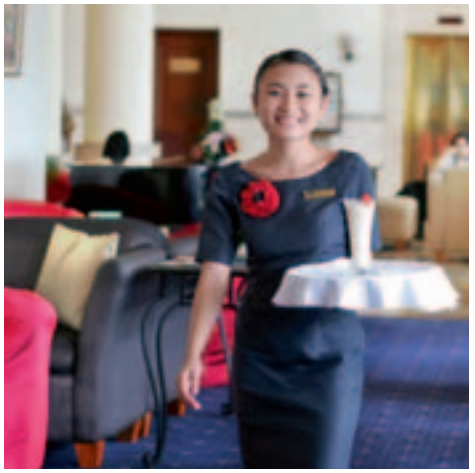
LOW-SKILLED WORKERS AND BILATERAL, REGIONAL, AND UNILATERAL INITIATIVES

Lessons for the GATS Mode 4 negotiations and other agreements



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Lessons for the GATS Mode 4 negotiations and other agreements

by
Rupa Chanda

Professor, Economics and Social Sciences Area
Indian Institute of Management, Bangalore

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Errata

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Contents

Executive Summary

The lack of progress on trade in services through the movement of natural persons, particularly of low-skilled persons, under the General Agreement on Trade in Services (GATS) has been a matter of concern for Least Developed Countries (LDCs). However, there are a growing number of initiatives at the unilateral, bilateral and, to a limited extent, at the regional levels to manage cross-country temporary labour flows. Many of these initiatives, particularly those at the national and bilateral levels, accommodate the movement of low- and semi-skilled workers. Many countries are making use of **national schemes**, such as special classes of work permits and visas to facilitate the entry of agricultural, seasonal and temporary workers. At the bilateral level, countries have entered into **bilateral labour agreements** covering specific types of workers and geared to meet demand in specific sectors. Countries are also including labour mobility provisions targeted at specific sectors and occupations under the broader rubric of **bilateral economic cooperation or partnership agreements.** And at the regional level, in the context of some **regional agreements,** mechanisms have been introduced or negotiated to facilitate intraregional labour mobility, though usually for limited high-skilled categories and occupations.

This paper attempts to understand how bilateral and unilateral schemes manage the temporary movement of low-skilled workers by examining their various features. The aim is to draw useful lessons for the GATS negotiations on Mode 4 and for future agreements that address Mode 4. The study examines the operational, institutional, financial, welfare and human development features of several arrangements to derive their positive and negative aspects. Based on the best practices that characterize these agreements, the paper suggests how some of these features could be incorporated in the context of the GATS Mode 4 commitments and offers. Underlying this learning-based approach is the larger objective of maximizing development benefits and of contributing towards a more strengthened and holistic development-friendly policy position on migration and the short-term movement of persons.

Sections 2, 3 and 4 provide an overview of bilateral, unilateral and other broader agreements and initiatives respectively, which cover the temporary movement of low-skilled workers. Section 2 examines the bilateral labour agreements between Spain and Ecuador and the Canadian Seasonal Agricultural Worker Program (CSAWP) between Canada and Mexico and Canada and the Caribbean countries. Section 3 covers unilateral initiatives by key host countries to target specific types of low-skilled workers. The cases covered are those of the United States under its agricultural and industrial worker schemes (H-2A and H-2B, respectively), the United Kingdom under its sector-based scheme and its seasonal agricultural workers scheme, the Republic of Korea under one of its temporary guest worker arrangement, the Employment Permit System, and the Gulf countries under their temporary labour contract system. This section also discusses issues of abuse and exploitation of low-skilled workers, including female migrant workers. Section 4 discusses an agreement that facilitates semi-skilled migration in the context of a broader economic agreement. The case that is highlighted is that of the Japan-Philippines Economic Partnership Arrangement (JPEPA) which covers the movement of caregivers and nurses from the Philippines to Japan.

Section 5 examines the role played by key source countries in managing low-skilled labour flows. The cases of the Philippines and Sri Lanka are highlighted to illustrate the administrative, financial, worker protection, welfare and capacity-building mechanisms used by such governments to maximize the benefit from low-skilled temporary movement and in making bilateral labour agreements work. The discussion shows that source countries need to invest in creating institutional capacity and frameworks that allow them to address a wide range of economic, social, legal and human development related issues associated with worker mobility, whether or not they have entered into managed bilateral arrangements.

Section 6 outlines the commonalities and differences across these different cases and the positive and negative aspects within and across the various cases. What emerges from this overview is that managed temporary worker arrangements are generally well laid out and specific in terms of defining scope, laying out the operational features, obligations on various parties, institutional frameworks and incentive and disincentive mechanisms. They involve a mix of specificity and binding obligations with regard to work terms, conditions and enforcement mechanisms, while permitting some degree of flexibility and customization to suit changing circumstances. Bilateral arrangements are also more holistic in their approach to worker mobility as they look beyond entry and stay issues to address a variety of developmental, social and institutional issues that have a bearing on the outcome and long-term viability of such arrangements.

Section 7 outlines some of the features and best practices from the discussed cases which can be taken forward into the GATS Mode 4 negotiations and other agreements, and the modalities for doing so under the GATS framework. These include making GATS Mode 4 commitments more explicit and unambiguous in definition and scope, and going beyond horizontal to sector-specific commitments in Mode 4. Further, the various conditions seen in bilateral

and unilateral schemes covering low-skilled workers, such as quotas, economic needs test, wage parity requirements and even obligations on source countries in terms of occupational certification, screening and placement, could be inscribed as limitations in the sectoral Mode 4 commitments. The paper also suggests that mechanisms are required to provide juridical affiliation for low-skilled workers which in turn would necessitate the establishment of institutional frameworks or the authorization of designated agencies to provide such affiliation to low-skilled, temporary workers who are deployed overseas. Thus, one of the main recommendations that emerges is the need to bring in institutional checks and controls in the migration process and to introduce more coordination and joint responsibility between sending and receiving countries under the GATS Mode 4 frameworks.

Section 8 concludes the paper by summarizing the key positive elements that emerge from the bilateral and unilateral arrangements discussed in the paper. It also highlights some areas which could be examined further to make any frameworks on temporary low-skilled worker mobility more development-friendly. The paper, however, emphasizes the importance of multilateral negotiations on labour mobility for low-skilled and semi-skilled workers. It notes that while bilateral and regional approaches can serve as benchmarks for the GATS, these approaches cannot be at the cost of multilateralism. All need to be pursued at the same time. Liberal market access commitments for semi- and low-skilled workers under the WTO would help LDCs address many of the Millennium Development Goals while also benefiting countries and potentially breaking the current stalemate in the Doha Round negotiations in services. This paper also stresses the need for sending countries to invest in capacity- and institution-building to manage the migration process and to incorporate human development dimensions into migration policy regardless of whether they adopt a bilateral, regional or multilateral approach.

Abbreviations

ATM	Automatic Teller Machine
CSAWP	Canadian Seasonal Agricultural Worker Program
CIC	Citizenship and Immigration Canada
CSS	Contractual Service Suppliers
EI	Employment Insurance
EMS	Employment Management System (Republic of Korea)
ENT	Economic Needs Test
EPS	Employment Permit System (Republic of Korea)
FARMS	Foreign Agricultural Resource Management Service (Canada)
FERME	Fondation des entreprises pour le recrutement de la main d'œuvre étrangère (Canada)
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GRECO	Global Programme on Regulation and Coordination of Immigration and Alien Affairs (Spain)
HRSDC	Human Resources and Social Development Canada
ICT	Intra-corporate transferees
ILO	International Labour Organization
IOM	International Organization for Migration
IRPA	Immigration and Refugee Protection Act (Canada)
JPEPA	Japan-Philippines Economic Partnership Agreement
LDC	Least Developed Country
MFN	Most Favoured Nation
MoU	Memorandum of Understanding
OFW	Overseas Filipino Workers
OSHA	Occupational Health and Safety Act (Canada)
OWWA	Overseas Workers Welfare Agency
POEA	Philippines Overseas Employment Administration
SAWS	Seasonal Agricultural Worker's Scheme (United Kingdom)
SBS	Sector Based Scheme (United Kingdom)
SECAP	Ecuadorian Vocational Training Service
SLBFE	Sri Lanka Bureau of Foreign Employment
UAE	United Arab Emirates
USCIS	Citizenship and Immigration Services (United States)
UTSTM	Technical Unit for the Selection of Migrant Workers
WTO	World Trade Organization

1. Introduction

Global trade liberalization has resulted in a significant expansion of trade in goods and services, with the dismantling of various barriers to trade. Global financial liberalization has led to increasing integration of financial markets and a surge in capital flows with the deregulation of financial sectors around the world. Rapid changes in, and transfer of, technology have made many more activities tradable than ever before, and have led to new forms of trade as well as the emergence of new players in the global arena. Although each of these globalization processes has encountered its own set of difficulties and roadblocks, perhaps no aspect of globalization has met with as much resistance as the opening up of labour markets or global migration. This resistance has been despite wide recognition of the fact that demographic imperatives in many parts of the world make migration increasingly necessary and that there is an intimate interface between migration flows and other global flows.

Migration is required to support the aging and declining populations in much of the developed world, to provide a wide range of services, to supplement the productive workforce and to sustain various social support and fiscal systems. Migration is a form of trade in labour services and plays a critical role in facilitating as well as complementing the cross-border movement of goods, capital and technology. Recent studies indicate that even small increments to global migration are likely to generate gains that far exceed those arising from liberalization in other areas and would benefit both developing and developed countries. The experience of many countries further reveals that remittances associated with migration flows are an important means of financing the balance of payments and can outweigh the role of official development assistance. Thus, a global trading system which facilitates the movement of people in a transparent, predictable, safe and mutually beneficial manner is certainly in the interests of host and source countries.

It is estimated that there were between 185 million to 192 million migrants worldwide in 2005, up from 82 million in 1970. Migrants represent close to 3 percent of the world's population today, of which nearly half are women.[1] It is, however, difficult to get an estimate of this migrant population in terms of skill profiles. The main destination markets are the United States, Europe and the Gulf region. The industrialized countries host a mix of skilled, low- and semi-skilled workers from a wide range of countries, including those in Africa, Asia, the Caribbean and Eastern Europe, while the Gulf region is mainly a destination for low- and semi-skilled workers from Asian countries such as Bangladesh, India, Pakistan, the Philippines, Sri Lanka and other Arab states such as Egypt and Jordan.[2]

In recent years, in recognition of this integral role played by migration flows in facilitating other facets of globalization, as well as their potential developmental impact in both source and receiving countries, many governments around the world as well as several international organizations have turned their attention to the issue of managing temporary labour migration and making it mutually beneficial. The General Agreement on Trade in Services (GATS), under the auspices of the World Trade Organization (WTO), which was expected to provide a global framework to manage temporary cross-border labour flows, has not proved useful. Developed countries have not made any meaningful commitments on the movement of natural persons, or Mode 4, which is the mode that covers the temporary cross-border movement of service providers under the Uruguay Round.[3] Even in the context of the Doha Round, there have not been any substantive improvements in their offers or revised offers on Mode 4.[4] Moreover, whatever has been committed or offered has been further constrained by numerous conditions and restrictive measures. Overall, as countries have made Mode 4 commitments that have often bound access conditions at the status quo or less, this remains the least liberalized of all four modes that are recognized in GATS as forms of delivery for trade in services. It is the mode

[1] UN Department of Economic and Social Affairs (2005), p.1.
[2] See Appendix A tables for data on international migration trends, key source regions and countries, and destination markets.
[3] GATS defines trade in services as taking place through four modes of supply. These include cross-border supply or Mode 1, consumption abroad or Mode 2, commercial presence or Mode 3, and movement of natural persons or Mode 4. Horizontal and sector-specific commitments are made for market access and national treatment for each of these four modes in all sectors included in a country's schedule of commitments. The commitments may be full (no restrictions), partial (subject to some restrictions) and unbound (no binding commitment at all). Horizontal commitments apply to all scheduled sectors while sectoral commitments apply to the specific sector that has been scheduled.
[4] Movement of natural persons refers to the temporary movement of service providers across countries, either in affiliation with a juridical entity as an employer or a contractual service supplier, or in an independent capacity. It is not aimed at entry into the permanent labour market or for citizenship in the host country. Mode 4 does not exclude any skill level.

of most interest to developing countries given the abundance of labour in these countries.

Where the GATS Mode 4 negotiations have really failed to deliver is in the area of low-skilled worker movement. There are no commitments on low-skilled service providers, although this is where the least developed countries (LDCs) have their main source of comparative advantage.

But where the GATS Mode 4 negotiations have really failed to deliver is in the area of low-skilled worker movement. There are no commitments on low-skilled service providers, although this is where the least developed countries (LDCs) have their main source of comparative advantage. Whatever limited commitments and offers have been made relate to the movement of high-skilled service providers, mainly intra-corporate transferees, business visitors and specialized persons, and typically those associated with establishments, while the commitments for low- and semi-skilled categories of service providers are left unbound, both in the cross sectoral and the sector-specific schedules of commitments and offers. There has been no progress despite calls for commitments to be made in sectors and modes of export interest to developing countries and LDCs in the Hong Kong Ministerial text and the Doha Ministerial declaration, the Modalities for the Special Treatment of Least Developed Countries, and the July Framework, and despite the latest LDC Mode 4 proposal (i.e., the Mode 4 request) which calls for commitments in sectors where skill requirements are often lower and for commitments in categories of persons whose movement is de-linked from commercial presence, for whom verification of experience, competence and capability to supply the service should replace recognition of qualifications. This lack of progress is despite the fact that Mode 4 under the GATS does not exclude any skill level. More generally, the GATS has not proved to be an effective framework for managing temporary global migration, whether skilled or low-skilled. This is in large part because countries are reluctant to make binding commitments on something which has a bearing on sensitive issues such as national security, social and cultural integration, unemployment and wages, and also because of the inherent difficulties in defining the scope and administration of Mode 4 within the overall gamut of migration flows and related administrative frameworks.

The lack of progress in the multilateral context on movement of natural persons, particularly in low-skilled persons, is in sharp contrast to the growing number of initiatives at the unilateral, bilateral and, to some extent, also the regional levels to manage cross-country temporary labour flows, not only in services but also in agriculture and industry.

The lack of progress on trade in services through the movement of natural persons, particularly in low-skilled persons, is in sharp contrast to the growing number of initiatives at the unilateral, bilateral and, to some extent, also the regional levels to manage cross-country temporary labour flows, not only in services but also in agriculture and industry. A growing number of countries are entering into arrangements that cover workers (not just service suppliers). Moreover, many of these initiatives, particularly those at the national and bilateral levels, accommodate the movement of low- and semi-skilled workers. For instance, many countries are making use of **national schemes**, such as special classes of work permits and visas, to facilitate the entry of agricultural, seasonal and temporary workers. At the bilateral level, countries have entered into **bilateral labour agreements** covering specific types of workers and geared towards meeting demand in specific sectors.[5] Countries are also including labour mobility provisions targeted at specific sectors and occupations under the broader rubric of **bilateral economic cooperation or partnership agreements.** And at the regional level, in the context of **some regional agreements**, mechanisms have been introduced or negotiated to facilitate intraregional labour mobility, though usually for limited high-skilled categories and occupations.

The natural question that arises is why countries have been more forthcoming about covering low-skilled movement outside the multilateral context. The answer, as pointed out by migration and GATS experts, is because of their inherent flexibility relative to GATS. This flexibility is in terms of the scope for customizing unilateral, bilateral and regional arrangements to suit local labour market conditions and addressing social, cultural and geographic interests, in terms of the scope for enforcing and tracking such schemes through joint sharing of administrative and other responsibilities, and withdrawing market access if conditions so warrant. In view of the recognized importance of managing temporary migration in a mutually beneficial manner and the limited progress under GATS to date, it is thus important to examine how unilateral, bilateral and regional mechanisms covering labour mobility, and in particular low-skilled labour mobility, operate. What are their successful and their not so successful features? What kinds of institutional arrangements do they involve between sending and receiving countries? And what kinds of outcomes have been seen in terms of entry, return and development impact under such arrangements?

1.1 Objectives

This paper is an attempt to answer the above questions as best possible given existing information on arrangements covering the

[5] National schemes are unilateral schemes, while bilateral schemes mean agreements between specific countries.

temporary movement of low-skilled workers. Its aim is to examine the operational, institutional, financial, welfare and human development features of several arrangements that cover the temporary movement of low-skilled workers at the unilateral, bilateral and regional levels and to use this understanding to better inform GATS Mode 4 negotiations as well as other future agreements. The main idea is to understand the positive and negative lessons from existing arrangements covering the temporary movement of persons in low-skilled categories, to take the best practices from these agreements, and to assess whether and how such features could be incorporated in the context of GATS Mode 4 commitments and offers. Underlying this learning-based approach is the larger objective of maximizing development benefits and contributing towards a more strengthened and holistic development-friendly policy position on migration and the short-term movement of persons.

It is important to point out that although GATS deals with service suppliers, the cases that are discussed in this paper cover service suppliers as well as agricultural and industrial workers as existing arrangements do not make this distinction. Hence, no distinction is made here either, nor is it deemed relevant, as the focus is to draw lessons from the features and functioning of these arrangements, independent of sectoral and occupational characteristics. It also needs to be noted at the outset that the bilateral and unilateral agreements that are discussed in this paper mainly involve advanced countries and developed and developing countries, but not agreements between developed countries and LDCs, or developing countries and LDCs. The choice of agreements and unilateral schemes has been shaped by the availability of information. As the purpose of the paper is to take best practices and useful features from unilateral and bilateral schemes and see whether these can be used to address the interests of LDCs in low-skilled worker movement, and the focus of the analysis remains on this category of worker movement, the selection of agreements specific to LDCs is not necessary.

As concerns the assessment of these arrangements, four key dimensions have been stressed. These include recruitment, entry and return; legal and social protection; financial flows; and capacity-building and development efforts, as these are the key features that appear to determine the viability of an agreement and its development friendliness. As there are institutional arrangements associated with each of these dimensions, the role of institutional mechanisms and frameworks is woven into the discussion. Where there are relevant additional issues, these are highlighted as well.

1.2 Outline

The paper is structured into eight sections. Following the introduction, Sections 2 to 4 provide an overview of different kinds of agreements and initiatives at various levels that cover temporary movement of low-skilled workers. Section 2 covers two different host countries, Canada and Spain, and their bilateral labour agreements with different countries or groups of countries. The cases covered are the bilateral labour agreements between Spain and Ecuador and the Canadian Seasonal and Agricultural Worker Program (CSAWP) between Canada and Mexico and Canada and the Caribbean countries.

Section 3 covers unilateral initiatives by host countries to target specific types of low-skilled workers. The cases covered are those of the United States under its agricultural and industrial worker schemes (H-2A and H-2B, respectively), the United Kingdom under its sector-based scheme and its seasonal agricultural workers scheme, the Republic of Korea under one of its temporary guest worker arrangement, the Employment Permit System, and the Gulf and Arab countries under their temporary labour contract system. This section also discusses issues of abuse and exploitation of low-skilled workers, including female migrant workers. As unilateral schemes covering low-skilled workers are the most prevalent means of managing low-skilled flows, a larger number of cases are discussed in this section. It warrants notice that several of these arrangements involve MoUs with specific sending countries. But as the schemes are mostly one-way in terms of how they are run and do not involve country-specific quotas or significant source country cooperation, they are more akin to unilateral initiatives.

Section 4 discusses an agreement that facilitates low- and semi-skilled migration in the context of a broader economic agreement. The case that is highlighted is that of the Japan-Philippines Economic Partnership Arrangement (JPEPA) which covers the movement of caregivers and nurses from the Philippines to Japan.

Section 5 examines the role played by key source countries in managing low-skilled labour flows. The cases of the Philippines and Sri Lanka are highlighted to illustrate the administrative,

financial, worker protection, welfare and capacity-building mechanisms used by such governments to maximize the benefit from low-skilled temporary movement and in making bilateral labour agreements work.

Section 6 outlines the commonalities and differences across these different cases, the positive and negative aspects within and across the above approaches. Section 7 outlines some of the features and best practices from the discussed cases which can be taken forward into the GATS Mode 4 negotiations and other agreements, and the modalities for doing so under the GATS framework. Section 8 concludes the paper by summarizing the key positive elements that emerge from the bilateral and unilateral arrangements discussed in the paper and aspects which could be examined further to make any frameworks on temporary low-skilled worker mobility more development-friendly.

2. Bilateral labour agreements covering low-skilled workers

Bilateral agreements give preferential or exclusive market access to defined categories of workers and specified occupations or sectors, to a selected country or group of countries. These agreements can be classified as guest worker, seasonal worker, cross-border worker, contract or project-linked worker, working holidaymaker and trainee arrangements. Most bilateral agreements are governed by quotas, with specified terms and conditions for entry and stay by foreign workers, and most tend to cover low-skilled jobs or workers.

Bilateral labour agreements serve the interests of both sides. Receiving countries use them to address labour shortages in their economies and also to promote political and strategic interests, especially where neighbours and regional partners are involved. Sending countries use these agreements to provide employment to their surplus labour, to earn remittances and to improve the welfare of their nationals, through a predictable and orderly temporary migration process. Various stakeholders are involved in both sending and receiving countries and the process is managed on both sides through defined administrative mechanisms and sharing of responsibilities under a coordinated process.

The following discussion highlights the bilateral labour agreements signed by two important developed country host nations, namely Canada and Spain. These include the Agreement on the Regulation and Planning of Migratory Flows, between Spain and Ecuador, and CSAWP, signed between Canada on the one hand and Mexico and Caribbean countries on the other. The basic contours of these agreements and the aspects that are relevant from a best practice point of view are highlighted in the discussion that follows.

2.1 Agreement between Ecuador and Spain on migratory flows

During the decade of the 1990s, Spain signed several bilateral labour agreements in recognition of its growing importance as a destination nation for migrant workers from certain countries. These were mainly bilateral readmission agreements which aimed to control migrants already in the country and the protection of their rights, as well as to stem illegal immigration into Spain. These agreements established mechanisms to guarantee that unlawful immigrants eligible for readmission to their home countries were indeed readmitted.[6] Post-2000, Spain also entered into several bilateral agreements which would help regulate migratory flows from several countries and facilitate circular migration. These included bilateral agreements with Bulgaria, Colombia, the Dominican Republic, Ecuador, Poland and Romania, all of which aimed to govern migratory flows by establishing mechanisms for advertising job offers, recruitment, entry, guaranteeing social and legal rights, and facilitating voluntary return of the foreign workers. These are 'Spain first' agreements, wherein foreign labour is recruited and provided work permits only if there are no unemployed people available for the open positions.[7]

Spain allows foreign workers to enter legally under a quota or contingent system that was introduced in 1993 and modified under the 2000 Immigration Act. This system distinguishes between temporary permits for jobs lasting less than a year and stable permits for longer-term jobs. Foreign workers are required to get work permits before their arrival. Spanish employers seeking guest workers submit job offers and request specially established provincial committees. The latter then send a recommended number of work permits for foreign workers to Spain's Ministry of Labour which in turn forwards these requests to Spanish embassies and consulates in the aforementioned selected countries with which Spain has signed bilateral labour agreements. Selection commissions have been set up in these participating countries to facilitate the recruitment of contract workers. The workers are recruited mainly by the local governments under the terms and conditions of these bilateral labour agreements, which include a provision that these countries must readmit their nationals when they return upon expiry of the contracts.[8] The specific case of the Spain-Ecuador agreement is discussed below at some length.

