

Trade in Services Series



Advancing Services Export Interests of Least-Developed Countries



Toward GATS Commitments on the Temporary Movement of Natural
Persons For the Supply of Low-Skilled and Semi-Skilled Services

By Daniel Crosby
Budin & Partners Law Firm



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ACRONYMS

ACP - Africa, Caribbean and Pacific

CDP - Committee for Development Policy

COMESA - Common Market for Eastern and Southern Africa

CSAWP - Canadian Seasonal Agricultural Worker Program

DDA - Doha Development Agenda

ECOSOC - Economic and Social Council of the United Nations

ENT - Economic Needs Test

EPA - Economic Partnership Agreement

EPS - Employment Permit System

EU - European Union

Eurostat - Statistical Office of the European Communities

EVI - Economic Vulnerability Index

GATS - General Agreement on Trade in Services

GNI - Gross National Income

HAI - Human Assets Index

IMF - International Monetary Fund

ISCO - International Standard Classification of Occupations

LDC - Least-Developed Country

MFN - Most-Favoured Nation

MRA - Mutual Recognition Agreement

MSITS - Manual on Statistics of International Trade in Services

OECD - Organisation for Economic Co-operation and Development

RTA - Regional Trade Agreement

SBS - Sector-Based Scheme

SEA - Spain-Ecuador Agreement on Regulation and Planning of Migratory Flows

TFSITS - Interagency Task Force on Statistics of International Trade in Services

UNCTAD - United Nations Conference on Trade and Development

UNPD - United Nations Population Division

UNSD - United Nations Statistics Division

UNWTO - World Tourism Organization

WTO - World Trade Organization

FOREWORD

The temporary movement of natural persons in the context of international trade is a crucial issue for Least Developed Countries (LDCs). Indeed, LDCs could successfully satisfy the increasing demand for low-skilled and semi-skilled workers in developed and developing countries. According to Alan Winters (2003) an increase in industrial countries' quotas for both skilled and unskilled temporary workers equivalent to three percent of their work force would generate an estimated increase in world welfare of more than USD 150 billion a year.

The present Issue Paper (No. 9) on "Advancing Services Export Interests of Least-Developed Countries: Toward GATS Commitments on the Temporary Movement of Natural Persons for the Supply of Low-Skilled and Semi-Skilled Services" by Daniel Crosby, a partner at the Budin & Partners Law Firm, shows how LDC supply of low-skilled and semi-skilled services could successfully respond through the temporary presence of natural persons in developed and developing countries to satisfy the increasing demand for such services in these countries. Moreover, it illustrates where market access should be bound through GATS commitments as well as in other regional and bilateral trade agreements.

Although LDC potential gains in these negotiations are highly relevant for these countries' long-term development objectives, most developed and developing countries seem reluctant to negotiate either the binding of existing regimes or reductions in trade barriers that inhibit the most important LDCs' service exports.

Moreover, the overwhelming majority of GATS Mode 4 commitments only apply to highly-skilled professionals. Within this "highly-skilled" category, commitments are linked to Mode 3 establishment, which refers to foreign services suppliers that invest in another Member's territory have limited rights to bring highly-skilled natural persons temporarily to supply services related to their investment. Currently, thus, GATS commitments are of little economic and social relevance to LDCs since they are not in a position to make Mode 3 types of investments in services.

At a regional and/or bilateral level some countries accord preferential treatment under temporary worker programmes. However, this access is not bound in Members' commitments under the GATS. Existing temporary worker programmes may though provide useful lessons for the improvement of these mechanisms as well as for a potential 'multilateralization' of currently unbounded market access for the supply of low-skilled and semi-skilled services from LDCs.

The purpose of this paper is thus to contribute to a knowledge-based debate in this area on how GATS negotiations, in general, and Mode 4, in particular, can successfully address the competitive advantages and concerns of LDCs. Ultimately, this paper's objective is to shed light on how potential Mode 4 benefits could effectively be turned into tangible sustainable development results in Least Developed Countries.



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1. INTRODUCTION

Least-Developed Countries (LDCs) by definition have a comparative advantage and substantial interest in supplying low-skilled and semi-skilled services¹ through the temporary movement of natural persons to developed and developing countries. According to the United Nations, LDCs are characterised by three factors (1) extremely low income, (2) “human resource weakness,” including low education and literacy levels, and (3) “economic vulnerability”, such as instability of service exports, modern services only making up a small share of GDP and the handicap of small domestic markets. The combination of these factors creates a strong comparative advantage in the supply of low- and semi-skilled services along with LDCs’ interest in mitigating economic vulnerability by growing domestic service sectors and creating a level playing field for trade in services supported by international treaty commitments.

The object and purpose of the General Agreement on Trade in Services (the GATS)² and the political framework of the current Doha Development Agenda (DDA)³ call for Members to make commitments in service sectors of export interest to LDCs. WTO Members from LDC countries have notified all developed and developing Members

that the supply of services through the temporary movement of natural persons (i.e: GATS “Mode 4”) is for them “one of the most important means of supplying services internationally” (WTO 2003, para. 9). However, WTO Members have neither made specific Mode 4 commitments for the supply of low-skilled and semi-skilled services in the Uruguay Round nor offered to make commitments in response to LDC requests under the Doha Development Agenda. Rather, the increasing need for such services in “consuming” countries is met under unilateral or bilateral arrangements with favoured trading partners and in some cases through illegal and unregulated immigration.

This paper will review barriers to trade in the supply of Mode 4 services by LDCs and explore means by which existing employment schemes for low-skilled and semi-skilled LDC service suppliers might be assessed, improved and multilateralised through GATS commitments. The GATS appears to provide a flexible legal framework for making Mode 4 commitments of export interest to LDCs; no technical or legal issue prevents Members from scheduling commitments that match their economic needs to LDC economic interests and supply capacities.

2. LEAST-DEVELOPED COUNTRIES' MODE 4 SUPPLY CAPACITY

If LDC service suppliers were allowed to compete based on their comparative advantage they could successfully satisfy increasing demand for low-skilled and semi-skilled services through temporary work in developed and developing countries. Such competition by LDC service suppliers could produce enormous economic and social gains for LDC nationals and governments, while yielding the largest efficiency gains for all WTO Members. According to Prof. L. Alan Winters, an increase in industrial countries' quotas for both skilled and unskilled temporary workers equivalent to three percent of their work force would generate an estimated increase in world welfare of more than USD 150 billion a year (Winters 2003, p. 59). Winters further specifies that because of the magnitude of the productivity gap between home and host countries, and the large number of people available to move, increased mobility of LDC low-skilled workers would make up a large portion of such benefits (Winters 2003, p. 68-69).

Although increased Mode 4 market access would benefit LDCs in terms of business experience and skills' enhancement while abroad, remittance transfers and capital accumulation, these short-term gains may potentially affect medium- and long-term interests unless LDC governments adopt strategies to apply the benefits of Mode 4 trade to domestic development objectives. In this context, the often-cited "brain drain" risk could be elevated in "semi-skilled" sectors. At the same time, this fear does not arise in low-skilled service sectors. Potential strategies to advance a "joined-up" policy approach to international and domestic services supply and demand are addressed in

detail in an ICTSD companion paper authored by Sabrina Varma entitled *Facilitating Temporary Labour Mobility in African LDCs: Addressing Mode 4 Related Supply-Side Constraints*.

Least-Developed Country Mode 4 supply capacity corresponds most strongly to the low- and semi-skilled sectors set out in Annex 1. This paper will illustrate how LDC supply in these sectors matches demand in developed and developing countries, and where market access should be bound through GATS commitments and other regional and bilateral trade agreements.

Given the lack of statistical systems at the international and national levels to track and report on the supply and demand of Mode 4 services, this paper relies necessarily on reports of business needs in service sectors that match LDC supply and on statistics regarding visas and remittances that provide a general picture of the temporary movement of workers. Although Mode 4 supply is only a subset of such reported information, no mechanism has yet been established to identify and separately report on services trade as defined by the GATS (Magdeleine and Maurer 2008).⁴ This paper includes a discussion of ongoing efforts to obtain and refine statistics on Mode 4 trade, even though these efforts will not bear fruit in the very near future and will not be available to support DDA negotiations. Notwithstanding the lack of official statistics, the sheer volume of movement and associated transfers of wealth, along with clear demographic trends, give ample reason for LDCs to expand such activity in line with their development strategies.

3. DEMAND FOR MODE 4 SERVICES FROM LEAST-DEVELOPED COUNTRIES

Recent surveys confirm that international demand is high for services of export interest to LDCs. The “2008 Borderless Workforce Survey” recently published by Manpower Inc. shows that the category of “labourer” leads the list of “jobs filled with foreign talent” (Manpower Inc. 2008). Separately, Manpower’s 2008 “Talent Shortage Survey” shows that the category of “skilled manual trades” leads the list of jobs that employers around the world

have the most difficulty filling (Manpower Inc. 2008a, p. 1). A number of factors, including low birth rates, ageing population, retirement policies and longer education curricula, indicate that over the medium- and long-term, demand will remain strong for low- and semi-skilled workers in developed and developing countries. As noted above, LDCs have a large potential supply of such workers which could meet this high demand.

