
Council for Trade in Services

**PRESENCE OF NATURAL PERSONS
(MODE 4)**

Background Note by the Secretariat

I. INTRODUCTION

1. This Note was prepared in the context of the information exchange programme currently conducted by the Council for Trade in Services. Complementing the Notes on developments in individual services sectors, it discusses issues related to a particular mode of supply, the presence of natural persons. As with previous Notes, it is by no means intended to be exhaustive, but to stimulate an exchange of views and information among Members in preparation for the next round of services negotiations. Its focus on trade-related issues is not meant to detract from many other important aspects – both social and political – which may govern Members' policies towards the movement of natural persons.

2. The Note is in five parts. Section 2 briefly discusses the potential economic effects of labour migration, from the perspective of both originating and receiving countries. Statistical sources of information are described in Section 3, supplemented by some empirical observations. Section 4 presents an overview of main types of barriers affecting movements of natural persons, drawing from the limitations listed in Schedules of Commitments. The final Section summarizes the relevant entries in the horizontal part of Members' schedules. Due to time and resource constraints, the Note does not extend to issues related to economic and labour market integration agreements; however, the Secretariat stands ready to prepare a supplementary Note if considered useful by Members.

3. The presence of natural persons, otherwise referred to as Mode 4, is one of the four possible forms of providing a service under the GATS. Members' commitments under this mode relate to the temporary admission of foreign nationals or foreign permanent residents as services providers in their territory (Annex). However, there is no agreed definition in the literature of what constitutes "temporary" presence; nor is there a definition, or a specified timeframe, in the GATS. The Agreement merely exempts from its coverage measures regarding citizenship, residence and employment on a *permanent* basis.¹ A cursory look at Members' schedules shows that the maximum length of stay permitted under Mode 4 varies with the underlying purpose. Thus, while business visitors are generally allowed to stay up to 90 days, the presence of intra-corporate transferees, another important category, tends to be limited to periods of between two and five years.

4. The economic impact of movements of natural persons may differ widely between sectors and economic activities. For analytical purposes, it may be useful to distinguish three scenarios:

- (i) Situations where movements of persons are the *only feasible mode of supply*. This is the case whenever (a) the physical presence of a supplier is the determinant factor for the provision of a service and (b) the consumer, or his property, are regionally immobile. Hospital and social services as well as

¹ See the Annex on Movement of Natural Persons Supplying Services under the Agreement.

many construction, restoration and repair services are cases in point. In these circumstances, service providers "carry the border with them";² their direct physical access to another market is a precondition for supply.

- (ii) Sectors and activities where movements of persons are *one among several possible modes*; they may be replaced, for example, by cross-border communication links between suppliers and consumers of a service (e.g. doctor and patient; teacher and student; accountant or lawyer and their clients).³ In general, such links may prove easier to achieve in relatively sophisticated, knowledge-intensive fields of activity, including advisory or consultancy work. Thus, while it may be possible for doctors, lawyers or architects to provide certain services across borders, distance appears to remain a more fundamental barrier for midwives, nurses or construction workers.
- (iii) Cases in which temporary movements *complement and facilitate trade under other modes*. Direct personal contacts may help to promote a company's reputation, bridge information gaps and cultivate business links. In turn, this may increase deliveries across borders, attract foreign consumers or lift sales through subsidiaries established abroad. For example, although an architect's design work may be done in his home country offices and delivered via mail, the quality of the final product may depend on his (or his collaborators) presence for some months to supervise the construction process.⁴

5. In addition, the introduction and proliferation of new information technologies – as a result of technical progress, deregulation and trade liberalization in telecommunications – has thrown open new possibilities of goods and services trade. For example, the software incorporated in a PC may obviate searches in libraries, consultations with experts and/or purchases of additional software packages. This suggests that trade in advanced electronic equipment may substitute for trade in (communication, consultancy, etc.) services, thus expanding merchandise at the expense of services trade, including through Mode 4. On the other hand, however, such trade may well create demand for new, complementary services activities under various modes.

6. A cursory look at Members' GATS schedules shows that levels of commitments vary strongly across modes of supply. Within a given sector, trade conditions for Mode 4 tend to be significantly more restrictive than conditions, in particular, under Mode 2. This is to a certain extent reflected in the pattern of horizontal limitations in current schedules applying across all sectors. Slightly over 20 such limitations with regard to Mode 2 compare with 100 cases for Mode 4 (Section 5.1). In turn, this reflects many Members' basic approach to scheduling Mode 4 entries; contrasting with other modes, they normally started from a general "unbound" which was then qualified by liberalisation commitments applying to specified types of persons (e.g. managers), movements (e.g. intra-corporate) and stays (e.g. up to four years).

² See B. Ghosh "Gains from Global Linkages. Trade in Services and Movement of Persons" (1998).

³ From a pure efficiency standpoint, however, such substitution may require consumers and/or producers to accept a second-best outcome. If a supplier is prevented from entering a foreign market, some potential consumers may decide to move abroad, some may finally accept a domestic service (despite lower quality or higher costs) and others may simply forego consumption.

⁴ Among the many buildings designed by Le Corbusier, only one house - in Mathes (Océan, France) - was reportedly completed without the architect or his associate never having visited the site. This was due only to tight budget constraints.

7. Many schedules have established links across modes of supply. For example, one-third of the Mode 4 entries examined in the context of this Note cover intra-corporate transferees.⁵ Such commitments are of limited interest to Members which, given their level of economic development, are not significant foreign investors. Other commitments relate specifically to persons establishing a commercial presence. However, the question may be raised, whether these commitments add legal and economic value to what has already been bound under Mode 3. Failure to accept such entrants could be considered tantamount to violating existing obligations.

8. The terminology used in many Schedules suggests that implementation of the commitments under Mode 4 may entail more scope for discretion than under other modes of supply. The relevant terms and their definition, such as "business visitors", "senior executives" etc., tend to be vague, and their interpretation lies in the hands of numerous immigration officials at ports of entry and consular offices.

Issues for discussion:

- *Is there scope for replacing movements of natural persons with other modes of supply (e.g. cross-border) higher for knowledge-intensive activities?*
- *What is the prevailing impact of new information and communication technologies on Mode 4 trade?*
- *Do Members feel that implementation of Mode 4 commitments presents greater difficulties in practice than implementation of other commitments? Have they encountered interpretation problems?*

II. TRADE AND LABOUR MOVEMENT – SOME BASIC CONSIDERATIONS

9. The traditional theory of international trade, focusing on trade in goods, takes a country's factor endowment – typically capital and labour – as given. Trade occurs in place of migration. Under standard assumptions, including identical conditions of production and the absence of economies of scale, trade tends to eliminate international differences in factor income. Theories of migration normally take as their starting point existing incentives for migration – typically cross-country disparities in employment and income opportunities - in order to examine the effects of migration on the countries, markets or persons concerned (Box 1).

10. From a development perspective, the consequences of international labour migration are hotly debated. Even though positive effects may exist over the long-run, for the short-term it has proved difficult empirically to identify "transmission mechanisms" by which international migration promotes development.⁶ It is generally the younger, better trained and more dynamic workers who tend to migrate. On the other hand, migration contributes to the inflow of remittances which may be a significant income factor for remaining family members. Remittances may be used either for investment, with positive developmental implications, or consumption. Since they benefit directly the final recipients, unlike government-to-government aid, there are no significant transfer losses.

11. In the area of services trade, however, a different paradigm may be needed:

- (i) The standard models used to analyse trade in goods cannot simply be applied to services trade as covered by the GATS. While these models may still be relevant for Mode 1 and, possibly, Mode 2 (cross-border flows and consumption abroad of services), their application to Modes 3 and 4 poses

⁵ However, the definition of the groups of persons actually covered may vary significantly among Members (Section 5).

⁶ See World Bank, "International Migration: Implications for the World Bank", Human Capital Development and Operations Policy Division, No. 54, May 1995.

problems. In the latter cases, trade is associated with changes in factor endowment, thus breaking with standard assumptions. The distinction between trade and factor movements becomes blurred.

