
The Movement of Natural Persons

A CARICOM Strategy for Trade in Services and International Trade Negotiations

Final Report

*Submitted to the Caribbean
Regional Negotiating Machinery*

*Consultants: Lynette A. R. Ifill
Aubrey Garcia*

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FOREWORD

This report arises from a consultancy commissioned by Emerging Market Economics (EME), which sought to implement Study 3 of the Caribbean Regional Negotiating Machinery (RNM) CARICOM Trade Project on the movement of natural persons and the development of a CARICOM strategy for trade in services and international trade negotiations.

The various negotiations in which CARICOM is engaged, namely, the WTO GATS 2000 negotiations, the implementation of Protocol II to the Treaty of Chaguaramas, regional bilateral agreements, the FTAA process, and the Cotonou Agreement, are examined and recommendations are made on the strategy that CARICOM should adopt.

There is nothing to be gained from CARICOM opting out of any of the negotiating processes. While its participation must be prioritized, none of the negotiations should be neglected although they may sometimes run concurrently.

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LIST OF ACRONYMS

ACP	African, Caribbean and Pacific Group of States
ATS	Agreement on Trade in Services, Annex II to the Agreement Establishing the Free Trade Area between CARICOM and the Dominican Republic
BIT	Bilateral Investment Treaty
BOP	Balance of Payments
BPM 5	Fifth Edition of the IMF Balance of Payments Manual
CACM	Central American Common Market
CARICOM	Caribbean Community
COTED	Council for Trade and Economic Development
CSME	Caribbean Single Market and Economy
EC	European Community
ENT	Economic Needs Test
EU	European Union
FATS	Foreign Affiliates Trade in Services
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
ILO	International Labour Organization
IMF	International Monetary Fund
ISCO	International Standard Classification of Occupations of the ILO
MERCOSUR	Mercado Común del Sur
MFN	Most-favoured-nation Treatment
NAFTA	North American Free Trade Agreement
TNC	Trade Negotiating Committee of the FTAA
TTMRA	Trans-Tasman Mutual Recognition Arrangement between Australia and New Zealand
UNESCO	United Nations Educational, Scientific and Cultural Organization
WTO	World Trade Organization

EXECUTIVE SUMMARY

A. Introduction to the GATS

The General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS) represents only the first step in what is expected to be a series of progressive rounds of negotiations leading to the liberalization of trade in services. The GATS itself contains provisions which require further rounds of negotiations leading to further liberalization of trade in services.

The GATS 2000 negotiations present an opportunity to develop a more stable framework for the liberalization of world trade in services. For the developing countries, it presents the opportunity to negotiate for higher levels of commitments in sectors and modes of supply that are of particular interest to them.

Modes of Supply

The GATS sets out a framework to address liberalization of trade in services via four modes of supply. This report examines the supply of services through the movement of natural persons or Mode 4, and the implications of Mode 4 for the CARICOM Member States.

Treatment Standards

The fundamental obligation under the GATS is the requirement of each Member to extend immediate and unconditional most-favoured-nation (MFN) treatment to the services and service suppliers of other Member countries. Under this rule, Members must treat services and service suppliers from one Member in the same manner as services and service suppliers from any other Member. The Agreement allows for exceptions in cases where Members list measures inconsistent with MFN; this list must satisfy the conditions set out in the Annex on Article II Exemptions.

Market access and national treatment are also to be granted in respect of the sectors specified in their respective Schedules in accordance with the conditions set out therein.

Other Principles

There is a requirement of transparency, which requires Members to publish all relevant measures of general application, as well as international agreements pertaining to or affecting trade in services, which pertain to or affect the operation of the GATS. Enquiry points must be established within two years from the date of entry into force of the WTO Agreement, but there is some flexibility for different time frames to be agreed upon for individual developing country Members.

Another relevant principle is increasing participation of developing country Members, to be facilitated through negotiated specific commitments, and the liberalization of market access in sectors and modes of supply of export interest to them. However, to date the Schedules of the developed Member countries have not in fact granted significant market access

commitments in sectors of export interest to developing country Members, nor have there been significant commitments on Mode 4. This has given rise to some dissatisfaction on the part of developing countries.

Economic Integration and Labour Markets Integration Agreements

The GATS also permits departure from the MFN treatment obligation in the case of economic integration and labour market integration agreements. Economic integration agreements must have “substantial sectoral coverage,” eliminate measures that discriminate against service suppliers of other countries in the group, and prohibit new or more discriminatory measures. It must not raise the overall level of barriers faced by non-members in trading with the group in the service sectors or sub-sectors covered.

In the case of agreements which establish full integration of labour markets, such agreements must exempt citizens of parties to the agreement from requirements concerning residency and work permits, and must be notified to the Council for Trade in Services.

Modification and Withdrawal of Commitments

A Member may only withdraw or modify its commitments after three years have elapsed from the entry into force of the commitment which, in the vast majority of cases, would be three years after entry into force of the Agreement. The Member that withdraws or modifies its commitments must enter into negotiations with affected countries for the agreement of compensatory adjustments. The option of modifying commitments is applicable only to a Member’s specific commitments and may not affect the application of MFN treatment. There is no prohibition on improving or adding to commitments at any time.

Dispute Settlement

The provisions for the settlement of disputes under the GATS are contained in Article XXIII of that Agreement which provides that where a Member considers that another Member fails to carry out its obligations or specific commitments under that Agreement, it must first try to reach a mutually satisfactory resolution by having recourse to the Dispute Settlement Understanding (DSU).

Under Article 22 of the DSU, if the Member complaining of the conduct of the other Member considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors under the same agreement. If it considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, it may seek to suspend concessions or other obligations under another covered agreement.

Expeditious arbitration within the WTO is an alternative means of dispute settlement which can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

Specific Commitments and MFN Exemptions

Schedules of Specific Commitments

The Schedules of Specific Commitments of Members form an integral part of the GATS. Specific commitments scheduled by a Member constitute an undertaking to provide market access and national treatment for the services listed in the Schedule on the terms and conditions specified in the Schedule.

The national Schedules generally conform to a standard format under which commitments are split into two sections. In the first section, “horizontal” commitments are listed, which stipulate limitations that apply to all of the sectors included in the Schedule. The second section of the Schedule contains the commitments on specific service sectors and sub-sectors, including any limitations on market access or national treatment that are being maintained.

All commitments in a Schedule are bound unless otherwise specified. This means that a Member may not introduce measures that are inconsistent with its market access or national treatment commitments.

Lists of Article II (MFN) Exemptions

Most-favoured-nation treatment applies to all measures affecting trade in services. However, particular measures inconsistent with the MFN obligation may be maintained but must be specified in a List of Article II Exemptions. In principle such measures may not be maintained for more than ten years and are subject to review after not more than five years.

GATS Annexes and Ministerial Decisions

Attached to the GATS are eight annexes and eight Ministerial decisions. Some of the annexes and decisions related to the short term finalization and implementation of elements of the GATS. However, others are intended to continue in the longer term. Those five annexes whose provisions will continue in the longer term are an integral part of the package of agreements on trade in services reached in the Uruguay Round.

Annexes will continue to apply in three specific sectors of trade in services, namely, air transport, financial services and telecommunications. The telecommunications sector is the subject of a questionnaire, while financial services is the subject of an understanding, both of which address, *inter alia*, the supply of services through Mode 4.

B. Movement of Natural Persons

Scope of Mode 4

The GATS applies to any service in any sector, except services supplied in the exercise of governmental authority.

The *Annex on Movement of Natural Persons Supplying Services under the Agreement* establishes that natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment. The *Annex* also makes clear that the Agreement applies only to the temporary movement of persons supplying services under

the Agreement and is not intended to prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory.

Linkages Between the Movement of Natural Persons and Other Modes

The provision of services is not discretely divided into the modes of delivery defined by the GATS for negotiating purposes. There are possible linkages between Mode 4 and other modes of supply. In particular, the use of Mode 4 to provide a service is often associated with the use of Mode 3. This is reflected in the commitments scheduled for intra-corporate transferees, usually in connection with related commitments made under Mode 3.

Interpretative Problems

Interpretative problems may arise because the GATS may cover services transactions which are not reflected in traditional balance of payments statistics. Further, since the GATS does not specify who would be the employer of a service provided under Mode 4, nor the nature of the employment contract, questions may arise concerning taxation, wages and other similar matters. These generally depend on who the employer is.

Article I should be clarified by indicating where regulatory authority rests in the application of commitments under various modes. A logical starting point is that the territory of consumption should be the country which has regulatory authority.

Additionally, there is no definition of the term “temporary” in the GATS. Member countries have interpreted the term largely in accordance with their immigration laws and the policy underlying their commitments to permit the entry and stay of natural persons for the supply of services. This has resulted in the application of the immigration rules for permanent stay being applied to temporary entry. The length of stay permitted also varies widely.

The Impact of Immigration and Labour Market Regulations

Temporary movement of labour is not separated from permanent movement of labour and therefore comes under the purview of immigration legislation and labour market conditions. The separation of temporary movement of labour from permanent movement of labour should be discussed multilaterally. Ideally, temporary service suppliers should fall outside the purview of immigration-related laws and labour market regulations and their entry and stay should be treated under a separate set of regulations. Alternatively, they could be covered by a special subset of regulations within the overall immigration policy framework, with more liberal conditions for entry and stay. There is also a suggestion by experts of a GATS visa for service professionals temporarily working overseas.

Other experts foresee a number of problems with the implementation of a GATS visa regime. A GATS visa regime would pose huge challenges to immigration and labour market development regulators. Therefore, the establishment of a GATS visa regime would have to take into account the different capacities of the WTO Members to implement efficient entry systems.

There is also some doubt about the acceptance of the idea of a GATS visa by developed countries and some developing countries. It should be recognised that this would not be an

easy matter to negotiate. Nevertheless, such visas would allow service suppliers to enter markets in order to supply services without time-consuming visa requirements and for this reason, the proposal should be pursued. In fact, the proposal for a GATS visa or permit has now received support from multinational companies, such as PricewaterhouseCoopers.

India has persisted with its proposal, and has submitted a more comprehensive proposal outlining the main features of the GATS visa, which are clearly based on Chanda's proposals.

Mutual Recognition and Standards

Constraints on the Movement of Natural Persons

In addition to restrictions on entry and stay, the movement of natural persons in services is constrained by requirements on qualifications, work experience and licensing or certification. However, such regulations may be motivated by consumer protection and public interest concerns and may not be intended to impede trade flows *per se*.

In many service sectors, in the absence of any significant restrictions on national treatment or establishment, it is the domestic regulation that constitutes the main barrier to the provision of services by foreign businesses or individuals. While many service sectors will always be subject to regulation to protect the interest of the public, the extensive application of such domestic regulations may and often does seriously hamper trade. This is therefore an important area where renewed efforts need to be concentrated in future negotiating rounds.

Mutual Recognition under Article VII of the GATS

Article VII of the GATS allows Members to enter into mutual recognition agreements with regard to education or experience obtained, requirements met, or licences or certification obtained in a particular country. Such recognition may be achieved through harmonization, based upon agreement or other arrangements, or may be accorded autonomously. Other Members must be afforded the opportunity to accede to such agreements or arrangements, or to negotiate comparable ones. The main purpose of Article VII is to permit departure from the MFN rule, while ensuring the openness of any bilateral mutual recognition agreement.

Although Article VII does not cover mutual recognition agreements between sub-central authorities, the general GATS standard is that Members are to take all "reasonable measures" to ensure implementation "by regional and local governments and authorities and non-governmental bodies" within their territories.

In the WTO, work on mutual recognition has been carried out by the Working Party on Professional Services, which has issued its *Guidelines on Mutual Recognition Agreements or Arrangements in the Accountancy Sector*. These guidelines are intended for use on a voluntary basis and are non-binding. Further, the *Disciplines on Domestic Regulation in the Accountancy Sector*, requires Members to ensure that measures relating to licensing requirements, technical standards and qualifications do not create unnecessary barriers to trade in accountancy services.

Many of the principles specified in the *Guidelines* and the *Disciplines* may be applied, with some minor modifications, to mutual recognition agreements in other service sectors. In

this respect, these documents are a useful starting point for the development of guidelines for mutual recognition agreements generally.

The framework envisaged by Article VII may be used as the basis for the development of a WTO plurilateral agreement on mutual recognition. Such an agreement would have to be the subject of negotiation by GATS Members. However, it may be expected that such negotiations would be lengthy and difficult, due largely to the widely varying standards recognised, not only by the Members at the national level, but by sub-regional authorities, and even by the professional associations of self-regulating industries. Nevertheless, developing countries, including CARICOM, must actively participate in such negotiations, in order to ensure that their positions and concerns are taken into account in the conclusion of such agreements.

The Requirements of GATS Article VI

Article VI of the GATS on domestic regulation requires the Council for Trade in Services to develop any necessary disciplines for ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. As stated above, the Working Party on Professional Services has developed guidelines for the accountancy sector based on internationally accepted criteria.

Additionally, agreements have also been reached on guidelines for the mutual recognition of qualifications, on procedures for the modification of schedules under Article XXI and on procedures for certification of rectifications and improvements in schedules.

C. GATS Mode 4 Commitments

Overview of Schedules of Commitments

Most Members have avoided comprehensive commitments on the presence of natural persons. Commitments are generally “unbound”, qualified by liberalization commitments applying to specified types of persons, movements and stays. Most, commitments apply only to senior executives and managers, persons representing an advanced level of training and expertise and business visitors. There may also be market access limitations such as numerical quotas and measures that discriminate in favour of domestic suppliers. Additionally, vague terms and definitions may leave decision on entry open to administrative discretion. In most cases, the relevant criteria for the operation of economic needs tests are not specified. The Schedules exhibit a general bias in favour of qualified labour.

In most services sectors, fewer developing countries than developed countries have made commitments. They have also made far fewer commitments than the developed countries in respect of individual service activities inscribed in their schedules of commitments. This reflects the fact that most developing countries do not have very developed services sectors and are mainly importers, not exporters, of services.

Implications of Developed Countries' Mode 4 Commitments for Developing Countries

In the United States Schedule of Commitments, there are no binding commitments in respect of the market access of natural persons; however, those that are permitted entry are generally entitled to full national treatment, although some states offer national treatment subject to conditions. In the Canadian Schedule of Commitments, there are no binding commitments on any other service except as indicated in the horizontal section schedule, which permits entry to business visitors and intra-corporate transferees; this applies both with respect to the market access and national treatment of such persons.

An examination of the schedules of commitments of the European Community shows that the European Community Members have made no binding commitments with respect to the movement of natural persons to supply services. This is true of both market access and national treatment. In addition, the EC Schedule imposes conditions that are so stringent that they may not easily be met, if at all, by persons from developing countries.

Nevertheless, these countries have made binding commitments in relation to specified numbers of service suppliers. For example, the United States increased the total number of H-1B visas that would be issued to persons in technology industries for the years 2001 to 2003 to 195,000 annually. This type of visa does not confer national treatment within the United States. The European Parliament has approved the EU Services Card Directive, which will allow third country nationals who are legally resident in a Member State the freedom to provide services in other Member States. Individual countries have also introduced measures to permit the entry of service providers. In Germany, an accelerated work visa programme has been implemented for the entry of highly skilled technical workers and their spouses. In the United Kingdom, where there is already no cap on highly skilled professionals, measures are being introduced to streamline the grant and renewal of work permits.

Many developing countries have also restricted the entry of natural persons to technical and managerial personnel, or have placed restrictions on other persons supplying services, but the "unbound" entry does not appear with the same unvarying frequency as in the developed countries' schedules. Although they have made commitments to liberalize fewer services than the developed countries, the schedules of commitments of the CARICOM Member States show that in respect of those services, they have made a fair number of conditional and unconditional commitments to permit the market access of natural persons for the supply of a service and their national treatment. This reflects a commitment to permit entry and national treatment to persons who enter their territories for the supply of services, in those sectors that they seek to develop.

D CARICOM Commitments Under the GATS

CARICOM Member States made specific commitments in nine of the twelve services categories. The three sectors in which no commitments were made are Distribution Services, Environmental Services and "Other" services. Commitments were also made in 72 sub-sectors, with 27 being made in Business Services.

The Schedules of Specific Commitments of the OECS Member States show that persons seeking to establish commercial presence would encounter market access limitations in all sectors in all OECS Member states except in St. Kitts and Nevis, which offered full market access in sporting services, and Saint Lucia, which offered full market access in entertainment and transportation services. They would also encounter limitations on national treatment in all OECS Member States except Saint Lucia and St. Kitts and Nevis, which offered full national treatment in some sectors.

Persons seeking to enter the territories of these countries to supply a service would encounter some form of market access limitations in all Member States of the OECS. However, they would enjoy full national treatment in all Member States in all sectors except in St. Kitts and Nevis in the tourism and travel-related services sector.

The CARICOM Member States other than the OECS Member States generally grant full market access and full national treatment to foreign service suppliers who require the establishment of commercial presence in order to supply services in sectors in which commitments have been made. Jamaica makes exceptions for education, professional services and health-related and social services.

In the case of the movement of natural persons, these Member States generally do not give full market access and full national treatment to foreign natural persons seeking permission to enter their countries in order to supply the specified services. Instead, they either have offered conditional market access and national treatment or have made no binding commitments in respect of the movement of natural persons. In some cases, there are conditions on market access but full national treatment is given.

Eight CARICOM Member States made commitments under the 1997 *Basic Telecommunications Agreement* to open to competition at least some aspects of telecommunications. In all cases, there is either conditional market access to the territory or no binding commitments have been made. However, national treatment is generally granted to natural persons.

MFN Exemptions

Three CARICOM Member States have submitted Lists of Article II (MFN) Exemptions. These are Antigua and Barbuda, Jamaica and Trinidad and Tobago.

For Antigua and Barbuda, the List of MFN Exemptions is restricted to one sub-sector of the Telecommunications Services sector, namely, the provision of terrestrial based mobile services. It offers CARICOM nationals equal treatment to domestic nationals and is of indefinite duration. Antigua and Barbuda bases this exemption on the CARICOM Single Market Agreement.

In the Jamaican List, the MFN exemptions apply to all sectors and the specific commitment is to the waiver of the work permit requirement for citizens of the CARICOM Member States. This is to be of indefinite duration. Jamaica also makes an exception in the Maritime Transport sector for cargo reservations under the UN Code of Conduct on Liner Conferences..

Trinidad and Tobago makes two exemptions, one of which is for cargo reservations under the UN Code of Conduct on Liner Conferences. The second exemption is for bilateral investment promotion and protection treaties; it applies to all existing and future treaties, is of unlimited duration and applies to privileges accorded to signatories only. The effect of this exemption is that Trinidad and Tobago may give more favourable treatment to parties with which it enters into such agreements, if they so provide, than it does to other GATS Members.

Anomalies

There is some inconsistency in the position of Antigua and Barbuda, since the MFN exemption for granting national treatment to CARICOM nationals applies only in respect of mobile services in the telecommunications sector. Its domestic legislation provides that the entry of CARICOM nationals is not limited to the telecommunications sector.

The position of Jamaica does not give rise to any anomalies, since their MFN exemptions are based on the special treatment to be given to service suppliers of other CARICOM Member States. This is premised on the existence of the Caribbean Single Market and Economy (CSME), and is consistent with the free movement of labour within the Single Market.

A possible anomaly lies in the position of Trinidad and Tobago in respect of its exemption for co-signatories to existing and future bilateral investment treaties. Since these do not include any CARICOM Member State, it means that in some areas in which Trinidad and Tobago promises national treatment to service suppliers under its BITs, those persons may receive more favourable treatment than other GATS signatories.

E. Intra-CARICOM Commitments

Intra-CARICOM Movement

Protocol II: Establishment, Services, Capital, amends Chapter V of the Treaty Establishing the Caribbean Community. It addresses the right of establishment, the right to provide services and the right to move capital by any CARICOM national in the Community.

Protocol II covers the acceptance of diplomas, certificates and other evidence of qualifications. COTED is responsible for establishing common standards and measures for accreditation or for the mutual recognition of diplomas, certificates and other evidence of qualifications. Ten CARICOM Member States have drafted legislation dealing with the movement of skilled CARICOM nationals. However, many of these Acts are not yet in force. All the Acts involve the issuing of a certificate or approval of qualifications either by the government of the State of entry or by the government which has issued the passport to the CARICOM national. This legislation goes a long way to achieving equivalency, since all Members recognise most of the same qualifications.

The Protocol also imposes an obligation on Member States not to introduce any new restrictions on the provision of services in the Community by nationals of other Member States and to extend national treatment to service suppliers who are temporarily engaged in approved activities in their respective territories. Member States must also remove discriminatory restrictions on the provision of services by Community nationals.

Most CARICOM Member States have submitted to the CARICOM Secretariat lists of the restrictions maintained by their legislation that hinder the implementation of Protocol II. However, in the absence of submissions of all the Members, the Secretariat has been unable to complete the necessary compilation of restrictions. Protocol II has also been informally submitted to the WTO Secretariat for unofficial evaluation regarding satisfaction of the requirements of Article V of the GATS. Since programmes for the removal of restrictions in Member States to give effect to Protocol II have not been determined however, a legal opinion could not be obtained as to whether Protocol II was consistent with Article V of the GATS.

An example of the type of legislation that imposes such restrictions is the Aliens' Landholding legislation in some Member States which poses a potentially significant obstacle to the right of establishment in those Member States, since they impose restrictions on a range of instruments including ownership of land, stocks, shares and debentures and the holding of directorships. Other restrictions include the requirement to obtain work permits, which in some cases is subject to economic needs tests. Non-resident workers may be subject to withholding tax, and in some professions, such as the legal profession, there may also be a requirement to employ a local person. Higher profession fees may also be payable.

The CARICOM Secretariat is currently in the process of identifying criteria for the removal of restrictions to the implementation of Protocol II. It will also identify restrictions that should be removed immediately and those that should be phased out over a period of time. Both the criteria and the restrictions identified for immediate approval must then be approved by the Member States through a process of negotiation. It is expected that the Member States will then undertake further negotiations for the removal of the remaining restrictions over a period of time.

Comparison of Commitments Under Protocol II, Domestic Laws and the GATS

The laws enacted by the Member States for the free movement of skilled CARICOM nationals generally meet the requirements listed in Protocol II. They provide in most cases for the issue of a certificate of recognition of skills to be issued by the relevant Minister in either the country to which entry is sought or another CARICOM Member. If the certificate is issued by the country to which entry is sought, then the CARICOM national seeking entry is entitled to national treatment. If the certificate has been issued in another CARICOM territory, the service provider may enter and stay for six months. The Acts generally apply to nationals of other CARICOM territories which grant reciprocal treatment to the nationals of the State to which entry is sought. However, there is no requirement of reciprocity in the case of Barbados.

All the Acts apply to graduates of approved universities and other approved tertiary institutions. Belize and Jamaica also apply the provisions to persons such as sportsmen, musicians, artists and media workers. Guyana's law also applies to other skilled and professional persons and contract workers on a seasonal basis and artists. Trinidad and Tobago's legislation includes persons other than graduates, and applies to any person who is not prohibited under the Immigration Act. Such a person can enter and work in that territory for thirty days without a work permit. This provision is not restricted to CARICOM nationals, but applies generally.

The commitments of the CARICOM Member States under the GATS reveal a general trend of imposing restrictions on market access for the movement of natural persons. There are fewer cases of full market access for Mode 4 than conditional market access, and in some instances, no binding commitments have been offered. The trend to grant national treatment once these persons have entered the territory. However, in a few cases limitations have been placed or no binding commitments made for national treatment of entering the territory to supply specified services.

When the GATS commitments are compared with the commitments made under domestic legislation for the free movement of skilled CARICOM nationals, the latter clearly grants more favourable treatment. The most obvious advantages are that there are no work permit or visa requirements, and there is no requirement that the person seeking entry do so in connection with the establishment of commercial presence. The category of persons permitted entry is not restricted to senior managerial personnel or experts not available locally. Any graduate of a specified institution of higher learning is permitted entry, once the conditions under the Act are satisfied, and some Member States also permit entry of other persons.

F. Other Agreements

Overview of Services Trade Liberalization Agreements in the Western Hemisphere

Since the coming into force of the North American Free Trade Agreement (NAFTA) in 1994, several sub-regional agreements have also emerged, with Mexico negotiating several similar NAFTA-type agreements with other countries of South and Central America, as well as agreements among these countries.

All of these efforts are occurring in tandem with efforts to establish the Free Trade Area of the Americas (FTAA). Although liberalization of trade in services has achieved limited progress at the multilateral level, there has been rapid progress at the regional and sub-regional levels. Further, liberalization at these levels goes beyond that agreed at the multilateral level.

Most of the sub-regional agreements have adopted the NAFTA-type “negative list” approach to liberalization of trade in services. Under this approach, all sectors are included in the commitment to liberalization unless otherwise exempted in an annex. All service sectors and service suppliers are guaranteed MFN and national treatment, unless they have been included in the list of exceptions. The concept of “market access” is not present in the NAFTA-type agreements.

The MERCOSUR Protocol on Services has followed the GATS approach, with gradual market opening of service markets, based on the negotiation of specific commitments to liberalize either market access or national treatment for specific service sectors. However, the MERCOSUR Protocol departs significantly from the GATS by seeking to achieve full liberalization of trade in services within a ten-year period, resulting in an open regional market for services by the end of the year 2007.

The Movement of Natural Persons and CARICOM's Bilateral Agreements

CARICOM and the Dominican Republic recently signed the *Agreement Establishing the Free Trade Area between CARICOM and the Dominican Republic*. The fundamental objective of the Agreement is to strengthen the commercial and economic relations between the Parties through the establishment of a Free Trade Area between the Parties consistent with the Agreement Establishing the World Trade Organization.

Under Article VI, the Parties agree to progressively liberalize trade in services between themselves by the establishment of a framework of principles and rules as contained in the *Agreement on Trade in Services (ATS)* in Annex II to the main Agreement. The framework so established is consistent with the GATS; further, for matters not covered in the ATS, the Parties agree to apply between themselves the provisions contained in the GATS.

The fundamental obligation of parties to the ATS is most-favoured-nation treatment. Specific commitments with respect to market access and national treatment are to be contained in an Attachment to the ATS. However, no Attachment has yet been negotiated.

The agreement does not apply to nationals of one Party seeking access to the employment market the other Party or employed on a permanent basis in its territory, or confer any rights with respect to such access or employment. The ATS applies to persons who enter the market of a Party temporarily to supply a service.

CARICOM has also entered into bilateral agreements with Venezuela and Colombia, which include provisions to undertake further negotiations on trade in services. Under both of these agreements, which are pre-Uruguay Round, the Parties recognise the importance of trade in services for the development of their economies. They promise to negotiate amendments or further elaboration of those agreements to take account of and to take advantage of the outcome of the Uruguay Round negotiations. To date, there has been no further elaboration of those agreements.

Attention must also be paid to ensuring that the services components of these agreements, when negotiated, are compatible with Article V of the GATS.

The Movement of Natural Persons and the FTAA Process

The movement of natural persons within the proposed FTAA has been the subject of much discussion, and several country and private sector positions have been presented on the issue. The main arguments centre around the need for transparency and uniformity in the application of administrative procedures for movement of people among Members; the need for all member countries to provide temporary entry to all professionals or technicians travelling on business; and issues relating to visas and work permits. Issues relating to income tax and withholding tax have also been raised, with the establishment of a common income tax at source amounting to 5% being proposed. Additionally, cross-sectoral Common Professional Standards should be adopted, based on objective and transparent criteria, such as competence and the ability to provide the service.

It has been recommended that existing models and studies on the harmonization of standards and regulations for the practice of each profession should be reviewed and considered. National treatment should be granted to foreign professionals without any

discriminatory factors such as the citizenship and/or residency requirements, while MFN principles should be applied to trade and professional services. Countries should revoke existing laws or rules regarding quotas for national and foreign professionals within professional services firms, or limitations on the capacity of foreigners to assume leadership positions in companies and other similar barriers.

Much thought has been given by the various business forums to the issues of mutual recognition of qualifications, taxation, work permits and visas. However, it is far from certain that these suggestions will be taken on board in negotiating the Agreement. Indeed, none of these proposals have yet been adopted or recommended by the Working Group on Services, and may be regarded as unclear or unworkable. However, it is hoped that some of the more practical recommendations made to the Working Group on Services will be eventually included in the drafting of the Agreement on the Free Trade Area of the Americas.

The NAFTA is very restrictive in terms of the movement of natural persons, and this Agreement may influence the negotiations for the FTAA. It provides that a Party is not required to extend to a service provider of another Party the benefits of recognition of education, experience, licences or certification obtained in another country, whether such recognition was accorded unilaterally or by arrangement or agreement with that other country. Even the NAFTA, however, requires the Parties to eliminate any citizenship or residency requirement for the licensing and certification of professional service providers in their respective territories, within two years of the entry into force of the Agreement, and they must consult periodically with a view to doing so. It is hoped that at the very least, a similar provision will be included in the FTAA.

CARICOM has submitted papers to all the Negotiating Groups, except for the Negotiating Group on Agriculture. All these submissions reflect issues of relevance to small economies. CARICOM was also able, at the meeting of the Trade Negotiating Committee in Barbados in September 2000, to secure the agreement to include the small economies issue as a permanent topic on the TNC's agenda. As a result, all negotiating groups must now ensure that issues relating to small economies be addressed.

Attention must also be paid to ensuring that the services component of the FTAA that eventually emerges is compatible with Article V of the GATS.

Services and the Cotonou Agreement

Part 3, Chapter 4 of the *Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States* (the Cotonou Agreement) covers trade in services. The general principles applicable to trade in services is contained in Article 41. The Community undertakes to give sympathetic consideration to the ACP States' priorities for improvement in the EC Schedule, within the context of Article XIX of the GATS, with a view to meeting their specific interests. This commitment may open the way for ACP countries to press for greater commitments on the movement of natural persons under Mode 4.

There is scope for improved commitments, and the possibility of such improvement is hinted at in Article 41.4. However, the condition for entering into such partnership is that the

Parties must have acquired some experience in applying MFN treatment under the GATS. This is clearly aimed at the developing countries that make up the ACP, and its open-ended nature undermines the hint of improved commitments.

There are some positive commitments in Article 41.5, under which the Community undertakes to support the ACP States' efforts to strengthen their capacity in the supply of services. A number of services are singled out for particular attention, namely, services related to labour, business, distribution, finance, tourism, culture, and construction and related engineering services, with a view to enhancing their competitiveness and thereby increasing the value and volume of the ACP countries' trade in goods and services.

Maritime transport and information and communication technologies are covered in Articles 42 and 43, respectively. The Community undertakes to support the ACP States' efforts to develop their maritime transport services with a view to increasing the participation of ACP operators in international shipping services. The Parties also reconfirm their respective commitments under existing multilateral agreements, in particular, the Protocol on Basic Telecommunications attached to the GATS.

G. Economic Benefits and Costs of Mode 4 for Developing Countries

Theoretical Predictions

The effects of Mode 4 labour movement on originating and recipient countries depend on the state of the labour markets in individual sectors and on the transportability of labour between sectors in both the originating and the recipient countries. Where there is surplus labour in a particular sector in a country and that labour is not transportable locally into another sector, that country would seek to be an exporter of that labour. Similarly where there is a shortage of labour in a particular sector in a country and that labour is not available locally from another sector, that country would want to be an importer of such labour.

When surplus labour is temporarily exported, it relieves welfare and other social costs in the exporting country. On the other hand, the export of labour could lead to upward pressure on wages in the exporting sector, which could have a deleterious effect on the competitiveness of the sector internationally. From the point of view of the importing country, the imported labour could exert downward pressure on wages in the particular sector and increase its international competitiveness.

A major element of risk in Mode 4 labour movement arises where there are surpluses in an exporting country and no shortages in the importing country but the trading rules permit the movement of labour to the importing country. The social costs of surplus labour may be transferred from the exporting to the importing country.

Another type of risk arises if the temporary export or import of labour becomes permanent. A country might have been experiencing temporary surpluses and exported its labour only to find that the labour is not available when the surpluses become shortages. Beside the resulting upward pressure in wages and loss of international competitiveness in the sector, where the exported labour was highly skilled there is the loss of the investment in human capital. With respect to the country that has imported labour to meet shortages, there are social costs to be met if the shortages become surpluses.

