

**ANALYSIS OF ACTUAL LIBERALISATION VERSUS GATS COMMITMENTS OF
QUAD MEMBERS: MODE 4 AND HEALTH SERVICES**

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I. INTRODUCTION

1. This note is the first of a series assessing the actual or current level of trade liberalisation in select modes and sectors of the Quad members (Canada, European Communities, Japan and the United States) compared with their General Agreement on Trade in Services (GATS) commitments in the respective areas-.
2. This first note is focused on the movement of natural persons (or mode 4) and health services. The goal of this exercise was to assess whether GATS commitments made by a few of the most developed service economies, i.e. Quad members, can be considered “weak” and below actual levels of liberalisation. This note may prove to be timely in light of the recent calls by developed countries for initial and improved offers by developing countries, as it shows that GATS commitments and initial offers of the Quad members in these key areas of interest to developing countries and least developed

countries (LDCs) have been cautious and bound below actual levels of liberalisation.

3. From this assessment, developing countries and LDCs can take away three main messages. Firstly, calls by developed countries for deep liberalisation commitments or binding of actual liberalisation should be taken with caution – since developed countries themselves have been cautious about committing at the levels requested. Secondly, in the same way that the Quad members are cautious and selective in their commitments under GATS, developing and least developed countries are arguably more justified in their decisions to liberalise under GATS with similar or greater caution and careful selection. Thirdly, there is room for improvement within the GATS commitments and initial offers of the Quad members – developing countries and LDCs can utilise this fact as a condition or negotiating basis for furthering market access negotiations.

II. BACKGROUND

4. Developing and LDCs are to mutually benefit from the GATS negotiations alongside developed countries. In order for such benefits to occur, developed countries must provide valuable market access in the areas of export interest to developing countries and LDCs. Unfortunately, this has not occurred thus far, as made evident by the relatively weak initial offers presented by developed countries in the modes and sectors of interest to developing countries and LDCs in this round of negotiations.
5. In mode 4 and health service sector analysed in this note, actual levels of liberalisation are occurring at a *higher* degree either through domestic legislation already in place and not bound within the GATS commitments or through bilateral and regional trade agreements. A significant characteristic of domestic legislations in place is their flexible nature. For example, numerical quotas can be changed depending on the economic situation or expeditious processing of work permits and visas can be instituted if labour demand rises significantly. Thus the inflexible nature of GATS may discourage the binding of trade in services liberalisation regimes that require a certain degree of flexibility.
6. There may be different reasons for why developing countries and LDCs should (and developed countries do) approach the market access negotiations with caution. In addition to the inability of GATS commitments to work in a flexible manner, the mandate for progressive liberalisation poses an additional factor for consideration. Members may be more comfortable pursuing liberalisation outside the GATS regime with hopes of binding in the future once levels of liberalisation proves sustainable and beneficial to the economy. Finally, withdrawing a commitment require costly compensation adjustments

which can add another reason for erring on the side of caution when making commitments.

7. It is then not too surprising that trade in services liberalisation does and continues to occur outside of the GATS regime. Actual levels of liberalisation that are deeper than GATS commitments are occurring through bilateral and regional agreements. It can also be observed in certain instances that after one trade agreement have been in place for a considerable amount of time, subsequent trade agreements tend to include the same type and degree of liberalisation. This can be seen with the North American Free Trade Agreement (NAFTA) and the subsequent United States-Chile Free Trade Agreement. Bilateral and regional trade agreements are also preferential by nature. Therefore, do countries that are part of these agreements and enjoy increased market access need the GATS for expanding trading activities? Alternatively, do countries who are not part of these agreements need the GATS to begin such trading activities and more importantly can they utilise the GATS to obtain such trading arrangements? The binding of bilateral and regional agreements may as a result be welcomed by some Members and face opposition by others.¹ In the near term and for some countries, however, liberalisation outside of the GATS regime and through bilateral and regional agreements may prove to be more appropriate in certain sectors and with particular countries.

III. ANALYSIS OF ACTUAL LIBERALISATION VERSUS GATS COMMITMENTS IN MODE 4 AND HEALTH SERVICES

8. The information presented in this section is not exhaustive. Not every type of liberalisation regime or legislation for mode 4 and trade in health services is presented for each country. However this note attempts to provide a sufficient amount of evidence to demonstrate that actual levels of liberalisation in these select developed countries are greater than what has been committed to under the GATS.

A. Mode 4

9. The horizontal commitments made on mode 4 are discussed and compared with the various types of liberalisation legislation and regimes occurring outside of GATS. For movement of natural persons in the health sector, the discussion takes place within its respective section below. Again, this section does not present an exhaustive list of all the different types of legislations and ways foreign workers enter the Quad member countries. For example, many

¹ It can be noted here that GATS Article V paragraph 4 allows for more favourable treatment among parties of an agreement involving only developing countries.

countries allow persons with foreign student visas to work temporarily. These specific types of legislation (and others) are not included in the discussion. Thus, it may be assumed that actual levels of liberalisations for some countries are even greater than the picture presented below.