- (ii) Models used to analyse international migration may also fail to capture important aspects related to the movement of natural persons under the GATS. In particular, these movements are not only temporary by definition, but normally occur only within, but not between, sectors. (A nurse from country X may be denied entry into Y, although Y has committed on nursing services, if she wants to exercise some other activity.) Mode 4 suppliers tend to be mobile between countries, but immobile between sectors. This implies that the effects on production, employment and wages associated with such movements have a stronger sectoral focus than inflows of an equivalent number of workers under immigration or asylum legislation.

12. A reasonably comprehensive discussion of these issues would lead, however, beyond the scope of this Note. The following two sections are thus confined to listing, based on a cursory review of existing literature, the economic effects generally associated with movements of natural persons across borders. In turn, this may assist Members in their assessment of current schedules.

BOX 1

The causes of international labour migration

While there is no single theory of international labour migration, five main explanations can be identified:

1. Neo-classical macroeconomic approach – sees geographic differences in wages, productivity and, thus, supply of and demand for labour in origin and destination countries as the major driving forces behind individual migration decisions.
2. Neo-classical microeconomic approach – views migration as the result of a cost-benefit analysis of rational individuals. Wage differentials and employment rates are critical determinants.
3. The new economics of migration – focuses on migration as a way for families to diversify sources of income, minimize risks, and obtain credit and capital. Migration is driven mainly by market failures (e.g. in the insurance or capital markets).
4. Dual labour market theories - employers' demands for low-wage migrants in developed economies are considered as the main force behind international migration. Recruitment policies in the countries of destination shape migration flows.
5. World systems theories – the disruptive impact of capitalist economic structures on traditional, peripheral, non-capitalistic societies is deemed to generate migration.

Once the migration process has started, mechanisms of circular causation (or perpetuation) may emerge. These include the creation of migrant networks, which serve to reduce the costs and risks of migration, the emergence of private and voluntary institutions supporting the movement of migrants and, more fundamentally, widening wage and employment disparities between the regions involved. The latter effects may result in particular from economies of scale and the selective effects of migration on the quality of the workforce, touching on the issue of "brain drain" (see Box 2).

Literature: World Bank, "International Migration: Implications for the World Bank", Human Capital Development and Operations Policy Division, No. 54, May 1995.

2.1 Effects of Labour Movements on the Originating Country

13. In general terms, trade may be expected to assist countries in specializing in productions for which, based on their factor endowment, they have a comparative advantage. In turn, increased specialization, and the resulting economies of scale and scope, are welfare enhancing. As noted above, however, these expectations are based essentially on "standard" models for goods trade. In the case of trade-related factor movements, additional considerations come into play.

14. From the perspective of originating countries, these considerations include the risk of losing domestic resources (skills and expertise), which are already relatively scarce, and suffering a transfer of educational investment.⁷ The threat of "brain drain", especially its negative implications for development and potentially adverse effects on income distribution, has been discussed intensively in the literature; it seems to be particularly relevant in the case of permanent migration. (However, temporary and permanent movements are not always easy to distinguish; regions experiencing a persistent outflow of temporary migrants tend to suffer an enduring reduction of their skills-base by a certain percentage.) Such developmental and distributional implications for the "labour exporting" countries might be exacerbated by lopsided regulatory regimes in importing markets which provide access predominantly for skilled persons - doctors, engineers, senior lecturers, etc. - rather than for basic labour.

15. On the other hand, a more detailed assessment would need to include the question of whether the persons moving abroad would alternatively have found employment at home in "their" professions. Moreover, as far as temporary movements are concerned, the home country's loss of skills - and, thus, educational investment - needs to be set against the experience gained abroad which may be available for use upon return. Temporary labour movements also present an advantage over (permanent) migration with respect to remittances. Empirical studies suggest that remittances are higher in the former case, as the persons involved return home within a well-defined future.⁸ While remittances improve the income status of the actual beneficiaries, their effects on income distribution may (again) be influenced by the skill and income characteristics of the persons who have moved abroad.

16. Although available data on remittances and labour-related income flows are subject to various qualifications (Section 3), the magnitudes involved indicate potentially significant effects for the main recipient countries such as India, Mexico and Portugal (Annex Table 2). For example, the remittances received by India in 1996, US\$ 7.6 billion, were almost three times as high as net direct investment inflows in the same year. In terms of foreign currency earnings, they came close to the contribution of the country's entire textiles and clothing industry (US\$ 8.6 billion).

⁷ See, in particular, Myrdal G. "An International Economy", 1996.

⁸ Galor, O. - Stark, O. "The probability of return migration, migrants' work effect and migrants' performance", Journal of Development Economics, No. 35, 1991.

BOX 2
The "brain drain"

The concept of "brain drain" is associated with highly skilled workers seeking to move abroad to increase returns on the educational investments they - or their governments - have made. Between 1961 and 1983, at least 700,000 highly educated professional workers are estimated to have moved from developing countries to the United States, Canada and the United Kingdom. This has meant the loss of a significant proportion of trained professionals for some countries: for example, sub-Saharan Africa alone is said to have lost 30 per cent of its highly skilled labour force between 1960 and 1987, mainly to the EC. Between 20 and 40 per cent of all graduates in the countries of Central America and the Caribbean choose to emigrate.

A recent study by the IMF suggests that the majority of migrants from developing countries to the OECD are much better educated than the rest of the population of their countries of origin. This may be partly explained by the immigration policies of OECD countries, which tend to favour skilled workers, and partly by the fact that it is generally easier for better educated individuals to cover migration costs. In a number of countries, especially in the Caribbean, Central America and Africa, over 30 per cent of individuals with tertiary education have moved abroad. A significant share of individuals with tertiary education has also left countries such as Iran, Chinese Taipei and the Philippines. By contrast, most migrants from Central American countries have reportedly been educated up to a secondary level.

For the originating countries, "brain drain" may represent a significant loss, even if it is difficult to quantify. The United States Congressional Research Centre estimated that in 1971-72 the developing countries had made an average investment in each skilled immigrant of around US\$ 20,000.

However, some countries may be training more skilled workers than their labour market is likely to absorb. Migration may therefore also reflect a lack of opportunities in the country of origin. In Somalia, for instance, the output of graduates has been estimated to be five times higher than demand; a survey found that in 1985, 40 per cent of graduates in major cities of Côte d'Ivoire were out of work. Governments may have over-invested in certain skills under pressure from vocal population groups (e.g. the urban middle class) with disproportionate policy influence.

In many cases, developing countries are losing talented people who go abroad to study without returning home. In the 1960s, more than half the Africans who went to the United States to study chemistry and physics never sought employment in their home countries. This may also happen in more economically advanced countries: in 1988, for instance, it was estimated that around 1,350 Koreans with PhD were working as scientists in the United States.

Literature: Stalker, P. "The Work of Strangers: A Survey of International Labour Migration", ILO Geneva, 1994; Adepaju, A. "South-North Migration: The African Example", in 'International Migration', 1991, Vol. 25, no. 2; Diaz-Briquets, S. "The effects of International Migration on Latin America", in Papademetriou, G. - Martin, P. (eds.) "The Unsettled Relationship: Labour Migration and Economic Development", 1991; International Monetary Fund, "How Big Is the Brain Drain?", Working Paper 98/102, Prepared by W.J. Carrington - E. Detragiache, July 1998; United Nations Development Programme, "Human Development Report", 1992; Ong, P. - Cheng, L. "Migration of Highly Educated Asians: Some Theoretical Considerations", Paper presented at the "Conference on International Manpower Flows and Foreign Investment in the Asian Region", Tokyo 1991.

2.2 Effects on the Recipient Country

17. As is the case for the originating countries, the economic consequences of labour movements for host countries are difficult to predict. A variety of factors - including timing, sector, occupation and type of movement - may come into play. Empirical evidence is scarce, however, especially for developing countries.

18. From an economic point of view, a variety of questions arise: In particular, how do the welfare gains expected to result from enhanced specialization compare with potentially counterbalancing effects associated with changes in the factor intensity of production? For example, does the movement of typists from country X into the United States encourage residents, who may otherwise have worked as typists, to seek more lucrative employment in other sectors and/or professions? Or do the immigrants predominantly add to the supply of typists, thus depressing wages and encouraging over-extensive use of the relevant services? From the perspective of resident workers, are the foreigners predominantly substitutes or complements?

