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# Trade & migration: the impact of mode 4 of the General Agreement on Trade in Services (GATS) on developing countries in the midst of a skills shortage and brain drain

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# Chapter One -Introduction

## 1.1) Topic

Trade & Migration: The impact of mode 4 of the General Agreement on Trade in Services (GATS) on developing countries in the midst of a skills shortage and brain drain.

## 1.2) Research Question

The reach of the World Trade Organisation (WTO) has gone beyond its traditional spheres of trading in goods to influencing the mobility of skilled labour and thus having an impact on migration patterns. The growing influence of the WTO has led to the enforcement and implementation of the General Agreement on Trade in Services (GATS), which calls for the liberalisation of services, including the movement of 'natural persons' for the purposes of providing services in member states of the WTO under mode 4 of the Agreement.

The International Organisation for Migration (IOM) has calculated that since 1990, over 20 000 professional Africans leave the Continent annually.[1] This has invoked heated debate over who benefits from the brain drain, the relevance of mode 4 and whether developing countries such as South Africa can use mode 4 to their national interests. Globalisation, liberal market economies and the increased mobility of skilled labour has resulted in the merging of the trade and migration communities globally. Using South Africa as an example, what will the impact of mode 4 of the General Agreement on Trade in Services (GATS) be on developing countries in the midst of a skills shortage and brain drain?

## 1.3) Aim

The following thesis will explore the relationship between trade and migration, situating GATS mode 4 within the broader context of temporary labour migration. It will look at existing schemes to facilitate temporary movement at the national, bilateral and regional

[1] Abrahams Bethina, "Africa's Brain Drain: The loss of capacity hinders the fight against AIDS in Africa", http://aids-hiv-treatment.suite101.com/artcle.cfm/africans_brain_drain

levels in order to draw from the experience of these schemes for the strengthening of GATS mode 4.

This research addresses issues relating to the management of mode 4, and temporary labour migration more broadly, in both receiving and sending countries. One will assess notions of a brain drain, especially from developing countries, while seeking ways to maximise on the movement of skilled labour in order to turn the brain drain into a brain circulation. The research seeks to explore the progress achieved in the current GATS negotiations and potential areas for future work. As trade policy has gone beyond its traditional jurisdiction into influencing migration policy, one will have to assess existing immigration policies in receiving countries, while also reviewing South Africa's immigration policy in the context of the GATS Agreement, thus reviewing what role South Africa should play as a country of origin, and as a potential country of destination for temporary skilled labour.

Engaging the diaspora has become increasingly incorporated within South Africa's foreign policy, and thus the country has sought to maximise and utilise the skills base abroad, seeing them as a strategic asset, rather than as a loss to the country. The thesis sets out to look into the impacts that remittances play, and will continue to play, while also assessing the role of skills and knowledge transfer from the diaspora community. One will look into the ways that the diaspora may be utilised in accessing further markets for South African trade, thus these communities will be presented as strategic allies, rather than in a negative light.

It will be very important for this thesis to contribute to the epistemology of the subject within international relations. The research stakes that it will lead to a better understanding of the linkages between trade and migration within the context of globalisation. Discussions related to the skills shortage or brain drain have tended to focus a lot on internal factors that have led to this, while neglecting the international dimension of the relationship between trade and migration; thus, this research seeks ways to strengthening and broadening the topic.

Without neglecting the role and impact of international relations theory, especially that of neo-liberalism, the thesis will assess who the brain drain benefits, what the purpose and relevance of mode 4 is, and whether South Africa can use mode 4 to manage its brain drain.

**1.4) Rationale**

Mode 4 of the General Agreement on Trade in Services (GATS), which has emerged as a major topic in the current WTO negotiations, raises a number of important and complex issues that go beyond the sphere of trade policy into the realm of migration policy and practices.[2] The debate on mode 4 is taking place against the backdrop of significant worldwide trade and migration. Although some short-term signals indicate a slowdown in migration, long-term factors suggest continued growth, especially for migration from low-income to high-income countries.[3] Thus trade and migration can no longer be viewed separately. With most first world countries actively looking to recruit highly skilled labour in the global market, developing countries must find ways to respond in a proactive manner.

A report by Statistics South Africa (Stats SA) states that 192 medical practitioners left South Africa in 2003, with a minimum cost of R120 000 to train doctors over seven years. Teachers have also left in numbers to work in Britain and the US, with 666 leaving in 2003, while 726 people in the accounting profession left the country in 2003.[4] Further statistics show that 17 000 Science and Technology professionals left South Africa between 1994 and 2001.[5]As trade and migration play an increasingly influential role within international relations, South Africa finds itself in somewhat of a paradoxical position. While South Africa is facing a skills shortage and a brain drain as a significant amount of its highly skilled workers find opportunities abroad, South Africa remains one of the few developing countries with a high potential of absorbing highly skilled labour, especially from the Southern African Development Community (SADC) region, Africa and the rest of the developing world.

The debate concerning the growing interdependence of trade and migration has not been limited solely to the national territory, but has made its way into multilateral structures such as the World Trade Organisation (WTO) as the trade regime aims to liberalise services through the General Agreement on Trade in Services (GATS). Of relevance for this thesis is the effect that the liberalisation of mode 4 service providers will have on both developed and emerging nations such as South Africa. Mode 4 provisions facilitate the movement of 'natural

[2] Trade & Migration: Building Bridges For Global Labour Mobility, OECD/IOM/World Bank Seminar, 2004, p3
[3] Ibid, p11
[4] Parker Randal, "Brain Drain from South Africa Accelerates", www.parapundit.com/archives/cat-immigration_brain_drain.html, 25 March 2004
[5] Jones Jonathan Spencer, "South Africa's Brain Drain Underestimated", http://www.scidev.net/News/index.cfm?fuseaction=readNews&itemid-1239&language=1, 19 February 2004, p1

persons' and cover the movement of highly skilled labour; it's also important that while there is no clear definition of 'temporary workers', mode 4 only covers the temporary movement of skilled citizens. This aspect of mode 4 is critical to the debate over the 'brain drain' faced by South Africa and developing countries alike.

What is certain is that South Africa has to learn to tap into its skills database, as limited as it may appear. This means that South Africa has to find ways of utilizing its diaspora effectively and strategically as they are a direct link in bridging the knowledge and skills gap between developing nations and the developed world. Most developed countries are now moving towards post-industrial knowledge based economies, where more emphasis is placed on skilled labour in driving economic growth and development, and thus policies are structured in such a way so as to best attract foreign skills, and this can be seen through the immigration policies of large importers of foreign skills. While skilled migration does not take place on the scale of other forms of migration, it certainly does represent the most influential type of movement.

**1.5) Background to Research**

The movement of skilled people from South Africa and the rest of Africa to developed countries is one of the most hotly contested public policy questions today. Debates amongst politicians, academics and bureaucrats about the scale and character of skilled migration, and the policies required to address these movements, are taking place in countries throughout the world[6]; in South Africa's example, this has been quite evident from the coverage it has received from the different kinds of media platforms. As the opportunities for skilled personnel to move increases with globalisation and the shift to a service based economy, as the costs of international travel decrease, and as the ability to communicate with other parts of the world becomes easier, it is likely that skilled migration itself will increase over the next few decades, magnifying its importance as a public policy issue.[7]

The process of globalisation has had a profound impact on South Africa's growth and development, while adding to the opportunities and challenges that come with rapid global change. Whereas traditionally, trade relations between countries largely involved the trading of goods, highly skilled labour has taken on an increasing importance, and thus Africa has become a net exporter of highly skilled labour within the process of globalisation; this has shown an increase in the overlap between trade and migration, and these two matters have increasingly come to be viewed simultaneously.

"The WTO's General Agreement on Trade in Services (GATS)[8] 'mode 4' is currently the only internationally agreed legal instrument with the potential to become a functioning multilateral labour migration regime.[9] It is an international mechanism aimed at liberalising labour mobility[10] on the basis of qualified negotiated commitments by states to accept non-

[6] Zweig D and Changgui C, China's Brain Drain to the United States: Views of Overseas Chinese Students and Scholars in the 1990s, Berkeley: University of California Press, 1995

[7] Sassen S, Globalisation and its Discontents: Essays on the New Mobility of People and Money, New York: New Press, 1998

[8] General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1B, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

[9] Regional labour mobility arrangements do exist, though their scope is usually limited (Nielson: 2003). The exception is the freedom of movement of workers in the European Union, that while not free of any of the problems discussed here, is geographically restricted to the European regional space and more importantly, is deeply embedded within an advanced system of economic and political integration. For a comprehensive, if not up to date, monograph on the subject, see Weiss: 2002.

[10] The GATS aims to achieve higher levels of liberalisation in the international trade in services, towards "the growth and development of the world economy"; see GATS Preamble.

permanent foreign labour migrants, subject to substantive rules that regulate and restrict states' unilateral labour immigration policies."[11]

The negotiations regarding the movement of natural persons under mode 4 of the GATS will only benefit from increased interaction and understanding from the different policy communities, particularly those of trade, immigration and labour market development. Thus, it would be wise for trade policy officials to interact more and seek more understanding of labour and immigration policy contexts when considering various agreements relating to mode 4 of the GATS. Their close, interconnected roles are revealed in the following diagram:

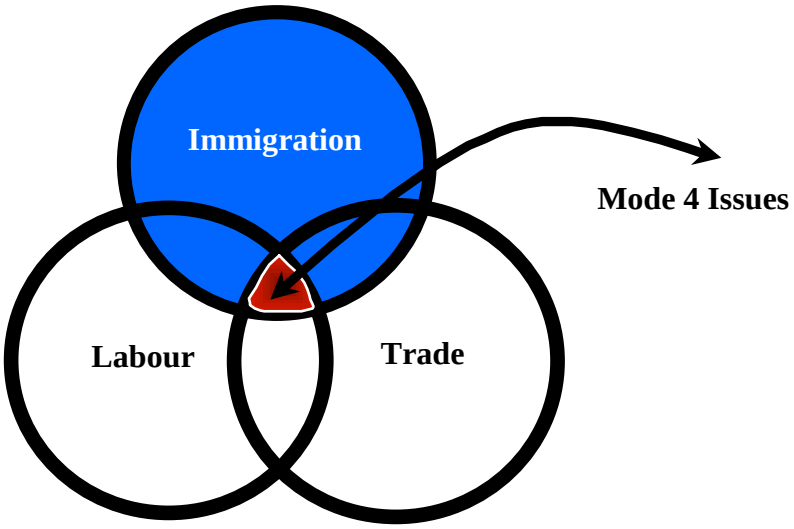



Diagram taken from Henry Paul, 'Mode 4 through a Canadian Immigration Policy Lens', http://www.wto.org/english/tratop_e/serv_e/symp_apr_02_henry_e.doc, p2

With trade and migration becoming more and more interconnected, one can be assured that developing countries will be highly impacted upon, especially since current agreements state that the liberalising of the 'movement of natural persons' is restricted to highly skilled service providers. It is a well known fact that there are more African doctors and health workers, scientists, engineers and other highly skilled service providers outside of the African continent than there are within the continent, and this has widely been termed a 'brain drain' in that nation states are seen to be loosing their greatest assets: their skilled human capital.

With the process of globalisation engulfing the realm of international relations at a more rapid pace, South Africa and developing countries alike must begin to be more strategic in implementing their national and foreign policies. One has to acknowledge the growing

[11] Broude Tome, The WTO/GATS Mode 4, International Labour Migration Regimes And Global Justice, The Hebrew University of Jerusalem Faculty of Law, Thesis No. 7-07, May 2007, p4

influence of neo-liberalism within globalisation and its institutions, while also seeking ways to maximise on the skills acquired by the diaspora.

This is a topic that has not been widely discussed, especially within the developing world, where one also finds it problematic to find indigenous texts relating to the subject in its entirety. National discussion on the 'brain drain' has often been internalised and limited in content, thus neglecting enabling global conditions for the increased movement of highly skilled labour. This thesis will thus widen and contribute to the academic discourse on trade and migration, and the impacts of mode 4 of the General Agreement on Trade in Services (GATS) on South Africa and developing countries alike. The thesis will thus be of great importance in shaping South Africa's discourse and strategy relating to GATS mode 4 and strategies of engaging within the global environment as the trading of highly skilled service providers plays a growing role within the WTO and its members.

# Chapter Two

## 2.1.) Literature Review

Expectations are running high for significant outcomes on the temporary movement of natural persons to supply services, known as mode 4 in the current WTO services negotiations. Powerful drivers for liberalisation exist, such as increased trade and investment, strengthened global business networks, shortage of skills in developed countries, and increasing capacity in skilled labour in developing nations. However, stumbling blocks remain. Research is required in determining the impact of temporary movement on domestic labour markets in developed countries, while one also needs to find out whether mode 4 contributes to "brain drain" in developing countries. One also has to determine the links between mode 4 and the sensitive issue of how countries regulate the entry of foreigners into their territory.[12]

Building on a recent groundbreaking Organisation for Economic Cooperation and Development (OECD)/International Organisation for Migration (IOM)/World Bank (WB) seminar, the book called *Trade and Migration* considers some of the questions posed in the first paragraph of the literature review, while examining the opportunities and challenges in the current debate as they relate to mode 4 and the current WTO services negotiations. The book explores possible ways forward for building greater understanding between the trade and migration policy communities on this important and timely issue. It suggests ways to unleash the potential of the temporary movement of service suppliers to bring significant gains to developed and developing countries alike.[13]

This book has played a critical role in the structuring of some of the research themes covered in this thesis. "As part of the annual series of OECD Services Experts Meetings, the Trade Directorate, in co-operation with the World Bank and the IOM, organised a seminar on trade and migration. Input was also provided by the OECD Directorate for Employment, Labour and Social Affairs. The seminar, which was held in Geneva on 12-14 November 2003, focused on the temporary movement of service suppliers under mode 4 of the WTO General Agreement on Trade in Services (GATS). It brought together for the first time trade and migration officials from 98 countries and from a wide range of international organisations, as

[12] Trade & Migration: Building Bridges For Global Labour Mobility, OECD/IOM/World Bank Seminar, 2004
[13] Ibid

well as representatives of business and civil society".[14] This seminar and the involvement of these major stakeholders highlights the growing importance of the research topic, and the need to encourage such research in the developing world.

This book, which essentially consists of the findings of the seminar, is structured into three parts. Part one is titled *"Trade and Migration: Report of the Seminar"*, the second part is titled *"Issues for Trade and Migration"*, while part three is the *Conclusion.* This publication has input from a variety of actors and stakeholders interested in the outcomes of the GATS mode 4 negotiations, which has enriched this thesis. While African case studies were no where to be found throughout the book, one is not discouraged since a number of interesting case studies from developing countries in Asia and Latin America were given which may be used to analyse South Africa and other African countries. What is positive is that one gets a sense of urgency in the seminar in ensuring that trade experts interact more closely with migration and labour policy experts, thus showing the increased interdependence of the trio. The book is also good in introducing and giving a broad understanding of the GATS, and mode 4 in particular.

The *Global Forum On Migration And Development (GFMD)* which was held in Brussels, Belgium from 9-11 July 2007 highlighted the growing influence of the role of trade, migration and development in the management of global governance. This forum sought to measure the growing impact of migration within international relations, while seeking solutions to problems faced and identifying opportunities at the national and international levels.

In Roundtable 3 of the Forum, titled *Enhancing Institutional and Policy Coherence and Promoting Partnerships*, the forum stated that:

"*The idea that migration and development are intertwined and should be addressed within a coherent policy and institutional framework has gained ground in policy circles in recent years. However whilst there is growing recognition that the achievement of sustainable development objectives – including the UN Millennium Development Goals – can be supported and reinforced by better managing the positive effects of migration on development, at the level of policy-making the two fields remain largely unlinked and*

[14] Ibid, p11

*uncoordinated. One of the biggest challenges facing national and international policy-makers in these fields today is to better understand how consideration for migration – and for the root causes of migration – can be incorporated in policy agendas of both developed and developing countries. It is also, in turn, to further understand the conditions under which migration can contribute to improving development, in order to better take development strategies into account when devising migration policies".*[15]

The Conference stated that achieving coherence at the policy planning levels was critical, especially since this would have to involve a range of departments both nationally and internationally. Consultation mechanisms between the different ministries and departments was cited as a necessity, especially those in charge of development, employment and social affairs, interior/foreign affairs, finance, trade, and agriculture. The Forum stated that the human dimension of migration should not be overlooked, and thus upholding international human rights norms was seen as critical if migrants were to benefit both countries of destination and countries of origin.[16]

This conference revealed the growing importance of the linkages between trade, migration and development, and the contents of the documents and resolutions taken in the duration of the conference have been closely studied for the purposes of this thesis. It will especially be of use since it took place very recently and its resolutions are relevant to contemporary times. This was the first forum of its kind, and this further reinforces the growing nature of the topic. Contributions were made by a number of stakeholders, including the United Nations (UN) and Amnesty International, and their contributions have been an asset to the thesis.

The Development Research Centre on Migration, Globalisation & Poverty has written extensively on migration, and has now been writing about the impacts of GATS mode 4 for developing nations, and their inputs have been a great resource for this thesis. In November 2005 they published a paper titled *GATS Mode 4: How Trade in Services Can Help Developing Countries.* This briefing reviews the progress of GATS mode 4 and looks at its advantages and disadvantages. It summarises some of the arguments made in relation to the topic and highlights recent work carried out by researchers at the Development Research Centre on Migration, Globalisation and Poverty at the University of Sussex. This has proved

[15] "Enhancing Institutional and Policy Coherence and Promoting Partnerships", Roundtable 3 of the Global Forum On Migration And Development (GFMD), Brussels, Belgium from 9-11 July 2007, p1

[16] Ibid, p2

to be very insightful and explains not only mode 4 of GATS, but also explains why trade in services has grown so dramatically within the global economy.

The publication states that "the General Agreement on Trade in Services (GATS) was negotiated in the Uruguay Round of global trade talks and came into force in 1995. It emerged in response to the huge growth in the services economy. The services sector is the fastest growing part of the global economy and accounts for 60% of global output, 30% of employment and nearly 20% of global trade".[17] This would explain why the WTO has put such an emphasis on trade in services, including mode 4, it would also explain the continued pressure to liberalise the services sector.

While the publication states the potential in the liberalisation of mode 4, it also states that there are limitations under mode 4 in that while developing countries have a comparative advantage in semi and medium skilled workers, most commitments under mode 4 have been made for highly skilled workers. One gets the feeling that the movement of semi and medium skilled workers will continue to be facilitated on a bilateral level, while managing highly skilled service providers will be conducted on a multilateral level between developed countries and fast growing developing countries such as South Africa.

The Australian Chamber of Commerce and Industry proposes in negotiations on mode 4 issues, that early attention be given to ensuring clarity and consistency to definitions of key concepts such as: 'temporary' and 'permanent'; business visitor, executive, professional, skilled person; and, 'economic needs' and 'labour market' tests. These proposals can be found in a paper titled *Advancing the Liberalisation of Trade in Services: Enhancing GATS Mode 4-the Movement of Natural Persons*.[18] One of the criticisms relating to mode 4 is the lack of definition given to certain crucial terms used in the Agreement. Australia is an immigration destination, and thus absorbs a lot of skilled labour from different parts of the world; it has certainly benefited from South Africa's pool of skilled labour and thus it will be important to monitor their interests in mode 4 of GATS.

Proposals have been constantly made for South Africa to liberalise further within the Trade in Services Committee of the WTO, and one such example is a document titled *Request From*

[17] GATS Mode 4: How Trade in Services Can Help Developing Countries , Development Research Centre on Migration, Globalisation & Poverty, Paper No. 4, November 2005

[18] Advancing the Liberalisation of Trade in Services: Enhancing GATS Mode 4-the Movement of Natural Persons, The Australian Chamber of Commerce and Industry, November 2002, p2

*the EC and its Member States to South Africa*. The document encourages South Africa to participate further in the liberalisation of services and specifies particular areas that it hopes South Africa will make further strides in the negotiations. This document shows one that South Africa is placed under a considerable amount of pressure within the services committee, and will continue to be placed under pressure. This thesis will show that South Africa has the opportunity to use the pressure placed upon it to get concessions in other areas of the WTO, and thus should view the pressure in a positive light as this will allow it to also make some demands.

The Canadian Centre for Policy Alternatives published a very important paper in 2005 titled *The GATS and South Africa's National Health Act: A Cautionary Tale.*[19] Scott Sinclair analyses the implications for the health sector of South Africa's commitments under the General Agreement on Trade in Services (GATS) and alerts South African citizens to the dangers that this agreement poses for the constitutionally enshrined right to health care. Sinclair also shows how the outgoing Apartheid regime, cynically or carelessly sold South Africa's sovereignty and the right of its citizens to an equitable health care by signing up to GATS. He also seeks to show how the GATS is in direct conflict with the National Health Act which seeks to correct the past inequalities in the health care sector.[20] It is imperative for this thesis to reveal that while there are strong actors advocating for the liberalisation of services, including the movement of 'natural persons', one also has to entertain and understand counter arguments that are posed.

This is a fascinating document as it cautions South Africa about the negative implications of the GATS commitments, especially under mode 4. It also shows that while there may be positive outcomes for both developing and developed countries, one should not be ignorant of the negative outcomes; it has thus contributed immensely to the thesis. One point that is worth noting is the binding effect of any agreement under the WTO; this is revealed in that an agreement that was signed by the outgoing Apartheid regime has come to affect the post Apartheid democratic government of South Africa. It is well known that while South Africa has a relatively stable health care facility, it still faces obstacles within the health sector, and this is further exacerbated by the 'brain drain' being experienced by the country in the health care sector.

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[19] Sinclair Scott, The GATS And South Africa's National Health Act: A Cautionary Tale, The Canadian Centre for Policy Alternatives, November 2005

[2020] Ibid, p7

Canada has for some time been committed to a programme of mass immigration in a knowledge economy, and despite critics of Canadian immigration such as Daniel Stoffman and Martin Collacutt, Canada more than other countries has relied on immigration as a development strategy.[21] This thesis will strengthen current understanding on why the growing knowledge economy has had such a profound impact on levels of migration of highly skilled workers, and thus understanding Canada's immigration programme is important in better understanding the topic of this research.

It is clear that immigration in Canada historically has matched stages of economic development. When the economy was primarily focused on agriculture, Canada recruited immigrants for agricultural work. When priorities shifted to those of an industrializing economy, immigrants were recruited for urban construction and manufacturing, and now that Canada is moving toward a post-industrial or knowledge based economy, immigrants are being recruited to contribute in that context,[22] and this largely involves importing skilled workers that are at times referred to as knowledge workers.

The same analogy can be applied to most immigrant receiving, or immigrant dependent countries. This also assists in understanding why the GATS mode 4 commitments only cover highly skilled workers as most developed countries are now in the context of a knowledge economy that requires more knowledge workers, rather than manual workers. Understanding Canada's and developed countries contexts will assist this research area as a lot of South African skilled workers are moving to these regions. Another paper on Canada's immigration policy that has assisted is one written by Paul Henry titled *Mode 4 through a Canadian Immigration Policy Lens.* It is quite evident that immigration policies in most developed countries are geared towards ensuring development and economic growth, and one will thus have to analyse South Africa's immigration policies in the context of GATS mode 4.

Jonathan Crush has written extensively about migration not only in South Africa, but also in Southern Africa as a region, and his contributions to this topic are utilised in this thesis. In a study titled *New Nation, New Migration Policy?* that was done on behalf of the Southern African Migration Project (SAMP), Crush states that creative policy thinking about immigration in South Africa has been hampered by the country's unsavoury immigration

[21] Reitz Jeffrey G, The Institutional Context of Immigration Policy and Foreign Credential Recognition in Canada, March 2004
[22] Ibid

history, where before 1994 Africans, by definition were not considered immigrants.[23] This meant that by virtue of their colour, Africans were not considered as immigrants. The study makes the assertion that South Africa has struggled to formulate an appropriate policy responsive to the country's new role in a changing region, continent and global migration regime.[24]

The study is useful in that the author traces the roots of labour migration between South Africa and its neighbours, and studying these bilateral and regional migration schemes will assist in strengthening the GATS mode 4 negotiations. The author asserts that contrary to predictions that there would be a massive 'brain drain' into South Africa from the region, numbers have actually declined. The decline in the number of people entering legally on temporary work permits is attributed not to a decline in South Africa's demand for skilled workers, but rather to the restrictionist immigration policy the country has implemented in the post Apartheid era[25].