In developing countries, where it is generally assumed that there are chronic surpluses of unskilled labour, it appears from the discussion above that there may be net benefits to be derived from the Mode 4 export of such labour if demand can be identified. In those developing countries – including some CARICOM countries – where there are surpluses of skilled labour, there may be benefits from Mode 4 export if the costs of any associated upward pressure in wages, loss of international competitiveness or loss of investment in human capital can be minimized.

Statistical Evidence

Assessment of the benefits and costs associated with Mode 4 is hampered by a lack of relevant statistics. The traditional statistical framework used for trade in services, as defined in the Fifth Edition of the IMF Balance of Payments (BOP) Manual (BPM5), records transactions between residents and non-residents; the GATS modes of labour supply use additional criteria such as nationality, territorial location and ownership or control. The GATS supply of services through commercial presence is also not recorded in the BOP statistics; a commercial presence company supplying services to the territory in which it is located is not considered to be conducting transactions between residents and non-residents.

In order to measure supply of services through commercial presence, statisticians have developed the Foreign Affiliates Trade in Services statistics (FATS). More generally, a Manual on Statistics of International Trade in Services is being developed which will, *inter alia*, meet the needs of trade negotiators. Until these efforts bear fruit, measurement in the GATS sense has to depend on using the BOP statistics and the FATS as proxies.

With respect to Mode 4, movement of natural persons, the BOP category compensation of employees is used as the proxy. This proxy includes transactions not related to service supply in the GATS sense such as income of foreign workers employed in national firms, foreign workers not involved in the supply of services and local staff of embassies and consulates; in these respects it is biased upward. However, it excludes income of individuals moving abroad to supply a service, which is included in the Mode 1 proxy above, and situations where the movement abroad is temporary but exceeds one year; in these respects it is downward biased. The resulting estimate shows Mode 4 to be just 1.4 percent of the trade in services in 1997.

In 1997, developed countries were net importers of Mode 4 services, exporting 64 percent and importing 88 percent, while developing countries were net exporters, exporting 36 percent and importing 12 percent. Asian countries accounted for 30 percent of exports and 9 percent of imports. The data appears to support the proposition that developing countries have a comparative advantage in Mode 4 trade, either because of a greater abundance of unskilled labour or lower-priced labour.

Given the relatively small share of Mode 4 trade in global trade in services, and the apparent comparative advantage of developing countries in Mode 4 trade as indicated above, it would appear that this is an aspect of trade that developing countries as a bloc – including CARICOM countries – should seek to promote for themselves in exchange for opening their markets to trade in the other modes.

H. Mode 4 Related Proposals

Proposals by Experts

Hoekman suggests that the set of generally applicable rules and disciplines must grow significantly and the weight of the specific commitments reduced. Future multilateral efforts must centre on eliminating the artificial goods-services distinction, and develop generic disciplines in foreign direct investment (establishment) and labour movement. The current round of WTO negotiations on services must aim at liberalizing the movement of natural persons by significantly improving the existing commitments in this mode. Further, realism suggests that proposals for improving GATS should build upon the existing structure as much as possible.

This latter approach is taken by Chanda who states that if GATS is to effectively promote trade in services and address the interests of developing countries, the current round of WTO negotiations on services must aim at significantly liberalizing the movement of natural persons. This can be realized through country-to-country negotiations by sector and also through the introduction of multilaterally accepted horizontal formulae within the existing framework of the GATS.

Chanda further suggests that the current round of multilateral negotiations move away from reliance on horizontal commitments to detailed and sector-specific commitments applicable to individual sectors and service personnel related to those sectors. The sector-specific commitments should be supported by improvements in the existing framework of horizontal commitments and by the introduction of multilateral guidelines on issues that cut across many sectors. Horizontal commitments should complement, rather than be substitutes for, the sectoral commitments. She argues for greater relevance and specificity of the sectoral commitments to individual sub-sectors and individual classes of service providers.

Multilateral guidelines on issues that cut across sectors should include: economic needs tests, recognition, the separation of temporary from permanent labour flows, wage parity, and taxes and social security. Fewer occupational categories should be subject to economic needs tests and that there should be consensus on those categories, with clear criteria for the application of such tests.

On the matter of recognition, Chanda recommends strengthening the provisions under Article VII by establishing detailed norms in related areas. Where licensing is required in the host country but not in the home country of the professional, disciplines governing licensing should allow for temporary licensing.

A GATS visa for service providers covered by sectoral and horizontal commitments is proposed to address the separation of temporary and permanent movement of labour. Multilateral guidelines are required to determine under what conditions wage parity must hold and when deviations from wage parity will be permitted, and how to link wage parity to entry conditions and formalities. Elimination of double taxation and eligibility for social security benefits are linked issues.

The international accounting firm PricewaterhouseCoopers has also produced a discussion paper on the temporary movement of natural persons, which to some extent supports the

proposals put forward by Chanda and by India in its Communications. It refers to the current negotiations on services and recommends that agreement be sought on:

- ◆ Common definitions of key business personnel
- ◆ Transparent procedures
- ◆ Common terms for intra-corporate transfers
- ◆ Provision of expedited procedures for short-term movement of personnel

The paper reviews the current barriers affecting the mobility of persons, and points to the need to introduce clarity, objectivity and transparency into GATS commitments regarding the movement of personnel. In order to improve the effectiveness of existing commitments and provide a stimulus for further liberalization, they propose:

- ◆ The development of a minimum set of Mode 4 requirements which could be applied both horizontally and sectorally. This could be specified in a model schedule formulated in sufficiently broad terms to avoid being overtaken by the dynamics of labour markets.
- ◆ Existing horizontal commitments should be reviewed to determine whether they are sufficiently detailed and specific, and reformulated as appropriate to align with the model schedule.
- ◆ To facilitate the temporary movement of defined categories of personnel, and expedited procedure in the form of a “GATS permit” should be developed for intra-corporate transfers involving the movement of personnel for less than 12 months. The issue of GATS permits should be subject to strict conditions and matters relating to renewal and transfer of applications and appeals against refusal to grant permits would also have to be addressed.
- ◆ A similar undertaking should be made to allow commitments to be made for the temporary movement of personnel, not involving intra-corporate transfers, in order to fulfil a contractual obligation.
- ◆ A new category of “intra-corporate transfer for training and career development” should be created, since this would benefit countries by increasing the knowledge, skills and experience of their workforce.

It is significant that the idea of a GATS visa or GATS permit has been proposed by a private sector multinational company. These suggestions were prompted by difficulties encountered by companies in moving their personnel from one country to another to provide services. The idea of a GATS visa may therefore not be as difficult to implement as suggested by other experts. It is also significant that there is support for the development of a model schedule.

Country Proposals

India

India proposes in one Communication that, at least in sectors of interest to developing countries, economic needs tests would not apply, and that, in the exceptional cases in which they would apply, they would be based on transparent and objective criteria.

Those sectors where visas would be issued automatically for temporary movement of natural persons should be listed, and certain occupations should be exempt from the work permit/residency requirement for short periods of trade-related presence. Like Pakistan, it suggests that a new list of occupations using the ILO International Standard Classification of Occupations could be established.

India has submitted another Communication, in which its proposals are further defined. It offers a number of proposals for improving the structure of commitments. Horizontal commitments should be amended to include the category of “individual professionals,” thereby delinking Mode 4 commitments from Mode 3 commitments. Relevant criteria for determination of eligibility to a particular category should be clearly specified; uniform definitions and coverage of broader categories should be drawn up; and the scope of categories covered by the horizontal commitments should be expanded by defining coverage of “other persons” and “specialists” to include middle and lower level professionals, with relevant criteria specified. In addition, sectoral and sub-sectoral commitments should be more clearly defined and specific, with applicable limitations and conditions being clearly stated in the schedules.

Fewer occupational categories should be subject to ENTs, and in cases where ENTs apply, clear criteria should be laid down for their application, for establishing norms for administrative and procedural formalities and for specifying how results of such tests would restrict entry to foreign service providers.

Additionally, temporary service providers should not fall under the immigration procedures applicable to permanent labour flows. Two alternatives are suggested for achieving this, namely, either a GATS visa for categories of personnel covered by horizontal and sectoral commitments, or the creation of a special subset of administrative rules and procedures within the overall immigration policy framework.

The main features of the GATS visa include:

- ◆ Strict timeframes for granting the visa (2-4 weeks maximum);
- ◆ Flexibility for visas on shorter notice for select categories of service providers;
- ◆ Transparent and streamlined application process;
- ◆ Mechanisms to find out status of applications, causes of rejection and requirements to be fulfilled;
- ◆ Easier renewal and transfer procedures;
- ◆ GATS visas for select companies for use by its employees deputed abroad temporarily; and

- ◆ Adequate in-built safeguard mechanisms to prevent temporary service providers entering the permanent labour market.

Developing country professionals should be exempt from social security contributions so that their comparative advantage is not affected. India also suggests the implementation of notification requirements of mutual recognition agreements under GATS Article VII, and that effective opportunities be provided to developing country Members to join in negotiations for the establishment of MRAs. This effort would be facilitated by the establishment of multilateral norms to facilitate MRAs.

Pakistan

Pakistan has submitted two Communications in which it makes recommendations for negotiations on the movement of natural persons under the GATS. It proposes the adoption of an occupational approach, under which a list of occupations, such as the ILO International Standard Classification of Occupations (ISCO), would be drawn up for which countries would agree to abolish ENTs. The classification could be used for establishing a list of occupations for the international trade in services. In categories which would not be covered by this list, the criteria for the application of ENTs would be clearly laid down.

Consideration should also be given to measures which would result in more transparent and objective implementation of visa and work permit regimes. Such measures could include the publishing of relevant administrative rules that define the conditions of entry and national treatment. Further, Members should bind their current immigration legislation related to all relevant categories in their specific commitments.

Finally, measures should be taken to overcome barriers created by qualifications and licensing regulations. These measures could include the development of international standards for qualifications and use of partial mutual recognition of qualifications.

Brazil

Brazil proposes that services negotiations should be conducted in two phases. The first phase would be the completion of a GATS regulatory framework, in which Members should complete the drafting of disciplines for GATS rules, emergency safeguards, subsidies, government procurement and domestic regulation. Once that phase is completed, the negotiation of specific commitments may take place, and should include the recognition of appropriate negotiating flexibility for developing country Members, including the right to condition access to their markets to the fulfilment of the objectives mentioned in Article IV.

The idea of conditioning access to markets based on the fulfilment of the objectives under Article IV appears to be a logical approach for the developing countries to adopt with regard to future negotiations. Certainly, they can be less liberal in further opening of their services markets unless there are similar commitments from the developed countries. The disadvantage is that they may also deprive themselves of the skills of persons who can contribute significantly to their development. Such a position must therefore be carefully considered.

I. CARICOM Strategy for Movement of Natural Persons

Underlying Strategy

CARICOM has committed itself to a strategy which treats its trade and economic cooperation agreements as stages in attaining global competitiveness. It must negotiate on many fronts paying close attention to the linkages between the negotiations.

A precursor to such negotiation is the generation of an appropriate infrastructure of national, regional and international information on services and trade in services, which would permit analysis of sectors and sub-sectors with a view to informing the negotiating strategy. Statistical data for the CARICOM countries are very deficient. The preparation of statistical data for countries of the region in accordance with the draft Manual on Statistics of International Trade in Services should be undertaken as a matter of urgency. The legal, regulatory and institutional framework affecting the various service sectors and sub-sectors also needs to be documented.

Developing a strategy for CARICOM countries in further negotiations on the movement of natural persons would begin with an analysis of the labour markets in these countries with a view to identifying sectors and sub-sectors in which there are projected shortages and surpluses of skilled and unskilled labour. A parallel analysis would be undertaken of the labour markets in countries with which these countries wish to trade in order to identify matching surpluses and shortages of skills. This information set would assist in identifying appropriate goals for CARICOM countries in the negotiating process.

In the absence of an appropriate information infrastructure, CARICOM countries may wish to seek as much access as possible for their skilled and unskilled labour to other markets, while making their markets accessible to those professional skills which may be perceived to be in short supply.

CARICOM Strategy for GATS 2000 Negotiations

The national services sectoral analysis of the CARICOM Member States must be completed as a matter of urgency, since the CARICOM position can only be developed from the respective national positions. Once the CARICOM position is developed, the regional body can act as a *demandeur* in services negotiations.

1. Compliance with GATS requirements

In tandem with the current GATS negotiations, CARICOM must take the necessary steps to comply with the existing requirements of the GATS. Three issues must be addressed urgently, namely:

- (i) The establishment of enquiry points, as specified in Article III of the GATS.
- (ii) The publication of relevant laws, regulations and administrative guidelines, without which the enquiry points would be ineffective.

- (iii) Notification to the Council for Trade in Services of measures affecting trade in services promptly, and at least annually.

2. Clarification of Article V of the GATS

Article V of the GATS has tremendous implications for CARICOM, which is in the process of creating a single market and economy. However, it contains ambiguous language such as the terms “substantial sectoral coverage” and “reasonable time-frame,” which are not defined and are therefore subject to interpretation. The level of flexibility which it purports to provide to developing countries is not clearly defined.

The applicability of Article V needs to be clarified at the level of the Council for Trade in Services. CARICOM should support and participate in all efforts to have this Article clarified and, if necessary, revised to provide certainty as to its scope and application. It could take the lead in such efforts to clarify Article V.

The question arises whether the level of labour integration achieved by the *Decision on the Movement of Skilled Persons* and Protocol II satisfies the condition of “full integration of the labour market” required by Article V *bis*. The *Decision* only provides for the movement of persons with tertiary education and this clearly does not constitute the full integration of the labour market. Protocol II does not restrict the movement of natural persons to those with a tertiary education but it gives the Member States wide discretion to determine the “approved activities” for which persons can enter. This also may not constitute full integration of the labour market. Efforts should therefore be undertaken to deepen the integration process and to further define the categories of persons who will be permitted entry into a Member State for the supply of a service. CARICOM should consider the ILO International Standard Classification of Occupations as an possible starting point for further defining such categories of persons.

3. Participation in new round of negotiations

Article XIX requires a comprehensive assessment of the objectives of the GATS, particularly in relation to Article IV. This assessment has not been completed and the general lack of statistical data and the lack of time may prevent the completion of this exercise any time in the near future. CARICOM can contribute to the completion of this exercise by producing its own statistical data and analysis, based on data from the individual countries, and an assessment of the effects of the GATS on those economies.

Negotiations on the emergency safeguard mechanism should be completed before the adoption of the results of the next round of services negotiations. Negotiations on subsidies and government procurement will probably continue after the conclusion of the current round of negotiations. CARICOM should support the negotiating stance that work on the emergency safeguard mechanism should be completed before attempting to address new substantive issues. It should also actively participate in negotiations on all outstanding issues, including those remaining after the current round of negotiations.

4. Negotiation on an across-the-board basis

As industrialized countries seek greater liberalization in the service industries of interest to them, developing countries would be well advised to insist on linking services negotiations across sectors and to ensure that the sectors of interest to them are included in the negotiations. For the CARICOM countries, tourism and financial services are such sectors. Other important service activities are computer and information-related services, entertainment, sports and cultural activities, transportation, health tourism and retirement services, professional services including educational services and back-office services, as well as services through free zones and the offshore sector. In addition, the region should exploit the potential of electronic commerce for service exports. Serious consideration should therefore be given to refusal to negotiate except on an across-the-board basis. Negotiation on a sector-by-sector basis would allow the developed countries to dominate the content of the negotiating agenda and to press for commitments in sectors of particular economic importance to them.

5. Improvement in horizontal and sectoral commitments

India offers a number of proposals for improving the structure of commitments. The main proposals are:

- ◆ Horizontal commitments should be amended to include the category of “individual professionals,” thereby delinking Mode 4 commitments from Mode 3 commitments;
- ◆ Relevant criteria for determination of eligibility to a particular category should be clearly specified;
- ◆ Uniform definitions and coverage of broader categories should be drawn up;
- ◆ The terms “other persons” and “specialists” should be defined to include middle and lower level professionals, thereby expanding the scope of categories covered by the horizontal commitments;
- ◆ Sectoral and sub-sectoral commitments should be more clearly defined and specific, with applicable limitations and conditions being clearly stated in the schedules;
- ◆ Categories of service providers should be disaggregated along the lines of the ISCO classification;
- ◆ Fewer occupational categories should be subject to ENTs and, in cases where ENTs apply, clear criteria should be laid down for their application.

If accepted, these proposals would go a long way toward improving the horizontal and sectoral commitments expressed in the Schedules of Commitments. CARICOM Members should therefore support these proposals.

6. Implementation of GATS visa

It has been stated by India that temporary service providers should not fall under the immigration procedures applicable to permanent labour flows. Two alternatives are suggested for achieving this: a GATS visa for categories of personnel covered by horizontal and sectoral commitments, or the creation of a special subset of administrative rules and procedures within the overall immigration policy framework.

India proposed the implementation of a special visa in 1999 and has recently submitted a more comprehensive proposal outlining the main features of the GATS visa. They include:

- ◆ Strict timeframes for granting the visa (2-4 weeks maximum);
- ◆ Flexibility for visas on shorter notice for select categories of service providers;
- ◆ Transparent and streamlined application process;
- ◆ Mechanisms to find out status of applications, causes of rejection and requirements to be fulfilled;
- ◆ Easier renewal and transfer procedures;
- ◆ GATS visas for select companies for use by its employees deputed abroad temporarily;
- ◆ Adequate in-built safeguard mechanisms to prevent temporary service providers entering the permanent labour market; and
- ◆ Developing country professionals should be exempt from social security contributions so that their comparative advantage is not affected.

CARICOM should support this proposal in the current services negotiations. Such visas would enable its Members not only to export the services of professionals, but also to facilitate the entry of foreign service suppliers, leading to transfer of specialist knowledge, expertise and skills. The entry of such skilled persons can bring significant benefits to their developing economies.

7. Alignment with countries with similar interests

CARICOM should align itself with countries that submit proposals that it can support. For example, it should support the proposals of India in its *Communication* on the proposed liberalization of movement of professionals under the GATS. It should also support the proposals of Pakistan, which are consistent with some of the Indian proposals. In addition, CARICOM can rely on the opportunities presented by Article IV of the GATS and should strongly consider the Brazilian proposal as a possible negotiating stance. This would involve increased access to CARICOM markets being conditional on liberalization by developed countries of market access in sectors and modes of supply of export interest to CARICOM countries.

In general, where there is a clear and common interest between CARICOM and other developing countries on certain issues, then it should align itself with those countries. However, CARICOM should also be open to the possibility of aligning itself with developed countries which have similar interests, rather than attempting to maintain a coalition among developing countries on all issues.

8. Mutual recognition

CARICOM should address the issue of mutual recognition of certification and licences. Steps have already been taken within CARICOM itself toward mutual recognition. An agreement containing common standards and measures developed by COTED could fall

under the type of agreement referred to by Article VII of the GATS. This Article permits bilateral and regional agreements or arrangements for the mutual recognition of standards and qualifications, but specifies that wherever appropriate, recognition should be based on multilaterally agreed criteria. CARICOM should therefore participate actively in the process of developing multilaterally agreed criteria. The framework envisaged by Article VII may be used as the basis for the development of a WTO multilateral agreement on mutual recognition.

It has been suggested by India that the requirement of notification of mutual recognition agreements under GATS Article VII be enforced by the Council for Trade in Services, and that effective opportunities be provided to developing countries to join in negotiations for the establishment of MRAs. These proposals should be supported by CARICOM, which should also consider submitting a Communication that is consistent with the Indian position.

9. Credit for autonomous liberalization

Article XIX.3 of the GATS establishes that negotiating guidelines for each round shall establish modalities for the treatment of liberalization undertaken autonomously by Members since the previous negotiations. This would permit "credit" to be given to countries that have autonomously undertaken liberalization, as many developing countries have done. However, difficulties have arisen in reaching agreement on the mechanisms for accreditation. Some developed countries are reluctant to grant credit to developing countries for market openings undertaken since the Uruguay Round, since these reforms have not been bound. This position does not take into account the fact that the developed countries are benefiting from such market openings by developing countries. The developed countries should encourage developing countries to lock in their market reforms by providing them with credit for those reforms.

CARICOM countries should contribute to these negotiations by analysing the extent of autonomous liberalization that has been undertaken by its Members since the Uruguay Round. They should press for credit to be given for such liberalization.

CARICOM Strategy for Intra-CARICOM Movement of Natural Persons

The commitments under Protocol II are subject to a negative list or top down approach. The principles of market access and national treatment apply to all measures that affect the right of establishment, the provision of services and the movement of capital between CARICOM countries, unless excluded by Members. Additionally, Protocol II covers all four modes of supply specified under the GATS. It is not clear whether national treatment is a general obligation to be applied to all sectors and activities, or only to those activities approved by the relevant Member State. This is an aspect of Protocol II that needs to be clarified.

Further, those sectors that are going to be excluded at the regional level should not be included in the GATS specific commitments, in order to avoid a situation where third countries could receive more favourable treatment than other CARICOM Member States.

This would be contrary to the stated intention of the CARICOM Conference of Heads of Government.

The full implementation of Protocol II should be expedited, since commitments for preferential treatment regionally are in danger of being superseded by commitments that may arise in the current GATS negotiations. The following recommendations are made with a view to fully implementing freedom of movement:

1. Steps should be taken to address outstanding mutual recognition issues. The domestic legislation has taken a first step, but CARICOM needs to go further and not restrict entry to those with tertiary qualifications.
2. The Council on Human and Social Development should concentrate its efforts on establishing common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualifications. Further, efforts should be made to extend the right of free movement to persons with skills other than academic qualifications and to remove remaining restrictions on establishment of services and movement of natural persons.
3. The commitments expressed in the domestic legislation could be improved. The domestic legislation should go further and confer national treatment on persons who are certified by another CARICOM Member State.
4. The domestic legislation does not address the issue of appeals against decisions of the Minister or other authority refusing entry. While there are procedures available such as judicial review, it would be preferable to enact specific procedures for enforcing such commitments at the national level.

CARICOM Strategy for Negotiations on Regional Bilateral Agreements

The specific commitments on market access and national treatment under the *Agreement on Trade in Services* between CARICOM and the Dominican Republic (ATS) have not yet been negotiated. These commitments can go further than the commitments made under the GATS, thereby permitting the Members the opportunity to further develop service sectors that are of particular interest to them. However, the question whether the ATS is consistent with Article V of the GATS needs to be addressed.

The area of services under the other bilateral agreements with Venezuela and Colombia is also to be negotiated. However, it would be in the interest of the parties involved if these were consistent with the CARICOM/Dominican Republic Agreement, since these agreements could together mark the beginning of a network of agreements designed to liberalize trade in services in the region.

A model schedule of commitments could be developed under the three agreements. This model schedule could form the basis for negotiating trade and economic agreements with

other non-CARICOM countries or sub-regional groupings in the hemisphere and could be used in the FTAA negotiations.

CARICOM Strategy for Negotiations on the FTAA

It has not yet been agreed whether the FTAA would be based on a negative list or a positive list approach. This fact makes it impossible at this stage for the parties to agree on the general framework of the agreement. Nevertheless, CARICOM must decide whether it will support the negative list approach to the liberalization of trade in services under the FTAA, as currently exists under the NAFTA.

Establishing a negative list would not be an easy task, since it requires that negotiators must consider and include all of the regulatory measures in their national economies which may discriminate against foreign service suppliers. The advantage of the negative list approach is transparency and a guarantee of national treatment for investors that may outweigh the burden involved in the assessment of all service sectors and the laws and measures affecting them.

On the other hand, the positive list approach would allow the parties to the FTAA agreement to assume limited general obligations, as was the case with the GATS, with a view to a gradual liberalization of trade in services. It would also allow CARICOM countries more flexibility to negotiate for special and differential treatment. It is recommended that CARICOM negotiate for the structuring of the FTAA Agreement as one based on a positive list approach.

Further, it has been argued by CARICOM that the FTAA should allow for different treatment measures to take into account the particular concerns of the smaller developing economies. One way of reflecting such special and differential treatment would be for the developed countries in the region to use the negative list approach for making commitments under the FTAA, while developing countries – or small developing countries – would use the positive list approach to making commitments. To date, CARICOM has succeeded in securing an agreement to include the small economies issue as a permanent topic on the Trade Negotiating Committee's agenda.

Under the NAFTA, natural persons must satisfy the requirements for immigration and employment in that territory as well as any other requirements as to qualifications and licensing applicable to the relevant occupation. The NAFTA countries may negotiate for the movement of natural persons to be restricted to the levels permitted under NAFTA. This is extremely narrow in terms of the persons allowed entry, since in many cases the recognition of qualifications depends upon acceptance by various sub-regional bodies. CARICOM and other parties to the FTAA process must therefore press for the adoption of common professional standards, greater access of natural persons supplying services, the removal of the visa requirement for persons providing services under the FTAA, and the avoidance of double taxation.

CARICOM Strategy for Negotiations on the Cotonou Agreement

There is a commitment on the part of the EC countries to support the ACP countries in their efforts to strengthen their capacity in the supply of services, in particular, services related to labour, business, distribution, finance, tourism, culture, and construction and related engineering services. This is a commitment to an ongoing process and, as a result, gives CARICOM the opportunity to grant wider market access and national treatment commitments as well as seek greater commitments from the EC in these sectors. In 2002 the EC will demand some reciprocal arrangements on services, with the commencement in September of that year of formal negotiations for a successor to Lomé IV. CARICOM must formulate a response for dealing with the services sectors in which the EC can be expected to make demands. In formulating this response, analysis of data on the various sectors is required in order to identify the ones in which the region would be prepared to make commitments, as well as opportunities for greater access for exports of services.

CARICOM should develop a framework for negotiating for greater commitments in the sectors that are of particular interest to its Members. This may also take the form of a model schedule of commitments. It should also be determined whether the EC's demands for commitments in certain sectors are compatible with CARICOM's regional, hemispheric and multilateral commitments.

Conclusion

CARICOM should not neglect bilateral and regional liberalization at the expense of multilateral liberalization of trade in services. It should adopt an integrated approach to all negotiations on trade in services. The liberalization of trade in services at the broader regional level may proceed more slowly than liberalization at the multilateral level and may be eclipsed by the GATS 2000 round of services negotiations which have commenced. However, greater liberalization of trade in services may occur at the bilateral and regional levels than at the GATS level. Consequently, the full implementation of Protocol II should be the immediate focus for CARICOM. It would be in a much stronger position to negotiate on the movement of natural persons if there were such free movement within the Single Market and Economy.

With respect to GATS negotiations, CARICOM should make written submissions on the procedural aspects of the GATS that are still being negotiated. Included in negotiating guidelines should be mechanisms for the recognition of autonomous liberalization undertaken by developing countries. It should also prepare a comprehensive position on the movement of natural persons via Mode 4, along the lines of India's submission. CARICOM should also make written submissions on the clarification of Article V.

In the case of the FTAA negotiations, CARICOM should negotiate for the positive list approach to be applied generally, and, if the developed and larger developing country Members insist on the application of the negative list approach, for the application of the positive list approach to small developing countries only.

With regard to the bilateral treaties to which CARICOM is a party, it should consider the development of a model schedule that includes commitments on the movement of natural persons, to be used as a basis for negotiations with the other parties to those treaties. Such a model schedule could also form the basis for negotiations with the EC for a successor agreement to the Lomé IV Agreement.

1 INTRODUCTION

The background to this study is perhaps best expressed in the Terms of Reference, part of which is reproduced here.

The liberalization of trade in services figured prominently among the “new issues” included in the Uruguay Round negotiations and resulted in the adoption of the General Agreement on Trade in Services (GATS) in April 1994 as part of the overall compact signed at Marrakesh.

For CARICOM countries this outcome is of fundamental importance given the sector’s large share in the region’s economy.

The GATS defines trade in services in terms of four modes of supply: (1) cross-border activity; (2) movement abroad of consumers; (3) commercial presence abroad; and (4) the movement abroad of natural persons supplying services.

It has been suggested that the potential benefit to developing countries from the GATS is likely to be realized from the movement abroad of natural persons for the supply of services (Mode 4) given their comparative advantage in labour intensive services. However, commitments which have been scheduled in respect of this mode are considerably less than in other modes and are linked mainly to Mode 3. It is a situation which CARICOM and other developing countries need to address.

The Marrakesh Agreement includes an agenda for future negotiations, in which the subject of services is prominent. Accordingly, on February 25, 2000 the special session of the WTO Services Council formally launched the new negotiations on services. GATS 2000 provides, therefore, a new opportunity to review, reform and deepen the rules and commitments, including those pertaining to Mode 4.

The movement abroad of natural persons for the supply of services (Mode 4) should be an important element in CARICOM’s negotiating strategy on services not only within GATS but also within CARICOM itself and in other negotiating contexts (e.g., FTAA, post-Lomé, bilateral).

The significance of Mode 4 transactions for CARICOM countries must not, however, be viewed solely in terms of potential market openings abroad secured through negotiation. Inward movement of natural persons can also contribute significantly to the Region’s development by making available required skills and experiences of foreigners, which could in turn promote commercial presence, cross-border trade, as well as exports through the physical movement of foreign consumers to CARICOM suppliers (e.g., typically, tourism); for, clearly, there is a vital synergy between Mode 4 and other modes.

There is also a synergy between the ability to take advantage of market openings abroad and what transpires domestically and within the CARICOM integration context to buttress competitiveness. Consequently, Mode 4 analysis must focus as well on the removal of supply and trade bottlenecks at the national level and within the regional integration arrangements.

The purpose of the study is to provide the necessary information base and analytical insights in order to:

1. Illuminate CARICOM's strategy in respect of Mode 4 services negotiations issues, with primary reference to the GATS 2000 negotiations;
2. Make proposals aimed at improving CARICOM's competitive position through sector liberalization, in terms of further commitments at the multilateral level, as well as within CARICOM; and
3. Provide policy guidance in relation to potential developments related to the movement of natural persons within FTAA, post-Lomé and bilateral negotiations, wherever relevant.

The report starts in Chapter 2 with an overview of the GATS, including the schedules of specific commitments and the lists of Article II exemptions and Mode 4 treatment in service sector agreements that contain relevant provisions. Chapter 3 examines in some detail the movement of natural persons under the GATS, including the problems associated with that mode of supply. Chapter 4 looks at the Mode 4 commitments of the WTO Members and the implications of the commitments of the developed countries for the developing countries. An examination of Mode 4 commitments by all CARICOM Member States follows in Chapter 5; this examination includes the commitments undertaken with respect to telecommunications and the MFN exemptions made by some CARICOM Member States. Chapter 6 discusses the intra-CARICOM commitments on the movement of natural persons under Protocol II to the Treaty of Chaguaramas, and goes on to examine the relevant domestic legislation and to compare CARICOM's commitments under Protocol II, the domestic legislation and the GATS. An overview of other relevant agreements follows in Chapter 7, which goes on to examine in more detail the FTAA process, CARICOM's bilateral agreements, and the recent Cotonou Agreement. There is an examination of the economic benefits and costs of Mode 4 for developing countries in Chapter 8, while Chapter 9 discusses the Mode 4 related proposals put forward by services trade experts and three major developing countries. Chapter 10 concludes with recommendations for CARICOM's strategy in the GATS 2000 negotiations on services, the intra-CARICOM movement of natural persons, regional bilateral treaties, the FTAA, and the Cotonou Agreement.

2 THE GENERAL AGREEMENT ON TRADE IN SERVICES

2.1 Overview of the General Agreement on Trade in Services

2.1.1 *The Uruguay Round and Future Negotiations*

World trade in services has expanded dramatically in recent years. This growth has been influenced by various factors including advances in information technology, increased outsourcing of service activities by firms and a rising share of services in the consumption of both developed and developing countries. The range of traded service activities is wide including *inter alia* health, education, financial services, accounting services, consulting, telecommunications, construction and engineering and tourism.

From 1947 onward, the negotiating rounds under the General Agreement on Tariffs and Trade (GATT) represented ever-increasing steps toward liberalization of the system of trade in goods. Under the Uruguay Round, there was for the first time an attempt to bring services into the multilateral framework of trade rules and disciplines. The resulting General Agreement on Trade in Services (GATS) has taken an important step towards doing so. However, it is by no means a complete liberalization of trade in services but, rather, represents the first step in what is expected to be a series of progressive rounds of negotiations leading to the liberalization of trade in services.