[6] Countries with which bilateral readmission agreements were signed in the 1990s included Estonia, Guinea Bissau, Latvia, Lithuania, Mauritania, Morocco, Nigeria and Slovakia, to name some.
[7] Perez, 2003.
[8] In 2002, employers requested 31,000 temporary permits and the Spanish Ministry of Labour approved 21,200 temporary permits, with 75 percent of these permits allocated to agriculture and 15 percent to construction work. However, many of the contingent permits are not used. See Arango and Martin, 2005, p. 267.

The agreement with Ecuador was signed on 29 May 2001, formally known as the Agreement on Regulation and Planning of Migratory Flows (Acuerdo entre el Reino de España y la República del Ecuador relativo a la regulación y ordenación de los flujos migratorios). This agreement builds on an earlier 1960 Hispano-Ecuadorian agreement on social security and a 1964 agreement on dual nationality between the two countries. The agreement covers issues such as the definition of job offers, assessment of professional qualifications, travel and entry of migrant workers, work and social conditions and the rights of migrant workers, special provisions for temporary workers and their return and a separate chapter which provides for the application and implementation of the agreement.

2.1.1 Recruitment, entry and return

Under the current agreement, Spain periodically forwards job offers to Ecuador. A bilateral commission called the Technical Unit for the Selection of Migrant Workers (UTSTM) was set up jointly by the government of Ecuador and the International Organization for Migration (IOM) in Ecuador, under the Foreign Affairs Ministry, in March 2002. Ecuadorian workers are screened and selected by Spanish and Ecuadorian authorities at UTSTM, wherein their qualifications are matched against existing job offers to select the most suitable candidate for each job. Once workers are selected, the unit also helps workers with contract and visa related issues, provides pre-departure training and other assistance up to their departure from Ecuador. The Unit maintains a database of workers, which numbered 22,236 as of 2003.[9] This database serves as a reserve for quickly meeting the employment needs of employers in Spain. Between 2002 and 2006, the UTSTM selected 2,577 Ecuadorian workers out of 2,700 employment offers made by Spain, with most workers being engaged in agriculture, restaurants and personal services.[10]

In order to enforce the primacy of UTSTM as the sole recruitment body under this agreement, there are also stringent sanctions to prevent the exploitation of Ecuadorian migrant workers by unregistered groups or persons who might extort large sums of money in exchange for promises to provide them with jobs in Spain, causing them to become undocumented workers. Carriers used by the Ecuadorian workers to travel by air, sea or land are required to closely check all documents authorizing their entry into Spanish territory and failure to meet this obligation can be subject to legal penalties. Thus, there are efforts to curb informal recruitment channels and to regularize, scrutinize and control the entire pre-entry process, starting from the communication of offers to the establishment of an exclusive unit for recruitment, the support structure for getting visas and contracts and up to departure, with some regulation and checks in the transport process as well, and thereby also protecting workers from exploitation by unscrupulous employers.

Work authorization is granted by Spanish authorities to the concerned employer in Spain. Upon receiving this authorization, the employer can sign a contract with the Ecuadorian worker. The contracts are typically for several months. Once a contract is received, the worker may obtain a temporary work permit from the Spanish consular authorities in Ecuador. Experience shows that the number of work permits increased significantly from 19,995 in 2003 to 29,641 for January-August 2004. Spanish authorities reserve the right to deny work authorization to an employer if there are previous violations of immigration rules and contract terms, if the employer does not guarantee the worker continued activity during the duration of the authorization, if the employer has not demonstrated sufficient means to meet the obligations of the contract, or has falsified information or documents in the petitioning process. Moreover, failure to register with the Spanish social security system within one month of a worker's entry into Spain can result in the cancellation of the work authorization and future requests by the employer may be denied if he is unable to provide sufficient justification for the failure to affiliate the worker. Thus, the recruitment and entry process involves obligations on employers to be transparent and respect the terms and conditions of the contract. It thus uses an incentive-cum–disincentive-based approach, and in the process also builds in some institutional checks at the authorization stage itself to ensure the basic protection of workers in line with the terms and conditions of their contracts. It uses an established national system – the social security system – as a means to track employers and workers and ensure that they play by the rules.

Under the contingent system, seasonal foreign workers may enter Spain for up to nine months. After completing three years of seasonal work,

[9] Geronimi et al, 2003, p.65. http://www.ilo.org/public/english/protection/migrant/download/imp/imp66s.pdf.
[10] Informacion General, 'Unidad Tecnica de Seleccion de Trabajadores Migratorios'.,

they can become immigrants. Work extensions are possible, thus enabling migrants to stay longer and earn additional money. Temporary authorizations can be extended for up to an additional year for the same work or service specified in the initial contract. Seasonal authorizations can be extended for six to nine months depending on the type of visa and the period of the initial contract. This flexibility has been significantly used. Recent immigration data from Spanish sources indicate that only 8 percent of Ecuadorian nationals in Spain have an 'initial residence authorization', only 12 percent have permanent residence authorization, and around 50 percent have a 'first renovation' authorization, i.e., many legal Ecuadorian migrants are choosing to renew authorizations. Thus, evidence indicates that Ecuadorian workers do capitalize on the opportunity for extended stay in Spain under this agreement.

There is also a preferential aspect to the granting of work permits to Ecuadorian workers (and, for that matter, workers from other countries participating with Spain in bilateral labour agreements) in that the 2003 legislative reform in Spain's Law on Aliens explicitly states that seasonal jobs offers would preferably be made to countries with which Spain had signed an agreement on the regulation of immigration flows. This preferential treatment is also evident in the Royal Decree which stipulates that the national labour situation will not be taken into account when granting a residence and work authorization to those migrants who have held work authorizations for seasonal activities for four years and also returned to their home countries. Thus, nationals of participating countries such as Ecuador implicitly get preferential access to the Spanish market as they are not subjected to labour market tests for getting their work authorizations, provided they have worked in Spain previously and also returned. Such preferences incentivize return and the scope for circular and repeat flows (a point discussed further in the section on the return dimensions of this agreement).

Another interesting feature of this agreement is that it attempts to regularize undocumented Ecuadorian workers residing in Spain. The agreement guarantees preferential processing of residence and work visas for such workers who are found eligible to return to Spain to work as legal migrants if they so desire. The Spanish authorities promise to pay for their return flight. Some 24,000 Ecuadorians have benefited from this programme. Thus, the bilateral agreement has also been used to track undocumented Ecuadorian workers and to mainstream them through the formal channels of recruitment and work authorization.

There are also obligations to return. Temporary workers are required to sign a commitment to return to Ecuador upon expiry of their contract, before they are hired. They are required to report to the Spanish consular office in Ecuador from which they received their visa, within a month of their return. If they fail to meet this requirement, they are disqualified from future employment in Spain as future requests by the worker for work authorization may be denied for a period of three years following the expiry of the original authorization. The information about the worker's return is communicated by the respective consular office to the Spanish Ministry of Foreign Affairs and Cooperation and the Ministry of the Interior and noted in the Central Register of Foreigners in Spain. Thus, there is a coordinated documentation and tracking mechanism to ensure return as well as adherence to related obligations under the agreement. It involves a carrot and stick approach, where timely return and meeting of all post-return requirements facilitates future entry by the worker into Spain while failure to meet requirements penalizes the worker in terms of future employment in Spain. There are also provisions for early repatriation of workers, prior to expiry of their contract, if they have not complied with the requirements for entry and stay. The latter include violations such as falsifying information and leaving their jobs prematurely. Officially, there are only eight cases on record where Ecuadorian workers have left their jobs, and these were due to misleading information from friends and relatives rather than problems experienced with the process of entry into Spain under the agreement. Overall, the return and repatriation conditions clearly put the onus on the individual worker to fulfill all obligations under the contract while the institutional structures that aid this process are clearly laid out.[11]

The agreement also provides for a mixed committee to meet at least once a year, alternatively in Spain and Ecuador, at the request of either one of the contracting

Nationals of countries such as Ecuador [that have signed agreements with Spain] implicitly get preferential access to the Spanish market as they are not subjected to labour market tests for getting their work authorizations, provided they have worked in Spain previously and also returned.

[11] There are also mechanisms outside the agreement which facilitate the continuation of migrants' social ties with their place of origin in Ecuador and thus create an incentive for return. For instance, the association of Ecuadorian migrants 'Ecuador Llactacaru' in Barcelona has established a community centre in one of the Ecuadorian towns whereby family members and friends of migrants can communicate with each other through the Internet and web cameras. Such a mechanism helps maintain a migrant's social network back home and motivates the person to return on completion of his or her contract. Similarly, the right to suffrage granted to Ecuadorians living overseas also permits Ecuadorian overseas workers to participate in their country's political process and maintain ties with the homeland.

parties, in order to evaluate the programme, make changes or suspend if required, and to enforce joint responsibility in its operation. There is flexibility to suspend the agreement on grounds of state security, public order and public health. Thus, these agreements are at one level non-binding and reversible, as the institutional setup allows for discretionary scope to continue and customize them through periodic reviews and consultations.

It is worth noting that despite the agreement, irregular migration from Ecuador to Spain continues through channels outside this bilateral accord. This is evident from the large number of Ecuadorians who were repatriated in 2003 from Spain and the large number of Ecuadorians registered in Spain's national census compared to the numbers registered as holding valid residency permits. The estimated number of irregular Ecuadorians resident in Spain in 2003 even exceeds the number of workers processed through the UTSTM during the 2002-2006 period. Thus, the possibility for legal migration under the agreement has not completely curbed the incentives for irregular migration flows, the possible reasons being that alternative channels and incentives were operating, such as an earlier agreement which allowed Ecuadorians to come to Spain as tourists without visas (later changed) and the prospects for legal status in Spain under regularization programmes (such as the one launched in 2005). Thus, the efficacy of a bilateral agreement may be undermined if other less monitored and less administratively structured channels for entry are possible and if the penalty for overstay and illegal entry are not perceived to be high.

2.1.2 Legal Rights, Social Protection, and Benefits

A survey of documented and undocumented immigrants in Spain found that temporary documented and legal workers, including those contracted under the framework of bilateral agreements, generally do not experience a lack of legal and social protection. The agreement between Spain and Ecuador provides for the equality of rights for Ecuadorian migrant workers and Spanish nationals with respect to minimum wages, access to social security, right to association, right to family reunification, vacation benefits and other work benefits, and the right to circulate freely and not be expelled, provided there is compliance with the agreement. Ecuadorian workers under the bilateral agreement are granted certain social protections that are considered universal in Spain, namely health and medical care, which are provided free through the social security system in Spain. Legal and labour advice and assistance are available to help workers with documentation, housing and mediation services – legal and human rights related intermediaries – at the regional and provincial levels. Spanish employers are responsible for providing them transportation and lodging. More detailed information on the rights of migrant workers could, however, not be obtained for the purpose of this research.

There is a general recognition in Spain that policies that support the development of the sending country (such as Ecuador) need to be integrated into all bilateral agreements.

2.1.3 Remittances and financial flows

The agreement has tried to induce migrants to use the formal banking system for financial transfers. In 2006, the Central Bank of Ecuador signed an agreement with a Spanish institution to facilitate the transfer of remittances in cooperation with a group of banks, societies and cooperatives in Ecuador. Steps have been taken to reduce the cost of remittance transfers and to direct them towards productive investments in the source regions of the migrants. For instance, Banco Solidario in Ecuador has eliminated transfer charges for migrant remittances to save money. Thirty percent of the bank's transfers are free, which have resulted in an estimated $6,023,137 in savings. The bank also has a Futuro Seguro savings account plan for migrants returning from Spain. It grants microcredit to individuals and groups wanting to start small enterprises in rural areas. Instant credit has been granted to some 1,600-plus migrants and migrant families. The possibility of using these savings to set up businesses and own homes is also an incentive to Ecuadorian workers in Spain to return home. A pilot Return Plan has also been proposed by the Ecuadorian president, wherein the workers would be encouraged to bring back the machines and material goods with which they worked in Spain in order to launch business projects. Thus, clearly, financial and other flows are seen as integral to meeting capacity-building and return or circular migration objectives under the agreement.

2.1.4 Capacity-building and development efforts

There is a general recognition in Spain that policies that support the development of the sending country (such as Ecuador) need to be integrated into all bilateral agreements. Several capacity-building and development efforts have been dovetailed into Ecuador's bilateral labour agreement with Spain and also into its other joint initiatives with Spain.

Under the Spanish Interior Ministry's Global Programme on Regulation and Coordination of Immigration and Alien Affairs (GRECO) plan, development cooperation is an important element. It states that 'investment in the development of countries of origin must be the key element in the government's overall design… in which we must favour over other actions the return of immigrants to their countries of origin. Their professional training, after their work here, will be an added value to their own experiences which will allow them to contribute to efforts towards development and growth in their own countries'. Thus, GRECO focuses on the training of immigrants so that they may contribute to development on their return to their home countries, assistance to immigrants for their reintegration in their country of origin, orientation of their savings towards productive investments in their home countries, granting of microcredit in source countries for financing productive activities, and technical assistance in the regions of origin. These elements in the co-development action plan are under the mandate of different line ministries of the Spanish government. While this strategy is not specific to any one agreement, initiatives reflecting this concept of development cooperation, with a primary focus on promoting development in source regions and countries as well as promoting and facilitating return, are evident in the Spain-Ecuador bilateral agreement.

A draft agreement was recently proposed to supplement the 2001 agreement between the two countries. It calls for advance training of migrant workers in some cases. This would thus involve closer relations between the Spanish Labour Ministry and the Ecuadorian Ministries of Foreign Relations and Labour and the possible use of the Ecuadorian Vocational Training Service (SECAP) to train workers registered in the UTSTM database, to support the requirements of the Spanish authorities. There have been discussions between the two countries to examine the scope for vocational and guidance courses. The draft agreement states, 'A procedure shall be agreed by the Spanish Ministry of Labour and Social Affairs and the Ecuadorian Ministry of Foreign Relations to promote the training of Ecuadorian workers, in their home country, in all areas in which Spanish businessmen require Ecudorean workers, as a precondition for participation in selection processes. This will help increase the professionalism of the Ecuadorian workers selected, thereby ensuring that they work to the best of their abilities in Spanish companies. Training could be funded by the Spanish Ministry of Labour and Social Affairs, sectional authorities, the various business, trade union and professional associations, finance institutions and Spanish businessmen who need the workers. For its part, the Ecuadorian Ministry of Foreign Relations will try to draw up an agreement with the Ecuadcorean Ministry of Labour with a view to ensuring that training is provided in exchange within the SECAP'.[12] Thus, training and capacity-building schemes are being considered under this agreement to enhance the scope for mutual benefits and to better address the needs of Spanish employers.

There are also joint development projects between receiving regions in Spain and sending regions in Ecuador. For instance, the Cañar-Murcia Joint Development Project, a project between the migrant sending canton of Cañar in Ecuador and the migrant receiving province of Murcia in Spain, has totaled nearly $6 million in investments since its initiation in 2006. It aims at ensuring that Ecuadorian workers going to Spain have internationally recognized rights and that the migration flows between the two countries foster economic and social development and transfer of technology to Ecuador and the implementation of productive infrastructure projects in Cañar. Similar initiatives are being considered in other migrant sending and receiving regions of Ecuador and Spain, respectively, particularly for the joint development of agricultural regions. Again, the overarching theme is that underdevelopment and poverty in source regions act as push factors for migration. By participating in development projects in their home countries, immigrants can contribute to their development, thus helping migrants retain ties with their home countries, and facilitating circular migration.

In some receiving regions of Spain, associations of workers play an important role. One such project is the Unió de Pagesos, which is a Catalan farmers' union that manages its own solidarity project to regulate migratory flows. Its role includes hiring at the place of origin by giving information and training on wages and working conditions in destination areas, mentoring seasonal workers during their stay in Spain, training overseas workers on social and cultural issues, promoting immigrant groups who work towards the development of their communities back home, and sensitizing development agents on the value of seasonal immigrants.

Underdevelopment and poverty in source regions act as push factors for migration. By participating in development projects in their home countries, immigrants can contribute to their development, thus helping migrants retain ties with their home countries, and facilitating circular migration.

[12] As quoted in Vevey, 2007.

The various development and capacity-building efforts discussed above, although not always specific to any one bilateral agreement, clearly indicate that initiatives which closely tie migrant workers to their communities and involve the participation of employers' groups and government bodies at various levels can make migration less of a one-way phenomenon, with concomitant benefits to source communities. The fact that these efforts come down to a micro- and community-based level also increases the possibility of direct impact on both sides.

2.2 Canadian Seasonal Agricultural Worker Program (CSAWP) with Mexico and the Caribbean

CSAWP has its roots in a pilot programme launched between Canada and Jamaica in 1966 for 264 Jamaican agricultural workers to come to Canada on a temporary basis to harvest tobacco in Southern Ontario. The objective was to address the shortage of agricultural labour within Canada. Since its inception, this programme has expanded to cover several other countries, including Barbados and Trinidad and Tobago in 1966, Mexico in 1974, and the Organization of Eastern Caribbean States in 1976. The programme was also expanded to cover a larger number of provinces within Canada and more agricultural commodity groups than just tobacco. CSAWP has been used as a model for managing migration in other sectors of the Canadian economy, such as hospitality and construction. In 2000, Caribbean and Mexican workers represented around 18 percent of the total horticultural workforce in Canada, and over half of the employment in sectors covered by this programme.

CSAWP is established by a Memorandum of Understanding (MoU) signed by Canada and governments of the aforementioned countries. It is jointly administered by Citizenship and Immigration Canada (CIC) and Human Resources and Social Development Canada (HRSDC), and falls under the authority of Canada's Immigration and Refugee Protection Act and Regulations (IRPA). In terms of its legal status, this is an intergovernmental administrative arrangement which does not have the status of an international treaty and where consultative processes are to be used to resolve any issues among the parties.

The objectives of CSAWP are clearly laid out in the MoUs. These are to serve the mutual interests of the contracting parties, to facilitate the movement of seasonal agricultural workers into all areas of Canada, subject to Canada's determination of its need for such workers. The role of the state is stressed in terms of determining those aspects of the programme which are to the benefit of the two sides, monitoring the movement of workers, and ensuring that there is no local labour displacement. The ensuing benefits to both sides – addressing labour market shortages and enhancing efficiency and sustaining the agricultural sector in the case of Canada, and providing employment at higher wages and remittances in the case of migrant workers and their source countries – are seen as major objectives that are served by this programme.

This is perhaps the most elaborate bilateral agreement on managed migration that exists today, in terms of institutional framework and coordination between Canada and source countries, operational guidelines for various stakeholders, detailed designation of duties and responsibilities for all state and non-state actors involved, and its cognizance of the social and legal rights of migrant workers. Numerous studies on CSAWP enable an objective evaluation and learning of best practices from this programme. The programme is subject to an annual review wherein amendments can be made after consultation with concerned parties.

2.2.1 Recruitment, entry and return

One of the main principles underlying CSAWP's recruitment process is that hiring must be need-based, and must supplement, not displace, the Canadian labour force. Workers from participating countries are to be employed only in the Canadian agricultural sector and only during those periods when Canadian workers resident in Canada are unavailable. The programme thus operates on a 'Canadian first' principle wherein employers have to show that they attempted to recruit and hire Canadian workers before they receive approval to hire an overseas worker from Mexico or the Caribbean. This needs-based system is further embedded in the guiding principles of the agreement which state that overseas workers have to be employed at a premium compared to domestic labour, as Canadian employers must pay additional costs such as accommodation and part of travel expenses. Part of the transport and work permit expenses are, however, recovered by employers through payroll deductions.

CSAWP has operated on a demand-supply basis since 1987 when HRSDC lifted the annual quotas on the entry of foreign workers into Canada. The administrative framework on the demand side is clearly delineated. The main federal agency responsible for this programme is HRSDC, which grants approval to employers requesting migrant workers in accordance with the 'Canadian first' policy. Employers are required to submit a human resources plan that demonstrates their inability to find sufficient Canadian workers. The application must provide information on the number of workers needed, the duration and location of employment, and tasks to be done. Successful applications are handed over for processing to the Foreign Agricultural Resource Management Service (FARMS) or its French counterpart FERME.[13] These service agencies then forward the successful applicants' requests to the government of the supplying country chosen by the employer. They are also involved in compiling statistics on the movement of workers and reporting to HRSDC on a regular basis.

On the supply side too, there are clear operating guidelines. Workers are recruited by the Caribbean Ministries of Labour and the State Employment Service in Mexico. For instance, under the Mexico-Canada agreement, once the Mexican Ministry of Labour receives the notice, it must complete the recruitment, selection, and documentation process in coordination with the Mexican Ministries of Foreign Affairs, Health, Interior, the State Employment Service and the Mexican Consulates in Canada, and inform the Canadian authorities. Workers must be selected within 20 days of receiving a request from the Canadian employer. Sending countries are also required to keep a pool of workers who can be readily deployed to Canada in case of harvest-related emergencies or worker replacement requests. (This reserve labour pool constitutes 10 percent of the total number of workers requested each year in the case of Mexico). Liaison officers are also required to be sent from the source countries to monitor the migrants' working conditions, ensure that wages are properly paid, provide worker orientation, inspect workers' housing, examine dispute cases, provide administrative services such as processing tax returns and workplace safety insurance board claims to the migrants, communicate information on arrivals, returns, transfers, etc. to home country authorities and provide policy advice and suggestions to HRSDC. Thus, there is considerable amount of institutional coordination required between the two sides and within countries, involving several different state agencies as well as non-state agencies.

Once selected, the worker must present all documents, including medical clearances and passports, to a Canadian immigration office, which then issues a work permit for the period requested by the employer. Dependents of the Mexican or Caribbean workers are not covered by the work authorizations. The operational guidelines require workers and employers to sign an employment agreement which specifies the duties and obligations of both parties under the contract and also outlines the role of state agents from Mexico and the Caribbean with regard to the contract. The employment agreement has to be signed and reviewed by the worker before arriving in Canada. The agreements for Mexico and the Caribbean, though separate, are broadly similar in their terms and conditions. The employment agreement provides for a minimum of 240 hours of work within a six-week period or less, including a 14-day probationary period, and not longer than eight months. The average stay for workers across all CSAWP participating countries in 2005 ranged between 18 to 21 weeks. The authorized stay period given on the work permit is the same as the anticipated duration of the employment. Authorized stay terminates when the work permit expires. If the employment terminates before the expiry date of the work permit, the worker may continue to reside in Canada till the expiry date, but is not allowed to work for another employer unless approved by an HRSDC officer and the government agent. The worker must promptly return home upon completion of the term of employment. According to a 2003-2004 report by the International Development Committee of the House of Commons, no Mexicans had overstayed in Canada in 28 years and very few workers had returned prematurely before expiry of their contract, thus indicating that the programme had worked effectively.

There are penalties for unauthorized employment. Migrants cannot legally work for another grower without the approval of HRSDC and the government agent in Canada. Employers who loan their workers or abet unauthorized work are fined up to $50,000, or two years imprisonment, and the foreign worker and unauthorized employer are subject to prosecution. If foreign workers do not return to their home country upon termination of

[13] FARMS and FERME are non-profit organizations controlled by Canadian growers and financed through user fees which privately administer CSAWP.

the contract, sanctions may be used against the employer in terms of withdrawing future approvals for work permits.

