

Michał Kruszka
Department of Microeconomics
The Poznań University of Economics
E-mail: m.kruszka@ae.poznan.pl

TRADE IN SERVICES AND TEMPORARY MOVEMENT OF LABOUR IN EUROPEAN COUNTRIES UNDER TRANSITION

1. Introduction

Globalization is one of the most important features of modern economy. There is no doubt that globalization is strongly connected with growing international trade, which includes goods, services and intellectual property rights. Setting legal rules of trade liberalization began in 1947 when GATT (*General Agreement on Tariffs and Trade*) was signed. However its commitments were applied only to goods and based mostly on gradual removing duty barriers. Negotiations of Uruguay Round of GATT revealed that so defined attitude towards changing international trade was not sufficient. According to this conclusion members of GATT decided to set up new rules for free trade, which should be applied not only to goods but also to services and intellectual property. This was main reason of transformation of GATT into World Trade Organization (WTO). Together with establishing new organization many agreements which regulated so defined trade were signed. Currently WTO with 148 members supervises abiding these rules. WTO has quasi court procedures for judging conflicts arised from applying regulations, it also organises further negotiations.

One of the core treaties signed by WTO members is GATS (*General Agreement on Trade in Services*), which apart from GATT and TRIPS (*Agreement on Trade-Related Aspects of Intellectual Property Rights*) defines scope of interests of WTO members. GATS is first multilateral agreement aimed at reducing barriers to trade in services. Although GATS regulations base on widely known and tested GATT norms, specific properties of services forced WTO to sign new treaty, which can become very important in XXI century.

One of the modes of services supply (mode 4) is defined as the supply of a service by a supplier of one WTO member, through the presence of natural persons in the territory of another member on a temporary basis. Unfortunately, this mode is clearly the least well understood of the modes for providing services under the GATS. It is also the mode of supply where the fewest commitments were made at the end of the Uruguay Round. Since many countries from Central and East Europe (CEE countries) have a comparative advantage in exporting labour – intensive services, the failure to liberalise mode 4 limits the overall value of GATS regulations for these countries. In order to effectively promote trade in services and address the interest of European countries under transition, the ongoing round of GATS negotiations should aim at liberalising movement of natural persons.

This paper is inspired by need to create information and ideas for discussion about temporary movement of labour across borders to supply services. First part provides some information about statistical rules concerning assessing trade in services. Second part presents some stylised facts on trade in services under mode 4 in CEE countries. Third part lists barriers to trade in services provided by presence of natural persons. The fourth section presents GATS commitments of European countries under transition. The last part suggests ways to promote further liberalization in mode 4.

2. International supply of services

GATS does not defines „service” but members of WTO have clearly said when

international trade of services arises. According to GATS there are four modes of services supply:

- Service is supplied from one country to another (not requiring the physical movements of supplier or consumer) – cross – border supply;
- Service is supplied in the territory of one country for foreign buyer – consumption abroad;
- Service is sold in the territory of one country by foreign affiliates – commercial presence;
- By a service supplier from one country through temporary movement of his personnel in the territory of any other country – presence of natural persons.

The essence of each mode of supply is presented on figure 1.

