

Working Paper  
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**Developing Country Proposals for the Liberalization of  
Movements of Natural Service Suppliers**

L ALAN WINTERS\*  
*Sussex Centre for Migration Research*

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\* L Alan Winters is currently on leave from Sussex, and is Director of the Development Research Group at the World Bank.

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Development Research Centre on  
Migration, Globalisation and Poverty  
Arts C-226, University of Sussex  
Brighton BN1 9SJ

Website: <http://www.migrationdrc.org>  
Email: [migration@sussex.ac.uk](mailto:migration@sussex.ac.uk)  
Tel: +44 (0)1273 873394  
Fax: +44 (0)1273 873158

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## 1. INTRODUCTION<sup>1</sup>

This paper is about developing countries' proposals in the GATS negotiations on the liberalisation of the movement of natural persons to provide services -- Mode 4. Trade negotiations in the Doha Round is as mercantilist as ever, and so typically 'proposals for liberalisation' are proposals that other countries should liberalise their imports while the proposing country does next to nothing. As well as being bad economics, this also makes it difficult to sort out, from initial public positions, exactly what the parties want, or even expect, to emerge; i.e., what is actually and realistically proposed and what is just rhetoric. At this early stage in the process of the Doha Round (early in terms of substance if not of calendar time), I have not been able to solve this riddle, so I have set myself a slightly more modest objective.

The paper considers the offers that have been made on Mode 4 by developing countries during the round to date -- in part to try to gauge the seriousness of their intent on Mode 4 -- as also to gauge the generalised demands that they have made of developed countries. (I have no access to their specific negotiating requests and therefore cannot comment on these.) I observe, as predicted above, that there is a huge difference in the level of ambition of the two parts of the putative equation. Then, having very briefly noted the extreme caution of developed country offers, and concluding that we are not going to see much progress on Mode 4 during this round, I ask why this is so. While the pressures for temporary mobility seem likely to grow as developed countries try to balance their ageing populations with their distaste for permanent migration (at least in Europe), neither side of the developed-developing country debate on Mode 4 seems to expect, or perhaps even wish, much from the process this time around.<sup>2</sup> Hence as well as considering the usual frictions in trade liberalisation such as entrenched interests, etc., I also ask whether the GATS is delivering what is required.

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<sup>2</sup> One interesting reflection due to Aaditya Mattoo is that the relative importance of cultural and displacement fears may influence host countries' preferences with regard to temporary/ permanent migration. In Europe, intense cultural xenophobia coupled with relatively benign policies for displaced workers favours temporary mobility. In the US, on the other hand, with a historical disposition towards migration and a relatively harsh labour market, politics favour permanent immigrants who can be unionised and incorporated into 'the system', to potential 'hit-and-run' competition from temporary migrants.

There is a lot to discuss about the economics of the temporary movement of natural persons, but I have done that elsewhere (Winters 2003; Winters et al. 2003a, b). Thus, this paper is more about the negotiations and their architecture than economics *per se*.

## 2. DEVELOPING COUNTRY OFFERS

Annex 1 lists the developing countries that have made offers on services by April 2004. These cover all four modes but we consider only their Mode 4 components here. They are also, of course, preliminary in the sense that serious negotiation of their content (as opposed to their form) has yet to start. Of the twenty-eight offers, three are published on the WTO website, and a few others are available unofficially or via national sites. Hence a full and formal analysis of the complete set is not feasible at this stage. On the other hand, private conversations with participants suggest to me a good deal of commonality across offers, leading me to believe that the general tendencies I identify below are not seriously misleading.

Annex 2 reports the horizontal commitments in the three schedules that are given on the WTO website. They are fairly typical of the others that I have seen although I am told that yet others, such as India's, are more ambitious. The text reported is extracted and occasionally paraphrased from the initial offers made by these countries in 2003. Hence, while the information is authentic, the wording is not always that of the official document.

The horizontal schedules are not uniform, but they share a number of themes. All three countries provide market access concessions on senior and skilled intra-corporate transferees and on business sellers (although the terminologies vary). In all cases only 'key' workers are permitted under the intra-corporate rubric, and business sellers are precluded from selling directly to the public. Among the differences, the conditions applied to mobile workers differ, with varying periods of stay and of qualification for intra-corporate status. Chile appears to apply a sort of economic needs test to intra-corporate specialists, and she certainly restricts foreign workers to a defined share (15 percent) of the workforce.