1. Canada

10. Canada has made horizontal commitments and initial offers for further liberalisation in mode 4. Initial offers have removed some barriers such as labour market tests and some work permit requirements however commitments continue to be restricted to the highly skilled and a limited number of occupations. The mode 4 commitments made by Canada do not represent the actual level of worker movement policies within the country.
11. The Immigration and Refugee Protection Act of 2002 was implemented to facilitate the movement of foreign workers. In 2003, Mexico, Jamaica and the Philippines were the second, third and fifth highest ranking foreign worker source countries respectively in Canada (the highest source country is the United States). Seasonal agricultural workers are included in these statistics.²
12. The Temporary Foreign Worker Program under the Immigration and Refugee Protection Act allows employers to determine labour shortages and seek approval for the employment of foreign workers. There is no limit to what type of employer or industry can participate in this program. In this regard, the GATS commitments undertaken by Canada, which allows entry of foreign workers for a limited list of occupations, are more restrictive than current legislation in place.
13. The NAFTA chapter on movement of natural persons is also more liberal than the commitments Canada has made under GATS. Under its GATS commitments, “specialists” as intra-corporate transferees are not allowed to stay in Canada beyond five years. Under NAFTA, however, all intra-corporate transferees do not have a limit on the period of stay.³ Other categories of persons committed to in NAFTA but not GATS are transportation operators transporting passengers, tourism personnel such as tour and travel agents, and tour guides and tour operators (including tour bus operators). Canada did not extend its horizontal commitments on mode 4 to these lower skilled worker categories.⁴
14. Under NAFTA and the Canada-Chile Free Trade Agreement, a “traders and investors” category of foreign worker is included. Activities permitted under this category include the general engagement in substantial trade in services between the member countries. This type of activity is above what Canada has committed to within its mode 4 horizontal commitments in GATS.

² Citizenship and Immigration Canada. *The Monitor*. Winter 2004 edition.

³ North American Free Trade Agreement. Chapter 16.

⁴ *Ibid.*

Furthermore, this category does not have a limit on the period of stay.⁵ Canada also affords a much easier process of entry for most business persons who are part of NAFTA and all foreign workers resident in the US, Greenland or St. Pierre and Miquelon by providing employment authorization at the port of entry.⁶

15. Canada also has in place a special program to increase the entry of foreign workers in the information technology (IT) sector. The Facilitated Processing for Information Technology Workers pilot program was created to fill shortages in the software industry and facilitate the entry of foreign workers in an expedited manner. This program is not committed to in GATS.⁷
16. Finally in its horizontal commitments of professionals who are those that can render services through a contract, Canada has excluded persons who obtain contracts through job placements services. This may be a significant withholding given that numbers of foreign workers enter Canada through such recruitment agencies.

2. *European Communities*

17. Horizontal mode 4 commitments undertaken by the European Communities (EC) have generally not responded to the requests of developing countries in that they do not extend to lower skilled categories. The EC has also not removed other access barriers such as stringent qualification requirements, work permits, entry processes, among others.
18. In its quest for harmonisation of EC markets, directives have been put in place to ensure no discriminatory treatment applies to nationals of other EC Members. However no real harmonisation plans for the entry of non-EC members has yet been put in place. Therefore, the degree of liberalisation for the temporary entry of non-EC foreign workers varies among the different EC Member states.
19. Several Member states have legislations that allow for a greater movement of foreign workers than what is allowed under GATS. For example, in the Netherlands foreign workers working for less than four weeks are exempt from the requirement of a work permit. Germany provides work permits to lower skilled foreign workers such as lorry drivers and ship and airline crews. The United Kingdom (UK) has a Sectors Based Scheme with a numerical limit that allows foreign workers to work in the hospitality sector, which includes bar staff, concierge staff, room attendant, etc. – most of which are low skilled workers -- whose period of stay is 12 months.⁸ The UK government has in

⁵ Canada-Chile Free Trade Agreement. Chapter K.

⁶ Citizenship and Immigration Canada.

⁷ Citizenship and Immigration Canada. Facilitated Processing for Information Technology Workers. See <http://www.cic.gc.ca/english/work/itw.html>

⁸ "UK SBS program to be extended". Workpermit.com. 19 May 2004. See <http://www.workpermit.com>

place a scheme to employ foreign teachers to teach students from finishing secondary school to the years commencing University studies while its GATS commitments for secondary education services are unbound for contractual service suppliers.⁹

20. Many EC Members states also have in place special programs to expedite and increase the facilitation of foreign workers for the IT service sector. These programs include the “IT-Specialists Temporary Relief Program” in Germany where foreign workers are allowed to stay for up to five years, which is higher than its GATS commitments. Fast-track systems for IT specialists are also in place in France and the Netherlands.¹⁰
21. Finally, in many EC Member states there is no restriction on which type of industry an employer can file for a shortage of workers in and seek approval for hiring foreign workers. This is more liberal than the GATS commitments where there is a limited list of qualifying occupations.

