC member countries for approval before the BTC is issued; this means that one country’s refusal blocks an applicant from receiving a BTC.

The WTO is based on the principle that all 148 member countries should be treated equally, the most-favored nation principle, so that if a country opens itself to accountants, there should be equal rules for all WTO nationals. However, countries are more likely to permit freer migration from neighbors with whom they have special relationships and similar credential and licensing systems rather than with 148 diverse WTO members. Indeed, some fear that if

⁵¹ Canadians also enter the US to work with H-visas, and an average 20,000 Canadians a year immigrate to the US.

GATS were to succeed in slightly liberalizing the global movement of service providers, this development could slow expansion of more comprehensive regional free mobility regimes.

Most countries with significant numbers of migrants operate unilateral programs, meaning that they announce the criteria employers must satisfy to employ foreign workers, but allow employers to recruit anywhere and in any way they choose. Cultural and language ties and transportation costs generally encourage employers to recruit migrants in nearby countries, even if no recruitment country is specified in the legislation.

There can also be bilateral agreements that favor recruitment in particular countries. The OECD counted 176 such agreements involving OECD countries in 2004.⁵² These bilateral agreements vary greatly, with some simply setting out general criteria for private recruitment and contract review, as with the German-Polish seasonal worker program, and others actively involving the sending country's labor ministry in migrant recruitment and returns, as with the Canada-Mexico program. Bilateral programs often place great emphasis on ensuring returns, offering employers the chance to specify a migrant by name for the next period of employment and the migrant the chance to return if program rules are obeyed.

Conclusion: Whither Mode 4?

GATS is an ambitious effort to expand international labor migration to help developing countries. Liberalization of Mode 4 movements of service providers is backed by estimates that, if OECD labor forces swelled by 3 per cent with migrants from developing countries, global GDP could rise by US\$150 billion, three times ODA, and developing countries would benefit via remittances.

GATS liberalization means different things to different people, making its likely outcomes uncertain. For example, if GATS made it easier for professional service providers to cross borders and stay abroad, a faster brain drain from developing countries could set in motion vicious circles that slowed their development. Remittances, the major benefit from more GATS migration, could decline with settlement or, to the contrary, continue to flow to developing countries and provide a band-aid that allows governments to put off the often painful reforms needed to prepare a developing country for an economic take off. Finally, liberalizing GATS movements slightly in a global agreement could slow expansion of regional free mobility regimes, such as in the European Economic Area because the WTO calls for treating all 148 member countries equally.

There is a fundamental difference in time horizons between trade and migration. Economic theory and international institutions advocate ever-increasing trade, arguing that a rising share of trade in a country's economy is good for the countries involved as well as global GDP. GATS Mode 4 sees the temporary movement of service providers in the same light—having more service providers cross national borders benefits the migrants, sending and receiving countries, and global GDP. However, there is no theoretical or institutional basis for ever-increasing international flows of service providers. Most sending countries view large-scale international labor migration as a short-term or transitional phase in their development, until economic growth creates sufficient jobs at high wages at home. Countries accepting migrants usually want to maximize their flexibility, adding workers quickly when there are unfilled vacant jobs but stopping the inflow when unemployment rises. Unlike with trade, most countries do not plan for sending or receiving ever rising numbers of migrants.

Many developing nations are demanding liberalization of GATS Mode 4, which would enable more of their nationals to enter higher-wage developed countries to provide services.

⁵² Georges Lemaître, presentation in Session 3 of the IOM – World Bank – WTO Seminar on Trade and Migration, October 4-5, 2004.

Many economists and international development institutions favor GATS liberalization, citing estimates that the gains to developing countries in the form of higher remittances would be far larger than current levels of ODA. However, since numerous generalizations about the effects of more Mode 4 movements are based on speculative models and what may be the special case of Indian IT workers, developing countries hoping that the GATS negotiations will make it easier for their nationals to cross borders may want to be careful with what they wish for: they could find more of their highly skilled workers leaving and not returning, thereby increasing international inequality.

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Appendix A: GATS Definitions

General Agreement on Trade in Services Article I Definition

www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - (a) from the territory of one Member into the territory of any other Member;
 - (b) in the territory of one Member to the service consumer of any other Member;
 - (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
 - (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

GATS Annex on movement of natural persons

www.wto.org/english/tratop_e/serv_e/8-anmvnt_e.htm

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member [independent contractors who are paid directly by the consumers of their services], and natural persons of a Member who are employed by a service supplier of a Member [foreign but not local employees of foreign firms established outside the firm's country of origin], in respect of the supply of a service. [Note that the WTO and some member countries consider virtually all foreigners employed abroad as service providers to be covered by GATS]
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment. [The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment].