Developing country schedules overall share most of these features. Most of the countries that have made offers are said to be conceding intra-corporate transfers and business sellers. In

Latin America maximum shares of the workforce or the wage bill are enforced locally and will be scheduled under the GATS. No developing countries are known to have made horizontal offers on lower-skilled professionals or workers (as they wish industrial countries to do) and very few have done so on independent professionals; several impose specific or vague (implicit) economic needs tests. Overall, so far as can be ascertained, developing countries continue to be actually or potentially quite restrictive on the movement of natural persons in general; they have made concessions in the key areas of interest to developed countries, which are also in their own interests in terms of improving service provision in their own economies.

Annex 2 summarises the initial sectoral offers from Turkey and Slovenia: Chile has made none, although she promises to strive to improve her offer, while simultaneously reminding her partners that she has requests as well. The sectoral offers are interesting in detail but given their paucity, the horizontal section of the schedule is the key indicator of progress. Although it is not entirely clear, the way to read the schedules appears to be to take the more restrictive of the horizontal or the sectoral schedules, unless the latter explicitly liberalises or over-rules the former. Specifically, 'none' in the horizontal section (where 'none' is the official term for no restrictions) means 'none except the conditions set out in the horizontal section' (*WTO Guidelines for Scheduling—L/S/92*). Sectors are exempt from the horizontal restrictions only if the exemption is explicitly noted. This rarely happens, and indeed most sectoral entries add further restrictions, often recording 'unbound', which means that even the restricted horizontal concessions do not apply to that sector, or 'unbound except as indicated in the horizontal section', which means that the horizontal concessions are the only ones that apply. Table 3 records text only where it differs from 'unbound', 'none' or, the ubiquitous 'unbound except as in the horizontal schedule'.

In Turkey education has a potentially more liberal regime than other service sectors, although the basis for licensing teachers is not spelt out. Insurance, on the other hand, has a more restrictive regime with licensing, residence, experience and capital restrictions even for key personnel. Hotels and restaurants have quantitative limits on foreign employment as does shipping (with a zero percent quota for foreigners!). Slovenia also further restricts the insurance sector, as well as the accountancy professions and travel agencies. In a piece of local liberalism, however, it permits foreign apprentice mountain guides. This presumably reflects the

fact that four companies have greater political clout than do local young seasonal workers and the need for foreign language skills for an international service.

Most of the remaining schedules are, I believe, not far different in flavour from these two. They have very few sectoral commitments and those that are recorded tend to further restrict financial services but liberalise teachers and the hotel trade. Less frequent, but still detectable, are constraints on legal workers, more favourable provisions for foreign doctors, a liberal regime for artists and at least one other country relaxing restrictions for tour guides.

In economic and negotiating terms these offers are fine so far as they go although, as has been noted many times elsewhere, it is difficult to know from the schedules alone exactly how far that is. (One needs country-specific detail and implementation information for that.) Moreover, they are, of course, minimal not actual levels of market access. However, they do not indicate an enthusiasm for foreign workers at any level of skill and they certainly make it difficult for local firms in developing countries to recruit specialists and leaders abroad. If they were keen to see progress on less-skilled workers, developing countries could usefully have established a precedent by scheduling some themselves. If they have excesses of such workers, as one would expect, presumably the inflow would be modest. Where local conditions mean that flows may be larger (e.g., South Africa), developing countries' reticence presumably reflects the same nervousness as developed countries feel about disruption to labour markets and social stresses. By failing to confront it they hardly increase their chances of getting their partners to do so. Overall, these schedules suggest that liberalising flows of less-skilled workers is not just a North-South issue.

### **3. DEVELOPING COUNTRY ASPIRATIONS**

Several developing countries have made statements about Mode 4 in general. These naturally say very little explicitly about what they would offer and they are not the specific requests that will ultimately drive the negotiation process. Rather, they are broad statements of objectives and motivations for negotiating in the area. Two among these are notable: an early one from India and a later paper by 14 countries.

The most comprehensive developing country proposal on Mode 4 is from India which is closely related to Chanda (2002) who provided the analysis. The proposal provides not only concrete suggestions for areas of further liberalisation in Mode 4, but also detailed administrative procedures relating to Mode 4 visas and work permits and the recognition of qualifications. It is motivated by the view that there is a huge imbalance between current commitments on Mode 3, commercial presence, and those on Mode 4, natural persons.