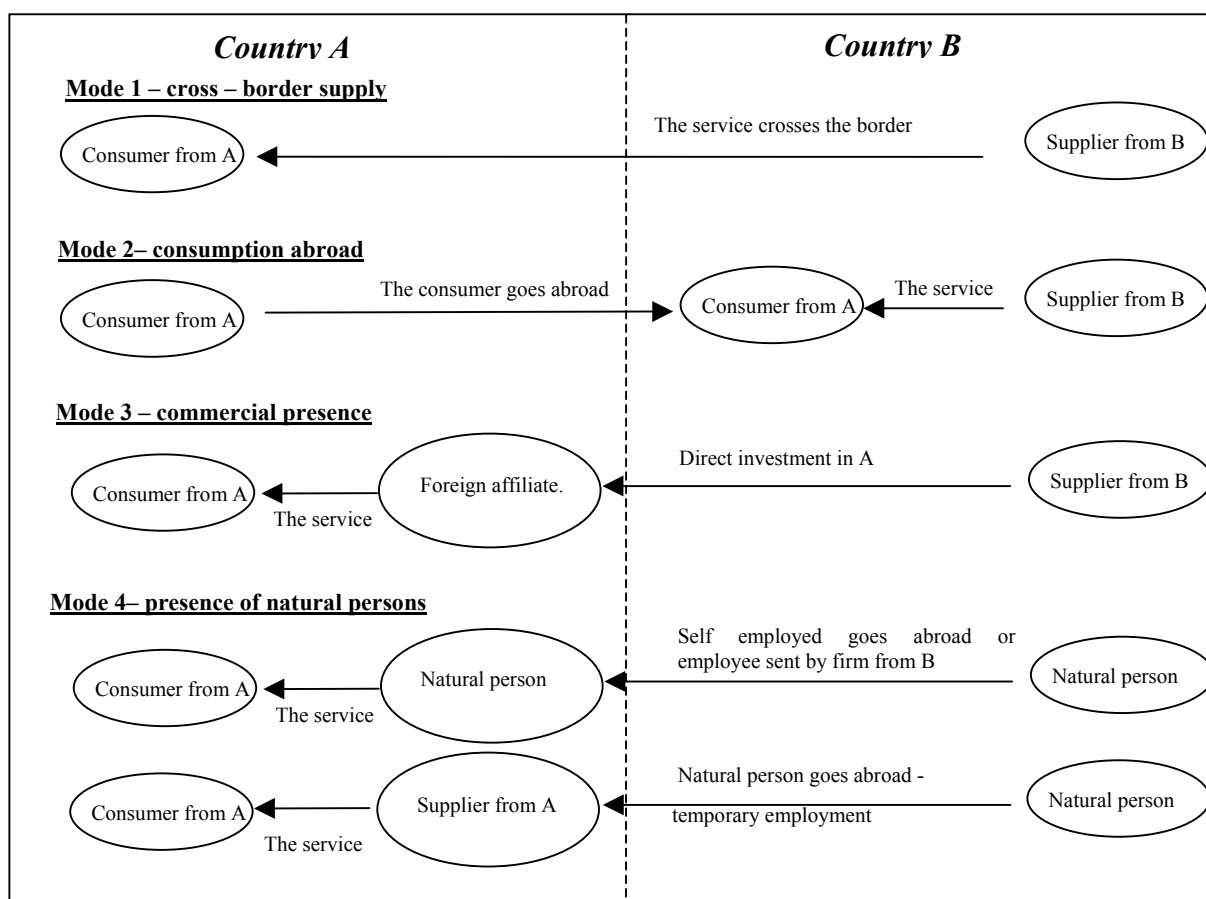


Figure 1. GATS modes of services supply
Source: OECD (2003).

WTO legal norms apply only to services known as commercial. Commercial services include all services except of those that are provided neither on a commercial basis nor in competition with one or more service suppliers¹. Members of WTO decided to divide commercial services into 12 subsectors². Complete classification of them is presented in table 1. Isolating of subsectors is very important for WTO, because every member of it, prior to joining has to submit list of commitments that allow services trade liberalization. Applying unified classification to every country makes possible to check the degree of openness of economy for foreign competition (see: Adlung et al. (2002)).

¹ Services provided neither on a commercial basis nor in competition are defined by GATS as services supplied in the exercise of governmental authority. See: GATS, Article I.

² See: document WTO MTN.GNS/W/120.

Table 1

Classification of services (according to WTO regulations)

Subsector	Services
Business services	<ul style="list-style-type: none"> • professional services • computer services • research and development services • real estate services • rental/leasing services without operators • other business services.
Communication services	<ul style="list-style-type: none"> • postal services • courier services • telecommunication services • audiovisual services • other communication services
Construction and related engineering services	<ul style="list-style-type: none"> • general construction work for buildings • general construction work for civil engineering • installation and assembly work • building completion and finishing work • other
Distribution services	<ul style="list-style-type: none"> • commission agents' services • wholesale trade services • retailing services • franchising • other
Educational services	<ul style="list-style-type: none"> • primary education services • secondary education services • higher education services • adult education services • other education services
Environmental services	<ul style="list-style-type: none"> • sewage services • refuse disposal services • sanitation and similar services • other
Financial services	<ul style="list-style-type: none"> • all insurance services and insurance related services • ranking • Other
Healthcare and social services	<ul style="list-style-type: none"> • hospital services • other human health services • social services • other
Tourism and Travel related services	<ul style="list-style-type: none"> • hotels and restaurants • travel agencies and tour operator services • tourist guides services • other
Recreational, cultural and sporting services	<ul style="list-style-type: none"> • entertainment services (including theatre, live bands and circus services) • news agency services • libraries, archives, museums and other cultural services • sporting and other recreational services • other
Transport services	<ul style="list-style-type: none"> • maritime transport • internal waterways transport • air transport services • space transport • rail transport services • road transport • pipeline transport • other transport services •
Other	Other services not included elsewhere

Source: document WTO MTN.GNS/W/120.

GATS legal norms define trade in services, but existing systems of statistical classification did not deal with modes of supply. This caused serious problems, and was one

of the biggest obstacles for collecting valuable data about globalization of services trade. In order to avoid it in future in 1994 was established a team that main aim, was to develop unique statistical methodology for the trade in services. It employed specialists from IMF and WTO and other institutions such as OECD, EUROSTAT and UN. The works of the team resulted in publication in 2002, *Manual on Statistics of International Trade in Services* (MSITS)³, which was specific handbook for public statistical agencies. It explains relationships between various systems of statistical information and show how to use combine data gathered in them.