19. The OECD Secretariat has reviewed the literature on the relationship - substitution or complementarity - between foreign and native workers. A study quoted in this context concluded that the complementarity between foreign and native workers was quite strong, based on the observation that a 10 per cent increase in the number of immigrants had no statistically significant effects on the wages of U.S. residents.⁹ By contrast, a study undertaken by World Bank staff members found negative effects of immigration into Germany on the wages on blue collar workers.¹⁰ Some recent work corroborates the existence of such effects which, however, seem to be relatively small.¹¹ Among a variety of factors deemed to lower unskilled relative to skilled wages, immigration was found to be the weakest.¹² In the context of this Note, however, an important qualification needs to be made: the above findings apply to labour inflows in general, e.g. including intra-EC migration covered by the Treaty of Rome, but not specifically to temporary movements of service suppliers.

20. Through Mode 4 trade, skills and knowledge embodied in foreign personnel may be accessed at lower than domestic "production" costs. A country's regulatory regime – and, correspondingly, its services schedule – may be geared to easing domestic supply bottlenecks. This may facilitate adjustment to changing market conditions, help to overcome skills and other labour shortages, overall or in specific sectors, and promote economic growth. (Shortages may be of a cyclical, regional, sectoral, qualification or seasonal nature; Box 3.) On the other hand, however, potential host countries have sought to ensure that foreign suppliers comply with domestic arrangements governing wages, prices and/or other supply conditions. Such measures may deprive potential entrants of a genuine economic advantage and, by the same token, reduce Mode 4 trade and its impact on both incumbent suppliers and users.

⁹ Grossman, J.B. "The substitutability of natives and migrants in production", Review of Economics and Statistics, 1992, No. 64.

¹⁰ Zimmerman, K.F. "European Migration: Push and Pull", Washington, D.C., The World Bank, Annual Bank Conference on Development Economics, 1995.

¹¹ The Economist, "Workers of the world", 1 November 1997.

¹² See Cline, W. "Trade and Income Distribution", 1997.

BOX 3

Easing skill shortages through movement of natural persons

Recent examples indicate how the movements of service providers may help to mitigate shortages of skills.

- The U.S. Senate cleared the way for an expansion of the number of visas for highly skilled foreigners by more than 300,000 over the period 1999 to 2001. The bill is aimed at meeting the acute shortage of staff in high technology industries, possibly including service providers (e.g. software development, etc.). In 1998, the annual allocation of 65,000 visas was exhausted by May, reflecting strong demand in the computer industry and a decline in the number of U.S. undergraduate degrees in key science disciplines.
- A shortage of teachers – especially science teachers – has prompted the New York City School Board to hire English-speaking Austrian teachers. (The whole of the United States is reported to experience difficulties recruiting U.S. science teachers.)
- By 2002, Western Europe is expected to face a potential shortage of 1.6 million staff in information technology (IT) sectors, corresponding to 12 per cent of demand. This is likely to result in strong wage pressure, supply disruption and delayed investment in the sector, ultimately undermining the IT and related industries' competitiveness. Some of these effects are already being felt. Recently wages have increased by up to 60 per cent per annum, and many projects and investments have experienced delays. A rising number of IT jobs are being contracted out to non-European service providers.
- The European biotechnology industry is reportedly suffering from shortages of senior managers, which are expected to persist in the foreseeable future. Attempts at hiring senior staff from the United States' larger biotechnology sector are likely to fail, however, as the American biotech industry is in a similar situation.

Literature: Financial Times, "US visa plan for high-tech workers", 25 September 1998; Wall Street Journal, "U.S. clears way for bill to boost high-tech visas", October 1998; CNN Web site, "The accent is on maths and science in New York schools", 8 September 1998; Financial Times, "Skill shortage hits W. Europe", 23 September 1998; The Economist, "Management shortfall", 18 July 1998. See also Box 4.

21. Temporary labour movements may also help to avoid certain follow-up costs associated with permanent migration, including the costs of using the social welfare, health and education systems of the host countries. While these countries may fear that temporary movement could act as a bridge for permanent immigration, both legal and illegal, regulatory restrictions might well prove a "two-edged sword". A more comprehensive policy assessment would need to include the potential impact on the economic and social situation – and, thus, on causes of migration - in originating countries.¹³

III. AVAILABILITY OF STATISTICAL INFORMATION ON MODE 4 TRADE

22. No reasonably comprehensive data exist today on the value of services trade taking place through Mode 4.¹⁴ However, some information at the international level may be gathered from sources such as the International Labour Office's employment statistics, the United Nations System of National Accounts, and the International Monetary Fund's balance of payment (BOP) statistics.

23. From a statistical perspective, a distinction needs to be made between the movement ("flow") and the presence ("stock") of service providers in a given country at a given time. The GATS covers both.¹⁵ Statistics collected at the ports of entry are the most widespread sources of information on the

¹³ Moreover, a Recommendation of Parliamentary Assembly of the Council of Europe, No. 1306 (1996), states that "temporary employment was identified ... as a factor in reducing irregular migration".

¹⁴ For a review of services statistics, see the Secretariat Papers S/C/W/5 and S/C/W/27.

¹⁵ Article I refers to the "presence of natural persons", whereas the Annex to the Agreement deals with "movement of natural persons supplying services under the Agreement".

movement of service suppliers, although they provide no indication of the value of trade generated. Measuring the "stock" of foreigners providing services poses even greater difficulties. The WTO Secretariat is not aware of any Member possessing a data collection system, be it a population register, a register of foreigners or other surveys or administrative records, which would allow to trace and keep track of foreign service providers in a reasonably comprehensive way.

24. BOP statistics capture labour-related flows in the following three categories:

- (i) Labour income – it includes wages, salaries and other compensation received by individuals working abroad for less than one year. It is assumed that these workers retain residence in their home country. This category can be found under "Current income" in the IMF BPM-5.¹⁶
- (ii) Worker remittances – these are transfers from workers who stay abroad for a year or longer, and who, from a balance-of-payment perspective, are assumed to have changed their residence. This item can be found under "Current transfers" in the IMF BPM-5.
- (iii) Migrants' transfers – they represent the flow of goods and changes in financial assets associated with international migration. They are reported under "Capital and financial account" in the IMF BPM-5.

25. From the perspective of this Note, BOP statistics are subject to important qualifications. First, the recorded income flows also cover the compensation of persons working in the manufacturing and agricultural sectors, of government employees (embassies)¹⁷ and of foreigners employed in locally owned companies.¹⁸ They further include payments to social security schemes, private insurance schemes and pension funds in the host country. On the other side, as noted above, the labour income of persons staying abroad for more than one year is not taken into account. Their earnings and spending are treated as domestic transactions, and only cross-border transfers are recorded. The relevant statistics may be misleading, however, as a significant proportion of remittances does not flow through official channels due, among other factors, to foreign exchange restrictions and taxes on remittances. An additional problem is related to the distinction between labour income and worker remittances, which may be arbitrary as it is often difficult to know in advance the length of stay of a foreign worker. Not long ago, the IMF reclassified US\$ 5 billion of labour income as worker remittances.¹⁹

26. Any quantitative assessment of trade through Mode 4 is thus subject to significant data problems. These are compounded by the fact that movements of persons may only be one element of a larger "services package" involving trade under other modes as well. It is unclear, for example, how the value generated by service-providing firms established abroad (Mode 3) could be separated from the value attributable to intra-corporate transferees working there under Mode 4. What is the "true" value of the service they supply?

27. Because of the problems noted above, the quantitative importance of trade in services attributable to the presence of natural persons is difficult to gauge. Balance-of-payment statistics show that, over the past few years, ten countries have accounted for a large and growing share of the world's remittances. In 1996, the top ten payers and receivers, respectively, accounted for 94 and

¹⁶ BPM-5 is the abbreviation frequently used to indicate the IMF "Balance of Payment Manual", 5th Edition, 1993.

¹⁷ Services provided in the exercise of governmental activity are beyond the scope of the GATS.