The GATS itself contains provisions which require further rounds of negotiations leading to further liberalization of trade in services. It has been observed¹ that policies affecting international transactions in services were new issues for most trade negotiators and that, due to the large element of “learning-by-doing” involved, it should come as no surprise that the GATS does not imply a move to “free trade” in services any time soon.

It has also been observed² that it is one of the architectural weaknesses of the GATS that many of the obligations are triggered only when a Member schedules a specific commitment. However, the answer may lie in the nature of trade in services. Under the GATT, universal national treatment for goods is possible without creating free trade, because the entry of foreign goods into a national market can still be controlled by import duties, quantitative restrictions and other border measures. On the other hand, a foreign supplier of most services, particularly if these services are supplied by commercial presence or the presence of natural persons in the importing country’s market, will in practice enjoy virtually free access to that

¹ Sauvé, P.: *Assessing the General Agreement on Trade in Services – Half-Full or Half-Empty?* Journal of World Trade vol. 29, August 1995, \No. 4, p.127.

² *Ibid.*

market if given national treatment, since this by definition will remove any regulatory advantage enjoyed by the domestic service supplier.³

The scheduled GATS 2000 negotiations present an opportunity to develop a more stable framework for the liberalization of world trade and investment in services. For the developing countries, it presents the opportunity to negotiate for higher levels of commitments in sectors and modes of supply that are of particular interest to them.⁴

2.1.2 Structure of the GATS

The GATS consists of: (i) a set of general concepts, rules and principles applying to measures affecting trade in services; (ii) a number of Annexes, of both a substantive and non-substantive nature; and (iii) the schedules of specific commitments on national treatment and market access made by each WTO Member.

Since the completion of the Uruguay Round, negotiations on two sectors have been completed, namely, basic telecommunications (in February 1997) and financial services (in December 1997). The outcome of these negotiations has been a significant increase in the liberalization of trade in these two sectors.

2.1.3 Modes of Supply

The GATS sets out a framework to address liberalization of trade in service via four modes of supply, namely the supply of a service:⁵

(a) ***From the territory of one Member into the territory of any other Member.***

Neither the consumer nor the supplier moves to the other. Examples: traditional banking or insurance services transacted through electronic means; the provision of distance education services.

(b) ***In the territory of one Member to the service consumer of any other Member.***

The consumer of a service moves across to the territory of the producer. Examples: tourism, services rendered to ships at ports or dry-docks, or to aircraft at airports.

(c) ***By a service supplier of one Member, through commercial presence in the territory of any other Member.***

The supplier moves to the consumer and the supply of the service involves the establishment of subsidiaries or branch offices, or the maintenance of a representative. Examples: international chains of hotels or department stores; subsidiaries or branches of banks.

³ *An Introduction to the GATS*, WTO Trade in Services Division, Technical Cooperation and Training Division, WTO Regional Seminar for Caribbean Developing Countries on GATS Negotiations in Progress, Basic Documentation Vol. 1 p. 9.

⁴ GATS Articles IV.1(c), XIX.

⁵ GATS Article I.2.

(d) ***By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.***

The supplier moves personnel or his person to the consumer in order to supply the service. Examples: movement of unskilled or semi-skilled migrant workers to harvest crops, or the movement of skilled persons such as accountants or lawyers on consultancies, or in the context of the provision of a service via commercial presence.

These four modes of supply are generally referred to by the following terms: cross-border supply, consumption abroad, commercial presence and movement of natural persons, respectively. They are also referred to as Modes 1 to 4, respectively. The GATS offers this further definition, which makes it clear that all stages of the delivery of a service are covered: “supply of a service includes the production, distribution, marketing, sale and delivery of a service.”⁶

2.1.4 Treatment Standards under the GATS

The fundamental obligation under the GATS is the requirement that each Member extend immediate and unconditional most-favoured-nation (MFN) treatment to the services and service suppliers of other Member countries with respect to any measure covered by the Agreement.⁷ MFN treatment applies to all services and service sectors except those listed by each Member and is therefore based on a “negative list” approach.

The Agreement allows measures inconsistent with MFN where such measures are listed in, and meet the conditions of, the Annex on Article II Exemptions.⁸ This Annex in turn incorporates the list of exemptions scheduled by the various Members, and specifies that the Council for Trade in Services is to review all exemptions granted for a period of more than five years, with a view to determining whether the conditions which created the need for the exemption still prevail. In principle, Article II exemptions must not exceed a period of 10 years and, in any event, they are to be subject to negotiation in subsequent trade liberalizing rounds. Any exemptions that are sought after the WTO Agreement comes into force must be approved under the WTO waiver procedures.

Apart from the basic MFN treatment standard, Members are required to open their markets so as to allow market access in the sectors specified in their respective Schedules,⁹ and to accord national treatment to services and service suppliers of any other Member, in

⁶ GATS Article XXVIII (b).

⁷ GATS Article II.1 provides: “With respect to any measure covered by this Agreement, each member shall accord immediately and unconditionally to services and service suppliers of any other member treatment no less favourable than that it accords to like services and service suppliers of any other country.”

⁸ GATS Article II.2 provides: “A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.”

⁹ Article XVI.1 provides: “With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.”

respect of all measures affecting the supply of services.¹⁰ These two treatment standards are determined by a “positive list” approach; they apply only to sectors listed in a Member's schedule, and are subject to any conditions set out therein.

Article XVII goes on to recognise that in order to confer national treatment on the services or service suppliers of another Member, a Member may have to accord to them treatment which is either formally identical to or different from that which it accords to its own national services or service suppliers.¹¹ However, not only the form of the treatment – i.e., identical or different – is to be considered, but its effect. If it modifies the conditions of competition in favour of the services or service suppliers of the particular Member, it will be considered to be less favourable treatment.¹²

2.1.5 Transparency

Article III imposes an obligation of transparency, and requires each Member to publish promptly all relevant measures of general application, as well as international agreements to which it is a signatory, which pertain to or affect the operation of the GATS. Members are also required to promptly inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by their specific commitments under the GATS.

In addition to being under an obligation to respond promptly to all requests by other Members for specific information on measures taken by it, each Member must establish enquiry points to provide specific information to other Members on request concerning new laws or changes to existing laws, regulations or administrative guidelines, which specifically affect trade in services covered by their specific commitments under the GATS. Enquiry points must be established within two years from the date of entry into force of the WTO Agreement, with appropriate flexibility in establishing such enquiry points being agreed upon for individual developing country Members.

2.1.6 Increasing Participation of Developing Countries

Article IV specifies that the increasing participation of developing country Members is to be facilitated through negotiated specific commitments relating to the strengthening of their domestic services capacity and its efficiency and competitiveness, the improvement of their access to distribution channels and information networks and the liberalization of market access in sectors and modes of supply of export interest to them. Although the developed countries have made commitments to liberalization of more service sectors and sub-sectors than the developing countries, there have been complaints that they have not in fact granted

¹⁰ Article XVII.1 provides: “In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.”

¹¹ GATS Article XVII.2.

¹² GATS Article XVII.3.

significant market access and national treatment commitments in sectors of export interest to developing country Members, particularly with respect to the supply of services via Mode 4.¹³

The limited specific commitments made so far with respect to market access and treatment of persons supplying services under Mode 4 have given rise to some dissatisfaction on the part of developing countries.¹⁴ It has been observed that the more restrictive commitments are in sectors and modes where developing countries have a comparative advantage, such as in low and medium skill related labour-intensive activities. Consequently, a major failing of the first round of commitments is that it does not recognise the movement of natural persons at all the different levels where WTO Members participate, and where there is trade in services.¹⁵

Additionally, commitments on Mode 4 have generally been linked to commitments on Mode 3. Consequently, restrictions on the latter mode may also translate into barriers to temporary movement of labour. Although such restrictions may be intended to protect consumers and the public interest rather than to erect barriers to entry, they indirectly limit the scope for movement of personnel which would normally accompany the flow of capital.

Where barriers are not linked to the movement of natural persons in connection with Mode 3, but are specific to Mode 4, such restrictions are usually in the form of economic needs tests (ENTs) or requirements for particular qualifications or experience, and are justified on the basis of consumer protection. These also impose severe restrictions on the supply of services through the movement of natural persons.

As part of their obligation to increase the participation of developing countries, developed country Members and, to the extent possible, other Members, were required to establish contact points by the beginning of 1997 to facilitate the access of developing country Members' service suppliers to information on the markets in which they are interested. The developed countries and some developing countries have in fact established such enquiry points. However, there has not been much activity in this regard on the part of the developing countries including many CARICOM Members.

With respect to the above measures for increasing the participation of developing countries, Article IV also requires that special consideration should be given to the needs of the least-developed country Members.¹⁶

¹³ See, for example, the *Schedule of Specific Commitments of the European Community and its Member States*, GATS/SC/31 and the *Schedule of Specific Commitments of the United States of America*, GATS/SC/90. In the latter case however, although there are generally no binding commitments made in respect of market access for natural persons, full national treatment is given in most sectors and sub-sectors.

¹⁴ See, for example, Mukherjee, N., *Market Access Commitments Under GATS in WTO: An Analysis of Horizontal Commitments From Developing Countries' Perspective*, p. 8.

¹⁵ Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour Under the GATS*, November 1999, p. 19.

¹⁶ GATS, Article IV.2,3.

2.1.7 *Economic Integration and Labour Markets Integration Agreements*

Article V permits any WTO Member to enter into an agreement to liberalize trade in services with other Members, provided that the agreement has “substantial sectoral coverage,” eliminates measures that discriminate against service suppliers of other countries in the group, and prohibits new or more discriminatory measures.¹⁷ Such an agreement should not provide for the *a priori* exclusion of any mode of supply. The agreement must be designed to facilitate trade among its Members, and must not raise the overall level of barriers faced by non-members in trading with the group in the service sectors or sub-sectors covered.¹⁸ If the establishment of the agreement, or its subsequent enlargement, leads to the withdrawal of commitments made to non-members, there must be negotiations to provide appropriate compensation.¹⁹

A related exception to the MFN rule is permitted by Article V *bis* of the GATS. This allows countries to take part in agreements which establish full integration of labour markets. Such agreements must exempt citizens of parties to the agreement from requirements concerning residency and work permits, and must be notified to the Council for Trade in Services.

2.1.8 *Modification and Withdrawal of Commitments*

A Member may only withdraw or modify its commitments after three years have elapsed from the entry into force of the commitment, which in the vast majority of cases, would be three years after entry into force of the Agreement.²⁰ The Member that withdraws or modifies its commitments must enter into negotiations with affected countries for the agreement of compensatory adjustments.²¹ If the negotiations do not lead to agreement, an affected country may take the matter to arbitration. If the arbitrator finds that compensation is due, the proposed changes in commitments may not be implemented until the compensatory adjustments are made.

If the changes are implemented without compliance with the arbitrator’s findings, the affected country has the right to retaliate by withdrawing commitments substantially equivalent to those findings, and such withdrawal will apply only to the country making the changes. The option of modifying commitments is applicable only to a Member’s specific commitments, and may not affect the application of MFN treatment. There is no prohibition, however, on improving or adding to commitments at any time.

¹⁷ GATS, Article V.1.

¹⁸ GATS, Article V.4.

¹⁹ GATS, Article V.5.

²⁰ Article XXI.1(a).

²¹ Article XXI.2(a).

2.1.9 Dispute Settlement

The provisions for the settlement of disputes under the GATS are contained in Article XXIII of that Agreement which provides that where a Member is of the view that another Member fails to carry out its obligations or specific commitments under that Agreement, it may try to reach a mutually satisfactory resolution by having recourse to the Dispute Settlement Understanding (DSU). If the Dispute Settlement Board (DSB) considers that the circumstances are serious enough to justify such action, it may authorise a Member or Members to suspend the application of obligations and specific commitments to any other Member or Members in accordance with Article 22 of the DSU. Such suspension is intended to be temporary and is available in the event that the recommendations and rulings of the DSB are not implemented within a reasonable period of time.

Under Article 22 of the DSU, if the Member complaining of the conduct of another Member considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors under the same agreement. Further, if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement. Consequently, the failure to honour a commitment in one trade sector, whether in goods, services or intellectual property, may lead to withdrawal of commitments in another sector.

Additionally, if a Member considers that a benefit that it could reasonably have expected to accrue to it under a specific commitment of another Member is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of the Agreement, it may have recourse to the DSU.

Under the DSU, special procedures are prescribed for disputes involving least-developed country Members.²² At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration is to be given to the special situation of least-developed country Members, and Members must exercise due restraint in raising matters under these procedures involving a least-developed country Member.

Expeditious arbitration within the WTO is an alternative means of dispute settlement which can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties. Resort to arbitration is subject to mutual agreement of the parties which must agree on the procedures to be followed. Agreements to resort to arbitration must be notified to all Members sufficiently in advance of the actual commencement of the arbitration process and the parties to the proceeding must agree to abide by the arbitration award.²³

²² Dispute Settlement Understanding, Article 24.

²³ *Ibid.*, Article 25.

2.2 Specific Commitments and MFN Exemptions

The Schedules of Specific Commitments of Members form an integral part of the GATS. A country's Schedule sets out the service sectors and sub-sectors to which, and the terms, limitations and conditions under which market access and national treatment apply within that country's jurisdiction. The country may also maintain a separate list of Article II Exemptions in which it specifies any exemptions to MFN treatment.

2.2.1 Schedules of Specific Commitments

The national Schedules generally conform to a standard format which is intended to facilitate comparative analysis.²⁴ In nearly all Schedules, commitments are split into two sections. In the first section, "horizontal" commitments are listed, which stipulate limitations that apply to all of the sectors included in the Schedule. The most frequent references are limitations relating to Modes 3 and 4, that is, commercial presence and the presence of natural persons. The horizontal entries must be taken into account when assessing the specific commitments on the sectors listed in the second section of the Schedule.

For each service sector or sub-sector that is offered in the second section of the Schedule, there must be indicated, with respect to each of the four modes of supply, any limitations on market access or national treatment that are being maintained. The first column in the standard format contains the sector or sub-sector in which the commitment is being made; the second column contains limitations on market access; the third column contains limitations on national treatment. The specific commitments on market access and national treatment therefore consist of eight entries which indicate the presence or absence of limitations with respect to each mode of supply. In the fourth column governments may enter any additional commitments which are not subject to scheduling under market access or national treatment.²⁵

Sector or sub-sector column: Specific commitments apply only to sectors or sub-sectors that are clearly defined in this column. In the great majority of Schedules the order in which the sectors are listed corresponds to the GATT Secretariat classification which lists twelve broad sectors.²⁶ Additionally, many sectoral entries are accompanied by numerical references to the Central Product Classification system of the United Nations on which the Secretariat list is based.

Market access column: A market access commitment by a Member in any sector or sub-sector must also indicate, for each mode of supply, any limitations that are being maintained on market access. There are six categories of restriction which may not be adopted or

²⁴ Guide to Reading the GATS Schedules of Specific Commitments and the List of Article II (MFN) Exemptions: http://www.wto.org/english/tratop_e/serv_e/guide1.htm, p. 3.

²⁵ *Ibid.* Note that the contents of the Schedule must comply with the requirements of Article XX of the GATS.

²⁶ These are: business; communication; construction and engineering; distribution; education; environment; financial; health; tourism and travel; recreation, cultural and sporting; transport; and other services not included elsewhere.

maintained unless they are specified in the Schedule;²⁷ each limitation on market access must therefore fall into one of these categories.

National treatment column: A Member wishing to maintain any limitations on national treatment, that is, any measures which result in treatment of foreign services or service suppliers that is less favourable than treatment of its own services or service suppliers, must indicate these limitations in the third column of its Schedule.

Additional commitments column: A Member may make additional commitments in a given sector relating to measures other than those of market access and national treatment, such as qualifications, standards and licensing matters.²⁸ Entries in this column are not obligatory but this column may be used to indicate additional positive undertakings. It should not be used for the listing of additional limitations or restrictions.

2.2.2 Lists of Article II (MFN) Exemptions

Most-favoured-nation treatment applies to all measures affecting trade in services. However, particular measures inconsistent with the MFN obligation may be maintained but must be specified in a List of Article II Exemptions. In principle such measures may not be maintained for more than ten years and are subject to review after not more than five years.

In contrast to the complex nature of Schedules of Commitments, these lists are largely self-explanatory and are structured in a straightforward manner. In order to ensure a complete and precise listing of a country's MFN exemptions, each country generally provides the following information for each exemption:²⁹

- (i) Description of the sector or sectors in which the exemption applies;
- (ii) Description of the measure, indicating why it is inconsistent with Article II;
- (iii) The country or countries to which the measure applies;
- (iv) The intended duration of the exemption;
- (v) The conditions creating the need for the exemption.

2.3 GATS Annexes and Ministerial Decisions

Attached to the GATS are eight annexes and eight Ministerial decisions. The latter were adopted in Marrakesh on the same day that the GATS were signed. Some of the annexes and decisions related to the short term finalization and implementation of elements of the GATS. However, others are intended to continue in the longer term. Those five annexes whose

²⁷ Under Article XVI:2 of the GATS these are: limitations on the number of service suppliers; limitations on the total value of service transactions; limitations on the total number of service operations or quantity of service output; limitations on the total number of natural persons that may be employed in a particular sector or by a service supplier; measures which restrict or require specific types of legal entity or joint venture; and limitations on the participation of foreign capital.

²⁸ GATS Article XVIII.

²⁹ *Ibid.*, p. 6.

provisions will continue in the longer term, are integral parts of the package of agreements on trade in services reached in the Round.

The Annex on Article II Exemptions has already been discussed, while the Annex on the Movement of Natural Persons Supplying Services under the Agreement is discussed in the following chapter. The other annexes that will continue to apply cover three specific sectors of trade in services, namely, air transport, financial services and telecommunications. Maritime transport services were also covered by an annex and a decision on negotiations, which dealt with the scope and procedure for those negotiations. These negotiations were suspended in June 1996, with a commitment to resume in the year 2000.

The telecommunications sector is the subject of a questionnaire, while financial services is the subject of an understanding, both of which address the supply of services through Mode 4.

2.3.1 Telecommunications

The GATS *Annex on Telecommunications* applies independently of specific commitments that individual WTO Members may have made to open up their markets for services in telecommunications. It covers the use of public telecommunications networks and services by service suppliers. Members are required to ensure that a service supplier of any other Member has access to and use of public telecommunications transport networks and services on non-discriminatory terms and conditions, for the supply of a service in its Schedule.³⁰

The *Questionnaire on Basic Telecommunications*³¹ poses questions that Members must address in drafting their commitments on the telecommunications sector. For example, with regard to market access, it asks what kind of limitations are applied on market access. This questionnaire includes issues such as whether there are any quantitative limitations on, or economic needs tests applied to, the number of suppliers and whether there are any limits on the total number of persons that may supply basic telecommunications or be employed by a supplier.

With regard to national treatment it asks what kind of limitations on national treatment are in place extending to foreign suppliers treatment less favourable than that for domestic suppliers. This encompasses issues such as whether there are preferences given to domestic suppliers or restrictions or obligations imposed on foreign suppliers with respect to any procedures or regulations, including licensing; limitations on the nationality or residency of managers, directors, or board members; and restrictions on foreign ownership of land or facilities.

The *Questionnaire* recognises that in many countries, telecommunications services are provided by monopoly suppliers, and that several other restrictions may apply. Members are

³⁰ Annex on Telecommunications, para.4.

³¹ Negotiating Group on Basic Telecommunications: *Questionnaire on Basic Telecommunications* Note by the Secretariat, TS/NGBT/W/3.

therefore required to state explicitly any restrictions on commercial presence and the movement of natural persons to supply such services. Members have in fact done so, and these issues are addressed in most of the Specific Commitments on Telecommunications submitted by individual Members.³²

2.3.2 *Financial Services*

In negotiating the GATS, it was generally recognised that the financial services sector would require special provisions. Some of the concerns that needed to be addressed included the right of Members to take steps to protect the stability of its financial institutions, and to protect users of financial services from suppliers who lack sufficient financial backing, or are badly managed or dishonest. The *Annex on Financial Services* addresses these concerns.

The *Understanding on Commitments in Financial Services* permits the WTO Members to take on specific commitments with respect to financial services under the GATS on the basis of an alternative approach to that outlined in Part III of the Agreement. It sets out the basis on which a number of developed, mainly OECD, countries agreed to draw up their scheduled commitments on financial services. Under this approach, their commitments reflected or were more liberal than the measures they actually applied.

With respect to cross-border trade, each Member must permit non-resident suppliers of financial services to supply services such as: a number of insurance services; reinsurance, retrocession and services auxiliary to insurance; provision and transfer of financial information and financial data processing; advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services.³³

In addition to permitting its residents to purchase such financial services in the territory of any other Member, each Member must permit financial service suppliers of any other Member to establish or expand within its territory.³⁴

The *Understanding* makes specific provision for the temporary entry of personnel. However, the entry and stay of natural persons in the financial services sector is exclusively linked to the commercial presence of service suppliers. Unconditional temporary entry is permitted only for senior managers and specialists, both of whom must be pre-employed by the service supplier. The entry of specialists in areas of computer services, accounts,

³² See for example, the commitments of Antigua and Barbuda, GATS/SC/2/Suppl.1; Jamaica, GATS/SC/45/Suppl.1; and Trinidad and Tobago, GATS/SC/86/Suppl.1.

³³ *Understanding on Commitments in Financial Services*, para. B.3.

³⁴ *Ibid.*, paras. B.4,5.

telecommunications, actuarial science and law, is subject to the availability of such qualified personnel in the host country. These persons must be associated with the commercial presence of the service supplier, and consequently appear to be prohibited from taking up other employment.

3 MOVEMENT OF NATURAL PERSONS UNDER THE GATS

3.1 Scope of Mode 4

As discussed in Chapter 2, Mode 4 refers to the supply of a service by the service supplier of one Member through the presence of natural persons of a Member in the territory of any other Member.³⁵ The GATS itself applies to any service in any sector, except services supplied in the exercise of governmental authority, which are those services supplied neither on a commercial basis, nor in competition with one or more service suppliers.³⁶

The *Annex on Movement of Natural Persons Supplying Services under the Agreement* establishes that, in accordance with Part III of the GATS, which covers specific commitments, and Part IV, which addresses progressive liberalization, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. These commitments are reflected in the Schedules of Commitments. Natural persons covered by a specific commitment must be allowed to supply the service in accordance with the terms of that commitment. Members are also under an obligation to enter into successive rounds of negotiations with a view to achieving progressively higher levels of liberalization.³⁷

At the conclusion of the Uruguay Round negotiations there were a number of issues that remained unresolved, including the movement of natural persons, financial services and telecommunications. It was agreed that these would be subject to further negotiations. The *Annex on the Movement of Natural Persons* resulted from these further negotiations. It arose largely because of the dissatisfaction on the part of the developing countries with the level of commitments in this mode of supply by the developed countries. It was intended to redress the balance brought about by the absence of specific commitments on the movement of natural persons by the developed countries. In fact, the resulting Annex is merely a restatement of the principles already contained or implicit in the GATS, and does not go any further toward the liberalization of commitments in this mode.

The *Annex* applies to measures affecting natural persons of a Member who are service suppliers either in their own right or as employees of a service supplier of a Member, in respect of the supply of a service. It makes clear that the GATS does not apply to measures affecting natural persons seeking access to the employment market of a Member, or to measures regarding citizenship, residence, or employment on a permanent basis. It is therefore not necessary to refer in the Schedules to immigration legislation or policy. Nevertheless, several Members, including some CARICOM Member States, have done so.

³⁵ GATS Article I.2(d).

³⁶ GATS Article I.3(c).

³⁷ GATS Article XIX.1.

The *Annex* also makes clear that the Agreement is not intended to prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders. However, such measures are not to be applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

The footnote to clause 4 goes on to explain that the sole fact of requiring a visa for natural persons of a certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment. In summary, the GATS does not require Members to depart from or modify the application of their immigration laws in respect of the entry of natural persons for the supply of services under the GATS.

3.2 Linkages Between the Movement of Natural Persons and Other Modes

In reality, the provision of services is not discretely divided into the modes of delivery defined by the GATS for negotiating purposes.³⁸ There may be linkages between Mode 4 and other modes of supply. For example, the provision of software via the Internet (Mode 1) may lead to a software specialist crossing national boundaries to refine the software for a particular consumer. Similarly, tourism services may combine Modes 2 and 4 where a tour guide from one country takes a group of tourists to visit another country. Nevertheless, the provision of services via Mode 4 is most closely linked with the provision of services through Mode 3.

The Schedules of Members reveal a greater number of commitments on Mode 3 than on Mode 4. Although foreign natural persons may be necessary for the operation of the commercial presence scheduled under Mode 3, their entry and stay are generally treated separately as commitments under Mode 4.³⁹ This is true even where entry is restricted to executives, managers or others directly associated with the management of an entity allowed under Mode 3. The commitments that are scheduled with respect to such persons generally require that they be employees of a commercial entity that is permitted entry. There are also far fewer commitments on Mode 4 in relation to self-employed persons than in relation to employees.⁴⁰

The scheduling of entry under Modes 3 and 4 separately, while at the same time linking them by granting entry only to those persons employed by an enterprise, is not necessarily indicative of a desire to create barriers to the entry of natural persons. Rather, it may be the exercise of a Member's right to control and approve on a case by case basis each commercial

³⁸ Young, A.: *Labour Mobility and the GATS: Where Next?* Prepared for *Services 2000: New Directions in Services Trade Liberalization – A Preparatory Conference*, p. 6.

³⁹ Young points to the Japanese Schedule as an example of a Schedule where such a link is made. See "Japan, Schedule of Specific Commitments", GATS/SC/46 (15 April, 1994), pp.6-16.

⁴⁰ The *Schedules of Specific Commitments* of Canada (GATS/SC/16), the Republic of Panama (GATS/SC/124) and Peru (GATS/SC/69) present rare examples of countries that have made such commitments.

enterprise and each foreign natural person that enters its territory to provide services. This is ultimately an exercise of sovereignty and most, if not all, Members are loath to relinquish any part of their sovereignty. There is also a tendency to ignore the fact that the GATS deals only with the temporary movement of natural persons, and to treat natural persons seeking entry for the supply of services in the same manner as persons seeking to immigrate or enter the labour market. This is perhaps not surprising, given that the GATS does not require Members to modify their immigration laws. However, the manner in which the entry of natural persons is controlled has led to the perception that entry requirements are in fact barriers to entry. This is discussed further in section 3.4.

3.3 Interpretative Problems

Different views have been expressed as to what actually constitutes Mode 4, and whether some transactions would be covered by the GATS. Young illustrates this problem by citing two cases.⁴¹ In the first case, it is accepted that where money flows from one country to a second in exchange for a service being provided by a person from the second country in the first, such a transaction is covered by the GATS. However, a close reading of the GATS definition of Mode 4 reveals that the GATS may cover services transactions which are not reflected in traditional balance of payments statistics. It seems that the transaction would also be covered where both a service supplier and a consumer from the first country travel to the second country, where the service supplier provides the consumer with a service in the second country. An example would be a tour guide taking tourists to another country and providing them with a tour. In that case there would be no import or export of a service and therefore no international transaction to be recorded in the balance of payments statistics, yet the transaction that has occurred falls within the definition of trade in a service under Mode 4.

Young raises the questions whether the GATS provisions would come into play in the absence of an international transaction, and whether there can be barriers to trade in such a situation.⁴² If the answer to these two questions is yes, then any rules that exist in the second country would impact on the ability of that supplier to provide the service to that consumer in the second country. These requirements may be domestic regulations under Article VI or performance requirements not permitted under Article XVI concerning market access.

The second case arises because the definition of Mode 4 does not specify who would be the employer of a service provided under Mode 4, nor does it specify the nature of the employment contract. It is clear that two distinct categories of natural persons, namely, independent contractors and employees, are covered by the GATS definition. The nature of the contract is generally not difficult to determine, but the rules applicable in a given case depend on whether the employment is based on a contract with an independent contractor or with an employee, and on whether the employer is in the home country, the host country or a third country. The latter question is important at the domestic level because the applicable

⁴¹Young, A.: *Labour Mobility and the GATS: Where Next?* Prepared for *Services 2000: New Directions in Services Trade Liberalization – A Preparatory Conference*, pp. 10-12.

⁴² *Ibid.*

regulatory systems concerning taxation, wages, labour market regulation and development, collective bargaining agreements, the collection of statistics and other such matters depend on who the employer is.

Issues such as these are important, since they influence the ability of service suppliers and service employers to be competitive. For example, the comparative advantage that would otherwise exist on the basis of lower wages may be lost if the service employer in the host country were compelled to pay wages comparable with those paid to local service suppliers.

It has been suggested that Article I should be clarified by indicating where regulatory authority rests in the application of commitments under various modes. A logical starting point is that the territory of consumption should be the country which has regulatory authority.⁴³

There is no question that the GATS is intended to cover only the temporary stay of service suppliers. However, a problem of interpretation may arise because of the failure of the GATS to define the term “temporary.” Member countries have interpreted the term largely in accordance with their immigration laws and the policy underlying their commitments to permit the entry and stay of natural persons for the supply of services. This has resulted in the application of the immigration rules for permanent stay being applied to temporary entry and widely varying lengths of stay permitted, depending on the purpose of the entry.

These and other interpretative problems will continue to be raised as the scope of Mode 4 is examined. They lend some support to the idea that a separate regime for labour services or even the movement of labour needs to be established.⁴⁴ Despite the difficulties that may arise in implementing a separate regime, it remains an attractive option that should be considered.

3.4 The Impact of Immigration and Labour Market Regulations

Movement of natural persons under the GATS is intended to be temporary, and only for the purpose of providing a particular service in each instance. As stated earlier, the *Annex on Movement of Natural Persons Supplying Services under the Agreement* makes this clear.⁴⁵ This condition has led to much discussion and debate, particularly among developing countries, which regard the steps taken to regulate the entry and stay of natural persons as amounting in some cases to barriers to entry under Mode 4.

Restrictions on the entry and stay of natural persons generally originate in immigration laws and labour market policies of Members. The temporary movement of labour is not separated from permanent movement of labour and therefore comes under the purview of immigration legislation and labour market conditions. The Schedules of Commitments show

⁴³ *Report on the RNM Reflections Group on Services*, Nassau, The Bahamas, March 2000.

⁴⁴ As proposed by Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour Under the GATS*, November 1999, p.23 *et seq.*, and Mukherjee, N.: *Exporting Labour Services and Market Access Commitments Under GATS in the World Trade Organization*, *Journal of World Trade*, vol. 30, October 1996, no. 5, p.40.

⁴⁵ *Ibid.*, para. 4.

this to be the norm. These restrictions may act as trade barriers by raising the cost of entering the market, thereby eroding the possible cost advantage of the foreign service supplier.⁴⁶ Indeed, there is not always a clear line between a “measure affecting trade in services” and a “barrier affecting trade in services.” What one government may feel is a necessary regulatory measure, applied in a non-discriminatory manner, may in fact constitute a *de facto* trade barrier to a foreign service supplier.⁴⁷

The view has been expressed that this issue of separation of temporary movement of labour from permanent movement of labour should be discussed multilaterally.⁴⁸ Ideally, temporary service suppliers should fall outside the purview of immigration-related laws and labour market regulations and their entry and stay should be treated under a separate set of regulations. Alternatively, they could be covered by a special subset of regulations within the overall immigration policy framework, with more liberal conditions for entry and stay.

Another option for dealing with such issues is the establishment of a separate class of visas,⁴⁹ namely, a GATS visa for service professionals temporarily working overseas. This would also make it easier to address issues such as social security, wage parity and recognition by allowing for more liberal treatment in the case of temporary service suppliers.⁵⁰

Other experts⁵¹ however, foresee a number of problems with the implementation of a GATS visa regime. The view has been expressed that in reality, a GATS visa regime would pose huge challenges to immigration and labour market development regulators, in terms of the need to reassess or phase out current entry programmes under existing legislation, the need to internationally coordinate data collection to track implementation, and the need to train border personnel and invest in new automated technology.⁵² These requirements would be even more onerous for many developing countries. The establishment of a GATS visa regime would have to take into account the different capacities of the WTO Members to implement efficient entry systems.⁵³

Quite apart from any problems associated with the implementation of a GATS visa, there is the question of the acceptance of the idea both by developed countries and some developing countries. India proposed the implementation of a special visa in July 1999,⁵⁴ but to date the

⁴⁶ Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour Under the GATS*, November 1999, p. 8.