There is also a provision for 'transfer workers' under CSAWP. Employers can request and get transfer workers with approval from the Service Centre Canada and the source country. Workers who have completed their first term of employment under this programme and whose initial period of employment plus the transfer period of employment are within the maximum stay period of eight months, are eligible to transfer to other employers. The Caribbean countries have a separate Employment Agreement for transfer contracts, wherein a transferred worker is given a trial period of seven working days in the new job, following which they are deemed a 'named' worker. The transfer process is mutually beneficial to both the worker and the employer. The former is able to stay longer and earn more while the latter is able to get workers easily and at lower cost, having to pay only the southbound airfare of the worker. It has been pointed out, however, that there are problems with the worker transfer process as there is no central coordinating agency to administer the process. FARMS only acts in an advisory capacity. It is left to the employers to seek such workers and get approval from HRSDC and the concerned government agent, or for the worker to request the employer and country agent to let FARMS know that a transfer is being sought.

There are also provisions for an employer to re-hire a worker by requesting the person by name. Such requests are processed on a priority basis. According to the North-South Institute, between 70 to 80 percent of migrants under CSAWP are re-hired by name every year and the average worker interviewed in 2002 had seven years of work experience in Canada. The name-hiring provision gives workers the assurance that they can continue their employment each season so long as they satisfy their employers, while it also enables farmers to get experienced and familiar workers. Although the name-hiring provision may make workers wary of criticizing their employers so that their chances of return to the same employer are not jeopardized, the system on the whole facilitates longer-term and stable relationships and facilitates circular migration. It gives workers the assurance that they can continue their employment each season so long as they satisfy their employers while enabling farmers to get experienced and familiar workers. Such strong ties are further promoted by a recognition bonus provision, under which workers who have been with the same employer for five or more consecutive years and are ineligible for vacation pay are given a bonus of Canadian $4 per week to a maximum of Canadian $128, payable at the end of the season. This complies with the terms and conditions of the employment agreement, and return to the home country is promoted.

According to the North-South Institute, between 70 to 80 percent of migrants under [Canada's programme] CSAWP are re-hired by name every year and the average worker interviewed in 2002 had seven years of work experience in Canada.

An employer may also repatriate a worker prematurely if the latter refuses to work or comply with the agreement terms or other valid reasons. The costs of repatriation are also laid out. Where a worker has been name-hired, the employer must bear the entire cost of repatriation. Where the worker is unnamed and selected by the source country government, and where over half of the contract period has been completed, the cost of return has to be fully borne by the worker.[15] Where the worker is unnamed and selected by their government and less than half the contract period has been completed, the cost has to be borne both ways by the worker. Thus, the repatriation norms are structured in such a way as to stress accountability on both sides, by penalizing non-compliance by the worker as well as by making the employer responsible for choosing the right worker if they name-hire.

Under CSAWP, temporary workers cannot legally work for another grower without the approval of HRSDC and the government agent in Canada. Unauthorized employment is subject to penalties that apply to employers and workers. Employers who loan their workers or abet unauthorized work are fined up to Canadian $50,000 or two years imprisonment, and the foreign worker and unauthorized employer are subject to prosecution. If foreign workers do not return to the home country upon termination of the contract, then sanctions may be used against the employer in terms of withdrawing future approvals for work permits.

2.2.2 Legal rights, social protection and benefits

CSAWP is extensive in terms of extending various legal and social rights and protections. In various respects it is very cognizant of migrant rights and benefits. However, in

[14] A 'named worker' is a worker who has been recruited by name, i.e., the employer knows the worker based on prior performance and recruitment by him/her and asks back for him/her the next time.

[15] In the case of the Caribbean Employment Agreement, if the worker is unnamed and has completed more than half of the contract, then the Caribbean state pays 25 percent of the cost of reasonable transportation to Kingston (Jamaica) and subsistence expenses.

some respects, the existing provisions under the Employment Agreements fall short of prevailing employment and other norms.

The employment agreements specify the rights and obligations of both employers and workers regarding transport costs, working conditions, wages and repatriation. Migrants have to be paid the prevailing wage rate, which, in 2003 was determined based on a national wage survey conducted for HRSDC by Statistics Canada, thus ensuring objectivity and transparency. Earlier, the wage rate was based on consultations among HRSDC, the horticultural industry, sending country governments, and federal and provincial agriculture ministries. Employers are also required to provide provincial health coverage to workers and enroll them in the provincial workplace safety insurance programme. Under the latter, compensation and benefits are provided to the dependents of workers in case of workplace injuries and occupational diseases, and also facilitates the recovery and return to work of the workers concerned. Employers are required to report all work related accidents and illnesses to the workplace safety insurance board and the supply country representative and make arrangements for the worker to see a doctor.

The employer is also required to provide food and lodging (usually on their own property). The Employment Agreements require that the accommodations are inspected every year to ensure that they meet provincial health standards. Such inspections may, however, not always be carried out, and government agents often do not criticize substandard accommodation facilities due to the competition among countries for placing their workers. Thus, there have been cases of workers being housed in trailers, bunkhouses and instant homes that do not meet required standards.

There are some discrepancies between the employment terms for migrant workers under CSAWP and prevailing employment standards for Canadian workers. While the employment agreements provide for a minimum average workweek of 40 hours, a normal workday of eight hours with the possibility of extension by mutual consent, and rest periods, farm workers in Ontario are exempt from the legal minimum standards concerning maximum hours of work, daily and weekly rest periods, statutory holidays and overtime pay, which are present in the Ontario Employment Standards Act. In some provinces, workers may also not be eligible for vacation benefits.

Yet another area where there is some ambiguity is occupational health and safety. Until recently, workers engaged in farming operations were not covered under the Ontario Occupational Health and Safety Act (OSHA). Migrant farm workers were exempt from most of the protections under this Act. Since June 2006, the act has been extended to cover farm workers, although with some exceptions and limitations. OSHA enables migrant workers to reduce non-wage labour costs. It accords several rights to the workers, including the right to know about workplace dangers, the right to representation through health and safety committees, the right to refuse unsafe work, and the right to be free from employer reprisals for trying to enforce rights under the Act. However, agricultural workers remain excluded from certain regulations relating to specific hazards under OSHA. The employment agreements fall short of the provisions under OSHA in that they fail to recognize that workers have the right to refuse unsafe work and state that employers can terminate contracts if workers refuse to work.

Migrant farm workers are also not covered under the Ontario Labour Relations Act, which means that they cannot engage in collective bargaining. Although workers are allowed to form employee associations, these associations do not have any enforcement capabilities as the law does not require employers to do more than receive submissions from workers and negotiate with them. Also, the Employment Agreements do not take account of workers in unionized environments.

As per the agreement, an unnamed worker cannot be discharged during the probationary period except in the case of misconduct or refusal to work. However, there is not sufficient clarity on the permissible reasons for discharge and their interpretation. Some who have evaluated this agreement have argued that it provides scope for arbitrary action by employers to remove workers without giving them any appeal mechanism. It has also been pointed out that source country liaison officials, who are supposed to arbitrate any disputes, are unlikely to go against employers given their objective of placing workers and maintaining a steady relationship with local employers. Thus, there is a conflict of interest in the dispute settlement process and an inherent bias against the workers in some of the repatriation norms. Moreover, as the worker is immediately removed from the grower's property and is not permitted to work for another employer unless the consulate places him on another farm, the worker has

to pay for accommodation costs while earning no income. The agreement states that where it is determined that the employer has breached the agreement, the employer has to bear the full costs of repatriation and compensate the worker for the total wages he or she would have received had the contract been completed. But, in reality, it is very difficult for the worker to claim damages for breach of contract. Thus, despite the provisions to protect the worker, the latter is at a disadvantage vis-à-vis the employer when a contract is terminated early.

Another contentious issue is that migrant farm workers are required to make Employment Insurance (EI) premiums (meant to support a worker during their search for another job in Canada) and to contribute to the Canada Pension Plan. But workers cannot claim regular EI benefits as they would need to remain illegally in Canada in violation of the Employment Agreements and their work permits. The pension contributions are quite limited and erode workers' earnings. While workers can claim maternity or paternal leave benefits under the EI programme, even if their children are born outside Canada, most CSAWP workers are not aware of this eligibility and many do not qualify for the benefits as they do not work an adequate number of insurable hours in Canada. Workers can receive disability benefits under the Canadian Pension Plan even if they are outside Canada as long as they meet the plan's eligibility conditions. However, many workers are not aware of these benefits and the process for claiming them.

2.2.3 Remittances and other flows

An important feature of CSAWP is its Compulsory Savings Scheme under which 25 percent of workers' wages are withheld and remitted to their source country governments. Caribbean governments keep 5 to 8 percent of the funds as administrative expenses and the rest is put in the workers' accounts at the end of the season. This scheme ensures a minimum level of remittances from CSAWP to the source countries. The main criticisms of this scheme are delays in depositing the funds into the workers' accounts, and double taxation of these savings in the home country. Underlying this forced savings mechanism is the objective of compelling workers to return, given that a large portion of their earnings is available only upon return, which workers would have to forego if they stayed behind in Canada. There are also banks in Canada which have remittance programs specially designed for seasonal agricultural workers from Mexico. One such bank provides Mexican workers with proper documentation before their arrival in Canada so that they are issued legal documents while still in Mexico and are more likely to transfer their savings through formal banking channels.

[Canada's migrant worker program] has a Compulsory Savings Scheme under which 25 percent of workers' wages are remitted to their source country governments...[which compels] workers to return, given that a large portion of their earnings is available only upon return...

Some estimates indicate that there has been significant remittance of workers' earnings under CSAWP to the source countries. A 2001 estimate for Jamaica indicates that the country received around Canadian $7.6 million in remittances from CSAWP workers. Statistics available for particular groups of migrant workers from Mexico show that, on average, Tlaxcalan participants worked 63 hours per week for around five months in 2001 and transferred around US $3,200 over the period of their stay. Those staying longer periods, tended to send much more, and where the contracts were very short, such as eight or fewer weeks, the remittances were quite small. Transfers were equivalent to 2.2 times the annual minimum salaries of the recipient households in the home country, and thus placed the average participating household slightly above the official poverty line according to some surveys.

2.2.4 Capacity-building and development efforts

CSAWP does not involve any initiatives directed at capacity-building and local development in source communities and regions as it is mainly a poverty alleviation rather than a co-development programme. There are, of course, impacts on the source regions through remittances, which are used towards family maintenance, education of children and productive investments in land, animals and small businesses, by the returning migrant workers and their families. For example, there have been surveys by Canadian researchers which show that returnee workers have adapted farming methods they learned in Canada to their own small family holdings and taught these to others in the community. There are specific initiatives to train workers in specific farming skills while in Canada, which they could put to use once back home, as well as coordinated efforts between Canadian and source country authorities to improve local infrastructure, provide concessional loans and organize agricultural projects. It has been suggested, however, that a fund be created from some part of the workers' remittances to support the development of small businesses by workers and their families, to provide training to farmers so that they can use their additional

skills when they return and have sustainable sources of income, and to link workers' overseas experience to new economic opportunities at home. Such initiatives would require new interdepartmental mechanisms that link the administration of the programme to adult and vocational training courses in agriculture, small business development and other areas, and would also require community-based partner organizations. To date, however, the capacity-building element is missing in CSAWP.

Overall, CSAWP is widely acknowledged as a successful bilaterally managed migration arrangement. Its success is explained by its well-defined institutional framework and the specification of rights and obligations of all parties, the mutual benefit of the programme to both sides, and the mix of incentives and sanctions used to encourage return, with reward for good performance through repeat migration. There are also inbuilt flexibilities in the programme through periodic reviews and consultations among the parties. Welfare aspects are also broadly covered under the agreement, notwithstanding certain shortcomings, and monitoring and evaluation mechanisms by and large ensure adherence to obligations on both sides.

CSAWP is widely acknowledged as a successful bilaterally managed migration arrangement. Its success is explained by its well-defined institutional framework and the specification of rights and obligations of all parties, the mutual benefit of the programme to both sides, and the mix of incentives and sanctions used to encourage return, with reward for good performance through repeat migration.

3. Unilateral arrangements to manage temporary low-skilled migration

Many countries also make use of unilateral schemes such as seasonal and guest worker arrangements, temporary foreign worker programmes, and sector-based schemes, which involve work permits and visas for particular groups of low-skilled workers. These are not arrangements that are signed with any particular country as in the case of bilateral labour agreements, although workers entering under such schemes often tend to be from a few countries only, typically driven by geography, historical, social and cultural ties. Unilateral approaches are often preferred as they can be adjusted to the host country's economic cycles and because they can be used selectively to protect certain sectors and groups of workers. On the other hand, they may encounter problems in selecting migrants from among different source countries and difficulties in enforcing temporary stay as they are not coordinated with sending countries.

The following discussion outlines four cases of unilateral visa and work permit schemes, by the United States, Korea, the United Kingdom and the Gulf countries. The cases are chosen to demonstrate different approaches to unilateral management of low-skilled workers, in terms of the extent of regulation of the programme and the extent of legal and social rights granted to the workers. Following these cases is a brief discussion of the abuse and exploitation that occurs under some unilateral schemes, especially of women, across various countries and regions.

3.1 Temporary worker programmes in the United States

The United States has several temporary labour migration schemes. Under these arrangements, aliens who are lawfully admitted to the United States for a specific purpose are defined as non-immigrants under US immigration law. The two schemes relevant to low-skilled workers are the H-2A and the H-2B programmes, for temporary agricultural workers and for temporary workers performing other services, respectively. Both these programs are demand driven, which means that petitions on behalf of foreign workers have to be submitted by their US employers rather than the workers themselves. These programs incorporate various degrees of worker protection on the premise that low-skilled workers require the most protection from abuse and exploitation. Both programs are discussed here.

3.1.1 The H-2A temporary agricultural worker program

The H-2A programme for temporary agricultural workers has been in operation in the United States since 1964. It is the only legal, temporary foreign agricultural worker programme in the country. Employers can apply under this scheme to recruit non-immigrant alien workers for seasonal and temporary work, for a specific purpose.[16] As with CSAWP, the objective is to provide a reliable workforce to US employers while also ensuring that recruitment of foreign workers does not displace domestic workers and depress their wages.

The programme is jointly administered by the Department of Labor's Employment and Training Administration and the Department of Justice's Citizenship and Immigration Services (USCIS). Applications have to be filed with the US Department of Labor, Regional Administrator, the Employment and Training Administration, and the local office of the State Employment Service.

There are no numerical ceilings as is the case of the H-1 visas. Any agricultural employer who needs workers for services of a temporary or seasonal nature is eligible to apply for the H-2A visa. The employer may be an individual proprietor, association of agricultural producers, a partnership or a corporation. The application may also be filed by an authorized agent on behalf of the employer.

Labour certification is an integral part of the recruitment process. To get this certification, employers seeking foreign workers under the H-2A visa must demonstrate that they are unable to get US workers for the job and that the employment of aliens will not adversely affect US workers. Once the certification is received, the employer is responsible for getting the foreign worker into the country. A visa petition must be filed with the USCIS

Both [the US temporary worker] programs are demand driven, which means that petitions on behalf of foreign workers have to be submitted by their US employers rather than the workers themselves.

[16] There are over 20 major non-immigrant visa categories and the major category for temporary workers is the H visa.

for named or unnamed alien beneficiaries. The application must be filed at least 45 days before the date when the worker is needed. The Regional Administrator must act on the certification request at least one month before the date of need and make a certification determination 20 days before the date when the worker is needed. It must also notify the employer. The prospective H-2A worker is required to file an application for the visa with the US Department of State consulate abroad. Thus, several departments and agencies are involved in the recruitment and entry process.

There are several obligations on employers aimed at protecting the H-2A workers from exploitation and preventing labour displacement by foreign workers in the local labour market. Employers are required to pay the same wages as those paid to similarly situated domestic workers. They must also provide free and approved housing to all H-2A workers who do not commute, and the housing must be inspected by the US Department of Labor and meet minimum federal standards. Employers are also required to provide either three meals a day to each worker or free and convenient cooking facilities. They are also responsible for covering transport costs to and from the worker's temporary home and transportation to the next place of work when the contract is fulfilled. They must also provide workers' compensation or equivalent insurance. The employer is also required to guarantee employment for at least 75 percent of the period under the work contract and any extensions. The employer is also required to pay the worker at least twice a month or more, maintain a record of the workers' earnings and hours and share this with the worker. H-2A workers are, however, not covered by the Migrant and Seasonal Agricultural Worker Protection Act which regulates agricultural labour standards and working conditions. They are also exempt from unemployment benefits and social security coverage and are not ensured the right to collective bargaining under the National Labor Relations Act. Thus, although workers are guaranteed basic wages and working conditions, they are not assured all rights and coverage under relevant legislation, as in the case of CSAWP.

As with bilateral labour agreements, there are enforcement mechanisms to ensure the smooth functioning of this programme and compliance with contractual obligations. The onus falls on the employer as, under this visa scheme, it is largely the responsibility of the employer to file the application, recruit the worker and take care of the worker. This is different from the bilateral arrangements discussed earlier, where enforcement applies equally to employers and workers. The penalties on employers include denying labour certification to any employer who violates the H-2A obligations, administrative proceedings to cover unpaid wages and civil monetary penalties of up to $1,000 against violators for each violation. There is a further penalty of up to $1,000 if employers interfere with the Department of Labor's investigation of enforcement procedures.

The number of H-2A workers has been small in comparison with the total number of hired US farm workers. Of the 1.2 million farm and agricultural service workers in 1999, there were only 28,560 H-2A visas issued to foreign agricultural workers, and not all these workers would have ultimately taken up employment. There has been an upward trend in the past decade in H-2A job approvals and visas issued, possibly reflecting growing familiarity with the system, and improved verification and tracking systems, making employers less willing to risk legal sanctions by hiring unauthorized workers, and returning workers. (See Table 2 in Appendix B.) Although the H-2A programme is open to all countries, the requirement to pay transport costs both ways for workers makes recruitment from neighbouring countries more attractive to employers. As a result, over three quarters of the workers recruited under this scheme are from Mexico (mainly for harvesting tobacco in the Southeastern states of the United States) followed by workers from Jamaica.

The H-2A programme has, however, been subject to considerable debate and controversy and proposals for amendment. Regulatory changes have been proposed to streamline the visa process and transfer certain rights in the adjudication of requests from the USCIS to the US Department of Labor. There have also been several legislations proposed in the US Congress to modify or supplement the programme, some of which have been adopted while others have not, or have been deferred. These regulations have mainly aimed at making the programme less cumbersome and more welfare friendly in response to criticisms by agricultural employers and farm labour advocates, respectively. For instance, there was a proposal to replace the labour certification requirement with a labour condition attestation and the supplementing of the H-2A programme with a large-scale pilot temporary agricultural worker programme. But this did not pass as opponents argued that it would result in the displacement of local workers and make it easier for foreign farm workers to become

undocumented immigrants. There have also been proposed legislations to amend the H-2A visa scheme and to establish a limited-time amnesty programme which would allow aliens who have worked in the US undocumented in seasonal agriculture and would continue to do so in future for a specified time, to be given temporary legal status and be listed in an agricultural registry which would be used by agricultural employers before their H-2A applications were considered. Thus, there have been proposals to regularize undocumented foreign farm workers in the country and to give preference to such workers, and US workers, over new admissions under the H-2A scheme, though no such proposal has yet been passed.

Another area where there have been suggestions for improvement is with regard to the benefits and rights of agricultural guest workers. These include their rights to better compensation as well as broader benefits such as health care and social security and the right to collective bargaining. There have been cases filed against employers on the grounds of breaching contract obligations regarding payment of overtime wages, not providing rest periods and lunch breaks, and not fully covering transport costs of workers to and from Mexico. There have also been suits filed by worker groups against the US Department of Labor for wrongly approving an employer's need for certification. Thus, the programme has not been without its problems.

3.1.2 United States H-2B temporary non-agricultural workers programme

This scheme covers employers who wish to bring in temporary non-agricultural workers from other countries in order to do seasonal, peak load or intermittent temporary non-agricultural work, and work that is not covered by other H visas. The employer's need cannot be continuous. There is a quota of 66,000 visas. Employers are required to file petitions and demonstrate to the Department of Labor that qualified US workers are not available and that foreign workers will not have an adverse effect on local workers, their working conditions and wages. Employers are permitted to file a petition without a labour certification from the Department of Labor provided they submit a statement explaining their reasons. The applications for certification of temporary non-agricultural jobs have to be filed with the State Workforce Agency in the concerned region at least two months but not earlier than three months before the worker is needed. The agency then prepares a job order which is put forward to the Employment Service System for 10 days. The employer must advertise the job opening for three consecutive days. Provided no local worker is available, the visa petition can be filed. A foreign worker applies for the H-2B visa at the overseas consulate and is required to submit copies of the labour certification forms to the Bureau of Citizenship and Immigration Services. The duration of the visa cannot exceed one year. Renewal is possible for an additional two years, provided the employer submits a renewal request justifying the reason and also applies for recertification. The worker is not permitted to transfer jobs or employers, as the visa is specific to a specified employer and job. Overall, the process for obtaining a H-2B labour certification is not seen as time consuming and cumbersome. As with the H-2A programme, the main beneficiaries are workers from Mexico and Jamaica. Although the programme is not specifically oriented towards low-skilled labour, its main beneficiaries are low-skilled workers. Some of the main occupations that receive H-2B certifications include landscaping, forest work, housekeeping, janitorial services, stable attending, tree planting, non-farm animal caretaking, construction work, dining room attending, and kitchen help.

Table 2 in Appendix B gives the total number of admissions under the H-2A and H-2B visa schemes. It shows clearly that the H-2B visa remains grossly underutilized relative to its numerical ceiling and that admissions under both the H-2A and H-2B schemes are quite small. If one includes multiple entries by the same persons over time, then the numbers improve for these two schemes, to 27,695 H-2A workers in 2001 and 72,387 H-2B workers in 2001, but these numbers are still small in comparison with the specialty occupation figure, which was 384,191 in 2001. There is an order of difference of around 10 times between the H-2A and the H-1B (for skilled categories) programs and an order of difference of around five times between the H-2B and the H-1B programs. One possible reason for the small number of yearly admissions under the H-2A and H-2B programs may be the fact that there are unofficial channels through which workers are available for such jobs in the United States, thus in part undermining the efficacy and appeal of these visas.

Overall, one of the central issues surrounding such programs covering low-skilled workers in the United States has been that of irregular immigration and the undermining of working conditions. It has been argued that the failure to

It has been argued that the failure to enforce legal prohibitions on the employment of unauthorized immigrants, as well as proposals for the legalization of irregulars, have undermined the use of formal channels such as the H2-A programme.

enforce legal prohibitions on the employment of unauthorized immigrants, as well as proposals for the legalization of irregulars, have undermined the use of formal channels such as the H-2A programme. Moreover, it is argued that the exemption of these formal schemes from social security contributions and unemployment taxes, and the failure to enforce work contract obligations under these programs have encouraged the hiring of temporary over permanent employment, undercutting local wages and working conditions.

3.2 Temporary worker schemes in the United Kingdom

There has been a considerable expansion in temporary worker schemes in the United Kingdom in recent years. These schemes have been the subject of a lot of debate regarding their merits and demerits both for the United Kingdom and for the source countries. As of 2004, the temporary worker schemes that covered low-skilled workers included the Seasonal Agricultural Workers Scheme (SAWS), the Sector Based Scheme (SBS), the domestic workers scheme and the au pairs scheme. The following discussion briefly outlines SBS and SAWS.

3.2.1 Sector Based Scheme(SBS)

This scheme operates on the principle of a strong employer-employee relationship, in contrast to much more centralized and regulated systems such as the Spain-Ecuador agreement. The sectors covered under the SBS are hospitality, catering and food processing industries. A quota of 10,000 work permits is allocated for the hospitality and food processing industries, although, as of August 2003, only 2,500 applications had been received, mostly in the food processing sector.