The communication first points out that existing Mode 4 commitments are largely linked to commercial presence which is of very limited use to developing countries which are interested primarily in the movement of independent professionals and other persons. It argues for adding another category, 'Individual Professionals', to the existing categories, in line with India's perceived comparative advantage in the competitive end of the professional market where the competition from large trans-national suppliers is least. Relatedly, it calls for further expansion in the scope of occupational categories to include middle and lower level professionals in the existing coverage of 'other persons' and 'specialists'. This is of interest to many developing countries, who see their comparative advantage lying at the lower end of the skills spectrum. It does not, however, do much for the many relatively small and very poor WTO members that are short of skills and abundant in unskilled labour and hence face potential brain-drain problems. These countries really need to press for low-skilled access, but so far have remained silent.

In support of their objective of extending coverage, the Indians call for uniform definitions of these broader service personnel categories, and propose using the ILO's International Standard Classification of Occupations for the WTO services sectoral classification. This is potentially important because specially negotiated classifications can be manipulated to provide tailor-made protection for the sectors in developed countries most at risk from foreign competition, i.e. for sectors where developing countries are most competitive.

India identifies the need for clarity in the definition of and multilateral discipline on the application of Economic Needs Tests. It calls for the establishment of Multilateral Norms to reduce the scope of discriminatory practices in the use of Economic Needs Tests, for fewer occupational categories to be made subject to such tests and for consensus to be achieved on what such categories should be. On the recognition of qualifications -- a major barrier to

temporary mobility -- India proposes the establishment of multilateral norms to facilitate the recognition of academic qualifications, as well as the recognition of work-related qualifications. The Indians also propose exempting temporary workers from social security contributions.

Perhaps most significantly and innovatively, India makes concrete proposals to separate temporary service providers under the GATS from permanent labour flows, so that normal immigration procedures do not hinder the commitments made on temporary mobility. She proposes introducing a special GATS visa for Mode 4 temporaries outside the normal immigration procedures, with the following features:

- Strict timeframes for granting the visa (2-4 weeks maximum);
- Flexibility for visas on shorter notice for select categories of service providers;
- Transparent and streamlined application processes;
- Mechanisms to find out the status of applications, causes of rejection and requirements to be fulfilled;
- Easier renewal and transfer procedures;
- GATS visas for select companies for use by its employees deputed abroad temporarily; and
- Adequate in-built safeguard mechanisms to prevent temporary service providers entering the permanent labour market.

Other developing country submissions -- e.g., those of Colombia, Pakistan and Brazil -- echo many of the points in the Indian paper, e.g., on economic needs tests and qualifications. The Brazilians also urge the negotiation of a framework before specific issues are tackled. This approach seems very likely to founder at the first stage, which may not be wholly unintentional.

Two and a half years after the Indian submission, a joint statement by 14 developing countries - - Argentina, Bolivia, Chile, The People's Republic of China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Pakistan, Peru, Philippines and Thailand (TN/S/W/14) -- made an eloquent and coherent plea for more progress on Mode 4 in many of the same directions as India. It is not an offer, *per se*, because even where it makes commitments, it is not binding on the authors, but nonetheless it identifies clearly the problems that developing countries face in this area. It argues that Mode 4 is the principal way in which developing

countries might expect to reap market access benefits in services and cites indicative evidence (Winters 2003) on the large magnitude of gains for both developed and developing countries. It comments, as we do above, that offers to date are modest and barely advance beyond existing schedules. In particular, most are horizontal, with no specific sectoral 'flesh' to hang on the horizontal 'bones', and most pertain to service providers associated with commercial presence (intra-corporate transferees) or the highly skilled.

The proponents suggest a special session of the Council for Trade in Services to consider several issues, including:

- the adoption of a classification of service providers separating intra-corporate transferees, business visitors, contractual service providers and independent service providers;
- serious work to develop sectoral commitments to complement horizontal commitments, and, expressed very mildly, to extend the concessions to lower skilled workers;
- to separate temporary from permanent movement, and specifically to establish a GATS visa, or equivalent;
- to codify or abolish economic needs tests;
- to improve the recognition of qualifications and to ensure that additional testing satisfies a necessity test -- i.e., it is necessary on objective grounds to test or instil necessary skills to operate in the host markets; and
- to devise a model schedule for Mode 4.

In addition to the major papers, I note in passing some recent advances. Colombia has tabled a proposal on Administrative Procedures relating to visas. India has tabled informal proposals relating to implementation of Article VII of GATS (recognition agreements) and on the recognition of qualifications. And the group of developing countries who had sponsored TN/S/W/14 have co-sponsored an informal proposal on Transparency in Mode 4.

