

Trade in Services and South Asia: An Aggressive Agenda

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1. INTRODUCTION

The service sector currently plays a pivotal role in the transformation of economies around the world. Services, today, are the dominant sector of economic activity for countries, regardless of their level of economic development. Services constitute around 60 percent of global output and 30 percent of global employment and even in many developing countries, services account for 50 percent or more of GDP, with agriculture and industry each accounting for less than 30 percent of total production.¹ Services transactions have also come to occupy a growing part of cross-border trade and investment transactions. Growth in services trade has outpaced growth in merchandise trade. Between 1990 and 2002, world trade in services grew by 155 percent compared to 40 percent for agriculture and 97 percent for manufacturing.² Much of this growth can be attributed to the advances in information and communication technology and the deregulation and privatisation of the service sector around the world, which have made services increasingly tradable. The composition of FDI has also shifted towards

services, mainly due to the liberalisation of service sectors like telecommunications, banking, insurance, and computer services. The share of services in the global stock of FDI rose from 25 percent in the early 1970s to nearly 50 percent in 1990 and further to two-thirds of total FDI in 2003. Developing country participation in the services sector trade and investment flows has grown considerably. The share of developing countries in global services exports has risen four fold in the last 15 years, from 14 percent in the 1985-89 period to 20 percent in 2000. Their share in global outward FDI flows in services rose from 1 percent in 1990 to 10 percent in 2002.³

The South Asian region, comprising India, Bangladesh, Nepal, Pakistan and Sri Lanka, is no exception to this trend. Services have come to occupy between 40 to 50 percent of GDP in these countries. The service sector is the second most important source of employment, after agriculture, in these countries, absorbing about 20-30 percent of the labour force.⁴ Certain sectors such as information technology (IT), business process outsourcing (BPO), tourism, construction, and energy services are important contributors

Growth in services trade has outpaced growth in merchandise trade. Between 1990 and 2002, world trade in services grew by 155 percent compared to 40 percent for agriculture and 97 percent for manufacturing.

¹ Based on World Bank, World Development Indicators and presentation by Pranav Kumar on 'Services Negotiations in the Doha Round: Concerns of South Asia', Colombo 9-10 March 2005.

² Presentation by Pranav Kumar on 'Services Negotiations in the Doha Round: Concerns of South Asia', Colombo, 9-10 March 2005.

³ Ibid.

⁴ Based on country reports, miscellaneous documents, CUTS and NCAER (2003).

to value added, employment, exports, and investment flows in these countries. Countries like India have emerged on the global map due to their success in exporting IT and BPO services while other countries in the region, such as Bangladesh and Sri Lanka are trying to develop their potential in these areas. Certain forms of services trade, such as manpower-based services exports are of critical interest to the region. This is indicated by the fact that remittances constitute around 20 percent of the region's GDP and that the South Asian region is the second largest recipient area of remittances in the world.⁵ There are also trade interests on the import side, with sectors such as telecommunications, banking, insurance, and transport services constituting thrust areas for attracting FDI into the region and playing a central role in the liberalisation programmes of all countries in this region. Overall, South Asia's trade interests in the services sector are driven by its factor endowments, with export interests in the area of labour-intensive and manpower-based services and import interests in the area of capital and technology intensive services.

There are, however, numerous barriers to services trade that affect all countries, including the South Asian countries. Studies indicate that half of the gains from liberalisation of all post-Uruguay Round barriers to trade would accrue in the service sector. The gains would be huge in areas where the services trade is highly restricted, such as cross-border movement of labour. According to one study, if developed countries increase their quotas by three percent of their labour force, then there would be gains of \$150 billion from the liberalisation of labour mobility alone.⁶ Many of the barriers common to the services trade are pertinent to the South Asian countries, both in terms of impeding their access to other markets as well impeding services trade and investment flows into their markets. For

instance, the South Asian economies would be major beneficiaries of liberalisation of cross-border movement of labour and could also benefit from the liberalisation of FDI regulations through increased FDI flows in their service sectors and associated technology and managerial expertise.

In this context, the ongoing Doha Round negotiations on services under the General Agreement on Trade in Services (GATS) have great significance for South Asia. They provide the economies in the region with an opportunity to negotiate better access for their services exports in key sectors and modes of interest and in turn to open up their services markets to enhanced competition, productivity, and growth in their economies.

SCOPE AND OBJECTIVES

This paper outlines the significance of services for South Asia and discusses possible strategies to secure the region's trade and development interests through the GATS negotiations. Section 2 provides a broad overview of recent trends and characteristics of service sector output and trade in South Asia and highlights the growing role of this sector in the region's production and trade flows as also in their domestic policy and regulatory frameworks. Section 3 discusses the significance of specific forms of services trade and specific service sub sectors where the South Asian economies have export and import interests, using the GATS' sectoral and modal classification framework. Section 4 discusses the barriers faced by the South Asian economies to their services exports in key destination markets and the restrictions they impose on the services trade and investment flows into their markets. The section also highlights domestic infrastructure and capacity constraints, which impede South Asia's trade in services. Section 5 outlines the state of liberalisation commitments and offers

⁵ Based on Table 3 of this paper.

⁶ Winters, in Mattoo and Carzaniga (eds.) *Moving People to Deliver Services*, and Winters 'Developing Country Proposals for the Liberalisation of Movement of Natural Service Suppliers' (January 2005).

in services under GATS, with reference to the key sectors and modes of export and import interest, and assesses their implications for South Asia. Section 6 presents possible approaches and negotiating strategies for furthering South Asia's interests in the GATS negotiations. This includes expanding market access in the main areas of interest in key destination markets and deepening the region's own liberalisation commitments in certain sectors and modes, in line with development objectives. Section 7 discusses the state of play in the rules negotiations under the GATS and the South Asian position on the development of various multilateral disciplines such as emergency safeguards, and subsidies, and on new approaches to negotiation such as benchmarking. The concluding section highlights domestic policy reforms, and capacity building measures that would be required to benefit from any market access improvements under GATS. All tables are provided at the end of the paper. Nepal is excluded from the analysis owing to the poor quality of data and the inconsistent nature of the available information.

2. SERVICES IN SOUTH ASIA: TRENDS AND CHARACTERISTICS

SIGNIFICANCE IN PRODUCTION

All the South Asian economies exhibit similar characteristics in terms of the evolution of their production structures — declining

share of agriculture, moderately increasing or stagnant share of industry and a considerable increase in the share of services. As shown in Table 1, between 1980 and 2000, the share of agriculture in South Asia (including Bangladesh, Sri Lanka, India) has declined from around 38 percent to 24 percent while that of services has risen from 37 percent to 49 percent, with industry growing slightly. In India and Bangladesh in particular, the contribution of services to GDP has grown significantly, rising by more than 30 percent, while the increases in Pakistan and Sri Lanka have been moderate. Thus, the production structure in all these countries has been shifting away from an agrarian economy towards a service economy.

An examination of services growth trends further indicates that for the region as a whole, the sector has grown more rapidly than the economy as a whole. Table 2 shows the service sector's performance relative to the overall economy as well as the world economy and the world service sector. Services output in South Asia grew at an average annual rate of 6.7 percent during the 2000-03 period compared to 4.9 percent for the overall GDP growth in the region. Barring one or two years of negative growth, services output consistently grew more rapidly than the rest of the economy across all the countries in the region. The service sector's growth performance has been particularly striking in the case of India, with services growth averaging 7.9 percent during the 1994-2004

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TABLE 1
Structure of Output in South Asian Economies

Countries	Agriculture			Industry			Services		
	1980	1991	2000	1980	1991	2000	1980	1991	2000
Bangladesh	49.4	37.5	24.3	14.8	16.9	24.7	35.8	45.6	51.0
India	38.1	31.0	24.0	25.9	28.9	27.1	36.0	40.1	48.9
Pakistan	30.6	25.6	26.2	25.6	25.7	24.9	43.8	48.7	48.9
Sri Lanka	26.6	22.3	20.6	27.2	29.2	27.3	46.2	48.5	52.1
South Asia	37.8	30.6	24.2	24.9	27.4	26.7	37.3	42.0	49.2

Source: CUTS, 'Competitiveness of Service Sectors in South Asia: Role and Implications of GATS', Jaipur, 2003, Table 2, p.17. Based on data from World Bank, World Development Indicators and ADB, Asian Development Outlook, 2001.

TABLE 2
Significance of Services in Production in South Asia

(US billion \$ and percentages)

	1995	2000	2001	2002	2003	Average 2000-03
South Asia						
GDP (bns of \$s)	427.2	556.1	580.5	603.3	648.2	
Services VA (bns of \$s)	192.0	271.0	287.0	306.0	333.0	
Services, etc., value added (percent of GDP)	44.9	48.8	49.5	50.8	51.4	50.1
Growth Rate of GDP	6.9	4.0	4.4	3.9	7.4	4.9
Growth Rate of Services Output	8.8	5.4	5.9	6.7	8.8	6.7
Bangladesh						
GDP (bns of \$s)	36.1	45.5	47.3	49.0	50.5	
Services VA (bns of \$s)	17.1	22.4	23.6	24.9	26.3	
Services, etc., value added (percent of GDP)	49.1	49.2	50.0	50.9	52.0	50.5
Growth Rate of GDP	7.0	4.3	3.9	3.6	3.1	3.7
Growth Rate of Services Output	4.9	5.5	5.5	5.4	5.4	5.5
India						
GDP (bns of \$s)	314.3	416.6	439.4	458.2	498.6	
Services VA (bns of \$s)	137.2	203.2	216.9	232.4	255.3	
Services, etc., value added (percent of GDP)	43.6	48.8	49.4	50.7	51.2	50.0
Growth Rate of GDP	7.6	3.6	5.5	4.3	8.8	5.6
Growth Rate of Services Output	10.5	5.5	6.8	7.1	9.9	7.3
Pakistan						
GDP (bns of \$)	57.7	69.6	69.4	70.5	74.7	
Services VA (bns of \$s)	28.9	34.9	36.0	37.7	39.7	
Services, etc., value added (percent of GDP)	50.1	50.2	51.9	53.5	53.2	52.2
Growth Rate of GDP	5.1	2.2	-0.4	1.7	5.9	2.3
Growth Rate of Services Output	4.8	4.2	3.1	4.8	5.3	4.3
Sri Lanka						
GDP (constant \$s)	12.7	16.3	16.1	16.7	17.7	
Services, etc., value added (constant 2000 US\$)	5.8	7.7	7.6	8.15	8.7	
Services, etc., value added (percent of GDP)	45.5	47.3	47.8	48.7	49.6	48.3
Growth Rate of GDP	5.5	6.0	-1.5	4.0	5.9	3.6
Growth Rate of Services Output	4.9	7.0	-0.5	6.1	7.7	5.1
Memorandum items						
World GDP growth	2.8	4.0	1.4	1.8	2.8	2.5
World Services growth	3.0	4.4	2.4			3.3
Share of services/GDP	60.7	61.8	62.4			61.8

Source: Calculated using data from World Bank, *World Development Indicators*, 2005.

period compared to 5.9 percent for overall GDP, 3 percent for agriculture, and 5.3 percent for industry.⁷ The service sector has also grown more rapidly in South Asia than in the world economy. In the 2000-03 period, services grew at an average annual rate of 6.7 percent in South Asia compared to 3.3 percent in the world economy. Thus, the service sector not only outperformed other sectors within South Asia, but also outperformed the global services sector.

Within the service sector, growth has been uneven, with certain segments such

as business services (including software and IT enabled services), banking, communication, and trade growing much more rapidly than others such as railways, public administration, and real estate services. The high growth services have been mainly those that have undergone deregulation and significant changes in policies concerning participation of private domestic and foreign players. According to a recent World Bank study of the Indian service sector, liberalised services such as business services, telecommunications, and financial services sectors have experienced

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TABLE 3
Significance of Services in South Asia's Trade

(US billion \$ and percentages)

	1995	2000	2001	2002	2003	Average 2000-03
Export of goods and services	57.97	86.43	88.2	91.43	118	96.11
Service exports	10.15	21.31	24.89	27.38	32.97	26.64
Service exports to total exports	17.5	24.7	28.2	29.9	27.9	27.7
Growth rate of service exports	11.1	20.9	16.8	10.0	20.4	17.0
Growth rate of exports	21.3	17.0	2.1	3.7	29.5	13.0
Total imports of goods and services	67.69	95.04	95.8	97.36	128	104
Service imports	15.94	25.42	28.74	21.42	23.65	24.81
Service imports to total imports	23.5	26.7	30.0	22.0	18.5	24.3
Growth rate of service imports	24.4	14.4	13.1	-25.4	10.4	3.1
Growth rate of total imports	27.1	8.8	0.8	1.6	31.6	10.7
Total trade in goods and services	126	181	184	189	247	200
Service trade	26.09	46.73	53.63	48.8	56.62	51.45
Service trade to total trade	20.8	25.8	29.1	25.8	23.0	25.9
Service Trade to GDP	5.6	7.9	8.8	7.6	7.5	7.9
Workers' remittances to GDP	2.1	2.7	3.4	3.3	3.5	3.2
Memorandum items						
GDP TOTAL FIGURE	466.77	594.21	612.76	645.83	753.11	651
Workers' remittances	9.94	15.92	20.59	21.52	25.99	21.0

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

⁷ Banga (2005), Fig. 1, p.8.

higher growth and greater productivity improvements than services such as legal and real estate services, where there has been limited liberalisation.⁸ Thus, there has not only been a compositional shift in the production structure of the South Asian economies, but also a shift within the services sector towards segments such as business and various deregulated infrastructure services, where private participation has grown.

SIGNIFICANCE IN TRADE

Services have also become increasingly important in South Asia's trade flows. As shown in Table 3, total services trade nearly doubled in value from US\$ 26 billion in 1995 to around US\$ 51 billion in 2003, with services exports more than doubling from US\$ 10 billion to US\$ 26.6 billion over the

same period. Services accounted for around 26 percent of the region's total trade for the 2000-03 period. Services trade has also grown in importance in the region's overall economy, with its share in GDP rising from 5.6 percent in 1995 to an average of 7.9 percent for the 2000-03 period, indicating the growing trade orientation of the region's service sector. Services exports have grown at an average rate of 17 percent during the 2000-03 period, faster than total exports for the region and faster than world services exports. Within the invisibles sector, factor incomes relating to labour flows, indicated by the share of workers' remittances to GDP, are significant for South Asia, averaging 3.2 percent of the region's GDP during the 2000-03 period.

The performance of services trade has, however, varied across the countries in South Asia, as shown in Tables 4 to 7. The high

TABLE 4
Significance of Services Trade in Bangladesh
(US billion \$ and percentages)

Values	1995	2000	2001	2002	2003	Average 2000-2003
Export of goods and services	4.12	6.59	7.23	6.79	7.38	7.00
Service exports	0.69	0.82	0.75	0.85	0.98	0.85
Transport	0.07	0.09	0.07	0.09	0.07	
Travel	0.02	0.05	0.05	0.06	0.06	
Other	0.60	0.67	0.63	0.70	0.85	
Services exports to total exports	16.9	12.4	10.4	12.5	13.3	12.1
Imports of goods and services	6.58	9.07	10.1	9.06	10.4	9.66
Service imports	1.53	1.62	1.52	1.41	1.70	1.56
Transport		0.09	1.03	1.01	1.21	
Travel		0.05	0.17	0.11	0.16	
Other		0.63	0.32	0.29	0.33	
Service imports to total imports	23.3	17.9	15.1	15.5	16.4	16.2
Total trade in goods and services	10.7	15.67	17.33	15.85	17.78	16.66
Services trade to total trade	20.8	15.5	13.1	14.2	15.1	14.5
Services trade to GDP	5.9	5.2	4.8	4.7	5.0	5.0
Workers' remittances to GDP	3.2	4.2	4.5	6.0	6.1	5.2

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

⁸ World Bank (2004).

growth of services exports and the growing significance of services trade within South Asia has mainly been driven by the sector's strong

performance in India. The share of services in India's total trade increased from 20.7 percent in 1995 to average 28.5 percent of total

TABLE 5
Significance of Services Trade in India

(US billion \$ and percentages)

Values	1995	2000	2001	2002	2003	Average 2000-2003
Export of goods and services	39.08	63.52	64.49	77.66	90.57	74.06
Service exports	6.77	18.33	21.33	24.96	27.61	23.02
Transport		1.83	1.88	2.53		
Travel		3.17	3.04	2.92		
Other		13.13	1.64	18.21		
Services exports to total exports	17.3	28.6	33.1	32.1	30.5	31.1
Imports of goods and services	43.33	66.99	67.47	79.6	96.59	77.66
Service imports	10.27	19.93	23.14	18.19	16.93	19.55
Transport	5703	4.36	2.64	2.52		
Travel	996	2.57	2.57	2.94		
Other	3569	8.89	12.56	11.41		
Service imports to total imports	23.7	29.7	34.3	22.9	17.5	26.1
Total trade in goods and services	82.42	130.52	131.97	157.26	187.16	151.73
Services trade to total trade	20.7	29.2	33.7	27.4	23.8	28.5
Services trade to GDP	4.8	8.3	9.3	8.5	7.4	8.4
Workers' remittances to GDP	1.8	2.6	2.3	2.7	2.9	2.6

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

TABLE 6
Significance of Services Trade in Pakistan

(US billion \$ and percentages)

Values	1995	2000	2001	2002	2003	Average 2000-2003
Export of goods and services	10.13	9.94	10.56	11.01	13.92	11.36
Service exports	1.86	1.38	1.46	2.43	2.97	2.06
Transport	0.88	0.84	0.82	0.79	0.85	
Travel	0.11	0.08	0.09	0.09	0.12	
Other	0.92	0.46	0.55	1.54	2.00	
Services exports to total exports	18.3	13.9	13.8	22.1	21.3	17.8
Imports of goods and services	11.78	10.86	11.37	11.07	13.42	11.68
Service imports	2.94	2.25	2.33	2.24	3.29	2.53
Transport	1.63	1.52	1.55	1.39	1.58	
Travel	0.45	0.25	0.25	0.26	0.92	
Other	0.86	0.49	0.53	0.59	0.78	
Service imports to total imports	24.9	20.7	20.5	20.2	24.5	21.5
Total trade in goods and services	21.91	20.8	21.96	22.08	27.34	23.05
Services trade to total trade	21.9	17.5	17.3	21.1	22.9	19.7
Services trade to GDP	7.9	5.0	5.3	6.5	7.6	6.1
Workers' remittances to GDP	2.8	1.5	2.0	5.0	4.8	3.3

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

TABLE 7
Significance of Services Trade in Sri Lanka

(US billion \$ and percentages)

Values	1995	2000	2001	2002	2003	Average 2000-2003
Export of goods and services	4.64	6.37	5.87	5.96	6.52	6.18
Service exports	0.82	0.94	1.36	1.27	1.41	1.25
Transport	0.34	0.39	0.38	0.51	0.56	
Travel	0.23	0.25	0.21	0.36	0.42	
Other	0.26	0.29	0.76	0.39	0.42	
Services exports to total exports	17.7	14.7	23.1	21.2	21.6	20.2
Imports of goods and services	5.99	8.10	6.86	7.10	7.72	7.45
Service imports	1.19	1.62	1.75	1.58	1.71	1.67
Transport	0.68	0.98	0.84	0.88	0.96	
Travel	0.19	0.24	0.25	0.26	0.28	
Other	0.33	0.40	0.65	0.44	0.47	
Service imports to total imports	20.0	20.0	25.5	22.3	22.1	22.5
Total trade in goods and services	10.6	14.5	12.7	13.1	14.3	13.6
Services trade to total trade	19.0	17.7	24.4	21.8	21.9	21.4
Services trade to GDP	15.5	15.7	19.7	17.2	17.1	17.4
Workers' remittances to GDP	6.3	7.1	7.4	7.8	8.1	7.6

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

trade for the 2000-03 period. The share of services trade in India's GDP increased from 4.8 percent in 1995 to average 8.4 percent in the 2000-03 period. Services exports grew at an average annual rate of 17.6 percent during 2000-03, more than trebling from a mere US\$ 6.8 billion in 1995 to US\$ 27.6 billion in 2003. In Sri Lanka, there has been a moderate increase in the share of services in total trade and in the country's GDP. But in Pakistan and Bangladesh, services have actually declined in importance in overall trade and in GDP and have exhibited a much more erratic trade performance. But it is worth noting that factor incomes based on manpower exports, proxied by workers' remittances have been consistently significant in the invisibles account of all the economies, and particularly for the smaller economies of the region. Workers' remittances accounted for over 7 percent of GDP in Sri Lanka and

5-6 percent of GDP in Bangladesh, reflecting the importance of labour-based services exports.

If one examines the composition of services trade, no clear pattern emerges for most of the countries. Only in the case of India, has there been a strong and consistent structural shift in services exports away from traditional areas like travel and transport services and towards other services, mainly business services such as information technology, business process outsourcing, and various professional services. The share of "other services" in India's services exports rose from 34 percent in 1995 to 71.6 percent in 2000, with other business services accounting for 66 percent of total services exports. The share of travel and transport services declined over this period. In contrast, in the other countries of the region, the composition of services exports has shown little change,

TABLE 8

Composition of Services Exports, Values and Shares

(US million \$ and percentages)

	1995		2000		2003	
	Value	Share	Value	Share	Value	Share
Bangladesh						
Total	698.2	100	815.1	100	978.8	100
Transport	70.2	10.1	91.4	11.2	71.9	7.3
Travel	25.1	3.6	50.4	6.2	56.9	5.8
Other	602.9	86.4	673.3	82.6	850.0	86.8
a. Communication			21.5	2.6	71.5	7.3
b. Insurance	0.4	0.1	3.5	0.4	3.8	0.4
c. Other Business services	372.8	53.4	99.3	12.2	152.9	15.6
India						
Total	6775	100	18331	100		
Transport	1890	27.9	1833	10.0		
Travel	2582	38.1	3168	17.3		
Other	2303	34.0	13131	71.6		
a. Communication						
b. Insurance	170	2.5	249	1.4		
c. Other Business services	2120	31.3	12139	66.2		
Pakistan						
Total	1857	100	1380	100	2977	100
Transport	830	44.7	840	60.9	845	28.4
Travel	110	5.9	81	5.9	120	4.0
Other	918	49.4	459	33.3	2012	67.6
a. Communication	269	14.5	190	13.8	190	6.4
b. Insurance	4	0.2	5	0.4	22	0.7
c. Other Business services	178	9.6	136	9.9		
Sri Lanka						
Total	819.2	100.0	938.7	100.0	1407.9	100
Transport	335.1	40.9	399.8	42.6	562.1	39.92
Travel	225.9	27.6	247.8	26.4	423.6	30.09
Other	258.2	31.5	291.1	31.0	422.2	29.99
a. Communication			45.3	4.8	52.8	3.75
b. Insurance	26.9	3.3	40.6	4.3	48	3.41
c. Other Business services	212	25.9	181.7	19.4	181.5	12.89

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

TABLE 9

Composition of Services Imports, Values and Shares

(US million \$ and percentages)

	1995		2000		2003	
	Value	Share	Value	Share	Value	Share
Bangladesh						
Total	1531.2	100	1620.2	100	1710.4	100
Transport	775.4	50.6	1012.8	62.5	1214.9	71.0
Travel	233.5	15.2	289.9	17.9	164.89	1.0
Other	522.3	34.1	317.5	19.6	330.56	19.3
a. Communication			7.4	7.4	9.7	0.6
b. Insurance	67.1	4.4	91.1	5.6	113.6	6.6
c. Other Business services	116.1	7.6	83.3	5.1		
India						
Total	10268	100	15815.0	100		
Transport	5703	55.5	4359.0	27.6		
Travel	996	9.7	2567.0	16.2		
Other	3569	34.8	8889.0	56.2		
a. Communication						
b. Insurance	559	5.4	279.0	1.8		
c. Other Business services	2714	26.4	7823.0	49.5		
Pakistan						
Total	2938.0	100	2252.0	100	3288.0	100
Transport	1628.0	55.4	1517.0	67.4	1581.0	48.1
Travel	446.0	15.2	250.0	11.1	924.0	28.1
Other	863.0	29.4	485.0	21.5	783.0	23.8
a. Communication	3.0	0.1	15.0	0.7	45	1.4
b. Insurance	45.0	1.5	34.0	1.5	72	2.2
c. Other Business services	214.0	7.3	220.0	9.8	347	10.6
Sri Lanka						
Total	1199.1	100	1621.4	100	1709.1	100
Transport	678.7	56.6	980	60.4	961.6	56.3
Travel	186.4	15.5	240.3	14.8	278.9	16.3
Other	334	27.9	401.2	24.7	468.6	27.4
a. Communication			45.3	4.8	52.8	3.75
b. Insurance	63.4	5.3	93.9	5.8	95.8	5.6
c. Other Business services	240.1	20.0	230.6	14.2	298.6	17.5

Source: IMF, *Balance of Payments Statistics Yearbook*, various years and UNCTAD, *Handbook of Statistics*, 2005.

with other services declining in importance and transport and travel services increasingly moderately in importance. Services imports have exhibited similar structural change across the countries, with the greatest shift occurring in the case of India, again away from travel and transport services and towards other business services. Tables 8 and 9 show the values and shares of services exports and imports, respectively, disaggregated by the categories generally available in balance of payments statistics.

Thus, the real growth story in services trade within South Asia has been India, with business services emerging as the dominant and fastest growing segment of India's services trade. This is also evident from calculations of revealed comparative advantage (RCA) for exports of commercial

services for South Asia as a whole and for the individual economies in this region.⁹ The RCA calculations show that only India has a comparative advantage in services exports as a whole and that this RCA is mainly attributable to its comparative advantage in other services, which given their high growth and large share in India's services exports, have offset India's lack of comparative advantage in areas like travel and transport services. The other South Asian countries have comparative advantage only in the area of transport services, which is offset by their lack of comparative advantage in both travel and other services. The RCA calculations for overall exports of commercial services and disaggregated by travel, transport, and other services are provided in Tables 10 to 13.

TABLE 10
Revealed Comparative Advantage (RCA) in Commercial Services for South Asia and Other Regions

Region/Economy	1980	1990	1998	1999	2000	Average 1998-2000
Low & middle income countries	0.7	0.7	0.9	0.8	0.7	0.8
High income countries	1.1	1.1	1.0	1.1	1.1	1.1
East Asia & Pacific	0.7	0.7	0.7	0.7	0.6	0.7
Europe & Central Asia	0.8	0.6	1.2	1.1	1.0	1.1
Latin America & Caribbean	0.9	0.8	0.7	0.6	0.7	0.7
Middle East & North Africa	0.4	0.6	0.9	0.8	0.5	0.7
Sub-Saharan Africa	0.6	0.7	0.7	0.6	0.5	0.6
South Asia	1.4	1.1	1.1	1.1	1.3	1.2
Bangladesh	1.1	0.8	0.2	0.3	0.2	0.3
India	1.6	1.1	1.3	1.5	1.6	1.4
Pakistan	1.1	1.0	0.7	0.7	0.7	0.7
Sri Lanka	1.1	1.0	0.8	0.9	0.8	0.8

Source: CUTS, 'Competitiveness of Service Sectors in South Asia: Role and Implications of GATS', Jaipur, 2003, Table 8, p.21. Calculations based on World Bank, *World Development Indicators*.

⁹ Revealed comparative advantage is the ratio of a region/country's exports of commercial services to its total exports divided by the ratio of the world's exports of commercial services to the world's total exports. It is the ratio of two ratios. An RCA greater than one reveals the presence of comparative advantage while an RCA less than one reveals absence of comparative advantage. An RCA of unity reveals neutrality to the presence or absence of comparative advantage.

TABLE 11
RCA in Transport Services for South Asia and Other Regions

Region/Economy	1980	1990	1998	1999	2000	Average 1998-2000
Low & middle income countries	1.0	1.0	1.0	1.0	1.0	1.0
High income countries	1.0	1.0	1.0	1.0	1.0	1.0
East Asia & Pacific	1.1	1.0	0.9	1.0	1.0	1.0
Europe & Central Asia	-	0.9	1.1	1.1	1.1	1.1
Latin America & Caribbean	0.9	1.0	0.9	0.9	0.9	0.9
Middle East & North Africa	0.7	1.2	-	1.1	1.1	1.1
Sub-Saharan Africa	1.3	1.1	0.9	1.0	1.0	1.0
South Asia	0.6	1.0	1.1	0.6	0.5	0.7
Bangladesh	0.6	0.5	1.4	1.5	1.4	1.4
India	0.4	0.7	0.6	0.6	0.5	0.6
Pakistan	1.2	2.1	2.2	2.4	2.8	2.5
Sri Lanka	0.5	1.4	1.8	1.9	1.9	1.9

Source: CUTS, 'Competitiveness of Service Sectors in South Asia: Role and Implications of GATS', Jaipur, 2003, Table 9, p.22. Calculations based on World Bank, *World Development Indicators*.

TABLE 12
RCA in Travel Services for South Asia and Other Regions

Region/Economy	1980	1990	1998	1999	2000	Average 1998-2000
Low & middle income countries	1.2	1.2	1.4	1.4	1.3	1.4
High income countries	1.0	1.0	0.9	0.9	0.9	0.9
East Asia & Pacific	1.2	1.3	1.4	1.4	1.4	1.4
Europe & Central Asia	-	1.0	1.3	1.2	1.3	1.3
Latin America & Caribbean	1.4	1.5	1.6	1.6	1.6	1.6
Middle East & North Africa	1.0	1.1	-	1.6	1.7	1.6
Sub-Saharan Africa	1.1	1.1	1.4	1.4	1.7	1.5
South Asia	1.7	0.9	0.8	0.7	0.6	0.7
Bangladesh	0.3	0.2	0.7	0.6	0.6	0.6
India	2.0	1.0	0.9	0.7	0.6	0.7
Pakistan	1.0	0.4	0.2	0.2	0.2	0.2
Sri Lanka	1.6	0.9	0.9	0.8	0.8	0.8

Source: CUTS, 'Competitiveness of Service Sectors in South Asia: Role and Implications of GATS', Jaipur, 2003, Table 10, p.23. Calculations based on World Bank, *World Development Indicators*.

TABLE 13

RCA in Other Services for South Asia and Other Regions

Region/Economy	1980	1990	1998	1999	2000	Average 1998-2000
Low & middle income countries	0.8	0.8	0.8	0.7	0.7	0.7
High income countries	1.0	1.0	1.1	1.1	1.1	1.1
East Asia & Pacific	0.7	0.7	0.8	0.7	0.7	0.8
Europe & Central Asia	-	1.0	0.7	0.8	0.7	0.7
Latin America & Caribbean	0.9	0.5	0.6	0.6	0.7	0.6
Middle East & North Africa	1.4	0.7	-	0.5	0.5	0.5
Sub-Saharan Africa	0.6	0.8	0.8	0.7	0.5	0.7
South Asia	1.0	1.1	1.1	1.4	1.6	1.4
Bangladesh	2.0	2.1	1.0	1.0	1.1	1.0
India	0.9	1.2	1.3	1.5	1.6	1.4
Pakistan	0.8	0.8	0.8	0.8	0.6	0.7
Sri Lanka	1.1	0.8	0.7	0.7	0.7	0.7

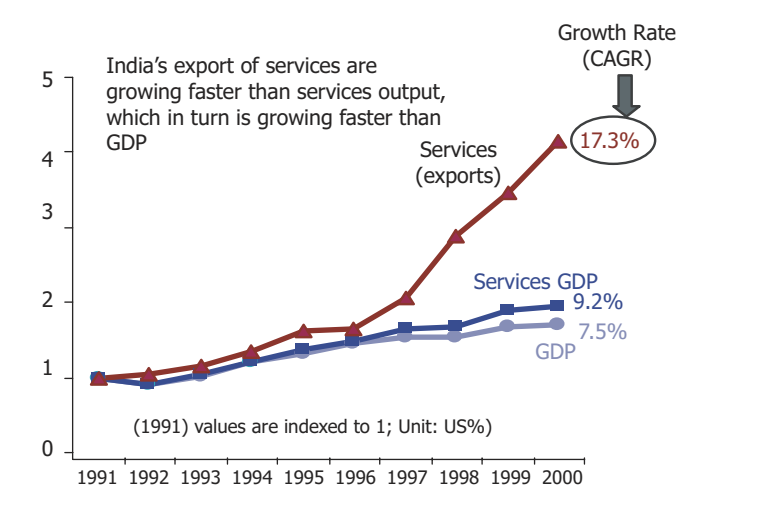
Source: CUTS, 'Competitiveness of Service Sectors in South Asia: Role and Implications of GATS', Jaipur, 2003, Table 11, p.23. Calculations based on World Bank, *World Development Indicators*.

India as the services driver in South Asia

Given India's significance in both services output and trade performance within the South Asian region, it is worth looking at the trends in India's service sector in some detail. The contribution of services to India's trade and FDI flows has grown considerably over the past decade, facilitating India's integration with the world economy. India has outperformed economies such as China in the case of services trade. During the 1990s, India had the highest growth of services exports among all economies, with an average annual growth rate of 17.3 percent, compared to China at 15.8 percent and Taiwan at 8 percent, and a world average of 5.6 percent. Between 1997-98 and 2001-02, India's services exports grew at an average annual rate of 23 percent compared to a world average of 3.6 percent. India's services exports grew from \$9.7 billion in 1997-98 to over \$20 billion in 2001-02.¹⁰ Figure 1 highlights the rapid growth in India's services output and exports

and the strong export orientation of India's services sector over the past decade. Figure 2 illustrates the impressive export performance of India's service sector relative to other economies.

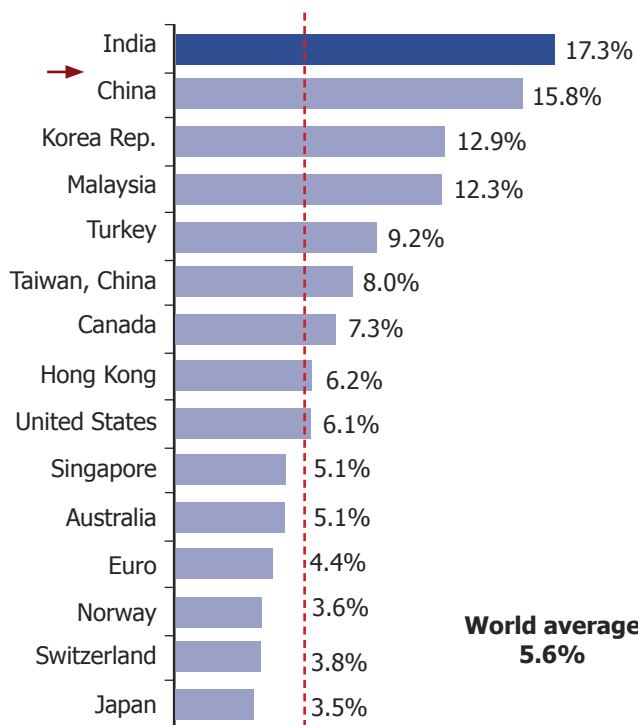
FIGURE 1

Trends in India's Services Output and Exports (1990s)

Source: World Bank (2004), Figure 1, p. 9. Based on *World Bank Indicator and Balance of Payments Statistics Yearbook* (2002).