Recruitment under SBS has been termed 'laissez faire'. Private agencies in the source countries match workers to employers in the United Kingdom. There is no government regulation of the process until the immigration authorities receive an application for a work permit. The permit is tied to a particular employer. Under this scheme, migrant workers are allowed to work for one year and can re-enter the United Kingdom after a minimum two-month stay outside the country after their return to their home countries. There is not much administrative detail available about this scheme, reaffirming the non-bureaucratic and non-centralized nature of its administration.

There have been, however, numerous criticisms regarding the lack of a development-friendly approach under SBS. For instance, although charging fees for work placements is prohibited under the Employment Agencies Act 1973, there is no means of enforcing this prohibition as workers are recruited abroad in an unregulated manner. Fee-based placement is known to occur. The Trade Union Congress has commented on the exploitation of workers under this system by recruitment agencies and employers, through the charging of high fees, unreasonable deductions from their wages, misinformation by recruiting agents regarding wages, the job, and working conditions, withholding of passports, excessive overtime demands and non-payment or slow payment of wages. Critics have argued that the recruitment process and the lack of a well-developed institutional framework with effective enforcement and a transparent entry process, render the foreign worker vulnerable and also reduce the potential gains from migration through higher income.

There have also been criticisms concerning the failure to grant adequate rights and protection to workers under the SBS. Due to the weak position of many migrant manual workers in the recruitment process, they are vulnerable to the abuse of their rights in the workplace as they are reluctant to confront employers and contracting agencies. Workers who are on contracts of less than one year, as is the case under the SBS, do not have the right to sue for unfair dismissal, making them even more vulnerable to exploitation.

There is also no capacity-building element built into the SBS, such as the provision of training to workers. It is left to individual employers or source countries to conduct post- or pre-arrival training, respectively. Training in health and safety or the English language are not provided. There are also issues regarding the difficulties in transferring remittances to the source countries, which further reduces the potential development benefits of the scheme. It has been noted that workers participating in the United Kingdom's temporary schemes are likely to have difficulties in opening bank accounts in the country as some of the requirements for opening accounts may not be easy for migrant workers to fulfill. There are also high costs of making financial transfers and no government support to facilitate remittances. Workers are also required to make contributions to national insurance while deriving little or no benefit from such contributions. Overall, there is no scope for participation by either the temporary workers or source countries in the design and administration of the SBS.

3.2.2 Seasonal Agricultural Workers Scheme (SAWS)

This programme has been in operation since 1945 and was developed by the British government to help organize seasonal agricultural workers, so that farmers and growers in the United Kingdom had sufficient number of temporary workers to meet their harvesting needs. The programme is run by a government agency, Work Permits UK. Today, the scheme has gone beyond targeting students to one that addresses labour shortages in the agricultural sector. SAWS benefits farmers by allowing them to access workers for up to six months Workers are hired from many countries, including Iran, Turkey, and earlier the Eastern European countries which have recently acceded to the European Union.

There is no institutionalized mechanism for recruitment. Work Permits UK has designated nine scheme operators who are authorized to recruit non–European Economic Area workers either on behalf of farmers across the country or for their own agricultural operations. The latter generally work with agricultural universities and travel and employment agencies in other countries in order to recruit workers. Some workers may directly apply to the operator. There is, however, no set standard procedure for recruitment for the operators. SAWS workers are not allowed to work in year-round jobs and are only permitted to do seasonal jobs where there is no continuous demand for them by the employer. They are also not permitted to work in food processing and pack houses so that they can be concentrated in harvest work.

The quota for SAWS has increased from 4,500 in 1994 to 25,000 in 2004. In 2004, designated operators recruited their quota of 25,000 non-EU students for this programme, benefiting over 700 farms across the United Kingdom. There is an upward trend in workers from the EU accession states. Since May 2004, there has no longer been any limit on the number of nationals from the accession states under SAWS, and the SAWS quota for non-EU nationals has been reduced to 16,250.

The workers receive minimum wages and are granted protection in terms of health and safety standards, accommodation (typically near the farm), and working conditions. The onus of the obligations varies depending on the kind of operators, farm or grower in question. Worker contracts stipulate hours and wages. SAWS workers are covered like all UK employees to the Working Time Directive of a maximum of 48 hours. The various SAWS operators have field officers who visit sites during the season and respond to the concerns of the workers. Previously, the workers financed the operators, while now the workers are responsible for documentation and insurance costs while the operators charge the growers for their recruitment services. There are penalties for employers who violate the obligations under the programme.

There are also provisions relating to cultural orientation in the United Kingdom, learning about the agricultural industry and its operations, and the development of English language skills. There is, however, no mechanism in place to monitor the return of SAWS workers. The operators track this through their contacts with overseas universities and agents.

Problems similar to those cited in the case of the SBS have been noted for SAWS. While designated operators are not allowed to charge workers for participating in SAWS, the scheme does not have any means of regulating third parties overseas who are involved in the process and who liaise with the designated operators in the United Kingdom. SAWS participants could face entry charges of between US $1,000 to $2,000 in their home countries, which cover fares, sanctioned fees and even bribes. The recruiters or intermediaries often retain 25 to 30 percent of the farmers' payment as a commission before paying the workers. There are similar difficulties with regard to remittances, as SAWS workers may find it difficult to open bank accounts in the United Kingdom and pay the charges on such transfers. Other criticisms include the vulnerability of workers, difficulties in redressing grievances through the legal system, and the limited stakeholder participation in the design and active operation of this programme, given the lack of involvement of the workers themselves and of civic groups and government welfare agencies.

[Seasonal agricultural] workers [in the United Kingdom] are not allowed to work in year-round jobs and are only permitted to do seasonal jobs where there is no continuous demand for them by the employer. They are also not permitted to work in food processing and pack houses so that they can be concentrated in harvest work.

3.3 The Republic of Korea's guest worker scheme

The Republic of Korea has two employment systems for unskilled foreign workers. These are the Employment Permit System and the Industrial Trainee System. The former is again divided into the Employment Permit System (EPS) for Foreign Workers and the Employment Management System (EMS) for ethnic Koreans of foreign nationality. The Industrial Trainee System is divided into two parts, one for small-

and medium-sized enterprises (1993) and the other for overseas investment businesses (1991). The Republic of Korea uses a strict numbers-based approach to regulating the admission of low-skilled foreign workers, to minimize labour market distortions and problems of unauthorized foreign workers. The Korean government has MoUs with selected countries in Asia, including Indonesia, the Philippines, Sri Lanka, and Vietnam, whose workers are admitted into the Republic of Korea under these schemes. The case of EPS is discussed below.

3.3.1 Employment Permit System for foreign workers

The Republic of Korea's EPS was introduced in August 2003 in recognition of the fact that the existing Korean policy on low-skilled foreign workers, namely the Industrial Trainee System which had been introduced in 1991, was seen as having failed to stem an increase in undocumented foreign workers in the country. The number of undocumented foreign workers had reached 80 percent of the total foreign workers in the country at the end of 2002, warranting a new institutional mechanism to address the labour shortages being faced by firms while also addressing the undocumented foreign worker problem. [17]

The EPS for foreign workers allows employers who have not been able to hire Korean workers over a three to seven day period to legally employ an adequate number of foreign workers. The government or a public agency administers the management of foreign workers from their entry to their return and there are well laid out institutional mechanisms to prevent irregular migration, unauthorized transfer of jobs by the worker, and non-compliance with contract obligations by the employer. The foreign workers who are admitted under the EPS are given the status of workers and are treated and protected equally as Korean workers as per labour laws. These foreign workers are given a non-professional employment visa (E-9). They are required to have passed a Korean Language Proficiency test and only then are eligible to make a job application under the EPS.

The scheme is administered under the Act on Employment of Foreign Workers which regulates the qualifications of businesses allowed to employ foreign workers, procedural issues, employment management, and the protection of foreign workers. There are two main nodal ministries involved, namely the Ministry of Labour and the Ministry of Justice. The Korean Ministry of Labour concludes MoUs with sending countries, prepares a roster of job seekers, issues employment permits, grants permission to change business or workplace in case of closure of business or delayed wages, inspects workplaces employing foreign workers and cancels and restricts the employment permits. The practical operational parts of the scheme are administered by the Local Employment Security Centres of the Ministry of Labour. The Ministry of Justice, under the Immigration Control Act, is responsible for issuing the Certificate for Confirmation of Visa Issuance, its extension, issuance of the foreigner registration certificate, permission to change status of sojourn, extension of sojourn period, and deportation orders. The local immigration officers are in charge of these operational duties. Other agencies are also involved in a designated capacity.

The EPS is not open to all employers. There are government stipulations on the type and scope of businesses that can avail of this scheme. Businesses that can bring in foreign workers include those in the manufacturing, construction, fishery and service industries, where there is a high rate of labour shortage and poor chances of hiring a Korean worker. Where an employer states more than one industry in the Certificate for Business Registration, he is only permitted to hire the foreign worker in the main industry of his business, as determined by a defined classification system under the Employment Insurance or the Industrial Accident Compensation Insurance as well as factors such as wages and numbers required.

The EPS is quota based, determined by the supply and demand conditions in individual industries so as to limit any adverse effects on the domestic labour market for Korean workers and to prevent the dominance by foreign workers in any particular industry. Thus, the quota is specified by industry and the number of foreign workers allowed in each industry is based on the number of Korean employees covered by employment insurance, as well as the performance of various sending states. These quotas are determined by the Foreign Workforce Policy Committee established by the government.

The assigned quota is then allocated across selected countries with which the government

[17] The scheme is aimed at meeting labour demand from small and medium enterprises while protecting foreign workers. It allows foreign workers to stay in the Republic of Korea for three years and to change jobs. This scheme is seen as an integral part of the country's small and medium enterprise (SME) development strategy. However, foreign workers are imported only to supplement native workers and as an act of last resort.

enters into MoUs. The number of job seekers allocated to each country is determined on the basis of a yearly assessment by the Ministry of Labour of the sending country's performance in terms of the numbers sent by that country in the past, the voluntary return rates, and the rate of illegal immigration from that country. These MoUs are meant to curb illegalities in the sending process. They are subject to regular assessment and can be renewed.

The government of the sending country selects candidates, a multiple of the number allotted under the quota to the country, based on objective criteria such as work experience and the score on the Korean Language Proficiency test. Following the stipulated period of three to seven days for attempting to recruit a Korean worker and failure to do so, the employer can apply for an employment permit at the Employment Security Centre. The Centre then recommends foreigners that suit the recruitment conditions, based on the information received from the sending country governments. An employment permit is issued when the employer selects from among the recommended foreign workers. There is a standard labour contract which has to be signed between the employer and the foreign worker. This contract clearly states working conditions such as wages, working hours, holidays and workplace conditions. The employer next applies for a Certificate for Confirmation of Visa Issuance which is then issued by the Ministry of Justice. The employer is required to send this certificate to the sending country, based on which the foreign worker is issued an E-9 visa from the Korean mission overseas. Employers may authorize agencies such as the Human Resource Development Service of the Republic of Korea and other non-profit organizations designated by the Ministry of Labour to sign the labour contract, the entry and departure arrangements, and the application for the Certificate of Confirmation of Visa Issuance. All foreign workers entering the Republic of Korea under this visa are required to receive job training within 15 days of entry.

The maximum duration of employment is three years from the time of the worker's entry into the Republic of Korea. A worker who has left Korea after employment must spend at least six months back in his country before he can be re-hired. Where the employer requests for a specific worker by name prior to his departure from Korea and after fulfilling three years of employment in Korea, then this minimum stay period in the home country is reduced to one month. Thus, there is a reward for good performance and circular migration is facilitated for those who abide by the terms of the contract. Where the worker has not worked the maximum period of three years, the employer can renew the contract for another year or for the remaining permissible sojourn period. If the labour contract is signed without using the standard labour contract, then the employer is fined up to $5,000. The Ministry of Labour reserves the right to cancel employment permits for foreign workers in order to protect the latter's rights and interests and to ensure effective employment management, if so required.

In order to ensure the smooth functioning of the programme, the Ministry of Labour carries out various other functions as well. These include providing education to foreign workers and their employers, cooperating with public organizations in sending countries and with civic groups within Korea that assist foreign workers, providing advisory services, promoting projects that help foreign workers adapt to their lives in Korea and any other important matters. The government covers some of the expenses associated with the projects organized by groups supporting foreign workers, such as medical care and cultural events. To ensure compliance with the terms and conditions of employment, safety and health, an annual inspection is conducted of the business or workplace hiring foreign workers and violations are dealt with in accordance with related legislation either by the Ministry of Labour or other concerned departments. Non-profit organizations are involved in some aspects of the EPS, specifically the administration of the Korean Language Proficiency test, employment training and consultation services. The agency to administer the EPS is designated by the Ministry of Labour. There are mechanisms to track the employment of foreign workers during their period of stay, and any change in employment or any outbreak of contagious disease must be reported by the employer to the Ministry of Labour.

To guarantee foreign workers with a retirement allowance and possibilities of overdue wages, the employer is required to buy the Departure Guarantee Insurance. A foreign worker is entitled to the departure guarantee insurance money if he or she has worked continuously with the same employer for one year or more. Foreign workers are required to buy the Return Cost Insurance and the Casualty Insurance to meet the expense of returning to their home country and for cases of accident or disease unrelated to work.

The number of job seekers allocated to each country [by Korea] is determined on the basis of a yearly assessment by the Ministry of Labour of each sending country's performance in terms of the numbers sent by that country in the past, the voluntary return rates, and the rate of illegal immigration from that country.

3.4 Low-skilled migration to West Asia

Several countries in West Asia, in particular the Gulf region, are major destinations for low-skilled labour, including construction workers, transport operators, domestic workers, artisans and various tradesmen. The major influx into the Gulf countries began after the oil price boom in 1973 and the surge in wealth in the region, which led to increased demand for workers to fulfill grand development plans. As the Gulf Cooperation Council (GCC) countries had a very limited workforce, this increased demand for workers was met by importing skilled and unskilled workers from other Arab countries, South and South East Asia, during the 1970s and 1980s. Cheap foreign workers from Arab and Asian countries have continued to fulfill the demand for unskilled workers in this region and are mostly involved in the '3D' jobs – dirty, difficult and dangerous. The significance of migration to this region is evident from the fact that for the last three decades, expatriates have constituted over half the labour force in all the GCC countries and in some cases have come to outnumber nationals. Non-nationals constituted 76 percent of the UAE population in 2000.

Cheap foreign workers from Arab and Asian countries have continued to fulfill the demand for unskilled workers in [the Gulf] region and are mostly involved in the '3D' jobs – dirty, difficult and dangerous.

The case of the Gulf region is a highly illustrative example for the purposes of this study for several reasons. Firstly, it is an important case of South-South low-skilled migration flows. Secondly, it highlights the importance of migration channels and institutional mechanisms for worker welfare. The flow of low-skilled migrants to the Gulf countries has occurred by and large through unregulated channels involving intermediaries and recruiting agents who place workers on behalf of employers in the destination countries or through social and family networks, and where sending country governments have probably played a more important role in regulating flows. The loose mechanisms through which host countries have admitted workers have interesting implications. Thirdly, the Gulf region also highlights the gender dimensions of low-skilled migration, given the large number of domestic workers (women) migrating to this region. And finally, the Gulf region is also illustrative of shifts in migration policy due to domestic economic and social compulsions. All of these issues are discussed below.

Although many of the Asian countries sending workers to the Gulf states... have ...agreements...regarding the recruitment and protection of their workers, the process by which workers are matched and placed tends to remain largely in private hands.

Recruitment of low-skilled workers to the Gulf countries occurs through temporary contracts that are organized by employers and recruitment agencies and only loosely regulated by the governments of these countries. Although many of the Asian countries sending workers to the Gulf states, including Bangladesh, India, Indonesia, Pakistan and the Philippines have negotiated framework agreements or statements of mutual cooperation regarding the recruitment and protection of their workers, the process by which workers are matched and placed tends to remain largely in private hands, except where the sending governments have very strong institutionalized mechanisms for placing their workers and monitoring intermediary agencies. (Such examples are discussed in a later section and are particularly pertinent for migration to the Gulf countries.)

The visa programs are broadly similar across the Gulf countries (Kuwait, Saudi Arabia, Oman and the UAE). There are no quotas on the number of migrants allowed. Preferential treatment is given to nationals for most jobs, but certain kinds of menial work have been allocated to foreigners as nationals are not willing to do these jobs. Clearance is required from source country embassies for low-skilled and domestic workers. All foreign workers require an 'iqamma', which is both a residency and a labour card. The resident card is available only after entry and on average takes two months to file. Temporary workers are normally legally attached to a sponsor ('kafeel') or employer till the completion of an employment contract. Each worker must have a sponsor. For workers engaged in the public sector, the government department employing the worker is the kafeel. Where he is engaged in the private sector, the local sponsor is expected to have a business for which it needs workers. Such a sponsor receives approval from the government to import foreign workers and can thus sponsor a work permit for a foreign worker. The sponsorship is granted for a fixed period of time following which the worker can get the sponsorship renewed by paying the kafeel a fee.

In general, temporary foreign contract workers are not allowed to move from one employer to another in the host country and, where possible, this must be with the permission of the host country government and the employer who acts as the sponsor. On completion of the contract, they are required to leave the host country or must receive a renewal of the work and residency permit and extend the contract. Those who leave their employers or sponsors or try to run away or overstay without approval for a renewal are deemed illegal and are subject to arrest and deportation. There are periodic crackdowns to find and deport such undocumented workers. There are no

possibilities for permanent settlement or citizenship rights; this applies to all workers.

Data on the share of migrant workers in the labour force of some of these countries clearly highlight the importance of these workers. For instance, in Oman, migrant workers constituted in 1999 73 percent of the workforce employed in agriculture, 92 percent in manufacturing, 96 percent in construction, 93 percent in restaurants and hotels, 87 percent in wholesale and retail trade, and 42 percent in mining and quarrying. There are a large number of domestic workers. For example, in 1999, the number of housemaids in the UAE exceeded 200,000, or 7 percent of the population. In 2001, in Lebanon, there were between 80,000 to 100,000 Sri Lankans and 20,000 Filipinas and roughly 5,000 Ethiopian women, mostly in domestic work. There were 35,000 Sri Lankans and 7,000 Filipinas working as domestic maids in Jordan in 2000.

An interesting system of visa trading has emerged in some of the main host countries such as Kuwait and Saudi Arabia, even though workers are supposed to be attached to one sponsor or employer. This has occurred because the demand for visas exceeds the supply of workers. Some Gulf country nationals have opened up fictitious companies in order to procure work permits which they have then sold to migrants who are willing to pay. Often, this work permit is not associated with a job and the migrant takes up employment with someone else and not the sponsor, or remains unemployed after entering the host country. Working on an 'azad' or free visa is illegal and the offence can be ground for deportation, but it remains widely used and constitutes a high revenue generating industry. It is estimated that in the UAE, the number of workers sponsored by such fictitious companies in 2004 was 600,000, roughly 27 percent of the total workforce. In Saudi Arabia, the government estimated that 70 percent of visas issued by the government were being sold on the black market in 2004. Such uncontrolled importation of workers has continued despite attempts in the Gulf countries to restrict the issuance of visas, mainly because there are elements in both the source countries and the host countries that profit from the trade in work permits. The presence of such visa trade and subcontracting of workers in an unregulated, profiteering manner clearly highlights the problems of the private sponsorship-based visa arrangement in the Gulf countries.

There has been considerable criticism about the lack of worker protection especially for low-skilled migrant labour in the Gulf States. Most of these countries do not cover temporary low-skilled workers under local labour laws. In fact, the latter do not specifically cover temporary contract migrants. Passports may be withheld immediately on arrival and retained by the employer or sponsor and the employee is treated as if he or she has been bought from the recruitment agency. Domestic workers are particularly vulnerable. They are excluded from any legal protections (further discussion of gender-based discrimination is provided in a later section).

It is estimated that in the UAE, [for instance] the number of workers sponsored by...fictitious companies in 2004 was... roughly 27 percent of the total workforce.

In recent years, given the growing unemployment of nationals in the Gulf countries and other socially sensitive issues, there has been a concerted effort in these nations to indigenize the labour force by creating job opportunities for their nationals and reducing the demand for foreign workers. New policies have included more efforts to catch and deport overstayers, penalties for undocumented workers and those aiding them, the stricter regulation of visa trading and the imposing of limits on the number of new visas available to foreign workers. Governments have also introduced policies to create demand for indigenous workers, such as making them more employable through training, setting quotas for nationals in various sectors to phase out foreign workers and generally curbing migration especially by low-skilled workers. The outcome of these policies is mixed. There has not been full compliance by employers and other agents. There is a continued reliance on foreign workers to supplement the limited domestic labour force.

In recent years, given the growing unemployment of nationals in the Gulf countries... there has been a concerted effort in these nations to indigenize the labour force by creating job opportunities for their nationals and reducing the demand for foreign workers.

3.5 Abuse of low-skilled workers under unilateral visa schemes

Race- and gender-based discrimination and abuse of low-skilled workers is common across many unilateral visa schemes, particularly when such visas cover workers who are in the invisible labour force and fall outside the purview of host country labour laws. The case of domestic workers in the Gulf countries who are hired as temporary contract labour and the case of Filipino entertainers, who enter Japan on entertainers' visas, illustrate the various kinds of abuse and exploitation that mark many unilateral schemes involving low-skilled persons.

The gender and race-based discrimination of foreign low-skilled workers in some host regions such as the Gulf has been the subject of much debate. Problems faced by low- and

The living and working conditions of Asian female live-in domestic workers in some [Gulf] countries is akin to that of slave or bonded labour.

semi-skilled women are especially acute. At the lower end of the skills spectrum, women migrant workers pick fruits and vegetables, manufacture garments, process meat and poultry, work as caregivers and nurse's aides, cleaners and domestic maids. The living and working conditions of Asian female live-in domestic workers in some countries is akin to that of slave or bonded labour. The lack of government involvement and the loosely structured arrangements governing entry and stay in these countries make low-skilled workers, especially women workers, vulnerable to exploitation by their employers, including threats of violence and sexual abuse. These female domestic workers have few rights and no freedom and remain as virtual prisoners in the households where they work. They are not allowed to join unions and, barring actions by their home country consuls or embassies, there are no institutional mechanisms to ensure their well-being, as they fall outside the visible labour force. It is worth pointing out that sending countries also have difficulty in monitoring the welfare of such large numbers of workers and there is also a potential conflict of interest as these governments are often interested in maintaining the employment relationship and ensuring remittances from such workers. There have been numerous cases of abuse and breach of contracts, causing women domestic workers to run away from their employers, and they are likely to be captured and returned to their employers or imprisoned. Embassies of some source countries have had to intervene to protect their workers in the Gulf states.

Likewise, many Filipino female migrants who enter Japan on entertainer visas are subject to many abuses by their employers during their six-month contracts. At times, they receive their salaries only on the expiry of their contracts and remain at the mercy of their employers during the period of their contract for their living expenses. Although they are supposed to be singers and dancers, they are often forced to entertain customers in various other ways as well. Also, as an entertainer is considered a professional guest performing an art and not a usual worker, she is not covered by labour laws and thus is left vulnerable to exploitation and abuse by the employer. Often, female entertainers are kept together in small places, guarded and limited in their activities. Their passports may be confiscated by employers, their salaries may be returned lump sum only after they return, penalties may be imposed for various reasons, they may be subject to physical violence, and they may be forced to work overtime and outside their contracts. Some run away from their employers and stay with their peers, which results in irregular migration.