3.1 Least-Developed Countries’ Interests in Low-Skilled and Semi-Skilled Service Supply on a Country/Region and Sectoral Basis

Most developing countries exhibit the greatest demand for “skilled manual trades” including carpenters/joiners, electricians, plumbers and welders. In Austria, Belgium, the Czech Republic, France, Germany, Greece, Ireland, Italy, Norway, Poland, Romania, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland, employers report “skilled manual trades” as either the first or second most difficult jobs to fill, with “labourer” also high on

the list (Manpower Inc. 2008a, p. 3-9). Similar results are reported by developed countries in the Asia-Pacific region (Australia and New Zealand) and the Americas (Canada and the United States of America). Arab countries are another major destination for manual services and “labourers” with over 9 million foreign workers employed on a temporary basis, sending more than USD 28 billion in annual remittances to their home countries (World Bank 2008).⁵

3.2 Major Existing and Potential Flows of Trade in Low-Skilled Service Suppliers

The following tables illustrate the top countries or regions of Mode 4 export interest to LDCs in terms of existing and potential trade flows using estimates of current LDC worker movement (Table

1), the number of foreign natural persons and the value of remittances (Table 2) and the value of remittances as a function of GDP (Table 3).

Table 1: Top 5 Existing LDC Worker Movement in 2005⁶

1. India (principally from Bangladesh and Nepal)	No statistical information available
2. Iran (principally from Afghanistan)	No statistical information available
3. Côte d’Ivoire (principally from Burkina Faso and Mali)	No statistical information available
4. United States of America (principally from Haiti)	According to 2007 US visa statistics, 70,364 of the 89,990 non-immigrant entries from Haiti were under the B2 category for “temporary visitors: for business”. No disaggregation is available and presently there is no way to determine GATS’ coverage of such visitors (US Dept. of Homeland Sec. 2007).
5. Saudi Arabia (principally from Bangladesh and Yemen)	No statistical information available

Source: World Bank, 2008.

While current LDC worker movement is based mainly on geographic proximity to markets and historical relationships, statistical reports show that significant movement takes place from LDCs to distant markets and that non-traditional sourcing plays an important role in worker movement. For instance, there are major flows of workers from Bangladesh to Saudi Arabia and from many African countries to distant OECD countries (World Bank 2008). Indeed distant countries with no apparent historical ties, are among the most common destinations for workers from the countries that receive the highest amount of remittances as a function of GDP, as reported in Table 3 below. For example, among the top 10 destinations for Lesotho's workers are distant countries like the United States and Canada. Nepalese workers also show readiness to undertake long journeys to countries like

Australia, the United States and Europe (World Bank 2008). These data show that LDC workers can overcome burdens of distance and expense to reach job opportunities in non-traditional and distant markets. Although historic, cultural and linguistic ties may help to explain some international worker flows, other trends such as educational background and remittance values may also influence flows.⁷ Therefore, while LDCs continue to expand traditional export markets, they can also target large non-traditional markets that hold great potential in terms of market size and demand, wealth transfer and "brain gain" from training and work experience.

The largest potential markets for LDCs in terms of numbers of foreign natural persons and value of remittances are listed in the following table:

Table 2: Top 10 Potential Markets for LDCs⁸

By number of foreign natural persons	By value of remittance (USD billions)	Comments
1. United States (38.4 million)	1. United States - 42.2	The data reported here show that the country volume as well as the value AND average annual remittance <i>per person</i> should be considered. Although disaggregated statistics are not reported to identify Mode 4 trade or to confirm the specific service sectors in question, it is presumed that some portion of the value reported here could relate to Mode 4 trade.
2. Germany (10.1 million)	2. Saudi Arabia - 15.6	
3. France (6.5 million)	3. Switzerland - 13.8	
1. Saudi Arabia (6.4 million)	4. Germany - 12.3	
5. Canada (6.4 million)	5. Spain - 11.0	
6. India (5.7 million)	6. Italy - 8.2	
7. United Kingdom (5.4 million)	7. Luxembourg - 7.5	
8. Spain (4.8 million)	8. Netherlands - 6.7	
9. Australia (4.1 million)	9. Malaysia - 5.6	
10. Pakistan (3.3 million)	10. United Kingdom - 4.5	

Source: World Bank, 2008.

Although the "top 10" figures clearly establish the enormous volume and value of worker movement, country- and sector-specific information should be reviewed in order to address the needs and capacities of individual countries. The World Bank Factbook consolidates useful information for each LDC, including information on numbers of emigrants, percentage of skilled workers in some cases and

country-specific (official) inward remittance flows. As always in the context of LDCs, *relative* values must be considered in order to put the issue in perspective. For example, although the overall number of LDC workers is small relative to other countries, the relative importance of remittances in terms of *percent of GDP* can be quite significant, as illustrated in the following table:

Table 3: Top 10 List of LDC Remittance Recipients in 2006 as a Function of GDP⁹

Country	Remittance as function of GDP (2006)
1. Lesotho	24.5%
2. Haiti	21.6%
3. Nepal	18%
4. The Gambia	12.5%
5. Cape Verde	12%
6. Kiribati	9.9%
7. Guinea-Bissau	9.2%
8. Bangladesh	8.8%
9. Uganda	8.7%
10. Togo	8.7%

Source: World Bank, 2008.

Table 3 illustrates the economic importance of worker movement to many LDCs and confirms the international demand for LDC workers. Of Lesotho's population of 2 million, 285,589 people, or 14.4 percent of the total population, were classified as emigrants in 2005 (World Bank

2008). Since only 2.4 percent of the total migrants have a tertiary education we can infer that an important share is composed of low- and semi-skilled workers, including some service suppliers. Similar conclusions can be drawn for the other LDCs listed in Table 3 (World Bank 2008).

3.3. Limitations of Statistics

Due to the widely-acknowledged inaccuracies and incompleteness of migration statistics, reported figures can only be used for general illustrative purposes. Such statistics are based on official migrant numbers and the consideration of figures for informal flows of people and remittances could lead to much larger numbers. These figures do not systematically specify the nature of work engaged in by migrants and there is no way to determine the extent to which the reported figures include the supply of services under GATS Mode 4.

In order to standardise and improve the collection and reporting of service statistics, an Interagency Task Force on Statistics of International Trade in Services (TFSITS) has been created with representatives from the Statistical Office of the European Communities (Eurostat), the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development

(OECD), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Statistics Division (UNSD), the World Trade Organization (WTO) and the World Tourism Organization (UNWTO). The TFSITS has proposed improvements to data collection, including the identification of Mode 4 trade, and the Manual on Statistics of International Trade in Services is being revised through a process of worldwide consultation.¹⁰

In the meantime, given the slow and cumbersome process of changing international statistics regimes, additional efforts could be made by WTO Members to report on measures affecting Mode 4 trade. Such reporting could seek to produce information relevant to LDC Mode 4 export interests, including: a description of visa programmes covering the supply of services under Mode 4, a description of bilateral or regional worker programmes designed to facilitate the temporary presence of natural persons, disaggregated sector- and country-

specific statistics confirming the number of temporary entries for the supply of services under various visa programmes and cross-border worker programmes. Such information could be requested in the context of DDA negotiations or under the Transparency provisions of GATS Article III.

Finally, much more effort needs to be applied in the analysis of statistics of specific interest to LDC Mode 4 in order to produce data that are analytically valuable to trade negotiators, public

policy-makers and service-suppliers. Although the most reliable way to obtain information about flows of people is for source countries to collect information from their citizens, LDCs lack the resources to obtain, process and maintain such volumes of information. Technical assistance would therefore be needed to help LDCs to follow the temporary movements of their own people and to help collect statistics on the nature of activities performed and services supplied while abroad.

4. GATS FRAMEWORK ISSUES

The GATS clearly covers trade in semi-skilled and low-skilled services supplied through the temporary presence of natural persons of WTO Members in the territories of other WTO Members. In particular, GATS Article I:2(d) defines trade in services as the supply of a service “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”. The GATS’ “Annex on Movement of Natural Persons Supplying Services Under the Agreement” (Mode 4 Annex) further confirms that “Members may negotiate specific commitments applying to the movement of *all categories of natural persons supplying services under the Agreement*”.¹¹

In order to dispel any doubt about GATS coverage of LDC interests, we emphasise here that the latter phrase can only mean that the GATS covers natural person service suppliers of all skill categories. The Mode 4 Annex also states that the GATS “shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis”. This institutional limitation to high-demand and low-supply services on a *temporary* basis, especially in low-skill sectors, should help to dispel concerns about permanent migration including “brain drain” in home countries and fears about integration and fiscal burdens on host countries (Dey 2006, p. 4-5).¹²

The GATS can apply to Mode 4 services in two ways: first, Members can make specific commitments in their GATS schedules on the supply of services through Mode 4 in sectors of interest to LDCs. To date, Members have not made specific commitments on Mode 4 that are meaningful for LDCs. In any case, Members may schedule limitations on their specific commitments, including quotas and economic needs tests (ENTs) as provided in GATS’ Article XVI:2. Many Members have in fact scheduled such limitations in connection with their Mode 4 commitments to maintain flexibility and consistency with domestic immigration regimes.¹³

Second, in the absence of specific commitments, the most-favoured nation (MFN) principle requires all Members to grant LDCs no less favourable Mode 4 market access than to any other Member with respect to all measures covered by the GATS, unless an MFN exemption applies.¹⁴ Most-favoured nation exemptions are either scheduled with respect to specific trading partners and durations, or can apply under the rules for economic and labour market integration agreements respectively under GATS Article V and Article V *bis*.¹⁵ Scheduled MFN exemptions should not apply for a period of more than 10 years, but this period has expired for original WTO Members and the elimination of MFN exemptions is subject to negotiation under the DDA.¹⁶

Agreements that qualify under GATS Article V and Article V *bis* must be notified to WTO Members and must meet demanding conditions including: respectively, substantial sectoral coverage and “elimination of substantially all discrimination”, and “full integration of labour markets”. Since few, if any, bilateral worker agreements would qualify under these exceptions, the MFN principle will apply fully to all such relevant measures applied by Members.

