



Labor
Mobility and
the Global
Economy:

Should the World Trade Organization Set Migration Policy?

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Acronyms and Terms

List of Acronyms

EU – European Union

FDI – Foreign Direct Investment

GATS – General Agreement on Trade in Services

GCIM – Global Commission on International Migration

ILO – International Labor Organization

IMF – International Monetary Fund

LDC – Least Developed Country

NAFTA – North American Free Trade Agreement

SAPs – Structural Adjustment Policies

SAWP – Seasonal Agricultural Worker Program (a Canadian program)

UN – United Nations

USTR – United States Trade Representative Office

WTO – World Trade Organization

List of Terms

Brain Drain – The loss of skilled professionals and the investment in educating them through emigration.

Balance of Payments – Measure of all economic transactions between one country and all other countries at a given time indicating whether or not the country has a net debt or surplus.

Bracero – a Mexican guest worker working in the U.S. through the Bracero Program.

Bracero Program – Guest worker program between the United States and Mexico that existed from 1942 to 1964 that provided primarily agricultural workers from Mexico to the U.S.

Commercial Presence – The GATS defines commercial presence as maintaining a commercial property such as a branch office in the export market.

Economic Needs Tests – Requirements whereby a company requesting permission to employ temporary foreign workers must demonstrate there is a labor shortage for the type of workers they need.

H1-B Visa – U.S. visa category for highly skilled temporary workers.

H2-A Visa – U.S. visa category for temporary seasonal workers in agriculture.

H2-B Visa – U.S. visa category for non-agricultural temporary seasonal workers.

ILO Convention No. 97 on Migration for Employment – A critical instrument for protecting the rights of documented migrant workers that entered into force in 1952.

ILO Convention No. 143 on Migrant Workers (Supplemental Provisions) – First multilateral instrument to protect the rights of all migrant workers including the undocumented. It entered into force in 1978.

Least Developed Country (LDC) – A country designation assigned by the Economic and Social Council of the UN using a low-income criterion, human resource weakness criterion, and an economic vulnerability criterion.

L Visa – U.S. visa category for intra-corporate transferees

Mode 4 – The fourth mode of trade in services as defined by the GATS, which is the Temporary Movement of Natural Persons across borders for the purpose of providing a service or fulfilling a service contract.

Market Access – The Market Access rules in the GATS prohibit governments from enacting policies that would limit foreign service providers operations in terms of number of operations, total value of transactions, capping the level of foreign ownership in a business, and more.

Most Favored Nation – A principle of international trade whereby a country must treat all goods and companies from all foreign countries who are party to a trade agreement equally to one another.

National Treatment – A principle of international trade under which foreign companies or goods must be treated equally to domestic ones for regulatory and tax purposes.

Universal Declaration of Human Rights – Adopted by the United Nations General Assembly in 1948 as a common standard of rights for all people.

United Nations International Convention on the Protection of the Rights of Migrant Workers and Their Families – Entered into force in 2003 and extends the basic human rights enshrined in the Universal Declaration of Human Rights to all migrants.

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EXECUTIVE SUMMARY

The General Agreement on Trade in Services (GATS) is one of more than 20 agreements that comprise the World Trade Organization (WTO). The GATS defines four modes of services trade depending on the location of the provider and the consumer at the time of service provision. Mode 4 is defined as the temporary movement of “natural persons” (e.g., workers) across borders to provide services. Put simply, Mode 4 covers labor migration within the services sector. GATS Mode 4 offers a regulatory framework to manage the movement of some of the millions willing to migrate for work.

This paper explores the GATS framework from a human rights perspective to determine whether or not the WTO is an appropriate arena for managing global labor migration and how expanding its coverage may affect development in the Global South. It explores the relationship between trade and migration, the potential development implications of promoting labor migration, and the drawbacks of the guest worker model.

Currently, the Mode 4 commitments of WTO member states primarily cover high-skilled labor and corporate-management, and are strongly linked to the presence of subsidiaries or branch offices in foreign countries, which primarily benefits large multinational companies. This reflects the status quo of most developed countries’ immigration regimes.

Negotiators from the Least Developed Countries (LDCs) and many developing countries, including Brazil, China, India, and the Philippines, view this as not serving their competitive advantage in low-cost labor. These countries are pushing for expanded commitments on Mode 4 to low- and semi-skilled occupations. They also want to separate flows of temporary migrant workers from permanent immigrants in national immigration regulatory processes. They argue that this would ease labor migration and remove reg-

ulations that either impose a double tax on migrant workers (e.g., paying social security in the host and home country) or are perceived as artificially raising migrant workers wages (e.g., wage parity), thereby eroding their comparative advantage.

This type of liberalization would amount to a global guest worker program because it would create a class of temporary workers who would be separated from permanent immigrant pools, enjoy fewer rights, and have their visa status tied to a specific employer or contract. Furthermore, the WTO has asserted that labor and human rights are not its responsibility, and it has refused to bind itself to upholding the relevant international conventions, thus showing a lack of concern for human rights. While the WTO has a strong enforcement mechanism, international human rights bodies do not. Consequently, trade law tends to override human rights law. Many migrant networks and human rights activists balk at what they see as the reduction of migrants to factors of production and view the WTO as having no mandate to regulate migration.

Mode 4 liberalization could enable developing countries to gain greater shares of the growing services trade. Arguments for expanding Mode 4 point out the importance of labor migration for facilitating international trade and investment. However, in this current round of WTO negotiations developing countries will likely pay for any Mode 4 expansion with extensive concessions in other areas of the services and industrial sectors of their economies.

Remittances are the most palpable product of labor migration. The long-term development impact of remittances is multi-dimensional and still debated. Remittances can lift people out of poverty and stimulate economic growth, which has happened in India. However, an over-dependence on remittances can exacerbate the brain drain,

discourage investment in human capital, and have serious social costs resulting from the separation of family members. Proponents of Mode 4 argue it will replace brain drain with more mutually beneficial circulatory flows of migrant workers. Opponents fear that by encouraging emigration while not addressing the structural economic failures that compel people to emigrate for work, Mode 4 expansion will in fact exacerbate brain-drain by encouraging migration.

A case study of India reveals that labor migration, on both a temporary and permanent basis, and across the skills spectrum, can stimulate long-term development. However, India's migrant workers are often abused and exploited. The Indian government has recommended that steps similar to measures taken by the Philippine government be taken to protect and promote the welfare of Indian migrant workers. Yet, a case study of the Philippines demonstrates the difficulty of protecting migrant workers and calls into question the effectiveness of focusing on labor exportation as a development policy. The Philippines' comprehensive legal framework for protecting workers and regulating labor recruiters has produced limited results and the economy continues to struggle after decades of labor exportation.

The European Union's experience with liberal immigration policy demonstrates that focusing investment on improving economies in sending countries can be effective in limiting migration while a policy of open borders does not necessarily cause massive waves of permanent migration. Rather than an open border policy, the North American Free Trade Agreement (NAFTA) included a guest worker visa (TN visa) for NAFTA professionals from the member states. A review of guest worker programs (which tie the worker's visa to a specific employer) in the United States, including the two-decade long Bracero Program, demonstrates a pattern of human

rights abuse, regardless of what labor protections are written into the programs. This is even the case with Canada's Seasonal Agricultural Worker Program (SAWP), which is often held up as a model of success for temporary labor schemes.

In conclusion, this paper argues from a human rights perspective that people have a right to mobility and a right to work, and therefore migration should be legally sanctioned on a much greater scale. But, migrants also have a right to community, which is denied to them by guest worker programs. Guest worker programs are often marketed as a way to slow or stop illegal migration and to benefit migrant workers by allowing them to work legally and providing them some rights and benefits. However, guest worker programs have a poor human rights record and promised benefits are often not delivered. Furthermore, while migration can have positive effects on sending countries' economies, guest worker programs are not an effective development policy.

The WTO is the wrong organization to manage global migration because its primary mandate is trade deregulation and it has no meaningful language to compel members to uphold human rights. It is unlikely that a global guest worker program administered by the WTO would be more effective in protecting labor rights than the national, bilateral, or multilateral guest worker programs already in place, which have done a poor job. This paper comes to the same conclusion as major international migrant rights organizations and unions who raise the concern that expansion of GATS Mode 4 under the WTO could undermine sustainable development in the Global South and efforts for rights-based migration policy worldwide.

1. Introduction

The right to work and the right to emigrate are fundamental human rights, according to the Universal Declaration of Human Rights and other statements. Because trade agreements increase the mobility of capital across borders but do not generally allow people, especially the poor and working class, that same right, the advance of free trade agreements can harm human rights. Trade liberalization can exacerbate the conditions for migration. Furthermore, workers' rights may be profoundly affected by the World Trade Organization's (WTO) General Agreement on Trade and Services (GATS), the terms of which are now under negotiation.

The GATS is a regulatory framework to facilitate and lock in progressive liberalization of services trade. In the WTO context, liberalization actually leads to deregulation by providing strong investment, market access, and intellectual property protections for businesses, all of which restrict governments' rights to regulate markets. The 161 services covered by the GATS include basically anything that can't be "dropped on your foot," including essential services like water, sanitation, and education. For each service sector, WTO member countries can agree to bring their policies into line with GATS disciplines in 4 broad areas, or "modes." These are:

What Is GATS Mode 4?

Mode 4 refers to the movement of labor, or in WTO language, the "temporary movement of natural persons" (corporations have legal personhood, but are not considered "natural"). Specifically, GATS Mode 4 covers employees of a foreign service provider or a self-employed service provider entering a country other than his or her origin for the purpose of providing a service. "Horizontal" commitments (applied equally across sectors) cover four categories of service personnel:

- 1) Services Salespersons;
- 2) Intra-corporate Transferees (covers Executives, Managers, Specialists, and Other);
- 3) Business Visitors (covers personnel engaged in establishing a foreign office or subsidiary and sales negotiations); and
- 4) Independent Contract Suppliers.

Sectoral commitments cover specific occupations in specific service sectors. The number of workers, occupations and sectors committed under Mode 4 is up to the individual countries.

Currently, the majority of WTO members' commitments on Mode 4 cover high-skilled labor, such as doctors and corporate executives, with a strong emphasis on those involved in commercial presence. There are few sector-specific commitments. Developing countries' trade ministers would like expanded Mode 4 commitments on semi- and low-skilled occupations, such as construction workers and live-in caregivers. Nothing in the GATS prohibits this.

The current Mode 4 framework allows for only temporary movement of workers. ("Temporary" is not defined by the GATS; rather, time limits are determined by the individual countries). Additionally, under Mode 4 the individual's visa is employer or contract bound, so they may not change jobs without losing their legal status. Therefore, depending on the outcome of negotiations, Mode 4 may boil down to a global guest worker program. High-level executives, managers, business visitors and others engaged in business negotiations or overseeing foreign operations are not "guest workers," as they are in positions of authority, are highly paid and well-compensated.

Mode 1 - Cross-border provision with no one actually moving (e.g. through postal services or telecommunications)

Mode 2 - Consumption of services abroad through temporary relocation of the consumer (e.g. as a visiting patient or student)

Mode 3 - Commercial Presence - Subsidiary branches (e.g. banks, hospitals, or construction firms that are owned by a foreign company)

Mode 4 - Temporary movement of natural persons (workers) across borders to provide services (see box for details)

Coming out of the WTO's 6th Ministerial in Hong Kong in December 2005, much has been left unresolved and negotiations will continue in 2006. One major area of contention is the treatment of labor movement (Mode 4) in the services agreement, which was essentially off the table in Hong Kong. The focus there with regard to GATS was primarily on the negotiations process.

The governments of African nations, other Least Developed Countries¹ (LDCs), and developing countries such as Chile, Colombia, and the Philippines are pushing for an expansion of the types of labor currently covered by wealthy countries' commitments under the GATS. So far, Mode 4 commitments cover primarily high-skilled labor and corporate management, which many developing country negotiators view as not serving their competitive advantage in low-skilled labor.

India is an exception here — its interest in Mode 4 is in increased minimum visa quotas under existing commitments, particularly in areas related to information technology workers. According to Benny Kuruvilla of Focus on the Global South, India is seeking a legally binding (or "bound") commitment of between 100,000 and 500,000 U.S. H1-B visas (the visa for highly skilled temporary workers).² In early March 2006, India requested expanded sector specific commitments for Contractual Service Suppliers (CSS) that are not linked to commercial presence. This means that foreign companies without offices in the host country could send temporary workers to fulfill contracts under Mode 4. The request also called for expanded commitments on Independent Contractors. The request, which had the

support of 15 developing countries, including China and Brazil, did not call for commitments on low-skilled occupations.

