

**LABOR MOBILITY UNDER THE TRADE DOMAINS**  
**- AN ANALYSIS OF THE LEGAL FRAMEWORK**  
**OF TRADE IN SERVICES (GATS)**  
**AND REGIONAL TRADE AGREEMENTS ON LABOR MOBILITY(RTAs) -**

**By**

**Hyun-Joo Kim**

**THESIS**

Submitted to  
School of Public Policy and Management, KDI  
in partial fulfillment of the requirements  
for the degree of

**MASTER OF PUBLIC POLICY**

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## **ABSTRACT**

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International migration has been increased markedly for the last decades. Even though its figures neither come up to the scale of the early 20<sup>th</sup> century nor stand comparison to those of international trade of goods and capital in this century, movement of people is still important. Reflecting the growing importance of labor mobility, it came to be incorporated under GATS and this inclusion signified much in expectation that harmonized mechanism in labor mobility could contribute to the skills circulation and to the liberalization of labor mobility.

In general terms, however, negotiations on Mode 4 since its appearance during the Uruguay Round were not particularly successful. The current picture of GATS mode 4 portraits that GATS only served to facilitate temporary business visits and the movement of highly skilled persons, usually at the senior level, within transnational corporations.

With regard to liberalization of labor mobility under the RTAs, coverage of the

RTAs varies from professionals to the comprehensive movement of people. In this sense, RTAs have reached beyond the reach of multi-lateral frames in more liberalizing the movement of people. However, it is worth taking notice that the agreements, in general terms, are more favorable to the highly-skilled workers. Besides, they are also subject to the existing migration policies and procedures, and they include moderating measures such as transition periods or measures to prevent abuse.

Proceeding from what has been discussed above through comparative analysis of the two trade domains, it should be concluded that RTAs cannot make a breakthrough in liberalizing labor mobility. Nevertheless high expectations on the progress in liberalization of Mode 4 are two-fold: the expected potential gains from liberalization of Mode 4 are great; and globalizing business operations increase the needs for swift circulation of the workers. While it is evident that Mode 4 liberalization will be still posing challenges during the trade negotiations, it is also certain that people will keep on moving cross-borders. This is why light should be keeping on shedding upon this issue under trade regimes for moving toward liberalization.

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## **1. Introduction**

Services have long been regarded as non-tradable owing to its two features of being produced and consumed simultaneously, and non-storable. However, as the services increase since the post-war period with advancement of information technology and telecommunication, the inclusion of 'trade in services' came to be an issue for trade negotiations. Through controversial debate on 'tradeability' of services, services came to be brought into the international trading system under the name of the General Agreement on Trade in Services(GATS) as a result of Uruguay Round in 1994. Under the GATS frame, however, the actual commitment to liberalize trade in services was very weak, little was achieved particularly with regard to the temporary entry of natural persons(termed as Mode 4 under GATS context). Commitments are only confined to the skilled workers such as intra corporate transferees and professionals.

The existing immigration process of individual country including visa issuance and work permits were still permitted with discretionary authority, which resulted in barriers to facilitating entry of the foreign workers. In the case of professional

occupations, recognizing the qualifications, means of verifying competence, is leaving many things to be desired to improve the access opportunities. Moreover, due to the concerns that the incorporation of Mode 4 trade under multilateral trade regime might imply such brain-drain, socio-political and social security issues, international activity for liberalizing cross-border movement of workers is halting. In economic terms, Mode 4 trade contributes to the national economic growth, particularly for the developing countries. As for the developed countries', the expansion of global business and shortened product circle necessitate to take corresponding measures to the changing environment by circulating highly skilled personnel.

All in all, although Member countries of WTO agree on the need for liberalization of labor mobility, it's still uncertain whether the real consequences of liberalization might generate benefits or cause cost for the parties involved. Thus, the issue surrounding the need for improving market access and removing procedural impedes for movement of workers is still controversial.

Since the inception of the WTO, especially in the face of deadlock in multi-lateral trade negotiations in the late 1990s, a new momentum was gained in international trade regime; proliferation of regional trade agreements. Unlike the multilateral agreements on a Most-Favored-Nation(MFN) principle, regional agreements make it harder for non-member countries of the agreement to trade with those members inside

of the agreement, thereby causing to dampen the efforts for further market opening in multilateral negotiations. Despite the indicated effects of flowing backward that regional trade agreement might pose against the multilateral trade regime, still, there are motives that drive regionalism: not to be left out the growing web of preferential deals; expected quicker results gained through regional negotiation; and pursuit of non-trade concerns and so on.<sup>1</sup> With regard to the labor mobility under the regional trade agreement, it is evaluated that some of the regional trade agreement include provisions that go beyond the reach of the GATS by providing more market access or improving access labor mobility.

Against this backdrop, the purpose of the present paper is to offer an analysis of the movement of natural persons under the trade domains; GATS Movement of Natural Persons and regional trade agreement. At the outset, it is imperative to clarify that labor mobility stipulated under the GATS is based on the temporary basis, even though it still opens the possibility of permanent immigration as discussed later in this paper. I shall not dwell here on all the diverse flow that international labor mobility covers such as asylum seekers and family unification.

The rest of this paper is organized as follows:

Before embarking upon the analysis of labor mobility stipulated under those trade mechanism, chapter 2 deals with the general picture of current international migration,

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<sup>1</sup> OECD(2003)

so that I can fine-tune the dimension of the study. After observing the migration flow from broader perspective, the focus will be directed at the concerns surrounding the labor mobility both for labor sending and receiving countries. Then, chapter 3 examines the labor mobility under the GATS context by looking into its operation and coverage. It also attempts to identify the measures affecting labor mobility and proceed to see current status of its liberalization to tackle the question of whether it helped labor mobility or not. Later, chapter 4, provides an overview of the regional trade agreements which are categorized into 6 types according to the coverage and supportive measures for facilitating entry of foreign temporary workers. Chapter 5 draws conclusion by sketching out main discussion with tentative prospect in further liberalizing labor mobility under the trade domains.

## **2. Does labor mobility matter?**

With the dramatic increase of cross-border trade and investment, there also has been an upsurge in international labor mobility. Moving people cross-border, therefore, is one of the essential aspects of globalization which is more facilitated by advanced transportation system and communication technologies. However, great attentions have been shown to the international flow of goods and capital for the past decades, because in statistical terms, it is evident that the scale of trade involving the movement of people is a far or long cry from those of goods and capital. Then, can we say that labor mobility deserves to be passed unnoticed? If not, what is to be central concerns and added to the discussion within international trade mechanism? In light of these considerations, I will present the current picture of international migration focusing on the temporary movement of workers and explore the concerns related to the cross-border movement that results in taking restrictive measures running counter to the aforementioned picture of temporary movement of people in our times.

### **2.1. Global trends of labor migration**

International migration of our times is in a tangle. The variety of migration flows are observed over the world ranging from family unification, labor migrants, unauthorized migrants(irregular migrants) to potential asylum seekers. Along with the diverse dimensions of international migration, various migration legislation processes on naturalization of individual country and coarse statistical information reported from those countries make it impossible to capture the full global migration flow. Despite the statistical inaccuracy, data on international migration present that it has been growing undoubtedly during the past decades(Table 2.1). By 2000, the estimated number of people residing outside of their country of birth has gone up to 175 million. This number takes 3% of the population of the world and it keeps increasing at faster rate than that of global population growth.

**Table 2.1. International migrant<sub>1</sub> in the main countries and regions of destinations (1960~2000)**

	1960			2000		
	Population	Migrant	Share(%)	Population	Migrants	Share
Australia	10,276	1,701	16.6	19,153	4,705	24.6
Canada	17,909	2,766	15.4	30,769	5,826	18.9
New Zealand	2,372	334	14.1	3,784	850	22.5
U.S.	186,158	9,735	5.2	285,003	34,988	12.3
Sub-total	216,715	14,537	6.7	338,709	46,369	13.7
Argentina	20,616	2,615	12.7	37,074	1,419	3.8
Uruguay	2,538	192	7.6	3,342	89	2.6

Western Europe <sub>2</sub>	391,771	24,346	6.2	562,627	66,713	11.9
Total	391,771	24,346	6.2	562,627	66,713	11.9

Source : Trends in Total Migrant Stock : The 2003 Revision

Note : <sub>1</sub> Migrant includes “voluntary migrant people who move for employment, study, family reunification, or other personal factors and forced migrants who leave their countries to escape persecution, conflict, repression, natural and human-made disasters, ecological degradation, or other situations that endanger their lives, freedom or livelihood” quoted from IOM/UN World Migration Report 2000

<sub>2</sub> Comprising Belgium, France, Germany, Italy, Luxembourg and Switzerland only

As noted earlier in this chapter, international migration flows cover diverse labor flows; yet the attention of this study is directed at the persons who leave the country of origin for work. The ILO estimates (Table 2.2) show the figures of migrant workers<sup>2</sup> reach approximately 80 million which are distributed mainly to the three regions: Europe, Asia and North America.<sup>3</sup> This data is bringing the hint of the concerns surrounding the movement of migrant workers, ‘North-South trade’, which will be discussed in following paragraphs.

**Table 2.2 ILO estimates of migrant workers by region, 2000(provisional)**

Region <sub>1</sub>	Migrant workers
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<sup>2</sup> Definition of migrant workers is read as “a person who is to be engaged, is engaged or has been engaged in remunerated activity in a State of which he or she is not a national in The 1990 UN Convention on the Protection of all Migrant Workers and their Families

<sup>3</sup> Still, the migrant workforce can be classified by age, skill level, occupation proximity from origin and length of stay. Most of them enter other countries through ones of the following three channels: permanent migration (primarily highly skilled migrants, family unification); temporary migration for all types of employment (filling vacant jobs persistently); temporary migration for time-bound employment (e.g. service providers, trainees and students).

