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**REPORT OF THE EXPERT MEETING ON MARKET ACCESS ISSUES IN MODE 4
(MOVEMENT OF NATURAL PERSONS TO SUPPLY SERVICES) AND
EFFECTIVE IMPLEMENTATION OF ARTICLE IV ON INCREASING THE
PARTICIPATION OF DEVELOPING COUNTRIES**

Held at the Palais des Nations, Geneva
from 29 to 31 July 2003

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Chapter I

CHAIRPERSON'S SUMMARY

1. The Expert Meeting on Market Access Issues in Mode 4 (Movement of Natural Persons to Supply Services) and Effective Implementation of Article IV on Increasing the Participation of Developing Countries was held in Geneva from 29 to 31 July 2003. Individual experts put forward their views on how Governments of developed and developing countries could play an active role at the national level and in multilateral negotiations in order to promote trade in services through mode 4. The following text summarizes their suggestions. It is intended to reflect the richness and diversity of the views expressed.

2. The Expert Meeting recognized that liberalization of mode 4 could be a win-win welfare situation for developed and developing countries given the right policy and regulatory framework at the national and international levels. Movement of natural persons supplying services under the GATS exceeds its pure economic, trade and competitiveness benefits for developing countries. It is an effective tool in addressing primary development needs, including alleviation of poverty and gender mainstreaming into services industries. It is also a way to generate investment and savings, promote development of other sectors of the economy and trade, ensure transfer of technology, entrepreneurship and knowledge, and build human capacities. There is therefore a strong political and economic case in favour of more comprehensive and commercially meaningful market access commitments in mode 4. GATS negotiations on mode 4 provide a unique opportunity to redeem the reputation of globalization and trade in the interest of developing and least developed countries. This is an important development benchmark for the Doha Work Programme from developing countries' perspective and would make the international trading system more equitable and balanced from that same perspective.

Economic and development importance of mode 4

3. Liberalization of the movement of labour across boundaries is the unfinished business of globalization. While there has been significant progress in the liberalization of capital flows, international mobility of labour is still seriously hampered by a variety of obstacles imposed by countries. Both factors of production should receive the same treatment, not only for reasons of equity, but also because the liberalization of the movement of capital only will not generate optimum worldwide welfare gains. Experts highlighted the result of a study showing that, if quotas were increased by an amount equal to 3% of developed countries' labour forces, there would be an increase in world welfare of \$US 156 billion per year. However, the question was raised regarding the economic model for this assessment. Liberalization of labour movement would progressively result in the convergence of productivity and income between countries. Currently, wages differ by a factor of more than ten to one across developed and developing countries, and this provides the basis for cost-quality competitiveness, resulting in comparative advantages for developing countries. Moreover, demographic transition in industrialized countries means that they must increasingly rely on foreign workers to fulfil their labour requirements.

4. Whilst there are regulations governing the movement of labour, a significant proportion of such movement takes place through more informal arrangements where regulations are relaxed. A view was expressed that specifically regulating mode 4 trade might actually result in less mode 4 trade if these informal arrangements suffer as a result. It is important to distinguish between temporary movement of service suppliers under mode 4 and permanent migration, since confusion on this account results in irrational resistance to liberalization in mode 4. On the contrary, liberalization and orderly movement through mode 4 could pre-empt some of the problems currently generated by permanent migration and illegal labour flows, which are a matter of a worldwide concern. There are already experiences, as in the case of labour movement between Ecuador and Spain, CARICOM, Mexico and Canada, where regulated temporary movement has helped to address some of the migration problems between the countries concerned.

5. In addition to the advantages of predictability in the international trading system, several experts noted the economic argument for opening up service markets for workers with all levels of skills, namely gains in productivity on account of their movement from their home to their host country. It follows from this that the productivity gains from the movement of lower-skill-level service suppliers would be greater and have the benefit of better opportunities and financial gains whilst meeting economic needs in the host country in less skilled service sectors. The movement of skilled persons also produces significant gains, especially in the case of supplying countries with larger pools of skilled human resources to tap. In those cases the advantages of brain circulation come into play, and brain drain concerns would arise only in respect of those countries and professions where domestic human resources are limited. Whilst both high- and low-skilled workers contribute to development of financial resources and physical and social infrastructure in their home countries, less skilled workers tend to have stronger links with home countries and therefore often account for more remittances.