#### **4. DEVELOPED COUNTRY REPOSSES**

It is early days yet, but one cannot help observing that the developing countries' requests have not been handsomely treated. It is true that the UK has instituted a GATS visa for a limited

number of sectors and the EU has made some concessions in its initial offer. In the latter, service companies with graduate training programmes will be able to transfer their 'managers of the future' for up to one year's training with an affiliated company in the EU. Other intra-corporate transfers are possible for managers and specialists for a maximum of three years without an economic needs test. Companies in specified sectors which have contracts to provide services with a client in the EU will be able to send *highly skilled* personnel<sup>3</sup> to the EU to provide these services for up to six months at a time. Finally, self-employed skilled professionals, again only in certain sectors (for example computer services, engineers) and who are based overseas will be able to enter the EU for up to six months to provide services to EU clients. Under the EC offer, member states will continue to be able to refuse entry to persons that pose a security threat or that are considered to be at risk of abusing the terms of their entry. This is not a handsome offer, despite the EU's evident pride in its boldness, and there is even some debate as to whether it lies within the competence of the EU to offer even such modest concessions on behalf of its members.

Other developed countries have done no better, at least formally through the GATS, although via unilateral actions we have seen a bit more progress. The UK has liberalised its regime somewhat with GATS visas in certain sectors, increased quotas in others and generally loosened implementation barriers (with an associated liberalisation in official rhetoric). Similarly the United States has proposed ways of regularising illegal workers and increasing their flow. Overall, however, we are little nearer to liberalising lower-skilled mobility or addressing issues such as economic needs tests, qualifications or social security.

## 5. WHY SO MODEST?

The aggregate gains from increased labour mobility are potentially huge. One does not have to take the various estimates literally (e.g., Winters 2001, 2003a; Walmsley and Winters 2003; Rodrik 2004) to see that the possibilities far outweigh those of further liberalising goods trade. This section explores why we are seeing such slow progress.

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<sup>3</sup> The person must possess (1) a university degree or equivalent technical qualification, (2) professional qualifications where this is required to exercise an activity in the sector concerned according to EC law or the law of the Member state where the service is provided and (3) at least three years of professional experience in the sector.

One argument is that I may have the wrong measure: Negotiations have not become serious yet and so one can read little into the initial offers. Clearly there is some truth to this, but in goods we do observe initial offers being used both as challenges to partners to make concessions in specific areas, and as ways of signalling intent to press for far-reaching deals. I do not detect these forces in the services schedules, although I do expect offers to become a little more daring over time.

Relatedly, the explicit trade-off in the Uruguay Round, and the expected one in this Round was Mode 3 concessions by developing countries in return for Mode 4 concessions by developed countries. Since developing countries are making offers in Mode 3, perhaps they feel no need to make them in Mode 4. Again, there is truth in this, but the trade-off did not work very well before and so the bargain is likely to become 'within Mode 4' this time as well. Hence, making offers in Mode 4 might facilitate receiving them.

It is also argued that until developed countries show a willingness to engage in Mode 4, it is unreasonable to ask developing countries who, outside intra-corporate transfers, are the demanders, to make extensive offers. This is the stalemate that I hope will be broken and the fact that it has not been so far bodes ill for the future and leads me to believe that developing countries are substantively nervous about this area.

This nervousness partly reflects the fact that migration and temporary mobility are more threatening than ordinary trade liberalisation because they raise the spectre of cultural and social strife. A well-run temporary mobility scheme (which ensures, by and large, temporariness) should circumvent long-run fears of this kind because it shows the local population that integration is not intended. On the other hand, by leaving the temporary migrants out of the mainstream one makes them more isolated and more visible, which could exacerbate short-run frictions. My own belief is that the former effect should dominate (especially if the rhetoric shifts from 'sponging aliens' to 'essential service providers'). However, I note that the eminent Copenhagen Consensus (*The Economist*, 11 June 2004) castigated

guest worker schemes on the grounds that they prevented the integration of migrants into local society.<sup>4</sup> The issue remains open.

A further related worry is that temporary mobility might be the first step towards permanent or very long-lived migration -- as, for example, Germany's *gasterbeiter* system turned out and the USA's H1-B visa scheme is basically intended to be. Thus issues of migration and labour market policies become involved very directly and these typically lie with ministries that are not instinctively outward-looking. Moreover, temporary schemes are complex to legislate and administer, so these ministries have concrete objections as well. Immigration officials dislike sector-specific visa regulations, as GATS calls for, because they increase the administrative burden (Chaudhuri, Mattoo and Self 2004). These latter issues apply to genuinely temporary as well as pseudo-permanent mobility.

