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**Issues and prospects  
on the movement of natural persons  
and human capital development  
in the Philippine-American  
economic relations**

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## **Abstract**

The United States of America is the top trading partner of the Philippines and also the top destination of highly skilled and professional Filipino workers. This paper explores the possibility of a free trade agreement (FTA) that covers the asymmetries of the two countries in labor, services and human resources development, particularly educational services. The existing FTAs of the U.S. are examined to seek for provisions the Philippines may adopt for a freer movement of natural persons. However, there are barriers inherent in the U.S. immigration and recent U.S. Congressional pronouncements to uphold the primacy of their immigration policy, thus, no more similar liberal agreements could be entered into. Issues on the movement of workers, particularly mutual recognition, accreditation, taxation and the refund of social security contributions were raised. For the educational sector, the issue of public subsidy and national treatment of foreign service providers are also brought up to clarify the objective of bringing access to students. The paper concludes that for an FTA concerning the movement of natural persons to materialize, the Philippines should weigh its sacrifices against what it will be requesting from the U.S. within the context of the overall importance of the maximizing opportunities for the Filipino worker.

**Keywords:** movement of natural persons, trade in services, education, free trade agreement

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# Issues and prospects on the movement of natural persons and human capital development in the Philippine-American economic relations<sup>1</sup>

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## 1. Executive Summary

Filipino labor migration as to flows, destinations and remittances has been considerably the subject of economic studies with the United States as the top destination of skilled, professional and permanent migrants. However, as global trade in services expands, it may be interesting to consider the various modes of supply in a service sector quite relevant to both the Philippines and the U.S. – the educational services sector, for it may present complementary value to the two countries.

Educational service is a relevant sector to analyze in view of several factors. The Philippines and the United States both use English as the medium of instruction, inquiry and publication in educational institutions. The asymmetries in education in both countries can also be explored to find out whatever complementation may exist. The advanced state of education in the U.S. may answer some of the pressing needs of the Philippines to improve its educational system. As a major producer of educational services, the U.S. can take advantage of the English milieu in the Philippines in securing this sizeable market. From the Philippine perspective, the country can benefit from such commercial interaction particularly in addressing the inadequacies of the educational system that include the problems of quality, equity and efficiency.

With the current difficulties and slowdown in multilateral trade negotiations, countries, including the Philippines, are looking for other avenues that will liberalize trade within the region and with their major trading partners - the U.S., for purposes of this paper, as it brings in PhP 10.4 billion worth of foreign direct investments. According to the Labor Market Intelligence Report (2004), the U.S. market has been the target of Philippines' priority service sectors which include information communication technology (ICT) enabled servicing, customer contact, content development, backroom operations services and other forms of sub-contracting and outsourcing services.

In examining the bilateral flows in education services with the GATS modes of supply as framework, the U.S. can be seen as having an active role. For *cross-border* transactions, the Philippines has the old style correspondence schools and distance education. Under *consumption abroad*, a large number of Filipino students and scholars go to American universities under various scholarship and fellowship programs. On the other hand, there are American exchange students (although minimal) who pursue studies

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in the Philippines. For *commercial presence*, there are international schools and sectarian schools, at least initially, controlled by foreigners including Americans. In more recent years, the establishment of branches of American universities overseas and other cooperative efforts undertaken by foreign schools with domestic education service providers was observed. For the *movement of natural persons* or *mode 4*, a number of Filipino scholars, who studied in the U.S., has not returned to the Philippines and has contributed to the problem of ‘brain-drain’. The movement of professors, academic personnel and researchers may also be covered by this mode.

In order to weigh the negotiation options of the Philippines for a free trade agreement (FTA) with the United States, their FTAs were analyzed. These include the NAFTA, U.S.-Chile., U.S.-Jordan, U.S.-Singapore, U.S.-Thailand, and U.S.-Vietnam.

The NAFTA has served as the benchmark for negotiations with the U.S. The salient provisions include standard treatment, provisions that obliges members to agree on consolidated any new liberalizing measure that may improve the conditions of service providers, no local presence requirement for foreign service providers, no citizenship or permanent residency requirement, unconditional most favored nation and national treatment, and liberal origin requirement.