6. Remittances are a key indicator of the economic and developmental benefit to developing countries associated with mode 4, and their increasing reliance on remittances as a source of development finance, including for poverty reduction, and as a revenue earner in terms of GDP is outstripping other prominent trade and economic activities, such as tourism, agriculture, commodities and textiles. In 2001, officially recorded remittances stood at US\$ 63.8 billion, as against US\$ 50 billion in official development assistance. The total amount of resources remitted may, however, be two or three times higher, since a large number of transactions are effected through informal channels. Policies are needed to support technology transfer that facilitates remittances or investments by making such transfers less costly. The transaction costs related to sending remittances sometimes reach 10 to 15 per cent of the total value, with the global business totalling US\$ 6 to 7 billion annually. Further work on this issue by UNCTAD was suggested. In developing countries, remittances represent on average 2.06 per cent of final household consumption expenditure, but in some countries they can amount to 16 per cent. The Inter-American Development Bank recently calculated that a little more than US \$30 billion dollars in remittances were circulated last year to Latin America. In the case of Ecuador, nearly 16 per cent of its active working population is working on a temporary basis abroad. Similarly, in other developing regions remittances have

become an increasingly important income source, in the case of Sri Lanka overtaking income earned from tea exports. Remittances stand above 10 per cent as a share of exports of goods and services for more than 30 countries, and exceed 60 per cent for some. Remittances to a home country become savings in banks or investments in the local market, producing spillover and multiplier effects, spurring economic growth and development, and generating employment locally. In essence, remittances have become a key source of global finance contributing to development.

Scope of mode 4 under the GATS

7. GATS recognizes that service delivery requires the presence of natural persons from another WTO Member as service suppliers abroad, but it does not detail specific ways in which this can be achieved. Lack of clarity on the issue has led to diversity of views among trade negotiators on the types of movements of natural persons that could fall under liberalization within GATS. GATS is an instrument for liberalization of temporary labour mobility for supply of services in a trade context. A clear consensus exists that job seekers, permanent establishment and citizenship do not fall within the purview of GATS, while contract-based service provision by individuals or firms and investment-related movement of persons are covered. GATS covers movement of all categories of natural persons supplying services. One view reflected doubt as to the coverage of all types of natural persons irrespective of their skill levels. The issue was also raised as to whether employment of foreign nationals in domestically owned firms in recipient countries is covered. In addition, from the practical national policy side, there may be no distinction as to whether a person enters to work for a firm under a service contract or an employment contract. This category of service suppliers is of key economic and negotiating interest for developing countries. Developing countries also have a strong interest in contractual service suppliers. Some experts felt that engaging in this discussion before the benefits of mode-4-related trade are well established among their populations may not be conducive to achieving progress in the negotiations, while others considered that achieving legal certainty is a necessary step forward.

8. In addition to the scope of mode 4, legal treatment of other issues related to liberalization of mode 4 was also discussed. GATS does not infringe upon the rights of Governments to require visas from nationals of other countries. At the same time, the decision taken in the WTO dispute on the EC regime for the importation, sale and distribution of bananas concluded that the scope of GATS does not exclude any category of measures, which would seem to include visas and work permits. Views were expressed that, where visas and work permits act as barriers and nullify and impair benefits of commitments made, this becomes an issue for liberalization negotiations.

9. Based on the experience of past negotiations in services, achieving effective liberalization of mode 4 needs to go beyond market access and national treatment. Article III on transparency may be an important tool for making administrative procedures more accessible. The importance of GATS Article XVIII as a way of scheduling additional

commitments may be particularly relevant to rendering market access and national treatment effective, for example in improving the transparency obligation of Article III. The GATS principle of transparency could be enhanced through alternative means, as was proposed by Canada in its submission to the WTO. Issues such as recognition of qualifications affect effective liberalization. Lack of an operational mechanism in the GATS for the recognition of qualifications is a significant hurdle, but Articles VI and VII may provide an important legal framework for professional services where specific commitments have been made, and this should be explored further.

Challenges in addressing mode 4 liberalization

10. Issues surrounding mode 4 liberalization are complex and touch upon many aspects of policies in different areas, including trade, social issues, labour, migration and education, and involve different institutions and stakeholders. All of this makes the issue highly sensitive and difficult in terms of identifying elements and choosing devices that are relevant to trade. Some experts stressed the importance of adjusting policies and regulations domestically in order to reap the full benefits of liberalization.