¹⁰ Based on World Bank (2004).

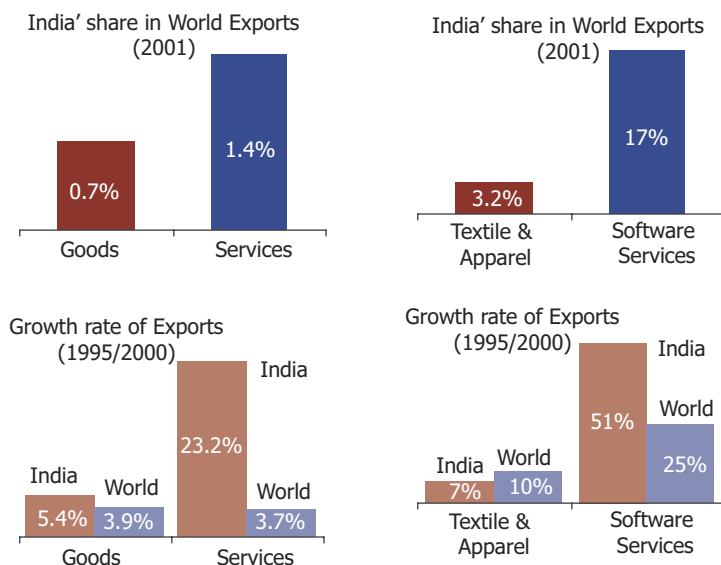
FIGURE 2
Relative performance of India's Services Exports (1990s)



Source: World Bank (2004), Figure 1, p. 9. Based on World Bank *Indicator and Balance of Payments Statistics Yearbook* (2002).

India's services exports have grown much more rapidly than its merchandise exports. Between 1995 and 2000, India's services exports grew nearly six times faster than world exports of services (23.2 percent compared to 3.7 percent, respectively) while its merchandise exports grew much more slowly, at only 1.4 times the annual average growth rate for world exports of goods (5.4 percent compared to 3.9 percent, respectively). Segments such as software services registered growth rates of over 50 percent in exports compared to less than 10 percent for exports of traditional products such as textiles and clothing. Owing to such rapid growth in services exports, India has succeeded in raising its penetration of world markets more rapidly in the case of services than for goods. Its share in world services markets stood at 1.4 percent in 2002-03 compared to 0.9 percent for global merchandise exports. Figure 3 highlights the relative export performance of India's goods and services sectors, including specifically for new and old economy activities, and the role being played by services in deepening India's integration with world markets.

FIGURE 3
India's Penetration of World Services and Goods Markets



Source: World Bank (2004), Figure 2, p. 10. Based on IMF, *Balance of Payments Statistics Yearbook* (2002), Nasscom Reports.

Thus, the evidence clearly indicates India's growing competitiveness in services relative to goods. This is supported by World Bank estimates of India's revealed comparative advantage (RCA) in services and goods, which show that between 1996 and 2000, the revealed comparative advantage index for services increased by 74 percent while that for goods declined by 15 percent. Figure 4 illustrates the trends in India's revealed comparative advantage for services relative to goods.

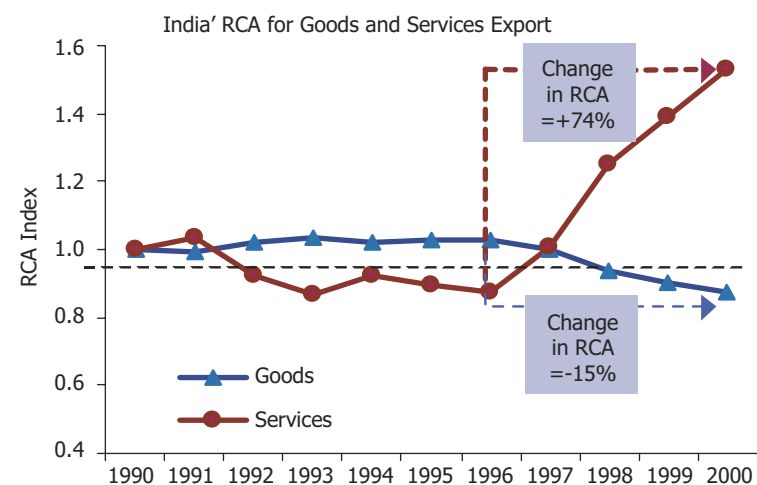
As noted earlier, the composition of India's service exports has also changed considerably, shifting away from traditional services such as transport and travel towards emerging services such as software and other services, the latter mainly consisting of a wide variety of business services like advertising, exhibitions, engineering, accountancy, and health services. The shares of other services such as insurance, communication, and construction have remained more or less the same over this

period. Figure 5 provides a breakdown of India's services exports in 1997–98 and 2001–02 and clearly indicates the compositional shift that has occurred over this period, which is consistent with the RCA estimates for India in different categories of commercial services.

The disaggregated estimates for India's revealed comparative advantage for services exports explain this shift in the composition of India's services exports. The revealed comparative advantage index has risen sharply for other business services, which include software, consulting, management, financial, and communication services while the index has fallen for traditional services like travel and transport. Figure 6 provides the trends in the revealed comparative advantage index for different categories of services exports during the 1990s.

Within other business services, India's growing competitiveness in software services and business process outsourcing has been particularly striking. Software services exports have risen from a mere US\$ 754 million in 1995–96 to US\$ 8.6 billion in 2003–04. Business process outsourcing exports

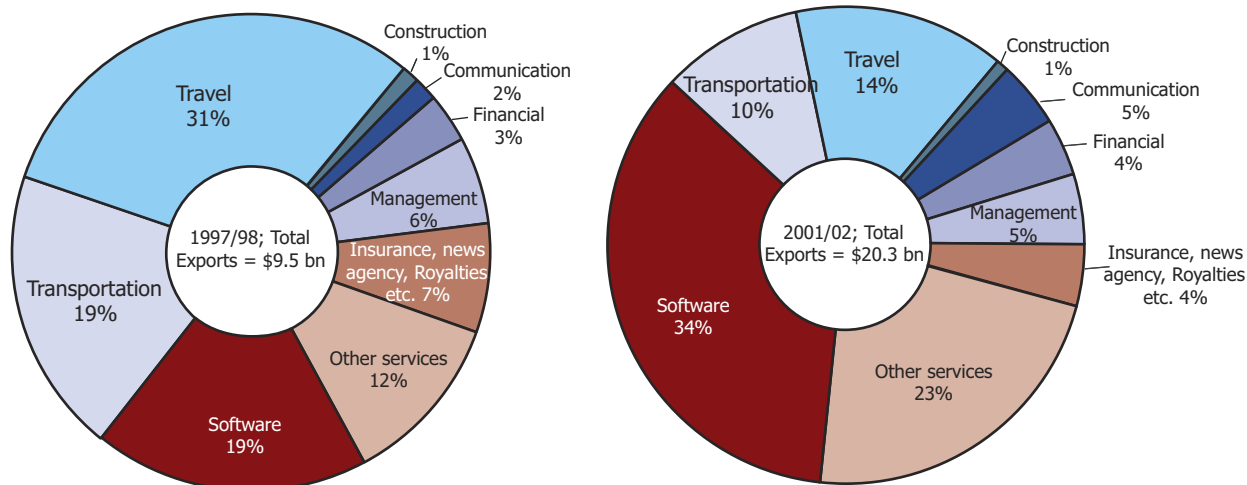
FIGURE 4
India's Revealed Comparative Advantage in Services and Goods



Source: World Bank (2004), Figure 3, p. 11. Based on IMF, *Balance of Payments Statistics Year Book* (2002).

have risen from a mere US\$ 665 million in 1999–00 to US\$ 3.6 billion in 2002–03 and are projected to grow to US\$ 12 billion by 2008.¹¹ These services experienced growth rates of over 50 percent in export earnings

FIGURE 5
Composition of India's Service Exports, 1997–98 and 2001–02



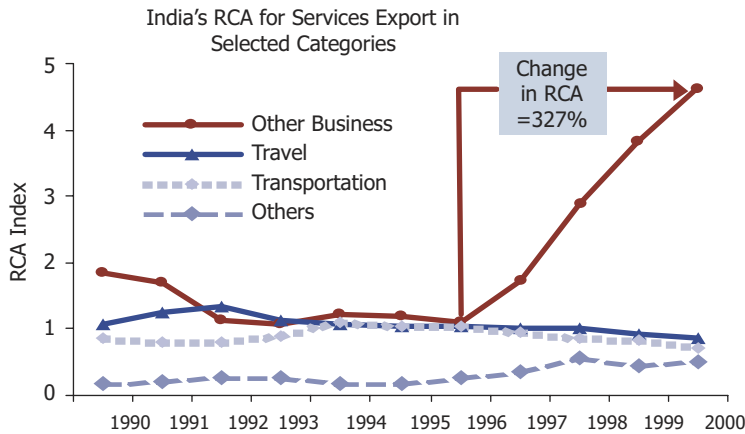
Source: World Bank (2004), Figure 4, p. 11. Based on *RBI Bulletin*.

¹¹ Nasscom Strategic Review (2004).

and turnover during the second half of the 1990s.¹² Thus, there is a dynamic growth story in services exports in particular segments within South Asia, mainly due to India's strong performance in this sector.

FIGURE 6

India's Revealed Comparative Advantage for Selected Categories of Services Exports



Note: 1. Other business services include software exports, communication, management and consultancy services, financial services, construction, news agency services, etc.

2. Other services include insurance and government services.

Source: World Bank (2004), Figure 3, p. 11. Based on IMF *Balance of Payments Statistics Year Book* (2002).

3. KEY AREAS OF TRADE INTEREST TO SOUTH ASIA

The estimates of RCA are broadly indicative of the trends and potential of the South Asian countries across a few highly aggregated categories of service sub-sectors, for which data are readily available. But they do not reveal the source of comparative advantage for South Asia in commercial services, or the key modal and sectoral interests of the region in services. However, if one combines the services trade data for South Asia with information on the various modes of delivery in services trade, especially labour, capital flows and technology-enabled flows, then the region's modal and

sectoral interests become quite evident. Such an examination of the sectoral and mode-wise data on services trade in South Asia reveals that the region's underlying source of comparative advantage in services and basis for exports in this sector is its large endowment of labour, including low-skilled, semi-skilled, and highly specialised and professional manpower. This endowment enables services exports through the cross border movement of labour, i.e., mode 4 of the GATS for onsite delivery of services at all levels of skills, or through technology-enabled cross border supply of services, i.e., mode 1 of the GATS for offshore delivery of labour-intensive services again at various levels of skills and domain expertise. The case of India in particular, highlights the region's significance as a global exporter of services through mode 4 and mode 1. The following discussion outlines the nature of exports in these two modes for the countries in South Asia, based on available information.

*MODE 4 EXPORTS BY SOUTH ASIA*¹³

The South Asian region is one of the most important exporters of services through movement of natural persons. According to officially reported statistics, outflow of migrant workers from India, Pakistan, Bangladesh, and Sri Lanka was put at 355,000, 104,000, 268,000, and 158,000, respectively in 1998.¹⁴ The significance of movement of natural persons for South Asia is also evident from the large volume of remittances received by countries in this region. Remittances amount to over US\$ 2 billion in Bangladesh, representing some four percent of GDP and one-third of gross export earnings.¹⁵ Across all the countries, remittances constituted between 2 to 8 percent of GDP.

In terms of geographic orientation, there are mainly three groups of countries that are important as destination markets

¹² Nasscom reports (various years).

¹³ Rupa Chanda, 'Movement of Natural Persons: A Case Study of South Asian Countries', CUTS, Jaipur, 2004.

¹⁴ Wickramasekara (August 2002), Table 1, p.15.

¹⁵ OECD *Observer* (2003).

for South Asian service providers. These include countries in the Gulf and Middle East, chiefly Saudi Arabia, Kuwait, and UAE; the English speaking industrialised countries, in particular, the UK, US, Canada, and Australia; and increasingly South-East Asia, chiefly Singapore and Malaysia. The skill and occupational breakdown varies according to the destination market. Temporary labour flows to the industrialised countries are mainly in higher skilled and professional occupations, such as medicine, information technology, engineering, and teaching. Temporary labour flows to the Middle East are dominated by the lower skilled occupational categories, in particular construction work, transport operations, and domestic services, although there is some movement of professionals, especially doctors, nurses, and accountants to the Middle East from South Asia. Temporary migration to South-East Asia is again a mix of skilled and lower skilled occupations, including domestic services, plantation work, as well as doctors and information technology personnel. Non-immigrant labour flows to the Middle East and South-East Asia are truly temporary and thus mode 4 in the strict sense, while non-immigrant labour flows to the industrialised countries are often subject to change of status to immigrant categories for permanent residence and citizenship in those countries, and thus only a part of these flows constitute mode 4 exports of services.

Characterizing mode 4 exports from India

India has traditionally been a large source country for high and low-skilled migration. There are an estimated 20 million plus Indians living abroad, who generate about US\$ 160 billion in annual income, and account for US\$ 400 billion worth of output (80 percent of the Indian economy).¹⁶

The bulk of labour movement from India is to countries in the Middle East.

Table 14 shows the annual outflow of labour migrants from India for the 1976-97 period. The figures show that the Gulf countries accounted for over 90 percent of labour outflows from India throughout the 1980s and 1990s. Indian workers constitute the largest group of migrants in the Gulf. A report by Birks, Sinclair and Associates estimates that the migrant non-native population of the six Gulf countries was 7,075,851 in the 1990s, of whom over 20 percent were Indian. According to another estimate, there were over 1.5 million Indian migrant workers in the Middle East in 1991, rising to 4 million in 1995.¹⁷ The Gulf region became an attractive destination for Indian migrant workers, following the oil-driven boom in these countries in the 1970s and continuing through into the 1980s, with its demand for large numbers of unskilled workers for infrastructure projects and for menial work. According to the Emigration Division of the Indian Ministry of Labour, during the 1991-97 period, Saudi Arabia accounted for

TABLE 14
Annual Outflow of Labour Migrants from India, 1976-97

Year	Number of emigrants	Percent of emigrants to the Middle East	Year	Number of emigrants	Percent of emigrants to the Middle East
1976	4,200	N.A.	1987	125,356	97.2
1977	22,900	N.A.	1988	169,844	97.7
1978	69,000	N.A.	1989	126,786	95.1
1979	171,000	N.A.	1990	141,816	94.2
1980	236,200	N.A.	1991	192,003	96.0
1981	276,000	N.A.	1992	416,784	96.7
1982	239,545	93.6	1993	438,338	95.5
1983	224,995	96.9	1994	425,385	95.1
1984	205,922	96.4	1995	415,334	93.0
1985	163,035	98.4	1996	414,214	93.7
1986	113,649	96.1	1997	416,424	92.8

Source: Nangia and Saha (2002), Table 1, p.14.

Note: N.A. = not available

¹⁶ *India Today* (October 20 02).

¹⁷ D'Sami (2001).

TABLE 15
Distribution of Annual Labour Outflows from India by Destination, 1999-2003

Country	1999	2000	2001	2002	2003
UAE	79,269	55,099	53,673	95,034	143,804
Saudi Arabia	27,160	58,722	78,048	99,453	121,431
Kuwait	19,149	31,082	39,751	4,859	54,434
Oman	16,101	15,155	30,985	41,209	36,816
Malaysia	62	4,615	6,131	10,512	26,898
Bahrain	14,905	15,909	16,382	20,807	24,778
Singapore	19,468	18,399	27,886	24,399	23,438
Qatar	--	--	13,829	12,596	14,251
Libya	1,129	1,198	334	1,339	2,796
Others	22,309	32,003	11,645	13,765	17,810
Total	199,552	243,182	278,664	367,663	466,456

Source: Emigration Division, Indian Ministry of Labour, various years.

TABLE 16
Indian Contract Workers in Service Jobs in West Asia and the Gulf

Country	Number
Bahrain	110,000
Kuwait	150,000
Oman	280,000
Qatar	80,000
Saudi Arabia	700,000
UAE	500,000
Yemen	103,000
Libya	36,000

Source: D'Sami (2001), p.3.

about 50 percent or more of these workers, followed by the United Arab Emirates with about 20 percent, and the others including Oman, Kuwait, Bahrain, accounted for the remainder. In 1998, India issued about 100,000 visas for labour overseas, a majority of this being for Saudi Arabia followed by

the UAE.¹⁸ Table 15 provides a country-wise breakdown of labour flows from India for the 1999-2003 period.

The majority of Indian migrants in the Middle East are engaged in low or semi-skilled occupations. About one in three of Indian migrants to the Middle East is engaged in construction work. According to ILO sources, there were an estimated 425,000 construction workers of Indian origin working in the Gulf in 1996.¹⁹ In addition, Indian workers in the Middle East are also engaged in other low and semi-skilled occupations, as production workers, transport equipment operators, domestic help, nurse's aids, craftsmen, and technicians, although there is also some movement of professionals, such as engineers and accountants. It is estimated that in 2000, out of a stock of 285,000 Indian workers in Kuwait, around 100,000 were engaged as domestic help.²⁰ Most low-skilled Indian workers in the Middle East are employed under contractual arrangements. Table 16 gives an idea of the volume of India's mode 4 exports to West Asia and the Gulf in 1989 for low-skilled service occupations. It clearly highlights the fact that there is a large stock of contract-based Indian service suppliers in the Middle East and Gulf countries, who are mainly engaged in low and semi-skilled occupations.

India is also an important exporter of skilled manpower, mainly to the developed countries. Table 17 provides an idea of the large stock of Indian knowledge workers present in various countries. India's significance as a supplier of skilled and professional manpower is also evident from host country immigration statistics on visas and work permits. Table 18 shows that Indian workers accounted for nearly 37 percent of Asian immigration to the US and around 17 percent of all immigration to the US under the professional, technical, executive,

¹⁸ <http://www.scalabrini.asn.au/atlas/india99.htm> (revisited on 14 Oct. 2005)

¹⁹ D'Sami (2001).

²⁰ Wickramasekara (August 2002).

and managerial categories during the 1994-96 period. If one adds to these categories occupations such as sales and administrative support, which also require some level of skills and qualifications, then the share of Indian workers in Asian immigration and in world immigration to the US, was 57 percent and nearly 25 percent, respectively. Thus, India accounted for over half of qualified and professional immigrants to the US from all of Asia and for a quarter of all such immigrants to the US. In the case of Canada, India ranked second among the top ten source countries for foreign labour in Canada, with a share of 10 to 12 percent in overall as well as skilled inflows into Canada for the years 2000, 2001, and 2002, with a similar occupational profile.²¹ There was a net inflow of 29,000 migrant workers of South Asian origin into the UK during the 1995-99 period, of which 19,000, or 69 percent, were in professional and managerial occupations.²²

Skilled migration from India has spanned a wide range of professions, including architecture, engineering, management, scientific and consulting services, computer services, and accountancy and auditing services, as shown in Table 18. It has, however, been significant in two or three occupations and sectors. Since the 1990s, the main source sector for skilled migration from India has been the IT sector. US immigration statistics from the 1990s indicate the disproportionately high share of Indian computer professionals in all H-1 visa admissions to the US. Table 19 shows that 47,477 visas or 73 percent of all H-1B visas granted to Indians were in computer-related fields and Table 20 further shows that Indian professionals accounted for around 70 percent of all H-1B visas granted in the computer-related occupational category across countries during the 2000-2002 period. The significance of the IT sector

TABLE 17
Indian Immigrants to Europe, America, and Oceania (knowledge workers)

Country	Number
France	42,000
Germany	32,000
Netherlands	103,000
UK	790,000
US	815,000
Portugal	102,000
Canada	250,000
Australia	200,000
New Zealand	30,000
Indonesia	30,000

Source: D'Sami (2001), p.3.

in skilled Indian migration to the US reflects the surge in demand for IT workers in the US during the late 1990s and the subsequent increases in the H-1B quota from 65,000 to 115,000 in 1999 and further to 195,000 in 2000 under the American Competitiveness and Workforce Improvement Act. Mode 4 exports from India in the IT sector are not only significant for the US in meeting skill shortages in this area, but they are also extremely important for India's own IT industry. Over 40 percent of export earnings in India's IT industry is based on on-site delivery of custom application, software development, and maintenance services by Indian IT professionals to developed country markets. On-site professional services contributed US \$3.6 billion worth of export revenues in 2001-01, out of total export revenues of US \$7.7 billion that year. Industry sources in India estimate that out of a supply of 132,986 newly entering IT professionals in 2001-02, about 64,350 left India to provide on-site services that year. Migration for on-site work accounted for 15 percent of the total stock of 428,636 IT professionals in 2001-02.²³

²¹ http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html (revisited on 14 Oct. 2005)

²² Findlay (2001), Table 5, p.16. Based on *Migration Research Unit Report* (2001).

²³ The discussion in this section is mostly based on NASSCOM (2002).

TABLE 18

H-1B Beneficiaries in the Top 10 Industries, US, Fiscal Year 2002

Industry (NAICS Code)	Total Number of Beneficiaries	Median Age (years)	Masters Degree or higher (percent)	Median Income	Leading Country of Birth (percent)
All industries	197,537	30	48	55,000	India (34)
Computer Systems Design and related services (5415)	50,776	29	36	60,000	India (68)
Colleges, Universities, and Professional schools (6113)	18,401	34	93	37,000	PRC (26)
Architectural, Engineering, and related services (5413)	8,963	31	44	48,000	India (21)
Management, Scientific, and Technical Consulting services (5416)	7,458	29	43	55,000	India (39)
Scientific Research and Development services (5417)	6,695	33	82	54,000	PRC (24)
Telecommunications (5133)	4,357	30	48	70,000	India (38)
Elementary and Secondary schools (6111)	3,983	33	31	33,000	India (18)
Accounting, Tax preparation, Book keeping, and Payroll services(5412)	3,507	30	36	42,000	India (16)
General Medical and Surgical Hospitals (6221)	3,442	32	81	42,000	India (24)
Securities and Commodity Contracts Intermediation and Brokerage (5231)	2,917	28	45	75,000	India (21)

Source: *Statistical Yearbook of the Immigration and Naturalisation Service, 2002*

Notes:

1. Industry data is collected using the North American Industry Classification System (NAICS).
2. Total number of beneficiaries is the sum of initial and continuing beneficiaries.

TABLE 19

H-1B Beneficiaries in the Top 5 H-1B Receiving Countries, 2002

Category	India	China	Canada	Philippines	United Kingdom
Computer-related	47,477	5,357	2,770	1,561	1,250
Fashion Models	5	4	92	1	50
Managers and Officials	1,212	388	1,204	315	908
Miscellaneous, Professional, Technical and Managerial	690	349	379	115	283
Administrative Specialisation	2,689	1,660	1,342	2,186	795
Architecture, Engineering and Surveying	5,780	2,633	1,629	993	1,235
Art	113	76	133	65	245
Education	1,908	3,593	1,507	957	893

(Contd...)

Entertainment and Recreation	69	28	77	9	89
Law and Jurisprudence	72	93	165	34	99
Life Sciences	727	1,965	415	63	360
Mathematics and Physical Sciences	693	1,401	446	76	272
Medical and Health	2,530	674	949	2,524	297
Museum, Library and Archival sciences	11	30	56	5	31
Religion and Theology	7	2	14	6	7
Social Sciences	738	413	365	257	206
Writing	77	91	133	44	83
Unknown	182	84	84	84	68
Total	64,980	18,841	11,760	9,295	7,171

Source: Statistical Yearbook of the Immigration and Naturalisation Service, 2002

TABLE 20
India's Share in H-1B Visas, Asia and World, 2000-2002

Category	2000		2001		2002	
	India's percent Share in Asia	India's percent Share in World	India's percent Share in Asia	India's percent Share in World	India's percent Share in Asia	India's percent Share in World
Computer-related	79.62	68.18	81.53	71.39	76.43	63.21
Fashion Models	10.53	0.33	2.00	0.11	11.63	0.67
Managers and Officials	32.45	12.28	37.16	13.92	31.79	11.42
Miscellaneous, Professional, Technical and Managerial	27.62	11.49	33.63	15.98	30.82	13.97
Administrative Specialisation	23.69	13.88	28.98	17.14	22.26	12.74
Architecture, Engineering and Surveying	39.47	26.01	42.36	27.87	38.10	22.94
Art	6.09	3.36	8.81	4.64	7.62	3.90
Education	17.26	8.36	19.99	9.45	18.64	9.26
Entertainment and Recreation	38.42	17.37	19.26	6.74	23.08	8.89
Law and Jurisprudence	12.90	4.77	15.31	5.02	14.40	5.01
Life Sciences	19.76	11.06	19.03	10.52	18.85	10.52
Mathematics and Physical Sciences	18.40	10.03	21.95	12.21	22.33	12.73
Medical and Health	27.86	18.00	31.86	20.34	30.50	19.58
Museum, Library and Archival sciences	18.99	8.06	14.18	5.65	9.48	3.49
Religion and Theology	10.34	4.41	14.71	6.02	15.56	5.93
Social Sciences	29.64	16.37	26.01	13.46	25.47	13.30
Writing	12.12	6.18	15.38	7.73	10.24	5.23
Unknown	38.93	18.88	50.00	23.66	31.71	13.22
Total	61.64	44.42	65.82	48.78	50.91	32.89

Source: Statistical Yearbook of the Immigration and Naturalisation Service, various years.

It is estimated that there are 1.2 million Sri Lankan workers abroad. Around 70 percent of this stock of workers is estimated to be in the Middle East. Among these over 60 percent are female migrants.

Evidence from other countries further confirms India's importance as a supplier of skilled manpower, with IT, engineering, and healthcare constituting the main source areas for mode 4 exports. Germany, Austria, Singapore, and Japan have introduced special work permit and visa schemes in recent years to attract Indian IT professionals and meet shortages of such workers in their markets. India has the largest stock of overseas doctors among all countries and also exports nurses to several developed countries like the UK and Australia. There is movement of nurses and doctors under private arrangements with establishments in the Middle East and Gulf countries, under arrangements between institutions in India and in developed countries, and under special visa schemes such as the H-1A visa for registered nurses in the US. In the past few years, there has been a surge in demand for Indian nurses due to huge shortages in the US and UK. As a result, many nursing schools and big hospitals are training nurses for working overseas in American and British hospitals and placement agencies and even big hospitals are advertising for nurses.²⁴ A detailed account of the work permits issued in the UK by occupational group shows that Indians received admission in the engineering, computer science, health, teaching, management and administration, business, and finance professions. Over 60 percent of the over 12,000 work permits granted to Indians were allocated to computer professionals followed by 9 percent of all work permits being granted to healthcare professionals.²⁵

CHARACTERISING MODE 4 EXPORTS FROM SRI LANKA

It is estimated that there are 1.2 million Sri Lankan workers abroad. Around 70 percent

of this stock of workers is estimated to be in the Middle East. Among these over 60 percent are female migrants.²⁶

The most striking feature of labour flows from Sri Lanka is the high share of female workers. Table 21 highlights the gender wise composition of annual labour outflows from Sri Lanka for employment purposes. The Middle East is the most important destination market for mode 4 exports by Sri Lanka. Tables 22 and 23 illustrate that the Middle East accounts for more than 90 percent of all departures for foreign employment from Sri Lanka. These tables further reveal that within the Middle East, Saudi Arabia receives more than one-third of all migrants from Sri Lanka, followed by Kuwait and the UAE, with around 19 percent and 15 percent, respectively in 2001. Saudi Arabia had a stock of 300,000 Sri Lankan workers in 2001, followed by Kuwait and UAE with 161,700 and 130,500 workers, respectively.²⁷ This country-wise composition of labour flows from Sri Lanka also holds true in the case of female migrant workers, as shown in Table 24. Saudi Arabia accounts for around 30 percent of the total female worker outflows, followed by Kuwait and the UAE with shares of 23 percent and 15 percent, respectively.

In addition to the Middle East, other destination markets include Singapore, Malaysia, Canada, the US, the UK, and Australia. The number of overseas contract workers in Italy, Singapore, South Korea and Hong Kong was estimated at 60,000, 14,000, 4,000 and 2,500, respectively.²⁸ Data on remittances, which is a proxy for both temporary and permanent migration, provided in Table 25 confirm the importance of markets other than the Middle East for Sri Lankan labour. These include North America, the EU (mainly the UK), South East and

²⁴ Conservative estimates put the shortage of nurses in the US at 100,000. It is projected that by the year 2008, there will be a demand for 450,000 nurses, a large part of which can be met by India. See, *Economic Times* (5 May 2004).

²⁵ These statistics are based on Findlay (December 2001).

²⁶ Jayanetti (2003).

²⁷ Jayanetti (2003).

²⁸ Ibid. 26.

TABLE 21

Sri Lanka: Departures for Foreign Employment, 1990-2001

Year	Male	Male as percent of total	Female	Female as percent of total	Total
1990	15,377	36	27,248	64	42,625
1991	21,423	33	43,560	67	64,983
1992	15,493	35	29,159	65	44,652
1993	17,153	35	31,600	65	48,753
1994	16,377	27	43,791	73	60,168
1995	46,021	27	126,468	73	172,489
1996	43,112	27	119,464	73	162,576
1997	37,552	25	112,731	75	150,283
1998	53,867	34	105,949	66	159,816
1999	63,504	35	115,610	65	179,114
2000	59,725	33	121,645	67	181,370
2001	59,751	32	124,137	68	183,888

Source: *Statistical Hand Book on Migration, 2001*, Bureau of Foreign Employment.

TABLE 22

Departures for Foreign Employment by Country, 1999-2001

	1998	1999	2000	2001
Saudi Arabia	48,171	59,397	63,368	61,141
Kuwait	37,969	28,834	33,505	33,419
UAE	23,944	21,883	30,047	32,712
Lebanon	11,793	13,646	6,841	13,132
Qatar	9,364	12,576	11,523	12,088
Oman	4,278	4,294	10,452	4,945
Jordan	3,674	3,882	6,982	7,289
Bahrain	3,329	7,116	5,634	6,467
Maldives	2,344	2,798	3,432	3,047
Singapore	2,200	1,837	2,027	1,603
S. Korea	1,069	441	510	855
Cyprus	915	1,607	1,965	1,333
All other countries	1,233	1,555	2,821	2,357
Total	150,283	159,816	179,114	181,393

Source: *Statistical Hand Book on Migration, 2001*, Bureau of Foreign Employment.

TABLE 23

Nationals Leaving Sri Lanka as Temporary Migrants by Destination, 1992-99

Destination	1992	percent	1993	percent	1994	percent	1996	percent	1997	percent	1998	percent	1999	percent
Bahrain	6,225	5	5,684	4	5,624	4.3	3,635	2.2	3,317	2.2	7,111	4.5	5,609	3.1
Jordan	3,511	3	3,329	3	4,830	3.7	3,845	2.4	3,657	2.4	3,828	2.4	6,984	3.9
Kuwait	32,368	26	30,362	24	33,273	25.5	41,023	25.2	37,907	25.2	28,636	17.9	33,140	18.5
Lebanon	3,145	3	4,389	3	7,953	6.1	9,623	5.9	11,719	7.8	13,604	8.5	6,822	3.8
Maldives	2,490	2	2,309	2	2,391	1.8	2,267	1.4	2,342	1.6	2,793	1.7		
Oman	8,715	7	5,520	4	4,523	3.4	4,843	2.9	4,253	2.8	4,271	2.7	10,406	5.8
Qatar	1,655	1	3,114	2	4,121	3.1	9,173	5.6	9,329	6.2	12,549	7.9	11,410	6.4
Saudi Arabia	41,083	33	51,413	40	45,005	34.6	57,255	35.2	48,130	32.0	59,321	37.1	63,102	35.2
Singapore	1,775	1	2,065	2	1,975	1.5	2,596	1.6	2,175	1.4	1,815	1.1	1,985	1.1
United Arab Emirates	22,409	18	19,901	15	17,982	13.8	22,393	13.7	23,838	15.9	21,805	13.7	29,879	16.7
Others	1,118	1	990	0.2	2,530	2.2	5,919	3.6	3,602	2.4	3,947	2.5	9,777	5.5
Total	124,494		129,076		130,027		162,572		150,269		159,680		179,114	

Source: <http://www.scalabrini.asn.au/atlas/data/Sri3.htm>

TABLE 24

Estimated Stock of Sri Lankan Employees by Gender and Country, 1994

Country	1994			1996		
	Male	Female	Total	Male	Female	Total
Africa	3,500	11,500	15,000	3,000	12,000	15,000
Bahrain	5,250	29,750	35,000			
Jordan	3,750	11,250	15,000	5,000	15,000	20,000
Kuwait	10,000	65,000	75,000	14,960	70,040	85,000
Lebanon	1,000	24,000	25,000	1,000	24,000	25,000
Oman	11,250	13,750	25,000	5,000	20,000	25,000
Qatar	2,500	7,500	10,000	3,750	11,250	15,000
Saudi Arabia	90,000	110,000	200,000	90,000	110,000	200,000
UAE				15,000	60,000	75,000
Other Middle East	3,500	6,500	10,000	5,000	10,000	15,000
Italy				5,000	10,000	15,000
East Asia	750	14,250	15,000	6,500	18,500	25,000
Other Asia	1,500	13,500	15,000	2,505	12,495	15,000
Total	148,000	352,000	500,000	156,715	373,285	530,000

Source: <http://www.scalabrini.asn.au/atlas/data/Sri4.htm>

Far East Asia, and Australasia, which are all important sources for private remittance flows to Sri Lanka. Other evidence from host countries also supports this fact. For instance, Sri Lanka was among the top ten source countries for foreign workers in Canada in the years 2000, 2001, and 2002, with a share of 2 to 2.5 percent (though the latter includes both temporary and permanent migrants).²⁹ Figure 7 also highlights the significance of regions other than the Middle East as sources of remittance flows to Sri Lanka and thus for the country's mode 4 exports.

Sri Lanka's labour exports consist of both skilled and unskilled categories of workers. Prior to the oil boom, the majority of migrating Sri Lankans were professionals

and skilled workers who travelled mostly to developed countries in order for employment and to obtain permanent residency. After the oil boom, the nature of migration from Sri Lanka changed and the Middle East became the primary destination for Sri Lankan workers. These include construction workers, drivers, mechanics, and domestic maids. Since the 1990s, professionals and low skilled Sri Lankans have increasingly been going to South East Asia. Table 26 shows the occupational and skill composition of Sri Lankans going overseas for employment in 2001. There were close to 37,000 departures by skilled workers, i.e., those in trade-based occupations like technicians and mechanics or nurses, for employment overseas. The

TABLE 25
Private Remittances (value in US million \$), 1991-2001

Origin	1991(c)	1992(d)	1993	1994	1995	1996	1997	1998	1999	2000	2001
1. Middle East(a)	230	301	347	398	423	484	562	611	651	730	703
2. North America	91	79	76	62	58	70	72	76	77	78	81
3. South and Central America	...	...	...	9	7	8	9	10	11	11	12
4. EU(b)	55	77	94	101	108	122	127	135	144	156	190
5. Eastern Europe	...	2	2	1	4	3	4	4	4	4	4
6. Europe (Other)	11	23	28	34	37	43	45	53	55	59	60
7. South Asia	6	6	11	4	5	7	8	8	8	8	7
8. South East Asia	22	9	10	14	15	17	16	19	20	22	22
9. Far East Asia	23	46	48	51	55	61	61	62	64	68	61
10. Australasia	3	4	6	6	7	8	9	10	11	12	14
11. North Africa	...	...	...	...	...	...	...	...	...	...	...
12. Central Africa	...	...	...	...	...	...	...	...	...	...	...
13. South Africa	...	...	...	...	0	...	...	...	...	...	...
14. Other	...	4	5	7	8	9	8	11	11	12	11
Total	442.6	548.4	627	690	727	832	921	999	1,056	1,160	1,155

Source: Central Bank of Sri Lanka

Notes: (a) Includes US \$ 64 Mn., US \$ 78 Million., US \$ 85 Mn. and US \$ 45 Mn received in 1997, 1998, 1999 and 2000 as compensation of US \$ 2,500 per person to 26,101; 31,279; 37,343; and 29,323 Sri Lankans, respectively, who lost employment in Kuwait due to the Gulf War in 1990. In addition, US \$ 27 Mn was also received as second round payment of US\$ 1,500 each to 18,244 Sri Lankans in 1999.