Appendix B: Estimating Gains

This appendix summarizes a World Bank effort to project the gains from adding three per cent developing country migrants to the labor force of high-income countries between 2001 and 2025 via increased migration, that is, adding 14 million migrants to the current 28 million.

These 2001 migrants, who included 25 million unskilled and 3 million skilled workers from developing countries, would be augmented by 10 million more unskilled and 5 million more skilled workers, so that in 2025 there would be a total of 35 million unskilled and 8 million skilled ldc migrants. However, with the labor force of high-income countries projected to shrink slightly to 475 million, ldc migrants would be a larger share of high-income country labor forces.⁵³ The model assumes that migrants are employed.

The estimated gains are based on a computable general equilibrium (CGE) model that calculates a rise of 0.6 per cent in global GDP by 2025, raising projected global GDP of \$60 trillion by \$360 billion. The major impacts of this additional migration would fall on four groups:

- the new migrants see their wages rise on average 11 times, making them the major gainers from more migration between low- and high-wage areas
- native owners of capital in high-income countries gain in higher returns to capital and higher asset prices
- migrants already settled in high-income countries see their wages decline significantly with the influx of new migrants and
- those remaining in developing countries gain from remittances that average an estimated 17 per cent of migrant foreign earnings.

The model is based on a high-income labor force of 480 million in 2001, including 28 million migrant workers⁵⁴ from developing countries, or 6 per cent of the high-income countries labor force (high-income countries are the European Union and the European Free Trade Area, Canada, the United States, Japan, Australia and New Zealand, and the newly-industrializing economies). The high-income workers include 150 million skilled workers (including 3 million migrants from developing countries) and 330 million unskilled workers (including 25 million migrants from developing countries).⁵⁵ High-income country workers were 69 per cent unskilled and 31 per cent skilled in 2001.

The fifteen developing countries include China, the Philippines, India, Russia, Turkey, South Africa, and Mexico as individual countries, plus 6 regions representing the remaining countries. They had 2.6 billion workers in 2001 who were 92 per cent unskilled and 8 per cent skilled. However, there were more skilled workers in developing countries, 200 million, than in high-income countries, 148 million.

⁵³ The growth in the migrant labor force is estimated to be 1.9 per cent a year, including a 1.5 per cent a year annual increase in unskilled migrants and 3.8 per cent annual increase in skilled migrants. The composition of migrants is assumed to remain the same, e.g. Indian IT workers and Mexican farm workers in the US.

⁵⁴ The total migrant population from developing countries is 65 million, suggesting 1.3 dependents per migrant worker.

⁵⁵ The US in 2004 had 40 million workers with college degrees, including 6 million who were foreign born.

The experiment is to raise the number of migrants in high-income countries by 14 million between 2001 and 2025, including almost 10 million unskilled and 5 million skilled migrants. Nonetheless, the total labor force of high-income countries shrinks slightly, to 475 million, and the shares of skilled and unskilled workers are assumed to remain constant, a questionable assumption in light of rising levels of education. Meanwhile, developing country labor forces increase by one billion, to 3.6 billion.

Table A2.1. Labor Force in High- and Low-Income Countries, 2001 and 2025 (millions)

High-income countries	2001					2025			
	Migrants	Share (%)	Total LF	Shares (%)	Migration	Migrants	Share (%)	Total LF	Shares (%)
Migrants from Idcs	28	6	479		14	28.5	6	475	
Unskilled	25	7	332	69	10	25.3	8	324	68
Skilled	3	2	148	31	5	3.2	2	145	31
Developing countries									
Total labor force			2,596					3,561	
Unskilled			2,396	92				3,294	93
Skilled			200	8				267	7
Source: Estimates from www.gtap.org .									

CGE models aim to highlight the interactions between economic sectors by specifying the equations used to describe microeconomic maximization behavior, that is, consumers maximize utility and producers maximize profits. Most CGE models assume perfect information and competition, so that workers are paid the value of their marginal productivity and there is no unemployment. In order to use CGE modeling to estimate the effects of additional workers, more assumptions had to be made, including the assumptions that new migrants compete mostly with each other and settled migrants, not native workers, and that the arrival of unskilled migrants has minor effects on the wages of unskilled natives.