	Excluding refugees		Including refugees	
	Millions	%	millions	%
Africa	5.4	7	7.1	8
Asia	22.1	27	25.0	29
Europe	27.5	34	28.2	33
Latin America and the Caribbean	2.5	3	2.5	3
North America	20.5	25	20.5	24
Oceania	2.9	4	2.9	3
Total	80.9	100	86.3	100

<sup>1</sup> UN statistics Division definition of the region. <sup>2</sup> Estimates of migrants by the United Nations Population Division. UNDP 2002, International Migration 2002, New York, United Nations.  
Source : Towards a fair deal for migrant workers in the global economy, International Labor Conference, 92<sup>nd</sup> session, 2004, p.7

## 2.2 Dimensions of labor flows

Migrant workers, a corner of the whole international labor mobility, can be subcategorized based on their motivations to move, skills, age, occupation etc.

Decoding the intricate web by the regions of origin and destination exhibits that it is closely associated with the skill levels of workers.<sup>4</sup> Those dimensions are: skilled and professional workers from developed to developing countries; professionals from developing to developed countries; unskilled workers from developing to developed

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<sup>4</sup> Winters(2002)



countries.

### 2.2.1 Labor flow from developed to developing countries: The Skilled

This flow is ubiquitous presence in the more dynamic regions of the world.<sup>5</sup> The professionals and managers are relocated (movement within the internal labor markets of transnational corporations) while expanding trade of direct foreign investments. These workers, so-called intra-corporate transfers, are necessary not only for providing services relevant to investment expansion but also increasing efficiency in the course of integrating local operations into the global level. Economic models<sup>6</sup> have shown that business mobility increases world output, as with most migration driven by wage differences.<sup>7</sup> They have also found that such a labor flow also narrows the skill gap(the differences between skilled and unskilled wages) in the developing host countries(due to the unskilled wage rise) while it is widened in developed countries.

### 2.2.2 Labor flow from developing to developed countries: The Skilled

Outside of the internal market mobility, there are also larger movement of professionals and highly skilled labor in multiple occupations such as ICT, medicine,

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<sup>5</sup> International Labor Office Geneva(2004), p.7

<sup>6</sup> Tang and Wood(1999)

<sup>7</sup> Hamilton and Whalley(1984) suggested that if labor were able to move between regions sufficiently to equalize wages around the world, world income could increase by more than 150%.

teaching, sea and air navigation, journalism, communications, and entertainment.<sup>8</sup>

(Some of workers in this category fall within the scope of ‘Mode 4 on trade in services, which will be discussed in subsequent chapter) They move from developing countries to developed countries. Such a flow usually involves the problem of ‘brain drain’(See Box 2.1.), because it is relatively clear that the countries receiving skilled labor tend to benefit while countries sending brains might suffer from the loss.

### **Box 2.1 The brain drain/gain**

Brain drain is related to the movement of highly skilled workers moving outside of their country of birth to increase returns on the educational investment made privately or publicly. According to recent IMF analysis, most migrant workers from developing countries to the OECD are much better-educated than the rest of the population of their countries of origin. The immigration policies of OCED countries contribute to such a phenomenon on the one hand, and the fact that better educated people more likely to be able to afford migration cost explains it on the other hand.

‘Brain drain’ is rendered to cause a serious loss to the originating countries, however, surplus of trained the skilled workers within the domestic labor market also ascribe to outflow of the highly skilled workers.

People who go abroad to study don’t go back home, developing countries, in many cases. Africans who studied chemistry and physics in the 1960 didn’t seek employment in their home countries. South Korea, a more economically advanced country, also experienced losing talented people trained abroad. The number of Koreans with Ph. D who are working in US as scientists are going up to more than 1350.

However, there are growing numbers of returning Chinese high-tech professionals from Silicon Valley. Returnees working in Shanghai’s Pudong special economic zone rose from 500 in 1999 to 3,200 in 2001. The brain gain

<sup>8</sup> International Labor Office(2004) Ibid. p.7

was also expected by Binod Khadria who predicts possibilities of the “brain drain” turning into “brain gain” in the “second generation” aspects of brain drain in India. He illustrates the Indian scholars who settled abroad who have come back to teach India or to interact with researchers as the “shining examples” on his argument. But he concludes that the possibility of the “brain drain” turning into “brain gain” is a matter of distant future.

Source : W.J.Carrington and E.Detrage(1998), “How big is the Brain drain?”, International Monetary Fund, Working Paper 98/102; Human Development Report, United Nations Development Program(1992); Ong,P. and Cheng, L., “Migration of Highly Educated Asian : Some Theoretical Considerations”, paper presented at the Conference on International Manpower Flows and Foreign Investment in the Asian Region, Tokyo in 1991. OECD(1998), Binod Khadria(1999)

At the same time, the labor sending countries experience lessening economy’s entrepreneurship, the ability to absorb new technologies, and various positive spillovers from skilled to other workers and society in general. This is more clearly shown to take the U.S. case. Table below(table 2.3.) shows that the number of Jamaicans with tertiary education in the U.S. were 3.7 times more than the number of people with same educational level at home in 2000. El Salvador is occupying second largest portion of college graduates in the U.S. in relations to the similarly educated cohorts remaining at home. Among every ten El Salvadorian college graduates, four of them were in the United States.

**Table 2.3. Migrants to the United States by level of educational attainment in relation to similarly educated cohorts remaining at home, 2000(%)**

Country	Educational level			
	Total	Primary or less	Secondary	Tertiary
East Asia				
China	0.1	0.1	0.2	2.2
Indonesia	0.1	0.1	0.1	0.7
Philippines	3.6	0.6	2.2	11.7
Eastern Europe, Central Asia				
Croatia	1.2	0.4	1.2	4.7
Turkey	0.2	0.1	0.4	1.3
Latin America and the Caribbean				
Brazil	0.2	0.1	0.5	1.1
Colombia	2.1	0.4	4.0	9.9
Dominican Republic	12.9	5.3	42.4	24.8
El Salvador	24.3	12.4	114.8	39.5
Guatemala	7.6	3.8	29.9	25.8
Jamaica	33.3	4.7	40.9	367.6
Mexico	13.3	10.8	17.2	16.5
Peru	1.8	0.3	2.5	4.2
Middle East, North Africa				
Egypt	0.3	0.1	0.2	2.3
Tunisia	0.1	0.1	0.2	1.3
South Asia				
Bangladesh	0.1	0.1	0.3	2.3
India	0.2	0.1	0.2	2.8
Pakistan	0.3	0.1	0.5	6.4
Sri Lanka	0.2	0.1	0.1	5.6
Sub-Saharan Africa				
Sudan	0.1	0.1	0.3	3.4

Note : Immigrants defined as foreign-born population in the United States age 25 years or over;

primary education or less corresponds to 0-8 years of schooling; secondary to 9-12 years of schooling; and tertiary to more than 12 years of schooling.

Percentage represents ratio of numbers living in the United States over those living at home with same educational attainment

Source : Reproduced from table 5, R.H.Adams : International Migration Remittances and the Brain Drain : A Study of 24 labor-exporting countries, World Bank Working Paper No.3069, 27 May 2003

### 2.2.3. Labor flow from developing to developed countries: The Unskilled

Along with the streams of highly-skilled labor, there is another part of contemporary migration flows<sup>9</sup>, unskilled labor flow from developing to developed countries. This type of flow is playing an important role in supplying the labor force, particularly in some sectors of developed countries which are vacated by the native workers' reluctance to be engaged in the work.

Among those abovementioned three dimensions of labor flows, more lights can be shed on the latter two categories, because it more incites the 'North-South' trade issue which causes hesitance in services trade liberalization. The increasing number of workers from developing countries to developed countries, regardless of their level of skill, also carries the feature of temporary basis as is seen from the data shown in the following paragraph.

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<sup>9</sup> Ibid. p.8

## 2.3 Service Trade and Temporary Movement of Workers

### 2.3.1 Statistics on service trade and temporary workers making entries

Temporary migrants mainly cover highly skilled professionals and unskilled seasonal workers in sectors such as agriculture, construction and tourism. They have time-bound contract and specific occupations are authorized. The temporary movement of workers to developed countries has been steadily increased(table 2.4)

**Table 2.4. Entry of temporary workers into selected developed countries  
(1992~2001)**

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

Source : Trends in International Migration(Continuous Reporting System on Migration) Annual Report(2004), OECD  
Note : ·· means data not available

The temporary movement of workers, both skilled and unskilled, has been increased in order to meet the labor demand of developed countries by taking target-specific migration policies for filling labor shortage in certain sectors. On the one

hand, skilled (or semi-skilled) workers are concentrated in several sectors such as health care, education(primarily higher education), and computer technology. For example, work permit approvals in the United Kingdom of Britain and Northern Ireland increased twice from 58,200 in 1999 to 115,700. Education(100 percent), health care(over 40 percent) and computer technology(around 25 percent) are the sectors that recorded the highest increase. The German government instituted the “green card program in 2000 to facilitate the entry of skilled labor, which resulted in a surge of employing foreigner workers(300 percent). United States also increased the quota of highly qualified temporary visas substantially in 2001.(Box 2.2.) Concurrent with the experience of the developed countries, the more advanced developing countries, Republic of Korea, for example, shows raised number of foreign workers from 17,700 in 2000 to almost 28,200 in 2001.<sup>10</sup>

**Box 2.2. Migration policies towards highly skilled foreign workers in selected countries**

UK, France, Germany, the USA, Canada and Australia have long standing immigration policies, however, these countries are experiencing skills shortages in sectors of their economy, notably in information technology(IT), health, education and other professional sectors.