11. There are long-established historical and cultural ties among countries, including in relation to movement of people, which may be difficult to change. Because of linguistic, religious, historical, geographical or cultural affinities, certain countries have a tradition of movement of people. One need only look at examples such as the migration between French-speaking African nations and France, or between Commonwealth countries and the United Kingdom, or between Mexico and the United States to gain a clearer sense of these historical trends. Just as it is difficult to change trading conditions for goods produced by unskilled labour, the same applies to mode 4 in general.

12. The liberalization of mode 4 service trade has many serious political implications. Experts emphasized that it will be the responsibility of officials in the countries involved to take the political initiative to smooth the liberalization process and ensure that it is implemented in the most effective manner possible.

13. Some experts noted that national security concerns are genuine and have increased in many countries recently. However, the view was expressed that the pursuit of national security can at times be over-zealous and affect mode 4 in a way disproportionate to the actual security concerns.

14. From an economic policy perspective, the possibility of mode 4 liberalization causing wage depression and unemployment in domestic markets was noted. However, it was pointed out that there is no robust evidence suggesting negative effects of the presence of mode 4 on local wages. On the contrary, UNCTAD's research and other studies indicate that there is a positive efficiency and welfare effect on the home country's economy.

15. All of these political challenges influence the direction and progress of mode 4 liberalization of services. While most stakeholders realize the positive-sum game that trade

liberalization in mode 4 services presents, there is a need to continue the awareness raising process. Several participants and panelists noted that bringing together all the relevant stakeholders, including policy makers and trade unions, to exchange views between countries is a necessary part of discussions on the movement of natural persons.

Mode 4 in the broader context of migration

16. Mode 4 issues in most countries are dealt with in the same manner as migration issues, blurring the boundaries between temporary and permanent movement. Not many countries have put in place modalities or mechanisms that specifically deal with the temporary movement of persons in the context of GATS. As defined by the IOM, there are two types of migration – temporary and permanent. Mode 4 falls under what is considered to be temporary migration, but in most countries it is governed by the same rules as permanent migration, which is not conducive to facilitating mode 4 liberalization. Where countries allow natural persons present temporarily to apply for permanent stay or citizenship, there may be a tendency to view even temporary movement as potential immigration. A plea was made to treat mode 4 as a trade issue and not a migration issue. In order to do this effectively, it is important that the trade and migration communities come together in a fora like UNCTAD and clarify the ground rules.

17. This would also imply that within countries, both exporting and importing, there be a dialogue between all government agencies dealing with migration, labour issues and trade to establish means of dealing with the temporary movement of persons supplying services in the context of GATS. This would also be helpful in terms of providing means of having an organized one-step procedure to deal with visas or work permits to avoid delay and unnecessary procedures, harassment and frustration. At the same time, steps should be taken to have an effective monitoring process to ensure the temporariness of the service.

Regulatory issues

Economic needs tests (ENTs)

18. ENTs, which often take the form of labour market testing in its application to mode 4, are the most pervasive and intractable measure affecting movement of natural persons. Most experts agreed that ENTs act as discriminatory measures, detracting from the predictability and certainty of market access conditions. The lack of clearly established criteria and application procedures remains another challenge with regard to ENTs. For key intra-corporate transferees and professionals, some countries already provide for market access without requiring compliance with ENTs. However, some experts admitted that it would seem unlikely that ENTs could be eliminated across the board in the near term. At the same time, maintaining ENTs in schedules of commitments would undermine any meaningful liberalization in that area. Any other alternative would seem to be a better option in comparison, including numerical ceilings. Best practices and examples of removal of ENTs

by some developed countries, like Norway, the EU, Canada or Japan, need to be broadened, deepened and replicated in categories of interest to developing countries.

19. To achieve progress in the negotiations in the area of ENTs, ways should be found to minimize their effect and make their application more transparent and predictable. Some categories of persons could be selected for exclusion from the application of the ENTs, such as all categories of intra-corporate transferees. In addition, the need to eliminate the prior employment requirement was mentioned. However, the view was also expressed that, if this requirement was eliminated, countries would be likely to apply ENTs. To the extent that ENTs remain in place, their administration may pose problems. Exchange of information by way of enhancing transparency in this area could identify best national practices and further enlighten the debate on how to minimize the burden on service suppliers facing such tests. Transparency could become part of the negotiations on specific commitments as a way to obtain clear information on all requirements related to mode 4.