(b) EU was earlier named EEC

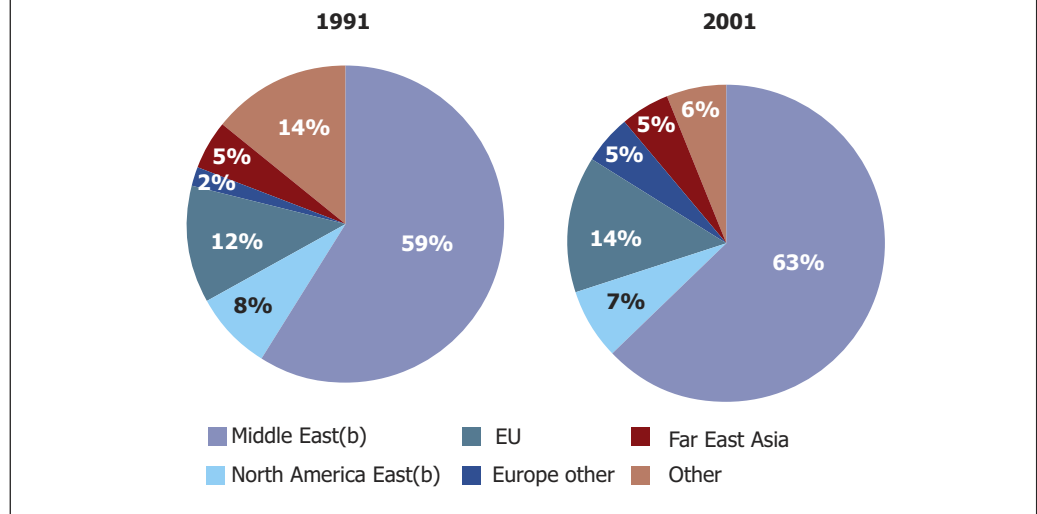
(c) Sri Lankan rupee converted into dollar by using average annual US\$/Rs exchange rate for 1991

(d) Sri Lankan rupee converted into dollar by using average annual US\$/Rs exchange rate for 1992

²⁹ http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html

FIGURE 7

Private Remittances: Relative Importance of Regions, 1991–2001



Source: Based on data provided in Table 25.

number of professional migrants is small. Skilled workers constituted 20 percent of all migrant workers in 2001. An important occupational group within skilled workers has been nursing with a large number of Sri Lankan nurses going to the Middle East, the UK, and also Canada. The unskilled category, which essentially includes construction and production workers, is large, at over 33,000 in 2001, accounting for 18 percent of all migrant workers. If one combines with this the housemaid category (which also falls under the unskilled group), then the number comes to over 130,000, or over 70 percent of all migrant workers.

The most striking feature of migration from Sri Lanka is the dominance of the housemaids category. This is the single largest occupational group, constituting 56 percent of all departures in 2001 and is consistent with the high share of female migrants in Sri Lanka's labour outflows noted earlier. Saudi Arabia, Kuwait, and the UAE are the three most important markets for all kinds of workers, with Saudi Arabia accounting for around one-third of migrant workers in the skilled, unskilled, and housemaids categories.

More recently, Singapore, Malaysia and Brunei are also emerging as important markets for Sri Lankan maids.

Table 27 further indicates that there has not been much change in the basic skill and occupational mix of labour outflows from Sri Lanka over the past few years. Number of departures under the housemaid's category has been around 80,000 to 100,000 per year during the late 1990s, the number of unskilled migrants has been around 30,000 per year, and the number of skilled migrants has been around 47,000 per year.

Characterising mode 4 exports from Pakistan

Estimates from the government indicate that there were 3,180,973 Pakistanis abroad in 1999. More recently, the number of legal Pakistanis registered with the Overseas Pakistani Foundation has been put at 4 million. Temporary migration from Pakistan has mainly been to the Middle East, for contract-based work. Since the 1970s, both skilled and unskilled Pakistanis, but predominantly unskilled workers, have been migrating to the Gulf region for work. By

TABLE 26

Departures for Foreign Employment by Country & Manpower Level –2001 (Sri Lanka)

Country	Professional	Middle Level	Clerical & Related	Skilled	Unskilled	Housemaid	Total
Saudi Arabia	379	1,604	1,689	12,037	13,474	37,461	66,644
Kuwait	54	171	703	4,887	2,957	26,321	35,093
UAE	224	665	1,868	8,574	5,747	11,206	28,284
Lebanon	3	24	21	1,038	2,274	12,070	15,430
Qatar	141	370	621	4,872	5,843	2,199	14,046
Oman	81	254	224	987	317	1,806	3,669
Jordan	17	26	115	1,936	214	5,720	8,028
Bahrain	47	129	142	906	465	2,051	3,740
Maldives	70	275	434	855	645	121	2,400
Singapore	27	52	36	82	291	1,019	1,507
S. Korea	-	-	-	-	353	-	353
Cyprus	8	46	41	118	561	2,316	3,090
All other Countries	88	154	117	416	308	521	1,604
Total	1,139	3,770	6,011	36,708	33,449	102,811	183,888

Source: *Statistical Hand Book on Migration, 2001*, Bureau of Foreign Employment.

TABLE 27

Departures for Foreign Employment by Manpower Levels (Sri Lanka), 1996-2001

Year	Housemaid	Unskilled	Other	Total
1996	110,479	21,929	30,168	162,576
1997	99,429	20,565	30,289	150,283
1998	85,349	34,304	40,163	159,816
1999	87,710	43,649	47,755	179,114
2000	98,363	35,905	47,102	181,370
2001	102,811	33,449	47,628	183,888

Source: *Statistical Hand Book on Migration, 2001*, Bureau of Foreign Employment.

the mid-1980s, there were an estimated 2 million Pakistanis in the Persian Gulf states, making up the largest group of foreign workers, and remitting more than US\$ 3 billion every year to Pakistan, or nearly half of Pakistan's foreign-exchange earnings. Typically, these workers stay overseas for five to ten years, following which they return home. This movement has been regulated by Pakistan's Ministry of Labour under its Programme for Overseas Pakistanis.

Table 28 highlights the magnitude and geographic orientation of migrant workers from Pakistan to selected countries in the Gulf region. The breakdown across countries is quite similar to that for Sri Lankan migrant workers, discussed earlier. Saudi Arabia has been the main destination market, although its relative importance has declined since the mid-1990s. The UAE is the second most important destination market, followed by Kuwait.

The bulk of this movement to the Middle East is in unskilled categories, as shown in Table 29. Professional migrants constituted less than 10 percent of all migrants to the region in the 1990-96 period, while migrants engaged in services and production, which basically cover menial occupations, contributed to 80 percent of all migrants to the region.

Pakistan also exports labour to other parts of the world, to North America, Europe (especially the UK), the Far East and Australia, and to parts of Africa. Pakistanis have been going to the US and the UK since

the 1960s, though most these outflows have been permanent in nature, unlike the flows to the Middle East. In 1998, there were an estimated 934,068 Pakistani nationals working in Europe, of which 720,000 were in the UK. There were 605,000 Pakistanis working in the US, close to 73,000 in South East Asia, Australia, and the Far East, and around 18,000 in Africa. The bulk, over 1.5 million, were working in the Middle East.³⁰ Thus, although the Middle East dominates as the destination market, other countries, including industrialised countries in North America and Europe, are also important

TABLE 28

Pakistan: Migrants from Pakistan to Selected Countries, 1990-99

	KSA	UAE	Oman	Qatar	Kuwait	Bahrain	Iraq	Others	Total
1990	79,435	20,083	8,364	1,367	1,338	2,516	2,076	341	115,520
1991	113,291	15,286	9,947	1,471	4,083	2,741	40	485	147,344
1992	137,694	23,816	11,664	1,935	16,812	3,551		621	196,093
1993	99,027	28,347	6,511	1,263	18,940	2,013		1,632	157,733
1994	70,444	28,750	4,248	1,492	6,124	1,735		1,247	114,040
1995	77,373	28,681	934	632	3,898	1,424	10	1,268	122,620
1996	79,036	30,851	3,724	1,453	5,574	1,583		5,563	127,784
1997	78,982	39,823	4,809	2,528	4,748	1,212		1,827	153,929
1998	44,667	44,761	2,713	2,070	3,851	2,102		3,880	104,044
1999*	11,082	33,763	1,084	1,301	2,525	985		842	41,582

* Up to June only

Source: <http://www.scalabrini.asn.au/atlas/data/Pak3.htm>

TABLE 29

Pakistani Migrants to the Middle East by Occupation

	Professional	Service	Production	Other	Total
1990	9.5	21.3	63.2	6.0	100
1991	8.6	19.1	68.3	4.0	100
1992	10.3	19.7	66.5	3.5	100
1993	6.9	20.2	62.3	10.7	100
1994	6.9	19.2	64.8	9.1	100
1995	6.2	19.7	62.7	11.4	100
1996	7.1	19.7	60.0	13.2	100

Source: <http://www.scalabrini.asn.au/atlas/data/Pak4.htm>

³⁰ ILO's International Labour Migration Statistics, 1986-2001, Tables 11 and 13 for Pakistan.

markets for Pakistani labour. Evidence from host countries confirms the importance of Pakistani workers in total labour inflows. For example, Pakistan ranked as the third most important source country for overall foreign labour inflows as well as for skilled labour inflows into Canada for the years 2000, 2001, and 2002, with a share of around 6 percent of all such inflows.³¹ The data suggests that most of Pakistani labour flows to developed countries has been in the skilled and professional categories.

Characterising mode 4 exports from Bangladesh

The basic pattern of migration from Bangladesh is broadly similar to that for other South Asian countries in terms of its primary orientation towards the Middle East and the concentration of semi-skilled and unskilled categories in these flows. Bangladeshi service providers are mainly engaged as construction labour, domestic maids, and nurses (in addition to working as fish and vegetable sellers and in garment production) in overseas markets. The most important market is Saudi Arabia. Increasingly, Bangladeshi maids and

nurses are also going to countries in South East Asia. There is an estimated stock of around 250,000 Bangladeshi workers in Malaysia, mostly engaged in low skilled work however an increasing number are also being employed in skilled occupations such as engineering, health, and nursing. Labour flows to industrialised countries are mostly permanent in nature and are mostly concentrated in semi-skilled categories of work. Tables 30 and 31 highlight the nature of labour outflows from Bangladesh by country of destination and by occupation.

It is evident from the data on labour flows to developed and developing countries from South Asia that all the South Asian countries have a strong interest in exporting labour-intensive services, at all levels of skills. The main markets of interest are the Middle East, South East Asia, and the industrialised countries, in particular, the US, UK, Canada, and Australia. The sectors of interest include professional services such as information technology, finance, and engineering as well as semi-skilled and low skilled services such as construction work, repair, nursing, and domestic help. All of the countries have also been focusing on the software industry as

TABLE 30
Bangladesh: Outflow of Bangladeshi Workers by Country of Destination

Year	Middle East	Malaysia	Korea	Singapore	Others	Total
1991	144,276	1,628	-	642	585	147,131
1992	176,981	10,537	-	313	293	188,124
1993	174,104	67,938	-	1,739	724	244,508
1994	134,539	47,826	1,558	391	2,012	186,326
1995	141,317	35,174	3,315	3,762	3,975	187,543
1996	132,116	66,631	2,759	5,304	4,904	211,714
1997	197,181	2,844	889	27,401	2,762	231,077
1998*	79,359	551	181	12,017	753	92,861

* Up to May only

Source: <http://www.scalabrini.asn.au/atlas/data/Bang1.htm>

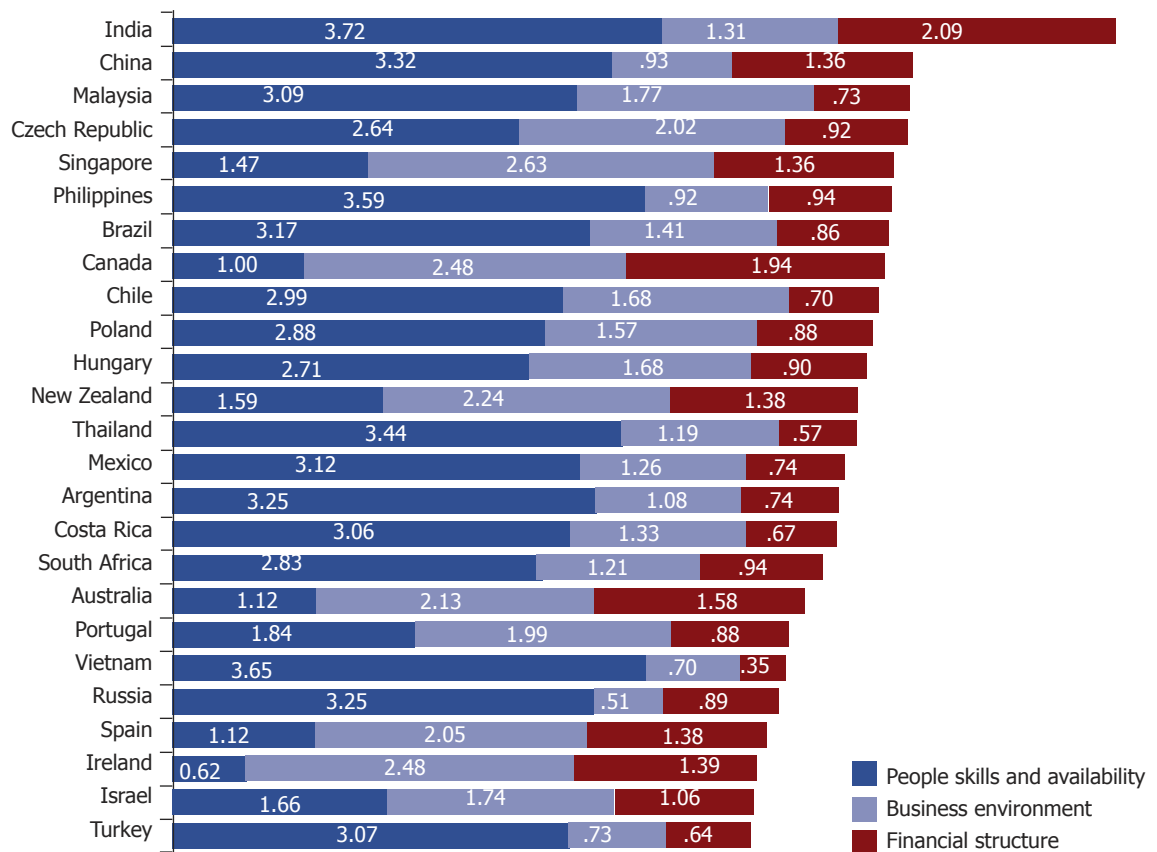
³¹ http://www.cic.gc.ca/english/pub/facts2002/immigration/immigration_5.html

a thrust area, by facilitating domestic and foreign investment in this industry and by investing in training and skill development to create the requisite manpower for this industry. Hence, mode 4 is a focus area for securing and enhancing market access in services exports for South Asia. It is also worth noting that mode 4 based exports are not only critical for the growth of certain industries such as IT, but also critical for generating resources for development in the source sectors and communities of these countries, and thus important not only from the strategic viewpoint of the GATS negotiations but also from a larger development perspective.

MODE 1 EXPORTS BY SOUTH ASIA

The existence of a large pool of low cost, but quality manpower has also enabled some South Asian countries to emerge as competitive exporters in labour-intensive services that can be digitised, fragmented, and delivered through information and communication technologies. In particular, IT-enabled and BPO services are a thrust area where some countries of the region, like Bangladesh, Sri Lanka, and Pakistan are trying to enter or establish themselves in particular segments of the BPO space, such as in transcriptions, data entry and conversion, and call centre

FIGURE 8
Attractiveness Index for Offshore Locations, 2004



Note: The numbers in the bars are index numbers. The weight distribution for the three categories is 40:30:30, meaning that financial structure is rated on a scale of 1 to 4, and that business environment and people skills and availability are on a scale of 1 to 3.
Source: A.T. Kearney (2004), 'Making Offshore Decisions', Figure 1, p.2.

operations. At the same time others like India are trying to sustain their leadership position and diversify their BPO exports into higher value segments and new domains. The South Asian countries are investing in training and requisite skills development, while also providing infrastructure and tax-related incentives to set up offshore development centres. Hence, there is a focus on offshore delivery of technology-enabled services such as IT solutions and transcriptions through mode 1 in addition to onsite delivery of purely labour-based services such as construction and health care through mode 4.

*India's mode 1 exports*³²

India in particular has a strong interest in market access through cross border supply of services. The 2004 A.T. Kearney study estimates the size of the BPO business at US\$ 7.7 billion in India, compared to US\$ 1.1 billion in China, US\$ 0.3 billion in the Philippines, and at US\$ 0.05 billion in Thailand for the year 2001. This compares very favourably with the magnitude of this business in developing and transition countries in other parts of the world, estimated at US\$ 0.2 billion in Russia, US\$ 0.4 billion in Eastern Europe, US\$ 0.01 billion in South Africa, US\$ 3 billion in Israel, and US\$ 0.5 billion in Mexico. According to this study, based on attributes such as firm structure, availability of people and skills, and the business environment in each country, India is the leading outsourcing destination in the world, as shown in Figure 8.

The single most important factor driving India's leading position in offshore service exports is its manpower availability and skills, which outweighs any deficiencies

in its policy and regulatory framework and business environment. India is by far the most competitive and leading outsourcing destination today, in terms of the volume and range of services delivered, as well as firm-level capabilities.³³ In recent years there has been a clear shift from on-site provision of services towards offshoring in India's IT sector. Offshore projects grew by nearly 67 percent compared to a growth rate of 7.8 percent for on-site projects in 2002-03. The contribution of on-site projects to total software and services export earnings fell from over 50 percent earlier to about 43 percent in 2002-03 while that of offshore projects increased to 57 percent from less than 50 percent a few years ago.³⁴ Within this sector, offshore outsourcing of IT and business services has been the fastest growing segment, registering growth rates of 50 to 60 percent year. The ITES and BPO segment grew by 59 percent in 2002-03, reaching an estimated value of US\$ 2.3 billion and further to over US\$ 3 billion in 2003-04, accounting for a growing share of software services exports.³⁵ It is projected that this segment will continue to grow at rates of 50 percent per year in India over the next four to five years, raising India's share of the global BPO business from 2 percent at present to 4.8 percent by 2008.³⁶ The major drivers within the ITES and BPO market in India have been segments such as customer care, financial services, human resource management, payment and administrative services, content development, engineering logistics, sales, and legal services.³⁷

India is host to outsourced IT services, chip design, call centres, and business back office work spread across the country, including the national capital region of Delhi,

The single most important factor driving India's leading position in offshore service exports is its manpower availability and skills, which outweighs any deficiencies in its policy and regulatory framework and business environment. India is by far the most competitive and leading outsourcing destination today, in terms of the volume and range of services delivered, as well as firm-level capabilities.

³² Some of the discussion in this section is reproduced from Rupa Chanda, S. 'Global Outsourcing of Services and Human Development', written for the *Asia Trade and Human Development Report*, UNDP Asia-Pacific Regional HDR Initiative, New Delhi and Asia Trade Initiative, Hanoi, (forthcoming 2005/06).

³³ The discussion on India is based on newspaper and magazine articles, industry reports, and studies.

³⁴ *The Hindu* (4 June 2003).

³⁵ Parthasarathy (16 June 2003) and Nasscom Strategic Review (2004).

³⁶ *Economic Times* (12 June 2003) and *The Hindu* (4 June 2003).

³⁷ *Economic Times* (12 June 2003), *Business Standard* (16 June 2003), and Parthasarathy (16 June 2003). The prevailing exchange rate during this period was in the range of around Rs. 47 to the US \$.

Gurgaon and Noida, and cities like Mumbai, Bangalore, Chennai, Kolkata, Hyderabad, Kochi, Ahmedabad, and Pune. According to the *Financial Times*, half of the world's largest 500 companies and many government agencies contract out IT and business process work to India. The number of companies outsourcing more than three percent of their IT budget to India rose from 32 percent in 2000 to 62 percent in 2001. About 60 percent of the Fortune 500 companies are already outsourcing work to India.³⁸

Outsourcing work in India is variously done by the following: (1) Captive MNC subsidiaries such as GE Capital International Services which focus on back office and customised operations for their parent companies; (2) Well known domestic IT companies such as Tata Consulting Services, Infosys, and Wipro, which are mostly focused on IT solutions and applications developed

related services; and (3) Independent outsourcing providers such as Daksh, Spectramind, Progeon, E-value Serve, and Transworks, which provide a wide range of offshore services, including routine back office, call centre, and interactive customer relation services as well as specialised niche area services such as designs and specifications. In all, there are over 800 IT vendors with over 150 independent ones. Most of these are IT companies and their subsidiaries.

The industry is quite diversified in terms of its coverage of sectors, activities, and skill sets. Box 1 shows the presence of Indian BPO service providers across the entire five-part value chain outlined earlier and the presence of key players like GE at all levels of the BPO business in India.

Overall, the Indian BPO and ITES segment is a highly diversified, dynamic, and evolving sector. It is also undergoing

BOX 1

India's diversified outsourcing industry³⁹

India is one of the few countries in Asia and also globally to engage in outsourcing services that range from high volume activities that require only basic computer literacy skills to low volume high-end activities which require domain expertise and specialised skills. Indian service providers are present all across the outsourcing value chain.

At the lowest end is the huge medical and legal transcription services business in India. At present, there are 200 medical transcription firms in India employing some 10,000 transcribers.⁴⁰ The price of transcription ranges from 3 cents to 12 cents per line. The value of the global medical transcription business is expected to double to \$4 billion by 2005 and it is expected that two-thirds of this business would be outsourced to India, providing employment to about 45,000 persons.⁴¹ Other low-end outsourced services include scanning, drawing, conversion to digital format, and migration of CAD data from one system to another.

Indian service providers are also engaged in rules-based decision making and support services. Firms such as Wipro-Spectramind, Daksh, Progeon, and Transworks service client companies such as Delta and British Airways for reservation and frequent flier services, financial companies like Citigroup for credit card payment and collection services, retail stores like JC Penny and Lowe's for on-line shopping services, and cheque printers like Deluxe for data processing services. Captive BPO units of multinationals like American Express provide back office processing and voice services specifically to their client companies.⁴²

India's outsourcing industry also provides problem solving, process reengineering, and decision-making services. Some examples include Cognizant Technologies, which has a contract with MetLife to upgrade the latter's human resource administration system and to streamline computer applications, or Wipro and Tata Consulting

Contd..

³⁸ Roy (17 May 2003), 'Outsourcing to India' (July 10, 2003), Wheatley (30 April 2003).

³⁹ Reproduced from Rupa Chanda (forthcoming), 'Global Outsourcing and Human Development', prepared for the UNDP Asia-Pacific Regional Trade Initiative.

⁴⁰ *The Business Week* (February 2003).

⁴¹ *The Economist* (5 May 2001).

⁴² *The Economist* (5 May 2001), *Business Week* (3 February 2003), *Business Standard* (16 June 2003), and Wheatley (30 April 2003).

Services, which script software to ease data entry and standardise operational templates across globally spread clients, or Satyam Computer Services, which provides business software solutions and CAD/CAE services to clients like Ford Information Technology Services.⁴³

India is increasingly becoming an offshore base for high value, specialised services in areas such as research and development, bioinformatics, drug testing and pharmaceutical research, engineering design, and financial analysis. All of the leading listed IT service players in India have entered this segment with the bigger ones also serving some of the Fortune 500 companies. For instance, Airbus and Boeing outsource their design work to Infosys. Ford, Caterpillar, Emerson, Whirlpool, and GE have set up subsidiaries in India for design and research and development activities and virtual design teams have been set up by some multinationals in India.⁴⁴ Microsoft India has developed several products for Microsoft, such as Net, Windows services versions for UNIX, and Outlook 2002 and similar product development work have been outsourced by companies like Compaq, HP, and Oracle. Although the high-end outsourcing segment today accounts for only a small part of the total outsourcing business in India, it is expected to grow significantly in future, given India's technical manpower and R&D base.⁴⁵

GE is perhaps the single largest offshore outsourcer in India. It provides BPO, software, engineering, and R&D services and was initially even engaged in transcription and data conversion

services. GE Software solutions provides Oracle applications, and implementation, maintenance, support, and upgrading services. GE Capital performs financial analysis and research services in addition to the usual back office functions of processing, payments, collections, and call centre support services. GE Capital Integrated Business Solutions builds global business platforms and provides IT-enabled services and product, specific solutions. I-process, another subsidiary of GE, provides BPO services like help desk, e-commerce, and web-based customer services. GE Capital Analytics provides support to GE Capital Business. The GE Jack Welch Technology Centre in Bangalore provides multidisciplinary R&D services and develops new technologies in collaboration with GE offices in Schenectady and Shanghai and forms an important part of the GE Global Research Team. The GE Plastics India Unit works on property analysis and product development. GE Medical Systems works on development of medical instruments and devices.

At all levels of the value chain, there is a huge cost advantage from outsourcing to India. For instance, costs of call centre operators, including salary and benefits, is around US\$ 3,000 per year in India compared to around US\$ 25,000 per year in the US. In the case of engineers and accountants, the cost in India is in the range of US\$ 6,000 to US\$ 7,000 per year compared to US\$ 55,000 to US\$ 60,000 per year in the US, amounting to a huge cost reduction for even the more skilled and high value activities.⁴⁶

structural changes, with consolidation of activities and innovation in terms of business models. It is evident that India's growing presence in global business process outsourcing is based on its huge labour endowment, varied skill sets and low cost but quality manpower coupled with a rapidly growing domestic IT industry. India's large labour endowment enables outsourcing companies to perform routine to complex operations at a fraction of what it would cost them in developed countries and also enables them to scale up their operations

easily. Estimated net savings from offshore outsourcing to India range from 40 to 60 percent for developed country firms, after accounting for costs of telecom, overheads, remote management and transaction costs.⁴⁷ Some Indian companies are also engaging in reverse outsourcing, offshoring part of their operations to other countries. The Indian BPO industry is projected to continue growing at double-digit annual growth rates over the medium-term, raising India's share of the global BPO business from the current 2 percent to 4.8 percent by 2008.⁴⁸

⁴³ *The Business Week* (3 February 2003) and 'Outsourcing to India' (10 June 2003).

⁴⁴ *The Economic Times* (15 May 2003), p.7. Note that the examples of Ford, Caterpillar, GE, etc. suggest that there is also a strong linkage between modes 1 and 3. This linkage is discussed later in this paper.

⁴⁵ *The Economic Times* (9 May 2003).

⁴⁶ Cost estimates were obtained from Indian placement service companies and industry sources.

⁴⁷ Chanda, 'Global Outsourcing of Services and Human Development', prepared for the Asia Trade and Human Development Report, UNDP Asia-Pacific Regional HDR Initiative, New Delhi and Asia Trade Initiative, Hanoi, (forthcoming 2005-06).

⁴⁸ *Ibid*, 47.

This is through mode 2 of the GATS, or consumption abroad, whereby foreign patients can receive quality treatment for organ transplants, cataract surgeries, hip replacements, and bypass surgeries, as well as in alternative medicines and therapies, at very low costs.

OTHER SECTORS AND MODES OF EXPORT INTEREST

There are a number of services and modes other than those highlighted above, where South Asian countries have export prospects or are just emerging on the global market. One such important area is that of health services where some South Asian countries, and India in particular, have a strong export interest.⁴⁹ This is through mode 2 of the GATS, or consumption abroad, whereby foreign patients can receive quality treatment for organ transplants, cataract surgeries, hip replacements, and bypass surgeries, as well as in alternative medicines and therapies, at very low costs. India, for instance, has a comparative advantage in exporting health services through mode 2 given its availability of highly qualified health care personnel and its ability to provide high quality but affordable treatment relative to that available in developed countries. Patients come for treatment from developed countries such as the UK and US as well as developing countries such as Bangladesh, Nepal, Sri Lanka, and countries in the Middle East for surgery and for specialized services in areas as wide ranging as neurology, cardiology, endocrinology, nephrology, and urology. There is a huge cost advantage. A coronary bypass operation costs Rs. 70,000 to 100,000 in India while it costs Rs.1.5 to 2 million in Western countries. A liver transplant costs Rs. seven million in the US and only one-tenth of this figure in India. Superspecialty hospitals such as Apollo get surgery cases from the US, from foreign tourists and non-resident Indians. There is also considerable trade in health services within the region through the movement of patients. An estimated 50,000 patients come from Bangladesh each year seeking treatment in Calcutta and other Indian cities. A recent study on Bangladesh's imports of health services from India study finds that

Bangladeshi patients spent some US\$ 1.4 million on treatment in India in 1998-99, up from US\$ 0.2 million in 1993-94, mostly for specialised treatment concerning heart diseases, cancer, and kidney diseases.⁵⁰

Some South Asian countries also have a niche in the traditional and alternative medicines segment under mode 2. India, for instance, has a large number of alternate traditional medicines, including unani, ayurvedic, and homeopathic forms of treatment. Holistic health care services have been developed at some health resorts in India, combining alternate systems of medicine. Many patients come to India for treatment in these alternate systems. The Indian state of Kerala is the main destination market for such patients. The Ayur Vaidya Sala (Ayurvedic school) at Kottakkal in Kerala is popular in the Gulf, Malaysia, Germany, the US, and the UK. There is a lot of scope to exploit India's comparative advantage in traditional medicine further, through active marketing in areas where there is a high regard for such treatments and procedures, by combining health care services with tourism packages, and by augmenting health services to include spas, massages, thermal baths, and other rehabilitation services.

There also exists the potential to export education services through consumption abroad. Indian public and private medical institutions export medical education services through the provision of seats to foreign students, including students from other countries in South Asia.

There is also scope to export by establishing commercial presence overseas, or mode 3 of the GATS. Indian firms are increasingly emerging as exporters of capital. Services account for a growing share of outward FDI flows from the Indian economy, constituting 45 percent of total FDI outflows for the 1999-2003 period, with non-financial

⁴⁹ Rupa Chanda, 'Trade in Health Services', prepared for the WHO Commission on Macroeconomics and Health for a discussion of India's prospects in export of health services, (2001).

⁵⁰ Dr. Mustafizur Rahman, 'Bangladesh-India Bilateral Trade: An Investigation into Trade in Services', Centre for Policy Dialogue, Dhaka (under the South Asian Network of Economic Institutes work programme) April 2001.

services, namely communication, software, and business services being the main source sectors.⁵¹ In segments like software and health services, some Indian companies are setting up overseas subsidiaries and tying up with regional or international networks. There is growing interest among some Indian higher education institutions in exporting education services through establishment of offshore campuses as well as twinning and partnership arrangements. In both health and education services, there is potential for such commercial presence based exports of education services within the South Asian region.

There are other areas like maritime transport, tourism, and energy services where South Asia has export potential owing to factors such as geography, history, and natural resource endowments. Bangladesh for example, has huge reserves of natural gas, with potential to export to other countries in the region through cross border supply.⁵² Sri Lanka has potential in shipping and port services, given its geographic location. India and Sri Lanka have considerable scope to export travel and tourism services, given their rich cultural, natural, and historical heritage. Again, as with health and education services, there is much scope for intra-regional trade in these other areas.

In sum, South Asia's modal interests span all four modes of the GATS. While the primary interest consists in movement of natural persons and cross border supply, also significant are exports through movement of consumers and overseas commercial presence. It is mainly India which has an interest in all four modes, given its more mature service sector relative to the other economies of the region. In terms of markets, both developed and developing country markets are important, including markets within the region.

IMPORT INTERESTS IN SERVICES

South Asian countries also have strong import interests in the service sector, mainly in the form of FDI participation in their economies. All these countries have significantly liberalised their FDI policies in the past decade. Foreign participation through joint ventures, technology and management tie-ups, and subsidiaries is increasingly being sought in services to alleviate infrastructural, financial, technological, and other constraints. Services such as telecommunications, banking, insurance, energy, transport, and software services are among the main drivers of foreign direct investment in the region.

Pakistan, for instance, has moved from a restrictive policy on FDI and dominance of the public sector in many critical sectors to encouraging foreign investment in areas like software development, tourism, and construction services. It has given permission for 100 percent foreign equity participation and waiver of a joint venture requirement in the case of social and infrastructure services, and permits full repatriation of profits. As a result of liberalisation, Pakistan has experienced substantial increases in FDI in services such as construction, utilities, and communications. In financial services, restrictions on the number of branches for foreign banks have been relaxed. Foreign banks are now subject to the same eligibility criteria for branch licensing as domestic commercial banks and the limit on the number of branches has been raised from 3 to 25. Foreign insurance companies are permitted to hold 51 percent of equity in life insurance, subject to meeting the minimum capital requirements. Legal consultancy services in third country or international law are permitted practice without requirement of license in Pakistan.⁵³

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⁵¹ Miscellaneous country documents on trade and investment in India. Also, See World Bank (2004).

⁵² Miscellaneous country documents on investment climate in Bangladesh.

⁵³ Miscellaneous documents on Pakistan.