The persistence of certain unsettled issues in the application of Mode 4 should not inhibit the scheduling of GATS Mode 4 commitments to specific LDC interests. The WTO Secretariat highlighted early on that

[t]here appears to be room for interpretation whether the foreign natural persons “employed by a service supplier of a Member” also include foreigners employed by host-country companies. While the wording of the Annex does not rule out this possibility, Article I:2(d) of the Agreement seems to cover only foreigners employed by foreign-owned companies (as noted above, the Article applies to services provided “by suppliers of one Member, through presence of natural persons of a Member in the territory of any other Member”). Thus, while foreigners would fall under the

GATS if they work on a contractual basis as independent suppliers for a locally-owned firm, they would seem not to be covered if they were employees of that firm (WTO 1998, para. 56).

Although the technical debate continues, and as a practical matter LDCs would benefit, along with other Mode 4 exporters, from an authoritative interpretation of GATS coverage, LDC interests in Mode 4 commitments can be scheduled clearly and conservatively to avoid this debate altogether.

Based on the generally-accepted scope of the GATS as described in the Secretariat Note, “receiving” countries can structure unilateral and bilateral programmes on worker movement to exclude large categories of trade. For example, if a country makes market access for natural person-supplied services conditional on employment by host-country companies, such supply of services would not be covered by the GATS (or by the MFN principle). The same services supplied by an independent foreign contractor to the same host-country companies could be scheduled under GATS Mode 4. It has been observed that

“[t]o treat jobs in a domestic firm differently from identical jobs in a foreign firm seems perverse, for it can result in exactly the same service provided by the same person being treated differently according to arcane details of firm ownership or history. However, whatever the legal situation the costs and political

risks of bringing the WTO into domestic employment law are likely to be high” (Winters 2005 p. 8).

In addition to this apparent uncertainty in scope and application of the GATS’ legal framework, doubts have been raised over the coverage of certain low-skilled services when supplied in the context of the agricultural and industrial sectors.¹⁷ Questions have been raised as to whether natural persons who temporarily visit other countries to harvest, pack and process agricultural goods can be considered Mode 4 service suppliers. Proponents of GATS coverage argue that such services fall under classification 881 of the United Nations provisional Central Product Classification system: “Services incidental to agriculture, hunting, forestry and fishing: services rendered on a fee or contract basis, mostly performed at the site where the agricultural production is done, e.g. services providing agricultural machinery with drivers and crew; harvesting and related services; services of farm labour contractors...” Least-developed countries have a strong interest in supporting this position because their Mode 4 service suppliers have significant capacity to provide such services and several existing worker movement regimes cover agricultural “harvesting and related services”.

Although nothing in the GATS framework prevents Members from scheduling Mode 4 commitments of interest to LDCs, as discussed in the following section, Members have not been prepared to make such commitments.

4.1. Lack of Mode 4 GATS Commitments on Semi-Skilled and Low-Skilled Services

To date, no WTO Member has scheduled sector-specific Mode 4 commitments targeted at semi- or low-skilled services. Although residual commitments in some Members’ schedules might be interpreted to cover limited semi- or low-skilled services, the overwhelming majority of GATS’ Mode 4 commitments apply to highly-skilled professionals (WTO 1998, para. 42). Within this “highly-skilled” category, commitments are linked to Mode 3 establishment, meaning that foreign service suppliers that invest in another Member’s territory have limited rights to bring in highly-skilled natural persons temporarily to

supply services related to their investment. Existing GATS commitments, therefore, have almost no practical economic relevance to LDCs, which do not generally have the means to make Mode 3 service investments and by definition can only supply low- and semi-skilled service suppliers.¹⁸

During the Uruguay Round, developing countries negotiated the inclusion of Mode 4 as a GATS mode of supply in order to balance developed country interests in supplying services through Mode 3 “commercial presence” (i.e. foreign investment in service sectors).

While many developed and developing countries have made extensive Mode 3 commitments, the current paucity of meaningful Mode 4 commitments shows that the system has failed to deliver the expected balance between Modes 3 and 4.

The structure and substance of most existing Mode 4 commitments differ from all other Modes in a number of ways: *first*, of the four modes of supply, Members have made the least number of commitments in Mode 4; in fact, no Member has scheduled full market access under Mode 4 in any sector (Carzaniga 2003, p.24). As noted above, the little market access that Members have scheduled is heavily limited by quotas and ENTs.

Second, the structure of Mode 4 commitments differs significantly from commitments in the other three modes of supply. Specific sectoral commitments under Modes 1, 2 and 3 generally follow a “top-down” approach: starting from full sectoral liberalisation and adding any desired limitations to market access and national treatment. Mode 4 commitments, in contrast, follow a “bottom-up” approach: starting from no market access (“unbound”), virtually all WTO Members have scheduled “horizontal commitments” on Mode 4 that apply to all service sectors in their schedules except as provided in sector-specific commitments (Carzaniga 2003, p.24).

Third, Members have limited their Mode 4 commitments in terms of functional and hierarchical characteristics of natural persons, linkages to other modes of supply and duration of stay. Most schedules limit Mode 4 market access to executives, managers, specialists, business visitors and contractual service suppliers, for the purpose of establishing business contacts, negotiating sales or setting up a commercial presence. Members have mostly limited their market access commitments to “intra-corporate transferees” that require a Mode 3 commitment in order to have legal and economic significance (WTO 1998, para. 38). Only the small number of Mode 4 commitments that are not qualified with respect to functional or hierarchical status and are not associated with commercial presence can be potentially interpreted as covering suppliers of low- and semi-skilled services of interest to LDCs (WTO 1998, paras. 38 and 42).

Current Mode 4 commitments do not significantly differ between developing and developed countries: neither group of countries has been willing to make meaningful commitments in this mode of supply. Even the service schedules of newly-acceded Members (i.e: post-1995) do not include broader commitments than those of existing Members, with the exception of some commitments for “contract suppliers” (Carzaniga 2003, p. 25).¹⁹

4.2. Least-Developed Country Interests in Doha Development Agenda Mode 4 Negotiations

Offers submitted in the context of the DDA reflect limited *potential* improvement on Mode 4 commitments and virtually none on low- and semi-skilled service suppliers (Mamdouh 2008). The Hong Kong Ministerial Declaration set out laudable objectives for Mode 4 negotiations, and targeted new and improved commitments on issues of interest to LDCs. The categories of “contractual service suppliers”, “independent professionals” and “others” are targeted, and reference is made to delinking market access from the commercial presence mode of supply and to reducing ENTs. Moreover, some positive “signals” were expressed at the Services Signalling Conference held in Geneva in July 2008. It was

reported that “[m]ost participants indicated their readiness to improve access conditions for Mode 4. In several statements, these signals were expressly linked to the developments character of this Round” (WTO 2008).

Positive political statements notwithstanding, serious commitments on Mode 4 remain to materialise. Moreover, although the LDC Group Request on Mode 4 includes some constructive elements that would advance LDC interests, the lack of specifically-targeted sectors could partially explain the lack of engagement by other WTO Members. In particular, the disciplines and clarifications sought in the LDC Group Request on Mode 4 could advance general LDC

interests. The four categories identified by LDCs – “Independent Professionals”, “Business Visitors”, “Contractual Service Suppliers” and “Others” – reflect interests in supplying low- and semi-skilled services by suppliers without a commercial presence in the host country. *However*, the request may well benefit from the targeting of specific service sectors of interest to LDCs.

Given the infamous absence of disaggregated statistics, LDCs need to identify rational means for targeting service sectors for Mode 4 trade. In addition to obtaining general technical assistance in this area, LDCs could use

commercial “talent shortage surveys” to match their sector-specific requests with apparent needs in country markets. Least-developed countries could also seek full information from Members on the sectoral coverage of their *existing* worker programmes. Even in the absence of detailed statistics, Members must be able to respond to LDCs’ requests for information about programme coverage, relevant quotas and approximate numbers of temporary worker entries under these programmes. Such LDC information requests would also bring into focus the question of whether various programmes are (or can be) subject to GATS disciplines.

4.3. Existing “Unbound” Mode 4 Access for Low- and Semi-Skilled Services

Although we can assume that a portion of the current volume of reported international worker movement could fall under Mode 4 supply of low- and semi-skilled services, no statistical system exists to track this “unbound” market access. An overview of unbound Mode 4 trading opportunities can be obtained by reviewing the range of unilateral, bilateral and regional programmes for the movement of natural persons. The following targeted (sector-specific) or general programmes have been the subject of recent academic work on Mode 4 low-skilled services trade (Chanda 2008):²⁰

- Spain - Bulgaria / Colombia / Dominican Republic / Ecuador / Poland / Romania / Senegal.
- Canada, Canadian Seasonal Agricultural Worker Program (CSAWP) - Mexico / Caribbean (Barbados, Jamaica, Trinidad and Tobago, Organization of Eastern Caribbean States).
- United States, H-2A temporary agricultural worker programme (unlimited entries); H-2B temporary non-agricultural workers programme (quota of 66,000 individuals) - all countries eligible.
- United Kingdom, Sector-Based Scheme (SBS) for temporary, low-skilled workers between 18 and 30 years old from Romania and Bulgaria in the food processing and hospitality sectors.²¹
- Republic of Korea, Employment Permit System and Employment Management System.
- Arabian Peninsula, several framework agreements and statements of mutual co-operation (as well as “unregulated channels

involving intermediaries”) (Chanda 2008, p. 28).