This has been contrary to the actual needs of the country and the GATS negotiations, but one may also argue that South Africa has shown intentions to adapt its immigration policy to the needs of the country and international community, while also showing that political considerations should always be kept in mind when assessing the implementation of multilateral agreements as domestic pressures and complexities always contribute to outcomes. The study shows that between 1989 and 1997 approximately 82 000 skilled people officially emigrated from South Africa to five main destinations (UK, US, Canada, Australia and New Zealand). Other credible sources place the number at about 230 000.[26] This shows that South Africa will have to rethink its migration policy to respond to its growing brain drain.

Compared to the volume of unskilled and forced migration, the international movement of skilled people is still relatively small, but its social and economic relevance outweighs its numerical significance for a number of reasons, some imagined and some real.[27] In the introduction of the book titled: *Destinations Unknown: Perspectives on the Brain Drain in*

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[23] Crush, Jonathan, South Africa: New Nation, New Migration Policy?, Southern African Migration Project, June 2003
[24] Ibid, p2
[25] Ibid, p3
[26] Ibid
[27] Findlay AM, 'Skilled Transients: The Invisible Phenomenon?', in Cohen R (ed), The Cambridge Survey of World Migration, Cambridge: University of Cambridge Press, 1995

*Southern Africa*, the editors state that the loss of a country's "best and brightest" is seen not only as a loss of human resources but also as a general indicator of whether a country is a desirable place to live in. The rationale behind this statement is that "nothing conjures up the image of a country gone wrong like the belief that skilled people are leaving in droves: a public litmus test of sorts where citizens vote with their feet. If true, a skilled exodus heralds tougher times to come, as human and financial capital moves with skilled nationals".[28]

This notion of a public litmus test is critical to my research topic, as one has to identify the causes and effects of the brain drain. Important themes are addressed in the book and the importance of policy development in relation to the brain drain is addressed.

This book has proved highly useful and will continue to play an important role in addressing the research topic; it does not only look into the brain drain as being confined to South Africa, but expands it to encompass the role of the SADC region in the midst of South Africa's brain drain. This will assist this particular research as the authors also go into the methodology used to measure South Africa's brain drain, outlining huge gaps in the methodology. The authors of this book have gone into the historical elements within the SADC region relating to the brain drain, and show that it is not new to the region. As states gained their independence in the region, SADC and other African states experienced a brain drain, and these African countries struggled to retain the best of their civilians, losing them mostly to the developed world. This has been highlighted especially within the health sector where more African doctors are practicing abroad than on the African continent; this has also been true of scientists and academics.

The authors of this book have published a number of books on migration, especially of skilled migration, which is the emphasis of the brain drain, and their knowledge and expertise will benefit the research. The angle taken of looking domestically and assessing the conditions within nation states for skilled professionals is an important angle to take as knowledge economies emphasize creating conducive environments for the productivity of human capital, an approach looked at by this thesis.

[28] McDonald David A and Crush Jonathan, "Thinking About the Brain Drain in Southern Africa" in McDonald David A and Crush Jonathan (eds), Destinations Unknown: Perspectives on the Brain Drain in Southern Africa, Africa Institute of South Africa, Pretoria, 2002, p1

The *"eAfrica Electronic Journal of Governance and Innovation"* stated in 2003 that Africa is losing to keep its most skilled citizens employed on the continent. The evidence is stark: more African scientists and engineers are now working in the US than in all of Africa. The most damaging emigration affects health care: 75% of the doctors trained in Zambia have emigrated, for example. However, while the brain drain is damaging in the short term, in the longer term, emigrants help open new markets to African products and bring back badly needed financial resources and new political and technological ideas. A key lesson is that emigrants may not return permanently but can make a dramatic difference by returning intermittently to be involved in development projects, charities and business ventures. One of the most startling facts about the diaspora is just how much Africa depends on it financially. Although the continent spends much time courting foreign direct investment by multinational companies, remittances from the diaspora represent a far larger source of funds for many African countries and have played a major role in stabilizing collapsing currencies.[29]

African policy makers have begun to look upon the diaspora as a human network through which new ideas, capital and technology flow back to the continent. Damtew Teferra, a lecturer and researcher on the diaspora at the Center for International Higher Education in Boston, US, notes: "Egypt considers its diaspora as its treasures kept abroad. It is vital to affirm that these unclaimed treasures can potentially serve as another window to the industrialised world, as another bridge in knowledge transmission and exchange, and as another catalyst in fostering knowledge creation and utilisation. It is apt to remark, therefore that the diaspora is a vital and influential community of 'undercover' ambassadors-of their home countries and regions-without formally designated portfolio."[30] Such thinking is vital if South Africa is to effectively engage its diaspora community.

Although Africa has focused on courting foreign investors, new research notes that the value of funds transmitted back to Africa as worker remittances is in many cases far larger than total foreign direct investment (FDI). The World Bank's *Global Development Finance* 2003 study found that emigrants from developing countries moved a total of $72.3 billion in remittances from the developed world to developing countries in 2001. For all low income countries, remittances were 213% of FDI.[31] Other studies indicate that the level of remittances moved through informal financial channels is double or triple the officially

[29] "The African Diaspora-The Medicine for What Ails Africa" in eAfrica Electronic Journal of Governance and Innovation, Volume 1, September 2003, p1
[30] Herbert, Ross, Guy, Trish, "Reversing the Brain Drain, Harnessing the Diaspora", in eAfrica Electronic Journal of Governance and Innovation, Volume 1, September 2003, p7
[31] Ibid

acknowledged rate.[32] This research thus shows that not all is lost for South Africa in that precedence set by other emerging African states shows that what initially may be defined as a brain drain can potentially be one of South Africa's greatest assets; however, mechanisms must be put in place to ensure that this happens. With this in mind, one will enquire through research whether South Africa can attract a certain portion of Africa's skilled labour that has traditionally been destined for developed nation's shores.

Anup Shah looks into the effects of globalisation on the state and the individual, coming to the conclusion that globalisation has meant that many people have lost the power to influence and define who they are within the context of globalisation. Chris Brown, in his book, *Understanding International Relations* also supports the previous statements, stating that theorists of globalisation take the view of the increasing marginalisation of the state; he addresses the ways in which global economic forces have marginalised both the state and the capacity of the individuals to influence their own lives.[33] Globalisation is nothing new to international relations; however, because of technological advancements in modern times, the process has been made more effective and faster. The effects of globalisation on the brain drain and the increased mobility of skilled labour are thus analysed by this thesis, while keeping in mind the enabling factors of globalisation for increased trade and mobility through migration.

In the early 1990s, the end of Apartheid produced fears within SADC of a renewed brain drain to South Africa from the rest of the region. Initially, these fears seemed justified. Skills migration to South Africa from all other SADC states jumped significantly in the run-up to the 1994 election. Some 200 medical doctors reportedly left Zimbabwe for Botswana and South Africa in 1992 alone.[34] Experts projected further losses and a significant impact on struggling local economies. The region's loss would be South Africa's gain, further exacerbating chronic regional inequalities. These fears have actually been muted by post-1994 South African immigration policy which placed a very low premium on skills imports from anywhere.[35] The other SADC states have been the unwitting beneficiaries of South

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[32] Ibid

[33] Brown, Chris, *Understanding International Relations*, MacMillan Press LTD, London, 1997, p9

[34] Saasen S, Globalisation and its Discontents: Essays on the New Mobility of People and Money, New York: New Press; Saasen S, The Mobility of Labor and Capital: A Study in International Investment and Labor Flow, Cambridge: Cambridge University Press, 1998.

[35] Crush J, 'The Discourse and Dimensions of Irregularity in Post-Apartheid South Africa', International Migration, vol 37, no 1, 1999

Africa's 'anti-immigrationism'. Work permits have been hard to come by and the movement of skilled Africans into South Africa has not yet reached anticipated levels.

In a paper written by the Centre for Development and Enterprise (CDE) titled, "South Africa must learn to exploit the global skills market"[36], it is stated that the most effective way of alleviating South Africa's crippling skills shortage would be to recruit skilled people from abroad. This leading policy research institute has made several explicit statements of this nature, and this adds to the national skills debate.

Commenting on the report, Ann Bernstein, CDE's executive director, said: 'We tend to regard ourselves as victims of the global skills market. If we are to break the stranglehold of the skills shortage on our economy, we need to change our attitude and exploit that market to our own advantage.'[37] Titled *Skills, Growth, and Migration Policy- overcoming the fatal constraint'*, the report says the demand for skills has been fuelled by higher rates of economic growth as well as the need for more skilled people in the public sector.[38]

The report thus calls for an unambiguous response from government and other major social actors, stating that immigrant entrepreneurs will actually create employment for South Africans. It further advocates the importation of such skilled people as maths teachers in order to equip South Africans with the necessary skills needed for sustainable, higher levels of growth. While this report makes very critical assertions, one feels that it often neglected the political dimension of immigration policy, especially in the importation of skilled labour in the midst of high levels of unemployment and low levels of information sharing and effective communication between government, trade unions and civil society.

CDE director Ann Bernstein says: "In order to confront the full reality of our skills crisis we have to face the fact that South African education and training is in deep trouble. Fixing this will take a generation. What no-one in the current discussion on the skills shortage wants to deal with is: *What do we do in the meantime?* Every government policy and strategy – BEE, local government, employment equity – assumes that there are sufficient trained people to fill the jobs and manage the complicated process required."[39] These are critical comments and questions raised by the CDE, and this research addresses them in the context of GATS mode

[36] South African must learn to exploit the global skills market, http://www.cde.org.za, 1 March 2007, p1
[37] Ibid
[38] Ibid
[39] Ibid, p3

4. One can truly see the sharply divergent views related to the skills shortage, which adds to the complexity of this research. The paper by the CDE states that foreign skilled workers are not a threat to South Africans, but are actually going to assist in growing the economy and adding to the employment rate.

Neoliberalism has played a central role in contemporary international relations; it has also influenced resolutions such as the GATS mode 4 under the World Trade Organisation (WTO). There has everywhere been an emphatic turn towards neoliberalism in political economic practices and thinking since the 1970s. Deregulation, privatisation, and withdrawal of the state from many areas of social provision have been all too common. Almost all states, from those newly minted after the collapse of the Soviet Union to old-style social democracies and welfare states such as New Zealand and Sweden, have embraced, sometimes voluntarily and in other instances in response to coercive pressures, some version of neoliberal theory and adjusted at least some policies and practices accordingly. Post-Apartheid South Africa quickly embraced neoliberalism, and even contemporary China moved toward a neoliberal orientation.[40] These findings and analysis of neoliberalism and its influence is provided in a book titled *A Brief History of Neoliberalism* written by David Harvey.

The book further states that the advocates of the neoliberal way now occupy positions of considerable influence in education (the universities and many 'think tanks'), in key state institutions (treasury departments, the central banks), and also in those international institutions such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organisation (WTO) that regulate global finance and trade. The author states that neoliberalism has, in short, become hegemonic as a mode of discourse.[41] With the trade and migration communities merging, one will have to pay close attention to the influence that neoliberalism has had on liberalising the movement of highly skilled labour for purposes of providing services through the GATS mode 4.

[40] Harvey David, A Brief History of Neoliberalism, Oxford University Press, Oxford, 2005, p3
[41] Ibid

## 2.2.) Analytical Framework & Methodology

It is vital when one aims to produce a well researched, informative thesis to be able to take the reader through the processes that one has to go through in acquiring research material. One cannot expect the reader to fully appreciate the thesis without knowing the causal relationships that exist between the dependent and independent variables in one's topic or research question. It is imperative that when one reads such a thesis to have a clear "causal diagram" which will act as a guide to painting a clearer picture of the direction of the paper.

Methodology acts as a key aspect to the following thesis as a way of revealing the procedure and methods used in acquiring relevant information for the thesis; this is achieved through the inclusion of the evidence requirements and evidence collection plan and allows the reader to fully appreciate the work that goes into compiling this thesis. The following analytical framework will serve this purpose, taking the reader through a step by step process into understanding the key concepts, variables and causal relationships which make up the thesis; the analytical framework thus consists of a chapter analysis which introduces the different chapters and themes presented. Justifications will also be provided for the case studies and theories used throughout the following thesis.

## 2.3.) Chapter Analysis

This thesis consists of eight chapters, each contributing in its own way. Each chapter is intrinsically linked to the one that comes before it, and likewise with that which follows, thus making all the chapters overlap in what they address. Chapter one consists of the aim, rationale and introduction. It thus lays the platform for what is to follow, highlighting the most important aspects and themes that will arise in the thesis. Chapter two is the literature review and gives examples of certain texts or sources that will be utilised in getting the necessary findings of the thesis.

Chapter three introduces the theme of trade and migration through the GATS, it thus gives an overview of what the GATS is, and how it came into being. This chapter introduces what one means by the GATS mode 4 and what this mode entails. It is important that one realises from this chapter that trade and migration have been institutionalised through the signing of the GATS mode 4. One also gets an overview of global trends pertaining to skilled migration in

particular, showcasing that the time is ripe for an agreement of the nature of GATS. Examples of regional trade regimes which aim to manage the movement of skilled labour will be found in this chapter, with the SADC region providing a good example. What one will get here is the sense that it is important that SADC makes progress in liberalising the movement of highly skilled labour within the region as this will greatly assist the region's bargaining power and confidence with the issue as it negotiates within the WTO.

Chapter four addresses the debate surrounding the brain drain and skills shortage, calling for policy makers to review their traditional thoughts on the issue. The chapter will analyse South Africa's own brain drain, while showing that South Africa is one of the only developing countries with huge potential of recruiting skilled labour in the global community. Chapter five then moves on to address South Africa's immigration policy, analyzing what role this can play in the context of the GATS mode 4 negotiations, the SADC Trade Protocol and the growing concern surrounding the skills shortage in South Africa. It will be revealed that immigration policy holds a central place to the progress of the SADC Protocol and to the GATS mode 4 negotiations. It is argued that South Africa must not hesitate in recruiting skilled labour to meet its national, regional, continental and global interests.

Chapter six analyses what role the theory of neo-liberalism has had, and will continue to have on the global environment, on the WTO negotiations and on general interpretations of international relations policy. It is argued that neo-liberalism has even had a profound impact on South Africa's immigration policy itself, as calls are increased in pushing for a more liberal immigration policy framework to be able to absorb the skills that are needed within South Africa. Chapter seven is a continuation, focusing on the process of globalisation and its impact on the brain drain, it focuses on acknowledging the great changes coming with the process of globalisation and how policy makers will have to adjust their thinking to adapt to the process of globalisation. It is argued that conceptions of a brain drain must also change since globalisation has created conditions that erase traditional notions of time and space, especially for skilled labour.

Chapter eight, containing the conclusion and recommendations captures the fundamental arguments made throughout the thesis, not presenting any new ideas and simply making a clear, concise summary. In consolidating the thesis, this chapter focuses on the concept of a knowledge based economy and what impact this has had on the research topic as a whole. It is revealed that most industrial economies are moving towards knowledge economies that

require knowledge workers, who are in high demand globally. Thus the fact that services now occupy a large portion of the global economy is a direct result of the evolving nature of economies, especially those in the industrialised countries, and these changes have forced developing countries to adapt to this process. This chapter thus contextualises the growing focus on skilled labour within a knowledge based economy, one driven by the developed world and affecting developing countries. It is important that this chapter essentially links all the research conducted. This will be followed by a bibliography listing all the sources used, while the thesis ends with the annexure which has some additional text and tables that are relevant to the thesis.

**2.4.) Methodology**

One has had to use a variety of sources in order to fulfill the requirements of this research topic. Books, journals, policy documents, conference papers and electronic sources have thus been used to get the required variety of information required. Utilising one's immediate environment effectively has proved important, and thus the Wits University library facilities have been useful in this endeavour. Jonathan Crush's work on behalf of the *Southern African Migration Project (SAMP)* has been of great use to this research, and was easily available within Wits University. Through his literature, one has been able to gather evidence on patterns of skilled migration in Southern Africa, while assessing the impact of South Africa's immigration policy for skilled migration in the region.

The thesis has benefited from the proximity of the South African Institute of International Affairs (SAIIA). My research and general understanding of the topic have been enhanced through contacting senior researcher for trade at SAIIA, Nkululeko Khumalo, whose assistance and time allowed me to get a more concise understanding of issues under the GATS mode 4, especially within the SADC region as he has looked into this area of research. His assistance mainly came through sharing relevant sources and policy briefs that he has published, while our discussion relating to my topic was very fruitful.

In Midrand, I was able to utilise the expertise of the Institute for Global Dialogue (IGD) that has written extensively on the progress of the trade negotiations within the WTO. Dr Garth Le Pere, the Executive Director of the IGD was helpful enough to give me useful publications by the IGD. These publications are from their *Occasional Papers Series* and have assisted one in extracting useful information on the WTO and services trade, while not neglecting

GATS mode 4 issues. Preferring discussions over structured interviews, I was also able to briefly discuss the research topic with Dr Le Pere in order to strengthen my own understanding of the trade in services.

Throughout the duration of the research, I found myself spending some time at the Department of Home Affairs in order to assess the general climate in terms of service and efficiency. I also used this time to speak to a few people who were passing through the department, and this helped one in getting an understanding of the way this important department is perceived amongst the people who rely on its services, especially foreign migrants. It was important to spend time in this department as perception is an important part of reality, and thus if this department is to fully play its role within a changing global environment, efforts would have to be increased in changing negative perceptions towards it.

The Centre for Development and Enterprise have published extensively on South Africa's immigration policy, and their expertise assisted one in compiling certain parts of the thesis. After studying their research and comments on South Africa's immigration policy, I was able to secure an appointment with David Shepperd and Robyn Leslie, two researchers at the institution. This meeting was enriching, with time being spent discussing some of the positions taken by CDE on South Africa's immigration policy. We also discussed ways in which South Africa could benefit from a more proactive stance on skilled immigration, while also discussing some of the challenges faced by the Department of Home Affairs. This discussion assisted me in not only understanding the issues better, but also in making my own recommendations towards skilled immigration within South Africa and the SADC region.

While initially having thought that material on the subject is very limited, one was able to discover an increasing amount of research focused on the area of trade and migration as interdependent factors. In trying to understand what stance developing countries should adopt in the WTO negotiations, a lot of research is emerging on the issue. This thesis did not place too much emphasis on structured interviews, believing that while they may have contributed or added value, holding less formal discussions on the topic with relevant people would be more enriching, and this was the case. One was able to attain a better understanding of the topic, while ensuring that knowledge transfer is a central theme in all discussions or debates held on the topic.

During the course of the research, I have had the opportunity to participate in the Model WTO (a simulation of the WTO Ministerial Round of negotiations) twice in 2007, one which was held at the University of the Witwatersrand, and the other which was held in Switzerland. These events allowed me to familiarise myself with the procedures and rules of the WTO, something important to the thesis. I was able to get a feel of the kind of tensions that arise from certain issues of great contention, such as the GATS mode 4 within the WTO.

While in Geneva, I was able to meet a group of South African expatriates on holiday in Geneva who are working in the United Kingdom. One may call it a coincidence, but I found out that we share the same surname, and this assisted in terms of maintaining the relationship. We exchanged contact details in order to stay in touch and exchange information; and their input on their reasons for leaving South Africa and their prospects for returning 'home' provided useful input. Through reasoning with them, one got the sense that although they had left South Africa, they were still very interested in developments within the country and still had family and friends back home. The relative ease of staying in contact was further evidence that globalisation and its instruments have played a great role in creating new spaces and conceptions of time.

Conversations were further held with young South Africans who had at least one parent working abroad. These discussions gave one the knowledge of the tangible benefits they were able to receive through a parent working temporarily abroad. One picked up that temporary labour could actually do a lot for the benefit of ordinary South Africans as it funded essential areas of daily life. Most importantly, their labour funded their children's education and daily living. Technology transfer was also a theme that arose, as parents were often able to purchase software and other technology abroad that they would not have been able to afford within South Africa.

The World Trade Organisation (WTO) website provided me with both historical and updated material relevant to this thesis. It provides a historical account of the General Agreement on Trade in Services (GATS) mode 4 and its possible impact on both developed and developing countries. It also offers different country positions and thus greatly enriched my thesis. Living in an information technology era, one was able to use the internet for electronic sources that are relevant to the thesis. A number of conferences have been held with a focus on some of the relevant topics contained in the thesis, and these have been of use to the

research as most of them address contemporary matters arising from an increased interdependence between trade and migration.

# Chapter Three

## 3.1.) Trade & Migration: Building Solid Bridges

## "The General Agreement on Trade in Services (GATS)"

The General Agreement on Trade in Services (GATS) is a multilaterally agreed legal framework for trade in services which applies to all World Trade Organisation (WTO) members. It has three main objectives:

- ***To progressively liberalise trade in services*** through successive rounds of negotiations which should aim at promoting the interests of all members of the WTO and achieving an overall balance of rights and obligations.

- ***To encourage economic growth and development*** through liberalisation of trade in services, as the General Agreement on Tariffs and Trade (GATT) does through the liberalisation of trade in goods.

- ***To increase the participation of developing countries in world trade in services*** and expand their services exports by developing their capacity and securing export opportunities in sectors of export interest to them.[42]

The agreement includes both rules and a framework for countries to make commitments to open particular service sectors to foreign suppliers. These market opening commitments are referred to as "specific commitments" and set out the service sectors in which foreign suppliers will be permitted and the conditions under which they should be implemented. Accordingly, the GATS is divided in two parts. The first consists of general obligations, as well as some obligations which apply only where commitments for particular sectors are made. An example of a general obligation is the "most favoured nation" or MFN requirement, which requires WTO members to treat all other WTO members as well as they treat their most favoured WTO member. That is, treatment offered to one WTO member must be extended to all other members.[43]

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[42] Trade & Migration: Building Bridges For Global Labour Mobility, OECD/IOM/World Bank Seminar, 2004, p125

[43] Ibid, p126

Some transparency requirements are also general obligations e.g. the requirement to publish or make publicly available at the national level all relevant measures of general application which pertain to the agreement. Other transparency requirements apply only where a commitment has been made (e.g. the requirement to notify other WTO members via the WTO Council for Trade in Services[44] of any new law or any changes to existing laws, which significantly affect trade in services covered by a commitment). The second part of the GATS sets out the framework under which countries decide which service sectors they want to allow foreign suppliers to enter, and under what conditions. The commitments made under this framework are referred to as "specific commitments".[45]

For purposes of making commitments, a list of 12 services sectors and around 160 subsectors was developed in 1991. The Services Sectoral Classification List (MTN.GNS.W/120, known as "W/120")[46] includes cross references to the United Nations Central Product Classification (Provisional CPC). While its use is not obligatory, many WTO members have used the W/120 in making their GATS specific commitments.

GATS classifies trade in services into four broad categories or 'modes', according to the manner in which they are supplied: *cross - border, consumption abroad, commercial presence, and the presence of natural persons.*

- *Cross Border (Mode 1)* – covers services supplied from the territory of one member into the territory of another. In practice, it creates the possibility for a non-resident service supplier to supply services cross – border into the territory of a WTO member. For example, a service supplier of banking services can supply banking services through telecommunication cross – border into any WTO member. Call centers in India have succeeded in exporting services to developed countries through this mode.

[44] The Council for Trade in Services is a body made up of representatives of all WTO members. It normally meets around four times per annum. The WTO Secretariat Trade in Services Division serves as the Secretariat to that body and its subsidiary bodies: the Working Party on Domestic Regulation; the Committee on Financial Services; the Working Party on GATS Rules; and the Committee on Specific Commitments.
[45] Trade & Migration: Building Bridges For Global Labour Mobility, OECD/IOM/World Bank Seminar, 2004, p1126
[46] Check Annex 4

- *Consumption Abroad (Mode 2)* – covers services supplied in the territory of one member to the consumer of another. Examples include where the consumer moves to consume tourism or education services in other countries.

- *Commercial Presence (Mode 3)* – covers services supplied through any type of business or professional establishment of one member in the territory of another. This allows a company to set up a branch or a subsidiary in a foreign country. This can take the form of a company, joint venture or partnership, and as such is the best considered investment.

- *Presence of natural persons (Mode 4)* – deals with the temporary movement of natural persons to the territory of other members as service suppliers or employees of service suppliers. This allows for the movement of intra-corporate transferees, as well as independent professionals (e.g. developing country software engineers often move to developed countries to supply their services). This movement should be temporary, and service suppliers are supposed to go back to their home countries after completing a particular mission.[47]

It is significant for this thesis that while research shows that greater commitments in the services sector will increase global wealth, the commitments made by nation states under the GATS have tended to be concentrated in certain modes, while largely neglecting other modes. An example here is that a majority of the commitments made under the services negotiations have come under mode 3, while binding commitments under mode 4 have almost been insignificant, despite the global climate being favourable for commitments in this sector and mode. A number of fears, often without evidence have hindered the progress of mode 4 negotiations, and this makes mode 4 a central issue to the GATS negotiations as it presents the greatest potential for growth and understanding.