The informalization of employment, particularly employment of women, leads to such problems as outlined above. Female migrant workers are, as a result, disempowered by the absence of labour protection laws, job security and support groups. They are adversely affected by gender biases in host societies, low wages, poor working conditions, deprivation and severe hardship in many sectors and occupations. For instance, evidence on the distribution of complaints filed by all overseas Sri Lankan workers, when assessed by gender, indicated that women suffer proportionately more than men. Women accounted for 82.5 percent of the complaints recorded among Sri Lankan overseas workers in 2002 even though they made up 65.3 percent of the total outflow that year. The most frequently cited complaints were the violation of employment contracts followed by harassment, mostly sexual harassment. Other complaints included their inability to communicate with family and other relatives, the difficulties endured during pregnancy, and mental torture. In each category of violation, the cases involving women were higher than for men. Also, of the total number of complaints, 75.8 percent were from unskilled and domestic female workers, indicating that unskilled females faced the most problems.[18] Similar evidence is found in the case of Filipino female workers, with complaints of repatriation due to contract violations, physical assault, fraudulent jobs, sexual harassment and other serious problems, most prevalently found among domestic helpers in the Middle East. There were 2,360 contract violations and 2,728 abuse and maltreatment related complaints recorded for Filipino workers in 2002.[19] Evidence about Pakistani overseas migrant workers also shows that those most at risk are the unskilled workers, especially the female domestic helpers.

Domestic worker schemes in several East Asian countries have also been criticized for their failure to protect migrant female workers, though perhaps not as strongly as in the case of the Gulf countries. But the basic problem of falling outside the visible workforce is evident here as well. In Singapore and Hong Kong, the employment of domestic labour is governed by stringent regulations where each

[18] See, IOM (2005), pp. 178-80.
[19] See IOM (2005), p. 198.

worker contracts with a particular employer, akin to a contract of indenture where the worker has no scope to seek employment with another household while she is resident in the host country. This results in occupational confinement of these foreign domestic workers, which exacerbates their confinement arising from contractual obligations. These workers are abused in terms of the wages they receive, the hours they work and the kind of duties they are required to perform, in addition to other types of abuse they may face from their employers. In some countries, there is no systematic arrangement for monitoring contracts and for policing the conditions under which workers are employed. The ultimate recourse to legal protection for such workers is often the home country diplomatic office, provided they are able to reach these offices. There are periodic executions of warrants for arrest, deportation and punishment of clandestine workers in some Asian countries, which highlight the vulnerability of such workers and the failure of state mechanisms (on both sides) to protect them.[20]

Low-skilled Filipino workers, particularly in Gulf countries as well as in some East and South-East Asian countries, face problems of abuse, notwithstanding strong institutional mechanisms for worker protection in the Philippines. Violations of the terms and conditions of employment include the non-payment or deferred payment of wages, unauthorized deductions, restrictions on remittances, violation of working hours and the non-payment of airfare. Other problems include living conditions and various cultural, religious and social restrictions imposed on workers in some host countries.

It needs to be noted that the exploitation of low-skilled workers in general also occurs in the sending countries and not only in destination countries. This is evident from the preceding discussion regarding the role of recruitment agencies and intermediaries in the placement process and the huge fees and commissions they charge workers. A case study on migration of Indonesian workers finds that most of these migrants have to pay between $290 and $550 to cover transport and accommodation costs from their villages to the domestic recruitment agency while waiting for placement overseas. They are also required to cover administrative costs for any training required, fees to the employment agency or brokers, levies, passport fees, working permit fees and so on. Where unregistered agents are involved, the fees charged tend to be higher. Similarly, in the Philippines, workers are subject to recruitment abuses that include overcharging placement fees, made possible by the multiple levels of recruiters and brokers who often misinform workers about the real terms and conditions of employment. Migrants may also face abuse when they are forced to take up various kinds of jobs while waiting for their jobs to be approved by the employment recruitment agencies abroad. There is again a gender dimension to such practices, with many women being recruited for fraudulent jobs and subsequently being trafficked and smuggled for prostitution and other hazardous work, with no legal protection available to them in the host country. Some sending countries have, however, introduced gender-sensitive policies, such as giving priority to the training and orientation of vulnerable groups, addressing gender-specific needs and legally prohibiting women below a specified age from accepting overseas employment. But abuses continue, especially when employment occurs through informal channels.

In sum, discrimination and abuse occurs in both host and home countries and where there is insufficient government monitoring and control over the recruitment process and sojourn of the employee. In addition, certain occupations and categories of workers, such as domestics, tend to be more vulnerable to such abuse than others, notwithstanding stringent regulations governing their entry and stay in many host countries. For instance, even in Singapore, which has well developed and very strict regulations on hiring foreign domestic workers, such as allowing only licensed employment agencies to import such workers and penalties for violations, there are cases of abuse. Thus, some occupations and groups of workers tend to be inherently more vulnerable than others and may warrant far more involvement by their source country governments in managing their recruitment, stay and return.

There is a gender dimension to [abusive] practices [in home countries of workers], with many women being recruited for fraudulent jobs and subsequently being trafficked...for prostitution and other hazardous work, with no legal protection available to them.

[20] One well cited case is that of an Indonesian female worker who was badly tortured by her employer in Malaysia. There have also been cases of mass deportation of Indonesian workers from Malaysia.

4. Managing labour mobility under a broader agreement

The preceding sections have focused on bilateral and unilateral initiatives that are specifically designed for managing labour mobility. However, there are also broader agreements, covering economic cooperation, trade and investment flows, which include provisions for managing the mobility of service providers and workers to attain a larger objective of fostering deeper integration between the member countries.

As discussed by many trade and migration experts, the mobility of people is addressed through a variety of approaches reflecting different degrees of liberalization under regional or bilateral trade and economic arrangements. Some of these agreements cover full mobility of labour. Others only allow market access for certain groups of workers and service providers. Another set of agreements have provisions for special visa arrangements, some facilitate entry for only certain kinds of persons, and some facilitate market access under existing visa regimes. However, such agreements, whether regional or bilateral, largely do not cover low-skilled labour and mostly facilitate the movement of intra-corporate transferees, business visitors and professionals. Broad based bilateral agreements that include provisions on labour mobility tend to target specific sectors and occupational groups, address shortages in one of the member countries and facilitate trade and investment flows in selected sectors. Again, coverage of low-skilled labour tends to be limited.

The following discussion highlights the case of Japan and the Philippines, which are important trade and investment partners. There are a significant number of Overseas Filipino Workers (OFW) in Japan. In 2002, of the total 667,226 OFWs from the Philippines, over 70,000 went to Japan. These workers comprise entertainers, professional nurses and domestic helpers (by far the largest group of OFWs in Japan at over 60,000 in 2000). The remittances from such workers have been substantial, indicating the huge gains possible from bilateral provisions on labour mobility between the two countries.

In 2002, a free trade agreement termed the Japan-Philippines Economic Partnership Arrangement, or JPEPA, was proposed. This arrangement includes provisions for the movement of Filipino nurses and caregivers to Japan. Although nursing does not constitute an unskilled occupation, it is discussed here because it is an important sector in the context of JPEPA negotiations on labour mobility and can be extrapolated to other sectors where host countries may want to use such agreements to address labour market shortages. The nursing sector also brings out gender issues. JPEPA highlights the difficulties in framing such arrangements. It also illustrates the close similarity between such arrangements and bilateral labour agreements.

4.1 Worker mobility under the Japan-Philippines Economic Partnership Agreement (JPEPA)

The movement of Filipino nurses and caregivers under JPEPA has been an important issue. Given the aging population and demographic profile of Japan, there is a need for nurses and caregivers to take care of the elderly, but there has been a decline in the number of Japanese care and health providers due to various economic and social factors.[21] Such trends have led Japan to propose the import of health care providers on a trial basis from the Philippines, which has had an active nurse migration policy and deploys nurses to countries around the world.

[Existing agreements on labour mobility] largely do not cover low-skilled labour and mostly facilitate the movement of intra-corporate transferees, business visitors and professionals.

Under JPEPA, which was first proposed in 2002, there is a specific provision covering the movement of natural persons and the entry of Filipino health and care personnel into Japan, subject to certain terms and conditions being fulfilled. To date, no nurses or caregivers have gone from the Philippines to Japan under this bilateral provision as the matter is still pending approval by the Philippines Senate. However, there is evidence that Filipino nurses and caregivers have already been recruited and have entered Japan or are being trained to work in Japan, in anticipation of the eventual approval of the agreement.

The provisions for entry and temporary stay cover natural persons of the Philippines who supply services as nurses or certified care

[21] These include shifting preference for jobs towards non-care ones and away from '3K' jobs (kitsui, kitten, kikanai jobs), unattractive wages and working conditions in the care professions, and changing family structures, among others.

workers or related activities on the basis of a contract with public or private organizations in Japan or on the basis of admission to public or private training facilities. Entry and temporary stay for a specified period as given in the agreement would be granted to a natural person of the Philippines, 'who is designated and which is notified to the government of Japan by the government of the Philippines in accordance with the Implementing Agreement, and who enters into Japan on the dates specified by the Government of Japan' and who engages in specified activities during his or her temporary stay in Japan. These specified activities include obtaining qualifications as a nurse under Japanese law, undertaking a training course including Japanese language training as referred to in the Implementing Agreement for six months, and acquiring required knowledge and skills at a hospital. It is further specified that such activities are to be conducted on the basis of a personnel contract with a public or private organization in Japan, which establishes a hospital under Japanese laws and regulations and which is notified by the Japanese government or a competent authority in Japan to the Filipino government. Likewise, temporary entry and stay is permitted for Filipino caregivers in Japan for the purposes of obtaining qualification as a certified caregiver under Japanese laws and regulations, with similarly specified conditions regarding the nature of this training. The training, whether in hospitals or caregiving facilities, or under public, private,or personal contracts, must satisfy the conditions notified by the Japanese government to the Filipino Government. Nurses and care workers would be allowed to stay for one year, which may be extended twice for an equal period of time in the case of nurses, and up to three times for an equal period of time in the case of care workers. For those natural persons engaged in training in certified training facilities, stay is granted for the period necessary for completion of training. Foreign workers require home country certification to be considered as a natural person in Japan.

While the terms and conditions with regard to eligibility, duration of stay and activities permitted are laid down in the agreement, there is little indication of the process by which workers would be recruited and placed and the mechanisms to be put in place for the protection of migrant workers. But evidence on existing mechanisms for deployment provide some indication. These channels include direct hiring by Japanese employers, social and family networks, placement agencies and recruiters in the Philippines, and even tourism. There are currently non-profit organizations in Japan which liaise with individuals and organizations in the Philippines and with sponsors in Japan. Through networks in both countries, the non-profit organization establishes links with local caregiving schools in the Philippines, which are then provided scholarships by Japanese sponsors. There are public consultations about the sending of Filipino caregivers and nurses to Japan by non-profit organizations working closely with local government officials. These organizations need to be accredited and registered in both Japan and the Philippines. Further, there are strict immigration requirements in Japan such as proof of the sponsor's credentials and no violations before a visa is issued, a process which can take as much as four to eight months. The non-profit organizations also recruit from a retirement village in a province in the Philippines. These organizations also link up with Japanese companies and advertise for nurses' aides to register for a caregiving course given exclusively to Filipinos in Japan.

There are, similarly, several different approaches to recruit nurses – through networks, company links and training support programs. For instance, one non-profit organization operates a Foreign Nurse Level Training Support Programme, aimed at addressing the nursing shortage in Japan. Selected nurses undergo training courses consist of Japanese language in a language school, basic nursing or caregiving information and techniques and practical training and orientation to Japanese language and culture. There are both scholarship based as well as pay back schemes.

In anticipation of JPEPA, hospitals in Japan have applied to get permission to hire foreign caregivers and nurses, though some of these applications have been turned down. Non-profit organizations have started to recruit nurses through their Filipino branch offices. The mechanisms for placing Filipinos at Japanese hospitals are still to be decided under the FTA. As of now, there are several examination requirements such as a Nurse Board exam and a Care Worker's Board exam in Japan that nurses and caregivers, respectively, need to pass once they come to Japan.

It is premature to say how well the proposed FTA between the two countries will address the mutual interests of both partners. While there is a basic framework procedural modalities are yet to be worked out. As discussed above, there already are quite elaborate and well laid out privately led initiatives for the selection and entry of Filipino nurses and caregivers into Japan. These could be carried into the

FTA framework, but issues such as protective measures to be granted to Filipino workers and specific work terms and conditions need further consideration in the context of an FTA. Training will remain a very important part for fulfilling the provisions for movement of natural persons under the FTA, especially the requirement to master the Japanese language and pass exams. However, the focus here could possibly shift towards requiring a functioning knowledge of Japanese rather than proficiency per se. Another issue to be resolved is that of the considerably high fees paid by Filipino trainees to the non-profit organizations and training sponsors, without guarantee of employment. This would require the regulation and monitoring of such training centres and of fees charged. But overall, there are certainly existing mechanisms that seem to work fairly well and which can be adopted along with additional safeguards and regulatory measures, for the mutual benefit of both countries.

5. Role of source countries in managing migration

The preceding section highlighted the role of host country immigration policies in managing the temporary entry and stay of low-skilled foreign workers. But, ultimately, the efficacy and developmental impact of any arrangement, whether unilateral or bilateral, is also a function of the sending country's policies and administrative structures concerning labour outflows, education and training, capacity building, remittances and protection of its workers. For effective migration management under a bilateral labour agreement, it is important for the source country to have adequate institutional structures and mechanisms in place. In the case of unilateral schemes to recruit low-skilled workers, the existence of such institutional frameworks becomes all the more important to ensure that proper processes are followed, that rights of overseas workers are protected, and the supposed benefits do ensue for the home country. The following discussion highlights the case of the Philippines and Sri Lanka to illustrate how some sending countries have tried to protect the interests of their workers and their countries and derive greater benefit from low-skilled migration.

5.1 The Philippines

Among major supplier countries of migrant workers, overseas employment regulations are perhaps nowhere as well developed and institutionalized as in the Philippines. The Philippines' foreign, economic and social policies all have bearing on the deployment and protection of Overseas Filipino Workers (OFWs). Although the government's regulation on overseas employment is very old, the international employment programme was first institutionalized in the 1970s, following the surge in demand for Filipino workers in the Middle East. It has now emerged as a comprehensive overseas employment programme which aims to enhance the competitiveness of Filipino workers, to empower labour and to ensure the welfare and protection of workers. Two agencies, namely, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA), attached to the Department of Labour and Employment, cater to the needs of OFWs.

There are several mechanisms in place to protect Filipino workers from exploitation and to ensure that the recruitment process is transparent and legitimate. There are checks on both the recruiters and on those seeking employment. There is for instance, a system of employer accreditation and verification. There are provisions for the POEA to monitor, license and prosecute recruitment and placement agencies, and regulate their placement fees.[22]

Foreign employers who wish to hire Filipino workers have to provide proof of both their legal status and their existing job vacancies. The POEA requires each recruited Filipino worker's documents to be verified by labour officers posted abroad and to be authenticated with regard to the terms of the contract and the existence of the employer and his or her company. Following such verification, the foreign employer has to be accredited by or has to work through a Philippines recruitment agency that is licensed by the Department of Labour and Employment. A foreign employer can recruit Filipino workers only through these licensed agencies. Each employment contract for an OFW has to be approved by the POEA. Even workers who find jobs on their own through direct contacts or via means other than recruitment agencies must submit their documents to the POEA for verification.[23] There is a strict worker documentation process whereby all workers who are selected have to undergo medical examination in accordance with the requirements of the host country or employer or the Philippines' Department of Health. The worker is required to present his employment contract, passport, visa and ticket for registration to the POEA and for obtaining an Overseas Employment Certificate, which certifies that the worker has met all necessary conditions. In order to enhance the competitiveness of Filipino workers, the POEA also provides skills and development training programmes which are attuned to the needs of the labour market, as well as skill testing.

There is also a pre-departure orientation briefing of workers by groups accredited by

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[22] The POEA also provides information services to Filipino workers about job vacancies and licensed agencies to smooth the job search and placement process.

[23] The system operates on the principle of joint responsibility of recruitment agencies and foreign employers and settles any contractual conflicts between workers and their employers accordingly.

the OWWA. This includes reminders about the documents required by workers for their departure, their rights and obligations under the work contract, how to remit their savings, the availability of support services overseas, and occupational health and safety issues. These briefings are run by a variety of accredited institutions and trainers, including non-governmental organizations (NGOs) and some recruitment agencies.

All OFWs are provided with mandatory life and personal accident protection at no additional cost and they are made to join a retirement protection scheme. Each OFW is given a permanent identification card prior to his or her departure, guaranteeing their legal status as an OFW and as a member of the OWWA. This card also facilitates travel tax exemptions and works as an international ATM card. Other welfare dimensions of the overseas employment programme include the deployment of labour attachés, doctors, welfare and social officers and resource centres in the host country to provide medical, juridical and other support to overseas workers. The Philippines has over 40 labour attachés in over 30 countries or destination sites. The Overseas Labour Offices and the embassies provide countries with various support services and work closely with the Department of Foreign Affairs and the Department of Labour and Employment of the Philippines to enforce the obligations of recruitment agencies and employers to workers. There is also a welfare fund for OFWs, which is financed by a fee of $25 that is levied on employers per worker per year. Where undocumented workers are concerned, the worker pays the fee on a voluntary basis. This fund is managed like a growth fund which is used towards support services for migrant workers, including the provision of overseas facilities, insurance coverage, reintegration assistance and worker education and training, among others. There is thus a very well planned and holistic approach to supporting migrant workers, from pre-departure assistance to their stay overseas, and even on their return.

The Philippines has also taken initiatives to maximize the returns from OFWs by incentivizing remittances and savings. Some Filipino banks and financial institutions offer investment and savings instruments for OFWs. There is, for instance, a voluntary savings programme that provides such workers with a future savings plan and housing loan benefits. The Development Bank of the Philippines issues investment certificates whose redemption values can be used to cover tuition fees of OFW dependants and hospitalization costs, and entitle the savers to life insurance coverage.

The programme also smoothes the process of reintegrating returning workers into the domestic labour market. The network of resource centres set up to protect workers helps reintegrate them by providing training seminars, counseling and information on job opportunities. Other services include skills training, educational support for children, investment advice and microcredit support to enable returning workers to set up small businesses. The Department of Labour and Employment and the OWWA Regional Offices have established a national network of OFW families to make it easier for the latter to access various services. NGOs are also involved in this network and provide various services to OFWs and their families. Livelihood and business development assistance programmes are conducted by the Department of Trade and Industry, the Department of Labour and Employment and OWWA, often in partnership with different NGOs.

In recent years, the Philippines government has entered into and upgraded bilateral agreements and MoUs with host countries in order to manage the migration of its workers through coordinated processes rather than solely through unilaterally managed approaches. It has signed labour agreements with 12 host countries to strengthen cooperation on migration issues, focusing on specific agreements rather than broad based general agreements to meet its objectives. These include a manpower cooperation agreement with Indonesia, a Special Hiring Programme for Taiwan and China, as well as for the recruitment of Filipino health workers in Japan and the United Kingdom. However, the institutional framework and processes established in the Philippines itself remains crucial to the realization of these objectives.

Notwithstanding such institutional arrangements, there have been concerns about exploitation and abuse of Filipino workers, especially female workers, and the need to go beyond POEA to address the concerns of Filipino workers overseas. For instance, it is widely felt that overseas embassies and missions need to be more integrally involved in the welfare and protection of overseas Filipino workers and that local NGOs need to be involved in pre-deployment screening and consultations with migrant workers. A 2005 research study by the International Labour Organization (ILO) notes that migrant workers

continue to face several problems at all stages.[24] The pre-deployment problems noted in this study include the high cost of placement fees, lack of information on the policies of the host country and illegal recruitment and deployment. The main on-site problems include abusive and exploitation working conditions, contract substitution, inadequate compliance monitoring, ill-attended health needs, trafficking of women and lack of social support from host country governments. It has been pointed out, for example, that labour agreements signed by the Philippines only serve as guidelines or recommendations for the recruitment of workers from the country but that they are largely silent on issues of violation of human and labour rights mainly because the Filipino government is afraid of losing lucrative host country markets. In the case of Filipino entertainers based in Japan, the report notes that there are contract violations in the form of underpayment, forcing work in places other than those originally agreed, forcing the women to do other kinds of tasks such as menial work and even prostitution, and recruitment under the statutory age through falsification of documents. Likewise, it has been argued that the pre-departure training is often superficial and provided in a hasty manner by persons who are not fully conversant on certain matters such as savings and preparation for return migration. Criticism has also been leveled at the inefficacy of reintegration programmes due to complicated procedures, poor coordination among participating agencies and limited knowledge of migrant workers about such programmes. There have also been complaints that the overseas consulates and embassies lack counseling and other services for distressed migrant workers, that they are not well equipped to provide legal services and that they are generally not well inclined to serving the needs of low-skilled migrant workers.

5.2 Sri Lanka

The case of Sri Lanka, although not as elaborate in terms of source country frameworks, also highlights the importance of institutional mechanisms in source countries for managing migration. It also illustrates the role that sending country governments can play in addressing worker abuse and exploitation, including gender-related issues. The Foreign Employment Policy in Sri Lanka, like the overseas employment programme in the Philippines, also aims at promoting employment opportunities for the country's workers and empowering them to take up such opportunities. There is also a specific strategy to address the needs of domestic female workers, given the large number of female migrant workers from the country.

The Sri Lanka Bureau of Foreign Employment, under the Ministry of Employment and Labour, is the nodal agency responsible for administering overseas employment-related programmes. Other partner government institutions include the Ministry of Foreign Affairs which provides consular and other welfare services overseas, the Ministry of the Interior which issues travel documents and ensures the implementation of immigration and emigration laws, the Ministry of Women's Affairs which organizes sensitization and empowerment programmes for women, including for female migrant workers, and the Ministry of Vocational Training, which is responsible for providing training in vocational skills, including for prospective migrant workers.

Sri Lankan migrant workers have faced problems similar to those highlighted earlier, such as the non-payment or underpayment of wages, breach of terms and conditions of a contract, non-repatriation on completion of a contract, or being left stranded without employment. The various government agencies involved in managing migrant worker flows and welfare have introduced measures to regulate the recruitment process, through the registration and control of foreign employment agencies, the registration of migrant workers and their monitoring at the point of departure. They introduced model contracts to curb exploitation and malpractice. Pre-departure orientation and training are also provided to workers in general and specifically to housemaids, with separate training by different host regions or countries. The welfare of overseas workers is ensured through labour attachés posted in six Middle Eastern countries and Labour Welfare Officers in 12 countries. There are also safe houses in some host countries that provide shelter to migrant workers who have left their employers. As in the case of the Philippines, there is a welfare fund financed through an employer levy and the funds are used to provide welfare services to the workers. There are also financial support measures such as provision of loans to meet departure expenses. Remittance transfer through formal channels is encouraged by permitting migrant workers to operate foreign currency accounts called Non-resident Foreign

[L]abour agreements signed by the Philippines only serve as guidelines or recommendations for the recruitment of [its] workers... but...are largely silent on issues of violation of human and labour rights mainly because the Filipino government is afraid of losing lucrative... markets.

[24] Ofreneo and Samonte, 2005.

Currency Account. Reintegration is also supported through loan schemes for migrant workers wanting to invest in self-employment activities and through a family development programme that helps families to invest their savings in self-employment activities.

