
Barriers to Cross-Border Provision of Services within the APEC: Focus on the Movement of Persons

by Marina Fe B. Durano

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MARKET ACCESS AND NATIONAL TREATMENT	エラー! ブックマークが定義されていません。
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**SA MGA PILIPINANG OCW, SA INYONG HINAGPIS
NAKAPUNLA ANG KINABUKASAN. SANA'Y
KILALANIN ANG INYONG KATAPANGAN.**

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The first section will show that services trade is an important component of trade flows for member economies of the Asia-Pacific Economic Cooperation (APEC). Much of foreign direct investment is also going into the services sector. This movement of capital probably highlights the large role that multinational corporations are playing in services trade. Together with the movement of capital from developed countries, there is a corresponding movement of professionals and highly skilled personnel. Movements are not only within corporate structures. There has also been a parallel movement of service suppliers with multinational clients as production processes take on an increasingly international character.

A reverse flow of semi-skilled and unskilled workers is moving from labor surplus economies to neighboring economies experiencing shortages in key industries. A significant portion of these movements are taking jobs in the services sector particularly construction and domestic services although composition differs according to the recipient economy. These flows are heavily restricted and monitored by recipient economies although illegal entry is considered significant in some economies. The significant number of these flows justify the need to study their role in services trade.

If expansion in services trade is to continue, identifying the barriers to their provision through the movement of persons must be done. The General Agreement on Trade in Services (GATS) and the APEC have included in their discussions the possibility of binding and liberalizing rules of entry for service suppliers. The second section shows, however, that most economies are hesitant to do so. Multilateral agreements are especially hesitant to include movements of the low-skilled and unskilled service providers. Thus, these commitments fail to cover many restrictions used by the member economies to regulate the inflow of foreign workers. The coverage of the GATS Schedules of Commitments and the APEC Individual Action Plans (IAPs) with respect to the movement of persons are discussed. The restrictions not covered by these commitments and how they are used by the APEC-member economies to restrict the entry of foreign workers are discussed in the third section.

Given the hesitation by economies to open their labor markets to foreign service suppliers, as evidenced by compromises in the GATS and vague commitments in the APEC, economies who may have comparative advantage in this area can only hope to ask for increased transparency of rules governing entry of workers. Transparency helps to minimize risks associated with movement of suppliers. Transparency is least costly to economies because there is no requirement to bind the rules. And yet, information from which future liberalization efforts may be based is made available.

Other areas for discussion are found in the concluding section. However, it is not likely that the APEC will reach any significant agreements regarding the movement of persons in the near future. At present only those movements linked to investment and multinational capital are acceptable for

inclusion in discussions. The APEC is expected to continue to rely on developments under the GATS. Further headway in this area may be possible but only under a sub-regional setting or with bilateral agreements.

Areas for further research not only involve improving data collection and information gathering. The role of institutions in development is highlighted as an important concern given its prominence in governing services trade.

II. Flows: Services Trade, Capital and Labor

Data on trade in services forms the background of discussions on the flows of capital and labor. It will not be dealt with to a large extent except to provide context, primarily to answer the question of how important trade in services is in the APEC region¹. The complementary nature of capital and labor flows plus the relationship described by Sassen above provides a guide to the discussions in the succeeding sections. The data identifies the similarities and differences and, hence, provides indications on issues of interest for the APEC-member economies with respect to temporary labor mobility in the services sector.

The largest traders in commercial services in the APEC are the United States, Japan, Hong Kong and Singapore. The first two are also well-known sources of foreign direct investment. As shown below much of the FDI flows into the services sector particularly in distributive trade and financial services. The section on labor mobility indicates that movement of professionals and highly skilled personnel also come from the same group of economies, to which is added Australia and New Zealand, albeit for a smaller number of people. Korea and Taiwan, which are also a source of FDI for its neighboring economies are a source of highly skilled personnel as well. Contrast this with labor flows from developing countries that are mostly unskilled. These workers are moving to fill perceived labor shortages in certain industries in the fast-growing economies that are, at the same time, facing slower population growth. The polarization of jobs in the services sector is exemplified by the contrast in skills. Unfortunately, the data available cannot provide the characteristics of polarization.

A. Definitions

Definitions of services usually begin with Hill (1977). A service is an activity by one entity to another directly resulting in a change in the condition of the latter. A typology of services for purposes of international trade is provided by Stern and Hoekman (1988) based on whether buyers or sellers

¹ Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Philippines, Singapore, Chinese Taipei, Thailand, United States of America

move across borders in the course of providing the service.² The first type is separated services which does not involve the movement of either demander or provider. The second type is demander-located services which require “physical proximity to the consuming households and firms” as “a necessary condition for the service.” The third type is provider-located services in which the buyer must move to the provider’s location. To complete the typology, the fourth type is footloose, non-separated services where both providers and demanders move. This is the typology followed by the World Trade Organization (WTO). In particular, the GATS identifies four modes of supply. These are: cross-border supply; consumption abroad; commercial presence; and , temporary entry of natural persons. Cross-border supply is defined as the supply of a service from the territory of one economy to another. Consumption abroad refers to the supply of a service inside the territory of a member to a consumer from another member. Commercial presence requires the service supplier from one member to establish a company in the territory of another member before service is supplied to that member. Lastly, service may be supplied by a natural person, not an employee, from a member in the territory of another member³. For the purposes of this paper, focus will be spent on the movement of natural persons.

In order to qualify the succeeding discussion, it should be pointed out that conceptual issues regarding trade in services remain. One of these is the need, according to Arndt (1989), to distinguish between factor and non-factor services especially in a trading environment. More importantly, literature must be able to distinguish between non-factor services and factor movements and earnings referring to the Stern and Hoekman’s second type of service trade. He believes that international factor movements do not constitute trade because the conditions that determine international trade are different from those that determine foreign investment and migration. The export of a non-factor service is defined by Arndt as ‘*outputs of service industry firms*’ of one country that are sold to residents of another country.⁴

Arndt then points to two complications. Firstly, temporary movement abroad defined as “services provided abroad by individual consultants, lecturers, artists, or guest workers” would not fall under service trade. In a similar manner he argues that “invisible exports, such as receipts from leasing of capital equipment, licensing of technology, franchising of trade marks, film rentals, royalties on books and patents, which strictly speaking represent the yield of capital assets (property rights) and therefore factor earnings, quite as much as investment income.” However, these are often considered non-factor services trade because of the temporary nature of the movements, whether in terms of residency or

² Stern, Robert M. and Bernard M. Hoekman (1988) “Conceptual Issues Relating to Services in the International Economy,” in Lee and Naya, eds., *Trade and Investment in Services in the Asia-Pacific Region*, Korea: Center for International Studies, Inha University, pp. 10-11.

³ Definitions of mode of supply are from Article I, Part I of the GATS.

⁴ Arndt, H.W. (1989), “Trade in Services: With Special Reference to ASEAN,” Australia-Pacific Research Centre Pacific Economic Paper No. 173, p. 8.

ownership.⁵ In practice, under the GATS, this distinction is overlooked as evidenced by the modes of supply they have identified.

B. Trade in Services

Data on trade in services is sparse and often replete with inconsistencies across countries. Secondary literature often discuss the difficulties associated with the measurement of services. This paper relies on the information published in a report by the Pacific Economic Cooperation Council. Unfortunately, their data was not classified into sub-sectors. What is available is an indication of the magnitude or relative importance of services trade for APEC-member economies.

Total world trade in commercial services is dominated by Western Europe controlling more than half of the share at 54.5 percent. Among APEC-member economies, the United States has a 17.0 percent share of the world total. In Asia, Japan has 5.2 percent followed by Hong Kong and Singapore with 1.9 percent each. Other major services traders are Korea (1.3%) and Australia and Chinese Taipei⁶ with 1.1 percent each. (See Table 1.) The PECC also presented data on exports and imports of services and the same pattern is reflected. Thirteen APEC member economies can be found in the top thirty exporters. Another thirteen economies are also found in the top thirty importers. Exports and imports of their services have been growing. For these economies, the United States, Hong Kong, Singapore, Mexico, and the Philippines are net exporters. (See Table 2.)⁷

These statistics come from the balance of payments. Estimates of services trade try to use the non-merchandise component of the balance of payments. Arndt points out, however, that this component contains flows of investment income, official aid, and migrant earnings, which he believes is, strictly speaking, not part of services trade⁸. With this argument, Table 2 shows that the Philippines and Mexico are in the top 30 exporters due to large amounts of worker's remittances. Investment income from Singapore's financial sector may also explain its presence.

Despite the data's weaknesses, however, APEC-member economies obviously have a large interest in services trade. Areas of interest for each country necessarily differ but data difficulties preclude identification of specifics.

• Table 1 Trade in Commercial Services for Selected Regions and APEC Economies
1980 and 1992, (Values in US\$ billions and Percentage Shares)

	1980	1992
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⁵ *ibid.*, pp. 9-10.

⁶ Chinese Taipei and Taiwan are used interchangeably in the tables in order to save space.

⁷ PECC (1995), "Milestones in APEC Liberalisation: A Map of Market Opening Measures by APEC Economies," Singapore: PECC, pp. 75-76.

⁸ Arndt (1989), p. 6.

	Value	Share	Value	Share
World	375.0	100.0	960.0	100.0
North America	43.6	11.6	179.7	18.7
Canada	7.1	1.9	16.5	1.7
United States	36.5	9.7	163.2	17.0
Latin America	19.5	5.2	38.8	4.0
Western Europe	226.7	60.4	522.9	54.5
Africa	13.7	3.7	23.0	2.4
Middle East	12.9	3.4	17.2	1.8
Asia	52.7	14.0	164.2	17.1
Australia	4.1	1.1	10.6	1.1
China	2.6	0.7	9.1	0.9
Hong Kong	4.4	1.2	18.4	1.9
Japan	18.9	5.0	49.6	5.2
Korea	4.5	1.2	12.8	1.3
Singapore	6.0	1.6	18.2	1.9
Chinese Taipei	2.1	0.6	10.6	1.1
Thailand	1.7	0.5	9.0	0.9

Source: PECC (1995), Table 4.1, p. 75.

C. Flows of Capital

The APEC Economic Committee has been able to compile matrices on the inward and outward flow of the stock of foreign direct investment among APEC-member countries. From this data, more than 50 percent of FDI stock in the APEC came from APEC-member countries in 1992. Japan became an important source of FDI especially for the US, Australia and New Zealand during the 1980s. Towards the latter part of the 1980s, the newly industrialized economies also became an important source of investment for the Asian member economies of APEC although to a much less extent than Japan. Their investments account for less than 10 per cent of the host economy.

The U.S. and Japan are the main source of direct investment stock for APEC-member economies. More than 60 per cent of Canadian and Mexican direct investment stock are from the United States. Japan and Philippines follow at more than 40 per cent while Hong Kong is at slightly more than 30 per cent. US investment accounts for more than 20 per cent of investments in the Republic of Korea, Chinese Taipei, Australia and New Zealand.

Japanese investments, on the other hand, account for more than 40 per cent of direct investment stock in the Republic of Korea and Hong Kong and more than 30 per cent in Thailand. In the following economies, Japanese investment accounts for more than 20 percent: the United States, Chinese Taipei, Singapore, Indonesia, Malaysia, and the Philippines.

• Table 2 Leading Exporters and Importers in World Trade in Commercial Services
1993 (Values in US\$ billions and Percentage Shares)

Exporters	Value	Share	Importers	Value	Share
United States	167.5	16.4	United States	113.4	11.5
France	100.8	9.9	Germany	111.9	11.3
Germany	61.8	6.1	Japan	100.7	10.2
Italy	59.0	5.8	France	83.3	8.4
United Kingdom	53.5	5.2	Italy	58.8	5.9
Japan	53.2	5.2	United Kingdom	44.4	4.5
Netherlands	37.0	3.6	Netherlands	35.9	3.6
Belgium-Luxembourg	36.7	3.6	Belgium-Luxembourg	32.3	3.3
Spain	31.7	3.1	Canada	27.1	2.7
Austria	29.7	2.9	Chinese Taipei	21.3	2.2
Hong Kong	28.9	2.8	Austria	21.1	2.1
Singapore	20.8	2.0	Spain	19.3	1.9
Switzerland	19.7	1.9	Switzerland	16.8	1.7
Canada	16.7	1.6	Korea	16.5	1.7
Korea	15.4	1.5	Hong Kong	16.0	1.6
Mexico	14.3	1.4	Saudi Arabia	13.9	1.4
Chinese Taipei	13.8	1.4	Norway	13.9	1.4
Denmark	12.8	1.3	Sweden	13.6	1.4
Norway	12.6	1.2	Australia	13.1	1.3
Sweden	12.6	1.2	Thailand	11.8	1.2
Thailand	11.2	1.1	China	11.6	1.2
China	10.9	1.1	Singapore	11.5	1.2
Australia	10.9	1.1	Mexico	11.2	1.1
Turkey	9.4	0.9	Denmark	10.0	1.0
Greece	8.5	0.8	Indonesia	8.8	0.8
Egypt	7.4	0.7	Brazil	8.7	0.9
Philippines	6.9	0.7	Malaysia	8.3	0.8
Portugal	6.8	0.7	Israel	7.2	0.7
Israel	6.2	0.6	Finland	6.4	0.6
Malaysia	5.9	0.6	Portugal	5.5	0.6
Total of Above	883.0	86.5	Total of Above	874.4	88.3
World	1,020.0	100.0	World	990.0	100.0

Source: PECC (1995), Table 4.2, p. 76

Other investment sources are more specialized. For example, most of Hong Kong investments go to the People's Republic of China at more than 60 per cent and some go to Thailand accounting for slightly more than 15 per cent. Chinese Taipei and Singapore invest heavily in Malaysia while Australia invests heavily in New Zealand. (See Table 3.)

Data for 14 economies from the United Nations Centre for Transnational Corporations show that much of foreign direct investment flows into the tertiary sector. For Australia, Mexico, New Zealand, Papua New Guinea, Thailand and the United States, more than half of foreign direct investment flows went to the tertiary sector. Meanwhile, a substantial portion (between 25 to 50 percent) went to the tertiary sector for Chile, Japan, Philippines, and Chinese Taipei. (See Chart 1.) Much of the investment flows are in the finance and insurance and distributive sectors. Exceptions are China (64% of FDI flows in the tertiary sector), Mexico (64%), Indonesia (59%) and the US (37%) where FDI flows went to the Others sector. Korea reports negative investment flows in the construction sector since it is a major exporter of construction services rather than the other way around. (See Chart 2.)

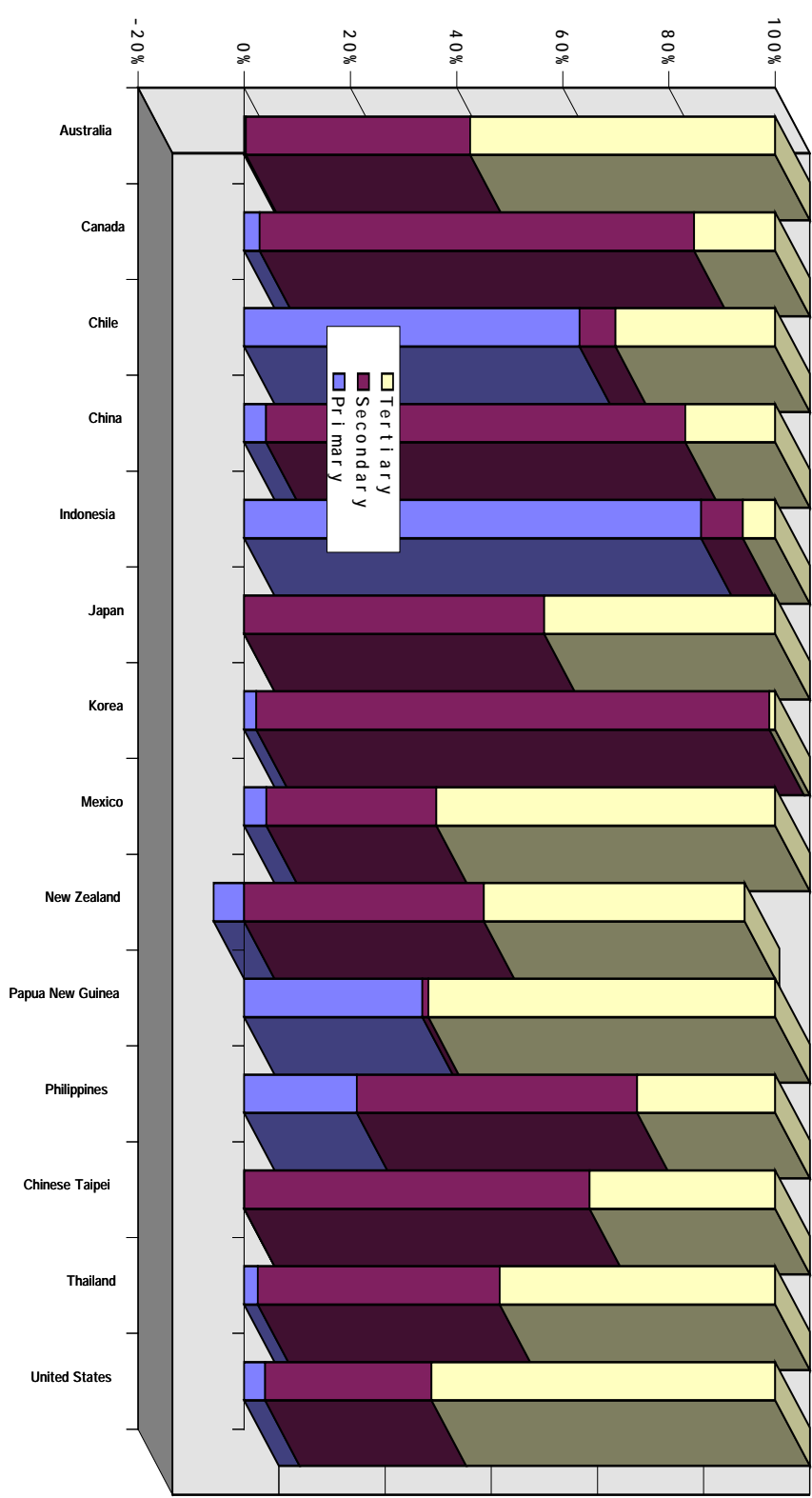
• Table 3 Distribution of Foreign Direct Investment Stock
APEC and Selected Regions, 1992
(Amount in US\$ millions, percent share)

Host Economy/ Home Economy	Can	US	Mex	Jap	PRC	Kor	HK	Tw	Sing	Ina	Mal	Thai	Phil	Aus	NZ	Total Amount
Canada		63.68	0.05	4.24	0.03	0.03	1.82	0.07	0.10	0.04	0.03			0.54	0.60	109,294.30
US	8.89		0.29	22.92	0.03	0.19	0.43	0.26	0.21	0.02	0.02	0.04	0.02	1.66	0.02	425,636.00
Mexico	1.55	61.69		4.31	0.01	0.01		0.01		0.05				0.01		37,474.10
Japan	4.39	41.87			0.03	0.14	2.28	0.15	0.16	0.03				0.01		26,855.00
PRC	0.39	9.29		11.89		0.32	60.96	4.00	1.10	0.07	0.08	0.47	0.11	0.67	0.04	38,174.20
Korea	0.3	26.16		43.17	0.06		1.67	0.13	0.65				0.01	0.03	0.08	8,491.30
Hong Kong	2.22	30.63		40.38	1.87	0.36		0.01	6.51	0.03	0.01	0.73	0.28	3.48	-6.05	28,505.90
Chinese Taipei	0.74	27.17		28.97		0.11	10.77		4.43	0.32	0.92	0.23	3.03	0.87		16,491.40
Singapore	4.15	17.03		23.27	0.2	-0.22	6.11	0.64		0.11	3.92	0.91	0.27	5.20	0.25	34,446.40
Indonesia	0.05	4.31		20.74		4.7	8.31	6.25	3.27		0.21	0.15	0.02	2.06		63,015.80
Malaysia	0.49	9.04		21.57	0.51	3.31	3.25	17.11	10.40	3.64		0.29	0.20	3.77	0.14	22,584.00
Thailand	0.25	17.29		34.02	0.17	0.54	15.39	6.77	8.50	0.14	0.37		0.06	0.90	0.04	12,434.80
Philippines	1.34	47.41		21.04		1.61	6.58	0.90	0.95		0.29			1.78		4,011.20
Australia	2.56	27.83		17.18		0.18	1.41	0.04	1.33		0.34	-0.01			4.35	71,888.00
New Zealand	5.32	22.51		2.97	-0.01	-0.01	2.28	0.10	5.18	0.76	0.25		0.02	34.46		9,455.90

Blank cells mean data is not available; not separately available; negligible; or zero.