20. Countries have been resorting to different types of ENTs and ENT-type measures that could be more or less restrictive with respect to mode 4. For example, the United States applies pre-admission and post-admission checks, where the most rigorous measure would be the pre-admission check, taking a considerable period of time to complete – up to two years at times. Some experts suggested that for most countries that are exporters in this area, a move from pre-admission to post-admission checks may become one way to reduce bureaucratic administrative processes, as the Government would delegate authority to employers to select qualified persons for given posts in their firms and would only later verify that the procedures are in place.

21. At the same time, the domestic context in some countries may necessitate a widening and tightening of the use of ENTs, especially in view of prevailing unfavourable economic conditions. In this regard, countries may as a first priority seek to ensure that no rollback in policies related to mode 4 trade could be allowed in the context of negotiations and that binding of existing conditions should be pursued. It was noted that ENTs may be a means to undertake commitments that would not otherwise be made; they may not always be discriminatory in nature and may be applied on a national treatment basis.

22. The question was posed as to whether ENTs are analogous to an emergency safeguard measure (ESM) in the context of mode 4 and ensure that the process can be well insulated in cases of serious economic problems or to avoid the system being abused. However, it was pointed out that there could be no connection between ENTs and efforts to evolve a comprehensive ESM under the GATS Rules negotiations. A safeguard measure is usually meant to be applied in a post-liberalization scenario and in the context of perceived surges in imports and injury to specific sectors. In the area of mode 4, there is no case for ESM because liberalization of trade has not progressed, and embedded and pre-emptive restrictions, including in the form of ENTs, are ample in existing market access.

Visas, work permits and other administrative and procedural issues

23. Experts agreed that administrative procedures, including entry visas and work permits, may act as a barrier to mode 4 trade and that at least transparency should be improved in this respect. Some experts suggested that a more proactive approach might be needed to overcome some of the issues that lead to delays in issuing visas and permits.

24. The way in which visas and work permits for suppliers of services are granted may be highly detrimental to the commercial viability or even feasibility of service supply, especially for providers from developing countries. Some experts felt that the new type of GATS-related mode 4 movement is not adequately reflected in the existing legislation, regulations and procedures of most WTO members.

25. Issues related to visas and work permits are treated separately in most countries. Some countries are implementing a "one-stop shop" for GATS visas so as to facilitate the issuing of visas that can also be used as work permits. This may not be possible for some countries that have different departments and regulations dealing with visas and work permits.

26. Experts felt that the United Kingdom's experience could serve as an example to be taken by other developed countries. The United Kingdom has established a GATS permit to facilitate the implementation of its commitments under the GATS for contractual workers. The procedure is simple, efficient and transparent and facilitates quick decision-making that can be carried out by one person in cases where the requesting party meets all the requirements.

National treatment issues

27. The problem of insistence under certain schemes on national treatment in the matter of social security for temporary workers was seen as a disguised tariff. Whilst some felt that it may not be a major barrier, amounting to a fraction of the costs associated with market access, others pointed out that, in the absence of portability of social security, it could have a cost equalization effect, thus undermining comparative advantage of service providers.

28. The issue of minimum wages and wage parity was also raised. The movement of natural persons would help meet market demands. A view was expressed that local workers in the "importing" nation are concerned about the increased movement of natural persons creating added risks of unemployment or salary decreases for them. It was recognized that insistence on payment of minimum wages prevalent in the host country is not only in the interest of maintenance of labor standards in the host country, but also in the interest of service suppliers and their home countries. It was also pointed out that minimum wages in developed countries correspond to the higher cost of living there due to the different price levels between developed and developing countries. However, insistence on wage parity would have the effect of nullifying any cost/quality competitiveness advantage that developing country suppliers have. It was pointed out that equal pay for work of equal value is a general principle contained in the ILO Constitution.

Mutual recognition agreements

29. Individual countries have established recognition schemes for specific professions and occupations, implemented either by government agencies or professional bodies, which reflect the public policy objectives embedded in regulations. Experts agreed that the lack of recognition of qualifications, skills and experience remains one of the pervasive barriers in the area of professional services and affects MNP in more than one way: it either denies market access to service providers from other countries or induces a service provider to perform in a capacity below his or her level of qualification.