¹⁸ The latter category does not seem to fall under the definition of Mode 4 trade (see Annex).

¹⁹ See IMF, "World Current Account Discrepancy", Washington D.C. International Monetary Fund, 1987.

74 per cent of total remittances (Tables 1 and 2, Annex). On the debit side, Saudi Arabia ranks first, followed closely by the United States, while on the credit side India is far ahead. Whereas the ranking of the top ten debtors has remained remarkably constant over recent years, significant changes have taken place among the top receiving countries, with Egypt, Portugal and Turkey being gradually overtaken by India and Mexico. China has also exhibited spectacular growth in its receipts of remittances.

28. Labour income statistics show a lower degree of concentration. In 1996, the top ten countries paid and received, respectively, 65 and 56 per cent of total labour income (Tables 4 and 5, Annex). Over the past few years, Switzerland has been the biggest debtor, while Belgium-Luxembourg, Germany and France have generally held the top ranks among creditors.

29. The following Table shows that, between 1980 and 1990, total labour-related exports and imports (credits and debits) of developed countries have increased substantially faster than those of developing countries. Although these data need to be interpreted with care, given the limitations noted above and numerous reporting problems, they may be taken as an indication that Mode 4 trade has expanded most rapidly between developed countries. Table 7 of the Annex expresses labour earnings (i.e. labour income plus workers' remittances plus migrants' transfers) of selected countries as a percentage of their merchandise exports; the results exhibit notable variations.

Direction of labour-related flows, 1980 – 1990^a

(US\$ million, percent)

	1980	1990	Growth rate (1980/90)
Developing countries			
Credits	29,279	45,955	57%
Debits	8,153	9,250	13%
Balance	21,126	36,705	74%
Developed countries			
Credits	13,072	25,186	93%
Debits	24,461	50,333	106%
Balance	-11,389	-25,147	-121%

^aLabour-related flows include labour income, workers' remittances and migrants' transfers.

Source: Computations based on UNCTAD; World Bank (1994).

30. The OECD Secretariat has noted that "... [temporary] worker movement, especially between certain OECD countries, applies more and more to skilled labour and over the past few years the migration of highly qualified workers has been growing in importance." (Table 8, Annex).²⁰ These flows are in part related to the general expansion of world trade and the growing role of intra-firm linkages. They reflect the development of internal labour markets within multinational firms and the establishment of institutional frameworks to facilitate international exchange of skills. Demographic changes in developed countries, with low fertility rates and aging populations, are also likely to have had an impact on the demand for specialized service providers (e.g. doctors and nurses).

²⁰ OECD, "Trends in International Migration. Annual Report 1997", 1998 edition.

BOX 4

Temporary labour migration in the OCED area

The demand for temporary foreign workers in OECD countries area has been increasing in recent years, as it provides greater labour market flexibility and helps to alleviate sectoral labour shortages in the country of destination. Most OECD countries allow foreign workers to enter and stay under temporary or seasonal work permits, within the framework of a contract of employment or training. Four main categories can be identified in most countries: (highly) skilled workers, seasonal workers, trainees and students. However, legislation differs substantially in these areas; the maximum length of stay allowed for temporary workers may vary between three months and four years.

Entries of temporary workers in Canada, the USA and Australia are particularly numerous, and these countries have established special programmes for temporary workers to meet labour market needs. In the United States, skilled workers represent more than 80 per cent of the entries of temporary workers (not including intra-corporate transferees and treaty traders and investors). In Canada and the United Kingdom, this share is close to 40 per cent, and in the Netherlands, Australia and France it varies between 15 and 30 per cent. Even if the heterogeneity of skilled workers makes international comparisons difficult, it is safe to say that the share of (highly) skilled workers among temporary workers has grown in most countries in recent years.

Literature: OECD, "Trends in International Migration", Annual Report 1997, 1998 edition.

Issues for discussion:

- *What is the impact of movement of natural persons on the pace and direction of structural change in the countries involved ?*

IV. MEASURES AFFECTING THE PRESENCE OF NATURAL PERSON

31. Measures governing the temporary movement of labour may be categorized in three groups: general immigration legislation (visa requirements, etc.); labour market regulation governing the issuance of work permits etc.; and regulations defining foreigners' ability to work in individual areas. From the perspective of this Note, the first group of measures does not seem to deserve particular discussion as they are beyond the scope of the GATS. The Annex on the Movement of Natural Persons expressly exempts measures regarding citizenship and residence as well as the rules governing permanent employment from the disciplines of the Agreement. Measures falling under the two other groups, by contrast, may be captured by general GATS obligations as well as, in scheduled sectors, the specific commitments undertaken under Articles XVI, XVII and XVIII.

32. Most Members have avoided comprehensive commitments with regard to the presence of natural persons under Articles XVI and XVII of the GATS. In many cases, commitments apply only to senior executives and managers or persons representing an advanced level of training and expertise, and business visitors. (As already discussed in previous Notes, however, actual regulatory regimes may be significantly more liberal – yet less stable – than those laid down in Schedules.) Market access limitations such as numerical quotas may coincide with measures denying national treatment or, in terms of Article XVII:3, modifying the conditions of competition in favour of domestic services or service suppliers. Relevant measures include residency requirements and non-eligibility under subsidy schemes.

33. Licensing and qualification systems may result in additional entry barriers. In many services areas, governments seek to ensure, for example on public interest grounds, that a supplier has undergone sufficient education and training before being allowed to offer services.²¹ In general, there are two such systems; publicly regulated systems, where the relevant processes are supervised directly by governments, and industry regulated systems, where industrial or professional associations play a decisive role. However, there is no difference in legal status under the GATS whenever the relevant measures, and any resulting benefits, are covered by government regulation.

34. Although frequently referred to in Schedules, licensing requirements and procedures are not as such captured by Articles XVI and XVII of the GATS, but by the disciplines governing domestic regulation under Article VI. As mentioned in previous Background Notes (S/C/W/43 and 50), if licensing is intended to implement restrictions affecting market access and national treatment, it is these restrictions that would need to be scheduled. By contrast, if licensing systems are incompatible with Article VI, for example because they are unnecessarily burdensome, they would need to be modified. Scheduling would not exempt them from the relevant disciplines.

35. However, it may prove difficult in individual cases to draw the border between, on the one hand, measures falling under Articles XVI and XVII and, on the other hand, the scope of Article VI. This is due in large part to the absence of more detailed criteria building on and clarifying the general provisions of Article VI (including the concepts of objectivity and transparency and the requirement not to be unnecessarily burdensome).²² Work on such criteria for the accountancy sector has taken place in the Working Party on Professional Services and is close to completion.

36. There may be additional measures having a disproportionate impact on foreigners as against nationals providing a service within the same territory. Cases in point are restrictions affecting the mobility, for example, of family members; regulations curtailing benefits under mandatory social insurance systems (e.g. denial of pension entitlements) or restrictions on participation in government-sponsored vocational training schemes. However, while such measures would need to be assessed case-by-case, Members may want to discuss potentially relevant GATS provisions, such as the footnote to Article XVII:1 which absolves governments from compensating for "any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers".

V. COMMITMENTS UNDER THE GATS

5.1 Market Access and National Treatment

37. The following discussion of Mode 4 commitments is based on the horizontal commitments scheduled by 100 Members. A comprehensive analysis at sectoral level, including for those 30 odd Members without horizontal commitments, proved too time- and resource-intensive within the context of this exercise. Moreover, the resulting gains in information might not have changed the general picture, but rather have caused additional interpretation problems revolving around the relationship between horizontal limitations and sector-specific entries in certain schedules. (Horizontal limitations of the type "unbound except as for the following categories ..." have been combined in a number of schedules with "none" or "unbound" at sectoral level; and it is not always clear whether this is to be read as a full commitment, as no commitment, or whether the horizontal entry is supposed to prevail.)

²¹ As indicated in the background Note on Health and Social Services (S/C/W/50), however, professional licensing requirements may well be maintained for more mundane than public policy reasons, including the objective of protecting current incumbents from new entrants.

²² In the latter context, it may be argued, for example, that strict language requirements are essential for interpreters, but unnecessarily burdensome and, thus, in conflict with Article VI, if applied to software specialists. But what about doctors working as general practitioners?