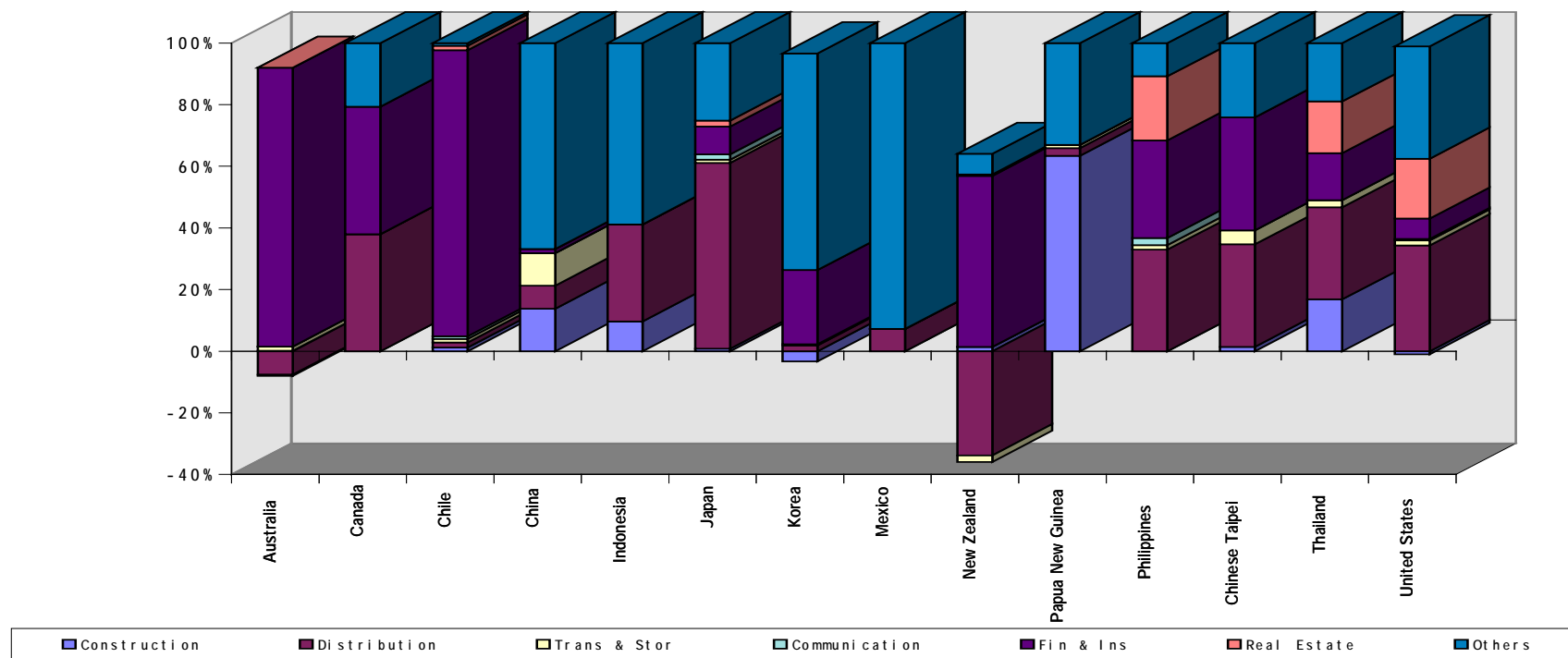
Source: APEC Committee (1995), FDI and APEC Economic Integration, Table 21.

• Figure 1 Industrial Distribution of Inward Foreign Direct Investment Flow
Selected APEC-member Economies
Various Years



Source: UN CTC (1992), World Investment Directory 1992

• Figure 2 Distribution of Inward Foreign Direct Investment Flows in the Tertiary Sector
Selected APEC member Economies
Various Years



Source: UN CTC (1992), World Investment Directory 1992

An important characteristic of investment in the services sector is the large role played by transnational corporations. Many invest in other countries by opening branches, sales offices, or selling franchises. Sauviant (1989) notes that the multinational firms are heavily concentrated in their respective sub-sectors. He describes these firms as skill- and capital-intensive and they engage in less intra-firm trade than manufacturing firms.⁹ These multinationals are found in advertising, accounting and auditing, management consulting, software production, and banking and finance, among others.

D. Flows of Labor

This section focuses more closely on that part of labor exports who provide some sort of service to the importing country. Monitoring the flow of service suppliers is difficult however. Data segregated by nationality or country of origin, by occupation, by industry, and by length of stay is not readily available. Matters are complicated when the movement of labor is undertaken within the corporate structure of a multinational corporation where management skills and specialized knowledge is provided but the payment for the service is internalized by the firm. The same management skills and specialized knowledge may also be provided by independent firms under contractual relationships with the importing firm. In many cases, the provision of a service through the movement of persons forms only a portion of a service package.¹⁰ In these cases, the trade value of the service cannot be accurately assessed. Given these and other characteristics, actual numbers are not readily available.

D.1 Visitor Arrivals

The most complete set of data on foreign arrivals comes from the tourism statistics of each economy. Despite its weaknesses, this data set is not completely without use. Most of the economies that have data are able to classify the number of arrivals according to purpose of visit. (See Table 4.) Arrivals of foreigners are largely tourism in nature accounting for more than 60 percent. Business visits comprise a little more than 10 percent although some visitors may classify themselves as tourists even though they have made business arrangements.

• Table 4 Visitor Arrivals by Purpose of Visit
Selected APEC member Economies
Various Years (Percent of Total Arrivals)

	Holiday	Business	Visiting Friends/ Relatives	Convention/ Conference	In Transit	Others
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⁹ Sauviant, Karl P. (1989), "Foreign Direct Investment and Transnational Corporations in Services," in United Nations Centre on Transnational Corporations, ed., *Services and Development: The Role of Foreign Direct Investment and Trade*, New York: UN, p. 15.
¹⁰ UNCTAD (1993a), "Temporary Movement of Persons as Service Providers," Geneva: UNCTAD. TD/B/CN.4/24, pp. 4-5.

Australia (1994)	62.74	9.58	18.00	1.93	0.80	5.28
Brunei (1990)	2.13	11.64	9.63		6.38	70.22
Indonesia (1992)	82.25	13.67		0.56		3.52
Korea (1991)	58.08	11.92	10.79	0.13		19.07
Mexico (1993)	66.7	9.36	21.99		0.56	1.39
New Zealand (1996)	56.26	10.82	22.15	2.11	2.36	6.30
Philippines (1994)	61.17	14.15		1.03		23.65
Singapore (1995)	55.56	17.14			10.01	17.29
Chinese Taipei (1994)	85.78	6.76	2.89	0.27		4.30
Thailand (1994)	86.87	10.67		0.86		1.60

Notes:

Australia - Data for others includes employment (0.08%).

Indonesia, Chinese Taipei, Mexico - Data for others includes study.

Korea, Thailand - Data for Business includes official business.

Singapore - Data for Business includes business and holiday combination.

Indonesia, Chinese Taipei, Philippines - Others includes purpose not reported.

Blank cells mean no data or data was not provided. Definitions of categories may differ across economies.

Source: Statistical Yearbooks of each economy.

Some note should be taken for the Others category.¹¹ For well-known labor-receiving countries, the ratio approaches close to 20 percent of arrivals. Brunei is exceptional with 70 percent of arrivals falling under this category. For emphasis, Table 5 shows visitor arrivals in Korea between 1981 and 1991 by nationality. Total arrivals almost tripled during this period caused by a huge increase in arrivals of Thais and Singaporeans which more than quadrupled. But the biggest jump was due to a more than ten-fold increase in arrivals of Filipinos. During the same period, visitor arrivals to Korea in the Others category increased by 1,619.5 percent. The growth of business arrivals of 321.8 percent is a far second. (*See Table 6.*)

Visitor arrivals by nationality or country of residence are found in Table 7. Two peaks are noticeable. One is due to the presence of Hong Kong, Macau and Chinese Taipei residents and nationals in mainland China. They made up 88.7 percent of tourist arrivals. Hong Kong residents made up 19.6 per cent of visitor arrivals in the Philippines.

The other peak is the overwhelming number of Malaysians arriving in Brunei at 83.8 percent of total arrivals. Looking at the purpose of travel, Malaysians made up 88.2 percent arrivals under the Others category, 58.9 percent of business arrivals and 44.2 percent of holiday arrivals. To a lesser extent, Malaysians are visiting Thailand (12.4%) and Indonesia (11.0%) as well.

• Table 5 Visitor Arrivals in Korea by Nationality
1981 and 1991

Nationality	1981		1991		Growth (%)	
	Total	Pleasure	Total	Pleasure	Total	Pleasure
Total	1,093,214	773,798	3,196,340	1,856,442	192.38	139.91

¹¹ The Others category includes, but is not limited to, arrivals for study, training, employment, and not reported.

Australia	5,060	2,207	16,108	5,977	218.34	170.82
Brunei			203	91		
Canada	10,226	5,229	23,179	11,308	126.67	116.26
Hong Kong	39,070		72,675		86.01	
Indonesia	6,505	5,097	23,562	6,479	262.21	27.11
Japan	506,819	455,388	1,455,090	1,268,799	187.10	178.62
Malaysia	15,743	14,799	23,110	9,027	46.80	-39.00
New Zealand	975	420	2,894	1,148	196.82	173.33
Philippines	9,055	7,426	143,932	43,811	1,489.53	489.97
Singapore	6,794	6,038	30,178	10,446	344.19	73.00
Chinese Taipei	118,569	116,269	281,349	240,400	137.29	106.76
Thailand	7,955	7,351	38,289	14,049	381.32	91.12
United States	130,402	58,475	315,828	99,071	142.20	69.42

Source: Rep. of Korea, Statistical Yearbook of Transportation 1992

• Table 6 Visitor Arrivals in Korea by Purpose of Visit
1981 and 1991

Purpose	1981		1991		Growth (%)
	Number	Distribution	Number	Distribution	
Total	1,093,214	100.00%	3,196,340	100.00%	192.38
Pleasure	773,798	70.78%	1,856,442	58.08%	139.91
Business	85,113	7.79%	359,026	11.23%	321.82
Visiting Friends, Relatives	156,241	14.29%	344,996	10.79%	120.81
Official	42,617	3.90%	22,124	0.69%	-48.09
Convention			4,271	0.13%	
Others	35,445	3.24%	609,481	19.07%	1,619.51

Source: Rep. of Korea, Statistical Yearbook of Transportation 1992

Other noticeable peaks are due to Japanese traveling to Korea (50.5% of total arrivals) and Australians traveling to Papua New Guinea (40.7%) and New Zealand (31.9%). Looking at the purpose of travel, Australians made up the majority in business arrivals (42.8%), other arrivals (40.5%), and holiday arrivals (35.8%) in Papua New Guinea. A reverse flow of New Zealanders going to Australia is a significant proportion of arrivals at 14.3 percent.

Japanese have also been visiting Australia (21.4%), Singapore (17.0%), Indonesia (13.1%) and New Zealand (12.2%). As expatriates, many Japanese in 1994 were living in the United States (37.1% of total Japanese expatriates) followed by Canada (3.4%), Australia (3.1%), Singapore (3.1%), and Thailand (3.0%). On the other hand, nationals of Korea (29.6%), U.S. (15.0%) and Chinese Taipei (16.5%) make up an important proportion of visitor arrivals in Japan.

Apart from Japan, Americans are also visiting the Philippines (21.9%), New Zealand (11.7%), Papua New Guinea (11.2%), and Korea (11.0%).

Lastly, Singaporeans comprise 25.4 percent of visitor arrivals in Indonesia. This is likely to be associated with the Singapore-Johore-Riau growth triangle where Singaporeans are taking advantage of low labor costs in Indonesia's Johore region. Chinese Taipei residents comprise 11.1 percent of visitor arrivals in the Philippines.

For very few countries, further data can be broken down by purpose of visit. Table 7 shows arrivals of visitors by purpose of travel and nationality for Brunei, Indonesia, Papua New Guinea and the Philippines. For Indonesia and the Philippines, most visits are for holiday purposes but for Papua New Guinea, most visits have a business nature while visits to Brunei largely fall under the Others category as noted earlier. In Indonesia, holiday arrivals were mostly made up of Singaporeans (28.3%), Japanese (13.5%), and Malaysians (11.4%). The same group of people made up visits for other purposes while Singaporeans made up a significant portion of business arrivals at 17.0 percent. In the Philippines, Americans and Japanese consistently rank first and second when looking at arrivals by purpose. Koreans come in third for business arrivals while Chinese Taipei ranks third in holiday arrivals.

D.2 Contract Labor

Several studies have been written on these movements and this paper relies on the literature already available for the descriptions found in this section.

The discussion is roughly divided into Asian and Non-Asian flows. Persons moving to the United States, Canada, Australia and New Zealand tend to move on a permanent basis. This type of movement is governed by the migration policies adopted by these countries. They hesitate promoting temporary labor migration and prefer to process entry for settlement purposes. Since these economies discourage the entry of temporary workers, much of contract labor flows within is concentrated among the Asian members. Contracts govern the possibility of movement and length of stay and dependents are not allowed to join the worker.

• Table 7 Arrivals of Overseas Visitors by Nationality
Selected APEC Economies
various years (Percentages are proportion to total arrivals.)

To Nationality	Australia/b 1994	Brunei 1990	Chile/a 1991	China 1993	Indonesia 1992	Japan 1995	Korea 1991	New Zealand/b 1996	Papua New Guinea Jan-Jun 1994	Philippines/b 1994	Singapore 1995	Thailand 1994
Australia		2,936 0.78%		99,300 0.24%	220,288 7.19%	61,373 1.64%	16,108 0.56%	422,319 31.92%	7,326 40.71%	69,846 4.94%	324,914 4.55%	193,349 2.65%
Brunei					8,471 0.28%		203 0.01%			6,704 0.47%		
Canada	54,300 1.62%	1,293 0.34%	6,222 0.43%	105,000 0.25%	26,906 0.88%	77,125 2.07%	23,179 0.80%	30,048 2.27%	263 1.46%	39,464 2.79%	75,826 1.06%	67,986 0.93%
China						229,965 6.16%			379 2.11%	9,259 0.65%	203,679 2.85%	693,107 9.51%
Hong Kong	109,500 3.26%	225 0.06%		36,704,800 88.74%	33,754 1.10%	20,378 0.55%	72,675		74 0.41%	277,825 19.64%	270,788 3.79%	
Indonesia	105,700 3.14%	4,183 1.11%				31,265 0.84%	23,562 0.82%			11,695 0.83%		72,350 0.99%
Japan	721,100 21.45%	2,521 0.67%	1,362 0.09%	912,000 2.20%	400,615 13.07%		1,455,090 50.47%	161,824 12.23%	778 4.32%	93,673 6.62%	1,212,250 16.98%	694,649 9.53%
Korea		586 0.16%	395 0.03%		84,442 2.76%	1,103,566 29.57%			320 1.78%	97,867 6.92%	360,365 5.05%	363,655 4.99%
Malaysia	95,100 2.83%	315,755 83.84%			336,393 10.98%	48,864 1.31%	23,110 0.80%		679 3.77%	28,038 1.98%		907,245 12.45%
Mexico						7,947 0.21%				760 0.05%		
New Zealand	480,400 14.29%	518 0.14%		19,000 0.05%	27,612 0.90%	27,894 0.75%	2,894 0.10%		932 5.18%	3,899 0.28%	67,123 0.94%	
Papua New Guinea	41,900									848 0.06%		
Philippines	21,700 0.65%	4,863 1.29%		146,700 0.35%	42,128 1.37%	105,838 2.84%	143,932 4.99%		440 2.45%			57,567 0.79%
Singapore	187,600 5.58%	16,915 4.49%		200,900 0.49%	776,904 25.35%		30,178 1.05%		305 1.69%	28,549 2.02%		317,097 4.35%

Table 7 (cont'd.) Arrivals of Overseas Visitors by Nationality
Selected APEC Economies
various years (Percentages are proportion to total arrivals.)

To Nationality	Australia/b 1994	Brunei 1990	Chile/a 1991	China 1993	Indonesia 1992	Japan 1995	Korea 1991	New Zealand/b 1996	Papua New Guinea jan-jun 1994	Philippines/b 1994	Singapore 1995	Thailand 1994
Taipei		1,484 0.39%		see notes	220,316 7.19%	614,931 16.48%	281,349 9.76%			157,419 11.13%	569,778 7.98%	see notes
Thailand	66,800 1.99%	4,030 1.07%		152,300 0.37%	24,865 0.81%	57,767 1.55%	38,289 1.33%			13,116 0.93%		
United States	289,700 8.62%	4,028 1.07%	62,040 4.32%	399,700 0.97%	131,361 4.29%	558,474 14.96%	315,828 10.96%	154,823 11.70%	2,011 11.18%	310,231 21.93%	375,140 5.26%	317,646 4.36%
Rest of the World	1,187,900 35.34%	17,299 4.59%	1,367,258 95.13%	2,621,000 6.34%	730,106 23.83%	787,063 21.09%	456,489 15.83%	553,872 41.87%	4,488 24.94%	265,459 18.76%	3,677,392 51.52%	3,603,921 49.45%
Total	3,361,700 100.00%	376,636 100.00%	1,437,277 100.00%	41,360,700 100.00%	3,064,161 100.00%	3,732,450 100.00%	2,882,886 100.00%	1,322,886 100.00%	17,995 100.00%	1,414,652 100.00%	7,137,255 100.00%	7,288,572 100.00%

Notes:

a/ by country of origin

b/ by country of residence

Data for Australian arrivals refers to short-term travelers only.

Data for China and Taiwan were combined for arrivals in Thailand. Data for China refers to tourist arrivals only and excludes overseas Chinese.

Data for Hong Kong was combined with Macau & Chinese Taipei for arrivals in China.

Data for the Philippines refers to arrivals by air only and excludes overseas Filipinos.

Data for Korea excludes arriving Koreans.

Data for New Zealand excludes New Zealanders.

Blank cells mean data was not provided.

Source: Statistical Yearbooks of each economy.

• Table 8 Arrivals of Overseas Visitors by Purpose of Travel and Country of Origin
Selected Countries
Various Years (Percentages are the proportion of total arrivals in each category.)

Destination	Brunei Darussalam (1990)			Indonesia (1992)			Papua New Guinea (Jan-Jun 1994)			Philippines (1994)		
Origin	Holiday	Business	Others	Holiday	Business	Others	Holiday	Business	Others	Holiday	Business	Others
Australia	107 1.34%	642 1.46%	2,604 0.80%	211,618 8.40%	19,412 4.45%	3,693 3.43%	1,511 35.85%	4,366 42.78%	1,449 40.54%	51,439 4.59%	13,140 6.89%	4,684 2.70%
Brunei				6,592 0.26%	1,571 0.36%	893 0.83%				1,831 0.16%	490 0.26%	9,125 5.27%
Canada	96 1.20%	262 0.60%	935 0.29%	18,231 0.72%	5,706 1.31%	739 0.69%	104 2.47%	132 1.29%	27 0.76%	30,154 2.69%	5,422 2.84%	3,517 2.03%
China							85 2.02%	253 2.48%	41 1.15%	1,200 0.11%	1,905 1.00%	2,834 1.64%
Hong Kong	19 0.24%	53 0.12%	153 0.05%	55,507 2.20%	20,232 4.64%	3,933 3.65%	19 0.45%	43 0.42%	12 0.34%	69,175 6.17%	16,269 8.53%	8,210 4.74%
Indonesia	129 1.61%	662 1.51%	3,382 1.04%							4,760 0.42%	3,528 1.85%	2,449 1.41%
Japan	741 9.25%	988 2.25%	792 0.24%	340,258 13.50%	42,541 9.76%	11,894 11.03%	196 4.65%	503 4.93%	79 2.21%	220,108 19.62%	38,737 20.30%	17,696 10.22%
Korea	102 1.27%	132 0.30%	352 0.11%	54,103 2.15%	22,463 5.15%	5,960 5.53%	52 1.23%	257 2.52%	11 0.31%	59,083 5.27%	20,581 10.79%	14,705 8.49%
Malaysia	3,544 44.24%	25,823 58.89%	286,388 88.18%	287,729 11.42%	34,715 7.96%	15,605 14.48%	61 1.45%	501 4.91%	117 3.27%	15,527 1.38%	9,939 5.21%	2,338 1.35%
Mexico										394 0.04%	247 0.13%	73 0.04%
New Zealand	22 0.27%	179 0.41%	317 0.10%	23,399 0.93%	2,603 0.60%	775 0.72%	134 3.18%	592 5.80%	206 5.76%	3,973 0.35%	2,306 1.21%	391 0.23%
Papua New Guinea										379 0.03%	267 0.14%	202 0.12%
Philippines	243 3.03%	731 1.67%	3,889 1.20%	24,316 0.96%	13,783 3.16%	3,755 3.48%	85 2.02%	181 1.77%	174 4.87%			

Table 8 (cont'd.) Arrivals of Overseas Visitors by Purpose of Travel and Country of Origin
 Selected Countries
 Various Years (Percentages are the proportion of total arrivals in each category.)