Thus, once again, we see that the sending country government attempts to regulate and shape various parts of the migration process, starting from the recruitment and pre-departure process to reintegration into the domestic labour market upon return. There is a clear attempt to maximize the possible benefits from migration, such as through remittances and savings, through capacity-building and through the absorption of these skills in the local economy. It is important to note here that reintegration is addressed by source countries but does not seem to be central to any of the bilateral agreements highlighted earlier. However, as in the case of the Philippines, certain problems persist.[25] For instance, only those workers who are registered with the SLBFE are covered under the various legislative provisions in Sri Lanka that concern migrant worker welfare and protection. There is also no specific legislation to deal with trafficking of workers although there have been concerns about the illegal departure and smuggling of people. There have also been problems with enforcement and implementation of laws and regulations in cases of fraudulent recruitment agencies and cases of abuse and exploitation. Although the pre-departure training programmes are largely seen to have worked, there still are cases of women who buy their certificates from unscrupulous job agents. Thus, notwithstanding many good initiatives and institutional arrangements, there still remain limitations in terms of implementation, enforcement, support services and sensitization.

[25] Dias and Jayasundare, 2001.

6. Common features and best practices inmanaged migration arrangements

As the preceding discussion has highlighted, there are numerous bilateral and unilateral approaches to managing the temporary movement of low-skilled workers. There are clearly commonalities and differences among these approaches, in terms of the level and range of institutional and other stakeholder involvement, the extent of focus on protection, rights and interests of workers, the extent of regulation of the pre-admission process, the scope for flexibility and customization, the onus on receiving versus sending countries in managing the flows, and the larger context within which temporary labour flows are seen. Even within individual categories of approaches, there are similarities and differences in the way temporary worker mobility has been managed. It is also evident that outcomes have varied, with some schemes more successful than others. The following summary matrix highlights the best features as well as some undesirable features of the various agreements and schemes discussed. in this paper.

Table 1. *Best practices under bilateral and other labour mobility arrangements*

Agreement, Scheme, Arrangement	Best practices
Spain-Ecuador	• Specificity and transparency with regard to nature of work, duration of stay, kinds of workers and occupations covered, provisions and institutional frameworks for regulating entry and return. • Onus on employers to fulfill obligations of contract, penalties for violations • Incentives and disincentives for workers to meet obligations under contract • Tracking mechanisms, use of existing social security system to register and track workers • Reporting requirement on return to home country • Coordinated documentation and tracking mechanisms • Periodic review of outcomes • Granting of social and legal rights and protection and advisory and assistance mechanisms to migrant workers • Preference given to workers with proven record of performance and return • Measures to track undocumented workers and to mainstream them through formal recruitment channels • Incentivizing formal banking channels for remittances • Reintegration assistance for returning workers • Capacity-building through co-development projects, vocational training, community level programmes
Canada: Canadian Seasonal Agricultural Workers Program	• Specificity with regard to sector and scope of work • Buy-in of domestic stakeholders due to needs-based principle • Clearly delineated administrative framework on the demand side to handle recruitment and entry, and return on both sides

	• Clear operating guidelines for different institutions • Institutional coordination in host and home countries • Clearly defined obligations on workers and employers and penalties for violations • Clear distribution of migration-related costs • Reward for good performance via transfers and name hiring • Grants various legal and social rights and protections • Forced savings via formal banking channels
United States: H-2A Agricultural Workers Programme	• Sector specificity • Buy-in of domestic stakeholders through labour certification to ensure no effect on local employment • Clearly defined institutions and frameworks for recruitment and entry • Well-defined obligations on employers to prevent exploitation of foreign workers • Enforcement mechanisms through penalties
United States: H-2B Nonagricultural Workers Programme	• Need-based principle to ensure local buy-in • Well laid out application procedures, clear timelines
United Kingdom: Sector Based Scheme	• Based on a strong employer-employee relationship • Sector specificity
United Kingdom: Seasonal Agricultural Workers Programme	• Sector specific • Minimum wage guarantees • Protection of workers • Penalties for violation of obligations by employers • Enforcement and review mechanisms • Defined distribution of transport and other costs
Korea: Employment Permit System for Foreign Workers	• Need based • Well-defined institutional mechanisms to ensure compliance with contract obligations • Well-defined institutional framework and coordination across various agencies in recruitment, entry and return • Limited scope of activities and types of employers • Review, assessment and tracking mechanisms • Training and capacity-building elements • Admissions linked to prior performance • Clearly specified terms and conditions on duration of employment, return and renewals • Protection of foreign workers and advisory services • Involvement of multiple stakeholders
Japan and the Philippines: Japan-Philippines Economic Partnership Agreement	• Specified terms and conditions for eligibility, duration and obligations on workers • Home country certification requirements

As seen in the above table, several best practices are common. These include elements such as the specificity to particular sectors and occupations, well-defined conditions regarding admission, stay and return, clearly laid out administrative and institutional structures, coordination between host and home countries, tracking and enforcement mechanisms, a mix of penalties and rewards to ensure compliance, local stakeholder buy-in through needs-based entry and labour certification requirements, and protection of migrant workers. Some of these features and practices are discussed in the following section.

6.1 Specificity, Clarity, and Transparency

One important feature to examine across most of the visa or work permit schemes discussed in Sections 2 and 3 is the extent to which they are **specific and well laid out.** Specificity and transparency could be in terms of the nature of work, the duration of stay permitted, the kinds of worker and occupations covered, i.e., whether they are sector-based or broader in their coverage of low-skilled workers, and the provisions and institutional frameworks for regulating entry and return.

One needs to examine how much clarity there is in the definition of temporary work and who is eligible to enter the country. In this regard, several of the arrangements discussed above are very specific, focusing on particular sectors and occupations only, and thus easily circumscribing the scope for entry. These include Canada's CSAWP, the United Kingdom's SBS and the Temporary Agricultural Workers Arrangement, Korea's Employment Permit System and the US H-2A visa scheme. It is evident that the seasonal nature of agricultural work makes it easier to introduce temporary worker schemes in this sector, and hence the existence of arrangements catering specifically to this sector across many countries. Among the discussed cases, some, however, do not specify the sector or occupation and broadly cover low-skilled workers, but subject to certain criteria or procedural checks. One case in point is the US H-2A scheme which is not targeted at any particular sector but is based on criteria such as lack of available domestic workers and temporariness of work, with mechanisms to ensure that these conditions are met. Similarly, the Spain-Ecuador agreement is not specific to any particular sector or occupation, but it includes jointly coordinated mechanisms to regulate the admission of workers. Thus, even if there is greater scope when it comes to the type of work and sector where entry is permitted, there are other measures that do put some controls on who enters through various pre-admission procedures.

One case that varies considerably in this regard is that of the Gulf countries, where low-skilled workers enter under temporary labour contracts to work in various kinds of occupations and where the scope for employment as well as the associated regulations to control entry are not spelt out and are quite relaxed. From the outcomes discussed under the various arrangements, it appears that the more sector-specific and targeted an arrangement, and the more objective the criteria regarding eligibility for entry even when an arrangement is not sector- or occupation-oriented, the more likely it is to be successful. Ambiguities in definition and scope of employment can result in the poor tracking migrant workers and weaker compliance with various obligations (on the part of both employers and workers) and are thus more likely to result in problems of undocumented entry and irregular migration in host countries.

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Specificity in terms of the duration of employment and controls on renewals and extensions are another important aspect of most temporary worker arrangements. All the cases discussed above clearly specify the duration of stay, which typically ranges between six months to less than one year. The conditions regarding renewals and extensions vary, with some requiring workers to return and stay for a minimum period in their home country before being allowed to reenter and others allowing extensions with the same employer or through transfers to another employer while still in the host country. Regardless, extensions tend to be subject to an upper limit in most cases. The focus is on limiting the length of stay to minimize the worker's integration with, and attachment to, the host country. In most cases, family members and dependants are not allowed to join the worker so as to create an incentive for return based on social and family networks back home. There is some evidence to suggest that the dependants make use of the remittances to invest in small businesses, education, construction of houses and acquisition of land and other assets. However, there are arrangements such as CSAWP and the Korean EPS which do encourage longer-term relationships between employers and workers through name-hiring possibilities and reentry on a priority processing basis. But even here employment is not permitted on a continuous basis. The underlying idea is to promote stable relationships between temporary workers and

the host country and to incentivize return through prospects for future return. Thus, whatever the approach, temporariness of stay is fundamental to all these schemes.

There also appears to be an optimal timeframe of less than one year for continuous stay by temporary foreign workers. But as illustrated by CSAWP, the temporariness of stay is not merely a function of the permitted duration of the work permit or contract. It is also a function of other incentives and disincentives built into the arrangements, and positive incentives may work just as well or even better than very stringent restrictions on stay and return. Also, as some of the cases highlight, the possibility of regularization of legal status for undocumented workers may also undermine the temporary nature of such arrangements. It is thus important for the time period of stay to be appropriately defined (keeping in mind that too short a stay would not enable workers to earn enough and could act as a disincentive to return). The time period should be customized to the needs of the sector and work under consideration, for other supporting mechanisms to enforce temporality, ideally through positive incentives, and for there to be coherence with other immigration policies so that these schemes are not undermined.

Specificity in terms of the number of temporary workers to be admitted under unilateral or bilaterally managed arrangements for low-skilled workers, and the justification for such entry, is also important. Most of the above cases include quotas for the admission of low-skilled temporary workers. These quotas are revised in accordance with host country labour market conditions, thus providing a measure of flexibility to customize such arrangements to local needs. This also assures greater buy-in from local workers and better satisfies the requirements of employers. In addition, almost all the agreements have a nationals-first requirement, wherein there is a requirement to advertise locally and demonstrate attempts to hire local workers and a failure to do so, which would justify a petition for temporary foreign workers.[26] Such labour market test requirements again ensure that there is a preference for local workers over foreign workers and that local sensitivities regarding displacement by foreign workers are addressed. In most of the developed country cases, the labour certification process is well laid out in terms of procedures and institutions involved, but in the case of Gulf countries, as was discussed, while there is a shift in approach towards preferring nationals, this is done indirectly through policies affecting the demand and supply of foreign and domestic workers, respectively. Again, whatever be the approach, entry based on economic needs seems to be important to make these arrangements acceptable, to tailor entry to local demand and supply conditions and to allow flexibility in administering such schemes and even withdraw them if required. However, what is not clear from the cases discussed is how these tests are administered, whether the labour certification process is transparent or not, how the justification of need is translated into the numbers to be allowed entry, and any revisions in quotas for entry.

Most of the successful arrangements discussed above are specific in terms of wages and working conditions. Almost all prescribe the benchmark wages to be paid, put limits on working hours and prescribe payment for overtime work. As with the labour certification requirement, the reason for this condition is to prevent downward pressure on wages and working conditions in the local labour market due to the availability of cheap temporary foreign workers and in part also to prevent exploitation of these workers by employers and recruiters. This is again part of the buy-in process from local stakeholders to increase the acceptability of temporary foreign labour and to provide benchmarks for monitoring their welfare. Once again, the less effective schemes are those which do not clearly specify such terms and conditions and are also not underpinned by strict monitoring mechanisms and checks on employers, as in the Gulf countries.

6.2 Wide stakeholder participation and institutionalization of processes

The discussion of the various bilateral and unilateral temporary worker arrangements also illustrates the significance of having broad based stakeholder participation in the design and operation of such schemes. Further, the nature of this participation and the degree of coordination between sending and receiving countries is also important. An arrangement is likely to be more successful if there is close involvement of stakeholders within and across both sending and receiving countries. Successful bilateral arrangements such as CSAWP or

[26] As discussed earlier, the agreement between Spain and Ecuador does not take into account the national employment situation when granting residence and work authorization for those migrant workers who have worked previously for four years in Spain and returned upon completion of their contracts.

the Spain-Ecuador agreement indicate that there is a clear delineation of responsibilities on both sides and involvement of multiple governmental agencies (ministries of labour, foreign affairs, education and training/human resources and development, central banks, etc.), NGOs (churches, civil society groups), workers (trade unions, foreign workers), the private sector (employers and employer associations) and international organizations. These stakeholders coordinate within and across the partner countries. More broad based participation and close coordination across private, public and civil society agents in the partner countries ensures that all dimensions of the worker mobility process are addressed.

While such cross country coordination is, of course, not envisioned in unilateral schemes such as the United States' H-2A or the Korean EPS schemes, even in these cases there are multiple government agencies and private stakeholders involved within the host country. Where such wide participation is not seen and the relationship is mainly at the employer-worker level (a more laissez-faire approach), with little or no involvement by governmental and non-governmental agents, as in the Gulf and the SBS in the United Kingdom, then there appear to be mixed outcomes with regard to compliance and worker welfare. It is also evident that where there is less institutionalization of the recruitment and entry processes and a greater role played by private intermediaries and recruitment agents, the outcomes tend to be poorer, especially in terms of worker welfare. The various cases also indicate that such arrangements by and large discourage loosely governed worker-employer relationships and subcontracting of workers to third parties, as subcontracting complicates the enforcement of the terms and conditions of the contracts, including worker welfare and return. Thus, workers are typically tied to one employer and even where they are permitted to take up employment with another employer, this process is regulated through defined institutional mechanisms. While one can argue that tying workers to one job or employer increases their vulnerability and restricts their mobility, the counter-argument is that such conditions also make it easier for concerned agencies to track employers and workers and to regulate the terms and conditions and, ultimately, the long-term viability of such arrangements. The case of the Gulf countries, where subcontracting is permitted, is illustrative as it has resulted in the trading of visas, large deductions from workers' earnings by middlemen and increased vulnerability of workers. In the context of unilateral and more laissez-faire schemes, the extent to which migration processes are institutionalized in the sending countries assumes great importance, as the case of the Philippines illustrates.

Thus, it is important for any source country for low-skilled workers to have well-developed institutional frameworks; the presence of unregulated private recruitment agencies severely hinders the protection of workers' interests. There are numerous such agencies operating in major source developing countries. Many work as small offices without websites; others like India's recruitment agencies have fancy websites that provide top-of-the-line services to their clients (employers abroad). While some do provide insurance and other benefits to workers they deploy abroad, many are focused on 'quick deployment' and satisfaction of the employers abroad.

6.3 Holistic approach to movement of workers

An issue that is related to the broad based participation in the design and implementation of such arrangements is how holistically the whole process of migration is treated. Again, as several of the cases highlight, there is more to the process than the mere movement of workers across countries. Issues include capacity-building and enhancing the competitiveness of workers, orienting and sensitizing workers prior to their departure, facilitating the transfer of remittances and deployment of savings towards productive investments through formal channels, supporting co-development schemes in source regions, providing adequate protection and benefits to foreign workers under host country labour, social security, pension and other laws, providing legal counseling, and other support to overseas workers and aiding the reintegration process and the effective absorption of returning workers. The bilateral arrangements tend to be more comprehensive in their approach, as the coordination between countries under such schemes makes it possible to address the migration process more holistically and through a negotiated process. However, as noted earlier, one aspect that does not get adequate attention under existing bilateral labour agreements is that of reintegration. The onus of reintegration of returning workers lies on the source countries with little or no contribution of the host countries.

Under unilateral schemes, while some like Korea's EPS do address aspects such as capacity-building, the approach is usually

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narrower and the onus is likely to fall much more on the sending country to ensure that it addresses capacity-building, remittance transfer, worker rights and protection, support services and pre-departure related issues. In either case, the importance of having well-developed institutions, especially in the source countries, to deal with these varied aspects of the migration process is evident. In short, the onus of obligations falls on both sides, whether it is required or not under the arrangement, if both sending and receiving countries are to ensure that their national interests are served through low-skilled migration.

6.4 Worker rights and protection mechanisms

An important issue that arises in the context of all these arrangements concerns worker protection and benefits, i.e., to what extent temporary foreign low-skilled workers are covered by host country labour laws; what their obligations are with regard to tax and social security contributions; what benefits they are entitled to in the host country and under the contract; what kind of legal recourse and redressal mechanisms they have in the host country; and whether they have the right to join unions or workers' groups and get their concerns represented in the host country. These issues are especially pertinent for low-skilled workers as they are mostly illiterate and are not well-informed and able to protect their own interests. One common problem is that those who are engaged in informal sectors (entertainers and domestic workers), are typically not covered by host country labour laws, leaving them unprotected and vulnerable. This suggests the need to extend coverage to all groups of workers or have special mechanisms to cover those in informal employment and to legalize their status from a labour law enforcement point of view. Another area of concern is the requirement to pay social security contributions and other taxes without being eligible for accessing the associated benefits given the limited duration of the employment. In some cases, however, the benefits can be availed, but workers may not be aware of that.

Possible steps could be the elimination of double taxation and the creation of totalization agreements between countries to generally exempt all workers moving between the two countries from such contributions, or to make this exemption specific to low-skilled workers in view of their limited earning capacity, or, alternatively, to set up special funds to help such workers. Mandatory savings and deductions, while potentially beneficial to the workers and their source countries by ensuring a certain level of remittances, need to be administered efficiently and transparently, and without being subject to double taxation. There also appear to be problems in enforcing workers' rights with regard to accommodation and transport costs under certain arrangements, where such costs, though payable by employers, may end up being indirectly recovered from workers through regular deductions from their earnings. Again, monitoring and enforcement mechanisms are critical for enforcing the provision of such entitlements to workers. The redressal of workers' grievances and their right to joining workers' associations for representation is another source of concern under several of the discussed arrangements. Even some of the most worker-friendly programmes, such as CSAWP, do not clearly provide for such rights. It is not clear how the exemption of foreign low-skilled workers from such provisions benefits such arrangements and one could argue that providing recourse to such channels would actually help enforce the terms and conditions of worker contracts.

6.5 Mix of Incentives and Penalties

It is also interesting to observe that most arrangements use a mix of positive incentives and sanctions or penalties to enforce provisions. Employers who renege on their obligations and violate the provisions of these arrangements (such as by loaning foreign workers to other employers) are liable to financial and legal penalties and denial of the right to get foreign workers in future. Similarly, workers who violate their contracts face penalties in the form of deportation, denial of future authorization and entry and liability to cover their transport costs. Positive incentives through systems such as name-hiring and priority processing of good workers and recognition bonuses are also used to ensure that both employers and workers abide by their obligations. However, some measures such as the forced transfer of savings may work as both positive and negative incentives. In general, the sanctions/penalties approach seems to be more prevalent than positive inducements. One of the most successful positive incentives is that of reentry into the host market as it does seem to be effective in lowering the chances of overstaying and becoming an illegal worker in the host country, as CSAWP would suggest.

7. Lessons for the GATS Mode 4 negotiations and future agreements

One of the main criticisms leveled by LDCs and developing countries against GATS is that it has failed to deliver any meaningful market access to them in the mode of supply of greatest interest to them, which is the movement of natural persons or Mode 4. The GATS Annex on movement of natural persons specifies that there are two categories of service suppliers covered under Mode 4. The first category, natural persons who are service suppliers of a member, is unambiguous and refers to self-employed or independent service suppliers who get their remuneration directly from customers. The second category, natural persons of a member country, who are employed by a service supplier of another member country, in respect of the supply of a service, is subject to interpretation as it is unclear whether foreigners employed by host country companies are also covered under Mode 4. In the latter case, it has been suggested that GATS Article I: 2 (d) only covers foreign employees of foreign firms established in another member country, while foreigners working for host country companies would fall under GATS Mode 4 only if they work on a contractual basis as independent suppliers for a host country firm. They would not be covered if they were employees of the host country firm.

The following discussion highlights the nature of existing GATS commitments and offers and GATS disciplines relevant to Mode 4, with possible bearing on movement of low-skilled temporary workers. It then suggests some of the practices discussed above in the context of bilateral and unilateral arrangements covering low-skilled workers, which could be reflected in the GATS negotiations to address some of the existing limitations in Mode 4 and better address LDC interests in promoting market access for low-skilled service providers.

7.1 Understanding GATS commitments in Mode 4 and relevant disciplines

Horizontal as well as sectoral commitments filed by countries have been the most limited in the case of movement of natural persons (Mode 4) relative to all other modes of supply.[27] This is because countries have left their sectoral commitments in Mode 4 unbound except for specified categories as indicated in their horizontal commitments. In their horizontal commitments they have often bound access conditions at the status quo or even less.

There are two problematic aspects of the Mode 4 commitments, especially from the perspective of low-income countries, including LDCs. The first is that they are biased towards high-skill and professional services categories, typically those that are linked to commercial work. These include business visitors, personnel engaged in setting up commercial presence, such as intra-coporate transferees (ICTs) and business visitors. The second problem is that these commitments tend to have a hierarchical bias, with more entries for executives, managers and persons engaged in 'specialty occupations'. For example, more than one third of Mode 4 entries refer to ICTs. Out of a total of 328 total entries, 240 relate to executives, managers and specialists and 135 deal explicitly with ICTs. Only 17 percent of all horizontal entries may potentially cover low-skilled personnel and only 10 countries have allowed some form of entry to 'other personnel'. Very few schedules (some 15 percent) refer to the category of contractual service suppliers (CSS). Within this category, the commitments mostly cover contractual employees of a foreign establishment. They rarely cover self-employed or independent service suppliers. In sum, the existing commitments exclude categories of interest to developing countries. Moreover, service provider categories are not defined. Also, most countries have not specified what is covered under the category 'other persons'.

Apart from the high-skill bias, there are additional problems with the Mode 4 commitments, including definitional issues and lack of clarity on aspects like coverage, duration of stay and application of restrictions, all of which provide considerable scope for interpretation and discretionary action by immigration officials. Such ambiguities create possibilities for undermining the value of any commitments made in Mode 4 in practice. For instance, the sectoral commitments in this mode are bound at the same level for all sectors, which means that sector-specific concerns and interests are not addressed and only broader level cross-sectoral commitments apply. The term 'temporary' is negatively defined in GATS as excluding permanent migration, i.e., individuals seeking access

[27] See Chanda, 1999, and Chanda, 2001, for a detailed assessment of GATS commitments in Mode 4.

to citizenship, permanent residence or employment on a permanent basis. Given such ambiguity, member countries are free to interpret the word 'temporary'. This discretion is reflected in their commitments whereby they have used varying durations of stay for different categories of service providers. The commitments also suffer from a lack of clarity about additional requirements such as economic needs and labour market tests in terms of the criteria based on which they would be applied, how they would be administered, and whom they would target. Also, a variety of restrictive conditions are attached to the Mode 4 commitments, which further limit the scope and extent of liberalization in this mode. Tables in Appendix B summarize some of the aforementioned characteristics of the commitments to date in Mode 4.

In terms of GATS disciplines, the most pertinent one relating to Mode 4 is Article VII on recognition. Article VII gives members the discretion to recognize the education, experience, licensing and certification of a foreign service provider, subject to certain conditions. For instance, Article VII.1 states that, 'For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of service suppliers … a member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.' Thus, this provision allows members to deviate from Most Favoured Nation requirements in order to extend recognition to some WTO members and not others, based on the fact that recognition is more likely to occur bilaterally or plurilaterally than multilaterally. There is also a provision under Article VII.2 which gives equal opportunity to members to negotiate Mutual Recognition Agreements or to demonstrate recognition and for this to be extended to other members. The disciplines that are being negotiated under Article VI.4 on domestic regulation attempt to ensure that qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services and thus have a bearing on Mode 4. These linkages stem from obvious ones such as stringent skills recognition requirements to less obvious ones such as indirect and costly operating licenses, which can impede Mode 4.