United Kingdom : Work permit system

- The Work permit system enables employers to recruit or train people who are not nationals of a European Economic Area(EEA) country. The work permits are issued for the duration requested by the employer, up to five years. There are

<sup>10</sup> Data from SOPEMI(Continuous Reporting System on Migration, 2004)

neither quota restricted nor points system. However, there are several eligibility criteria; non-existence of suitable resident workers available; the pay should be at least equal to that normally given for similar work

German : Green card system(IT-specialist temporary relief program)

- German Government introduced this scheme to make it possible for IT specialists from non-EU-countries to work in Germany for up to 5 years of which procedures are as unbureauratic , rapid and transparent as possible. The eligibility criteria includes; language ability(German or English); educational level(degree in the filed of ICT); equivalence of working conditions and payment to the standard German employees etc.

U.S. : H-1B specialty(professional) workers

- The skilled entry route into U.S. allows US employers to admit highly skilled foreigner workers that have at least a BA degree allowing them to fill US “specialty occupations”. The annual quota have been raised from 115,000 in the year 1999 to 195,000 in 2001.

Source : Gail Mclaughlan & John Salt, Migration Policies towards Highly Skilled Foreign Workers(2002)

On the other hand, unskilled foreign labor enters to developed countries on a seasonal basis under the specific scheme for inviting seasonal workers, and their numbers are increasing for the past years. A good example is agriculture sector. In Canada, the numbers of the guest workers employed in agriculture tripled in 2002(18,604) compared with that of 987(6,202).<sup>11</sup> More drastic increase is found in UK; from 5,019 admissions of seasonal agricultural workers in 1992 to 19,372 in 2002.<sup>12</sup>

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<sup>11</sup> Citizenship and Immigration Canada, Facts and Figures 2002 available at <http://www.cic.gc.ca/English/pub/facts2002-temp/index.html>

<sup>12</sup> Work Permits UK, <http://www.workpermits.gov.uk>



## 2.3.2 Temporary movement of workers and trade in service

### 2.3.2.1 Theories about temporary movement of workers

#### a. Traditional theory of international trade

Trade in services might be understood the same as the trade in goods, which is explained by the traditional economic models. The typical neoclassical models assume that conditions for production (endowments of labor and capital) between two given countries are identical and the economies of scale is absent. Under these assumptions, exchange of goods arises from the different endowment of labor and capital. In other words, incentive to trade comes from the differences in relative cost of producing goods, therefore, countries with well endowed in labor specialize in labor-intensive goods while the countries well endowed in capital do likewise in capital-intensive goods. In this regard, differences in cost for production between the countries are removed and trade substitutes for factor mobility.

However, it is hard to apply to all the modes of trade in services.<sup>13</sup> Chanda<sup>14</sup>

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<sup>13</sup> Coverage of Trade in Services

- Mode 1 (cross-border supply) : Services supplied from one country to another, not requiring the physical movement of the consumer (e.g. distance education, e-learning, virtual universities)
- Mode 2 (Consumption abroad) : Consumers or firms making use of a service in another country (e.g. students who go to another country for their studies)
- Mode 3 (Commercial presence) : A foreign company setting up subsidiaries or branches to provide services in another country (e.g. local branch or satellite campuses, franchising arrangements with local institutions)
- Mode 4 (Presence of natural persons) : Individuals traveling from their own country to supply services in another (Source : WTO GATS overview document)

explains that it is difficult to use standard models for goods are not directly applicable to services via the movement of labor and capital for the following two reasons. First, in the case of trade in services, trade taken place through movement of labor or capital results in a change in factor endowments while standard trade models for goods are premised on the given endowments. Secondly, trade is not a substitute for factor mobility but is rather represented by the labor or capital that moves across border. Therefore, trade and factor mobility are not distinguishable in terms of movement of natural persons and commercial presence in service trade. These considerations lead to modify the notion of factor endowments in standard models in two respects; the heterogeneous nature of tradable services; complementarities of labor and capital. The former can be seen from the cases of many developing countries where unskilled labor is better endowed than skilled labor while the latter is depicted by professionals who move to a firm that has been established abroad. Under these modifications, the comparative advantages in services are still based on differences in endowments.

#### b. Theories of migration

Theories of migration also try to clarify the reasons behind moving people across borders, which generally point that geographic wage differential, different

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<sup>14</sup> Chanda(1999)

productivity, motivation of securing diverse means of income, and minimizing risks determine the international migrations<sup>15</sup>. The temporary movement of workers, especially the movement of natural persons under GATS(Mode 4) which will be discussed later is different from migration. However, no matter the duration of their stay, their movement itself still has links to the permanent migration, which becomes one of the concern that impedes further liberalization in labor mobility.

### **2.3.2.2 Understanding effect of temporary movement of workers**

#### **a. Effects on the countries of origin**

As noted above, trade probably helps countries in specializing production based on endowments of comparative advantage. Traditional models for international trade of goods accounts for these expectations, however, more concerns come on stage in the cases of factor movements. One of them is the brain drain issue raised by the originating countries’.

The loss of human capital, called “brain drain” comes first among the concerns of temporary moving workers. The more number of professionals who leave the countries of their origin, the more labor sending countries lose skilled labors, which is

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<sup>15</sup> See WTO(2001) p.622(Box23.1)

a loss in investment of education and training. As Ghose<sup>16</sup> indicated, increased trade aggravates the brain drain problems under the circumstances without restrictions on labor mobility. He further elaborates that trade and flows of skilled labor are complements while trade and flows of unskilled labor are substitutes. Under these circumstances, expanding trade with liberalized labor mobility means reducing national welfare by failing to accumulating human capital.<sup>17</sup> Such costs can be much larger when the limited number of skilled labors who are fostered through public investment emigrate.

However, temporary emigration of the workers may provide opportunities when the domestic labor market is saturated and Werner<sup>18</sup> presents that it can work in reducing the unemployment rate. Besides, the data regarding the size of remittances of migrants to their family show that remittances are becoming sources for boosting investment in those regions through developing human capital or increasing savings. Reminding the condition of moving people, temporary basis, it can be expected that there are gains from the returning workers, which compensate the short-term loss of the human capital, because experiences of those returning workers mean the accumulation of the human capital which influences the future economic growth of

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<sup>16</sup> Ghose(2002)

<sup>17</sup> However, there are contrasting opinions on the argument above. Stark and Wang(2001) maintain that emigrating workers improve the welfare of the remaining people, for migration opportunities induce them to attain more skills through education. The number of learned people who are leaving is only a portion of the remaining ones(graduates) who would not have studied without the possible emigration opportunities.

<sup>18</sup> Werner(1996)

the developing countries. In order to make the most of the skills of the returning workers, there should be appropriate infrastructures and career opportunities.<sup>19</sup>

#### b. Effects on the countries of destination

The impact of temporary workers on the receiving countries is also dubious and they can also be considered in three respects: labor market and industrial relations, relation to the permanent migration and social-security concerns.

In the saturated labor markets, entry of the foreign workers could exacerbate the unemployment rate. Beside, their return to the originating countries causes a loss of human capital and investment which was accumulated through the training during their stay. However, considering their major fields of occupation, the influence is more beneficial in the respect of filling the gaps between labor demand and supply in the labor-receiving countries. Particularly with demographic transition in developed countries with population aging, immigration can be a solution for substituting for the human labor(Box 2.3.). Yet, ironically, this effect can also be the exact reverse from the domestic workers' point of view, because the arrivals of the foreign workers weaken the power of labor union in setting the wages and working conditions.

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<sup>19</sup> OECD(2001)

### **Box 2.3. Population aging and migration**

The proportion of the foreigners or the foreign born in the total labor force in OECD countries has been increasing significantly. For example, the first group in terms of the foreign of foreign-born share of total employment ranges from 57~18%(in descending order) in Southern Europe, Luxemburg, and United States. Under these circumstances the demographic projection by UN shows that the population of EU and Japan supposedly will fall by 10~14 percent between 2000 and 2050. This means serious strain on social welfare such as Medicare and pension system. Receiving more permanent immigration, thus, appears to be one of the solutions to the problems. It can increase the economic population in a short-term, however, it cannot be a sole solution. Because dependency ratio can be maintained through enormous increase of immigration, according to the projection, it is not plausible(e.g.U.S and the EU would have to increase the migration 10 times the annual average of the 1990s).

Sources : UN(2000), OECD(2001)

Workers who arrived at the counties of destination can change their status either by changing the visa categories or overstaying illegally, so that they can reside longer. The lingering possibilities of changing visa status during their stay make arrivals of the temporary workers be regarded as the initial stage for permanent migration<sup>20</sup>. Final concerns regarding foreign workers can be tracked in social dimension from three aspects. First of all, migrant workers' lack of the host country's language impedes integration in the destination country. Secondly, cost of covering foreign workers in social protection and health care service is one of the major points of

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<sup>20</sup> There are not supportive evidences on workers' transfer from temporary status to permanent one.(OECD 2001)

contention in many host countries.<sup>21</sup> Finally, the liberalization of temporary movement of workers faces the growing concerns about national security. The break of the September 11, 2001 posed greater challenges in balancing the facilitation and enforcement aspects of the control.<sup>22</sup>

### **2.3.3.3 Implication of temporary movement of workers and WTO**

As seen from the above, it is difficult to answer to the question of effects on temporary movement of workers both for labor sending and receiving countries. However, in many respects, the balance of cost and benefit are dependent upon the regulatory framework of host countries, because foreign workers are subject to the receiving countries' arrangements on wages, prices and taxes. They can wear down their advantages thereby reducing size and scope of movement of workers. Thus, regulatory environment is critical to determine the scope and implication of trade in services under WTO through the movement of workers.