In contrast to India, developing countries in general are pushing for commitments on low- and semi-skilled labor such as construction, domestic workers, and healthcare personnel. There is nothing in the GATS that prohibits commitments regarding these levels of occupations.³ However, where developing countries' governments may see an opportunity to create jobs for their citizens, migrants, labor unions and other civil society groups see the potential for an institutionalized global guest worker program in which human rights are disregarded and migrant workers are traded like commodities.

The current level of commitments essentially mirrors the current visa systems of developed countries. The potential impact of Mode 4 may not be obvious to some policy makers who see what amounts to the status quo. They may conclude that current commitments are reasonable, as multinational corporations need to be able to respond to the market by sending executives or intra-corporate transferees overseas temporarily. Moreover, the rights of high-level executives, managers, business visitors and others engaged in business negotiations or overseeing foreign operations are not at risk because they are in positions of authority, are highly paid and well-compensated. For these reasons, particularly because of their level of authority and professional mobility, people engaged in these activities are not guest workers in the common sense.

Thus Mode 4 may not appear to be controversial. However, it is this status quo with which developing country governments are not satisfied. They want to do two things:

- 1) Separate flows of temporary migrant workers from permanent immigrants to reduce administrative barriers to labor migration and to treat migrant workers qualitatively differently than permanent immigrants by, for example, exempting migrant workers under Mode 4 from social security payments in the host country; and
- 2) Broadly expand the coverage of commitments un-

der the Mode 4 categories of Independent Contractors, and Intra-Corporate Transferees (particularly the sub-category Other Persons) to include many types of low- and semi-skilled occupations.

India's economy is at a different level than most developing countries and its interest in services extends beyond Mode 4 into other modes of service trade. Consequently it has been distancing itself from the proposal to broadly expand Mode 4 coverage. Instead India is focusing on gaining increased quotas independent of commercial presence in the categories and occupations already committed under Mode 4. India does share an interest in separating employees covered by Mode 4 from permanent immigrants.

Both proposals could have a significant impact on the ability of national governments to regulate immigration because:

- The WTO follows a single undertaking structure, meaning that the outcome of the negotiations will constitute a set of rules and regulations that participants have to take as a whole, and which can not be amended by national governments;
- Commitments are legally binding for at least three years and thereafter can only be withdrawn by paying compensation to all WTO members (a sum that would amount to billions, if not trillions of dollars); and
- National regulations can be subject to challenges by foreign governments, which would be resolved through WTO dispute tribunals that transcend national judiciaries and are not subject to public scrutiny.

What is more troubling is that the type of liberalization desired by developing country governments would amount to a global guest worker program because it would create a class of temporary workers who would be separated from permanent immigrant pools, enjoy fewer rights, and have their visa status tied to a specific employer or contract. Because guest worker programs have a poor history when it comes to human rights, many labor groups, migrants and advocates are skeptical about the prospect of an extensive expansion of Mode 4.

Migration for work is an extensive world phenomenon that needs to be addressed in a way that respects human rights. Millions of people are willing to migrate for work and the GATS offers a regulatory framework to manage the movement of some of them.

However, as indicated above, the notion of managing global labor migration through the GATS is troubling on several fronts. GATS rules make it possible for members to challenge government regulations that are perceived as "more burdensome than necessary to ensure the quality of the service." This jeopardizes a wide range of regulations beyond what people usually think of as trade. Additionally, because WTO agreements must be taken as a whole package (i.e. single-under-taking) and developing country governments may have to trade access to their essential services markets for an expansion of Mode 4, millions of poor people could lose access as essential services are privatized. Furthermore the WTO has repeatedly stated that labor and human rights are not in its purview and should be handled by the International Labor Organization (ILO) and the United Nations (UN). Furthermore, international migrant rights organizations and unions, including Migrant Rights International, Public Services International, and the International Confederation of Free Trade Unions, who represent millions of migrants and workers worldwide, argue that the WTO has no mandate to set migration policy. They also note that GATS Mode 4 undermines the movement for multilateral rights-based migration policy worldwide.⁴

So is the GATS framework worth embracing? Is the WTO an appropriate place to manage migration in any capacity? If so, what needs to happen to ensure that expanded Mode 4 commitments create a net benefit to workers and poor economies?

To answer these questions, this paper will:

- 1) provide some general background, including an overview of migration and migrant labor and the importance of trade in services in the global economy,
- 2) give a full description of Mode 4, including a description of current commitments by WTO members and a look at proposals to facilitate broader

commitments and improve the efficiency and economic gains of Mode 4 services trade,

- 3) look at the relationship between migration, trade and development, and the dynamics of migrant remittances,
- 4) explore two case studies — an India case study which reveals that migration can have significant development impacts for the sending country, and a Philippines case study which demonstrates the possibilities and difficulties in protecting migrants,
- 5) provide a comparison of GATS Mode 4 to the treatment of labor migration in the European Union and under the North American Free Trade Agreement (NAFTA) (the EU offers an example of more open and rights-based border policies while NAFTA relies on the guest worker model), and
- 6) explore the experiences of guest workers under the U.S. Bracero program with Mexico, current U.S. visa schemes, and the “offshore” program in Canada.

2. Additional Background

2a. A Brief Overview of Migration and Migrant Labor

Worldwide, the rate of migration grew at 6% a year during the 1990s, a rate faster than population growth as a whole. There are currently about 200 million people living outside their countries of birth.⁵ There are more than 86 million economically active migrants in the world, about 32 million of which are in developing regions.⁶

There are many factors pushing migration, including poverty; war; natural disasters; demographic, wage, and employment differentials; population density and pressure on natural resources; urbanization; and technological advances in transportation. Global economic integration (i.e. globalization) inevitably fosters new pathways for migration. Migrants tend to go where there is a network of migrants from their community. Once a migration network is created it is nearly impossible to stop the flow of migrants to that area. Furthermore, World Bank and International Monetary Fund structural adjustment policies (SAPs) combined with

market liberalization are major causes of dislocation.⁷ For example, 1.7 million small-scale Mexican farmers were displaced by the flood of cheap agricultural products from the U.S. following the implementation of NAFTA.⁸

There are intense demographic factors pulling migrants to industrialized countries. In particular, western European countries and Japan have aging populations combined with low-birth rates and longer life expectancies. Simply put, the number of people reaching retirement age is outpacing the rate of entry by nationals into the domestic workforce. This imbalance will stress welfare systems such as social security where worker contributions finance senior benefits. Increasing immigration to augment the workforce is frequently suggested as a way to solve this imbalance.

These aging populations have also contributed to shortages of healthcare workers — including nurses and live-in caregivers — in many industrialized states. These jobs are increasingly filled by migrants, especially women. As poor women from the Global South become domestic caregivers, children are separated from their migrant mothers while women in families hiring domestic workers are freed to seek higher paying work in professional careers. This creates a global division of labor based on gender and nationality.

This is just part of the larger feminization of migrant networks and migrant workforces. Women comprise more than 50% of migrants in the developed world and 45.7% in the developing world.⁹ Although women can escape rigid gender roles through emigration and their success can have a transforming effect on gender roles at home, they are generally confined to occupations traditionally filled by women such as nurses, maids, caregivers, caterers, and teachers. While women may gain new authority as remitters they may be deskilled (trapped in low-skilled occupations for which they are over qualified) by the occupations they are confined to under guest worker programs.¹⁰

When a significant number of a country’s professionals emigrate permanently to other countries, the sending country loses the capital it has invested in training professionals. This process, known as “brain drain,”

erodes the human capital base and hampers economic growth. Some argue that the educated class is essential for a healthy democracy, public discourse, and addressing societal problems, so “brain drain” hampers development in the broader sense. The development impact of brain drain is quite obvious according to a recent World Health Organization (WHO) report that warned, “millions of people are dying of preventable causes in poor countries because of lack of health care workers, many of whom are leaving for better paid jobs in Europe and North America.”¹¹

Furthermore, through brain drain, wealthy countries receive a type of subsidized labor force. They benefit from the knowledge and skills of highly trained foreigners whose training they did not pay for.

The following statistics offer some idea of the significance of “brain drain” throughout the world:

- Of the world’s 60 million healthcare workers, a third are in the Americas and just three percent in Africa, which has a quarter of the global burden of disease.¹²
- A recent five-year study by a former Philippines health secretary found that about 50,000 nurses had left the country to work abroad in the last five years, while nursing schools have managed to produce only 33,370 nurses over the same period.¹³
- Thirty percent of all highly educated Ghanians and Sierra Leoneans live abroad.¹⁴
- Twelve percent of Mexican college graduates, thirty percent of Mexicans with PhDs, and seventy-five percent of Jamaicans with college degrees live in the U.S.¹⁵
- In 2003 the WHO reported that 60 percent of South African institutions had trouble replacing nurses who had emigrated.¹⁶

An issue related to the migration of skilled professionals is recognition of various credentials. Developing country economists and skilled migrants argue that their professional degrees, licenses, and experience are devalued by immigration policy in industrialized countries. Foreign professionals usually must meet certain requirements regarding qualifications and

work experience. While the motivation for these practices is to protect consumers, there are concerns that the processes discriminate against professionals from developing countries. This issue has been identified by many WTO insiders as an obstacle to progress in the GATS negotiations, and it has been recommended that countries come to Mutual Recognition Agreements on professional qualifications (see section 3e. *Issues of Concern for Negotiators from the Global South*). Developing countries hope to address these concerns through the Mode 4 negotiations.

2b. The Significance of Services

Developing countries generally import more services than they export. This deficit in services trade is significant because services are the fastest growing sector of the global economy. These deficits vary across regions in terms of severity and trends.¹⁷ The average share of GDP held by services in developed countries economies is 72% (70% of workforce) compared to 49% (and 30%) in developing countries.¹⁸ Advances in technology have enabled the outsourcing of business services across the skills spectrum, from customer service to financial analysis. Countries receiving outsource contracts may benefit from increased Foreign Direct Investment (FDI) and export earnings. Additionally, there is the potential for climbing the value chain by moving into the supply of higher-skilled, more profitable services. One study frequently encountered in the literature on Mode 4 estimates that 3% liberalization under Mode 4 would result in US \$156 billion in world welfare.¹⁹ Some estimates even exceed this figure. However, as Edward Sussex of Union Network International notes, “one should be deeply skeptical about quantitative global forecasts of the impact of services trade liberalization, in view of the paucity of hard data and the wide variation in the forecasts made by experts using different methods of measuring trade barriers.”²⁰

2c. Migration and Human Rights

The UN and ILO have developed comprehensive instruments (conventions) to protect the rights of migrant workers. However both organizations lack effective en-

enforcement mechanisms. The UN International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families entered into force in July 2003. This convention extends basic human rights, as defined in the Universal Declaration of Human Rights, to migrant workers both documented and undocumented. It also contains the principle of equality of treatment between migrant workers and nationals regarding wages, extensive rights to transfer earnings, and access to emergency medical assistance and education for their children.

The most relevant ILO Conventions are No. 97 on Migration for Employment and No. 143 on Migrant Workers. They provide migrant workers with more distinct rights than the UN Convention regarding unionization, cultural rights, collective freedoms, reimbursement, social security, housing, education, and training.²¹ These conventions require ratification by national governments, as well as cooperation by those governments for enforcement.

In general, it is the labor-sending countries that have ratified these conventions. Convention No. 97 has been ratified by 45 countries while only 19 countries have ratified No. 143. Neither the United States, Canada, Japan, India, nor any of the Gulf States have ratified either convention.²² Likewise, the major migrant-receiving countries are not among the 34 countries that have fully ratified the UN International Convention on the Protection of the Rights of Migrant Workers and Their Families.²³ Without ratification and enforcement mechanisms in labor-receiving countries like the United States these conventions are merely symbolic.

This highlights a systemic problem in the international economy whereby the mechanisms for protecting capital and investment rights are increasing in scope and effectiveness while the mechanisms for protecting human rights remain weak. However, there is a broad consensus that while there are enforcement difficulties, these conventions are the result of an extensive consultative process among a variety of stakeholders including migrant communities and their advocates and do represent a good baseline for international standards on the rights of migrant workers.