The labour market effects of the temporary mobility of the lower-skilled fall heavily on local less-skilled workers. In high- and middle-income countries these have long been a favoured group in trade-policy terms, ostensibly being the main beneficiaries of protection, e.g., in agriculture, clothing and footwear. Moreover, in arguing for the liberalisation of imports of unskilled labour-intensive goods, protagonists have often implicitly fallen back on the existence of less-skilled jobs in the non-traded sector ('a nation of hamburger-flippers'). Mobility threatens these jobs (or the wages in them) too, and so encounters even more strongly the traditional biases and concerns. Moreover, although I have argued previously that the educated and aging rich countries are going to run out of unskilled labour soon, the higher levels of unemployment among the less-skilled in those countries suggest that we have not got there yet.

It is worth reiterating that the resistance of unskilled workers to immigration is not restricted to richer countries. Even in poor developing countries such fears are heard. This, along with social/racial concerns, could well explain why developing countries have not been bolder in their schedules.<sup>5</sup>

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<sup>4</sup> Has anyone else noted the irony of a group of temporary workers -- the Consensus Panel travelled to Denmark and worked there -- castigating temporary mobility?

<sup>5</sup> It is possible that the Indian proposals on contractual service providers could extend to less skilled workers, but it does not seem very likely.

Competition from abroad is now visiting itself upon more-skilled, middle-class jobs as well as the unskilled. The outsourcing debate partly reflects this phenomenon, but so too do the debates over the regulation and qualifications of foreign workers. The traditionally self-regulating professions have long sought to control competition by managing trainee numbers, and are now active in trying to preclude foreign competition via qualification restrictions; for example, the US State Bar Associations significantly restrict inter-state commerce in lawyers. Thus, interest groups throughout the economy are resistant to admitting competing labour. Moreover, the middle-classes are much more articulate, networked and influential than less-skilled workers, so we must expect the opposition to be fierce, especially in developing countries where the relatively smaller middle-class faces all the adverse consequences of competition but only a share of the consumer gains from lower prices and more choice.

As always, export interests are less well organised and motivated than import-competing ones: the identities of the gainers are less clear and the gains may be eroded by future entry anyway. In Mode 4 the Indians have led on independent professionals, however. Several possible rationales exist: to try to cement down the willingness of the EU to grant concessions in this area, because India's strong endowment of such workers makes this a national interest and, very probably, because India has strong professional associations. It is also worth speculating that many senior Indian decision-makers have children entering the professions whose levels of education are sufficient to practice in the United States or Europe and whose incomes would be greatly enhanced by doing so. Thus pushing on 'independent professions' marries public and private policy. Such pushing, however, may not be to the advantage of smaller, poorer, developing countries with scarce professional skills. They may suffer more seriously from a 'brain drain'.<sup>6</sup> This possible division of interests in the developing world could also help to explain why we have not seen strong coalitions growing up. The traditional 'foot-soldiers' of the developing country caucus may recognise that they have different interests from the traditional 'captains'.

An important counteracting force, as in intermediate goods trade, is firms which wish to use foreign labour. These are likely to push for increased mobility. Examples include the IT sectors in the US, UK and Germany in the early 2000s, the medical profession seeking nurses and

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<sup>6</sup> The brain drain is less of an issue with temporary than with permanent mobility, but problems cannot be ruled out.

doctors, and agriculture seeking pickers and packers. These groups are certainly behind the expansion of mobility schemes but, naturally, mainly for their own specific requirements rather than for labour in general. In goods trade, users lobby for free trade in their inputs and also quite often for liberalisation elsewhere in their economies so that, via reciprocity, other countries will relax restrictions on the users' exports. In labour mobility, the pressure for general liberalisation is lost because, with one exception, none of the users exports labour. The exception, of course, is multinational companies whose desire to both 'export' and 'import' their own employees lies behind the progress on intra-corporate transferees.

Finally, having spent much of the last few years exploring issues of migration, permanent and temporary, I can assert that they are very complicated. Even qualitative results are hard to establish unambiguously and quantitative ones are rarely credible. In the absence of a well-defined calculus of net benefits, policy-makers will tend to be cautious -- exactly as they were over agriculture until the OECD provided some clear numbers in the mid-1980s.

To ask why there is so little movement on the GATS is not to imply that there is no movement on temporary labour mobility, however. In fact there is, but not via GATS. Temporary labour schemes currently exist, and, as I noted above, are being extended and improved. But not multilaterally. This may indicate either that there is no demand for a multilateral input on labour mobility or that there is demand but the GATS cannot satisfy it.