⁴⁷ Stephenson, S. M.: *Approaches to Services Liberalization by Developing Countries*, in OAS Trade Unit Studies – Analyses on trade and integration in the Americas, February 1999, http://www.sice.oas.org/TUNIT/studies/srv_lib/SRV4e.asp, Part B, p. 3.

⁴⁸ *Ibid.*, p. 23.

⁴⁹ *Ibid.*, pp. 23-26.

⁵⁰ *Ibid.*

⁵¹ See, for example, Young, A.: *Labour Mobility and the GATS: Where Next?* Prepared for *Services 2000: New Directions in Services Trade Liberalization – A Preparatory Conference*.

⁵² *Ibid.*, p. 23.

⁵³ *Ibid.*, fn 29, pp. 23-24.

⁵⁴ *Preparations for the 1999 Ministerial Conference - Proposals Regarding the GATS Agreement in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration - Communication from India* : WT/GC/W/224, 2 July 1999. See section 9.2.2 below.

idea has not been taken up by any other country. It should be recognised that this would not be an easy matter to negotiate. Nevertheless, such visas would allow service suppliers to enter markets in order to supply services without time-consuming visa requirements and for this reason, the proposal should be pursued. In fact, the proposal for a GATS visa or permit has now received support from multinational companies, such as PricewaterhouseCoopers.⁵⁵

India has persisted with its proposal, and has submitted a more comprehensive proposal outlining the main features of the GATS visa, which are clearly based on Chanda's proposals. They include:

- ◆ Strict timeframes for granting the visa (2-4 weeks maximum);
- ◆ Flexibility for visas on shorter notice for select categories of service providers;
- ◆ Transparent and streamlined application process;
- ◆ Mechanisms to find out status of applications, causes of rejection and requirements to be fulfilled;
- ◆ Easier renewal and transfer procedures;
- ◆ GATS visas for select companies for use by its employees deputed abroad temporarily;
- ◆ Adequate in-built safeguard mechanisms to prevent temporary service providers entering the permanent labour market; and
- ◆ Developing country professionals should be exempt from social security contributions so that their comparative advantage is not affected.

3.5 Mutual Recognition and Standards

3.5.1 *Constraints on the Movement of Natural Persons*

In addition to restrictions on entry and stay, the movement of natural persons to supply services is constrained by requirements on qualifications, work experience and licensing or certification. Such regulations are generally motivated by consumer protection and public interest concerns and may not be intended to impede trade flows *per se*. They are required in many service sectors to ensure high quality of service and adherence to specified codes of professional conduct in order to prevent damage to consumers and the social and national interest.

Nevertheless, recognition requirements may either prevent market access for the foreign service supplier through rejection of the work permit or visa application, or may limit his scope for work to specific activities once he enters the overseas market. In addition, licensing requirements are the norm in accredited services such as legal, accountancy and health services. In many other cases, market access is restricted to certain categories of natural persons, such as managers and executives, or experts.

⁵⁵ PricewaterhouseCoopers: *Discussion Paper on the Temporary Movement of key Business Personnel*, October 2000.

In some sectors, there are no formal certification or licensing procedures to accord recognition. In such sectors there is some degree of discretion in granting recognition and equivalence between work experience and educational qualifications and/or training. The software services sector is one such case. For example, the stipulated qualification requirements for software professionals such as programmers and systems analysts in the United States and the United Kingdom exceed those actually needed for the service to be rendered, indirectly implying that the candidate's professional and educational qualifications are not appropriately recognised.⁵⁶

In many service sectors, in the absence of any significant restrictions on national treatment or establishment, it is the domestic regulation that constitutes the main barrier to the provision of services by foreign businesses or individuals. While many service sectors will always be subject to regulation to protect the interest of the public, the extensive application of such domestic regulations may and often does seriously hamper trade.⁵⁷ This is therefore an important area where renewed efforts need to be concentrated in future negotiating rounds.

3.5.2 *Agreements for the Mutual Recognition of Qualifications*

There are many bilateral and in some cases regional agreements for scientific and cultural cooperation, which have mutual recognition provisions. Under such agreements, diplomas granted by signatory countries are mutually recognised on the basis of reciprocal trust regarding the equivalence of educational institutions and study programmes.

Examples of regional arrangements include that in the European Community (EC) in which, since 1985, there has been a new approach to encourage the provision of services and establishment.⁵⁸ For example, in the area of professional services, the adoption of a general system of recognition of higher education diplomas has largely replaced the previous approach aimed at harmonizing the conditions for access. Under this approach, Members accept the comparability of their higher education diplomas particularly for the purpose of granting the authorisation to exercise a regulated profession.⁵⁹

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand, which covers both goods and services, provides another example of the extensive use of mutual recognition in regional integration. Under this agreement, goods which can be legally sold in one country can be sold in the other. Similarly, persons (other than medical practitioners) registered to practise an occupation in one country may practise the same occupation in the other without the need for complete harmonization of standards and professional qualifications.⁶⁰

⁵⁶ Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour under the GATS.*, November 1999, p. 11.

⁵⁷ Zampetti, A. B.: *Market Access Through Mutual Recognition: The Promise and Limits of GATS Article VII*, p.1.

⁵⁸ Following the 1985 *White Paper on Completing the Internal Market*.

⁵⁹ Zampetti, A. B.: *Market Access Through Mutual Recognition: The Promise and Limits of GATS Article VII*, p.4.

⁶⁰ *Ibid.*, p.5.

The NAFTA approach represents the other end of the spectrum. Professionals from one NAFTA party are unable to practise a licensed profession within the territory of another party, even on a temporary basis, without meeting all licensing criteria and receiving a license from the host jurisdiction.⁶¹ The NAFTA provides a framework under which interested professions can work toward mutual recognition based on objective and mutually acceptable standards for licensing and certification. However, adoption of the recommendations is reserved for the respective competent authorities of the parties, namely, individual states in the case of the United States and provinces in the case of Canada. So far, only the representatives of the engineering and legal professions have developed and recommended arrangements in the area of mutual recognition, but these have not yet found wide acceptance.⁶²

At the multilateral level, UNESCO and the Council of Europe have done extensive work which has led to the conclusion of several conventions. The recent *Convention on the Recognition of Qualifications Concerning Higher Education in the European Region* aims to facilitate the recognition of qualifications granted by one party in another party. It requires requests to be assessed in a fair manner and within a reasonable period of time. Further, recognition can only be refused if the qualification is substantially different from that of the host country, and the onus is on its educational institution to prove that it is.⁶³

3.5.3 Mutual Recognition Under Article VII of the GATS

The GATS provides an opportunity for the conclusion of agreements or arrangements for the mutual recognition of education, qualifications or ability to provide services.⁶⁴ Article VII allows Members to enter into mutual recognition agreements with regard to education or experience obtained, requirements met, or licences or certification obtained in a particular country. Such recognition may be achieved through harmonization, based upon agreement or other arrangements, or may be accorded autonomously. Other Members must be afforded the opportunity to accede to such agreements or arrangements, or to negotiate comparable ones.

If the Member acts autonomously, it must afford the opportunity to any other Member to demonstrate that the training or experience requirements met in its territory should be recognised. If it grants recognition on an autonomous basis, it must not discriminate between like services and service suppliers or introduce disguised restrictions on trade in services. Article VII also specifies that wherever appropriate, recognition should be based on multilaterally agreed criteria, thereby indicating a preference for a multilateral approach to mutual recognition. The main purpose of Article VII is to permit departure from the MFN rule, while ensuring the openness of any bilateral mutual recognition agreement.

⁶¹ NAFTA Article 1210 and Annex 1210 on Professional Services.

⁶² Zampetti, A. B.: *Market Access Through Mutual Recognition: The Promise and Limits of GATS Article VII*, p. 7 states that the mutual recognition document established by the engineering profession has found approval in Mexico and Canada, but only in the state of Texas in the United States. The recommendations of the legal profession have not yet been accepted.

⁶³ *Convention on the Recognition of Qualifications Concerning Higher Education in the European Region*, Articles III.5, IV.1.

⁶⁴ GATS Article VII.

Although Article VII does not cover mutual recognition agreements between sub-central authorities, the general GATS standard is that Members are to take all “reasonable measures” to ensure implementation “by regional and local governments and authorities and non-governmental bodies” within their territories. Members therefore have overall responsibility for ensuring that bodies such as professional associations do not maintain unjustifiable barriers to entry of natural persons.

In the WTO, work on mutual recognition has been carried out by the Working Party on Professional Services, which has issued its *Guidelines on Mutual Recognition Agreements or Arrangements in the Accountancy Sector*.⁶⁵ These guidelines are intended for use on a voluntary basis and are non-binding. The *Guidelines* contain sections on the conduct of negotiations and relevant obligations under the GATS and on the form and content of a mutual recognition agreement. The former section states that with reference to the obligations of Members under Article VII of the GATS, it sets out points considered useful in the discharge of those obligations. The latter section covers such matters as the scope of the agreement, guidelines on the mutual recognition of qualifications and registration requirements, and mechanisms for the implementation of a mutual recognition agreement.

Further, the *Disciplines on Domestic Regulation in the Accountancy Sector*,⁶⁶ requires Members to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. Such measures must not be more trade-restrictive than necessary to fulfil a legitimate objective, such as the protection of consumers, the quality of service, professional competence and the integrity of the profession. Licensing requirements must also be pre-established, publicly available and objective, while the scope of examinations and other qualification requirements must be limited to subjects relevant to the activities for which authorization is sought.

Many of the principles specified in the *Guidelines* and the *Disciplines* may be applied, with some minor modifications, to mutual recognition agreements in other service sectors. In this respect, these documents are a useful starting point for the development of guidelines for mutual recognition agreements generally. The Working Party on Professional Services is continuing its work on the development of general disciplines for professional services, but it retains the possibility of developing or revising sectoral disciplines, including accountancy.⁶⁷ CARICOM should support and encourage the development of guidelines for mutual recognition agreements or arrangements in other professions and service sectors.

The successful conclusion of an agreement or agreements on mutual recognition in other service sectors would have to be the subject of negotiation by WTO Members. It may be expected that such negotiations would be lengthy and difficult, due largely to the widely

⁶⁵ Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector, S/L/38, 28 May 1997.

⁶⁶ Disciplines on Domestic Regulation in the Accountancy Sector, S/L/64, 17 December 1998.

⁶⁷ Decision on Disciplines Relating to the Accountancy Sector, S/L/63, 15 December 1998.

varying standards recognised, not only by the Members at the national level, but by sub-regional authorities, and even by the professional associations of self-regulating industries. Nevertheless, developing countries, including CARICOM, must actively participate in such negotiations, in order to ensure that their positions and concerns are taken into account in the conclusion of such agreements. Unless they participate, they run the risk of the negotiations being dominated and indeed, dictated, by the developed countries. Their participation must include negotiating for their qualifications to be accorded recognition on the basis of equivalency. This would require intensive technical work and detailed comparison between national, regional and international requirements. Work on the technical aspects of national or regional qualifications should therefore be commenced as a matter of urgency. 3.6 The Requirements of GATS Article VI

Article VI.4 of the GATS on domestic regulation requires the Council for Trade in Services to develop, through appropriate bodies it may establish, any necessary disciplines for ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. The aim of such disciplines is to ensure that such requirements are: (a) based on objective and transparent criteria, such as competence and the ability to supply the service; (b) not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service. To date, the Working Party on Professional Services has developed *Disciplines on Domestic Regulation in the Accountancy Sector*, referred to above, to facilitate trade in accountancy services by ensuring that the relevant domestic regulations meet the requirements of Article VI.4.

Additionally, agreements have also been reached on guidelines for the mutual recognition of qualifications, on procedures for the modification of schedules under Article XXI and on procedures for certification of rectifications and improvements in schedules.

4 GATS MODE 4 COMMITMENTS

4.1. Overview of Schedules of Commitments

A look at Members' GATS Schedules shows that developing countries included fewer sectors than developed countries, and also tabled fewer measures with respect to those sectors. Developing countries scheduled only 17.2 percent of the maximum possible commitments on services, as compared with 53.8 percent for industrialized countries.⁶⁸ Overall, only 25 percent of the universe of services was scheduled by high-income countries without listing any exceptions to national treatment or market access commitments. In the case of developing countries as a group, only 7 percent of the universe of services was scheduled; further, a quarter of the low and middle income countries, scheduled less than 3 percent of the GATS list.⁶⁹

The levels of commitments vary greatly across modes of supply. Within a given sector, trade conditions for Mode 4 tend to be significantly more restrictive than conditions for other modes, particularly Mode 2. This is to a certain extent reflected in the pattern of horizontal limitations in current Schedules applying across all sectors. A little over 20 such limitations with regard to Mode 2 compare with 100 cases for Mode 4. In scheduling Mode 4 entries, Members normally started from a general "unbound" position, which was then qualified by liberalization commitments applying to specified types of persons, movements and stays.⁷⁰

Most Members have avoided comprehensive commitments with regard to the presence of natural persons under Articles XVI and XVII of the GATS. In many cases, commitments apply only to senior executives and managers, persons representing an advanced level of training and expertise, and business visitors. Market access limitations such as numerical quotas may coincide with measures denying national treatment or modifying the conditions of competition in favour of domestic services or service suppliers. Such limitations include residency requirements and non-eligibility under subsidy schemes.⁷¹

Further, there is poor coverage of sectors where Mode 4 is important, since many countries have not scheduled service sectors where movement of natural persons is required.

⁶⁸ Stephenson, S. M.: *Approaches to Services Liberalization by Developing Countries*, in OAS Trade Unit Studies – Analyses on trade and integration in the Americas, February 1999, http://www.sice.oas.org/TUNIT/studies/srv_libSRV4e.asp, Part B, p. 6.

⁶⁹ Hoekman, B., *Assessing the General Agreement on Trade in Services* in Martin, W. and Winters, L., *The Uruguay Round and the Developing Economies*, World Bank, 1994, p. 327, p. 341. Other experts have quoted slightly different figures; see, for example, Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour Under the GATS*, November 1999, p. 16, who quotes scheduling of 50 percent of services by developed countries and 11 percent by developing countries, with a total of 28 percent of the universe of services being scheduled without restrictions by developed countries.

⁷⁰ WTO Council for Trade in Services: *Presence of Natural Persons (Mode 4): Background Note by the Secretariat, SC/W/75*, 8 December, 1998, p. 2.

⁷¹ See, for example, the *Schedule of Specific Commitments of the European Community and its Member States*, GATS/SC/31, under which several Members have listed such conditions.

Where they have, their commitments are more restrictive in sectors and modes in which developing countries have a comparative advantage. One of the main problems lies with the nature of Mode 4 commitments themselves. Market access and national treatment obligations in Mode 4 are mostly unbound in the sectoral schedules which refer to the horizontal commitments. The latter in turn are bound for only a small subset of service personnel, typically at the higher level, and in categories that are related to commercial presence abroad, which are in turn also subject to conditions and limitations.⁷²

Another problem with horizontal commitments in Mode 4 is that only broad categories of service providers are covered. Neither the categories nor the duration of stay specified may be equally relevant to all sectors or sub-sectors. Thus, the use of horizontal commitments in Mode 4 limits the flexibility of the commitments that have been made and also their relevance to the needs and characteristics of individual sectors or sub-sectors.⁷³

The terminology used in many Schedules in connection with Mode 4 tends to be vague, and includes terms such as “business visitors,” “senior executives” and “experts.” Vague terms and definitions may leave decisions on entry open to administrative discretion. This is of particular concern for Mode 4 movements where the relevant rules are normally applied on a highly decentralized basis by immigration officials and consular officers. The predictability of actual entry conditions is further affected by Members’ failure in most cases in which they have reserved the right to operate economic needs tests to specify the relevant criteria.⁷⁴

An overview of commitments on the movement of individual suppliers shows that almost three-quarters of the entries scheduled concern executives, managers and specialists. Of these, a little more than half explicitly relate to intra-corporate transferees. They may be combined with other entries having similar effects, for example, those applying to executives, managers or specialists that are combined with limitations related to commercial presence. Additionally, the Schedules exhibit a general bias in favour of qualified labour. Only 17 percent of all horizontal entries may cover low-skilled persons as well. The periods for which entry may be permitted have not generally been indicated.

The focus of existing commitments on employed persons is also reflected in Members’ frequent use of “pre-employment” as an entry criterion; it is the most prevalent restriction. Numerical quotas and economic needs tests are the entry criteria that rank after pre-employment. While most of the quotas relate to the total staff of a company, some Members have also reserved the right to operate quotas based on parameters such as senior staff or wages. Rather than indicating a liberal policy stance, the low number of quotas relating to “ordinary staff” reflects the general absence of commitments in that segment. The quotas

⁷² Chanda, R.: *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour Under the GATS*, November 1999, pp. 16-17.

⁷³ *Ibid.*, p. 21.

⁷⁴ WTO Council for Trade in Services: *Presence of Natural Persons (Mode 4): Background Note by the Secretariat, SC/W/75*, 8 December, 1998, p. 13.

scheduled in absolute terms are particularly restrictive as the number of permitted entries vary between one and four.

With regard to the access criteria and conditions used in individual Schedules, the following observations may be made:⁷⁵

- (i) Close to 50 entries provide for the application of domestic minimum-wage legislation. These entries have frequently been coupled with similar limitations regarding conditions of work, working hours and social security. It might be argued that such requirements deprive foreign suppliers, who may be at a disadvantage in terms of other relevant competitive factors, of the most important economic parameter – wages – they could reasonably use to compete effectively with national suppliers. There appears to be no valid reason for scheduling such requirements under Article XVII.⁷⁶
- (ii) In at least 46 cases, Members have scheduled horizontal limitations with regard to real estate.⁷⁷ Such limitations are likely to impinge in particular on activities requiring stays of significant duration, while most business visitors may not be affected at all. However, the actual importance of such entries is difficult to assess because, as noted before, many Members have failed to specify maximum permitted periods of stay. In 31 cases, real estate-related restrictions apply to movement of executives, managers and specialists.
- (iii) “Technology transfer clauses,” i.e. requirements to train local staff, have been scheduled in 32 cases. In 30 of these cases they apply to executives, managers and specialists, and have been included only by developing country Members. The main users are Latin American and African countries.
- (iv) In 22 cases, Members have reserved the right – generally as a national treatment limitation (19 cases) – to suspend commitments in the event of labour-management disputes. Such limitations apply almost exclusively to executives, managers and specialists. They are particularly frequent in the case of persons explicitly referred to as intra-corporate transferees.
- (v) Ten entries imply restrictions with regard to geographical or sectoral mobility. The latter restrictions might prevent, for example, executives and managers in multi-enterprise conglomerates from moving between firms. Limitations on geographical mobility may encompass: (a) restrictions related to licensing (e.g. a work permit issued by one sub-central entity may not be recognised elsewhere); (b) limitations on establishment or real estate acquisition in certain provinces (at least two cases); or (c)

⁷⁵ *Ibid.*, pp.14-16.

⁷⁶ Among other considerations, the footnote to Article XVII may be relevant in this context, absolving Members from the need “to compensate any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.”

⁷⁷ Several CARICOM Member States, namely, Barbados, Dominica, Grenada, St. Christopher and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago fall in this category.

variations in access conditions maintained with a view to benefiting ethnic minorities (one case).

There are a number of additional cases where Members included limitations, although relevant GATS rules do not seem to require scheduling under Articles XVI or XVII. Thus, in twenty cases, discriminatory tax measures have been included;⁷⁸ in three cases, foreign exchange restrictions have been listed;⁷⁹ and several Members have scheduled limitations benefiting foreigners who are related to nationals or have resided in the country for a minimum number of years.⁸⁰

Appendix 1⁸¹ summarizes the commitments in service activities by major country group, with each major group showing the number of countries of which it is comprised. It should be noted that the figures showing levels of commitments in particular country groups mask significant variations in the sectoral coverage of commitments by individual countries in the group. Nevertheless, it can be clearly seen that for most services fewer developing countries than developed countries have made commitments. The exceptions to this trend are in the financial services and tourism and travel related services sectors. Appendix 2⁸² lists the number of commitments on service activities of individual country Members. Again it can be seen that the developing countries have made far fewer commitments than the developed countries in respect of service activities inscribed in their schedules of commitments.

4.2 Implications of Developed Countries' Mode 4 Commitments for Developing Countries

In the United States Schedule of Commitments,⁸³ there are no binding commitments in respect of the market access of natural persons who seek entry to that territory in order to supply a service. However, those that are permitted entry are generally entitled to full national treatment, although some states offer national treatment subject to conditions. The Canadian Schedule of Commitments⁸⁴ shows that apart from financial services, in which commitments on natural persons are in accordance with the Understanding on Financial Services, there are no binding commitments on any other service except as indicated in the horizontal section schedule, which permits entry to business visitors and intra-corporate transferees. This applies both with respect to the market access and national treatment of such persons.

⁷⁸ A footnote to Article XIV would seem to provide a carve out for direct taxation of non-residents under certain conditions.

⁷⁹ Paragraph 9 of document MTN.GNS/W/164/Add.1 states that "exchange control restrictions are subject to the general disciplines of Articles XI and XII of the GATS. Foreign exchange control restrictions which fall under Article XII are exceptions from the obligations and commitments of the GATS and therefore should not be scheduled."

⁸⁰ Such measures seem to raise problems under Article II and may need to be covered by an MFN exemption. Only one Member has acted correspondingly.

⁸¹ Source: TIDCO: Workshop on the Conduct of International Trade Negotiations, Port of Spain, Trinidad & Tobago, September 1997, *Background Document for Agenda Item A.1: The World Trade Organization*, pp. 79-82.

⁸² *Ibid.*, pp. 83-84.

⁸³ GATS/SC/90.

⁸⁴ GATS/SC/16.

An examination of the schedules of commitments of the European Community shows that the European Community Members have made no binding commitments with respect to the movement of natural persons to supply services. This is true of both the market access and national treatment standards. In addition, the EC Schedule imposes conditions that are so stringent that they may not easily be met, if at all, by persons from developing countries. These include residency requirements, specific educational degrees or technical qualifications and membership of specific associations, which would pose barriers to movement of service suppliers from developing countries unless steps are taken to recognise their qualifications or experience.

Following the entry into force of the GATS, the Negotiating Group on Movement of Natural Persons completed its work on July 28, 1995. These negotiations resulted in just six⁸⁵ higher level commitments for qualified professionals to work abroad, in an individual capacity on temporary assignments, without the requirement of commercial presence in the host country. For example, the EU and its Member States have guaranteed opportunities for foreign professionals without commercial presence to perform temporary assignments in several professional and business sectors. Switzerland and Norway have made similar commitments.

Many developing countries have also restricted the entry of natural persons to technical and managerial personnel, or have placed restrictions on other persons supplying services, but the “unbound” entry does not appear with the same unvarying frequency as in the developed countries’ schedules. Although they have made commitments to liberalize fewer services than the developed countries, the schedules of commitments of the CARICOM Member States show that in respect of those services, they have made a fair number of conditional and unconditional commitments to permit the market access of natural persons for the supply of a service and their national treatment. This reflects a commitment to permit entry and national treatment to persons who enter their territories for the supply of services, in those sectors that they seek to develop.

The stance taken by the developed countries mentioned above, on the other hand, reflects a reluctance to take steps toward permitting the easier movement of natural persons, and instead, shows a desire to strictly control their entry. While within the sovereign rights of Members to control the number and types of persons who enter their territories, this policy of the developed countries has made it difficult for persons seeking entry to their territories to supply services to do so. There is therefore some justification for the complaints of the developing countries regarding their level of commitments to permit the entry of persons.

Nevertheless, despite the difficulties that would be encountered by persons from developing countries in seeking to enter the major developed countries to supply services, some of those countries have in fact made binding commitments in relation to specified numbers of service suppliers. For example, the United States increased the total number of H-1B visas that would be issued to persons in technology industries in the year 2000 from

⁸⁵ Australia, Canada, the European Community and its Member States, India, Norway and Switzerland.

65,000 to 115,000. In October 2000, an Act was passed to further increase the number of such visas to 195,000 annually for the next three years. It should be noted, however, that persons entering the United States under this type of visa are not entitled to national treatment within that territory or any of its constituent states. In May 2000 the European Parliament approved the EU Services Card Directive, which will allow third country nationals who are legally resident in a Member State the freedom to provide services in other Member States. Individual countries have also introduced measures to permit the entry of service providers. For example, in Germany an accelerated work visa programme has been implemented for the entry of highly skilled technical workers and their spouses. In the United Kingdom, where there is already no cap on highly skilled professionals, the government announced in March 2000 measures to streamline the grant and renewal of work permits for foreign personnel seeking to enter the UK.

5 CARICOM COMMITMENTS UNDER THE GATS

5.1 Overview of CARICOM Mode 3 and 4 Commitments

Most CARICOM Member States were original Members to the WTO, and all of these submitted their Schedules of Specific Commitments on 15 April 1994. Only Haiti and Saint Christopher and Nevis acceded to the Agreement after it entered into force, and submitted their Schedules on 30 August 1995 and 30 November 1995, respectively.

CARICOM Member States made commitments in respect of few services out of the total number of possible services. Table 1 shows the number of CARICOM Member States which have made commitments on commercial presence in the twelve service sectors, as well as the level of commitments made – full market access, conditional market access and no commitment (unbound).

Table 1: CARICOM Commitments on Commercial Presence

Service Sector	Service Sub-Sector	Market Access			National Treatment		
		Full Market Access	Conditional Market Access	Unbound	Full National Treatment	Conditional National Treatment	Unbound
Business	<i>Professional</i>	5	2		5	1	
	<i>Computer & Related</i>	3	1		3	1	
	<i>Research & Development</i>	1	1		1	1	
	<i>Real Estate</i>	1			1		
	<i>Other Business Services</i>	2			2		
Communication	<i>Courier</i>	1	2		1	2	
Construction/Engineering		1			1		
Educational		3			3		
Financial	<i>Banking</i>	3			3	1*	
	<i>Insurance</i>	3	6	1	6	4	
	<i>Offshore Companies & Trust</i>		1		1		

Table 1 (cont'd): CARICOM Commitments on Commercial Presence

Health-Related/Social		3	1		4		
Tourism/Travel-related	<i>Hotels/Resorts/Restaurants</i>	4	6	1	5	5	1
	<i>Travel Agencies & Tours</i>	2	1	1	2	1	1
Recreational/Cultural/Sporting	<i>Entertainment</i>	3	5	1	4	4	1
	<i>Sporting</i>	1	2	2	1	2	2
Transport	<i>Air Transport</i>	2**	1	1	2**	1	1
	<i>Road Transport</i>	2			2		
	<i>Maritime</i>	3	2		4	1	
	<i>Auxiliary Services</i>	1	1		1	1	

* In the banking sub-sector, Guyana gave full market access and national treatment for the service of acceptance deposits; full market access, but limitations placed on national treatment for lending services.

** Guyana made no binding commitment on either market access or national treatment in the aircraft repair and maintenance services sub-sector, but gave full market access and national treatment in the other sub-sectors.

Table 2 shows the number of CARICOM Member States that have made commitments in respect of the movement of natural persons, using similar categories to those used in Table 1.

Table 2: CARICOM Commitments on the Movement of Natural Persons

Service Sector	Service Sub-Sector	Market Access			National Treatment		
		Full Market Access	Conditional Market Access	Unbound	Full National Treatment	Conditional National Treatment	Unbound
Business	<i>Professional</i>	1	2	3	3		3
	<i>Computer & Related</i>	2	1	1	3		1
	<i>Research & Development</i>	2	1		3		
	<i>Real Estate</i>			1			1

Table 2 (cont'd): CARICOM Commitments on the Movement of Natural Persons

	<i>Other Business Services</i>	1		1	1		1
Communication	<i>Courier</i>	1	2		3		
Construction/Engineering				1			
Educational		2		1	2		1
Financial	<i>Banking</i>	1		2	1		2
	<i>Insurance</i>	3	5	2	6		3
	<i>Offshore Companies & Trust</i>			1	1		
Health-Related/Social		1	2	1	3		1
Tourism/Travel-related	<i>Hotels/Resorts/Restaurants</i>	2	5	4	7		4
	<i>Travel Agencies & Tours</i>	1		3	1		3
Recreational/Cultural/Sporting	<i>Entertainment</i>	2	5	2	8		1
	<i>Sporting</i>	1	4	1	6		
Transport	<i>Air Transport</i>			2			2
	<i>Road Transport</i>			1			1
	<i>Maritime</i>	1	2	2	4		1
	<i>Auxiliary Services</i>		2		2		

These tables were drawn up from the Schedules of Commitments of the CARICOM Member States. It should be noted that the total number of commitments indicated in these tables does not imply that they have made full commitments in all sectors, sub-sectors and services, since in fact, their commitments were limited in almost every sector. Additionally, their commitments on telecommunications have not been included.

In the sub-sectors listed, most CARICOM Member States have granted market access subject to limitations for the establishment of commercial presence in order to supply services,

but the number of those that have granted full national treatment are almost twice the number of those that have granted national treatment subject to conditions. Very few Member States made no binding commitments on market access or national treatment with regard to Mode 3. With regard to the movement of natural persons to supply services, the majority have granted market access subject to conditions, but once these persons have entered, they are generally entitled to full national treatment. However, there are a significant number of Member States that have made no binding commitments on Mode 4 in certain sectors, both with regard to market access and to national treatment.

5.2 Details of CARICOM Mode 3 and 4 Commitments

The following discussion is based on the material in the paper presented by Byron Blake and Timothy Odle entitled: *Analysis of the Market Access and National Treatment Commitments Made by CARICOM Member States Under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO)*. CARICOM Member States made specific commitments in nine of the twelve services categories. The three sectors in which no commitments were made are Distribution Services, Environmental Services and “Other” services. Commitments were also made in 72 sub-sectors, with 27 in Business Services.⁸⁶

The following sections examine the commitments of the CARICOM Member States with respect to the establishment of commercial presence and the entry of natural persons.⁸⁷ It is limited to these two modes of provision of services since, practically speaking, the movement of natural persons (Mode 4) is more closely linked with commercial presence for the provision of a service (Mode 3) than with Modes 1 and 2. The OECS commitments are examined together, since this facilitates the making of comparisons among them. The other CARICOM countries, including new Member Haiti, are then examined. Commitments made by Member States on the movement of natural persons in the telecommunications sector, are then presented. Finally, the MFN exemptions of the three CARICOM Member States that have listed such exemptions are analysed.

5.2.1 The OECS Commitments

Business Services

Antigua and Barbuda is the only Member of the OECS to make market access and national treatment commitments in the business services sector. In respect of the establishment of commercial presence and the entry of natural persons, there is a limitation on market access, but no limitation on national treatment except in relation to legal services.

⁸⁶ Blake, B. and Odle T.: *Analysis of the Market Access and National Treatment Commitments Made by CARICOM Member States Under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO)*, Ch.4.

⁸⁷ *Ibid.* The same format is followed and, for each sector or sub-sector, the Members making commitments on market access and national treatment in respect of establishment and entry of natural persons are listed.

Communication Services

Dominica and Grenada have made commitments in courier services.

In both countries, foreign suppliers wishing to establish commercial presence to provide service will encounter limitations with respect to both market access and national treatment, while natural persons entering those territories to provide the service will encounter market access limitations but obtain national treatment.

Financial Services

Banking Services

St. Kitts and Nevis is the only OECS State to have made commitments in banking services, namely, registration of offshore companies and trust companies, not including insurance companies and banks, to do offshore business. Service suppliers wishing to establish commercial presence could encounter limitations both in terms of market access and national treatment. The employment of foreign natural persons is subject to work permit regulations. The issue of permits is normally confined to persons with managerial and technical skills which are in short supply or not available in St. Kitts and Nevis.

Insurance and Insurance-related Services

Antigua and Barbuda, Dominica, Grenada, Saint Lucia and St. Vincent and the Grenadines have made commitments in reinsurance services. These commitments are uniform across the Member States both in terms of market access and national treatment. With regard to commercial presence, limitations on market access are to be expected in all five countries. Only Saint Lucia will give full national treatment; in the other four countries, there are limitations on national treatment. With regard to the movement of natural persons, all five States have placed limitations on market access in the form of immigration and work permit regulations, but give full national treatment.