- Japan - Philippines Economic Partnership Agreement.
- Singapore - Philippines.

Research by the OECD has been particularly helpful in reviewing the legal structures and coverage of labour movement in a broad range of regional trade agreements (RTAs). This work shows that trade in services through the movement of natural persons is covered by many RTAs, but that many such agreements do not lend themselves to direct comparison with the GATS (Nielsen 2002).

Finally, LDCs should be aware of the volume and effect of illegal migration on their potential market access to other countries’ markets because the failure to control immigration inevitably satisfies demand in the relevant markets and diminishes the opportunities for legal Mode 4 trade. Likewise, many observers have suggested that countries could help address their illegal immigration problems by providing meaningful market access in combination with effective regulation. Although this issue is far beyond the scope of GATS rules, LDCs might note that the “legalisation” of worker movement could open to competition a number of job opportunities in large markets such as the United States²² and Europe, some of which could fall under GATS commitments, and a great portion of which are low-skilled categories for which LDCs could compete effectively if given the chance.

5. BARRIERS TO MODE 4 SUPPLY OF SERVICES BY LEAST-DEVELOPED COUNTRY LOW-SKILLED WORKERS

5.1. Most Significant Obstacles to Low-Skilled Service Suppliers from Least-Developed Countries

Several significant barriers prevent or restrict the flow of low- or semi-skilled service suppliers from LDCs to service consumers located in developed countries. Most such barriers are not specific to LDC service suppliers but apply generally to Mode 4 trade. Nevertheless, many barriers have a disproportionate effect on LDCs due to the additional costs and burdens which are more difficult for LDCs to overcome.

Barriers can roughly be split into three main categories: (i) border measures, (ii) internal measures, and (iii) “other hurdles”. In addition to discussing regulatory hurdles, this paper observes that inter-governmental co-operation can be one of the greatest facilitators of Mode 4 trade. Insofar as the LDC Services Modalities specifically encourage Members to take measures, including inter-governmental co-operation programmes, to increase the participation of LDCs in services trade, LDCs should consider requesting the expansion of such programmes in the Mode 4 context.

“Border measures” include measures regulating or impeding the entry of service suppliers into a consumer’s market. Quotas and ENTs are the most common examples of “border measures”. Virtually all countries maintain border measures, either through quotas, ENTs or both. For instance, the *United States H-2B Temporary Non - Agricultural Workers Program*, sets a yearly quota of 66,000 visas (which is filled every year on opening day). Conversely, the *United States H-2A Agricultural Workers Program* does not set any specific numerical ceiling but requires US employers to meet an ENT by demonstrating that they are unable to fill the relevant jobs with US workers and that the employment of foreigners will not adversely affect local workers. Similar ENTs apply under many unilateral and regional labour movement programmes. Under a limited number of agreements no ENT applies; for instance,

Canada’s *Seasonal Agricultural Worker Program (CSAWP) with Mexico and the Caribbean* has an institutional framework that clearly delineates the duties and obligations of public and private stakeholders in the process of recruitment of foreign workers. Canadian employers are required to demonstrate their advertisement efforts and their inability to fill the vacant positions with residents. In the application, the employer must provide information on the number of workers needed, duration and location of employment, as well as a description of the work.²³

Visa regimes also limit the entry of foreign service suppliers. GATS’ rules do not require Members to apply the same visa requirements to all trading partners, as long as market access commitments are not nullified or impaired by such differential treatment.²⁴ In practice, Members have complete authority to grant or deny visas for any reason. Because of this, negotiating proposals in the Doha Development Agenda have included provisions to improve transparency of Members’ visa regimes.²⁵

Foreign persons who successfully overcome quotas or ENTs and obtain visas face a number of “internal measures” that can put them at a competitive disadvantage vis-à-vis domestic service suppliers. Temporary work programmes often require wage parity (or minimum wage parity) with domestic suppliers. Mandatory social security contributions which are not returned to the contributor are also unfair to LDC service suppliers. Local laws may even require employers to pay a “premium” to employ foreign service suppliers, including coverage of travel expenses, lodging and meals. While some of these requirements aim to protect foreign workers, in practice they may unnecessarily undermine comparative advantages that LDC service suppliers have over domestic suppliers.

The non-recognition of professional qualifications and work experience also represents a major

barrier for foreign service suppliers. Such requirements should not be applied to LDC low-skilled service suppliers who do not possess specific academic qualifications. However, domestic licensing regimes do apply in semi-skilled sectors and required certification may be expensive, time-consuming or unavailable in the home country.

Several “other hurdles” can limit the ability of LDCs to supply Mode 4 services. These measures include the costs of visa applications, and

certification and licensing requirements, as well as more expensive and less convenient travel routes. As noted above, illegal immigration diminishes market opportunities for LDCs, while host countries’ fears of permanent low-skilled immigrants reduces political support for Mode 4 commitments for the temporary supply of low-skill services.

The following table illustrates some key issues affecting the supply of services through Mode 4:

Table 4: Key Issues Affecting the Supply of Services

Border Measures	Internal Measures		Other Hurdles
	Qualifications	Regulations	
Quotas	Licensing	Wage parity / Minimum wage requirements	Distance
Economic Needs Tests (ENTs)	Work experience requirements	Travel premium	Illegal immigration / fear of illegal immigration
Visa requirements	Non-recognition of home country qualifications	Lodging and food premium	Language skills (<i>de facto</i> limitations)
	Language skills (<i>de jure</i> limitation)	Mandatory social security funding	Lack of transparency and awareness of opportunities
		Health insurance	Perceptions of unsettled GATS application
		Work permit processing costs	

5.2 The Application of Existing Rules and Commitments and GATS’ Consistency of Existing Measures

The current lack of Mode 4 commitments, in particular for low-skilled service suppliers, has political, social and cultural roots, and should not be blamed on an inappropriate legal framework. That said, Members might welcome a clarification of the scope of Mode 4 and its application to low- and semi-skilled suppliers.

Since some GATS provisions, including those on “Market Access, National Treatment and Domestic Regulation”, only apply where Members have scheduled specific commitments, these provisions are of very little use to LDCs given the current lack of specific Mode 4 commitments relevant to them.

On the other hand, LDCs could attempt to apply such technical arguments to their own benefit by negotiating preferential Mode 4 access that need not be extended to other WTO Members arguing that this treatment is “outside of the GATS”. Some observers consider, however, that since LDCs lack the capacity to advance and prevail on such technical arguments, and given existing market access, they would benefit more from the non-discriminatory extension of such market access consistent with the GATS MFN principle.²⁶

Some GATS provisions, like MFN and Transparency rules, apply to all measures covered by the GATS

regardless of whether specific commitments exist. Least-developed countries could therefore consider whether WTO Member practices comply with Transparency requirements and apply in a non-discriminatory manner consistent with the MFN principle. Least-developed countries might usefully raise MFN-based issues to highlight points of equity in the negotiations, and they could confirm whether Members are using technical arguments to justify discrimination against LDC Mode 4 service suppliers, while providing preferential market access “outside of the GATS”.

5.3. Barriers Addressed through Inter-Governmental Co-operation Programmes

Several countries have addressed barriers to the supply of Mode 4 services through RTAs, ranging from allowing the free movement of all workers, to facilitating recruitment and visa procedures. The most liberal regimes, like those underpinning the European Union, allow service suppliers to locate in a country as a “fundamental freedom”.²⁷ Least-developed country members of the Common Market for Eastern and Southern Africa (COMESA) have set a similar goal of economic integration and free movement of workers for 2025.²⁸ They will need to develop new regulations to implement this goal over time, and the development of this regime could serve as a useful template for discussions outside of the region.

Least-developed countries in the Africa, Caribbean and Pacific (ACP) group will also need to formulate requests for services market access in Economic Partnership Agreements (EPAs) with the EU. In addition to substantive commitments on market access, EPAs present an opportunity for ACP LDCs to obtain technical assistance, training and capacity-building that could include a strong component on worker movement. Least-developed countries can look to the EPAs/Euro-Med Association Agreements being negotiated and implemented with Caribbean and North African countries since these agreements call for the development of disciplines on worker movement.²⁹ Specifically, these countries can

consider examples in the recently-concluded EU-Cariforum EPA and its commitments on the temporary movement of natural persons to supply services. Although the EU-Cariforum EPA commitments mainly cover high-skilled services, some sectors are included that interest semi-skilled Caribbean suppliers like “chef” and “fashion model” since higher education is not necessary for these categories of services.³⁰

Most importantly for LDCs, however, is the new approach for making Mode 4-type commitments of specific interest to developing country trading partners that go beyond current GATS commitments (and beyond offers made under the Doha Development Agenda). Least-developed countries, particularly those engaged in regional EPA negotiations with the EU, would be justified in requesting market access for low- and semi-skilled sectors of export interest. Members can of course apply the sector-specific approach to Mode 4 in the GATS context as they have done for all other GATS commitments. The current “horizontal” approach to GATS’ Mode 4 commitments is not the result of the GATS architecture, but rather of political sensitivities. The Collective Request on Mode 4 circulated by India in 2006 suggests the use of a positive listing approach.³¹

Some agreements do not provide for specific market access for services supplied by natural

persons, but instead establish mechanisms to help partners identify opportunities for such trade and to facilitate their entry to supply services. The 2001 Spain-Ecuador Agreement on Regulation and Planning of Migratory Flows (SEA) provides a helpful example of how a developed host country and a developing source country can collaborate to advance mutual interests in the temporary movement of service suppliers. The SEA provides a comprehensive infrastructure for recruiting workers from Ecuador, ensuring their entry for seasonal work in Spain, securing efficient payment of remittances, ensuring workers' return home and maintaining the possibility of returning to Spain to repeat the experience. Although an ENT applies for entrants into the programme, over time, qualified participants can become exempt from this test (Chanda 2008, p. 11). Least-developed countries could consider requesting the establishment of

international collaboration programmes to help facilitate their services trade in the GATS context.