30. In general, assessment of qualifications and/or skills for entry into an occupation may take place through one or more of the following procedures: (i) mutual recognition agreements (MRAs) for occupations or for groups of countries or provinces/states; (ii) competency-based assessment by means of employer interviews or tests; (iii) on-the-job competency assessment, during or after a period of service; (iv) probationary or trial periods of supervised work; (v) examination of knowledge, skills and language skills; and (vi) credentials assessment, or assessment of paper qualifications, where institutions or individuals are assessed for comparability, 'substantial' equivalence or equivalence.

31. Different approaches may have disadvantages from the service provider's perspective. Sometimes an approach falls short when assessing a person's knowledge and skills because it only takes into consideration formal qualifications, or it has a special bias towards local knowledge and regulation, or uses unfamiliar examination formats. It can also involve prohibitive fees for the applicant or heavy administrative costs. Furthermore, the assessment of paper qualifications may not be the optimal way of measuring true competencies, which are the most relevant to the ability to supply the service.

32. Some proposed the idea of delegating responsibility for negotiating MRAs to the professional or industry bodies in country. However, some experts cautioned that this would need to be accompanied by agreed basic definitions to steer their development. Others noted that in some countries responsibility for negotiating MRAs has already been delegated to professional/industry bodies. However, skepticism was expressed about the neutral role of professional agencies. The issue was raised that professional bodies may be partial and that there might be a need for government intervention in this respect.

33. MRAs tend to be concluded between countries with relatively similar training systems and regulatory regimes, and generally require the active involvement and existence of professional bodies and the private sector. Acceding to an existing MRA could be very difficult for those countries that lack national recognition systems, professional bodies and/or industry associations. Developing countries could benefit from bilateral technical and financial support in promoting the establishment of professional bodies and associations. To date, discussions on issues of recognition of professional qualifications, including the advancement of prospects of negotiating MRAs between developed and developing countries, have not gone beyond a preliminary stage. In order to stimulate discussion on and

possibly improve prospects for negotiating MRAs, some countries have developed generic guidelines for MRAs.

34. Article VII of the GATS permits members to deviate from the most-favoured-nation (MFN) principle and enter into bilateral or plurilateral MRAs. However, Article VII also obliges Members to notify existing MRAs and those under negotiation, and to provide an adequate opportunity for other members to negotiate their accession or negotiate comparable agreements. Experts highlighted the need for technical and financial support to facilitate accession of developing countries to MRAs. So far, there have only been 39 notifications by 19 WTO members, but this number does not reflect the total number of MRAs negotiated. Some agreements have been notified under other GATS Articles, while others have not been notified at all. The overall objective of notifications is to increase transparency in this area, and achieving timely and comprehensive notifications is in the interests of developing countries.

35. The development of disciplines under the GATS Article VI:4 in order to determine the discriminatory nature of a given domestic regulation would also enhance the possibilities for recognition of qualifications, but only when basic definitions are agreed.

36. In the absence of MRAs, agreed means of assessing competency need to be put in place. The assessment of a combination of qualifications and skills acquired through work experience or training should be left to employers, recruitment agencies and entities that are responsible for hiring workers.

Increasing participation of developing countries

37. It was recognized that, for developing countries, commercially meaningful mode 4 liberalization is a litmus test for the development content of the Doha Work Programme and its claim to being called the Doha Development Agenda. The fact that in the services negotiations mode 4 has thus far been treated as an orphan gave rise to concerns about a development deficit in the services negotiations, just as lack of progress in agriculture has caused frustration in the larger context. It was pointed out that political, social and cultural sensitivities, issues of job displacement and economic costs are analogous if not much less in scope and magnitude as compared to the costs, sensitivities and adjustment called upon from developing countries asked to make commitments in the area of non-agricultural market access or other services sectors and modes such as commercial presence. Thus, experts emphasized that, given the larger welfare effects for developed countries from mode 4 liberalization, there has to be readiness for short-term adjustment, especially since, because of their well-developed social security systems, developed countries are in a better position to absorb displacement effects and deal with associated social implications and retraining.