Destination	Brunei Darussalam (1990)			Indonesia (1992)			Papua New Guinea (jan-jun 1994)			Philippines (1994)		
Origin	Holiday	Business	Others	Holiday	Business	Others	Holiday	Business	Others	Holiday	Business	Others
Singapore	425 5.31%	7,669 17.49%	8,821 2.72%	713,170 28.30%	74,205 17.02%	21,769 20.20%	32 0.76%	225 2.20%	48 1.34%	14,600 1.30%	12,320 6.46%	1,502 0.87%
Chinese Taipei	754 9.41%	78 0.18%	652 0.20%	183,822 7.29%	28,162 6.46%	8,342 7.74%				128,771 11.48%	12,997 6.81%	15,503 8.95%
Thailand	157 1.96%	704 1.61%	3,169 0.98%	18,666 0.74%	6,466 1.48%	1,317 1.22%				5,632 0.50%	4,348 2.28%	2,587 1.49%
USA	237 2.96%	1,122 2.56%	2,849 0.88%	85,583 3.40%	35,310 8.10%	4,444 4.12%	1,003 23.80%	808 7.92%	200 5.60%	228,270 20.35%	45,385 23.78%	35,261 20.36%
ROW	1,434 17.90%	4,804 10.96%	10,474 3.22%	497,414 19.74%	128,794 29.54%	24,671 22.89%	933 22.14%	2,345 22.98%	1,210 33.86%	286,297 25.53%	2,935 1.54%	52,113 30.09%
Total	8,010 100.00%	43,849 100.00%	324,777 100.00%	2,520,408 100.00%	435,963 100.00%	107,790 100.00%	4,215 100.00%	10,206 100.00%	3,574 100.00%	1,121,593 100.00%	190,816 100.00%	173,190 100.00%

Notes:

Business includes official visits and conventions. Others includes but is not limited to education, visiting relations and not stated.

Blank cells means data was not provided.

Sources:

Brunei Darussalam Statistical Yearbook 1991

Indonesia Foreign Visitor Statistics 1992

National Statistics Office, Papua New Guinea, International Arrivals and Departures, March and June Quarter 1994

National Statistical Coordination Board, Philippine Statistical Yearbook 1995

Non-Asian Flows

The United States, Canada and Australia (and New Zealand) are the major destinations for permanent migration. These countries have structured their migration policies by favoring highly skilled individuals. The procedures for entry, for these individuals, are usually less strict and requirements are minimal. Australian immigration policy has been dictated by their economy's labor requirements. During times when a shortage of labor was felt, immigration policy tended to favor the entry of workers. According to Appleyard (1988), Australia has always geared their migration policy towards permanent settlement. Temporary labor migration "is not supported."¹² Immigration policy in New Zealand has been geared towards responding to the labor needs of the economy as well as maintaining its British population.¹³ As with Australia, New Zealand uses a points-based system for entry under the General Category. This system is geared towards immigrants with "human capital skills." In addition, it also makes use of a Business Investment Category which requires either direct or portfolio investment of legally-obtained business funds. The United States, however, has been accepting middle and lower-level skilled migrants but mostly because of family reunification objectives and to allow the employment of temporary contract labor (mostly from Mexico) for their farms.¹⁴

In this sense, Mexico is quite closely integrated with the United States labor market. But it is also receiving workers from other Central American countries. Some proportion of Central American migrants use Mexico as a springboard to enter the United States while those who are unable to enter end up staying in Mexico. One segment of Mexican migrants can be found working in the service sector of major U.S. cities such as San Diego, Los Angeles, and Chicago while another segment is found in the agricultural sectors of the states of California, Texas, Illinois, and Florida.¹⁵ The agricultural workers stay for a short period, ranging from one to three years, and is seasonal in nature¹⁶.

Chile's labor market is least connected with the rest of the APEC. Data on total arrivals by country of residence in 1991 reflects this. Residents of the United States comprise only 9.9 percent of arrivals. Japan is a far second, comprising only 1.7 percent. Other APEC-member visitors are residents of Australia (0.6%), mainland China (0.2%), and New Zealand (0.2%). Most of Chile's population has been migrating to

¹² Appleyard, Richard T. (1988), "International Migration in Asia and the Pacific," in Appleyard, Richard T., ed., *International Migration Today Vol. I: Trends and Prospects*, Paris, France and Australia: UNESCO and University of Western Australia Centre for Migration and Development Studies, p.156.

¹³ *ibid.*, p. 131.

¹⁴ Amjad, Rashid (1996), "International Labor Migration and its Implications in the APEC Region," a paper presented at the Regional Conference of the APEC Study Centers Network, Manila, 9-10 May 1996, p. 4. See also Stalker, Peter (1994), *The Work of Strangers: A Survey of International Labor Migration*, Geneva: ILO.

¹⁵ *op.cit.*

¹⁶ Interview with Andrés Emmanuel Trinidad Hernández, Consul, Embassy of Mexico, November 27, 1996, Tokyo, Japan.

Argentina although this has slowed down in recent years. Chilean men tended to work in the construction industry and the women worked as domestic helpers.¹⁷

The receiving countries above have tended to send expatriate professionals to administer and manage overseas offices of transnational corporations. In addition, some residents of these countries who are of Asian descent are returning to their countries of origin to take advantage of new opportunities. This is particularly true of Koreans.¹⁸

Asian Flows

Wickramasekara (1996) describes the flows of contract labor within Asia in the following manner:

- **Complex.** Flows are not limited to a uni-directional movement. Some countries are both senders and receivers of migrant workers.
- **Feminisation.** An increasing number of women are participating in temporary labor migration especially for Southeast Asia and Sri Lanka.
- **Illegal migration.** This may have increased due to the increasingly restrictive nature of immigration policies of other countries.
- **Sub-regional.** Movement is concentrated within East and Southeast Asia.

Wickramasekara (1996) cited Pang (1994)¹⁹ who identified three streams of temporary migration flows: within East and Southeast Asia, within Southeast Asia, and within East Asia. Some of the movements may be associated with what some have termed regional growth triangles within the areas that Pang has identified. The streams are described briefly and a short section on Papua New Guinea is added to complete the picture on APEC. Amjad (1996) cites various sources for the number of foreign workers in the economies he surveyed and these figures are combined with Pang's description.

Within East and Southeast Asia

Unskilled workers, both documented and undocumented, from South and Southeast Asia have been moving to Northeast Asia, mostly to Hong Kong, Chinese Taipei and Japan as well as the Republic of Korea. In Japan, unskilled workers are usually trainees, working students and ethnic Japanese from South America. Amjad (1996) cites data for 1993 stating that there were some 17,000 trainees, 63,000 working students, and 152,000 (1992 data) ethnic Japanese. Legal temporary professional workers were around 95,000. In Hong Kong for 1994, there were around 50,000 foreigners working mostly as technicians and construction workers. Another 150,000 were working as domestic helpers and most of these were Filipinos. An estimated 20,000 foreigners were working as professionals. Expatriate workers data for 1996 in Hong

¹⁷ Amjad (1996), p. 15.

¹⁸ *ibid.*, p. 16.

¹⁹ The work cited is: Pang, Eng Fong (1994), "Labor Migration, Economic Development and Regionalism in the Pacific Asian Region," in OECD, *Migration and Development: New Partnerships for Cooperation*, Paris: OECD.

Kong cited by Amjad (1996) shows that United States nationals constitute 33 percent followed by Canada (26%), Japan (22%), and Australia (19%).

Chinese Taipei is beginning to use an orderly system of importing migrant labor for its economy. The opposite flow is composed of skilled and professional workers. Unskilled workers try to look for job opportunities while skilled and professional workers move with the direction of trade, investment and technology flows. The latter movement may have attained significant levels and is believed to continue to increase. Stahl (1991) also reports that there may also be a large number of Taiwanese and South Korean communities in many of the countries in this region likely to be associated with foreign direct investment.²⁰

Within Southeast Asia

Among the ASEAN members, both skilled and unskilled labor have been joining the Singapore labor market from Indonesia, Malaysia, Philippines and Thailand. Skilled and professional workers from Singapore have been moving temporarily to these countries. The labor market within the bounds of Malaysia's Johore state, Singapore and the Riau islands of Indonesia is also expanding. Unskilled labor, mostly undocumented, has also been going to Sabah from the Philippines; from Indonesia and Southern Thailand into Malaysia; from Myanmar into Thailand; and from several countries in South and Southeast Asia into Brunei.

Within East Asia

A significant number of unskilled labor has been entering Japan from China, Republic of Korea, Hong Kong and Chinese Taipei. China has been a source of unskilled labor for Hong Kong, Chinese Taipei and the Republic of Korea. Meanwhile Hong Kong and Chinese Taipei have been sending a number of professionals, managers and technicians to China. Most of the flows have been illegal but the legal flows between Hong Kong and China may be important.²¹ From a survey conducted by the Census and Statistics Department of Hong Kong in 1992, some 64,200 Hong Kong residents had worked in China during the twelve months before enumeration. Thirty-nine percent of them were managers and administrators and another 22.6% were professionals and associated professionals.

Papua New Guinea

Papua New Guinea's labor market is tied more closely to Australia. In 1993, arrivals for short-term employment totaled 5,898 with 49.9 percent coming from Australia. The Philippines and Malaysia also sent a number of workers accounting for 13.5 percent and 11.6 percent, respectively. The occupational make-up is largely at the professional level. Administrative, executive and managerial workers comprise 52 percent, followed by professional and technical workers 17.2 percent and tradesmen, mechanics, boilermen, etc. with

²⁰ Stahl, Charles (1991), "South-North Migration in the Asia-Pacific Region," *International Migration*, 29 (2): 163-93 cited in Athukorala, Premachandra (1993), "International Labour Migration in the Asian-Pacific Region: Patterns, Policies and Economic Implications," *Asian-Pacific Economic Literature*, Vol. 7 No. 2, pp. 28-57.

²¹ Wickramasekara, Piyasiri (1996), "Recent Trends in Temporary Labour Migration in Asia," *Migration and the Labor Market in Asia: Prospects to the Year 2000*, Paris: Organisation for Economic Cooperation and Development, pp. 104-105.

12.5 percent. Amjad (1996) reports that the European population is going to continue to decline and the number of Asians may increase. (See Tables 9 and 10.)

• Table 9 Arrivals for Short-term Employment in Papua New Guinea by Occupation Group
1993

Occupation	Number	Distribution
Total	5,898	100.00%
Professional, technical	1,014	17.19%
Administrative, executive, managerial	3,063	51.93%
Clerical	318	5.39%
Sales	60	1.02%
Agricultural, farmers, fishermen	42	0.71%
Miners, quarry workers	194	3.29%
Transport and communication workers	18	0.31%
Tradesmen, mechanics, boilermen, etc	737	12.50%
Service workers	83	1.41%
Armed services	9	0.15%
Housewives, mothers	268	4.54%
Students, children	86	1.46%
Retired, pensioners	6	0.10%

Note: Includes dependents of persons arriving for short-term employment.

Source: International Arrivals and Departures, June Quarter 1994, National Statistics Office, Papua New Guinea

• Table 10 Arrivals for Short-term Employment in Papua New Guinea by Country of Residence
1993

Country	Number	Distribution
Total	5898	100.00%
Australia	2941	49.86%
Canada	68	1.15%
China	87	1.48%
Hong Kong	12	0.20%
Korea	50	0.85%
Japan	37	0.63%
Malaysia	683	11.58%
New Zealand	299	5.07%
Philippines	797	13.51%
Singapore	79	1.34%
United States	184	3.12%

Note: Includes dependents of persons arriving for short-term employment.

Source: International Arrivals and Departures, June Quarter 1994, National Statistics Office, Papua New Guinea

III. International Agreements on the Movement of Persons and the APEC

The first section takes a quick look at three agreements among APEC-members that deal with the movements of persons in some detail. These are the Trans-Tasman Travel Agreement between Australia and New Zealand, the Canada-US Free Trade Agreement, and the North American Free Trade Agreement. Bilateral agreements have not been studied. The second section looks at the commitments in the Individual

Action Plans under the 1996 Manila Action Plan. The third section then looks at the commitments of APEC members in the GATS.

A. Sub-regional Arrangements

Other agreements have either been too vague or too specialized. Among the ASEAN member countries, for example, there is an agreement to a visa-free, short-term, non-employment related entry. This agreement has helped to boost tourism and business for the member countries. The labor exporting countries have unilaterally strengthened their exit rules in order to minimize irregularities and abuses that sometimes cause a strain in diplomatic relations. Negotiations for a GATS-Plus services trade agreement is ongoing. The People's Republic of China and the United States signed an agreement on Cooperation in Science and Technology. Both countries will exchange scientists, scholars, specialists, and students under this agreement. The agreement also calls for "each country will put forth its best efforts to facilitate the prompt entry and exit of equipment and personnel."

Australia and New Zealand share a bilateral economic pact that allows free movement of labor (without visas or work permits) between them through the Trans-Tasman Travel Agreement. The 1988 Services Protocol between these two countries allows market access and national treatment to service providers. Like the European Union, both countries have agreed to have a common labor market where residents of both countries are free to seek employment in each other's economy.²²

The mutual recognition of professional qualifications is discussed under the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). The agreement recognizes the equivalence of professions in Australia but will not have any effect on the laws governing the same occupations in New Zealand. In this agreement, the home country gains greater control, but final control is given to the host country.²³ At this point, however, both countries have not specified details on how the recognition of qualifications can be expedited except for the commitment that each country will try to ensure that the rules and regulations in force do not discriminate the foreign service providers. Difficulty is associated with the state governments of Australia, which have authority to alter matters affecting licensing and certification.²⁴

Perhaps the most comprehensive agreement involving the movement of professionals is found under the Canada-US Free Trade Agreement (CUSFTA) and the North American Free Trade Agreement (NAFTA). The following discussion is aided by Hoekman and Sauvé (1994) who provide a comparison of provisions on services trade among the European Community, the CUSFTA, the NAFTA, and the ANZCERTA..

²² Hoekman and Sauvé (1994), p. 28.

²³ UNCTAD (1993b), "Harmonization and Recognition of Professional Qualifications," Geneva: UNCTAD/SDD/SER/2, p. 12.

²⁴ Hoekman, B. and Pierre Sauvé (1994) "Liberalizing Trade in Services," World Bank Discussion Paper No. 243, Washington, D.C.: World Bank, p.13.

The CUSFTA has four chapters related to service trade. These are: a general chapter on services that has annexes on telecommunications, computer services, tourism, and the mutual recognition of architects, a chapter on financial services, and a chapter on the temporary entry of business people²⁵. Temporary entry is provided for four categories namely, business visitors, traders and investors, professionals and employees of multinationals. This provision does not require labor market tests, is not subject to quotas, and other similar conditions. There is also a commitment to simplify the procedures for visa application and issuance. Legal and medical professionals cannot use this provision except when engaging in teaching or research.

The North-American Free Trade Agreement expands this provision to include Mexico. A list of activities is provided in Schedule I, Chapter 16 of the Agreement. If the applicant wishes to engage in one of these activities, employment authorization is not required as long as the applicant has already completed the immigration requirements of the receiving country. Chapter 16 also commits each country to continue discussions on the possibility of granting easier entry for spouses of business persons. Each country also agrees to distribute clear explanations of the entry requirements for business persons who wish to use the provisions of the Agreement.²⁶ In addition, the NAFTA hinders the imposition of new measures related to local presence or residency requirements for service providers.²⁷

The four categories of business persons as defined in the Agreement follows, *in toto*:

- business visitors engaged in international business activities for the purpose of conducting activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service and other general services;
- traders who carry on substantial trade in goods or services between their own country and the country they wish to enter, as well as investors seeking to invest and substantial amount of capital in that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;
- intra-company transferees employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country; and
- certain categories of professionals who meet minimum education requirements or who possess alternative credentials and who seek to engage in business activities at a professional level in that country.

Mexico and the United States agreed to a quota of 5,500 Mexican professionals each year. Canada did not set any limits for Mexico.

²⁵ *ibid.*, p. 29.

²⁶ UNCTAD (1993a), p. 22.

²⁷ Hoekman and Sauvé (1994), p. 18.

Under the NAFTA, in addition to national treatment, the three countries hope to be able to build the appropriate procedures for professionals requiring licenses and certifications. The three are also attempting to develop a set of professional standards for people licensed to practice or whose practice is restricted by law.

B. APEC and the Movement of Persons

The Manila Action Plan for APEC (MAPA) includes trade in services in its many areas of cooperation. Four sectors have received the most attention, namely, tourism, transport, energy, and telecommunications. The financial services sector has also received much attention recently. The initial assessment is that business dealings made from the host economy remains more liberal than those that require the commercial presence. The MAPA relies heavily on the implementation of each members' WTO commitments under the GATS. Work is currently focusing on the analysis of competition policy, standards setting and conformance, and intellectual property rights. Specific to the movement of persons is the work being done by the WTO Working Group on Professional Services on the mutual recognition of accountancy services. The MAPA wishes to explore the possibility of applying these outcomes to other professional services. In addition, explorations are also being undertaken for streamlining procedures governing the mobility of business persons.²⁸

This section attempts to put together liberalization initiatives listed by the APEC members as reported in various APEC Secretariat publications. In addition, the individual action plans (IAPs) submitted during the 1996 APEC Manila Summit are studied. The final source of information are the Schedule of Commitments submitted by the GATS members. Papua New Guinea was not yet a GATS member at the time this paper was written and, hence, is not included in the discussion.

Two sections under the IAPs were studied. One is the section under business/professional services and the other is the mobility of business persons. The format of the IAPs require the member economies to report the status of restrictions on market access and national treatment. Then each member economy should indicate its commitments for the future.

This system differs from the GATS Schedule of Commitments. The schedules contain sixteen cells in total. Commitments are divided into horizontal commitments and sector-specific commitments. These must differentiate between market access and national treatment restrictions. A further division of commitments is done according to the mode of supply. The analysis undertaken for this paper concentrates on the fourth mode of supply.

²⁸ Manila Action Plan for APEC (1996), "Highlights and Overview of the MAPA, Volume 1," <http://www.apecsec.org.sg>.

The GATS Schedule of Commitments also contains a separate table listing the most-favored nation exemptions. Only those exemptions identified by signatories as related to the movement of persons were studied.

The difference in formats between the two agreements already reflects that more information can be obtained from the GATS schedules rather than the IAPs. The IAPs specially do not discuss commitments by mode of supply thus limiting the analysis to business/professional services and encompassing commitments related to other modes of supply.

B.1 Status of Market Access and National Treatment

From PECC (1995), a listing of the unilateral liberalising actions in services trade is available. From this list, only a few economies have commitments related to business/professional services and the movement of natural persons. Additional information on the deregulation and liberalization initiatives of the APEC-member economies is provided by the APEC Committee on Trade and Investment. This information refers to initiatives undertaken in 1995. The third source of information is the IAP themselves.

A summary of the measures related to the movement of persons in the first two sources is found in Table 11. The IAPs of nine economies provided some information on legal services and they are found in Table 12. The other services are found in Table 13. Highlights of the IAPs on business/professional services are found in Table 14 while Table 15 shows the highlights on the mobility of business people.

- Table 11 Measures Related to the Movement of Persons in APEC-member Economies
Status of Market Access Restrictions and National Treatment Restrictions
As Reported by the APEC CTI and the PECC

Economy	Measure
Chile	Visas were facilitated for South Korea, allowing entry into the country without previous inquiry. In addition, a list of 146 Korean firms was established so that executives may automatically obtain visas.
Korea	The one-stop investment service includes comprehensive assistance with respect to visas.
Malaysia	Two specialists/experts per service organization are allowed entry while additional specialists/experts may be allowed subject to market tests and the training of Malaysians. Any company with foreign paid-up capital of US\$2 million and above will be allowed five expatriate posts. Additional expatriate posts will be given upon request. Any company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts subject to certain qualifications.
New Zealand	In 1991, New Zealand introduced a points based system for the General Category which targets immigrants with human capital skills. A separate Business Investment Category requires the investment of legally obtained business funds in New Zealand in either direct or portfolio investments. Both the Business and General Immigration Categories are currently under review.
United States	Permitting investors to hire senior management regardless of nationality.

Mobility of Business Persons

Not much information regarding the mobility of persons could be obtained as shown in Table 11. Chile, Korea, and New Zealand listed visa-related rules. Malaysia and the US provided information regarding the entry of management personnel.

Legal Services

There are four kinds of restrictions being used by the nine economies namely: scope of work limitations (4 instances), citizenship or residency requirements (4 instances), establishment restrictions (6 instances), and qualifications specifications (3 instances). The scope of work limitations usually allow foreign lawyers to work in one or any combination of home country law, third-country law, or international law. In some cases, foreign lawyers can only serve in an advisory or consulting capacity or work as an assistant to a local lawyer. This is true for Australia, China, Japan, and Malaysia.