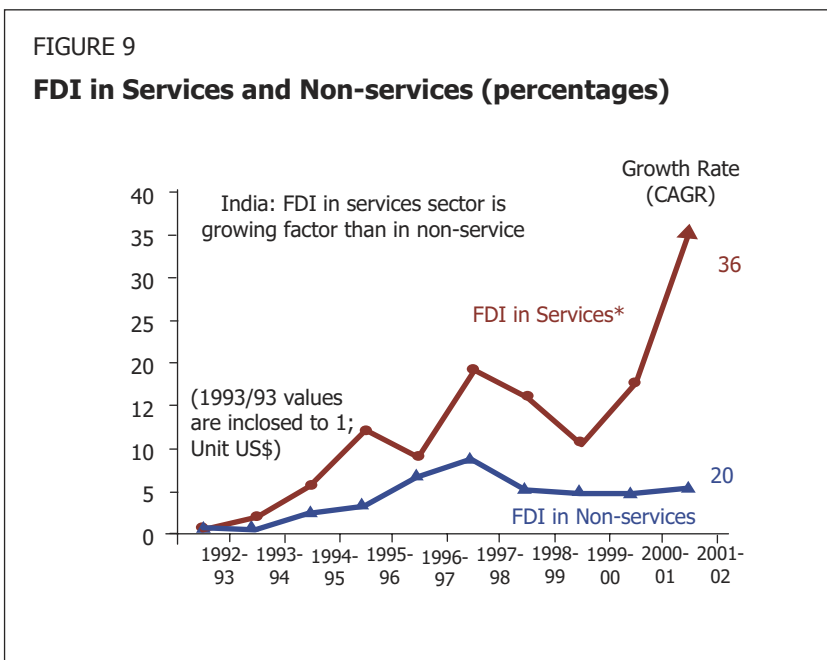
Bangladesh has similarly liberalised its investment and industrial policies since the 1990s to encourage investments in energy, telecommunications, oil and gas, ports, highways and other civil works, data processing and software development, and tourism services. In all but five sectors, it permits 100 percent foreign private investment with no prior approval requirements, or limits on equity participation, or restrictions on repatriation of profits and income, although there are requirements of local incorporation and registration with the Board of Investment. In response to such liberalisation, FDI in Bangladesh increased from virtually zero in the 1980s to US\$ 360 million in 2002. The service sector attracted around half of the total FDI in 2002, with the natural gas sector alone accounting for around 30 percent of total FDI inflows into the country. The latter sector has attracted the attention

of major corporations like Shell and Unocal for extraction and distribution of natural gas. Road and water transport, airports, power generation, transmission, and distribution, cellular telephony, health, and education services are other priority areas for foreign investment in Bangladesh. Examples of foreign commercial presence in services include the cases of American Express in banking, Westmont Power in power generation, IBM in computer services and TM International in telecommunications.⁵⁴

There is also evidence to indicate that FDI in services has implications for the region's export competitiveness in both services and goods. In Bangladesh, for example, the presence of several well-known multinational companies in exploration, production, and distribution operations, has implications for the country's export prospects in energy services. In India, FDI in telecommunications has played an important part in facilitating the growth of IT-enabled and BPO services.

*FDI flows in India's service sector*⁵⁵

As in the case of exports, India is again the most important player in driving FDI flows in services in South Asia and thus warrants separate discussion. There has been a structural shift in FDI flows into India with inflows being increasingly directed at the service sector and away from manufacturing. The average share of services in FDI rose from 10.5 percent for the 1990-94 period to 28.3 percent during the 1995-9 period.⁵⁶ FDI in services registered a cumulative average growth rate of 36 percent between 1992-93 and 2001-02 compared to 20 percent in the case of non-services. Figure 8 illustrates the



Source: World Bank (2004), Figure 1, p. 9. Based on *World Bank Indicator and Balance of Payments Statistics Yearbook* (2002).

⁵⁴ Miscellaneous documents on Bangladesh.

⁵⁵ Rupa Chanda, 'Services and India', Kaushik Basu (ed.), submitted to Oxford Encyclopaedia of India, New Delhi: Oxford University Press (in process, forthcoming 2005/06) and Rupa Chanda (2005), 'India's Stake in the WTO Services Negotiations', Chapter 2, *WTO at Ten: Looking Back to Look Beyond, Vol II: Issues at Stake*, Bibek Debroy and Mohammed Saqib (eds), Delhi: Konark Publishers Pvt. Ltd., pp. 21-74.

⁵⁶ Based on World Bank (2004).

broad sectoral trends in FDI inflows in India over the 1992-3 to 2001-02 period.

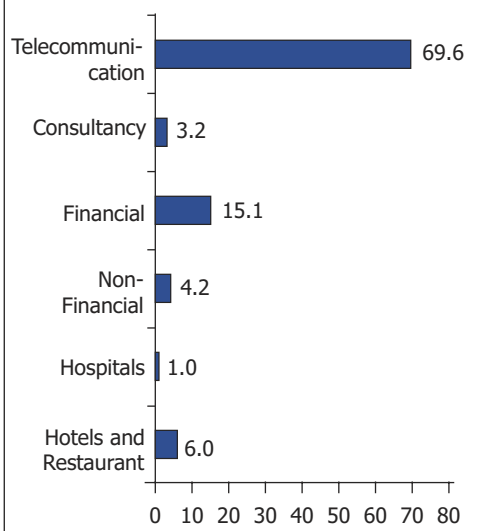
The growing significance of the service sector in India's FDI flows is a consequence of liberalisation in this sector. Much of India's structural and institutional reforms as well as its liberalisation/deregulation strategies since the initiation of its reforms in 1991, have involved the opening up of key services, such as telecommunications, banking, and insurance, in order to attract much needed foreign capital, technology, and to encourage competition and efficiency in these areas, with positive externalities for the rest of the economy. Many services, including, construction, tourism, health, and computer-related services, for instance, have been put on automatic approval route for FDI. Government monopoly in many critical services has been eliminated, with further liberalisation planned or already announced.

Telecommunication services have experienced the greatest amount of liberalisation. Today, fully owned foreign firms are allowed in some segments of the telecom sector; government monopoly in long distance telephony and internet has been eliminated and there is no restriction on the number of providers. FDI in voice telephony services has been permitted with a ceiling of 49 percent foreign equity participation and a proposal to raise the equity cap to 74 percent. Similarly, government monopoly in the insurance services sector has been eliminated and the sector has been opened up to private players, with a foreign equity ceiling of 26 percent through joint ventures and possibly to 49 percent in the near future. Banking services have also been liberalised with a 74 percent ceiling on foreign equity in private banks and a 20 percent ceiling on FDI and portfolio investment in public sector banks. It is proposed to permit 100 percent FDI in the banking sector, subject to automatic approval.⁵⁷ Software, tourism, health, and several other services are open to 100 percent

FIGURE 10

Share of Services in Inward FDI for Select Categories of Services, 1991-2002

Share of Services in Inw and FDI (1991 to 2002)



Source: Banga (January 2005).

foreign equity participation. There are other areas such as retail distribution, urban housing, real estate, environmental, and educational services where there is interest on the part of international players to enter markets like India and where there is likely to be liberalisation in future.

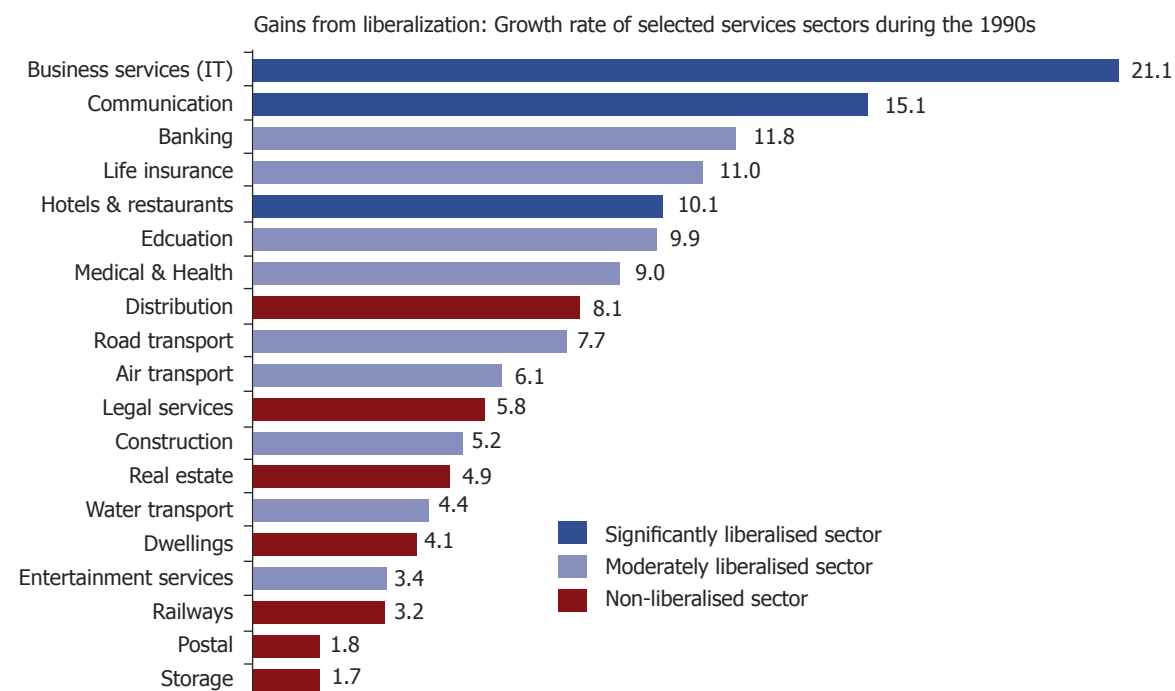
One finds that sectors that have undergone more liberalisation are also the ones that have attracted a larger share of FDI inflows. In India, FDI inflows have mainly been directed at telecommunication and financial services. Within the former, the largest recipient of FDI has been the cellular mobile segment. Figure 9 provides the disaggregated shares of services FDI for different categories of services.

Evidence also suggests that services that have been liberalised in terms of trade and FDI policies have also typically experienced higher growth rates. Figure 10 shows that there is a clear positive correlation between the degree of liberalisation in a service sector and its access to external markets, and the growth exhibited in that sector with regard to

⁵⁷Miscellaneous documents on India, including the Budget and Economic Survey.

FIGURE 11

Liberalisation and Growth Linkages in India's Service Sector (percent)



Source: World Bank (2004), Figure 6, p. 16. Based on staff estimates and CSO statistics.

output and employment opportunities. Areas such as business services (mainly IT and IT-enabled services), communication, banking, and insurance, which have been liberalised, have exhibited higher growth rates, with wider efficiency and growth benefits to the rest of the economy. On the other hand, services where there has been a limited opening, like air transport, legal, and real estate, services have grown much more slowly, with likely adverse effects on economy-wide competitiveness and growth performance.

Productivity estimates also corroborate the role played by competition and integration with global markets in improving efficiency in the service sector. Estimates by McKinsey indicate that telecommunications and software services have much higher productivity levels than other service sectors in India, owing to factors such as global and domestic competition and changes in ownership structure, which have in turn enabled technological

externalities, knowledge spillovers, improved management practices, and technology diffusion. In addition, liberalisation in certain services has also impacted positively on export opportunities. For instance, the opening up of areas like telecommunications to FDI has had a positive impact on export opportunities in IT and BPO services. There is also evidence, which indicates increased usage of services in manufacturing and resulting productivity gains in India's manufacturing sector. Further liberalisation of the service sector is likely to yield sector-specific and economy-wide gains in terms of growth, export, efficiency, and competitiveness.

4. BARRIERS AFFECTING SOUTH ASIA'S TRADE IN SERVICES

There are numerous external and domestic barriers to South Asia's services exports. The most pertinent barriers are those pertaining

to the region's mode 4 exports. Mode 4 restrictions take the form of immigration and labour market regulations and recognition requirements. In addition, for countries like India, which are engaged heavily in exporting through mode 1, recent legislation banning certain types of outsourcing (namely, government contracts) and domestic regulations such as data privacy laws in client countries, also affect services exports. Domestic factors, which impede the region's exports of services are mainly in the form of capacity constraints due to infrastructure, financial, and standard related inadequacies.

*BARRIERS TO MODE 4*⁵⁸

There are broadly two types of impediments to mode 4 exports from South Asia. These can be classified as either border measures or domestic regulatory barriers. The two are not completely distinct as domestic regulations affect the implementation of border measures while border measures have a bearing on the nature and use of domestic regulations. The main border measure is immigration regulation. The main domestic measures are recognition requirements and economic needs tests. In addition, there are discriminatory measures and other policies, which may implicitly constrain entry of workers from the region. These barriers are not specific to South Asia and generally impede mode 4 exports of services by developing countries.

Immigration Regulations: Administrative and Procedural Barriers

One of the main restrictions on movement of natural persons is due to visa-and work permit-related procedures. Mode 4 is regulated by highly developed visa systems in the major recipient countries. These visa

systems differentiate among a large number of categories in terms of length and conditions of stay. Most host countries retain flexibility to target areas of shortage through temporary migration, exclude areas of oversupply, and minimise any negative impact on the domestic labour market. Usually, these schemes also specify minimum salary requirements and skill levels and subject foreign workers to a wide range of local labour laws and sub federal and provincial regulations.

The main problem is that such procedures do not separate between temporary and permanent movement of labour and treat mode 4 under usual immigration legislation and labour market regulations, which are applicable to migrant workers, though in principle mode 4 is supposed to be distinct from permanent migration. Moreover, such regulations are often quite cumbersome, non-transparent, costly, and arbitrary. They include strict eligibility conditions for applications of work permits/visas, cumbersome procedures for actual application and processing of these visas and permits, and limitations on the length of stay and transferability of employment in the overseas market. All of these restrictions raise the direct and indirect costs (due to delays and uncertainty) of entering the foreign market, thereby often eroding the cost advantage of the foreign service supplier and curtailing the scope for trade in services via mode 4.

A case in point is that of Indian software professionals, who require work permits/visas to provide on-site software services in overseas markets such as the US. Time consuming and burdensome procedural requirements are involved in obtaining work permits and visas. Employers filing for such work documents on behalf of foreign workers, must meet certain preconditions, such as providing evidence of an extensive search for a local person

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⁵⁸ Much of the discussion in this section is adapted from Rupa Chanda (May 2004), 'Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations', South Centre; Geneva; Rupa Chanda (2004), 'Movement of Natural Persons: A Case Study of South Asian Countries', CUTS, Jaipur; and Rupa Chanda (1999), ICRIER Working Paper.

There are also numerical ceilings on visas and work permits in major host countries. For instance, the US puts a cap on the number of H-1B visas, its employment-based visa for temporary workers, and varies this ceiling depending on economic conditions and lobbying by its domestic industry associations.

before hiring a foreign national, meeting stringent advertising requirements and search specifications, and demonstrating the infeasibility of training a local person. Failing all these other avenues only can an application be submitted for a foreign worker. There may also be additional requirements specifying that the foreign worker must train a local person for replacement within a certain time period or age and residency based restrictions.

The application process itself can be quite burdensome. A typical application requires exhaustive details about the employer, the job, efforts to find local personnel and evidence of failure to do so, details of the candidate in terms of his experience, skills, and training, and verification of other personal details. The filing and processing of information may take anywhere from two weeks to over two months, or even longer, at times almost a year, due to the application requirements. Often temporary workers may be subject to a two-permit entry procedure, one for an entry visa and another for a work permit. It may be necessary in some cases to leave the passport in the embassy during the processing period, anywhere from a week to one month, during which time the service provider or business visitor is unable to travel to another country as he does not have his travel documents. Such long and tedious processes hurt service sectors where personnel need to be shipped overseas at short notices and where delays mean a loss of opportunities and business. This is a major impediment to the smooth flow of exports of many services.

There are also conditions that are attached to entry, especially for contractual and employment based service providers, which can delay the labour certification process and issuance of the visa/work permit. One such

condition is wage parity. It is required that wages paid to foreign service providers be at par with those that would have been paid for a local person in the same position and with similar qualifications. The principle underlying the wage parity requirement is that overseas nationals are to be hired to address the shortage of suitably qualified service providers in the host country and not to save money by hiring cheap labour from abroad. However, the wage parity requirement also acts to negate the cost based advantage of many developing countries in exporting labour-intensive services and works against the very concept of comparative advantage based on cost differentials.⁵⁹

There are also numerical ceilings on visas and work permits in major host countries. For instance, the US puts a cap on the number of H-1B visas, its employment-based visa for temporary workers, and varies this ceiling depending on economic conditions and lobbying by its domestic industry associations. The cap on the H-1B visa was raised from 65,000 to 110,000 and further to 195,000 at the time of the IT boom in the late 1990s. This ceiling has now reverted to the original ceiling of 65,000, following the recent downturn in the US economy. Such cyclical changes in quantitative ceilings on entry create uncertainty. Moreover, they tend to hurt certain service sectors such as software more than others, as the majority of temporary contract-based employment in this sector occurs under the H-1B visa. Such limits also result in efforts to circumvent the visa cap by sending persons under other visas, such as the intracompany transferee (ICT) visa category (L-1 visa in the US), where conditions are less stringent, processing is faster, and various conditions like wage parity are not applicable.

⁵⁹ In the US, the employer is required to obtain prevailing wage information from authorities or other sources and pay at least 95 percent of this wage rate to foreign candidates. In the EEA countries, wage rates paid to foreign candidates must be in line with the rates that have been set by collective labour agreements. Work permit applications are normally refused if the candidate is shown to be earning less than the minimum agreed wage for the type of work specified. Failure to comply with the wage legislation can create problems in receiving future work permits, rejection of work permit applications, and penalties if there is a violation. Moreover, there may also be stipulations on how the salary must be paid, such as under specified schemes, in order to prevent misuse of the provisions.

Many companies are known to have brought in service providers under L-1 and then subcontracted them to perform activities, which would normally qualify for H-1B visas. Thus, such administrative barriers result in manipulation of the visa system, and cause a blurring of boundaries between different categories of visas, and may ultimately not be that effective in achieving their actual purpose.

Restrictions also apply to natural persons after they enter the foreign market. For instance, there are limitations on the transferability of work permits and mobility of the provider after he enters the host country. The work permit usually pertains only to the specific job detailed in the application and does not permit the individual to take up any other work in the host country. To transfer, the entire application process may have to be repeated. While such provisions are intended as safeguards to prevent foreign labour from entering the host country's permanent labour market, they limit the flexibility of moving service personnel to various client sites to render the service and act as a disincentive to hiring foreign nationals.

There are also difficulties that temporary service providers experience with extensions and renewals of their visas and work permits, which may be subject to stringent conditions, re-application requirements, and high fees. Often, after the long wait in filing and processing information, only a single entry permit may be granted, thus requiring the service provider or company to undergo the same cumbersome process once again. Such procedures may discourage companies, typically smaller ones, from hiring foreign nationals and may force them to use local persons who may be in short supply and costlier.

(i) *Case of the US*⁶⁰ The administrative requirements for issuance of non-immigrant

visas in the US help illustrate the preceding points. The hiring of foreign workers for employment in the US normally requires approval from several government agencies. Employers who hire workers under certain visa categories, such as the H-1B, H-1C, H-2A, and H-2B categories, are first required to seek labour certification through the US Department of Labour (DOL). However, this does not guarantee issuance of the visa. The employer must petition the Bureau of Citizenship and Immigration Services (BCIS) for a visa, after receiving the DOL's approval. Only following this petition does the Department of State (DOS) issue a visa number to the foreign worker for entry into the US. Thus, multiple departments and agencies are involved in regulating the immigration process.

There are five steps that must be met to obtain labour certification. First, the employer must ensure that the position meets the qualifying criteria for the requested programme (e.g., H-1B's need to have a bachelor's degree in a specific specialty). Second, the employer should complete the ETA (Employment and Training Administration) form designated for the requested programme. This includes obtaining supporting documentation. Third, the employer must ensure that the wage offered equals or exceeds the prevailing wage for the occupation in the area of employment. Fourth, the employer must ensure that the compliance issues concerning hiring of foreign workers are completely understood. And fifth, the completed ETA form has to be submitted to the designated Department of Labour office for the requested programme.

The processing time for labour certifications can vary from several months to even several years, due to the large number of administrative requirements that are involved.⁶¹ Currently, the process to obtain an employment-based temporary

The processing time for labour certifications can vary from several months to even several years, due to the large number of administrative requirements that are involved. Currently, the process to obtain an employment-based temporary labour certification (H-2A, H-2B) usually takes months through the state agency and the DOL's regional office.

⁶⁰ Much of the discussion in this section is based on draft note by Ganguly (May 2005) on barriers to movement of natural persons from India in the US.

⁶¹ Current processing time for labour certification by DOL can be found at <http://workforcesecurity.doleta.gov/foreign/times.asp>

Entry is even more difficult for service providers at lower skill levels, such as artisans and tradesmen, who may be technically competent in their trade and qualified on the basis of work experience, but are not highly educated or qualified professionally.

labour certification (H-2A, H-2B) usually takes months through the state agency and the DOL's regional office. There are two main reasons for the delay in the labour certification process. One main reason is the wage parity condition. The time needed to determine the prevailing wage varies from state to state, from one to four weeks. The second main reason is the employer search requirement. Employers are required to post a notice to hire H-1Bs for at least 10 days in the workplace. They have to place a job order with the local employment office, and an advertisement in a publication for at least three days. Such burdensome procedures and documentation requirements certainly make it less attractive for employers to hire foreign workers.

Apart from these formalities, employment for certain categories of temporary workers is subject to numerical limitations. As noted earlier, there are annual ceilings on the number of H-1B (specialty occupations) and H-2B (occupations in which persons providing services cannot be found in US) and H-1C categories. For instance, currently there is an annual quota of 65,000 visas under the H-1B category, of 500 visas under the H-1C programme for registered nurses, and 66,000 visas per year for H-2B workers.⁶² The annual cap of 65,000 new H-1B workers was reached in mid-February of 2004, within less than five months into the fiscal year, with 22,000 H-1B applications still pending from the previous year.⁶³ In addition, due to the setting aside of nearly 7,000 H-1B visas for Chile and Singapore as part of recent US free-trade agreements with those countries, effectively only 36,000 new H-1B visas were available in 2004.⁶⁴ Indian IT professionals were prevented from entering the US market (on a new H-1B visa) until

October 2004 due to the early exhaustion of such visas in that year.

There are also domestic regulations concerning length and extension of stay, accompaniment by family members, travel within the US, and change of admission status. In addition to these federal level regulations, in some sectors there are also regulations by state governments and professional associations at the subfederal level. Thus, there are multiple layers of administrative requirements, which constrain mode 4 exports to the US market, by limiting numbers and by raising the costs of entry.

Biases and discretion in admission of foreign workers

There are also biases in migration regimes towards higher skilled categories of workers. For instance, work permit applications and visas for higher skill and functional levels, such as intracompany transferees (ICTs), are easier to obtain than permits for personnel such as coders or systems analysts. In particular, migration regimes are liberal towards movement which is associated with the establishment of commercial presence while middle and lower level service professionals moving on contracts or in an independent capacity face stringent admission requirements and procedures with respect to conditions on wages and prior employment. Entry is even more difficult for service providers at lower skill levels, such as artisans and tradesmen, who may be technically competent in their trade and qualified on the basis of work experience, but are not highly educated or qualified professionally. Since most developing countries, including the South Asian countries, have a comparative advantage in contract-based and independent

⁶² The yearly number of H-1B visas for foreign workers and professionals dropped by two-thirds for fiscal 2004 from 195,000 in the years 2001-2003.

⁶³ The notice from the BCIS (INS) is at http://uscis.gov/graphics/publicaffairs/newsrels/h1bcap_NR.pdf.

⁶⁴ *Computer World*, September 2003.

movement of workers and are typically not in a position to establish commercial presence overseas given the high capital requirements, such biases constrain their ability to export through mode 4.

In recent years, these biases have been accentuated with the introduction of new migration schemes to encourage entry of skilled workers into the industrialised countries. These schemes target particular occupations and thus create an uneven playing field between different sectors and categories of workers. The Australian and US visa systems are cases in point.

Both Australia and the US focus on temporary entry by the highly skilled.⁶⁵ In Australia, 73.5 percent of entrants under the temporary business category fall under the two highest skill groups of managers/administrators or professionals compared to 38.8 percent of the total Australian population. In addition to managers, executives, and specialists, Australia's visa schemes cater to those with recognised skills in specific areas or those associated with investment. In recent years, temporary residence business visas have been issued in large numbers to meet shortages of computing professionals and there has been priority processing for nurses, another key area of high demand. For the year 1999-2000, Australia issued an extra quota of 5,000 places in addition to the 35,000 places already designated for skilled workers. Immigration statistics for the US similarly reveal the relative importance of skilled workers in overall temporary admissions into the US. For instance, temporary business visitors constitute the largest class of admissions (1.3 million entrants between 1995 and 1999) followed by specialty occupations (H-1Bs) across industries as wide ranging as IT, engineering, consulting, accounting, and architecture (384,191 admissions in

2001), and intracompany transferees (L-1s) (328,480 admissions in 2001). All three categories fit under the highest skill groups. In the recent past, the US increased the number of specialty occupation visas, as noted earlier, to enable more skilled workers, especially in the IT profession to enter the US market. In addition to the bias towards managerial and professional groups, the US also has special visa schemes to address shortages in specific skilled occupations like nursing.

In recent years, many other host countries have also changed their immigration regulations to encourage temporary migration, particularly by skilled workers, mainly to address shortages in various skilled professions like computer-related services and medicine. For instance, Singapore changed its regulations for the issuance of work permits to encourage larger numbers of foreign entrepreneurs and foreign skilled workers. The United Kingdom created a new type of visa to select highly qualified persons on the basis of a point system, for employment in the country. Canada amended its point-based selection system in June 2002 in order to better identify candidates who were required by the Canadian labour market.⁶⁶ In August 2000, Germany introduced a policy to hire 20,000 information technology specialists for a period of five years. Even a nontraditional host market like Japan recently altered its policy to encourage entry by skilled workers, by extending the initial duration of stay from six months to one year.⁶⁷

In contrast, entry by lower skilled and semi-skilled workers is mainly governed by bilateral labour agreements and seasonal and guest worker programmes, usually between governments, employers, and industry representatives. These agreements are typically for shorter periods, usually less than one year, with strict conditions to prevent

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⁶⁵ All statistics provided in this section for the US and Australia are based on Nielson and Cattaneo, in Mattoo and Carzaniga (eds), *Moving People to Deliver Services* (eds), (2003).

⁶⁶ SOPEMI (2002).

⁶⁷ OECD (2002) and SOPEMI-OECD (2001).

On the whole, low skilled movement from South Asia does not benefit from predictable immigration regimes. There have been occasions when major host countries, such as the UAE have stopped issuing visas to low skilled service providers from the subcontinent in view of changing domestic market conditions and requirements.

renewals and extensions and transferability between employers. They are also subject to quantitative ceilings on the number of visas per year and require some form of certification before admission is granted. There are requirements to return to the source country upon completion of work and a specified gap of some period before readmission is allowed. There are also specifications regarding terms and conditions of operation, such as on wages and hours of work within the host country, to ensure worker welfare and address employers' concerns. For example, the US H-2B scheme for temporary nonagricultural workers performing services that are not available in the US is subject to a quantitative ceiling of 66,000 per year. It requires certification from the US Department of Labour attesting to the need for such workers from overseas and that such entry will not result in any adverse local labour market effects. Moreover, the employer's need cannot be continuous and must be one time, seasonal, peak load, or intermittent and any extensions are subject to recertification. South Asia has only a few bilateral arrangements with other countries, for select categories of workers, such as nurses. On the whole, low skilled movement from South Asia does not benefit from predictable immigration regimes. There have been occasions when major host countries, such as the UAE have stopped issuing visas to low skilled service providers from the subcontinent in view of changing domestic market conditions and requirements.⁶⁸ Such unpredictability in migration regimes is another constraint to mode 4 exports from South Asia.

Another increasingly important source of discretion in immigration regimes is the need to defend national security, particularly after the September 11 attacks. In November 2001,

the US State Department announced that there would be increased security checks on all male non-immigrant visa applicants aged 16-45 from Arab or Muslim countries. This has resulted in an additional 20-day waiting period, which enables name checks against FBI databases. From 5 January 2004, every person entering the US with a visa at US commercial international airports, and in 14 major seaports is being electronically fingerprinted and photographed at immigration inspection station. Non-immigrant workers have to notify the INS of any change of address or employment. While such anti-terrorism measures may be necessary for US security, the operational modalities of such regulations have tended to be discretionary and biased against workers from certain countries, including those from South Asia.

There have also been ethnic and nationality related biases in the treatment of workers from South Asia, in several host countries. For instance, in March 2003, over 200 Indian IT professionals were rounded up (along with other Indians), detained, and ill-treated by the Malaysian police in Kuala Lumpur.⁶⁹ Although the Malaysian government ordered an investigation into this incident, the actions were explained as being part of constant efforts by Malaysian authorities against illegal immigrants. However, there appeared to have been an ethnic bias to this raid and no irregularity was found among the IT professionals who were detained.⁷⁰ A similar incident occurred in 2002 against Indian IT professionals in the state of Texas in the USA. Several Indian IT workers were rounded up, handcuffed, and made to parade publicly. There have also been instances of bans imposed on recruitment of certain kinds of workers and sudden repatriation of South Asian workers,

⁶⁸ See, http://news.bbc.co.uk/1/hi/world/middle_east/422161.stm

⁶⁹ According to news reports, several of the professionals were slapped and kicked, handcuffed, made to kneel or sit in a police car, and their personal belongings were confiscated. Their passports and visas were allegedly defaced and they were asked to apply for fresh visas. The detained IT professionals had gone at the invitation of Malaysian companies.

⁷⁰ *The Hindu* (15 March 2003).

such as Bangladeshi migrants from Malaysia, following the economic crisis in that country in 1997.⁷¹ These incidents indicate that in addition to discretion and biases in entry norms, there is also lack of transparency and fairness and a lot of arbitrariness in post-entry norms and conditions concerning foreign workers.

*Economic needs test*⁷²

One of the most pervasive measures affecting movement of natural persons (and also commercial presence by foreign service providers) is the economic needs tests (ENTs). The latter may take the form of labour market tests, management needs tests, or manpower planning requirements, or other types of tests and conditions. In the context of mode 4, ENTs are most prevalent in areas like medical and dental services and professional and business services like engineering. They tend to cover categories like contractual and employment based temporary workers such as specialists, technicians, and other professionals, while often excluding the category of ICTs. ENTs also apply to some lower skilled occupations such as construction work, tour operator services, and taxi services.⁷³

While the ultimate objective of the ENT is to restrict market access to foreign service providers based on some assessment of the necessity of allowing entry into the host market, its application varies across countries. In some cases, it is conducted on a case by case basis, for instance as each application for licence or permit is submitted, while in other cases, such tests may be conducted periodically. The purpose of the test may also vary. For instance, the test may be applied to determine the issuance of a licence or permit or authorisation to a foreign service provider,

or it may be applied to determine the need to allow entry to additional service suppliers based on local market supply and demand conditions, or it may be used to determine the number of foreign service suppliers to be allowed entry. The US applies ENTs in the form of pre-admission and post-admission checks, where the most rigorous measure is the pre-admission check, which may take as long as two years to complete. In some cases, ENTs are combined with quantitative restrictions and the total number of service suppliers allowed to enter in a specific sector may be subject to an ENT.

The main problem with ENTs is their lack of clearly established criteria and procedures for application, making them unpredictable, non-transparent, and arbitrary barriers to mode 4. The substantive content of ENTs and how the findings of these tests are translated to undertake decisions on mode 4, either in quantitative terms or otherwise, is not generally known to affected countries. There is also no clear definition of what constitutes an ENT. In particular, there is no uniformity in the objective of an ENT with some countries using the concept of needs tests, others referring to labour market tests, others to local unavailability of a service, and yet others to needs based quantitative limits. Hence, the meaning of ENT is quite broad. Moreover, there is also some lack of clarity on whose perspective an ENT should be administered from, whether it is to be administered from the point of view of consumers or that of market incumbents, whether it should take into account considerations of overall economic efficiency, or equity. Such lack of precision in the definition, objective, criteria, and administration of ENTs, makes them potentially discriminatory.

While the ultimate objective of the ENT is to restrict market access to foreign service providers based on some assessment of the necessity of allowing entry into the host market, its application varies across countries.

⁷¹ <http://www.scalabrini.asn.au/atlas/bangladesh99.htm>

⁷² Much of the discussion in this section is based on WTO (S/CSS/W/118), (30 November 2001).

⁷³ See, WTO (S/CSS/W/118), (30 November 2001) for a list of occupations where such tests are applicable across different member countries.

There are several different mechanisms that are used to assess qualifications and skills for entry purposes. An important mechanism is the mutual recognition agreements, signed by two countries or groups of countries, at the national or the sub-federal levels for specific sectors and occupations and typically administered by relevant professional bodies and associations.

Recognition requirements

Lack of recognition of qualifications, skills, or experience is one of the most common barriers affecting movement of natural persons. It either denies market access altogether to foreign service providers or induces such suppliers to perform in a capacity that is below their level of qualifications (academic or otherwise). South Asia's mode 4 exports are affected by recognition requirements.

There are several different mechanisms that are used to assess qualifications and skills for entry purposes. An important mechanism is the mutual recognition agreements (MRAs), signed by two countries or groups of countries, at the national or the sub-federal levels for specific sectors and occupations and typically administered by relevant professional bodies and associations. MRAs are mostly used in certified and licensed professions like medical and accountancy services where there are established international standards and practices and benchmarking and determining cross-country equivalence is feasible. Another mechanism for according recognition is a test of competence. The latter may take various forms, including an employer interview or test; an on-the-job competency assessment—during or after a period of service—a probationary or trial period of supervised work, an examination of knowledge, skills, and language abilities, and an assessment of credentials or paper qualifications, where institutions or individuals are assessed for comparability, 'substantial' equivalence or equivalence. Such tests may be implemented by employers, government agencies, or by professional bodies and associations.

Although recognition schemes, whether formal ones like MRAs or otherwise, have public policy objectives like ensuring quality and standards of services and protecting consumer and national interests, and thus are not *per se* protectionist, it is in their

implementation and procedural aspects that they may act as market entry barriers. They may impose additional costs or curtail the scope for practice. A few cases from selected services that are commonly subject to such requirements help illustrate the point.

For example, in the absence of MRAs in areas such as nursing and dental services between the host and source country, the foreign worker may be required to take host country examinations and undergo tests of competence in order to qualify for practice in these markets. This applies to South Asian health care professionals who wish to practice in countries such as the US, UK, and Australia as their qualifications are not recognised in the latter markets. Recertification is also a prerequisite to registration with local bodies or associations in order to practice. These recertification and competence tests are subject to various problems of administration and bias (discussed at length later in this paper). Moreover, they impose financial and time-related costs, and tend to create an uneven playing field between countries that are party to such MRAs and those that are not, or between preferred source countries (for historical, cultural, or other reasons) and others. Even in countries where medical qualifications of South Asian health care professionals are recognised, such as in the Middle East, Africa and parts of Asia, some of these host countries now require that South Asian medical graduates and postgraduates undergo examinations to qualify for practice. In addition, there is also reported discrimination against medical graduates from the subcontinent in the Middle East, in terms of the compensation they receive relative to professionals holding equivalent British or US medical degrees.⁷⁴

There are similar problems of recognition in the case of nurses, technicians and other paramedical staff from the subcontinent.

⁷⁴ There is even further discrimination in that an Indian holding a British medical degree is still paid less than a westerner holding the same degree. However, this is more a case of racial discrimination than a direct recognition issue *per se*.

Nursing and technical qualifications from Indian institutions are not recognised in the developed countries. South Asian nurses are required to pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) exam in order to practice in the US. In addition, there are stringent documentation requirements for processing the application and for visa and placement, which can cause major delays in going overseas.⁷⁵

The problem of certification and verification of qualifications is even more difficult in the case of lower skilled occupations such as repair and maintenance services, masonry, and construction work, where there may be no formal paper qualifications. Actual demonstration of work quality may be the only means of judging competence. Further, lack of clearly specified criteria for judging uniformity between qualifications of different countries may lead to discretion in granting entry.