38. The limitations scheduled by Members for Mode 4 are generally based on functional and/or hierarchical criteria. These are related either to the type of persons involved (e.g. executive, manager, specialist, etc.) or the purpose of their movement (e.g. establishment of commercial presence, negotiating sales contracts). Annex Tables 9 to 12 summarize the main features of Members' horizontal commitments in this regard, allocating the limitations found to twelve different types of suppliers, movements or stays. Given the range of limitations made, the relevant figures include significant multiple counting from the perspective of individual Members and their suppliers. (A Member may submit the same group of persons, e.g. company executives, to several limitations and, conversely, impose the same type of limitation on several groups.) The category of "not specified" persons refers to entries in schedules not related to professional or hierarchical status and not associated with commercial presence; in the absence of additional qualifications, these cases – they account for less than 4 per cent of all entries - provide for the most open access conditions.

39. Due to the absence of generally agreed definitions and vague descriptions in many schedules, the results discussed below are necessarily subject to interpretation problems. For example, it has proved difficult in several cases to distinguish between the "standard" categories of persons most frequently referred to in schedules - executives, managers and specialists - and to concord alternative classifications used by some Members with these categories.²³ Moreover, a particular term (e.g. executive) may not have been used consistently by the Members concerned to describe the same function (e.g. decision making at an advanced hierarchical level). By contrast, the interpretation of individual measures and their classification in the context of Tables 11 and 12 has proved easier in general, barring some exceptions.²⁴

40. The classification problems referred to above may entail significant policy implications in practice. Vague terms and definitions may lay the ground for administrative discretion. This is a particular concern for Mode 4 movements where the relevant rules are normally applied on a highly decentralized basis. The predictability of actual entry conditions is further affected by Members' failure in most cases in which they have reserved the right to operate economic needs tests, to specify the relevant criteria.²⁵ (This has been done only in three out of a total of 54 cases; the relevant criteria are mainly investment-related (value thresholds, etc.))²⁶ Economic needs tests are particularly frequent within the – theoretically "open" - category of "not specified" persons (Table 11).

41. An overview of commitments for individual suppliers shows that the majority of the entries scheduled - close to 240 out of a total of 328 – concern executives, managers and specialists. Of these, 135 entries explicitly relate to intra-corporate transferees; their economic value is thus determined by Mode 3 commitments. For analytical purposes, they may be combined with other

²³For example, the Secretariat has grouped "administrators" under "executives", "senior personnel" under both "managers" and "executives", and "experts" under "specialists". The term "professionals" has been interpreted as capturing providers of professional services; any such references have been disregarded.

²⁴References to national laws, without any indication of scope and content, have been ignored as such references may be considered as legally irrelevant. Similarly, entries relating to the applicability of immigration legislation have been omitted, given the relevant provisions of the Annex on Movement of Natural Persons (see below). The same applies to general registration or licencing requirements for professionals. All references to Government assistance (including public support, tax relief and industrial policy) have been counted as "subsidy" – there are 118 such cases - and all references to academic qualifications and language requirements as "qualification requirements" in the relevant Tables. Work permit requirements not mentioned in connection with economic needs tests have been counted separately.

²⁵ Paragraph 3 of the addendum to the scheduling guidelines (MTN.GNS/W/164/Add.1) provides that "the entry should indicate the main criteria on which the [economic needs] test is based e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely".

²⁶ The total number of horizontal entries subject to an element of discretion is even higher as unspecified government approval, work and residency permit requirements may need to be added as well. However, from the perspective of an affected supplier, the resulting figure - 108 – may be inflated by multiple counting.

entries having similar effects (31 commitments apply to executives, managers or specialists in general, but are combined with limitations related to commercial presence). The focus of existing commitments on employed persons is also reflected in Members' frequent use of employment links as an entry criterion; "pre-employment" ranks top, by a wide margin, among all relevant restrictions.

42. An additional important feature is the schedules' general bias in favour of qualified labour. Only 17 per cent of all horizontal entries may cover low-skilled persons as well ("business sellers", "non specified" and "other").

43. The periods for which entry may be permitted have not generally been indicated. This is surprising as one might have expected that, in the absence of a definition of "temporariness" in the GATS (Annex), Members would provide more precision in their schedules.²⁷ Table 10 summarizes the entries - they represent no more than one-third of all cases - where time-limits have been specified nevertheless. Such entries are more frequent for intra-corporate transferees and business visitors than for other groups. For obvious reasons, the relevant periods are shorter for business visitors than for executives, managers and specialists. While visitors are generally allowed to enter for no more than three months, presence of the latter group tends to be limited to between two and five years.

44. As already indicated above, pre-employment is the single most important entry criterion, referred to in over 100 cases. (Of these, however, only four require pre-employment for more than one year.) Numerical quotas, with close to 80 cases, and economic needs tests rank next. While most of the quotas relate to the total staff of a company, some Members also have reserved the right to operate quotas based on parameters such as senior staff or wages. Rather than indicating a liberal policy stance, the low number of quotas relating to "ordinary staff" reflects the general absence of commitments in that segment. The quotas scheduled in absolute terms are particularly restrictive as the number of permitted entries varies between one and four.

45. With regard to the access criteria and conditions used in individual schedules, the following observations may be made:

- (a) Close to 50 entries provide for the application of domestic minimum-wage legislation. These entries have frequently been coupled with similar limitations regarding conditions of work, working hours and social security.²⁸ However, minimum wage requirements do not seem to fall under any of the criteria enumerated in Article XVI:2 nor otherwise discriminate *de jure* or *de facto* against foreigners. (Nevertheless, in 44 cases they have been scheduled in the Market Access column.)²⁹ On the other hand, it might be argued that such requirements deprive foreign

²⁷ Moreover, the scheduling guidelines (MTN.GNS/W/164/Add.1) stipulate that "in the absence of a reference to a specific duration for the temporary stay of a service supplier, no binding is being undertaken in this respect" (paragraph 4).

²⁸ Paragraph 8 of the addendum to the scheduling guidelines (MTN.GNS/W/164/Add.1) provides, *inter alia*, that "schedules should not contain general references to laws and regulations as it is understood that such references would not have legal implications under the GATS." It may well be the case that certain Members, relying on these provisions, have refrained from scheduling limitations for which other Members have sought legal cover through entries such as those mentioned above. To avoid distortions, general references to domestic legislation governing working hours, social security etc. have not been counted in the context of this exercise.

²⁹ Paragraph 5 of the scheduling guidelines (MTN.GNS/W/164) may be relevant in these cases. It states that "that the quantitative restrictions specified under Article XVI (a) to XVI (d) refer to maximum limitations. Minimum requirements such as those common to licencing criteria (e.g minimum capital requirements for the establishment of a corporate entity) do not fall within the scope of Article XVI. If such a measure is discriminatory within the meaning of Article XVII and if it cannot be justified as an exception it should be scheduled as a limitation on national treatment. If such a measure is non-discriminatory, it is subject to the disciplines of Article VI:5. Where such a measure does not conform to these disciplines, and if it cannot be justified as an exception, it must be brought in conformity with Article VI:5 and cannot be scheduled".

suppliers - who may be at disadvantage in terms of language and other relevant competitive factors – of the most important economic parameter – wages – they could reasonably use to compete effectively with national suppliers. It appears questionable, however, whether such - economic – arguments would find a legal counterpart in the GATS and relevant jurisprudence which would call for scheduling under Article XVII.³⁰