Health-related Services

St. Vincent and the Grenadines is the only OECS Member State to make commitments in this sector, in respect of hospital services. Both commercial presence and the movement of natural persons are subject to limitations on market access and full national treatment. Commercial presence is subject to the Commercial Code, Exchange Control Act and Aliens Landholding Act. Movement of natural persons is subject to work permit laws, immigration regulations, medical registration and certification and the Medical Officers Ordinance.

Recreational, Cultural and Sporting Services

All Member States of the OECS made commitments in this sector. Persons seeking to establish commercial presence will encounter market access and national treatment limitations in Antigua and Barbuda, Dominica, Grenada and St. Vincent and the Grenadines. These are generally, the requirement to employ national artists and entertainers, and the restrictions

imposed by the Aliens Landholding Acts. However, in Saint Lucia they will enjoy full market access and national treatment.

With respect to the movement of natural persons, all these States would impose market access limitations through their work permit regulations, but would grant national treatment to persons entering their territories for these purposes.

Tourism and Travel-related Services

All Members of the OECS grouping made commitments in the hotel sub-sector. Persons seeking to establish commercial presence would encounter limitations in market access and national treatment in all countries, except Saint Lucia, where they would receive full national treatment. In Dominica hotel development of less than 50 rooms may be subject to an economic needs test.

Persons seeking to enter the territories to supply services will encounter market access limitations in all Member States of the OECS, except St. Kitts and Nevis, which made no binding commitments, suggesting that limitations are also possible. Full national treatment will be granted in all the Member States, except in St. Kitts and Nevis, which made no binding commitments.

Transportation Services

Antigua and Barbuda, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines made commitments in transportation services. The provision of transportation services through commercial presence is to receive full access and national treatment in Saint Lucia, while it is to receive full national treatment in St. Kitts and Nevis. In Antigua and Barbuda and St. Vincent and the Grenadines it is to encounter limitations in both market access and national treatment.

Natural persons seeking to enter these territories will encounter market access limitations in the form of work permit and immigration regulations in these four OECS Member States. However, full national treatment would be given.

Summary

Persons seeking to establish commercial presence would encounter market access limitations in all sectors in all OECS Member states except in St. Kitts and Nevis, which offered full market access in sporting services, and Saint Lucia which offered full market access in entertainment and transportation services. They would also encounter limitations on national treatment in all OECS Member States except Saint Lucia and St. Kitts and Nevis, which offered full national treatment in some sectors.

Persons seeking to enter the territories of these countries to supply a service would encounter some form of market access limitations in all Member States of the OECS.

However, they would enjoy full national treatment in all Member States in all sectors except in St. Kitts and Nevis in the tourism and travel-related services sector.

5.2.2 Commitments of Other CARICOM Member States

Business Services

Guyana and Trinidad and Tobago committed themselves to give full market access and full national treatment to all foreign service suppliers who require to establish a commercial presence in their domestic markets to provide any of the specified services. Barbados offered full market access and full national treatment to foreign service suppliers requiring a commercial presence except in the case of professional services in which it places limitations on market access but give full national treatment. Jamaica places limitations on the market access of all foreign service suppliers who require a commercial presence to provide the specified services but gives full national treatment.

With respect to movement of natural persons, Barbados and Trinidad and Tobago gave full market access and full national treatment to all foreign service suppliers who require the movement of natural persons into their domestic markets to provide any of the specified services. Barbados made no binding commitment on the market access of foreign natural persons who seek to provide any of the specified professional services.

Guyana and Jamaica made no binding commitment on either the market access or the national treatment which foreign natural persons would receive in their domestic markets.

Suriname made no commitments in this sector. Haiti made a commitment with respect to veterinary services, under which there are no restrictions on market access and national treatment for commercial presence and the movement of natural persons.

Belize made no commitments with respect to market access except for senior managerial personnel and technical experts who are not available in the local labour market. With respect to national treatment, there are no restrictions with respect to the persons indicated in market access, but it offers no commitments regarding all other categories of persons.

Construction and Related Engineering Services

Haiti is the only CARICOM Member State which has made commitments in this sector. It is committed to giving full market access and full national treatment to all foreign service suppliers who require to establish a commercial presence in their domestic markets to provide any of the specified services.

With respect to movement of natural persons, Haiti made no binding commitments in respect of either the market access or national treatment of foreign service suppliers who require to have foreign natural persons move into its domestic market to supply any of the specified construction and related engineering services.

Courier Services

Barbados has made commitments in this sector. Foreign service suppliers and consumers of this service will enjoy full market access and full national treatment irrespective of the mode of supply used to provide the service.

Education Services

Haiti, Jamaica and Trinidad and Tobago made commitments in this sector.

Haiti offers full market access and full national treatment to all foreign service suppliers who require to establish a commercial presence in order to supply any of the specified educational services.

With respect to commercial presence, Jamaica placed limitations on market access but offered full national treatment to all foreign service suppliers who require to establish a commercial presence in order to supply any of the specified educational services. These include work permit and visa requirements, and it also indicates that in some cases licensing would be required.

Trinidad and Tobago made no binding commitment to either market access or national treatment of foreign service suppliers of educational services who require to establish a commercial presence.

With respect to the movement of natural persons, Haiti offers full market access and full national treatment to all foreign service suppliers who require to have foreign natural persons move into its domestic market to supply any of the specified education services.

With respect to movement of natural persons, Jamaica made no binding commitments on either the market access or national treatment of foreign service suppliers who require to have foreign natural persons move into its domestic market to supply any of the specified education services.

Trinidad and Tobago placed limitations on market access, but offered full national treatment to all foreign natural persons who require movement in its domestic market to provide any of the specified education services.

Financial Services

Banking Services

Guyana and Haiti are the only Members of the group to make commitments in banking services. Guyana undertakes to give full market access and national treatment to foreign service suppliers who require the establishment of a commercial presence to supply the service of acceptance of deposits and other repayable funds. Full market access was given but a limitation, in the form of approval by the Central Bank for loans to non-residents, was placed

on the national treatment of foreign service suppliers who require the establishment of a commercial presence to supply lending services of all types.

No binding commitments were made on either the market access or the national treatment of those foreign natural persons who wish to enter its domestic market to supply any of the specified banking services.

Haiti offers full market access and national treatment in banking and other financial services, excluding insurance, both in respect of commercial presence and the movement of natural persons. It offers these commitments for a wide range of services, namely: acceptance of deposits and other repayable funds from the public; lending of all types; financial leasing; payment and money transmission services; guarantees and commitments; and trading in various ways in money market instruments, foreign exchange and transferable securities.

Insurance and Insurance-related Services

Barbados, Guyana, Jamaica and Trinidad and Tobago made commitments in this sub-sector.

Barbados and Guyana committed themselves to give full market access to all foreign service suppliers who require to establish a commercial presence in order to provide any of the specified insurance or insurance-related services into their domestic markets. Jamaica and Trinidad and Tobago placed market access limitations on those foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services. In Jamaica, the Superintendent of Insurance must be satisfied that a number of requirements are met. In the case of Trinidad and Tobago, there are registration and certification requirements.

Barbados and Trinidad and Tobago offered full market access and full national treatment, while Guyana and Jamaica made no binding commitments in either the market access or the national treatment of those foreign natural persons who require to enter their domestic markets to provide the specified services. There are also work permit requirements for Jamaica.

Health-related and Social Services

Belize, Jamaica and Trinidad and Tobago made commitments in this sector.

Belize offers full market access and full national treatment to all foreign service suppliers who require to establish a commercial presence in its domestic market in order to supply any of the specified services. Jamaica placed limitations on market access but gave full national treatment to those foreign service suppliers who require to establish a commercial presence in its domestic market in order to supply any of the specified services. Trinidad and Tobago made no binding commitments on either market access or national treatment to those foreign service suppliers who require to establish a commercial presence in its domestic market in order to supply any of the specified services.

With respect to the movement of natural persons for the supply of services, Belize placed limitations on both market access and national treatment, while Jamaica made no binding commitments in either market access or national treatment. Trinidad and Tobago placed limitations on market access in the form of registration and certification requirements, but gave full national treatment to those foreign service suppliers who require the movement of natural persons to provide any of the specified services.

Tourism and Travel-related Services

Guyana, Jamaica, Suriname and Trinidad and Tobago made commitments in this sector.

Guyana and Suriname committed themselves to give full market access and full national treatment to foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services.

Jamaica placed limitations on market access, but committed itself to give full national treatment to foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services.

Trinidad and Tobago placed limitations on both the market access and national treatment of foreign service suppliers who require a commercial presence to supply tour operator services. It committed itself to give full market access and full national treatment to foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services.

Trinidad and Tobago offered to give full market access and full national treatment to foreign service suppliers who require the movement of natural persons into its domestic market in order to supply any of the other specified services.

Suriname placed limitations on both the market access and the national treatment of foreign service suppliers who require the movement of natural persons into its domestic market in order to supply any of the specified services.

Jamaica and Guyana made no binding commitments on either the market access or the national treatment of foreign service suppliers who require the movement of natural persons into their domestic markets in order to supply any of the specified services.

Recreational, Cultural and Sporting Services

Barbados, Jamaica and Trinidad and Tobago made commitments in this sector.

Barbados offered full market access and full national treatment to foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services in its domestic market.

Jamaica placed limitations on market access in the form of registration and licensing requirements, but gave full national treatment to foreign service suppliers who require to

establish a commercial presence in order to supply any of the specified services in its domestic market.

Trinidad and Tobago made no binding commitments on market access or national treatment of foreign service suppliers who require to establish a commercial presence in order to supply any of the specified services.

Barbados and Trinidad and Tobago offered full market access and full national treatment to those foreign natural persons who require movement from outside their domestic markets to supply any of the specified services.

Jamaica made no binding commitment to either market access or national treatment of foreign natural persons who require movement from outside their domestic markets to supply any of the specified services.

Transportation Services

Guyana, Jamaica, Suriname and Trinidad and Tobago made commitments in this sector.

Suriname and Trinidad and Tobago offered full market access and full national treatment to foreign service suppliers who require to establish a commercial presence in their domestic markets in order to supply any of the specified services.

Within the category of Aircraft Repair and Maintenance Services, Guyana offered no commitment on market access and national treatment to foreign service suppliers who wish to establish a commercial presence in its domestic market in order to supply any of the specified services.

Jamaica placed limitations in the form of registration and licensing requirements on market access, but gave full national treatment to foreign service suppliers who wish to establish a commercial presence in its domestic market in order to supply any of the specified services.

With respect to movement of natural persons, Jamaica and Guyana made no binding commitments on either the market access or the national treatment of those foreign natural persons who want to enter into these domestic markets in order to supply any of the stipulated services.

Suriname placed limitations both on market access and on national treatment of foreign natural persons who want to enter into its domestic market in order to supply any of the stipulated services.

Trinidad and Tobago committed itself to give only full market access and full national treatment to foreign natural person who want to enter into its domestic market to supply dry docking, ship repairs, boat building and other specified services. For the two other specified services (ship surveys and navigation aid and communications/meteorological services for

maritime purposes), limitations would be placed on market access but full national treatment would be given for the movement of foreign natural persons into its domestic market.

Summary

The CARICOM Member States other than the OECS Member States generally grant full market access and full national treatment to foreign service suppliers who require the establishment of commercial presence in order to supply services in sectors in which commitments have been made. Jamaica makes exceptions for education, professional services and health-related and social services.

In the case of the movement of natural persons, these Member States generally do not give full market access and full national treatment to foreign natural persons seeking permission to enter their countries in order to supply the specified services. Instead, they either have offered conditional market access and national treatment, or have made no binding commitments in respect of the movement of natural persons. In some cases, there are conditions on market access, but full national treatment is given.

5.2.3 *Telecommunications Services*

Basic Telecommunications Agreement, 1997

The *Basic Telecommunications Agreement 1997* required WTO Members to make specific commitments to liberalizing the telecommunications sector. The February 1997 deadline for the negotiations on basic telecommunications resulted in the tabling of 55 offers, covering 69 governments (counting individually the Member States included in the EC Schedule). The commitments of the CARICOM Member States that made them are summarised below. They reveal a commitment to open to competition at least some aspects of telecommunications. Commitments to liberalization were generally greater in the telecommunications sector than in any other sector.

Antigua and Barbuda

Antigua and Barbuda places restrictions on commercial presence for foreign service suppliers who require to establish a commercial presence in order to provide services in voice telephone, domestic telephone, private leased circuit, closed user groups, satellite-based mobile services and fixed satellite services, by reserving the right to provide such services until 2012 to the exclusive operator. For other services such as terrestrial based mobile services, commercial presence is permitted only if capital invested is greater than US\$500,000. It opens to full competition other services such as Internet and Internet access services (excluding voice) and teleconferencing.

With respect to the movement of natural persons, Antigua and Barbuda has made no binding commitments and, in accordance with its horizontal commitments, work permits are required. It submitted an MFN Exemption List to enable the Government to extend to nationals of other CARICOM Member countries treatment equal to its own nationals with

respect to joint venture arrangements. This is significant in the context of the CSME, since national treatment will be offered to CARICOM nationals, as opposed to MFN treatment offered to other WTO Members.

Belize

Belize places restrictions on the commercial presence of foreign service suppliers who require to establish commercial presence in order to provide telecommunications services. In some cases, the provision of services such as trunked radio service and teleconferencing services is reserved to the existing exclusive operator until December 30, 2002 and thereafter, only through joint venture arrangements with a Belizean national or through facilities supplied by the existing exclusive operator. In other cases, the provision of services such as Internet and Internet access and paging is reserved to the existing exclusive operator until December 30, 2007, and thereafter only through joint venture arrangements with a Belizean national.

With regard to the movement of natural persons, Belize has made no binding commitments on market access for the provision of any of the specified services, except for senior managerial personnel and technical experts not available in the local market. There is full national treatment of such persons, but no binding commitments for all other categories of natural persons.

Dominica

With regard to commercial presence, Dominica places restrictions on the market access of foreign service suppliers who wish to establish commercial presence for the supply of telecommunications services. In all cases, such services either are reserved for the exclusive supplier or must be provided only on network facilities supplied by the exclusive supplier. However, they are entitled to full national treatment.

With regard to the movement of natural persons, there is a restriction on market access, namely, that their employment is subject of work permit regulations and labour laws, with work permits being confined to persons with managerial and technical skills which are in short supply or not available in Dominica.

Grenada

With regard to commercial presence, Grenada places restrictions on the market access of foreign service suppliers who wish to establish commercial presence for the supply of telecommunications services. In all cases, such services are either reserved for the exclusive supplier or must be provided only on network facilities supplied by the exclusive supplier until 2006. Thereafter, there are no restrictions on market access. Additionally, they are immediately entitled to full national treatment.

With regard to the movement of natural persons, there is a restriction on market access, namely, that their employment is subject to work permit regulations and labour laws, with work permits being confined to persons with managerial and technical skills which are in short

supply or not available in Grenada. However, full national treatment would be granted to those persons.

Jamaica

Jamaica has maintained limitations on the market access of foreign service suppliers seeking to establish commercial presence for a number of telecommunications services, such as voice telephone services, Internet and Internet access, teleconferencing and international voice, data and video transmission services. These limitations include the supply of these services by the exclusive private operator until September 2013 and the exclusion of voice telephony over the Internet, also until September 2013. With respect to the provision of mobile telephone services of all types, a five to ten year licence is scheduled to be issued to the exclusive private operator. No commitments are offered in respect of national treatment; work permits are required, except for managers and executives who are exempt from work permits for a period of 30 days and experts and specialists who are exempt for 14 days.

In all of the services specified, there are no binding commitments on market access or on national treatment, except for managers and executives, experts and specialists, under the same conditions referred to above.

St. Christopher and Nevis

St. Christopher and Nevis offers commitments only on electronic mail, voice mail and online information and data processing, excluding telefax. It offers full market access and national treatment for online information and data processing for supply of the service through commercial presence. However, it made no binding commitments on the movement of natural persons to supply the service, except as indicated in the horizontal section, which confines the issue of work permits to persons with managerial and technical skills that are in short supply or unavailable in that country.

Suriname

The provision of specified telecommunications services such as Internet and Internet access services, teleconferencing and voice telephone services through commercial presence is subject to market access limitations. These must be provided through the network facilities supplied by the duopoly operators. However, suppliers are entitled to full national treatment.

There are no commitments on the provision of services through the movement of natural persons, both for market access and for national treatment, except as provided in the horizontal commitments. These offer no commitments on market access, except for senior managerial personnel and technical experts not available in the local labour market. However, they are entitled to national treatment.

Trinidad and Tobago

Trinidad and Tobago offers limitations on market access for the provision of some telecommunications services through commercial presence. Services such as voice telephone,

telex, telegraph and private leased circuit services, are reserved to the exclusive supplier until 2010. Thereafter, there are no limitations. The Schedule also states that market access for the provision of Internet and Internet access services through commercial presence are to be negotiated with the exclusive supplier. However, there are no limitations on national treatment for any of the services provided. Other services, such as mobile services and the provision of telecommunications equipment also enjoy full market access.

The provision of all the specified services through the movement of natural persons enjoys full market access and national treatment.

5.2.4 MFN Exemptions

CARICOM Member States Making MFN Exemptions

Three CARICOM Member States have submitted Lists of Article II (MFN) exemptions. These are Antigua and Barbuda, Jamaica and Trinidad and Tobago.

Antigua and Barbuda

The list of MFN exemptions is restricted to one sub-sector of the Telecommunications Services sector, namely, the provision of terrestrial based mobile services. In this sub-sector, reference is made to measures which offer CARICOM nationals treatment equal to that accorded to domestic nationals. This applies to CARICOM member countries, and is of indefinite duration. It is based on the CARICOM Single Market and Economy.

Jamaica

The MFN exemptions apply to all sectors, and the specific commitment is to the waiver of the work permit requirement for citizens of the CARICOM Member States. This is to be of indefinite duration. The rationale for this exemption is the creation of the single market, which will provide for the free movement of personnel within the Common Market States.

Jamaica also makes an exception in the Maritime Transport sector for cargo reservation under the UN Convention on a Code of Conduct on Liner Conferences. This exemption applies to signatories of the UN Code of Conduct on Liner Conferences for an indefinite period. This exemption is made so as to fulfil Jamaica's obligations as a contracting party to the Convention.

Trinidad and Tobago

Trinidad and Tobago makes two exemptions, one for cargo reservations under the UN Code of Conduct on Liner Conferences, which is of unlimited duration, and which applies to signatories of the Code.

The second exemption is for bilateral investment promotion and protection treaties. It applies to all existing and future treaties. It is of unlimited duration, and applies to privileges accorded to signatories only. This is an interesting exemption, since the effect of it is that,

where applicable, Trinidad and Tobago can continue to give more favourable treatment to parties with which it enters into such agreements (referred to as BITs) than it does to other signatories to the GATS. Such treatment, which may amount to national treatment in some cases, will enable investors of BITs signatories to enjoy treatment not available to non-signatories.

Anomalies

The position of Jamaica does not in fact give rise to anomalies, since their MFN exemptions are based on the special treatment to be given to service suppliers of other CARICOM Member States. This is premised on the existence of the Caribbean Single Market and Economy, and is consistent with the free movement of labour within the Single Market. It should be noted that Jamaica is not obliged to list its commitments to CARICOM nationals in its List of Article II Exemptions, under which a Member may be party to an agreement establishing full integration of the labour markets among its parties provided that such an agreement exempts citizens of parties to the agreement from requirements concerning residency and work permits, and is notified to the Council for Trade in Services.⁸⁸

There is some inconsistency in the position of Antigua and Barbuda, since the MFN exemption for granting national treatment to CARICOM nationals applies only in respect of mobile services in the telecommunications sector. Under its domestic legislation giving effect to the free movement of skilled CARICOM nationals the entry of such persons is not limited to the telecommunications sector, and they are to be granted full market access and, in the case of persons with a certificate issued by the Government of Antigua and Barbuda, full national treatment. Persons who are issued certificates by other CARICOM governments receive less than national treatment, through restrictions on the duration of their stay and on the acquisition of property. Service suppliers of other GATS signatories in all sectors will receive MFN treatment in accordance with Article II of the GATS.

A possible anomaly lies in the position of Trinidad and Tobago in respect of its exemption for co-signatories to existing and future bilateral investment treaties (BITs). Since these do not include any CARICOM Member State, it means that in those areas in which Trinidad and Tobago promises national treatment to service suppliers under its BITs, those persons may receive more favourable treatment than even CARICOM nationals. However, this would depend on the terms of the relevant BIT, but that issue is outside the scope of this study. In order to determine the treatment that is to be granted to CARICOM nationals, it is necessary to look at the treatment specified in its domestic legislation that is intended to give effect to the movement of CARICOM skilled nationals. That legislation provides that CARICOM skilled nationals can enter and stay either indefinitely or for six months, according to whether the certificate is issued by the Government of Trinidad and Tobago or another CARICOM government. There are some restrictions on national treatment in the latter case. However, the failure to include an express exemption in favour of other CARICOM nationals is not necessarily an indication that the treatment agreed upon for CARICOM nationals will not be

⁸⁸ GATS, Article V *bis*.

honoured. Trinidad and Tobago is not obliged to list its commitments to CARICOM nationals in its List of Article II Exemptions, and may be relying on Articles V and V *bis* of the GATS, under which a member may be party to an agreement establishing full integration of the labour markets among its parties, provided that such an agreement exempts citizens of parties to the agreement from requirements concerning residency and work permits, and is notified to the Council for Trade in Services.⁸⁹

Interestingly, only one other country has included a similar provision in its List of Article II exemptions, namely, the United States of America. The United States has made an exemption for all countries with whom it has a friendship, commerce and navigation treaty or a bilateral investment treaty, and for certain countries described in section 204 of the Immigration Act of 1990. However, it goes on to specify that there will be issued treaty trader or treaty investor non-immigrant visas to nationals of treaty partners in executive and other personnel categories. This treatment is therefore limited and clearly does not amount to national treatment. These persons must be engaged in substantial trade, including trade in services or trade in technology, or in developing an investment and directing the operations of an enterprise in which a natural person has invested or is actively engaged in investing a substantial amount of capital.⁹⁰ These exemptions are of indefinite duration.⁹¹

⁸⁹ *Ibid.*

⁹⁰ *Schedule of Specific Commitments of the United States of America*, GATS/EL/90.

⁹¹ Another country that may have made a similar commitment is the Philippines, but from the language used, it is not clear that it is necessarily referring to investors under BITs. The Philippines provides a special visa category for traders and investors of countries with which the Philippines has concluded bilateral treaties on entry rights for traders and investors. These rights terminate on the expiration or termination of bilateral treaties on entry rights for traders and investors.

6 INTRA-CARICOM COMMITMENTS

6.1 Intra-CARICOM Movement

6.1.1 *Protocol II: Establishment, Services, Capital*

Protocol II: Establishment, Services, Capital, amends Chapter V of the Treaty Establishing the Caribbean Community. It addresses the right of establishment, the right to provide services and the right to move capital by any CARICOM national in the Community.⁹²

It can now be provisionally applied in Member States, since Montserrat signed the Protocol and Suriname made its signature effective on July 4, 2000. Montserrat was the fourteenth Member State to sign the Protocol. Suriname had signed the Protocol in 1997, but national application could not take place until signature was ratified by the Suriname National Assembly.

Article IV of Protocol II replaces Article 35 of the Caribbean Common Market Annex with a new Article 35, and introduces five new Articles, namely, Articles 35a to 35e. Article 35b prohibits the introduction of new restrictions relating to the right of establishment of nationals of other Member States. Article 35c covers the removal of restrictions on the right to establishment, while Article 35d covers the management of the removal of restrictions on the right of establishment. Article 35c requires each Member State to remove restrictions on the right to establishment of nationals of a Member State in its territory.⁹³ The removal of restrictions on the right of establishment is also to apply to restrictions on the setting up of agencies, branches or subsidiaries. This is an important element of the Protocol, since the right to set up agencies, branches or subsidiaries is closely linked to the right of free movement for the provision of services.

The Council for Trade and Economic Development (COTED), in consultation with the Council on Human and Social Development and the Council for Finance and Planning, is responsible for establishing a programme providing for the removal of restrictions on the right of establishment of Community nationals.

Article 35d deals with the management of removal of restrictions on the right to establishment. Priority should be accorded to the removal of restrictions on activities in

⁹² Article IV, which replaces Article 35 of the Treaty of Chaguaramas with a new Article 35.

⁹³ It should be noted that this obligation is subject to the provisions of Article 38a and Article 38b. Article 38a permits a Member to apply restrictions on the exercise of rights where such exercise causes serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community. These restrictions must be notified to the competent organ. Article 38b provides that notwithstanding any provision in Chapter V of the Treaty of Chaguaramas, a Member State may apply to the Community Council for a waiver of the requirement to grant any of the rights mentioned in Article 35.1 in respect of any industry, sector or enterprise. Such waiver should not exceed five years.

respect of which the right of establishment encourages the development of both the production of goods and the provision of services, which generate foreign exchange earnings.⁹⁴ In this regard, COTED must require Member States to remove all restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies and other entities established in the Community.⁹⁵

In addition to this requirement, Member States must also be required to remove administrative practices and procedures which impede the exercise of the right of establishment, as well as restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies and other entities established in the Community.⁹⁶

COTED must also establish measures to ensure the removal of restrictions on the right of establishment in respect of activities accorded priority treatment as they relate to:

- (i) the establishment of agencies, branches or subsidiaries belonging to an economic enterprise; and
- (ii) the conditions governing the entry of managerial, technical or supervisory personnel employed in such agencies, branches and subsidiaries, including the spouses and immediate dependent family members of such personnel.

Article 35e covers the acceptance of diplomas, certificates and other evidence of qualifications. The Council on Human and Social Development is responsible for establishing common standards and measures for accreditation or for the mutual recognition of diplomas, certificates and other evidence of qualifications.⁹⁷ This is intended to facilitate access to, and engagement in, non-wage-earning activities in the Community by nationals of Member States. “Non-wage-earning activities” refers to those activities carried out by self-employed persons or independent contractors. Members are then responsible for establishing common standards to determine equivalency or accord accreditation to diplomas, certificates and other evidence of qualifications.⁹⁸ The legislation discussed in the following section goes a long way to achieving this, since all Members recognise most of the same qualifications. The only scope for variation is with respect to qualifications not listed which may be approved by the Minister or other accrediting authority.

Articles 36 and 36a, introduced by Article V of Protocol II, deal with the provision of services. Member States are under an obligation not to introduce any new restrictions on the provision of services in the Community by nationals of other Member States. Without prejudice to the provisions relating to the right of establishment, persons providing services

⁹⁴ Article 35d (a).

⁹⁵ Article 35d (c).

⁹⁶ Article 35d (b), (c).

⁹⁷ Article 35e.1.

⁹⁸ Article 35e.2.

may, in order to provide such services, temporarily engage in approved activities in the Member State where the services are to be provided, under the same conditions enjoyed by nationals of that Member State.⁹⁹ This provision is of general application, and will cover persons providing services other than those associated with an economic enterprise established in another Member State. Such persons are to receive national treatment. It covers the supply of services by the four modes of supply listed under Article I.2 of the GATS.¹⁰⁰

Article 36a imposes an obligation on Member States to remove discriminatory restrictions on the provision of services within the Community by Community nationals. COTED must establish a programme for the removal of restrictions on the provision of such services by Community nationals. It must also establish measures to ensure the removal of restrictions on the right to provide services in respect of activities accorded priority treatment, both in terms of conditions for the provision of services in the territories of Member States and the conditions governing the entry of personnel, including their spouses and immediate dependent family members. It must further require Member States to remove administrative practices and procedures, the maintenance of which impede the exercise of the right to provide services.¹⁰¹ COTED is also obliged to require Member States to ensure that nationals of one Member State receive national treatment in respect of access to land, buildings and other property situated in their territories for purposes directly related to the provision of services.¹⁰²

6.1.2 Issues Relating to Implementation of Protocol II

Most CARICOM Member States have submitted to the CARICOM Secretariat lists of the restrictions maintained by their legislation that hinder the implementation of Protocol II. However, in the absence of submissions of all the Members, the Secretariat has been unable to complete the necessary compilation of restrictions. Protocol II has also been informally submitted to the WTO Secretariat for unofficial evaluation regarding satisfaction of the requirements of Article V of the GATS. Since programmes for the removal of restrictions in Member States to give effect to Protocol II have not been determined however, a legal opinion could not be obtained as to whether Protocol II was consistent with Article V of the GATS.¹⁰³

An example of the type of legislation that imposes such restrictions is the Aliens' Landholding legislation in some Member States which poses a potentially significant obstacle to the right of establishment in those Member States, since they impose restrictions on a range of instruments including ownership of land, stocks, shares and debentures and the holding of directorships. Other restrictions include the requirement to obtain work permits, which in some cases is subject to economic needs tests. Non-resident workers may be subject to withholding tax, and in some professions, such as the legal profession, there may also be a requirement to employ a local person. Higher profession fees may also be payable.

⁹⁹ Article 36.2.

¹⁰⁰ Article 36.4.

¹⁰¹ Article 36a.3(b).

¹⁰² Article 36a.3(e).

¹⁰³ Report on the Establishment of the CARICOM Single Market and Economy (Agenda 5), p. 10.

The CARICOM Secretariat is currently in the process of identifying criteria for the removal of restrictions to the implementation of Protocol II.¹⁰⁴ It will also identify restrictions that should be removed immediately and those that should be phased out over a period of time. Both the criteria and the restrictions identified for immediate approval must then be approved by the Member States through a process of negotiation. It is expected that the Member States will then undertake further negotiations for the removal of the remaining restrictions over a period of time.

6.1.3 Laws and Policy in CARICOM Member States

Ten CARICOM Member States have in fact drafted and in most cases enacted legislation covering the movement of skilled CARICOM nationals. Apart from the legislation passed by Barbados and Guyana, these pieces of legislation exhibit many common features, and indeed, in some cases contain identical provisions. All the Acts¹⁰⁵ are based on the issuing of a certificate either by the government of the State of entry or by the government which has issued the passport to the CARICOM national. The table presented in Appendix 3 shows the key features of those pieces of legislation.

6.2 Comparison of Commitments Under Protocol II, Domestic Laws and the GATS

Protocol II requires the removal of restrictions on the establishment of agencies, branches or subsidiaries belonging to an economic enterprise. COTED is required to establish measures to ensure the removal of restrictions relating to the conditions governing the entry of managerial, technical or supervisory personnel employed in such agencies, branches or subsidiaries, including the restrictions on the spouses and dependent family members of such personnel. These measures are aimed at facilitating the establishment of enterprises in the Caribbean Single Market and Economy (CSME), and they address the movement of persons only insofar as such movement relates to the establishment of the enterprise.

There are also measures that address the movement of natural persons providing services independently of such enterprises. Member States are required to remove administrative practices and procedures the maintenance of which impede the right to provide services, and to remove restrictions on the conditions governing the entry of service providers, their spouses and dependent family members. They are also to be accorded national treatment in respect of access to land, buildings and other property for the provision of services.

The laws enacted by the Member States for the free movement of skilled CARICOM nationals generally meet these requirements. They provide in most cases for the issue of a certificate of recognition of skills to be issued by the relevant Minister in either the country to

¹⁰⁴ Source: CARICOM Secretariat.

¹⁰⁵ With the possible exception of the Dominican Caribbean Community Skilled Nationals Act, Act No. 30 of 1995, which provides only for certificates issued by the relevant authorities in other CARICOM Member States.

which entry is sought or another CARICOM Member.¹⁰⁶ If the certificate is issued by the country to which entry is sought, then the CARICOM national seeking entry may stay for an indefinite period, is free to leave and re-enter the territory, may engage in gainful employment or other occupation, and may acquire property for use as a residence or for the purposes of his business. That person's spouse and dependent relatives may leave and re-enter the territory without further permission. If the certificate has been issued in another CARICOM territory, the service provider may enter and stay for six months and his spouse and dependent family members may leave and re-enter the territory for that period without further permission.¹⁰⁷ The Acts generally apply to nationals of other CARICOM territories which grant reciprocal treatment to the nationals of the State to which entry is sought. However, there is no requirement of reciprocity in the case of Barbados.