38. Movement of natural persons is a vehicle for increasing participation of developing countries in trade. GATS provides a framework to ensure progressive liberalization and a way for all countries to share in its benefits. The liberalization of mode 4 services trade would further enhance global welfare, increase participation of developing countries in

services trade and also have positive efficiency and competitiveness effects. It was noted that much of the existing trade in services under mode 4 is taking place under bilateral agreements or through tacit arrangements. Whilst these are useful instruments and need to be encouraged, there is clearly a need to have a multilateral framework that would provide some basic guidelines and structure, thus providing certainty and predictability in market access. Care should be taken, however, to ensure that such a multilateral agreement adds value and does not restrict current movement under bilateral and other agreements.

39. Some experts underlined the importance of looking at common categories and also of having agreement on the common list of occupations that could be considered in the ongoing negotiations, which would add predictability, improve comparability and enhance the value of commitments made. One way of establishing such a list would be to review what is contained in the present schedules of specific commitments. However, developing countries have noted a number of occupations where they are already supplying services internationally and have specific interests in liberalizing market access in the context of the GATS. In establishing such a list, insight could be obtained from the ILO classification (ISCO), and this could be a way of establishing those categories and skill levels that could be negotiated. A concern was expressed that using ISCO would complicate matters, given the lack of concordance with existing national classification systems. A common understanding needs to be developed in establishing clear definitions of categories of persons, including those covered in the horizontal commitments, e.g. business visitors, intra-corporate transferees and contractual service suppliers, and establishing links of correspondence with national immigration regimes.

40. Some experts suggested that commercial establishment abroad might serve as an easier way to enhance supply of mode-4-related services by utilizing the intra-corporate transferees segment. However, the associated costs may be prohibitive in some cases, and Governments of developing countries would need to play an active role in promoting this.

41. Some experts noted the potential for mode 4 trade between developing countries, particularly at the regional level. Regional mode-4-related trade is part of the reality on the ground and is taking place among developing countries. However, the relative importance of the pull and push factors for mode 4 trade between developed and developing countries was highlighted.

42. Looking ahead at possible approaches and instruments to facilitate an exchange of access commitments and define an acceptable set of multilateral rules for the liberalization of mode 4 in the current negotiations, the experts examined model schedules and the possibility of setting specific benchmarks in terms of years and percentages of categories for liberalization of a wide range of mode 4 service supplier categories (CARICOM approach to liberalization). Some experts stressed the importance of extending coverage of less skilled workers in the specific commitments. One approach that received some support was a model schedule which could serve either as a formula for commitments that all members are to assume or as a focal point designed to generate improved commitments. This model schedule builds on the approach endorsed by the European Services Forum (ESF) and the US Coalition

of Service Industries, which has a more limited coverage. The model was designed to supplement and improve the existing commitments WTO members have undertaken. Experts also discussed other possibilities, including the use of quantitative restrictions and ENTs, as a means to allow scheduling of further commitments and benchmarking.

43. The model schedule envisages commitments essentially for natural persons with professional skills on short-term, intra-company visits (category 1) and short-term visits to fulfill contracts (categories 2 and 3). The short term is defined in each case as a stay of less than a year. For these classes of movement, the schedule proposes a service provider visa (SPV) in order to separate procedures that affect temporary and permanent entry and therefore streamline those for temporary entry. The second part of the model schedule represents a set of additional commitments that would be made under Article XVIII of the GATS, like the reference paper on basic telecommunications. This part would encompass domestic regulatory obligations that would enhance the transparency of procedures and limit the trade-impeding impact of measures such as qualifications requirements and procedures. The emphasis in this model schedule is on broad horizontal commitments ensuring a basic minimum level of access across all sectors, supplemented by sector-specific commitments where deeper liberalization is possible. The point was made that the high amount set for performance bonds and specific contract value in the ESF model schedule seems to be prohibitive in terms of obtaining facilitated market access for developing country suppliers of services.

Opportunities in other modes of supply for movement of natural persons

44. A mode-wise approach in the negotiations does not reflect the economic reality of changing business practices and the linkages between modes of supply for the delivery of services. Ability to supply services under mode 4 may often be conditional on commercial presence, and the limitations on specific commitments in mode 3 could become barriers for mode 4. Also, market access under mode 1 is frequently conditional on commercial presence in the host country.