- (b) In at least 46 cases, Members have scheduled horizontal limitations with regard to real estate. (Imprecise language and other problems may mask some more cases.) Such limitations are likely to impinge in particular on activities requiring stays of significant duration; most business visitors may not be affected at all. However, the actual importance of such entries is difficult to assess because, as noted before, many Members have failed to specify maximum permitted periods of stay. In 31 cases, real estate-related restrictions apply to movement of executives, managers and specialists.
- (c) "Technology transfer clauses", i.e. requirements to train local staff, have been scheduled in 32 cases. As could have been expected, they apply mainly to executives, managers and specialists (30 cases) and have been included only by developing country Members. The main users are Latin American and African countries.
- (d) In 22 cases, Members have reserved the right – generally as a national treatment limitation (19 cases) – to suspend commitments in the event of labour-management disputes. Although the statistical basis is too narrow for general conclusions, it is interesting to note that such limitations apply almost exclusively to executives, managers and specialists. They are particularly frequent in the case of persons explicitly referred to as intra-corporate transferees.
- (e) Ten entries imply restrictions with regard to geographical or sectoral mobility. The latter restrictions might prevent, for example, executives and managers in multi-enterprise conglomerates from moving between firms. Limitations on geographical mobility may provide cover for: (a) restrictions related to licensing (e.g. a work permit issued by one sub-central entity may not be recognized elsewhere); (b) limitations on establishment or real estate acquisition in certain provinces (there are at least two such cases); or (c) variations in access conditions maintained with a view to benefitting ethnic minorities (one case).
- (f) There is a variety of additional cases where Members found it appropriate to include limitations, although relevant GATS rules do not seem to require scheduling under Articles XVI or XVII. Thus, in twenty cases, discriminatory tax measures have been included;³¹ in three cases, foreign exchange restrictions have been listed;³² and

³⁰ Among other considerations, the footnote to Article XVII may be relevant in this context, absolving Members from the need "to compensate any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers".

³¹ A footnote to Article XIV would seem to provide a carve out for direct taxation of non-residents under certain conditions.

³² Paragraph 9 of document MTN.GNS/W/164/Add.1 states that "exchanges control restrictions are subject to the general disciplines of Articles XI and XII of the GATS. Foreign exchange control restriction which fall under Article XII are exceptions from the obligations and commitments of the GATS and therefore should not be scheduled."

several Members have scheduled limitations benefiting foreigners who are related to nationals or have resided in the country for a minimum number of years.³³

Issues for discussion:

The general pattern of Mode 4 commitments, in particular, their focus on movements related to:

- ? *commercial presence and*
- ? *well-trained, skilled labour.*

The need to develop a common approach for scheduling purposes defining, for example,

- ? *the relationship between horizontal limitations ("unbound except as indicated below") and sector-specific entries (e.g. "none", "unbound" or explicit reference to horizontal entry);*
- ? *main categories of natural persons, e.g. executives, managers and specialists;*
- ? *the duration of stay considered to be temporary (taking into account paragraph 4 of MTN.GNS/W/164/Add.1);*
- ? *the relevance of minimum wage and similar legislation under Articles XVI and XVII; and*
- ? *the applicability of Articles XVI and XVII (rather than Article II) to cases where certain foreigners are preferred over others on the basis of family links or duration of stay.*

5.2 MFN Exemptions

46. It is difficult to provide a reasonably comprehensive overview of the MFN exemptions affecting movements of natural persons. This is mainly for two reasons. First, MFN exemptions are not generally expressed in modal terms. Many of them, not least in the area of professional services, may affect both movements of natural persons and commercial presence (investment). Second, a variety of exemptions relate to regional agreements – notwithstanding the provisions of Article V and Vbis of the GATS – which are described in such general terms, sometimes merely by name, that is next to impossible to infer their coverage. Despite such uncertainties, however, the Secretariat has identified 38 MFN exemptions clearly dealing with such movements; their content is summarized in Table 13 (Annex).

47. Of these exemptions, 32 are of a preferential nature. In the remaining cases, the treatment covered is purely reciprocal or, in two cases, it is at the same time preferential and reciprocal. Preferences granted are not frequently mirrored by similar exemptions on the part of beneficiary countries. Among other factors, this could reflect asymmetrical treatment under relevant agreements or failure by a government to seek an exemption in time. (In turn, such failure could also result in asymmetries should the government, in view of the legal situation, have decided to extend the benefits *erga omnes*.) Due to imprecise drafting, however, such possibilities cannot be further explored. Moreover, while 11 exemptions are clearly related to bilateral agreements and seven to unilateral measures, 12 provide no clarification of the legal basis of the measure – unilateral application; bilateral, regional or plurilateral agreement. Other exemptions provide cover for various combinations of unilateral measures and bilateral, regional and plurilateral agreements.

48. Most of the exemptions are of unspecified sectoral coverage. Only three exemptions apply to clearly designated sectors - interpretation, distribution and maritime transport - and one exemption to sectors covered by a bilateral treaty (Annex Table 13.B). In another case, the Member involved has indicated the sectors "principally concerned" (hotel, catering, construction). The scope of two other exemptions is confined to unskilled or semi-skilled labour, and a further exemption covers only seasonal workers. Finally, three exemptions apply to what seem to be peripheral aspects from the perspective of Mode 4 trade, namely the amount of consulate duties collected (one case) and a social security agreement.

³³Such measures seem to raise problems under Article II and may need to be covered by an MFN exemption. Only one Member has acted correspondingly.

49. The countries covered are not always clearly identified. For example, two exemptions simply refer to "traditional sources" of supply and one exemption to countries contained in national legislation. In two cases, reference is made to geographical zones whose borders are not clearly defined, while one exemption covers an unspecified range of countries selected on the basis of language. In eight instances, reference is made to members of a regional organization which are not further specified, possibly implying that any future members would also be covered. Similarly, several exemptions mention as beneficiaries all countries with whom the Member concerned maintains, or may conclude in future, agreements of a certain type. (It is difficult to provide count of such cases as the terms used are not always sufficiently clear.) In two cases, there is an apparent contradiction between the description of the measure – "bilateral agreement" – and its envisaged application to "all countries". (Presumably, the Members concerned intended to include all present and future signatories to bilateral agreements of a certain type.)

50. In many cases, the underlying measures are not, or not precisely, defined. Visa procedures are explicitly mentioned twice, notwithstanding the relevant provisions of the Annex on Movement of Natural Persons to the GATS (see below). However, such procedures may also be used to provide for "most favourable entry conditions" "preferential treatment", "measures affecting the movement of natural persons" or "facilitation of access procedures". Most of the measures, which have been specified in more detail, relate to the granting of work or residency permits, the waiving of economic needs tests or nationality requirements, or improved access to certain – not normally defined – activities. One exemption waives limits on the duration of stay, the proportion of foreign employees and their payroll share.

51. The vast majority of exemptions, 30 in total, are destined for an indefinite period. Of these, however, two provide for period review by the national authorities. Three additional exemptions are linked to the duration of the agreement covered, two are limited to ten years, and two apply until the completion of an integration process. In one case, the timeframe has not been specified.

52. In conclusion, it appears fair to say that the information contained in many MFN exemption lists is limited. In order to obtain a clearer picture of the measures covered, preferences conferred and intended beneficiaries, it would often be necessary to consult the underlying agreements or legislation.

ANNEX

1. Terms and Definitions

53. Mode 4 is defined in Article I:2(d) of the GATS as entailing "the supply of a service ... by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member". Article XXVIII(k) specifies that this definition applies to nationals as well as, in certain circumstances, permanent residents of WTO Members seeking to supply services abroad. (Permanent residents are covered provided the Member concerned (1) does not have nationals; or, subject to additional qualifications, (2) accords substantially the same treatment to permanent residents as to nationals.)

54. The Annex on Movement of Natural Persons Supplying Services under the Agreement clarifies that the GATS does not apply to measures affecting individuals seeking access to the employment market of a Member nor to measures regarding citizenship, residence or employment on a permanent basis. Moreover, regardless of their obligations under the Agreement, Members are free to regulate the entry and stay of individuals in their territory provided that the measures concerned "are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment". The operation of visa requirements only for natural persons of certain Members, but not for others, is not *per se* regarded as nullifying or impairing such benefits. (It is somewhat surprising that the relevant footnote to the Annex refers to nullification or impairment of benefits under a specific commitment, i.e. Articles XVI, XVII and XVIII, and not to violation of Members' obligations under Article II.)

55. Two categories of measures are covered by the Annex; those affecting natural persons who are:

- (i) "service suppliers of a Member" – i.e. self-employed (or independent) suppliers who obtain their remuneration directly from customers - as well as
- (ii) "natural persons of a Member who are employed by a service supplier of a Member in respect of the supply of a service".