Finally, some countries have negotiated mutual recognition agreements (MRAs) in order to overcome the barriers posed by licensing regimes. These agreements "have mostly been negotiated between developed countries and between countries with close cultural and historical linkages", (UNCTAD 2005, para. 51) and a great many LDCs have such linkages. In connection with MRAs, LDCs will need to seek a significant level of technical assistance targeting the creation of capacity to certify qualifications as necessary to obtain value from the agreement. Here again, inter-governmental collaboration, support for technical assistance, training and capacity building will be key to the success of the initiatives.

5.4. Addressing Barriers to Low- and Semi-Skilled Services

Least-developed countries can reference existing practices and new ideas to help address barriers to their Mode 4 service exports. The following table illustrates possible approaches as contained in unilateral worker movement schemes, regional

and bilateral treaties, in research and other initiatives, including GATS' negotiating proposals. Least-developed countries could consider including some of these approaches in Mode 4 requests in specific sectors.

Table 5: Possible Approaches to Address Barriers to Mode 4 Service Exports

Type of Measure	Solutions to Consider
Border Measures	
Quotas	Clearly describe the nature of the work and eligibility requirements to avoid arbitrary restrictions. ³²
Economic Needs Test (ENT)	Non-discriminatory and transparent application. Specific mention of (i) the service sectors and occupations to which the ENT shall be applied; (ii) the definition, criteria and conditions to be used in applying the ENT; and (iii) the duration of application of the ENT. ³³
Visa requirements	Clearly describe the duration of stay, the nature of the work, the eligibility requirements (in particular for non-sector or occupation-specific oriented programmes) and conditions for renewal and extension (including the possibility to require applicants to return home for a certain period of time before re-applying, and the respect of upper limits) (Chanda 2008, p. 43). ³⁴
Internal Measures	
Licensing	GATS Article VI: ensure that qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.

Type of Measure	Solutions to Consider
Border Measures	
Work experience requirements	GATS Article VI: ensure that qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. ³⁵
Non-recognition of home country qualifications	Multilateral recognition agreements, host-country mandatory training ³⁶ , pre-departure training (Chanda 2008, p. 10).
Language skills (<i>de jure</i> limitation)	GATS Art. VI: are requirements “necessary”?
Wage parity / Minimum wage requirements	Not a pre-condition for entry, however possibility to set minimum wages and / or salary thresholds based on average salaries in the host country, as well as caps on working hours and mandatory payment for overtime. ³⁷
Travel premium	Full or partial payment of roundtrip airfare (or other kind of transportation) and of the travel between the airport (or other point of arrival) in the host country and the place of employment and work sites by the employer. Part of the incurred expenses can be recouped through payroll deductions. ³⁸
Lodging and food premium	Free housing meeting building and health standards, proper equipped cooking area if workers choose to make their own meals provided by employer. Part of the incurred expenses can be recouped through payroll deductions. ³⁹
Mandatory social security funding	Double taxation agreements between home and host countries ensure that the worker does not have to pay tax twice on the same income. ⁴⁰
Health insurance	Paid by the employer. Part of the incurred expenses can be recouped through payroll deductions.
Work permit processing costs	Paid by the employer, can be recouped through payroll deductions. ⁴¹
Other Hurdles	
Distance	Can be overcome, if overall programme is fair, balanced and transparent. ⁴² However, “travel premia”, especially advance payment requirements, <i>de facto</i> discriminate against LDCs.
Illegal immigration / fear of illegal immigration	Inter-governmental collaboration, including coordinated documentation and tracking mechanism; and repatriation / re-admission agreements, incentives to return and circular migration policy, including: <ul style="list-style-type: none"> - transfer of remittances free of charge; - incentive to bring back equipment used in the host country to launch business projects at home; - penalties, including loss of the possibility for multiple temporary stays or liability for the workers to cover their transport costs; - co-development action plans; - continuation of workers’ social ties with their place of origin.⁴³
Language skills (<i>de facto</i> limitations)	Support language sector-specific training in home countries; target anglophone / francophone LDCs.
Lack of transparency and awareness of opportunities	Advertisement, inter-governmental efforts in the country of origin and in the host country. ⁴⁴
Perception of unsettled GATS application	<ul style="list-style-type: none"> - Schedule commitments conservatively in order to avoid unsettled issues; - Member action to clarify meaning; - Encourage academic consideration.

6. ADDRESSING KEY QUESTIONS

In taking this issue forward a number of questions can help to clarify outstanding matters:

6.1. Does the GATS provide a practical tool for achieving increased bound market access for LDC low- and semi-skilled service suppliers? YES - nothing in the GATS' legal framework inherently inhibits Members from making commitments. Transparent and GATS-consistent ENTs will play an important role in helping Members to schedule existing market access. However, in order to give commercial certainty and meaning to GATS commitments, and also to the MFN principle, LDCs should clarify whether and how GATS rules apply to existing measures maintained by developing and developed country Members that affect Mode 4 trade.

6.2. Do EPAs provide examples for achieving increased bound market access for LDC low-skilled service suppliers? YES - EPAs provide a good framework for targeting specific sectors of interest to LDCs. However, LDCs might consider requesting the inclusion in EPAs of collaborative schemes to promote circular flows of service suppliers, specific commitments on low-skilled suppliers and the exclusion of educational and practice qualifications, especially for low-skilled categories.

6.3. What lessons can be drawn from RTAs, and more specifically in the EPAs? The transposition of problems from GATS to RTAs and EPAs does not eliminate the concerns of host countries about illegal immigration. However, such agreements provide a more manageable and focused negotiating framework in which specific LDC interests can be addressed. As long as LDC interests are specifically addressed and reflected in the RTA texts without unnecessary qualifications and limitations, such agreements can serve as stepping stones - and not stumbling blocks - toward GATS Mode 4 commitments on the

supply of low- and semi-skilled services.

6.4. Why has the DDA mandate for Mode 4 negotiations and sectors of interest to LDCs not produced results for low-skilled service suppliers? A combination of technical, strategic and "political" factors seems to have produced the stalemate on Mode 4. As a technical issue, the lack of statistics on trade in services makes it difficult for LDCs to justify their arguments on the economic value of Mode 4 commitments. Additional resources must be committed to improve the expedited gathering and analysis of relevant statistical data. Least-developed countries must also try to identify the specific sectors in which they are interested in supplying Mode 4 services.

The lack of consolidated information on existing unbound Mode 4 market access also works against LDCs. These countries have a clear right to request and obtain full information on preferential temporary labour movement programmes maintained by WTO Member countries that could affect Mode 4 trade, whether scheduled or not. The ongoing debate on the scope, application and understanding of certain GATS provisions and the absence of an agreed classification system for low- and semi-skilled service categories might be inhibiting some Members from making commitments (or perhaps providing excuses?). As a political matter, Members are loath to make commitments that are perceived to affect the sensitive topic of immigration and, as yet, there has been little political will to address such issues. Both individually and as a group, LDCs need to identify key issues and sectors on which to focus their attention in order to achieve desired results. This area could be a prime candidate for technical assistance provided in the WTO context.

7. CONCLUSION

The GATS provides a viable framework for Mode 4 commitments on the supply of low- and semi-skilled services. This paper has presented several means of addressing existing barriers and obtaining commitments to ensure principled and equitable application of GATS' rules and principles, in some cases building on current "unbound" practices. In particular, LDCs may wish to consider the positive and negative aspects of reviewing "unbound" preferential temporary migration programmes in the framework of the MFN principle.

Practically-speaking, however, commitments will only emerge through a combination of flexible approaches to scheduling in specific sectors of LDC interest and positive developments in: (a) collaboration between sending and

receiving countries, (b) Members' enlightened self-interest in addressing economic and demographic challenges, (c) investment into statistical resources and research by source countries, receiving countries and international organisations and (d) political will. Some of these issues can be addressed in negotiations targeting barriers, but overarching structures of inter-governmental collaboration need to be established in order to advance the LDC Mode 4 agenda in a meaningful manner.

Although economic imperatives in developed, developing and least-developed countries give reason for optimism, much work remains to be done in order to obtain improved Mode 4 commitments that are commercially relevant for LDCs.

ANNEX 1: CATEGORIES OF LOW- AND SEMI-SKILLED SERVICES

The table below reproduces a partial listing of the occupation categories found in the International Standard Classification of Occupations (ISCO-88) that are appropriate for low- and semi-skilled workers prepared by the South Centre (South Centre 2005, p. 12-16).