45. The real economy shows that services are provided simultaneously through multiple modes of supply. Barriers to one translate into actual/potential barriers to other modes, and for developing countries barriers to mode 4 most affect the ability of developing countries to use the other three modes to their advantage effectively.

46. The link between modes 1 and 4 has received little attention so far, but cross-border exports of services from developing countries have grown rapidly in recent years due to the rise in outsourcing of back-office and offshore activities to low-cost centres, driven by advances in information and communication technologies, pressures to reduce costs, availability of low-cost, well trained and educated workforces in developing countries, and demographic trends. Global spending on IT-enabled services and business process outsourcing (BPO) was estimated at US\$ 712 billion in 2001, with more than 500,000 people thus employed, and the projections are overwhelmingly positive.

47. The benefits derive from the employment and investment diverted to developing countries. The outsourcing companies benefit from the trade facilitation effect, cost reduction and a round-the-clock work cycle, enhancing their competitive advantages, particularly when the home economy faces shortages of manpower and skills in specific areas and sectors. The constraints derive from technical and infrastructural limitations, the legal framework, especially relating to consumer and privacy protection, and the recent policy backlash due to the economic crisis.

48. The increase in outsourcing and the use of IT-based solutions make mode 1 and mode 4 substitutes in respect of low-value-added services, but for higher-end services, both modes of supply complement each other, though the required stays in other countries are reduced systematically. This complementarity-substitutability relation differs depending on the kind of service rendered, the nature of the contract and the level of service provider. Moreover, mode-4-rendered services facilitate mode 1 trade (e.g. successful on-site provision of services and an established reputation help in securing offshore contracts), though the opposite cannot be said to be true.

49. In a broader context, it was recognized that liberalization of mode 4 would be beneficial to all trading partners and, under certain conditions, in its linkages with modes 1, 2 and 3. Thus, market access barriers to mode 4 affect the development of mode 1 trade and the execution of some types of outsourcing contracts (those with higher value added). Limitations across modes comprise: recognition requirements, licensing, nationality and residency requirements, commercial presence requirements and other requirements related to security (data protection, liability, privacy).

50. In order to facilitate trade related to modes 1 and 4, developing countries should seek unrestricted mode 1 commitments on a formula basis or a positive sectoral list basis. They should prevent efforts to ban outsourcing through government and industry-level discussions, clarify categories and requirements for different visas, seek liberal market access conditions for intra-corporate transferees, in addition to independent professional and contractual service suppliers, de-link modes 1 and 4 from commercial presence, and seek transparency in the recognition and facilitation of MRAs. They should also promote the establishment of a multilateral framework for e-commerce that would clarify classification and jurisdictional issues.

51. At the domestic level, developing countries should enhance their telecom infrastructure, manpower, standards for training and qualifications, data protection, and labour laws with regard to teleworking. Governments and industrial associations should also become more proactive at the bilateral level through the establishment of representative offices/commercial presence in the outsourcing economy for lobbying purposes in order to prevent protectionism.

52. Experts recognized the contribution made by the Expert Meeting on Mode 4 and underlined the leading role that UNCTAD should play in clarifying the way ahead and in undertaking concrete further steps towards deepening the debate on MNP in a perspective of

continuity among the most relevant stakeholders. Such work could include identification of domestic policy frameworks, formulas, mechanisms, disciplines and institutional arrangements to approach trade issues in a manner facilitating mode 4 movement, treatment of which is technically feasible within the GATS framework, as a means of mainstreaming a symmetrical treatment of MNP in relation to the other modes of delivery of services, ensuring trade and development gains, and obtaining a balance of rights and obligations and full implementation of Articles IV and XIX of the GATS. Experts felt that such an endeavour should be achieved in a reasonable timeframe, before the end of the Doha Work Programme.