Suggestions of MSITS shows some possibilities to use existing statistical data in order to get information that complies with WTO rules, but their implementation is quite difficult and needs time. According to this even issued by WTO *International Trade Statistics* yearbook which contains statistical data about merchandise trade and trade in services does not present mode of supply. That is why referring to rules of services supply forces author to use some estimation instead of existing sources

For example according to WTO official data (collected on the basis of balance of payments) showed that in 1997 global export of commercial services accounted for \$1321.4 billion, which was about 24 % of global trade in goods. However some authors proved that in this case only two first modes of services supply were included (Karsenty (2000)). Calculations made by him for another two modes suggested that real export of commercial services was \$2170 billion, which was about 39 % of trade in goods. Kruszka (2005) proved that applying analogous approximations to 1999 estimated global value of commercial services export was \$2700 billion USD, which is equal to 48 % trade in goods.

From developed countries perspective it is crucial to set up FATS (*Foreign Affiliates Trade in Services statistics*). This database is used for collecting data about foreign affiliates for which foreign investor owes more than 50 % of voting power or equity interests. Information obtained from FATS is an approximation of trade in services supplied by commercial presence i.e. under mode 3. WTO (2004) indicates that such trade in case of USA is more than twice as high as recorded in balance of payments, while in Canada more than three times. Data available for the OECD countries' foreign affiliates in the services-producing activities suggest that their global sales are approximately 1.5 times the conventional cross-border trade flows (mode 1) measured through the balance of payments. However FATS system is not common yet, even in those countries who were members of EU prior to 2004. Concerning this there is no possibility to get up to date and full information about global trade in services assessed according to GATS modes of supply.

Another important problem is measurement of services supplied by presence of natural persons mode. This facet of trade in services becomes very important during Uruguay Round negotiations. It caused so much interest, but also many controversies, especially between well developed and developing countries, that talks were continued after formal signing GATS. They resulted in The 3rd Protocol to GATS, but it did not change rules of liberalization set up by Uruguay Round

Supplying services under mode 4 can be described in three dimensions: time of foreign stay of natural person, skills level, and legal character of contract between supplier and buyer of service.

Time criterion is not clearly defined by GATS. However it is usually assumed that its rules apply only to persons who stay temporarily abroad in order to supply services. This conclusion can be derived from article 2 of *Annex on Movement of Natural Persons Supplying Services under the Agreement*, which says that GATS rules do not apply to employment on a permanent basis. It can be said that in this case employees are interested in emigration.

³ See document: ST/ESA/STAT/SER.M/86 issued by Department of Economic and Social Affairs, Statistics Division of UN.

However practice of WTO members in defining temporary stay is not unified, because sometimes GATS rules apply to 90 days residence, but on the other hand for certain categories upper limit is 5 years.

Skills level, which is very important for trade in services, especially for undeveloped countries, is not subject to GATS regulations, so if other criteria are fulfilled every person that supplies services regardless of formal and real qualifications should be treated as element of GATS regulated trade in services.

Annex on Movement of Natural Persons says that GATS applies to persons who are suppliers of services or those employed by supplier. It means that first group is independent side of contract between seller and buyer, so buyer pays for services directly to suppliers. Another group of persons is not side of contract, but only employees of supplier. Chaudhuri, Matoo i Self (2004) doubt, whether this category refers both to foreigners employed by supplier from his own country and working abroad and foreigners employed by supplier that is resident in the country of supply, but MSITS regulations enforce positive answer.

Concerning mentioned above facts it is obvious that it is very hard to obtain comparable data about services supplied in mode 4. WTO Secretariat (1998) says, that using standard IMF balance of payments data allow identification of two possible data sources; however both of them are imperfect.

First is value of "compensation of employees" which can be found in current account under position "income". The most important disadvantage of it that it does not isolate sectors, so this category can refer also to those employed in industry and agriculture. Additionally current account includes incomes of persons that stay abroad shorter than one year, so from formal point of view they do not change place of residence, while GATS commitments allows much longer presence outside native country.

Another source of data is value of "worker remittances" from persons who stay outside country longer than year. It is included under position "current transfers" of current account. But also in this case it is not divided between sectors. Moreover this position includes transfers from emigrants, who are not subject to GATS regulations. It has to be underlined that only small part of payments is kept on current account, because many transfers have unofficial character. In many countries exist many barriers aimed at reducing currency exchange or transfers are subject to taxation. This can lead to significant underestimation of so defined trade in services.

In many papers presenting problems of measuring trade in services according to mode of supply (Karsenty (2000), Maurer, Chauvet (2002)) it is suggested that compensation of employees can be treated as substitute of services supplied in mode 4. However data from current account is not divided between sectors, but majority of people is employed in services so it can be said that compensation describes huge part of payments linked with trade in services. Moreover it also regards that residence is temporary and avoids underestimation of observed trade in situation when position "worker remittances" is used. Although it was proved by Jansen and Piermantini (2004) that in case of USA and UK more accurate data is available, but in global scale this attitude turned out to be useless, because of lack of comparability. According to these fact in the further analysis author decided to measure trade in services supplied under mode 4 using "compensation of employees", which is included in current account

3. Trade in services supplied by natural persons in CEE countries

All Central and East European countries are subject to WTO activity. Some of them are original members which mean that delegations from them took part in the Uruguay Round of GATT, signed its *Final Act* and ratified *WTO Agreement*. Some of them are members

who joined after Uruguay Round, so they had to undergo accession process. The last group has only observer status, who has already applied for establishing Working Group that will set up WTO accession procedures and conditions. Information about status of these countries is presented in table 2.