• Table 12 Legal Services in APEC-member Economies
The Status of Market Access Restrictions and National Treatment Restrictions
As Reported in the 1996 Individual Action Plans

Country	Legal Services
Australia	<p><i>To practice as a Lawyer:</i> Can practice foreign law only. Can be an employee of a local firm or act as a consultant. In some states and territories, may enter into partnership with local lawyers. Cannot employ local lawyers.</p> <p><i>To Operate a Foreign Law Firm:</i> In addition to the residence requirements for public companies, legal firms can be required to have at least one equity partner who is a permanent resident, depending on which state is involved.</p>
Chile	<p><i>To Practice as a Lawyer, Public Defender, Notary Public under Civil Law, Custodian, Archivist, Licensed Attorney, Court Clerk, Arbitrator, Receiver in Bankruptcy and Public Auctioneers (Also as customs brokers or agents):</i> Must have Chilean nationality.</p>
China	<p><i>To Operate a Foreign Law Firm:</i> According to the Interim Provisions of the Ministry of Justice and the State Administration for Industry and Commerce on the Setting up of an Office of a Foreign Law Firm in China, foreign law firms are allowed to: (a) provide clients with consultancy on the home country's law, international treaty and practice; (b) handle legal affairs on behalf of and entrusted by Chinese clients and law firms in the country in which the law firm is registered for legal business; (c) act on behalf of foreign clients to entrust a Chinese law firm to deal with legal affairs in the territory of China.</p>
Hong Kong	<p><i>To Practice as a Solicitor:</i> Foreign lawyers must pass the Overseas Lawyers (Qualification for Admission) Rules under the Legal Practitioners Ordinance</p> <p><i>To Practice as Barrister:</i> Satisfy one of the following: Obtain their qualifications in Hong Kong. Obtain their qualifications in England, Northern Ireland or Scotland and; I. have practiced as a barrister or advocate in the UK for at least 3 years; or II. be a permanent resident of HK; or III. has been ordinarily resident in Hong Kong for at least 7 years. Are Commonwealth citizens or citizens of the Republic of Ireland and; I. have been ordinarily resident in Hong Kong for at least 7 years; and II. have obtained a Postgraduate Certificate in Laws from a HK university. Have been admitted as a solicitor in HK for at least three years; and, I. during that time was in practice as a solicitor in HK; or II. were employed by the HK government as a legal officer. Have been admitted as a barrister or legal practitioner in Australia, Canada (except Quebec), I. New Zealand, the Republic of Ireland, Zimbabwe and Singapore; and, II. have experience in advocacy; III. have been employed in the HK government Legal Dept. as legal officer for at least 7 years, of which time 3 years was spent on work similar to that undertaken by a barrister of 10 years seniority and intend, if admitted, to practise as a barrister in HK within 12 months after admission.</p> <p><i>To Operate a Foreign Law Firm:</i> A foreign law firm cannot practise HK law and cannot employ and/or enter into partnership with HK solicitors. A registered foreign firm may associate with a local law firm provided that the ratio of foreign lawyers to local lawyers is not more than one. A waiver is provided by the Law Society under exceptional circumstances. A branch of a foreign law firm registered as a local law firm (i.e. practicing HK law) may bear the same name as the mother firm provided that the mother firm is registered and has practiced HK law for the past three years.</p>

Table 12 (cont'd.) The Status of Market Access Restrictions and National Treatment Restrictions
on Legal Services in APEC-member Economies
As Reported in the 1996 Individual Action Plans

Country	Legal Services
Japan	<p><i>To be recognized as "gaikoku-ho-jimu-bengoshi":</i> A service supplier must be recognized by the Minister of Justice. The supplier must register with the Japan Federation of Bar Associations. Conditions for granting recognition by the Minister of Justice are: The service supplier is qualified as a lawyer in the jurisdiction. The service supplier has engaged himself as a lawyer for at least 5 years in the jurisdiction. The service supplier is not subject to such conditions of disqualification which, if applied to bengoshi (lawyers), would disqualify the bengoshi. The service supplier possesses the intention to undertake the profession in good faith. The service supplier possesses the plans, residence and financial basis to perform his function properly and steadily. The service supplier possesses capability to compensate for damages caused to the client, if any.</p> <p><i>Practice of Law by Foreigners Qualified by Japanese Law (gaikoku-ho-jimu-bengoshi):</i> gaikoku-ho-jimu-bengoshi cannot employ Japanese lawyers. gaikoku-ho-jimu-bengoshi cannot handle legal business related to third country law except for the law of primary qualification or designated law. One requirement to become gaikoku-ho-jimu-bengoshi is at least five years of practice as a foreign lawyer with a maximum of two years practice in Japan under a bengoshi or a gaikoku-ho-jimu-bengoshi to be counted as part of the five years.</p> <p><i>General</i> Reciprocity measures are no longer applied to nationals of GATS members with respect to the Foreign Lawyer's Act.</p>
Malaysia	<p><i>To Operate a Foreign Law Firm:</i> Advisory and consultancy services on home-country laws, international laws, or off-shore corporation laws of Malaysia may be provided if the company is registered in Labuan.</p>
Mexico	<p><i>To Become a Notary Public:</i> Only nationals by birth may become notary publics.</p> <p><i>To Operate a Foreign Law Firm:</i> Foreign law firms with prior approval from the National Commission for Foreign Investment may own directly or indirectly more than 49 percent of the ownership interest in the firm.</p>
Chinese Taipei	<p><i>To Practice as a Lawyer:</i> Only Chinese Taipei citizens can practice as a lawyer.</p> <p><i>To Work as a Chinese Taipei Lawyer's assistant or consultant:</i> Must be a college graduate majoring in a law-related subject. Have law-related work experience for at least two years. Have passed the lawyer's examination in any foreign country.</p>
Singapore	<p><i>To Operate a Foreign Law Firm:</i> Establishment of a foreign law firm is approved on a case-by-case basis.</p>

Source: Respective Individual Action Plans under the MAPA 1996
Requirements for recognition of gaikoku-ho-jimu-bengoshi in Japan comes from Japan's schedule of commitments in the GATS.

Citizenship or residency requirements specifically limit certain types of legal services to nationals or permanent residents of that country. Chile, for example, requires that the following legal service providers must be of Chilean nationality to practice their profession: lawyers, public defenders, notary public under Civil Law, custodians, archivists, licensed attorneys, court clerks, arbitrators, receivers in bankruptcy, public auctioneers and customs brokers or agents.

Establishment restrictions refer to whether commercial presence is required, the presence of equity limitations, the limitations on whether partnerships can be formed with nationals engaged in the same profession or business and the rules that govern them as well as employment restrictions. For Australia, Hong Kong and Japan, foreign law firms or foreign lawyers are prevented from employing local lawyers. In Hong Kong, partnerships with Hong Kong solicitors are also not allowed. Malaysia requires that a foreign law firm be registered in Labuan. This is likely to complement Labuan's special status for foreign banks and their branches.²⁹ Mexico tries to control foreign equity ownership while Singapore approves establishment applications only on a case-by-case basis. Nationality requirements may also be applied to equity partners.

Lastly, qualifications specifications refer to the competency requirements that foreign lawyers must fulfill before they can practice domestic law. Hong Kong provides a rather detailed list of requirements to practice as solicitor and barrister in their territory requiring not only degrees from an acceptable set of countries but also a minimum number of years of experience. Japan and Chinese Taipei also provide some idea of what requirements must be fulfilled.

Other Services

Other services can be analyzed in the same manner. Citizenship or residency requirements apply to accounting and auditing services in Australia and Hong Kong and security services in Chile. Qualifications requirements are specified for accountants and certified public accountants and selected medical services in Hong Kong and tour guide services in Chinese Taipei. Establishment limitations are placed on accounting services, integrated engineering services, and construction and engineering-related services and overseas headquarters services in Malaysia. Engineering services and architecture services are also subject to these limitations by requiring directors to be registered engineers or architects. Security services in Hong Kong and real-estate services in Australia require commercial presence. Chinese Taipei on the other hand has opened four service sectors to foreign ownership.

In addition to these limitations, Chile uses technology transfer requirements particularly for engineering services and research services. Foreign engineers and firms wishing to provide security services must gain authorization from their corresponding professional associations and are subject to

²⁹ Foreign banks registered in Labuan can avail of special incentives including but not limited to tax breaks.

the association's "tutoring and surveillance." More detailed requirements are needed for research along the Chilean border and the Chilean 200-mile maritime zone, as well as for anthropological, archaeological and paleontological activities. Usually, one or more Chileans are required to join the activities. Technology transfer requires foreigners with skills not possessed by a national to train local counterparts.

• Table 13 Other Services in APEC member Economies
The Status of Market Access Restrictions and National Treatment Restrictions
As Reported in the 1996 Individual Action Plans

Country	Sector	Citizenship or Residency Requirements
Australia	<i>To operate an accounting firm</i>	In addition to the residence requirements for public companies, accounting firms are required to have at least one equity partner who is a permanent resident.
HK	<i>To practice as a certified public accountant</i>	Meet a limited residency requirement to obtain a practicing certificate. (A waiver of residency by the Council may be considered depending on the length of work experience.)
Chile	<i>To become private armed guards</i>	Must have Chilean nationality.
Qualifications Requirements		
HK	<i>To practice as an accountant</i>	Pass the examinations prescribed by the Council of HK Society of Accountants, or be a member of an accountancy body approved by the Council.
	<i>To practice as a certified public accountant</i>	Possess experience and knowledge of local law and practice in order to obtain a practicing certificate.
	<i>To practice as a veterinary surgeon</i>	Must be a member of the UK Royal College of Veterinary Surgeons.
	<i>medical laboratory technicians</i>	Must hold UK qualifications for registration. Overseas qualifications are considered on a case by case basis and technicians may be required to pass an examination set by the Board.
	<i>occupational therapist</i>	Must hold UK qualifications for registration. Overseas qualifications are considered on a case by case basis and therapists may be required to pass an examination set by the Board.
	<i>pharmacist</i>	Register with the Pharmacy and Poisons Board. Hold a local degree: Completed a pharmacy degree, has been registered, or is professionally qualified to be registered, in the country where the degree was obtained; has had relevant pre-registration training and/or post-registration experience of at least one year; has passed the registration examination of the Pharmacy and Poisons Board.
Chinese Taipei	<i>To become a tour guide</i>	The Tour Guide Management Regulations have been amended to allow foreigners to participate in the Tour Guide Examination and receive qualifications equivalent to that of Chinese Taipei nationals.
Technology Transfer		
Chile	<i>To provide engineering services</i>	Requires authorization from the corresponding professional association subject to the tutoring and surveillance of the association.
	<i>To provide security services</i>	Requires authorization from the corresponding professional association subject to the tutoring and surveillance of the association.
	<i>To explore the Chilean border whether scientific, technical or related to mountain climbing or mining</i>	Requires authorization from the Chilean Consulate. The Department of Borders shall: Determine whether one or more Chileans will join the expedition; Give authorization and supervision.
	<i>To perform excavations, surveys, probings, collect anthropological, archaeological, paleontological material</i>	The person in charge must come from a reliable foreign institution and must be working with a Chilean state-owned scientific organization or a Chilean university.

Table 13 (cont'd.) Other Services in APEC-member Economies
The Status of Market Access Restrictions and National Treatment Restrictions
As Reported in the 1996 Individual Action Plans

Country	Sector	Establishment Requirements
Malaysia	<i>To operate an accounting firm</i>	Commercial presence is allowed for accounting, auditing, and bookkeeping services through a locally registered partnership with Malaysian accountants or accounting firms.
	<i>For integrated engineering services and construction and engineering-related services</i>	Commercial presence through a representative office, regional or Malaysian-controlled corporation.
Chinese Taiwan	<i>Construction of houses</i>	Opened to foreign ownership.
	<i>Military engineering and construction</i>	Opened to foreign ownership.
Singapore	<i>To operate a firm for engineering services</i>	The previous ruling of at least two-thirds of the shares must be held by registered engineers or allied professionals is removed. However, the requirement that the Chairman and at least two-thirds of the directors will have to be registered engineers or allied professionals remains.
HK	<i>To operate a securities firm</i>	Obtain a license to provide security services. Must be incorporated in HK.
Australia	<i>To operate a real estate firm</i>	Commercial presence is required.
Chinese Taipei	<i>Real estate brokerage</i>	Opened to foreign ownership.
	<i>To operate a travel agency firm</i>	Opened to foreign ownership.
Malaysia	<i>Overseas Headquarters Services</i>	Commercial presence is allowed through a locally incorporated wholly foreign-owned company.
	<i>Maritime Transport</i>	The Rules and Regulations Governing the Permission and Management of Foreign Marine Employees was amended in July 1994 to allow the deck department and the engineer department of vessels to each hire one foreign mariner to assume a position no higher than deck officer and engineer officer. Any vessel can hire foreign employees, but foreign nationals cannot amount to more than half of the total crew.
Singapore	<i>To operate an architecture firm</i>	The previous ruling of at least two-thirds of the shares must be held by registered architects or allied professionals is removed. However, the requirement that the Chairman and at least two-thirds of the directors will have to be registered architects or allied professionals remains.
Australia	<i>For auditors</i>	Only natural persons can be registered auditors.
		Others
Chile	<i>To conduct Research in the Chilean 200-mile maritime zone:</i>	Submit a request 6 months in advance and comply with other requirements.
Australia	<i>For taxation, liquidation and auditing:</i>	National treatment applies, that is, foreign practitioners need to fulfil the same requirements of the regulatory bodies as Australian practitioners.

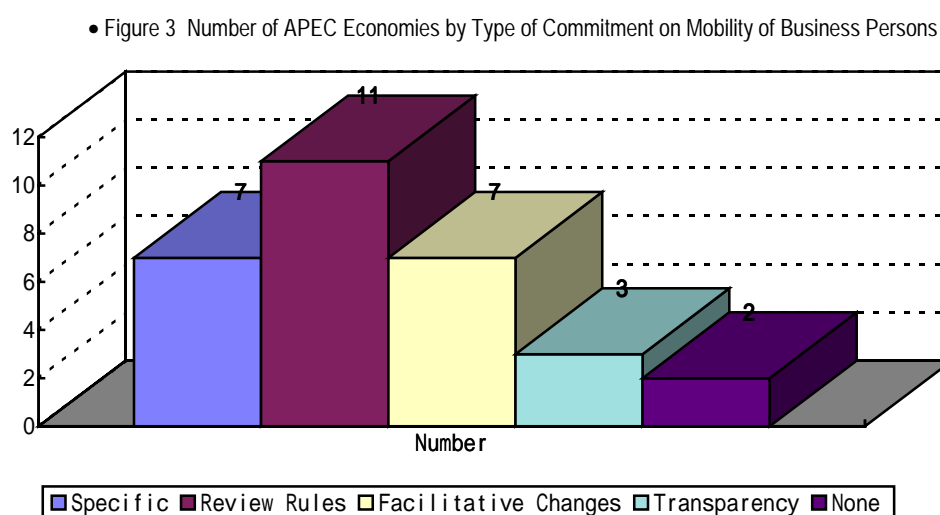
Source: Respective Individual Action Plans under the MAPA 1996, APEC CTI (1995) and PECC (1995)

B.2 Commitments in the IAPs

Two sections under each Individual Action Plan submitted by each member economy for the Manila Summit are related to the movement of persons. One is the annex on the mobility of business persons and the other is business/professional services. As explained earlier, the APEC does not use the model of supply approach in outlining commitments in the services sector. Service provision under the business/professional services is a type of service that is skill- and knowledge-embodied in the supplier. Hence, one of the most effective ways of sharing this information is through movement of the supplier.

Mobility of Business Persons

Commitments under this heading have been classified into four types. The first group consists of specific commitments with respect to entry requirements such as, establishing the APEC Business Access Travel Card and the extension of visa validity periods. The second type are commitments to review visa rules and regulations. The third type are commitments to enhance or increase the facilitation of administrative procedures in order to shorten the processing period. The fourth type refers to commitments in increasing the transparency of rules and regulations. Chart 5 shows the number of economies by type of commitment. Most of the commitments (11) are of the second type, promising to review rules and considering the possibility of changing them in the future. Seven commitments belong to the third type and another seven are more specific. Three commitments refer to transparency (People's Republic of China, Mexico, United States) while two economies (Canada and Papua New Guinea) have no commitments to increase the mobility of business people.



Among the specific commitments, Australia, Chile and the Philippines make direct references to the APEC Business Travel Card system equivalent to visa-free travel within the APEC for businessmen. The Republic of Korea wishes to delegate more authority to its diplomatic and consular missions with respect to the issuance of visas and permits. Malaysia has offered to convert a business pass into an employment pass for qualified persons who intend to set up companies for trade and investment purposes. The Philippines increased the validity period of multiple entry visas for foreigner's in Board of Investment-registered companies and foreign investors and traders to two years. It also extended the validity of business/tourist visa holders from 59-day single entry to 60-day multiple entry. Thailand will revise its Immigration Act 1979 (B.E. 2522) to provide multiple-entry and re-entry visas for business people by the year 2000. The United States has a conditional offer of giving a 10-year multiple entry temporary business visa based on reciprocity. (See Table 14.)

• Table 14 Commitments on Mobility of Business People
APEC Individual Action Plans

Country	Commitment
Australia	Progressively introduce the Electronic Travel Authority from 1996. Introduce an Australian Business Access Card in 1996 to streamline border processing. Work with other APEC members to establish the APEC Business Travel Card system equivalent to visa-free travel.
Brunei	Review visa procedures and arrangements.
Canada	None.
Chile	Enhance and facilitate administrative procedures for Tourist visas and Temporary Resident visas. Work with other APEC members to establish the APEC Business Travel Card system equivalent to visa-free travel.
China	Provide APEC economies with its national laws and regulations regarding entry/exit management. Consider possibility of issuing multiple entry visas to business people. Review existing visa regulations. Simplify procedures and accelerate visa approval including computerization.
Hong Kong	Examine feasibility of a travel pass scheme in 1997-98 for frequent visitors. Review visa and border clearance arrangements.
Indonesia	Review its visa arrangements.
Japan	Simplify and expedite procedures including computerized visa issuance. Review existing requirements of the issuance of multiple-entry visas. Research on the implementation of the Immigration Control Act and Refugee Recognition Act. Review status of residence of Intra-company transferee based on reciprocity.
Korea	Delegate more authority to diplomatic and consular missions. Examine possibility of extending multiple entry visas all APEC economies.
Malaysia	Review visa arrangements on a reciprocal basis. Convert business visit pass to an employment pass to qualified persons intending to set up companies for trade and investment purposes.
Mexico	Further facilitate temporary entry of foreign business persons on a reciprocal basis. Establish more transparent criteria and procedures for temporary entry.
New Zealand	Monitor and review border entry measures. Examine possibility of extending visa waiver arrangements to other APEC economies.
Papua New Guinea	None
Philippines	Extend the visa to two years. Multiple entry visas will be granted to foreigners working in BOI-registered companies, investors, traders. For Business/Tourist (9a) visa holders, extend them from 59-day single entry to 60 day multiple-entry. Streamline visa processing procedures for Treaty Traders Visa and Pre-arranged working visa. Introduce five-yr. Multiple entry (59 days max stay per entry) APEC business visa on a reciprocal basis. Introduce APEC business lanes at major ports of entry. Consider establishing an Immigration Office at Makati City.
Singapore	Review visa arrangements.
Chinese Taipei	Explore the possibility of enhancing bilateral visa arrangements for business people with other APEC economies. Study the possibility of implementing computerized visa issuance procedure. Investigate the possibility of expanding the visa-exempt program to include citizens of more APEC economies.
Thailand	Revise Immigration Act 1979 (B.E. 2522) to introduce multiple entry and re-entry visas for business people by the year 2000 and Modify the Ministerial Regulations accordingly.
United States	Prepared to offer its maximum validity business visas (10-yr. multiple entry B1) on a reciprocal basis. Explore ways of broadening the INSPASS program to facilitate entry of a broader class of business travelers. Exchange information on regulatory regimes. Explore use of new technologies to streamline visa processing.

Source: Respective Individual Action Plans

Business/Professional Services

Under commitments on the services sector, the relevant sub-heading was that of business/professional services. Thirteen economies have no specific commitments in this area. Three

economies, namely Hong Kong, Japan, and Chinese Taipei, have offered commitments for legal services. In addition to legal services, Hong Kong has also offered to amend its law removing references to qualifications for persons wanting to be veterinarians services, medical laboratory technicians, occupational therapists, and pharmacists. These qualifications usually make reference to the country where such qualifications were obtained. The commitments, however, only promise to *review and consider* removing the restrictions. (See Table 15.)

C. GATS Commitments of APEC members

The APEC mandate requires conformity with the World Trade Organization. Hence, this discussion cannot be complete without taking into consideration the commitments submitted to the Group of Negotiations on Services.

The relevant section under the GATS commitments is the movement of natural persons mode of supply. Both Horizontal Commitments and Sector-Specific commitments were studied. Horizontal commitments are those that apply to all the sectors in the schedule. Sector-specific commitments are, as their name suggests, applicable only to the particular sector under which it is listed.

Most of the horizontal commitments by the APEC members covered bindings on the movement of intra-company transferees while some included the movement of business persons. Provisions on the former clearly enhance the role of multinational corporations in services trade. Intra-company transferees (Table 16) usually cover executives, managers and specialists of companies that have branches or subsidiaries in the host economy. The commitments have the following characteristics:

- In order to effect the transfer of a non-national, these employees must have been employed for at least one year prior to either application or granting of permission for entry. Chile requires at least two years of employment while Australia, China and Indonesia are unclear about length of prior employment.
- The maximum length of stay including extensions ranges from one year for Mexico to eight years for Australia. Most offers are either three or five years. New Zealand, China and Korea are unclear with respect to period of extension.
- Quotas are used by Chile and Malaysia. Hong Kong makes some reference to “degree of suitability” but does not give precise figures.