3. Japan

22. Of the countries analysed in this note, Japan seems to have the lowest degree of liberalisation of foreign workers within and outside of the GATS regime. Even so, a few instances of foreign worker legislations that have not been included in its GATS commitments are found.
23. Under its Immigration Control and Refugee Recognition Act, Japan has a “Skilled Labor” residence status category which is not part of its GATS commitments. The “Skilled Labor” status applies to foreign workers providing services such as food preparation of overseas origin, architecture or civil engineering characteristic to foreign countries, manufacturing or repair of products special to foreign countries, processing of gems, precious stones or fur, training of animals, seabed digging for oil exploration or development of terrestrial heat or the study of the seabed for minerals exploration, piloting of an aircraft used for air transport, and instructing sport. These activities, some of which are lower skilled in nature, are not committed to in GATS by Japan. Furthermore, Japan has additional residency statuses of “Researcher”, “Instructor”, “Entertainer” and “Trainee” – all of which are not included in its GATS commitments.

4. United States

24. Existing legislation in the United States (US) is in some instances less restrictive than what has been committed under GATS. The first case in point

⁹ “Gap Year Employment in the UK.”. Workpermit.com. 22 April 2004. See <http://www.workpermit.com>

¹⁰ McLaughlan, G. and Salt, J. Migration Policies Towards Highly Skilled Foreign Workers. Migration Research Unit, Geography Department. University of College London. March 2002.

regards the period of stay allowed for foreign worker categories. The H1-B visa which is utilised for the “specialty occupation” category of occupations within the GATS commitments has a maximum period of stay of six years. However, the GATS commitment for this category is for a maximum of three years.¹¹

25. The US also has in place a temporary non-agriculture workers program referred to as the H-2B visa. This visa scheme allows for foreign workers in the hospitality and tourism related sectors and includes lower skilled workers. The period of stay for this visa is one year with a possibility of renewal for an additional two years. This temporary non-agriculture worker category is not committed to under GATS. The US also has an H3 visa category for “Trainees” who participate in a temporary training program other than graduate education or training in the US – this category also does not appear in the GATS commitments.¹²
26. Similar to Canada, commitments on movement of natural persons under NAFTA are more liberal than those in GATS. The activities permitted under the category “traders and investors” for persons engaging in substantial trade in services between member countries are not found in GATS commitments. Other categories of foreign workers committed in NAFTA but not GATS are transportation operators transporting passengers; “after sales services” persons which includes installers, repair and maintenance personnel and supervisors training workers to perform services; and tourism personnel such as tour and travel agents, tour guides and tour operators (including tour bus operators). Many of these are commitments are for lower skilled worker categories, which the US has not committed to in GATS.¹³
27. In the US-Chile Free Trade Agreement, the commitment for the category of “professional”, whose equivalent in the GATS commitments is “specialty occupations”, does not have a numerical limit of 65,000 as it does in the GATS commitment. Within the “professionals” category, activities that involve performing training functions are also included. Activities related to trainings are not included in the GATS commitments. Similar to the commitments under NAFTA, the US also committed to after/sales services and tourism personnel (tour and travel agents, tour guides, or tour operators) under the US-Chile FTA and again not in GATS.¹⁴

¹¹ Ibid.

¹² US Citizenship and Immigration Services. Immigration Classifications and Visa Categories. See <http://uscis.gov/graphics/services/visas/htm>.

¹³ North American Free Trade Agreement. Chapter 16.

¹⁴ US-Chile FTA text.

Table 1. Summary of limitations to GATS horizontal commitments and initial offers in mode 4 of the Quad members in the second column along side existing legislation and regimes of (higher) liberalisation levels in the third column.

COUNTRY	LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS	ACTUAL HIGHER LEVELS OF LIBERALISATION
Canada	<p>For the category of <u>business visitors</u>, the natural person must not receive remuneration from within Canada and must not engage in direct sales to the public or supplying of the service. The natural person can participate in business meetings, negotiations for the sale of services, activities involving preparations for establishing a commercial presence in Canada and supplying after-sales or after-lease services. Period of stay up to six months with possibility of extension.</p> <p>For the category <u>Intra-corporate transferee</u>, the natural person must have been an employee of a third country firm of at least one year. The natural person can render services to the third country firm who has substantive business operations in Canada or is constituted in Canada. “Executives”, “Managers” and “Specialists” fall under this category. Period of stay is for an initial period equivalent to the period of the transfer with the possibility of extensions as a temporary resident status. “Specialists” may not stay past 5 years.</p> <p>For the category <u>Professionals</u>, the natural person must have a service contract granted by a third country service supplier (except from placement and supply services of personnel). The natural person must engage in a qualified occupation¹⁵ and possess necessary requirements recognised by licensing bodies in Canada. Period of stay is for one year or the time necessary to complete the contract, whichever is less, and extensions are possible.</p> <p>For the category <u>Spouses and common-law partners of qualifying intra-corporate transferees or professionals</u>, period of stay is equivalent to that of their spouse or partner who has a work permit for at least six months.</p>	<ul style="list-style-type: none"> • The Temporary Foreign Worker Program allows employers to determine labour shortages and seek approval for the employment of foreign workers. There is no limit to what type of employer or industry can participate. • Under NAFTA, all intra-corporate transferees do not have a limit on the period of stay. Other categories of persons, some of which are lower skilled worker categories, committed to in NAFTA but not GATS are transportation operators, transporting passengers, tourism personnel such as tour and travel agents, and tour guides and tour operators (including tour bus operators). • Under NAFTA and the Canada-Chile Free Trade Agreement a “traders and investors” category is included with no limitations in the period of stay. • The Facilitated Processing for Information Technology Workers program fills shortages in the software industry. • Easier process of entry is provided for most business persons who are part of NAFTA and all foreign workers resident in the US, Greenland or St. Pierre and Miquelon.