MAJOR GROUP 5 - SERVICE WORKERS AND SHOP AND MARKET SALES WORKERS

51	PERSONAL AND PROTECTIVE SERVICES WORKERS	5143	Undertakers and embalmers
511	TRAVEL ATTENDANTS AND RELATED WORKERS	5149	Other personal services workers not elsewhere classified
5111	Travel attendants and travel stewards	515	ASTROLOGERS, FORTUNE-TELLERS AND RELATED WORKERS
5112	Transport conductors	5151	Astrologers and related workers
5113	Travel guides	5152	Fortune-tellers, palmists and related workers
512	HOUSEKEEPING AND RESTAURANT SERVICES WORKERS	516	PROTECTIVE SERVICES WORKERS
5121	Housekeepers and related workers	5161	Fire-fighters
5122	Cooks	5162	Police officers
5123	Waiters, waitresses and bartenders	5163	Prison guards
513	PERSONAL CARE AND RELATED WORKERS	5169	Protective services workers not elsewhere classified
5131	Child-care workers	52	MODELS, SALESPERSONS AND DEMONSTRATORS
5132	Institution-based personal care workers	521	FASHION AND OTHER MODELS
5133	Home-based personal care workers	5210	Fashion and other models
5139	Personal care and related workers not elsewhere classified	522	SHOP SALESPERSONS AND DEMONSTRATORS
514	OTHER PERSONAL SERVICES WORKERS	5220	Shop salespersons and demonstrators
5141	Hairdressers, barbers, beauticians and related workers	523	STALL AND MARKET SALESPERSONS
5142	Companions and valets	5230	Stall and market salespersons

MAJOR GROUP 7 - CRAFT AND RELATED TRADES WORKERS

71	EXTRACTION AND BUILDING TRADES WORKERS	713	BUILDING FINISHERS AND RELATED TRADES WORKERS
711	MINERS, SHOTFIRERS, STONE CUTTERS AND CARVERS	7131	Roofers
7111	Miners and quarry workers	7132	Floor layers and tile setters
7112	Shotfirers and blasters	7133	Plasterers
7113	Stone splitters, cutters and carvers	7134	Insulation workers
712	BUILDING FRAME AND RELATED TRADES WORKERS	7135	Glaziers
7121	Builders, traditional materials	7136	Plumbers and pipe fitters
7122	Bricklayers and stonemasons	7137	Building and related electricians
7123	Concrete placers, concrete finishers and related workers	714	PAINTERS, BUILDING STRUCTURE CLEANERS AND RELATED TRADES WORKERS
7124	Carpenters and joiners	7141	Painters and related workers
7129	Building frame and related trades workers not elsewhere classified	7142	Varnishers and related painters
		7143	Building structure cleaners
		72	METAL, MACHINERY AND RELATED TRADES WORKERS

721	METAL MOULDERS, WELDERS, SHEET-METAL WORKERS, STRUCTURAL METAL PREPARERS, AND RELATED TRADES WORKERS	7331	Handicraft workers in wood and related materials
7211	Metal moulders and core-makers	7332	Handicraft workers in textile, leather and related materials
7212	Welders and flame-cutters	734	PRINTING AND RELATED TRADES WORKERS
7213	Sheet metal workers	7341	Compositors, typesetters and related workers
7214	Structural-metal preparers and erectors	7342	Stereotypers and electrotypers
7215	Riggers and cable splicers	7343	Printing engravers and etchers
7216	Underwater workers	7344	Photographic and related workers
722	BLACKSMITHS, TOOL-MAKERS AND RELATED TRADES WORKERS	7345	Bookbinders and related workers
7221	Blacksmiths, hammer-smiths and forging-press workers	7346	Silk-screen, block and textile printers
7222	Tool-makers and related workers	74	OTHER CRAFT AND RELATED TRADES WORKERS
7223	Machine-tool setters and setter-operators	741	FOOD PROCESSING AND RELATED TRADES WORKERS
7224	Metal wheel-grinders, polishers and tool sharpeners	7411	Butchers, fishmongers and related food preparers
723	MACHINERY MECHANICS AND FITTERS	7412	Bakers, pastry-cooks and confectionery makers
7231	Motor vehicle mechanics and fitters	7413	Dairy-products makers
7232	Aircraft engine mechanics and fitters	7414	Fruit, vegetable and related preservers
7233	Agricultural- or industrial-machinery mechanics and fitters	7415	Food and beverage tasters and graders
724	ELECTRICAL AND ELECTRONIC EQUIPMENT MECHANICS AND FITTERS	7416	Tobacco preparers and tobacco products makers
7241	Electrical mechanics and fitters	742	WOOD TREATERS, CABINET-MAKERS AND RELATED TRADES WORKERS
7242	Electronics fitters	7421	Wood treaters
7243	Electronics mechanics and servicers	7422	Cabinet makers and related workers
7244	Telegraph and telephone installers and servicers	7423	Woodworking machine setters and setter-operators
7245	Electrical line installers, repairers and cable jointers	7424	Basketry weavers, brush makers and related workers
73	PRECISION, HANDICRAFT, PRINTING AND RELATED TRADES WORKERS	743	TEXTILE, GARMENT AND RELATED TRADES WORKERS
731	PRECISION WORKERS IN METAL AND RELATED MATERIALS	7431	Fibre preparers
7311	Precision-instrument makers and repairers	7432	Weavers, knitters and related workers
7312	Musical instrument makers and tuners	7433	Tailors, dressmakers and hatters
7313	Jewellery and precious-metal workers	7434	Furriers and related workers
732	POTTERS, GLASS-MAKERS AND RELATED TRADES WORKERS	7435	Textile, leather and related pattern-makers and cutters
7321	Abrasive wheel formers, potters and related workers	7436	Sewers, embroiderers and related workers
7322	Glass makers, cutters, grinders and finishers	7437	Upholsterers and related workers
7323	Glass engravers and etchers	744	PELT, LEATHER AND SHOEMAKING TRADES WORKERS
7324	Glass, ceramics and related decorative painters	7441	Pelt dressers, tanners and fellmongers
733	HANDICRAFT WORKERS IN WOOD, TEXTILE, LEATHER AND RELATED MATERIALS	7442	Shoe-makers and related workers

MAJOR GROUP 9 - ELEMENTARY OCCUPATIONS

91	SALES AND SERVICES ELEMENTARY OCCUPATIONS	916	GARBAGE COLLECTORS AND RELATED LABOURERS
911	STREET VENDORS AND RELATED WORKERS	9161	Garbage collectors
9111	Street food vendors	9162	Sweepers and related labourers
9112	Street vendors, non-food products	92	AGRICULTURAL, FISHERY AND RELATED LABOURERS
9113	Door-to-door and telephone salespersons	921	AGRICULTURAL, FISHERY AND RELATED LABOURERS
912	SHOE CLEANING AND OTHER STREET SERVICES ELEMENTARY OCCUPATIONS	9211	Farm-hands and labourers
9120	Shoe cleaning and other street services elementary occupations	9212	Forestry labourers
913	DOMESTIC AND RELATED HELPERS, CLEANERS AND LAUNDERERS	9213	Fishery, hunting and trapping labourers
9131	Domestic helpers and cleaners	93	LABOURERS IN MINING, CONSTRUCTION, MANUFACTURING AND TRANSPORT
9132	Helpers and cleaners in offices, hotels and other establishments	931	MINING AND CONSTRUCTION LABOURERS
9133	Hand-launderers and pressers	9311	Mining and quarrying labourers
914	BUILDING CARETAKERS, WINDOW AND RELATED CLEANERS	9312	Construction and maintenance labourers: roads, dams and similar constructions
9141	Building caretakers	9313	Building construction labourers
9142	Vehicle, window and related cleaners	932	MANUFACTURING LABOURERS
915	MESSENGERS, PORTERS, DOORKEEPERS AND RELATED WORKERS	9321	Assembling labourers
9151	Messengers, package and luggage porters and deliverers	9322	Hand packers and other manufacturing labourers
9152	Doorkeepers, watchpersons and related workers	933	TRANSPORT LABOURERS AND FREIGHT HANDLERS
9153	Vending-machine money collectors, meter readers and related workers	9331	Hand or pedal vehicle drivers
		9332	Drivers of animal-drawn vehicles and machinery
		9333	Freight handlers

ANNEX 2: UNITED NATIONS OFFICE OF THE HIGH REPRESENTATIVE FOR THE LEAST-DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES AND SMALL ISLAND DEVELOPING STATES (UN-OHRLLS)

Criteria for the Identification of LDCs⁴⁵

In its latest triennial review of the list of least-developed countries in 2003, the Economic and Social Council of the United Nations (ECOSOC) used the following three criteria for the identification of LDCs, as proposed by the Committee for Development Policy (CDP):

- a low-income criterion, based on a three-year average estimate of the gross national income (GNI) per capita (under USD 750 for inclusion, above USD900 for graduation);
- a human resource weakness criterion, involving a composite Human Assets Index (HAI) based on indicators of: (a) nutrition, (b) health, (c) education, and (d) adult literacy; and
- an economic vulnerability criterion, involving a composite Economic Vulnerability Index (EVI) based on indicators of: (a) the instability of agricultural production, (b) the instability of exports of goods and services, (c) the economic importance of non-traditional activities (share of manufacturing and modern services in GDP), (d) merchandise export concentration, (e) the handicap of economic smallness (as measured through the population in logarithm), and (f) the percentage of population displaced by natural disasters.