[T]he significance of Mode 4 commitments…for developing countries remains limited due to the exclusion of relevant categories of service providers, the extensive use of restrictions…in categories which matter to developing countries, and the lack of transparency and clarity…

As things stand today, the significance of Mode 4 commitments and offers for developing countries remains limited due to the exclusion of relevant categories of service providers, the extensive use of restrictions specifically in categories which matter to developing countries, and the lack of transparency and clarity in commitments which creates possibilities for discrimination and arbitrary interpretation of the commitments. Several of these issues and in particular the issue of skill level coverage would need to be addressed if GATS negotiations are to cater to the Mode 4 interests of developing country service suppliers. In this regard, some of the lessons drawn from bilateral and unilateral schemes covering low-skilled labour may be instructive. Likewise, the provisions regarding recognition of occupational licenses and certifications under the article on recognition may also be relevant when trying to extend features under bilateral and unilateral schemes for low-skilled workers to the GATS framework.

7.2 Post-Uruguay Round discussions on Mode 4

Mode 4 has been an important part of the Doha Round negotiations. Several communications and proposals have highlighted the need to liberalize Mode 4 to advance the interests of developing countries and LDCs. In the initial phase of the Doha Development Round discussions and prior to the request-offer stage, six proposals were tabled on Mode 4. These were by Canada, Colombia, the EC member states, India, Japan and the United States. The proposals outlined some ideas for improving Mode 4, either by increasing market access or by increasing the effectiveness of existing market access to host countries, and addressing several of the above mentioned limitations of GATS in the context of Mode 4.[28]

The July 2006 package and the Hong Kong Ministerial Declaration (Annex C) specifically noted the need to liberalize sectors and modes of supply that are of export interest to LDCs in particular. Annex C of the Hong Kong Ministerial Declaration calls for 'new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence, to reflect inter alia: removal or substantial reduction of economic needs tests, indication of prescribed duration of stay and possibility of renewal, if any'. LDCs have also called for operationalizing

[28] The detailed proposals pertaining to each of these ideas as well as other suggestions are discussed at length in Chanda (2004).

special priority status to them which would have implications for their Mode 4 access on a fast track basis. The collective request on Mode 4 tabled in 2006 draws upon Annex C of the Hong Kong Ministerial declaration and calls for

> introducing greater clarity and predictability in Mode 4 commitments, for instance through agreement on common definitions on service provider categories and providing information on restrictions like economic needs tests;
>
> improving transparency of commitments through, for instance, greater use of notification procedures and transparency guidelines for providing information on all relevant requirements and procedures and changes to the latter;
>
> introducing a special system of administrative procedures such as a GATS visa, separate from usual immigration visas, which would be more streamlined and liberal and backed by appropriate safeguards and legal procedures under the WTO;
>
> granting more market access under Mode 4 by, for instance, covering more Mode 4 relevant service sectors in the scheduling process, covering a wider range of service provider categories, and reducing or removing some of the associated conditions on Mode 4.

Even prior to the Hong Kong Ministerial and the subsequent plurilateral negotiations in 2006, during the request-offer process that took place under the Doha Round, several communications from developing as well as developed countries have made reference to Mode 4. The thrust of the proposals in Mode 4 by developing countries has been to expand market access beyond higher-skill categories like ICTs and business visitors to include categories like contractual service suppliers and independent service providers explicitly in the commitments. They also seek to de-link Mode 4 from commercial presence, to introduce a GATS visa that is distinct from usual immigration visas and to generally improve administrative procedures for entry and remove wage parity requirements and social security taxes. Some developing countries, in their communications regarding Mode 4, have called for the elimination of all economic needs tests, nationality and residency requirements, and all requirements for residency and work permits that must be applied for separately from petitions for admission under Mode 4.[29] Several proposals, including by the LDCs, also call for coverage of a wider range of service provider and skill categories as well as for a better application of GATS recognition norms to prevent discriminatory use of recognition barriers on Mode 4. Several proposals also call for greater transparency in the work permit and visa issuance process and clarity in defining service provider categories and terms used in the commitments. However, in response to these communications, there has been little or no substantive improvement in the initial or revised offers in Mode 4. In the few cases where the scope and extent of liberalization has increased, these improvements remain targeted at high-skill categories and completely exclude low-skilled workers.

The LDCs presented a revised request on Mode 4 in May 2006.[30] This followed an earlier request by the LDCs, which did not achieve any meaningful response from the recipient countries. This revised request aimed to implement Paragraph 9 of the LDC Modalities, which calls on them to identify sectors and modes of export interest to them, so that these can be taken into account in the revised offers and eventual schedules of commitments. The LDC request covers the following:

- expanding the sectoral scope of Mode 4 commitments
- commitments for independentprofessionals, business visitors, contractual service suppliers and 'others' with the latter being widened to explicitly include categories such as installers, maintenance and repair workers, graduate trainees, personnel of public or private enterprises in another WTO member with a state contract in the host country and some other kinds of personnel
- de-linking Mode 4 from commercial presence
- extending commitments beyond minimum qualifications to include diplomas and experience so that semi-skilled workers can be covered
- using new ways such as demonstrated experience to assess competence where there are non-formal qualifications involved

[29] See the horizontal requests made by various developing countries on Mode 4.
[30] JOB (06)/155

• widening the range of alternatives to proving competence (such as occupational certification by guilds, agencies in the home country, proficiency certificates, etc.) and speeding up the process for verification to within three months

• setting up skills testing facilities

• reduction in quantitative restrictions

• reduction in ENTs

• direct receipt of remuneration by services suppliers

• excluding wage parity as a precondition to entry

• providing an option for contract renewal

The main points to note about the LDC Mode 4 request is the demand to widen the scope of Mode 4 offers and commitments to a larger range of sectors and categories of personnel and to expand the means for testing competence. There has, however, been no response to this request as yet and negotiations on Mode 4 following the Doha Ministerial have instead focused on the plurilateral request on Mode 4 in which LDCs did not participate. While there is an overlap between the plurilateral request on Mode 4 and the interests of LDCs, some sectors of key export interest to the LDCs, such as health, tourism and recreation, are not included. Also, the LDC focus on going beyond skilled professionals, including diploma and certificate holders and people with demonstrated experience and alternate means of assessing competence, is not reflected in the plurilateral request on Mode 4. Thus, the interests of LDCs remain unaddressed in the GATS negotiations and a difference between LDC and developing country objectives in Mode 4 is evident with the former focusing more on the semi-skilled and the latter more on the skilled and professional categories.

7.3 Extensions from bilateral and unilateral low-skilled worker schemes to GATS

There are several possible ways in which the various positive features highlighted earlier about bilateral and unilateral schemes concerning low-skilled worker mobility, can be reflected in the GATS Mode 4 negotiations and commitments. Some relate to the way in which the commitments are framed in terms of transparency and definitional issues and some relate to the commitments themselves, in terms of attached conditions, operational details, carve out possibilities, etc.

An important point to note at the outset is that while there is some ambiguity under GATS about what is meant by the 'supply of a service' (for instance, whether fruit pickers are to be viewed as temporary agricultural workers or as suppliers of fruit picking services), for the purposes of this study such distinctions are not seen as important. It is often difficult to classify activities by sectors and to distinguish between a worker and a service provider. Much depends on how countries interpret what constitutes a service as opposed to an agricultural or manufacturing activity and how broadly one defines Mode 4. In the discussion that follows, GATS Mode 4 is viewed as covering three types of service suppliers. The first category consists of independent service providers from a source country who sell services either to a host country company or individual. The second category consists of foreigners employed by home or third country companies established in the host country. The third category consists of persons who are contracted out by home or third country companies to provide services to a host country customer. Hence, there is no bar per se on skills or on sectoral coverage.

Certain features of the bilateral and unilateral initiatives are easily extendable to the GATS framework. Chief among these are the specificity, clarity and transparency with which worker categories, sectoral coverage and employment terms and conditions are clearly defined, which, as noted earlier, are some of the defining and good features of successful unilateral and bilateral schemes. In this regard, sectoral specificity is important as countries are unlikely to make wide-ranging commitments on low-skilled workers under GATS. One finds that even bilateral and unilateral schemes typically focus on chosen sectors and occupations to suit local needs. Specificity in terms of worker coverage may be difficult to realize without sector-specific Mode 4 commitments on the admissible categories of workers, such as hospitality workers, construction workers, transport operators and others under appropriate sectoral schedules of commitments. The horizontally applicable commitments would not give countries the means to customize their commitments to suit sector specific interests, which is one of the main advantages of unilateral and bilateral arrangements. Any general issues pertaining to the treatment of foreign workers in low-skill categories or occupations with regard to taxes, social security contributions,

economic needs tests, legal provisions, access to various benefits, etc. could be inscribed in the horizontal commitments. The latter would also be appropriate as there should ideally be a generalized framework and approach for dealing with low-skilled workers on these issues, rather than taking a sector-wise approach and creating segmentation between classes of low-skilled workers. The horizontal commitments could, in addition, provide a list of excluded sectors and occupations, which could be revised in accordance with future sectoral commitments based on the need to import low-skilled workers in additional sectors not originally scheduled.

The bilateral and unilateral schemes also indicate that any framework covering low-skilled worker mobility will be acceptable in the host country only if it is subject to various riders and controls, along with the flexibility to tailor these controls to evolving local requirements. It would be unrealistic to expect that in the GATS context, any commitments covering low-skilled workers would be possible without some attached conditions and limitations. The bilateral and unilateral schemes are indicative of the kinds of conditions that countries would seek when making their sectoral commitments in Mode 4 for low-skilled workers. Chief among these would be numerical ceilings on the number of workers to be permitted along with a provision to adjust these quotas depending on local market conditions. Other limitations include wage parity requirements, a specified period of stay and a clear upper ceiling on total stay, limits on the transferability of employers or jobs, and entry subject to economic needs or labour market tests requirements. While it could be argued that inscribing such limitations would give too much discretionary scope to host countries, the real question is whether without such possibility for flexible customization of entry quotas or local labour market tests, countries would be willing to commit at all on low-skilled workers in a multilateral framework, given that they are choosing to retain this flexibility in a bilateral or unilateral context. The main issue is how the quotas are adjusted, whether there is a transparent and objective process by which such revisions are done and whether the revisions are non-discriminatory or not. Also, from a feasibility point of view, such an approach is likely to be more acceptable to local stakeholders in the country committing than an approach that gives potentially unfettered access to overseas low-skilled workers.

The same goes for conditions such as wage parity which would be akin to requiring the local minimum wages to be paid to foreign low-skilled workers, as the bilateral and unilateral schemes do require. Again, this makes the granting of market access much more acceptable and allays concerns about depression of wages and working conditions in the local labour market and also works in the interest of the foreign workers by reducing the scope for underpaid labour. Likewise, the nationals-first approach effected through conditions such as labour market tests also make Mode 4 commitments covering low-skilled labour much more socially acceptable in the committing markets. What is important here is to ensure transparency in the design and implementation of such tests and in their translation to entry ceilings. This issue can be addressed through the GATS transparency provisions requiring countries to provide enquiry points and to inform other members about changes in their policies, which in this case would mean providing information about how the labour certification process works, how quotas are arrived at and any revisions in these quotas and the reasons and means for doing so.

Commitments could also be made subject to certain obligations about manpower being fulfilled by the source countries. As seen in bilateral arrangements such as CSAWP, the Spain-Ecuador agreement and even schemes such as the Korean EPS which is backed by MoUs between the Korea and sending countries, in managed migration arrangements, there are obligations on both sending and receiving countries. In order to ensure temporariness of movement, countries could inscribe additional conditions against their Mode 4 commitments, such as providing market access in the selected sectors and for specified categories of workers, subject to clearance or screening and occupational certification by government authorities or government designated agencies. The onus on sending countries could be placed on the recruitment and placement process, thus providing some institutional structure on the supply side, reducing the presence of informal processes and unauthorized agents who act as middlemen, providing much more assurance of return and reducing the possibility of overstay and illegal migration. Host countries could require other conditions to be fulfilled, such as pre-departure orientation, or the presence of representatives or liaising officers through source country consulates or embassies in the host country. Inscribing such additional obligations on source countries would be on an MFN basis, i.e., making no explicit differentiation among source countries in terms of their need or ability to undertake such obligations and would basically mimic the coordination seen in bilateral initiatives on temporary worker mobility.

[I]t is in the national interests of sending countries, and the interests of their overseas workers, to develop... institutional mechanisms [and]... there may be some merit in insisting on source country institutional obligations.

It must be noted, however, that although the additional conditions for granting Mode 4 access would be on an MFN basis, they would still implicitly differentiate among countries, given the latter's differences in institutional capacity and their ability to provide institutional support through recruitment, deployment and overseas worker representation and protection services. Hence, such conditions based on regulatory obligations for source countries could implicitly put different sending countries on an uneven playing field in terms of granting market access to the host country. But, as the bilateral schemes indicate, there is a joint responsibility to manage migration and thus it is in the national interests of sending countries, and the interests of their overseas workers, to develop such institutional mechanisms. Thus, there may be some merit in insisting on source country institutional obligations.

The above suggestions can be implemented through expanded commitments in Mode 4 that cover low-skilled workers in addition to business visitors, intra-corporate transferees, independent professionals and specialists, within one of the categories in which countries have made Mode 4 commitments, namely that of contractual service suppliers (CSS).[31] Under GATS, CSS are persons who are temporarily sent abroad to fulfill a services contract that their employer, who generally does not have commercial presence in the host country, has concluded with a client in the host country. They are thus employees of a home country service supplier abroad and are not employed in the host country. The question is whether this existing CSS category as understood under GATS can be modified or expanded upon in some manner to cover low-skilled movement, which occurs under contractual arrangements – though between the individual supplier and the recruiting firm or agent in the host country, and is perhaps more akin to movement of independent professionals than CSS under the GATS framework. To broaden the scope of CSS one would need to (a) relax the minimum eligibility requirements under the CSS category, by including persons who are occupied in low-skilled occupations but are deemed to be technically competent, with prior work experience, but without academic qualifications and (b) provide some form of juridical affiliation for the concerned workers in the home country, with the worker being seen as sponsored or certified by that juridical entity, and the contract between the individual worker and the overseas client regarded as being backed by the juridical entity.

The relaxation of eligibility criteria could be done by including additional criteria for assessing skills, which could potentially enable lower-skilled suppliers in trades like carpentry, masonry, welding, repair and maintenance and the like to also be covered by the CSS category. But the real issue is not the mere inclusion of additional skill levels under CSS but how this CSS category can be adapted to suit the various requirements and concerns that would be associated with granting market access to low-skilled service providers. The critical issue here is the need to provide some kind of legal or juridical affiliation for low-skilled CSS and move it away from an independent, freelance kind of movement. This is because host countries have been reluctant to de-link Mode 4 access from commercial presence (however much against the interests of developing countries), as seen in the case of Mode 4 commitments for higher-skilled categories. It is all the more unlikely that there would be any Mode 4 commitments forthcoming in lower-skilled categories on an independent non-affiliated basis. One finds that even in the context of bilateral arrangements on temporary worker mobility, institutional backing and certification of workers by sending country authorities or licensed agencies tends to be important for the viability of such arrangements. In a multilateral context, juridical affiliation becomes even more important.

How can such juridical affiliation be instituted for contract-based low-skilled workers? Firstly, to what extent are lower-skilled workers covered in reality by contractual arrangements? Are service suppliers in trades like masonry, carpentry and repair work affiliated with entities which send them to other countries as contract workers? The answer here is that most such workers do not fall under establishment-based contractual suppliers, unlike the professional and skilled persons covered by CSS. As seen earlier in this paper, low-skilled workers often have no juridical affiliation. Many are sent abroad by overseas manpower export agencies and private recruitment agencies that perform screening and facilitation tasks for foreign employers in exchange for fees and commissions deducted from workers, which in turn also renders these workers to abuse and exploitation. One means by which low-skilled workers can be given some institutional affiliation is, as suggested earlier, by creating occupational guilds and certification mechanisms, where the guilds could be treated as establishments deploying workers overseas. Alternatively, government

[31] This proposal draws upon the discussion in Chanda, 2004.

agencies or agents authorized by governments and working in cooperation with concerned departments in source countries could provide such institutional affiliation. Here, these agencies or licensed agents would perform the certification, screening, placement and overseas protection functions, and would be equivalent to an establishment with which the worker is affiliated. Contracts would need to be vetted by the occupational guilds or these agencies and thus one would move beyond a worker-employer kind of contractual arrangement to a tripartite kind of arrangement, where other authorized and credible organizations are involved. Such an arrangement would make it easier to enforce terms and conditions, to track workers, and to address concerns about overstay, national security, and illegal migration that impede progress in Mode 4 commitments by host countries. The ILO could play an important role in this certification process, given its tripartite structure, by ensuring that only internationally recognized recruitment agencies can engage in this process.

The main point is that if lower-skilled workers are to be categorized as contractual service suppliers, then they must not be independent or unaffiliated workers, as that would raise concerns over enforcement of temporary stay and difficulties in tracking in the host country. It would thus become important for source countries interested in accessing overseas markets for their low-skilled manpower to establish occupational certification schemes, to establish guilds in various trades and occupations where there is supply capacity and to foster greater coordination in the Mode 4 process within the source country, across various government departments, NGOs, guilds and occupational bodies and recruitment agencies. The importance of coordinated processes and wide stakeholder participation was evident from the earlier discussion on bilateral arrangements. This also underscores the point made earlier, that greater coverage of low-skilled service providers is only feasible if part of the onus of meeting obligations also falls on source countries.

The elements of the proposed Mode 4 commitments for low-skilled workers would be as follows:

Low-skilled workers could be covered under a category termed Contractual Service Suppliers-2 (CSS-2). They would include those

(a) screened and deployed overseas by manpower or recruiting agencies, and concerned government departments or guilds in the sending country; or

(b) whose services are solicited temporarily by clients in the host country and contracted via government or government authorized agencies in the source country, without affiliate presence in the host country

Further, this category would typically cover persons without formal academic qualifications but with on-the-job or other training and experience, and who go to the host country for short periods of six to nine months and not exceeding one year at any one time (unless otherwise indicated in the commitments) in order to:

(a) perform a service pursuant to a contract between the deploying government or authorized agency/establishment/ occupational guild and a client located in the host country

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

The horizontal schedule can provide a negative listing of scheduled sectors where this category of natural persons would not be covered. Restrictions such as economic needs tests, wage parity conditions and obligations required of source countries could be scheduled horizontally for those falling under the proposed CSS-2 category, as per the definition above, along with a listing of restrictions such as quotas, which could be varied according to sectoral requirements and accordingly inscribed in the sectoral schedules. Such quotas, which vary with sectoral requirements, could be seen as very well-specified Economic Needs Tests, but what would be important is clarity and predictability in their criteria and implementation. Depending on individual member country sectoral and category-wise interests, and their capacity for the negotiations, the horizontal and sectoral schedules can be used in conjunction to address a country's interests in Mode 4 so that these commitments can be customized to sectoral needs and specificities.

National social welfare mechanisms also need to be considered in Mode 4 commitments covering low-skilled workers, such as social security contributions and other taxes and making such workers exempt from these payments. This would entail a kind of positive discrimination of low-skilled foreign workers in view of their limited earning capacity and

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

ineligibility to avail of associated benefits. There might be legal difficulties in host countries to permit such exemptions and bilateral tax treaties or MoUs may be required between sending and receiving countries. Alternatively, mechanisms can be worked out to ensure that these contributions are partly or fully refunded or put into funds earmarked for meeting various welfare requirements of these workers. Again, the proposed approach of providing institutional affiliation for these workers could facilitate the introduction of such schemes and MoUs.

Finally, there are issues of worker rights, worker protection, exploitation and abuse which could perhaps be addressed through the GATS framework. As illustrated by the bilateral arrangements and some of the unilateral schemes, host country monitoring and enforcement mechanisms as well as continued assistance and support provided by sending country agencies, are required to safeguard workers' rights and interests. To some extent, once again, the juridical and establishment-based movement of low-skilled service providers could help provide such tracking and enforcement mechanisms on the part of the source country. But in addition, it may be worth considering the introduction of explicit penalties and sanctions under the horizontal commitments in Mode 4 and the conditions for applying such measures. For instance, it may be useful to explicitly state in the horizontal national treatment commitments on Mode 4, the kinds of actions that would warrant penalties and sanctions, including forced labour, misrepresentation of services, illegal subcontracting, discrimination on the basis of wages, gender or race, etc. and that any such violations would be subject to appeal, review and heavy penalties for the employing party. In this regard, it would also be useful to define the scope of domestic labour laws and regulations with regard to Mode 4 and to bring such aspects relating to worker welfare under the purview of Article VI disciplines of GATS. The transparency and enquiry point provisions in the GATS framework could also be used for this purpose. But as is evident once again, there needs to be institutional capacity in sending countries to inform workers about such protections and to assist workers in seeking their rights in case of abuse and exploitation.

How for instance, would the violation of labour standards in the host country be addressed? Would the penalties involve action by host country governments against the offending employers? Might the workers hired by such violating firms themselves be penalized in the process and hurt the cause of Mode 4?

Note that there are some sensitive issues in this context. How for instance, would the violation of labour standards in the host country be addressed? Would the penalties involve action by host country governments against the offending employers? Might the workers hired by such violating firms themselves be penalized in the process and hurt the cause of Mode 4? Might some sending countries be penalized more due to lack of their institutional capacity to monitor working conditions and proper recruitment practices in other markets, thereby raising Most Favoured Nation (MFN) issues? These are difficult issues to address and need further deliberation on what is the right balance in terms of rights of workers and obligations of host and source countries so that Mode 4 itself is not curbed. The main point being made here is that the approach has to be managed and coordinated, as seen in the bilateral arrangements for low-skilled labour.

The following table summarizes the various elements outlined above, which could be incorporated into the GATS commitments on Mode 4.

Table 2. *Elements of labour mobility agreements and GATS Mode 4 commitments*

Element	Details
Specificity, clarity, transparency	Required when deciding worker categories, sectoral coverage, employment terms and conditions, administration of needs tests.
Sectoral commitments	Schedule selected sectors and occupations. Subject these to numerical ceilings on entry by low-skilled workers, with provision for adjustment of quotas to suit local market conditions. Very targeted and better administered Economic Needs Tests. Ensure flexibility in entry terms and conditions. State clear conditions regarding wages, duration of stay, transfers, renewals and administration of economic needs and labour market tests.

Horizontal commitments	Inscribe clear conditions on cross-cutting issues such as taxes, social security contributions, economic needs tests, legal provisions, access to benefits.
Transparency	Ensure better use of GATS transparency provisions via enquiry points.
Additional conditions	Make commitments subject to obligations by source countries to ensure better coordination between sending and receiving countries and the former's institutional capacity. These conditions could relate to the screening and follow up of workers, and the existence of certain institutional mechanisms for managing migration in sending countries. The conditions could be equally applicable across all member countries. Note: Explicit MFN exemptions for source countries lacking such institutional capacity are possible, but are likely to be controversial and are less desirable and may be inconsistent with the Article II obligation that requires members to accord immediate and unconditional access.
Scope of Mode 4 commitments	Expand the CSS category to include low-skilled persons by reducing minimum eligibility requirements and considering non-formal and work-based qualifications
Treatment of CSS category	Provide juridical backing to independent service providers of low-skilled movement. Juridical affiliation could be provided by creating occupational guilds and certification mechanisms. Attach low- and semi-skilled workers to institutions in source countries to guilds, government agencies, licensed agents, etc. and move towards a tripartite arrangement involving employer, worker and authorized agency. Use this affiliation to track, ensure return and protect various rights. Create a separate CSS-2 category covering low-skilled workers
Negative listing	Exclude sectors where CSS-2 not applicable.
Other issues	Consider the possible introduction of specific penalties under horizontal commitments to ensure rights of foreign service providers. Define the scope of domestic labour laws regarding Mode 4; bring such aspects under purview of Article VI of GATS.