• Table 15 Commitments on Professional/Business Services
APEC Individual Action Plans

Country	Commitment
Australia	<i>Engineering Services:</i> Work to lay the groundwork for mutual recognition of engineering qualifications in the region. <i>Accounting Services:</i>

	Implement WTO Working Party on Professional Services guidelines on mutual recognition of qualifications and licensing procedures as soon as practicable and support proceedings with the rest of the agenda in the work program. With regard to harmonization of international accounting standards, Australia will allow the use of these international standards for all firms, if they wish, by the year 2000.
	<i>Legal Services:</i> Improve on liberalising commercial presence arrangements for firms practising foreign law. Encourage the States to move towards uniform minimum measures in relation to residence requirements. Encourage speedy adoption of mutual recognition processes by the States to facilitate the practice of foreign law.
Brunei	None.
Canada	None.
Chile	In the short-term, it will identify market access trade restrictions and national treatment limitations or MFN exemptions. It will remove the identified restrictions, limitations and exemptions where appropriate.
China	None.
Hong Kong	<i>Legal Services:</i> It will consider removing the market access restrictions in the legal services sector and, in the medium term, remove them where appropriate. It will consider devising objective, reasonable, non-discriminatory and standards-based admission criteria for foreign lawyers who wish to practice as barristers in Hong Kong. <i>Veterinary Services:</i> It will seek to amend the law by 1997 to remove references to qualifications of any specific country. <i>Medical Laboratory Technicians, Occupational Therapists, Pharmacists:</i> Seek to amend the law by 1997 to remove references to UK qualifications for the purposes of registration.
Indonesia	None.
Japan	<i>Legal Services:</i> Employment of Japanese lawyers by foreign lawyers qualified in Japanese Law Handling of legal business related to third country law by foreign lawyers qualified in Japanese Law Experience requirement to become a foreign lawyer qualified in Japanese Law Begin to study the possibility of reviewing laws governing the legal practices in Japan by foreign lawyers lawyers qualified in Japanese Law in fiscal 1996, in which the application of the revised Special Measures Law Concerning the Handling Of Legal Business by Foreign Lawyers will be monitored and surveys conducted to determine whether or not there could be any negative impact related to employment, etc. Surveys will also be conducted on the recent trends in the legal systems of other countries, etc. Efforts will be made to reach a conclusion within fiscal 1997.
Korea	None.
Malaysia	None.
Mexico	None.
New Zealand	None.
PNG	None.
Philippines	None.
Singapore	None.
Chinese Taipei	<i>Legal Services:</i> Permit foreign lawyers to establish law offices and provide their services for domestic and international law conditional on accession to the WTO. Consider allowing foreign lawyers to form partnerships with Chinese Taipei attorneys.
Thailand	None.
United States	None.

- Other limitations involve residence requirements for Chile; Hong Kong requires that the alien does not transfer employment or employers; Indonesia may impose levies; and Malaysia subjects the applications to a market test.

Business visitors (*Table 16*) are usually defined as those who enter to negotiate the sale or purchase of a service activity but direct sales to the public are not allowed. Other countries include the establishment of commercial presence and participation in other business activities in their definition. Remuneration from local sources is also not allowed. Malaysia is peculiar in that it requires one year of

prior employment in the same company before entry. The duration of stay ranges from 60 days for Chinese Taipei to one year for Australia. Most, however, offer a maximum of 90 days.

All the sectors under the sector-specific commitments were reviewed. It should be noted that these schedules follow the positive list approach. If a sector is not listed, it is unclear whether restrictions exist or not. In contrast to this, the negative list only that provides information on the prohibited sectors. Thus, a positive list provides less information. The negative list approach was used for the exemptions from GATS Article II Most Favored Nation. In addition, each economy came up with their own subset of sectors.

Sector-specific commitments were mostly unbound and exceptions are noted in Table 17 for reference. The bindings set out in the sub-sectors vary in form of limitation and eight types have been identified. A commitment may be a combination of limitations. Table 17 splits these commitments according to type. The limitations identified are: residency or citizenship requirements; labor market-related restrictions; technology transfer requirements; length of stay limitations; establishment restrictions; qualification requirements; scope of work limitations; and others. The first two forms may be related in that residency or citizenship requirements almost amount to restricting an occupation to nationals or its equivalent. Together these two account for 44 per cent of all restrictions. Canada uses the citizenship or residency requirements the most and applicability varies across its states. For Hoekman and Sauvé (1994), the “lack of disciplines on discriminatory licensing practices involving citizenship or permanent residency requirements can be expected to weaken the GATS impact on trade in professional services.”³⁰ The most common form of labor market-related restriction is the quota, which is used by Malaysia, Thailand, Indonesia, Chinese Taipei, and the Philippines. Quotas are set as specific numbers of persons or as a proportion to total employment. Other labor-market related restrictions are bans against foreigners, the payment of fees and levies by either the worker or employer and local availability test.

³⁰ Hoekman and Sauvé (1994), p. 40.

• Table 16 Summary of GATS Bindings for Intra-Company Transferees and Business Visitors
APEC-member Economies

Country	Intra-Company Transferees			Business Visitors		
	Definition	Duration	Other Limitations	Definition	Duration	Other Limitations
Australia	Executive and senior managers responsible for company or branch/dept. of company. Length of prior employment with firm unclear.	Four years renewable up to four more years	Unclear but national treatment measures that may apply to this group are bound.	A visitor not based in Australia; to negotiate service sales agreement; no direct sales or provision of service to public	Initial stay up to 6 months and renewable to 12 months.	Unclear but national treatment measures that may apply to this group are bound.
Brunei	Managers, executives and specialists employed by a branch, subsidiary, or affiliate. Length of prior employment should not be less than one year.	Three years with extension of up to two years for a total term not to exceed five years.				
Canada	Executive and managers direct company or department, specialist at an advanced level of expertise and in possession of proprietary knowledge. Employed by a firm no less than one year prior to transfer.	Maximum of three years	Unclear but national treatment measures that may apply to this group are bound.	Visitor allowed: (1) business contacts including negotiations of sale of service but no direct sales or provision of service to the public and (2) prepare to establish commercial presence	Up to 90 days	Unclear but national treatment measures that may apply to this group are bound.
China	Managers, executives and specialists of a branch or subsidiary in PRC.	Initial period of stay is three years.		Service salespersons representing a service supplier for purposes of negotiation where sales are not directly made to the public and the person does not supply the service himself.	90 days maximum.	
	Managers, executives and specialists of a foreign invested enterprise conducting business.	Long-term stay permit as stipulated in the contracts or a minimum of 3 years whichever is longer.				

Table 16 (cont'd.) Summary of GATS Bindings for Intra-Company Transferees and Business Visitors
APEC-member Economies

Country	Intra-Company Transferees			Business Visitors		
	Definition	Duration	Other Limitations	Definition	Duration	Other Limitations
Chile	Senior managers and specialists (not including board directors) of companies that meet commercial presence requirements employed not less than two year before the date of application.	Initial period of stay is two years with the possibility of extension for another two years.	Must be resident in Chile. Must not exceed 15% of employment.			
Hong Kong	General managers, senior managers and specialists employed for a period of not less than one year preceding the date of application.	One year which may be extended for a total of five years.	Cannot change employment or employers. Reasonable number depending on size and nature of business operation			
Indonesia	Directors, managers, technical experts/advisors	Maximum of two years with one year extension	Subject to charges levied by national, provincial and municipal governments			
Japan	Person who directs an establishment or one of its establishments or persons with advanced knowledge. Employed for minimum of one year by the supplier immediately preceding the transfer.	Up to five years	Unclear but national treatment measures that may apply to this group are bound.	Visitor allowed: (1) participation in business contacts and negotiations sale of services but no direct sales or provision of service to the public and (2) establishment of commercial presence	Ninety days maximum.	Unclear but national treatment measures that may apply to this group are bound.
Korea	Executives, senior managers, specialists employed for at least one year.	No more than 3 years with possibility of extension if necessary.		Persons responsible for setting up a commercial presence and not engaged in direct sales.	Ninety days maximum.	
Malaysia	Senior managers, specialists or experts employed for a minimum of one year prior to the date of application for transfer.	Total of five years.	Subject to market test. Only two specialists or experts per organization	Employed for at least one year by a foreign service supplier entering for purposes of negotiating sale of services or entering into agreements to sell with no direct sales to the public.	Ninety days maximum.	

Table 16 (cont'd.) Summary of GATS Bindings for Intra-Company Transferees and Business Visitors
APEC-member Economies

Country	Intra-Company Transferees			Business Visitors		
	Definition	Duration	Other Limitations	Definition	Duration	Other Limitations
Mexico	Executives, managers, and specialists employed for minimum of one year prior to gaining permission for transfer.	One year with possibility of extension.		Entering for purposes of negotiating sale of services or entering into agreements without direct sales to the public.	Ninety days maximum	
New Zealand	Executives and senior managers employed for at least twelve months prior to transfer.	Up to three years renewable.	Unclear but national treatment measures that may apply to this group are bound.	A visitor allowed negotiation for service sales but no direct sales to public.	Up to three months per calendar year.	unclear but national treatment measures that may apply to this group are bound
	Specialist and/or senior personnel (1) to handle specialized task at senior level; or (2) for the establishment of commercial presence. Length of prior employment with company unclear.	Up to twelve months renewable	unclear but national treatment measures that may apply to this group are bound			
Singapore	Managers, executives, and specialists who are employees of a branch, subsidiary, or affiliate and have been employed for a period of not less than one year prior to transfer.	Three years with extension of up to two years for a total term not to exceed five years.				
Chinese Taipei	A responsible person, a senior manager or a specialist through a branch, subsidiary or affiliate established in Chinese Taipei according to the "Statute of Investment by Foreign Nationals" employed for a period of not less than 1 year prior to transfer.	No more than three years		A visitor allowed to participate in business meetings, business negotiations, the preparation for establishing a commercial presence or other similar activities and not making direct sale to the public.	Up to 60 days.	

Table 16 (cont'd.) Summary of GATS Bindings for Intra-Company Transferees and Business Visitors
APEC-member Economies

Country	Intra-Company Transferees			Business Visitors		
	Definition	Duration	Other Limitations	Definition	Duration	Other Limitations
Thailand	Managers, executives and specialists in the employ of their firm for at least one year immediately prior to transfer.	One year and may be extended twice for not more than one year each time.		A visitor allowed for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities	Up to 90 days.	
USA	Managers, executives and specialists in the employ of their firm at least one year immediately prior to transfer. Specialist is at an advanced level of knowledge.	Up to three years renewable for two more years. No more than five years total.	The United States did not bind limitations on national treatment that might apply to this category of personnel.	A visitor allowed to negotiate sales of service but no direct sales or provision of service to public	Up to 90 days	The United States did not bind limitations on national treatment that might apply to this category of personnel.

A blank cell means no commitments.

Source: UNCTAD and GATS Schedule of Commitments

• Table 17 GATS Commitments for the Movement of Natural Persons by Type of Restriction
Market Access and National Treatment
APEC-member Economies as Reported in the GATS Schedule of Commitments

Country	Commitment
Residency or Citizenship Requirements	
Korea	<i>Life insurance services, securities investment trust services and investment advisory services</i> Top executive personnel of each establishment must reside in Korea.
Malaysia	<i>Insurance services</i> Residency requirements to be met for lending of money.
Canada	<i>For mortgage brokers, architects, landscape architects, engineers, community/urban planners, customs brokers, real estate agents, chartered appraisers, agrologists, professional administrators and certified management consultants, industrial relations counsellors, security and investigation services, trading in securities and commodity futures and advisory and auxiliary financial services, Tourism (sale of liquor), travel agencies, related scientific and technical consulting services, credit reporting and collection agencies, auditing, licensed public accountants, legal services, construction and related engineering services</i> One or more of the following may be required to practice, use titles; operate a firm and gain accreditation depending on province and profession: commercial presence, citizenship, permanent residency, maintenance of an address.
Australia	<i>For chiropodists and podiatrists and research and development services</i> Permanent residency requirement in some states.
Chinese Taipei	<i>Publishing and news agency services</i> Residence in Chinese Taipei is required for a publisher and an editor. <i>Tourism services</i> A foreigner can apply for the travel-guide examination only if they have obtained an alien resident certificate and have resided for more than six months.
Philippines	<i>Travel agencies</i> Managers and executives must be resident Filipino citizens.
Brunei	<i>Rental/Leasing services without operators</i> For aircraft: To practice a licensed profession, residency and registration is required.
US	<i>Real estate services, integrated engineering services, accounting, auditing and bookkeeping services, legal services</i> One or more of the following may be required to practice or licensure depending on state and profession: US citizenship, in-state residency, in-state office.
Technology Transfer Requirements	
Malaysia	<i>Insurance Services and Banks</i> Specialists or experts are subject to acceptable training programme for Malaysians to be conducted by these persons.
Philippines	<i>Banking and Other Financial Services</i> Foreign service suppliers shall perform technical functions only, with Filipino understudy.
Brunei	<i>For rental of aircraft with crew and Rental/Leasing Services without Operators</i> For aircraft: Subject to training of Brunei nationals.

Table 17 (cont'd.) GATS Commitments for the Movement of Natural Persons by Type of Restriction
Market Access and National Treatment
APEC-member Economies as Reported in the GATS Schedule of Commitments

Restricted Occupations/Quotas/Fees and Levies/Labor Market Tests	
Malaysia	<p><i>Insurance services and banks including insurance companies and representative offices</i> One senior manager for each institution. One foreign national for a management post in a representative office. Specialists or experts are subject to market test.</p> <p><i>Non-banks</i> One foreign national for a management post other than CEO for each establishment.</p>
Thailand	<p><i>Life insurance services</i> Only senior managerial personnel, specialists and technical assistants with the approval of the Insurance Commissioner.</p> <p><i>Foreign bank branch</i> Limitations on the number of non-resident foreign personnel per foreign bank branch: a) 2 persons for banks operating as representative office b) 6 persons for banks operating as full-licensed branch c) 4 persons for banks operating as IBF branch only d) 8 persons for banks operating as full-licensed and IBF branch</p> <p><i>Finance Companies</i> a) 2 persons for a representative office b) Maximum of 4 directors or specialists permitted for finance companies</p>
Indonesia	<p><i>Foreign bank branch</i> Only executive positions can be assumed by expatriates with limitation that at least one of them shall be an Indonesian national.</p> <p><i>Joint-venture bank</i> Only for directors' position can be assumed by an expatriate in proportion to the ownership shared.</p>
Chinese Taipei	<p><i>Architect</i> A local architect establishment in Chinese Taipei may employ not more than 20 foreign technicians and may not exceed one-third of its total employees.</p> <p><i>TV and radio advertising services, publishing and news agency services, video tape and motion picture production and distribution services, motion picture projection services, radio and television services</i> Foreigners employed by the business may not exceed 10 percent of its total employees.</p> <p><i>Construction and related engineering services</i> Foreign technicians employed in each construction site shall not exceed 5 persons, and the total foreign employees shall not exceed one-third of the business' total employees.</p>
Philippines	<p><i>Tourist accommodation facilities</i> Only citizens of the Philippines can be employed in tourism-oriented establishments. However, for hotels and resorts, aliens may be employed subject to the pertinent provisions of the Tripartite Agreement among the Department of Tourism, Department of Labor and Employment, and the Bureau of Immigration, as follows: a) only hotels/resorts duly accredited by the Department of Tourism shall be allowed to engage the services of aliens. b) aliens may occupy a maximum of four managerial positions in a hotel or resort establishment</p> <p><i>International Transport</i></p>

For specialized vessels, aliens may be employed as supernumeraries only.

Table 17 (cont'd.) GATS Commitments for the Movement of Natural Persons by Type of Restriction
Market Access and National Treatment
APEC-member Economies as Reported in the GATS Schedule of Commitments

Restricted Occupations/Quotas/Fees and Levies/Labor Market Tests	
Mexico	<i>International Transport</i> The following occupations are reserved for Mexican nationals: ship captain, airline pilots, ship owners, ship engineers, ship mechanics, crew of ships and flag carriers, "airport commander", "port pilot", customs broker, rail crew.
Brunei	<i>Rental/Leasing services without operators</i> For aircraft: Subject to local availability test.
Length of Stay Limitations	
Philippines	<i>Insurance Services</i> For all insurance subsectors, only aliens qualified to hold technical positions may be employed within the first five years of operation of the enterprise. Their stay is not to exceed five years upon entry. <i>For tourist accommodation facilities</i> The services of aliens may be engaged during special occasions/events such as food festivals, provided the service contract shall be limited to a period of three months renewable for a maximum period of another three months. For new hotels or resorts, aliens required during the pre-operation stage and up to six months after opening of the hotel/resort to the public may be employed. <i>International Transport</i> For specialized vessels, aliens may be employed as supernumeraries only for a period of six months. <i>For specialty restaurants</i> Aliens may be employed subject to the pertinent provisions of the Tripartite Agreement among the Department of Tourism, Department of Labor and Employment, and the Bureau of Immigration, as follows: a) only specialty restaurants duly accredited by the Department of Tourism as well as those forming part of the integrated operation of accredited hotels/resorts may be allowed to engage the services of aliens. b) A specialty restaurant with a minimum capacity of 75 seats shall be allowed to employ one alien as a specialty chef or sous chef. In the initial stage of operation of a specialty restaurant and for a maximum period of two years, three more alien specialty chefs may be employed. c) A specialty restaurant with a seating capacity of 500 or more may be allowed to employ three additional aliens in any of the following positions: specialty chef, sous chef, food service manager or a combination of the above.
Brunei	<i>For rental of an aircraft with crew:</i> Subject to local availability test.
Malaysia	<i>Architect</i> Only an architect who is a consultant to a project wholly financed by a foreign government or implemented under a bilateral agreement between governments are subject to temporary registration for a period of one year per temporary registration. <i>Engineers</i>

Subject to temporary registration for a period of one year.
Integrated engineering services
 Employment of aliens for a period of up to one year or the duration necessary to complete the services contract.

Table 17 (cont'd.) GATS Commitments for the Movement of Natural Persons by Type of Restriction
 Market Access and National Treatment
 APEC-member Economies as Reported in the GATS Schedule of Commitments

Length of Stay Limitations	
China	<i>Medical Services</i> Foreign doctors with professional certificates issued by home state shall be permitted to provide short-term medical services. The license shall be obtained from the health authorities at the provincial level. The term of service is six months and may be extended to one year.
Chinese Taipei	<i>Certified Public Accountants</i> Temporary movement of natural persons who are qualified CPAs under their home country's laws and are employed by international accounting firms for the purpose of supplying the services mentioned above is allowed. Entry and stay of these persons is limited to a one-year period that may be extended if deemed necessary.
Japan	<i>Lawyer qualified as a "bengoshi" under Japanese law</i> A service supplier is required to stay in Japan not less than 180 days in a year. Can stay for a period not exceeding 5 years and who will return to their place of origin upon expiration of said period. <i>Consultancy on law of jurisdiction where the service supplier is a qualified lawyer; a patent attorney qualified as "benrishi" under Japanese law; legal services supplied by a maritime procedure agent qualified as "kajidairishi" under Japanese law</i> Can stay for a period not exceeding 5 years and who will return to place of origin upon expiration of said period.
Commercial Presence Requirements/Partnership and Employment Limitations	
Chinese Taipei	<i>Insurance Services</i> One who has obtained an agent, broker, and adjuster qualification certificate may not practice business in the name of individual. <i>Architect, engineering services, veterinary services, certified public accountant, licensed tax attorney</i> A foreigner as a licensed tax attorney of Chinese Taipei shall form a professional establishment to provide services. <i>Legal services</i> Establishment of law firm in the form of sole proprietorship or partnership is required. (limited to qualified lawyers under the laws of Chinese Taipei) Not permitted to employ licensed lawyers of Chinese Taipei and not permitted to form partnerships with Chinese Taipei lawyers. The firm name must indicate the title of "attorney of foreign law affairs" and refer to the jurisdiction where the service provider is qualified as a lawyer. <i>TV and radio advertising services, publishing and news agency services, video tape and motion picture production and distribution services, motion picture projection services, radio and television services</i> May employ foreigners if the business has been established for more than one year and paid-in capital of the business is more than NT\$5 million even though it has been established for less than one year.
Korea	<i>Architectural Services</i> Supply of services by foreign architects through joint contracts with architects licensed under Korean law will be allowed from Jan. 1 1996.
Malaysia	<i>For selected medical specialty services</i>

	Practice to be limited to private hospitals of at least 100 beds. Practice only at a specified location and change of location requires approval. Setting up of individual or joint group practices is not permitted.
Canada	<i>For real estate services and real estate agents, credit reporting and collection agencies, for auditing</i> Commercial presence is required in some provinces.