¹⁵ Qualifying occupations are: engineers, agrologists, architects, forestry professionals, geomatics professionals, land surveyors, foreign legal consultants, urban planners, and senior computer specialists.

COUNTRY	LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS	ACTUAL HIGHER LEVELS OF LIBERALISATION
<p>European Communities</p>	<p>EC directives on mutual recognition of diplomas do not apply to non-EC countries.</p> <p>In France, non-resident directors of industrial, commercial or artisanal activity need specific authorisation. In Italy, access to industrial, commercial and artisanal activities requires residence permit and specific authorisation.</p> <p>For the category <u>Intra-corporate transferee</u>, the natural person must be an employee of a third country firm (other than a non-profit organisation) for at least one year. The natural person must provide services through an establishment or place of business of the firm that is constituted in an EC Member. “Managers”, “Specialists” and “Graduate trainees” fall under this category. Period of stay is a maximum of three years for Managers and Specialists and 12 months for Graduate trainees.</p> <p>For the category <u>Business Visitors</u>, the natural person must be engaged in activities for the negotiation of the sale of services or entering into agreement to sell services and must not make direct sales to the public or supply services themselves. Period of stay is up to 90 days in any given one year period.</p> <p>For the category <u>Contractual services suppliers</u>, there are two sub-categories: 1) <i>employees of juridical persons</i> and 2) <i>independent professionals</i>. <i>Employees of (third country) juridical persons</i> can supply services without a commercial presence in an EC Member state. The natural person must have a university degree or equivalent technical qualification, professional qualifications and at least three years professional experience. The natural person must have a contract from a consumer in a Member state through an open</p>	<ul style="list-style-type: none"> • In the Netherlands, foreign workers working for less than four weeks are exempt from the requirement of a work permit. • Germany provides work permits to lower skilled foreign workers such as lorry drivers and ship and airline crews. • The United Kingdom has a Sectors Based Scheme with a numerical limit that allows foreign workers to work in the hospitality sector, which includes bar staff, concierge staff, room attendant, etc., which are mostly low skilled workers, whose period of stay is 12 months. • The United Kingdom government employs foreign teachers to teach students from finishing secondary school to the years commencing University studies. • Germany has a “IT-Specialists Temporary Relief Program” where foreign workers are allowed to stay in Germany for up to five years. • Fast-track systems for IT specialists are in place in France and the Netherlands.

¹⁶ The activities permissible are: legal; accounting and bookkeeping; taxation (only for Austria, Belgium, Germany, Luxembourg, The Netherlands, Sweden and the United Kingdom); architectural, urban planning and landscape architectural; engineering and integrated engineering services; computer and related services; research and development (only for Luxembourg and France); advertising; management consulting; services related to management consulting; technical testing and analysis; related scientific and technical consulting; maintenance and repair of equipment; translation; construction services (only for The Netherlands and France); site investigation work (only for Belgium, Germany, Denmark, The Netherlands, France, Portugal, Sweden and the UK); higher education (only for Luxembourg and France); environmental services; travel agencies and tour operators (only for Austria, Belgium, Italy, Germany, Ireland, Denmark and Finland); entertainment (only for Austria and France); services related to the sale of equipment or to the assignment of a patent (only for France).

¹⁷ Activities permitted for Independent Professionals are: architectural, urban planning, and landscape architecture, engineering and integrated engineering services, computer and related services, management consulting, services related to management consulting, and taxation services.

	<p>tender process. This commitment only applies to a limited number of activities and not for all Member states.¹⁶ The period of stay is a maximum of six months in any given one year period or the duration of the contract, whichever is less. Access may be subject to a numerical ceiling. The entry requirements for <i>independent professionals</i> are similar to that of <i>employees of juridical persons</i> except that the <i>independent professional</i> must be engaged in the supply of the service as a self-employed person established in an EC Member state and must have at least six years professional experience. This commitment applies only to a limited number of activities and not for all Member states.¹⁷</p>	
<p>Japan</p>	<p>For category a) the natural person must be an employee of a third country firm for at least one year and is transferred to a branch office, representative office or a juridical person constituted or registered in Japan. The natural person can engage in activities of directing as an office head, board member or auditor, directing departments, and that require technology and/or knowledge at an advanced level.¹⁸ Period of stay is one or three years which may be extended.</p> <p>For category b) the natural person must be a legal, accounting or taxation service supplier qualified under Japanese law and engaged in activities of professional services. Period of stay is one or three years which may be extended.</p> <p>For category c) the natural person must not receive remuneration from within Japan and must not be engaged in direct sales to the public or supplying of the service. The natural person can engage in activities of negotiating sales for the service supplier and other similar activities including those to prepare for establishing a commercial presence. Period of stay is 90 days maximum.</p> <p>For category d) the natural person must have a personal contract with a public or private organisation in Japan and be engaged in activities that require technology and/or knowledge at an advanced level that fall under Japan's residence status of "Engineer" and "Specialist in Humanities/International Services".</p>	<ul style="list-style-type: none"> • Under its Immigration Control and Refugee Recognition Act, Japan has a "Skilled Labor" residence status which applies to foreign workers providing services such as food preparation of overseas origin, architecture or civil engineering characteristic to foreign countries, manufacturing or repair of products special to foreign countries, processing of gems, precious stones or fur, training of animals, seabed digging for oil exploration or development of terrestrial heat or the study of the seabed for minerals exploration, piloting of an aircraft used for air transport, and instructing sport. • The Act includes additional residency status of "Researcher", "Instructor", "Entertainer" and "Trainee".