[47] Khumalo Nkululeko, "Trade in Services: From Controlling to Managing the Movement of Persons in SADC", in Trade Policy Report No. 16, South African Institute of International Affairs (SAIIA), Johannesburg, 2007, p8

**3.2.) The General Agreement on Trade in Services (GATS) Mode 4**

An interesting feature of migration flows in recent years is the relative shift towards temporary migration from permanent migration. Immigration trends in key destination countries like the U.S., Australia, and Canada indicate that temporary migration inflows have grown much more rapidly during the past decade relative to permanent migration inflows. Much of this is due to labour market shortages and rising demand in certain sectors and activities in major host countries, which have led to the introduction of innovative temporary migration schemes and changes in immigration policies to induce specific types of temporary immigrants.[48]

While the movement of skilled labour is on the increase globally, it is important for one to emphasize that this movement has increasingly been of a temporary nature, thus alleviating some of the fears of policy makers from countries of origin who have constantly feared that permanent migration of skilled labour has damaging effects on countries of origin. The shift to temporary migration means that developing countries such as South Africa can now be in a position to manage this increasing movement of skills to its own advantage, ensuring that governments can now be better placed to monitor their skilled labour since their departure abroad is increasingly of a temporary nature.

It also means that governments can now implement with more certainty knowledge and skills transfer programmes to ensure that indigenous citizens are able to benefit from the international exposure and experience of their fellow citizens. Globalisation may be viewed as a threat or may be viewed as a tool to suit the interests of South Africa, and from policies embraced by the Republic, one gets an unequivocal sense that this phenomenon is increasingly viewed by policy makers as an inevitable phenomenon to be embraced rather than feared. While it is certain that globalisation has created more opportunities for skilled migrants to move freely, it is also true that it has brought the global community closer to home, making it illogical for countries to attempt to suppress the movement of its own citizens.

[48] Chanda, Rupa, Movement & Presence of Natural Persons & Developing Countries: Issues & Prospects for the GATS Negotiations, Trade – Related Agenda, Development & Equity (T.R.A.D.E) Working Paper No. 19, South Centre, Geneva, May 2004, p1

Fears of a brain drain from South Africa and other developing countries has been driven not merely by the movement of their skilled workers to another country in the global community, but by the fear that persons leaving the country of origin will be permanently lost to that country and thus not contribute to the growth of the country of origin. However, with the migration trends in favour of skilled migration on a temporary basis, it is essential for nation states to be less defensive in discussing highly skilled migration, and instead focus on using this temporary migration to the benefit of the country not only when professionals return to the country, but also while abroad.

The services sector has been one of the main drivers in fuelling recent trends in temporary migration, particularly from developing to developed countries. Rapid expansion of the services sector, particularly in knowledge intensive and information technology (IT) services, rising demand for cheap and efficient support services and outsourcing of many services by firms, establishment-related temporary migration flows of service providers, and increased reliance on imported labour services due to declining fertility rates and labour market shortages in host markets, have all contributed to this phenomenon.[49]

The movement of natural persons is relevant across a wide range of services, including construction, engineering, repair and maintenance, health, legal, and accountancy services, among others. Temporary movement of highly skilled workers is common in the software and health services professions from countries such as India and Philippines. Rising demand for on site software services by developed country firms has fuelled cross-border movement of software programmers from such countries to the U.S. and Europe in the 1990s. Shortages of nurses and doctors in the Middle East and in several developed countries have led to regulatory changes and contractual arrangements between source and host country governments and establishments to facilitate the temporary entry of foreign medical and nursing personnel.[50]

Developed countries actively seeking to recruit skilled labour into their domestic arena do so because of the demands within the country, not simply because it's a natural process of globalisation. Such countries know that it is within their national interests to liberalise the movement of skilled labour. As a matter of fact, it is true that the major economies have

[49] Ibid
[50] Ibid, p2

never at any point in their history been able to produce enough skilled labour to sustain their economic growth, and this is also true of South Africa which has a relatively large economy.

As the South African economy grows, it is imperative that the skilled human resources of the country grow simultaneously with economic growth in order to prevent stagnation and even a regression in economic growth. One may thus compare the trade in goods to the trade in services, and that of natural persons for the purposes of providing services in that when certain vital goods are not found in sufficient quantities within the borders of South Africa, these goods are imported from other countries; at the same time, this principle should then apply to services and skilled labour more specifically. With demand for electricity now outstripping supply in South Africa, one of the major challenges reported has been that of a lack of skills, a clear sign that South Africa's skills output does not match its growing economy.

The movement of labour from a country can vary in several ways: length of stay, level of skills and nature of the contract. Technically, mode 4 is defined in Article I.2 (d) of the GATS as being "the supply of a service…by a service supplier of one member, through presence of natural persons of a member in the territory of another member".[51] Thus, mode 4, the temporary movement of people to supply services, has emerged as a major topic in the current WTO negotiations and raises a number of important and complex issues that go beyond the sphere of trade policy into the realm of migration policy and practices.[52]

The debate on mode 4 is taking place against the backdrop of significant worldwide migration. Although some short-term signals indicate a slowdown in migration, long-term factors and projections suggest continued growth, especially in migration from low-income to high income countries. Important structural determinants include increasing variations in per capita income among countries, differing demographic structures, ease of international communications and transport, converging educational levels and the globalisation of production processes. By the year 2004, there was already an estimated 175 million international migrants, nearly 3% of the world's population.[53]

[51] Trade & Migration, Op Cit
[52] Ibid, p11
[53] Ibid, p12

While it is clear that migration is on the rise, there is no comprehensive international legal framework governing the cross-border movement of people. International legal instruments aimed at promoting the protection of refugees and migrant workers and at combating smuggling and trafficking of persons exist. To date, however, states have been reluctant to undertake binding international commitments that limit their sovereign right to determine who enters and remains within their territories and under what conditions, although they increasingly recognise the need to facilitate certain types of movement.[54]

From the business perspective, global corporations want to be able to move personnel around as needed and may be more inclined to invest in countries that facilitate this. While national laws usually accommodate most mobility needs of global corporations, their implementation is not always rational or efficient and thus creates additional costs for companies.[55]

Companies looking to minimise their production costs will increasingly see the importance of implementing national laws relating to migration in an efficient manner. This is also driven by the proliferation of multinational corporations in the global business community, and affects countries that are seeking more foreign direct investment from the global community. South Africa, the Southern African Development Community (SADC) and the African continent as a whole have pursued an outward looking trade policy in engaging with the international community, and regional arrangements and agreements have also largely adopted a policy of open regionalism. Initiatives such as the New Partnership for Africa's Development (NEPAD) also emphasize the importance of open regionalism and attracting foreign direct investment to the continent. When one takes the above into account, it is clear that South Africa and the rest of the continent must make positive and progressive moves towards ensuring greater efficiency in regulating the movement of skilled personnel.

With South Africa now accounting for the majority of foreign direct investment into the African continent, it will be of great importance that African countries implement efficiently, and without unnecessary and costly delays, processes that ensure the temporary movement of skilled South African intra-company transferees, executives and professionals, while also ensuring that the same group of skilled people from the international community, and from within the African continent can also easily access South Africa temporarily. South African multinational corporations now seek to compete on a global level and are more exposed to

[54] Ibid, p12
[55] Ibid, p13

competition from the global community through the policy of open regionalism and an open trade policy, thus making it more imperative for South Africa to address these matters as it engages with the continent, and the global community at large.

There are essentially two factors affecting the mode 4 negotiations. The first is that most countries do not distinguish between temporary movement and permanent migration in terms of their administrative modalities and mechanisms, thus blurring the distinction between the two. Most countries treat the movement of natural persons as a migration rather than a trade issue, thus complicating the mode 4 negotiations with considerations such as labour displacement and national security that relate mainly to permanent migration flows. The second factor is that there has been much more emphasis on higher skilled and professional service providers under the mode 4 negotiations and little or no progress on lower and semi-skilled service provider categories which are of great interest to developing countries and Least Developed Countries (LDCs).[56]

This asymmetric treatment of skill categories is due to the fact that there is already a significant amount of intra-firm movement of employees reflecting the globalisation of production operations and thus, the existing momentum in this higher skilled area. This momentum has been lacking in the case of lower skilled service providers as there are inherent difficulties in expanding market access for lesser skilled and less formally qualified service providers with whom concerns of labour displacement, illegal migration, and social integration tend to be more prevalent. Hence, there is a greater challenge facing some WTO members, particularly LDCs, in addressing their primary interest under mode 4 as the momentum for moving forward in such skill categories and the requisite environment for negotiating these categories is essential if the mode 4 negotiations are to be especially meaningful for LDCs.[57]

However, overemphasizing low and semi – skilled migrants within the multilateral framework of the GATS is most likely to produce unrealistic expectations for the GATS negotiations, while removing the central focus not only of the developed world, but also that of developing countries: that being their skilled labour. One must also note that the non - inclusion of low and semi – skilled labour in the GATS mode 4 commitments does not mean that this is not a critical issue, but rather that the regulation of low and semi – skilled labour is

[56]Chanda, Rupa, Op Cit, p3
[57] Ibid, p4

currently best regulated bilaterally, where countries have flexibility. Confidence has to be built in regulating the movement of highly skilled labour on a temporary basis first before moving towards making multilateral commitments focusing on low and semi – skilled labour.

### 3.3.) An Overview of Mode 4: Recent Trends & Characteristics

There are no reliable global figures on the size of mode 4 trade in services. Available migration statistics are incomplete, not readily comparable across countries, and club together mode 4 workers with other groups of workers spanning sectors other than services. Proxies such as remittances can be used to measure mode 4 but also go beyond the scope of mode 4. Notwithstanding such difficulties, rough estimates put the value of mode 4 at US$ 30 billion in 1997, much smaller than all other GATS modes of supply (though this figure is likely to be significantly underestimated). Recent data indicates that temporary movement is rising, with short-term movements of between 3 and 6 months being the highest growth area.[58]

Immigration figures from individual countries like the U.S., Australia, and Canada, the traditional destination markets for migrants, provide some indication of the size of temporary migration flows and the growing significance of such flows relative to permanent migration. Average annual permanent migration inflows into the U.S. between 1990 and 1994 stood at 748 400 and rose to 850 000 in 2000, representing an increase of 13.6% over the 1990 – 2000 period. In comparison, temporary migration flows increased from 1, 008, 300 on average between 1990 and 1994 to 1, 534, 800 in 2000, representing an increase of 52% over the 1990-2000 period. The fastest growing categories are temporary visitors for business, temporary workers (H-1B visas) and trainers, and intra-company transferees.[59]

In the case of Australia, permanent migration inflows rose from 86, 800 on average between 1990 and 1994 to 92, 300 in 2000, an increase of 6.3%, compared to temporary inflows, which increased by 45.6%, from 153, 800 to 224, 000 over this same period. It is estimated that about 2 – 3% of the Australian work force at any given time consists of people on temporary working visas.[60] In the case of Canada, permanent migration increased by 11.5%

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[58] OECD, "Service Providers on the Move: Labour Mobility & the WTO General Agreement on Trade in Services", Policy Brief, OECD Observer, Paris, August 2003

[59] Nielson J, and Cattaneo O, "Current Regimes for the Temporary Movement of Service Providers: Case Studies of Australia & the United States" in Mattoo & Carzaniga (eds), Moving People to Deliver Services, World Bank & Oxford University Press, Washington Press, Washington DC, 2003, p116

[60] OECD Observer, Op Cit, p12

from 203, 800 to 227, 200 while temporary migration flows increased by 31.2% from an annual average of 65, 700 between 1990 and 1994 to 86, 200 in 2000.[61]

These figures should provide for interesting reading to South African policy makers in the trade, labour and Home Affairs departments as they aim to fulfill their respective mandates. These are the departments that would mostly be interested in the above figures as an overwhelming majority of skilled South Africans have traditionally gone to the United States, the U.K., Canada and Australia. What had initially impacted South Africa negatively is that South Africans who were leaving for these destinations were going permanently, and not to temporarily be service providers in another WTO member country, raising issues of a brain drain, sometimes in an exaggerated manner.

Current trends of global migration should be in South Africa's favour; however, the fact that the climate is ripe for South Africa to utilise its skilled labour to meet its developmental goals does not mean that the country will simply benefit from the trends without any action on its part. With more skilled labour migrating temporarily, South Africa also has to make strides in redirecting the flow of African skills to European countries and the U.S.A., instead encouraging through actions and policies those skilled Africans to rather use their skills in South Africa than outside of the continent. This could form part of initiatives geared to increase intra-regional trade and African integration. Skilled Africans have to interact more in order to find solutions to African problems, and this must form an integral part of South Africa's trade and foreign policy as it drives the African Renaissance forward.

While the potential for gains strongly exist for South Africa and Africa as a whole, it is important to reiterate that of all the service sectors under the GATS, mode 4 is currently the least liberalised. Sector - specific commitments have focused on measures regulating commercial presence, rather than those regulating the movement of natural persons involved in supplying services. In general, WTO countries have not significantly opened markets in their sector – specific commitments on mode 4. As for horizontal commitments, those that apply to all service sectors included in a country's schedule of commitments, they do not refer to the movement of people in all categories and occupations.[62]

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[61] Chanda, Rupa, Op Cit, p5

[62] Nkululeko Khumalo writes that there are three types of entries made against a mode of supply in a country's schedule of commitments: none, unbound, and limited. None – denotes a fully binding commitment with no restrictions. Unbound – means no binding commitments are made. Limited – refers to a situation where a binding commitment is qualified in one way or another.

Despite a growing number of factors in favour of the liberalisation of skilled labour, freeing the movement of people involved in supplying services is adversely affected by political considerations, and in many countries immigration rules have not been reformed to reflect GATS commitments. For example, though GATS focuses on the temporary movement of service suppliers, some countries fear that this may facilitate permanent migration.[63] These fears are often unsubstantiated by credible evidence and research, and are misplaced as these fears should and do often apply to low and semi – skilled labour, rather than highly skilled labour.

GATS mode 4 also makes it unequivocally clear that it only covers the movement of natural persons in the supply of services for a temporary period of time. Perhaps this elevates the need to provide clarity in the definition of 'temporary' within the agreement, and South African policy makers must make recommendations in defining temporary, or at least in making suggestions of a maximum amount of time period covered by the word 'temporary'.

As a result of these misdirected and politically charged fears, it becomes unsurprising that recent estimates, based on limited empirical information, suggest that mode 3, commercial presence, accounts for more than half of world trade in services, and mode 1, cross – border trade, for about a fourth, while mode 2, consumption abroad, constitutes less than one – fifth. Mode 4 was found to be nearly insignificant, accounting for just over 1% of world services trade.[64] Despite the disappointingly low figures in the liberalisation of mode 4, this sector provides the biggest potential for growth. One may add that the large number of countries involved within the GATS negotiations make it more difficult to come out with far reaching commitments under mode 4, and the more individual countries and their regions grow to understand mode 4 issues, and how to best manage them, the more confident countries will become in making binding commitments within the GATS.

Nkululeko Khumalo, a senior researcher on Trade Policy in the Development through Trade Programme at the South African Institute of International Affairs (SAIIA) writes that sensitivities to immigration, especially in developed countries, have been worsened by

[63] Pillay P, "The General Agreement on Trade in Services (GATS): implications and possible ways forward for the Southern African Development Community (SADC)", paper presented at UNESCO Conference on Globalisation and Higher Education. Oslo, 26 – 27 May 2003.
[64] WTO, "GATS, Mode 4, and the pattern of commitments: background information", WTO Secretariat Paper, April 2002.

increases in international terrorism and organised crime. This makes it unlikely for the GATS negotiations to liberalise mode 4 effectively any time soon, even though this is a viable option in dealing with migration, as it promotes temporary and circulatory flows, as opposed to long – term or permanent migration. Because of these difficulties, regional and bilateral mode 4 liberalisation pacts are increasingly seen as an alternative option.[65] This is a valid point in that lessons and experience created from bilateral and regional agreements can be taken into the multilateral framework of the GATS once nation states are more comfortable with regulating the movement of highly skilled labour bilaterally and regionally.

### 3.4.) Temporary Migration Regimes

Mode 4 is regulated by highly developed visa systems in the major recipient countries. These visa systems differentiate among a large number of categories in terms of length and conditions of stay. Most retain flexibility to target areas of shortage through temporary migration, exclude areas of oversupply, and minimise any negative impact on the domestic labour market. Usually, these schemes also specify minimum salary requirements and skill levels and require local labour laws and working conditions to be respected. Most provide entry for a period of a year or less initially, but are extendable up to a maximum permissible limit, often as much as six years.[66]

### 3.5.) Migration by higher skilled workers

In Australia, 73.5% of entrants under the temporary business category fall under the two highest skill groups of managers/administrators or professionals. In addition, Australia's visa schemes cater to those with recognised skills in specific areas or those associated with investment. In recent years, temporary residence business visas have been issued in large numbers to meet shortages of computing professionals and there has been priority processing for nurses, another key area in high demand. For the year 1999 – 2000, Australia issued an extra quota of 5000 places in addition to the 35 000 places already designated for higher skilled workers.[67] These are signs of a growing demand for skilled migration, especially within the knowledge economies of the world, which offer higher incentives for skilled migrants.

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[65] Khumalo Nkululeko, Op Cit, p12, p13
[66] Chanda, Rupa, Op Cit, p5
[67] Ibid, p6

Immigration statistics for the U.S. similarly reveal the relative importance of higher skilled workers in overall temporary admissions into the U.S. For instance, temporary business visitors constitute the largest class of admissions (1.3 million entrants between 1995 & 1999) followed by specialty occupations (H-1B visa holders) across industries as wide ranging as IT, engineering, consulting, accounting, and architecture (384, 191 admissions in 2001), and intra-company transferees (L-1 visa holders) (328, 480 admissions in 2001). All three categories fit under the highest skill groups. The U.S. has in recent years increased the number of specialty occupation visas from 65 000 – 115 000 and further to 195 000 during the 1990s to enable more skilled workers, especially in the IT profession. In addition to the bias towards managerial and professional groups, the U.S. also has special visa schemes to address shortages in specific skilled occupations such as nursing.[68]

In recent years, there have been increased changes in potential host countries, as many of them have also changed their immigration regulations to encourage temporary migration, particularly by higher skilled workers, mainly to address shortages in various skilled professions like computer – related services and medicine. For instance, Singapore changed its regulations for the issuance of work permits to encourage larger numbers of foreign entrepreneurs and foreign skilled labour. Germany introduced a policy to hire 20 000 IT specialists for a period of 5 years in August 2005; while, even a non – traditional host market like Japan recently altered its policy for qualified skilled workers by extending the initial duration of stay from six months to one year.[69]

**3.6.) Migration by the low skilled worker**

Provisions for entry by low skilled or semi – skilled workers are mainly through bilateral labour agreements and seasonal and guest worker programmes, usually reached between governments, employers, and industry representatives. These agreements are typically for shorter periods, usually less than 1 year, with strict conditions to prevent renewals, extensions and transferability between employers. They are typically subject to quantitative ceilings on the number of visas per year and some form of certification before admission is granted.

[68] Ibid
[69] Ibid

There are also requirements to return to the source country upon completion of work and a specified gap of some period before readmission is allowed.[70]

### 3.7.) Regional and bilateral arrangements

Regional trade agreements address mode 4 in various ways. Some cover mobility of persons within the area in a general way, while others provide for free movement of labour including entry into the local labour market. Some permit mobility for certain kinds of trade and investment related activities while others are restricted only to temporary movement of service suppliers. Generally, agreements among countries with similar levels of development, such as the E.U. and the European Free Trade Area, exhibit more liberal arrangements for labour mobility, while agreements like the Asia – Pacific Economic Cooperation Agreement (APEC) or the South Asian Association for Regional Cooperation (SAARC), where members have very different levels of development or are at similar but low levels of development, tend to be more restrictive on labour mobility.[71]

In general, most of these arrangements tend to cover the higher skilled and professional categories of services providers. It is only in the context of bilateral seasonal or temporary worker type labour market arrangements that lower skilled and non – professional occupational categories tend to be covered. The latter reflects the fact that countries want to retain flexibility and discretion in granting market access to lower skilled service providers and in monitoring and enforcing conditions of stay and return, which are done more easily bilaterally than can be done regionally and even more multilaterally.[72]

It is important for the purposes of this thesis and topic to understand the context within the Southern African Development Community (SADC) as South Africa plays a critical role in moulding and shaping regional affairs. Within the context of the GATS mode 4 negotiations, it becomes imperative for SADC countries, who are members of the WTO and signatories to the GATS to commit to regional agreements pertaining to the movement of highly skilled labour within the region in order to grow the services sector within the region. Such commitments will better equip SADC countries in their multilateral negotiations within the WTO. One cannot expect serious and far reaching commitments within the WTO without

[70] Ibid
[71] Ibid, p7
[72] Ibid, p8

seeing momentum in the SADC region, and South Africa as a regional economic and political powerhouse will have a huge impact. With power comes responsibility, and South Africa must use its influence to ensure a sustained commitment from the region. This will have to be located within the context of greater regional integration, with its own national interests playing a critical role in the policy positions taken by South Africa. A comprehensive regional framework to facilitate the free movement of highly skilled labour will even assist SADC countries in exempting them from some WTO norms, including the MFN rule.

Non –discrimination or MFN, found in GATT Article I and GATS Article II form the core principle of the WTO legal framework. However, under conditions set out in the GATS Article V, countries are allowed to enter into a regional trade agreement (RTA), offering more favourable treatment to services or services suppliers of its parties than what is granted to other WTO members[73], an exception that would not only benefit South African services and service providers, but also the region's service providers. Within the terms stipulated under the GATS Article V, an RTA must have substantial sectoral coverage; and it must provide for the absence or elimination of substantially all discrimination through elimination of existing discriminatory measures, and / or prohibition of new or more discriminatory measures, either at the entry into force of that agreement, or on the basis of a reasonable time-frame in order to qualify for the exemption.[74]

With the ultimate goal of regulating movement on a global scale, international experience shows that it is relatively easier to make headway on certain issues of developmental importance in RTAs among a smaller subset of countries, than in the slow – moving multilateral negotiations forum in terms of GATS. These RTAs are also important as a means of 'testing the waters', and then provide lessons for the multilateral trading system.[75]

It is within the context of an RTA that SADC aims to liberalise the intra-regional movement of natural persons. An African example of such an agreement is contained within the 16 member states of the Economic Community for West African States (ECOWAS), which have implemented a regional framework for the free movement of natural persons. These countries have, since 1999, established a common passport, issued by all member states, and no visa is

[73] Khumalo Nkululeko, Op Cit, p13
[74] Ibid
[75] Ibid, p14

required from any national originating from ECOWAS countries for travel within the region. This example demonstrates the great potential RTAs have for providing customised rules that are acceptable for the countries involved, which often go beyond what GATS can reasonably offer.[76] One barrier that the SADC region must overcome involves the bureaucracy and cost involved in obtaining a visa and temporary residence permit. Overcoming these obstacles will ensure better and more efficient provision of services, especially the movement of natural persons within the SADC region.

### 3.8.) Migration Trends in SADC

Since colonial times, cross-border labour migration within Southern Africa has been both a cause and an effect of economic interdependence. Currently, variation in wealth and remuneration results in a net flow of skilled personnel from poor to relatively richer countries in the region. Writing for the Southern African Migration Project (SAMP), Crush and Williams aptly describe this trend as follows:

> The relatively higher employment and wage standards of Botswana, Namibia and South Africa attract unemployed migrants from other states. But it is not only the unskilled or semi – skilled who migrate; skilled labourers also gravitate towards labour markets in which incomes are higher. However, labour markets paying higher wages also experience skills deficits. In Namibia this has resulted in a considerable dependence in the public sector on skilled foreign workers who, in 1997, constituted 18 per cent of senior officials and 14 per cent of professionals in public posts. The proportions are higher in the private sector. Botswana has also drawn on nurses, doctors, university teachers and artisans from neighbouring states and overseas.[77]

In an interesting study done by Bhoret et al, it was revealed that contrary to being a net skills absorber, South Africa was actually sending more skilled people to its neighbours, such as Namibia, than it received. However, in the late 1990s, it became increasingly clear that the 'fortress South Africa' approach was increasingly unsustainable in a globalised world. The business community, in particular, began to exert pressure on government to relax stringent immigration laws so as to enable them to import critical foreign skills. The skills shortage was exacerbated by the fact that, even as this country continued to restrict skilled

[76] Ibid
[77] Crush J and Williams V, 'Regional Migration Regime: Can it work in Southern Africa?', Southern African Migration Project (SAMP), 2004

immigration, South African skilled people were being lost to competitors overseas. This prompted a policy shift, informed by a realisation that skilled immigration is not necessarily a disadvantage to the country.[78] The 1999 white paper on international migration recognised the need to 'attract qualified people into South Africa to offset the brain drain.'[79]

The changing paradigm with reference to South Africa's outlook on skilled migration is a shift that has to extend, and be reflected at the SADC policy making level. It is precisely this shift in paradigm that will open a window of opportunity for further liberalisation of services, and mode 4 services in particular within the SADC region. However, while formulating policy is considered to be integral to the development of the region, one will find that it is at the implementation level that more focus is needed.