Recognition accorded through registration or licensing is often subject to discriminatory requirements, like residency and nationality conditions. Non-residents or foreign nationals may not be allowed to practice in certain sectors or may be restricted to practice only certain types of activities within the sector. For instance, in the legal services sector, non-resident or non-national legal professionals are often only allowed to act as counsellors and consultants, but are not allowed to represent clients in court or sign any legal documents.

In addition to outright rejection or acceptance of foreign service personnel on the basis of various recognition requirements, there are also sectors where the application of such measures is highly discretionary. The latter problem is common in services where there may be no clearly specified international or other criteria for judging equivalence between home and host country

qualifications and work experience, where there may be no established licensing and certification mechanisms, where non-academic qualifications and work experience may be important, and where there may be no institutional and regulatory mechanisms. Thus, self-employed, independent movement or contractual movement in non-accredited professions and trades, tend to be most subject to such discretion. Services in point include IT and engineering services, and trades like plumbing, welding, and carpentry. In the software services area, for instance, the US requires software professionals to have three years of post-graduation experience in the occupation and a degree directly related to it.⁷⁶ However, as pointed out by the Indian IT industry, software personnel from developing countries such as India may have the skills to deliver the service even with 1 to 2 years of experience due to their strong engineering base and background. The discretion and uncertainty in recognising previous experience and qualifications create a barrier for developing countries.

There may also be inherent problems with the implementation of recognition requirements due to lack of clarity on substantive elements of recognition and inherent biases that may be present in implementation, especially against certain types of service providers more than others. For instance, an assessment approach may fall short of truly assessing a person's knowledge and skills as it may only take into account formal qualifications, or have a bias towards assessing local knowledge and domestic regulations, or may use unfamiliar examination formats. Assessment can also involve prohibitive fees for the applicant or heavy administrative costs. Furthermore, the assessment of paper qualifications may not be the optimal way of measuring true competencies of the persons involved. Lack of clarity on issues such as what

There may also be inherent problems with the implementation of recognition requirements due to lack of clarity on substantive elements of recognition and inherent biases that may be present in implementation, especially against certain types of service providers more than others.

⁷⁵ *The Economic Times* (4 May 2004).

⁷⁶ Computer programmers and systems analysts applying to enter the UK are required to have five years or more of experience in a high-level (managerial, analytical, or executive) position or a graduate degree plus two or more years of senior post-graduation work experience. For further details see Chanda (1999).

Recognition requirements in licensed professions like accountancy, legal, and health services are also subject to subfederal regulations at the state and provincial levels in countries such as the US and Canada.

constitutes competence, how non-academic qualifications like work experience are to be judged and their comparability with academic qualifications, what constitutes comparable training and standards across countries and how to bridge such differences, create the scope for a discretionary application of recognition schemes. It is also important to note that developing countries are at a particular disadvantage with regard to recognition arrangements due to the absence of national recognition systems and professional bodies or industry associations for many services along with the dissimilarity of their training systems and regulatory regimes from those of developed countries, as also their lack of technical and regulatory capacity to undertake negotiations on mutual recognition. In sum, although recognition requirements may be justified on public interest grounds, they may in practice create significant obstacles to the free flow of service providers across countries.

(i) *State and subfederal requirements*⁷⁷: Recognition requirements in licensed professions like accountancy, legal, and health services are also subject to subfederal regulations at the state and provincial levels in countries such as the US and Canada. The licensure is often the responsibility of each individual state/territory/province. Thus, multiple layers of eligibility and prior conditions may apply. Moreover, even multiple levels of certification may be involved, such as at the subfederal and provincial levels.

Take the case of accountancy services, where as shown in Table 8 of the Annex, there is movement of Indian professionals to the US. The main licensing organisations of the accounts profession in the US are the 54 State Boards of Accountancy, the American Institute of Certified Public Accountants (AICPA) and the 54 state societies of CPAs.

The State Boards of Accountancy are agencies of state governments and each state board operates under legislation enacted by the concerned state. As India does not have a mutual recognition agreement with the US in the accountancy services sector, Indian accountants who plan to work in the US, must apply to the licensing board in the state or territory in which they wish to practice. They must not only meet the requirements of that licensing board with respect to education and experience, but must also pass licensing examinations.

The process involves three steps in most US states. First, service providers must apply to the state board of accountancy for the state in which they wish to register. They must provide details of their qualifications, which are then assessed by a foreign credentials evaluator, at a fee ranging from \$90 to \$160 for academic credentials, along with extra fees for shipping costs. The minimum eligibility condition is the equivalent of a US bachelor's degree.⁷⁸ Secondly, once the application to the state board is accepted, the applicant must pass the AICPA Uniform Final Examination, which is a professional licensing examination used by all state accountancy boards to ensure that CPA applicants possess a mastery of technical knowledge needed to enter the CPA profession. Foreign professionals must take tests in four subjects—auditing and attestation, business environments & concepts, financial accounting and reporting and regulation. The cost of taking the exam varies across state jurisdictions, but the estimated costs for first-time candidates applying to take all four sections is huge, in the range of \$575-\$800.⁷⁹ Thirdly, after passing the CPA exam, applicants in most states need to satisfy additional requirements for receiving a license, such as passing an ethic exam of

⁷⁷ Much of the discussion in this section is based on Ganguly (May 2005).

⁷⁸ This is based on the fees charged by a popular evaluation agency, Academic Credentials Evaluation Institute, Inc.

⁷⁹ Applicants pay fees based on their application status (first-time applicants/re-examination applicants) and the number of examination sections to be tested. For instance, in Washington State, the administrative fee for a first time applicant ranges from \$ 83 to \$ 124.50, depending upon the number of sections the applicant is taking and a section fee that varies from \$ 100.50 to \$ 134.50. For further details on fees and application process for CPA, see <http://www.cpa-exam.org/>

the respective state. They must meet work experience requirements, which are typically specified at around 12 to 24 months. They must also pay the appropriate license fee for the state. These fees vary across states, costing around US\$ 100-200 in California as opposed to US\$ 330 in Washington State. Some states may also require an in-state office or in-state residency for licensure purposes. The US GATS commitment schedule in accountancy services highlights the fact that 14 US states require an in-state office and 25 states require in-state residency for licensing foreign accountancy professionals.⁸⁰ Further, one state also requires US citizenship for licensing.

Thus, foreign accountancy professionals face a lengthy consuming and costly licensing process in the US. Nationality, establishment, and residency conditions constrain market access even if other qualification requirements are met. In addition, there are also requirements in some states that a specified number or fraction of the owners of an accounting firm be local citizens/residents and members of an approved professional organisation, which implicitly curtail the scope for provision of such services by foreign professionals. It is also important to note that even if restrictions appear to affect domestic incumbents and foreign entrants similarly, the foreign service provider is likely to be more adversely affected, as he/she is at an initial disadvantage in entering a market that is dominated by domestic incumbents.

Similarly, in the legal profession, since qualifications from South Asian countries are not recognised in the US, professionals from

South Asia who wish to practice in the US, must obtain an additional degree from an approved law school in the US. They must also pass a state bar examination, and satisfy the bar's other eligibility requirements. This process would need to be repeated if the person wants to practice in another state and to register with the state bar association. Even after satisfying these requirements, some jurisdictions in the US may permit them only to work as foreign legal consultants and further only to advise on the law of their home country only. Similarly, in a sector like architectural services, state and provincial licensing requirements are present, thus effectively curtailing the geographic scope of practice or forcing the service provider to undergo multiple certifications in order to have geographic mobility within the host market.

Likewise, health professionals from South Asia must re-certify in the US and UK. In the US they must pass the Educational Council for Foreign Medical Graduates (ECFMG) exam for doctors and in order to be recognised as a specialist, certification is required by a specialty board following a three-to-five year programme that includes work in a recognised hospital. Moreover, as the requirements vary across states in the US, these professionals must meet the specific requirements of the state where they plan to work. Indian medical graduates wanting to go to the US have to clear the US Medical Licensing Examination (USMLE) in order to be certified and be able to practice. This examination, which is also applicable to US medical students, assesses knowledge and understanding of basic biomedical science as well as clinical science.⁸¹ In the

⁸⁰ An in-state office must be maintained for licensure in Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, and Wyoming. An in-state residency is required for licensure in Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, and West Virginia.

⁸¹ There are three steps to the USMLE. The first step assesses knowledge and understanding of key concepts of basic biomedical science with stress on principles and mechanisms of health, disease, and modes of therapy. The second step assesses medical knowledge and understanding of clinical science considered essential for patient care under supervision, including stress on health promotion and disease prevention. The third step assesses medical knowledge and understanding of biomedical and clinical science considered essential for the unsupervised practice of medicine with stress on patient management in ambulatory settings. The first two steps can be taken in any order but the third one can only be taken once the first two have been cleared.

Trade through movement of natural persons may also be adversely affected by domestic policies, which tend to favour domestic service providers over foreign suppliers of services. One common source of discrimination against foreign service providers is government procurement and sourcing policies.

UK, medical graduates and postgraduates from South Asia are subject to stringent certification requirements. They are required to take a PLAB (Professional and Linguistic Assessment Board) examination. Only after clearing the PLAB are they entitled to registration, and to a job in the UK. However, here again there are limitations, as the registration is for only a limited period of five years and the PLAB exam can be taken only in the UK. Postgraduates are subject to further requirements in order to be eligible for practice, despite holding an MD or MS degree from their source country. They are required to clear the fellowship or membership and only after clearing an open general examination are they eligible for selection to a consultant's post.⁸² Similar procedures for certification and registration apply to foreign medical graduates seeking to practice in Canada and Australia.

Other barriers

Trade through movement of natural persons may also be adversely affected by domestic policies, which tend to favour domestic service providers over foreign suppliers of services. One common source of discrimination against foreign service providers is government procurement and sourcing policies. Some commonly affected sectors include education, data processing, construction, and consultancy services. Governments may give procurement preferences to domestic suppliers of services in tendering processes for sectors like construction and consultancy services. They may also reserve or prefer to contract government work to domestic as opposed to foreign service suppliers. They may also grant price-based preferences to domestic suppliers.

Another policy-based source of discrimination between foreign and domestic service providers is the requirement of

government approval or authorisation for entering certain service activities. These approval procedures not only tend to favour domestic service providers, but in some cases may also altogether preclude entry by foreign service providers. The criteria for authorisation and failure to grant permission are often not defined and thus entry is subject to discretionary approval by government authorities.

Government subsidisation policies also create an uneven playing field between domestic and foreign service persons. There are often explicit and implicit subsidies given to domestic service suppliers in sectors like construction and engineering services. For instance, some governments subsidise pre-feasibility studies for construction and engineering projects to domestic service providers. In addition, rules with regard to accounting or advertising practices, and consumer protection laws may also potentially discriminate against foreign service providers. Foreigners are not eligible for many subsidy schemes, and to buy real estate in many states of the US. Loans by the Federal Small Business Administration are restricted to US citizens or companies that are 100 percent owned by US citizens and whose directors are all US citizens.⁸³ Such differences in treatment, although often guided by national interest and public policy objectives, put foreign service providers at a disadvantage.

Apart from policies which may affect the competitiveness of foreign service suppliers and thus their ability to enter another market, policies which affect earnings and conditions of stay can also act as non-tariff barriers. One such constraining factor is taxes. In the US, a non-immigrant working temporarily may be subject to a heavy tax burden due to the structure of taxes and benefits available to resident versus non-resident aliens. There

⁸²The Open General Examination consists of five papers: Paper A—a multiple choice question paper, paper B—a comprehensive English paper, paper C—a medical short answer paper, paper D—a written English paper, and paper E—an oral examination.

⁸³ Ganguly (May 2005).

are four major components of tax for any worker in the US, namely, federal income tax, state tax, social security tax, and Medicare tax. In the absence of a double taxation avoidance treaty, income from any US source is taxable whether it is received while the foreign worker is a non-resident alien or a resident alien. The amount of tax depends on a foreign workers' filing status and is important for determining the deductions and credits he can avail. For instance, resident aliens can claim personal exemptions and exemptions for dependents in the same way as US citizens, while nonresident aliens generally can claim only one personal exemption. Thus, a temporary worker who is in the US for a short period may be subject to a high tax burden.⁸⁴

Service providers are also required to make social security and other contributions in the absence of totalisation agreements between the source and host country governments. However, they are not eligible for receiving the associated benefits. For example, South Asian professionals must make social security and Medicare contributions to the US government. These contributions are required despite the fact that the service provider is on deputation abroad for a period, which is less than the period of stay required to avail of social security benefits in the future (ten years in case of the US). The service provider not only pays social security taxes in the US, but may also be making equivalent contributions back home, and also does not recover his contributions upon returning to the home country. In effect, the application of the national treatment principle to social security taxes effectively amounts to double taxation of the foreign service provider's earnings, and is akin to a trade tax or disguised tariff that erodes his earnings. The current contribution rate, also known as the FICA tax rate, is 7.65 percent for employees and 15.30 percent for self-employed

workers. The social security tax rate is 6.2 percent on earnings of up to US\$ 87,900 and the Medicare rate is 1.45 percent on all earnings.

Likewise, other policies of national treatment, such as insistence of minimum wages or wage parity may have the effect of nullifying cost-quality based competitive advantage of developing country service suppliers. While it can be argued that such conditions, especially the payment of minimum wages to unskilled or semi-skilled foreign suppliers, are required to ensure labour standards and are in the interests of such workers, they are analogous to conditions of price equalisation or minimum prices in the case of merchandise exports.

In sum, there are numerous explicit and implicit barriers to services trade through movement of natural persons. Although such measures are not necessarily motivated by protectionist reasons, in practice they have the effect of inhibiting such trade by raising costs, creating opaqueness, uncertainties and discretionary scope, reducing earnings, and ultimately even undermining the very basis for such trade.

BARRIERS TO MODE 1 EXPORTS

Although exports through cross border supply in areas like BPO and IT enabled services are largely unregulated and free at this time, increasingly, legal and regulatory frameworks are posing a challenge to such exports, which is of concern to countries like India. Laws concerning data protection, privacy of information, liability, and consumer protection are pre-empting outsourcing when adequate and compatible legislation in these areas is absent in the delivery economy. For example, the EU requires countries to enact data protection laws that are compatible with its own for offshoring in sectors like health care and financial services. Such regulatory barriers cause firms to either not outsource

There are numerous explicit and implicit barriers to services trade through movement of natural persons. Although such measures are not necessarily motivated by protectionist reasons, in practice they have the effect of inhibiting such trade.

⁸⁴ Ibid., 83.

There is also growing private sector opposition to outsourcing, which could pose challenges to BPO exports of established players like India as well as BPO export opportunities for other countries in South Asia that are trying to become globally competitive.

the work or to do so only through captive subsidiaries in these markets. Lack of a regulatory framework for conducting on-line payments and transactions or for protecting consumers can also result in work not being offshored.

External barriers in the form of protectionist legislation and opposition in external markets are also becoming a problem, especially in key developed markets like the US and the UK. There is a clear move towards policy-based intervention in these markets, a direct response to the successful performance of developing countries like India and the media-led publicity about the displacement of workers and loss of white collar jobs in the offshoring countries.

The state of New Jersey (NJ) in the US has passed a bill, which bans the outsourcing of government contracts to other countries. The bill requires government contracts to be handled only by US nationals or residents unless they involve specialties for which US workers are not available. In several other states, including, Maryland, Connecticut, Washington, and Missouri, there is similar legislation to prohibit or restrict state government related contracting with firms that offshore to low wage developing countries. Labour unions like the Communication Workers of America are also lobbying against outsourcing by US companies to developing countries like India. Another discriminatory practice that has recently emerged in the US is the right of customers to obtain information on the source country from which a call centre service is delivered.

There is also growing private sector opposition to outsourcing, which could pose challenges to BPO exports of established players like India as well as BPO export opportunities for other countries in South Asia that are trying to become globally competitive. There have been attempts in Germany to protect locals from outsourcing

to low wage locations. There is growing sentiment in the UK as well against outsourcing to developing countries. British Telecommunications came under attack for exporting jobs to India. The union went on strike against British Telecommunications and protested against the company's plans to open two call centres in India, which would provide employment to over 2,000 Indians.⁸⁵ Labour unions in some developed countries are also increasingly raising issues such as working hours and parity in wages between developing and developed country service providers, aspects which could completely erode the cost and geographic advantage of South Asia in offshore service delivery.

There is also the growing possibility that immigration related legislation in key outsourcing markets could affect the ease with which outsourcing work is done by developing countries like India. Chief among these is the possibility of intracompany transferee visas like the L-1 visa in the US being eliminated or capped, which would affect the ability of offshore suppliers in India and possibly the other South Asian countries from sending over managerial and specialised staff to the client site to understand and copy client processes and transfer these to the delivery company.

It is difficult to gauge the net impact of such protectionist pressures on global outsourcing. The state bans on government outsourcing are not likely to have a major impact on major delivery countries as US government projects constitute one percent or less of outsourcing in countries like India. However, there is a possibility that such protectionist challenges may grow and spread beyond government outsourcing to the private sector, especially when prevailing unemployment rates are high and there are recessionary conditions in the major developed economies.⁸⁶ While the imperatives of cost reduction and global competitiveness will require companies to continue outsourcing to low cost centres, such

⁸⁵ *The Economic Times* (7 May 2003) and Press Trust of India (5 June 2003).

⁸⁶ Such protectionism has become more of an issue recently in the US given the high unemployment rate of 5.2 percent in the country's IT sector, its highest ever and up from 3.7 percent in 2000 (Press Trust of India, 5 June 2003).

barriers and protectionist pressures could have an impact on the volume and type of business outsourced.

DOMESTIC CONSTRAINTS

There are several domestic factors, which prevent the region from realising its export potential in its key modes of export interest and in attracting FDI in services. In the context of mode 4 exports, lack of uniformity in training and standards within the countries gives rise to deficiencies and considerable divergence in the quality of service providers. In the case of healthcare services, there is a lot of disparity in standards of training for doctors in the region. In India, for example, degrees recognised by the Medical Council of India (MCI) are based on examinations that are set by individual states with very different standards of training and institutions. Degrees from different institutions and regions of the country are not equivalent. A degree from the All India Institute of Medical Sciences (AIIMS) is not equivalent to a degree from a regional university, though both institutions may be recognised by the MCI. The problem of non-uniform training standards and the current certification system is one of the major impediments to the recognition of Indian medical professionals abroad as graduates from reputed institutions carry the burden of being clubbed together with poorly trained graduates from lower rung institutions.

In the case of nurses and technicians also, there is a lot of disparity in domestic training standards. Degrees or diplomas conferred by different institutions are not necessarily equivalent. In India, nursing degrees or diplomas are under the purview of individual state nursing councils, giving rise to divergent standards across states. In the case of technicians, the problem of standards is even more severe as there are no regulatory bodies in the region to ensure minimum standards and training via a common curriculum and examination.

Similar issues of quality and standardisation of services are becoming

important in the IT services sector. Due to the surge in demand for IT professionals, there has been a rapid growth in the number of IT training institutions within countries like India. However, there has not been a sufficient standardisation of these institutes, many of which are in the non-formal sector. As a result, there is a likelihood of dilution of quality and standards of training in this sector, which could hurt mode 4 exports of such services. In semi-skilled professions and trades, such as carpentry, repair work, or plumbing, the lack of occupational guilds for apprenticeship and training and for certifying competence and quality affects exports of such manpower.

In the context of outsourcing, there are physical infrastructure and manpower constraints, which affect exports by major players like India. Physical infrastructure constraints result from underdeveloped telecommunications infrastructure, slow network connectivity, insufficient bandwidth, high connectivity costs, and erratic power supply. Human resource constraints are emerging in countries like India due to the lack of adequately trained and quality manpower, low levels of computer literacy, high turnover rates, absence of required language abilities (especially the lack of an English speaking workforce) as well as other specialised skills beyond the first tier cities and towns. For example, in the Indian case, human resource constraints are becoming a major limiting factor due to the high turnover rates, saturation of the labour market, absence of a pipeline of educated, quality workers, dearth of training institutes in the voice area, rising wages, and poaching among offshore service providers. There are also regulatory gaps, such as the absence of national data protection legislation, which could affect procurement of outsourcing contracts from markets like the EU in future.

Services imports in the region are mainly affected by regulatory barriers, which limit the extent of foreign investment in services. In services such as retail distribution, legal,

There are several domestic factors, which prevent the region from realising its export potential in its key modes of export interest and in attracting FDI in services.

Services imports in the region are mainly affected by regulatory barriers, which limit the extent of foreign investment in services. In services such as retail distribution, legal, accountancy, and air transport services, policies towards foreign commercial presence or presence of foreign service suppliers, remain restrictive.

accountancy, and air transport services, policies towards foreign commercial presence or presence of foreign service suppliers, remain restrictive. Retail distribution remains closed to foreign firms in India, due to a strong trader lobby opposition and concerns about employment and equity. Likewise, legal and accountancy services remain closed to foreign firms and service providers due to regulatory capture by concerned regulatory bodies. Although air transport services have been partly opened up to FDI, current policy does not allow any equity stake by a foreign airline, in order to limit competition to the state-owned airlines in the case of India. There are also limitations in the absorptive capacity arising mainly from infrastructure constraints, which constrain FDI inflows in services in the region.

5. SIGNIFICANCE OF GATS COMMITMENTS FOR SOUTH ASIA

The GATS negotiations are significant for the South Asian countries in terms of securing and improving access to key markets of export interest under mode 4 and mode 1, strengthening GATS disciplines that are pertinent to these two modes, and liberalising their own commitments, particularly in mode 3. The following discussion assesses the original commitments as well as more recent offers (initial and where available revised) in mode 4 and mode 1 by major markets and highlights their implications for enhancing South Asia's service exports. The discussion also assesses the commitments and offers made by the South Asian countries in mode 3 and their implications for enhancing imports of services through foreign commercial presence in these economies.

CHARACTERISING COMMITMENTS IN MODE 4

Under the GATS, the original horizontal as well as sectoral commitments filed by

countries have been the most limited in the case of movement of natural persons (mode 4) relative to all other modes of supply. This holds true even with the initial and revised offers that have been made in mode 4. Hence, the implications for South Asia's exports under mode 4 are quite limited.

There are numerous limitations with the mode 4 commitments and offers.⁸⁷ One major limitation is that they are horizontal rather than sectoral, which means that the commitments and attached conditions apply to all service sectors, with no greater access given in sectors like professional services of particular relevance to mode 4. Moreover, most of these horizontal commitments are 'unbound' except for specified categories of service providers, based generally on the level of skill, type of occupation, and purpose of movement. The sectoral commitments are unbound for mode 4 and refer to the horizontal commitments. This implies that sectoral needs and interests are not addressed by the mode 4 commitments and very general commitments have been made. Table 32 illustrates the very low share of full commitments in mode 4 across a wide range of sectors where mode 4 is an important form of trade.

Another limitation of the mode 4 commitments is that they are biased towards higher skill categories of service providers, although mode 4 technically covers all skill levels; entry requirements are bound for three main categories of service providers. Table 33 indicates the skewed nature of mode 4 commitments towards higher skill and functional categories of service providers in the original commitments made under the Uruguay Round. These include business visitors, personnel engaged in setting up commercial presence, such as intracompany transferees (ICTs), and personnel in 'specialty occupations'. The commitments on ICTs come closest to full bindings. More than one-third of mode 4 entries refer to intracompany transferees. Out of a total of 328 total

⁸⁷ Chanda (1999) for a detailed assessment of the GATS commitments in mode 4.

GATS Commitments in Mode 4

Table 32. Commitments Percentage by Sector and Mode of Supply (professional services)

I. MARKET ACCESS (Percentages in each activity)	Cross-border			Consumption Abroad			Commercial Presence			Natural Persons		
	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.	Full	Partial	No.
Legal Services	18	67	16	24	67	9	4	87	9	2	91	7
Accounting, Auditing and Bookkeeping Services	29	41	30	41	45	14	9	89	2	2	86	13
Taxation Services	44	44	12	53	44	3	15	82	3	0	88	12
Architectural Services	52	26	22	68	20	12	24	72	4	0	92	8
Engineering Services	50	28	22	55	28	17	24	72	3	0	85	5
Integrated Engineering Services	59	22	19	66	22	13	31	59	9	0	94	6
Urban Planning and Landscape Architectural Services	45	36	18	52	36	12	24	73	3	0	97	3
Medical and Dental Services	34	29	37	61	34	5	21	68	11	0	87	13
Veterinary Services	54	19	27	69	23	8	31	58	12	4	81	15
Services provided by Midwives, Nurses, Physiotherapists	33	33	33	47	53	0	20	80	0	0	93	7
Other	33	67	0	33	67	0	0	100	0	0	100	0
II. NATIONAL TREATMENT												
Legal Services	22	60	18	31	58	11	16	76	9	2	91	7
Accounting, Auditing and Bookkeeping Services	34	36	30	50	36	14	32	64	4	4	80	16
Taxation Services	41	41	18	56	35	9	35	56	9	12	71	18
Architectural services	52	30	18	64	22	14	56	38	6	8	80	12
Engineering Services	45	31	24	60	21	19	52	43	5	9	79	12
Integrated Engineering Services	63	19	19	72	13	16	72	13	16	9	78	13
Urban Planning and Landscape Architectural Services	52	30	18	61	24	15	58	33	9	9	85	6
Medical and Dental Services	47	18	34	66	24	11	45	45	11	3	87	11
Veterinary Services	62	12	27	81	8	12	58	35	8	8	77	15
Services provided by Midwives, Nurses, Physiotherapists	40	27	33	53	47	0	53	47	0	0	93	7
Other	33	50	17	33	50	17	33	67	0	17	67	17

Note: Full = Full commitment (indicated by "None" in the market access or national treatment column of the Schedule)

Partial = Partial commitment (limitations are inscribed in the market access or national treatment column of the Schedule)

No = No commitment (indicated by "Unbound" in the market access or national treatment column of the Schedule)

Percentages may not add up to 100 due to rounding. Basis of total is listed sectors.

Source: WTO Secretariat. Background Note on Accountancy Services, Geneva, Dec 1998.

entries, 240 relate to executives, managers, and specialists and 135 deal explicitly with intracompany transferees. These are all categories that are typically linked to some form of commercial presence, i.e., movement of capital. Only 17 percent of all horizontal entries cover low skilled personnel and only 10 countries have allowed some form of entry to 'other personnel'. Very few schedules (some 15%) refer to the category of contractual service suppliers (CSS). Within this category the commitments mostly cover contractual employees of a foreign establishment. They rarely cover self-employed or independent service suppliers, usually specified as qualified specialists or independent professionals in the schedules. Thus, the commitments are typically linked to commercial presence and do not facilitate movement in an independent capacity. Overall, for the most part, the existing commitments exclude categories of interest to developing countries.

Another limitation of the mode 4 commitments is the lack of clarity and definition at various levels. For instance, there is no definition of the different service provider categories across countries, although there are some common features across the schedules in each category. While some schedules contain descriptions of executives, managers, and specialists, without explicitly indicating that these refer to ICTs, others combine elements of executives and managers in a category of "senior managerial position", and yet others refer to ICTs as inclusive of executives and managers, though not necessarily specialists. In the case of business visitors and service salespersons, there is an overlap in definitions. Some schedules describe business visitors as foreign persons seeking entry into another member's territory for purposes of setting up a commercial presence and service salespersons as persons seeking entry for purposes of negotiating sales of a service on behalf of

TABLE 33

Types of Natural Persons Supplying Services (horizontal commitments)

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

Notes: Total number of entries by those 100 WTO members that have included commitments on Mode 4 in the horizontal section of their schedules.

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 9, p. 27.

an enterprise. Other schedules provide the opposite definition. A third group of schedules merges these two categories, combining elements that are common across the two. Thus, the definitions of the categories are either too broad, or overlapping, or unclear in terms of their boundaries.⁸⁸

There is also lack of definition as to what constitutes temporary and a permissible length of stay for individual service provider categories across different countries. This ambiguity enables countries to leave unspecified the period for entry and stay, for the more restricted categories of persons such as specialists and 'other persons' where in any case the commitments are fewer and subject to more conditions. Most countries have specified the 'temporary period' only in the

case of ICTs and business visitors, but here too the length of stay varies, ranging from 90 days for business visitors to 2 to 5 years in the case of intracompany transferees. Table 34 shows the different lengths of stay accorded to different groups of service providers under the mode 4 commitments. The ambiguity about the term 'temporary' has also resulted in the use of restrictions and conditions that fall under the purview of general immigration legislation and labour market regulations and thus measures affecting permanent movement of labour. Hence, there is a discrepancy between mode 4 in principle under the GATS and mode 4 in its legal interpretation under the commitments, as also noted earlier, stemming from this basic lack of definition of temporary stay.

TABLE 34

Duration of Stay by Type of Natural Persons^a

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

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

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 10, p. 28.

⁸⁸ See informal note on categories of natural persons, WTO (3 October 2003) for a detailed discussion of classification and definitional issues in mode 4.

TABLE 35

Entry Conditions/Restrictions by Type of Natural Persons^a

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

^a See Table 5 for the legend

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

^c Total workforce of the country concerned

^d Absence of labour-management disputes

Source: WTO, Presence of Natural Persons, Background Note, Geneva, Dec 1998, Table 11, p. 29.

Likewise, there is lack of clarity about additional requirements such as economic needs and labour market tests in terms of the criteria based on which they would be applied, how they would be administered, and whom they would target. For instance, while

economic needs test has been required by most countries for the category 'other persons', it has not been specified in the schedules as to what kind of service providers fall under 'other persons'.

TABLE 36

Other Discriminatory Treatment affecting Work and Living Conditions

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

^a Total number of entries by those 100 WTO members that have included mode 4 in the horizontal section of their schedules.
Source: WTO, Presence of Natural Persons, Background Note, Geneva, December 1998, Table 12, p. 30.

TABLE 37

A Revised Model Schedule of Horizontal Commitments in Mode 4⁸⁹

Sector/sub sector	Limitations on market Access	Limitations on national treatment	Additional commitments
Horizontal commitments			
Temporary entry and stay of natural persons for all sectors	<p>4) No restrictions except where specified</p> <p>1. Short-term intra-company visits</p> <p>This category covers Intra-Company Transferees who are defined as employees of a company or a partnership:</p> <p>(a) Who enter for short periods of stay of upto 1 year at its host country affiliate office to provide assistance or advice or service to a foreign client;</p> <p>(b) Who are sent to its affiliate office in the host country for training and development</p> <p>(c) Who are sent to its affiliate office to discuss business activities and collaborative ventures</p> <p>2. Short term visits by skilled and professional contractual service suppliers</p> <p>This category covers Contractual Service Suppliers-1 (CSS-1) who are employees of a foreign-based company or partnership, who have formal academic qualifications (minimum of a university bachelors degree or diploma), and who go to the host country for short periods of stay of upto 1 year to:</p> <p>(a) perform a service pursuant to a contract between their employer and a client located in the host country where the employer does not have an affiliate office and where remuneration must be paid solely to the employer;</p> <p>(b) fulfill qualification and licensing requirements where presence in the host country is required for this purpose</p> <p>3. Short-term visits by less skilled, non professional contractual service suppliers</p> <p>This category covers Contractual Service Suppliers-2 (CSS-1) who are</p> <p>(a) screened and deployed overseas by manpower/recruiting agencies/concerned government departments/guilds in the sending country; or</p> <p>whose services are solicited temporarily by source or third country firms without affiliate presence in the host country</p> <p>These persons do not have formal academic qualifications but have on-the-job or other training and experience, and go to the host country for short periods of stay of up to 6 months to:</p> <p>(a) perform a service pursuant to a contract between their deploying agency/firm and a client located in the host country and where remuneration must be paid solely to the agency or firm deploying the person</p>	None, except for the requirement of a Service Provider Visa and the conditions attached to entry and temporary stay under such a visa, as specified below and discussed in Sections 5.1.1, 5.1.2, 6.1, and 6.2 of this paper. ⁹⁰	Undertake obligations pertaining to transparency of entry rules and procedures and their amendments, adherence to specified time frame for processing and notification, conditions pertaining to the use of domestic regulations such as standards, qualification requirements and procedures, and adherence to multilateral guidelines for MRAs. ⁹¹

⁸⁹ This model schedule is in part based on the schedule discussed in Chaudhuri *et. al.* (July 2003). Some changes have been made to that schedule based on the proposals and suggestions made in this paper, particularly with regard to coverage of lower skilled service providers under the CSS category.

⁹⁰ See annex of conditions and qualifications in Chaudhuri *et. al.* (July 2003) for further elaboration.

⁹¹ See Section 7 for a discussion of the areas where additional commitments need to be undertaken. Further elaboration can be found in Annex 2 in Chaudhuri *et. al.* (July 2003).

- (b) fulfill qualification and competence test requirements in the form of local aptitude tests, apprenticeships, and learning period, where presence in the host country is required for this purpose

Negative listing of scheduled sectors where this category of natural persons would not be covered at all, can be provided in the horizontal schedule and similarly carved out of the corresponding commitment in the sectoral schedules.

Restrictions such as quantitative ceilings and wage parity conditions may be scheduled horizontally for this category along with a listing of specific services where these conditions will be waived/relaxed

Alternatively, none can be scheduled under this category in the horizontal commitments, followed by a list of services where certain restrictions would apply. The relevant sectoral schedules would then list these restrictions.

4. Short-term visits by independent professionals

This category covers natural persons (typically self-employed, free lancing professionals) who have formal training and qualifications and who travel to the host country for short periods of stay of up to 1 year to:

- (a) perform a service pursuant to a contract between them and a client located in the host country and where remuneration is paid solely to the natural person
- (b) fulfill qualification and licensing requirements, where presence in the host country is essential for meeting such requirements.

Thus, definitional problems and lack of clarity on aspects like coverage, duration of stay, and application of restrictions, provide considerable scope for interpretation and discretionary action by immigration officials. Such ambiguities create possibilities for undermining the value of any commitments made in mode 4 in practice.

Mode 4 commitments are also very restrictive. Horizontal commitments in mode 4 are subject to limitations in the case of 100 countries as opposed to only four countries for mode 2 (consumption abroad). There are very few cases of full commitments and fewer cases of partial commitments than for other modes of supply. A variety of restrictive conditions are attached to the mode 4 commitments. The most common among these include:⁹²

- a) Entry restrictions for certain sectors and categories of personnel;
- b) Restrictions on the duration of stay of natural persons;
- c) Pre-employment conditions and other related requirements;
- d) Economic needs, labour market, and management needs tests;
- e) Quantitative restrictions by numerical quotas for persons who can enter, specifications on the proportion of total employment that can be met by foreigners, specifications on the proportion of total wages;
- f) Requirements for technology and skill transfer (training local staff);
- g) Discriminatory tax treatment;
- h) Requirement of government approval;

⁹² This discussion is based on a review of a sample of about 30 existing horizontal schedules of commitments covering a wide range of countries.

Six communication proposals have been tabled on mode 4, by Canada, Colombia, the EC and its member states, India, Japan, and the US. The proposals seek to improve mode 4 commitments, either by increasing market access.

- i) Requirement of work permits, residency, and citizenship in certain sectors;
- j) Recognition of professional qualifications by the importing country; and
- k) Restrictions via minimum investment requirements.