¹⁸ Technology and/or knowledge at an advanced level must pertain to the physical sciences, engineering or other natural sciences, jurisprudence, economics, business management, accounting or other human sciences.

COUNTRY	LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS	ACTUAL HIGHER LEVELS OF LIBERALISATION
<p>United States</p>	<p>For the category of <u>Services Salesperson</u>, the natural person must not receive remuneration from a US entity and must not be engaged in direct sales to the public or supplying the service. The natural person can engage in activities of negotiation sales for the service supplier. Period of stay is 90 days maximum.</p> <p>For the category of <u>Intra-corporate transferees</u>, the natural person must be an employee of a third country firm that provide services through a branch, subsidiary or affiliate in the US. “Managers”, “Executives” and “Specialists” fall under this category. Period of stay is three years with the possibility of extension up to two years and not exceeding five years.</p> <p>For the category of <u>Personnel Engaged in Establishment</u>, the natural person must have been employed in the preceding year by an establishment included in the sector-specific commitments and receiving remuneration from that entity. Natural persons must be “Managers” and “Executives” who want to establish an entity in the US and employ intra-corporate transferees. Requirements include proof of acquisition of a physical premise for business operations within one year of the date of entry.</p> <p>For the category of <u>Fashion Models and Specialty Occupations</u>. 65,000 persons are allowed into the US a year. Natural persons must be fashion models with distinguished merit and ability or engaged in a specialty occupation requiring theoretical and practical application of highly specialised knowledge and a bachelor’s or higher degree (or its equivalent). Specialty occupation persons must be licensed in a US state if required and demonstrate education or experience. Period of stay is 3 years maximum.</p>	<ul style="list-style-type: none"> • Under NAFTA, the category “traders and investors” involves persons engaged in substantial trade in services between the US and the third country. Additional categories of foreign workers under NAFTA are transportation operators transporting passengers; “after sales services” persons which includes installers, repair and maintenance personnel and supervisors training workers to perform services; and tourism personnel such as tour and travel agents, tour guides and tour operators (including tour bus operators). Many of these include lower skilled workers. • In the US-Chile Free Trade Agreement, the commitment for the category of “professional”, whose equivalent in the GATS commitments is “specialty occupations”, does not have a numerical limit and activities involving training functions are included. Additionally, activities of after/sales services and tourism personnel (tour and travel agents, tour guides, or tour operators) are included. • The H1-B visa category which is utilised for the “specialty occupation” category of occupations has a maximum period of stay of 6 years. • The H-2B visa category allows temporary foreign workers in the hospitality and tourism related sectors, which includes lower skilled workers. • The H3 visa category is for “Trainees” who participate in a temporary training program other than graduate education or training in the US.

B. Health

28. The primary mode of supply of health services in which developing countries and LDCs have a relatively greater export potential and interest in is mode 4. The bulk of trade in health services in fact occurs through the movement of service providers. Additionally, the majority of this type of trade originates from developing to developed countries.¹⁹ However, mode 1 or the cross-border supply of health services is increasingly holding a large export potential for many developing countries. Tele-health and telemedicine services are increasingly being supplied (and projected to rise) by developing countries to developed countries. This section will thus focus mainly on these two modes of supply with regards to liberalisation levels of health services. It should be noted here that trade in mode 1 of health services is a relatively new phenomenon and thus information availability is limited. The discussion on mode 1 thus is scarce, however is sufficient to conclude that actual levels of liberalisation are higher than GATS commitments.

1. Canada

29. Canada has not committed to health services in GATS. This is in line with their overall governmental objective of not committing to their sectors of public services, which includes health, within the multilateral trading system.²⁰ However, Canada does have in place various bilateral arrangements with developing countries for the supply of health workers.