It is encouraging when one notes that SADC member states are currently engaged in a number of developments aimed at liberalising the movement of persons within the region. These developments are clearly in conformity with the SADC treaty, which mandates its signatories to progressively 'eliminate obstacles to the free movement of capital and labour, goods and services and of people in the region generally among members'.[80] Although not necessarily under the aegis of GATS, liberalisation of trade in services has been slowly taking place in SADC. Such liberalisation has been primarily driven by protocols and memoranda of understanding (MOUs) aimed at fostering greater economic integration and development in the region. As such, a number of services-trade-related protocols and MOUs contain provisions that mandate signatory countries to liberalise, inter alia, the movement of natural person services providers regionally.[81]

### 3.9.) The SADC Trade Protocol

While it is clear that the SADC Trade Protocol provides for the liberalisation of services, there are no legally binding obligations that bind the members to commitments. It is thus quite plausible to state that the major focus of the Protocol is tariff liberalisation or liberalisation of trade in goods, rather than a clear and balanced focus on services. However,

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[78] This will be discussed in more detail later.
[79] Bhoret H, Meyer J, and Mlatsheni C. Skilled labour migration from developing countries: study on South and Southern Africa, International Migration Programmeme, Geneva, July 2002
[80] Check Article 5.2 (d) of the treaty
[81] Khumalo Nkululeko, Op Cit, p24

on closer observation, it becomes ever more certain that SADC members are beginning to show more commitment to the services sector.

Within SADC, there already exists an initial draft annex on services which, if approved by all member states, shall serve as a basis for negotiations on trade in services. The Draft Annex on Trade in Services sets out the framework for the liberalisation of trade in services between SADC members. The ultimate aim of the liberalisation process is that each member will treat the services emanating from other members, and the suppliers of such services, in the same way as its own services suppliers, and the services they supply. All methods of supplying a service are included, and the standard accorded is called 'national treatment'.[82] Apart from national treatment, Article 5 of the draft annex provides for the MFN principle, which prohibits a member state from granting less favourable treatment to service suppliers and services of one member than that which it accords to any other member.[83] As seen above, this is in harmony with the rules and regulations of the WTO, and the GATS more specifically.

Thondhlana, in an article in 2006 states that a shortage of human skills can cripple efforts to develop the targeted core infrastructure services sectors. For example, South African construction firms have reportedly embarked on a serious recruitment drive for Zimbabwean engineers, quantity surveyors, senior managers and all disciplines of artisans, among other skills categories, to help them meet tight deadlines on their 2010 World Cup projects.[84] Indeed, there has been concern about South Africa meeting its 2010 obligations, and a determined liberalisation of services in the region first, and globally will be of great significance in meeting its goals, especially given that the majority of the concern has been centered on the fact that South Arica does not, and cannot produce enough skills to meet the current demands.

### 3.10.) Protocol on the Facilitation of the Movement of Persons

At their 2005 summit in Botswana, SADC states finally adopted a comprehensive Protocol on the Facilitation of Movement of Persons, about ten years after the original document was announced. According to Matlosa, the reasons for such delay and apparent reluctance to liberalise human movement in this region include:

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[82] Ibid, p25
[83] Ibid
[84] Thondhlana B, 'SA Construction firms woo Zimbabweans as industry booms', Creamer Media's Mining Weekly, 15 December 2006.

> "…(a) individual states clinging to their national sovereignty; (b) the perception of migration as a security and not a developmental issue; (c) protectionist immigration laws and policies; (d) the criminalisation of foreign migrants and (e) the all-pervasive xenophobia in most countries. States perceive migrants through security lenses and began to tighten their economic fortresses by militarizing boundaries and developing electric fences. Xenophobia is, therefore, rife in southern Africa."[85]

The protocol will come into force when ratified by two thirds of the members. As the table below shows, the DRC, Lesotho, Namibia, Mozambique, South Africa, Swaziland and Zimbabwe have signed the protocol. Mozambique is the only country that has ratified the protocol as yet. Further, Angola, Botswana, Malawi, Mauritius, Tanzania and Zambia are required to sign, whereas Madagascar is only required to accede to the protocol once it is in force.[86] One should note that out of the six members who have signed onto the protocol, four are Southern African Customs Union (SACU) members, further emphasizing the growing importance of South Africa's role within this policy domain.

[85] Matlosa K, 'Human movements, common regional citizenship and identity in Southern Africa: prospects for deeper integration between Lesotho and South Africa', Policy, Issues & Actors, 19, 3. Centre for Policy Studies, Johannesburg, March 2006.
[86] Khumalo Nkululeko, Op Cit, p27

**Table 1: Protocol tabled for signature on 18 August 2005**[87]

| Protocol | Member states that have signed | Member states that have ratified | Member states that have acceded | Member states that have to sign | Member states that have to ratify | Member states that have to accede |
|---|---|---|---|---|---|---|
| **SADC Protocol on the Facilitation of Movement of Persons**<br><br>*Has not entered into force* | Lesotho<br>Mozambique<br>Namibia<br>South Africa<br>Swaziland<br>Zimbabwe | Mozambique | | Angola<br>Botswana<br>Malawi<br>Mauritius<br>Tanzania<br>Zambia | | Madagascar |

Source: SADC Secretariat.

The protocol certainly seems strong on provisions on facilitating general free movement of all categories of natural persons beyond service providers and / or skilled professionals. It fosters a general trend towards reviewing and relaxing the criteria countries use to grant residence permits to citizens of fellow SADC members.[88] "The protocol clearly goes beyond the narrow liberalisation of 'temporary' movement of persons provided for by the GATS, as it covers issues of permanent migration, and also urges member states to amend their immigration policies in order to give effect to its objectives."[89]

Perhaps it is its far-reaching nature that has contributed to the delays faced over the years, especially as it seeks to embark on including a framework for permanent migration, a clear Achilles heel for most states within the region, as they seek to retain their skilled labour. A greater focus on skilled migration will allow the protocol to be more acceptable in the short – medium term for SADC countries, while the more controversial and contested aspects of the protocol should continue to be discussed with the intention of reaching a common agreement.

[87] Ibid
[88] Article 17 of the Protocol
[89] Khumalo Nkululeko, Op Cit, p28

One finds that all SADC countries have accepted in their GATS commitments the notion of liberalising highly skilled labour, and this must reflect in their SADC Protocol, but it will be more difficult to go beyond that at the current stage, given the different levels of development within the region.

It has been argued earlier that the different modes of services stipulated under the GATS overlap, and thus that liberalising the trading of one of the modes of supply automatically affects the level of liberalisation of the other modes. It has also been noted that there has been more commitments under other modes of supply than for the movement of persons, and that as the other modes continue to liberalise, mode 4 will also be forced to liberalise in order to realise the goals of the other modes of supply. The SADC Protocol on the Development of Tourism is a perfect example of this argument.

The Protocol on the Development of Tourism, which was signed in 1998 and came into force on 26 November 2002, provides the legal policy instrument for the sector. The objectives of the protocol are to ensure equitable, balanced and complementary development of the tourism industry in the region; to optimise resource usage through joint development of infrastructure; to involve small and micro-enterprises, local communities, women and youth; and to facilitate intra-regional travel through the easing of visa restrictions. As the table below shows, most member states have acceded, except Angola, the DRC, Madagascar, Malawi and Zambia.[90]

[90] Ibid, p29

**Table 2: Protocol tabled for signature on 14 September 1998**[91]

| Protocol | Member states that have signed | Member states that have ratified | Member states that have acceded | Member states that have to sign | Member states that have to ratify | Member states that have to accede |
|---|---|---|---|---|---|---|
| **SADC Protocol on the Development of Tourism**<br><br>Entered into force: 26 November 2002 | Botswana<br>Lesotho<br>Malawi<br>Mauritius<br>Mozambique<br>Namibia<br>South Africa<br>Swaziland<br>Tanzania<br>Zambia<br>Zimbabwe | | | | | Angola<br>DRC<br>Madagascar<br>Malawi<br>Zambia |

Source: SADC Secretariat

Khumalo has acknowledged a plethora of projects at various stages of implementation to give effect to the goals of the protocol. These include proposals to abolish visa requirements for regional tourists who wish to enter another member state's territory as visitors in order to help facilitate intra-regional travel; the establishment of a single visa (Univisa) for all SADC countries; the harmonisation of immigration procedures in order to facilitate the movement of international tourists in the region. Such policies are expected to result in an increase of the region's world tourism market share and revenue; and to ensure that all SADC member states participate in, and benefit from, South Africa's hosting of the FIFA World Cup in 2010. In relation to this, SADC member states were requested to submit, by the 30th of June 2006, their views on how they intend to benefit from their participation in the 2010 event. These views would then be considered by ministers responsible for tourism.[92]

Another example of the interdependence that exists between the different modes of supply and services is illustrated through the removal of impediments to the movement of persons which is addressed in some provisions of the Protocol on Education and Training and the Protocol on Health.

[91] Ibid, p28
[92] Ibid

In particular, Article 28 of the health protocol, which deals with referral systems or co-operation in tertiary care services, calls upon member states, inter alia, to build capacity progressively in their countries to provide appropriate high-quality specialised care through the exchange and attachment of specialists in the region, and the sharing of information on centers of excellence in the region. The issue of exchange and attachment of health specialists clearly relates to liberalisation of movement of natural person service providers, under mode 4 of GATS, and, at a regional level, the Protocol on the Facilitation of Movement of Persons constitutes the legal framework.[93]

"Further, one of the key interventions being addressed in the education implementation plan is the development of a SADC qualifications framework, aimed at promoting comparability of qualifications in the educational systems of all SADC member states. This is important both for facilitating mobility of students and academic staff, especially to our higher institutions of learning, and, subsequently, for enhancing labour mobility, and clearly relates to the Protocol on Facilitation of Movement of Persons."[94] This shows clearly that countries cannot, and should not avoid liberalising the movement of skilled labour in that as they give concessions and liberalise other modes of supply, it immediately puts pressure to open up mode 4 service suppliers.

While progress is clearly being made in liberalising the movement of highly skilled labour, a lot more needs to be done in reassuring countries, especially those of the developing world to convince policy makers that it is in their immediate national interests to allow their skilled labour to gain experience in the global market. Arguments concerning the threat of the 'brain drain' have not yet been clearly articulated to remove fear from national governments. Hence, mode 4 negotiations, which have a lot more potential than the other modes of supply, have not yet produced the anticipated, or hoped for results of far reaching liberalisation that supports economic growth. Concerns of the brain drain have caused nation states to be defensive, rather than seeing the GATS negotiations as the solution to their national 'brain drain'.

GATS mode 4 only covers the movement of highly skilled labour on a temporary basis, and thus erases the common fear that skilled nationals will emigrate, thus not contributing to the development of their respective countries of origin. It is thus imperative to visit this notion of

[93] Ibid, p30
[94] Ibid

the ‘brain drain’, in order to find credible ways for nation states to meet their mutual self interests. A failure to adequately address the notion of a brain drain will lead to more conservative approaches to the GATS mode 4 negotiations, and this will not assist developing countries in their quest to maximize on their skilled labour. Through conversations with young people from South Africa who have at least one parent working abroad, it was consistently mentioned that there are a number of positive outcomes that have assisted their immediate lives; with remittances being used to cover education and other essential necessities. Emigration was dismissed as an option for most families with a parent abroad. This was especially true for black families, who are firmly rooted in South Africa and don’t possess dual citizenship unlike some of their white counterparts.

# Chapter Four

## 4.1.) Confronting the Brain Drain: From Brain Drain to Brain Circulation

The brain drain is not new to the African continent. From the days of chattel slavery, the best of Africa's brains were drained from the continent with the principal aim of building the economic and social strength of other nations. The brain drain thus forms the backbone of Western civilisation, historically and in contemporary times. One may be justified in saying that "nothing is new under sun". Throughout its different levels of evolution, the brain drain has constantly uprooted the best of Africa's assets, including its human capital, that which forms the heart of any nation state.

African territories have constantly subsidised the labour resources and forces of other nations. It thus appears that South Africa's and, indeed, Africa's problem throughout modern history has not been an inability to produce healthy, productive human capital. On the contrary, the African continent has consistently produced effective and healthy humans who contribute to the strength and wealth of the global economy. Rather, Africa's main challenge has been in retaining its resources, and making sure that its assets contribute positively both at home and abroad. The inability of the current citizens to positively contribute to the solution through the usage of their acquired skills thus forms a major stumbling block if South Africa is to reach its domestic and foreign policy objectives.

The narrative of human civilisation and history cannot be detached from the reality of migration. Thus, when geographic locations such as Ethiopia and Egypt were the centers of civilisation, knowledge production, education, commerce and culture, many people, including Europeans, migrated to these centers to acquire valuable knowledge and skills that could be applied within their own contexts, and this reality has not changed. Hence the rise of Ancient Greece and the Roman Empire was largely influenced by the knowledge and skills learned in Africa, and then applied and adapted to their own domestic context.

**4.2.) South Africa's Brain Drain**

Compared to the volume of unskilled and forced migration, the international movement of skilled people is still relatively small, but its social and economic relevance outweighs its numerical significance for a number of reasons, some imagined and some real.[95] In the introduction of the book titled: *Destinations Unknown: Perspectives on the Brain Drain in Southern Africa,* the editors state that the loss of a country's "best and brightest" is seen not only as a loss of human resources but also as a general indicator of whether a country is a desirable place to live in. The rationale behind this statement is that "nothing conjures up the image of a country gone wrong like the belief that skilled people are leaving in droves: a public litmus test of sorts where citizens vote with their feet. If true, a skilled exodus heralds tougher times to come, as human and financial capital moves with skilled nationals".[96]

Given the far- reaching social and economic implications of the "brain drain", it is not surprising that there has been much public and academic hyperbole on the matter. Political leaders declare emigrants unpatriotic and selfish, while the media make wild and unsubstantiated statements about the extent of emigration and the motivations for it.[97] These elements have all contributed to an atmosphere filled with confusion and uncertainty on the issue.

Southern Africa is no different in this respect. Skilled migration is currently a topic of hot debate in the region and it has attracted a wide range of claims and counter- claims, particularly in South Africa where the emigration of skilled nationals has generated considerable public attention during and since the demise of apartheid. In the early 1990s, for example, the brain drain became a card in the hands of those arguing for the entrenchment of white political privileges.[98] The issue re-emerged with unexpected force after 1994. Banner headlines declaring an "Exodus *as Rainbow Nation's iridescence fades"*[99], "*74% with skills*

[95] Findlay AM, 'Skilled Transients: The Invisible Phenomenon?', in Cohen R (ed), The Cambridge Survey of World Migration, Cambridge: University of Cambridge Press, 1995
[96] McDonald David A and Crush Jonathan, "Thinking About the Brain Drain in Southern Africa" in McDonald David A and Crush Jonathan (eds), Destinations Unknown: Perspectives on the Brain Drain in Southern Africa, Africa Institute of South Africa, Pretoria, 2002, p1
[97] Ibid
[98] In 1993, Nelson Mandela made several public appeals to white South Africans not to leave because their skills were economically indispensable. See Rule S, 'South African Emigration to Australia: Who and Why?, South African Geographer, no 17, 1989; Rule S, 'A Second Phase Diaspora: South African Migration to Australia', Geoforum, vol 25, no 1, 1994
[99] Financial Mail, 25 October 1996

*want to quite SA?"*[100], and *"Brain Drain Reaching Mind –bending Proportions"*[101] have contributed to the general panic over the state of the country's social and economic stability.[102] This debate has once more come to dominate newspaper headlines as Eskom, South Africa's power utility faces challenges in terms of meeting the rising demand for electricity; the core challenge is whether South Africa has enough relevant skilled professionals to build up the electricity reserves of the country. Current newspaper headlines quote immigration agencies stating that there's been a rise of enquiries and applications since the energy crisis. However, as stated earlier, this is a topic faced with a lot of hyperbole, especially from local media. It is an issue largely lacking in critical and objective analysis.

Equally vituperative responses from government officials attempting to defend their post-Apartheid record have served to polarise the debate. The *Sunday Times* headline, for example, fuelled a national controversy on the subject, which started with a speech in Mauritius at a Southern African Development Community (SADC) conference by then President Nelson Mandela where he suggested that "whites were running away from their country" and asserted that "the real South Africans were being sorted out in the process".[103]

While it cannot be denied that South Africa has faced a skills exodus in the post Apartheid era, one must distinguish between permanent migration and temporary migration; the major concern has been about the former, and rightfully so. One cannot expect governments to be pleased when state resources are used to train the labour force, only for those people to leave permanently, even changing their national citizenship and all the benefits that come with holding citizenship of a particular country.

However, what this thesis has shown is that the global trend is now changing as more skilled labour moves temporarily instead of permanently to ply their trade, ensuring that countries of origin can directly benefit from their skilled professionals. The context within South Africa has also changed significantly. Whereas the late 1980s and early 1990s were characterised by a lot of uncertainty as skilled labour feared the inevitability of change, South Africa is now a stable country with great international prestige. The ANC led government of South Africa has also now realised the importance of effectively engaging with its citizens abroad.

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[100] Sunday Times, 13 September 1998
[101] Cape Argus, 4 August 2000
[102] McDonald David A and Crush Jonathan, Op Cit, p3
[103] Ibid

**4.3.) Engaging the Diaspora**

One may assert that it is within South Africa's national interests to engage the diaspora to counter the loss of skills and vital capital being experienced in South Africa. National interests have always played an intrinsic role in determining the foreign policy of a sovereign, independent state and will continue to do so. These views were expressed by President Thabo Mbeki, commenting on the African Renaissance and its challenges, he expressed that:

*As we recall with pride the African scholar and author of the Middle Ages, Sadi of Timbuktu, who had mastered such subjects as law, logic, dialectics, grammar and rhetoric, and other African intellectuals who taught at the University of Timbuktu, we must ask the question - where are Africa's intellectuals today? In our world in which the generation of new knowledge and its application to change the human condition is the engine which moves human society further away from barbarism, do we not have need to recall Africa's hundreds of thousands of intellectuals back from their places of emigration in Western Europe and North America, to rejoin those who remain still within our shores![104]*

*I dream of the day when these, the African mathematicians and computer specialists in Washington and New York, the African physicists, engineers, doctors, business managers and economists, will return from London and Manchester and Paris and Brussels to add to the African pool of brain power, to enquire into and find solutions to Africa's problems and challenges, to open the African door to the world of knowledge, to elevate Africa's place within the universe of research, the information of new knowledge, education and information. Africa's renewal demands that her intelligentsia must immerse itself in the titanic and all-round struggle to end poverty, ignorance, disease and backwardness, inspired by the fact that the Africans of Egypt were, in some instances, two thousand years ahead of the Europeans of Greece in the mastery of such subjects as geometry, trigonometry, algebra and chemistry.[105]*

In the same way that South Africa's foreign policy affects not only South Africa, but the region of Southern Africa, Africa as a whole and the global African family, the "brain drain" of skilled professionals also has a domino effect, especially when one considers the aims and objectives of South Africa's ambitious foreign policy.

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[104] Mbeki, Thabo, The African Renaissance Statement, SABC, Gallagher Estate, 13 August 1998
[105] Ibid

The Great Trek in South Africa was a formative event which shaped South African history during the eighteenth and nineteenth centuries. In response to conditions that were regarded as unbearable, thousands of disaffected early- Afrikaners in the Eastern Cape moved to territories to the north and in the process overcame considerable obstacles. Today, a century and a half later, emigrants participating in the New Great Trek might want to argue that they too are trying to escape from obstacles very similar to those faced by their forebears, albeit in different guises.[106]

The New Great Trek is a highly disturbing element of the relatively successful transition to democracy of the country that faced conflagration of frightening proportions during the period up to 1994. Although hundreds of thousands of black and white South Africans left the country under Apartheid rule, millions more, including more than four million whites, remained in the country to experience the miracle of liberation from Apartheid and the transition to democracy in 1994. However, just five years later, many of those who had shared in the spirit of reconciliation and supported nation-building felt unable to cope with the aftermath and consequences of this monumental change.[107]

Emigration can be defined as the departure of a person from the country of which he or she has citizenship to another with the intention of acquiring permanent residence abroad and usually, but not always, with the intention of relinquishing the rights and duties of the former home country's citizenship.[108] Many white South Africans, and large parts of the Western world hold the view that Africa north of the Limpopo River is a lost cause. This view is in strong contrast to the vision of an "African Renaissance" propagated by South African President Thabo Mbeki, who believes that the twenty-first century will belong to Africa and that the continent is on the dawn of an economic, political and cultural resurrection.[109] It is within this optimistic belief that Thabo Mbeki and the South African government hope to stem the outflow of skilled South African professionals, culminating in a reversal of the brain drain where skilled emigrants either return to the country or find ways and means of making useful contributions to the country even though not physically returning permanently.

Attempts to encourage the emigration of skilled professionals into the country instead of leaving are not new in the South African context. Throughout the twentieth century

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[106] Van Rooyen, Johann, The New Great Trek; The Story of South Africa's White Exodus, Unisa Press, Pretoria, 2000, vii
[107] Ibid, ix
[108] Scruton, Roger, A Dictionary of Political Thought, London, Pan, 1982, p144
[109] Van Rooyen, Johann, Op Cit, p5

successive South African governments continued to attempt to actively encourage European emigration to South Africa. Prime Minister Jan Smuts succeeded in attracting 60 000 white immigrants over two years through an immigration scheme launched in 1946 to lure skilled European immigrants.[110] Based on this precedent set by Jan Smuts, the South African government and other African governments encountering the same predicament can take comfort in the fact that it has been done before in South Africa. This shows that the efforts of President Thabo Mbeki and everyone else involved in the "African Renaissance" projects efforts are not futile, as so many of their critics have been inclined to think.

Thousands of predominantly white, young, skilled South Africans of all persuasions, regions and professions are leaving the country each year to settle mainly in Australia, New Zealand, Britain, the USA and Canada. Official statistics suggest that just over 8 200 people had emigrated from South Africa in 1998 and about 9 000 in 1999. Because of the under-reporting of between one half and two thirds the unofficial total would have been between 16 000 and 25 000. These latest emigrants joined the 550 000 emigrants who have left officially since 1945, in addition to the 500 000 to one million emigrants who may have left the country unofficially during this period.[111]

It should be cause for concern to the national government that the official and unofficial numbers for migration remain so different. This does not allow the government to keep track of all movements from the country, which is a serious hindrance to nation building and continental renewal. Reasons provided for these discrepancies between official and unofficial statistics (the latter obtained from the embassies and immigration departments of several countries) is because many people who leave the country do so on the pretext of temporary visits and do not state on their departure forms that they are emigrating, and hence, they will not appear in the official emigration statistics. Even the South African authorities are aware of this phenomenon, but are powerless to do anything about it, according to Mark Orkin, who was speaking in his capacity as chief of Statistics South Africa.[112]

However, one cannot simply accept this view that government is totally powerless over these discrepancies. The South African government has shown on countless occasions its willingness to be innovative in its work. This is what's needed in this case, and the mere fact that one can also obtain these statistics at the different embassies means that the South

[110] Ibid, p10
[111] Ibid, p26
[112] *Die Burger*, 22 October 1998.

African government, and also other African governments will have to create closer links with the different embassies and immigration departments in order to correct these discrepancies, seeing that one can affirm that the numbers can be doubled or even tripled in order to get the real number of emigrants. With an enabling international framework under the GATS, one feels that strengthening this agreement can also assist in stemming the flow of skills on a permanent level. However, as noted in the thesis, some citizens leave without declaration that they are leaving permanently, thus showing that the GATS framework will have to tighten its ability to monitor temporary service providers.