Table 2

Formal status of European countries under transition in WTO

Country	Status	Status obtained on
Albania	accessing member	8 September 2000
Belarus	observer	27 October 1993
Bosnia and Herzegovina	observer	15 July 1999
Bulgaria	accessing member	1 December 1996
Croatia	accessing member	30 November 2000
Czech Republic	original member	1 January 1995
Estonia	accessing member	13 November 1999
Hungary	original member	1 January 1995
Latvia	accessing member	10 February 1999
Lithuania	accessing member	31 may 2001
Macedonia (FRY)	accessing member	4 April 2003
Moldova	accessing member	26 July 2001
Poland	original member	1 July 1995
Russian Federation	observer	16 June 1993
Romania	original member	1 January 1995
Serbia and Montenegro	observer	8 February 2001
Slovak Republic	original member	1 January 1995
Slovenia	accessing member	30 July 1995
Ukraine	observer	17 December 1994

Source: www.wto.org.

According to real membership, further analysis includes 14 countries. As mentioned above assessing trade in services by GATS modes of supply is only partially possible on the basis of current account data. Services supplied under mode 1 (cross-border supply) can be described by transactions included in current account except of those who are linked with traveling and government services. Mode 2 can be treated as travel services. These two categories are published by WTO Secretariat as information about trade in commercial services. Their values for CEE countries are presented in table 3.

Table 3

Trade in commercial services (proxy of trade in services under mode 1 and 2) in CEE countries (millions USD)

Country	1995			2000			2003		
	Credit	Debit	Balance	Credit	Debit	Balance	Credit	Debit	Balance
Albania	94	98	-4	429	413	16	717	676	41
Bulgaria	1366	1246	120	2129	1660	469	3123	2540	583
Croatia ^a	3193	1661	1532	4081	1789	2292	8621	2948	5673
Czech Republic	6638	4860	1778	6751	5264	1487	7763	7273	490
Estonia	868	420	448	1495	868	627	2205	1362	843
Hungary ^a	5806	3919	1887	5981	4859	1122	7894	8043	-149
Latvia ^a	1121	703	418	1193	710	483	1509	932	577

Lithuania ^a	786	639	147	1052	655	397	1703	1108	595
Macedonia ^a	151	300	-149	290	260	30	304	324	-20
Moldova ^a	103	156	-53	155	190	-35	231	264	-33
Poland	10637	7008	3629	10385	8861	1524	12339	11228	1111
Romania	1476	1801	-325	1720	1948	-228	3021	2951	70
Slovak Republic	2378	1801	577	2218	1779	439	3248	3005	243
Slovenia	2016	1429	587	1882	1423	459	2786	2160	626

Notes: ^a instead of data for 1995 data for 1996 is included.

Source: WTO (2004).

It has to be underlined that vast majority of CEE countries has surplus in trade in services supplied in mode 1 and 2. Only two countries (Macedonia and Moldova and Romania) had deficit both in 1995 (1996) and in 2003⁴, but it was reduced over this period. It is important because all analyzed countries had problems with big deficit in merchandise trade. This table confirms fact that trade in services can be source of advantage in international trade for CEE countries.

Unfortunately, countries under transition have not implemented FATS yet, so there are no trustworthy sources of information about services supplied under commercial presence mode. But according to previous remarks, GATS mode 4 was described by value of “compensation of employees” included in “income” position of current account. Information of so defined trade in the years 1995, 2000 and 2003 is presented in table 4.

Table 4

Compensation of employees (proxy of trade in services under mode 4) in CEE countries
(millions USD)

Country	1995			2000			2003		
	Credit	Debit	Balance	Credit	Debit	Balance	Credit	Debit	Balance
Albania	42.7	n.a.	n.a.	67	n.a.	n.a.	110.6	-4.1	106.5
Bulgaria	42.8	-23.0	19.8	58.2	-26.0	32.2	67.3	-12.7	54.6
Croatia ^a	46.8	-7.8	39.0	82.2	-13.1	69.1	241.2	-38.3	202.9
Czech Republic	189.0	-100.0	89.0	295.0	-604.6	-309.6	493.1	-1075	-581.9
Estonia	1.3	-2.9	-1.6	2.2	-1.3	0.9	31.3	-5.5	25.8
Hungary ^a	161.0	-81.0	80.0	219.0	-69.0	150.0	247.0	-90.3	156.7
Latvia ^a	41.0	-2.0	39.0	70.0	-4.0	66.0	171.5	-4.7	166.8
Lithuania ^a	0.7	-32.2	-31.5	47.7	-36.8	10.9	81.6	-36.1	45.5
Macedonia ^a	22.5	-0.9	21.6	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Moldova ^a	84.0	-5.1	78.9	153.4	-27.0	126.4	317.0	-39.0	278.0
Poland	51.0	-230.0	-179.0	192.0	-213.0	-21.0	362.4	-287.9	74.5
Romania	5.0	-1.0	4.0	94.0	-5.0	89.0	110.6	-6.8	103.8
Slovak Republic	26.0	-3.0	23.0	18.0	-7.0	11.0	31.2	-15.2	16.0
Slovenia	215.8	-25.3	190.5	178.1	-36.0	142.1	226.1	-47.6	178.5

Notes: ^a instead date for 1995 data for 1996 is included; n.a- data not available.