Thus, the GATS negotiations and commitments need to go beyond a commercial and largely trade-oriented perspective to a more comprehensive one, where social, gender, institutional capacity and developmental issues are also considered. Only with such a broader perspective can low- and semi-skilled worker mobility with all its associated sensitivities be adequately addressed. But, for this, greater cooperation between sending and receiving countries is an imperative. Also, greater involvement is required within and among countries across the trade, migration and development communities.

8. Conclusion

This paper has discussed several bilateral as well as unilateral schemes covering the temporary movement of low-skilled workers. It has attempted to cover important developed and developing countries and regions that are host to and source for temporary low-skilled migrant labour. The overview of the institutional, development related and administrative features of these various schemes throw up several commonalities and differences in approaches and in outcomes. The key best practices that emerge relate to:

- specificity, clarity, detail on
  - categories of workers
  - scope of work
  - temporariness (including renewal and extension provisions)
  - sectoral and occupational focuses
  - conditions imposed on employers and workers
  - numbers to be admitted (though criteria and determination not indicated)
  - administrative mechanisms and institutional frameworks for recruitment and entry
  - preference to local workers
  - wages and working conditions
  - obligations on source and host countries (in the context of bilateral arrangements)
  - flexibility in design and implementation to attune to local requirements (labour market and sector-specific)
- use of disincentives (penalties and sanctions) and incentives (e.g., return possibilities)
- broad based stakeholder participation
- interdepartmental and interagency coordination within and across countries
- regulation of intermediaries
- holistic approach to cross-border movement of labour
- mechanisms to protect workers and to safeguard their rights and interests in both host and source countries
- ensuring of coherence with other policies (immigration, taxes, training)

Areas where there are some shortcomings under the bilateral and unilateral schemes for temporary low-skilled migration relate to aspects such as

- inadequate or unclear coverage of foreign workers under host country labour laws
- inadequate recourse to redressal mechanisms and the legal system for foreign workers
- lack of recourse for foreign workers to representatives and membership in workers' associations
- possible undermining of existing bilateral schemes by other immigration policies
- failure to address unregulated recruitment, subcontracting and intermediary processes
- insufficient use of positive incentives to facilitate return and stimulate circular migration

Several of the positive features of existing bilateral and unilateral initiatives discussed here provide useful insights for the GATS Mode 4 negotiations. This paper has highlighted certain features that could be accommodated within the existing framework of GATS Mode 4 commitments, while also taking into account domestic sensitivities and concerns that are usually associated with low-skilled worker movement.

GATS negotiations need to look at the best features of managed migration, such as the coordination of processes on the part of both host and home countries, the specificity and clarity with which terms and conditions are laid down in these bilateral agreements, and other such features highlighted above, while also using the flexibility provided in the GATS commitment process to inscribe conditions that would ensure that movement remains temporary and well managed. As long as such conditions are objective, transparent

and non-discriminatory in their application, such commitments are possible in the GATS framework and the best features of bilateral approaches can be incorporated into the GATS commitments on Mode 4.

Finally, while countries may prefer the bilateral route, as this would allow them to focus on markets of interest and realize their interests more quickly and effectively, such efforts should not be at the cost of multilateralism. Liberal market access commitments for semi-skilled workers under the WTO would help LDCs improve livelihoods, expand income for a wider range of people, and better address many of the Millennium Development Goals. There would also be a clear benefit to the host countries, given their demographic trends and labour market shortages in many low- and semi-skilled sectors and occupations. Most importantly, liberalization of Mode 4 for low- and semi-skilled workers would appear to be a necessary central component to a round that is termed the Doha Development Round and also has the potential to serve as a breakthrough in the Doha Round negotiations. Thus, bilateralism and multilateralism need to be pursued at the same time. Moreover, the need to invest in capacity- and institution-building for managing the migration process and the need to incorporate human development dimensions into migration policy remains, regardless of whether one takes a bilateral or a multilateral approach.

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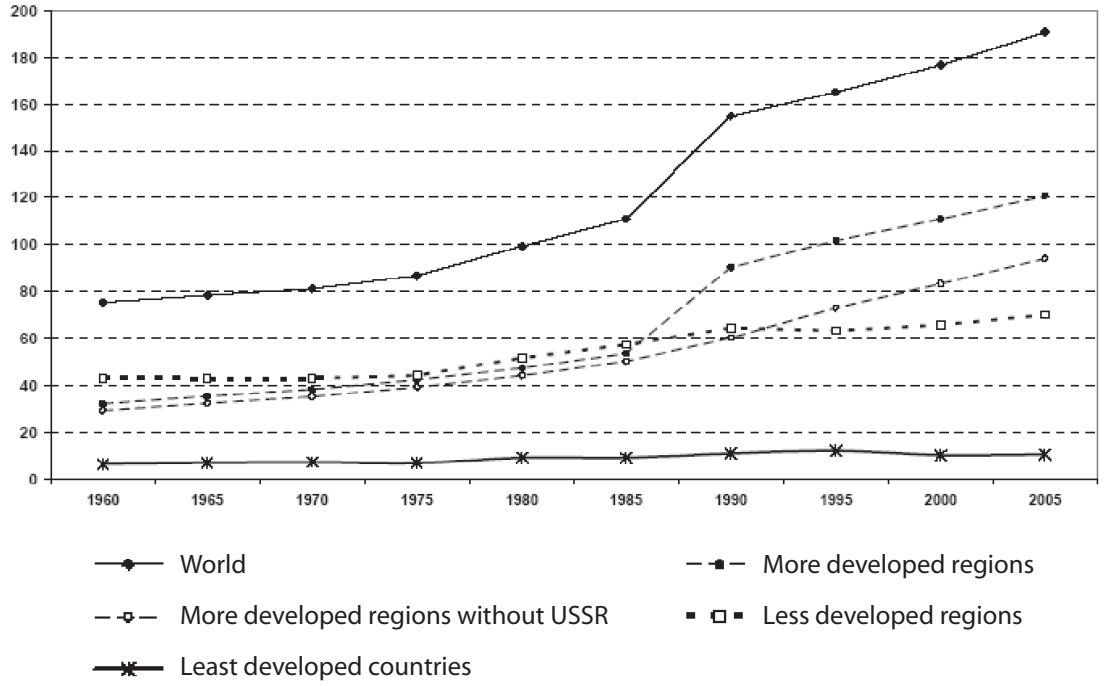
Appendix A: Trends in international migration

Figure 1 *Trends in the number of international migrants for the world and major development groups, 1960-2005*



Source: UNDESA (2005), Figure I, p.2.

Table 1 *Entries of temporary workers in selected OECD countries by principal category (2003-3005), in thousands*

	Trainees			Working Holiday Makers			Seasonal Workers			Intra-Company Transfers			Other Temporary Workers		
Country	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Australia	6.9	7.0	7.0	88.8	93.8	104.4							56.1	58.6	71.6
Austria	1.7	0.8					17.4	15.7		0.2	0.2		10.5	9.8	
Belgium							0.4	1.0	2.7				1.2	0.5	2.8
Canada							18.7	19.0	20.3	3.8	4.2	4.5	52.1	55.8	
Denmark	1.4	1.5	1.9										3.6	3.4	2.6
France	1.0	0.5	0.4				14.6	15.7	16.2				10.2	10.0	10.5
Germany	2.3	2.3					309.5	324.0	320.4	2.1	2.3		43.9	34.2	21.9
Italy				0.1	0.3	0.4	68.0	77.0	70.2						
Japan	64.8	75.4	83.3							3.4	3.6	4.2	143.7	146.6	110.2
Korea	58.8	46.7	51.6							7.8	8.5	8.4	7.2	8.3	11.9
Netherland													38.0	44.1	46.1
N. Zealand	2.0	2.4	1.8	20.7	21.4	29.0			2.9				40.3	43.7	44.3
Norway	0.5	0.5	0.3				17.9	25.4	20.9				2.5	2.1	1.1
Sweden							7.3	4.9	5.9				2.6	3.4	2.2
Switzerland	0.4	0.4	0.3							14.4	7.5	1.8			
UK				46.5	62.4	56.6		19.8	15.7				98.0	113.4	111.2
USA	1.4	1.4	1.8				29.9	31.8	31.9	57.2	62.7	65.5	192.5	221.8	218.6

Source: OECD International Migration Outlook 2007, Table I.4, p.51.

Table 2 *Estimated number of international migrants by numbers and percentage of the population, 1990 and 2005*

Region	Number of migrants (millions)		Increment (millions)	Percentage change	Migrants as percentage of population	
	1990	2005	1990-2005		1990	2005
World	154.9	190.6	35.7	23.0	2.9	3.0
More developed regions	82.4	115.4	33.0	40.1	7.2	9.5
Less developed regions	72.6	75.2	2.7	3.7	1.8	1.4
Arab region of which:	13.1	19.8	6.7	51.1	6.8	7.3
MAGHREB	0.9	1.0	0.2	20.6	1.4	1.3
MASHREQ	3.5	5.7	2.2	61.9	3.7	4.3
GCC	8.6	12.8	4.2	48.5	37.2	35.7

Source: UNDESA, International Migration in the Arab Region, Table 1, p.2, May 2006

Table 3 *Estimated number of international migrants in GCC member countries, 1970-2000 (in thousands)*

Country	1970	1980	1990	2000
Bahrain	38	103	173	254
Kuwait	468	964	1560	1108
Oman	40	180	450	682
Qatar	63	157	345	409
Saudi Arabia	303	1804	4220	5255
UAE	62	737	1556	1922
Total	974	3946	8305	9630

Source: United Nations Population Division

Table 4 *Outflow of migrant workers by country of employment, selected years from 1990 to 2005*

	Countries of employment							
Country of origin	Saudi Arabia	UAE	Bahrain	Qatar	Kuwait	Oman	Other countries	Total
	Number of workers (in thousands)							
Bangladesh								
1990	57	8	5	8	6	14	6	104
1995	84	15	3	0	17	21	47	188
1998	159	39	7	7	25	5	26	268
2002	163	25	5	1	16	4	11	225
2005	80	62	11	2	47	5	46	253
India								
1990	79	12	7		1	34	6	140
1995	257	80	11		16	22	29	415
1998	105	135	17		22	21	55	355
2002	99	95	21		5	41	106	368
Indonesia								
1998	123	9					174	306
2001	103	11					225	339
Pakistan								
1995	74	28	1	1	4	9	1	117
1998	47	43	2	2	4	3	1	101
2003	126	61	1	0	12	7	6	214
Philippines								
1998	194	35	5	11	17	5	371	638
2003	169	49	6	14	26	4	383	652
Sri Lanka								
2000	61	33	6	12	34	5	31	182
2004	71	33	4	30	37	3	36	213

Source: UNDESA, International Migration in the Arab Region, Table 3, p.5, May 2006

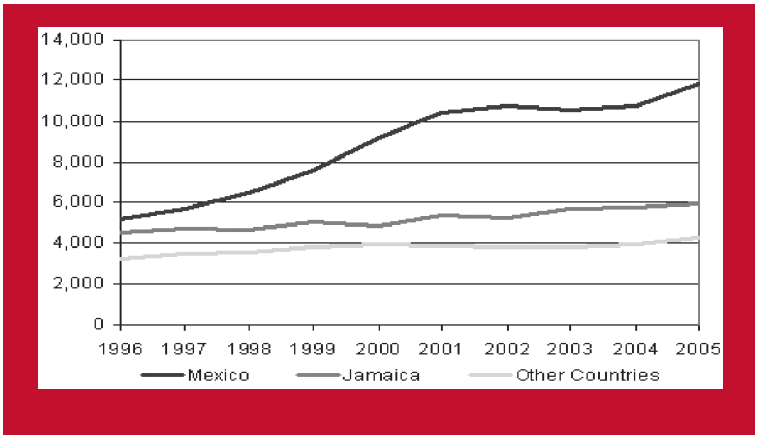
Appendix B: Trends in labour flows under selected temporary worker arrangements

Table 1 *Canadian Guest Worker Employment in Agriculture*

Year	Mexican workers	Caribbean workers	Total	% of workers who are Mexican
1987	1547	4655	6202	25
1988	2721	5682	8403	32
1989	4468	7674	12142	37
1990	5149	7302	12451	41
1991	5111	6914	12025	43
1992	4732	6198	10930	43
1993	4710	5691	10401	45
1994	4848	6054	10902	44
1995	4884	6376	11260	43
1996	5194	6379	11573	45
1997	5670	6705	12375	46
1998	6480	6901	13381	48
1999	7528	7532	15060	50
2000	9222	7471	16693	55
2001	10446	8055	18501	56
2002	10778	7826	18604	58

Source: Citizenship and Immigration, Canada

Figure 1 *Foreign Worker Flows, Seasonal Agricultural Workers Program, Canada, 1996-2005*



Source: CIC, Facts and figures 2005

Table 2 *Non-immigrant temporary worker admissions (I-94 only) by country of citizenship, United States, fiscal year 2002 - 2006*

Class of admission	2002	2003	2004	2005	2006
Total seasonal agricultural workers (H2-A)	15,628	14,094	22,141	NA	46,432
Guatemala	20	NA	45	35	133
Jamaica	1,577	2,485	2630	2820	3376
Mexico	12,846	9,924	486	1,282	40,283
Class of admission	2002	2003	2004	2005	2006
Total seasonal agricultural workers (H2-B)	86,987	102,833	86,958	NA	97,279
Guatemala	2722	3113	3077	3725	4485
Jamaica	10,573	10,557	8685	9123	11488
Mexico	52,972	65,878	2,972	89,184	89,483

Source: Yearbook of Immigration Statistics (various years)

Table 3 *Seasonal Agricultural Workers Scheme, United Kingdom*

Year	Ceiling	Admissions
1992	4450	5019
1993	4450	5011
1994	5500	Not available
1995	5500	5052
1996	5500	6152
1997	10000	10255
1998	10000	10394
1999	10000	10464
2000	10000	10846
2001	15200	15258
2002	18700	19372
2003	25000	Not available

Source: Work Permits UK, www.workpermits.gov.uk.

Appendix C: GATS Commitments and Negotiations on Mode 4

Table 1 *Types of natural persons supplying services (horizontal commitments)*

		No. of entries	No. of aggregate entries	% of total entries	% of aggregate entries
Intra-company transferees	Executives	45	135	13.7	41.1
	Managers	44		13.4	
	Specialists	45		13.7	
	Others	1		0.3	
Executives		22	104	6.7	31.7
Managers		40		12.2	
Specialists		42		12.8	
Business visitors	Commercial presence	30	70	9.1	21.3
	Sale negotiations	40		12.2	
Independent contract suppliers		3	3	0.9	0.9
Other		3	3	0.9	0.9
Not specified		13	13	0.9	0.9
Total[a]		328	328	100.0	100.0

[a] Total number of entries by those 100 WTO Members that have included commitments on Mode 4 in the horizontal section of their schedules.

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

Table 2 *Commitments percentage by sector and mode of supply (professional services)*
(Percentages in each activity)

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

Note: Full = Full commitment (indicated by 'None' in the market access or national treatment column of the Schedule)
Partial = Partial commitment (limitations are inscribed in the market access or national treatment column of the Schedule)
No = No commitment (indicated by 'Unbound' in the market access or national treatment column of the Schedule)
Percentages may not add up to 100 due to rounding. Basis of total is listed sectors.

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

Table 3 *Duration of stay by type of natural personsa*

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

[a] Unless otherwise indicated, the following periods are maximum periods which may be reached after an extension of the initial stay.

[b] Entries in parenthesis indicate the possibility of an extension where the Schedules concerned have not specified a timeframe.

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

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

Table 4 *Entry conditions/restrictions by type of natural personsa*

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

[a] See Table 5 for the legend
[b] The person seeking access must have already worked for the current employer, the minimum period specified Schedules is generally one year.
[c] Total workforce of the country concerned
[d] Absence of labour-management disputes

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

Table 5 *Other discriminatory treatment affecting work and living conditions*

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

[a] Total number of entries by those 100 WTO Members that have included Mode 4 in the horizontal section of their schedules.

Source: WTO, 'Presence of Natural Persons', Background Note, Geneva, Dec 1998, Table 12, p. 30.

Table 6 *Mode-4 – Horizontal commitments (all sectors)*

Commitments	Changes in subsequent offers
United States Unbound, except for measures concerning temporary entry and stay of nationals of another member who fall into the following categories: services salespersons, intra-corporate transferees like managers, executives and specialists, personnel engaged in establishment, fashion models and people involved in specialty occupations	There is no significant change in the offers of the US
European Union Unbound except for measures concerning the entry into and temporary stay within a member state of the following categories of natural persons providing services: intra-corporate transferees like managers and specialists, graduate trainees, business visitors, contractual service suppliers, employees of juridical persons and independent professionals	The revised EU offer has been expanded to include some categories of Contractual Service Suppliers and Independent Professionals. Requirements of economic needs and labour market tests have been relaxed, albeit only for intra-corporate transferees
Australia Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories: executives and senior managers as intra-corporate transferees, independent executives, service sellers as business visitors and specialists.	The revised offer has been expanded to include categories of business visitors, contractual service suppliers, service salespersons and spouses of such temporary entrants.
Canada Unbound, except for the entry or temporary stay of a natural person who falls in one of the following categories: business visitors Intra-corporate transferees, executives, managers, specialists and professionals	Subsequent offers have progressively expanded the categories of entry of temporary persons and they have also relaxed requirements of labour market tests.
Singapore Unbound except for intra-corporate transferees at the level of managers, executives and specialists.	The initial offer has changed the limit of entry of intra-corporate transferees from a total of five years to eight years. There has been no revised offer tabled as yet.
Korea Unbound except for executives, senior managers and specialists.	The subsequent offers have opened up this mode for measures concerning intra-corporate transferees, business visitors and service salespersons. But the mode will be unbound for contractual service suppliers.
Japan Unbound except for natural persons of specified categories with limitations on sectors, activities and types of entities that are covered.	The subsequent offers have expanded the scope of entry of temporary persons by including intra-corporate transferees, independent professionals, business visitors, senior managers, executives and service salespersons.
United Arab Emirates Unbound except for business visitors, intra-corporate transferees at the level of managers, executives and specialists.	No further offers tabled.
Kuwait Unbound except for skilled technical persons, specialists and managers	No further offers tabled.

Source: Author's compilation based on country schedules of commitments and offers under the GATS

Table 7 *Status of Mode 4 commitments of selected countries in specific sectors*

List of countries and sectors covered	Status of commitments and subsequent offers
US, Australia, Canada, EC, Japan, Kuwait, Korea, Singapore, UAE, US	
Construction and related engineering services; tourism and travel-related services	All the countries covered have these sectors unbound, except as indicated in the horizontal section.
Health-related and social services	Market is unbound and countries have not tabled any offers in this sector.

Source: Author's compilation based on Mode 4 commitments and offers.

Table 8 *Communications and requests from India and other developing countries*

- Communications have been sent from India and other groups of countries to the members of GATS emphasizing the need to reduce the barriers present for supply of services via Mode 4.
- Most of the communications stress on removing the limitations scheduled in the horizontal section. Measures suggested to improve the structure of the horizontal commitments include :

  a) de-linking of Mode 4 commitments with Mode 3

  b) including the category of individual professionals and contractual service suppliers in addition to the other categories that exist

  c) expansion in the scope of categories covered by the horizontal schedules by defining the coverage of categories like 'other persons'
- Requests have also been made to revise the sector-specific commitments by clearly defining the measures applicable to individual sectors and the categories for which the commitments apply.
- Requests have been made to remove the existing limitations such as wage parity requirements and economics needs test or make them transparent.
- Communication dated 3 July 2003: Restating the interest of the developing countries in Mode 4, several developing countries focused on the need to enhance the commitment level of the developed countries in Mode 4. The submission highlighted the existence of artificial barriers to market access like the economic needs tests and expressed concerns over transparency in issues like visa approval.
- Communication dated 31 March 2004: Seventeen countries submitted a proposal to the council of trade in services for the review of progress in Mode 4. The proposal highlighted the insufficient liberalization of Mode 4 by developed countries and emphasized the need to de-link the movement of natural persons with commercial presence.
- Communication dated 29 September 2004: Fourteen developing countries submitted a proposal on transparency issues which emphasized the need to develop effective mechanisms for making rules on transparency relating to Mode 4.
- Communication dated 18 February 2005: Twelve developing countries submitted a communication expressing interest in broadening the coverage of categories of natural persons for whom the commitments were being sought.
- Communication dated 30 June 2005: Twelve developing countries submitted a communication which reviewed and assessed the progress made in Mode 4 till the time of implementing the revised offers. This proposal expanded the already existing parameters for assessment of Mode 4 based on the previous proposals and submissions.
- Post-Hong Kong ministerial, a plurilateral request representing twelvef developing countries was filed with a view to identify the specific objectives of liberalisation in Mode 4. This collective request was drafted in accordance with the Annex C of the Hong Kong ministerial and the target group included developed countries like Australia, Canada, the EU, the US etc. The plurilateral requests sought for new and improved commitments relating to contractual service suppliers and independent professionals and also emphasized on transparency in Mode 4 commitments.
- The major developed countries that developing countries have targeted for liberalization of Mode 4 commitments include Australia, Canada, EC, Japan, New Zealand, Norway, Switzerland and the US.
- The list of developing countries which have jointly and individually sent communications and requests in Mode 4 include Bolivia, Chile, China, Colombia, Dominican Republic, Guatemala, India, Indonesia, Mexico, Pakistan, Peru, Philippines, Brazil, Argentina and Thailand.

Source: Author's compilation based on communication proposals and requests for Mode 4

The lack of progress on trade in services through the movement of natural persons, particularly of low-skilled persons, under the General Agreement on Trade in Services (GATS) has been a matter of concern for Least Developed Countries (LDCs). However, there are a growing number of initiatives at the unilateral, bilateral and, to a limited extent, at the regional levels to manage cross-country temporary labour flows. Many of these initiatives, particularly those at the national and bilateral levels, accommodate the movement of low- and semi-skilled workers. Many countries are making use of national schemes, such as special classes of work permits and visas to facilitate the entry of agricultural, seasonal and temporary workers. At the bilateral level, countries have entered into bilateral labour agreements covering specific types of workers and geared to meet demand in specific sectors. Countries are also including labour mobility provisions targeted at specific sectors and occupations under the broader rubric of bilateral economic cooperation or partnership agreements. And at the regional level, in the context of some regional agreements, mechanisms have been introduced or negotiated to facilitate intraregional labour mobility, though usually for limited high-skilled categories and occupations.

This study attempts to understand how bilateral and unilateral schemes manage the temporary movement of low-skilled workers by examining their various features. The aim is to draw useful lessons for the GATS negotiations on Mode 4 and for future agreements that address Mode 4. The study examines the operational, institutional, financial, welfare and human development features of several arrangements to derive their positive and negative aspects. Based on the best practices that characterize these agreements, the study suggests how some of these features could be incorporated in the context of the GATS Mode 4 commitments and offers. Underlying this learning-based approach is the larger objective of maximizing development benefits and of contributing towards a more strengthened and holistic development-friendly policy position on migration and the short-term movement of persons.

United Nations Development Programme
Bureau for Development Policy
Poverty Group
Trade and Human Development Unit
UNDP Office in Geneva
Palais des Nations, CH – 1211 Genève 10
Switzerland
Tel: (4122) 917 8202
Fax: (4122) 917 8001

www.undp.org