The real significance of this exodus can be found not so much in the sheer size of the exodus- even though it is large by any standard, but in the fact that these emigrants represent a huge loss of human capital: they are mostly professionals and their skills and ability to create wealth and jobs cannot be replaced overnight, if at all. In addition, emigration on this scale raises the questions of how many more may join this new Trek, and whether this emigration will continue at current levels or whether a sudden mass exodus might become a possibility.[113]

One feels that the real questions that should be asked is: how can government ensure that these skills which under the Apartheid regime were almost 'exclusively white' can be transferred at a faster pace. Emigration does not present too much of a problem if there is an abundance of skilled people within the borders of the country. One of the reasons that have been identified by many South Africans who leave the country, especially white South Africans, is the high levels of crime. Anne Paton, whose husband, Alan, was one of South Africa's foremost liberals and author of *Cry the beloved Country* left South Africa in 1999 as a result of 'intolerable levels of crime'. She was quoted as saying: "Our President has called those who leave the country cowards. I have to confess that I am now about to join the number of those cowards who are streaming out of the country".[114] It is clear to one that the continuous departure of skilled South Africans in the country, and of skilled Africans in the rest of the continent, seriously undermines the efforts of what has been called Thabo Mbeki's African Renaissance, which forms an integral part of South Africa's foreign policy. This brain drain thus not only affects South Africa, but the continent as a whole.

Africa is losing the struggle to keep its most skilled citizens employed on the continent. The evidence is stark: more African scientists and engineers are now working in the US than in all

[113] Van Rooyen, Johann, Op Cit, p26
[114] Ibid, p42

of Africa. The most damaging emigration affects health care: 75% of the doctors trained in Zambia have emigrated, for example. However, while the brain drain is damaging in the short term, in the longer term, emigrants can help open new markets for African products and bring back badly needed financial resources and new political and technological ideas. A key lesson is that emigrants may not return permanently but can make a dramatic difference by returning intermittently to be involved in development projects, charities and business ventures. One of the most startling facts about the diaspora is just how much Africa depends on it financially. Although the continent spends much time courting foreign direct investment by multinational companies, remittances from the Diaspora represent a far larger source of funds for many African countries and have played a major role in stabilizing collapsing currencies.[115]

African policy makers have begun to look upon the diaspora as a human network through which new ideas, capital and technology flow back to the continent. Damtew Teferra, a lecturer and researcher on the diaspora at the Center for International Higher Education in Boston, US, notes: "Egypt considers its diaspora as its treasures kept abroad. It is vital to affirm that these unclaimed treasures can potentially serve as another window to the industrialised world, as another bridge in knowledge transmission and exchange, and as another catalyst in fostering knowledge creation and utilisation. It is apt to remark, therefore that the diaspora is a vital and influential community of 'undercover' ambassadors-of their home countries and regions-without formally designated portfolio"[116] , such thinking is vital if South Africa is to effectively engage its diaspora community.

The view that one gets is that the diaspora through emigration does not necessarily have to be viewed as a 'brain drain', but as a 'brain gain' simply by harnessing the potential of this community in an effective manner. In the context of South Africa's domestic and foreign policy objectives, this is of particular importance since the diaspora communities are best placed to utilise and access certain markets in the developed world. They can also assist the South African government in engaging with the process of globalisation by acquiring vital technology which can have a positive effect on South Africa's renewal. As stated, examples of technology transfer were noted in discussions with young people with a parent abroad,

[115]"The African Diaspora-The Medicine for What Ails Africa" in eAfrica Electronic Journal of Governance and Innovation, Volume 1, September 2003, p1

[116] Herbert, Ross, Guy, Trish, "Reversing the Brain Drain, Harnessing the Diaspora", in eAfrica Electronic Journal of Governance and Innovation, Volume 1, September 2003, p7

who stated that they have been able to access technology purchased from abroad at prices far more affordable than local prices.

Instead of making people feel guilty and unpatriotic when emigrating, South Africa and other African governments can give new emigrants a good sense of responsibility, making them feel that they still have something to contribute. This will also help in that instead of people not stating that they are emigrating, they would not mind stating it on their departure forms. Governments could also make arrangements to meet these potential emigrants to reason with them on a one-on-one basis, almost as though they are being given an official sending off to be unofficial ambassadors. Governments certainly have to be more accommodating to their citizens, those at home and those abroad.

Eritrea is perhaps the best example of an African nation combining patriotism, social networks and effective organisation to tap into the strengths of its diaspora. During the 30 year war for independence from Ethiopia, Eritrea developed a system for facilitating contributions from citizens living abroad. Since independence in 1993, it has maintained contact with foreign based citizens. It was one of the first, and remains one of the only African states to collect taxes from its expatriates. When the new nation wanted to launch a national television system, it was able to finance it entirely with the contributions from abroad.[117]

Although Africa has focused on courting foreign investors, new research notes that the value of funds transmitted back to Africa as worker remittances is in many cases far larger than total foreign direct investment (FDI). The World Bank's *Global Development Finance* 2003 study found that emigrants from developing countries moved a total of $72.3 billion in remittances from the developed world to developing countries in 2001. For all low income countries, remittances were 213% of FDI.[118]

These are positive studies for the African Renaissance project. South Africa has almost put too much focus on the need for FDI from developed countries, neglecting a very vital avenue for investment. It can thus be agreed that in order for South Africa to meet its goals, a key investment will have to be made in the diaspora. Tiny Somaliland, with 1.5 million people, receives an estimated $500 million a year from its diaspora. Other studies indicate that the level of remittances moved through informal financial channels is double or triple the

[117] Herbert, Ross, "Capturing the Wealth Abroad", in eAfrica Electronic Journal of Governance and Innovation, Volume 1, September 2003, p11
[118] Ibid

officially acknowledged rate.[119] This research thus shows a great potential in the contribution from the diaspora in that precedents set by other emerging African states shows that what initially may be defined as a brain drain can potentially be one of South Africa's greatest assets. However, mechanisms must be put in place to ensure that this happens.

**4.4.) Government Initiatives in the midst of the Brain Drain and Skills Shortage**

The South African government has taken note of the obstacles it encounters, seen in such initiatives as the Accelerated and Shared Growth Initiative for South Africa (ASGISA. Much is expected of ASGISA, which is designed to remove barriers to growth with a R370bn injection in the public sector, with most of that money allotted to infrastructural improvement. It is hoped that this can push the economy past the 6% target for GDP growth and significantly reduce South Africa's crippling unemployment rate.[120]

ASGISA originates from a commitment made by the African National Congress (ANC) in its 2004 election manifesto as part of its objective to halve unemployment and poverty by 2014. Accomplishing this depends on achieving a 6% growth per year by 2010. By 2004, economic growth had exceeded the average 3% growth per year of the first 10 years of democracy. Yet the challenge remained to increase and sustain growth at levels sufficient to meet social targets. Following discussions between the ANC, its allies, and a range of domestic and international stakeholders, government developed a focused set of initiatives to accelerate shared growth. A broad strategy paper was prepared under Minister of Finance Trevor Manuel's leadership, after which President Thabo Mbeki asked the Deputy President and a team of Cabinet ministers and provincial premiers to develop ASGIA.[121]

President Thabo Mbeki states that:

"*The challenge is to grow, to grow more rapidly, to reduce unemployment, and reduce some of the excessive inequalities we inherited, some of which are very persistent. Our Accelerated and Shared Growth Initiative for South Africa (ASGISA) is our coordinated national effort to move to a higher level of shared growth. Through it we are attacking what we see as the binding constraints on shared growth. These include: the relative volatility of the currency; the need for more efficient infrastructure and infrastructure services; a stronger supply of*

[119] Ibid
[120] Oxford annual business, economic and political review, Emerging South Africa 2006, Emerging Market Series, 2006, p13
[121] Accelerated and Shared Growth Initiative for South Africa Annual Report, 2006, p3

*suitable skilled labour; better strategies to develop new industries and a more diversified economy; better programmes to integrate the marginalised poor into the broader economy; and a more capable and efficient government at national, provincial and local levels*."[122] He further states that *"we simply need to ensure that we continue to increase the pace of production of skilled professionals and managers and continue to attract them home from abroad, and that we remain vigilant of possible vulnerabilities in our government systems."*[123]

Around 40% of the funds that ASGISA has pledged will be spent on public enterprises, with R84bn going to state electricity firm Eskom to increase capacity in generation, transmission and distribution. Transnet, the state rail, port and pipeline company, will receive R47bn, which will be spent on upgrades to harbours, ports, railways and petroleum pipelines. The R47bn allocated to Transnet will pay for the expansion of the Richards Bay port facility, including R2bn worth of investment in a new ship repair facility, a R1.2bn expansion of the Richards Bay Coal Terminal (RBCT), a R1.5bn investment in a new container-handling facility and the construction of a new fresh produce terminal. In addition, R188m has also been earmarked to expand the port's liquid bulk terminal.[124]

An extra R19.7bn has been set aside to pay for the construction of the necessary infrastructure for the 2010 World Cup, including investment in ICT infrastructure to speed up the expansion of South Africa's broadband network. Support to low income households through social security and assistance grants amounts to the biggest area of government expenditure, totaling some R70bn a year. The government will also spend a further R23bn on subsidies for new housing over the next three years.[125] These are clear signs that the South African economy is getting stronger; it also points to a robust foreign policy which has clear signals of South Africa's plans for further expansion. However, despite these plans by the government, it remains uncertain whether these initiatives can be carried through successfully, taking into account the skills shortage that is the legacy of Apartheid, which is further exacerbated by the brain drain.

Perhaps the greatest constraint to growth, and thus also to ASGISA is the shortage of skilled workers. Serious doubts remain over the government's ability to deliver on the vast array of infrastructure projects currently on the table. There are particular concerns over the capacity

[122] Ibid, p17
[123] Ibid
[124] Ibid, p31
[125] Ibid

of local government to provide basic needs and services. Analysts estimate that South Africa will need some 3000 – 6000 more civil engineers, IT professionals and technicians for all of the infrastructure projects that are currently planned.[126] This is a particularly sensitive issue because the Congress of South African Trade Unions (COSATU) is somewhat opposed to any move to import labour, which, they argue would be tantamount to a betrayal of the South African working class. With this in mind, the government has launched the Joint Initiative for Priority Skills Acquisition (JIPSA). Under this project, a body of relevant ministers and business leaders are tasked with developing a range of solutions, which include special training programmes, calling on retirees and expatriates, and, as a last resort, bringing in foreign workers.[127]

This is where a better understanding of the importance of the GATS mode 4 negotiations, and the SADC Protocol on the Movement of Persons will be of great use. While the argument is sound that the first priority should be developing the necessary skills within South Africa, JIPSA will do well to acknowledge that developing skills cannot, and should not happen overnight. Instead, it is a time consuming exercise that the ANC led government must remain committed to. However, in the absence of certain specialised skills within South Africa, policy makers and government should not limit themselves. They should rather look to promote the temporary employment of foreign service providers and professionals, looking first within SADC and the rest of the continent, and then looking to the global skills base.

When the Oxford Business Group, in its annual business, economic and political review, titled "Emerging South Africa", asked Frederick Willem de Klerk, former President of South Africa:
*What do you think the long term effects of the continuing burden of poverty will be on the stability of South Africa if something is not done about it?*, his response was:

*Something has to be done. The fact is that we are more unequal now than we were in 1995 and the problem is not the availability of resources, the problem lies in the skills base in South Africa. The government has now recognised this. Part of the problem was the unbalanced and overly hasty way in which affirmative action took place. This has resulted, in many state departments and parastatals, in a loss of highly skilled people. They have been*

[126] Ibid
[127] Ibid, p32

*replaced, in most cases, by highly intelligent young people, but without sufficient experience.*[128]

Minister Mdladlana commended the Cabinet's appointment of Mr Mantashe to head JIPSA's technical working group and for approving the composition of the body's task team which was to be chaired by Deputy President Mlambo-Ngcuka and consists of representatives from diverse groupings such as government, youth, organised labour, academic institutions, gender, state owned enterprises and science councils. Minister Mdladlana said he had no doubt the new structures would help enhance the government's accelerated efforts to address the skills deficit, thereby increasing the availability of workplace expertise in various sectors. "I'm also delighted at the Cabinet's endorsement of integrating the needs of people with disabilities into JIPSA activities," the Minister said.[129]

These initiatives by the South African government stress the importance of the need for skills in nation building and, therefore, to see that South Africa's policy objectives are not merely a concept but are made into a reality through practical implementation of its objectives. The Deputy President has also stressed the need for a "skills revolution" in the country, working closely with the departments of Education, Labour, Science and Technology, Public Service and Administration (DPSA) and others, as well as Sector Education and Training Authorities (SETAs), private sector and organs of civil society, with all intervening at different levels.

The Deputy President has been quoted as saying that; "The Department of Foreign Affairs (DFA) has an important contribution to make in sourcing and attracting scarce skills from the international community, including Africans in the diaspora, to assist us to train our people in foreign academic institutions and for international placements when we train people through placements in foreign private companies and governments. South Africa is most sensitive to the brain drain, and the potential of the brain gain, in Africa."[130] This confirms that although the problems are great, efforts are being made to reverse the "brain drain" into a "brain gain". One sees a shift in paradigm as government warms to the reality that foreign skills, especially highly skilled labour can be a huge asset to South Africa, rather than being perceived as a threat to the South African worker; it should once more be emphasized that it is temporary movement that has to be the cornerstone.

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[128] Oxford annual business, economic and political review, Emerging South Africa 2006, Emerging Market Series, 2006, p18

[129] Ibid

[130] Address delivered by the Deputy President, Phumzile Mlambo-Ngcuka, at the launch of the Joint Initiative for Priority Skills Acquisition (JIPSA), Presidential Guest House, http://www.info.gov.za/speeches/2006/06032810451001.htm, 27 March 2006

**4.5.) Brain Gain in the Midst of the Brain Drain**

In the 1980s and 1990s, various new developments refocused the brain drain debate as many countries faced for the first time, a potential drain of local skills to other countries within the SADC region. The first movement of significance was the so called "white flight" to South Africa from countries such as Zimbabwe and Mozambique.[131] Politically, their departure was unlamented but their exodus left sudden holes in the private and public skills base. Deteriorating economic conditions in some states (as a result of civil strife and Apartheid South Africa's war of destabilisation) led to further uncertainty and departures, this time of skilled blacks. From the late 1970s, a silent drift of skills began from SADC and other African countries (particularly Ghana and Uganda) to the "independent" South African homelands of Transkei and Bophuthatswana. Prah's study of what he's called "the great trek of talent" to the homelands involved an estimated 7000 skilled Africans by the late 1980s.[132]

In the early 1990s, the end of Apartheid produced fears within SADC of a renewed brain drain to South Africa from the rest of the region. Initially, these fears seemed justified. Skills migration to South Africa from all other SADC states jumped significantly in the run-up to the 1994 election. Some 200 medical doctors reportedly left Zimbabwe for Botswana and South Africa in 1992 alone.[133] Experts projected further losses and a significant impact on struggling local economies. The region's loss would be South Africa's gain, further exacerbating chronic regional inequalities. These fears have actually been muted by post-1994 South African immigration policy which placed a very low premium on skills import from anywhere.[134] The other SADC states have been the unwitting beneficiaries of South Africa's anti-immigrationism. Work permits have been hard to come by and the movement of skilled Africans into South Africa has not yet reached anticipated levels.

While government is optimistic about meeting some key targets for the first period of ASGISA (2004 – 2009), the 2010 – 2014 targets will definitely be the most challenging to

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[131] Crush, J, 'Migrations Past: An Historical Overview of Cross-Border Movement in Southern Africa', in DA McDonald (ed), On Borders: Perspectives on International Migration in Southern Africa, New York: St Martin's Press, 2000a

[132] Prah K, The Bantustan Brain Gain: A Study into the Nature and Causes of Brain Drain from Independent Africa to the South African Bantustans, Southern African Studies Series no 5, Roma: National University of Lesotho, 1989.

[133] Saasen S, Globalisation and its Discontents: Essays on the New Mobility of People and Money, New York: New Press; Saasen S, The Mobility of Labor and Capital: A Study in International Investment and Labor Flow, Cambridge: Cambridge University Press, 1998.

[134] Crush J, 'The Discourse and Dimensions of Irregularity in Post-Apartheid South Africa', International Migration, vol 37, no 1, 1999

achieve. South Africa's ability to reach 6% average annual growth relies on removing bottlenecks to growth. It is clear that significant gains already made must be consolidated to provide a stable base for growth. Infrastructural services must improve considerably, and those responsible for education and skills delivery must focus on producing more skilled people, and more rapidly.[135]

In studying the ASGISA report, one is disappointed that there is no mention of how the immigration policy will be utilised to meet the targets set by ASGISA. This is because the same 'bottlenecks' to growth identified by ASGISA exist within the Department of Home Affairs, and one cannot expect to meet the development goals without a clear policy on importing skilled labour, labour that has to go through the Department of Home Affairs and governed by the framework of the immigration policy. Developed countries have altered their immigration policies to meet their skills and developmental needs, and without a clear strategy of easing the entry for skilled temporary labour, ASGISA will not meet their needs.

[135] ASGISA Report, 2006, p2

# Chapter Five

## 5.1.) Opening the Door to Skilled Migration: South Africa's Immigration Policy

It is argued by the Centre for Development and Enterprise (CDE) that South Africa has two closely linked shortages. One is a shortage of productive skills and practical competencies, and the other is a shortage of people who are employable, self employable or readily trainable by employers in a modern, knowledge, technology and technique-based economy. CDE then goes on to propose two solutions to this problem. One is a dramatic upgrading of our educational and training systems. They argue that while vitally necessary, the bold reforms required to equip a really large number of South Africans with the skills our economy needs will take years to implement, years South Africa cannot afford to waste. The hard reality is that our only short-term policy option is an open door, market driven immigration policy.[136]

"CDE emphatically rejects the view that skilled immigrants prevent South Africans from finding jobs. The opposite is true. One qualified immigrant teacher of mathematics, science or bookkeeping can probably 'create' scores of jobs without in any way reducing the chances of a South African becoming employed. Even more importantly, it is estimated that every skilled professional, directly or indirectly generates additional jobs. Each new skilled immigrant will create new jobs for South Africans simply by going about their business, buying goods and services and paying tax."[137]

The following section will look into the arguments that support a more open approach to skilled immigration in South Africa. This has invoked debate within the country from interested stakeholders, stating that the absence of a committed open door policy to skilled immigration will stifle South Africa's growth trajectory, having negative implications for the majority of poor South Africans. This thesis has shown that the GATS mode 4 negotiations have a huge impact on member states of the WTO's attitudes and approaches to immigration.

It has been revealed that there exists an interlink between trade, labour and immigration policy, and that South Africa must adapt with the evolution of the international landscape in order to remain competitive and meet its political, social, cultural and economic interests.

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[136] South Africa's New Immigration Law: A salvageable instrument for economic growth?, The Centre for Development and Enterprise, Parktown, Johannesburg, 2 October 2002, Executive Summary
[137] Ibid

While agreeing that illegal immigration presents a threat to national security, it is argued that legal skilled immigration cannot be looked at with the same lens as that of illegal unskilled immigration; they require different approaches, and most importantly, different attitudes. The GATS mode 4 negotiations, together with parallel efforts within the SADC policy framework on the movement of skilled labour will benefit greatly from a sound approach to skilled migration, reflected through South Africa's immigration policy.

Simkins concludes that South Africa faces a very serious deficit of productive skills. As the new global "knowledge" economy deepens its impact and extends its inter-penetration with our own, it is argued that this deficit will deepen. All major analyses of our competitiveness point to our human resource base as the most serious drag on our likely future growth. The output of our education system, both in absolute terms and relative to changing demands on it, has weakened in recent years and is not likely to turn around for the next few years. While improvement in matric pass rates is evident, our output of university level maths and science passes is still declining in absolute terms.[138]

A recent survey done by the Southern African German Chamber of Commerce and Industry among its members highlights South Africa's human capital constraints, showing some improvements in business confidence in the country. However, 52% of the 127 companies responding are pessimistic about the likelihood of our educational system improving enough to support increased productivity.[139] From this one can deduce that for South Africa to continue developing its economy while creating sustainable employment, the country will have to see an injection of new skills. One must be clear and unequivocal in stating that reforms in the education system are sorely required, and that all efforts must be made to produce enough home grown skills; but, South Africa must be pragmatic in acknowledging the fact that the short to medium term strategy has to be through sourcing the required skills from abroad through immigration. This will be consistent with the SADC protocol on a regional level, and the GATS mode 4 negotiations on a multilateral level.

The following box highlights South Africa's need for foreign skills, with extracts from certain people representing affected organisations:

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[138] Simkins C, The Jagged Tear. Human Capital, Education and AIDS in South Africa, 2002 – 2010, CDE Focus no.7, March 2002

[139] Southern African German Chamber of Commerce and Industry, Seventh Survey of German Enterprises in South Africa, July 2002

**Table 3: SOUTH AFRICA'S NEED FOR FOREIGN SKILLS[140]**

Organised business and the professional organisations are unanimous in identifying a major shortage of skills in South Africa. Many of these groups have been calling for an 'open door' to skilled immigrants:

'Business is convinced that the immigration policy we need should constitute a progressive, modern approach which would help to integrate South Africa with the rest of the world and ensure that necessary skills are made available from all sources to promote economic growth and development. The reality is that, at the present pace, we will never catch up with the exponentially accelerating knowledge economy of the developed world, because we simply cannot create skills quickly enough, nor do we have instructors to impart them, unless we look outside our borders. -- **Business South Africa, 15 May 2002**

"Liberalisation of immigration requirements [is needed] in order to reduce our skills deficit and enhance risk taking in the economy." **- Kevin Wakeford, CEO, South African Chamber of Business, November 2001**

"A shortage of skilled workers is a deterrent to foreign companies considering investing in South Africa." -- **Wolfgang Thomas, chief economist, Wesgro, 20 March 2002**

"The general lack of skills, in particular financial management skills, in South Africa presents a serious challenge…. This is illustrated best by the small number of Chartered Accountants relative to the population and is compounded by the so-called 'brain drain.'" -
**- Abel Dlamini, chair, Public Sector Committee, South African Institute of Chartered Accountants, April 2002**

"It is a crisis. We are losing white and black engineers to other countries. Our immigration policies stop us from bringing skilled people in." -- **Stuart Melaia, telecoms placement consultant, 15 September 2000**

"More than a quarter of all South African doctors who graduated between 1990 and 1997 are currently working abroad." -- **South African Medical Association, 9 July 2001**

*Source: CDE 2002*

One cannot deny that South Africa itself bears testimony to the benefits that immigration of able people can bring; here one refers not only to immigrants from the western nations but to the enrichment of South African society and its storehouse of talent throughout recorded history. People of Malay extraction, people from India and Pakistan, from Eastern Europe, the Middle East (Lebanon) and the Far East have all made major contributions to South Africa's skills base. Most recently we have benefited from the immigration of people from African countries to our north. Our universities in particular have benefited significantly by the appointment of academics from a variety of African countries, some of them having rapidly become familiar public figures.[141]

Despite the above fact, immigration all over the world remains a highly emotional and political issue, where popular sentiment may often override objective reason and fact. It is a global phenomenon that generally "people fear immigration (except in North America where the general population seems to realise how much the contributions of immigrants have supercharged the economy). For instance, Europe is now going through a significant new

[140] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?, p3
[141] Ibid, p4

wave of xenophobia. But it is important to remember the facts: the immigrants who are feared are not South African nurses and teachers, Indian computer scientists and technicians, Chinese restaurant owners, North African chefs, Asian entrepreneurs or Latin American musicians. The people who arouse resentment and fear are unskilled refugees or illegal immigrants, as is the case here. No one in South Africa can seriously object to Cuban doctors, to Asian small factory owners or to East and West African academics."[142] However, this does not mean that xenophobia is non existent towards South African nurses and other skilled professionals, and it is such exceptions that prompted the resolutions of the Global Forum on Migration and Development (GFMD) to emphasize the need for human rights standards to be upheld at all times.

The *Business Day* newspaper has noted on a number of occasions, in advocating an open door policy, that we are also losing skills through emigration. This is not unusual in emerging markets but the shortfall is that South Africa is not replenishing these skills through immigration, unlike in the developed world. In 2001, official figures show that we lost nearly six times more professionals and technicians than we gained. A recent University of South Africa study estimates that 1,6 million South Africans are already living abroad and that in 1999 alone no fewer than 39 000 more joined them. Some 20% of South African skills have been lost through emigration. Worse still, it estimates that around 70% of skilled South Africans consider emigrating. The study quotes the fact that some 35% of doctors who graduate from the Wits Medical School have left the country. The fewer than 4000 legal immigrants that enter the country each year are an insignificant compensation for the loss;[143] one could say that this amounts to a huge trade deficit in the trading of skills in the global market.