53. UNCTAD was invited to continue working in the trade-related areas of MNP and explore possible areas of work. In particular it should:

- (a) Continue the dialogue on conceptual, policy, legal, institutional and administrative frameworks facilitating movement of natural persons to supply services;
- (b) Explore possible approaches and mechanisms for granting GATS visas and for expediting associated administrative procedures;
- (c) Contribute to the improvement of statistics on mode 4;
- (d) Contribute to strengthening capacities of Governments in managing the trade agenda surrounding the issues of mode 4, including sequencing of the implementation of domestic policy reforms, innovative employment policies and training programmes aimed at capitalizing on export opportunities; and support the creation of institutional capacities to allow recognition of qualifications at all levels in those services with export potential through this mode;
- (e) Drawing upon existing work and information available, analyse national and existing regional experiences in the treatment and liberalization of mode 4 in schemes relating to integration, free trade areas and bilateral agreements in order to draw lessons for the treatment of MNP at the multilateral level;
- (f) Undertake studies and organize ad hoc expert meetings to discuss specific issues such as recognition of qualifications and MRAs, transparency, economic needs tests, safeguards and national experiences with regard to administrative procedures.

In this respect, UNCTAD should continue working together with other relevant organizations, including WTO, ILO, UNESCO, OECD, IOM, regional organizations, and UN regional commissions, as appropriate.

Chapter II

ORGANIZATIONAL MATTERS

Convening of the Expert Meeting

54. The Expert Meeting on Market Access Issues in Mode 4 (Movement of Natural Persons to Supply Services) and Effective Implementation of Article IV on Increasing the Participation of Developing Countries was held at the Palais des Nations, Geneva, from 29 to 31 July 2003.

Election of officers

55. At its opening meeting, the Expert Meeting elected the following officers to serve on its bureau:

Chairperson: Mr. Prasad Kariyawasam (Sri Lanka);

Vice-Chairperson-cum-Rapporteur: Ms. Allison Young (Canada).

Adoption of the agenda

56. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.1/EM.22/1. The agenda for the Meeting was thus as follows:

1. Election of officers
2. Adoption of the agenda
3. Market access issues in mode 4 (movement of natural persons to supply services) and effective implementation of Article IV on increasing the participation of developing countries
4. Adoption of the report of the Meeting

Documentation

57. For its consideration of the substantive agenda item, the Expert Meeting had before it a note by the UNCTAD secretariat entitled "Increasing the participation of developing countries through liberalization of market access in GATS mode 4 for movement of natural persons supplying services" (TD/B/COM.1/EM.22/2).

Adoption of the report of the Meeting

58. At its closing meeting, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting under the authority of the Chairperson.

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Algeria	Mexico
Argentina	Morocco
Australia	Nigeria
Bangladesh	Philippines
Barbados	Republic of Korea
Belgium	Russian Federation
Botswana	Saudi Arabia
Canada	Senegal
China	Slovenia
Colombia	South Africa
Ecuador	Spain
Egypt	Sri Lanka
El Salvador	Sweden
France	Switzerland
Germany	Thailand
Guatemala	Trinidad and Tobago
Hungary	Tunisia
India	Uganda
Indonesia	United Kingdom of Great Britain and Northern Ireland
Iran (Islamic Republic of)	United Republic of Tanzania
Italy	Yemen
Japan	Zimbabwe
Kenya	
Madagascar	
Mali	

2. The following intergovernmental organizations were represented at the Meeting:

European Commission
International Organization for Migration
League of Arab States
Organization for Economic Cooperation and Development
South Centre

3. The following United Nations organization was represented at the Meeting:

United Nations Development Programme

* For the list of participants, see TD/B/COM.1/EM.22/INF.1.

4. The following specialized agencies and related organizations were represented at the Meeting:

International Labour Organization
United Nations Industrial Development Organization
World Trade Organization

5. The following non-governmental organizations were represented at the Meeting:

General Category

International Confederation of Free Trade Unions

Special Category

International Council of Nurses

6. The following special invitees attended the Meeting:

Mr. Julian Arkell, Consultant, Trade and Service Policy, London, United Kingdom
Ms. Minako Morita, Fair Trade Center, Tokyo, Japan
Mr. Roderick Sanatan, Manager, Research Department, University of West Indies,
Bridgetown, Barbados

7. The following panelists attended the Meeting:

Ms. Rupa Chanda, Professor, Indian Institute of Management, Bangalore, India
Mr. Mark Hatcher, Head, Global Public Affairs, PricewaterhouseCoopers, London,
United Kingdom
Mr. Robyn Iredale, Associate Professor, University of Wollongong, Australia
Mr. Philips Martin, Professor, University of California, San Francisco, United States
of America
Mr. Alan Winters, Professor of Economics, School of Social Sciences, University of
Sussex, Sussex, United Kingdom