Table 17 (cont'd.) GATS Commitments for the Movement of Natural Persons by Type of Restriction
Market Access and National Treatment
APEC-member Economies as Reported in the GATS Schedule of Commitments

Commercial Presence Requirements/Partnership and Employment Limitations	
Japan	<i>Tax accountant qualified as "zeirishi" under Japanese law; patent attorney qualified as "benrishi" under Japanese law; consultancy on law of jurisdiction where the service supplier is a qualified lawyer; lawyer qualified as a "bengoshi" under Japanese law, legal services supplied by a maritime procedure agent qualified as "kaijidairishi" under Japanese law</i> Commercial presence is required. Engaged only as a natural person and not as an employee. Details depend on occupation.
US	<i>Legal Services</i> Services must be supplied by a natural person.
Qualification Requirements	
Malaysia	<i>Insurance Services and banks</i> Specialists or experts are subject to eligibility criteria. <i>Architects, engineers, selected medical specialty services</i> A qualifying examination, to determine the competence and ability to supply the service for the purpose of registration with the professional bodies, will be conducted in the English.
Korea	<i>Architectural Services</i> Foreign architects licensed under their home country's law may acquire a Korean architect license by passing a simplified examination which covers only two of the regular test's six subjects: architectural laws and regulations and architectural design. <i>Certified Public Accountant</i> To practice, a candidate must have field experience of two years in Korea after passing the CPA examination. <i>Certified Tax Accountant</i> To practice as a certified tax accountant, a candidate must have six months field experience in Korea after passing the CTA examination.
Chinese Taipei	<i>Architects</i> Foreigners employed by local architects are required to meet one of the following qualifications: a) graduation from related departments in a college and having experience in related technical works for more than 2 years. b) graduation from related departments in an advanced vocational school and having experience in related technical works for more than 5 years. c) having taken vocational training courses or having special skill, and having proof of experience in related technical works for more than 5 years. <i>Legal Services</i> A service provider must be recognized by the Ministry of Justice as "attorney of foreign law affairs" and register with the Bar Association in a locality where the law firm is located. The conditions for granting recognition by the Ministry of Justice are as follows: a) the service provider is qualified as a lawyer in his/her home country. b) the service provider has practiced as a qualified lawyer for at least 5 years in his/her home country. However, the employment period for a service provider who has been

employed by the law firms in Chinese Taipei as an of-counsel or an associate is allowed to be taken into account, up to the maximum of 2 years, for calculating the 5-year period.
c) the service provider shall have adequate practice plans and financial resources, and have capability for compensating damages out of his/her legal practice,
d) the service provider has not been sentenced for one year or more, or subject to disbarment in his/her home country and is not disqualified under the laws of Chinese Taipei.
Construction and Related Engineering Services
A construction business may employ foreign architects and construction technicians who meet certain qualification requirements.

Table 17 (cont'd.) GATS Commitments for the Movement of Natural Persons by Type of Restriction
Market Access and National Treatment
APEC-member Economies as Reported in the GATS Schedule of Commitments

Qualification Requirements

Chinese Taipei	<i>Tourism Services</i> A foreigner who intends to be a travel guide shall pass the examination and the training held by the competent authority entrusted by the Tourism Bureau.
China	<i>For software implementation services</i> Certified engineer or Bachelor's degree or above and 3 years experience in these fields <i>Translation Services</i> Qualification requirements: three years of experience in translation or interpretation and a good command of the working languages.

Scope of Work Limitations

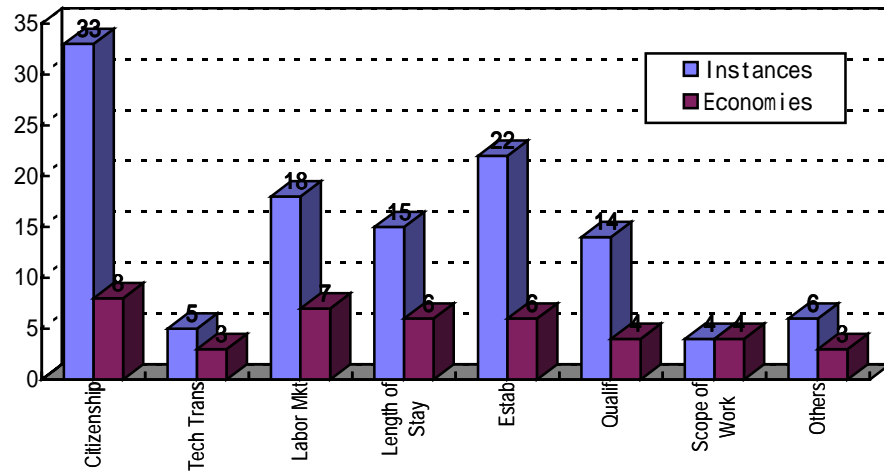
Philippines	<i>Banking and Other Financial Services</i> Foreign service suppliers shall perform technical functions only.
Canada	<i>For Collection Agencies</i> Trust funds must remain in Alberta.
Chinese Taipei	<i>Legal Services</i> Practice of third country law is not permitted. The "attorney of foreign law affairs" is not permitted to practice the law of Chinese Taipei.
Japan	<i>Consultancy on law of jurisdiction where the service supplier is a qualified lawyer</i> Consultancy on law does not include: a) legal representation for juridical procedures in courts and other government agencies as well as preparation of legal documents for such procedures; b) expression of legal opinions concerning laws other than laws of the jurisdiction where the service supplier is qualified as a lawyer; c) legal representation for the entrustment of the preparation of notarial deeds; and d) those activities concerning a legal case whose primary objective is the acquisition or loss or change of rights concerning real property in Japan or of industrial property rights, mining rights or other rights arising upon registration thereof with government agencies in Japan. A service supplier shall be required to cooperate with "bengoshi" or to ask for his advice in a legal case concerning family relations or inheritance, in which a Japanese national is involved as a party, or in a legal case whose objective is the acquisition or loss or change of rights concerning real property in Japan or of industrial property rights, mining rights arising upon registration thereof with government agencies in Japan, as long as the above objective is not the primary one.

Others

New Zealand	<i>Production, distribution, exhibition and broadcasting of audiovisual works</i> A special procedure for the granting of visas to entertainers, performing artists and associated support personnel for work purposes. To be eligible for a work visa or work permit, such applicants must come within the policy guidelines agreed to between the Minister of Immigration, independent promoters, agents or producers and the relevant performing artists' unions.
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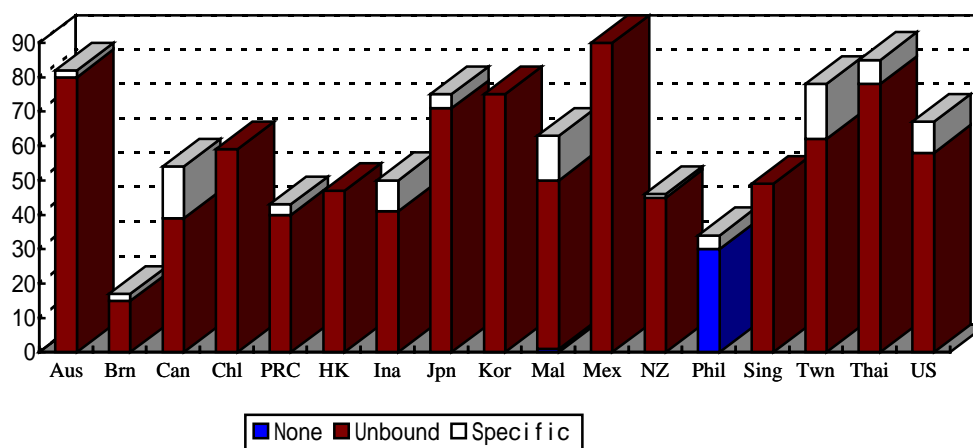
Japan	<p><i>Lawyer qualified as a "bengoshi" under Japanese law, consultancy on law of jurisdiction where the service supplier is a qualified lawyer, a patent attorney qualified as "benrishi" under Japanese law, legal services supplied by a maritime procedure agent qualified as "kajidairishi" under Japanese law</i></p> <p>Employed by a juridical person of a member other than Japan or has been a partner in it for a period not less than one year immediately preceding the date of his application for entry and temporary stay in Japan.</p>
US	<p><i>Legal consultancy services</i></p> <p>Some restrictions apply depending on the state where consultant will practice.</p>

• Figure 4 Number of Instances and Number of Economies Using the Restrictions in the GATS
APEC-member Economies only (Does not Include Papua New Guinea)

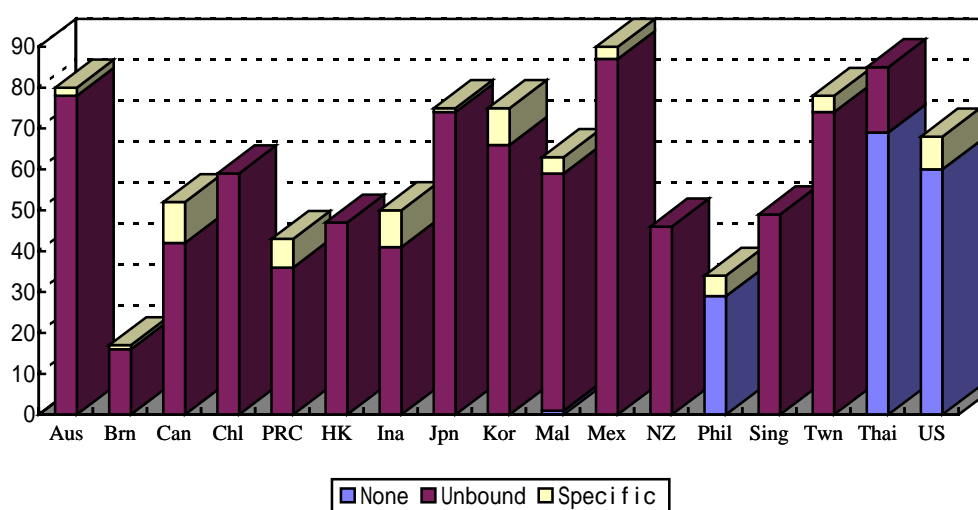


The following figures show the breakdown of the number of sectors according to whether there were no limitations, or unbound or if there are specific commitments. Under Market Access, only the Philippines has none for most of its specific sub-sector commitments. Under National Treatment, the Philippines, Thailand and the United States claim none for most of their sub-sector commitments. No limitations or none indicates that under the specified sub-sector, the economy claims that there are no laws, rules or regulations that limit market access and national treatment. Unbound means that the economy does not make any commitments with respect to the sub-sector. The presence of specific commitments refers to the details provided by each GATS member with respect to restrictions on market access and national treatment under the sub-sector. Thus, unbound reflects the hesitation of countries to liberalize the entry of persons. Not binding themselves to anything allows them the freedom to increase restrictions as well as to remove them. The Philippines, as well as Thailand and the United States, then are noteworthy exceptions. In its horizontal commitments columns it binds the entry of persons as subject to market tests but promises to review this provision two years after the GATS takes effect. Under specific sub-sector schedule of commitments, the Philippines claimed that no limitations were imposed on the movement of persons except those listed in the schedule. In effect, Philippines is bound to remove the restrictions it listed as the GATS begins to pave the way for freer trade in services in the future, unlike the other economies that specified that their market access and national treatment restrictions were unbound.

• Figure 5 Proportion of Market Access Commitments to Total Number of Sectors by Type of Commitment



• Figure 6 Proportion of National Treatment Commitments to Total Number of Sectors by Type of Commitment



When comparing Tables 14 and 15 with Tables 16 and 17, greater detail is found in the GATS commitments than in the APEC commitments. Most other APEC-member economies used these commitments as their base scenario, especially when taking into account that most of the APEC commitments centered around reviewing rules and regulations. The specific commitments under the mobility of business persons, however, were additional to the GATS.

The difficulties associated with these rules in a multilateral negotiations context are pointed out by Hoekman (1995) in his discussion of the GATS. Certainly, the rules covered by the GATS are only a small part of the other regulations that could affect market access and national treatment of foreign service providers. Among these are labor legislation, tax regimes, restrictions on land availability, ownership or use, licensing and related fees, existence and reach of competition policies, regulation of monopolies, judicial

enforceability of contracts, etc. as enumerated by Hoekman (1995). These regulations may also inhibit market contestability.³¹

Seven economies include restrictions on the movement of persons under the list of Article II Most Favored Nation exemptions. This list of exemptions contains information on the countries to which the exemption applies, the duration of the exemption and the justification for the exemption. All these commitments have an indefinite or indeterminate length of implementation. Brunei, Canada, Indonesia, Singapore and Malaysia point to rules that govern the entry of temporary semi-skilled and unskilled workers. The need for social cohesion is cited by Brunei, Singapore and Malaysia as an important reason for the exemption. Indonesia points to the development efforts being undertaken in the region as the reason why it limits access to low-level occupations to its neighbors namely Malaysia, Singapore, Brunei, Papua New Guinea and Australia. Canada sources temporary agricultural workers from islands in the Caribbean and Mexico based on a Memorandum of Understanding between the respective governments. These workers are expected to fill in seasonal shortages for as long as return passage is assured.

The US and the Philippines exempted visa categories for treaty traders and investors pointing to the need to facilitate trade and investment for their respective economies. The US also cites reciprocity for limitations on longshore work done by foreign crews. These exemptions further reinforce the assertion that economies are unwilling to open their labor markets to foreign workers.

³¹ Hoekman, Bernard (1995), "Assessing the General Agreement on Trade in Services," in Martin, Will and L. Alan Winters, eds., "The Uruguay Round and the Developing Economies", World Bank Discussion Paper No. 307, Washington, D.C.: World Bank, p. 339.

• Table 18 List of MFN Exemptions in the GATS Related to the Movement of Persons
APEC-member Economies Only

Sector or Subsector	Description of Measure indicating its Inconsistency with Article II	Conditions creating the need for the exemption
Brunei All sectors	Preferences for entry and temporary stay of workers from traditional sources of supply.	Due to the small population base the government needs to regulate the flow of foreign workers, both skilled and unskilled to ensure social cohesion.
Canada Services incidental to agriculture	Temporary entry of agricultural workers from countries with Canada has signed a memorandum of understanding are subject to an accelerated process for labor certification.	Seasonal shortages of experienced farm workers and requirement for guaranteed return passage.
Indonesia Movement of personnel (semi-skilled workers)	Low level occupations are reserved for Indonesian citizens. Based on Government Policy, limited exemptions may be granted to citizens of certain countries.	Development of the region is being undertaken and for the confirmation of this programme, it is decided to grant limited access to low level occupations to citizens to limited number of countries.
Singapore All sectors: presence of unskilled and semi-skilled natural persons and skilled persons (including craftsmen skilled in a particular trade, but excluding specialists/professional personnel at management level.	Preference for workers from traditional sources of supply	Due to land constraints and the fundamental need for social cohesion among the multi-racial population, the Government needs to regulate the flow of foreign workers, both skilled and unskilled, to ensure that Singapore is not overpopulated and foreigners who could potentially disrupt social order are not admitted.
United States Movement of persons	Government issuance of treaty trader or treaty investor non-immigrant visas that extend a special visa category to nationals of treaty partners in executive and other personnel categories engaged; <ul style="list-style-type: none"> solely to carry on substantial trade, including trade in technology, principally between the US and the foreign state of which a natural person is a national, or solely to develop and direct the operations of an enterprise in which a natural person has invested or is actively in the process of investing a substantial amount of capital. 	To facilitate trade under FCNs and BITs.

Table 18 (cont'd.) List of MFN Exemptions in the GATS Related to the Movement of Persons
APEC-member Economies Only

Sector or Subsector	Description of Measure indicating its Inconsistency with Article II	Conditions creating the need for the exemption
<i>United States</i> Longshore work	Restrictions on performance of longshore work when making US port calls by crews of foreign vessels owned and flagged in countries that similarly restrict US crews on US-flag vessels from longshore work	Reciprocal restrictions on countries that prohibit longshore work by crew members aboard US vessels.
<i>Malaysia</i> All sectors	Liberalization of measures affecting movement of foreign semi-skilled and unskilled workers into Malaysia may be carried out in a differentiated manner based on reasons including proximity, either contiguous or regional, religious and/or cultural compatibility.	The measure is required to: 1) maintain the arrangements under existing bilateral agreements; and, 2) ensure that the movement of foreign semi-skilled and unskilled workers contributes to the social stability and industrial harmony in Malaysia.
<i>Philippines</i> Entry and temporary stay of natural persons supplying services	A special visa category is provided for traders and investors of countries with which the Philippines has concluded treaties on entry rights for traders and investors. Under this special category, the labor market test is waived and simplified entry procedures are provided.	To facilitate entry into the Philippines, on the basis of reciprocity, of foreign nationals for purposes of trade, investment and related activities.

IV. Entry and Exit Rules Governing Movement of Persons Among the APEC-member Economies

The welfare of migrants as discussed by Gunatilleke (1986 and 1992) covers three periods during the migratory phase: first, the pre-migration preparations; second, the welfare at the work area; and third, the return of the worker to the home country.³² For the effective management of migrant workers, it would be important to look into how the migrant worker's decision-making processes are affected by the factors that govern the migration process. This section concentrates on the first phase, particularly the entry and exit rules. The probability of migrating is largely affected by the entry rules of the country the migrant wishes to enter and the exit rules of the migrant's country of origin. Each recipient economy has its own set of rules, the details of which may or may not be easily understood or known by the potential migrant. The following discussion first shows the various ways by which access to foreign labor markets are restricted. The succeeding discussion then proceeds to describe the various instruments of border control used by the APEC-member economies. Completing the information contained in this section and gathering information on the other means of control would be the obvious next step in research work on this area.

A. How Market Access Is Restricted

Domestic interventions by governments in the services sector often have non-economic objectives. These objectives differ according to the sectors being regulated. Other objectives are similar to the reasons for protecting trade in goods. These would include the infant industry argument, the promotion of employment, the protection of wages, and improvement of the balance of payments. As far as the entry of foreign workers is concerned, all countries have a set of laws that govern them for reasons ranging from public order, security, and health.

There may be two economic reasons for regulating the services sector: natural monopoly and asymmetric information.³³ Natural monopoly would apply to sectors such as telecommunications which require large fixed costs before the services can be provided. Perhaps the latter is the more important factor for regulating professional services. The practice is perhaps best described by the principal-agent problem. The regulations and code of ethics set forth by both the government and professional bodies are an attempt to cover some portion of the monitoring costs that otherwise would have been borne by the consumer. Meanwhile, networking activities of foreign firms serve as a signaling tool for foreign firms to local clients

³² Gunatilleke, Godfrey (1986), ed., *Migration of Asian Workers to the Arab World*, Tokyo: United Nations University Press and Gunatilleke, Godfrey (1992), ed., *The Impact of Labor Migration on Households: A Comparative Study in Seven Asian Countries*, Tokyo: United Nations University Press.

³³ UNCTAD (1995), "Impact of Progressive Liberalization and of Service Imports on the Development of Competitive Services Sectors, and the Difficulties faced by Developing Countries which Prevent them from Increasing their Participation in World Trade in Services," Geneva: UNCTAD TD/B/CN.4/43, p. 8.

as to the reliability of their service. These regulations are now perceived as technical barriers to trade because of the institutional differences across economies.

Geiger (1989), however, points out that these regulatory activities may actually not serve their original purpose. When taking into consideration that the regulatory bodies are self-regulating in nature, the result may be that they protect themselves by pursuing their own interests rather than the consumers' interests. It might more useful for the consumer if there was increased competition in the sector in order to ensure high quality and cost-efficient services. Not only are "regulations ... rooted in tradition and are defended by powerful interest groups," but they also are not transparent slowing the pace of regulatory reform in the professional services sector.³⁴

A more systematic discussion on restrictions in the movement of labor across boundaries are provided by Sieh (1990).³⁵ Five categories of restrictions are identified and these are:

1. *Border controls.* These include work permits, visas, and other immigration requirements. They act not only as administrative and regulating mechanisms but also serve to prevent long-term stay. Those requiring payment have some revenue generation purpose or serve as a form of foreign exchange control.

In general, UNCTAD (1993) describes two groups of temporary visitors as used by many countries. One group refers to short-term visitors who wish to enter a country for a very short period. These visitors do not hope to be employed in the receiving country during their stay. They may also be referred to as business visitors. The second group comprises temporary working residents. This group may request entry for longer periods and may be employed by the receiving country. They would include among others:

- intra-company transferees,
- corporate trainees,
- individual service contractors (a self-employed consultant, an artist, an athlete, or anyone hired in the exporting country by an organization of the importing country to fulfill a specific contract)
- salespersons, and
- investors.³⁶

The decision on whether to grant a visa or not could depend on a number of factors such as the applicant's country of origin, state of health, criminal record, or a record with the immigration office of the

³⁴ Geiger, Rainer (1989), "Patterns and Effects of Service Regulations," in United Nations Centre on Transnational Corporations, ed., *Services and Development: The Role of Foreign Direct Investment and Trade*, New York: UN, p. 139.

³⁵ PECC-HRD Task Force (1993), *Human Resource Development Outlook 1993-1994: Migration and Labour Flows in Selected Pacific Economies*, Singapore: Times Academic Press, p. 54.

³⁶ UNCTAD (1993a), p. 14.

receiving country. In addition, the purpose of visit must also coincide with the applicant's occupation or skill level.

For those who are seeking employment, distinctions may be made between those occupations that require a labor market test and those that do not. These tests could take any of the following form:

- measures that determine potential competition with domestic labor such as unemployment rates for the occupation or region;
- quotas for each industry;
- special work permits especially for seasonal workers;
- discretion of the immigration officer; and,
- complete ban.

The other requirements for the issuance of a work permit identified by UNCTAD (1995) are:

- eligibility requirements for firms who wish to hire foreign labor;
- short validity period of work permits;
- vague definitions of occupational categories;
- minimum wage requirements and social security requirements; and,
- fees and charges.³⁷

2. *Professional qualifications controls.* These relate to requirements to practice a particular profession. These requirements may be used to ensure some minimum standard. The regulations usually attempt to control the service provider's competence, his/her practice, and compliance with some code of conduct. Local professional bodies may also insist on these requirements to inhibit the supply of a particular service.