56. There appears to be room for interpretation whether the foreign natural persons "employed by a service supplier of a Member" also include foreigners employed by host-country companies. While the wording of the Annex does not rule out this possibility, Article I:2(d) of the Agreement seems to cover only foreigners employed by foreign-owned companies (as noted above, the Article applies to services provided "by suppliers of one Member, through presence of natural persons of a Member in the territory of any other Member"). Thus, while foreigners would fall under the GATS if they work on a contractual basis as independent suppliers for a locally-owned firm, they would seem not to be covered if they were employees of that firm.

TABLE 1**Top ten payers of workers' remittances, 1990-96**

(US\$ million)

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

Source: Butkeviciene, J. "Market Access for the Movement of Natural Persons as Service Suppliers", UNCTAD (1998).

TABLE 2**Top ten recipients of workers' remittances, 1990-96**

(US\$ million)

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

Source: Butkeviciene, J. "Market Access for the Movement of Natural Persons as Service Suppliers", UNCTAD (1998).

TABLE 3**Annual average growth rates of workers' remittances, 1980-1996**

(Per cent)

	1980-1996	1980-1990	1980-1985	1985-1990	1990-1995	1987-1988	1988-1989	1989-1990	1990-1991	1991-1992	1993-1993	1993-1994	1994-1995	1995-1996
PAID														
World	6.2	4.4	1.0	9.8	6.5	10.5	8.8	16.8	5.9	6.6	8.2	9.4	-0.7	3.0
DCs	6.4	5.8	1.5	9.7	5.4	6.1	2.3	14.5	2.0	9.4	2.4	7.1	5.3	12.6
LDCs	5.9	2.6	0.5	9.9	7.7	17.7	18.6	19.7	10.7	3.5	15.3	11.6	-6.8	-8.0
CEECs	-	-	-	-	-	-	-	-	-	-	-	-	13.3	-2.9
RECEIVED														
World	3.3	2.0	-12.9	18.8	-8.3	4.1	7.2	62.0	0.3	19.8	8.0	30.0	-76.6	1.5
DCs	1.6	-0.7	-10.0	5.6	1.2	-2.1	-7.1	25.1	-1.2	12.9	-11.2	-2.1	16.3	-2.5
LDCs	3.7	3.7	-1.4	10.1	1.9	1.5	9.2	21.4	-14.9	8.1	-0.2	5.7	8.2	-8.0
CEECs	4.3	3.8	-6.3	11.9	0.3	8.2	-1.0	19.3	1.5	5.3	-5.3	-0.4	2.8	1.7

Abbreviations

DCs – Developed countries

LDCs – Developing countries

CEECs – Central and Eastern European countries

Source: Butkeviciene, J. "Market Access for the Movement of Natural Persons as Service Suppliers", UNCTAD (1998).

TABLE 4**Top ten payers of labour income, 1990-96**

(US\$ million)

	1990	1991	1992	1993	1994	1995	1996
Switzerland	5752	6147	6241	5776	6078	7054	6764
Germany	3170	3741	3757	3935	4016	5186	5229
USA	2367	2742	3077	3310	3711	3851	3891
Belgium-Luxembourg	1155	1274	1510	1531	1712	2507	2492
Italy	3640	2484	2296	2143	1922	1447	1647
France	3986	4137	4871	4524	4769	5362	1250
Israel	-	-	20	132	269	650	1103
Netherlands	620	627	943	823	760	1083	1005
Norway	81	78	81	89	93	556	559
Russia	-	-	-	-	221	469	508
Total top ten	20771	21230	22796	22263	23551	28165	24448
% of total world	67	68	67	64	64	66	65

Source: IMF, "Balance of Payment Statistics"

TABLE 5**Top ten recipients of labour income, 1990-96**

(US\$ million)

	1990	1991	1992	1993	1994	1995	1996
Belgium-Luxembourg	2821	3127	3541	3442	3524	4513	4421
Germany	5102	5028	4725	4199	3968	4020	3853
France	3032	3461	3660	3539	3695	4460	2603
Italy	3764	2712	2232	2022	1901	1934	2189
Thailand	973	1019	445	1112	1281	1695	1806
Switzerland	787	848	902	914	1060	1232	1164
Mexico	606	616	630	647	647	695	725
Netherlands	465	440	497	480	511	666	694
Australia	348	337	354	340	387	431	507
Austria	-	82	815	769	845	973	497
Total top ten	17898	17670	17801	17464	17819	20619	18459
% of total world	79	76	71	71	68	66	56

Source: IMF, "Balance of Payment Statistics".

TABLE 6

Direction of labour-related transfers and income flows, 1980-1990

(US\$ million)

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Net workers' remittances											
LDCs	20110	19325	19239	19444	20461	19387	21650	24195	24251	27958	33737
Credit	25336	24698	24682	24787	24882	23444	25420	27898	27990	31884	38599
Debit	5225	5374	5443	5343	4422	4057	3771	3703	3740	3926	4862
DCs	-10607	-11057	-11026	-10631	-10366	-10107	-10840	-11955	-13682	-14900	-18230
Credit	3760	3210	3140	2923	2846	2941	3455	3877	4274	4626	5213
Debit	14367	14268	14166	13554	13211	13047	14295	15832	17956	19526	23442
Net migrants' transfers											
LDCs	-147	-176	-189	-197	-145	-94	-46	38	208	130	43
Credit	230	247	182	151	155	131	205	254	437	346	212
Debit	377	424	371	348	300	225	251	216	228	216	168
DCs	1092	1385	1195	1156	936	804	1264	1779	2507	3400	3326
Credit	1946	2281	2098	1957	1908	1807	2323	3261	4088	5197	5225
Debit	854	897	903	800	972	1003	1059	1482	1581	1797	1899
Net labour income											
LDCs	1161	1693	2016	2360	2130	1756	2001	2222	2502	2910	2923
Credit	3713	4019	4283	4688	4332	4056	4562	5237	5654	6161	7144
Debit	2551	2326	2267	2328	2202	2300	2561	3015	3152	3251	4220
DCs	-1874	-2330	-2307	-2512	-2715	-2686	-3506	-4899	-5944	-7117	-10243
Credit	7366	6632	6999	6733	6403	6642	8909	10872	12317	12670	14748
Debit	9240	8963	9306	9245	9115	9328	12415	15770	18261	19787	24992
Net total labour-related flows											
LDCs	21125	20841	21066	21607	22445	21049	23604	26454	26961	30998	36704
DCs	-11389	-12003	12138	-11986	-12141	11988	-13082	-15074	-17119	-18618	-25147

Source: UNCTAD, The World Bank, "Liberalizing International Trade in Services. A Handbook", 1994.

TABLE 7
Labour earnings and merchandise exports for selected countries, 1996^a
 (US\$ million and per cent)

	Labour earnings	Merchandise exports	Labour earnings as % of merchandise exports
INDUSTRIALISED COUNTRIES			
Japan	514.73	400279	0.13
Austria	1068	72995	1.46
Belgium-Luxembourg	4927	154407	3.19
France	4526	274062	1.65
Greece	3079	5890	52.28
Italy	2584	250843	1.03
Portugal	3868	25271	15.31
Spain	3530	102041	3.46
Sweden	301	84690	0.36
Switzerland	1334	95513	1.40
AFRICA			
Namibia	14	1349	1.04
Seychelles	6	92	6.52
Sudan	221	620	35.65
ASIA			
Cambodia	12	644	1.86
Sri Lanka	851.4	4095	20.79
Samoa	45	10	450.00
EUROPE			
Albania	551	244	225.82
Armenia	86	290	29.66
Hungary	49	14184	0.35
Lithuania	3	3413	0.09
Macedonia, FYR	67	1147	5.84
Malta	21	1840	1.14
Poland	774	27557	2.81
Romania	18	8085	0.22
Slovak Republic	21	8824	0.24
Slovenia	214.1	8366	2.56
WESTERN HEMISPHERE			
Aruba	12.5	1736	0.72
Colombia	166	10651	1.56
Dominican Republic	943.2	3963	23.80
Mexico	4949	96000	5.16
Panama	94	5889	1.60

^a Labour services earnings include receipts of labour income, migrants' transfers and workers' remittances. Countries were selected on the basis of data availability for 1996; the allocation to country groups follows IMF conventions.