Although, for the most part, these laws apply only to graduates of approved universities and other approved tertiary institutions, two Member States¹⁰⁸ also apply the provisions to persons such as sportsmen, musicians, artists and media workers. In addition, Guyana's law also applies to other skilled and professional persons and contract workers on a seasonal basis, and artists include persons engaged in visual and performing arts. Trinidad and Tobago is the other Member State to include persons other than graduates, and in this case the provision is wide, applying to any person who is not a member of the prohibited class under section 8 of the Immigration Act.¹⁰⁹ Such a person can enter and work in that territory for thirty days without a work permit.¹¹⁰ This provision is not restricted to CARICOM nationals, but applies generally.

All of the Acts provide for the recognition of degrees from certain universities, namely, the University of the West Indies, the University of Guyana and the University of Suriname. Some Acts also recognise the University of Belize. Other qualifications that may be recognised vary, and include qualifications certified by the Secretary-General of CARICOM, the relevant Minister and authorised accrediting agencies.

The commitments of the CARICOM Member States under the GATS reveal a general trend of imposing restrictions on market access for the movement of natural persons. Restrictions on market access are generally linked to immigration, visa and work permit

¹⁰⁶ The exceptions are Dominica and St. Vincent and the Grenadines, which provide only for the issue of certificates by Ministers of other CARICOM territories.

¹⁰⁷ Barbados is an exception; it only permits the recognition of qualifications by the relevant Minister in Barbados, and CARICOM skilled persons may not only remain for the duration of the employment, but may also take up new employment. The spouse and dependent relatives may accompany him or her, but may only take up employment if they satisfy the same conditions or obtain a work permit. There is no requirement of reciprocity.

¹⁰⁸ Belize and Jamaica.

¹⁰⁹ Section 8 of the Immigration Act, Ch. 18:01, prohibits the entry of a wide range of undesirable persons, including persons who are likely to be a charge on public funds by reason of physical or mental incapacity or otherwise, persons afflicted with infectious or dangerous infectious diseases, persons convicted of a crime which would be punishable by imprisonment for at least one year in Trinidad and Tobago, persons engaged in prostitution or homosexuality or living on the earnings of such persons, persons engaged in or suspected to be engaged in drug trafficking, advocates of insurrection and civil disorder, and persons suspected of treason.

¹¹⁰ Immigration (Amendment) Regulations 1993, Legal Notice No. 70 of 1993.

regulations. In some cases, entry is restricted to senior managerial personnel or technical experts not available in the local labour market. There are fewer cases of full market access for Mode 4 and, in some instances, no binding commitments have been offered.

In general, national treatment is granted once these persons have entered the territory. Nevertheless, there are a number of instances where limitations have been placed or no binding commitments made on the national treatment of persons who require to enter the territory to supply the specified services.

When the GATS commitments are compared with the commitments made under domestic legislation for the free movement of skilled CARICOM nationals, the latter clearly grants more favourable treatment. The most obvious advantages are that there are no work permit or visa requirements, and there is no requirement that the person seeking entry do so in connection with the establishment of commercial presence. The category of persons permitted entry is not restricted to senior managerial personnel or experts not available locally. Any graduate of one of the specified institutions of higher learning is permitted entry, once the relevant conditions of the Act are satisfied.

Where the requisite certificate is issued by the country to which entry is sought, the legislation permits the unrestricted entry, employment and self-employment of skilled CARICOM nationals. Persons entering the territory under these conditions are granted full national treatment. In some cases, other persons such as sportsmen and media workers are also permitted entry. However, where the requisite certificate is issued by another CARICOM Member, the period of stay permitted is six months. Persons entering with such certificates are not granted full national treatment, since they are not permitted to freely acquire property. In such conditions, the provisions of the respective Aliens Landholding Acts, with their restrictions on the ownership of land by foreigners, would apply.

6.3 Compliance of Protocol II with the GATS

Articles V and V *bis* of the GATS are potentially of great significance to the CARICOM Member States, in light of Protocol II to the Treaty of Chaguaramas and the recently established Caribbean Single Market and Economy (CSME). Articles V and V *bis* permit the parties to a regional agreement to maintain more favourable treatment to the parties to the economic integration or the labour market integration agreement, respectively. The question that arises is whether the Single Market under Protocol II meets the requirements of Articles V and V *bis*.

The view has been expressed¹¹¹ that the merely preambular reference in Protocol II to the movement of labour, combined with the freedom of movement policy for self-employed persons and supervisory personnel, may fall short of the requirements for the exemption under Article V *bis* of the GATS which requires “full integration” of the labour markets. Even if the

¹¹¹ Carnegie, A.R. and Thompson, D.J.H.: *Report on the Legal Regime of Free Trade in Services*, Attachment III to SER/(TWG) 99/1/2, prepared for Caribbean Export Development Agency, p. 10.

scope of coverage of Protocol II is extended, the exclusion of non-supervisory employees with qualifications lower than university degrees may still provide a shortfall of coverage by the GATS exemption standard.

The view has also been expressed that the “interim conclusion” is that Protocol II meets the requirements of Article V on sectoral coverage, taking account of the additional leeway permitted for developing countries in relation to preferences for regionally owned enterprise, but falls short in respect of Article V *bis*.¹¹² However, the agreement in principle reflected in the preamble needs to be expanded into a substantive obligation. A caution has also been sounded that unless the CARICOM arrangements qualify under the GATS exemption criteria, the CARICOM policy of intra-regional trade protection, as well as all attempts to confer mutual privileges in trade in services matters within CARICOM, might have to give way to the GATS.¹¹³

Other writers have also cast doubt on whether such an arrangement will satisfy the conditions specified under Articles V and V *bis*.¹¹⁴ In particular, doubt has also been cast¹¹⁵ on whether sectoral, “stand-alone” agreements on services, which have been concluded by developing and other countries are compatible with Article V of the GATS. They have not yet been considered at the multilateral level within the GATS Council. However, their legal status would appear to be questionable at best, and may be declared “GATS-illegal” if challenged by a non-member to such an agreement.

The agreement on the free movement of skilled natural persons was referred to in the schedules of commitments and the lists of Article II exemptions of some CARICOM Member States at the time of the coming into force of the GATS. It is not clear whether this would be considered sufficient notification to the Council on Trade in Services for the purposes of Article V *bis*. In short, the legal status of this arrangement as it stands is questionable, but a definitive statement on its legality within GATS remains to be given. It also remains to be seen whether the scope of Protocol II will be extended to encompass a wider range of persons supplying services.

¹¹² *Ibid.*, p. 11.

¹¹³ *Ibid.*

¹¹⁴ Gill, H. S.: *The Services Sector in CARICOM: The State of Analysis and Suggestions for an Agenda*. Prepared for the UNDP Caribbean Regional Program, Revised for Publication, August 1997, p.38.

¹¹⁵ Stephenson, S. M.: *Approaches to Services Liberalization by Developing Countries*, in OAS Trade Unit Studies – Analyses on trade and integration in the Americas, February 1999, http://www.sice.oas.org/TUNIT/studies/srv_lib/SRV4e.asp, Part D, p. 5.

7 OTHER AGREEMENTS

7.1 Overview of Services Trade Liberalization Agreements in the Western Hemisphere

Since the coming into force of the North American Free Trade Agreement (NAFTA) in 1994, there have been ongoing efforts to liberalize trade in services in the western hemisphere. Mexico has negotiated several similar agreements with other countries of South and Central America. These include its NAFTA-type agreement with Colombia and Venezuela in 1995 (as the Group of Three), and bilateral agreements with Bolivia, Chile, Costa Rica and Nicaragua. Mexico has also engaged in negotiations for comprehensive trade liberalization, including services, with Guatemala, Honduras and El Salvador, as well as with Panama, Ecuador, Peru, Belize, and Trinidad and Tobago.¹¹⁶

Within Central America, the five members of the Central American Common Market (CACM) have signed a free trade agreement with the Dominican Republic, and are negotiating other agreements with Panama and Chile. The Central American countries are also working towards a draft agreement for the liberalization of services within that region.¹¹⁷ In South America, the MERCOSUR Protocol on Service and the Decision on Services of the Andean Community have come into force. CARICOM has implemented Protocol II to the Treaty of Chaguaramas which is intended to liberalize trade in services through establishment of enterprises and the free movement of capital and skilled persons.

Most of the sub-regional agreements have adopted the NAFTA-type “negative list” approach to liberalization of trade in services. Under this approach, all sectors are included in the commitment to liberalization unless otherwise specified in an annex as exceptions or as non-conforming measures.¹¹⁸ All service sectors and service suppliers are guaranteed MFN and national treatment, unless they have been included in the list of exceptions. However, the concept of “market access” is not present in the NAFTA-type agreements.

The MERCOSUR Protocol on Services has followed the GATS approach, with gradual market opening of service markets, based on the negotiation of specific commitments to liberalize either market access or national treatment for specific service sectors. However, the MERCOSUR Protocol departs significantly from the GATS by seeking to achieve full

¹¹⁶ Stephenson, S. M: *Approaches to Services Liberalization by Developing Countries*, in OAS Trade Unit Studies – Analyses on trade and integration in the Americas, February 1999, http://www.sice.oas.org/TUNIT/studies/srv_lib/SRV4e.asp, Part A, p. 3.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, Part D, p. 2 of 13.

liberalization of trade in services within a ten-year period, resulting in an open regional market for services by the end of the year 2007.¹¹⁹

All of these efforts are occurring in tandem with efforts to liberalize services in the western hemisphere through the Free Trade Area of the Americas (FTAA) process. Although liberalization of trade in services has achieved limited progress at the multilateral level, there has been rapid progress at the regional and sub-regional levels. Further, liberalization at these levels goes well beyond that agreed at the multilateral level.

7.2 The Movement of Natural Persons and CARICOM's Bilateral Agreements

CARICOM and the Dominican Republic recently signed the *Agreement Establishing the Free Trade Area between CARICOM and the Dominican Republic* (the main Agreement). The fundamental objective of the Agreement is to strengthen the commercial and economic relations between the Parties through the establishment of a Free Trade Area between the Parties consistent with the Agreement Establishing the World Trade Organization. Included in the means toward the achievement of that objective is the progressive liberalization of trade in services. Also included are the liberalization of the movement of capital between the Parties and the promotion of the active participation of private economic agents with a view to deepening and broadening the economic relations between the Parties, including through the promotion and establishment of joint ventures. All of these means may have implications for the movement of natural persons. The Agreement is scheduled to come into force on January 1, 2001.

Under Article VI, the Parties agree to progressively liberalize trade in services between themselves by the establishment of a framework of principles and rules as contained in the *Agreement on Trade in Services* (ATS) that appears as Annex II to the Agreement. The objective of this Agreement is to establish a framework for the liberalization of trade in services among the parties, consistent with the GATS. The framework so established is in fact consistent with the GATS, and many of the articles are almost identical to the equivalent provisions of the GATS. Further, for matters not covered in the ATS, the Parties agree to apply between themselves the provisions contained in the GATS.¹²⁰

The fundamental obligation of parties to the ATS is most-favoured-nation treatment. Article IV contains the same provisions as Article II.1 and II.3 of the GATS. However, it is contemplated that specific commitments with respect to market access and national treatment will be contained in an Attachment to the ATS.¹²¹ As yet, there is no Attachment, and consequently, no opportunity to compare the commitments made in the Attachment with the commitments made in the country Schedules to the GATS.

¹¹⁹ *Ibid.*, Part C, p. 4 of 14.

¹²⁰ *Annex II: Agreement on Trade in Services*, Article XX.

¹²¹ *Ibid.*, Articles XII and XIII.

Article III.3 of the ATS lists the limitations on the scope of its application. It provides, *inter alia*, that nothing in that agreement is to be construed as imposing any obligation on a Party with respect to a national of the other Party seeking access to its employment market or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment. It clearly contemplates that persons will enter the territory of a Party only temporarily, for purposes associated with the provision of a service. They will not form part of the employment market and the ATS will not apply to such persons, who will therefore fall under the relevant immigration and work permit regulations.

Consultations on matters such as balance-of-payments will be held with the Committee on Trade in Services, established under Article XIV of the main Agreement, while disputes will be resolved pursuant to Article XV of that Agreement.¹²² Interestingly, the ATS does not prohibit the adoption of new non-discriminatory quantitative restrictions after its entry into force, but requires each Party to notify the other. Each Party must, at least every two years, endeavour to negotiate the liberalization or removal of existing non-discriminatory quantitative restrictions and those introduced after the date of entry into force of the ATS. These provisions are based on the NAFTA, Article 1207.

With respect to anti-competitive business practices, the parties are to apply the provisions on competition policy that may be in force or enter into force at the national level after the entry into force of the ATS, as well as any provisions that may be established in international agreements on competition policy.

CARICOM has also entered into bilateral agreements with Venezuela and Colombia, which include provisions to undertake further negotiations on trade in services.¹²³ Under both of these agreements, which are pre-Uruguay Round, the Parties recognise the importance of trade in services for the development of their economies. They promise to negotiate amendments or further elaboration of those agreements to take account of and to take advantage of the outcome of the Uruguay Round negotiations. To date, there has been no further elaboration of those agreements.

Attention must also be paid to ensuring that the services components of these agreements, when negotiated, are compatible with Article V of the GATS. The requirements of Article V are discussed in more detail in section 6.2.

7.3 The Movement of Natural Persons and the FTAA Process

The FTAA process was initiated in December 1994 at the Summit of the Americas meeting in Miami. The aim of completing negotiations for a regional free trade area by the year 2005 was set out in the Declaration of Principles. It has been observed that the breadth of

¹²² *Ibid.*, Articles IX.5 and XIX.

¹²³ *Agreement on Trade, Economic and Technical Cooperation Between the Caribbean Community (Caricom) and the Government of the Republic of Venezuela*, Article 13; *Agreement on Trade, Economic and Technical Cooperation Between the Caribbean Community (Caricom) and the Government of the Republic of Colombia*, Article 14.

the negotiations which have been launched in the western hemisphere is unprecedented even by the Uruguay Round.¹²⁴ These negotiations will encompass all those areas previously negotiated and covered by the WTO agreements, but will also include investment, government procurement and competition policy.¹²⁵

Twelve Working Groups have been set up to cover the areas that must be addressed for the implementation of the FTAA. The negotiating objective of the Services Working Group is to (a) establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency; and (b) ensure the integration of smaller economies into the FTAA process.¹²⁶

The movement of natural persons within the proposed Free Trade Area of the Americas has been the subject of much discussion, and several country and private sector positions have been presented on the issue. The main points regarding the movement of persons submitted to the Third Business Forum at the Meeting of the Americas, are summarized in the Synopsis of Position Papers¹²⁷ as follows:

1. Administrative procedures on movement of people among member countries must be transparent, simple and uniformly applied, independent of nationality. Obstacles such as visa and work permit requirements must be removed .
2. All member countries must provide temporary entry for stays of less than one year to all professionals or technicians travelling on business.
3. A business visa should not be required for stays of less than 30 days.
4. Application for a temporary work permit could be made after initial entry and would not require the applicant to leave the country before applying.
5. The application for a visa should be processed in no more than 5 days.
6. Payments for services provided by professionals or technical staff from subsidiaries of the same corporation would not be subject to withholding tax.
7. Personal income tax would be applicable if the professional resides in a particular country for more than 6 months during a 12-month period, and only on the income earned in the country.
8. Member countries must establish a common income tax at source amounting to 5%. Countries must avoid additional taxes on services and on currency exchanges, such as value-added taxes.

¹²⁴ *Ibid.*, Part D, p. 7 of 13.

¹²⁵ *Ibid.*

¹²⁶ Ministerial Declaration of San José Summit of the Americas Fourth Trade Ministerial Meeting, San José, Costa Rica, March 19, 1998.

¹²⁷ Meeting of the Americas: *Third Business Forum of the Americas*, Belo Horizonte, Brazil - May 1997, *Synopsis of the Position Papers*.

9. The employer will be responsible for the filing/payment of taxes and the employee could exit prior to payment.
10. The adoption of cross-sectoral Common Professional Standards designed to remove barriers to trade in all professional services sectors. Qualification requirements, procedures, technical standards and licensing requirements should be based on objective and transparent criteria, such as competence and the ability to provide the service. Requirements and procedures should be harmonized in an effort to be streamlined and simplify the qualification and licensing process. Where they exist, international standards for mutual recognition of professional services providers should be considered for adoption, providing they do not act as inhibitors to trade.

The Workshop Conclusions of the Services Workshop at the Fourth Business Forum of the Americas, held in San José, Costa Rica in March 1998 identified barriers and restrictions to the free movement of persons. These include lack of transparency in the solicitation processes, both public and private; lack of uniform criteria not only for recognition of degrees but as well for the requirements or criteria for effective practice of a profession; lack of uniform, minimum academic standards; and the application of obsolete criteria and a lack of control mechanisms for non-traditional professions and for the virtual practice of professions, as a result of new technologies and the needs of modern economies.

It recommended a comparative study and analysis of regulations applying to the practice of professional services by country and profession or technical area, including regulations which apply to both national and foreign professionals. This should serve as a preliminary step before starting any type of multilateral negotiations on minimum international standards for the practice of each profession. Existing models and studies on the harmonization of standards and regulations for the practice of each profession should be reviewed and considered.

National treatment should be granted to foreign professionals without any discriminatory factors such as the citizenship and/or residency requirements for the exercise of a profession, while MFN principles should be applied to trade and professional services. Countries should revoke existing laws or rules regarding quotas for national and foreign professionals within professional services firms, or limitations on the capacity of foreigners to assume leadership positions in companies, as well as any other similar barriers.

Countries should sign agreements that eliminate double taxation in relation to professional honoraria or profits of professional services companies. They should also establish flexible labour legislation which allows the deposit of social security and health care contributions in countries of origin. Additionally, transfer of funds should be permitted. Specific recommendations were also made for the construction and engineering sub-sector, including the publication of regulatory standards in the domestic markets.

The Florida Position Paper, presented to the Fifth Americas Business Forum in Toronto, Canada in 1999, makes the point that non-tariff barriers in the region impede the free movement of management, technical and professional services and thus hinder the growth and

development of cross border business in the hemisphere. It also states that an equivalency measurement should be determined when comparing experience and educational qualifications from country to country.

Clearly, much thought has been given by the various business forums to the issues of mutual recognition of qualifications, taxation, work permits and visas. However, it is far from certain that these suggestions will be taken on board in negotiating the Agreement. Indeed, none of these proposals have yet been adopted or recommended by the Working Group on Services, and may be regarded as unclear or unworkable. However, it is hoped that some of the more practical recommendations made to the Working Group on Services will be eventually included in the drafting of the Agreement on the Free Trade Area of the Americas.

If the NAFTA provides any indication of the positions of the main players in the FTAA negotiations, it shows that the Agreement will probably be restrictive in terms of the movement of natural persons. It provides, for example, that notwithstanding the MFN obligation a Party is not required to extend to a service provider of another Party the benefits of recognition of education, experience, licences or certification obtained in another country, whether such recognition was accorded unilaterally or by arrangement or agreement with that other country.¹²⁸ Even the NAFTA, however, requires the Parties to eliminate any citizenship or residency requirement for the licensing and certification of professional service providers in their respective territories, within two years of the entry into force of the Agreement, and they must consult periodically with a view to doing so.¹²⁹ It is hoped that at the very least, a similar provision will be included in the FTAA.

CARICOM has submitted papers to all the Negotiating Groups, except for the Negotiating Group on Agriculture. All these submissions reflect issues of relevance to small economies. CARICOM was also able, at the meeting of the Trade Negotiating Committee in Barbados in September 2000, to secure the agreement to include the small economies issue as a permanent topic on the TNC's agenda. As a result, all negotiating groups must now ensure that issues relating to small economies be addressed.

Attention must also be paid to ensuring that the services component of the FTAA that eventually emerges is compatible with Article V of the GATS.

7.4 Services and the Cotonou Agreement

The *Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States* (the Cotonou Agreement) was signed in Cotonou, Benin, on June 23, 2000. It replaces the Lomé IV Agreement. Part 3, Chapter 4 of that Agreement covers trade in services. The treatment of the general principles applicable to trade in services is brief; they are contained in Article 41. Under this Article, the Parties underline the growing importance of services in international

¹²⁸ NAFTA, Article 1210.2.

¹²⁹ NAFTA, Article 1210.3, 4.

trade and their major contribution to economic and social development. They go on to reaffirm their respective commitments under the GATS, and underline the need for special and differential treatment to ACP suppliers of services.

The Community undertakes to give sympathetic consideration to the ACP States' priorities for improvement in the EC Schedule, within the framework of the negotiations for progressive liberalization of trade in services under Article XIX of the GATS, with a view to meeting their specific interests. This commitment may arguably open the way for ACP countries to press for greater commitments on the movement of natural persons under Mode 4. However, the EC commitment to "give sympathetic consideration" to such priorities falls short of making any specific commitments. There is in fact, no mention of the movement of natural persons for the supply of services.

One of the commitments listed under Article IV of the GATS is increasing the participation of developing country Members through negotiated specific commitments for the liberalization of market access in sectors and modes of supply of export interest to them. Arguably, these concerns are to be raised in future negotiating rounds under the GATS. Nevertheless, the Cotonou Agreement presented an opportunity for both parties to improve market access commitments within the framework of that Agreement. The fact that there is no mention of such improved commitments, together with the weak language used, is perhaps a reflection of the unwillingness of the EC to make far-ranging commitments to a large number of developing countries at different levels of development.

Certainly, there is scope for improvement, and the possibility of such improvement is hinted at in Article 41.4, under which the Parties agree on extending their partnership to encompass the liberalization of services in accordance with the GATS, particularly those relating to the participation of developing countries in liberalization agreements. However, the condition for entering into such partnership is that the Parties must have acquired some experience in applying MFN treatment under the GATS. This is clearly aimed at the developing countries that make up the ACP, and its open-ended nature undermines the hint of improved commitments.

However, there are some positive commitments in Article 41.5, under which the Community undertakes to support the ACP States' efforts to strengthen their capacity in the supply of services. A number of services are singled out for particular attention, namely, services related to labour, business, distribution, finance, tourism, culture, and construction and related engineering services, with a view to enhancing their competitiveness and thereby increasing the value and volume of the ACP countries' trade in goods and services.

Tourism also receives further special attention in Article 25, under which the EC Members undertake cooperation with a view to sustainable development of the tourism industry in the ACP countries. Cooperation programmes and projects are proposed to support the efforts of the ACP countries to establish and improve their legal and institutional frameworks and resources for the development and implementation of sustainable tourism policies and programmes.

Maritime transport and information and communication technologies are also covered in Articles 42 and 43, respectively. Parties are required to promote the liberalization of maritime transport, and to apply the principle of unrestricted access to international maritime transport on a non-discriminatory and commercial basis. Further, they are to grant national treatment to ships operated by nationals or companies of the other party. The Community undertakes to support the ACP States' efforts to develop their maritime transport services with a view to increasing the participation of ACP operators in international shipping services. The Parties also reconfirm their respective commitments under existing multilateral agreements, in particular, the Protocol on Basic Telecommunications attached to the GATS.

8 ECONOMIC BENEFITS AND COSTS OF MODE 4 FOR DEVELOPING COUNTRIES

8.1 Theoretical Predictions¹³⁰

Traditional economic theory assumes that countries have fixed factor endowments – capital and labour – and identical production functions. International trade encourages individual countries to exploit their comparative advantages in factor endowments, a process which is welfare enhancing for each individual country when compared to its situation without trade. The fixed factor endowment assumption of traditional theory, in particular, renders this approach unsuitable for analyzing the welfare effects of trade in services through movement of natural persons (Mode 4); the labour factor is moving between countries and is therefore not fixed in the individual countries.

The various theories of international migration¹³¹ assume various incentives for migration – typically cross-country disparities in employment and income opportunities – and examine the effects of migration on the countries, markets or persons affected. The major limitation of these models from the point of view of Mode 4 analysis is that the migration contemplated in them is permanent while that in Mode 4 is temporary.

In spite of the limitations of the above approaches, with some modification of their assumptions they can provide some insight into the expected effects of Mode 4 labour movement on originating and recipient countries.

In general, the effects depend on the state of the labour markets in individual sectors and on the transportability of labour between sectors in both the originating and the recipient countries. Where there is surplus labour in a particular sector in a country and that labour is not transportable locally into another sector, that country would seek to be an exporter of that labour. Similarly where there is a shortage of labour in a particular sector in a country and that labour is not available locally from another sector, that country would want to be an importer of such labour.

When surplus labour is temporarily exported, it relieves welfare and other social costs in the exporting country. Furthermore, there are likely to be inflows of remittances from the exported labour. On the other hand, the export of labour could lead to upward pressure on wages in the exporting sector, which could have a deleterious effect on the competitiveness of the sector internationally. From the point of view of the importing country, the imported labour could exert downward pressure on wages in the particular sector and increase its

¹³⁰ See, in particular, World Trade Organization, *Presence of Natural Persons (Mode 4)*, S/C/W/75, December 1998.

¹³¹ World Bank, *International Migration: Implications for the World Bank*, Human Capital Development and Operations Policy Division, No. 54, May 1995.

international competitiveness; however, there is likely to be an associated outflow of remittances.

A major element of risk in Mode 4 labour movement arises where there are surpluses in an exporting country and no shortages in the importing country but the trading rules permit the movement of labour to the importing country. The social costs of surplus labour may be transferred from the exporting to the importing country.

Another type of risk arises if the temporary export or import of labour becomes permanent. A country might have been experiencing temporary surpluses and exported its labour only to find that the labour is not available when the surpluses become shortages. Beside the resulting upward pressure in wages and loss of international competitiveness in the sector, where the exported labour was highly skilled there is the loss of the investment in human capital. With respect to the country that has imported labour to meet shortages, there are social costs to be met if the shortages become surpluses.

In developing countries, where it is generally assumed that there are chronic surpluses of unskilled labour, it appears from the discussion above that there may be net benefits to be derived from the Mode 4 export of such labour if demand can be identified. In those developing countries – including some Caribbean countries - where there are surpluses of skilled labour, there may be benefits from Mode 4 export if the costs of any associated upward pressure in wages, loss of international competitiveness or loss of investment in human capital can be minimized.

8.2 Statistical Evidence

Assessment of the benefits and costs is hampered by a lack of relevant statistics.¹³² The traditional statistical framework used for trade in services, as defined in the Fifth Edition of the IMF Balance of Payments (BOP) Manual (BPM5),¹³³ records transactions between residents and non-residents; the GATS modes of labour supply use additional criteria such as nationality, territorial location and ownership or control. The GATS supply of services through commercial presence is also not recorded in the BOP statistics; a commercial presence company supplying services to the territory in which it is located is not considered to be conducting transactions between residents and non-residents.

In order to measure supply of services through commercial presence, statisticians have developed the Foreign Affiliates Trade in Services Statistics (FATS). More generally, a Manual on Statistics of International Trade in Services is being developed which will, *inter alia*, meet the needs of trade negotiators. Until these efforts bear fruit, measurement in the GATS sense has to depend on using the BOP statistics and the FATS as proxies.

¹³² Karsenty, G., *Just How Big are the Stakes? An Assessment of Trade in Services by Mode of Supply*, Statistics Division, World Trade Organization, April 1999, p. 2.

¹³³ International Monetary Fund, *Balance of Payments Manual*, Fifth Edition, IMF, 1993.

Table 3 provides estimates of trade in services by mode of supply¹³⁴ for 1997 and indicates the various proxies used. The proxy for Mode 1, cross-border supply, is export of services less travel and government services in the BOP current account; it should be noted that this proxy includes transactions occurring when the supplier moves to the territory of the consumer to supply its services and thus overestimates Mode 1. The proxy for Mode 2, consumption abroad, is the travel category in the BOP current account; it excludes activities such as ship repair abroad and is therefore biased downwards. Mode 3, commercial presence, is estimated using the FATS statistics mentioned earlier.

Table 3: Trade in Services by Mode of Supply, 1997

Mode	Proxy Used	Value US\$ billions	Percent of All Modes	Percent of World GDP	Percent of World Exports of Goods and Services
<i>Mode 1: Cross-border Supply</i>	BOP: Commercial Services less Travel and Government Services	890	41.0	3.1	13.1
<i>Mode 2: Consump- tion Abroad</i>	BOP: Travel	430	19.8	1.5	6.3
<i>Mode 3: Commercial Presence</i>	FATS: Gross Output in Services	820	37.8	2.9	12.0
<i>Mode 4: Movement of Natural Persons</i>	BOP: Compensa- tion of Employees	30	1.4	0.1	0.4
<i>All Modes</i>		2,170	100	7.6	31.8

¹³⁴ Karsenty, G., *Just How Big are the Stakes? An Assessment of Trade in Services by Mode of Supply*, Statistics Division, World Trade Organization, April 1999, p. 18.

With respect to Mode 4, movement of natural persons, the BOP category compensation of employees is used as the proxy. This proxy includes transactions not related to service supply in the GATS sense such as income of foreign workers employed in national firms, foreign workers not involved in the supply of services and local staff of embassies and consulates; in these respects it is biased upward. However, it excludes income of individuals moving abroad to supply a service, which is included in the Mode 1 proxy above, and situations where the movement abroad is temporary but exceeds one year; in these respects it is downward biased. The resulting estimate shows Mode 4 to be just 1.4 percent of the trade in services in 1997.

Table 4 uses the Mode 4 proxy to estimate the shares of various blocs of countries in Mode 4 trade in 1997.¹³⁵ Developed countries were net importers, exporting 64 percent and importing 88 percent, while developing countries were net exporters, exporting 36 percent and importing 12 percent. Asian countries accounted for 30 percent of exports and 9 percent of imports. The data appears to support the proposition that developing countries have a comparative advantage in Mode 4 trade, either because of a greater abundance of unskilled labour or lower-priced labour.

Table 4: Shares of World Exports and Imports of Mode 4 Services, 1997

	Percent of Exports	Percent of Imports
North America		12
Western Europe	55	65
Africa	3	3
Asia	30	9
Latin America	3	3
<i><u>Developed Countries</u></i>	64	88
<i><u>Developing Countries</u></i>	36	12

Given the relatively small share of Mode 4 trade in global trade in services, as indicated in Table 4, and the apparent comparative advantage of developing countries in Mode 4 trade as indicated above, it would appear that this is an aspect of trade that developing countries as a bloc – including CARICOM countries – should seek to promote for themselves in exchange for opening their markets to trade in the other modes.

¹³⁵ *Ibid*, p. 17.

9 MODE 4 RELATED PROPOSALS

The gap between the potential benefits that can accrue to developing countries from Mode 4 exports of services, as suggested in Chapter 8 above on Economic Benefits and Costs, and the experience to date in the GATS negotiations – particularly with respect to commitments as outlined in Chapter 4 – has prompted proposals from trade experts as well as developing countries for radical reform of the GATS in future negotiations. These proposals should influence CARICOM’s strategy in those negotiations.

9.1 Proposals by Experts

Hoekman¹³⁶ suggests that “there are many challenges that need to be addressed by negotiators if the GATS is to become an effective and therefore credible instrument of multilateral liberalization . . . The set of generally applicable rules and disciplines must grow significantly and the weight of the specific commitments reduced. The approach taken towards scheduling commitments in the Uruguay Round needs to be critically assessed to determine whether it will be conducive to achieving significant liberalizing of service markets in the future. . . More generally, it must be recognised that the problems involved in “fixing” the GATS extend beyond services. Future multilateral efforts must center on eliminating the artificial goods-services distinction, and develop generic disciplines in foreign direct investment (establishment) and labor movement. It will be important that attention is devoted to both goods and services in this connection, and that the same rules apply to goods and services.” At the same time, he states that “realism suggests that proposals for improving GATS build upon the existing structure as much as possible . . .”¹³⁷.

This latter approach is taken by Chanda¹³⁸ who states as follows: “Since developing countries generally have a comparative advantage in exporting labour-intensive services, the lack of significant liberalization under the movement of natural persons limits the overall value of GATS for developing countries. If GATS is to effectively promote trade in services and address the interests of developing countries, the forthcoming round of WTO negotiations on services must aim at liberalizing the movement of natural persons¹³⁹ . . . If the movement of persons is to be liberalized under the GATS, then existing commitments in this mode have to be significantly improved in future rounds of service sector negotiations. This can be realized through country-to-country negotiations by sector and also through the introduction of multilaterally accepted horizontal formulae . . . within the existing framework of GATS.”¹⁴⁰

¹³⁶ Hoekman, B., *Assessing the General Agreement on Trade in Services* in Martin, W. and Winters, L., *The Uruguay Round and the Developing Economies*, World Bank, 1994.