These regulations are normally set by the government, either national or local. In some instances, however, the responsibility for regulating the profession is left to the private associations in the educational and professional fields.

The forms of denial of access vary and may include any of the following listed by UNCTAD (1993b):

- non-accreditation,
- non-recognition of foreign qualifications,
- denial of access to examinations for completion of qualifications,
- non-recognition of non-citizens or non-residents requirement of joint venture or prohibition of joint venture,
- local establishment requirements,

³⁷ *ibid.*, pp. 15-16.

- foreign exchange controls affecting the repatriation of earnings by firms,
 - restriction of staff that could be employed,
 - mandatory use of local consultants,
 - discriminatory regulation of fees and expenses,
 - discriminatory purchasing arrangements,
 - entry restrictions such as visa restrictions,
 - prohibition of using firm's name,
 - denial of access to transborder data flows or telecommunication services,
 - the use of subsidies or other forms of official support being granted to domestic suppliers, and
 - anti-competitive practices of TNCs.³⁸
3. *Technical constraints or incompatibilities.* These have more to do with the adaptability of machinery and equipment to a country. These may refer simply to differences in voltage requirements or it could be as complex as infrastructure support. Incompatibilities may also refer to differences in human resource developments and abilities.

This constraint may be very much related to the second constraint above. The mutual recognition of qualifications acknowledges that human resource development differs across countries. The absence of a section on mutual recognition of professional qualifications in negotiations may result in the potential service provider having to undergo a complete verification of his/her qualifications.

This could involve attendance at local courses at specified educational institutions, both academic and professional, for the appropriate number of years, including supervised practice periods, and followed by examinations and registration procedures. Where mutual recognition agreements are attempted, it is usual to assess the body of knowledge, examinations, codes and enforcement procedures, and agree on either shorter revalidation education, and with the usual examinations, or alternatively to test for material differences in the body of knowledge (usually relating to local conditions, laws, administrative procedures, standards, customs, and so on), leaving practitioners free to acquire the additional knowledge in their own way. After these tests, professionals would be permitted or required to register locally so as to ensure adherence to the local code and mandated activities, if any.³⁹

4. *Weak labor market structure.* A labor market may be small in size and lack scale and scope economies and have poor cost efficiency. There are cases when a labor market is extremely reliant on foreign expertise and technology.
5. *Non-price competition.* This would refer to labor services that rely on intra-firm or intra-group referral systems to gain access to particular markets.

Foreign firms who wish to supply services may have to be well placed in the local market. Clients may require that the foreign firm be perceived as having a good grasp of national customs and mores. Networks

³⁸ UNCTAD (1993b), p. 6.

³⁹ *ibid.*, p. 8.

with local firms are resorted to by the foreign firms in order to gain this ability in shortest possible period in exchange for training and the upgrading of service quality. According to UNCTAD (1993b), this networking method has resulted in a two-tiered market, “i.e., a few large firms, supported by their access to intra- and inter-corporate information networks, supplying multinationals and large local firms, with more numerous small firms supplying small and medium-sized domestic enterprises.”⁴⁰

When the aforementioned rules limit the movement of persons, some firms have resorted to “offshore back-office services.” Labor-intensive portions of a service activity, such as programming or data encoding, can be sent to another country to take advantage of their lower labor costs. This has been made possible by advances in telecommunications. While these activities have allowed the labor-surplus developing economies to benefit through increased employment, the entry and exit barriers serve to limit the prospects of the developing countries’ services sectors. The result may be that “developing country firms will be relegated to sub-contractors, competing for a limited share of the market.”⁴¹

B. Entry and Exit Rules Across APEC-member Countries

An attempt was made to gather information on the barriers described above are used by APEC-member economies to control the entry of foreign workers. The section begins with basic entry requirements for business people. Business persons are included because the APEC has identified their mobility as an important component of trade. Some business persons may enter to negotiate service contracts or establish service organizations. Rules usually do not differentiate by type of business activity. The next section is basically a survey of literature regarding entry and exit rules in order to draw a basic picture of the policies. The discussion is arranged according to the type of policy, and the economies known to use the policy will be identified. Where information is available, details on how the policy is implemented is also discussed. Note that not all aspects of restrictions are discussed and the quality and level of detail varies across economies and, hence, this survey will not purport to be comprehensive. Information was not available on Chile and Papua New Guinea.

The preference for professionals and highly skilled workers is clear in most economies especially developed economies. For some labor short economies, one reason is that the local workforce hesitates to take on low-skilled, low-wage jobs. The domestic labor force wants high-skilled, high wage jobs but immigration policy also prefers the entry of foreign workers in these kinds of jobs. What does this do in terms of competition? Will this not have the same effects as unemployment threats and lower wages for these types of workers? This is not expected if the demand for skilled workers and professionals moves up together with or faster than supply.

⁴⁰ *ibid.*, p. 4.

⁴¹ UNCTAD (1993a), p. 6.

Developed countries are using their immigration policy to upgrade the skills level of their respective economies. The entry of unskilled workers is allowed only if the labor shortage is proven to be true and if there is a guarantee that the unskilled worker will not remain in the country for an extended period of time. Developing economies on the other hand are suspicious of the entry of skilled workers and often impose conditions related to technology transfer such as training and apprenticeship programs. These preferences are reflected in the various schemes described below.

B.1 Entry Rules

The following divides the discussion according to the type of border control being used. These are: visa requirements for business people; definitions used; labor market tests; quotas; fees and levies; technology transfer and other requirements. The definitions used to differentiate among professionals, skilled and unskilled workers can also be a form of control, particularly when standard definitions do not exist.

Visa Requirements for Business People

Although business people are not necessarily service providers, they are the people who are almost always given priority for entering the territory of a member. Their entry is seen as a way of facilitating trade and investment for the host economy.

Information regarding the Visa and Entry Requirements were made available by the APEC Committee on Trade and Investment in the APEC Business Travel Handbook⁴². A matrix summarizing the visa requirements for business people is found in Table 19. This matrix shows which countries are required to have visas (Y= yes) before entering the territory of another economy. The validity period of visa-free entry is provided where data was made available. From this matrix, there are 18 by 18 cells (for a total of 324 cells) for each economy. Eighteen cells are removed from the total (to give 306) since citizens do not require visas. The number of countries requiring visas were counted and the proportion to the matrix was calculated. Exactly, 50 percent of the cells contained a yes answer. The three Chinese economies, in particular faced the most restrictions. They were followed by Chile, Papua New Guinea, Philippines, and Thailand. On the other hand, Australia, the People's Republic of China, Indonesia, and Papua New Guinea require all other member economies to get a visa before entering their territories. The most open economies were Hong Kong, the Republic of Korea, and Singapore, all of which offered some form of visa-free entry to most of the other APEC-member economies.

The number of days for visa-free entry may also indicate the openness of the economy to the entry of business persons. A total of 2,891 days of visa-free entry was offered by six economies: Hong Kong (30%), Singapore (18%), Thailand (18%), the Republic of Korea (16%), Brunei Darussalam (9%), and Republic of

⁴² APEC Committee on Trade and Investment (1996), *APEC Business Travel Handbook: A Guide to Visa and Entry Requirements for Business Travel to APEC-member Economies*, 1st ed., Singapore: APEC Secretariat.

the Philippines (negligible). The distribution of these visa-free across the APEC are shown in Table 9 as well. Singapore business people have the most number of visa-free days getting an 11 per cent allocation, followed by New Zealand with 10 per cent. Australia, Brunei Darussalam, Canada, Malaysia, Papua New Guinea and the Philippines share third place with an 8 per cent allocation.

Some immigration policies attempt to invite investors into the country by providing residency incentives upon fulfilling a minimum amount in either direct or portfolio investment. This is true for Australia, New Zealand and the Philippines.

Definitions of Skilled and Unskilled Labor

Where definitions are available, there are large differences in what constitutes skilled labor. Some definitions involve a cut-off wage as in the cases of Malaysia, Singapore and Hong Kong while others have qualification requirements such as educational attainment and work experience as in the cases of the United States and Australia.

In Malaysia, an Employment Pass is necessary for employment in a factory or business establishment, the installation of machinery and equipment, and employment in a government or quasi-government body. A Visit Pass (Employment) is for workers commanding a salary of at least M\$1,200 a month.⁴³ This is usually available for foreign professional and skilled workers. Temporary passes are issued by the government for domestic helpers, plantation, construction and other workers.⁴⁴

Singapore has several types of employment passes. The Professional and Employment Passes are issued to skilled, technical, managerial and professional workers. An employment pass holder must earn at least S\$2,001 per month. These individuals must have college degrees from reputable institutions.⁴⁵ Temporary Professional Visit Passes are issued to professionals who have to carry out approved contracts or assignments. Work permits, on the other hand, are issued to unskilled workers. Unskilled workers are defined as those workers earning S\$1,500 a month or less. Block work permits are also given for workers in construction projects.

⁴³ Pang, Eng Fong and Linda Low (1990), "Labour Mobility, Trade in Services and the Uruguay Round: The Perspective of ASEAN Countries," in UNCTAD, ed., *Services in Asia and the Pacific: Selected Papers*, Vol. 1, New York: UNCTAD.

⁴⁴ Pillai, Patrick (1996), "Labor Market Developments and International Migration in Malaysia," in OECD, *Migration and the Labor Market in Asia: Prospects to the Year 2000*, Paris: OECD, p. 141.

⁴⁵ Hui, Weng-Tat (1997), "Recent Developments in Labor Migration in Singapore," a paper presented at the Workshop on International Migration and Labor Markets in Asia, Tokyo, Japan, 30-31 January 1997, p. 3.

• Table 19 Visa Requirement Matrix for Business People
APEC member Economies

To/ From	Aus	Brun	Can	Chile	PRC	HK	Ina	Jap	Kor	Mal	Mex	NZ	PNG	Phil	Sing	Twn	Thai	USA	% Open
Aus		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0%
Brun	Y		N (14d)	Y	Y	Y	N(14d)	N (14d)	N (14d)	N (30d)	Y	N (14d)	Y	N(14d)	N(30d)	Y	N(14d)	N(90d)	59%
Can	N	N		Y	Y	Y (green)	N (blue)	Y	N	N	N	N	N	Y	N	Y	Y	N	59%
Chile	N	Y	N		Y	Y (green)	N (blue)	N	Y	N	N	Y	Y	Y	N	Y	Y	N	47%
PRC	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0%
HK	N (3m)	N (3m)	N (3m)	N (3m)	Y		N (14d)	N (1m)	N (14d)	N (3m)	N (1m)	N (3m)	N (3m)	N(14d)	N (3m)	Y	N(14d)	N(1m)	88%
Ina	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	0%
Jap	Y	N	N	N	Y	Y	Y		Y	Y	N	N	Y	Y	N	Y	Y	N	41%
Kor	N (15d)	N (15d)	N (15d)	N (15d)	Y	N(15d)	N(15d)	N(15 d)	N(15 d)		N(90d)	N (90d)	N (15d)	N(15d)	Y	N(90d)	N(15d)	N(15d)	88%
Mal	N (90d)	N (90d)	N (90d)	N	Y	Y (green)	N (blue)	N (90d)	N	N		N (90d)	N(90d)	N(90d)	N(90d)	Y	N(90d)	N	82%
Mex	N	Y	N	N	Y	N	N	N	N	N		N	Y	N	N	Y	N	N	76%
NZ	N	N	N	Y	Y	Y	N	N	N	N	Y		Y	Y	N	Y	N	N	59%
PNG	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	0%
Phil	N	N	N	N	Y	Y (7 d)	N	N	N	N	N	N	N		N	Y	N	N	82%
Sing	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N		N	N	N	88%
Twn	N	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y		Y	N	29%
Thai	N (30d)	N (30d)	N (30d)	Y	Y	Y	N (30d)	N (30d)	N (90d)	N (30d)	N (30d)	N (90d)	N(30d)	N(30d)	N(30d)	Y		N(30d)	76%
US	N	N	N	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y		35%
% Rest.	29%	41%	24%	59%	100%	88%		41%	24%	47%	41%	41%	29%	59%	65%	35%	100%	53%	24%
Days Visa-free	235	235	239	105	0	22		159	89	118	240	150	299	225	148	330	15	133	165

Source: APEC (1996), APEC Business Travel Handbook

Y = yes; N = no; d = days; m = month and one month is assumed to be 30 days; % rest. = % restricted

In Thailand, the definition of skilled labor is less clear. The Investment Promotion Act of 1977, the Alien Act of 1978 and the Immigration Act of 1978 have allowed the issuance of temporary work permits to specific types of foreign workers including those BOI foreign firms who wish to bring in foreign skilled labor, technicians and their families for a fixed period. Only those occupations which are considered highly skilled and specialized, such as production control, engineering, and high-level administration, could make use of the permits.

Labor Market Tests

Labor market tests are often used in combination with other entry restrictions. The objective of these tests is to ensure that local workers are not displaced by the employment of foreign workers.

The United States follows a labor certification process for the employment of foreign workers. The U.S. Department of Labor has six programs that deal with the admission of foreign workers. One of the programs is a permanent labor certification program for the admission of immigrant workers, while the rest of the programs deal with non-immigrant workers. Labor certification programs usually result in “a certification by the Secretary of Labor that sufficient U.S. workers are not able, willing, qualified and available at the place of employment to perform particular” work. All job offers must pay the prevailing wage in the industry and current labor standards must be met. These programs are normally complaint-driven, that is, thorough investigations with regard to the accuracy of the employer’s claims will not be done until a complaint has been filed by an injured party (can be either the alien or a displaced U.S. worker).⁴⁶

A short description of the latter five programs follows:

- *H-2A program for agricultural workers.* Employers who wish to hire foreign workers must first file an application and a job offer containing the conditions of work, payment, and a description of the recruitment process with the Department of Labor. This application must be filed 60 days before the beginning of employment and the government agency must make its decision not later than 20 days before said date. Hence, the recruitment period for U.S. workers is 40 days. If an insufficient number of workers is found, a certification is then issued for the difference in the number of workers requested and the number of U.S. workers recruited. The employer must continue to accept referrals even though work has started until half of the contract period has expired. This means that

foreign workers hired may still be displaced by U.S. workers who were hired on a later date.

- *H-2B program for non-agricultural workers.* The Immigration and Naturalization Service handles the admission of foreign workers in specialty occupations in consultation with the Department of Labor. In addition to the usual procedures, the requesting employer must show proof that the job offer is “genuinely temporary”. In general, however, “the H2-B program operates under a scant set of regulations.”
- *H-1B program for persons in specialty occupations and fashion models.* A specialty occupation is defined as “one that requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a college degree. Fashion models must be “of distinguished merit and ability”. The employer must file a “labor condition application” but this application is equivalent to an attestation that the employer has promised to pay the prevailing wage, apply working conditions that do not adversely affect U.S. workers, there is no strike or lockout in progress, and has notified the union or workers of the intent to hire an alien. The recruitment of a U.S. worker for the available job is not required of the employer.
- *D-visa for foreign crew members performing longshore work.* This program applies to crew members of ships and airplanes except for airline crews. Longshore work involves “loading and unloading cargo, letting go or making fast a ship or operating cargo equipment” unless there are exceptions. A vessel owner must file an attestation with the Department of Labor that it has notified the union or the workers of the filing of application, no strike or lockout is in progress, and that it is the current practice at the port for alien crewmembers to do longshore work.

The F-visa program for foreign students in off-campus work was a pilot program that ended in 1996. Originally, foreign students could work only in study-related work at educational institutions or in cases of economic necessity. Employers filed an attestation that it attempted to recruit U.S. workers for 60 days and failed and that they would pay the local prevailing wage or the facility wage, whichever is higher. Employment in the entertainment and sports industry follow a different set of guidelines. These persons are now under the O and P visa categories and are supervised by the INS.⁴⁷

⁴⁶ Information was provided by Roger Kramer, Director, Division of Immigration Policy and Research, Bureau of International Labor Affairs, United States Department of Labor.

⁴⁷ A detailed discussion of United States Immigration policy is found in Kramer, Roger (1996), “Developments in International Migration to the United States: 1996,” Immigration Policy and Research Working Paper 28, Washington D.C.: Bureau of International Labor Affairs, U.S. Department of Labor.

Canada follows a process similar to that used by the United States. An employer who wishes to hire a foreigner must give the details of the job offer to the Canada Employment Centre (CEC). The job offer must pay the prevailing wages and provide suitable working conditions. If a qualified and available Canadian or permanent resident cannot be found to fill the position, the CEC will approve the job offer and immigration will issue an employment authorization. The employment authorization is valid only for the job, the period of employment and employer specified. Some jobs, however, do not need CEC approval. Except for residents of the United States,⁴⁸ who can apply at the port of entry, all processing should be done before arrival in Canada.

Recently, Hong Kong began to follow the same process as described above. An application is submitted to the Labor Department's Job Matching Centre. There are 26 job titles that cannot be applied for including sales representatives, sales assistant, waiter/waitress, receptionist, cashier, junior cook, food processing worker, clerical worker, teller, computer/key punch operator and telephone operator. After checking for inconsistencies, an employer must meet three requirements: 1) show proof that local recruitment was undertaken for two weeks without success; 2) participate in the Job Matching Programme for two months; 3) for companies with more than 15 vacancies, a meeting is set with the Employees Retraining Board to see if a training scheme can be arranged to solve the vacancy problem. After meeting these requirements, the application goes through the Labor Advisory Board and finally an approval is given by the Secretary for Education and Manpower. The applicant employer can then approach the Immigration Department for a visa application.

New Zealand simplifies the process slightly by using an Occupational Priority List which is updated regularly. Applicants whose occupations are on the list do not need to inquire whether there are nationals available for these positions, otherwise a labor market test is required.

In PRC, an employer must apply for an employment permit before hiring a foreign worker. A permit is granted if the job is "special" and no suitable Chinese could be found to fill the vacancy. This permit is not necessary for foreign experts and managerial personnel hired by the government. Employers must also obtain an employment certificate from the Labor Administration Department.

Quotas

Quotas are used by the United States, Singapore, Hong Kong, and Taiwan. The United States quota is a worldwide quota under a general category. Australia does not have a clear quota but the numerical

⁴⁸ Residents of Greenland and St. Pierre and Miquelon are also exempted.

migrant assessment system (NUMAS) is expected to have a similar effect. The other countries have more detailed arrangements depending on occupation or industry.

Indonesia and Thailand also closes many occupations to foreigners. In Thailand, some professional occupations such as engineering, accounting, architecture and law are closed, as well as, manual occupations. In the Philippines, foreign unskilled workers cannot be hired for positions in the following industries: retail trade, rice and corn, public utilities, and natural resources. The admission of foreign workers into Korea is restricted to the following categories: technology transfer, professional activities, foreign language teaching, research, entertainment, and employment recommended by a government minister. Foreigners entering Korea to practice these professions must show proof that they have a job offer in Korea.⁴⁹

In 1979, the Australian government implemented the NUMAS which allocates points to a potential migrant depending on their qualities. The objective was to effectively match the occupational requirements of the economy with potential supply.⁵⁰ The points system has six criteria, the most important of which is skill and work experience accounting for fifty percent of the highest possible score. The other criteria refers to the characteristics of the sponsor, the relationship of the applicant to the sponsor and the applicant's age.⁵¹

From the U.S. Immigration Act of 1990, Article 121, an annual quota of 140,000 visas were set for employment-based immigration. There are 66,000 available for the H-2B Non-agricultural workers program and 65,000 available for H1B for fashion models and persons in specialty occupations. Under the NAFTA, the U.S. has agreed to allow 5,500 Mexican professionals to enter its labor market in addition to the visas available under the worldwide quota.

In Malaysia, quotas on foreigners are set only for executive positions. Permanent "key posts" may be occupied by foreigners in firms with more than US\$500,000 equity participation..⁵² Five expatriate posts are available for those investments where foreign paid-up capital is at least US\$2 million. Additional posts are possible upon request. One post is open for those whose foreign paid-up capital is on RM\$500,000. Companies with foreign paid-up capital of less than US\$2 million can also have expatriate posts but this is subject to certain qualifications. In addition, service organizations are

⁴⁹Park, Young-bum (1997), "Country Report: Republic of Korea," paper presented at the Workshop on International Migration and Labor Markets in Asia", 30-31 January 1997, Tokyo, Japan, pp. 6-7.

⁵⁰ Appleyard (1988), p. 150.

⁵¹ Department of Immigration and Multicultural Affairs, Commonwealth of Australia (n.d.), "Concessional Family-skilled migration (including points test): Form 958iC," mimeographed.

⁵² Stalker (1994).

allowed to hire two specialists or experts. Additional experts are allowed but they are subject to a labor market test and the training of Malaysians.⁵³

In 1992, Chinese Taipei set a quota of 15,000 workers initially for the construction industry but later on included workers for the manufacturing industry and domestic services. The workers would come from the four countries from which the illegal workers originated – Malaysia, Philippines, Thailand, and Indonesia. In July 1992, the Statute of Relations across the Taiwan Strait was approved by the Chinese Taipei parliament thus allowing the import of Chinese workers from the mainland.⁵⁴

The quota used by Singapore is based on a maximum proportion of foreign workers to total employment in a firm. In 1988, the proportion ranged from 40-50 percent depending on the industry. In 1990, the ratio was raised to 70 per cent depending on the number of skilled workers in the company. Table 16 shows the dependency ceiling used by Singapore by occupation.