It should also be noted that there are wider benefits to skilled immigration, other than simply filling South Africa's skills shortage and adding to its skilled human capital. In the midst of high levels of unemployment in South Africa, it is understandable that there exists a relatively low level of economically active people who pay income tax. With this in mind, it is also true that productive and skilled legal immigrants will pay tax, thus contributing to the general income and reserves of the government. Productive skilled immigrants, who have been trained through the resources of other countries (thus coming at no cost to the South African state and citizenry), also consume South African goods and services, thus generating

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[142] Ibid
[143] "Violent Crimes Drive Skills Abroad", Business Day, 25 July 2002

revenue for the country which can be used to further increase the standard of living of ordinary South Africans. Skilled foreign entrepreneurs can also create employment for less skilled South Africans, thus directly and indirectly contributing to job creation within South Africa, a feat that cannot be exclusively left in the hands of government. The UNISA study referred to above estimates that "every skilled professional, directly or indirectly generates 10 unskilled jobs."[144]

The Global Entrepreneurship Monitor's (GEM) Report on South Africa for 2006[145] states that as compared to other emerging markets, South Africa was falling behind in terms of entrepreneurship, which is so critical to an economy. It further states that while South Africa has one of the most favourable conditions for entrepreneurship globally, entrepreneurial activity was on the decline, having huge negative implications for its competitiveness. While one of the greatest obstacles identified was the mind set, one may argue that injecting the economy with productive entrepreneurs from the region and global environment may assist in stimulating South Africa's own productivity of entrepreneurs, but this can only be done through a conducive legal framework based on immigration policy. South African businesses, especially small & medium enterprises must also seize the opportunity by forging networks throughout the continent which advance their mutual interests.

The Centre for Development and Enterprise (CDE) has come under criticism at times in its stance on the liberalisation of South Africa's immigration policy. This has been partly caused by the fact that it has often gone further than most people and organisations who advocate a more liberal immigration policy, focusing not only on the highly skilled labour in terms of the GATS mode 4 agreement. It also advocates for an open door policy with regard to those immigrants who may have the ability to sustain themselves through entrepreneurial activities without being a burden to the state. Most criticism has stated that such an open door policy would limit opportunities for South Africans, an argument that the CDE is unconvinced of.

One should note that what the CDE advocates would not be a permanent policy, but would be implemented until such a stage is reached when South Africa assesses that it is now training enough of its own skills to grow the economy and create employment for the rest of the citizens. The CDE has noted four shortages that South Africa currently faces, these being:

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[144] Ibid
[145] Maas Gideon, Herrington Mike, Global Entrepreneurship Monitor (GEM): South African Report 2006, 2007

- A shortage of recognised formal skills and professional, technical, commercial and other vocational competencies;
- A deficit of people at a level of basic education in maths, science, commerce and other numerate disciplines that would allow them to be deployed or trained in the myriad and diffuse tasks in a modern, knowledge, technology and technique-based economy;
- A shortage of people with managerial and project management abilities, relevant not only in the private sector but also in a variety of development roles in the public, semi state and NGO sectors; and
- Far too few people with focused entrepreneurial aptitudes and motivations, whether accompanied by formal skills or not, who are self-employable and likely to add value in an economy with relatively weakly developed middle ranges of competitive business activity.[146]

**5.2.) The Immigration Debate and Legislative Process**

South Africa's skills crisis appears to have been well understood by the President and key members of the Cabinet. The critical need for skilled migration was fully acknowledged by President Mbeki in his state of the Nation speech in February 2001 when he committed government to 'improving competitiveness by lowering input costs throughout the economy' and to reviewing 'immigration laws and procedures to attract skills into our country'.[147] Several senior politicians have also made their contribution to the debate surrounding South Africa's skills shortage and thus the importance of importing necessary skills. Some of these can be seen in the box below:

[146] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?, p6
[147] President Thabo Mbeki, State of the Nation Address, 9 February 2001

**Table 4: SENIOR POLITICIANS ON THE SKILLS CRISIS[148]**

"… much more needs to be done to improve our skills base….Immigration laws and procedures will be reviewed urgently to enable us to attract skills into our country." - **President Thabo Mbeki, 9 February 2001**

"The South African economy is not one of growth without jobs…. it is in need of specific kinds of skills…. We need to expedite programmes dealing with skills development." -- **President Thabo Mbeki, 25 July 2002**

"… our economy has restructured and is becoming more services oriented which requires new skills…. the skills that are abundantly available in the economy are those that are not required by the economy." - **Deputy President Jacob Zuma, 11 June 2002**

"… we need to open up the country to the skills our economy needs, as stated by the President in his State of the Nation Address last year." - **Minister Mangosuthu Buthelezi, 19 March 2002**

"In every sector of our economy, highly skilled labour is in high demand and vacancies cannot be filled." - **Minister Alec Erwin, 21 May 2002**

"The defining line for economic competitiveness of nations is today drawn between those nations that are knowledge rich and those that are knowledge poor." **- Minister Kader Asmal, 14 June 2002**

"It is not correct to assume that every job occupied by a non-South African means one job less for a South African. We need managed immigration that can contribute to stimulation of economic growth, development and create jobs for South Africans." - **Mpho Scott, Chairperson of the Home Affairs Portfolio Committee, 17 May 2002**

*Source: CDE 2002*

In its comments on the new immigration law, the CDE states that: "The legislative process, including the hearings by the Parliamentary Committee on Home Affairs, was muddy to put it mildly, reflecting a confusing interplay of political interests and hostilities, near-xenophobic sentiment, issues of racial transformation and above all a failure on the part of Cabinet to exercise leadership. The tortuous process that has finally led to the enactment of the new immigration legislation in the final minutes of the 11th hour to meet a constitutional deadline has disappointed all people whose over-riding commitment is to economic growth. It has not, however, resulted in the kind of legislation that South Africa needs and that was promised by President Mbeki in his State of the Nation speech in February 2001."[149]

It is important for the purposes of this thesis to understand the legislative process that transpired in order to finally produce the heavily anticipated immigration policy adopted by South Africa. This process will give insight to some of the challenges that will be encountered by other nations, especially in the developing world as they seek to update their immigration policies to suit their modern needs and interests. It is only hoped that as deeper integration takes place in the SADC region through the free movement of people, and as the GATS mode 4 negotiations continue to have a bearing on the developmental trajectory of developing countries, those that have not undertaken reforms to their immigration policy to meet their domestic and foreign policy goals will learn from the process that took place in South Africa.

[148] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?, p7
[149] Ibid, p8

Following intensive and expansive debate around the White Paper, the Minister and Department of Home Affairs initially produced draft legislation that, technical difficulties notwithstanding, was a huge improvement on the Aliens Control Act. The new draft legislation was basically intended to be more market friendly and to support growth and investment.[150]

The White Paper and Bill's proposed new strategy for attracting skilled personnel to South Africa had two dimensions. First, it was suggested that the South African government needs to make it easier for skilled persons to obtain extended work permits and/ or permanent residency for themselves and their families. Second, it proposed to let 'market forces' determine where skills are most needed in the economy. The state, through the agency of the proposed Immigration Services, would continue to monitor the skilled labour market, and would establish a national training fund that employers who hire skilled foreigners would need to pay into to train South Africans for future jobs, but the bulk of the decision making would be delegated to employers.[151]

With their own interests at heart, organised business appreciated the provision for corporate permits, allowing large businesses to act as agents in issuing work permits subject to certain prescriptions. They also accepted that the outsourcing of certification to Chartered Accountants would speed up applications and avoid less efficient departmental procedures, with reservations about the affordability of CA's for smaller businesses.[152]

The proposal to make it easier for qualified persons to obtain visas, work permits and temporary resident status for themselves and their families was a welcome corrective to the immigrant decision making of the past. Simplification of administration and greater consistency in policy should go a long way toward attracting skilled people to the country. There were, however, a number of problematic assumptions and contradictory lines of argument in these proposals, which only served to heighten the level of contestation and debate among the drafters of the policy.

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[150] Ibid

[151] The Immigration Service was conceptualised as a quasi-independent body with considerable autonomy (somewhat akin to the United States Immigration and Naturalisation Service). The ANC objected strongly to this proposal and a revised bill placed the Service directly under the control of the Minister.

[152] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?,p8

The first problem is that while it presents a potential threat to growth, skilled emigration (the brain drain) is not necessarily as significant a problem as it is made out to be in the White Paper and by various pro business think tanks.[153] In uncritically accepting popular wisdom on the issue without questioning the validity of the "facts" which led to this conclusion, the White Paper unwittingly set itself up for a series of policy reforms which may not have addressed the demographic and attitudinal realities of skilled migration. At the very least, the Southern African Migration Project (SAMP) research suggests that popular assumptions about the migration plans of skilled South African nationals and skilled foreigners cannot be taken for granted and that much more (academically sound) research is needed on this important topic.[154]

With no real consensus on measuring the extent of the brain drain and skills shortage, one must concur with the view that more research is needed on the topic in order to find better ways of measuring the skills shortage and brain drain within South Africa, and this will need a multi-sectoral approach involving experts from differing fields of study and research.

The proposal to require employers to pay into a national fund to provide training to South Africans is also highly controversial, although it has good intentions. Official logic is that this fund would effectively make the cost of hiring a foreigner higher than that of an equivalently qualified South African. Thus, employers would only hire foreign workers when they really needed to do so. More persuasively, the funds would add value to programmes aimed at expanding the skills base of South Africans. Nevertheless, the practicalities of such a system remain open to doubt and it would be almost impossible to enforce in a consistent and fair manner. And because skilled foreign migrants are also already likely to be more expensive to hire, this would be seen (especially by the business community) as an additional penalty for hiring workers that are actually needed. Such a policy could act as a disincentive to immigration and settlement by skilled non-citizens.[155]

In its comments on the new immigration legislation, the CDE has included a table which outlines the parliamentary processing of the Immigration Bill from late 2001 to May 2002, stating that this is "how not to deal with important legislation", this can be seen below:

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[153] See for instance Centre for Development and Enterprise, Is Government's White Paper on International Migration Good Enough?, Johannesburg: CDE, 1999
[154] McDonald David A and Crush Jonathan, Op Cit, p10
[155] McDonald David A and Crush Jonathan, Op Cit,p11

**Table 5: HOW NOT TO DEAL WITH IMPORTANT LEGISLATION[156]**

| | |
|---|---|
| 1997-2001 | 5-year consultative process on immigration policy; including Green Paper on international migration, 1997; White Paper on international migration, 1999; draft Immigration Bill, February 2000; international consultative conference, July 2000; extensive inter-departmental and public consultation, NEDLAC input and Cabinet processing, including a full-day Cabinet workshop, 2000; further Cabinet deliberations, 2001/2 |
| 24 October 2001 | The Chair of the Home Affairs Portfolio Committee, Aubrey Mokoena, MP, rules that the Bill is to be 'read aloud line by line, in order for the Committee members to know it backwards and forwards, as the Cabinet does.' |
| 13 March 2002 | Mokoena is called before the Parliamentary Rules Committee and instructed to expedite the processing of the Bill in order not to miss the Constitutional Court deadline of 2 June 2002 to amend the Aliens Control Act. |
| 19 March 2002 | The Minister of Home Affairs, Mangosuthu Buthelezi, introduces the Bill to the Portfolio Committee and emphasizes that it has received Cabinet approval. |
| 6 May 2002 | Mpho Scott, MP, replaces Mokoena as Chair of the Portfolio Committee on Home Affairs. |
| 9 May 2002 | The ANC majority on the Committee introduces major changes to the version of the Bill approved by Cabinet. |
| 15 May 2002 | ANC and IFP complete inconclusive negotiations on the changes to the Bill. |
| 16 May 2002 | The ANC majority on the Committee, ignoring the emphatic objections of the Department of Home Affairs, votes through a significantly different version of the Bill based on a quota system for skilled immigration. |
| 17 May 2002 | Minister Buthelezi introduces the amended Bill to the National Assembly. He emphasizes his disapproval of the Committee's amendments, and points out that these were made against the advice of the Department of Home Affairs concerning its capacity. He argues that the amendments subvert government economic policy by reflecting a 'command economy philosophy'. The Bill is passed by the NA and referred to the NCOP. |
| 21 May 2002 | The Minister of Trade and Industry, Alec Erwin, attempts to have the quota provisions removed from the Bill in the National Council of Provinces. |
| 22 May 2002 | Minister Erwin's intervention fails because of the need for the Bill to be passed into law in time to meet the Constitutional Court deadline of 2 June 2002. |
| 23 May 2002 | The National Council of Provinces passes the Bill. The Chair of the Social Services Select Committee in the NCOP, recognising the deficiencies of the Bill, calls upon the Minister to 'come back to Parliament with an amendment Bill' as soon as possible. Minister Buthelezi points out that substantive amendments cannot be made without proper consultation |
| 29 May 2002 | In response to a Parliamentary question, President Mbeki comments that the Immigration Act 'may not address all the matters that we wanted.' |
| 30 May 2002 | President Mbeki signs the Immigration Bill into law. |

*Source: CDE 2002*

[156] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?, p11

It's clear from the title given to the table that CDE was generally unhappy with the way in which the immigration legislation was handled in parliament. This attitude emerged in a number of their internal papers published.

Despite the emphatic presentations by Business South Africa (BSA), foreign business chambers and CDE itself to the effect that bureaucratically determined skills quotas could not accommodate the needs of business and the larger economy in a rapidly changing world, the role of quotas in the Bill was vastly expanded in the committee stage. Encouraged by the unions and perhaps the Department of Labour, the committee practically re-wrote the Bill so that quotas became a central part of the final Act rather than the exceptional mechanism that Home Affairs had envisioned in its version of the Bill. The provision for outsourcing chartered accountants of the required certification of applications was also opposed by the labour lobby on the grounds that it would introduce a pro-business bias in the process. [157] This showed a strong influence from labour and the trade unions within the parliamentary process.

It was the view of the local and international business community that the absence of formative inputs by the National Economic Development and Labour Council (NEDLAC) amounted to an almost farcical dereliction of a key responsibility within the negotiations. Indeed, it is argued that it did not help the process that NEDLAC, the primary forum for the reconciliation of business and labour interests, played almost no part in the process. This appears to have been the result of a procedural dispute in NEDLAC and misunderstandings about what steps needed to be taken. Another theme in the debates of the parliamentary committee was the role of race and black empowerment. The labour lobby view was that preferences should be given to black immigrants from the SADC region. There was also concern that any emphasis on high level skills would favour immigrants from the northern countries, i.e. non-African countries.[158]

While the CDE was totally opposed to the view that the immigration policy should have a focus on black empowerment, seeing it as a racist stance detrimental to even black South Africans, its important to note that it appears that the business lobby may have underestimated the recurring issue of black empowerment within the South African political landscape, being a product of the widely known past of Apartheid. The strong influence that

[157] Ibid, p12
[158] Ibid

the labour lobby exerted on the negotiations was also not adequately prepared for, neglecting the fact that immigration is a highly politicised issue in the world, including in South Africa. Thus, the business sector would have had to prepare for this, bringing strong counter arguments to persuade the parliamentary committee of its position. Often sound economic arguments must realise that they feature within a political climate where interests are more often than not forced to compete. Thus economic interests must always co-exist amongst political interests, and in South Africa, where labour and trade unions are represented within the tripartite alliance partners, the business sector must learn to be more innovative in their arguments and counter arguments in the passing of important legislation.

One way of countering the argument on preference for regional skilled labour is to situate this within the context of the GATS mode 4 and SADC Protocol on the movement of persons. The GATS Article 5, as mentioned earlier allows for countries to offer preferential access to service providers from the region if a regional agreement was concluded and had far reaching measures. This allows South Africa to focus on black empowerment and regional integration within such a context. What this would have allowed the business lobby to do is exert more pressure on the parliamentary committee to pass the kind of legislation appropriate to the modern global economy. It would have also allowed business to exert more pressure on South Africa to apply more pressure on its neighbours to sign the SADC Protocol on the movement of persons in order to ensure the black empowerment and regional integration espoused by the labour lobby.

A more open, less bureaucratic immigration policy would be a trade off for more commitment to regional integration and movement of skilled persons within the region. One cannot deny the importance of greater movement of skilled labour within the region, and of offering preference to skilled labour within the region. However, the business lobby could have once more pushed for a stance that where certain skills could not be sourced from the region, the country would have to look further abroad, thus sourcing from the global skills market. Such an approach allows the business community to get the kind of concessions they require, while meeting some of the critical concerns of the labour lobby, and this is where NEDLAC could have played a greater role in reconciling the interests of the different parties and interest groups.

South African businesses are now the biggest investors in the region and greater African continent, putting a strong need for them to be able to move their personnel from one place to

another without the hassles of stringent, time consuming and expensive immigration frameworks, thus putting a greater need for the business and labour community to reconcile their differences in the interests of the growing influence and economy of South Africa.

**Table 6: GETTING A WORK PERMIT**[159]

How does the Department of Home Affairs decide whether or not to issue a work permit to a foreigner?

**Under the repealed Aliens Control Act** work permits were issued on the basis of 'skills certification.' The applicant and his or her employer had to show that they had made a thorough search for a South African or permanent resident with the necessary skills and that none could be found. Only if the Department of Home Affairs were satisfied that this was the case would a work permit be issued. This has proved to be a very slow and expensive process, often with an unpredictable or unsatisfactory outcome from the point of view of the applicant and the prospective employer.

**Under the Minister's draft Immigration Bill,** the main mechanism for granting work permits to foreigners was intended to be:
• certification that the foreign worker would be paid no less than an equivalently skilled South African
• payment by the foreigner's employer of an annual fee (set by the Minister as a proportion of the foreigner's salary) into the National Training Fund.
This system was intended to ensure that a foreign worker would always be somewhat more expensive to employ than an equivalently skilled South African, in this way encouraging employers to hire South Africans whenever possible. On the other hand, if the employer were prepared to pay a premium for a foreign skilled worker, there would be no major additional bureaucratic obstacles to doing so.

**The new Immigration Act** sets up a system involving both quotas and skills certification.
The Department of Home Affairs in consultation with the Department of Trade and Industry and the Department of Labour is obliged to create annual numerical quotas based on skills and/or qualifications. Foreigners may apply for work permits under these quotas. The Department will assess whether each individual applicant fits a quota description. If not, or if the annual quota applicable to that foreigner has been exhausted, skills certification, as under the Aliens Control Act, may be applied for.

*CDE 2002*

One of the fundamental features of the legislation enacted was that there was doubt about the capacity of the state institutions to actually implement the legislation as it imposed additional responsibilities on an already ailing department. Despite submissions from the Department of Home Affairs and the Minister of Home Affairs to the effect that his department was facing massive capacity constraints, these were largely ignored; the proposed issuing of quotas is a perfect example of the above.

[159] Ibid, p13

**Table 7: DIFFERING ASSESSMENTS OF STATE CAPACITY: THE CASE OF SKILLS QUOTAS**

The joint trade union movement submission on the Immigration Bill recommended that work permits should be issued under a system of annual skills quotas. The submission suggests that in setting up annual skills quotas, the Department of Home Affairs should have to consult with the National Skills Authority, the Department of Trade and Industry and the Department of Labour.[160]

The Department of Labour did not respond to these suggestions. The attitude of the Department of Trade and Industry is probably reflected in Minister Erwin's unsuccessful attempt to have the quota system removed from the Bill entirely.[161] According to the Minister of Home Affairs, "government is ill-equipped to determine the skills our country needs... in the modern labour markets assessing immigration applications on the basis of skills is extremely difficult and demands massive administrative capacity.'[162]

The position of the Department of Home Affairs itself was also very clear:

"Quota systems were contemplated by the DHA between 1995 and 1998 and after long study they were disregarded because they do not meet South African needs; they require an enormous amount of administrative capacity to administer…. Moving to a system in which quotas are established to cover the entire field of human activities will require… monumental data gathering and processing capacity… government would need to employ a great deal of capacity which the DHA does not have…. One cannot even begin identifying how the system… would eventually work…."[163]

*Source: CDE 2002*

There were major significant changes witnessed between the legislation enacted and the draft prior to the committee's amendments. These visible amendments were made to critical areas of the legislation. One example of the changes to the Act as amended by the committee is the added focus on the skills quotas. Whereas they were originally only intended for limited application in exceptional circumstances in the original draft, and would not have required a full development of quota specifications for all types of applications, the new provision for applications to be within the limits of annually predetermined quotas of all different types of skills has now become the primary criterion in terms of which applications will be approved. This could basically mean that comprehensive skills categories, with associated criteria and specifications, would have to be developed to cover the entire range of possible applications, viewed as a huge and currently impossible task.[164]

On the face of it, there may be an alternative to the issuing of quotas. This is contained in clause 19(1) of the Act, which provides that a general work permit may be issued to a foreigner not falling within a category of a skills quota, provided that the Department can be satisfied that no local applicant is available with qualifications equivalent to those of the

[160] Joint Submission by COSATU, NACTU and FEDUSA to the Home Affairs Portfolio Committee on the Immigration Bill, 18 April 2002
[161] SAPA, ANC withdraws Immigration Bill amendment, 22 May 2002
[162] Minister Mangosuthu Buthelezi, Speech on the Second Reading of the Immigration Bill, National Assembly, 17 May 2002
[163] Department of Home Affairs, Comments on various options contained in the E version of the Immigration Bill, 15 May 2002
[164] Op Cit, South Africa's New Immigration Law: A salvageable instrument for economic growth?, p15

foreigner.[165] However, as noted above, this will once more add to a Department struggling with capacity constraints. The above simply presents more delays to skills acquisition as the Department would not simply take the employer's word that no such a person exists within the country, thus forcing the Department to attempt to verify the employer's claims. It is clear from the legislation finally approved that there has been a continuation of a centralised bureaucratic controls system, and less focus on the potential for outsourcing key services. While fear of immigration is common in places such as Europe as well, these are often aroused by less skilled immigration, and definitely not the type that the Bill envisages.

It is important to note that it is within the interests of South African businesses to have a ready supply of skilled labour from within the country, and this ensures that they will not arbitrarily seek to recruit skilled labour from the global market as a first choice. Recruiting labour from the global skills market will always be more expensive than recruiting domestically, thus negating views that company's will undermine South African skilled labour. These are fears that usually arise when low skilled labour is involved, and this is not the intention of the Bill as it focuses on highly skilled labour.

While noting improvements to the immigration policy from the Aliens Control Act, it is imperative that in future, debates surrounding the immigration policy of South Africa are contextualised and more focused, not confusing fears of low skilled migration with highly skilled migration. Ultimately, South Africa will have to continue to refine and improve its immigration policy and state institutions charged with implementing it, as this will play an incredibly positive role in sustained economic growth and job creation. Immigration policy is now even more elevated as it plays an intrinsic role within the GATS mode 4 negotiations in facilitating the movement of highly skilled labour on a global level.

One can expect more pressure towards the Department of Home Affairs and parliament of South Africa as advocates of a more liberal approach to immigration call for the liberalisation of South Africa's immigration policy. The formation of the WTO and the GATS Agreement must be placed within a global context whereby the theory of neoliberalism began to further assert itself with the fall of the Soviet Union at the end of the Cold War, and thus this theory has played a central role in WTO Agreements and global restructuring. It has a direct influence on the direction of the GATS and South Africa's commitments under it, while it

[165] Ibid

also affects the SADC Trade Protocol on the Movement of Persons. This thesis requires one to have a general understanding of the theory of neoliberalism in the contemporary world of international relations as it has influenced, and continues to influence the proposals for a more open stance to economic activity, including immigration policy.

# Chapter Six

## 6.1.) Neo-liberalism

Neo-liberalism as a theory of interpreting and understanding international relations has played an important role in establishing the current global economic order. It will also influence the nature of immigration policy making in nation states which seek to attract foreign skills. South African policy makers have increasingly come under more pressure to set a more liberal, market friendly immigration policy that will be suitable to attracting foreign skills that the country is either not producing, or is not producing enough to meet its current demands domestically, regionally and internationally. A more open, liberal immigration policy is thus proposed for the implementation of the GATS mode 4.

The purpose of this section is not to argue whether neo-liberalism is correct or incorrect, exploitative or empowering; this section is thus neither an endorsement of neo-liberalism, nor is it a critique of neo-liberalism. Instead, what one aims to achieve by analyzing neo-liberalism as an independent variable is to show what impact such a theory has had, and will continue to have on the GATS negotiations, especially under mode 4. It was stated in earlier chapters of the thesis that the GATS mode 4 negotiations have, and will continue to exert influence on trade departments, labour departments and even immigration departments globally, especially on developing countries outlook towards immigration in general, and skilled immigration more specifically. It is thus important that this thesis shows an overview of the theory of neo-liberalism as this assists one in better understanding the agreements taken by members of the WTO, while understanding the rationale behind the pressure being applied to South Africa's immigration policy framework.