¹³⁷ *Ibid.*, p. 328.

¹³⁸ Chanda, R., *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour under the GATS*, November 1999.

¹³⁹ *Ibid.*, p. 3.

¹⁴⁰ *Ibid.*, p. 21.

It has been observed¹⁴¹ that the sectoral commitments in Mode 4 are mostly unbound except for the categories of persons listed in the horizontal schedules, which only cover broad categories of service providers such as intra-corporate transferees and business visitors. Thus the specific needs of individual sectors and sub-sectors are not covered. Similarly, the duration of stay where specified for certain categories of service personnel in the horizontal commitments may not be appropriate for individual sectors and sub-sectors. It is therefore suggested that the current round of multilateral negotiations move away from reliance on horizontal commitments to detailed and sector-specific commitments applicable to individual sectors and service personnel related to those sectors.

At the same time, Chanda recognises that the sector-specific commitments should be supported by improvements in the existing framework of horizontal commitments and by the introduction of multilateral guidelines on issues that cut across many sectors. With respect to horizontal commitments, she suggests that these should complement – rather than be substitutes for – the sectoral commitments. “The horizontal commitments should establish a common working definition and coverage of personnel categories and also attempt to cover a wider range of provider categories than at present . . . It is important to include middle and low-skill level providers and make the commitments more relevant to the interests of the developing countries with expertise in these categories . . . The sectoral commitments should build on this wider scope and provide more detailed provisions and conditions, making them as relevant and specific as possible to individual sub-sectors and individual classes of service providers . . .”¹⁴² within each sub-sector.

As regards multilateral guidelines on issues that cut across sectors, she suggests that such issues include: economic needs tests, recognition, the separation of temporary from permanent labour flows, wage parity, and taxes and social security.

With respect to economic needs tests, it is suggested that fewer occupational categories should be subject to such tests and that there should be consensus on those categories. The scope for discrimination through the use of such tests should be reduced by laying down clear criteria for the application of such tests, establishing norms for the administrative and procedural formalities associated with such tests, and by specifying how the results of such tests are to be used in restricting entry to foreign service providers. Requirements and decisions made on the basis of such tests should be subject to challenge under the WTO’s dispute settlement mechanism.¹⁴³

On the matter of recognition, Chanda recommends strengthening the provisions under Article VII by establishing detailed norms in related areas. Where there is a divergence of requirements standards between home and host countries, the GATS framework should encourage a compensatory system of granting recognition, whereby local adaptation periods and aptitude tests for foreign professionals can be used to offset differences among national

¹⁴¹ *Ibid.*, p. 20.

¹⁴² *Ibid.*, p. 23.

¹⁴³ *Ibid.*, p. 29.

systems and standards. The GATS should also discourage differential treatment of the value of work experience and qualifications between professionals; norms should be established that specify the kinds of jobs and academic qualifications that may be considered to be equivalent. Where licensing is required in the host country but not in the home country of the professional, disciplines governing licensing should allow for temporary licensing. Where there are no formal accreditation or licensing procedures, norms in terms of minimum professional education or experience should be developed. There should be mechanisms to facilitate regulatory cooperation among bodies concerned with recognition in member countries; the GATS should also facilitate transitivity of bilateral recognition agreements and enable their application multilaterally.¹⁴⁴

With respect to the separation of temporary and permanent movement of labour, a GATS visa for service providers covered by the sectoral and horizontal commitments filed by each GATS Member country is proposed. The main features of this visa may be summarized as follows:

- (i) Permission to work in a Member's territory on a temporary basis if the service supplier is covered by sectoral and horizontal commitments on Modes 3 and/or 4;
- (ii) Strict time frame within which visa must be granted (2-4 weeks maximum);
- (iii) Flexibility for visas on shorter notice for select categories of suppliers and border availability of visa;
- (iv) Transparent and streamlined application process;
- (v) Mechanisms to find status of application, rejection, requirements;
- (vi) Multiple entry visas for senior executives and CEOs;
- (vii) Easier renewal and transfer procedures;
- (viii) GATS visas for select companies for use by its employees deputed abroad;
- (ix) Safeguard mechanisms to prevent persons from entering the permanent labour market;
- (x) Procedure for challenging rejections, delays, and unfair practices under the dispute settlement mechanism.

As regards wage parity, there are potential conflicts between the exploitation of the comparative advantage of developing countries in labour-intensive services and issues of fair wages and social welfare.¹⁴⁵ In order to address these concerns, multilateral guidelines are required to determine under what conditions wage parity must hold and when deviations from wage parity will be permitted, and how to link wage parity to entry conditions and formalities. Related to the treatment of wage parity, will be elimination of double taxation and eligibility for social security benefits.¹⁴⁶

¹⁴⁴ *Ibid.*, p.29.

¹⁴⁵ *Ibid.*, p.27.

¹⁴⁶ *Ibid.*, p. 26.

The international accounting firm PricewaterhouseCoopers has also produced a discussion paper¹⁴⁷ on the temporary movement of natural persons, which to some extent supports the proposals put forward by Chanda and by India in its Communications, discussed in the following section. It refers to the current negotiations on services and recommends that agreement be sought on:¹⁴⁸

- ◆ Common definitions of key business personnel – to remove from scheduled commitments uncertain and inconsistent terms thereby reducing the scope for arbitrary and discriminatory application of the rules and procedures by relevant authorities;
- ◆ Transparent procedures – to facilitate compliance with necessary requirements for obtaining permission for entry;
- ◆ Common terms for intra-corporate transfers – to remove uncertainty and arbitrary restrictions on the movement of categories of personnel under intra-company transfers; and
- ◆ Provision of expedited procedures for short-term movement of personnel – to reduce the delays and costs involved in arranging assignments in host countries of less than 12 months.

The paper reviews the current barriers affecting the mobility of persons, and points to the need to introduce clarity, objectivity and transparency into GATS commitments regarding the movement of personnel. In order to improve the effectiveness of existing commitments and provide a stimulus for further liberalization, they propose:¹⁴⁹

- ◆ The development of a minimum set of Mode 4 requirements which could be applied both horizontally and sectorally. This could be specified in a model schedule containing market access commitments and international trade principles relating to minimum durations of stay and circumstances in which ENTs could be justified. The model schedule would have to be formulated in sufficiently broad terms to avoid being overtaken by the dynamics of labour markets.
- ◆ Existing horizontal commitments should be reviewed to determine whether they are sufficiently detailed and specific, and reformulated as appropriate to align with the model schedule.
- ◆ To facilitate the temporary movement of defined categories of personnel, and expedited procedure in the form of a “GATS permit” should be developed for intra-corporate transfers involving the movement of personnel for less than 12 months. The issue of GATS permits should be subject to strict conditions relating, for example, to the method of application, including information necessary to support the application, proof of employment with the current employer for a defined period, and a declaration of an intention not to establish a permanent residence in the recipient country. Matters

¹⁴⁷ PricewaterhouseCoopers: *Discussion Paper on the Temporary Movement of key Business Personnel*, October 2000.

¹⁴⁸ *Ibid.*, p. 1.

¹⁴⁹ *Ibid.*, pp. 5-6.

relating to renewal and transfer of applications and appeals against refusal to grant permits would also have to be addressed. A standing bond made between the applicant business and the local embassy or consulate of the recipient country could be relied upon to facilitate compliance and to minimise opportunities for abuse.

- ◆ A similar undertaking should be made to allow commitments to be made for the temporary movement of personnel, not involving intra-corporate transfers, in order to fulfil a contractual obligation.
- ◆ A new category of “intra-corporate transfer for training and career development” should be created, since this would benefit countries by increasing the knowledge, skills and experience of their workforce.

It is significant that the idea of a GATS visa or GATS permit has been proposed by a private sector multinational company. They also suggest that a system could be developed whereby companies that are certified by the immigration authorities could self-administer transfers that satisfied appropriate criteria. These suggestions were prompted by difficulties encountered by companies in moving their personnel from one country to another to provide services. Further, the proposal includes suggestions for addressing the problem of possible abuse of the GATS visa system. The idea of a GATS visa may therefore not be as difficult to implement as suggested by other experts. It is also significant that there is support for the development of a model schedule.

9.2 Country Proposals

9.2.1 India

In its Communication on *Proposals Regarding the GATS Agreement*,¹⁵⁰ India states that the importance of Mode 4 for developing countries is obvious; and yet commitments made by the developed countries in this area were far from satisfactory. Mode 4 commitments undertaken by developed countries being modest, there is a need for them to make substantially greater commitments in this area if the balance of benefits under GATS is to be preserved. It proposes that greater levels of commitments can be achieved on the basis of:¹⁵¹

- ◆ rules that are transparent;
- ◆ no additional tariffs, taxes or other regulatory restrictions on the nationals of foreign countries that do not apply to one’s own nationals;
- ◆ no quantitative limits on temporary movement of natural persons;
- ◆ fees/charges applicable for providing social security nets should not apply to temporary movement of natural persons;
- ◆ no non-tariff barriers; and

¹⁵⁰ *Preparations for the 1999 Ministerial Conference - Proposals Regarding the GATS Agreement in Terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration - Communication from India: WT/GC/W/224, 2 July 1999.*

¹⁵¹ *Ibid.*, p.2.

- ◆ no regulatory restrictions on the movement of natural persons.

Further, at least in sectors of interest to developing countries, economic needs tests would not apply, and that, in the exceptional cases in which they would apply, they would be based on transparent and objective criteria.

It also proposed that those sectors where visas would be issued automatically for temporary movement of natural persons should be listed. This proposal is similar to the idea of a GATS visa proposed by Chanda. Additionally, certain occupations should be exempt from the work permit/residency requirement for short periods of trade-related presence. A new list of occupations using the ILO International Standard Classification of Occupations could be established.

India has submitted another Communication,¹⁵² in which its proposals are further defined. It points to the fact that existing commitments are largely linked to commercial presence which is of very limited use to developing countries who are interested primarily in movement of independent professionals and other persons. It goes on to indicate the administrative and procedural problems that effectively rule out market access for developing countries. These are essentially the same problems indicated in Chanda's paper.¹⁵³

It offers a number of proposals for improving the structure of commitments. Horizontal commitments should be amended to include the category of "individual professionals," thereby delinking Mode 4 commitments from Mode 3 commitments. Further, relevant criteria for determination of eligibility to a particular category should be clearly specified; uniform definitions and coverage of broader categories should be drawn up; and the scope of categories covered by the horizontal commitments should be expanded by defining coverage of "other persons" and "specialists" to include middle and lower level professionals, with relevant criteria specified.¹⁵⁴ In addition, sectoral and sub-sectoral commitments should be more clearly defined and specific in terms of measures applicable to individual sectors and categories for which commitments apply, with applicable limitations and conditions being clearly stated in the schedules.

India is also proposing that categories of service providers should be disaggregated along the lines of the ISCO classification. Fewer occupational categories should be subject to ENTs, and in cases where ENTs apply, clear criteria should be laid down for their application, for establishing norms for administrative and procedural formalities and for specifying how results of such tests would restrict entry to foreign service providers.¹⁵⁵

¹⁵² Council for Trade in Services – Special Session – *Communication from India – Proposed Liberalisation of Movement of Professionals under General Agreement on Trade in Services (GATS): S/CSS/W/12*, 24 November 2000.

¹⁵³ Chanda, R., *Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labour under the GATS*, November 1999.

¹⁵⁴ Council for Trade in Services – Special Session – *Communication from India – Proposed Liberalisation of Movement of Professionals under General Agreement on Trade in Services (GATS): S/CSS/W/12*, 24 November 2000, p. 3.

¹⁵⁵ *Ibid.*, p. 5.

Additionally, temporary service providers should not fall under the immigration procedures applicable to permanent labour flows. Two alternatives are suggested for achieving this, namely, either a GATS visa for categories of personnel covered by horizontal and sectoral commitments, or the creation of a special subset of administrative rules and procedures within the overall immigration policy framework.¹⁵⁶

The main features of the GATS visa are clearly based on the proposals of Chanda discussed in section 9.1 above. They include:

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

India further proposes that developing country professionals be exempt from social security contributions so that their comparative advantage is not affected. It also suggests the implementation of notification requirements of mutual recognition agreements under GATS Article VII, and that effective opportunities be provided to developing country Members to join in negotiations for the establishment of MRAs. This effort would be facilitated by the establishment of multilateral norms to facilitate MRAs, including the development of norms for professional service sectors where no formal accreditation or licensing procedures are required, norms on the equivalence of work-related and academic qualifications, and norms for temporary licensing in the host country where such licensing procedures are absent in the home country.¹⁵⁷

9.2.2 Pakistan

Pakistan has submitted two documents in which it makes recommendations for negotiations on the movement of natural persons under the GATS.¹⁵⁸ The second Communication essentially summarises the points made on the movement of natural persons made in the first Communication. Pakistan makes the point that further liberalization of the movement of natural persons would be essential for the full implementation of Article IV.1(c)

¹⁵⁶ *Ibid.*, p. 6.

¹⁵⁷ *Ibid.*, pp. 7-8.

¹⁵⁸ *Communication from Pakistan* WT/GC/W/131, 22 December 1998; *Communication from Pakistan* WT/GC/W/160, 1 April 1999.

of the GATS, which provides for the liberalization of market access in sectors and modes of supply of interest to developing countries.¹⁵⁹ Based on the *Agreement Establishing the World Trade Organization* and the GATS itself, Members have committed themselves to undertaking trade liberalization measures in areas of particular interest to the developing countries, thereby enhancing the share of developing countries in world trade and promoting their development.¹⁶⁰

Pakistan argues that the Uruguay Round resulted in insignificant liberalization in this area. Despite the fact that the GATS is based on the concept of symmetry in the obligations between the movement of capital and movement of labour, the results have been grossly asymmetrical. The sector specific commitments have covered measures regarding commercial presence substantially more than the measures regulating movement of natural persons as service suppliers, while horizontal commitments on Mode 4 merely state the elements of the immigration and labour laws.¹⁶¹ It argues that given the obvious economic benefits of further liberalization in this area, both for exporting and importing countries, and also the need to fulfil the provisions of Article IV of the GATS, it is necessary that significant progress be made in upcoming negotiations.¹⁶²

Pakistan proposes the adoption of an occupational approach, under which a list of occupations would be drawn up for which countries would agree to abolish economic needs tests (ENTs). It points to the ILO International Standard Classification of Occupations (ISCO), which has established an internationally adopted classification of nine major groups of occupations. The classification could be used for establishing a list of occupations for the international trade in services.¹⁶³ In categories which would not be covered by this list, the criteria for the application of economic needs tests would be clearly laid down.

Consideration should also be given to measures which would result in more transparent and objective implementation of visa and work permit regimes. Such measures could include the publishing of relevant administrative rules that define the conditions of entry and national treatment. Further, Members should bind their current immigration legislation related to all relevant categories in their specific commitments.

Finally, measures should be taken to overcome barriers created by qualifications and licensing regulations. These measures could include the development of international standards for qualifications and use of partial mutual recognition of qualifications.

¹⁵⁹ Article IV.1(c) of the GATS provides: "The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to parts III and IV of this Agreement, relating to: ... (c) the liberalization of market access in sectors and modes of supply of export interest to them."

¹⁶⁰ *Communication from Pakistan* WT/GC/W/131, 22 December 1998, p. 6.

¹⁶¹ *Ibid.*, p.4.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, p.9.

9.2.3 Brazil

Brazil proposes that services negotiations should be conducted in two well-defined and consecutive phases. The first phase proposed is the completion of a GATS regulatory framework. During the first phase, Members should complete the drafting of disciplines for GATS rules, emergency safeguards, subsidies, government procurement and domestic regulation. Once those outstanding issues are completed, the negotiation of specific commitments may take place, and should include the recognition of appropriate negotiating flexibility for developing country Members (Article XIX (2)), including the right to condition access to their markets to the fulfilment of the objectives mentioned in Article IV.¹⁶⁴ The idea of conditioning access to markets based on the fulfilment of the objectives under Article IV appears to be a logical approach for the developing countries to adopt with regard to future negotiations. Certainly, they can be less liberal in further opening of their services markets unless there are similar commitments from the developed countries. The disadvantage, of course, is that they may also deprive themselves of the skills of persons who can contribute significantly to their development. Such a position must therefore be carefully considered.

¹⁶⁴ *Preparations for the 1999 Ministerial Conference – Services – Communication from Brazil: WT/GC/W/333*, 23 September 1999, p. 2.

10 CARICOM STRATEGY FOR MOVEMENT OF NATURAL PERSONS

10.1 Underlying Strategy

Given the smallness and similar structures of most of its economies, liberalization within CARICOM will not by itself allow the region to fulfill its goal of global competitiveness. The region has therefore committed itself to a strategy which treats its trade and economic cooperation agreements as stages in attaining global competitiveness. In that context, it must negotiate on many fronts paying close attention to the linkages between the negotiations.¹⁶⁵

A precursor to such negotiation is the generation of an appropriate infrastructure of national, regional and international information on services and trade in services, which would permit analysis of sectors and sub-sectors with a view to informing the negotiating strategy. Statistical data for the CARICOM countries are very deficient, except for the tourism sector and, to a lesser extent, the financial services sector (both domestic and offshore). A first step in this direction is the preparation of statistical data for countries of the region in accordance with the draft Manual on Statistics of International Trade in Services as a matter of urgency. At the same time, the legal, regulatory and institutional framework affecting the various service sectors and sub-sectors needs to be documented.¹⁶⁶ Some work has already been undertaken at the level of the OECS and has commenced in CARICOM as a whole. The sectors that should be emphasized include: tourism and financial services (the two sectors in which CARICOM made the greatest number of commitments), software development, health services (including health tourism), professional services, educational services, sports and recreational services (including entertainment) and possibly, construction services.

Developing a strategy for CARICOM countries in further negotiations on the movement of natural persons would then begin with an analysis of the labour markets in these countries with a view to identifying sectors and sub-sectors in which there are projected shortages and surpluses of skilled and unskilled labour. A parallel analysis would be undertaken of the labour markets in countries with which these countries may wish to develop trading relationships in order to identify matching surpluses and shortages of skills. This information set would provide the necessary background for identifying appropriate goals for CARICOM countries in the negotiating process.

In the absence of an appropriate information infrastructure, CARICOM countries may wish to seek as much access as possible for their skilled and unskilled labour to other markets, while making their markets accessible to those professional skills which may be perceived to be in short supply.

¹⁶⁵ Regional Negotiating Machinery, *Report of the Chief Negotiator*, August 1997.

¹⁶⁶ Regional Negotiating Machinery, *Report of the RNM Reflections Group on Services*, March 2000, pp. 13–14, 27–28.

10.2 CARICOM Strategy for GATS 2000 Negotiations

A new round of negotiations on services was launched on February 25, 2000. In accordance with Article XIX.1 of the GATS, the aim of these negotiations is to achieve a higher level of liberalization of trade in services through the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. The need for CARICOM countries to undertake their national services sectoral analysis has been identified above. This vital exercise must be completed as a matter of urgency, since the CARICOM position can only be developed from the respective national positions. Once the CARICOM position is developed, the regional body can act as a *demandeur* in services negotiations.

1. Compliance with GATS requirements

In tandem with the current GATS negotiations, CARICOM must take the necessary steps to comply with the existing requirements of the GATS. Three issues must be addressed urgently, namely:

- (iv) The establishment of enquiry points, as specified in Article III of the GATS. Some Member States have established these, but by no means all of them have done so.
- (v) The publication of relevant laws, regulations and administrative guidelines, without which the enquiry points would be ineffective.
- (vi) Notification to the Council for Trade in Services of measures affecting trade in services promptly, and at least annually. This would include changes to existing laws, regulations and administrative guidelines, and is an ongoing obligation.

2. Clarification of Article V of the GATS

Article V of the GATS has tremendous implications for CARICOM, which is in the process of creating a single market and economy. However, it contains ambiguous language which makes it difficult to determine whether any particular agreement is consistent with its provisions. The terms “substantial sectoral coverage” and “reasonable time-frame” are not defined and are therefore subject to interpretation. Therefore, while it purports to provide flexibility to developing countries, the level of such flexibility is not clearly defined.

The applicability of Article V needs to be clarified at the level of the Council for Trade in Services. CARICOM should support and participate in all efforts to have this Article clarified and, if necessary, revised to provide certainty as to its scope and application. It could take the lead in such efforts to clarify Article V.

Article V *bis* also has implications for CARICOM, although the scope of application of that Article is clearer than that of Article V. However, the question arises whether the level of labour integration achieved by the *Decision on the Movement of Skilled Persons* and Protocol II satisfies the condition of “full integration of the labour market.” The *Decision* only provides for the movement of persons with tertiary education and this clearly does not constitute the full integration of the labour market. Although Protocol II does not restrict the

movement of natural persons to those with a tertiary education, it gives the Member States wide discretion to determine the “approved activities” for which persons can enter. This also may not constitute full integration of the labour market. Efforts should therefore be undertaken to deepen the integration process and to further define the categories of persons who will be permitted entry into a Member State for the supply of a service. CARICOM should consider the ILO International Standard Classification of Occupations as an possible starting point for further defining such categories of persons.

3. Participation in new round of negotiations

It is not clear at this stage whether there will be a comprehensive round of negotiations on services in 2001. CARICOM must therefore address the question of what issues it is willing to negotiate in the GATS, in the context of the current uncertainty. Article XIX requires a comprehensive assessment of the objectives of the GATS, particularly in relation to Article IV. This assessment has not been completed, and the position has been taken by some African countries that this must be done before embarking on further negotiations. However, the general lack of statistical data and the lack of time may prevent the completion of this exercise any time in the near future. CARICOM can contribute to the completion of this exercise by producing its own statistical data and analysis, based on data from the individual countries, and an assessment of the effects of the GATS on those economies.

Another issue is whether negotiation on all procedural and outstanding issues such as an emergency safeguards mechanism, subsidies and government procurement should be completed before the commencement of negotiations on substantive issues. Negotiations on the emergency safeguard mechanism should be completed before the adoption of the results of the current round of services negotiations. It has been suggested that in order to have maximum impact, an emergency safeguard mechanism would need to be applicable across sectors (it would apply horizontally and not be sector specific) and modes of supply, be time bound, subject to progressive liberalization, and MFN based.¹⁶⁷ Negotiations on subsidies and government procurement will probably continue after the conclusion of the current round of negotiations. CARICOM should support the negotiating stance that work on the emergency safeguard mechanism should be completed before attempting to address new substantive issues. It should also actively participate in negotiations on all outstanding issues, including those remaining after the current round of negotiations.

4. Negotiation on an across-the-board basis

As industrialized countries seek greater liberalization in the service industries of interest to them, developing countries would be well advised to insist on linking services negotiations across sectors and to ensure that the sectors of interest to them are included in the negotiations.¹⁶⁸ For the CARICOM countries, tourism and financial services are such sectors. Other important service activities are computer and information-related services, entertainment, sports and cultural activities, transportation, health tourism and retirement

¹⁶⁷ Mashsayekhi, M.: *GATS 2000: Progressive Liberalization*, in UNCTAD: *Positive Agenda and Future Trade Negotiations (2000)*, p. 190.

¹⁶⁸ *Ibid.*, p. 21.

services, professional services including educational services and back-office services, as well as services through free zones and the offshore sector. In addition, the region should exploit the potential of electronic commerce for service exports.¹⁶⁹ Serious consideration should therefore be given to refusal to negotiate except on an across-the-board basis.¹⁷⁰ Negotiation on a sector-by-sector basis would allow the developed countries to dominate the content of the negotiating agenda and to press for commitments in sectors of particular economic importance to them.

5. Improvement in horizontal and sectoral commitments

India offers a number of proposals for improving the structure of commitments. These are consistent with the suggestions of experts such as Chanda. The main proposals are:

- ◆ Horizontal commitments should be amended to include the category of “individual professionals,” thereby delinking Mode 4 commitments from Mode 3 commitments;
- ◆ Relevant criteria for determination of eligibility to a particular category should be clearly specified;
- ◆ Uniform definitions and coverage of broader categories should be drawn up;
- ◆ The terms “other persons” and “specialists” should be defined to include middle and lower level professionals, thereby expanding the scope of categories covered by the horizontal commitments;
- ◆ Sectoral and sub-sectoral commitments should be more clearly defined and specific, with applicable limitations and conditions being clearly stated in the schedules;
- ◆ Categories of service providers should be disaggregated along the lines of the ISCO classification;
- ◆ Fewer occupational categories should be subject to ENTs and, in cases where ENTs apply, clear criteria should be laid down for their application.

If accepted, these proposals would go a long way toward improving the horizontal and sectoral commitments expressed in the Schedules of Commitments. CARICOM should therefore support these proposals.

6. Implementation of GATS visa

It has been stated by India that temporary service providers should not fall under the immigration procedures applicable to permanent labour flows. Two alternatives are suggested for achieving this, namely, either a GATS visa for categories of personnel covered by horizontal and sectoral commitments, or the creation of a special subset of administrative rules and procedures within the overall immigration policy framework.

This is consistent with the approach suggested by Chanda, a key element of which is the implementation of a GATS visa. Multinational corporations have suggested such visas for the entry of key personnel who are already employed and would enter the country for less than

¹⁶⁹ Report on the RNM Reflections Group on Service, Nassau, The Bahamas, March 2000, p. 5.

¹⁷⁰ *Ibid.*, p. 27.

one year, while those entering on a multiple basis within one year for less than three months at a time would bypass the visa requirements. In such cases, this mode of entry would be linked to Mode 3. On the other hand, developing countries would prefer that such movement not be limited to key personnel or by pre-employment requirements, but rather, be opened up to all service suppliers, whether or not they are providing a service in conjunction with Mode 3.

India proposed the implementation of a special visa since 1999, but to date the idea has not been taken up by any other country. It should be recognised that this would not be an easy matter to negotiate. Nevertheless, such visas would allow service suppliers to enter markets in order to supply services without time-consuming visa requirements and for this reason, the proposal should be pursued. In fact, the proposal for a GATS visa or permit has now received support from multinational companies, such as PricewaterhouseCoopers.

India has persisted with its proposal, and has submitted a more comprehensive proposal outlining the main features of the GATS visa, which are clearly based on Chanda's proposals. They include:

- ◆ Strict timeframes for granting the visa (2-4 weeks maximum);
- ◆ Flexibility for visas on shorter notice for select categories of service providers;
- ◆ Transparent and streamlined application process;
- ◆ Mechanisms to find out status of applications, causes of rejection and requirements to be fulfilled;
- ◆ Easier renewal and transfer procedures;
- ◆ GATS visas for select companies for use by its employees deputed abroad temporarily;
- ◆ Adequate in-built safeguard mechanisms to prevent temporary service providers entering the permanent labour market; and
- ◆ Developing country professionals should be exempt from social security contributions so that their comparative advantage is not affected.

CARICOM should support this proposal in the current services negotiations. Such visas would enable its Members not only to export the services of professionals, but also to facilitate the entry of foreign service suppliers, leading to transfer of specialist knowledge, expertise and skills. The entry of such skilled persons can bring significant benefits to their developing economies.

7. Alignment with countries with similar interests

CARICOM should align itself with countries that submit proposals that it can support. For example, it should support the proposals of India in its *Communication* on the proposed liberalization of movement of professionals under the GATS. It should also support the proposals of Pakistan, which are consistent with some of the Indian proposals. CARICOM countries can rely on the opportunities presented by Article IV of the GATS and should strongly consider the Brazilian proposal outlined in section 9.2.3 as a possible negotiating

stance. This would involve increased access to CARICOM markets being conditional on liberalization by developed countries of market access in sectors and modes of supply of export interest to CARICOM countries.

In general, where there is a clear and common interest between CARICOM and other developing countries on certain issues, then it should align itself with those countries. However, CARICOM should also be open to the possibility of aligning itself with developed countries which have similar interests, rather than attempting to maintain a coalition among developing countries on all issues. The practical difficulties of bringing too many issues into a coalition may imply that it is desirable to identify key groups of issues and to join in several groups.¹⁷¹

8. Mutual recognition

In addition to negotiating on the issues listed above, CARICOM should also address the issue of mutual recognition of certification and licences. Steps have already been taken within CARICOM itself toward mutual recognition. If an agreement containing common standards and measures developed by COTED were implemented, it could fall under the type of agreement referred to by Article VII of the GATS. This Article contemplates the existence of bilateral and regional agreements or arrangements for the mutual recognition of standards and qualifications. However, it also specifies that wherever appropriate, recognition should be based on multilaterally agreed criteria.¹⁷² CARICOM should therefore participate actively in the process of developing multilaterally agreed criteria. It can draw on its experiences within CARICOM in doing so. Where appropriate, it should seek the assistance of intergovernmental and non-governmental organizations which are involved in such standard-setting activities.

The framework envisaged by Article VII may be used as the basis for the development of a WTO multilateral agreement on mutual recognition. Such an agreement would have to be the subject of negotiation by GATS Members. It may be expected that such negotiations would be lengthy and difficult, due largely to the widely varying standards recognised, not only by the Members at the national level, but by sub-regional authorities, and even by the professional associations of self-regulating industries.

It has been suggested by India that the requirement of notification of mutual recognition agreements under GATS Article VII be enforced by the Council for Trade in Services, and that effective opportunities be provided to developing countries to join in negotiations for the establishment of MRAs. This effort would be facilitated by the establishment of multilateral norms to facilitate MRAs, including the development of norms for professional service sectors where no formal accreditation or licensing procedures are required, norms on the equivalence of work-related and academic qualifications, and norms for temporary licensing in the host country where such licensing procedures are absent in the home country. It has also been

¹⁷¹ *Ibid.*, p. 31.

¹⁷² GATS, Article VII.5.

suggested¹⁷³ that faster progress could be attained if harmonization were to be concentrated on industry-regulated services rather than state-regulated services.

These proposals should be supported by CARICOM, which should also consider submitting a Communication that is consistent with the Indian position.

10. Credit for autonomous liberalization

Article XIX.3 of the GATS establishes that negotiating guidelines for each round shall establish modalities for the treatment of liberalization undertaken autonomously by Members since the previous negotiations. This would permit “credit” to be given to countries that have autonomously undertaken liberalization, as many developing countries have done. However, difficulties have arisen in reaching agreement on the mechanisms for accreditation. Some developed countries are reluctant to grant credit to developing countries for market openings undertaken since the Uruguay Round, since these reforms have not been bound. This position does not take into account the fact that the developed countries are benefiting from such market openings by developing countries. The developed countries should encourage developing countries to lock in their market reforms by providing them with credit for those reforms.

CARICOM countries should contribute to these negotiations by analysing the extent of autonomous liberalization that has been undertaken by its Members since the Uruguay Round. They should press for credit to be given for such liberalization.

10.3 CARICOM Strategy for Intra-CARICOM Movement of Natural Persons

The region is in the process of fully implementing a single market and economy, within which nationals of the region can expect to receive treatment that is more favourable than that accorded to persons from outside CARICOM. The CARICOM Conference of Heads of Government have decided that the regional agreement would represent the highest level of commitment or “ceiling,” while other agreements at the hemispheric level would represent lower levels of commitment, or “floors.”

While specific commitments under the GATS are the subject of a positive list or bottom-up approach, those under Protocol II are subject to a negative list or top down approach. Under the positive list approach the only general obligations are MFN treatment and transparency, while all other liberalizing principles (market access and national treatment) are of a specific nature and arise out of the negotiating process. On the other hand, the negative list approach incorporates all the liberalizing principles as general obligations covering all modes of delivery and sectors, except those explicitly excluded from coverage.

¹⁷³ Mashsayekhi, M.: *GATS 2000: Progressive Liberalization*, in UNCTAD: *Positive Agenda and Future Trade Negotiations* (2000), p. 181.

This is the case with Protocol II, since the principles of market access and national treatment apply to all measures that affect the right of establishment, the provision of services and the movement of capital between CARICOM countries, unless excluded by Members. Additionally, Protocol II covers all four modes of supply specified under the GATS. With respect to the movement of natural persons, Protocol II permits non-wage earning, or self-employed, nationals of one Member State to engage in “approved” activities in another Member State, “under the same conditions enjoyed by nationals of that Member State.”¹⁷⁴ It is not clear whether the elimination of discrimination on the grounds of nationality is a general obligation to be applied to all sectors and activities, or only to those activities approved by the relevant Member State. This is an aspect of Protocol II that needs to be clarified.