In December 2003, the UN formed the Global Commis-

sion on International Migration (GCIM) with the mandate to develop recommendations for a comprehensive global response to migration. The report that the GCIM released in September 2005 called for a successful conclusion to GATS Mode 4 negotiations arguing that that GATS will benefit the global economy substantially and that agreement on Mode 4 could set a precedent for further liberalization of the international labor market.²⁴ Lacking from the GCIM's discussion of Mode 4 is recognition of civil society's concerns about Mode 4 and the WTO. Many in the migrant rights community think the report shows a shift within the UN from advocating from a human rights framework to an economic one.

3. Movement of Natural Persons in the General Agreement on Trade in Services

3a. Background

The GATS is a regulatory framework to facilitate and lock in progressive liberalization of services trade. As noted earlier, the GATS has no language or provisions to protect human rights and the WTO has stated that human rights and labor rights should be dealt with by the UN and ILO. This would not necessarily be problematic if there was language that obligated WTO members to adhere to the UN and ILO conventions regarding labor practices. However, efforts to include such a "social clause" were strongly opposed and ultimately defeated by developing country negotiators because they felt such provisions would be used as protectionist measures by wealthy countries and erode their comparative advantage of cheap labor.

By placing responsibility for protecting human rights with the UN and ILO while refusing to obligate itself to adhere to relevant human rights conventions, the WTO displays a lack of concern for human rights. Furthermore, some of the same developing countries who most adamantly argued against incorporating labor standards into the WTO, particularly Egypt and Malaysia,²⁵ are among those countries now advocating for the expansion of commitments on GATS Mode 4. In light of this one wonders if the governments of these

countries are representing the best interest of their emigrant workers.

In the context of liberalizing trade in services, the focus regarding labor movement has been on those employees necessary to establish commercial presence (GATS Mode 3) – in the form of foreign subsidiaries – and facilitate new business opportunities. GATS Mode 4 covers the temporary movement of “natural persons” to provide services in foreign countries. (“Natural” is used to specify human beings as opposed to juridical persons such as corporations and other organizations.) Specifically, GATS Mode 4 covers employees of a foreign-service provider, or a self-employed service provider entering a country other than his/her origin, for the purpose of providing a service. Although a literal reading of GATS Article 1.2(d) defines Mode 4 as only covering employees of foreign firms, there is a debate over whether or not domestic firms contracting foreign employees are or should be covered.²⁶

The GATS Annex on Movement of Natural Persons Supplying Services Under the Agreement specifically states that it does not cover migrants “seeking access to the employment market” of foreign nations. It also does not alter Members’ rights to legislate and apply immigration law. By denying access to the employment market, labor under Mode 4 is essentially “captive labor” lacking the ability to switch jobs in the host country.

By making a commitment under a Mode, a member state is obligated to ensure that national regulations permit fulfillment of the commitment. In effect, while the Annex suggests that Mode 4 does not alter state sovereignty over immigration, a member who makes a Mode 4 commitment binds a portion of its immigration policy and regulatory practices to the WTO. Those practices are then subject to challenges by other members and to the WTO dispute settlement system. The impact of Mode 4 commitments on immigration policy and the labor market will be determined largely through the dispute settlement process; specifically by what policies are challenged and how the WTO tribunals rule. Therefore the full impact will not be clear until perhaps ten or fifteen years after the commitments enter into force and challenges have been brought and settled.

A look at the sectoral breakdown of current horizontal commitments (applied equally to all sectors) shows that transnational corporations (TNCs) are favored.

Sectoral coverage under current horizontal commitments

Horizontal commitments	Intracorporate transferees (ICTs)	Executives, Managers, Specialists (who are not ICTs)	Short-Term Business Visitors	Independent contractors, other
Percent of total	43%	28%	13%	7%

Niessen, Jan (10/28/2003) *Negotiating the liberalization of migration – Is GATS a vehicle or a model for global migration governance?* Presented at the EPC-KBF Migration Dialogue Global Governance of Migration – Challenges for the EU, Brussels, pg 4.

The existing commitments are “essentially a trade deal for the multinationals from the industrial countries,”²⁷ because they are strongly linked to foreign investment rights (capital movement) and the ability to establish foreign subsidiaries, branches, or offices (commercial presence), which is of very limited use to capital-poor developing countries. This link to commercial presence may hamper their export potential in a number of sectors.²⁸ About 17% of commitments relate to low-skilled personnel. In most of these cases, an economic needs test²⁹ applies that further limits the movement of low- and semi-skilled workers. There are a number of conditions placed on these otherwise limited commitments. Thus, commitments are limited to a tiny part of the services labor force and there are numerous administrative hurdles for the few occupations that have been committed.

Conditions on market access and national treatment

Condition or restriction	Pre-employment requirements	Numerical quotas	Subject to economic needs tests	Conditions regarding work hours & social sec.
Number of instances	100 countries' commitments	80 countries' commitments	50 countries' commitments	50 countries' commitments

Chanda, Rupa. (1999) *Movement of Natural Persons and Trade in Services: Liberalising Temporary movement of Labour under the GATS. Working paper no. 51, Indian Council for Research on International Economic Relations, pg 31.*

Clearly, current commitments are partial and have critical limitations. Moreover, commitments by developed countries generally reflect the status quo of their immigration regimes with regard to labor migration, and therefore do not represent a change in policy by developed countries. For example the U.S. simply bound its H1-B program at 65,000 (while outside of the WTO the U.S. Congress has increased the quota to as much as 195,000).

The situation would be quite different if some developing country governments achieve the Mode 4 expansion they seek. Such an expansion would encompass low- and semi-skilled occupations in contrast to the current U.S. commitments that are limited to L-visas for intra-corporate transferees and H1-B visas for those with highly specialized knowledge. The proposed expansion would also differentiate migrant workers from permanent migrants by implementing a separate system for managing their movement that transcends national governments. Notably, the *GATS Annex on Movement of Natural Persons Supplying Services Under the Agreement* states that, under Mode 4, workers are not given access to the employment market. This means that their visa and right to stay are bound to the specific employer or service contract under which they enter the country as a Mode 4 service provider.

This lack of visa portability is the most salient and problematic aspect of guest worker programs. Such an extensive expansion of Mode 4 would amount to a global guest worker program. Migrant workers would be reduced to second-class workers since their legal status would be tied to employment with a specific employer or under a specific contract, jeopardizing their ability to exercise basic labor rights such as collective bargaining, free association, and the right to strike.

3b. Framework for GATS Negotiations

Until now the GATS has followed a bottom-up approach that covers only the sectors listed in the commitments. This is called a “positive list approach.”³⁰ This approach is preferred by developing countries because they don’t have to anticipate all the services they may

want to exclude from the GATS in the future. The positive list approach operates through a request offer process. For example, the U.S. might request that Brazil open its banking sector while Brazil in turn requests that the U.S. open its civil engineering sector to Brazilian engineers through a Mode 4 commitment. The request and offer process combined with the positive list approach supposedly offers members flexibility by encouraging an atmosphere of give and take in the negotiating process and allowing members to make commitments only where they are comfortable. Bilateral requests and offers are hardly ever matched, in that offers generally reflect the self interests of the member making the offer rather than responding directly to the interests expressed in the request. However, through the process, members get a sense of each others’ respective interests.

Moving forward from the December 2006 WTO Hong Kong Ministerial, this bottom-up approach and associated flexibility is in jeopardy. While Mode 4 was not addressed directly in Hong Kong, the GATS framework was. The Hong Kong Declaration moves away from the associated flexibility of the original request-offer approach, which was bi-lateral, toward a plurilateral process of negotiations in which multiple countries come together to make requests and offers. This process of negotiations would allow developed countries to collectively drive the agenda by ratcheting up the pressure and making it harder for developing countries to walk away from the negotiating table. To direct this process, industrial groups, or “friends groups,” have done substantial work to identify which countries would make up a “critical mass” (representing 80-90% of world trade) and what restrictions they perceive to be main barriers to trade in these countries. This means these “friends” grouping (e.g. “friends of:” financial services, telecoms, environmental services, distribution, constructions services, tourism, logistics, energy, and legal services – areas of key interest to developed countries) have designed a single platform of regulatory commitments for the global economy. These regulations require investment and competition policy provisions that safeguard the interests of foreign firms rather than local suppliers.³¹

The overall outcome of the recent Ministerial once

again demonstrates that the demands of the Global South are being ignored. This includes an attack on the flexible framework of the GATS, originally added as a concession to developing countries. Although plurilateral negotiations were previously a part of the GATS process and the developed countries (and India) failed to make the plurilateral negotiations mandatory, they succeeded in adding language pressuring members to engage in such negotiations. Conversely, the G90 (one of the largest groupings of developing countries) put forth a proposal in Hong Kong rejecting mandatory plurilateral negotiations and calling for expansion of Mode 4 coverage. While Mode 4 expansion was hardly touched upon at the Ministerial, the stronger language regarding the plurilateral process was added to the text. All of this demonstrates the increased pressure being placed on the Global South to liberalize rapidly in many service sectors and indicates that the Mode 4 expansion sought by the G90 will only come in exchange for extensive sectoral concessions in the GATS as well as the industrial sector negotiations as dictated by the developed countries.³²

3c. Current status of GATS Mode 4 in the United States

Current U.S. commitments on GATS Mode 4 are representative of developed countries' commitments in general in that they bind the status quo rather than inducing a significant change in market access for low- and semi-skilled migrant workers. Again, developing countries want broad market access under Mode 4 for their workers in low- and semi-skilled occupations. They complain that temporary migrant workers have unreasonably been treated similarly to permanent immigrants, which subjects them to a number of unnecessary administrative hassles creating significant transaction costs. Therefore they also seek to differentiate flows of temporary migrant workers from permanent immigrants to reduce transaction costs, increase market access and flexibility of movement (see section 3e. *Issues of Concern for Negotiators from the Global South*). Some countries have proposed a GATS visa in order to enable this type of differentiation.

The U.S. currently has no sector specific commitments on Mode 4. The horizontal (applied equally to all sectors) commitment covers Services Salespersons, Intra-Corporate Transferees, Personnel Engaged in Establishment, and Fashion Models and Specialty Occupations. Intra-Corporate Transferees are divided into Managers, Executives, and Specialists. The subcategories of Managers and Executives are not employees who primarily perform tasks necessary for the provision of the service, and therefore do not cover the semi-skilled occupations of interest to developing countries. Specialists must "possess knowledge at an advanced level of continued expertise and... proprietary knowledge of the organization's services, research equipment, techniques or management." The stays of Services Salesperson's are limited to 90 days, while Intra-Corporate Transferees are permitted to stay three to five years.

Intra-Corporate Transferees are covered under the L visa, which is currently uncapped. Persons coming under Fashion Models and Specialty Occupations fall under the H1-B visa (highly skilled temporary workers), which was bound at 65,000 annually by the U.S. initial commitment on Mode 4 in 1994. The U.S. cannot reduce the quota below that number or rather the U.S. must provide some mechanism for the entry of 65,000 specialty occupation foreign workers. The U.S. can raise the quota and has. The H1-B program quota peaked at 195,000 from 2001-2003, but has been brought back down to 65,000 for 2004 and 2005.

The provisions of the H1-B program essentially comprise U.S. restrictions on market access for specialty occupations at the horizontal level on Mode 4. U.S. employers seeking to employ H1-B visas are required to pay H1-B workers either the prevailing wage or actual wage paid to U.S. employees in the same position with similar levels of experience. The same principle is applied to benefits. The employer must submit a Labor Condition Attestation demonstrating that it will meet wage and benefit requirements, and that domestic workers will not be adversely affected. Firms with 15% or more H1-B

workers are called “H1-B dependent employers,” and must demonstrate that H1-B workers will not be used to replace U.S. employees and that they have made extensive efforts to recruit domestically. Finally, the firm must pay a \$750-\$1,500 “training and education fee” as well as a \$500 fraud prevention and detection fee as part of the application process. Only U.S. firms can apply for H1-B visas. The foreign worker must provide a detailed history of his/her education and work experience to demonstrate that he or she is qualified for the position, and in many cases must obtain a U.S. license where state law requires such for performance of the occupation.

Despite these requirements to protect H1-B and U.S. employees, the program is controversial and appears to fall victim to the same patterns of abuse seen with guest worker programs in general (see section 6b. *NAFTA, Investment Liberalization and Guest Worker Programs*). Neither the Department of Labor nor the U.S. Citizenship Immigration Services (USCIS) apply sufficient resources to enforce the requirements of the program. Because H1-B workers are dependent on their employers for their immigration status they are eager to please. They are often not paid prevailing wages or offered benefits comparable to U.S. workers. They are also often under enormous pressure to work unpaid overtime. H1-B workers have been referred to as “hi-tech Braceros” because the program is exploited in ways similar to the U.S.-Mexico Bracero guest worker program that existed from 1942 to 1964.