The liberal school of economics became famous in Europe when Adam Smith, a Scottish economist, published a book in 1776 called *The Wealth of Nations*. He and others advocated the abolition of government intervention in economic matters. No restrictions on manufacturing, no barriers to commerce, no tariffs, he said; free trade was the best way for a nation's economy to develop. Such ideas were "liberal" in the sense of no controls.[166]

The debate between neo-realists and neo-liberals has dominated mainstream international

[166] Martinez Elizabeth, Garcia Arnoldo, "What is Neoliberalism: A Brief Definition for Activists", www.corpwatch.org, p1

relations scholarship in the United States since the mid-1980s. Two of the major US journals in the field, *International Organisation* and *International Security*, are dominated by articles that address the relative merits of each theory and its value in explaining the world of international politics. Neo-realism and neo-liberalism are the progeny of realism and liberalism, respectively. They are more than theories; they are paradigms or conceptual frameworks that define a field of study, limit our conception of reality, and define an agenda for research and policy-making.[167]

In the academic world, neo-liberalism generally refers to neo-liberal institutionalism or what is now called institutional theory by those writing in this theoretical domain. However, it is important that one notes that in the policy world, neo-liberal foreign policy promotes free trade or open markets and western democratic values and institutions. [168] It is important for one to distinguish between the two realms in which it is applied. When it is noted during the duration of this thesis that there has been great pressure applied to the South African government to liberalise its immigration policy in order to attract critical skills and knowledge workers from the global skills market, one is referring to the application of neo-liberalism in the policy framework.

In reality, neo-liberal foreign policies tend not to be as wedded to the ideals of democratic peace, free trade, and open borders. National interests take precedence over morality and universal ideals and, much to the dismay of traditional realists, economic interests are given priority over geopolitical ones.[169] While there are clear differences between neo-realism and neo-liberalism, these differences should not be exaggerated. Robert Keohane,[170] a neo-liberal institutionalist, has stated that neo-liberal institutionalism borrows equally from realism and liberalism. Both theories represent status quo perspectives and are what Robert Cox calls problem-solving theories. This would mean that both neo-realism and neo-liberalism address issues and problems that could disrupt the status quo, namely, the issues of security, conflict, and co-operation.[171]

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[167] Lamy, Steven L. "Contemporary mainstream approaches: neo-realism and neo-liberalism" in Baylis John, Smith Steve (eds), The Globalisation of World Politics: An Introduction to International Relations (2nd edition), New York, Oxford University Press, 2003, p183
[168] Ibid
[169] Ibid, p184
[170] Baldwin D (ed), Neo-realism and Neo-liberalism: The Contemporary Debate, Columbia University Press, New York, 1993
[171] Lamy, Steven L. Op Cit, p184

Neither theory advances prescriptions for major reform or radical transformation of the international system. Rather, they are system maintainer theories, meaning that adherents are generally satisfied with the current international system and its actors, values, and power arrangements. These theories address different sets of issues. In general, neo-realist theory focuses on issues of military security and war. Neo-liberal theorists focus on issues of cooperation, international political economy and, most recently, the environment. For neo-liberal institutionalists, the core question for research is how to promote and support co-operation in an anarchic and competitive international system. For neo-realists, the core research question is how to survive in this system.[172]

David Baldwin identified four varieties of liberalism that influence contemporary international relations: commercial, republican, sociological, and liberal institutionalism. The first, *commercial liberalism*, advocates free trade and a market or capitalist economy as the way towards world peace and prosperity. Today, this view is promoted by global financial institutions, most of the major trading states, and multinational corporations. *Republican liberalism* states that democratic states are more inclined to respect the rights of their citizens and are less likely to go to war with their democratic neighbours. In current scholarship, this is presented as democratic peace theory. These two forms of liberalism, commercial and republican, have been combined to form the core foreign policy goals of many of the world's major powers. This neo-liberal internationalism is promoted by the US and its G-8 partners in advancing their trade, aid, and security policies.[173] Taking into account the fact that South Africa has now been invited to a few meetings of the G-8, and may likely form a part of the expanded G-8 in future, it is evidently clear that South Africa has forged its foreign policy goals within an international atmosphere dominated by the framework of neo-liberalism, making this theory important to understanding South Africa's role and positions in the global community and multilateral structures.

It is argued that neo-liberalism has long been lurking in the wings of public policy. A small and exclusive club of passionate advocates-mainly academic economists, historians, and philosophers-had gathered together around the renowned Austrian political philosopher Friedrich von Hayek to create the Mont Pelerin Society (named after the Swiss spa where

[172] Ibid
[173] Ibid, p188

they first met) in 1947; the notables included the likes of Ludvig von Mises, the economist Milton Friedman, and even, for a time, the noted philosopher Karl Popper.[174]

The group's members depicted themselves as 'liberals' in the traditional European sense because of their fundamental commitment to ideals of personal freedom. The neo-liberal label signaled their adherence to those free market principles of neo-classical economics that had emerged in the second half of the nineteenth century (thanks to the work of Alfred Marshall, William Stanley Jevons, and Leon Walras) to displace the classical theories of Adam Smith, David Ricardo, and, of course, Karl Marx. Yet they also held to Adam Smith's view that the hidden hand of the market was the best device for mobilizing even the basest of human instincts such as gluttony, greed, and the desire for wealth and power for the benefit of all. Neo-liberal doctrine was thus deeply opposed to state interventionist theories, such as those of John Maynard Keynes, which rose to prominence in the 1930s in response to the Great Depression.[175]

Neo-liberal theory gained in academic respectability by the award of the Nobel Prize in economics to Hayek in 1974 and Friedman in 1976. Neo-liberal theory, particularly in its monetarist guise, began to exert practical influence in a variety of policy fields. During the Carter Presidency, for example, deregulation of the economy emerged as one of the answers to the chronic state of stagflation that had prevailed in the US throughout the 1970s. But the dramatic consolidation of neo-liberalism as a new economic orthodoxy regulating public policy at the state level in the advanced capitalist world occurred in the United States and Britain in 1979.[176]

In May of that year Margaret Thatcher was elected in Britain with a strong mandate to reform the economy. Under the influence of Keith Joseph, a very active and committed publicist and polemicist with strong connections with the neo-liberal Institute of Economic Affairs, she accepted that Keynesianism had to be abandoned and that monetarist 'supply-side' solutions were essential to cure the stagflation that had characterised the British economy during the 1970s. There was, she famously declared, 'no such thing as society, only individual men and women'-while she subsequently added, and their families.[177]

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[174] Harvey David, A Brief History of Neo-liberalism, Oxford University Press, New York, 2005, p20
[175] Ibid
[176] Ibid, p22
[177] Yergin D, Stanislaw J, The Commanding Heights: The Battle Between Government and Market Place that is Remaking the Modern World, Simon & Schuster, New York, 1999

According to theory, the neo-liberal state should favour strong individual private rights, the rule of law, and the institutions of freely functioning markets and free trade. These are the institutional arrangements considered essential to guarantee individual freedoms. The neo-liberal state is seen as one which should persistently seek out internal reorganisations and new institutional arrangements that improve its competitive position as an entity vis-à-vis other states in the global market. International agreements between states guaranteeing the rule of law and freedoms of trade, such as those now incorporated in the World Trade Organisation (WTO) agreements are critical to the advancement of the neo-liberal project on the global stage.[178]

The increasingly geographical mobility of capital was in part facilitated by the mundane but critical fact of rapidly diminishing transport and communication costs. The gradual reduction in artificial barriers to movement of capital and commodities, such as tariffs, exchange controls, or, even more simply, waiting times at borders (the abolition of which had dramatic effects in Europe) also played an important role. While there was, and still is considerable unevenness, the general thrust was towards standardisation of trade arrangements through international agreements that culminated in the World Trade Organisation that took effect in 1995. This greater openness to capital flow put pressures on all states to look to the quality of their business climate as a crucial condition for their competitive success. Since the degree of neo-liberalisation was increasingly taken by the IMF and the World Bank as a measure of a good business climate, the pressure on all states to adopt neo-liberal reforms ratcheted upwards.[179]

With free trade and the mobility of capital can be attached the increasing need for the freer movement of skilled labour to follow the mobility of capital. With migration patterns largely reflecting that skilled workers are moving from lower income countries to more high income countries, it became evident that the long delays experienced at national borders for those entering or leaving constituted a barrier to trade, thus calling on countries such as South Africa to correct this. Neo-liberalism demands the free movement of capital and in an increasingly growing global knowledge based economy, where skills are in greater demand globally, there is growing pressure for immigration laws to reflect the growing demand for

[178] Harvey David, Op Cit, p64-65
[179] World Bank, World Development Report 2005: A Better Investment Climate for Everyone, Oxford University Press, New York, 2004

skills in order to absorb them, or export them on a temporary basis.

It has been stated that it was perhaps Bill Clinton and Tony Blair who, from the centre-left, did the most to consolidate the role of neo-liberalism both at home and abroad, with the formation of the WTO being the high point of this institutional thrust: the WTO set neo-liberal standards and rules for interaction in the global economy.[180] With South Africa having accepted important aspects of the neo-liberal framework in international relations, it is clear that its own immigration policy has been affected as it seeks to attract more foreign skills into the country. Institutions such as the CDE have been instrumental in advocating for a more liberal immigration policy for South Africa, a stance no doubt affected by the wider trends of neo-liberalism.

It has been established that the theory of neo-liberalism has had, and will continue to have an overwhelming impact on South Africa's policy framework. The concessions made by South Africa within the WTO under the General Agreement on Trade in Services (GATS) have an impact on trade, labour mobility and thus immigration policy as the global trend suggests more people moving temporarily rather than permanently. Yet this increased movement of skilled labour must be governed through immigration legislation in individual countries in order to better facilitate the liberalisation of highly skilled labour. Neo-liberalism has consistently concerned itself with destroying all known and unknown barriers to trade, which, in a service based economy also translates into removing barriers at the borders, especially for highly skilled labour. Thus it is clear that the theory of neo-liberalism will continue to exert an influence on reforms to the South African immigration framework.

Taking into account the increased mobility of human capital throughout the world, especially of highly skilled labour, it further becomes important to understand terms such as 'globalisation', and the 'globalisation of labour' in order to better understand the complexity of the GATS, and all that it entails. Understanding the process of globalisation assists in alleviating certain fears of a brain drain. As we understand more that the movement of a country's skilled labour to other countries does not necessarily constitute a brain drain, policy makers can better structure their strategies in ensuring that South African expatriates can continue to benefit the growth of the country even while abroad. Policy makers can also further understand that through globalisation, South Africa has the conditions to turn what

[180] Harvey David, Op Cit, p93

was traditionally referred to as a brain drain into a brain circulation. Regardless of what one's stance is on globalisation, what remains clear is that it will allow South Africa to better utilise this process in alleviating common fears of a skilled exodus.

# Chapter Seven

## 7.1.) Globalisation

Whenever a new word becomes popular, it is often because it captures an important change that is taking place in the world. A new idea is needed to describe a new condition. An example is when philosopher Jeremy Bentham coined the term 'international' in the 1780s, it caught hold because it highlighted a deepening reality of his day, namely, the rise of nation states and of cross border transactions between them. People had not spoken of 'international relations' before this time, since humanity had not previously been organised into national communities governed by territorial states.[181]

Two hundred years later, starting in the 1980s, talk of globalisation became rife. The term was quick in penetrating standard vocabulary-not only in academic circles, but also among journalists, politicians, business people, advertisers, and entertainers. As this thesis itself does, it has become common to speak of global markets, global communications, global conferences, global threats, and so on. During the late twentieth century students of international relations and other disciples began to examine questions of global governance, global environmental change, global gender relations, global political economy, and more.[182]

There exist a number of general usages of the word 'globalisation' which can be distinguished. For example, the word has been taken to mean *internationalisation,* that is, an intensification of cross-border interactions and interdependence between countries. A second usage has treated globalisation as *liberalisation,* that is, a process of removing government imposed restrictions on movements between countries in order to create an 'open', 'integrated' world economy. A third conception has viewed globalisation in terms of *universalisation,* that is, the spread of various objects and experiences to people at all corners of the earth. Fourth, many people, especially critics of cultural imperialism have defined globalisation as *westernisation,* especially in an Americanised form. Still others have identified globalisation as *deterritorialisation,* that is, a shift in geography whereby territorial places, territorial distances and territorial borders lose some of their previously overriding influence. These five conceptions overlap to some extent, only differing in terms of where

[181] Scholte, Jan Aart, "The globalisation of world politics" in Baylis John, Smith Steve (eds), The Globalisation of World Politics: An Introduction to International Relations (2nd edition), New York, Oxford University Press, 2003, p13
[182] Ibid, p14

they focus more.[183]

Most of the interpretations of globalisation affect how strategists view the notion of a brain drain as skilled labour leaves South Africa to occupy posts and provide services in countries such as Australia, New Zealand, Canada, the UK and the USA. If globalisation truly ensures that the barriers caused by physical boundaries and constraints are removed almost instantly, then one can expect a South African expatriate to simply keep in touch and maintain contact with family members and friends in South Africa through the utilisation of telecommunication services and the internet. One can also expect that particular expatriate to be able to make a simple monetary transaction back to his/her South African family and friends. Such a scenario alleviates the common fear that South African expatriates, who often have readily available access to technology will be lost forever to South Africa and its emerging economy.

To a large extent, country locations and in particular the boundaries between territorial states are in some important senses becoming less central to our lives. Globalisation is thus an ongoing trend whereby the world has-in many respects and at a generally accelerating pace-becoming one relatively borderless social sphere. Territorial spaces remain significant, to be sure, but the geography of world politics is now no longer reducible to territoriality.[184] The box below can be seen as examples of the ways in which different people conceptualise the process of globalisation; these offer interesting insight to an ongoing topic that is sure to remain central as emerging markets such as South Africa are forced to make the necessary adjustments in a period of great global transition:

[183] Ibid,
[184] Ibid, p15

**Table 8: Globalisation: making the world a single place**[185]

'Globalisation refers to all those processes by which the peoples of the world are incorporated into a single world society, global society.'

(Martin Albrow, 1990)

'Globalisation can…be defined as the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa.'

(Anthony Giddens, 1990)

'Die Globalisierung…global networking that has welded together previously disparate and isolated communities on this planet into mutual dependence and unity of "one world".'

(Emanuel Richter, translated from German)

'The characteristics of the globalisation trend include the internationalizing of production, the new international division of labour, new migratory movements from South to North, the new competitive environment that accelerates these processes, and the internationalizing of the state…making states into agencies of the globalizing world.'

(Robert Cox, 1994)

'The world is becoming a global shopping mall in which ideas and products are available everywhere at the same time.'

(Rosabeth Moss Kanter, 1995)

'Globalisation is what we in the Third World have for several centuries called colonisation.'

(Martin Khor, 1995)

'Globalisation can be thought of as a process (or set of processes) which embodies a transformation of the spatial organisation of social relations and transactions.'

(David Held et al, 1999)

[185] Ibid

**7.2.) Aspects of Globalisation**

Globalisation has recently been evident in everyday thinking. People living at the start of the 21st Century are aware of the world as a single place to an extent that earlier generations were not. It is sometimes argued that perhaps the greatest spur to this shift in consciousness came in 1966, with the production of the first photographs taken from outer space showing planet Earth as one location. "Today we live not only in a country; in very direct and immediate senses we also live in the world as a single place."[186]

Jan Aart Scholte argues that globalisation did not figure continually, comprehensively and intensely in the lives of most of humanity until around the 1960s. It is only since the 1960s that the world has acquired most of the late 1990s figures of 850 million telephone connection points, 1.1 billion television receivers, 60 000 trans-border corporations, 16 500 trans-border citizens associations, US$ 1.5 trillion in foreign exchange transactions every day, and nearly 1.5 billion passengers per year on scheduled airline flights.[187] However, it is especially important for a scholar of international relations to not fall into the fallacy of oversimplifying or exaggerating the extent and process of globalisation. Some international commentators have fallen into this trap, and thus have failed to really show the characteristics of globalization. Nation states will have to adapt their thinking to better adapt to the process of globalisation. Some international commentators even go as far as dismissing notions of globalisation as simply mythology; thus it is important to desist from making a number of assumptions about globalisation, as they are outlined below.

Unlike oversimplified notions of globalisation state, globalisation has not been experienced everywhere to the same extent. Instead, phenomena such as global companies and electronic mail have been mainly concentrated in the so-called North of the world. In addition, globalisation has generally affected city dwellers, professional people, and younger generations relatively more than other groups, although the process has left no one completely untouched. Secondly, one may justifiably argue that globalisation is not the straightforward process of cultural homogenisation that some accounts would have us believe; globalisation has in no way brought an end to cultural diversity. Thirdly, globalisation has not eliminated the significance of territoriality in world politics; it has

[186] Ibid, p16
[187] Ibid, p16-17

instead produced different dimensions of geography and created new spaces through the use of technology.[188]

Statements in the previous paragraph provide opportunities for developing countries such as South Africa. It must be acknowledged indeed that the phenomenon of globalisation has not affected everyone in the same manner. Globalisation mainly affects city dwellers, professionals and highly skilled labour, giving them more access to technology, cheaper travel costs and more access into the global network of nation states. What this says is that the same people targeted by the General Agreement on Trade in Services (GATS) mode 4 are the same people most affected by globalisation.

Unlike low skilled workers and illegal immigrants, who are generally more difficult to trace and track down, high skilled workers are often in positions of influence and are thus easily contacted, working towards the favour of the intentions of the GATS mode 4, while alleviating some of the common fears held about the brain drain. This is not to argue that globalisation is the cure to the skills shortage and brain drain that South Africa in particular faces in that, conversely, the process of globalisation can even exacerbate the skills shortage and brain drain as highly skilled workers from South Africa get more absorbed into the global economy. What this thesis does argue for is a more proactive stance rather than a reactive stance. This thesis advocates for a more forward looking approach to the brain drain and skills shortage, allowing for more flexibility and allowing South Africa to make good use of the process of globalisation to serve its national, regional, continental and global interests.

In the same way that South African expatriates are not really too far from home when abroad, the same principle can be applied to foreign skilled labour as South African companies seek more leverage in recruiting skilled labour from abroad. A Zimbabwean, Kenyan, Ethiopian, Ghanaian or Nigerian engineer, doctor, architect or professor are still given the opportunity to overcome the physical barriers imposed by distance through the use of technological innovations, while also being able to wire money through remittances back home, and this same principle applies also to a European or Indian skilled worker.

This principle is much more appropriately applied to the movement of highly skilled labour on a temporary basis as it once more reinforces the suggestion that we should not necessarily

[188] Ibid, p17-19

fear the movement of our skilled labour; instead we must use the instruments of globalisation to meet South Africa's and the developmental goals of the African continent, while promoting greater integration through the better management of the movement of skilled labour. South Africa must use the conditions presented by globalisation to maintain links with its expatriates, while also recruiting skilled labour from the global labour market, especially within the African continent. Any sort of hesitation with recruiting skilled labour from Africa especially will lead to that same knowledge worker being recruited by European and North American demands for skilled labour.

### 7.3.) Re-organizing the Role of the State: The End of the Westphalian Order?

"Before the onset of intensified globalisation several decades ago, world politics was chiefly organised on the basis of the so-called Westphalian system. The name is derived from the Peace of Westphalia, signed in 1648, which contains an early official statement of the core principles that came to dominate world affairs during the subsequent three hundred years."[189]

"The Westphalian state was moreover sovereign, that is, it exercised comprehensive, supreme, unqualified, and exclusive control over its designated territorial domain. Comprehensive rule meant that, in principle, the sovereign state had jurisdiction over all affairs in the country. Supreme rule meant that, recognizing no superior authority, the sovereign state had the final say in respect of its territorial realm. Unqualified rule meant that, although Westphalian times witnessed periodic invasions and occasional debates about possible duties of humanitarian intervention, on the whole the state's right of total authority over its territory was treated as sacrosanct by other states. Finally, exclusive rule meant that sovereign states did not share competences in regard to their respective domestic jurisdictions. There was no 'joint sovereignty' among states; 'pooled sovereignty' was a contradiction of terms."[190]

Even as one reviews the nature of the Apartheid state, one draws on parallels with the Westphalian state in that the state controlled virtually all sectors of the public space, especially controlling the movement of people very closely. Immigration policy at this time was highly centralised and was treated as a security issue, heavily restricting movement, not only movement of South Africans going outside of the country, and people seeking to enter

[189] Ibid, p20
[190] Ibid

South Africa, but movement was even restricted within South Africa, emphasizing the high levels of restrictions. This attitude was reflected in the Aliens Control Act, which could no longer prevail in a changing domestic and international context. South Africa presents a perfect example of the changing role of the state in international relations.

It has overwhelmingly become evident that, owing partly to the rapid rise of globalisation, the Westphalian system is already past its due date, while some have called this the 'end of sovereignty.' While the state apparatus clearly persists in modern times, and while some states have actually expanded and increased their capacity to intervene in the public sphere, it is clear that some of the core Westphalian norms are no longer in operation, and as a result of globalisation will not find their way back into contemporary international relations.

"Under conditions of contemporary globalisation, governance in terms of supreme and exclusive territorial state authority has become utterly impracticable. No amount of institution building and unilateral legislation will allow a state to achieve absolute control of its realm. Indeed, many new post-colonial states-established during the recent time of large scale globalisation have never been sovereign."[191]

If one is to take this statement to heart, then one would have to consider that the new South Africa has never actually even received the opportunity to exercise complete sovereignty, which is a statement that does have its merits. It has meant that states have to be more cautious in managing the movement of persons across their borders, having to allow for more flexibility, except where national security is threatened. It is clear that globalisation has altered the role of the state, and thus South Africa has to look into the debate of the skills shortage and brain drain within the context of globalisation. South Africa will have to separate the debate surrounding illegal immigration, which is harmful to any country if unmonitored, from the legal migration of skilled workers who can provide invaluable skills and an injection into the South African economy.

[191] Ibid, p23

**7.4.) The Rise of the Suprastate**

Permanent multilateral institutions are certainly not new to international relations in recent decades, but their number, size, scope, and impact has greatly expanded with contemporary accelerated globalisation.[192] This has had implications for nation states in that they've had to diffuse some of their power, giving it to the 'suprastate'. This has meant that decisions taken at a global level now have huge varying effects on national policy making in general. A perfect example is the effects of the GATS mode 4 on national policy spaces, as discussed above.

The growth of suprastate regulation covers a very wide spectrum; in the field of macro-economic policy, for instance, the Organisation for Economic Co-operation and Development (OECD) has since the 1960s issued influential guidelines on a whole host of matters, including new information technologies, environmental problems, taxation, and trans-border corporations. Since 1979 the International Monetary Fund (IMF) and the World Bank have supplemented their already significant stabilisation and development functions with far-reaching structural adjustment programmes in almost 100 countries. The IMF has also conducted detailed annual policy surveillance of all its member states. The WTO, established in 1995, covers a much wider range of activities with substantially greater powers than its forerunner, the General Agreement on Tariffs and Trade (GATT).[193]

The impact of global decisions by global institutions will continue to affect the national policy framework of South Africa, and thus the country must adapt in order to remain prepared and not be caught off guard by any global changes. While not being able to control everything within their territory, states may now retain an element of flexibility within their policy framework in order to adjust to the necessary changes affecting it.

It has been suggested that globalisation has changed, and continues to change, the nature of world politics. The character of those changes is much debated. Analysts are deeply divided when it comes to definitions, measurements, chronologies, explanations, prognoses, and normative assessments of globalisation. It has also been suggested that contemporary history is witnessing a significant shift in the spatial character of politics. In addition to the old geography of territorial places, distances, and borders, we now have an extensive

[192] Ibid, p24
[193] Ibid, P25

supraterritorial dimension in which certain circumstances are effectively placeless, distanceless, and borderless.[194]

What this section has shown clearly is that the world is in a transition phase of great change and adaptation, and the process of globalisation has merely assisted in globalizing this process of change. One may say that since the industrial economies are now moving from industrial economies to knowledge based economies, having profound influences on developing countries, and South Africa in particular, the policy framework globally has shifted greatly to accommodate the ushering in of the knowledge economy. One cannot be blind to the strong interests involved in international relations by nation states, especially by the industrialised economies through entrenched economic interests. The fact that services now constitutes a significant portion of the global economy is reflected in the changing nature of the role of the WTO to accommodate trade related aspects such as services and intellectual property. These were crafted by developed countries largely in their own interests and under heavy pressure from their evolving and growing private sector who saw the huge potential for privatisation of services in developing countries. The challenge for developing countries is to articulate and get concessions in areas they view in their own advantage, such as the movement of highly skilled labour on a temporary basis.