Levin and Chiu (1997) describe the labor importation schemes used by Hong Kong since 1992. There are three schemes: the General Scheme for the Importation of Labor which was replaced by the Supplementary Labor Scheme and the Special Labor Importation Scheme, which covers construction workers for the new airport and related projects. A series of labor importation schemes were implemented by the Hong Kong government in response to what the business sector perceived as a labor shortage.

In 1989, the government allowed the importation of skilled workers at the supervisory, technician, and craftsman levels. The scheme began with 2,323 foreign workers. In 1990, the government allowed a maximum of 10,000 experienced foreign operatives to enter the domestic labor market. They defined an experienced operative as anyone with at least one year of work experience in the relevant field. In 1992, the quota was increased to 25,000 skilled and semi-skilled foreign workers. In 1994, the quota was reduced to 11,000. The quotas were allocated across industries by an inter-departmental Steering Group on Importation of Labor according to the vacancy situation, the rate of wage increases, the rate of labor utilization, and the industry's contribution to the Gross Domestic Product. Table 20 shows the industry distribution of the quota. The top three industries receiving foreign workers were retailing (15.8%), catering (14.8%), and import/export trades (13.4%), all of which are service industries. Employers must file an application with the Steering Group and register their vacancies with the Local Employment Service of the Labor Department.

⁵³ Pillai (1996), p. 141 and APEC CTI (1995).

⁵⁴ Stalker (1994), p. 262.

Numerous objections arose from the implementation of the General Scheme so that by 1995, the Governor of Hong Kong replaced the scheme with the Supplementary Labor Scheme with a quota of 5,000 workers. But due to much pressure from organized labor, the government decided to review the scheme after 2,000 workers had entered.

The Special Labor Importation Scheme began in 1990 with a quota of 2,000 construction workers. By 1996, the quota was raised to 27,000 workers. Hong Kong also tried a pilot scheme in 1994 that allowed employers to recruit 1,000 professionals and specialists from China if they were graduates from one of 36 recognized universities.

Fees and Levies

Fees must sometimes be paid by the foreign worker for visas and work permits upon entry. Visa fees are set according to the type of visa being applied for. For some countries, multiple entry visas are more expensive than single entry visas. Visa fee schedules can also depend on reciprocity arrangements between economies. If these fees are set very high it can either discourage an applicant or, if the applicant is determined, it can push the applicant to consider other means. According to Stalker (1994), getting a permit in Malaysia can be expensive. An Indonesian worker may have to pay as much as \$460 to acquire an official permit but if the permit is acquired by some other method, the worker only has to pay \$70.

• Table 20 Hong Kong: Allocation of Workers Under the Labor Import Scheme, 1994

Industry	Quota Allocation	Share to Total Quota
Automobile Repairing	30	0.3
Banking and Finance	700	6.4
Catering	1,624	14.8
Clothing	435	4.0
Communication	307	2.8
Construction work sites	295	2.7
Electrical	19	0.2
Electronics	107	1.0
Footwear	0	0.0
Furniture	2	0.0
Handbag	0	0.0
Hotel	154	1.4
Import/export trades	1,473	13.4
Insurance	11	0.1
Jewelry	6	0.1
Machine shop	486	4.4
Plastics	17	0.2
Printing	96	0.9
Retail	1,733	15.8

Sanitary, laundry and cleaning services	17	0.2
Shipbuilding and repairing	9	0.1
Social and community services	711	6.5
Textile	40	0.4
Tourism	49	0.4
Transport (e.g. water transport, air transport, cold storage, godowns)	267	2.4
Wholesale	189	1.7
Sub-Total	8,777	79.8
Others (manufacturing)	112	1.0
Others (non-manufacturing)	2,111	19.2
Total	11,000	100.0

Notes: The allocation of places to a sector is based on the vacancy rate and the unemployment rate in the sector.

Source: Skeldon (1996), Table 3, p. 191.

Levies can also be charged to employers who wish to hire foreign workers. This would have the effect of equalizing the costs between hiring a foreigner and a local worker. In some instances, levies may not be imposed, but a requirement for entry is the assurance that the foreign worker will not be paid less than a local counterpart, thus having the same effect on wages. For example, China stipulates that wages of foreign workers cannot be lower than the prevailing wage. Hong Kong uses both methods requiring employers to pay the foreign workers wages that are “broadly comparable” to the average wage of a local worker engaged in the same activity and imposing a levy imposed at a rate of HK\$400 a month per worker.

The government of Brunei discourages the employment of workers from more distant countries by requiring a higher deposit. For example, workers from the ASEAN pay B\$600 but those from the Asian mainland or from Japan have to pay a deposit of B\$1,600. Employers of foreign labor must pay the government of Chinese Taipei an “employment stability fee” currently set at US\$23 for domestic helpers and US\$54 for manufacturing workers.

In Malaysia, a levy is imposed for the employment of foreign workers in order to control their numbers. The following table is from Pillai and Yusof (1996). The table shows that, in general, higher skilled workers are subject to higher levies. Malaysia prefers to reserve the high skilled occupations for its nationals.

• Table 21 Malaysia: Levy Imposed on Foreign Workers

Sector	Rate per Month (RM)	
	Before Oct. 1995	After October 1995
Management/Professional		
Technical	100	200
Professional	150	300
Middle Management	150	300

Higher Management	200	400
Agriculture/Estate		
Unskilled Worker	25	25
Semi-skilled Worker	45	90
Skilled Worker	60	120
Manufacturing and Construction		
Unskilled Worker	35	70
Semi-skilled Worker	50	100
Skilled Worker	75	150
House Maids	30	30
Other Sectors		
Unskilled Worker	30	60
Semi-skilled Worker	45	90
Skilled Worker	60	120

Source: Pillai and Yusof (1996)

Singapore also imposes a levy, which is paid by the employer, for each immigrant worker hired. The amount varies depending on the industry. The construction and shipbuilding industries must pay a higher levy since the government wants employers to “train and use more skilled workers”. For other industries, the levy is paid only for immigrant workers earning below a set threshold. In 1991, the threshold was set at S\$1,500 in manufacturing and S\$250 in domestic services. The levy ranges between S\$200 to S\$440 per month according to Hui (1997). Unlike Malaysia, Table 22 shows that Singapore has a preference for professionals and skilled workers. Professionals are not subject to any levies while skilled workers are subject to lower levies.

Length of Stay Limitations

In order to ensure the temporary nature of movement, limits are set on the duration of stay of a foreigner. For some professions, length of stay is determined by the contract period of the job offer. For unskilled workers, however, contract periods usually depend on government regulations.

• Table 22 Singapore: Levy Imposed on Foreign Workers

Category	Monthly Levy (S\$)	Dependency Ceiling
Manufacturing		
1 st tier	330	1 local: 1 foreign
2 nd tier	450	
Service	330	3 local: 1 foreign
Domestic Workers	330	-
Skilled Construction	200	1 local: 5 foreign
Unskilled Construction	440	1 local: 5 foreign
Skilled Marine	200	1 local: 3 foreign
Unskilled Marine	385	1 local: 3 foreign
Harbour Craft	330	1 local: 9 foreign

Note: The 1st tier levy is payable for employing foreign workers up to 35 percent of the company's workforce. Beyond that and up to a maximum of 50 percent, the second tier is payable.

Source: Hui (1997)

In Malaysia, work passes expire after three years except for domestic helpers whose passes can be renewed indefinitely. The validity period of employment passes for professionals usually depends on the contract. The executive posts held by foreigners can be occupied for a maximum of ten years.

Employment passes of foreign professionals in Singapore have a longer validity period of five years. Stalker (1994) explains that Singapore is actually "anxious" to attract professional workers such that restrictions against entry are virtually absent. Permanent residence can be applied for by persons with the following qualifications: holders of at least five 'Ordinary Level' school certificates or its equivalent; five years of work experience; and, earning at least S\$1,500 a month.⁵⁵

When Hong Kong began its labor importation scheme, the foreign workers were allowed to stay for a maximum of two years. In 1992, the two-year contracts could be renewed twice for a maximum stay of six years. Domestic workers were also subjected to the two-year limit on contract duration.

Foreigners in specialty occupations working in the United States can stay for a period up to six years but unskilled workers, such as those entering the agricultural workers program, can only stay up to the end of the period stated in the job offer.

Technology Transfer

The Philippines also places restrictions on the hiring of foreigners especially when such skills are available locally. A letter of justification explaining why a foreigner must be hired should be submitted. In cases when local talent is unavailable, an understudy must be trained to replace the foreigner. The employer is required to assign two understudies to the foreigner within thirty days of the beginning of the contract. A progress report is submitted once every three months. A similar arrangement is used in Indonesia. Technology transfer, foreign investment, and the absence of qualified Indonesians for a position determines the entry of foreign workers especially since Indonesia heavily discourages their employment, especially at the professional level.⁵⁶ A training scheme is employed to ensure that Indonesians can replace a foreign worker after the contract has been fulfilled. Foreign firms in Thailand

⁵⁵ Stalker (1994), p. 255. Before 1996, a skilled worker was defined as having a monthly salary more than S\$1,500.

⁵⁶ Ananta, Aris and Turro S. Wongkaren (1996), "Indonesia: Entering an Integrated Labor Market," paper presented at the Workshop on International Migration and Labor Markets in Asia: National Policies and Regional Cooperation, 1-2 February 1996 held in Tokyo, Japan.

are also required to train Thai counterparts in order for technology transfer to occur.⁵⁷ In Malaysia, non-executive posts may be held by foreigners as long as Malaysians are being trained for their replacement.

Technology transfer is also undertaken through training programs sponsored by developed countries as part of their development assistance efforts. Japan and Korea offer training opportunities for unskilled workers from developing countries to upgrade their skill levels. Courses cover both classroom style teaching and on-the-job training.

Officially and by definition, these trainees are not part of the labor force. They are paid allowances and are not covered by the labor laws and regulations. However, many working in the migration field believe that this amounts to using foreign unskilled labor in the workplace especially when taking into account on-the-job training. The quotas set by the governments indicate that they are aware that such programs are open to abuse. Given this view, the entry rules governing these training programs are included in the discussion.

The Korean training program was instituted to allow firms with overseas subsidiaries to bring in foreign workers for skills upgrading. Later as labor shortages were felt in key industries, this training system was put to use. In 1993, some 10,000 foreign trainees were allowed to enter Korea to work in small manufacturing firms under ten industries. This group was allowed to stay for one year. Towards the end of the year, the number of trainees increased to more than 20,000. The newcomers could stay for two years. In 1994, the garment/footwear sector was allowed to bring in 10,000 trainees and even large firms were allowed to participate in the program. In 1995, another 20,000 foreign trainees for manufacturing was allowed to enter Korea. In 1996, the fishery industry was given a quota of 1,000 foreign trainees and some 30,000 trainees entered Korea for the manufacturing sector. In some occupations, the period of stay was extended to three years.⁵⁸

There is a limit to the number of trainees that can be brought in by an establishment. For Korean firms with foreign affiliates, the maximum number of foreign trainees is 100 but they should not exceed 10 per cent of production workers employed. These workers can stay for two years. In the larger training program administered by the Foreign Training Cooperation Corporation (FTCO) of the Korea Federation of Small Business (KFSB), the number of foreign trainees per firm was set at 10 per cent of

⁵⁷ Chalamwong, Yongyuth (1996), "Country Report: Thailand," paper presented at the Workshop on International Migration and Labor Markets in Asia: National Policies and Regional Cooperation, 1-2 February 1996, Tokyo, Japan, p. 8.

⁵⁸ Park (1997), pp. 4-5.

the workforce or 20 trainees, whichever is smaller. Their length of stay is a maximum of three years. The firms must meet several criteria⁵⁹ before it could engage trainees. A point system based on another set of criteria⁶⁰ is used by the FTCO to determine the allocation across firms⁶¹.

At the recruiting end, trainees must meet an age requirement (18-35 years old) and must not have a criminal record. The trainees can come from fourteen countries through selected recruiting agencies from each country. Trainees must undergo more than 10 days of training at the local recruiting office and less than six days of orientation upon arrival in Korea given by the FTCO.

In Japan, most of the trainees who have arrived are staff transferred from overseas subsidiaries or affiliates of large Japanese companies. In 1990, the law was changed to allow small and medium-scale companies with less than 50 workers to have three trainees.⁶² The only requirement for a firms was that they registered with programs run by the chambers of commerce, local merchants' associations, or small business organizations.⁶³ In 1993, the Technical Intern Training Program was instituted. This program allowed trainees, that have attained a certain level, to practice the skills acquired. This would require a change in status of residence⁶⁴ from "trainee" to "designated activities." Designated activities are defined as those activities that the Minister of Justice has specified for foreigners. The total period for training, including technical internship, must not be longer than two years. Table 23 shows the permissible number of trainees per firm.

• Table 23 Japan: Permissible Number of Trainees Per Organization

Number of Full-time Employees of Organization Responsible for the Implementation of OJT Programmes	Number of Trainees
201-300	15
101-200	10
51-100	6
50 or less	3

⁵⁹ The company must be a small manufacturing business with a labor shortage of more than 5 percent. Total employment of permanent workers should be between 5 and 301 except for the footwear sector. It should have been in operation for at least one year. It must be registered with the Ministry of Trade, Industry and Energy. It should have accommodation facilities. The company must introduce an automation plan to reduce the labor shortage. Domestic capitalization should be more than 50 percent.

⁶⁰ Priority is given to companies: located in industrial complexes or areas outside Seoul or in rural-special-supporting areas; recommended as a promising small business; that export more than 50 percent of output; with less than 50 production workers; recognized for quality control programs; substituting imported machinery with domestic machinery; in the cast-iron, forging, heat treatment, gold-coating, and dyeing and finishing industries; and membership in the KFSB.

⁶¹ Park (1997), pp. 8-9.

⁶² Stalker (1994), p. 251.

⁶³ Shimada (1994), *Japan's Guest Workers: Issues and Public Policies*, Translated by Roger Northridge, Tokyo: University of Tokyo Press, p. 70.

⁶⁴ A status of residence must be obtained for foreigners staying in Japan for more than 90 days. The status of residence describes the purpose, duration, and allowable activities while in Japan.

Source: JITCO (n.d.), "An Overview of JITCO: Providing Information to Support and Promote Training Programs in Japan," p. 9.

Other Requirements

The other requirements not have not been discussed above are documentation requirements. Apart from the usual passport and visa requirements, documents certifying that the applicant has no previous criminal record and is in a good state of health must also be submitted. In Singapore for example, from 1997, all foreign workers who wish to get a work permit in Singapore must undergo malaria tests as part of their medical examination requirements. Proof that a foreigner has the skills required for the occupation being applied for may also have to be provided. Sometimes minimum age requirements are set for certain occupations. In Chinese Taipei, for example, caretakers and domestic helpers must be at least 25 years old and factory workers must be at least 20 years old.

The documentation requirements are probably exemplified by Taiwan. Some of the requirements for applying for a working visa include:

- application form, pictures, photocopies of the passport,
- a complete list of all contract workers recruited by accredited agencies,
- Chinese Approval Letter from the Council of Labor Affairs,
- Medical Examination Clearance from accredited hospitals and clinics,
- an employment contract authenticated by the Taiwan District Court and the Economic and Cultural Office,
- a criminal clearance from police authorities, and
- a visa fee.

Special arrangements exist in Hong Kong, Malaysia and Japan. In 1990, Hong Kong began to allow Chinese with P.R.C. passports, who have been residing abroad for more than two years, to apply for work permits.⁶⁵ In addition, domestic helpers were restricted to domestic work and could not accept or be transferred to any other job. The work permit in Malaysia has a similar restriction on the worker against transferring to another position. Malaysia entered into bilateral agreements with Indonesia, Philippines, Thailand, Bangladesh, India and Pakistan for the supply of migrant workers particularly for its plantations. Japan on the other hand has highly liberal entry rules for *nikkei*—foreign nationals of Japanese descent. Most of the *nikkei* are from Brazil and some are from Peru. They are entitled to long-term resident status, allowed to work and can receive legal protection almost at par with Japanese

nationals. Japan also allows foreign students to join the labor market for a maximum of 20 hours each week. This system is difficult to monitor such that some work for 10-hour days and rarely show up for classes.

B.2 Exit Requirements

For those economies that send out a significant number of workers to other countries, institutions that ensure the orderly manner by which their workers are sent have been established. These agencies are also responsible for ensuring the welfare of their nationals while they are working in a foreign country.

In Indonesia, the Ministry of Transmigration and Human Resettlement regulates and supervises the recruitment process of Indonesians who wish to work abroad. The Sub-Directorate for Inter-regional and Overseas Employment helps recruitment agencies while the Directorate-General of Manpower Protection approves the employment contracts. In a similar arrangement in Thailand, the government agency responsible for overseas contract workers is the Overseas Employment Administration Office (OEAO) while the agency responsible for the licensed recruitment firms is the Overseas Employment Service Division of the Department of Labor under the Ministry of Interior. The Philippine Overseas Employment Authority (POEA) is the government agency concerned with labor exports. Employment agencies must be licensed by the POEA before they can recruit potential workers. Documents regarding the potential employer must then be submitted to the POEA, which grants approval. Pillai and Yusof (1996) report that the Malaysian government announced in August 1995 that “recruitment of foreign workers for plantation, construction and manufacturing will henceforth be on a government to government basis, through one accredited supplier in each country.” All employers must deal with the Task Force on Foreign Workers under the Ministry of Home Affairs. Private recruitment agencies are allowed to deal only with domestic maids and shop assistants. The objective was to prevent any more exploitation of the workers through the collection of exorbitant charges and fees.⁶⁵ Agencies Act 246 of 1981 only requires the provision by the employment agencies of employment information to the Director-General of Manpower. These countries send a significant number of workers abroad and this probably explains the similarity in structure.

⁶⁵ Levin, David A. and Stephen W.K. Chiu (1997), “Immigration for Employment: The Case of Hong Kong,” a paper presented at the Workshop on International Migration and Labor Markets in Asia, Tokyo, Japan, 30-31 January 1997, p. 6.

⁶⁶ Pillai, Patrick and Zainal Aznam Yusof (1996), “Country Report: Malaysia,” paper presented at the Workshop on International Migration and Labor Markets in Asia: National Policies and Regional Cooperation, 1-2 February 1996, Tokyo, Japan, p. 8.

Gao (1997) explains that labor emigration in China is administered under “a unified management system for foreign engineering projects and labor service cooperation” headed by the Ministry of Foreign Trade and Economic Cooperation. There are 460 companies and organizations that are authorized to send workers abroad and all these institutions are state-owned. Chinese companies, enterprises and other economic organizations enter into construction projects with foreigners and they usually have a labor service component. Labor service cooperation refers to labor services provided by Chinese citizens through Chinese entities contracting with foreigners.⁶⁷ Approval and permits must first be acquired before engaging in the “labor emigration business.”

The number of people from mainland China allowed to stay in Hong Kong is based on an agreement between the two governments. In reality, however, mainland China determines the number by controlling the number of permits it issues (one-way permit quota). According to Levin and Chiu (1997), China currently issues 150 permits per day.

As far as the exit of workers from China is concerned, the relevant government departments and the recruitment agencies must “ensure that the Laborers to be sent abroad are good in ethics, technical skills and health, and launch a regular training program for them so as to guarantee their qualities.” The government also requires that an administrative unit be organized in a country or region where the number of Chinese laborers have reached a certain number. The administrator in this unit is expected to “help the employers to manage the Chinese Labor emigrants and ... work to protect their legal rights and interests, and also duly solve any problem or difficulty that arises in the fulfilment (sic) of labor contract.”⁶⁸

The Philippines in particular instituted stricter rules for potential overseas contract workers in order to contain the number of abuses being reported. Requirements have been set for what it considers vulnerable occupations namely domestic work and entertainers. Thus, exit requirements for Filipinos are not only limited to those needed to obtain a passport, such as birth certificates. For entertainers who wish to work overseas, academic and skills training at accredited centers of the National Manpower and Youth Council must be undertaken. A competency certificate is then issued by NMYC and an Artist Record Book by the POEA. This record book contains the artists’ professional profile – training and skills, audition results, overseas employment history—as well as, the competency certificate number, some personal data, and the artist’s particular talent. There is also a minimum age requirement for

⁶⁷ Gao, Guanjiang (1997), “International Labor Migration and Policies in China,” a paper presented at a Workshop on International Migration and Labor Markets in Asia, Tokyo, Japan, 30-31 January 1997, pp. 3-4.

⁶⁸ Gao, Guanjiang (1996), “Country Report: China,” paper presented at the Workshop on International Migration and Labor Markets in Asia: National Policies and Regional Cooperation, 1-2 February 1996, Tokyo, Japan, pp. 10-12.

women leaving to work as domestic helpers and entertainers. In addition, recruitment agencies in the Philippines are required to conduct pre-departure orientation. They are also required to post security bonds to guarantee repatriation of the worker in cases of contract violations.