One possibility is that the constituencies that would naturally lobby for agreements on Mode 4 can be satisfied without it. On the unskilled labour front the safety valve for the agriculture, hotels and tourism and clothing sectors may well be illegal migration. If, despite the hostile rhetoric towards foreign workers, they get the labour they want, why bring things out into the open? On more skilled labour the situation is probably that direct targeting of specific sources of labour is cheaper and more reliable (because there are fewer qualifications and education systems to understand) than a global search, so that that is what users lobby for.

Breining, Chadha and Winters (2003) consider this question in a study of temporary mobility in the health sector, specifically, the flow of doctors from India to the UK. They observe that medical mobility already satisfies many of the conditions that informed scholars of Mode 4, such as Mattoo (2000), urge on negotiators. For example, to qualify to practice in the UK

doctors need to prove their suitability via a test of competence and language (the PLAB); they do not need to undergo more training or meet extensive residence requirements as are found with some other professions. That is, the qualifications test focuses on necessary fiduciary issues rather than irrelevant formalities. Moreover, the WHO accreditation of medical training facilities goes a long way towards achieving mutual recognition of primary medical qualifications, for the UK recognises preliminary medical training given in any WHO accredited institution. Moreover, India and the UK are almost as good a pair of negotiating partners as one is likely to find.<sup>7</sup> India is the UK's principal supplier of non-EEA doctors and the UK [one of] India's principal markets.<sup>8</sup> This maximises the internalisation of the negotiation, and in so doing will encourage agreement.<sup>9</sup>

Despite these apparent advantages, doctors never figure explicitly in GATS Mode 4 commitments, and medicine is not included in the sectors for which the UK will now issue 'GATS visas' or in the favoured sectors in the EU's GATS offer. Partly this may just be because the mobility of health workers is well established and is seen by government as part of the health and employment portfolio rather than the trade nexus, i.e. no one thought of using the GATS in this context. It might also be because the current balance between supply and demand means that there is not much value-added to the GATS. Indeed, the GATS could increase the bureaucratic cost of medical mobility, since the UK's current 'permit-free' schemes for doctors are light-handed relative to other forms of international mobility<sup>10</sup>.

A more likely candidate, however, is concern about the inflexibility of the GATS. In the absence of a safeguards clause, it would be arduous to reduce inward mobility below bound levels if circumstances changed. And given the very long gestation period for doctors, the authorities will wish almost all short- to medium-term demand fluctuation to be accommodated by 'imports'. A cohort of unemployed domestic doctors would be a very awkward political constituency. Also, both sides wish to avoid the MFN clause. European countries appear to

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<sup>7</sup> Even though health and education are national competences in the EU, the formal negotiation would be between the European Union and India, because the Commission has responsibility for all negotiations in the WTO, even where, as here, the issues at stake are national competences.

<sup>8</sup> The UK is obliged to recognise qualifications from the European Economic Area and to impose no restrictions on the employment of EEA nationals.

<sup>9</sup> See Finger (1979) or Winters (1987) on internalisation in GATT negotiations.

<sup>10</sup> Once an overseas doctor has a training job in a UK hospital he/she has no need to apply for a work permit. By 'training jobs' I mean jobs for junior doctors who undertake a great deal of clinical work, but who also received advanced training in their specialities. They are typically time-limited and expire when training is completed.

want to be able to target specific countries for specific services. This is especially true where language, culture or qualifications are concerned. For example, Commonwealth citizens receive favourable treatment in several UK temporary immigration schemes, or where they offer training, in which case 'aid-like' considerations occur. On the Indian side, applying the MFN clause would increase competition in the UK for migrant doctors places, almost certainly reducing the numbers of Indians or their rewards. That is, binding in the GATS would reduce internalisation. These arguments, of course, also apply to preferential trade in goods, and, at least for around 40 years, we largely overcame them in the GATT. However, given that integrating people is more demanding than accepting foreign goods, they are possibly stronger for Mode 4.