Source: Computations from IMF "Balance of Payment Statistics Yearbook", 1997.

TABLE 8
Inflows of skilled workers as a percentage of total temporary workers in selected OECD countries, 1992-1996
(Thousands and per cent)

	1992	1993	1994	1995	1996
Australia					
Skilled temporary workers	14.6	14.9	14.2	14.3	15.4
<i>% of total temporary workers</i>	17.1	20.3	18.0	18.4	20.5
Canada					
Skilled temporary workers	81.8	68.1	60.6	59.9	-
<i>% of total temporary workers</i>	35.5	37.0	35.0	43.7	-
France					
Skilled temporary workers	1.8	1.9	2.0	2.2	2.0
<i>% of total temporary workers</i>	5.0	5.6	6.5	7.3	6.7
Germany					
Skilled temporary workers	115.1	63.3	48.4	56.2	47.3
<i>% of total temporary workers</i>	-	25.2	23.1	22.1	17.3
Netherlands					
Skilled temporary workers	1.9	1.8	2.0	1.5	-
<i>% of total temporary workers</i>	26.4	25.7	29.4	27.8	-
United Kingdom					
Skilled temporary workers	12.7	12.5	13.4	15.5	16.9
<i>% of total temporary workers</i>	42.2	42.7	44.6	43.7	44.8
United States					
Skilled temporary workers	123.2	112.5	130.7	147.5	178.6
<i>% of total temporary workers</i>	70.1	61.7	62.0	66.8	70.2

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

Source: OECD; "Trends in International Migration", Annual Report 1997, 1998 Edition.

TABLE 9**Types of natural persons supplying services (horizontal commitments)**

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

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

TABLE 10

Duration of stay by type of natural persons^a

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

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

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

Legend:

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

TABLE 11
Entry conditions/restrictions by type of natural persons^a

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

^a See Table 10 for the legend.

^b The person seeking access must have already worked for the current employer; the minimum period specified in Schedules is generally one year.

^c Total workforce of the country concerned.

^d Absence of labour-management disputes.

TABLE 12

Other discriminatory treatment affecting work and living conditions

		Real estate	Subsidy	Foreign exchange	Borrowing	Taxation	Mobility restrictions
Intra-company transferees	Executives	7	22			1	2
	Managers	7	22			2	2
	Specialists	8	22			2	2
	Others						
Executives		3	3	1		3	
Managers		4	4	1		4	
Specialists		2	4	1		5	
Business visitors	Commercial Presence	3	17			1	2
	Sales Negotiations	7	22			1	2
Independent Contract Suppliers		1	1				
Other		1					
Not Specified		3	1		1	1	
Total ^a		46	118	3	1	20	10

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

TABLE 13

Overview of MFN exemptions affecting movements of natural persons

A. EXEMPTIONS WITH COMPREHENSIVE SECTORAL COVERAGE

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
1. Austria	Switzerland	Waiving of visa requirement and other measures	Indefinite	
2. Brunei	Traditional sources	Preferences for entry and stay	Indefinite with periodic national review	
3. Cyprus	EU Member States	Permission for limited numbers of EU nationals to be employed or to exercise professions in specific occupations in accordance with criteria to be established unilaterally or in future agreements with EU	Until the time of full EU membership	
4. Portugal	Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Sao Tome and Principe	Waiving of the nationality requirement for the exercise of certain activities and professions	Indefinite	
5. France	Francophone African countries, Algeria, Switzerland and Romania	Facilitation of access procedures for the exercise of certain services activities	10 years	
6. United Kingdom	Members of the British Commonwealth	Waiving of the requirement of a work permit for citizens having a grandparent born in the UK	Indefinite	
7. EC and/or Member States	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
8. EC and certain Member States	San Marino, Monaco, Andorra, Vatican State city	Right of establishment for natural (and legal) persons, waiving the requirement of work permits	Indefinite	
9. EC Member States	States in Central, Eastern and South-Eastern Europe including Russia, Ukraine, Belarus and Georgia, and in the Mediterranean basin	Guarantee of work permits in limited number for temporary contract work	Indefinite or, for certain countries, until an economic integration agreement is concluded or completed	All sectors (principally construction, hotel and catering). Reference to a broader initiative
10. Italy	States in Central Eastern and South Eastern Europe and in the Mediterranean Basin	Guarantee of work permits for seasonal workers	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
11. Egypt	Greece, Iraq, Jordan, Libya, Qatar, Sudan, United Arab Emirates, Yemen and possibly other countries	Full national treatment	As long as the agreements remain in force	
12. Indonesia	Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, Australia	Measures concerning movement of personnel (semi-skilled workers). Limited access to low level occupations	Indefinite	
13. Jamaica	Caricom Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago	Waiving of work permits	Indefinite	
14. Liechtenstein	Switzerland	Mutual granting of temporary stay and permanent residency	Indefinite	
15. Liechtenstein	EC and EFTA countries	Preferential treatment of persons from traditional recruiting areas with regard to permits for entry, stay and work (applies to persons other than the essential persons appearing in the schedule of commitments).	Indefinite	
16. Liechtenstein	All countries	Reciprocity concerning the "right of presence of natural persons"	Indefinite	
17. Malaysia	All countries	Differential treatment for measures affecting the movement of semi-skilled and unskilled workers on a regional, religious and cultural basis	Indefinite	
18. Malta	European Union Countries	Preferential treatment in the granting of licences and permits to provide services	Indefinite	Reference to the integration process into the EU
19. New Zealand	Kiribati	Most favourable entry conditions possible for up to 20 nationals each year	Indefinite	
20. New Zealand	Tuvalu	Most favourable entry conditions possible for up to 80 nationals each year	Indefinite	
21. Panama	Guatemala, El Salvador, Nicaragua, Costa Rica, and Honduras	Preferential treatment for suppliers of services of different kinds	Indefinite	
22. Panama	United States	Preferential treatment for suppliers of services under the Panama Canal Treaties	Indefinite	
23. Peru	All countries	Waiving the limitations of: three years as maximum duration, 20% of the total number of employees and 30% of the payroll	Indefinite	
24. Philippines	"All countries" /countries with whom a treaty on entry rights for traders and investors has been concluded	Waiving labour market test and simplifying entry procedures	Expiry or termination date of the bilateral treaties	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
25. Sierra Leone	Mano River Union and ECOWAS countries	Full national treatment	As long as agreements remain in force or are extended	
26. Singapore	"Traditional sources"	Measures regarding unskilled, semi-skilled, and skilled persons except specialists and professionals. (Purpose: prevent overpopulation and maintain social order)	Indefinite (periodic national review)	
27. Solomon Islands	Members of the Melanesian Spearhead Group: Vanuatu, Papua New Guinea	Waivers for measures affecting the entry and temporary stay of natural persons	Indefinite	Reference to an ongoing process
28. Sweden	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
29. Switzerland	Liechtenstein	See 14.	Indefinite	
30. Switzerland	EC and EFTA countries	See 15.	Indefinite	
31. Tunisia	"All countries" (probably with whom Tunisia has or will have agreements)	Bilateral social security agreements: extension of social security and health benefits to citizens of other countries	Not specified	
32. Turkey	Libya	Restrictions on the transfer of premiums for long-term insurance schemes and on employment of foreign-workers by foreign companies is waived (not applied de facto).	Indefinite	
33. Turkey	All countries	Consulate duties: if the amount of the consulate duties collected from Turkish nationals by any country is higher than the amount written in the tariff list, the consulate duties collected from the nationals of that country will be increased reciprocally.	Indefinite	
34. USA	All countries with whom the United States has a friendship, commerce and navigation treaty, a bilateral investment treaty; or certain countries described in Section 204 of the Immigration Act of 1990	Movement of persons for trade and investment: issuance of "treaty trader or treaty investor non immigrant visas" to nationals of the countries concerned engaged in substantial trade in services or in developing an investment.	Indefinite	

B. SECTOR-SPECIFIC EXEMPTIONS

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