The most prevalent market access and national treatment limitations relate to the type of service provider and the reason for his movement (such as negotiating sales, delivery of specialised skills, or commercial presence, etc.) and corollary restrictions on duration of stay, eligibility conditions, and additional requirements that the foreign service supplier must satisfy. Pre-employment is the most important criterion and is referred to in over 100 cases. There are some 80 cases where there are limitations in the form of numerical quotas and 50 cases where there is a requirement of an economic needs test. Fifty countries have scheduled conditions relating to domestic minimum wage legislation along with additional conditions on work hours and social security. There are also horizontal limitations with respect to geographic and sectoral mobility, mobility across firms, foreign exchange related restrictions, non-eligibility of foreign service providers for subsidies, and other government regulations. In the case of 46 countries there are horizontal limitations with respect to real estate. Many countries have also indicated that their commitments would be suspended in the case of labour-management disputes. Industrialised countries have also subjected their offers in business services to various conditions relating to labour and technical standards, specified educational and other qualifications, membership of associations, and specifications on technical experience.⁹³ Tables 35 and 36 summarise the various kinds of restrictions or conditions attached to the mode 4 commitments.

⁹³ Such limitations are in contrast to commitments on commercial presence where few countries have placed a blanket denial to capital mobility although there are some limitations in the form of foreign equity ceilings, requirements on the nationality of board members, sector-specific conditions on foreign investment, and economic needs test requirements for establishing commercial presence. However, on the whole commitments are far more liberal for capital movement in services.

⁹⁴ The detailed proposals pertaining to each of these ideas as well as other suggestions are discussed at length in Sections 6 and 7. Only a summary of the main issues and proposals made is provided here.

Finally, in addition to the existing limitations on commitments, there are also MFN exemptions by countries in selected sectors. Thirty-eight of these exemptions are relevant to mode 4, of which 32 are preferential agreements and the rest are reciprocal. Where measures have been specified in detail, they mostly relate to granting of work permits, waiving of ENTs, or improved access for certain countries. Factors listed include traditional sources of supply, regional organisations, and language, among others.

Ongoing negotiations in mode 4

Services negotiations commenced on 1 January 2000 as mandated under the agreements reached in the Uruguay Round. They have been progressing on the basis of requests and offers among member countries. Mode 4 has played an important part of these discussions.

(i) Initial communications on mode 4: Six communication proposals have been tabled on mode 4, by Canada, Colombia, the EC and its member states, India, Japan, and the US. The proposals seek to improve mode 4 commitments, either by increasing market access or by increasing the effectiveness of existing market access, and addressing several of the aforementioned limitations with mode 4 commitments. The main ideas proposed in these communications from member countries include:⁹⁴

- Introducing greater clarity and predictability in mode 4 commitments, for instance, through agreement on common definitions on service provider categories and providing information on restrictions like economic needs tests;
- Improving transparency of commitments, for instance, through greater use of notification procedures and transparency

guidelines for providing information on all relevant requirements and procedures and changes to the latter;

- Introducing a special system of administrative procedures such as a GATS visa, separate from usual immigration visas, which would be more streamlined and liberal and backed by appropriate safeguards and legal procedures under the WTO; and
- Granting more market access under mode 4, for instance, by covering more mode 4 relevant service sectors in the scheduling process, by covering a wider range of service provider categories, and by reducing or removing some of the associated conditions on mode 4.

(ii) *Requests in mode 4:* In the request-offer process, several requests from developing as well as developed countries have made reference to mode 4. The thrust of the requests in mode 4 by the developing countries, including India and Pakistan, is to expand market access beyond higher skill categories like ICTs and business visitors to include categories like contractual service suppliers and independent service providers explicitly in the commitments, and essentially to de-link mode 4 from commercial presence. For instance, the horizontal request on mode 4 by India proposes the introduction of a GATS visa that is distinct from usual immigration visas and calls for a general improvement in administrative procedures for entry, and removal of wage parity requirements and social security taxes.⁹⁵ It also calls for the elimination of all economic needs tests, nationality and residency requirements, and of all requirements for residency and work permits that must be applied for separately from petitions for admission under mode 4.⁹⁶ India and Pakistan have also requested coverage of a wider range of service provider

and skill categories, for better application of GATS recognition norms to prevent discriminatory use of recognition barriers on mode 4, greater transparency in the work permit/visa issuance process, and clarity in defining different service provider categories and various terms used in the commitments.

The sectoral requests in mode 4 not only echo the horizontal proposals outlined above but also refer to sector-specific barriers and issues of concern. For instance, India's request in the computer and related services sector calls for a full commitment in mode 4. In addition to the aforementioned proposals like the GATS visa and exemption from social security taxes, this request also calls for due recognition of training and educational qualifications and experience for software professionals. India's sectoral request in architectural services also calls for the removal of residency or citizenship requirements for practice and entry into MRAs, to facilitate practice by its architects in other countries.⁹⁷

(iii) *Initial and revised offers in mode 4:* To date, all the major markets of export interest to South Asia under mode 4, including the US, EU, Australia, Singapore, and Japan, have submitted initial as well as revised offers.⁹⁸ Although the offers in mode 4 are not significantly more liberal than the original commitments in this mode, there are a few improvements in some member country commitments. These changes include extending the commitments to cover more service provider categories and service sectors, including some that had been requested by developing countries in the request process, clarification of definitions of some service provider categories, and increases in the length of stay and removal/relaxation of some restrictive conditions for certain categories.

For instance, the EU has made additional horizontal and sector-specific commitments

The horizontal request on mode 4 by India proposes the introduction of a GATS visa that is distinct from usual immigration visas and calls for a general improvement in administrative procedures for entry, and removal of wage parity requirements and social security taxes.

⁹⁵ See the horizontal request made by India on mode 4.

⁹⁶ See the horizontal request made by Colombia on mode 4.

⁹⁷ See the sectoral requests made by India in computer and related services and in architecture services.

⁹⁸ WTO, WT/TPR/OV/9 (20 Feb. 2004).

Key host countries like the US have not liberalised their commitments in mode 4. The US' revised horizontal offer in mode 4 still applies only to service salespersons, intracorporate transferees, and specialists, with no expansion to include additional categories such as independent professionals and contractual service suppliers, as requested by some of the South Asian countries.

in mode 4. It has clarified the definition of ICTs as covering managers, specialists, and a new category, that of graduate trainees, i.e., persons with a university degree transferring for career development or training purposes. There is further elaboration in the EU offer for the contractual service suppliers (CSS) category, which is broken down into employees of juridical persons, which have no commercial presence in the EC and a new CSS sub-category, i.e., independent professionals. Thus there is an extension to categories like graduate trainees and independent professionals, and movement, which is not necessarily linked to commercial presence, though still catering to relatively skilled and specialised service providers. Another improvement in the EU offer is its removal of restrictions like the economic needs test in the case of ICTs and business visitors and greater flexibility in duration of stay for certain categories. For instance, business visitors in certain categories are permitted to stay up to 90 days in any 12 months while contractual service suppliers who are engaged as employees of juridical persons can stay up to 6 months cumulative in any 12-month period. There is also more elaboration on market access conditions for various subgroups, particularly for the two CSS sub-categories, in terms of prior employment, nature and duration of the contract, length of stay, required qualifications, and associated sectors.

Canada has similarly expanded the scope of its mode 4 commitments, removed some associated restrictions, and clarified certain definitions. For instance, in the case of business visitors, it has expanded the scope of services this group can supply and has extended the permissible length of their stay. Under the ICT category, it has clarified the definitions of executives, managers, and specialists. It has also clarified the conditions for professionals. Moreover, Canada has removed the labour market test requirement for all of these service provider categories. Similar improvements in terms of scope, greater clarity, and reduced restrictions, are also present in some other developed country offers.

Japan's revised offer in mode 4 has likewise improved over its earlier commitments. It has been expanded to include contractual service suppliers and independent professionals. The eligibility criteria for independent professionals have been simplified. The duration of stay has been extended for business visitors, and the various categories of service providers have been better defined, with a listing of eligibility conditions and exceptions.

Some improvement is also reflected in a few sectoral offers, though typically in the less sensitive and already more open sectors. For instance, the Australian offer in computer and related services removes the economic needs test requirement on mode 4 and removes the specification on number of years of experience or qualification for mode 4. However, the sectoral offers still remain unbound in mode 4 as in the earlier commitments.

However key host countries like the US have not liberalised their commitments in mode 4. The US' revised horizontal offer in mode 4 still applies only to service salespersons, intracorporate transferees, and specialists, with no expansion to include additional categories such as independent professionals and contractual service suppliers, as requested by some of the South Asian countries. Moreover, the revised offer still contains numerous prior employment and functional hierarchy conditions. It provides no further clarification on the definition of different categories and thus allows room for discretionary interpretation of eligibility under the specified categories. It does not extend the duration of stay under any category and maintains the quantitative ceiling of 65,000 for specialty occupations, as earlier. The only change is with regard to transparency concerning US policies and procedures on mode 4, with the US offering to establish a single Internet-based information resource to obtain information.

Overall, there is little substantive improvement in the initial or revised offers in mode 4. Extensive use of restrictions

and conditions continue to characterise the commitments, including prior employment and functional and hierarchical criteria for entry, wage parity, numerical ceilings and quotas, and discretion in according due recognition to qualifications and experience. Moreover, some of the horizontal offers, such as the EU's, note that any additional conditions listed in the sectoral schedules would be applicable, thus potentially undermining some of the improvements and liberalisation undertaken in the horizontal offer. Conditions such as nationality and residency requirements, language barriers, and exclusion of certain regions, would be applicable to CSS in selected sectors, thus partly diluting the liberalisation undertaken in this category under the horizontal offer. Several members would also continue to apply restrictions like numerical ceilings and quotas. Finally, and most importantly, the basic structure and framework of the mode 4 commitments remains flawed. There is still no clear separation of mode 4 from immigration rules and procedures and the distinction between permanent and temporary movement is still not evident from the commitments. The basic problem of unbound sectoral entries in mode 4 remains, with reference to only horizontal and thus generic liberalisation in mode 4, and thus failure to address sector-specific needs and interests, also continues. National treatment is also unbound in the offers, implying that discriminatory conditions could apply to foreign service providers.

Hence, no meaningful liberalisation has been undertaken in mode 4 from the point of view of South Asian countries. Relevant categories of service providers have been excluded or have been subject to numerous restrictions. Despite some improvement in transparency, there remains considerable scope for discretionary interpretation of eligibility conditions and requirements. Two basic shortcomings continue with the commitments in mode 4. The first is that they do not distinguish between temporary

movement and permanent migration in terms of the associated administrative modalities and mechanisms. Most countries treat movement of natural persons as a migration rather than a trade issue in their commitments, thus complicating the mode 4 negotiations with considerations of labour displacement, national security, and cultural assimilation that relate mainly to permanent migration flows. The second shortcoming is that there is too much emphasis on higher skilled and professional service providers and no commitments on low and semi-skilled service provider categories, which as highlighted earlier, is of export interest to South Asia.

CHARACTERISING COMMITMENTS IN MODE 1

Market access commitments/offers in mode 1 by the major industrialised countries are fairly liberal. For instance, the US has made mostly full commitments in business and professional services such as accounting, auditing, management consulting, and research and development services and also in other areas such as travel and tour services, distribution, and value added telecommunication services such as e-mail, voice mail, on-line information and/or database retrieval services, which are relevant for outsourcing. The same is true of other developed countries like Australia and Canada. But the EU has placed commercial presence and residency conditions in their mode 1 commitments in areas like legal services or have left their mode 1 commitments unbound in areas like health services and R&D services.

Figures 12 and 13 show the coverage of market access commitments in mode 1 with regard to various services that can be provided on-line, and Figure 14 highlights the nature of these commitments. It is evident from these figures that there is scope for further liberalisation in mode 1 through improved coverage of relevant services and through the scheduling of more full commitments, as less than half of the commitments are full or unrestricted at present. This liberalisation

No meaningful liberalisation has been undertaken in mode 4 from the point of view of South Asian countries. Relevant categories of service providers have been excluded or have been subject to numerous restrictions.

FIGURE 12
Market Access Commitments on Cross-border Supply

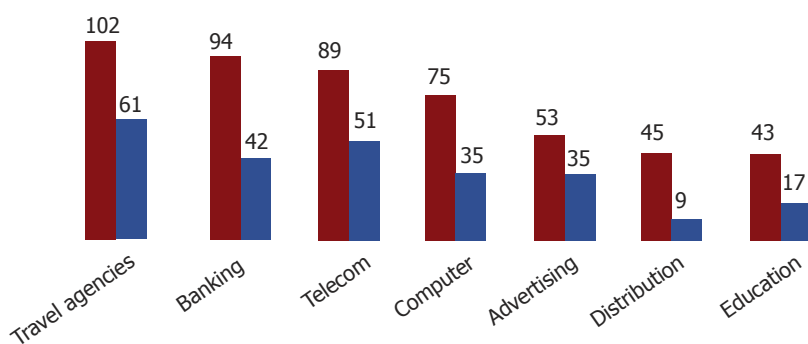
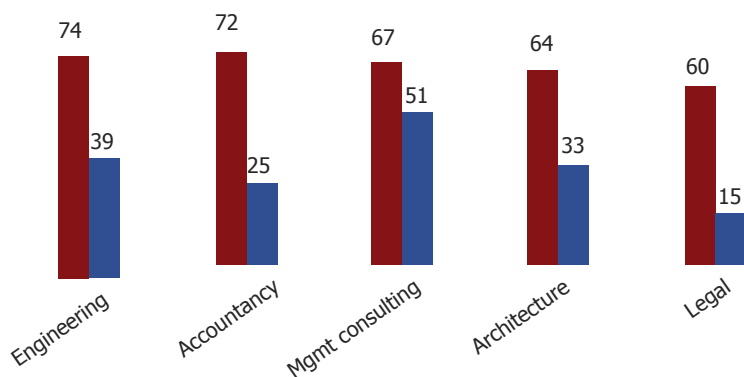


FIGURE 13
Market Access Commitments Enabling on-line Professional Services



would mainly entail increased scheduling of sectors where mode 1 is relevant, such as various business and professional services, distribution, and value-added communication services, as well as moving from unbound or partial commitments to full commitments in mode 1 where sectors have been scheduled.

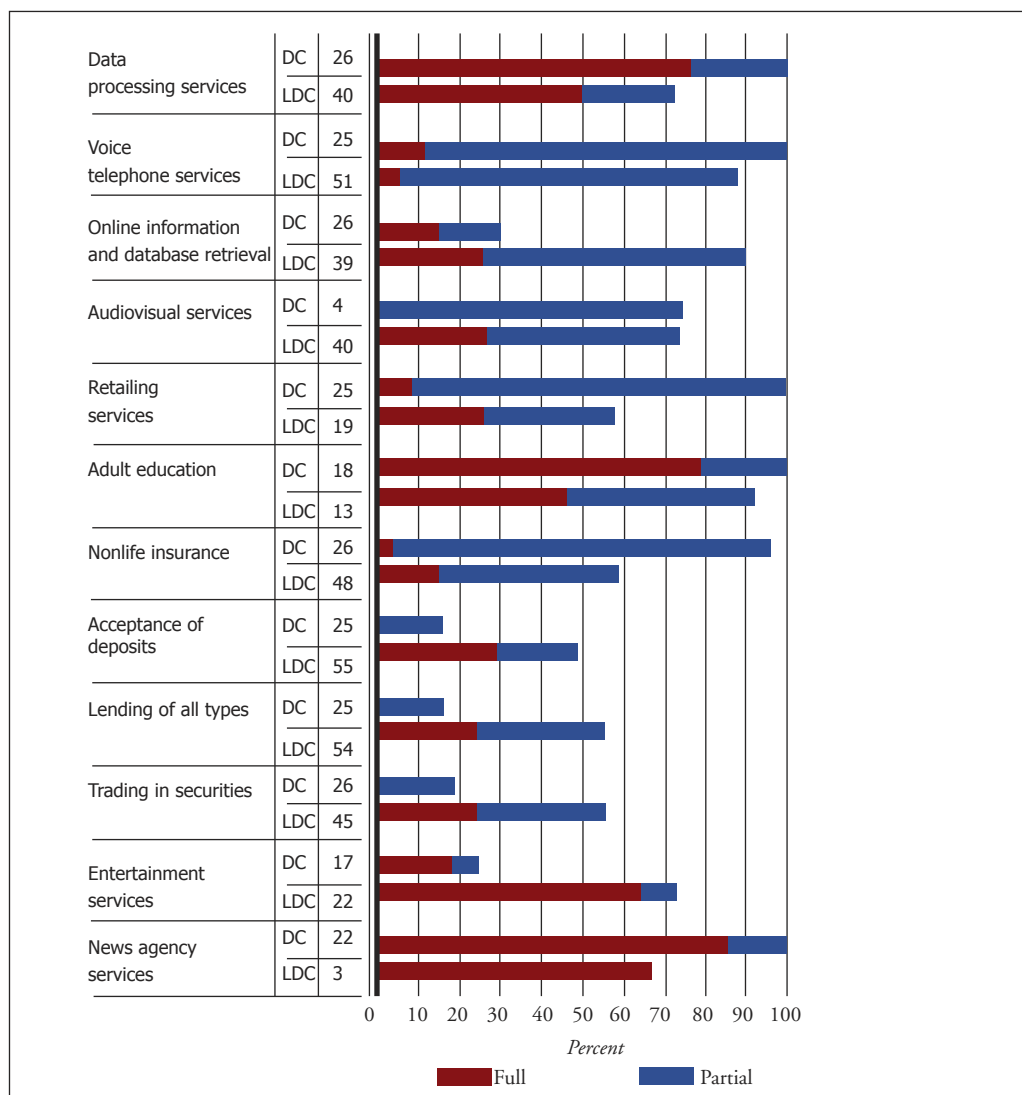
In the ongoing request-offer process, several developing countries, which had earlier left mode 1 unbound in their sector commitments on grounds of technical infeasibility, have now made full commitments. The latter reflects the fact that many more services can now be traded

through this mode due to technological advances, and with the emergence of global outsourcing and e-commerce. For instance, India's offer provides for unrestricted market access and national treatment under mode 1 in professional and business services, including engineering, computer and related services, while the earlier commitments in these areas were unbound. Pakistan has similarly moved from partial or unbound commitments in areas like e-mail, internet and intranet services, and private leased circuit services to full commitments. The liberalisation of mode 1 commitments by developing countries, including some of the South Asian countries, is significant, given recent trends in intra-developing country trade via outsourcing. Further liberalisation of mode 1 commitments by larger developing countries such as India, Brazil, and the Philippines, can help in driving South-South trade in services through collaborative and partnership arrangements in outsourcing.

There has, however, been little improvement in the mode 1 offers by developed countries in terms of scope, though where committed, developed countries have mostly made full commitments.⁹⁹ This is a matter of concern to countries like India, given the recent wave of opposition against outsourcing in some of the developed countries. India, for instance, has an interest in securing market access in mode 1 and thus in locking in this access through binding commitments in this mode through wide coverage of all services where on-line provision is possible. This would help pre-empt future protectionist measures on outsourcing of services. It is important to note that the South Asian countries, in particular, India, which has a strong interest in securing predictable market access for outsourcing exports, cannot challenge the recent state legislation banning government outsourcing in the US, as services provided in the exercise of government authority are excluded from the scope of the GATS. But such protectionism can be averted

⁹⁹ Based on an examination of original commitments, and where publicly available, initial and revised offers by countries in the ongoing services negotiations.

FIGURE 14
Commitments on Cross-Border Supply in Selected Services Sectors, 1999



* Number of countries with commitments.

Note: IC-industrial countries; DC-developing countries; LDC-least developed countries

Source: Mann, C., 'Electronic Commerce, Developing Countries and the WTO' in (eds.) Hoekman, Mattoo, and English, Development, Trade, and the WTO, World Bank, Washington, DC, 2002, Box 31.1, p. 321.

in the context of private outsourcing if the negotiations can be used to obtain binding and unrestricted mode 1 commitments.

CHARACTERISING COMMITMENTS BY SOUTH ASIAN COUNTRIES

The GATS negotiations provide the South Asian countries with an opportunity to bind in the autonomous liberalisation they have undertaken in the service sector. In particular, it enables them to signal their commitment to liberalisation of FDI policy in services and

provide more transparent regimes for foreign participation.

In this regard, the South Asian countries have significantly improved upon their earlier commitments, across all the modes, and most noticeably in mode 3. For example, in banking services, India has raised the limit on the number of bank branches from 12 to 15 per year for new entrants and existing banks and has excluded the licenses issued for ATMs installed by foreign banks from this cap on licenses. It has also permitted foreign banks to invest in private sector banks

through the FDI route subject to a foreign equity ceiling of 49 percent. In the case of factoring and financial leasing services by foreign financial services companies, it has raised the foreign equity ceiling from 51 to 74 percent. Likewise, in hospital, medical and dental services, the foreign equity ceiling has been raised from 51 to 74 percent, although subject to approval and technology transfer requirements. In computer and related services, the foreign equity cap has likewise been raised from 51 to 74 percent. In other modes too, India has changed its commitments from unbound to unrestricted entries. For instance, in the case of accounting and book-keeping, engineering, medical and dental, and construction and civil engineering services, India has changed its commitment from unbound to a full market access commitments in modes 1 and 2 in its conditional offer, therefore permitting such services to be imported on-line without restrictions. Some new sectors/sub sectors, such as—have also been scheduled, expanding the scope of India's commitments.¹⁰⁰

There is some indication that India's revised offer will upgrade the level of commitment/initial offer by binding in the autonomous policy regime in those sectors where commitments have already been made, and will offer fresh commitments up to autonomously liberalised levels in new sectors which were not committed earlier. For instance, it is proposed to improve upon the initial offer in areas like engineering, medical and dental, hospital, technical testing and analysis, audiovisual, construction and related engineering, financial, telecommunication, tourism and travel, and R&D services by binding in the autonomous regime in these services. It is also proposed that in sectors where no FDI is allowed in the existing commitments, the offer would be improved by expanding its scope to cover new areas,

such as non-statutory audit services in the case of accountancy services and to offer commitments in mode 3 for FDI up to 26 percent. Where requests have been received but no earlier commitments made, it is proposed to schedule them in the revised offer, such as in integrated engineering, architectural, real estate, education, wholesale distribution, and environmental services, among others, and to bind in the existing policy regime. Thus, there is an attempt to align the commitments with the current policy regime in services, rather than the earlier conservative approach of binding less than the status quo.

Pakistan has similarly expanded the scope of its commitments by scheduling more services, including several important ones where developed countries have expressed interest in entering the local market.¹⁰¹ These include legal, accounting and book-keeping, on-line information and data processing, mobile communication, retailing and franchising, educational, and environmental services, among others. In most of these services, it has permitted foreign service suppliers to operate through commercial presence, subject to partnership or equity ceiling conditions and in some cases economic needs tests. In mobile communications and all educational services, Pakistan has offered unrestricted market access. In retailing, refuse disposal, and sanitation services, it has permitted foreign equity participation of up to 51 percent and subject to economic needs test. It has also relaxed certain requirements and offered more liberal commitments in services that were previously scheduled. For example, in banking services, it has removed limits on the volume of deposits and other repayable funds mobilised by foreign banks, though subject to prudential regulations of the central bank. It has permitted incumbent and new entrants to open up to 25 branches and has relaxed requirements for payment and money transmission

¹⁰⁰ This discussion is based on India's original commitment and its initial offer. Although India has made a revised offer, it is not yet in the public domain.

¹⁰¹ This discussion is based on an examination of Pakistan's original commitments and its initial offer.

services by permitting transmission of permissible funds and foreign currency through banks having authorised dealers' license and through exchange companies, subject to applicable foreign exchange rules and regulations. Likewise, conditions have been eased for foreign financial institutions to undertake asset management and leasing services. There has also been liberalisation of commitments in other modes, such as in mode 1 for various kinds of computer and related services, including software implementation, data processing, data base, and consultancy services, in research and development services, printing and publishing services, courier services, various value added telecommunication services (fax, on-line information and data base retrieval, mobile communication), education services, and construction and engineering services. Thus, unrestricted market access has been granted for on-line services across a wide range of sectors, with implications for trade in IT-enabled services.

In the case of Sri Lanka and Bangladesh, only the original Uruguay Round commitments are publicly available.¹⁰² It is therefore difficult to assess what additional market access has been granted in the ongoing negotiations. The original commitments by these two countries are not very extensive in terms of sectoral coverage or even within the sectors that have been scheduled. Sri Lanka's commitments are in telecommunication and travel and tourism services. In telecommunication services, in segments like domestic and long distance telephony, mobile cellular services, or data communication services, the commitments are unrestricted under modes 1 and 2 but partial under mode 3, with limitations either in the form of monopoly access given to the government provider, or restrictions on the number of licenses/operators and/or ceilings on foreign equity participation. In tourism and travel related services, the

commitments allow for foreign commercial presence in hotels and tour operator services, but subject to scheduled horizontal measures on approvals, taxes, foreign equity caps, listed in the Sri Lankan commitments. Overall, they are not very meaningful as the coverage of sub-sectors is limited and there are numerous horizontal measures affecting investment. Bangladesh's commitments are similarly very narrow in coverage, and pertain only to telecommunication and travel and tourism services. Mode 3 entries in telecommunication services are largely partial, subject to government monopoly conditions, restrictions on resale of excess capacity, on use of network facilities, and number of licenses. In travel and tourism services, the commitments are limited only to five star hotel and lodging services, with foreign commercial presence permitted upto 100 percent but subject to local incorporation requirements. Sectors such as energy, transport, and computer and related services where FDI is present, have not been scheduled.

The commitments by the South Asian countries are on the whole more restrictive than prevailing policies, especially with regard to foreign commercial presence. It was highlighted earlier that the countries in this region have significantly liberalised their FDI policies and in several sectors have even permitted 100 percent FDI. However, for the most part, mode 3 commitments by these countries are partial, with foreign equity being capped at a lower ceiling than exists in practice. The commitments do not also cover services which have been opened up to foreign participation. These have often not been scheduled. Thus, the commitments for the region clearly indicate the failure to lock in existing liberalisation although there are some pre-commitments to phasing out monopolies and increasing market access over the medium term in certain sectors.

The commitments by the South Asian countries are on the whole more restrictive than prevailing policies, especially with regard to foreign commercial presence.

¹⁰² Sri Lanka has made an initial conditional offer but this is a restricted document. It is possible that the revised offer is significantly different from the original commitment and in that case, the analysis would need to be changed accordingly.

6. NEGOTIATING STRATEGIES FOR SOUTH ASIA UNDER GATS¹⁰³

Some of the countries in South Asia have taken a pro-active position in discussions on specific modes, sectors, and cross-cutting issues that have a bearing on their export interests. India has put forward strong proposals on mode 4 and mode 1 and has also proposed model schedules of commitments to expedite liberalisation in these areas. The following discussion highlights the proposals that have been put forward in these two modes and approaches that can be considered for further liberalisation and for specifically addressing the interests of this region in the case of mode 4.

STRATEGIES TO LIBERALISE MODE 4

India and Pakistan along with some other developing countries have submitted communications on mode 4. They have also made a joint submission along with some other developing countries on mode 4.¹⁰⁴ All the countries in the region view progress in the mode 4 negotiations as essential for facilitating their increased participation in the services trade and for ensuring greater symmetry in benefits between developed and developing countries under the GATS.

The aim of these proposals is to improve existing commitments in mode 4 and to strengthen and enforce related disciplines to make the mode 4 commitments operationally meaningful. These proposals basically address the various limitations of the GATS framework and commitments with regard to mode 4 and the main barriers to this mode. They derive from the fact that existing systems for temporary entry in many countries are broader and more detailed and flexible than indicated by their GATS commitments and

also the fact that there are bilateral and regional arrangements on temporary movement whose features could be incorporated into the multilateral framework.¹⁰⁵ These proposals also take a long-term view by recognising that there is likely to be a future convergence of interests on mode 4 between developing and developed countries due to impending demographic and cost pressures in developed countries.

These proposals broadly address the following issues pertaining to mode 4:

- (a) Administrative procedures: Streamlining and improving procedures for entry and stay, particularly with regard to the issuance of visas and work permits;
- (b) Framework of commitments in mode 4: Widening and deepening the horizontal and sectoral commitments in this mode;
- (c) Recognition: Reducing the scope for discretion and non-transparency in the application of such requirements, facilitating participation by countries in such arrangements, and enforcing and clarifying associated GATS disciplines
- (d) Economic needs tests: Reducing the scope for such tests and clarifying their use and administration;
- (e) Domestic regulation: Strengthening associated GATS disciplines and developing sub-provisions relevant to mode 4;
- (f) Other limitations and policies: Reducing the scope for policies that discriminate between domestic and foreign service suppliers (social security, government procurement, subsidy, and other national treatment issues).

There are thus two broad sets of issues addressed by these proposals. The first pertains to issues of market access and how temporary movement can be separated from permanent migration by improving

¹⁰³ Much of the discussion in this section is adapted from Rupa Chanda (May 2004), 'Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations', South Centre, Geneva, and from Rupa Chanda (2004), 'Movement of Natural Persons: A Case Study of South Asian Countries', CUTS, Jaipur.

¹⁰⁴ Joint Communication TN/S/W/14 (3 July 2003) and Communication from India, S/CSS/W/12, (24 November, 2000).

¹⁰⁵ These include regional agreements like NAFTA, APEC, and US-Chile FTA.

administrative procedures for entry and stay and also how these procedures can be reflected in the framework of mode 4 commitments. The second pertains to domestic policies and measures whose use can be shaped by stronger GATS disciplines so as to increase transparency in their application and prevent such policies from becoming undue barriers to mode 4. It is important to note that the above issues are not independent of one another. The proposals on administrative procedures are only useful if they are appropriately reflected in modified commitment structures and backed by relevant disciplines on domestic policies. Likewise, the development of disciplines on domestic regulatory issues such as recognition of qualifications can only have meaning if they are captured in the framework of mode 4 commitments.

Improving market access

One of the main criticisms of the mode 4 commitments is that they remain subject to cumbersome, non-transparent administrative procedures and regulations that fall under the purview of usual immigration and labour market policies. Thus, streamlining of administrative procedures for entry and a clear distinction between temporary and permanent entry is essential for any progress in the mode 4 negotiations. In this regard, India has proposed the introduction of a Service Provider Visa (SPV) (originally proposed as a GATS visa) to cover temporary service suppliers falling under selected categories and to make this operational through a model schedule of commitments. The main features of this proposed visa and model schedule are outlined below.

(i) *An overview of the proposed Service Provider Visa.*¹⁰⁶ The Service Provider Visa

(SPV) would include natural persons with professional skills and a specified minimum level of educational and other qualifications, who are on short-term intra company visits (category 1) and on short-term visits to fulfil contracts either as part of juridical entities (category 2) or independently (category 3). The SPV would thus cover ICTs, establishment-based, and independent contractual service suppliers (CSS), but it would not cover employment-based movement.¹⁰⁷ Short term is uniformly defined as stay of less than one year for all three categories.

The rationale for focusing on the above categories and the exclusion of others stems from two reasons. The proposal notes that while employment-based movement is important (and countries like the US and Australia have included employment-based movement in their GATS offers), this category is not suited to the discussions on mode 4. This is because of the long duration of stay permitted for such movement (up to six years in the US for H-1B visas) and the possibility of adjusting status to permanent residence. Hence, concerns relating to labour displacement and entry into the permanent labour market are likely to be much greater for such movement. As noted in Chaudhuri *et al.* (2003), visas for employment based categories often work less as temporary migration schemes and more as selective permanent migration schemes, with the employing firm performing a screening function, putting forward selected foreign employees for permanent resident status. As a result, liberal MFN commitments are less likely if one covers employment-based movement.

On the other hand, the coverage of intracompany transferees under the SPV is justified by the fact that this category has received the most liberal commitments

¹⁰⁶ Much of the discussion in this section is based on Chaudhuri *et al.* (2003).

¹⁰⁷ An establishment-based contractual service provider is a person who is a regular employee of a home or third country establishment and is deputed abroad by this firm to render services for a short period of time, on the basis of a contract signed between the host country client and the sending firm and where remuneration is paid to the employer. Independent contractual service providers includes self-employed, independent professionals (such as freelancing architects or consultants) whose services are contracted or solicited by a client firm, individual, or professional organisation based in the host country. See the model schedule in Section 7 of this paper for the definition of the various SPV categories.

thus far under the GATS, making further liberalisation of market access terms and conditions much more feasible for this category than any other. Although the ICT category is most relevant to developed country multinationals as movement by ICTs is linked to commercial presence, it is of some significance to several developing countries like India and Brazil which are increasingly establishing commercial presence overseas in sectors like IT, construction, and health services. Thus, to the extent that some developing countries may also be emerging as exporters of capital, liberal conditions for movement of associated service suppliers, such as executives, managers, and specialists, would be of significance to them.

The inclusion of CSS under the SPV is due to the importance of such movement, which is not linked to commercial presence in the host country, for developing countries. Such movement is more likely to be temporary than employment based movement of the H-1B type, for the reasons given earlier. Moreover, contract based movement can be more closely identified with trade in services while employment-based movement is perceived more as economic migration to enter the labour market (although, as noted earlier, it may at times be difficult to distinguish between the two in practice). Thus, host country concerns of labour displacement and assimilation, and home country concerns such as brain drain, are less likely with contractual movement. Given developing country interest in sending both employees of juridical persons as well as independent professionals who provide services under a contract, the CSS covers both types of contractual movement. It is this latter category of CSS, which may prove conducive to cover temporary movement of lesser skilled service providers (an issue discussed at length later in the paper).

The proposal also specifies various administrative elements and criteria for operationalising the SPV.¹⁰⁸ For instance, the scheme would be extended strictly to persons with requisite qualifications to fill positions responsible either for management of operations, or provision of services at a level of complexity and specialty that would require at a minimum, a diploma or university degree, or demonstrated experience. Hence, this visa would apply only to *persons with some minimum level of educational/other qualification* mainly due to practical considerations of acceptability and enforcement and would not, as presently proposed, extend to lower skill categories (though with modifications it potentially could, as discussed later).¹⁰⁹

Applicants seeking an SPV would have to meet all requirements to provide all information necessary to support their applications. This would include proof of employment with current employer in the case of categories 1 and 2, a copy of the service contract and/or invitation and declaration of intent not to stay for a period of more than 12 months in the case of categories 2 and 3 along with information on the terms and conditions and monetary value of this contract, and information pertaining to level of education and qualifications, and proof of citizenship for all categories. The SPV fees would reflect actual administrative costs. The wage parity condition would not apply for the issuance of such visas. Moreover, the SPV would be issued without unreasonable delay, and in any case, no later than 3 weeks following the satisfactory submission of required documentation. For all three categories, the SPV would be authorised for a period of three years, allowing for multiple entry, but with no single stay exceeding one year. Applicants would also have the opportunity to appeal in case they are denied the SPV and would have the right to obtain a reply within one month of appeal.

¹⁰⁸ See, Chaudhuri *et al* (2003) for details on the administrative and other operational aspects of the Service Provider Visa.

¹⁰⁹ The latter is a noteworthy limitation of the SPV scheme, given the interest on the part of developing countries and LDCs to cover a wide range of skill levels, especially lower skill categories of service providers. This issue is discussed at length later in the paper.