Expansion of the H1-B program is sought by some developing countries, particularly India, who as mentioned earlier would like an H1-B commitment of several hundred thousand visas. This is because H1-B visas are not related to commercial presence as are the other categories in the U.S. horizontal commitment. However, the H1-B program covers relatively high-skilled workers. Broad market access for low- and semi-skilled occupations (sought by developing countries in general) is unlikely unless one of three conditions are met:

- The creation of a GATS visa to which the U.S. makes a binding commitment.

- A qualitative change to the H1-B program through U.S. congressional legislation to expand the program to cover low- and semi-skilled occupations.
- A GATS commitment of the H2-B visa, which is the visa category for low- and medium skill non-agricultural temporary workers (see section 3e. *Issues of Concern for Negotiators from the Global South*).³³

3d. North-South Differences in the Doha Round of the GATS

The Doha round of WTO negotiations that began in 2001 was designated the “development round.” This occurred after a series of events in which developing countries demonstrated their discontent with the direction of the WTO, which was not addressing their economic needs.

The lack of agreement in the last few years shows that the wealthy nations have been unwilling to move forward on areas of importance to the Global South, that the Global South has been unwilling to accept conditions dictated by the Global North, or a combination of the two. These are among the reasons why the minimal advancement of recent GATS negotiations is not necessarily a bad thing.

The belief that negotiations should move forward at all is contentious. Civil society groups concerned about corporate globalization believe that the pace of WTO negotiations is too rapid for developing countries and unless they are slowed, broader goals of community development in the Global South will suffer. At the same time, WTO Director-General Pascal Lamy, officials from the U.S. Trade Representative’s (USTR) Office and other WTO proponents claim that another WTO Ministerial collapse will be disastrous for the goal of development in the Global South.

The following discussion draws on the ideas and concerns of those who would likely fall into the latter category: trade ministers and other government officials; business representatives, economists, trade lawyers; and non-governmental groups allied with the WTO.

3e. Issues of Concern for Negotiators from the Global South

In July 2003, Argentina, Bolivia, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Pakistan, Peru, the Philippines and Thailand submitted a paper calling for expansion of Mode 4 in the form of sector-specific commitments including additional skill levels not covered in horizontal commitments and echoing an earlier proposal by India.

However, as noted earlier, India's interest in the GATS exceeds Mode 4. It has attempted to distance itself from the more controversial request of commitments on new low- and semi-skilled occupations. This may be a strategic move to ally itself with the developed countries and enhance its chances for achieving the liberalization it seeks in other areas of the GATS, and also could be an effort on India's part to protect its low-skilled labor market from foreign competition.

In contrast, the African countries and other LDCs especially have staked their claim at the WTO on GATS Mode 4 and are not willing to further liberalize in other areas of the WTO without achieving expansion of Mode 4 to lower-skilled occupations. Developing country governments in favor of expanding Mode 4 argue that their countries have surpluses of low-skilled service workers who would earn more by working abroad, and that their remittances can be vital in alleviating balance of payments problems. The temporary nature of work under Mode 4 is supposed to replace "brain drain" with "brain circulation" where professionals temporarily migrate and then return home with new skills, business practices, and professional connections. Furthermore, brain drain isn't a major issue in the push for Mode 4 commitments on lower-skilled occupations because of the minimal investment in the education and training of workers in those occupations. The temporary nature is also part of the argument used to dispel any concerns of receiving countries regarding permanent immigration and the fiscal and social costs perceived to be associated with it. However, experiences with guest worker programs call many of these arguments into question (see section 6b. *NAFTA, Investment Liberalization and Guest Worker Programs*).

While much of the current tension regarding Mode 4 is related to the push for including lower-skilled occupations in member's commitments, there are broader issues concerning restrictions on the ability of skilled professionals from the Global South to work abroad and to travel for the general purpose of conducting international business. There is considerable concern among developing countries' professionals and governments that there is too much room for discretion in the administration of visas, work permits, and economic needs tests. This, along with the lack of clarity and uniformity in the definition of occupations and the recognition of professional credentials and work experience, are primary areas perceived as restrictions on mobility and market access for professionals and other workers from the Global South.

These concerns may be legitimate and addressing them could benefit developing countries, their workers, and businesses. However, these issues could be addressed through bilateral or multilateral agreements outside of the WTO. Doing so would likely benefit developing countries even without an expansion of commitments on Mode 4 and without the costly concessions that such an expansion would entail. Since most developing countries view Mode 4 as the only area where they can gain substantially from the GATS, if not the entire WTO package, industrialized countries are able to use expansion of Mode 4 as a bargaining chip to leverage major concessions from developing countries in other areas of interest to wealthy nations. Thus, while greater clarity and uniformity in occupation definitions and credentials recognition would likely benefit developing countries, the costs of achieving these improvements at the WTO will likely greatly outweigh the benefits.

There are a number of ways the issue of credentials recognition could be addressed. The GATS allows members to draft Mutual Recognition Agreements for broad-based recognition of qualifications, which has already been done for standards in accounting services. Other tactics include the use of local adaptation periods and aptitude tests as practiced among European Union (EU) members,³⁴ and the ILO developing standardized qualifications for skilled services.³⁵ All of

these strategies could be applied through bilateral or multilateral agreements outside of the WTO.

In November 2000, India made a proposal for moving negotiations forward. Many aspects of this proposal have been echoed by other developing countries, including Colombia, Chile, and Mercosur (the common market of the South American Cone).³⁶ India's proposal called for

- uniformity and clarity of definitions and administrative norms,
- more commitments on independent service providers and specialists,
- superimposing the ILO's International Standard Classification of Occupations (ISCO-88) on the GATS to allow for finer and more uniform classification of occupations (while the ISCO-88 is not necessarily embraced by all developing countries, the issue of uniform disaggregated sectoral classification is a common concern),
- establishing multilateral norms for economic needs tests (ENTs),
- the creation of a GATS visa to separate Mode 4 suppliers from permanent migration flows,
- establishment of Mutual Recognition Agreements for qualifications standards, and
- Bilateral Totalization Agreements to exempt Mode 4 professionals from host country social security payments.

The GATS visa proposal has evolved into a Contractual Service Provider (SCP) visa that would most likely be restricted to intra-corporate transferees, at least at first.

Resolving such administrative barriers could enhance the development opportunities for poorer countries. However, given what would be negotiated away in order to achieve the type of Mode 4 expansion sought by developing countries, particularly LDCs who are most interested in inclusion of low-skilled occupations, the WTO is not necessarily the right avenue for addressing these problems. Nonetheless, developing countries may see the WTO as the only avenue currently avail-

able to them for addressing these issues, and may effectively "give away the shop" in exchange for Mode 4 expansion. In doing so they may not have the best interest of their workers in mind.

In March 2006, India along with Argentina, Brazil, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Morocco, Pakistan, Peru, Thailand, and Uruguay submitted a request for expanded sector specific market access for Contractual Service Suppliers de-linked from commercial presence and Independent Professionals in over 20 sectors. This type of commitment on Contractual Service Suppliers would allow foreign firms without commercial presence (physical offices or subsidiary branches) in a country to export workers to firms with commercial presence in that country. This could be a significant step toward a global guest-worker scheme in which workers are traded between companies. However, this request is generally limited to professionals with a bachelor's degree or equivalent experience who are less likely to be taken advantage of. It also seeks to restrict the use of economic needs tests and precludes the use of wage parity as a condition for entry. The LDC group has not yet put forth a revised Mode 4 request. An LDC group request would likely echo the call for de-linking commitments from commercial presence and for greater restrictions on economic needs tests but would seek the inclusion of lower-skilled occupations such as domestic and construction workers.

4. Migration and Development

Sorting out the relationship between migration and development is necessary to understand why developing countries' governments might be pushing for Mode 4 and whether or not expanding Mode 4 commitments would have a positive impact on long-term development.

This section presents the basic theories on the relationship between migration and development, and explores the significance and dynamics of workers' remittances. It is followed by a case study of India that demonstrates some of the long-term development effects migration can have on the home country's economy. This case study also indicates why India has

been a strong proponent of Mode 4 liberalization. The next case study of the Philippines experience regulating temporary labor migration not only shows the difficulty of protecting migrant workers, but is particularly valuable because that country has implemented policies for protecting migrant workers similar to those recommended by the High Level Committee on the Indian Diaspora.

Economists argue that migration contributes to economic growth through the exchange of skills and knowledge, and by generating new business opportunities. Arguments for expanding GATS Mode 4 often point to the importance of the “movement of natural persons” to facilitate other modes of trade. Migrant workers abroad expand the market for products from home by introducing them to the host country. For example the High Level Committee on the Indian Diaspora reports that:

*The [Indian] diasporic community has often helped to create breakthrough for new Indian products and companies... Indian textiles and fashion designers, Indian herbal cosmetics, products and jewelry are mainly known abroad due to the presence of a large Diaspora.*³⁷

Migration for work stimulates huge financial gains (when taken as a whole) in the form of remittances to poor relatives left behind. However, as mentioned earlier it may undermine economic development through a “brain drain” (by depriving communities of their most economically productive members), and through depriving families of mothers and fathers causing social instability and increasing the vulnerability of children. Moreover, many of these remittances are generated by workers subjected to harsh workplace exploitation and dangerous travel conditions.

Understanding the dynamics of remittances is essential to designing policies that maximize the development potential of temporary migration. Those supporting Mode 4 argue that legalizing migrant flows increases remittances by raising wages and making it easier to transfer funds back home. They also note that remittances tend to decline over the long term as immigrants’ connections to their communities of origin

decrease. Therefore, the argument goes, temporary migration will generate greater remittances than increased permanent migration.³⁸

Remittances are a vital resource to millions of the world’s poor. Total remittances are conservatively estimated at US\$150 billion annually³⁹ but believed to be possibly two to three times that figure. Moreover, remittances exceed official development aid (ODA) and are second only to foreign direct investment (FDI) among international financial flows (see chart on pg. 14). Although there is much room for improvement in the estimation of remittances and their effects on receiving communities, not just receiving households,⁴⁰ experts say that they increase in times of economic crisis and they put money directly into the hands of those who need it most.

The long-term development impact of remittances is hard to gauge. Some argue that the impact is substantial as increased local consumption can stimulate local industries and that remittances can provide much needed hard currency for a poor nation’s balance of payments, which is a major issue in highly indebted poor countries. However, remittances may also lead to lower domestic food production, inflation, and economic vulnerability.⁴¹ They may also discourage investment in social capital by encouraging further emigration, causing governments and foreign investors to view the workforce as unreliable.⁴² There is a gender dynamic in remittance behavior as women are more likely to spend remittances on health care, school, food, and clothing, while men prefer durable goods such as televisions and cars.⁴³ Dependence on migrants can have serious side effects. In some communities in the Dominican Republic family members receiving remittances quit working because of the vast differential between local wages and remittances and children dropped out of school because they planned to migrate to the U.S.⁴⁴

One of the most direct ways to enhance the benefits of remittances for migrants and their communities is to reduce the cost of transferring money. This is taking place as banks are beginning to extend financial transfer services to migrant workers at a much lower cost

than traditional wire companies like Western Union. Getting banks involved in remittance transfers not only lowers prices through increased competition, it's also an opportunity to provide other financial services to migrant workers including savings accounts, micro-credit

programs for small businesses, and remittance-backed bonds. Mexico has introduced the *metrícula consular* identification card which enables undocumented Mexican migrants to open U.S. bank accounts and remit earnings.