To be added to the list, a country must satisfy all three criteria. To qualify for graduation, a country must meet the thresholds for two of the three criteria in two consecutive triennial reviews by the CDP. In addition, since the fundamental meaning of the LDC category, i.e, the recognition of structural handicaps, excludes large economies, the population must not exceed 75 million.

In the 2000 review, Senegal was included in the list of LDCs and Timor-Leste was added to the list in 2003, bringing the total number of LDCs to 50.

With regard to the 2003 triennial review of the list, the CDP concluded that Cape Verde and Maldives qualified for graduation and recommended that they be graduated from the LDC category. The CDP also concluded that Samoa was eligible for graduation in 2006. Based on the CDP report, the ECOSOC will make a recommendation to the General Assembly, which is responsible for the final decision on the list of LDCs.

ANNEX 3: WTO LIST OF LDC MEMBERS⁴⁶

The WTO recognises as least-developed those countries which have been designated as such by the United Nations. There are currently 50 least-developed countries on the UN list, 32 of which have become WTO Members to date.

These are:

Angola
Bangladesh
Benin
Burkina Faso
Burundi
Cambodia
Central African Republic
Chad
Congo, Democratic Republic of the
Djibouti
Gambia
Guinea
Guinea Bissau
Haiti
Lesotho
Madagascar
Malawi
Maldives
Mali
Mauritania
Mozambique
Myanmar
Nepal
Niger
Rwanda
Senegal
Sierra Leone
Solomon Islands
Tanzania
Togo
Uganda
Zambia

Ten additional least-developed countries are in the process of accession to the WTO. They are: Afghanistan, Bhutan, Cape Verde, Ethiopia, Lao People's Democratic Republic, Sao Tome & Principe, Samoa, Sudan, Vanuatu and Yemen. Furthermore, Equatorial Guinea is a WTO Observer.

ANNEX 4: ANNEX ON MOVEMENT OF NATURAL PERSONS SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.⁴⁷

ENDNOTES

- 1 There is no agreed definition of semi- and low-skilled services. Annex 1 includes a partial listing of the occupational categories found in the International Standard Classification of Occupations (ISCO-88) relevant to low- and semi-skilled services.
- 2 According to its preamble, the GATS wishes “to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners *and the development of developing countries*” and desires “to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports....” Further, GATS Article IV stipulates that increased participation of developing country Members shall be facilitated through negotiated specific commitments relating to “the liberalization of market access in sectors and modes of supply of export interest to them”.
- 3 Paragraph 8 of the “Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services, Adopted by the Special Session of the Council for Trade in Services on 3 September 2003” (WTO 2003), stipulates that “Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services. Such measures could include: strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness; reinforcing export/import promotion programmes; promoting the development of LDCs’ infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and improving the access of LDCs’ services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.” See also the conclusions reached in the “July Package” on Mode 4 and least developed countries, “Doha Work Programme - Decision Adopted by the General Council on 1 August 2004”, (WTO 2004) (“LDC Services Modalities”), Annex C, Paragraphs (b) and (c), reaffirmed in the Hong Kong Ministerial Declaration, “Doha Work Programme - Ministerial Declaration Adopted on 18 December 2005” (WTO 2005, paras. 25-27).
- 4 “It should be stressed that the MSITS guidelines on the compilation of statistics on the international supply of services are laid out for statistical purposes and that they do not exactly correspond to trade in services as defined in GATS. ... [T]oday no reliable estimate exists on the value of mode 4 trade which renders any quantitative assessment difficult”.
- 5 Figures include the North African countries of Algeria, Egypt, Morocco and Tunisia.
- 6 The data used by the World Bank to estimate movement of workers is based on 2005 statistical data compiled by the United Nations Population Division (UNPD) and includes short and long term migrants, tourists and refugees that move to a country for a period of at least three months. While such a working definition goes well beyond the coverage of the GATS, it does not catch movement of service suppliers for periods of less than three months, which is very important for GATS Mode 4 purposes. In addition, disaggregated, sector-specific information is not made available at the national or international level.
- 7 Not surprisingly, flows of students and workers seem to correlate positively. In addition, statistics show major differences in per-person remittance values, leading to the conclusion that Saudi

Arabia is the major market with the highest remittance per person (see Table 2). Also, some top-10 countries in terms of worker numbers (e.g. France, Canada, India) rank significantly lower in terms of total remittance value.

- 8 Excluding the former Soviet Union. The data refer to officially recorded remittances. The actual value of remittances, including unrecorded flows through formal and informal channels, is believed to be larger.
- 9 The data refer to officially-recorded remittances. The true size of remittances, including unrecorded flows through formal and informal channels, is believed to be larger.
- 10 The “Manual on Statistics of International Trade in Services”, a joint product of the TFSITS introduced in 2002 established for the first time an internationally-agreed framework for measuring trade in services. The currently ongoing revision of the manual includes discussions on the measurement of trade flows by modes of supply, in particular Mode 4. See Magdeleine and Maurer (2008) and <http://unstats.un.org/unsd/tradeserv/TFSITS/msits.htm> (last visited 10 December 2008).
- 11 Mode 4 Annex, para. 3 (emphasis added).
- 12 See also Varma (2009).
- 13 The established practice of scheduling quotas and ENTs consistent with the GATS framework calls into question the suggestion that the GATS does not offer the flexibility necessary to accommodate fluctuations typical of migration. According to the OECD “while labour market conditions - and migration needs - fluctuate, GATS commitments do not” (OECD 2003).
- 14 GATS Article II and Annex on Article II Exemptions.
- 15 A compilation of MFN exemptions affecting movements of natural persons can be found in WTO 1998, p. 31-34.
- 16 GATS Annex on Article II Exemptions, para. 6. The Hong Kong Ministerial Declaration calls for the removal or substantial reduction of MFN exemptions and for the clarification of the remaining MFN exemptions in terms of scope of application and duration (WTO 2005, Annex C).
- 17 According to the OECD “[t]he GATS Mode 4 only covers movement of people supplying services: there are no parallel WTO rules covering movement of people in other areas such as agriculture and manufacturing”, (OECD 2003, p. 2).
- 18 Also, due to the virtually inexistent flow of foreign direct investment from LDCs to developed countries, commitments for intra-corporate transferees are of no real value to LDCs. For a description of the quantity and quality of GATS Mode 4 commitments see Carzaniga 2003, p. 21-26; Adlung, and Roy 2005, p. 11; and WTO 1998, p. 12-16.
- 19 Contract suppliers are employees of a foreign enterprise that has concluded a contract to supply services in a country but does not have a commercial presence in that market.
- 20 Chanda’s work is recognised as particularly helpful in consolidating and explaining information about existing worker flows of potential relevance to Mode 4 commitments.

- 21 See <http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/sbs/> (last visited September 2008).
- 22 According to the Homeland Security (2007) “there were an estimated 11.6 million unauthorized immigrants living in the United States as of January 2006”.
- 23 See http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/ei_tfw/sawp_tfw.shtml (last visited October 2008) and Chanda 2008, p. 14-15.
- 24 Discriminatory visa requirements are not *per se* regarded as nullifying or impairing such commitments. (See Footnote 13 to Paragraph 4 of the Mode 4 Annex).
- 25 Collective Request-Mode 4 Movement of Natural Persons, available at <http://www.uscsi.org/publications/papers/collective/mode4.pdf> (last visited October 2008).
- 26 Winters has opined that MFN-based challenges by LDCs to preferential Mode 4 market access “would not be helpful”. He would “rather leave [bilateral deals] out of the GATS than dilute the fundamental non-discrimination principle of the GATT and the WTO”. Finally, he “would not recognize [such deals] under the GATS and would certainly not allow them to be scheduled or enforced via its procedures” (Winters 2005, p. 17). While Prof. Winters makes valid points concerning the political sensitivity of the Mode 4 issue, LDCs should of course consider carefully and decide for themselves whether or not MFN-based challenges would advance their interests.
- 27 The Treaty Establishing the European Community (EC Treaty) lays down the principle that the self-employed may freely exercise an activity either by setting up in another Member State (*freedom of establishment*: ECT Article 43) or by supplying services across frontiers in other Member States while remaining in the country of origin (*freedom to provide services*: ECT Article 49).
- 28 Articles 4(6)(e) and 164 of the COMESA Treaty, and http://www.comesa.int/countries/comesa/publications/vision/vision_chapter_6/view (last visited October 2008).
- 29 See for instance Article 69 para. 2 of the Euro Mediterranean Agreement establishing an association between the European Communities and their Member States, and the Kingdom of Morocco.
- 30 See Chapter 4 of the CARIORUM EPA for commitments on the “Temporary Movement of Natural Persons for Business Purpose”.
- 31 Collective Request-Mode 4 Movement of Natural Persons, available at <http://www.uscsi.org/publications/papers/collective/mode4.pdf> (last visited October 2008).
- 32 See the Korean Employment Permit System for Foreign Workers (EPS), according to which the quota is specified by industry and the number of foreign workers allowed into the country is based on the number of Korean employees covered by employment insurance. The industry quota is allocated across selected countries that sign a memorandum of understanding with Korea. Country-specific quotas are set on the basis of an assessment by the Korean Ministry of Labour of the total number of workers sent in the past years and the rate of illegal immigration from individual countries (Chanda 2008, p. 26-27).