The provisions for renewal of the visa for all three categories would be based on continued status and absence of abuse of any of the conditions governing the permit. Renewal would have to be sought within one month of the date of expiry of the permit, and no later. Recourse to appeal in case of denial would also be available in the case of renewals.

The current proposal also calls for several levels of safeguards to help maintain the distinction between temporary and permanent movement. These safeguards would include preventing SPV holders from changing their status to another non-immigrant visa category while they are on the SPV, penalties for abuse of the scheme through a one-year prohibition, and even temporary suspension of the scheme for up to one year where a systematic pattern of misrepresentation and fraudulent use is detected among a number of companies.

*(ii) Proposed model schedule of commitments:*¹¹⁰ Any improvements in administrative procedures would need to be supported by an improved framework of commitments in mode 4. India has developed a model schedule of commitments for mode 4 to facilitate the introduction of the SPV as well as broader and deeper commitments in this mode.

One part of the model schedule deals with market access and national treatment commitments for selected categories of service providers who would be subject to the Service Provider Visa. The model schedule proposes broad horizontal commitments in mode 4 so as to ensure a basic minimum level of access across all sectors. The focus on horizontal commitments stems from the fact that this has thus far been the main form of commitment in mode 4 and thus can be built upon. It is also driven by the fact that regulations concerning temporary stay are not sector, specific but generally apply across all sectors and thus the fact that horizontal commitments would be easier to administer for immigration

authorities while administering sector-specific commitments would be cumbersome. The latter would, however, be supplemented by sector-specific commitments where further liberalisation is desired and feasible. While the horizontal commitments might apply only above a threshold minimum skill level, such as a bachelor's degree or high school graduation, the sectoral commitments could lower the acceptable skill threshold in certain sectors, for instance by covering diplomas or shorter duration training programme certificates in sectors like IT or maintenance services. Thus, instead of horizontal commitments substituting for sectoral commitments, the two would supplement one another, with the sectoral commitment addressing sector-specific characteristics and interests

The second part of the model schedule represents a set of additional commitments that would be made under Article XVIII of the GATS, akin to the reference paper on telecommunications. This part would cover obligations relating to domestic regulations and transparency of procedures, so as to make the commitments in mode 4 and the associated changes in administrative and other regulations, operationally meaningful. Transparency and due process regarding the granting of entry visas or permits could be a positive way to ensure that market access concessions are not nullified or impaired by onerous and non-transparent criteria and procedures.

(iii) An assessment of existing SPV proposal The proposal for an SPV is a good step forward in the mode 4 negotiations. For the skilled categories that are covered, the proposal is practical and easily implementable, given the existing framework of mode 4 commitments. For instance, the proposal builds upon areas where commitments have been forthcoming in mode 4 by focusing on ICTs, a category where entry is most liberal and length of stay tends to be longer, and hence where progress in the GATS 2000 negotiations is more likely.

¹¹⁰ See Hatcher (2003) and Chaudhuri *et al* (2003) for further details and an indicative model schedule.

From the point of view of South Asian countries like Bangladesh, whose primary interest is in exporting low- and semi-skilled manpower, the coverage of the SPV is inadequate.

The proposal is practical in recognising that the ICT avenue may be a predictable and efficient way of servicing foreign markets as opposed to seeking new employment-based movement. Likewise, the focus on (CSS) again addresses the interests of developing countries and LDCs in serving foreign markets through subcontracting arrangements between two companies or between an individual and a company.

However, the proposal is subject to some major shortcomings. The first and most important shortcoming is the *limited coverage of the SPV* with its relative emphasis on the highly skilled and its virtual exclusion of lower skilled and non-professional service provider categories. This relatively narrow focus is of course practical, given concerns such as illegal migration, burden to the host country, and threat to local workers, that are typically associated with liberalising movement of unskilled persons. It can be argued that it is best for now to focus on higher skilled categories if any progress is to be made. Lowering the skill level too far might preclude liberalisation even in categories like ICTs and professionals where progress is more feasible. There is thus a tradeoff between breadth and level of liberalisation that can be attained.

However, from the point of view of South Asian countries like Bangladesh, whose primary interest is in exporting low- and semi-skilled manpower, this coverage is inadequate. The proposal as it currently stands mainly caters to the interests of large developing countries like India, which are in a position to exploit market access opportunities in highly skilled occupations such as engineering, health, IT, and the like. The threshold specifications of the SPV proposal effectively exclude lower skilled and non-formally qualified personnel such as carpenters, technicians, repairmen, and domestics, who constitute categories of export interest under mode 4 for smaller LDCs. Thus, it is important to consider whether the existing SPV proposal can be modified or improved upon or whether alternative schemes can be proposed which

would cover additional categories and skill levels.

A second drawback of the existing SPV proposal concerns the feasibility of distinguishing between the various categories that are covered by this scheme in actual practice and in the framework of mode 4 commitments. For instance, some countries may treat CSS as employees for the purposes of bringing them under the purview of domestic labour laws, such as the labour condition application, including the wage parity requirement in the US or social security taxation. Even when a person is treated like an employee by the host country, he may technically be outside the permanent labour market as long as he is not able to change employers without permission. This distinction between employment-based and contract-based movement creates economic distortions in that it would cause workers to be treated differently under the two arrangements and thus induce service delivery to take a particular form when it should actually be delivered in another form. It may also be difficult in practical terms to exclude the employment-based category as some of the main immigration schemes working in countries like the US and Australia, cater to this category. So, countries would need to undertake some major modifications in their migration regimes, including in the application of various domestic laws, to enforce this distinction. There may not be willingness to undertake such major changes in legislation.

What may also complicate the separation of employment-based from the SPV categories is the fact that the latter would not be subject to conditions like wage parity, economic needs tests, and quantitative ceilings. In operation, this may create possibilities for entering into the regular labour market and competing for local jobs (which is not the purpose of the SPV) due to the cost advantages that may arise from the removal of these restrictions. For instance, if wage parity requirements are not applied to ICTs,

then foreign established firms could benefit by bringing in such suppliers and bidding at lower costs for outsourced work in the domestic market. Similarly, in the absence of wage parity requirements, foreign companies that engage CSS, establishment-based or independent suppliers, could have a cost advantage in bidding for outsourced work in the host country market. Thus, although the ICT and CSS categories under the SPV are meant to be distinct from employment-based movement, in practice, suppliers in these categories could still compete for jobs in the regular labour market unless there are post-entry conditions attached.

On a related note, the SPV proposal also does not address the issue of clarifying the definitions of the various service provider categories as well as of more finely delineating and classifying different types of service providers in order to cover a wider range of occupational and skill categories. For the SPV scheme to be meaningfully implemented through the model schedule, it is essential to have greater clarity, uniformity, and disaggregation of service provider categories and some discussion of ways in which this can be done.

The third major shortcoming of the existing proposals on mode 4 is their lack of discussion of enforcement issues and regulatory mechanisms that would be required to implement such a scheme and to ensure its viability. An important point in this context is whether enforcement mechanisms can be uniform or whether they would need to vary across categories, especially if one were to expand the scheme to cover lower skilled categories.

All of these aforementioned limitations need to be addressed if the mode 4 negotiations are to move forward and effectively address developing and LDC interests, including the interests of the South Asian countries.

*Moving forward on market access*¹¹¹

Any progress in the mode 4 negotiations requires initiatives to further liberalise market access, especially for *lower skilled categories*. There is need to formulate new skills categories and expand the occupation lists to include middle and lower skilled workers and for mechanisms to broaden classifications and/or extend the commitments to new categories of workers. It is thus worth considering if a *wider coverage of service suppliers, in terms of skill, occupational, and functional levels* is possible, and if so, how far down the skill chain it is feasible to go, and through what kinds of administrative schemes and supporting measures. In addition, this expanded coverage would also need to be supported by adopting appropriate definitions and classification of service provider and skill categories and addressing the limitations of the GATS W/120 occupational classification.

(i) *Including the less skilled under CSS:* Within the framework of the proposed SPV and model schedule discussed earlier, it is possible to include lower-skilled service provider categories. By working within this framework, developing countries and LDCs can build upon the momentum and negotiating environment already generated by these proposals and tailor them to suit their own interests, rather than initiating a new set of proposals and creating the requisite environment for their acceptability.

One possibility is to use the existing SPV categories of ICT, CSS, and independent professionals, and to try and include a wider range of service suppliers within these categories. In particular, the existing service provider categories and associated criteria under the SPV could be interpreted more liberally so as to cover lesser skilled service providers. Such an approach has already been explored to some extent in the proposed model schedule for mode 4. For instance, the

Any progress in the mode 4 negotiations requires initiatives to further liberalise market access, especially for lower skilled categories. There is need to formulate new skills categories and expand the occupation lists to include middle and lower skilled workers and for mechanisms to broaden classifications and/or extend the commitments to new categories of workers.

¹¹¹ Discussion in this section is adapted from Rupa Chanda (May 2004), 'Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations', South Centre, Geneva; and Rupa Chanda (2004), 'Movement of Natural Persons: A Case Study of South Asian Countries', CUTS, Jaipur.

ICT category normally includes managers, executives, and specialists. This category could be expanded to cover employees who provide assistance, advice or service to a foreign client, or receive business training, regardless of their status in the organisation, and without requirement of a period of prior employment, as proposed in the model schedule. Thus, the functional or hierarchic bar could be lowered and a wider class of skilled suppliers can be included under the relatively liberal route of ICTs. But this of course would still mostly apply to educated and relatively higher level service providers, and would therefore be of limited interest to most developing countries and LDCs.

However, this approach can be extended to include the less skilled by using the CSS category and relaxing the minimum eligibility requirements of the SPV. For instance, it might be possible to expand the list of persons qualifying under the CSS category, to include persons who are skilled in terms of their work experience or technical competence but not necessarily academically qualified in terms of having a bachelor's degree or diploma. The horizontal commitment would thus refer to persons with some specified threshold of educational qualifications like a bachelor's or work experience, or related qualifications. The inclusion of additional criteria for assessing skills could potentially enable lower skilled suppliers in trades like carpentry, masonry, welding, repair and maintenance, and the like to also be covered by the CSS category.

There are, however, two operational issues, that would need to be addressed if: (a) the CSS category is used to expand the coverage of skill sets under the SPV, and (b) if the minimum eligibility criterion is relaxed to include non-formal qualifications. First, to what extent are lower skilled workers covered in reality by contractual arrangements? Are service suppliers in trades like masonry, carpentry, repair work affiliated with entities, which send them to other countries as contract workers? The answer here is that most such workers do not fall under establishment-based contractual

suppliers, unlike the professional and skilled persons covered by CSS. They are often sent abroad by overseas manpower export agencies, which are basically recruitment agencies that perform screening and facilitation tasks for foreign employers. Thus, the affiliation is not with an organisation that deals specifically with the trade or occupation in question but with a cross-sectoral organisation dealing with such skill and occupational levels. If such workers are to be brought into the category of CSS, then the very concept of what a CSS is needs to be expanded to include other types of contracts and overseas deployment mechanisms. One possibility is to consider whether such recruiting firms or manpower agencies can be designated by the government or by the concerned guilds, to act as the contracting establishment which then deploys independent and self-employed service providers to the client premises overseas. The contract would then be between the client (firm/individual) and such establishments and the latter would be responsible for monitoring contract terms and conditions, screening of qualifications, and enforcement issues, along with other regulatory enforcement mechanisms that would normally operate in the host country. It is important to note, that if progress is to be made with the lesser skilled categories through the CSS avenue, then the contract needs to be with a juridical entity (government or otherwise) rather than directly between the client and the self-employed independent service provider. Concerns of overstay, illegal migration, and security are more likely when there is no juridical backing to the presence of such categories of service providers.

Thus, under the proposed SPV scheme, lower skilled workers can be classified as falling under temporary contract-based movement that is *affiliated with a juridical entity* (with an expanded definition of such an entity to include manpower export agencies). In the absence of such agencies, it might be worth considering the role of government ministries/ departments of labour or employment,

which often do deal with migrant workers and conduct emigration clearance checks, to provide this institutional affiliation. It was noted earlier that there are special departments and agencies in the Ministries of Labour as well as Overseas Labour Export agencies that regulate emigration in the South Asian countries. Such agencies can serve as the nodal juridical bodies for low and semi-skilled workers going overseas on contracts. The main point is that if lower skilled workers are to be categorised as contractual service suppliers, then they must not be independent or unaffiliated workers, as that would raise concerns over enforcement of temporary stay and difficulties in tracking in the host country. Of course, a question that arises is to what extent such alternative institutions and agencies can be seen as equivalent to a trade body or association or a company, as in the case of professional and skilled contract-based movement.

Provided that the aforementioned modification to the SPV scheme is implemented under the CSS category, a second issue that needs to be addressed is that of assessment of work experience or related qualifications for the lesser skilled categories. The latter typically include trades and occupations, where there are no international benchmarks or standards for assessing skills or competence and thus little or no scope for multilateral recognition. However, there are two possible approaches to addressing this problem.

The first approach would be to require some form of approval by an appropriate trade or industry association in the home and/or host country, which can attest to the competence and skills of the concerned service supplier. The latter may of course be difficult to do, if there is no such body to determine competence or if it is not possible to agree on a set of objective criteria, like number of years of work in that trade or fulfillment of some form of apprenticeship equivalent programme in that trade. The absence of such associations or assessment criteria like training and other

programmes in certain trades, especially for lower skilled occupations, would then become a barrier to such movement. This goes back to the issue of institutional or juridical affiliation discussed above. In the absence of such associations, one possibility may be to assign the task of certification to the entity, which takes responsibility for contracting out the worker, such as the manpower export agency, or a concerned government department. The second and perhaps better approach may be to leave this task to the host country employer, recognising that the employer would be the best judge of skills and competence in keeping with his requirements. It is perhaps best to leave such assessment to private parties in the home and host countries. (This issue is discussed in more detail in the section on recognition issues.

(ii) *Including the less skilled under a new CSS sub-category:* A second approach would be to carve out from within the existing CSS category under the SPV, a sub-category that is pertinent to lower skilled service providers, with different terms and conditions. Under this approach, instead of clubbing different skill sets and qualification criteria together, the CSS category would be divided into CSS-1, which would include those who are formally qualified with academic and paper qualifications, and CSS-2, which would include those who are non-formally qualified, such as through work experience and exposure to their occupation. The latter sub-category would be suited to cover less skilled service providers. This breakdown of the CSS category would be in line with the eligibility criterion under the SPV outlined earlier, i.e., that the person must at a minimum, have a diploma or university degree *or demonstrated experience*. It is the latter, 'demonstrated experience' requirement than can be used to facilitate market access for lesser skilled persons, who have proven and certified non-formal qualifications such as through vocational training, apprenticeships, and on-the-job experience. Their services would be

The main point is that if lower skilled workers are to be categorised as contractual service suppliers, then they must not be independent or unaffiliated workers, as that would raise concerns over enforcement of temporary stay and difficulties in tracking in the host country.

Restrictions such as quantitative ceilings and minimum wage type conditions, coupled with shorter duration of stay such as three to six months compared to one year for the CSS-1 and ICT categories, may need to be applied to the CSS-2 category.

contracted out and their competence certified by some recruiting or manpower agency type organisation, as suggested earlier. An important point to note is that while CSS-1 would cover independent professionals with the possibility of a direct contract between the self-employed individual and the host country client, CSS-2 would not cover direct contractual arrangements between independent workers and host country clients. Instead, the contract would be between some kind of juridical entity that deploys or certifies the competence of such workers and the host country client, as outlined earlier. This is because it is unlikely that any country would make commitments to cover independent unskilled workers, given the inherent difficulties in ensuring return and monitoring stay.

It may also be important to differentiate between the CSS-1 and CSS-2 sub-categories in terms of the SPV terms and conditions for entry and stay. For instance, the CSS-2 sub-category would need to be framed keeping in mind labour market and trade union type concerns of host countries without negating altogether market access for lower skilled suppliers from developing countries. More stringent conditions may need to be attached to the issuance of the SPV for the CSS-2 category. Restrictions such as quantitative ceilings and minimum wage type conditions, coupled with shorter duration of stay such as three to six months compared to one year for the CSS-1 and ICT categories, may need to be applied to the CSS-2 category. Hence, in terms of the proposed model schedule, the horizontal commitments for lower skilled categories of service suppliers or CSS-2, would include such limitations. If countries want a further level of safeguard in the lower skilled categories, then they could further inscribe in their horizontal schedules a small negative list of service sectors where the CSS-2 would not be applicable. The aim would be to progressively reduce this

negative list so as to include a growing range of skills and occupations over time and also to progressively undertake deeper sectoral commitments in the schedules where they do cover the CSS-2 lower skilled category. So, even if the horizontal commitments include restrictions such as quotas or needs-based tests for the lower skilled, these restrictions could be relaxed or removed in the sectoral schedules, in keeping with member country interests and needs in individual services. Thus, if a country has a severe shortage of construction workers, it could choose to make a more liberal commitment under mode 4 under construction services, by relaxing/waiving some of the horizontal limitations subject to specified economic and sectoral conditions. There may also be some merit in drawing upon relevant elements of existing bilateral, seasonal, and guest worker arrangements, in framing the requirements and conditions for the CSS-2 sub-category of suppliers.

*(iii) Developing a revised model schedule:*¹¹²

The aforementioned proposals and suggestions to incorporate additional skill categories in mode 4 would need to be reflected in revised horizontal commitment schedules and offers, building upon the approach endorsed by the European Services Forum (ESF) and the US Coalition of Service Industries. The main additional feature of this model schedule would be the expanded coverage to include lower skilled service providers under a separate sub-category of contractual service suppliers, as proposed earlier. The latter could then be supplemented by sectoral schedules where more liberal commitments are possible in mode 4 for select services and categories. Or the sectoral schedule can provide a detailed listing of restrictions that may apply to selected categories, otherwise not listed in the horizontal schedule. The South Asian countries could focus on those sectors and occupational categories that are of most interest to them and could try to negotiate mode 4 commitments in such sectors in a

¹¹² This section and the model schedule presented in this paper are based on Section VIII of Rupa Chanda, Working Papers No. 19, South Centre, Geneva, (May 2004).

manner that reflects the various proposals outlined earlier (the existing and modified versions of the SPV) and the kinds of terms, conditions, and definitions outlined above in the model horizontal schedule.

(iv) Addressing definitional and classification issues: The introduction of additional skill categories and occupations under the SPV and model schedule would make it all the more necessary to address definitional and classification of service providers under the GATS. As noted earlier, it may not always be possible to distinguish between CSS and employment-based movement. To address this problem, some form of curbs on SPV categories may be worth considering, such as preventing outsourcing and further sub-contracting once entry is granted, or stipulations on ICTs in terms of the size and operations of the establishment, or on CSS in terms of the contracts they are eligible to service, so as to maintain the distinction between SPV suppliers and employment-based movement. These would either have to be specified under the SPV conditions themselves or listed as limitations under the commitments. It is also worth noting that the removal of conditions such as wage parity and quantitative ceilings for those entering under SPV implicitly suggests that usual economic considerations and business cycle related pressures on entry schemes would not apply in the case of this special visa. The latter may, however, be a difficult point to impress on host country governments and to implement through MFN commitments.

More generally, the mode 4 discussions need to be supported by a finer classification of service provider categories and greater clarity and uniformity of definitions for individual categories. Without addressing such classification and definitional issues, widening of the SPV or for that matter any scheme to include lesser skilled categories and their implementation through commitments, would not be meaningful. Agreement on a

common list of occupations and definitions would ensure predictability and comparability in commitments and also enhance the value of the commitments made. Developing countries have noted a number of occupations where they are already supplying services internationally and have specific interests in liberalising market access in the context of the GATS. It should be possible to make use of the International Standard Classification of Occupation (ISCO-88) of ILO to arrive at the list of categories and skill levels that can be negotiated and to incorporate these into the WTO Services Sectoral Classification List.¹¹³ For instance, one of the 9 major occupational groups under the ISCO is that of professionals. The latter are included in two major groups covered under ISCO-88. These are Major Group 2 for professionals and Major Group 3 for technicians and assistant professionals. Under each group there is an elaborate list of different types of professionals falling under specific services. For example, in the engineering services sector, the Major Group 2 for professionals includes civil, electrical, electronics and telecommunications, chemical, mechanical, and mining engineers, metallurgists, cartographers and surveyors, and other related professionals. Similarly, in the case of medical and dental services, a long list of specific and detailed professionals is contained in the ISCO-88 classification. Thus, it may be useful to make commitments with respect to the specific sectors or subsectors as contained in the GATS W/120 list but supported by specific occupational categories relevant to these sectors or subsectors, based on the ISCO-88 list.

Progress in the area of classification would of course require close cooperation between professional and regulatory bodies and associations between countries in order to arrive at a common understanding of different service provider categories and what would constitute an appropriate disaggregation of broader categories like professionals or

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¹¹³ See S/CSS/W/12, Communication from India (24 November 2000).

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specialists. As a first step, these bodies could provide a detailed listing of categories of service providers for their respective sectors, along with the qualifying work-related and educational criteria for designation under this category. Discussions could then take place to determine equivalence of categories across countries and come to some consensus on definitions, terminology, and breakdown into finer categories.

(v) *Addressing enforcement issues:* If a wider range of workers and skill levels is to be covered, then the enforcement of a scheme such as the SPV and its legal interpretation through GATS commitments cannot be uniform across categories. Hence, the requisite enforcement and regulatory capacity for implementing the SPV would also need to vary across different types of service suppliers

But this in turn raises a larger question of feasibility in administration. Would immigration officers and establishments be able to administer special rules for particular groups within temporary entry? For instance, where countries have no existing visa scheme for temporary business entrants, this category would then be introduced under the SPV. But how capable would all members be to introduce and administer such a scheme, what administrative and other costs would this impose, and would these costs be commensurate with the benefits? Would they be able to arrive at a common definition and classification of different types of service providers that also enables clear distinctions across categories. Would host country immigration officials be unduly burdened in trying to administer not only a special type of visa but also sub-categories of visas within the SPV and might this expose those entering to more scrutiny than at present? Would source country governments or manpower

agencies, especially in LDCs, have the regulatory capacity to certify and track lower skilled workers that they contract out to other countries? The implementation of the SPV would also require institutional changes in the administration of visas and work permits. But would a “one-stop shop” for such visas be possible to implement in countries where different departments, agencies, and regulatory bodies may be dealing with visa and work permit matters?¹¹⁴

There are no clear answers to these questions, but they do highlight the fact that absence of adequate regulatory frameworks and enforcement capacity in both host and source countries could be a major constraint to implementing the SPV, especially in the case of the lower skilled workers. Administration of a new set of visas could prove costly if it imposes an additional burden on scarce institutional and human resources.

STRATEGIES TO LIBERALISE MODE 1

Domestic strategies at the firm and government levels also need to be supported by international strategies to facilitate global outsourcing and realise the associated benefits. The recent surge in opposition to global outsourcing in key markets like the US and UK, and its likely spread to other developed countries, makes it all the more important to address this issue through multilateral, regional, and bilateral negotiations and agreements.

There are two liberalisation proposals that have been made to ensure liberal market access under mode 1.¹¹⁵ The first is to economise on negotiating effort by adopting a formula approach to liberalising mode 1 that cuts across sectors rather than liberalising sector by sector. Under this proposal, countries would inscribe full commitments in mode in their

¹¹⁴ Some experts have noted that the UK's experience could be worth replicating in other developed countries. The UK has established a GATS visa to facilitate the implementation of its commitments under the GATS, for contractual workers. The procedure is simple, efficient and transparent and facilitates quick decision-making that can be done by one person in cases where the requesting party meets all the requirements.

¹¹⁵ Rupa Chanda, 'Global Outsourcing of Services and Human Development', written for the *Asia Trade and Human Development Report*, UNDP Asia-Pacific Regional HDR Initiative, New Delhi, and Asia Trade Initiative, Hanoi, (forthcoming, 2005/06).

schedule of horizontal commitments, with the exception of some sectors like financial services (for prudential and regulatory reasons) or transport services (for reasons of infeasibility). While this approach would enable much speedier liberalisation it has met with resistance by governments in outsourcing economies like the US and EU, mainly because it goes against the usual positive list approach to liberalisation that characterises the GATS. It has also met with some resistance within delivery economies because of uncertainties about future technological developments and how these may impact on the sector at home. There is also some concern in developing countries that such wide-ranging liberalisation may have an adverse impact in the absence of requisite regulatory and legal frameworks.

An alternative approach that has been proposed is to make a positive list of sectors where mode 1 is most relevant, such as various professional services and other sectors like distribution services. Countries are more willing to take this approach as it allows them to pace the degree and scope of liberalisation in accordance with their needs and readiness in terms of supporting domestic regulations. The limitation of this approach, however, is that it is much slower and thus may not be able to adequately stem the spread of protectionism across sectors and activities. Moreover, a sectoral approach may not ensure full coverage of a country's export interests, given the inadequacies of the existing GATS classification structure for dealing with the dynamic and evolving nature of services trade under mode 1. Often, there is ambiguity about whether a new service falls under an existing GATS W/120 category or under more than one category, or if it is at all covered by the GATS W/120 list of activities. As the range of services that can be traded through outsourcing expands and becomes more complex, boundaries between sectors are likely to become increasingly

blurred and the GATS classification scheme may not be sufficiently representative to deal with mode 1-based services. Thus, if the positive list approach were to be taken for liberalising mode 1 commitments, then broader discussion of the GATS classification structure and sectoral classification issues of services traded via mode 1, would be required. Under both the horizontal and the positive list approach, it would also be important to obtain commitments in mode 2 given the thin line separating these two modes of supply. The aim should be to push for binding and full commitments, with safeguards for prudential, consumer protection, and public policy reasons, so as to lock in market access through cross border supply.

The GATS discussions on mode 1 also need to take into consideration the relationships that exist between mode 1 and other modes of service sector delivery, such as movement of natural persons and commercial presence. For example, given the substitutability between on-site and offshore delivery, the liberalisation of mode 1 commitments should also be pursued to secure market access under this mode in substitution for mode 4 based delivery of services. For instance, attempts like the recently proposed 'Bill HR 2268' in the US, which seeks to abolish H-1B (the employment visas) to prevent further displacement of US workers by foreign service providers, make binding commitments in mode 1 all the more significant.¹¹⁶ A complementary negotiating strategy between modes 1 and 4 may also be required for certain categories of service providers. For instance, it was noted earlier that offshoring of a service involves some degree of cross border movement of service providers such as managers and specialists to understand the client processes and transfer these back to the provider in the delivery country. Thus, a mix of intra-company transferees and some middle level service

The GATS discussions on mode 1 also need to take into consideration the relationships that exist between mode 1 and other modes of service sector delivery, such as movement of natural persons and commercial presence.

¹¹⁶ Legislation to ban the issue of H-1B visas is being debated at present in the US. Although this move is meant to protect American jobs, especially in the IT sector, where unemployment is at an all time high, if this ban is enforced, the US could face major shortfalls in the high tech and computer-related industries.

Developing countries may need to look beyond the lower and middle levels of service suppliers, which they have been doing so far, given the significance of higher-level service suppliers for enabling outsourcing of services.

providers at different stages may be required to support the execution of outsourced work. This in turn implies that developing countries need to focus on liberalising market access for such kinds of service providers, not only with the objective of liberalising mode 4 but also with the objective of facilitating their cross border exports of services. Recent attempts to curb the use of intra company transferee visas in developed countries like the US would affect not only mode 4 based exports but also the ease with which mode 1 exports can be delivered owing to the complementary and supporting relationship that exists between modes 1 and 4 in the case of certain types of service providers. Thus, developing countries may need to look beyond the lower and middle levels of service suppliers, which they have been doing so far, given the significance of higher-level service suppliers for enabling outsourcing of services. Likewise, the negotiating strategy would also need to focus on cross-cutting issues such as recognition, residency requirements, and the use of domestic regulation in certain sectors that affect both these modes of supply.¹¹⁷

There are similar linkages between cross border supply and commercial presence, which need to be factored into the negotiating strategy. As highlighted earlier, each of these modes can potentially facilitate the other. Thus, liberalisation of mode 3 in areas like accountancy, legal, advertising, distribution and many other services in developing countries, can result in the establishment of subsidiaries and joint ventures in these countries in such sectors, and create possibilities for outsourcing. Thus, a strategy to facilitate mode 1 exports and outsourcing in particular can be linked to the extent of liberalisation offered by the delivery country under mode 3 and also the extent to which delivery countries are able to realise the aforementioned investment flows that can result from global outsourcing.¹¹⁸

Apart from using the GATS negotiations and the WTO framework to ensure liberal market access conditions for global outsourcing, various other international forums can be used to facilitate global outsourcing. For instance, discussions under regional and bilateral trade and investment agreements that cover services can be used to promote outsourcing and foster intra-developing country trade and cooperation in this regard. Discussions at the regional and bilateral level under agreements involving major players in global outsourcing can also help in developing regulatory frameworks that can later be extended to the multilateral level. Likewise, in addition to the WTO, other international organisations can also play an important role in shaping the domestic business environment in developing countries to facilitate their emergence as global outsourcing destinations. These include bilateral aid organisations, various parts of the UN system, and the World Bank, which can support programmes to develop the ITES sector, through the provision of physical infrastructure, through investments in education and training, and through policy advice on technical and regulatory matters and in identifying service sectors of export interest. One important area where international organisations can help is in improving the availability of national statistics and data on outsourcing, given the problems in enumerating such trade.

In addition to governments and international organisations, other stakeholders such as industry associations and domestic as well as multinational firms engaged in outsourcing, must also help in securing liberal market access conditions for global outsourcing and countering protectionist threats. For instance, industry associations in both outsourcing and delivery economies should play an advocacy and publicity role in highlighting the mutual benefits from

¹¹⁷ See, Rupa Chanda (July 2003) for a discussion of complementary negotiating strategies to address concerns in modes 1 and 4.

¹¹⁸ See Chanda (November 2003), Chanda (July 2003), and Chanda (forthcoming), 'Intermodal Linkages in Services Trade', OECD, Paris.

outsourcing and dispel misconceptions about outsourcing, as has been done by the National Association of Software Service Companies (NASSCOM) in India. Domestic firms that are engaged in outsourcing in developing countries may also need to make strategic decisions such as establishing representative offices or some form of local presence in their export markets to enable more effective lobbying with concerned governments and industry bodies and to make a more visible impact on the outsourcing economies.

LIBERALISING SERVICE IMPORTS IN SOUTH ASIA

It has been noted that the South Asian countries have significantly liberalised their FDI policies. However, as the assessment of their commitments revealed, although the South Asian countries have improved on their earlier commitments across all modes, and most importantly in mode 3 which is their main mode of import interest in services, the offers are still not as liberal as prevailing policies. Some services that have been opened up to foreign participation, have not even been scheduled. In other services, which have been scheduled, the commitments bind in lower levels of foreign participation, for example, through lower foreign equity ceilings than permitted in practice. In the case of India, an important sector such as insurance, which is of market interest to the developed countries, has not been committed, despite the fact that joint ventures are permitted in this sector. Likewise, telecommunication services have been bound at less than the prevailing equity ceiling of 74 percent. A similar wedge between commitments and existing policies characterises the commitments for Pakistan, Sri Lanka, and Bangladesh.

If the South Asian countries are to negotiate for greater market access in modes 4 and 1, they must also be prepared to liberalise their market access commitments and to respond to requests made to them by other countries. A clear *quid pro quo* strategy would be to bind in existing policies in mode 3 as

this is the mode where concessions are being sought by the markets of export interest to South Asian countries. Hence, if 74 percent foreign equity is permitted in a sector, the countries could consider offering in this level of market access. In addition, they could also consider pre-committing to liberalising to a certain extent by a specified date, thus giving themselves transition time to prepare for foreign competition, put in place necessary domestic regulation, and to address domestic sensitivities in the sector. Pre-commitment would enable phasing in of liberalisation while signaling policy intentions, especially where the governments have proposed such action. It is important to note that having a commitment that is more conservative than the existing policy may not increase their bargaining power in the negotiations as in many services, such as in telecommunications or financial services, rollback of liberalisation is not a credible possibility. So, the countries may not be able to extract much in terms of additional market access by offering by binding in less than the status quo as a policy reversal to less than the status quo from prevailing policy is discounted. Thus, the South Asian countries can use such a strategy to obtain better commitments in mode 1 from other countries, to pre-empt future protectionism in this mode. The *quid pro quo* strategy of offering more liberal and binding commitments in mode 3 may also enable the South Asian countries to obtain improved commitments in mode 4, in terms of getting other countries to clarify their definitions of service provider categories, to expand the categories to include those of interest like contractual service suppliers and independent professionals, to remove certain limitations, and to make their commitments more transparent with regard to the use of limitations like economic needs tests and recognition requirements.

Another improvement that South Asian countries can make is to enhance the transparency of their administrative procedures, as this is a common request by

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other countries. It is worth noting that India and Pakistan have made their horizontal mode 4 commitments more transparent. They have also eased requirements for entry and stay in the case of business visitors and intracompany transferees, again an area of request by some developed countries in view of their business interests in these countries.

In view of the unbound nature of commitments in mode 1, this is another possible area for further liberalisation by the South Asian countries. As noted, India and Pakistan have already moved to unrestricted commitments in this mode for several services. But in view of the growing on-line possibilities in a large range of services and the region's interest in trade in IT enabled services, the countries could consider liberalising mode 1, as there could be implications for developing their export competitiveness.

In addition to offering more liberal market access terms in scheduled sectors, there is also the possibility of scheduling more services to include areas where foreign participation is already present or encouraged. These could include areas of interest to other countries, such as retail distribution, educational, environmental, and energy services. It is not necessary to offer very liberal market access in these newly scheduled services, at this time. Scheduling in itself would signal an intent of progressive liberalisation towards the status quo and beyond. It would be helpful to identify such services that are of strategic interest to big service sector players in developed countries in order to leverage their scheduling to obtain better commitments in sectors and modes of interest to the region.

It should be noted, however, that additional scheduling or enhanced market access commitments must be supported by a thorough analysis of the service sector in the South Asian countries. This includes understanding the opportunities and constraints in individual services, understanding the domestic regulatory environment and gaps that would need to be addressed in the wake of liberalisation,

limitations that would need to be inscribed in the schedules, and national interests that would need to be ensured when making the commitments. Hence, any changes in commitments must preserve objectives such as universal service obligations, consumer protection, technology transfer, and linkages with the local economy.