The MFN obligation in the GATS applies to all services trade whether scheduled or not (unless a measure has been explicitly excepted from MFN, and even that is time-limited). Thus there is some chance that all bilateral labour mobility arrangements, except those forming part of a fully-blown preferential arrangement, could be challenged and possibly ruled WTO-inconsistent. That would not be helpful. Some commentators are starting to say that since the issues are so sensitive and so case-specific that progress will be possible only bilaterally, we should bow to the inevitable and let the GATS recognise bilateral deals. I agree that for many years most temporary mobility deals will be bilateral, but I would rather leave them out of the GATS than dilute the fundamental non-discrimination principle of the GATT and the WTO. Thus while there is clearly a case for ensuring that bilateral deals on mode 4 cannot be taken to the dispute settlement procedure, I would not recognise them formally under the GATS and would certainly not allow them to be scheduled or enforced via its procedures. Bilateralism is likely to create friction in temporary mobility and there is a case for keeping that friction out of the WTO. Moreover, bilateralism in goods is economically and politically destructive and will become (even) harder to resist if we concede on Mode 4.

## **6. CONCLUSIONS**

Developing country offers in Mode 4 are unambitious; their general demands are reasonable, but these are not supported by their offers or negotiating tactics, partly because interests differ across developing countries. The developed countries, on the other hand, have breathed a sigh of relief and offered almost nothing under Mode 4, despite stealthily liberalising labour

mobility via other mechanisms. The forces ranged against Mode 4 are formidable, so it will be a long and uphill struggle to establish it, not least because bilateralism looks more feasible in most cases. Nonetheless, I would oppose dropping demands for the liberalisation of lower-skilled labour mobility under the GATS, and I would have the GATS ignore rather than condone bilateral arrangements. By seeking to keep unskilled labour in and bilateral deals out, I would clearly be reducing the amount of liberalisation that could be attributed to the GATS, but at least, I would be upholding the fundamental principles of equity and non-discrimination.

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**ANNEX 1: Developing and Transition Country Services Offers  
up to April 2004**

Argentina	Mexico
Bahrain	Panama
Bolivia	Paraguay
Bulgaria	Peru
Chile	Poland
China	St Christopher & Nevis
Colombia	Singapore
Costa Rica	Slovak Republic
Czech Rep	Slovenia
Fiji	Sri Lanka
Guatemala	Suriname
India	Thailand
Macao, China	Turkey
Mauritius	Uruguay

**ANNEX 2. Horizontal Commitments—Turkey, Slovenia, Chile**

<p><b>Turkey</b> Market Access</p>	<p>Unbound except for the entry and temporary stay of natural persons in the following categories:</p> <p>A. Administrative and technical personnel of established foreign service providers. Work permits and residence permits are valid up to 2 years, and subject to renewal. This includes: managers-executives, specialists, and service sellers.</p> <p>B. Service sellers It is not necessary to obtain work permits and residence permits for service sellers who stay in Turkey for not more than 30 days, for the purpose of participating in business meetings, business contracts including negotiations for the sale of services, entry into contract to sell services and visits of business establishments, or other similar activities. Service sellers may not sell services directly to the general public.</p>
<p>National Treatment</p>	<p>The professional services which are assigned only to Turkish citizens by the specific laws cannot be rendered by foreigners either as service providers or as the personnel of service providers. On the other hand foreign citizens with Turkish origin may work in professions which are assigned only to Turkish citizens with the permission obtained from the Ministry of Interior. Those professions which are assigned only to Turkish citizens are given below:</p> <p>1. 1) Doctors, 2) Pharmacists, 3) Nurses, 4) Veterinarians, 5) Responsible directors of the factories producing medicine, 6) Guides, 7) Responsible directors of private hospitals, 8) Responsible directors of travel agencies, 9) Directors of newspaper, 10) Dentists, 11) Notaries, 12) Those personnel working in Free Trade Zones other than managers and qualified personnel, 13) Those personnel undertaking coastal commerce and related activities, 14) Opticians, 15) Doctors, pharmacists and veterinarians dealing with laboratory services, 16) Lawyers who practice in Turkish Courts, 17) Accountants and Certified Public Accountants.</p>

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Note: Turkish legislation related to taxation, prudential and professional competency requirements, immigration policies has not been listed separately in this schedule.

<p><b>Slovenia</b> Market Access</p>	<p>Unbound, except for measures concerning the entry into and temporary stay, without requiring compliance with an economic need test*, of a natural person which falls in one of the following categories:</p> <p><u>Business visitors</u> A natural person, who stays in the Republic of Slovenia without acquiring remuneration from or within the Republic of Slovenia and without engaging in making direct sales to the general public or supplying services, for the purpose of participating in business meetings, business contacts, including negotiations for the sale of services, or other similar activities, including those to prepare the establishment of commercial presence in the Republic of Slovenia. The duration of temporary stay is limited with a 90 day visa.</p> <p><u>Intra-Corporate Transferee+</u> Natural persons of another Member who have been employed by juridical persons of another Member for a period of not less than three years immediately preceding the entry or have been partners in it (other than majority shareholders):</p> <p>(a) Natural persons occupying a senior position.</p> <p>(b) Natural persons working who possess special knowledge and uncommon qualifications essential to the establishment's service, research equipment, techniques or management. The duration of temporary stay for "intra-corporate transferees" is limited with a residence permit, which may be granted for up to one year with extensions.</p>
<p>National Treatment</p>	<p>Unbound except for measures concerning the categories of natural persons referred to in the Market Access Column.</p>

\*All other requirements of laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements.