## **2.4 Preliminary conclusion**

International migration has been increased markedly for the last decades. Its

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<sup>21</sup> UN(2004)

<sup>22</sup> World Bank(2004)

figures, however, neither come up to the scale of the early 20<sup>th</sup> century nor stand comparison to those of international trade of goods and capital in this century. Besides, the development of information and communication technology which enabled the proliferation of services trade through telecommunications weigh against the significance of moving people for delivering services.

As yet, movement of people is important in three respects. The one is the feature of services trade which inevitably accompanies the interaction between provider and consumer. Secondly, the demographic change in many parts of the world, mostly developed countries, necessitates the inflow of labor force from outside of their countries. Thirdly, from the international trade perspective, the developed countries are better endowed with the skilled labor while the developing countries are better endowed with the unskilled labor, which has lagging the consensus building in trade negotiations. Given those reasons above, I can conclude that labor mobility still matters a lot in the current century.

The labor mobility making a marked trend of time-bound basis came to be incorporated under GATS and this inclusion signifies much in the sense that foreign workers are subject to the receiving countries' arrangements on entry qualification and employment thereby controlling the size and scope of movement of workers. Moreover, under the current circumstances where most of the developed countries run



immigration policy schemes targeted for supplying temporary labor force in some sectors, it might be expected that harmonized mechanism in labor mobility could contribute to the skills circulation and to the liberalization of labor mobility. Then, the next step I would like to take in this study is to explore the current status of liberalization in labor mobility under the GATS and address the question of what have been achieved and what are remaining barriers to the achievements.

### **3.Is GATS helping temporary movement of workers?**

GATS aims to achieve liberalizing trade in services, encouraging economic development and increasing the participations of developing countries in the world trade in services. In this respect, GATS seems to provide the best let-out for liberalizing movement of workers and the feature of GATS mode 4, temporary entry, may be easing the concerns caused from the permanent immigration. Moreover, economic analysis which supports that fact that more liberalized services trade would increase benefits both for developing and developed countries is another hue to the rainbow, labor mobility liberalization. Then, has GATS really worked like this as expected? Can we conclude that GATS helped the facilitation of temporary movement of workers? This chapter will be centering on these questions.

#### **3.1 Overview of the Mode 4**

##### **3.1.1 Coverage of Mode 4**

The Mode 4, a term refers to presence of natural persons, is defined in Article

I .2(d) as the supply of a service “by a service supplier<sup>23</sup> of one Member, through presence of natural persons of a Member in the territory of any other Member”. As this definition is not clear cut, further clarification is provided in the GATS Annex on the Movement of Natural Persons supplying services. The Annex applies two categories: measures affecting natural persons who are service suppliers of a Member; natural persons who are employed by a service supplier of a Member, in respect of the supply of a service”. There is confusion with regard to second category<sup>24</sup>, however, they present that Mode 4 includes both Mode 3 connected service supplier and those who are not relevant to Mode 3. The former includes intra-corporate transferees, personnel engagement in establishment and service seller(part of commercial establishment), while the latter includes foreign workers as an contractual service supplier on individual capacity basis. An OECD work<sup>25</sup> has generalized about GATS Mode 4 coverage as the following :

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<sup>23</sup> GATS only covers service sectors and service supplier, however, the concept of “the supply of service” is open to dispute. An OECD work illustrated two examples. One example is fruit pickers and fruit picking. Should fruit pickers viewed as temporary agricultural labourers who don’t fall under Mode 4 coverage or as supplier of fruit picking services. The answer can be found depending on how broadly WTO members interpret the scope of the category “services incidental to agriculture” in Services Sectoral Classification List(1.Business service-F.Other Business Service-f.services accidental to agriculture, hunting and forestry MTN.GNS/120). The other one is regarding tasks performed in a fee or contractual basis. A factory which receives a contract to sew 300 shirt is a supplier of tailoring services, whereas a factory which owns the cloth and produces 300 shirts which it then sells under its own mark is a textile manufacturer. Under the circumstances where the out-sourcing activities are on the rise, there is some debate about this matter.

<sup>24</sup> The wording “...the foreign natural persons employed by a service supplier of a Member” does not rule out the possibility that foreigners employed by host-country companies fall under the GATS. However, Article I .2(d) of the Agreement seems to cover only foreigners employed by foreign-owned companies. Thus, WTO Secretariat background note suggests foreign workers working for the host county companies would fall under GATS mode 4 if they worked on a contractual basis as independent suppliers for a locally-owned firm, but would not necessarily seem to be covered if they were employees of that firm.(WTO Secritariat background note, 1998)

<sup>25</sup> OECD(2003)

- persons providing services where a foreign service supplier obtains a contract to supply services to the host country company and sends its employees to provide the services ;
- independent service providers abroad : an individual selling services to a host country company or to an individual ;
- persons employed abroad by foreign companies established in the host country (but excluding nationals of the host country)

### 3.1.2 Operation of the GATS

The GATS contains an MFN obligation that applies to all service sectors with conditionally allowed special exemption (temporary - Article II:2, proximity - II:3). However, National Treatment and market access (including a prohibition on quantitative restrictions) apply only where Members have made commitments to such coverage in the Schedule.<sup>26</sup> Commitments can be made for each sector or sub-sector and for each mode of supply (e.g. in computer services, commitments can be made for foreign computer professionals with granted access only with Mode 3). Commitments can also be made horizontally covering a single mode of supply across all sectors unless clearly specified at the sectoral level. (a country's schedule specifies that its

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<sup>26</sup> Michael J. Trebilcock and Robert Howse (1999) pp.280~281

horizontal commitments on mode 4 does not apply to legal services)

In making commitments for deciding the level of market access, national treatment for each service sector or sub-sector and modes of supply, WTO Member countries have three main choices: full commitment indicated by “None” in the market access or national treatment column of the Schedule; partial commitment which places inscribed limits in the market access or national treatment column of the Schedule; no commitment indicated by “Unbound” in the market access or national treatment column of the Schedule. 6 types of restrictions on the access to the markets are(1) restriction on the number of services suppliers(2)restrictions on the total value of service transactions(3)restrictions on the total number of service operations(4)restrictions on the total number of natural persons(5)restrictions on certain type of legal entity(6)limitations on the participation of foreign capital. These must be listed in the Schedule if a Member country wants to use them.

## 3.2 Measures affecting Mode 4

### 3.2.1 Provisions affecting Mode 4 commitments

#### **3.2.1.1 MFN Exemption**

MFN exemptions are not scheduled as restrictions, however, they have influence on the Mode 4. Beneficiaries of the exemption could be specified related to granting work permits, waiving visa requirements or better access in certain sectors. However, there are also cases where the beneficiaries are unidentified.

### **3.2.1.2 Recognition of Qualifications**

GATS Article VII permits WTO Member countries to enter into Mutual Recognition Agreements (MRAs) which include provisions that a member to the MRAs shall afford adequate opportunity for other members to negotiate their accession to such an agreement. Article VII:4 requires Members' notification of the existing recognition measures to the Council for the Trade in Services. This 'mutual recognition' deals with the non-discriminatory measures in practice, however, the process of MRAs require a significant degree of regulatory cooperation, which is highly complex and time-consuming. Insufficient international recognition qualifications also lead to significant gap between national and international standards, so this qualification system poses an entry barrier in services sectors.

### **3.2.1.3 Domestic regulation**

Article VI of the GATS, specifically VI:4 requires negotiation of any necessary regulations to guarantee that measures relating to qualification necessities and licensing requirements do not impede trade liberalization. This is a very sensitive issue in the respect that they are relevant to the Member countries' right to regulate including to ensure standards of performance for professionals.<sup>27</sup>

## **3.2.2 Other measures affecting Mode 4**

### **3.2.2.1 Eligibility in entry**

It is already mentioned that Mode 4 is based on temporary entry, however, it still opens the channel for permanent migration. Thus, immigration regulations affect the conditions on eligibility for entering workers, which encompass procedural matters for visa and work permits, employers' prior effort for finding workers, wage parity requirement.

### **3.2.2.2 Visa and work permits**

In applying visa or work permits, comprehensive details should be accompanied.

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<sup>27</sup> OECD(2001)

For the applicants' part, they should provide details on the job, wages, personal information regarding experiences in relevant fields, qualified skills and so on. From the employers' place, they must present evidence of adequate search for local workers before hiring foreign workers with verification of difficulties in finding local person. This process takes up to two months, therefore, delays in visa issuance cause cost rise in hiring foreign nationals.

### **3.2.2.3 Wage parity condition**

Among the entrance issue, wage parity condition is also in controversy. Wage parity condition is that wage paid to the foreign national is required to be equivalent to that of local persons with the same level in position and skills. It is intended to ensure that foreign workers are employed to meet the needs for the qualified service provider and to ensure that local wages are not declined by hiring foreign workers in local persons' place.<sup>28</sup> Parikh<sup>29</sup> fingered the cases where an Indian software professional with better qualification or work experience than those locally available can't be given preference, if local persons are able to satisfy the needs of the employer.

### **3.2.2.4 Conditions on stay**

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<sup>28</sup> Chanda(1999)

<sup>29</sup> Parikh(2001)



Entering destination country as a service provider faces subsequent barriers on the length of stay, and movement between sectors. Work permits or visas can be renewed or extended, however, the procedures are expensive, rigorous and burdensome enough to discourage the attempts of companies from hiring foreign nationals or extending contract with the foreign service supplier. Besides, the visa or work permits prevent their holders from changing jobs or work sites. It could be allowed, yet the conditions are stringent and the repetitions of the whole process are cumbersome.