Further, those sectors that are going to be excluded at the regional level should not be included in the GATS specific commitments, in order to avoid a situation where third countries could receive more favourable treatment than other CARICOM Member States. This would be contrary to the stated intention of the CARICOM Heads of Government.

The full implementation of Protocol II should be expedited, since commitments for preferential treatment regionally are in danger of being superseded by commitments that may arise in the current GATS negotiations. Under Protocol II as it stands, certain nationals of CARICOM Member States can expect to receive treatment that is more favourable than that accorded to persons from outside CARICOM. The following recommendations are made with a view to fully implementing freedom of movement:

1. Steps should be taken to address outstanding mutual recognition issues. The domestic legislation has taken a first step, but CARICOM needs to go further and not restrict entry to those with tertiary qualifications.
2. The Council on Human and Social Development should concentrate its efforts on establishing common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualifications. Further, efforts should be made to extend the right to free movement to persons with skills other than academic qualifications and to remove remaining restrictions on establishment of services and movement of natural persons.
3. The commitments expressed in the domestic legislation could be improved. The domestic legislation should go further and confer national treatment on persons who are certified by another CARICOM Member State. This would be an exercise of good faith in the other Members’ assessment procedures. This step should be facilitated by the fact that they have essentially the same conditions for approval of qualifications.
4. The domestic legislation does not address the issue of appeals against decisions of the Minister or other authority refusing entry. While there are procedures available such

¹⁷⁴ Article 36.

as judicial review, it would be preferable to enact specific procedures for enforcing such commitments at the national level, since these could lead to more speedy and efficient resolution of appeals against decisions.

10.4 CARICOM Strategy for Negotiations on Regional Bilateral Agreements

The specific commitments on market access and national treatment under the *Agreement on Trade in Services* between CARICOM and the Dominican Republic (ATS) have not yet been negotiated. These commitments can go further than the commitments made under the GATS, thereby permitting the Members the opportunity to further develop service sectors that are of particular interest to them. However, the question whether the ATS is consistent with Article V of the GATS needs to be addressed; the conditions that must be satisfied in order that a regional or sub-regional agreement be GATS-consistent have been discussed elsewhere.¹⁷⁵

The area of services under the other bilateral agreements with Venezuela and Colombia should also be negotiated. However, it would be in the interest of the parties involved if these were consistent with the CARICOM/Dominican Republic Agreement, since these agreements could together mark the beginning of a network of agreements designed to liberalize trade in services in the region.

A model schedule of commitments could be developed under the three agreements. This model schedule could form the basis for negotiating trade and economic agreements with other non-CARICOM countries or sub-regional groupings in the hemisphere and could be used in the FTAA negotiations.

10.5 CARICOM Strategy for Negotiations on the FTAA

The FTAA would represent a single undertaking of mutual rights and obligations which means that its adherents will have to agree to all or none of the provisions of the negotiated text. However, it has not yet been agreed whether the FTAA would be based on a negative list or a positive list approach. This fact makes it impossible at this stage for the parties to agree on the general framework of the agreement. Nevertheless, CARICOM must decide whether it will support the negative list approach to the liberalization of trade in services under the FTAA, as currently exists under the NAFTA.

The advantage of the negative list approach is transparency and a guarantee of national treatment for investors that may outweigh the burden involved in the assessment of all service sectors and the laws and measures affecting them. It would also promote a greater and faster liberalization of trade in services, as occurred with the NAFTA. Establishing the negative list approach would not be an easy task, since it requires that negotiators must consider and include all of the regulatory measures in their national economies which may discriminate

¹⁷⁵ See section 2.1.7.

against foreign service suppliers. If it were decided to adopt a negative list approach at the FTAA, CARICOM would have to commence or accelerate the process of reviewing the service sectors in each Member State and the measures that affect trade in those sectors.

On the other hand, there are advantages to the positive list approach that CARICOM may wish to advance. This approach would allow the parties to the FTAA agreement to assume limited general obligations, as was the case with the GATS, with a view to a gradual liberalization of trade in services. It would also allow CARICOM countries more flexibility to negotiate for special and differential treatment. It is recommended that CARICOM negotiate for the structuring of the FTAA Agreement as one based on a positive list approach.

Further, it has been argued by CARICOM that the FTAA should allow for different treatment measures that would be negotiated in accordance with the particular concerns of the smaller developing economies.¹⁷⁶ This concept would separate developing countries into “small developing economies” and presumably, “larger developing economies.” One way of reflecting such special and differential treatment for small developing countries would be for the developed countries in the region to use the negative list approach for making commitments under the FTAA, while developing countries – or small developing countries – would use the positive list approach to making commitments. It is not clear how acceptable this proposal will be to other FTAA parties. CARICOM should therefore consider whether, as an alternative to negotiating for a positive list approach to be utilised by all Members, it wants to negotiate for a special dispensation for smaller economies expressed in the use of the negative list approach by developed country Members (and possibly, larger developing country Members) and the positive list approach by small developing country Members. To date, it has succeeded in securing an agreement to include the small economies issue as a permanent topic on the Trade Negotiating Committee’s agenda. The TNC subsequently instructed all negotiating groups to ensure that the small economies issue be addressed.

CARICOM has indicated its intention to negotiate with a single voice and common positions in the FTAA process. The issue of the movement of natural persons has been discussed in some detail at the level of the deliberations of the Working Group on Services. It is clearly an issue of great concern to many countries involved in the process and CARICOM should add its voice.

Although NAFTA has gone a long way toward liberalization of trade in services, it has permitted access to the territories of the Parties on the condition that natural persons should satisfy the requirements for immigration and employment in that territory as well as any other requirements as to qualifications and licensing that may be applicable to the relevant occupation. It is possible that the NAFTA countries will negotiate for the movement of natural persons to be restricted to the levels permitted under NAFTA. This is extremely narrow in terms of the persons allowed entry, since in many cases the recognition of qualifications depends upon acceptance by various sub-regional bodies. The other countries

¹⁷⁶ OAS Trade Unit Studies: *Mechanisms and Measures to Facilitate the Participation of Smaller Economies in the Free Trade Area of the Americas: An Update*, March 1998, p. 2.

that are part of the FTAA process, including CARICOM, must therefore press for the adoption of common professional standards, greater access of natural persons supplying services, the removal of the visa requirement for persons providing services under the FTAA, and the avoidance of double taxation.

10.6 CARICOM Strategy for Negotiations on the Cotonou Agreement

There is a commitment on the part of the EC countries to support the ACP countries in their efforts to strengthen their capacity in the supply of services, with particular attention being paid to services related to labour, business, distribution, finance, tourism, culture, and construction and related engineering services. This is a commitment to an ongoing process and, as a result, gives CARICOM the opportunity to grant wider market access and national treatment commitments as well as seek greater commitments from the EC in these sectors. It should also be borne in mind that in 2002 the EC will demand some reciprocal arrangements on services, with the commencement in September of that year of formal negotiations for a successor to Lomé IV. Therefore, CARICOM must formulate a response for dealing with the services sectors in which the EC can be expected to make demands. In formulating this response, analysis of data on the various sectors is required in order to identify the ones in which the region would be prepared to make commitments, as well as opportunities for greater access for exports of services.

CARICOM should develop a framework for negotiating for greater commitments in the sectors that are of particular interest to its Members. This may also take the form of the model schedule of commitments discussed earlier, or may be based on it in whole or in part. It should also be determined whether the EC's demands for commitments in certain sectors are compatible with CARICOM's regional, hemispheric and multilateral commitments.

10.7 Conclusion

CARICOM should not neglect bilateral and regional liberalization at the expense of multilateral liberalization of trade in services. It should adopt an integrated approach to all negotiations on trade in services. There is a possibility that liberalization of trade in services at the broader regional level will proceed more slowly than liberalization at the multilateral level and may be eclipsed by the GATS 2000 round of services negotiations which have commenced. Nevertheless, there is a strong likelihood that greater liberalization of trade in services will occur at the bilateral and regional levels than at the GATS level. Consequently, the full implementation of Protocol II should be the immediate focus for CARICOM. It would be in a much stronger position to negotiate on the movement of natural persons if there were such free movement within the Single Market and Economy.

With respect to GATS negotiations, CARICOM should make written submissions on the procedural aspects of the GATS that are still being negotiated. Included in negotiating guidelines should be mechanisms for the recognition of autonomous liberalization undertaken by developing countries. It should also prepare a comprehensive position on the movement of

natural persons via Mode 4, along the lines of the submission by India. Written submissions on the clarification of Article V would also put CARICOM in a leading role on this issue.

In the case of the FTAA negotiations, CARICOM should seek clarification of the approach – negative list or positive list – that will form the basis of the FTAA provisions on services. It should also negotiate for the positive list approach to be applied generally, and, if the developed and larger developing country Members insist on the application of the negative list approach, for its application to small developing countries only.

With regard to the bilateral treaties to which CARICOM is a party, it should consider the development of a model schedule that includes commitments on the movement of natural persons, to be used as a basis for negotiations with the other parties to those treaties. Such a model schedule could also form the basis for negotiations with the EC for a successor agreement to the Lomé IV Agreement.

Underlying the steps that CARICOM takes is its need to participate fully at all levels of negotiation regarding the movement of natural persons. It should therefore carefully assess the requirements of the respective labour markets of its Member States, and adopt a comprehensive and coherent position on the issue of the movement of natural persons.

Commitments in service sectors by major country group, indicating number of countries

Service Activity	DC	LDC	Transition	Total	Service Activity	DC	LDC	Transition	Total
1. BUSINESS SERVICES					1. BUSINESS SERVICES				
A. Professional Services					E. Rental/leasing without operators				
a. Legal	25	19	4	48	a. Ships	22	5	3	30
b. Accounting, auditing & bookkeeping	25	26	4	55	b. Aircraft	22	4	1	27
c. Taxation	22	12	3	40	c. Other transport equipment	22	4	1	27
d. Architectural	25	21	3	49	d. Other machinery and equipment	24	7	1	32
e. Engineering	25	27	4	56	e. Other	4	2	1	7
f. Integrated engineering	24	11	3	38	F. Other business services				
g. Urban planning & landscape architecture	23	11	3	37	a. Advertising services	23	16	4	43
h. Medical & dental	18	15	4	37	b. Market research and public opinion polling	24	14	3	41
i. Veterinary	21	3	3	27	c. Management consulting	24	25	4	53
j. Midwives, nurses, physiotherapists & para-medical personnel	17	2	1	20	d. Related to management consulting	24	8	2	34
k. Other	14	3	0	17	e. Technical testing and analysis	21	13	1	35
B. Computer and related services					f. Incidental to agriculture, hunting and forestry	24	11	4	39
a. Consultancy services related to the installation of computer hardware	24	27	4	55	g. Incidental to fishing	21	9	1	31
b. Software implementation	24	27	4	55	h. Incidental to mining	21	11	2	34
c. Data processing	24	27	4	55	i. Incidental to manufacturing	6	5	1	12
d. Database	23	21	4	48	j. Incidental to energy distribution	2	1	1	4
e. Other	23	7	2	32	k. Placement and supply of personnel	20	4	1	25
C. Research and development					l. Investigation and security	20	1	1	22
a. R&D on natural sciences	3	11	1	15	m. Related scientific and technical consulting services	12	5	3	20
b. R&D on social sciences and humanities	22	12	3	37	n. Maintenance and repair on equipment	23	11	3	37
c. Interdisciplinary R&D	4	9	1	14	o. Building-cleaning services	25	6	3	34
D. Real estate services					p. Photographic services	23	5	4	32
a. Owned or leased property	22	2	0	24	q. Packaging services	20	4	3	27
b. On a fee or contract basis	23	3	0	26	r. Printing, publishing	21	3	5	29
					s. Convention services	22	7	0	29
					t. Other	19	11	1	31

Commitments in service sectors by major country group, indicating number of countries

Service Activity	DC	LDC	Transition	Total	Service Activity	DC	LDC	Transition	Total
2. COMMUNICATION SERVICES					2. COMMUNICATION SERVICES				
a. Postal services	0	3	0	3	E. Other	0	6	0	6
b. Courier services	4	15	3	22	3. CONSTRUCTION AND RELATED ENGINEERING SERVICES				
C. Telecommunications services					A. General construction work for buildings	24	22	3	49
a. Voice telephone services	0	10	0	10	B. General construction work for civil engineering	24	21	3	48
b. Packet-switched data transmission services	2	9	0	11	C. Installation and assembly work	23	19	3	45
c. Circuit-switched data transmission services	2	10	0	12	D. Building completion and finishing work	23	13	3	39
d. Telex services	1	6	0	7	E. Other	20	13	3	36
e. Telegraph services	0	6	0	6	4. DISTRIBUTION SERVICES				
f. Facsimile services	1	8	2	11	A. Commission agents' services	23	4	0	27
g. Private leased circuit services	1	7	0	8	B. Wholesale trade services	25	8	4	37
h. Electronic mail	25	19	4	48	C. Retailing services	25	9	4	38
i. Voice mail	25	17	4	46	D. Franchising	23	5	3	31
j. On-line information and data base retrieval	25	17	4	46	E. Other	14	0	0	14
k. Electronic data interchange	25	21	4	50	5. EDUCATIONAL SERVICES				
l. Enhanced/value-added facsimile services, including store and forward, store and retrieve	9	16	4	29	A. Primary education services	18	4	4	26
m. Code and protocol conversion	25	12	4	41	B. Secondary education services	19	6	3	28
n. On-line information and/or data processing (incl. transaction processing)	9	16	4	29	C. Higher education services	18	3	4	25
o. Other	4	15	2	21	D. Adult education	18	1	4	23
D. Audiovisual services					E. Other education services	3	4	2	9
a. Motion picture and video tape production and distribution services	3	10	0	13	6. ENVIRONMENTAL SERVICES				
b. Motion picture projection services	3	3	1	6	A. Sewage services	23	6	2	31
c. Radio and television services	2	1	0	3	B. Refuse disposal services	24	6	3	33
d. Radio and television services	2	4	0	6	C. Sanitation and similar services	23	5	1	30
e. Sound recording	2	2	0	4	D. Other	23	6	1	30
f. Other	2	2	0	4					

Commitments in service sectors by major country group, indicating number of countries

Service Activity	DC	LDC	Transition	Total	Service Activity	DC	LDC	Transition	Total
7. FINANCIAL SERVICES					7. FINANCIAL SERVICES				
A. All insurance and insurance-related services					g. Participation in issues of all kinds of securities	23	27	4	54
a. Life, accident and health insurance services	24	38	4	66	h. Money broking	24	13	0	37
b. Non-life insurance services	25	37	4	66	i. Asset management	23	23	2	48
c. Reinsurance and retrocession	25	41	4	70	j. Settlement and clearing services for financial assets, inclu. securities, derivative products, and other negotiable instruments	23	13	3	39
d. Services auxiliary to insurance (including broking and agency services)	24	36	4	64	k. Advisory and other auxiliary financial services	23	28	2	53
B. Banking and other financial services (excluding insurance)					l. Provision and transfer of financial information, financial data processing and related software by providers of other financial services	23	20	2	45
a. Acceptance of deposits and other repayable funds from the public	24	35	4	63	C. Other	1	10	0	11
b. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions	23	35	4	62	9. HEALTH RELATED AND SOCIAL SERVICES (other than those listed under professional services)				
c. Financial leasing	24	22	2	48	A. Hospital services	15	15	2	32
d. All payment and money transmission services	24	25	3	52	B. Other human health services	2	4	1	7
e. Guarantees and commitments	23	24	4	51	C. Social services	13	1	1	15
f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise the following					9. TOURISM AND TRAVEL RELATED SERVICES				
f.1. Money market instruments	23	21	3	47	A. Hotel and restaurants (incl. catering)	25	69	4	98
f.2. Foreign exchange	24	23	3	50	B. Travel agencies and tour operator services	25	53	4	82
f.3. Derivative products, including, but not limited to futures and options	24	11	1	36	C. Tourist guide services	24	24	2	50
f.4. Exchange rate and interest rate instruments, including products such as swaps and forward rate agreements	23	15	3	41	D. Other	1	12	0	13
f.5. Transferable securities	22	20	3	45					
f.6. Other negotiable instruments and financial assets, including bullion	24	15	0	39					

Commitments in service sectors by major country group, indicating number of countries

Service Activity	DC	LDC	Transition	Total	Service Activity	DC	LDC	Transition	Total
10. RECREATIONAL, CULTURAL AND SPORTING ACTIVITIES					11. TRANSPORT SERVICES				
A. Entertainment services (other than audiovisual)	17	16	1	34	e. Supporting services for air transport	19	14	2	35
B. News agency services	22	1	0	23	D. Space transport	2	0	0	2
C. Libraries, archive, museums and other cultural	5	4	0	9	E. Rail transport services				
D. Sporting and other recreational services	20	15	1	36	a. Passenger transportation	4	4	1	9
E. Other	2	2	0	4	b. Freight transportation	4	5	1	10
11. TRANSPORT SERVICES					c. Pushing and towing services	3	2	0	5
A. Maritime transport services					d. Maintenance and repair of rail transport equipment	19	4	3	26
a. Passenger transportation	3	16	0	19	e. Supporting services for rail transport services	2	3	0	5
b. Freight transportation	3	22	0	25	F. Road transport services				
c. Rental of vessels with their crew	14	6	0	20	a. Passenger transportation	23	9	0	32
d. Maintenance and repair of vessels	1	8	1	9	b. Freight transportation	22	14	0	36
e. Pushing and towing services	1	3	0	4	c. Rental of commercial vehicles with operator	18	2	0	20
f. Supporting services for maritime services	1	6	0	7	d. Maintenance and repair of road transport equipment	22	4	3	29
B. Internal waterways transport					e. Supporting services for road transport services	2	2	0	4
a. Passenger transportation	1	4	2	7	G. Pipeline transport				
b. Freight transportation	1	1	2	4	a. Transportation of fuels	2	0	1	3
c. Rental of vessels with crew	13	0	2	15	b. Transportation of other goods	3	1	0	4
d. Maintenance and repair of vessels	1	0	3	4	H. Services auxiliary to all modes of transport				
e. Pushing and towing services	2	0	2	4	a. Cargo-handling services	3	11	0	14
f. Supporting for internal waterway transport	2	2	2	6	b. Storage and warehouse services	21	13	0	35
C. Air transport services					c. Freight transport agency services	21	9	0	30
a. Passenger transportation	0	3	1	4	d. Other	19	8	0	27
d. Maintenance and repair of aircraft	20	13	4	37	I. Other transport services	14	6	0	20

DC: Developed countries

LDC: Less developed or developing countries

Commitments on service activities of individual Member countries

Member	Number of service activities inscribed in schedule of commitments	Member	Number of service activities inscribed in schedule of commitments
Developed Economies			
Australia	93	Liechtenstein	78
Austria	109	New Zealand	79
Canada	92	Norway	96
European Union	106	South Africa	74
Finland	75	Sweden	89
Iceland	96	Switzerland	107
Japan	109	United States	101
Developing Economies			
Algeria	1	Kuwait	44
Antigua & Barbuda	17	Macau	24
Argentina	57	Madagascar	2
Aruba	22	Malaysia	69
Bahrain	4	Malta	8
Bangladesh	1	Mauritius	11
Barbados	6	Mexico	68
Belize	1	Morocco	41
Benin	13	Mozambique	17
Bolivia	6	Myanmar	3
Brazil	43	Namibia	3
Brunei Darussalam	21	Netherlands Antilles	22
Burkina Faso	2	New Caledonia	7
Cameroon	3	Nicaragua	45
Chile	31	Niger	5
Colombia	42	Nigeria	29
Congo	4	Pakistan	35
Costa Rica	14	Paraguay	11
Cote d'Ivoire	15	Peru	27
Cuba	33	Philippines	45
Cyprus	9	Romania	45
Dominica	5	Saint Lucia	8
Dominican Republic	68	Senegal	22

Commitments on service activities of individual Member countries

Member	Number of service activities inscribed in schedule of commitments	Member	Number of service activities inscribed in schedule of commitments
Developing Economies			
Egypt	28	Singapore	55
El Salvador	25	Sri Lanka	2
Fiji	1	St. Vincent & Grenadines	8
Gabon	14	Suriname	5
Ghana	32	Swaziland	9
Grenada	5	Tanzania	1
Guatemala	11	Thailand	71
Guyana	17	Trinidad & Tobago	19
Honduras	14	Tunisia	11
Hong Kong	61	Turkey	72
India	33	Uganda	2
Indonesia	7	Uruguay	24
Israel	49	Venezuela	52
Jamaica	32	Zambia	15
Kenya	22	Zimbabwe	20
Republic of Korea	80		
Transition Economies			
Czech Republic	81	Poland	54
Hungary	89	Slovak Republic	82

CARICOM Legislation on Movement of CARICOM Nationals

1	2	3	4	5	6	7	8	9
Member State	Legislation	Skilled persons eligible to enter and work	CARICOM national with certificate from State to which entry is sought	Spouse and dependent relatives of CARICOM national in column 4	CARICOM national with certificate from another CARICOM Member State	Spouse and dependent relatives of CARICOM national in column 6	Other categories of persons permitted to enter and work	Reciprocity
Antigua & Barbuda	Caribbean Community Skilled Nationals Act, Act No. 3 of 1997	Graduates of the University of the West Indies, University of Guyana, University of Suriname, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister	Entry for a period of indefinite duration; freedom to leave and re-enter Antigua and Barbuda without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use in business	No restriction on freedom of movement including the freedom to leave and re-enter Antigua and Barbuda without further permission	Entry for a period of six months; freedom to leave and re-enter Antigua and Barbuda without further permission during that period	For duration of permission, no restriction on freedom of movement including the freedom to leave and re-enter Antigua and Barbuda without further permission	Not yet	Rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges; in the absence of proof to the contrary, rights and privileges presumed to be the same as under this Act
Barbados	Immigration (Amendment) Act, Act No. 9 of 1996	Holder of degree, diploma or equivalent qualification from the University of the West Indies, University of Guyana, University of Suriname or other institution approved by Minister of Education	No certificate required, but evidence of qualifications, employment or self-employment, or employment with certain Caribbean entities; may remain for duration of employment and may take up new or additional employment	Spouse, minor children and dependent relatives may accompany CARICOM national, but these are prohibited from engaging in employment unless they also satisfy the same requirements or obtain a work permit	This distinction is not made	This distinction is not made	Not yet	No requirement for reciprocity

CARICOM Legislation on Movement of CARICOM Nationals

1	2	3	4	5	6	7	8	9
Member State	Legislation	Skilled persons eligible to enter and work	CARICOM national with certificate from State to which entry is sought	Spouse and dependent relatives of CARICOM national in column 4	CARICOM national with certificate from another CARICOM Member State	Spouse and dependent relatives of CARICOM national in column 6	Other categories of persons permitted to enter and work	Reciprocity
Belize	Caribbean Community (Free Movement of Skilled Persons) Act, Act No. 45 of 1999	Graduates of the University of the West Indies, University of Guyana, University of Suriname, persons with other qualifications prescribed by the Minister, persons with qualifications certified by the University of Belize or University College of Belize as satisfying conditions for recognition	Entry for a period of indefinite duration; freedom to leave and re-enter Belize without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use as residence or in business	Any dependant of national of a qualifying CARICOM State may enter and remain in Belize for an indefinite period	Entry for a period of six months; freedom to leave and re-enter Belize without further permission	Any dependant of CARICOM national may enter and remain in Belize for six months	Persons certified by competent authority of a qualifying CARICOM State as representing that State in sports; musicians, artists and media workers certified as such by the competent authority of the qualifying CARICOM State of which they are nationals	Act to apply to nationals of qualifying CARICOM State whose laws provide treatment for citizens of Belize which is not less than the treatment provided for by the Act for those nationals
Dominica	Caribbean Community Skilled Nationals Act, Act No. 30 of 1995	Graduates of the University of the West Indies, University of Guyana, University of Suriname, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister/accrediting authority	*Entry for a period of indefinite duration; freedom to leave and re-enter Dominica without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use as residence or in business	No restriction on freedom of movement including the freedom to leave and re-enter Dominica without further permission	Entry for a period of six months; freedom to leave and re-enter Dominica without further permission during that period	For duration of permission, no restriction on freedom of movement including the freedom to leave and re-enter Dominica without further permission	Not yet	Rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges; in the absence of proof to the contrary, rights and privileges presumed to be the same as under this Act

CARICOM Legislation on Movement of CARICOM Nationals

1	2	3	4	5	6	7	8	9
Member state	Legislation	Skilled persons eligible to enter and work	CARICOM national with certificate from state to which entry is sought	Spouse and dependent relatives of CARICOM national in column 4	CARICOM national with certificate from another CARICOM member	Spouse and dependent relatives of CARICOM national in column 6	Other categories of persons permitted to enter and work	Reciprocity
Grenada	Caribbean Community Skilled Nationals Act, Act No. 32 of 1995	Graduates of the University of the West Indies, University of Guyana, University of Suriname, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister or accrediting authority	Entry for a period of indefinite duration; freedom to leave and re-enter Grenada without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use as residence or in business	No restriction on freedom of movement including the freedom to leave and re-enter Grenada without further permission	Entry for a period of six months; freedom to leave and re-enter Grenada without further permission during that period	For duration of permission, no restriction on freedom of movement including the freedom to leave and re-enter Grenada without further permission	Not yet	Rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges; in the absence of proof to the contrary, rights and privileges presumed to be the same as under this Act
Guyana	Immigration Act, as amended by Immigration (Amendment) Act, Act No. 9 of 1992 Caribbean Community (Free Entry of Skilled Nationals) Act, Act No. 6 of 1996	Graduates of the University of the West Indies, University of Guyana, University of Suriname, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister	Entry for a period of indefinite duration; freedom to leave and re-enter Guyana without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use as residence or in business	No restriction on freedom of movement including the freedom to leave and re-enter Guyana without further permission	Entry for a period of six months; freedom to leave and re-enter Guyana without further permission during that period	For duration of permission, no restriction on freedom of movement including the freedom to leave and re-enter Guyana without further permission	Other skilled and professional persons; contract workers on a seasonal basis; persons engaged in visual and performing arts, sports and the media	Rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges; in the absence of proof to the contrary, rights and privileges presumed to be the same as under this Act

CARICOM Legislation on Movement of CARICOM Nationals

1	2	3	4	5	6	7	8	9
Member state	Legislation	Skilled persons eligible to enter and work	CARICOM national with certificate from state to which entry is sought	Spouse and dependent relatives of CARICOM national in column 4	CARICOM national with certificate from another CARICOM member	Spouse and dependent relatives of CARICOM national in column 6	Other categories of persons permitted to enter and work	Reciprocity
Jamaica	Caribbean Community (Free Movement of Skilled Persons) Act, Act No. 18 of 1997	Graduates of the University of the West Indies, University of Guyana, University of Suriname, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister	Entry for a period of indefinite duration; freedom to leave and re-enter Jamaica without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on freedom to acquire property for use as residence or in business	No restriction on freedom of movement including the freedom to leave and re-enter Jamaica without further permission; **or on freedom to acquire property for use as residence or business; ***or on freedom to engage in gainful employment or other occupation	Entry for a period of six months; freedom to leave and re-enter Jamaica without further permission; no restriction on freedom to acquire property for use as residence or business; or on freedom to engage in gainful employment or other occupation	No restriction on freedom of movement including the freedom to leave and re-enter Jamaica without further permission; **or on freedom to acquire property for use as residence or business; ***or on freedom to engage in gainful employment or other occupation	Persons certified by competent authority of a qualifying CARICOM State as representing that State in sports; musicians artists and media workers certified as such by the competent authority of the qualifying CARICOM State of which they are nationals	Act to apply to nationals of qualifying CARICOM State whose laws provide treatment for citizens of Jamaica which is not less than the treatment provided for by the Act for those nationals
Saint Lucia	Caribbean Community Skilled Nationals Act, Act No. 18 of 1996	Graduates of the University of the West Indies, University of Guyana, University of Suriname, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister or accrediting authority	Entry for a period of indefinite duration; freedom to leave and re-enter Saint Lucia without further permission; no restriction on right to engage in gainful employment or other occupation	No restriction on freedom of movement including the freedom to leave and re-enter Saint Lucia without further permission	Entry for a period of six months; freedom to leave and re-enter Saint Lucia without further permission	No restriction on freedom of movement including the freedom to leave and re-enter Saint Lucia without further permission	Not yet	A qualifying CARICOM State's reciprocal rights and privileges comprise those conferred by that State on the holder of a Saint Lucian passport under analogous conditions; rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges

CARICOM Legislation on Movement of CARICOM Nationals

1	2	3	4	5	6	7	8	9
Member State	Legislation	Skilled persons eligible to enter and work	CARICOM national with certificate from state to which entry is sought	Spouse and dependent relatives of CARICOM national in column 4	CARICOM national with certificate from another CARICOM member	Spouse and dependent relatives of CARICOM national in column 6	Other categories of persons permitted to enter and work	Reciprocity
St. Vincent and the Grenadines	Immigration (Caribbean Community Skilled Nationals) Act, Act No. 4 of 1997	Graduates of the University of the West Indies, University of Guyana, University of Suriname, University of Technology of Jamaica, university with comparable academic standing, any qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister or accrediting authority	Not applicable	Not applicable	Entry for a period of indefinite duration; freedom to leave and re-enter St. Vincent and the Grenadines without further permission; no restriction on right to engage in gainful employment or other occupation; subject to provisions of Aliens Land-Holding Act, no restriction on freedom to acquire property for use as residence or in business	Entry for the duration of the residence of the CARICOM skilled person; freedom to leave and re-enter St. Vincent and the Grenadines without further permission; ***no restriction on right to engage in gainful employment or other occupation; **subject to provisions of Aliens Land-Holding Act, no restriction on freedom to acquire property for use as residence or in business	Not yet	Rights and privileges conferred by Act not to exceed other CARICOM State's reciprocal rights and privileges; in the absence of proof to the contrary, rights and privileges conferred on a citizen of a qualifying CARICOM State satisfying the conditions corresponding with those required under this Act
Trinidad and Tobago	Immigration (Caribbean Community Skilled Nationals) Act, 1996, Act No. 26 of 1996 (Not yet in force) Immigration (Amendment) Regulations 1993, Legal Notice No. 70 of	Graduates of the University of the West Indies, University of Technology of Jamaica, University of Guyana, University of Suriname, university with comparable academic standing, any	Entry for a period of indefinite duration; freedom to leave and re-enter Trinidad and Tobago without further permission; no restriction on right to engage in gainful employment or other occupation; no restriction on	No restriction on freedom of movement including the freedom to leave and re-enter Trinidad and Tobago without further permission	Entry for a period of six months; freedom to leave and re-enter Trinidad and Tobago without further permission; may apply for permission to remain for an indefinite period if granted a certificate by the	No restriction on freedom of movement including the freedom to leave and re-enter Trinidad and Tobago without further permission	Any person who is not a member of the prohibited class under section 8 of the Immigration Act may enter and engage in gainful occupation in Trinidad and Tobago for up to thirty days without a work permit; not restricted to	A qualifying CARICOM State's reciprocal rights and privileges comprise the rights and privileges conferred by that State on Trinidad and Tobago national satisfying conditions analogous to those required under this

	1993	qualification certified by Secretary-General of CARICOM, qualifications prescribed by Minister or accrediting authority	freedom to acquire property for use as residence or in business		Minister		CARICOM nationals	Act
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- * The Act refers to two types of certificate – one granting the right to entry for an indefinite duration and the other granting the right to stay for six months. Unlike the other Acts, however, both of these depend on certificates issued by another CARICOM State. The distinction being drawn between them is not made clear in the Act. It is not known whether this was intended, or whether in the case of entry for an indefinite period, the certificate must in fact be issued by the government of Dominica.
- ** It is probably not intended to create a separate right for dependent relatives to acquire property for use as a residence or in business, and in practice, the right may be restricted to the holder of the certificate.
- *** The Act does not impose any limitations on the spouse and dependent relatives of a CARICOM national permitted entry under the Act, such as the requirement of a certificate under the Act or a work permit. This is inconsistent with the purpose of the Act, and may not apply in practice.

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