CROSS-MODAL ISSUES AND BROADER NEGOTIATING STRATEGIES

As trade in services occurs in a bundle with multiple modes of supply being used simultaneously, and since barriers to one mode often constrain the scope for services trade through other modes, a complementary approach across modes and groups of services is required in the negotiations. In particular, it is important to consider the linkages between modes 3 and 4 and between modes 1 and 4. Restrictions on commercial presence in the form of local staffing and management requirements or approval requirements may not only affect the scope for mode 3 but may also curtail the scope of mode 4 associated with the establishment of firms. Thus, if mode 4 is to be liberalised, associated restrictions on mode 3 need to be removed and so the mode 4 negotiations need to take into account the nature of commitments and conditions applied in practice under mode 3. In the case of mode 1, there is evidence to suggest that mode 4 plays a complementary role in outsourcing and back office activities, which today constitutes the most important and rapidly growing form of cross border supply of services. For instance, temporary movement of higher level personnel and specialists is often required to understand client needs and specifications for the effective execution of outsourcing projects. Thus, restrictions on mode 4, such as recent steps in the US to tighten conditions for ICTs, can affect the costs and scope for trade in services through cross border supply. Similarly, recent efforts to curb outsourcing and the protectionist backlash to outsourcing in the US, UK, and some other developed

countries, would also affect the prospects for associated movement of service suppliers. Thus, the South Asian countries need to complement their negotiating strategy in mode 4 and mode 1 by addressing limitations in related areas like mode 3, even though they may not have a major direct interest in exporting through that mode.

7. ADDRESSING CROSS-CUTTING DISCIPLINES AND ISSUES ¹¹⁹

It has been argued that any additional market access gained in modes of interest, and in particular in mode 4, would be of limited use without strong GATS disciplines to govern the use of domestic policies on matters such as recognition, necessity tests, and domestic regulation. Thus, progress is required on various cross-cutting disciplines and issues to make any improvements in market access operationally meaningful for the South Asian countries.

RECOGNITION REQUIREMENTS

Perhaps the most important domestic policy issue to be addressed is that of recognition of qualifications. As noted earlier, the latter often constitute a major barrier to entry by South Asian service suppliers, who are largely outside existing recognition initiatives and thus at a disadvantage in various services where licensing and certification requirements apply for entry.

Any progress on the issue of recognition requires initiatives to be taken simultaneously at three levels. The first is to try and improve the framework for MRAs. The second is to address more broadly the entire concept of recognition, such as the assessment of competence and determination of equivalence. The third is to try and address the operational difficulties facing the South Asian countries

and LDCs in negotiating recognition agreements, given institutional, technical, and financial constraints and mode 4 interests that tend to fall outside the purview of most MRAs.

Facilitating access under MRAs

One of the main steps to be taken in the context of MRAs is to facilitate access to existing agreements by other member countries, in particular, developing countries. In this regard, it would be important to implement the notification requirements under Article VII, such as making the full texts of all existing MRAs available immediately to the WTO Secretariat and for circulation among all members, and providing adequate opportunities to developing countries to join in negotiations for the establishment of MRAs, and for regular monitoring by the CTS of all these notification requirements.

The overall objective of enforcing notification requirements would be to increase transparency in this area. These proposals on notification and better implementation of Article VII were made in India's negotiating proposal on mode 4.

Evidence on notifications under Article VII suggests that there is poor enforcement of this provision thus far. Most notifications are for MRAs that have already been concluded and thus the provisions for allowing other countries to join in the negotiations have not been implemented. There have only been 39 notifications by 19 WTO members, far less than the total number of MRAs actually negotiated. Moreover, some agreements have been notified under other GATS articles, while others have not been notified at all. There is thus ample scope to improve information flow on MRAs, such as through informal reporting of any negotiations on MRAs to the CTS so as to enable expression

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¹¹⁹ The discussion in this section is adapted from Rupa Chanda (May 2004), 'Movement and Presence of Natural Persons and Developing Countries: Issues and Proposals for the GATS Negotiations', South Centre, Geneva, and Rupa Chanda (2004), 'Movement of Natural Persons: A Case Study of South Asian Countries', CUTS, Jaipur.

of initial interest to participate in these negotiations by other member countries. It may be even better to make such agreements publicly available rather than just circulating it within the Council. There also need to have mechanisms to facilitate accession and extension of MRAs to third parties. Most of the agreements that have been concluded do not provide easy avenues for accession or for handling requests for reciprocal treatment by third countries. Mechanisms such as clear accession clauses or to allow third countries to demonstrate equivalent training to that obtained in a country which is a party to an MRA, could help encourage transitivity and spread of such agreements.

It must be noted, however, that such mechanisms to facilitate extension of MRAs to other countries could also inhibit the very establishment of MRAs and that technical and financial support may need to be extended to developing countries in this process.

Developing a general model for MRAs

Another possibility would be to develop a model plurilateral WTO agreement on recognition under the GATS. This would take the form of general rules and principles based on which bilateral and sectoral commitments could be undertaken. The benefit of such an agreement would be to embed MRAs in the WTO system and give it a legal status, which it lacks currently. This agreement would include precise rules on accession, enable the scheduling of mutual recognition commitments, and include other necessary provisions on definitions, safeguards, and institutions. Under this proposal, recognition would include waiving of domestic licensing, qualification, and other requirements where it is judged that there is regulatory equivalence, even if the regulatory systems are different. There would also be provisions for consultation and cooperation between regulatory authorities and there would be

agreed compensatory requirements to ensure quality of service and fulfillment of public policy objectives in the host country.

The model agreement proposal is an ambitious one. While it covers many of the guidelines for MRAs in the accountancy sector and uses these to establish a general framework for MRAs, it goes beyond those guidelines in making them legally binding. Hence, it is unlikely that countries would be forthcoming in accepting such a model agreement. Instead, it may be easier to try and apply the Accountancy Sector Guidelines broadly as a template for MRAs in other professional services, as has been proposed by some authors. Industry and professional associations could use these guidelines to initiate negotiations on MRAs but also tailor the framework from the accountancy sector in accordance with sectoral needs and interests. Generalisation of the accountancy sector guidelines for MRAs would enable agreement on similar formats and procedures for all MRA negotiations and thus help in establishing a more transparent system of MRAs. Eventually, this step would lead to the development of a multilateral framework for MRAs, which would include guidelines on rule making, enforceable standards of non-discrimination and transitivity, and provision of institutional infrastructure for accreditation.

*Establishing multilateral norms for recognition*¹²⁰

It has been proposed in one developing country communication that multilateral norms be established which deal with four specific aspects of recognition.¹²¹ The first concerns norms for professional services where there are no formal accreditation or licensing procedures, such as software services. The proposal suggests that criteria be laid down for minimum professional experience and education to reduce the scope for discretion in according due recognition

¹²⁰ See, Chanda (1999) for a detailed discussion of these multilateral norms.

¹²¹ See the Communication by India (24 November 2000).

in such services. The second relates to norms for assessing equivalence of work related and academic qualifications. The third concerns norms for temporary licensing to enable suppliers to practise in sectors where licensing procedures are absent in the home country. The fourth relates to norms concerning broad-based equivalence of qualifications and standards for purpose of granting recognition. The latter would require establishment of bridging mechanisms where requirements and standards diverge between home and host countries and compensatory systems based on local adaptation periods and aptitude tests would need to be developed without requiring actual harmonisation of standards.

Although the latter proposal is highly detailed and gets into the specifics of various types of recognition, it is much too ambitious for a wide range of countries with differing levels of development to adopt. Establishment of such norms would involve very difficult negotiations with active involvement by professional associations and concerns about loss of domestic regulatory autonomy. It is not clear whether the benefits would be commensurate to the costs involved in such negotiations. However, it would be worth including reference to these issues in any multilateral or plurilateral agreement on MRAs, though it is not necessary to get into discussions at this time on the norms and practices. This proposal is useful for highlighting the need to go beyond recognition in terms of established degrees and licensing systems to include more flexible forms of recognition arrangements.

Greater use of recognition-related GATS provisions

It would also be important to make more effective use of some of the GATS provisions which do not directly relate to recognition but have a bearing on some aspects of recognition. One such provision is Article VI.6, which requires members making specific commitments on professional services

to provide adequate procedures for verifying the competence of professionals, although this article does not require recognition or negotiation of MRAs. In this regard, Article VI.6 provides a means to facilitate the provision of services by suppliers of countries that are not party to MRAs. Thus, members can obtain information from their trading partners on the procedures they use for verifying competence where a market access commitment has been made and also to push for an improvement in these procedures. The main drawback of using Article VI.6 is that it is not a general provision but is applicable only to cases where commitments have been made. It also does not lend itself to use in services where technical competence and non-formally acquired skills have to be assessed, and generally where the service supplier cannot be categorised as a professional. Thus, it would be less relevant to lower and semi-skilled occupations and categories of service providers.

Another important GATS discipline, which could be developed, is Article 4. As discussed earlier, this provision covers issues of qualification and licensing requirements and procedures and technical standards. The development of disciplines under this provision would be to determine the discriminatory nature of a given domestic regulation and thus enhance the possibilities for recognition of qualifications. However, progress in this regard would only be possible if all members agree upon basic definitions.

Issues such as transparency and objectivity in recognition procedures could be addressed through the GATS' commitment structure by undertaking additional commitments under Article XVIII of GATS. These commitments would be aimed at establishing a transparent and least burdensome procedure for verifying the foreign service provider's competence. The idea underlying these additional commitments would be to introduce a hierarchy of measures, with the burden of proof being placed on the domestic regulator to move from a less burdensome measure to a more burdensome

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procedure. For example, if it is accepted that administering a test of service provider's competence and/or educational attainment is the least burdensome way of verifying a foreign service provider's competence, then a foreign service provider would be required to make up any objectively verifiable deficiencies in education, training, and experience, only where it is necessary. The onus of proving this necessity would fall on the host country regulator. Moreover, sectoral guidelines on recognition, such as those developed for the accountancy sector and proposed for other professional services, could be included in the Additional Commitments.

Addressing broader conceptual issues in recognition

There are several conceptual and definitional issues that need to be clarified for developing the GATS framework on recognition.¹²² First, how is equivalence to be defined? Would it mean the same, substantially the same, equal, or comparable? As Iredale notes, a strict interpretation of the term 'equivalence' as meaning the same would tend to prohibit recognising other qualifications. If recognition is to be facilitated, it may be better to define equivalence in terms of comparability of qualifications so as to allow some flexibility in skills, professional and regulatory approaches, and content. Second, what is meant by qualifications? Does it include education, experience, exams passed, and all other means through which competence is acquired or a more limited set of means? It can be argued that qualifications should include a broad range of mechanisms through which competence is developed. For instance, in services like IT where competence is acquired on the job and where constant upgrading of skills and knowledge occurs on the job or through informal training mechanisms, it is important to go beyond formal educational mechanisms in according recognition.

¹²² Iredale (2003) provides a good summary of these issues.

Operational issues in recognition

There are several difficult operational issues that need to be addressed if negotiations on recognition are to progress. The first concerns the institutional apparatus for negotiations, i.e., the question of what would be an appropriate body to undertake the overall GATS negotiations on recognition and more specifically the negotiation of MRAs in specific sectors. The difficulty here is that although it may not be feasible to establish a single national body to deal with the GATS negotiations on recognition, given the need to involve individual professional bodies, leaving individual professional groups to negotiate would also not work. Thus, some combination of an independent outside body with regular inputs from professional associations would be required. At the sectoral level, it might be better to leave the negotiation of agreements to the concerned regulating bodies in the host and home countries rather than relying on government intervention.

A second set of operational issues concerns the feasibility of recognition agreements between countries with very different systems of training, codes of ethics, professional structures, standards, and practices. Given the wide divergences that currently exist, it seems unlikely. Moreover, in some sectors, the South Asian countries do not even have professional bodies comparable to those in developed countries with which to negotiate recognition agreements.

A third set of issues concerns the possibilities for according recognition to specific groups of service providers. For example, creation of fast track procedures for recognition of specialised service suppliers, such as nurses or medical assistants, who may be in high demand in some host countries, could be of significance to some developing countries. These fast track procedures could consist of streamlined and standardised competence tests. However, the risk here is

that such tests may be biased towards locally trained persons and may also set unduly high standards for foreign suppliers. Thus, to the extent possible, one would need to have similar tests for domestic and foreign service suppliers, if the fast track procedure is to be operationally meaningful.

Similarly, it would be important to develop mechanisms for recognition of service suppliers who fall between being professionals and tradesmen, whose qualifications need to be assessed at a technical level. Since such occupations are not always licensable in all countries, formal mechanisms of certification would not be useful, as they would tend to deny entry. Thus, flexible alternatives would be required to adequately assess non-academic and other credentials, which create competence in the concerned activity. Here, however, issues such as who certifies technical competence, whether this is done by a host country employer/regulatory body/association or by a home country institution, would need to be decided. In the absence of MRAs, agreed means of assessing competency would be required. It can be argued that the assessment of a combination of qualifications and skills acquired through work experience or training should be left as far as possible to employers, recruitment agencies, and entities that are responsible for hiring workers. This is because such private parties would be in the best position to know their own requirements and judge competence in accordance with their needs and specifications for the task in question, a point also made earlier when discussing the SPV2 category. The case of the IT sector, where both academic and non-academic qualifications are important, shows clearly that a system which leaves assessment and screening to firms in host and home countries, is conducive to mode 4. Thus, there may be a case to minimise intervention by government and formal regulatory bodies in the case of sectors and occupations where a more comprehensive assessment of abilities is required than looking at formal qualifications. Needless to say, there is likely to be more

discretion in according recognition to such suppliers, especially where one cannot apply some minimum threshold level of education. So, operationally, recognition mechanisms are likely to have an inherent bias against lower skilled and non-formally qualified service suppliers.

ECONOMIC NEEDS TESTS

The concept of ENTs and the various limitations in their use and administration, have been highlighted earlier. Basically, two sets of issues need to be addressed in the context of ENTs. The first is to limit the number of service categories permitted for their use and to reach agreement across member countries on the criteria for selection of these categories. As proposed in the model schedule, one possibility is to eliminate ENTs for only those covered by the SPV as across the board elimination of ENTs is not likely to be feasible. Insisting on very broad elimination of ENTs would only result in fewer sectors being scheduled, particularly those sectors where mode 4 is involved at a lower level of skills and occupational categories.

However, a more conservative approach to ENTs may be more realistic than even what is proposed under the model schedule. This more limited approach is driven by the fact that developing countries are interested in extending the SPV to cover a wider range of skills and occupations. Thus, the wider the coverage of SPV, the less realistic is such a blanket exemption of SPV categories from the economic needs test. In the light of the modified SPV scheme outlined earlier, one possible approach is to eliminate ENTs for SPV1 categories, while retaining them for SPV2 categories under the horizontal commitments. Countries would retain the discretion of eliminating ENTs for SPV2 categories in their sectoral commitments, if they are willing to commit to deeper liberalisation in a particular sector or occupation. Thus, an agreement would be required on the SPV categories, not only to

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implement the scheme administratively but also to clarify the scope of ENTs. Meanwhile, the process of progressively removing ENTs, as is reflected in the initial offers by Canada, EU, and some other developed countries, can be encouraged through negotiations and progressively extended to categories of interest to developing countries.

The second issue to be addressed is the development of some multilateral standards to reduce the arbitrariness and discriminatory scope in the application of ENTs. As noted earlier, there is no common definition of an ENT, no clearly set criteria for their use, and no clearly established procedures for their administration. Thus, some guidelines need to be set up for applying ENTs, starting perhaps with a sector where such measures are commonly used (in a manner similar to the establishment of guidelines for the accountancy sector). The aim would be to extend these guidelines to additional sectors and to eventually develop a multilateral framework for use of ENTs. These guidelines could for instance, specify when ENTs are to be conducted periodically and when on a case-by-case basis, whether ENTs should be used to solely determine the need to allow foreign service suppliers or to also go beyond this to determine the actual number of such suppliers to be permitted entry, whether such tests should be pre- or post-admission, or both, and what would constitute a reasonable time frame for conducting and completing such tests. Some narrowing of the meaning of ENT in terms of its objective and how it is translated into a market access barrier is required.

Since part of the problem with ENTs is the lack of information on such measures, it would be important to promote transparency and greater availability and exchange of information on ENTs and national practices. Transparency requirements could be included under additional commitments, with specific reference to ENTs. It would also be important to obtain binding commitments on the use of ENTs to prevent discretionary rollback

through widening and tightening of ENTs when economic conditions so warrant. Thus, the scope for using ENTs as some kind of safeguard mechanism depending on economic conditions, would need to be curbed.

DISCIPLINES ON DOMESTIC REGULATION

The South Asian countries also have an interest in developing disciplines on domestic regulation to address issues of fairness and transparency in the implementation of commitments and administrative procedures, something of great significance in the context of mode 4. Article VI:1 states that, 'In sectors where specific commitments are undertaken, each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.' In the case of mode 4, the latter would mean that all administrative procedures concerning issuance of work permits and visas or all recognition-related measures such as licensing and certification requirements, or the application of ENTs, should be done in a fair and reasonable manner. Article VI:2 further requires members to allow for review of procedures and decisions affecting trade in services, while Article VI:3 requires timely notification of the decision. Hence, these provisions have a direct bearing on the proposals made above for the administration of the SPV, such as timely issuance, recourse to appeal rejections, and justification for rejections.

In particular, development of disciplines under Article VI:4 is important for the mode 4 negotiations. Article VI:4 calls for the adoption of disciplines to ensure that 'qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services', that such requirements are 'based on objective and transparent criteria', 'not more burdensome than necessary to ensure the quality of the service', and that licensing procedures are 'not in themselves a restriction on the supply of the service.' As highlighted

earlier, domestic regulations concerning administrative procedures for entry and recognition are among the main impediments to mode 4. For example, the qualification procedures in many countries may involve long delays in the verification of an applicant's qualifications, unreasonable intervals for examination of applications, and may impose exorbitant financial and other costs on applicants. Similarly, domestic regulations concerning licensing procedures may be overly burdensome, with unreasonable time frames and requirements, unclearly specified criteria, high registration and licensing costs, and multiple levels of requirements to be fulfilled at the federal and sub-federal/provincial levels. Thus, development of disciplines on the various elements of Article VI:4—in particular on administrative procedures, qualification requirements and procedures, technical standards, and licensing requirements—is of significance to mode 4 negotiations as such domestic regulations impinge greatly on the scope for mode 4. In fact, implementation of the various proposals outlined can only be possible if backed by appropriate disciplines in each of these areas under Article VI:4.

However, two basic issues need to be resolved with regard to the scope of Article VI:4. The first issue concerns the type of regulations that fall under Article VI:4 as opposed to Articles XVI and XVIII on Market Access and National Treatment, respectively, or any other GATS provisions. Disciplines for domestic regulation are to apply to regulations that fall outside the scope of other GATS provisions. However, such a distinction is not always possible. For example, licensing systems have separate components that can fall under Market Access, National Treatment and Article VI:4 measures. It is not always possible to distinguish the particular requirements and procedures that fall exclusively under Article VI:4. Similarly, there is some ambiguity about the coverage of residency requirements and whether all such requirements should fall under National Treatment and thus be subject to scheduling under specific commitments

or whether there are aspects of residency requirements, which can be covered under Article VI:4. Hence, the extent to which Article VI:4 can address mode 4 related issues depends greatly on the scope of this provision. For instance, if all residency requirements are seen as falling under National Treatment, then issues relating to the process by which a foreign service provider obtains residency can be covered under Article VI:4. However, if all residency requirements are not seen as falling under National Treatment, then the *requirement of residency* for the purposes of licensing and the *process by which residency is obtained* can both be subject to Article VI:4 disciplines.

The second issue relates to the question of whether Article VI:4 disciplines should apply only to measures where commitments have been undertaken or more generally, regardless of what commitments or initial offers have been made. In the former case, Article VI:4 would have a bearing on mode 4 only with regard to regulatory measures that are applicable to existing commitments and offers. In the latter case, the linkages between mode 4 and Article VI:4 would be extensive and any mode 4-related barriers could be disputed under this provision.

The Working Party on Domestic Regulation will need to determine the scope of various provisions and to what extent the various GATS articles are mutually exclusive. It would be in the interests of developing countries to specifically include administrative procedures for work permits and visas, residency, licensing, and qualification under Article VI: 4 as opposed to commitments under market access and national treatment provisions. It would also be useful to assess if certain skill levels and occupations are subject to more regulatory barriers than others and to address these through Article VI:4 disciplines. However, developed countries are likely to resist the application of Article VI:4 disciplines to a wide range of domestic regulations and to measures that are outside the scope of their commitments. This opposition is evident

It would also be useful to consider the possible extension of bilateral agreements on social security payments, multilaterally. In this regard, transparency and timely notification of existing totalisation agreements or negotiations of new agreements would be important, so as to facilitate participation by more countries.

from recent proposals by Japan and the EC for treating regulations such as licensing procedures outside Article VI:4, such as through a separate annex of disciplines. It is also important to recognise that development of Article VI:4 disciplines alone will not result in improved commitments in mode 4, particularly in lower and middle skill levels and occupational categories. Thus, the gains realised by developing countries from widening the scope of Article VI:4 may not be commensurate to the loss in their autonomy over domestic regulation. Given such trade-offs and different positions, progress in developing such disciplines is likely to prove difficult. It is in this respect that the additional commitments on transparency and domestic regulation suggested in the model schedule, take on importance. Such commitments would take less time to obtain than developing horizontal disciplines on Article VI, and could broadly achieve the same objectives as Article VI:4 disciplines.

NATIONAL TREATMENT RELATED ISSUES

While most of the proposals deal with market access issues, there are several measures pertaining to national treatment commitments, which are also worth considering. Again, these measures are most relevant in the case of mode 4. Chief among these is social security tax, which is imposed on South Asian (and other developing country) service suppliers while they are in the host country, without providing the associated social benefits in future. This is because there is no comparable social security contribution in these source countries and there are no totalisation agreements with the main developed countries to which manpower is exported. The main issue here is whether temporary service providers can be relieved of such payments or if mechanisms can be worked out to ensure that they can receive social benefits in return.

The most practical approach would be to exempt those covered under SPV from social security taxes on their earnings and to exclude

them from coverage under social security benefits, regardless of the total length of their stay (cumulatively across multiple entries). Therefore, even if a CSS spends more than 10 years under the SPV in the US, (10 years being the period required to avail of social security benefits in future) under multiple contracts in the US, with no single contract lasting more than one year, he would not be subject to social security taxes or eligible for such benefits, as long as he remains on the SPV. This would of course, require agreement on the SPV categories and would probably need to be supported by some type of bilateral totalisation agreement. Thus, if the service supplier were to later enter the US on a different visa, like a regular employment visa such as H-1B, he would be subject to social security taxes from that point onwards and his preceding years of work in the US would not qualify him for receiving social security benefits. Any scheme which allows for retroactive calculation or payment of past contributions, as has been suggested in some proposals, would be administratively difficult to implement and burdensome. It is thus best to keep the demarcation between the SPV and other visa schemes distinct, both in terms of payment of social security taxes and eligibility for social security benefits.

It would also be useful to consider the possible extension of bilateral agreements on social security payments, multilaterally. In this regard, transparency and timely notification of existing totalisation agreements or negotiations of new agreements would be important, so as to facilitate participation by more countries. As in the case of recognition, it may be useful to draw upon common aspects of existing bilateral agreements, such as eligibility conditions, regulatory cooperation, and administrative arrangements, in order to develop a multilateral framework for social security and other taxes.

It was noted earlier that *government procurement* policies can create a disadvantage for foreign service persons. Here, the approach should be to allow countries to inscribe such

measures as national treatment limitations, thus giving them the autonomy to use such measures to address public policy objectives, but to also insist on greater transparency in applying such measures and proper notification of the existence of such measures. For instance, countries could be required to make explicit the existence of government procurement policies and subsidies in all relevant sectoral commitments schedules and to provide information on their nature and magnitude, how they operate, and other relevant parameters. It may also be useful to try and limit the scope of such limitations in the schedules. For instance, government procurement limitations could be restricted to taking the form of ceilings on the percent of contracts or value of transactions to be procured from domestic sources, the number of local service persons employed, and the extent of preference to be accorded to domestic contracts. Enforcement of transparency provisions backed by some consensus on the permissible forms of these measures would be essential for reducing the discriminatory scope and impact of such policies. Much would of course depend on the progress in the discussions on such disciplines. An important point to note, however, is that some major developing countries are not signatories to the Government Procurement Agreement and are resisting discussions on transparency in government procurement. Many were proponents for a carve-out of government procurement policies from the scope of the GATS. A re-think on this issue may be warranted on the part of some developing countries and LDCs, as their service providers are likely to face growing market access restrictions to procuring government contracts and sub-contracts.¹²³

Wage parity is a difficult national treatment issue concerning mode 4. While wage parity requirements attached to mode 4 erode the cost advantage of foreign service

providers, wage parity and insistence on payment of minimum wages is in the welfare interests of foreign suppliers, particularly lower skilled workers. One possibility is to distinguish between treatment of different classes of service providers in the application of wage parity measures. Those covered under the CSS-1 sub-category can be exempt from wage parity requirements, the reason being that the reservation wage for such suppliers is likely to be much higher. Moreover, host market demand and supply conditions are likely to result in sufficiently high wages, so differences between foreign and domestic service provider wages are unlikely to be very large. The difficulty here may be with professionals in fields like IT where there are job displacement concerns in the host country and fears about “body shopping” by developing country firms and agents if there is no wage parity requirement. In the case of CSS-2 service providers, it would be practical to allow for wage parity requirements, unless a country wished to remove this condition in its sectoral commitment. For such categories, associated welfare concerns are likely to be more important. So, assurance of minimum wages is in the interests of both developed and developing countries and of the worker. But what is most important is to ensure that wage parity requirements do not impose a cumbersome condition for screening of foreign service providers and the issuance of entry visas. Hence, the earlier proposals regarding the time frame for issuance of the SPV and notification requirements for delays and additional conditions should be inclusive of any wage-related requirements. Delays and rejections on account of failure to meet wage parity requirements should be open to appeal and review under the SPV procedures. Development of Article VI:4 disciplines on administrative procedures for entry could also cover the administration of wage parity requirements as a part of domestic labour market regulations applicable to mode 4.

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¹²³ The recent offshoring ban on US government contracts is a case in point. This would affect not only mode 1 but also mode 4.

The justification for ESMs is that such a possibility may provide countries with a greater comfort level and thus enable them to schedule more services and to make more liberal commitments in scheduled sectors.

EMERGENCY SAFEGUARD MEASURES ¹²⁴

The GATS mandated discussions on and conclusion of emergency safeguard measures by March 2002. The justification for ESMs is that such a possibility may provide countries with a greater comfort level and thus enable them to schedule more services and to make more liberal commitments in scheduled sectors. However, progress has been slow in this area. As far as the South Asian countries are concerned, their position on ESMs will have to depend on a balancing of both domestic interests which can be served by the use of ESMs to protect domestic service industries and the export interests which may be affected by the application of such measures by other countries.

From the domestic point of view, the issue of ESM is likely to be of limited interest as it is only relevant to the very few sectors for which new sectoral trade liberalisation commitments may be contemplated and where these sectors may not yet have been exposed to international competition. But as highlighted earlier, the South Asian countries have made commitments that do not schedule all liberalised sectors and even within the scheduled sectors, have made conservative commitments. Even where such additional scheduling and more liberal commitments are being considered, it may be better for the South Asian countries to deal with further liberalisation at the time of making commitments, by providing features such as phase-ins and transition mechanisms rather than relying on the possible use of a safeguard measure. A safeguard measure may be relevant only for residual circumstances, unforeseen at the time of making commitments.

From an export perspective, ESMs could impede the exports of South Asia. In

particular, such a measure is most likely to be applied against mode 4 imports by the developed countries. This is because mode 4 is the most easily quantifiable mode of services trade. Local labour unemployment/displacement in particular sectors, wage effects, and injury to domestic workers can be easily identified and correlated with the volume of mode 4 imports and institutional mechanisms for the imposition of such measures are readily available through the immigration system. Hence, the presence of ESMs could undermine market access commitments in mode 4 through the imposition of quotas/reduction in existing quotas and other market entry barriers and result in more uncertain market access under mode 4 depending on business cycle and sector-specific conditions in host country markets. Given the importance of mode 4 for South Asia, ESMs are not likely to be in the region's interest. It is worth noting, however, that since existing commitments in mode 4 are already quite restrictive and immigration systems already have safeguard possibilities, there may not be much additional scope to invoke such measures. But the availability of such a safeguard is not likely to result in more liberal commitments in mode 4. It may be harder to introduce ESMs against other modes, such as mode 1 due to problems of quantification and possible circumvention through alternate forms of trade, which could create problems of enforcement.

If an ESM is developed, the South Asian countries should insist on high standards of transparency and due process. The eventual creation of an ESM must rest on well-defined procedural requirements that minimise administrative discretion to ensure predictability and fairness in application, and to sufficiently circumscribe them to avoid abuse.

¹²⁴ Some of the discussion in this section is based on UNCTAD (9 March, 2005) and Department of Finance, Government of Canada, (June 2001).

The GATS mandate also calls for discussions on subsidies in services so as to develop multilateral disciplines to avoid trade distortive effects of subsidies, to consider the appropriateness of countervailing procedures, and to enable exchange of information among members. The main concern for the South Asian countries in the context of these discussions is how to preserve the public policy dimension of subsidies, such as their role in promoting universal service obligations, social equity, and sustainable development in sectors like education, health, and environmental services, while ensuring that they are not trade distorting. One possibility is of course, not to schedule such services where subsidies are important for realising these kinds of objectives. The other is to ensure that even when a sector has been scheduled, that there is flexibility to grant subsidies to domestic service providers as opposed to foreign service providers by inscribing this as a national treatment limitation in the commitments for that sector.

Certain approaches can also be considered for addressing the issue of subsidies. One possible approach would be to follow the goods model and to establish three categories of subsidies, namely, prohibited, actionable, and non-actionable subsidies. Here, export subsidies, which for instance are environmentally harmful could be treated as prohibited while subsidies, which are important for achieving public policy objectives, would be treated as non-actionable. All other export subsidies would be actionable. This approach would require a countervailing mechanism, but the problem here would be in designing such a mechanism and finding the resources to use it. A second possibility could be to follow a five-step approach, to first agree on a definition for subsidies in services (something

very difficult to do), mandatory notification of all services subsidies, freezing of existing subsidy levels, reduction of commitments of existing non-exempt subsidies, phasing out all non-exempt subsidies over a period of time. The South Asian countries need to participate in this discussion to help define subsidies in services, to identify the rationale for exempting certain service subsidies, such as in the case of economic, social, and environmental development, and to identify cases for special and differential treatment for developing countries.

BENCHMARKING ¹²⁶

Given the slow progress with the GATS negotiations, the EU has recently proposed the benchmarking of commitments to expedite the discussions. This would be the equivalent in services to the adoption of a formula approach as applied in the agriculture and NAMA negotiations, and would complement the main request/offer method of negotiations. According to the EU proposal, the benchmarks would have quantitative and qualitative elements, cross-sectoral in approach, and would differentiate between developed, developing and least developed countries. In the quantitative part, a certain number of key sectors would be selected for priority targeting and members would agree to make commitments in a number of key sectors with major economic interest. In the qualitative part, there would be an obligation to bind at least the status quo in the selected sectors and in the case of developed countries to go further. There would be specific measures to reduce horizontal limitations in existing schedules and an obligation to reduce current requirements related to each mode of supply in a certain percentage of sectors. For instance, benchmarks in the case of mode 4 would be in terms of years of stay, percentages of categories

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¹²⁵ Some of the discussion in this section is based on WTO, Working Party on GATS Rules, 'Negotiations on Subsidies', Report of the Meeting of 7 February 2005, Geneva, (18 March 2005).

¹²⁶ Some of the discussion in this section is based on Third World Network, various articles on benchmarking, June 2005, accessed from <http://www.twinside.org/sg/title2/>.

Any negotiating strategy would need to be supported by initiatives and policy efforts at the domestic level.

eligible for liberalisation, either across all skill levels or within specific categories, or the extent of removal of horizontal limitations like economic needs tests. Likewise, in mode 3, benchmarks would be placed in terms of percentage of commitments where foreign commercial presence is unrestricted or percentage of foreign equity participation.

While the establishment of a “common baseline” or benchmark could provide yardsticks for measuring progress in liberalisation, especially in critical areas like mode 4, the concern for South Asian countries is that it would go against the principle underlying the GATS’ framework of commitments. The latter permits flexibility in scheduling sectors and within scheduled sectors in exercising discretion in the extent and content of liberalisation across sub-sectors and modes. This approach is likely to put the burden of additional commitments on the developing countries as it is mainly the latter who have committed less than the status quo in sectors of economic interest to developed countries, such as in banking, insurance, and telecommunications under mode 3. While the developing countries may be required to offer more liberal commitments in mode 3, the improvements in mode 4 under a benchmarking approach is likely to be in terms of the removal of horizontal limitations like ENTs, but not in terms of binding horizontal and sectoral commitments. The basic problems that characterise the mode 4 commitments highlighted earlier are likely to continue. Although it has been suggested earlier that the South Asian countries should try and lock in their existing policies, especially in mode 3, it would still not be in their interest to have this kind of lock-in forced through a benchmarking approach. The latter may force them to make deeper and broader commitments more rapidly, possibly without the supporting domestic reforms and stock taking of national interests and constraints.

8. DOMESTIC CAPACITY BUILDING AND REFORMS

Any negotiating strategy would need to be supported by initiatives and policy efforts at the domestic level. For example, more liberal commitments in mode 4 or strengthening of mode 4 related disciplines under the GATS framework will not automatically translate into benefits for sending countries unless they are supported by domestic reforms and measures. One of the most important areas for domestic reform is that of training and standards. Greater market access under mode 4 will only be meaningful if the South Asian countries can exploit this access through the provision of low-cost but high-quality service providers. Hence, there has to be adequate investment in training, related infrastructure, and establishment of standards so that developing country suppliers can meet host country requirements. This is particularly true in the low-and semi-skilled trades like construction work, welding, and plumbing, where technical rather than academic proficiency is important, but where there are often no regulatory bodies or formal training or apprentice programmes to ensure minimum standards and quality in these countries. And as noted earlier, divergence in training standards in services like nursing and medicine will also need to be addressed in order to facilitate entry into mutual recognition agreements by the South Asian countries. Full and binding commitments in mode 1 can only be meaningful for the South Asian countries if there are supporting investments in telecommunications infrastructure, human capital, and quality certification to promote cross-border exports of BPO and IT-enabled services.

It will also be important for the South Asian countries to improve their institutional and regulatory capacity with regard to labour market and immigration policies. Most of the

above proposals require adequate institutional and regulatory capacity in the sending as well as receiving countries to undertake tracking, screening, and certification responsibilities, to provide timely information under the transparency and notification requirements, and to ensure return and successful integration of temporary service suppliers. Thus, negotiating strategies to facilitate mode 4 must be embedded within a larger national policy and institutional framework to deal with temporary migration and trade. Likewise, development of regulations for data protection and cybercrime would be required to develop the institutional framework for cross-border exports of services.

The South Asian countries must, however, realise that there are many tradeoffs involved in the GATS negotiations. For instance, there

are tradeoffs between widening commitments, such as covering more skills and occupational categories in the horizontal commitments on mode 4, and the depth of these commitments. There are tradeoffs between developing disciplines on domestic regulation to deal with administrative, licensing, and other procedures and national sovereignty and autonomy in the use of domestic regulation. There are tradeoffs between facilitating greater participation in MRAs and trying to multilateralise them and the establishment of MRAs. There are also tradeoffs in distinguishing between temporary and permanent movement and possible administrative and other complexities that may arise. Thus, the countries need to weigh these costs against the expected benefits in order to frame an appropriate negotiating and domestic reform strategy and effectively balance the competing concerns.

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