Source: IMF (2002) and publications of central banks of analysed countries.

In this case it should be notified, that among countries which were in 1995 or 1996 net importers of employees income all had surplus in 2003. The only exception was Czech

⁴ Data on balance of payments for 2004 is preliminary and will be subject to a further revision in some countries, so author decided to use only data for the period 1995 – 2003.

Republic which becomes net importer. Another important fact is huge share of services supplied by presence of natural persons mode in export of commercial services in case of Moldova. It was about 57 % in 2003, while average for CEE was about 5%.

4. Constraints to the trade in services under mode 4

Data presented in paper confirms that trade in services is important element of international trade of European countries under transition. Those countries can generate surplus in this field, but mode 4 seems to be not significant part of services export, which can be strange especially when considering that they have relatively well skilled, cheap and mobile labour.

One of the explanations of existing situation can be numerous barriers to flow of services linked with personnel movement. In traditionally understood international merchandise trade barriers are custom duties and no-tariff means (for example technical requirements or phytosanitary norms). But intangibility of services and specific way of supply through natural persons presence suggests influence of different instruments. Chanda (2001) states that these barriers can be divided into four groups:

- immigration norms applied to entry and stay of service suppliers;
- regulations concerning recognition of qualification and professional experience;
- differential treatment of domestic and foreign personnel;
- regulations applied to other modes of supply, especially commercial presence.

First group of barriers is directly linked with immigration policy and labour market regulations. It is common that in order to work abroad employee must obtain visa and work permit. Mandatory character of these requirements generates administrative burdens for potential supplier who wants hire foreign personnel temporarily. If flow of natural persons was to take form of self employment or intra-corporation transfer, visa and work permit costs should be included in the price of service, which make it less competitive. Setting up these barriers (sometimes linked with visa and permit quotas) usually bases on political reasons – according to common thesis government has to protect market against cheaper labour from different countries⁵.

Second group is more selective, but is very important when applied to subsectors which require highly skilled labour. It can be seen in case of professions which require formal qualifications or specific ethic attitude. Typical examples are lawyers or healthcare employees. One of arguments used for supporting this stance is need of providing customers with high quality services. However very often official requirements are constructed in the way that discriminates foreign suppliers (for example nationality, resident status or membership in national professional association are required).

Third category of barriers is aimed at those foreign suppliers who managed to enter market regardless of administrative obstacles. In this case it can turn out that they are obliged to pay taxes and other burdens (for example social security) that are not required in their native countries. Moreover they are subject to double taxation, because they are not entitled to tax relief in the home country. Another example of discrimination of foreign suppliers is economic need test in situation when company wants to employ natural persons from other countries. Nationality preferences in case of government procurement or subsidies have also significant influence in creating trade restraints

Natural persons movement can be very important enhance of trade in services supplied in the way of commercial presence (mode 3), so restrictions on FDI inflow are also barriers to

⁵ While globalization has focused attention on migration, the largest migration flows took place in the period of 1815 – 1915 (OECD(2001)).

services supplied under mode 4. This group of means includes foreign equity limits or guarantees for domestic monopoly or exclusive suppliers.

Core legal norm for GATS functioning is Most-Favoured-Nation treatment (MFN) set up by article 2 of GATS. This measure is very well known form practice of GATT, but its application to trade in services caused serious conflicts during Uruguay Round. This forced members of WTO to treat MFN in a bit different way. According to GATS all suppliers and services from WTO countries are subject to MFN, but when GATS was signed countries were allowed to list some exceptions, so governments can sustain existing measures inconsistent with MFN, on condition that these restraints meet formal requirements.

Second crucial group of GATS norms are market access and national treatment commitments. Such commitments are not mandatory for WTO members, but each government can implement them in order to benefit from free trade in services. This forces each WTO member to prepare Schedule of Specific Commitments (SSC) which includes its declarations. They can be applied to either all services (horizontal commitments) or chosen subsector (as listed in table 1).

Declarations can take two extreme forms:

- none – government resigns of any restrictions in trade ;
- unbound – government does not implement any liberalization commitments. However it does not mean introducing trade restrictions, but this is information that in some cases they can be used.

There are also two intermediate types of declarations:

- generally none, but some restrictions can be considered;
- generally unbound, but some liberalization exemptions can be applied.

Schedule of Specific Commitments must contain both market access and national treatment declarations. Remembering that services can be supplied under four modes every country has to submit 8 declarations. Carzaniga (2003) notifies that isolating subsectors generates hybrid system. The more sectors are included in SSC the country is more open for international competition, while longer list of restriction shows unwillingness to take part in global trade. Examination of SSC is time consuming but it is crucial for understanding performance of countries that take part in international trade on the basis of binding WTO rules.