Remittances, Official Development Aid, and Foreign Direct Investment in 2004

Remittances (formal transfer channels)	Official Development Aid	Foreign Direct Investment
US\$150 billion	US\$78.8 billion	US\$158.3 billion
Source: <i>Report of the Global Commission on International Migration</i> , 2005 Switzerland: SRO Kundig, pg 85	Source: OECD Development Assistance Committee Secretariat	Source: <i>World Economic and Social Survey 2005</i> , United Nations Development Policy and Analysis Division http://www.un.org/esa/policy/wess/

Regional Distribution of Remittances in 2000

Region	Rank	Proportion of total World Remittances	Regional Leader*	Leader's Proportion of regional total	Leader's proportion of world total
Latin America and the Caribbean	1	31%	Mexico**	34%	8%
South Asia	2	20%	India	73%	15%
Middle East and North Africa	3	18%	Egypt	35%	5%
East Asia and the Pacific	4	14%	The Philippines	43%	8%
Europe and Central Asia	5	13%	China	43%	8%
Southern Africa	6	5%			

Source: Sorensen, Ninna N. (June 2004) *The Development Dimension of Migrant Remittances*. International Organization for Migration, working paper series

* Within regions remittances tend to be concentrated among a few countries. Typically two countries receive more than 50% of the regions remittances

** In Latin American and the Caribbean, El Salvador and the Dominican Republic each receive 9% of the regions remittances

Top 10 in 2004	
Remittance-receiving countries	India , 21.7 billion USD China , 21.3 billion USD Mexico , 18.1 billion USD Philippines , 11.6 billion USD Spain , 6.9 billion USD Belgium , 6.8 billion USD Germany , 6.5 billion USD United Kingdom , 6.4 billion USD Morocco , 4.2 billion USD
Remittances as share of GDP	Tonga , 31.1 percent Moldova , 27.1 percent Lesotho , 25.8 percent Haiti , 24.8 percent Bosnia & Herzegovina , 22.5 percent Jordan , 20.4 percent Jamaica , 17.4 percent Serbia & Montenegro , 17.2 percent El Salvador , 16.2 percent Honduras , 15.5 percent

Source: IMF BoP Yearbook, 2004, and World Bank staff estimates cited in *Global economic prospects 2006: economic implications of remittances and migration*, World Bank 2005

5. Case Studies

5a. Migration and Development: India

Migration for labor, both permanent and temporary, has played an important role in India's economic development. Reviewing this history shows that facilitating migration for work can lead to economic growth, and that Mode 4 liberalization is part of India's effort to manage labor migration for economic development. India also has had success in providing incentives to increase migrant remitting and investment.

The export of workers both skilled and unskilled is clearly part of India's development strategy. India is currently the world's leading receiver of remittances. Millions of white-collar Indians have emigrated to the U.S. and other industrial states, while millions of low- and semi-skilled Indian workers migrate for temporary work in the Gulf States.⁴⁵

The Indian government recently established the High Level Committee on the Indian Diaspora to make policy recommendations on how to harness the financial and human capital of the 20 million Indian migrants, immigrants and their children living outside of India.⁴⁶ The High Level Committee notes that Indians abroad

are employed in the top consultancies and multinational firms and can provide access to top management and facilitate foreign direct investment (FDI); and that Indian immigrants who dominate the budget lodging industry in the U.S. can expand India's tourism industry.⁴⁷ Remittances have played an important role in overcoming balance of payments difficulties in the past.⁴⁸ Furthermore, migrants' investments have led to commercial development and expansion in India's healthcare sector.

The success of the information technology (IT) sector in India is partly a result of the emigration of IT professionals to the industrial world, particularly the United States. "In [California's] Silicon Valley alone, the number of Indians working in technology firms is estimated at 300,000, and accounts for more than 15% of high-tech start up companies."⁴⁹ Roughly 33% of engineers and 7% of high-tech CEOs in Silicon Valley are Indian.⁵⁰

While the migration of Indian IT specialists, doctors, and other professionals is well known in North America, the extent of migration of low- and semi-skilled Indian workers to other parts of the world is not. For example, of the roughly 300,000 Indian citizens working in the Gulf States, 70% are employed in semi- and low-skilled occupations (e.g., construction and domestic help).⁵¹ The state of Kerala is India's leading source of workers migrating abroad, especially to the Middle East. Remittances moved the state from below the national average for per-capita consumption to 41% above the average in 1999-2000, and reduced the number of households below the poverty line by approximately 3%.⁵² Remittances fueled a housing boom there during the 1970s and 1980s. The village of Lebdaikudi Kadu in the state of Tamil Nadu, where three out of four families have a family member working in a Gulf State, has the highest concentration of opulent *pucca* ⁵³ houses in the state. Migrant families are now buying real estate in order to develop shopping centers, hotels and textile factories.

Another strong trend is the use of remittances for professional training.⁵⁴ There is increasing non-resident Indian investment in the construction of health centers in Kerala and the wealthier western state of Gujarat,

which sends many migrant workers to the U.S. and Canada. As remittances raise the incomes of migrant workers and their families in general, more of them are seeking health services.⁵⁵

The Indian experience shows that systems of incentives⁵⁶ can increase migrant deposits in savings accounts, while sound macroeconomics and a floating exchange rate will greatly increase direct remitting.⁵⁷ Unskilled migrants have always been much more likely to remit directly. Semi-skilled and skilled migrants working in the Gulf States, primarily on a contractual basis, continue to prefer non-resident savings accounts to direct money transfers since they plan on using the money when they return to India (the Gulf States offer guest workers very few opportunities for permanent residency and citizenship) and savings accounts offer the most security.⁵⁸

The economic benefits of migration come with a price. While Indian professionals migrating to the Gulf States may bring their families, Indian laborers may not. Furthermore, Indian laborers are exploited and taken advantage of in many ways, including poor working conditions, being conned by recruiting agents, long work hours, and extensive wage deductions and withholdings. Additionally, employers frequently take away workers' passports.

As stated earlier in the discussion of the H1-B visa program, abuse of migrant workers is by no means unique to lower-skilled workers, although it is more pervasive. (See section 6b. *NAFTA, Investment Liberalization, and Guest Worker Programs*). The High Level Committee has recommended that the Ministry of Labour take a number of actions to protect migrant workers (see box), particularly in the Gulf region. Many of these recommended policies are similar to ones used by the Philippines and will be explored in more detail in the next section.

5b. Migration Management: the Philippines

The Filipino diaspora shares some characteristics with India's,⁵⁹ and the Filipino government has been active in managing migration. It has used policies similar to those recommended by India's High Level Commit-

Government Recommendations for Protecting Indian Migrant Workers

The High Level Commission on the Indian Diaspora recommended that the Indian government clamp down on predatory and unscrupulous recruiters. Other measures recommended to protect migrant workers include the negotiation of a "Standard Labour Export Agreement" with the Gulf countries regarding, *inter alia*, minimum wages and health care. The government can play a role in educating migrants about their rights and obligations, involve the Missions in the Gulf States in "verifying the [validity] of overseas job offers and the reliability of parties offering them" and inspecting labor camps, and ending the practice of foreign employers taking away worker's passports. Additionally the HLCID recommended that the following measures be instated expeditiously:

Setting up a welfare fund for repatriated workers and workers in distress; negotiation of a Standard Labour Export Agreement with the host countries; tightening supervision of both the employment contracts and conditions of our overseas workers by our Missions; launching the insurance schemes expeditiously; establishing mechanisms for the provision of legal assistance locally, and instituting training programmes for human resource development and skill upgradation. [sic]

tee,⁶⁰ particularly the use of model contracts, pre-departure orientation seminars, an overseas workers welfare fund,⁶¹ and monitoring and regulating recruiters. Thus it offers an opportunity for limited evaluation of these types of policies. Despite an extensive legal framework and a variety of agencies in place to protect migrant workers, the Philippines has had limited success preventing malpractice by recruiters and responding to the needs of migrant workers.

Furthermore, while India's experience with outward labor migration as a development policy has led to lasting economic growth in certain sectors and regions, it is less clear that the Filipino experience with labor exportation has successfully encouraged development.

While large sums of remittances have been generated, the government invests little in education, healthcare, and domestic job creation. Furthermore, the remittances may be offset by the resulting brain drain and associated underutilization of the Filipino workforce. For example, Joshua Mata of the Filipino NGO Alliance for Progressive Labor points out that many of the roughly 150,000 Filipina migrant domestic workers employed in Hong Kong were trained as teachers and other professionals in the Philippines.⁶² Offering further evidence that economic development is not materializing, The Alliance for Progressive Labor reports that unemployment rate in the Philippines was 30% in 2005 and that wages are declining.

Moreover, the experience of many overseas workers calls into question the quality of jobs being provided by the Filipino labor exportation policy. Filipina nightclub entertainers in Osaka, Japan, often live seven to a room in employer owned housing, and at best get a day off every two weeks. Filipinas who head overseas to Japan, Indonesia and Thailand as entertainers often end up in the sex trade. Perhaps worst of all is the plight of Filipina domestic workers in the Middle East. Richard Paddock recently reported in the LA Times that:

*Runaway maids arrive at the Philippine Embassy in Kuwait desperate, bruised, hungry and penniless. They slip out of their employers' homes in the dead of night through a window, over a wall, or by walking out a door accidentally left unlocked. They break the law simply by leaving without permission. Some spend more than a year in the embassy compound, waiting for their passports, back pay or the resolution of their legal cases...At times more than 500 women live at the Overseas Workers Welfare Administration next to the embassy. The building gets so crowded they can't all lie down to sleep at the same time.*⁶³

Each year, approximately 860,000 Filipinos leave the country for work overseas. The Philippines leads the world in overseas workers in maritime and health care. The Middle East has been the number one destination of Overseas Filipino Workers, but migration to Asian countries is also increasing. Overall, 70% of Filipino migrant worker outflows are female. Most of those going to Asian countries are domestic workers, caregivers and entertainers (mostly female nightclub workers). In 2003 Japan was the number one receiver of Filipino migrant workers. It is assumed that most of these 58,755 workers were female entertainers.⁶⁷

Because of the government's active role in labor migration and significant involvement of the Philippine National Bank, roughly 35-50% of remittances are sent through formal channels.⁶⁸ Overseas Filipino Workers remitted US\$6.23 billion in 2000, which made up that year's shortfall in the balance of payments.⁶⁹

Pre-departure orientation seminars are mandatory and required for all first-time migrant workers in order to receive their documentation as well as to be eligible for the Overseas Filipino Workers Welfare Fund. The objective of the seminar is to educate workers about their rights and obligations, employment conditions abroad, important cultural differences and customs, and to inform them about the government services available to them. The Pre-departure Orientation Seminar Program was improved by being changed from a mandatory education program for receiving clearance to work abroad to welfare and assistance program for members of the Overseas Worker Welfare Administration Welfare Fund and their families. Moreover, "the Seminar program relies on multi-sectoral cooperation among all sectors involved in the interests and welfare of migrant workers, and as a result receives wide support."⁷⁰

Pre-departure Orientation Seminars follow government prescribed curricula and cover specified modules for different occupations. They have a decentralized nature that enables more coverage into rural areas, although there is still significant room for improvement in this area. Domestic workers and overseas performing-artists (generally exotic dancers) are underserved by these seminars and have little knowledge of, and

experience with, overseas government agencies and services to protect them.

Generally, migrant workers who received the seminars found them useful, especially with regard to foreign customs and practices, but pointed out areas for improvement. Recruiting agencies must ensure that workers complete a seminar before being hired for work abroad. The recruitment agencies caught violating this requirement are sanctioned. Annually an average of up to 142,000 newly hired land-based contract workers, or 50% of newly deployed workers from the Philippines attend a seminar, although many are not up to Philippine Overseas Employment Administration standards.⁷¹ Overall, the program is hampered by a lack of resources and personnel.⁷²

Masud Ali, Executive Director of the Bangladeshi NGO INCIDIN, notes that: “At the country level, wherever the private sector is involved in recruitment, an increase in fraudulent and unscrupulous practices has been observed: for example, aborted migration despite payment in advance... false promises of work and, in the worst cases, trafficking.”⁷³

The government of the Philippines has taken various actions to try to prevent abuse by recruiting and contracting agencies.⁷⁴ The Philippine Overseas Employment Administration closely monitors recruiting agencies.⁷⁵ Additionally, Philippine Overseas Labour Offices are responsible for monitoring and registering employers in host countries. Recruitment agencies and employment promoters must meet strict requirements in order to obtain and maintain their accreditation and are responsible for ensuring that contracts are adhered to.⁷⁶ Furthermore, the direct employment of Filipinos by foreign employers is prohibited and recruitment agencies must be at least 75% Filipino owned⁷⁷ and have sufficient capital to ensure contract liability. While agencies that break the rules will have their license revoked,⁷⁸ top performers may win awards of excellence and certain operational benefits. When a recruiting agency is licensed it becomes a “co-employer” and thus jointly liable with the actual employer for meeting the terms of the contract.⁸⁰

Despite these efforts, complaints of abuse increased

consistently over the last decade both in total numbers of complaints and in proportion to the number of workers deployed abroad. Likewise, judging from the number of complaints, increasing the severity of punishment for violations in the mid-1990s has not diminished malpractices.⁸¹ Migrant workers, particularly domestic workers and overseas performing artists, feel that government agencies discriminate against them and are more concerned with satisfying the overseas employer than protecting the workers.⁸² Eman Villanueva, Secretary General of United Filipinos in Hong Kong, accuses the government of turning a blind eye to abuses by recruiters.⁸³

There could be a variety of reasons for the ineffectiveness seen thus far with recruitment policies in the Philippines, but whatever the cause this ineffectiveness is an indicator of the difficulties of protecting migrant workers even within a strict legal framework. This is a common problem with guest worker programs, especially among government agencies in sending countries. There is nothing in the GATS that provides for these types of regulations. No model contracts or minimum work standards are put forth. Many participants in the WTO would argue that the WTO should not be in the business of forcing labor regulations on member countries, however, it is notable that the GATS does not provide for the types of regulations used by the Philippines, nor is there any meaningful relationship between the WTO, the ILO and UN in terms of compelling WTO members to enforce minimum labor standards put forth in the conventions mentioned earlier (see section 2c. *Migration and Human Rights*).