- 33 Collective Request-Mode 4 Movement of Natural Persons available at <http://www.uscsi.org/publications/papers/collective/mode4.pdf> (last visited October 2008). For instance, in Spain, the National Employment Institute (Instituto Nacional de Empleo) must issue a report on the nation's employment situation. Entry of foreign workers can only be considered if the report determines that there are no unemployed domestic workers available to fill the open positions. Spain applies this ENT as part of its quota system (Perez 2003). Under Canada's *Seasonal Agricultural Worker Program (CSAWP) with Mexico and the Caribbean*, approval for hiring foreign workers is conditional upon the requesting employers showing that they attempted to recruit and hire Canadian workers (Chanda 2008, p. 14).
- 34 Despite not being specific to any particular sector, the SEA provides for a joint mechanism for the selection and admission of workers (Chanda 2008, p.10).
- 35 Chanda suggests using demonstrated experience to assess competence where there are non-formal qualifications involved and widening the range of alternatives to proving competence. Also, skill testing in the host country may obviate to the lack of academic qualifications (Chanda 2008, p. 49-50).
- 36 For instance, the Japan - Philippines Economic Partnership Agreement provides for Filipino nurses and caregivers to work in Japan after undergoing mandatory training in Japan, including Japanese language, for a period of 3-4 years. (See <http://japan.pinoy-abroad.net/jpepa.htm> last visited October 2008). The Philippines ratified the Agreement on 8 October 2008, while Japan ratified it in 2007.
- 37 Collective Request-Mode 4 Movement of Natural Persons (available at <http://www.uscsi.org/publications/papers/collective/mode4.pdf> last visited October 2008) and Chanda 2008, p. 44.
- 38 See Agreement for the Employment of *Seasonal Agricultural Workers from Mexico (2008)*, (available at http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/forms/2008mexicansawp-e.pdf last visited October 2008).
- 39 See for instance Agreement for the Employment of *Seasonal Agricultural Workers from Mexico (2008)*, (available at http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/forms/2008mexicansawp-e.pdf last visited October 2008).
- 40 In the case of Canada's *Seasonal Agricultural Worker Program (CSAWP) with Mexico and the Caribbean*, Canada has tax treaties with Barbados, Jamaica, Mexico and Trinidad and Tobago which exempt from taxes workers earning under certain thresholds. (See <http://www.cra-arc.gc.ca/E/pub/tg/rc4004/rc4004-08e.pdf> last visited October 2008). Although LDCs have been increasingly concluding double taxation treaties, simplified instruments focusing exclusively on the workers' income taxes could be considered with a view to facilitate the conclusion of treaties permitting to avoid double taxation of LDC low- and mid- skilled workers in as many countries as possible.
- 41 See for instance Agreement for the Employment of *Seasonal Agricultural Workers from Mexico (2008)*, (available at http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/forms/2008mexicansawp-e.pdf last visited October 2008).
- 42 The disadvantage of distance can be offset by a well-balanced programme, for instance by requiring employers to pay for the workers' travel expenses from and to the host country with

the possibility for the employer to recoup all or part of the costs through payroll deductions. Employer payment of such costs can help to overcome the problem of workers having to pay upfront for their travel costs without diminishing the LDC worker's comparative advantage against domestic workers, as discussed above. Available data show that the top destination of workers from most African LDCs include very distant markets such as Canada and the United States.

- 43 See for instance the institutional structures and procedures in place under the SEA (Chanda 2008, p. 10-12 and p. 46).
- 44 For instance, the bilateral agreements concluded by Spain with Bulgaria, Colombia, the Dominican Republic, Ecuador, Poland and Romania, establish mechanisms for advertising job offers (Chanda 2008, p. 9).
- 45 See <http://www.un.org/special-rep/ohrls/ldc/ldc%20criteria.htm> (last visited October 2008).
- 46 See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm (last visited October 2008) and <http://www.un.org/special-rep/ohrls/ldc/list.htm> for the United Nations LDC list (last visited October 2008)
- 47 The sole fact of requiring a visa for natural persons of certain Member States and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

REFERENCES

- Adlung, R. and R. Martin. 2008. *Turning Hills into Mountains? Current Commitments under the GATS and Prospects for Change*. WTO Staff Working Paper, ERSD-2005-01, March 2005. Geneva: WTO.
- Carzaniga, A. 2003. The GATS, Mode 4 and Pattern of Commitments. In *Moving People to Deliver Services*, by A. Mattoo and A. Carzaniga. Washington DC: World Bank.
- Chanda, R. 2008. *Low-Skilled Workers and Bilateral, Regional and Unilateral Initiatives: Lessons for the GATS Mode 4 Negotiations and Other Agreements*. New York: UNDP.
- Dey, D. 2006. *Movement of Natural Persons (Mode 4) Under GATS: Advantage Developing Countries!* (available at SSRN: <http://ssrn.com>).
- Hoefner, M., Rytina, N. and C. Campbell. 2007. *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006*. Washington DC: US Department of Homeland Security.
- Magdeleine, J. and A. Maurer. 2008. *Measuring GATS Mode 4 Trade Flows*. WTO Staff Working Paper, ERSD-2008. Geneva: WTO.
- Mamdouh, A. 2008. "Mode 4 - Definition, Commitments, State of Play in the Negotiations". Presented at *WTO Symposium Mode 4 of the GATS - Taking Stock and Moving Forward*, 22-23 September 2008, Geneva.
- Manpower Inc. 2008. *The Borderless Workforce* (available at http://files.shareholder.com/downloads/MAN/438555278x0x208353/5c23db8a-7cce-4b09-8fb4-5db8651917c5/BorderlessWkforce_whitepaper_US_FINAL.pdf, last visited October 2008).
- Manpower Inc. 2008a. *Talent Shortage Survey 2008 Global Results* (available at http://files.shareholder.com/downloads/MAN/438555278x0x189693/9adcf817-96cf-4bb3-ac68-038e79d5facf/Talent%20Shortage%20Survey%20Results_2008_FINAL.pdf, last visited October 2008).
- Nielsen, J. 2002. *Current Regimes for Temporary Movement of Service Suppliers, Labour Mobility in Regional Trade Agreements*. OECD paper presented at Joint WTO-World Bank Symposium on Movement of Natural Persons (Mode 4) Under the GATS, 11-12 April 2002 (available at <http://www.wto.org>).
- OECD. 2003. *Service Providers on the Move - Labour Mobility and the WTO General Agreement on Trade in Services*. Paris: OECD (available at <http://www.oecd.org>).
- Perez, O.N. 2003. *Spain: Forging an Immigration Policy*. Washington DC: Migration Policy Institute (available at <http://www.migrationinformation.org>).
- South Centre. 2005. *GATS Mode 4 Negotiations and Low Skilled Workers*, SC/TADP/AN/SV/12. Geneva: South Centre (available at <http://www.southcentre.org>).
- UNCTAD. 2005. *Trade in Services and Development Implications*. Note by the UNCTAD Secretariat, TD/B/COM.1/71, 20 January 2005. Geneva: UNCTAD.

- US Department of Homeland Security. 2007. *Yearbook of Immigration Statistics: 2007*. Washington DC: Department of Homeland Security (available at <http://www.dhs.gov>).
- Varma, S. 2009. *Facilitating Temporary Labour Mobility in African LDCs: Addressing Mode 4 Related Supply-Side Constraints*. Geneva: International Centre for Trade and Sustainable Development.
- Winters, L.A. 2003. The Economic Implications of Liberalizing Mode 4 Trade. In *Moving People to Deliver Services*, by A. Mattoo and A. Carzaniga. Washington DC: World Bank.
- Winters, L.A. (unpublished) *The Temporary Movement of Workers to Provide Services (GATS Mode 4)*.
- Winters, L.A. 2005. *Developing Country Proposals for the Liberalization of Movements of Natural Services Suppliers*. Sussex: Sussex Centre for Migration Research.
- World Bank. 2008. *Migration and Remittances Fact Book 2008*. Washington DC: World Bank (available at <http://siteresources.worldbank.org/> last visited October 2008).
- WTO. 1998. *Presence of Natural Persons (Mode 4) Background Note by the Secretariat*. Document S/C/W/75, 8 December 1998. Geneva: WTO.
- WTO. 2003. *Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services*. Adopted by the Special Session of the Council for Trade in Services on 3 September 2003, TN/S/13, 5 September 2003. Geneva: WTO.
- WTO. 2004. *Doha Work Programme - Decision Adopted by the General Council on 1 August 2004*. (“July Package”), WT/L/579, 2 August 2004. Geneva: WTO.
- WTO. 2005. *Doha Work Programme - Ministerial Declaration Adopted on 18 December 2005*. WT/MIN(05)/DEC, 22 December 2005. Geneva: WTO.
- WTO. 2006. *LDC Group Request on Mode 4*. Communication from the Delegation of Zambia on Behalf of the LDC Group, JOB(06)/155, 24 May 2006. Geneva: WTO.
- WTO. 2008. *Report by the Chairman of the Trade Negotiations Committee*. JOB(08)/93, 30 July 2008. Geneva: WTO.

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- Identify and clarify key sustainable development issues and prospects in relation to the agenda on trade in services;
- Assess systematic issues for developing country policy makers and influencers in the GATS legal architecture;
- Facilitate interaction among negotiators, policy makers, policy influencers, civil society and business communities on GATS discussions and negotiations.

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Founded in 1996, the International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit and non-governmental organisation based in Geneva. By empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity building, the Centre aims to influence the international trade system so that it advances the goal of sustainable development.