Willing to asses CEE countries commitments in the field of trade in services liberalization one must use SSC. Data collected on this basis is presented in the further analysis

5. Schedules of Specific Commitments of European countries under transition

According to mentioned above remarks list of MFN⁶ exemptions and SSC⁷ were analyzed. It turns out that none of CEE countries declared exemptions from MFN in the field of temporary movement of natural persons. Pondering this, if one of countries will apply any specific preferences linked with mode 4 to another, these rules will automatically abide all GATS members.

It must be said that GATS regulations not refrain its members from deeper economic integration. Although WTO norms are binding for all its members, they are not aimed at creating global common market. Contrary to WTO norms EU laws are aimed at different targets, because common market is one of the most important economic basements of united Europe.

⁶ In internet WTO database (www.wto.org) these documents are marked with codes GATS/EL.

⁷ Codes GATS/SC.

Considering this article V of GATS says that, WTO members can join or create liberalization agreement which goes further beyond GATS regulations, but such activities could not lead to raise overall level of barriers to trade in services for countries outside the agreement. Article V bis applies this rule directly to labour market integration agreements.

The EU enlargement in May 2004 is fully consistent with situation mentioned in the articles V and V bis, because it is aimed at lifting all barriers (but not immediately) to labour movement and trade in services supplied by natural persons with EU area. However countries outside EU could not demand equal preferences, on the basis of WTO norms and MFN treatment, because EU enlargement did not raise overall level of barriers to trade. According to this MFN treatment can be successfully applied only to trade contracts signed by CEE countries when one of part is non EU member.

During Uruguay Round negotiations it turned out that most countries decided to sustain constraints to natural persons movement. This led to situation when SSC contained horizontal (applied to all types of services) unbound market access declaration. All well developed countries behaved in this way, this pattern was followed by Uruguay Round participants from CEE, i.e. Czech Republic, Hungary, Poland, Romania and Slovak Republic. Further talks resulted in signing The 3rd Protocol to GATS produced no major breakthrough. Carzaniga (2003) notifies that only: Australia, Canada, EU, India, Norway and Switzerland introduced very few new commitments.

Next countries that joined WTO did not change such practice. It means that all CEE countries currently bound by WTO norms chose horizontal unbound declaration on SSC. However it should be underlined that they opened domestic market for some categories of foreign natural persons.

It has to be mentioned once again that EU enlargement in 2004 r. has changed weight of GATS commitments, because they can be applied only to contracts between EU and non EU members. For EU members from CEE intra EU trade is the most significant part of their international trade, so it is obvious that WTO regulations are no more so important for them. However for other countries WTO norms are still crucial instrument of participation in free global trade.

Results of SSC analysis show, that GATS market access commitments connected with movement of natural persons are usually based on functional or hierarchical criteria (see table 5).

Table 5

Types of natural persons allowed to supplying services (horizontal commitments) in CEE countries

Type of person		Number of entries	Aggregate entries	Per cent of aggregate entries
Intra-corporate transferees	Executives (E)	14	39	53.4
	Managers (M)	11		
	Specialists (S)	14		
Executives		1	4	5.5
Specialists		3		
Business visitors	Commercial presence (CP)	10	21	28.8
	Sale negotiations (SN)	11		
Contract suppliers (CS)		8	8	10.9

Other	1	1	1.4
Total	73	73	100.0

Source: own calculations.

All examined countries accepted intra-corporate transferees, which directly show strong relationship between services supply under mode 3 and 4. It means that foreign service supplier must initially conduct direct investment for example in Croatia, setting up a subsidiary. Then he can transfer personnel from his native country in order to perform duties linked with service supply. Most of countries have also allowed temporary stay of persons involved in preparation of foreign commercial presence, which once again shows connection between mode 3 and 4.

Considering skills, one can state that analyzed countries prefer employing highly qualified labour force. This practice is common among CEE and well developed countries (Carzaniga (2003)). However this solution is more profitable for richer partners of international trade relations, because they possess enough capital that be transformed into FDI and then assign personnel to fulfill duties connected with supplying services. Host countries can benefit from imported know how, and knowledge of foreign specialists.

As said before only 5 countries from Central and East Europe took part in Uruguay Round and they became original WTO members. The rest of CEE countries had to undergo accession procedure. In case of other facets of international trade, for instance merchandise trade, new members very often accept much more liberal trade regime than WTO original members. Natural persons movement is an exception from this rule. The only detectable difference for mode 4 is relatively higher number of commitments scheduled by WTO member from CEE for „contract suppliers”- that is employees of a foreign company that has concluded a contract to supply services in a other country, but does not have a commercial presence in host market.

GATS norms can be applied to natural persons temporarily staying abroad in order to supply services. However GATS does not contain definition of temporary staying, so each SSC can include its own duration – see table 6.