What’s more, the deregulatory nature of the GATS, particularly the national treatment and market access principles, threaten the very basis for the Philippines system for regulating recruitment, which is the requirement that recruiting agencies be 75% Filipino owned and thus fully under the jurisdiction of the government. (While this particular issue falls under Mode 3, it applies because of the single undertaking structure of the WTO.) Furthermore, migrant workers themselves see the WTO and other deregulatory forces as a source of hardship. As Eman Villanueva puts it, “Many of the issues that we [migrant workers] are confronted with

come from policies that are being promoted by the WTO.”⁸⁴ Foreign domestic workers, including Filipinas, had a strong presence at the anti-WTO demonstrations during the 6th Ministerial in Hong Kong.

6. The Treatment of Labor in Other Trade Agreements

Whether or not trade agreements should cover migration in any way is debatable. If one accepts that labor movement should be incorporated into trade agreements then the question of how and to what extent becomes paramount. The GATS is not the first or only trade agreement to cover the movement of people. The Agreement on the European Community Treaty/European Union and the North American Free Trade Agreement (NAFTA) cover labor movement in very different ways.⁸⁵

6a. Citizenship and Open Borders in the EU

Since 1968 the European Union (EU) has allowed free movement of members’ citizens. Migrant workers (from member states) are entitled to all unemployment benefits granted national citizens following the EU non-discrimination rule. Article 18 of the European Community Treaty (ECT) provides all citizens of member states with the right to move to other member states. The ECT also covers movement of employees, usually with a 6 month limit, while the self-employed are granted the “right of establishment” (ECT Article 43) based on national treatment.⁸⁶ More recently, the 1992 Treaty of Maastricht on the European Union included the concept of EU citizenship while the 1999 Amsterdam Treaty created a timetable for transforming the European Union into an Area of Freedom, Security and Justice in which, “citizens are free to circulate; immigration is well managed; access to humanitarian protection of asylum is well regulated; citizens and other residents are secure; and justice is upheld for all.”⁸⁷

This approach to regional integration, although based on a strongly economic agenda (where labor market liberalization is seen as fundamental to economic liberalization), recognizes the broader rights and general humanity of migrant workers. The consideration that is given by EU officials, at least on face value, is also

indicated by EU-Speak, or the official nomenclature used by the EU. For example, the EU refers to *social exclusion* where the U.S. would use the word poverty. Sarah Anderson and John Cavanagh of the Institute for Policy Studies argue that by suggesting the condition of poverty is a societal failure “[the concept of] Social exclusion restores the dignity of the poor and disadvantaged, [while] the predominant U.S. model has been to blame the poor for their poverty”.⁸⁸ The idea that the poor are socially excluded places the responsibility on the society rather than the individual. Also, *financial solidarity* is a principle guiding the use of development funds that aims to benefit deprived sectors.

Although the Common Market was expanded to include the “poor four” (Ireland, Spain, Portugal, and Greece) in 1986, it was not until 1991 that they were fully granted labor mobility. In the interim the EU’s use of Structural Convergence Funds and foreign direct investment (FDI) eased emigration pressures through economic growth. Consequently, emigration levels dropped significantly and two of the “poor four” states even became net labor importers.⁸⁹

As of May 2004 the EU 15 was expanded to include Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia. Although full integration will be phased in, all member states must allow full labor movement by May 2011. All of the new members except Malta and Cyprus are considerably poorer than were the “poor four” members integrated in the late 1980s. This wealth differential, along with stagnating economies and increasing anti-immigrant sentiment in the EU 15, are compelling policy makers to restrict labor movement from the new members. Only Sweden placed no immediate restrictions on the mobility of citizens from the poorest eight of the ten new member states.⁹⁰

However, fears of massive permanent immigration are unlikely to be realized since migration rates throughout Europe are low and cultural and language barriers will prevent many citizens of the Eastern European members from migrating. Structural Convergence Funds and other investments can also play an important role in minimizing migration, but the EU coffers are strained, so FDI will have to play a greater role than during the

integration of the “poor four” in the late 1980s.⁹¹

The experience of the EU, although evolving, demonstrates some important points.

First, focusing on equalizing push and pull factors through Structural Convergence Funds can be effective in limiting migration and creating economic growth. Ireland’s experience as a major sender of labor shows that economic growth can bring emigrants back home.⁹²

Second, the EU provides migrant workers from EU countries with full freedom of movement, access to the employment market, a right of establishment and unemployment benefits. The GATS, on the other hand, leaves the issue of rights to the member states and specifically states that workers under Mode 4 do not have access to the employment market (i.e., their legal status is tied to a specific employer).

The EU experience shows that a policy of open borders, which doesn’t limit migrant workers rights or restrict their movement, does not necessarily cause massive waves of permanent migration. Most people, including the economically disadvantaged, do not wish to permanently leave their home communities, and given the opportunity to circulate freely will return there as much as possible. However, the EU has not extended its open borders to countries outside of Europe, and in fact strictly regulates and controls its external borders.

6b. NAFTA, Investment Liberalization and Guest Worker Programs

Despite the fact that the EU’s internal open border policy is coupled with strict regulation of its external borders, the approach to economic integration taken by the EU is still in stark contrast to that of NAFTA, which deeply liberalized the movement of capital but not the movement of people among the member states. While the EU offers full citizenship to citizens of all members, NAFTA offers a guestworker visa. Furthermore, as mentioned earlier, the economic liberalization imposed by NAFTA has added 1.7 million small-scale Mexican farmers to the migrant worker pool.

NAFTA contains a pledge by the three members — the

U.S., Canada, and Mexico — to guarantee access for business visitors, business traders, and intra-corporate transferees, which are covered under the L visa in the U.S. NAFTA also created the TN visa for temporary movement of foreign professionals, which has always been uncapped for Canadian professionals but was capped at 5,500 for Mexican professionals from 1994 until January 2004. Common occupations filled by workers with TN visas include nurses and teachers. Jessica Vaughn from the Center for Immigration Studies reported in the Washington Post that the TN visa is used to insource lower paid foreign labor:

*Stephanie Tabone, of the Texas Nurses Association, charges that hospitals choose to hire foreign nurses to avoid improving working conditions and raising pay for American nurses. “Hospitals can bring in even very experienced nurses from abroad, and call them entry level, so they can get away with paying them less,” she says.*⁹³

Additionally:

*The National Education Association worries about the growing number of school systems hiring foreign workers... even if a school system offers the guest workers the same salary that it would pay an American teacher, it saves by not paying for health benefits, a retirement plan, or even, frequently, Social Security.*⁹⁴

There are several current guest worker proposals before the U.S. Congress. These proposals are similar to the infamous Bracero program between the U.S. and Mexico that lasted from 1942 to 1964.⁹⁵ That program had a number of working and living conditions guarantees, which were actually stronger than under any of the current guest worker visa programs in the U.S.⁹⁶

However, for the most part, the conditions and guarantees were not met, working conditions were harsh, housing was typically substandard and sometimes nonexistent, and food was poor quality if not unsanitary. The power of the agribusiness lobby over the regulation of the program enabled large-scale employers to control the determination of prevailing wages, gain a surplus of captive workers further depressing

wages, and use braceros to break strikes. Braceros who fought for their rights were typically deported and blacklisted. In fact, it was not until the program ended that the efforts to organize farm workers were successful. Undocumented migration of Mexicans to the U.S. increased significantly during the Bracero Program, showing that it encouraged — rather than reduced — undocumented migration.⁹⁷

With the right contracts, braceros could earn considerably more in the U.S. than in Mexico. However, excessive wage deductions and rampant bribery in the recruitment process meant that braceros often ended the season with little savings and sometimes even in debt. Ex-braceros are still engaged in a legal battle over wage deductions transferred to a compulsory savings account in Mexico that they never recovered. Public outrage, along with the efforts of farm labor activists and concerned public officials, brought the program to an end in 1964.

Although the program ended in name it essentially continued under the H2 Visa program, which became the H2-A agricultural and H2-B non-agricultural visa programs with the passage of the Immigration Reform and Control Act (IRCA) of 1986. (The H2 visa program also started in 1942, but unlike the Bracero Program, H2 visas are not restricted to certain countries.) While the H2-A program has worker protections similar to those of the Bracero Program, the H2-B program has very few protections at all.

These types of programs have shown time and again that when a worker's right of stay is tied to a specific employer their labor rights are not respected and they are abused in myriad ways. As mentioned earlier, this is even the case with the H1-B program that covers high-skilled specialty occupations. H1-B workers are often paid significantly less than prevailing salaries and placed under intense pressure to work unpaid overtime.

Although macro-economic studies indicate that immigration does not have a negative impact on wages, these types of programs negatively affect wages in the regions and sectors in which they are used. While they may improve conditions for migrant workers in some cases, this is by no means the rule. The fundamen-

tal problem of standard guest worker programs is that workers are rendered captive by a restrictive contract on which their legal status is based, and that they are denied free association and work permit portability.

6c. Seasonal Agricultural Workers in Canada

While it is widely acknowledged that the U.S. H2-A, H2-B, and H1-B programs are deeply flawed and give too much control to employers, Canada's Seasonal Agricultural Workers Program that covers workers from Mexico and several Caribbean countries is pointed out as an example that guest worker programs can work.¹⁰⁰ However, a closer look at the Seasonal Agricultural Worker (SAWP) program reveals that it too has problems.

Ninety percent of the roughly 7,000 Mexicans employed in Canada each year are in Ontario, and 3,000 alone in the town of Leamington, which has a thriving greenhouse industry that is highly dependent on migrant labor.¹⁰¹ Canada has officially extended workers' compensation and unemployment insurance to migrant workers, given them access to Medicare, included them in Canada Pension, and provided coverage under some provisions of the Employment Standards Act of Ontario. Harvesters are entitled to vacation pay and public holiday pay if they have been employed for thirteen weeks or more. The Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico entitles the workers to the highest of three types of minimum or prevailing wages.¹⁰²

In practice, these rights are not fully exercised. Mexicans employed in Leamington did receive the minimum wage, but on average were paid 50 cents to a dollar less per hour than native Canadian workers doing the same work. Regarding workers comp, many Mexican workers are afraid to claim compensation for fear of upsetting the grower and risking being rehired the next year.¹⁰³ According to one study no Mexican worker in Leamington has received a paid holiday and often they don't receive the required weekly day off. A worker has to work as a harvester for thirteen weeks to qualify for vacation pay, but most workers only spend part of their contract as harvesters. That study reported that "They

deny paid public holidays to all Mexican workers and the amount of vacation pay varies from one grower to the next. Some growers also use vacation pay as a reward and therefore some workers receive the full vacation pay; some workers claim to receive only 2% and some none at all.”¹⁰⁴ Mexicans often do not receive the health benefits to which they are entitled. Finally, migrant farm workers are prohibited from striking and collective bargaining,¹⁰⁵ and workers involved in work stoppages have been deported.¹⁰⁶

Language barriers and lack of outreach by the host community or the government keeps Mexican workers in a state of isolation. Guest workers in Canada are not offered the government-funded English classes, orientation classes, settlement counseling, or professional training offered to permanent immigrants. This signals that they are not meant to be part of Canadian society and contributes to their isolation and alienation in the community. They are consumers¹⁰⁷ and workers but not citizens, and despite the communities’ dependence on them they are commodified (treated as an object that can be imported),¹⁰⁸ distrusted,¹⁰⁹ and even the victims of hate crimes.¹¹⁰ They are represented as less deserving of public benefits than Canadian citizens and particularly suited to the brutal work they do.¹¹¹ Finally, because of their separation from the community at large, there is not the cultural and social exchange of ideas, knowledge, and practices so frequently cited as an important benefit of migration.