#### **3.2.2.5 Quantitative ceilings**

Some countries restrict the number of visas issued to temporary foreign nationals in certain sectors. For example, U.S. limit the H1B(See annex 1) visa issuance to 195,000. The allowed numerical limit on the number of foreign suppliers is working as one of the barriers to the movement of workers. Being fall on the category of 6 restrictions under the access to the market, this should be listed in the Schedule if a Member country wants to use them.

#### **3.2.2.6 Economic Needs Test(ENT)**

There is no concerted definition on the Economic Needs Test(ENT). However, it

can be referring to the measures in controlling the demand and supply of services in terms of quantity and price of the services through setting standards which is irrelevant to the quantity or qualification for providing services. For instance, imposing limitation on establishing gas station(one gas station per every other kilometer) can be one of ENTs. It is not always metrical nor objective standards, thus it is referred to as one of the barriers to the liberalizing trade in services.

### 3.3 Achievements of Mode 4 so far

#### 2.4.1 Availability of Mode 4 statistics

It is very difficult to trace reliable statistical information on the trade in services through Mode 4 for the three reasons. First of all, the services have the nature of intangible and non-storable, therefore, assessing the value-added in service sector is a hard work. Secondly, the diverse modes of transaction and inconsistent coverage make it infeasible to put individual country's data together for comparison. Thirdly, the limited coverage of Mode 4 and its relations to other groups of workers add the difficulty to statistical accuracy. For example, intra-corporate transferees are not only engaged in services but also in other areas such as manufacturing, mining and agriculture. In spite of all the above mentioned restrictions on measuring Mode 4 trade statistics, a rough sketch can be drawn mainly from analysis of balance of payment statistics such as labor income, worker remittances and migrants' transfers. According to the IMF statistics on workers' remittances, its flows have grown steadily

for the past decades. Total remittances inflows grew five-fold between 1980 and 2003 and currently came up to about \$100 billion a year. This flow takes up significant amount of GDP in developing countries. In absolute terms, India, Mexico, the Philippines, Egypt and Turkey are the top five single largest recipients of remittances during 1990~2003 in average; they range from 7 to 4 billions of US dollars.

## 2.4.2 Current status of Mode 4

### 3.3.2.1 Mode 4 trade statistics

Although measuring Mode 4 trade is not precise, available estimates on Mode 4 trade compared to the other modes can be seen from the table below(table 3.1.). Mode 4 takes the smallest among the four modes of supply in international trade.

**Table. 3.1. Statistics of GATS modes of supply**

Service exports by modes of supply, 2001 (billions of dollars and percent of total)

Modes of international services supply	1997		2001		Proxy
	Value	Percentage of total	Estimate	Percentage of total	
1. Cross-border supply	890	41.0	1,000	28.2	BOP : commercial services minus travel
2 Consumption abroad	430	19.8	500	14.1	BOP : travel exports

3 Commercial Presence	820	37.8	2,000	56.3	FATS statistical turnover
4 Movement of Natural Persons	30	1.4	3,550	100.0	BOP : compensation of employees
BOP is balance of payments. FATS of Foreign Affiliate Trade in Services. Source : IMF, Balance of Payments Yearbook.					

### 3.2.2.2 Mode 4 Commitments

In accessing the level of Mode 4 liberalization, GATS commitment made by the individual WTO Member country should be taken into account. The results of the analysis(table 3.2.) can be generalized as the following:

- More restrictive than other Modes: trade conditions for Mode 4 tend to be significantly more restrictive than conditions of other modes. No developed countries has scheduled a “none” entry for their Mode 4 commitments, and only 1 percent of market access commitments undertaken by developing countries are fully liberal while one out of two entries for Mode 2 are full commitments.<sup>30</sup>
- Horizontal rather than sectoral commitment: Commitment on Mode 4 governed by the same conditions inscribed in the horizontal part of the schedules that

<sup>30</sup> WTO(1999) calculation cited from Mattoo and Carnizaniga(2003)

apply to all service sectors. These horizontal commitments generally take the form of “unbound” which is then qualified with limitations on specific types of labor(skill levels, type of occupation) and purpose of their movement.<sup>31</sup>

- **Biased skill levels:** Mode 4 covers all skill levels, however, commitments in general are biased in favor of the higher skilled including managers, executives and specialists. Entries by WTO Members that have made Mode 4 horizontal commitments as of April 2002 show that they are limited to executives, managers and specialists. Among a total of 400, 170 entries clearly have relevance to intra-corporate transferees whose economic value is constrained by Mode 3. The tendency of reluctance in liberalizing Mode 4 shows similarities in both developed and developing countries while they commit more liberalization in the other three modes. The inclusion of the low-skilled workers in terms of business sellers, non-specified and other only takes 17 percent of all horizontal entries.

**Table 3.2. Mode 4 commitments by WTO members  
(Horizontal commitments)**

		Number of entries	Number of aggregate entries	Percentage of aggregate entries
		02	02	02
	Executives	56	168	42

<sup>31</sup> OECD(2003)

	Managers	55		
	Specialists	56		
	Others	1		
Executives		24	110	28
Managers		42		
Specialists		44		
Business visitors	Commercial presence	41	93	23
	Sale negotiations	52		
Contract suppliers		12	12	3
Other		17	17	4
Not specified		-	-	-
Total		400	400	100
Total : Number of entries by those WTO Members that have inclined commitment on Mode 4 in horizontal section of their Schedules				

### 2.4.3 Overall assessment and prospect

There have been efforts for moving forward in liberalizing the movement of people.<sup>32</sup> Overall, however, liberalization under the GATS mode 4 has so far been limited, on the developed countries' side and developing countries' side as well.

Going back to the application of trade theory to labor mobility, we have confirmed the

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<sup>32</sup> The services negotiations formally started on 1 January 2000, which was mandated by the GATS Article XIX that requires WTO Members to commence successive round of talks. In the WTO Ministerial conference in Doha, negotiating guidelines and procedures were reaffirmed and the timetables were established. The deadline for the submission of initial requests for specific commitment(30 June 2002);deadline for the submission of initial offers for specific commitment(31 March 2003);stock taking on all GATS-related matters(WTO Ministerial Conference, Cancun 2003);overall deadline for the negotiations(1 January 2005) However, with the failure of the WTO Ministerial conference on Cancun, the overall deadline of the DDA negotiations fail to be met. Initial offers were received only from 39 countries between 31 March 2003 and 30 October 2003 and revised offers were submitted by the July 2005.

fact that comparative advantages in services are still based on differences in endowments. In other words, developing countries are better endowed with unskilled labor (there are exceptions that have advantages in skilled labor such as India especially in the IT sector) while developed countries are likewise in skilled labors. Even so, liberalizing of Mode 4 under GATS is only restricted by failing to narrow the gaps in the different interests between developing and developed countries. Still, for another way forward, components on the WTO negotiation table remains to be addresses; they include improving market access and increasing efficiency through administrative procedural efficiency. Regrettably, it is expected that the concrete progress will be stagnant in more market opening which includes unskilled workers and that administrative improvements are showing possibilities for reaching consensus from the Member countries involved which yet to surmount negotiation tangles.

#### **2.4.3.1 Improving Market Access**

Even though there were efforts to improve market access in terms of Mode 4 trade, their improvement are as limited as the previously made commitments. Looking at the initial or revised offers for service trade negotiation of the so-called “Quad” Group

including United States, Japan, Canada and the Europe Communities and developing countries such as Chile and Pakistan show both sides' hesitance to the Mode 4 liberalization.(Box 3.1.)

### **Bx 3.1. Offers of Mode 4 from selected countries**

The United State of America: US initial offer rarely contains additional commitment regarding Mode 4. In other words, it is binding to the status quo, reflecting the existing commitment which codified the H1B visa(employment-based movement). And the rules reproduced in the schedule include labor certification requirements, university degree or equivalent experiences and quota.

Canada: Business visitors who are allowed to supply after-sale and after lease services. Intra-corporate transferees must have been employed for a period of not less than one year within the three-year period immediately preceding the date of application for admission to Canada. Work permits are required to business visitors, intra-corporate transferees and professionals. Spouses and common-law parents of qualifying intra-corporate transferees and professionals appear in this offer.

European Communities: Graduate trainees who have university degree are included in the definition of intra-corporate transferees in this offer. In the category of contractual services suppliers, qualification requirements apply and they should be offering services as an employee of the juridical persons supplying the services for at least the year immediately preceding such movement

Japan : Japan lists the number of professionals where foreigners are permitted to enter under the pre-employment criteria

Chile: The commitments in this Schedule extend only to service suppliers who operate through a commercial presence, are established as a foreign investment and governed by the rules and legal procedures in force on direct foreign investment. The commercial presence covered by this Schedule is that affected solely through the Foreign Investment Statute and financed by external capital. The senior and specialized personnel who are admitted into Chile will be subject to the labor and



social security legislation in force.

Pakistan : Natural persons having skills inter alias in information technology, construction engineering, tourism, educational services, health related services, selected sporting services; who enter for temporary stay to impart training. Stay 30 days to one year, subject to labor market test

Sources : United States initial offer, 31 March 2003; Canada revised conditional offer on services, 23 May 2005;European Communities conditional revised offer, 29 June 2005;Japan revised offer, 24 June 2005;Chile conditional revised offer, 5 July 2005; Pakistan conditional initial offer, 30 May 2005

Even so, there are many developing countries which propose for more market access; many developing countries find their interests in service trade liberalization through sending people abroad for work, temporarily. The proposals can be looked into from three respects. The one is converting the current blanket treatment for Mode 4 entry across all sectors into commitment for particular service sectors of high demand such as ICT rather than the current. The other is better access for some groups, particularly intra-corporate transferees through streamlining the application process of blanket application by companies. The third one is more access to the groups of people who are not highly skilled but crucial supportive roles for providing services(e.g.technical support personnel, non-professional essential personnel)

#### **2.4.3.2 Agenda for Administrative Procedural Improvement**

#### a. More clarification and predictability

The existing definition including the definition of personnel needs greater clarity to improve the coherence of the commitments. Young (2002) suggests detailed description of occupations contained in NAFTA. A further proposal<sup>33</sup> refers to the International Labor Organization's International Standard Classification of Occupations, which already provides definitions of categories of personnel, for the purpose of making GATS commitments.<sup>34</sup>(Box 3.2.)