According to mentioned above remarks market access for natural persons bases on hierarchical criterion. So it is not surprising that in case of core personnel listed in intra-corporation transfers usually five years period is applied. Participants of trade negotiations or those who are involved in establishing commercial presence usually are not entitled to stay longer than three months. And again it is similar to regulations imposed by other countries of WTO. Specific feature of CEE countries declarations is fact that only 1/3 of them do not contain upper limit of stay, while in case of other WTO members only 1/3 contains such limits (WTO (1998)).

Table 6

Duration of stay by type of natural persons

Duration ^a	Intra-corporate transferees			E	S	Business visitor		CS	Other	Total
	E	M	S			CP	SN			
3 months					2	6	7	3		18
						(2)	(2)	(2)		6
6 months					(1)			(1)		2
12 months	(2)	(1)	(2)							5
24 months	(1)	(1)	(1)					(1)		4
36 months	1		2							3

60 months	5	5	5							15
Unspecified	5	4	4	1		2	2	1	1	20
Total	14	11	14	1	3	10	11	8	1	73

^a Unless otherwise indicated, the following periods are maximum periods which may be reached after an extension of the initial stay. Entries in parenthesis indicate the possibility of an extension where the SSC concerned have not specified a timeframe.

Source: own calculations.

Additional restrictions imposed by CEE countries on market access for foreign natural persons are included in table 7. Contrary to mentioned above information in this case the same categories of natural persons are subject to couple of criterions joined together, which explains bigger number of entries. It has to be notified that in this situation most common requirement is previous work experience with foreign employer which applies to intra-corporation transferees. Another barrier is need of qualification recognition for persons who are to be employed as specialists. Dominance of those measures is specific for CEE countries, because in other WTO members minimal wage standards are the most common constraint.

Table 7

Entry conditions/restrictions by type of natural persons

Entry condition/restriction	Intra-corporate transferees			E	S	Business visitor		CS	Other
	E	M	S			CP	SN		
ENT ^a with no criteria	1		1						
ENT with criteria			1						
Residency	4	2	4					1	
Work permit	3	1	3					1	
Pre-employment ^b	1 0	5	10		2	2		1	
Link to Mode 3				1					
Qualification			6		1				1
Numerical Limits	1		1	1					
Visa	1		1			4	4		
Subsidy	1		1				1	1	

^a ENT – Economic Need Test.

^b The person seeking access must have already worked for the current employer; the minimum period specified in SSC is generally one year.

Source: own calculations.

Another group of declarations listed on SSC refers to national treatment. If one country decides applying its regulations to foreign supplier and foreign services it automatically abides to treat them not less favorable than its own companies and services (see: GATS, Article XVII). Analysis of SSC submitted by CEE countries lead to conclusion that once again horizontal commitment was used. Former socialist countries declared two forms of such commitment: none, but only for natural persons categories notified in market access agreements or unbound with exemptions for natural persons listed on SSC. Both forms have equal meaning – foreign labour force that is subject to entry criterions and met all formal

requirements has to be treated same as domestic citizens.

European countries under transition introduced only two exemptions from national treatment. The first applies to real estate market transactions (11 entries), which can be carried out only by citizens of country. However this is only obstacle for personnel considered in intra-corporate movement. In other cases period of legal stay is so short that purchasing of real estate is not economically viable. Another exemption is more serious, because it concerns government subsidies (8 declarations). It means that only domestic suppliers are entitled to benefit from public aid.

Summarizing results of SSC analysis, shows that CEE countries:

- submitted very similar schedules to those issued by well developed countries. The only significant exemption is easier access for “contract suppliers”.
- liberalization commitments are generally applied to highly skilled personnel involved in intra-corporate movements, so they depend on prior FDI (commercial presence).

6. A possible liberalization of mode 4 in current negotiations

Practice of Schedules of Specific Commitments creation, both in well developed and CEE countries, reveals the deepest liberalization of movement of highly skilled core personnel employed in foreign affiliates. Because economies under transition from centrally governed to market systems are net importers of FDI so defined GATS commitments are of limited interests to them. They do not provide legal framework for development of trade in services supplied by presence of natural persons.

Data from table 4 confirms existing situation, because it shows relatively small share of such trade. However supplying of services under mode 4 is crucial for many subsectors, for example health care services or construction. CEE countries possess comparative advantage in labour intensive services provided by low and medium skilled personnel. It means that for them is more important to achieve bigger openness for flows of this category of natural persons. Estimations conducted by Winters (2003) shows that increasing well developed countries' quotas for incoming temporary movement of natural persons by 3 % of their labour forces generates raise of global welfare more than \$150 billion a year. Moreover Winters suggests that one of the biggest benefits can be gained by developing countries (including countries from CEE).

Analyzed countries can strive for removing barriers to movement of natural persons by bilateral or multilateral negotiations. The examples of the first way were trade negotiations linked with EU enlargement. However economic interests of EU members and applicant were sometimes so different that eventually it led to creation of system with no declared barriers to labour movement (but there are many exemptions, especially when Poland is considered). For countries outside UE more complex solution are multilateral negotiations conducted in WTO which began in 2000⁸.