30. The Canadian Foreign Worker Program allows entrance of foreign health care workers to fill labour shortages. A “Live-In Caregiver” program has also been instituted for foreign workers to provide care for children, elderly persons or people with disabilities. In its rural areas and small towns, Canada is facing a shortage of doctors and nurses.²¹ Recruitment of foreign doctors is occurring in developed countries as well as developing countries, namely South Africa. In 1995, 1,129 out of 55,000 doctors in Canada were from South Africa.²² Another example of foreign recruitment at the provincial level is with the government of Ontario, Canada where a portion of investment in its health care industry is used to increase the number of foreign-trained doctors to practise in Ontario.²³

¹⁹ Chanda, Rupa. Trade in Health Services. Working Paper No. 70. Indian Council for Research on International Economic Relations. June 2001.

²⁰ Opening Doors to the World : Canada’s International Market Access Priorities – 2004. International Trade Canada. 2004.

²¹ Citizenship and Immigration Canada. Towards a more balanced geographic distribution of immigrants. See <http://www.cic.gc.ca/english/research/papers/geographic/geographic-d.html>.

²² Ibid.

²³ Canada Ministry of Finance. The Right Choices: Investing in Health Care. 27 March 2003. See <http://www.gov.on.ca/FIN/bud03e/budhi1.htm>.

31. Foreign nurses must complete a nursing program comparable to one in Canada, have fluency in English, practiced recently in the field and passed the Canadian examination. The province of Manitoba actively recruits foreign nurses, mostly from the Philippines, through its provincial nominee program. Through this program, the provincial nurses association travels to the Philippines to physically recruit nurses. Private agencies in Canada are also actively involved in the recruitment process by establishing partnerships with employers to facilitate the hiring and entry of foreign nurses.²⁴
32. Under NAFTA, health care occupations such as registered nurse, occupational therapist, pharmacist, dentist, etc. fall under the occupation list of professionals committed to under the chapter on temporary movement of business persons.²⁵
33. Finally, despite not committing to mode 1 or the cross-border supply of trade in health services, Canada does not have in place domestic policies prohibiting such trade.²⁶ Thus, Canada has higher actual levels of liberalisation of its health sector in modes 4 and 1.

2. *European Communities*

34. The EC Member states have varying degrees of mode 4 commitments for medical and health services. In all of its sector commitments, the EC has kept contractual service suppliers unbound, which effectively prohibits the movement of health care workers through GATS. Movement of foreign health care workers into the EC however occurs to a large degree.
35. Since 2001, there have been more non-EC than EC nurses registering with nurses associations. The major developing countries that supply nurses to the EC include the Philippines, South Africa and India.²⁷
36. Health care worker shortages are seen in several EC Member states and foreign health care worker recruitment programs have been instituted.²⁸ For example, in Ireland the recruitment of nurses and midwives is facilitated through a partnership with the Philippine Overseas Employment Administration.²⁹ In the United Kingdom (UK), there are health care worker shortages for general practitioners, nurses and technicians. Due to these labour shortages as well as higher government set staffing targets and growth, the UK is increasing its international recruitment activities. England with the

²⁴ Ibid.

²⁵ NAFTA Legal Text.

²⁶ Putting Health First: Canadian Health Care Reform, Trade Treaties and Foreign Policy. Canadian Centre for Policy Alternatives Consortium on Globalization and Health. October 2002.

²⁷ International nurse mobility: Trends and policy implications. World Health Organisation, International Council of Churches, and Royal College of Nursing. Geneva 2003.

²⁸ Ibid.

²⁹ Irish Department of Health and Children, Nursing Policy Division. Guidance for Best Practice on the Recruitment of Overseas Nurses and Midwives. December 2001.

endorsement of the National Health System and through intergovernmental agreements actively recruits in developing countries such as India and the Philippines. Private recruitment agencies and individual employers also engage in direct recruitment. The Department of Health in England facilitates the work of recruitment agencies by placing a list of approved agency sites on its web site as well as names of National Health Services employers seeking foreign workers. The main source developing countries in these markets are the Philippines, South Africa, India and Zimbabwe.³⁰

37. With regards to mode 1, the EC has for the large part not committed to this mode of supply (there are exceptions with Sweden and Finland). However, trade via this mode does occur with Member states. For example, university hospitals in Tunisia supply teleconferencing, telepathology and teleradiology services to French medical institutions.³¹

3. Japan

38. As mentioned above, Japan is still relatively more closed to foreign workers than the other countries discussed in this note. However, as an aging country Japan is considering the increased need for the foreign supply of healthcare workers. Although Japan has not committed to mode 4 under its health service sector commitments, Japan does technically allow foreign workers to provide medical and nursing services provided they meet stringent Japanese qualifications.
39. In its Immigration and Refugee Control Recognition Act, Japan allows for the inflow of medical service providers, such as doctors, dentist, pharmacists and nurses. However, requirements include graduating from a Japanese medical or dental university or Japanese school of nursing and undergoing years of training. Still, for other occupations such as physical therapists and others, an invitation by a Japanese institution is additionally required. In 2001, Japan had 95 foreigners providing medical services.³²
40. The government of Japan is currently considering accepting foreigners to work as nurses and caretakers of the elderly.³³ Current discussions of bilateral free trade agreements with Thailand and the Philippines involve the inclusion of movement of foreign doctors and nurses. Nongovernmental activities are also in place to facilitate movement of foreign health care workers into Japan. One example is AHP Networks which assists foreign nurses, mainly from Vietnam, to pass Japanese nursing exams.³⁴

³⁰ International nurse mobility: Trends and policy implications. World Health Organisation, International Council of Churces, and Royal College of Nursing. Geneva 2003.