#### **Box 3.2. International Standard Standard Classification of Occupations (ISCO-88)**

ISCO-88 uses to main concept: Job and Skill.

Job is defined as the sets of tasks or duties performed by a person and a set of jobs of which tasks are sharing a high degree of similarities form occupation. Occupational groups are delineated and aggregated on the basis of similarities in the skills required to execute the tasks and jobs of a given job. Such skills have two aspects: s function of the complexity and range of the tasks and duties involved(skill level);and definition by the field of required knowledge, used tools and machinery and so on(skill specialization).

Skills in ISCO-88 are defined in four broad levels. They are :

- 1<sup>st</sup> ISCO skill level-primary education
- 2<sup>nd</sup> ISCO kill level-the first and second stages of secondary education including apprenticeship or on the job training

<sup>33</sup> Council for Trade in Services in Special Session "Communication from India: Proposed Liberalization of Movement of Professionals under the GATS", S/CSS/W/12, 24 November 2000.

<sup>34</sup> OECD(2002)

- 3<sup>rd</sup> ISCO level-education beginning at 17~18 which last for about 4 years leading to an credentials equivalent to university degree
- 4<sup>th</sup> ISCO skill level-university or postgraduate university degree or equivalent

Source : OECD(2002)

#### b. Transparency and Information

Existing access to the information regarding conditions of entry is not used due to service suppliers' lack of information on the necessary requirements and procedures. Additionally, Mode 4 entrants who make visit frequently need up-to-date information on any changes. Some of the suggested forms are providing one-stop information on all relevant procedures and requirements through on-line access(web-site) or by creating contact point at national level for notification to the WTO and prior consultation on regulatory changes and so on.

#### c. New scheme in administrative procedure

Owing to the time-consuming and costly procedure for entry, new scheme, GATS' visa was proposed as a means to facilitate entry of Mode 4 workers. The GATS visa and permit regime contains important elements covering duration of stay, procedure, time for issuance, role of companies and renewals, so that it can reduce the time spent

in the process including both independent service suppliers and intra-corporate transferees. However, it might be difficult for this visa to apply all the mode 4 entrants, because the diverse group of people are subject to different entry conditions.

## 2.5 Preliminary conclusion

In general terms, negotiations on Mode 4 since its appearance during the Uruguay Round were not particularly successful. The current picture of GATS mode 4 portrays that GATS only served to facilitate temporary business visits and the movement of highly skilled persons, usually at the senior level, within transnational corporations.

This current status of Mode 4 liberalization is attributable to major three factors. To begin with, there are concerns that movement of people accompanies inevitably which do not matter in international trade of goods. Particularly for the developed countries, the temporary stay of the workers still considered to be another channel for the permanent settlement that have farther effects on the labor market and socio-political concerns as well. Secondly, due to the acknowledgment of domestic regulation and maintenance of migration schemes, developed countries have less incentive for liberalizing Mode 4. They have separate schemes for inviting both skilled and unskilled workers temporarily and they are targeting specific sectors.

Setting limits on quota and requiring qualification standard are filtering and screening labor inflows. Thirdly, there are many barriers that hamper liberalization contingent to the GATS operation. The GATS commitment, primarily made on horizontal basis enables Member countries to tune-up the market access suiting to their needs; liberalize sectors where they have comparative advantage; protect sectors where are vulnerable to fierce competition.

Proposals were suggested to improve market access and enhance efficiency in administrative procedures. It is expected that reaching consensus would be restricted only to the latter which also comes with going through another insurmountable process of balancing counter interests among the parties involved. Even under the expectations against progressive liberalization in labor mobility, yet the developing countries' interest in the area of their comparative advantage and are now seeking greater openness on the one hand, and the multinational corporations that would like to see more scope for international movement of personnel on the other hand are creating more shared interest between developed and developing countries. Though they are still guarded, sense of optimism can be expected in the following negotiations.

## 4. Have regional agreements achieved Mode 4 trade liberalization?

As mentioned in the previous chapter, regional trade agreements can be more attractive in the face of a continuum which only shows sluggish progress. For the past years, particularly since 1994, regional trade agreements (RTAs) have become a reversible feature of today's multilateral trading system. Between January 2004 and February 2005 alone, 43 RTAs have been notified to the WTO, making this the most prolific RTA period in record history.<sup>35</sup> In this chapter, I would like to focus only on the issue of labor mobility dealing with the question of what is being done under the RTAs. RTAs with respect to the labor mobility can be framed in the following paragraphs. They can be briefly summarized as the table below.

**Table 4.1. The categories of RTAs on the provision of movement of natural persons**

Type	Examples	Date of entry into force
Comprehensive mobility of workers	•European Union - ECSC - Enlargement	Aug.1951 May.2004

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<sup>35</sup> WTO(2005)

	•European Free Trade Association(EFTA)–Stockholm Convention	May.1960
	•Agreement on the European Economic Area(EEA)	Jan.1994
	•Common Market for Eastern and Southern Africa(COMESA)	Dec.1994
Wide-ranging mobility of persons	•Caribbean Community(CARICOM)	Aug.1973
Selective mobility of business persons	•North American Free Trade Agreement(NAFTA)	Jan.1994
	•Canada-Chile FTA	Jul.1997
	•Chile-US FTA	Jan.2004
	•Japan-Singapore FTA	Nov.2002
	•Chile-Korea FTA	Apr.2004
GATS-Plus model	•U.S-Jordan Free Trade Agreement	Dec.2001
	•ASEAN Free Trade Area(AFTA)	Jan.1992
GATS-type exception model	•Southern Common Market Agreement(MERCOSUR)	Nov.1991
Facilitating entry deviating from GATS	•The Asia Pacific Economic Cooperation Forum(APEC)	Established in 1989
	•ANDEAN Community(Cartagena agreement)	Signed in 1969

The comprehensive mobility of workers is referring to the full mobility of people based on the concept of citizenship within the regional boundaries. They are conferred to move freely cross-border as a citizen not merely as a worker for job opportunities. The subsequent category, wide-ranging mobility of people has less comprehensive coverage compared to the previous type, still it includes persons ranging from

business persons and their family members. The third model usually includes separate provisions on movement of natural persons which limit the coverage of people who are eligible to enter into the other Member countries' territory. Next, the GATS-plus model stipulates the language of the GATS, yet it seeks to achieve beyond the level of the GATS through improving administrative measures and removing requirements. In the following, there is the GATS-type exception model which reflects the verbatim of the GATS and carves out the access to the labor market and permanent residence. Finally, there are types that facilitate entry deviating from the GATS frame which typically circumscribe market access and mode of supply.

## 4.1 Types of regional agreements by the labor mobility

### 4.1.1 Comprehensive mobility of people

#### **4.1.1.1 European Union(EU)**

The EU provides comprehensive mobility of workers under the concept of citizenship within the EU and broad definition of the workers. Turning first to the citizenship, the EU views a moving individual not a factor of production but citizens with intrinsic rights. Citizenship within the EU is provided in the Article 17 of the



Treaty of European Union: Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. And every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty(Article 18). As regards to the definition of the workers, it is broadly interpreted to include seasonal and frontier workers, self-employed, service suppliers. Besides, job-seekers and trainees are recognized as workers under the EU. Even though individuals are not employed, they may move and live in another member state in search of employment for a reasonable duration with the rights fully protected by Community Law. The trainees who are enrolled in educational program are also considered as workers under the Law.<sup>36</sup>

- Freedom of movement of workers(Article 39~42) : Freedom of movement for workers secures the citizens of the EU the abilities:(a) to accept offers of employment actually made;(b) to move freely within the territory of Member States for this purpose;(c) to stay in a Member State for the purpose of employment in accordance with the provisions...(d) to remain in the territory of a Member State after having been employed in that State.... Discrimination based on the nationality against citizens' of the other member states as regards employment, remuneration and other conditions of

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<sup>36</sup> Christopher J. Cassise(1996)

employment are also abolished under this article.

- Right of Establishment (Article 43~47): The concept of the right of establishment given to the natural and legal persons such as business units is also broad in its coverage and application. It covers self-employed activities and includes business undertakings ranging from main centers to branches or subsidiaries. This article also takes in the right to be engaged in the business activity under the same conditions laid down for its own nationals.

- Freedom to Provide Service (Article 49~55): Freedom to provide services is provided to the activities of industrial and commercial characters, craftsmen and the professions. Persons providing services on the temporal basis also included and all the mentioned shall be under the same conditions as are imposed by that State on its own nationals.