With the emphasis of a knowledge economy being on highly skilled labour, and with neo-liberalism opening up the markets for greater free movement of goods and services through institutions such as the WTO, it is clear that the emergence of a knowledge based economy has affected how developing countries respond to globalisation and neo-liberalism itself. It is imperative for one to understand what the knowledge economy entails, and what kind of effects it has had on GATS mode 4, debates surrounding the brain drain, and immigration policy, while also knowing what kind of impacts it is having on the process of globalisation and the theory of neo-liberalism, especially since it is at the center of the global change and refocus towards highly skilled labour.

[194] Ibid, p30

# Chapter Eight

## 8.1.) Conclusion and Recommendations

The thesis has sought to add to the epistemology of the topic, while determining the impact of temporary migration of skilled labour on both developed and developing country labour markets. The thesis has also sought to find out who the brain drain benefits and whether mode 4 contributes to the brain drain in developing countries. Taking into account the potential for far reaching measures within the GATS mode 4 negotiations, one had to determine the links between mode 4 and the sensitive issue of how countries regulate the entry of foreigners into their territory; these are all central issues to the thesis.

The thesis has shown that trade and migration are now intrinsically linked as rapid globalisation and a shift towards a knowledge based economy takes place mainly among the industrial economies of the world, thus forcing developing countries such as South Africa to adapt to the changing climate. With the trade in services now occupying a greater role in both developed and developing countries, it came as no surprise that the WTO went beyond its traditional mandate of facilitating the trade in goods to influencing the trade in services; this was done through the General Agreement on Trade in Services (GATS). While more commitments are evident under the other modes of supply, especially mode 3, the thesis has shown that as members of the WTO make further commitments under mode 3 and the other modes of supply, they will be compelled to liberalise the 'movement of natural persons' for the purposes of providing services. This is an important development as skilled human capital is the prerequisite in meeting the goals of the other modes of supply.

Fears and misperceptions have been invoked by the potential that lies in the mode 4 negotiations, as nation states feel as though their sovereignty is being intruded by the resolutions of the GATS. There have been a number of factors limiting the potential of the GATS mode 4 negotiations; among these has been the fear that mode 4 may increase the skilled exodus being experienced by most developing nations as their capacity to produce skilled labour increases. Another fear has been that which relates to immigration as a developmental issue, rather than a security issue as traditionally conceptualised.

Since the days of the treaty of Westphalia, nation states have exercised tight security over their borders, making immigration a highly emotional and politicised issue. However, this

thesis has assisted in alleviating some of the traditional fears surrounding the brain drain and immigration, thus contributing to a better understanding of the above issues in a modern context. The research has shown that while nation states worry about a brain drain as liberalisation of skilled labour continues, the context has now significantly changed as research shows that more and more skilled labour migrate temporarily rather than permanently in the modern era. These findings have generally come to the fore in the post Cold War era, which saw a rapid rise in neo-liberalism and a more open ideology to commerce. The nature of mode 4 also means that nation states in the developing world can utilise it to their advantage, as the emphasis is on temporary migration and not permanent migration.

While negotiations continue within the Trade in Services Committee of the WTO, one cannot expect significant commitments under the multilateral body at the current moment, and thus the focus should not only be located within the GATS, but in regional bodies such as the SADC, who have adopted 'open regionalism' as a way of meeting their regional goals. SADC and other regional trade agreements must first familiarise themselves with the issues under the GATS before significant agreements can be reached in regards to mode 4 on a multilateral level. This, in theory is also supposed to assist regional bodies in that they will be allowed to give their neighbouring service providers preference over skills situated in other nations of the North, and this has been covered by Article 5 of the GATS. Engaging the diaspora has become a critical part of foreign policy, and this community has been presented as strategic allies rather than constituting a loss to South Africa and the developing world.

Building an effective knowledge economy in South Africa will require effective skills and knowledge transfer, which becomes the responsibility of the diaspora community as they have direct access to advanced technology and global skills to bring back to their countries of origin. Globalisation, while not erasing traditional notions of territory and time, has created new spaces and conceptions of time, thus reshaping the way in which nation states conceptualise what a brain drain constitutes.

It has been important for this thesis to highlight that developed countries are now moving towards a post industrial economy, otherwise called the knowledge economy. The knowledge economy, as mentioned has a direct effect on the process of globalisation in that the process of globalisation will now be engineered to serve the needs of the knowledge economy, which among other things, is highly skilled labour or knowledge workers.

The knowledge based economy also has an effect on the application of the theory of neo-liberalism in that it will compel neo-liberalism and its advocates to address the sectors most in need of neo-liberal orientation in order to serve the interests of a knowledge economy being driven by the powerful industrialised economies. As the mobility of skilled labour is enhanced through liberalising the mode 4 service suppliers, one has found that this has been geared to serve a knowledge economy in search of skilled labour. Thus one can confidently assert that the knowledge economy affects both globalisation and the theory of neoliberalism in its practical application. While countries such as South Africa debate notions of a skills shortage and brain drain, one should acknowledge the fact that South Africa is not exclusive in this matter; it is in fact the whole global economy which faces a skills shortage in sectors such as services.

While developed nations are pushing vigorously for the liberalisation of all services in the global economy, developing nations feel heavily threatened by what this would imply for growth and their ability to retain and attract skilled workers that have the ability to contribute to the economy. As global competition for scarce skills continues to grow, it has become imperative for developing nations to set policies that will enable economic and social growth, while growing the skills base from within; and this is the challenge that South Africa faces. President of the Republic, Thabo Mbeki has openly spoken of the need to engage with the process of globalisation in a manner that will not marginalise developing nations, but in an innovative manner where developing nations can gain benefits from the process.

Although many have been skeptical towards the process of globalisation, not too many critics of globalisation have come with an alternative; thus the need to find effective means to engage effectively with the process. Globalisation is not new to international relations; however, what is new is the rapidity at which it is taking place. The knowledge economy calls for innovation in a system of constant change, and this should thus be the emphasis for South Africa in building a knowledge based economy in the midst of globalisation. It has been shown that knowledge based economies have the ability to grow consistently, while attracting skilled workers as the quality of life within the country improves. This effectively turns a brain drain into a brain gain as knowledge economies tend to attract knowledge workers. It is also true that knowledge economies invest heavily in their human capital, thus growing and strengthening the skills base from within.

South Africa will have to take a proactive approach, instead of being reactionary in terms of the brain drain. This means building capacity from within, while improving living conditions and the quality of life within the country for the citizens, thus creating conducive conditions which allow for productive human capital. While results will not be seen and felt immediately, the most effective way to combat a skills shortage is to invest in quality education, thus growing the knowledge base and skills base from within; this presents a process which takes time and patience. It is important that a parallel process of attracting skilled labour from the skills market abroad is equally being implemented in the short to medium period. It should be made unequivocally clear that it is important for South Africa to adopt a more proactive stance on recruiting African skills into areas of shortage; such a strategy should be seen in the context of African integration. Plenty of African skills get absorbed into North America and Europe to occupy critical positions, and it is this outflow that South Africa must stem through absorbing those skills into the South African market. Unless there is increased mobility within the continent, regional integration remains merely a distant dream.

For the last two hundred years, neo-classical economics has recognised only three factors of production: land, labour and capital. This is now changing, as information and knowledge replaced the former as the primary wealth-creating assets. In addition, technological developments in the 20th century have transformed the majority of wealth-creating work from physically-based to "knowledge-based." Technology and knowledge are now the key factors of production. With increased mobility of information and the global work force, knowledge and expertise can be transported instantaneously around the world, and any advantage gained by one company can be eliminated by competitive improvements overnight. The only comparative advantage a company will enjoy will be its process of innovation--combining market and technology know-how with the creative talents of knowledge workers to solve a constant stream of competitive problems--and its ability to derive value from information. We are now an information society in a knowledge economy where knowledge management is essential.[195]

[195] "Knowledge Economy", www.enterweb.org, July 19th 2005, p1

***"It is not the strongest of the species that survive, nor the most intelligent, but the ones most responsive to change.***
***— Charles Darwin[196]***

In the context of this thesis, these are significant words in that they signal what an emerging nation such as South Africa must encompass. The world is now in a constant state of change, and it is those nation states which are able to best adapt to the change which can prosper in the new global economy. South Africa will have to improve and address a number of matters if it is to truly make a successful transition towards a knowledge based economy, especially when one takes into account the fact that it is facing a deficiency of knowledge workers and a number of important pillars that are essential to forming an effective knowledge economy. As the thesis has proposed, a new mindset and attitude is critical for South Africa to position itself within the new global economy, as reflected by the table below.

### 8.2.) South Africa's Domestic and Global Strategy: A New Mindset

**"A Change in Mindset: From the Old Economy to the New Economy"**

**Table 9: Beliefs about Economic Development in the Old and New Economies**[197]

| In the Old Economy people believed that: | In the New Economy people believe that: |
|---|---|
| Being a cheap place to do business was key. | Being a place rich in ideas & talent is key. |
| Attracting companies was key. | Attracting educated people is key |
| A high quality physical environment was a luxury that stood in the way of attracting cost conscious businesses. | Physical and cultural amenities are crucial to attracting knowledge workers. |
| Regions won because they held a fixed competitive advantage in some resources. | Regions prosper if organisations and individuals have the ability or skill to learn and adapt. |
| Economic development was government led. | Only bold partnerships among business, government, and the non profit sector can bring about change. |

[196] Ibid, p5
[197] Ibid

Change is constant, and South African strategists must learn to master that change effectively. The research topic explored by this thesis presents researchers with an opportunity to further do more focused research into the area of trade and migration. It is hoped that as more South African scholars realise the importance and relevance of this research topic to their everyday lives, they will be able to contribute from a more informed position on some of the aspects raised by the thesis. It is also hoped that all sectors of government and the private sector will be able to reconcile their perceived differences in the interests of South Africa and its growing population and economy. Many gaps still remain in this research area. However, they can only be realised as researchers do more research into the area of study, and thus one hopes that these identified gaps will provide a niche for young researchers to add to a growing area of research.

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# Annexures

## ANNEX 1: NON – TARIFF BARRIERS IN SADC

| Activity | SADC Member States | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ANGOLA | BOTSWANA | LESOTHO | MALAWI | MAURITIUS | MOZAMBIQUE | NAMIBIA | SA | SWAZILAND | TANZANIA | ZAMBIA | ZIMBABWE |
| Notification of NTB national contact points | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Core NTBs | | | | | | | | | | | | |
| Cumbersome Customs procedures and documentation | 5 | 2 | 3 | 3 | 1 | 5 | 3 | 2 | 3 | 4 | 3 | 3 |
| Cumbersome import licensing/permits | 4 | 3 | 2 | 3 | 2 | 3 | 3 | 2 | 2 | 2 | 3 | 3 |
| Cumbersome export licensing/permits | 3 | 2 | 2 | 2 | 3 | 3 | 2 | 1 | 2 | 2 | 2 | 2 |
| Import and export quotas | 1 | 2 | 2 | 1 | 2 | 2 | 2 | 3 | 2 | 1 | 1 | 2 |
| Unnecessary import bans/prohibitions | 1 | 3 | 1 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 1 |
| Other NTBs | | | | | | | | | | | | |
| Restrictive charges not being import or export duties | 3 | 1 | 1 | 1 | 2 | 3 | 2 | 1 | 1 | 1 | 1 | 1 |
| Restrictive single-channel marketing | 4 | 2 | 1 | 2 | 3 | 2 | 2 | 1 | 3 | 2 | 1 | 3 |
| Prohibitive transit charges | 3 | 3 | 1 | 2 | 1 | 4 | 2 | 2 | 1 | 3 | 2 | 2 |
| Cumbersome visa requirements | 4 | 3 | 3 | 2 | 2 | 3 | 2 | 3 | 2 | 2 | 2 | 2 |
| Restrictive technical regulations | 1 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 2 | 3 | 2 | 2 |

Scale 1-5 5.Very Serious; 4.Serious; 3.Moderate; 2.Low; 1. Nil

Source: Imani Development Austral Pty Ltd.

## ANNEX 2: MODE 4 GATS COMMITMENTS BY SADC COUNTRIES

| Country | Market Access Limitations | National Treatment Limitations |
|---|---|---|
| Angola | No commitment | No commitment |
| Botswana | ABC | DE |
| DRC | No commitment | No commitment |
| Lesotho | ABC | None |
| Madagascar | - | - |
| Malawi | ABC | D |
| Mauritius | A | D |
| Mozambique | No commitment | No commitment |
| Namibia | AB | No commitment |
| South Africa | ABE | D |
| Swaziland | No commitment | No commitment |
| Tanzania | No commitment | No commitment |
| Zambia | ABC | D |
| Zimbabwe | ABC | D |

A= limited access to highly skilled persons only; B= limited to employees of companies operating in the country; C= development of locals required; D= no discrimination for those permitted to enter under market access commitment only; E= professionals need to be domestically registered.

Source: From Hansohm D et al., 'State of trade in services and service trade reform in Southern Africa', NEPRU Research Report no. 31. Windoek: Namibia Economic Policy Research Unit, May 2005, at //www.nepru.org.na/index.php?id=126

**ANNEX 3: THIRD PROTOCOL TO THE GATS[198]**

WORLD TRADE ORGANISATION

**S/L/12**

24 July 1995
(95-2166)

## Trade in Services

# THIRD PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organisation whose Schedules of Specific Commitments to the General Agreement on Trade in Services relating to movement of natural persons are annexed to this Protocol,

***Having*** carried out negotiations under the terms of the Ministerial Decision on Negotiations on Movement of Natural Persons adopted at Marrakesh on 15 April 1994,

***Having*** regard to the results of such negotiations,

*Having regard* to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,

***Agree*** as follows:

1. The commitments on Movement of Natural Persons annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace or supplement the relevant entries on movement of natural persons in the Schedule of Specific Commitments of that Member.

2. This Protocol shall be open for acceptance, by signature or otherwise, by Members concerned until 30th June 1996.

3. This Protocol shall enter into force on the 30th day after 1st January 1996 for those Members which have accepted it by that date, and for those accepting it after that date, which date shall not be beyond 30th June 1996, it shall enter into force on the 30th day following the date of each acceptance. If a Member whose schedule is annexed to this Protocol does not accept it by that date, the matter shall be referred to the Council for Trade in Services for consideration and appropriate action.

4. This Protocol shall be deposited with the Director-General of the World Trade Organisation. The Director-General shall promptly furnish to each Member a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.

5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this -- day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

[198] www.wto.org

**Annex 4: SERVICES SECTORAL CLASSIFICATION LIST[199]**

**WORLD TRADE ORGANISATION**

RESTRICTED

**MTN.GNS/W/120**
10 July 1991

(98-0000)

Special Distribution

## SERVICES SECTORAL CLASSIFICATION LIST

Note by the Secretariat

The secretariat indicated in its informal note containing the draft classification list (24 May 1991) that it would prepare a revised version based on comments from participants. The attached list incorporates, to the extent possible, such comments. It could, of course, be subject to further modification in the light of developments in the services negotiations and ongoing work elsewhere.

_____

[199] www.wto.org

SERVICES SECTORAL CLASSIFICATION LIST

| SECTORS AND SUB-SECTORS | | CORRESPONDING CPC |
|---|---|---|
| 1. | BUSINESS SERVICES | Section B |
| A. | Professional Services | |
| a. | Legal Services | |
| b. | Accounting, auditing and bookeeping services | 862 |
| c. | Taxation Services | 863 |
| d. | Architectural services | 8671 |
| e. | Engineering services | 8672 |
| f. | Integrated engineering services | 8673 |
| g. | Urban planning and landscape architectural services | 8674 |
| h. | Medical and dental services | 9312 |
| i. | Veterinary services | 932 |
| j. | Services provided by midwives, nurses, physiotherapists and para-medical personnel | 93191 |
| k. | Other | |
| B. | Computer and Related Services | |
| a. | Consultancy services related to the installation of computer hardware | 841 |
| b. | Software implementation services | 842 |
| c. | Data processing services | 843 |
| d. | Data base services | 844 |
| e. | Other | |
| C. | Research and Development Services | |
| a. | R&D services on natural sciences | 851 |
| b. | R&D services on social sciences and humanities | 852 |
| c. | Interdisciplinary R&D services | 853 |
| D. | Real Estate Services | |
| a. | Involving own or leased property | 821 |
| b. | On a fee or contract basis | 822 |
| E. | Rental/Leasing Services without Operators | |
| a. | Relating to ships | 83103 |
| b. | Relating to aircraft | 83104 |
| c. | Relating to other transport equipment | 83101+83102+ |
| d. | Relating to other machinery and equipment | 83106-83109 |
| e. | Other | |
| F. | Other Business Services | |
| a. | Advertising services | 871 |
| b. | Market research and public opinion polling services | 864 |
| c. | Management consulting service | 865 |
| d. | Services related to man. consulting | 866 |
| e. | Technical testing and analysis serv. | 8676 |
| f. | Services incidental to agriculture, hunting and forestry | 881 |
| g. | Services incidental to fishing | 882 |

| | | |
|---|---|---|
| h. | Services incidental to mining | 883+5115 |
| i. | Services incidental to manufacturing | 884+885 |
| j. | Services incidental to energy distribution | 887 |
| k. | Placement and supply services of Personnel | 872 |
| l. | Investigation and security | 873 |
| m. | Related scientific and technical consulting services | 8675 |
| n. | Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) | 633+ 8861-8866 |
| o. | Building-cleaning services | 874 |
| p. | Photographic services | 875 |
| q. | Packaging services | 876 |
| r. | Printing, publishing | 88442 |
| s. | Convention services | 87909* |
| t. | Other | |
| 2. | COMMUNICATION SERVICES | |
| A. | Postal services | 7511 |
| B. | Courier services | 7512 |
| C. | Telecommunication services | |
| a. | Voice telephone services | 7521 |
| b. | Packet-switched data transmission services | 7523** |
| c. | Circuit-switched data transmission services | 7523** |
| d. | Telex services | 7523** |
| e. | Telegraph services | 7522 |
| f. | Facsimile services | 7521**+7529** |
| g. | Private leased circuit services | 7522**+7523** |
| h. | Electronic mail | 7523** |
| i. | Voice mail | 7523** |
| j. | On-line information and data base retrieval | 7523** |
| k. | electronic data interchange (EDI) | 7523** |
| l. | enhanced/value-added facsimile services, incl. store and forward, store and retrieve | 7523** |
| m. | code and protocol conversion | n.a. |
| n. | on-line information and/or data processing (incl.transaction processing) | 843** |
| o. | other | |
| D. | Audiovisual services | |
| a. | Motion picture and video tape production and distribution services | 9611 |
| b. | Motion picture projection service | 9612 |

*The (*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

| | | |
|---|---|---|
| c. | Radio and television services | 9613 |
| d. | Radio and television transmission services | 7524 |
| e. | Sound recording | n.a. |
| f. | Other | |
| E. | Other | |
| 3. | CONSTRUCTION AND RELATED ENGINEERING SERVICES | |
| A. | General construction work for buildings | 512 |
| B. | General construction work for civil engineering | 513 |
| C. | Installation and assembly work | 514+516 |
| D. | Building completion and finishing work | 517 |
| E. | Other | |
| 4. | DISTRIBUTION SERVICES | |
| A. | Commission agents' services | 621 |
| B. | Wholesale trade services | 622 |
| C. | Retailing services | 631+632 |
| D. | Franchising | 8929 |
| E. | Other | |
| 5. | EDUCATIONAL SERVICES | |
| A. | Primary education services | 921 |
| B. | Secondary education services | 922 |
| C. | Higher education services | 923 |
| D. | Adult education | 924 |
| E. | Other education services | 929 |
| 6. | ENVIRONMENTAL SERVICES | |
| A. | Sewage services | 9401 |
| B. | Refuse disposal services | 9402 |
| C. | Sanitation and similar services | 9403 |
| D. | Other | |

| | | | |
|---|---|---|---|
| 7. | FINANCIAL SERVICES | | |
| A. | All insurance and insurance-related services | | 812** |
| a. | Life, accident and health insurance services | | 8121 |
| b. | Non-life insurance services | | 8129 |
| c. | Reinsurance and retrocession | | 81299* |
| d. | Services auxiliary to insurance (including broking and agency services) | | 8140 |
| B. | Banking and other financial services (excl. insurance) | | |
| a. | Acceptance of deposits and other repayable funds from the public | | 81115-81119 |
| b. | Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction | | 8113 |
| c. | Financial leasing | | 8112 |
| d. | All payment and money transmission services | | 81339** |
| e. | Guarantees and commitments | | 81199** |
| f. | Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: | | |
| | - money market instruments (cheques, bills, certificate of deposits, etc.) | | 81339** |
| | - foreign exchange | | 81333 |
| | - derivative products incl., but not limited to, futures and options | | 81339** |
| | - exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc. | | 81339** |
| | - transferable securities | | 81321* |
| | - other negotiable instruments and financial assets, incl. bullion | | 81339** |
| g. | Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues | | 8132 |
| h. | Money broking | | 81339** |
| i. | Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services | | 8119+**<br>81323* |
| j. | Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments | <br>or | 81339**<br>81319** |
| k. | Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy | <br>or | 8131<br>8133 |
| l. | Provision and transfer of financial information, and financial data processing and related software by providers of other financial services | | 8131 |

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|---|---|---|
| C. | Other | |
| 8. | HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1.A.h-j.) | |
| A. | Hospital services | 9311 |
| B. | Other Human Health Services | 9319 (other than 93191) |
| C. | Social Services | 933 |
| D. | Other | |
| 9. | TOURISM AND TRAVEL RELATED SERVICES | |
| A. | Hotels and restaurants (incl. catering) | 641-643 |
| B. | Travel agencies and tour operators services | 7471 |
| C. | Tourist guides services | 7472 |
| D. | Other | |
| 10. | RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services) | |
| A. | Entertainment services (including theatre, live bands and circus services) | 9619 |
| B. | News agency services | 962 |
| C. | Libraries, archives, museums and other cultural services | 963 |
| D. | Sporting and other recreational services | 964 |
| E. | Other | |
| 11. | TRANSPORT SERVICES | |
| A. | Maritime Transport Services | |
| a. | Passenger transportation | 7211 |
| b. | Freight transportation | 7212 |
| c. | Rental of vessels with crew | 7213 |
| d. | Maintenance and repair of vessels | 8868** |
| e. | Pushing and towing services | 7214 |
| f. | Supporting services for maritime transport | 745** |
| B. | Internal Waterways Transport | |
| a. | Passenger transportation | 7221 |
| b. | Freight transportation | 7222 |
| c. | Rental of vessels with crew | 7223 |

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|---|---|---|
| d. | Maintenance and repair of vessels | 8868** |
| e. | Pushing and towing services | 7224 |
| f. | Supporting services for internal waterway transport | 745** |
| C. | Air Transport Services | |
| a. | Passenger transportation | 731 |
| b. | Freight transportation | 732 |
| c. | Rental of aircraft with crew | 734 |
| d. | Maintenance and repair of aircraft | 8868** |
| e. | Supporting services for air transport | 746 |
| D. | Space Transport | 733 |
| E. | Rail Transport Services | |
| a. | Passenger transportation | 7111 |
| b. | Freight transportation | 7112 |
| c. | Pushing and towing services | 7113 |
| d. | Maintenance and repair of rail transport equipment | 8868** |
| e. | Supporting services for rail transport services | 743 |
| F. | Road Transport Services | |
| a. | Passenger transportation | 7121+7122 |
| b. | Freight transportation | 7123 |
| c. | Rental of commercial vehicles with operator | 7124 |
| d. | Maintenance and repair of road transport equipment | 6112+8867 |
| e. | Supporting services for road transport services | 744 |
| G. | Pipeline Transport | |
| a. | Transportation of fuels | 7131 |
| b. | Transportation of other goods | 7139 |
| H. | Services auxiliary to all modes of transport | |
| a. | Cargo-handling services | 741 |
| b. | Storage and warehouse services | 742 |
| c. | Freight transport agency services | 748 |
| d. | Other | |
| I. | Other Transport Services | |
| 12. | OTHER SERVICES NOT INCLUDED ELSEWHERE | 95+97+98+99 |