³¹ Chanda (2001).

³² White Paper on International Trade 2003. Japan Ministry of Economy, Trade and Industry.

³³ "Gov't to consider letting foreign nurses work in Japan." Japan Today. 27 May 2004. See <http://www.japantoday.com/e/?content=news&cat=1&id=299992>.

³⁴ "Firms employing record number of foreigners". Asia Times Online. 6 May 2004. See <http://www.atimes.com/atimes/Japan/FE06Dh01.html>.

41. Japan has not made commitments in mode 1 in health services due to lack of technical feasibility. However, trade via mode 1 does occur in Japan. For example Japan through satellite links cooperates with countries in the Asia Pacific region on telemedicine services as well through links between its university hospitals and health care sites in Cambodia, Fiji, Papua New Guinea and Thailand.³⁵

4. United States

42. The US has not committed to medical and dental services and services provided by midwives, nurses, physiotherapists and para-medical personnel in its GATS commitments for modes 1 and 4. The only commitments made in the health sector are on hospital services; other human health services, social services, and some services falling under the other category. Although some of these sub-sectors involve the use of lower skilled workers, horizontal commitments in mode 4 prevent the movement of lower skilled workers.

43. Despite the low level of commitments, the US is a major importer of health services. It receives a large number of health care workers from developing countries. The main sources of developing countries are India, the Philippines, Pakistan and Jamaica. The US government in order to address domestic shortages actively encourages the inflow of certain types of workers under special visa schemes.

44. The Immigration Nursing Relief Act followed by the Nursing Relief for Disadvantaged Areas Act is one such scheme.³⁶ Through this act, qualified hospitals can temporarily employ foreign registered nurses for up to three years under the H1-C visa category. There is a numerical limit of 500 H1-C visas per year. This type of worker category is not committed to in GATS.

45. The H-2B visa scheme allows for the temporary entry of foreign health service providers with a nursing degree – this visa scheme is also not included in the GATS commitments. Additionally, NAFTA allows the movement of health care workers such as registered nurse who do not require a minimum of a Bachelor's degree as is required under GATS.³⁷ Finally, in its horizontal mode 4 commitments in GATS, the US requires obtaining state licenses where applicable. Medical education graduates of certain accredited Canadian medical schools are waived from this requirement.

46. With regards to mode 1, the US does indeed engage in cross border trade in services. For example, university hospitals in the US have links to telemedicine services with the King Faisal specialist hospital and resource

³⁵ Chanda (2001).

³⁶ US Department of Labor. Employment Law Guide. See <http://www.dol.gov/asp/programs/guide/nurses.htm>

³⁷ NAFTA Legal Text.

centre in Saudi Arabia. Furthermore, Stanford University hospital in the US has links to Singapore hospitals for second opinions.³⁸ It can thus be concluded that the US has bound below actual levels of liberalisation within its GATS health commitments.

³⁸ Chanda (2001).

Table 2. Summary of limitations to GATS commitments and initial offers in modes 1 and 4 for the health sector of the Quad members in the second column along side existing legislation and regimes of (higher) liberalisation levels in the third column.

COUNTRY	LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS	ACTUAL HIGHER LEVELS OF LIBERALISATION
Canada	<p><u>1. Business Services: A. Professional Services: h. Medical and dental services</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>i. services provided by midwives, nurses, physiotherapists and para-medical personnel</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>8. Health Related an Social Services: A. Hospital Services, B. Other Human Health Services, C. Social Services and E. Other</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p>	<ul style="list-style-type: none"> • “Live-In Caregiver” program which imports foreign workers. • Ontario, Canada invests in health care to increase the number of foreign-trained doctors to practise in rural areas and small towns. • Recruitment of foreign doctors from South Africa. • The Provincial Nursing Association of Manitoba recruits nurses from Philippines. • NAFTA has provision for the temporary movement of health professionals. • Trilateral Initiative for North American Nursing
COUNTRY	LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS	ACTUAL HIGHER LEVELS OF LIBERALISATION
European Communities	<p><u>1. Business Services: A. Professional Services: h. Medical and dental services</u></p> <p>Mode 1: Unbound for all members states except Sweden</p>	<ul style="list-style-type: none"> • Health care worker shortages are seen in several EU Member states. • Direct governmental recruitment in developing