+ An "intra-corporate transferee" is defined as a natural person working within a juridical person, other than a non-profit making organisation, established in the territory of a WTO Member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of the Republic of Slovenia; the juridical persons concerned must have their principal place of business in the territory of a WTO Member and the transfer must be to an establishment of that juridical person, effectively providing like services in the territory of the Republic of Slovenia.

	To the extent that any subsidy is made available to natural persons, their availability may be limited to nationals of the Republic of Slovenia.
<b>Chile</b> Market Access	<p>Unbound, except for transfers of senior and specialized natural persons within a foreign enterprise established in Chile, who have been in the employ of the organization for a period of at least two years immediately preceding the date of their application for admission. Foreign natural persons may not make up more than 15 per cent of the total staff employed in Chile. For all legal purposes, senior and specialized personnel must establish domicile or residence in Chile. Senior personnel are executives and specialists with indispensable skills. Specialists must have skills not available in Chile.</p> <p>Service providers are admitted into Chile temporarily for a period of two years which can be extended for a further two years. Personnel admitted under these conditions will be subject to the labour and social security legislation in force.</p>
National Treatment	Unbound, except for the categories of natural persons listed under market access.

### ANNEX 3. Sectoral Commitments—Turkey, Slovakia

Turkey	
Sector	Market Access
Primary, Secondary and Other Educational Services	Foreign teachers and experts may work in pre-primary, primary and secondary educational institutions and in non-formal educational institutions (i.e. in language teaching and vocational training centers) after obtaining permission from the Ministry of Education.
Insurance	Engaging of natural persons in a brokerage business or establishment of an insurance and reinsurance broker company or opening of a branch of a foreign insurance and reinsurance broker company in Turkey is subject to prior permission and obtaining an operation licence from Undersecretariat of Treasury. Such a firm must be founded in the form of a joint-stock or a limited liability company, and must possess the required minimum paid-in capital.
Services auxiliary to insurance	Foreign commercial presence or presence of foreign natural persons regarding services auxiliary to insurance is permitted only for consultancy and risk management. Natural person insurance and reinsurance brokers have to reside in Turkey and they must have at least 5 years of experience as brokers in their countries of origin. Unbound except administrative and technical personnel. Foreign natural person insurance and reinsurance brokers must have at least 5 years of experience as a broker abroad.
Collective investment management	The majority of the members of the board of directors of an investment corporation must have Turkish nationality.
Hotel and restaurants	After receiving the permission of the Ministry of Interior based on the affirmative opinion of the Ministry of Culture and Tourism, the hotels and restaurants with the tourism encouragement certificate, may employ foreign personnel. But the amount of foreign personnel employed in an enterprise should not exceed 10 per cent of the total personnel. This amount could be increased up to 20 per cent by the decision of the related Ministry.
Passenger and freight transportation	Captain and crew of the Turkish flag vessels should be Turkish residents.

Slovenia	
Sector	Market Access
Accounting, Auditing and Bookkeeping services*	Unbound except as indicated in Part I and subject to limitations on natural persons employed by juridical persons only.
Services auxiliary to insurance,	Unbound except as indicated in Part I and for actuarial and risk assessment for which residence is required in addition to a qualifying examination, membership in the Actuarial Association of the Republic of Slovenia and proficiency in the Slovene language.
Travel Agencies and Tour Operators	Unbound except as indicated in Part I and that a licence of the Slovenian Chamber of Commerce is required (for consumer protection purposes).
Other: Mountain Guides Services	Registration is required (for consumer protection and safety purposes). Unbound, except as indicated in Part I and training, one year of apprenticeship and examination are required for acquiring mountain guide qualifications. Registration in the Register of active mountain guides is required. &

\*According to Slovene Law, auditing services are a matter of firms, not natural persons.

& Mountain guides from abroad are temporarily allowed to guide groups from their country being subject to membership of the IFMGA and registration in the national Register of active mountain guides is required.