There is no doubt that one of the most important problems to be solved during these talks is developing precise definitions used in the SSC creation process. This applies also to more accurate description of categories of natural persons entitled to enter domestic labour

⁸ Until the Treaty of Nice, and in contrast to GATT, where the European Commission holds the full competence in multilateral negotiations, GATS was subject to mixed competences where the Commission shared responsibility with the member states. The Nice Treaty introduced full Community competence in commercial policy also in the service sector, except for trade agreements relating to cultural and audiovisual services, educational services, and social and human health services, which still fall under the shared competence of the Community and its member states (Lavenex (2002)).
In intra EU trade WTO norms are not applicable.

market. Very interesting proposal in this field was submitted by India⁹. Their proposal assumed linking each sub-sector of services (see table 1) with detailed classification of professions developed by International Labour Organization (ISCO-88). This will make list of commitments more clear.

Apart from more precise creation of GATS commitments it is crucial to broaden its application. Existing state seems to be sufficient only in case of highly skilled labor. For European countries under transition considering category of medium skill personnel would be desirable. This can be achieved by developing definition of auxiliary personnel for example medic analysts. Much easier for implementation would be expanding category of specialist and creating qualification list for specified for support staff.

Reluctance of governments towards broader applying GATS regulations can be explained by problems caused by obstacles to isolating temporary movement from immigration (Nielsen, Cattaneo (2003)). In order to avoid such situation Chanda (1999) proposed issuing specific visa regime for persons supplying services under mode 4. This idea got official character when India submitted its proposals in 2000. So defined attitude towards personnel movement was endorsed by business organizations from USA and EU. This led to creation of “model schedule” applied to temporary stay of natural persons (Hatcher (2003), Chaudhuri, Matoo, Self (2004)).

In mentioned above document highly skilled personnel which is subject to existing commitments (intra-corporate transferees) was omitted. This category is not subject to political activities aimed protection of domestic labour market which is proved by long period of legal stay (up to five years). Instead of it Chaudhuri, Matoo i Self (2004) defines three additional categories of foreign natural persons, whose stay could not exceed one year:

- intra –corporate visitors assigned to :
 - domestic customer support ;
 - training of domestic staff;
- employees of foreign supplier, that did not set up commercial presence, whose duties include :
 - setting up trade contracts with domestic buyer;
 - fulfill qualifications or licenses that require priori stay in host county;
- self-employed independent professionals who stay in host country:
 - in order to supply services to domestic customers ;
 - fulfill qualifications or licenses that require priori stay in host county;

The new visa regime basing of clearly defined qualifications criterions should be applied to mentioned above categories of natural persons.

Ideas on expanding GATS regulations on other groups of natural persons were formally submitted to WTO in 2003. They stemmed from EU which was 15 this time¹⁰. For CEE countries very important facet of these negotiations is fact that EU will to consider in market access commitments self-employed independent suppliers.

Stress on persons signing direct contract with buyers allows for more precise isolation of temporary movement from immigration, which is very often linked with employment. Another important feature of such attitude is fact that contract-based service supply does not cause threat of brain drain to developing countries. Moreover this solution makes possible to resign of economic need test, because market decides whether supplier will find customers for his services.

Another group of issues that need to be solved during GATS 2000, refers to access to information about domestic regulations of services and labor market. Proposal of “model

⁹ See: document S/CSS/W/12.

¹⁰ See: document TN/S/O/EEC.

schedule” requires publishing information about all measures concerning services market not only in domestic official bulletins but also creation of consolidated form of them which should be submitted to WTO Secretariat. One more important problem are qualification requirements and recognition of foreign equivalents of diplomas and licenses. Even in EU so defined harmonization is not advanced, one proposes to entitle natural persons to enter domestic labour market in order to fulfill formal qualifications that need at least resident status. These proposals fully comply with economic interests of European countries under transition, so they should support this direction of negotiations.

7. Conclusions

Services are very important component of global trade. Free personnel movement is crucial for many types of them, but governments’ reluctance to opening labour markets has made mode 4 of services supply the less liberalized way of providing them.

CEE countries have young, quite cheap and well educated labour forces so one can state that they possess comparative advantage in export of labour intensive services. Reducing flows of natural persons to highly skilled intra-corporate transferees shows strong relationship between mode 3 (commercial presence) and mode 4. This situation causes loss of huge part of CEE countries’ comparative advantage, because of lack of capital for direct foreign investments. That is the reason why trade in services supplied in mode 4 is so small in these countries.

According to this situation it is desirable for European countries under transition to expand GATS commitments to lower and medium skilled personnel and self-employed professionals. There is no chance that WTO members will remove all constraints to natural persons movement, so more attention should be dedicated to gradual lowering of qualification requirements and elaboration of common rules of formal skills judgment.

It is obvious that in case of CEE countries that joined EU the most important issue will be removing intra-EU barriers to personnel movement. However rapid globalization will not allow to close trade liberalization within one continent. That is why WTO norms are still crucial measures determining trade in services.

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