	<p>Mode 4: For <u>intra-corporate transferees and business visitors</u>, commitment as indicated in the horizontal commitments. Austria did not commit to medical and dental services other than psychologists and psychotherapists; and midwives require at minimum three years of practice if establishing a professional practice. Denmark allows only 18 months for period of stay and requires residency. Italy requires residency. Sweden requires compulsory training. Finland has not committed. Poland, France and Germany conditions nationality however France has exceptions based on quotas and Germany waives condition on exceptional basis for public health interests. Germany did not commit to midwives. For <u>contractual services suppliers</u>, unbound.</p> <p><u>j. Services provided by midwives, nurses, physiotherapists and para-medical personnel</u></p> <p>Mode 1: Unbound for all members states except Finland and Sweden.</p> <p>Mode 4: For <u>intra-corporate transferees and business visitors</u>, Denmark allows only 18 months for period of stay and requires residency. Portugal conditions nationality. Italy subjects an ENT. Sweden requires compulsory training. Austria requires midwives minimum three years of practice to establish a professional practice. For <u>contractual services suppliers</u>, unbound.</p> <p><u>8. Health Related and Social Services: A. Hospital Services, B. Other Human Health Services, C. Social Services and E. Other</u></p> <p>Finland and Sweden have not committed.</p> <p>Mode 1: Unbound for all categories of health services.</p> <p>Mode 4: For <u>Category B. Other Human Health Services</u> (see above), CSS are not committed to.</p> <p>Mode 4: For <u>Category C. Social Services</u>, France provides conditional authorisation and commercial presence is required in Austria. CSS are not committed to.</p>	<p>countries.</p> <ul style="list-style-type: none"> • Ireland actively recruits nurses from overseas for example through partnership programs with third countries such with the Philippine Overseas Employment Administration. • The United Kingdom government with the endorsement of the National Health System and through intergovernmental agreements actively recruits in developing countries such as India and the Philippines. • Private recruitment agencies in the UK and individual employers engage in direct recruitment. • The Department of Health in England facilitates the work of recruitment agencies by placing a list of approved agency sites on its web site as well as names of National Health Services employers seeking foreign workers.
<p>COUNTRY</p>	<p>LIMITATIONS TO MARKET ACCESS IN GATS COMMITMENTS AND INTIAL OFFERS</p>	<p>ACTUAL HIGHER LEVELS OF LIBERALISATION</p>
<p>Japan</p>	<p><u>1. Business Services: A. Professional Services: h. Medical and dental services</u></p>	<ul style="list-style-type: none"> • Japan has links to telemedicine services with developing countries in the Asia Pacific region such as Cambodia, Fiji,

	<p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>j. Services provided by midwives, nurses, physiotherapists and para-medical personnel</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>8. Health Related ands Social Services: A. Hospital Services, B. Other Human Health Services, C. Social Services and E. Other</u></p> <p>Mode 1: Unbound (due to lack of technical feasibility).</p> <p>Mode 4: Unbound</p>	<p>Papua New Guinea and Thailand. Service providers from developed countries such as Canada are providing telehealth/telemedicine services to Japan.</p> <ul style="list-style-type: none"> • In its Immigration and Refugee Control Recognition Act, Japan allows for the inflow of medical service providers, such as doctors, dentist, pharmacists and nurses who have graduated from a Japanese medical or dental university or Japanese school of nursing and undergoing years of training.
<p>United States</p>	<p><u>1. Business Services: A. Professional Services:</u></p> <p><u>h. Medical and dental services</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>j. Services provided by midwives, nurses, physiotherapists and para-medical personnel</u></p> <p>Mode 1: Unbound</p> <p>Mode 4 : Unbound</p> <p><u>8. Health Related ands Social Services: A. Hospital Services, B. Other Human Health Services, C. Social Services and E. Other</u></p> <p>Mode 1: Unbound.</p> <p>Mode 4: Unbound except as indicated in the horizontal section.</p>	<ul style="list-style-type: none"> • The US has trading links to telemedicine services from Saudi Arabia and Singapore • The Nursing Relief for Disadvantaged Areas Act allows qualified hospitals to temporarily employ foreign registered nurses for up to three years under the H1-C visa category. There is a numerical limit of 500 H1-C visas per year. • The H-2B visa allows temporary entry of foreign health service providers with a nursing degree. • NAFTA facilitates the movement of certain types of health care workers. The NAFTA TN visas allow highly skilled Canadians, which include doctors and medical specialists, entry into the US. • Medical education graduates of certain accredited Canadian medical schools are waived from this requirement of obtaining a state license.

IV. CONCLUSION

47. Trade in services liberalisation among Quad members are and have been occurring extensively outside of the GATS regime. This analysis has shown that the Quad members are liberalising the movement of natural persons and trade in health services at a slower pace within the GATS regime than in domestic regulations or other non-WTO bilateral or regional trading agreements.
48. The inflexible and potentially costly nature of the GATS market access negotiations (coupled with the absence of rules) may not be conducive for making commitments during this early stage of services liberalisation within many countries. Hence, all countries, developed, developing and least developed, may need to be more selective, strategic and fully aware of their levels of development when making commitments under the GATS negotiations – it is quite clear that this is the strategy being utilised by the Quad members.
49. With regards to market access negotiations in GATS, developing countries must call for improvements in the commitments and offers made by the Quad members in the areas of export interest and commercial value to developing countries and LDCs. This note provides ample evidence that Quad members have made GATS commitments below actual levels of liberalisation. Despite this fact, some of these members are calling on developing countries and LDCs to make commitments which at minimum bind existing levels of liberalisation. This pressure can and should be withstood during this current round of market access negotiations and by calling on Quad members to improve their initial offers as a condition for movement in negotiations.

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