Despite this mistreatment, migrant workers from Mexico and the Caribbean come back again and again because of the money they can make. They can earn up to CA\$15,000 per year, which is far more than they earn in Mexico or Jamaica. This enables them to purchase and ship home refrigerators, sewing machines, VCRs and DVD players. They can also send their children to better schools and become professionals such as lawyers, surgeons or airline pilots.¹¹³ This is accomplished by spending up to eight months a year away from their families in an environment that does not fully respect their rights or fairly compensate them for their contributions.

7. Conclusion

Trade and migration are linked in a variety of ways. International trade changes the demands of the global labor market, including local and regional job prospects. In some cases, like the Mexican farmers after NAFTA, trade liberalization can destroy peoples’ livelihoods and cast millions into migrant labor networks. Moreover, general disparities in income, job opportunities, and demographic differences will likely increase international migration in the foreseeable future. Sadly, as migration increases so will the abuse and even trafficking of migrant workers.

Migrant advocates, trade activists and policy makers need to consult with each other and migrant communities to determine what migration policy centered on human rights and empowering migrant workers looks like. In doing so, it may help to consider the following questions:

- Can migration policy centered on human rights co-exist with an international free trade regime focused on deregulation?
- What will be the long-term effects of expanded guest worker programs?
- What trade policies are good for workers in both sending and receiving countries?
- Is the WTO the right organization to manage global labor migration?

Policies are needed to protect the human rights of migrants and maximize the development impact of their labor. Migration policy centered on human rights must allow migrants to decide what is best for them. Therefore, while circulatory (i.e., temporary) migration may be the natural tendency, it is important that the opportunity for permanent immigration is available to migrant workers in order to respect their right of equal treatment before national laws and their right to community. Migrants work hard for their incomes. Rather than appropriate remittances for large centralized development projects, policy aimed at utilizing remittances for development should encourage and enable

migrant workers to invest their money wisely in education, training, or business ventures.

What makes the issue of guest worker programs complicated is that despite the inevitable abuse they are subjected to, contract workers are able to pull themselves out of poverty and in some cases achieve social mobility for their families through these programs. Notwithstanding this abuse and exploitation, many migrant workers still want the jobs and often support the programs, although they may see great room for improvement. At the same time, these programs undermine labor standards in host countries.

From a human rights perspective, people have a right to mobility and a right to work, and therefore migration should be legally sanctioned on a much greater scale. But, migrants also have a right to community, which is denied to them by guest worker programs. Guest worker programs are often marketed as a way to slow or stop illegal migration and to benefit migrant workers by allowing them to work legally and providing them some rights and benefits. In reality, they often increase undocumented migration as word spreads of work opportunities in the host country and demand for jobs in the sending countries far exceeds visa quotas, and as new migration networks are established. As the case study of the Philippines shows, even when there are substantial mechanisms in place to protect migrant workers, many workers are neglected and exploited. Even in the best cases, like Canada, where migrant workers are guaranteed a number of worker rights and benefits by law, those benefits often don't materialize in reality.

As the Indian case study shows, labor migration can contribute significantly to economic development both regionally and nationally, although this is less clear in the Philippines. Despite the importance of trade and migration to one another, the WTO is not necessarily the right organization to create global migration policy. The GATS approach to regulating labor movement is very limited. In dealing with the provision of services it reduces migrants not only to workers, but to service providers whose sole purpose is the provision of a ser-

vice. Furthermore, they are "temporary" service providers who are to return home when they have fulfilled their contract. Many migrant networks and human rights activists balk at what they see as the reduction of migrants to factors of production and view the WTO as having no mandate to regulate migration. WTO officials would likely counter that they are not trying to regulate migration and are only incorporating cross-border movement to the extent necessary to facilitate trade in services.

Despite WTO claims to the contrary GATS Mode 4 is a form of migration policy. The WTO is not the right organization to manage global migration for the following reasons. The WTO's primary mandate is trade deregulation, or perhaps re-regulation to limit the rights of governments and increase the rights of investors and private enterprises. It has no meaningful language to compel members to uphold human rights. In light of this, downward harmonization of labor standards is a predictable effect of the WTO. Therefore, it is extremely unlikely that a guest worker program administered by the WTO would be more effective in protecting labor rights than the national, bilateral, or multilateral guest worker programs, which have performed poorly. Therefore, as groups such as Migrant Rights International and Public Services International have argued for several years, it is more likely that expansion of GATS Mode 4 under the WTO will further the brain drain undermining sustainable development in sending countries and efforts for rights-based migration policy worldwide.

END NOTES

1. There are currently 50 Least Developed Countries as defined by the United Nations (UN). The Economic and Social Council of the UN uses a low income criterion, human resource weakness criterion, and an economic vulnerability criterion to identify Least Developed Countries. For details see <http://www.un.org/special-rep/ohrls/ldc/ldc%20criteria.htm>
2. For example, the Indian government, has attempted to negotiate with the U.S. Trade Representative (TR) to obtain a guarantee of 110,000 H1-B visas for Indian nationals, however there is no way that the USTR can guarantee this. See Walach, Lorie and Tucker, Todd (10/16/2005)
3. "When defining Member A as the country of the service supplier and country B as the country of the service consumer, the GATS main text makes it clear that the following natural persons are covered: Self employed of Member A entering the territory of Member B in respect of the supply of a service; Employee (who is a natural person of a Member) of a service supplier of Member A: [when] the employee is sent to Member B in respect of the supply of a service; or the service supplier of Member A has commercial presence in Member B and sends its employee to its affiliate in Member B." Background Note on GATS Mode 4 and its Information Needs: World Trade Organization and OECD. United Nations Department of Economic and Social Affairs; Statistics Division, Meeting of the Technical Subgroup on Movement of Natural Persons – Mode 4, Paris, January 31 – February 3, 2005, pg 6
4. See Gencianos, Genevieve (July 29, 2005). GATS Mode 4: Critical Observations from the Rights-based Perspective. Presentation made at the public debate, "GATS Power Play: Corporate Interests Trump Peoples Rights," Geneva Peoples Council on the WTO, Geneva, Switzerland
5. Migration in an interconnected world: New directions for action. Report of the Global Commission on International Migration (GCIM), (October 2005) Switzerland: SRO-Kundig, pg 83
6. Towards a fair deal for migrant workers in the global economy, (2004) International Labor Conference, 92nd Session, PDF version pg 7
7. SAPs generally include the raising of interest rates, cuts in public spending for health, education, and subsidies to the manufacturing and agriculture industries. Additionally, countries are pushed to privatize public services (to reduce government expenditure so additional money can go to repaying international loans) and to liberalize their economy by opening it to foreign competition. Privatizing government services leads to layoffs for many public workers and lower pay and less benefits for the workers who keep their jobs.
8. Ahn, Christine, Moore, Melissa and Parker, Nick. (Spring 2004) Migrant Farmworkers: America's New Plantation Workers. Food First: Institute for Food and Development Policy. <http://www.foodfirst.org/pubs/backgrdrs/2004/sp04v10n2.html>
9. Flynn, Donn and Korman, Eleonore. (July 2004) "Women, trade, and migration" Gender and Development 12:2, pg 67
10. Ali, A.K. Masud (2005) Pre-Departure Orientation Programme: Study of Good Practices in Asia: A comparative Study of Bangladesh, the Philippines and Sri Lanka.. Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits. International Organization for Migration, pg 90
11. Williams, Frances. "WHO warns of 'deadly' health staff shortage" New York Times, April 7, 2006
12. Ibid
13. "Warnings Raised About Exodus of Philippine Doctors and Nurses" New York Times, November 27, 2005
14. Newland, Kathy. Migration as a Factor in Development and Poverty Reduction. Migration Policy Institute, June 1, 2003, pg 3
15. Ibid
16. Hamilton, Dr. Kimberly and Yau, Jennifer "The Global Tug-of-War for Health Care Workers" Migration Information Source December 1, 2004 pg 2
17. Trade in Services and Development Implications, Note by the UNCTAD Secretariat, March 2005, pg 3
18. Ibid, pg 2
19. Winters, Alan, et. al. Negotiating the Liberalization of the Temporary Movement of Natural Persons, Commonwealth Secretariat, March 2002. Cited in, Trade in Services and Development Implications (March 2005) Note by the UNCTAD Secretariat, pg 5
20. Sussex, Edward. Assessing the Economic Impact of Liberalisation in Trade in Services: Research and Propaganda. <http://www.ourworldisnotforsale.org/showarticle.asp?search=716> pg 1. This article does not review the Winter's paper mentioned here, but Winter's paper is similarly measuring hard to quantify barriers to trade in services.
21. Towards a fair deal for migrant workers in the global economy pg 72, 78
22. International Labor Organization ILOEX Database of International Labor Standards <http://www.ilo.org/ilolex/english/convdisp2.htm>
23. Office of the United Nations High Commissioner for Human Rights <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty25.asp>
24. Report of the Global Commission on International Migration, pg 19
25. Leary, Virginia A. (1997) "The WTO and the Social Clause: Post-Singapore" European Journal of International Law, 8:1, <http://www.ejil.org/journal/Vol8/No1/art7.html>
26. The WTO Secretariat Background Note on Mode 4 suggests that foreign employees of a local firm could be covered

if they were hired on a contractual basis as independent service providers. Another argument for this broader coverage is that WTO members consider all foreign temporary workers to be employees in order to bring them under domestic labor laws. Background Note on GATS Mode 4 and its Information Needs, pg 8

27. Mukherjee Neela, (1998) Non-Tariff Barriers and Trade in Services. A Comparative Assessment of Capital and Labor Mobility in the GATS under the World Trade Organization. Cited in Lavenex, Sandra March (2002) Labor Mobility in the General Agreement on Trade in Services (GATS) – Background Paper pg 11

28. Chanda, Rupa. (1999) Movement of Natural Persons and Trade in Services: Liberalising Temporary movement of Labour under the GATS. Working paper no. 51, Indian Council for Research on International Economic Relations, pg 17

29. Economic needs tests link the regulation of entry of foreign workers with the state of the domestic labor market. Essentially they require employers to demonstrate that the domestic labor market is not meeting their needs, which is to say there is a shortage of the type of personnel they seek. They must demonstrate that the employment opening has been sufficiently advertised, and in general that they have made a satisfactory effort to find a worker locally.

30. This is the opposite of the negative list (or top-down) approach of the North American Free Trade Agreement (NAFTA) and the more recent Central American Free Trade Agreement (CAFTA) where all sectors are covered except where exemptions are listed.