#### **4.1.1.2 European Free Trade Association(EFTA)<sup>37</sup>**

The EFTA agreement contains a part for free movement of persons, services and capital. It applies to workers, the self-employed and persons with no gainful employment who otherwise have sufficient financial means, including under certain

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<sup>37</sup> The EFTA was established in 1960 and has been lasted for over 40 years for the cooperation among EFTA States. The existing four Member States are Iceland, Lichtenstein, Norway and Switzerland. However, owing to the existence of EEA that applies to the three EFTA Member States other than Switzerland, EFTA mainly concerns the relations between Switzerland and the other three.

conditions their family members. It provides the right of access to work, entry/exit and establishment(residence), the right to provide services for a period of up to 90 days per year and the right of equal treatment.<sup>38</sup> Beyond the legal framework, the EFTA States will be coordinating the social security schemes in order to complement the right to freedom of movement. It attempts to apply common principles and rules so that the stumbling blocks to mobility of persons caused by different national legislation will be removed. Moreover, the mutual recognition of professional diplomas will be set up which further facilitate the movement of persons.

#### **4.1.1.3 Agreement on the European Economic Area(EEA)<sup>39</sup>**

The EEA Agreement is concerned principally with the four fundamental pillars (“the four freedoms”) of the Internal Market and one of them is freedom of movement of persons, services and capital. Thus, the agreement secures the freedom of movement for workers among EU Member States and EFTA States. It covers workers, self-employed, service provider and entails the rights; to accept offers of employment;

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<sup>38</sup> <http://secrariat.efta.int>

<sup>39</sup> EEA was originally negotiated between all the EFTA States and the EC and its member States and was signed in 1992. Subsequently, Switzerland decided not to join following a referendum, and three others joined the EU. The EEA Agreement entered into force on 1 January 2004.

to move freely within the territory of EU Member States and EFTA States; to stay and remain in this region. Such a freedom of movement entails the abolition of any discrimination based on nationality between workers of EU Member States and EFTA States as regards employment, remuneration and other conditions of work and employment(Article 28). These rights are subject to limitations on the grounds of public policy or public health. The provision of article 28 does not apply to employment in the public sectors.

#### **4.1.1.4 Common Market for Eastern and Southern Africa(COMESA)**

COMESA is the preferential agreement that came into force as of December 1994. Its eventual goal is to create a fully integrated and internationally competitive and unified region in which goods, services, capital and persons move freely<sup>40</sup>. To move ahead for the goal, COMESA has taken a four-stage program. It aims to establish full Monetary Union involving the use of one common currency issued by a common Central Bank by the year 2025. Along with this long-term, it focuses on trade development and investment, specifically, the elimination of impediments to trade and investment in short term. COMESA treaty includes chapters on free movement of persons, labor, services, right of establishment and residence. It states the Member

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<sup>40</sup> <http://www.comesa.int>

States to agree ; to adopt...necessary measures in order to achieve progressively the free movement of persons, labor and services and to ensure...the right of establishment and residence by their citizens; to conclude a Protocol on the Free Movement of Persons, Labor; to the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements .

#### 4.1.2 Wide-ranging mobility of persons

##### **4.1.2.1 Caribbean Community(CARICOM)**

Chapter 3 of the Revised Treaty provides the legal basis for the free movement of services within the CARICOM Single Market Economy(CSME). Services can be provided in four ways which reflect GATS model. When the provisions relating to services are combined with the Right of Establishment, opportunities are provided for the free movement of a large category of persons. These include business owners, entrepreneurs, and self-employed persons providing services, managerial, technical and supervisory staff and the spouses and immediate dependent family members of those who qualify to move.<sup>41</sup> Particularity, free movement of persons includes those of university graduates, other professionals and skilled persons and occupations such as media workers, sports persons, artists and workers in the tourism industries.

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<sup>41</sup> Adapted from the CARICOM official website <<http://www.caricom.org>>

Besides, freedom of travel and exercise of a profession is stated including elimination of passport requirements and of worker permit requirements, and facilitation of entry at immigration points. More supportive measures include: the harmonization and transferability of social security benefits; mechanisms for certifying and establishing equivalency of degrees; completion of a skill register; coordination of social policy; and the development and promotion of a public education program on the free movement policy.<sup>42</sup>

#### 4.1.3 Selective mobility of business persons

##### **4.1.3.1 North American Free Trade Agreement(NAFTA)**

NAFTA limits the entry of persons on temporary and economic basis. Chapter 16 of the NAFTA and its annex addresses the cross-border movement of business persons who are citizens of parties to the NAFTA. The categories are 4 groups of persons; business visitors, professionals, intra-corporate transferees, and traders and investors. Business visitors who are without the intention of setting up permanent residence are provided with visas.

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<sup>42</sup> Coke Hamilton(2000)

- Business visitors are the persons who plan to carry on any business activity in the relevant fields such as research, manufacturing and production, marketing, sales and distribution, after-sales service and general service. These persons are not allowed to enter the labor market and may be compensated from the outside of the country in which they are seeking entry.

- Professionals(appendix 1603.D.1 see annex) listed have minimum education requirements of a Bachelors Degree or alternative credentials. The degree held must be relevant to the position sought. Self-Employed Professionals may not enter a member country for the purpose of either being self-employed or to establish a professional practice. They must have a contract with an enterprise in the member country.

- Intra-corporate transferees are business persons employed by a corporation or a firm(branch, parent, subsidiary or affiliates) with specialized skills. Their length of stay is more than one year and the total period of stay for a person employed can be either 7 years(in an executive or managerial capacity or 5years(in a capacity that requires specialized knowledge)

- Traders are business persons who conduct substantial trade in goods or services between their country of permanent domicile and the country for temporary entry.

Investors are involved in providing advice or technical services to the operation of an investment.

The grant of entry to the above groups of persons can be refused if they might affect adversely the settlement of any labor disputes. Labor certification tests are not required for all the groups while work permits are necessary to the three groups except for business visitors. The visas are still required, however, there is limit for the fees in processing the application. Yet, the provisions within Chapter 16 neither alter a member country's general immigration provisions (regarding public health, safety and national security), nor do they preclude the requirement for temporary workers to meet licensing or certification requirements respecting the exercise of a profession.

#### **4.1.3.2 Canada-Chile and Chile-U.S. Free Trade Agreement**

Canada-Chile free trade agreement facilitating the movement of people is modeled on NAFTA in Chapter K. U.S-Chile free trade agreement is also reflecting the similar framework of the two preceding agreements. These agreements are limited to the temporary entry with skilled workers: business visitors, traders and investors, intra-corporate transferees and professionals, who have no intent to establish permanent residence in the other Party. Both the Canada-Chile and Chile-U.S free trade



agreements still apply the existing immigration requirements and immigration documents authorizing employment may be refused to be issued when the entry of the person from the other party can adversely affect the settlement of labor disputes, however, labor certification tests or other similar procedures are removed from all the categories of the entry. In addition, those two agreements do not permit either party to impose or maintain numerical restriction relating to temporary entry.

#### **4.1.3.3 Japan-Singapore Free Trade Agreement**

Chapter 7(Trade in Services) provides the scope and definition including market access and national treatment and chapter 9(Movement of Natural Persons) states the measures affecting the movement of natural persons of a Party who enter the territory of the other Party for business purposes. As with the above described agreements, this agreement does not cover measures regarding nationality or citizenship, residence or employment on a permanent basis. Conditions for entry and stay are managed by specific commitments which include: short-term business visitors of the other Party; and intra-corporate transferees of the other Party.

#### **4.1.3.4 Chile-Korea Free Trade Agreement**

Chile-Korea free trade agreement also contains two separate chapters on trade in services(chapter 11) and movement of natural persons(chapter 13) which clearly states the general principle of the agreement: protecting domestic labor force and permanent employment in their respective territories. In other words, it does not cover the persons who seek access to its employment market or employed on a permanent basis. Temporary entry is permitted only for the business visitors, traders and investors and intra-corporate transferees. It contains lists of sectors where the agreement does not apply, however, this agreement show much progress in removing prior approval procedures, labor certification tests, and numerical restrictions relating to the temporary entry. Besides, the Parties reconfirmed the voluntary commitment established in the APEC Business Travel Card “Operating Framework” .

#### **4.1.4 GATS plus model**

##### **4.1.4.1 U.S-Jordan Free Trade Agreement**

US-Jordan agreement free trade agreement includes article of Trade in Services where GATS is referred as a structure stating ‘unless otherwise stated...terms used in

this article and such services schedules that are used in GATS shall be construed in accordance with their meaning in the GATS meanings mutatis mutandis(Article 3.4(a)). With respect to Mode 4, rights and obligations of the Agreement comes from the GATS Annex on the Movement of Natural Persons and its commitments cover services ; U.S, includes salespersons, intra-corporate transferees, personnel engaged in establishment, fashion models and specialty occupations for U.S. and business visitors; Jordan business visitors, intra-corporate transferees and professionals. What makes this agreement goes further than the scope of GATS is the visa commitment stipulated in Article 8 which is subject to the law regulating to the entry, sojourn and employment of aliens. The substantial traders include trade in services or in technology(Article 8.1). In addition, persons involved in investment must be establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources(Article 8.2)

#### **4.1.4.2 ASEAN Free Trade Area(AFTA)**

The Association of Southeast Asian Nations(ASEAN) was established in 1967 with the later accession of four more countries by 1999. The Framework Agreement

on Enhancing Economic Cooperation was adopted at the Fourth ASEAN Summit in 1992, which included the launching of a scheme toward an ASEAN Free Trade Area or AFTA. The strategic objective of AFTA is to increase the ASEAN region's competitive advantage as a single production unit. The Fifth ASEAN Summit held in Bangkok in 1995 adopted the Agenda for Greater Economic Integration, which included the acceleration of the timetable for the realization of AFTA from the original 15-year timeframe to 10 years. ASEAN countries officially launched their joint effort to work towards freer flow of trade in services within the region through the signing of *ASEAN*, recognizing the growing importance of trade in services. Framework Agreement on Services(AFAS) in 1995 is aimed at substantially eliminating restrictions to trade in trade in services among ASEAN countries in order to improve the efficiency and competitiveness of ASEAN services suppliers. AFAS provides the broad guidelines for ASEAN Member Countries to progressively improve Market Access and ensure equal National Treatment for services suppliers among ASEAN countries in all four modes of services supply as stipulated in GATS. Besides, AFAS also provides rules for related aspects such as mutual recognition, dispute settlements, institutional mechanism, as well as other areas of cooperation in services. In fact, it is expected that liberalization of services trade under AFAS shall

be directed towards achieving commitments beyond Member Countries' commitments under GATS, or known as the GATS-Plus principle.<sup>43</sup>

#### 4.1.5 GATS type exception model

##### **4.1.5.1 Southern Common Market Agreement(MERCOSUR)**

MERCOSUR mirrors the language of GATS that prevent the access to the labor market and permanent residence. It also permits the Members' rights to control the entry and stay of the foreign workers into the territories of the other Members. Market access is circumscribed by the specific commitment as seen from GATS.