31. Kwa, Aileen (12/06/05) GATS Draft Points in Dangerous Direction, Focus on the Global South http://www.focusweb.org/content/index.php?option=com_content&task=view&id=723&Itemid=36

32. For details on the results of the Hong Kong Ministerial see: Bello, Walden (12/21/2005) The Real Meaning of Hong Kong: Brazil and India Join the Big Boys Club <http://www.ourworldisnotforsale.org/showarticle.asp?search=1182>, and Khor, Martin (12/22/2005) WTO ministerial outcome imbalanced against developing countries <http://www.ourworldisnotforsale.org/showarticle.asp?search=1183>

33. Tucker, Todd and Wallach, Lori (10/16/2005) Debunking the Myth of Mode 4 and the U.S. H1-B Visa Program pg 1 <http://www.ourworldisnotforsale.org/showarticle.asp?search=798>

34. Chanda, Rupa. (1999) pg 46

35. Towards a fair deal for migrant workers in the global economy, pg 132

36. In July, 2003, Argentina, Bolivia, Chile, China, Columbia, Dominican Republic, Egypt, Guatemala, India, Mexico, Pakistan, Peru, Philippines and Thailand submitted Proposed liberalisation of Mode 4 under GATS Negotiations, a paper which called for sector specific commitments, broader recognition of qualifications, a GATS Visa or separate procedures for temporary service providers, and the elimination of ENTs. Niessen, pg 5

37. Conclusions and Recommendations, Report of the High

Level Committee on the Indian Diaspora, (2001) pg 559

38. O'Neil, Kevin (2003) Summery Report: Discussion on Migration and Development: Using Remittances and Circular Migration as Drivers for Development, Meeting of the Migration Policy Institute, hosted at the Center for Comparative Studies, University of San Diego April 11-12, 2003, pg 7

39. Report of the Global Commission on International Migration, 2005 Switzerland: SRO Kundig, pg 85

40. Ibid, pg 9

41. Sorensen, Ninna N. (June 2004) The Development Dimension of Migrant Remittances. International Organization for Migration, working paper series, pg 10

42. Ibid, pg 21

43. Flynn, Donn and Korman, Eleonore. "Women, trade, and migration" Gender and Development 12:2, July 2004, pg 68

44. Sorensen, Ninna N. (June, 2004) pg 10

45. Sasikumar, S.K. and Varma, Uday K. (2005) External Migration and Remittances: Trends, Policies, Impact and Development Potential: the Case of India, Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits, International Organization for Migration pg 317

46. Sorensen, Ninna N. (June, 2004) pg 11

47. Executive Summary, Report of the High Level Committee on the Indian Diaspora, (2001) pg xxxii

48. Sasikumar, S.K., and Varma, Uday K. (2005), pg 339

49. Ibid pg 315

50. Chapter 29: Economic Development(Investment, International Trade, Industrial Development and Tourism), Report of the High Level Committee on the Indian Diaspora (2001) pg 417

51. Chapter 3: The Gulf Region, Report of the High Level Committee on the Indian Diaspora (2001) pg 19-21

52. Sasikumar, S.K., and Varma, Uday K. (2005), pg 340

53. Pucca houses have walls of burnt brick, metal sheets, stone, cement or concrete. They have roofs made of tile, slate, shingles, corrugated iron, zinc or other metal sheets, asbestos, cement sheets, brick, lime and stone. National Human Development Report: 2001. Government of India Planning Commission, pg 39 http://hdr.undp.org.in/APRI/NHDR_Rgn/India/

54. Sasikumar, S.K., and Varma, Uday K. (2005), pg 341

55. Ibid 342

56. Incentives for NRI deposits included: "higher interest rates for foreign currency deposits than those operating in international markets; higher interest rates for rupees deposits than for domestic accounts of comparable maturity; exchange rate guarantees for foreign currency accounts; facilities for repatriation of deposits, including interest earned; exemption of wealth and income tax for the deposit and its interest; absence of any ceiling on the amount that could be deposited." Ibid pg 329

57. Ibid 324

58. Karela, India's largest labor exporting state, especially to the Gulf States, is a primary example of this as the state accounts for one third of NRI deposits in the country, and accounted for 35% of total state remittances while NRI deposits, on average, constitute only 16% of remittances nationally. Ibid 327

59. Like India, the Philippines also exports large numbers of skilled technical and professional workers, which comprise 35% of OFWs, and large numbers of low-skilled workers including a high percentage of female domestic workers. It is the world's number one exporter of nurses and second only India in the number of doctors it deploys overseas. The Middle East has been the number one destination of OFWs. There the OFW population is mostly comprised of professional, technical, other skilled workers, and semi-skilled construction and health care workers.

60. Executive Summary (2001) pg xv

61. They established an Overseas Workers Welfare Fund (OWWF) whereby after a US\$25 contribution they are entitled to compensation in the event of illness, accidental death, disability, and loan facilities for "livelihood projects" and education. Mughal, Rashid and Padilla, Luzviminda (2005) Regulatory Frameworks for the Recruitment of Migrant Workers and Minimum Standards in Employment Contracts: A comparative study of Pakistan, the Philippines and Sri Lanka, Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits, International Organization for Migration, pg 63

62. Presentation given by Joshua Mata of the Filipino NGO Alliance for Progressive Labor at civil society forum event in Hong Kong during WTO meetings on December 13, 2005.

63. Paddock, Richard C. (5/20/2006) "the Overseas Class: millions working abroad help their nation get by, but not prosper. It's life of lonely risky sacrifice." The LA Times

64. Mughal, Rashid and Padilla, Luzviminda (2005), pg 18

65. This trend is going to continue due to the marked shortage of health professionals in the U.S., Canada, Australia, the U.K. and other European countries, and because of the enormous wage differentials between these areas and the Philippines. Nurses in the Philippines earn \$120-\$220/month compared to \$40,000/year in the U.S. Doctors can only earn \$4,000/year in the Philippines and consequently there are 4,000 Filipino doctors enrolled in nursing school. It is much easier to immigrate to the U.S. as a nurse than as a doctor. Comerford, Mike (10/14/2005) "Why nurses leave the Philippines," Daily Herald, www.dailyherald.com

66. Flynn, Donn and Korman, Eleonore (July 2004), pg 68

67. Mughal, Rashid and Padilla, Luzviminda. (2005) pg 45

68. Sorensen (2004) pg 12

69. Flynn, Donn and Korman, Eleonore (July 2004), pg 68

70. They may be provided by recruiting agencies, NGOs or government agencies. Ali, A.K. Masud. (2005), pg 108

71. Ali, A.K. Masud, (2005), pg 119

72. Ibid, pg 110

73. Ibid, pg 91

74. The main laws governing regulation of migrant workers in

the Philippines are the Labour Code (Presidential Decree No. 442) of 1974, the Migrant Workers and Overseas Filipino Act of 1995, and the Rules and Regulations Governing the Recruitment and Employment of Workers. Agencies promoting, protecting, and serving migrant workers and OFWs include the Philippine Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), the National Labour Relations Commission (NLRC), and the Philippine Overseas Labour Offices (POLOs) which operate under the Department of Labour and Employment. Within Filipino Embassies there are Filipino Workers' Resource Centers (FWRCs) which offer welfare assistance, counseling and legal services and other information to OFWs. Mughal, Rashid and Padilla, Luzviminda (2005), pg 18-21

75. Recruitment agencies are subject to pre-licensing and regular inspections of their offices and records. Advertising of employment opportunities by recruitment agencies must follow guidelines to ensure that the ads are not misleading. Ibid, pg 27

76. The Philippines uses standard Overseas Employment Contracts, which are country specific and differ for various occupations, but cover the following in one manner or another: guaranteed wages for regular working hours; free transportation to and from the worksite or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; fair or authorized causes for termination of employment; repatriation of remains and belongings at the expense of the employer in the case of the death of the worker; free emergency medical and dental services and facilities including medicine; one rest day per working week; and procedures for settlement of disputes. Ibid pg 35

77. This requirement has been instituted to ensure that the government of the Philippine has regulatory jurisdiction over all aspects of recruitment and employment of OFWs. This is further accomplished by the use of standard overseas employment contracts and by the requirement of joint liability between the employer and the recruiter regarding the enforcement of employer contracts. Ibid pg 19

78. Other punishments may include six to twelve years in prison and a fine, life imprisonment and a fine when the violation is deemed "economic sabotage." Ibid pg 20

79. Top performing recruiters may be allowed to extend their license more easily, pre-approved employment clearances, and referrals of clients by the POEA. Ibid pg 28

80. This is complemented by the fact that recruiters must post a cash and surety bond, deposit cash in an escrow account on behalf of the POEA, and sign an affidavit which acknowledges its responsibility to ensure worker welfare. Ibid pg 19, 39

81. Ibid pg 48-49

82. Ali, A.K. Masud. (2005), pg 108

83. Wong, Albert (9/27/2005) "Maids plan WTO show of strength: Despite growing fears that World Trade Organization protests may be stifled, Hong Kong's foreign domestic helpers' Asian Migrants Coordinating Body has begun intensifying a campaign to mobilize its constituents to protest against deregulation policies," The Standard

84. Ibid

85. For details on other agreements dealing with labor movement include see *Advancing the Liberalisation of the Trade in Services: Enhancing GATS Mode 4 – the Movement of Natural Persons*, Australian Chamber of Commerce, November 2002, pgs 16-21

86. *Advancing the Liberalisation of the Trade in Services: Enhancing GATS Mode 4 – the Movement of Natural Persons*. Australian Chamber of Commerce (November 2002), pg 20

87. Van Selm, Joanne and Eleni, Tsolakis (May 2004) *The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members*, Policy Brief No. 4 Migration Policy Institute, pg 2, 3

88. Social exclusion is defined as the condition “when people are prevented from participating fully in economic social, and civil life and/or when their access to income and other resources (personal, family social and cultural,) is so inadequate as to exclude them from enjoying a standard of living and quality of life that is acceptable by the society in which they live.” Anderson, Sarah and Caranagh, John (February 2004) *Lessons of European Integration for the Americas*, Institute for Policy Studies, pg 16

89. Anderson, Sarah and Caranagh, John (February 2004) *Lessons of European Integration for the Americas* Institute for Policy Studies, pg 15

90. Van Selm, Joanne and Eleni, Tsolakis (May 2004) pg 5

91. Ibid pg 6

92. Anderson and Cavaanagh (February 2004) pg 11

93. Vaughn, Jessica (5/2/2004). “Some Lost Jobs Never Leave Home: Skilled Foreigners Flow In to Fill Them” *The Washington Post*

94. Ibid

95. This program was based on international treaty and had the extensive involvement of Mexican and American government agencies. It complied (in writing) with the Mexican Federal Labor Law and had progressive wage, working and living conditions guarantees, which were actually much stronger than under any of the current guest worker visa programs in the U.S. For a short but comprehensive review of the Bracero Program and its implications for Mode 4 see Jensen, Bjorn (October 2005) *Looking Back-Looking Forward: a Review of the Bracero Program Raises Questions About GATS Mode 4*, Trade Matters Discussion Paper Series, American Friends Service Committee <http://www.afsc.org/trade-matters/issues/Looking-Back-Looking-Forward.pdf>

96. Guest worker visas include the H1-B, H2-A, H2-B, TN and L

97. Campbell, Howard L. (1972) *Bracero Migration and the Mexican Economy, 1951-1964*, thesis, American University, pg 321

98. The leaders of the movement to reclaim these funds say that 98 percent of eligible braceros never received their benefits. Estimates of the total sum owed range from \$300 million to \$1 billion in current U.S. dollars.

99. Guest workers programs like the H2-A and H2-B visa programs in the U.S. can border on slavery or debt bondage

as workers pay high fees for visas, job placement, and poor quality housing and food. Guest worker programs stimulate the development of recruitment and contracting industry. Unregulated private recruiters tend to charge exorbitant job placement fees and frequently mislead workers about job opportunities and benefits. Contractors and crew bosses manipulate time cards to underpay workers. Workers do not receive adequate medical care for injuries and illness, and they are threatened out of consulting with legal service providers or talking to activists who try to inform the workers of their rights.

100. O’Neil, Kevin (2003), pg 6

101. Basok, Tonya (April, 2003) *Human Rights and Citizenship: the Case of Mexican Migrants in Canada*, Working Paper No. 72, the Center for Comparative Immigration Studies, University of California-San Diego, pg 8

102. These include: the provincial min. wage for workers; the annual rate determined by Human Resources Development Centre to be the prevailing wage rate for the type of agricultural work being done; the rate being paid by the employer to his Canadian workers performing the same type of work. Ibid pg 9

103. Ibid 10

104. Ibid pg 12

105. Ibid pg 20

106. Ibid pg 19

107. The money spent by migrant workers in the local economy can make the difference between being in red or the black for local retailers. Bauder, Harold and Corbin, Margot (2002) *Foreign Farm Workers in Ontario: Representations in the Newsprint Media*, University of Guelph, pg 18

108. Ibid, pgs 8, 13

109. Basok, Tanya (April 2003) pg 13

110. “Police say migrant farm workers from the Delhi area have been subjected to so many racist attacks by local youths that some are too afraid to go into town...” Bauder, Harold and Corbin, Margot (2002), pg 13

111. Bauder’s and Corbin’s work compares newspaper articles discussing the possibility of incorporating agricultural work into Canada’s welfare to work program: “Agricultural work is hard labour. Rose Charles, 56, wouldn’t mind the work if she didn’t have a back injury;... She laughs, however, at the idea that people might have to take an agricultural job or forfeit their welfare. ‘They can’t make people do that kind of work’”(my italics). The excerpts provided here show Canadian and foreign workers are held to different standards: this “slavery” style work is not acceptable for Canadian welfare recipients, it’s just too hard, but it’s fine for Mexicans and Jamaicans. Bauder, Harold and Corbin, Margot (2002), pg 20

112. Ibid pg 15

113. Ibid pg 14