#### 4.1.6 Facilitating entry deviating from GATS frame

##### **4.1.6.1 The Asia Pacific Economic Cooperation Forum(APEC)**

APEC contains no provision relating to the market access for labor mobility. However, it has committed to the measures for enhancing labor mobility through exchanging information on regulatory regimes, streamlining the process of short-term business visitors visas, procedures for temporary residence of business people and

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<sup>43</sup> Adapted from the ASEAN official website <<http://www.aseansec.org>>

maintaining dialogue on these issues with the business community which is coordinated by the Informal Experts' Group on Business Mobility(IEGBM). The Member economies have continued to work to streamline processing of temporary business residency and process applications from intra-company transfers within 30 days and APEC Business Travel Card Scheme was launched in March 1999.<sup>44</sup> This card is valid for three years since the date of issuance and manifold short-term business entries are provided. The card must contain the signature of the cardholder as well as the list of countries for which entry has been permitted to enter. Though cardholders are still required to present their passports, work permits are not required. By mid 2002, 3,400 cards have been issued.<sup>45</sup>

#### **4.1.6.2 ANDEAN Community**

The Andean Community agreement urged Members to facilitate the free movement and temporary presence of natural or physical persons for the provision of services with no specific chapters developed by 2001.<sup>46</sup> However, the liberalization process took a major step forward with the approval of Decision 510 "Adoption of the Inventory of Measures Restricting the Trade in Services," signed on October 31, 2001.

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<sup>44</sup> Chris(2000)

<sup>45</sup> OECD(2001)

<sup>46</sup> Stephenson(2001)

The measures contained in the inventory will be gradually and progressively phased out in annual rounds until the process concludes in 2005. The new provision will permit citizens of one Andean country to provide a service in any of the other four sub-regional member countries without incurring the application of restrictive measures, except for those listed in the inventory, which will be gradually phased out between now and 2005.<sup>47</sup> It was also stipulated that any benefits that are obtained from the speed up or deepening of given service sectors or sub-sectors by agreement of two or more Member Countries, will be extended immediately and unconditionally to any country in which that sector has already been deregulated and, through negotiations, to the rest of the Andean Community Member Countries.<sup>48</sup>

## 4.2 Preliminary conclusion

With the proliferation of the RTAs which now makes the total of 312 as of January 2005, it is difficult to fit all those multifarious beings into a frame of limited number of categories. Notwithstanding, those various RTAs can be classified according to the approach to the movement of natural persons into 6 types as seen from the table above. As seen from the table above, several features can be made. First, the type of RTA of

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<sup>47</sup> Chapter 7 of Andean Subregional Integration Agreement (“Cartagena Agreement”-available at <http://www.comunidadandian.org>)

<sup>48</sup> Adapted from the website <<http://www.comunidadan.org>>

comprehensive mobility of workers is more deeply involved with regional proximity, similarities of the level of economic conditions, and cultural ties. Most of them are not the following-up measures taken posterior to the WTO but they have initiated their own steps forward integration including economic and social dimensions as well. Secondly, many a FTA subsequent to the inception of GATS has a tendency of converging on the type of selective mobility of business persons with separate provision regarding on them.

The coverage of the RTAs varies from only professionals, most of them are business persons, to the comprehensive movement of people. In this sense, RTAs have reached beyond the reach of multi-lateral frames in more liberalizing the movement of people. However, it is worth taking notice that the agreements, in general terms, are more favorable to the highly-skilled workers. Besides, they are also subject to the existing migration policies and procedures, and they include moderating measures such as transition periods or measures to prevent abuse.<sup>49</sup>

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<sup>49</sup> WTO(2002)



## 5. Conclusion

The GATS has not been particularly successful in liberalizing “movement of people”, Mode 4. In this study, the complex web of factors that have induced such a limited liberalization in Mode 4 trade have been explored which is ranging from the inherent concerns surrounding moving people cross-border, measures affecting Mode 4 trade including immigration policy schemes of individual countries to the operations of the GATS itself. Compared to the GATS, some of the regional agreements have surpassed in coverage of Mode 4 and bettered the administrative procedures. Nevertheless, the achievement of general mobility of people under some agreements, the majority are inclined to only selected workers to access within presented immigration policy measures.

Proceeding from what has been discussed above through comparative analysis of the two trade domains, it should be concluded that RTAs cannot make a breakthrough in labor mobility because they contain basic provisions similar to GATS even with differences in the scope and depth compared to the commitments under GATS. Following this conclusion would be inducing to expect discouraging prospects in liberalization of Mode 4, due to the inevitable process involving complicated policy

coordination and dialogue among the labor, migration and trade authorities concerned not only at the national level but also at international negotiation table.

However, there are still high expectations on the progress in liberalization of Mode 4. The expected potential gains from liberalization of Mode 4 are great, particularly developing countries are seeking to the liberalization in the sectors of their comparative advantage, and globalizing business operations increase the needs for swift circulation of the workers. While it is evident that Mode 4 liberalization will be still posing challenges during the trade negotiations, it is also certain that people will keep on moving cross-borders. This is why light should be keeping on shedding upon this issue under trade regimes for moving toward liberalization.

## Appendix 1 : U.S. non-immigration Visas

Type	Category
A-1	Ambassador, public minister, career diplomat or consular officer, and immediate family
A-2	Other foreign government officials or employees, and immediate family
A-3	Attendant, servant, or personal employee of A-1 or A-2, & immediate family
B-1	Temporary visitor for business
B-2	Temporary visitor for pleasure
B-1/B-2	Temporary visitor for business and pleasure
C-1	Alien in transit
C-2	Alien in transit to United Nations Headquarters district under Section 11(3)(4) or (5) of the Headquarters Agreement
C-3	Foreign Government official, immediate family, attendant, servant or personal employees, in transit
D	Crewmember(sea of air)
E-1	Treaty trader, spouse and children
E-2	Treaty investor, spouse and children
F-1	Student (academic)
F-2	Spouse of child of student
F-3	Mexican and Canadian commuter students(academic)
G-1	Principle resident representative of recognized foreign member of government to international organization, staff, and immediate family
G-2	Other representative of recognized foreign member government to international organization, staff, and immediate family
G-3	Representative of non-recognized or nonmember government to international organization, and immediate family
G-4	International organization officer or employee of G-1 through G-4 & immediate family
H-1 A	Temporary worker-registered nurse under 1989 law
H-1 B	Other temporary workers in specialty occupation
H-1 B1	Temporary workers in specialty occupations entering under Chile and Singapore free trade agreements
H-1 C	Temporary worker-registered nurse in health professional shortage areas
H-2 A	Temporary worker performing agriculture services unavailable in the

	U.S.
H-2 B	Temporary worker performing other services unavailable in the U.S.
H-3	Trainee
H-4	Spouse or child of alien classified H-1, H-2/B, or H-3
I	Representative of foreign information media, spouse and children
L-1	Intracompany transferees
M-3	Mexican and Canadian commuter vocational or non-academic students
TN	Canadian and Mexican aliens entering as professionals under the North America Free Trade Agreement

## **Appendix 2 : Glossary of Regional Trade Agreements**

Agreement on the European Economic Area(EEA) : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom

Asean Free Trade Agreement(AFTA) : Brunei Darussalam, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam

Andean Community : Bolivia, Colombia, Ecuador, Peru, Venezuela

Asian Pacific Economic Cooperation Forum(APEC) : Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States and Vietnam

Caribbean Community(CARICOM) : Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St.Kitts and Nevis, St.Lucia, St.Vincent and the Grenadines, Suriname, Trinidad and Tobago

Common Market for Eastern and Southern Africa(COMESA) : Angola, Burundi, Comoros, Republic of Congo, Djibouti, Arab Republic of Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Zambia, Zimbabwe

European Free Trade Association(EFTA) : Iceland, Liechtenstein, Norway, and Switzerland

European Union(EU) : Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, The Netherlands, United Kingdom

North American Free Trade Agreement(NAFTA) : Canada, Mexico, United States

Southern Common Market Agreement(MERCOSUR) : Argentina, Brazil, Paraguay, Uruguay

### Appendix 3 : List of Professionals under NAFTA

PROFESSION <sup>1</sup>	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
General	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial license <sup>2</sup>
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or PostSecondary Diploma <sup>3</sup> or PostSecondary Certificate <sup>4</sup> , and three years experience
Disaster Relief Insurance Claims Adjuster (claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial license
Forester	Baccalaureate or Licenciatura Degree; or state/provincial license
Graphic Designer	Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or PostSecondary Diploma or PostSecondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or

	PostSecondary Diploma or PostSecondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/federal license
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist <sup>5</sup>	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree

Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
Medical/Allied Professional, Scientists and Teachers are not listed here	



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