The U.S.-Singapore followed with more liberal commitments that involved that freer movement of natural persons considering a list of qualifications. The U.S.-Singapore FTA provides that “*a party shall not as a condition for temporary entry, require prior approval procedures, petitions labor certification test, or other procedures of similar effect; or impose or maintain any numerical restriction relating to temporary entry*”.

The United States prioritized the entry of foreigners with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. Notably, H1 visa (specialty occupation) holders are also prioritized. The U.S. has around 19 different types of visas which range from A for ambassadors to TN for professionals from NAFTA countries.

The most serious barrier to the movement of Filipinos to the United States is the U.S. Congressional move to uphold the primacy of their immigration policy. The U.S. House Judiciary Committee has vowed not to pass a bill with similar immigration provisions that are contained in the Singapore and Chile agreements.

For restrictive measures, the problems and concerns of Filipino workers and their U.S. employers include delays and costs in proving that the migrant worker has the extraordinary ability and that there is no U.S. worker available. On the other hand, the Philippines has a constitutional limitation on the practice of licensed professions. Labor market tests also apply to foreign nationals.

Looking inwards, the impact of the movement of people from the Philippines can be felt in the country’s brain drain of professionals. Many of the Filipinos who have

migrated and settled in the U.S. are mostly educated professionals. This is quite a drain not only on the human resources of the Philippines but also on its limited educational resources especially if the government has subsidized the education of these emigrants. A phenomenon of reverse transfer of technology emerges as a developing country like the Philippines subsidizes the education of migrant workers and professionals working in the United States.

Although remittances have been considered as a major rationale for encouraging migration, its impact may not be that sizeable since many of the Filipinos who have migrated to the United States have settled there permanently. In addition, many of them have also petitioned their families to join them. Thus, the remittance income from this type of migration flow is expected not to be that huge as compared with the remittance income sent by OFWs or those deployed on a temporary employment basis.

The liberalization of the entry of professors, researchers and scientists into the Philippines will have positive contributions on the development of research and instruction in higher educational institutions (HEIs) in the country. Relative to the other modes of supply of educational services, the entry of natural persons cannot be expected to displace local private colleges and universities. Even if they can contribute to the development of higher education in the Philippines, however, the entry of foreign professionals may threaten domestic professionals. The criteria for economic needs tests will have to be transparent so that it may not be used as a protective shield and barrier to trade.

As for the *definition* of the movement of natural persons, the Philippines can use the non-immigrant visa classification of the U.S. immigration as an alternative to the limiting definition by the GATS. Mode 4 (movement of natural persons) is often taken in conjunction with Mode 3 (commercial presence) and not as a separate mode in itself. However, regardless of the mode and definition, temporary workers could not be prevented from changing their residency and work status to permanent. The issue is how to maximize the opportunities to be gained in lowering barriers to immigration. This could be possible through the adoption of a similar visa to NAFTA visa that would include various classifications of professionals.

For the issue of access, the Philippines should push for provisions in the FTA similar to the NAFTA and Singapore to ease the movement of professionals and skilled workers. Alongside with this, however, the Philippines should be prepared to make sacrifices for the U.S. request. Consider the costs, sacrifices and the relative importance of Philippine request to the overall country benefit. This should be taken in consideration of the U.S. Congressional pronouncement on immigration following the U.S.-Singapore FTA and NAFTA.

One significant issue in temporary labor migration is the payment of taxes and social security considering that the worker will not enjoy the benefits eventually in the host country. Social savings are intended to benefit the workers when they retire. However, temporary workers are not expected to settle permanently in their host

countries. The enjoyment of these social security benefits, therefore, may not accrue to them in the future. It will only be beneficial to Filipino workers who change their immigration status to permanent migrant. It should be proposed that contributions of temporary workers be refunded to the worker. This option is more practicable than outright exemption and may even induce return migration.

For the negotiating principle and liberalization, the Philippines should decide whether to go for the principle of reciprocity or preferential treatment. Given the unequal status between the two countries, the Philippines may compromise national interest and the Constitutional restriction on the employment of foreigners under a reciprocal mode of negotiations. A preferential treatment with a loose interpretation of reciprocity may still compromise other sectors in acceding to the demands of U.S. negotiators. The importance of each sector and the mode that is subjecting to concessions and commitments must be weighed carefully.

Focusing on the education sector, the criteria for market access to foreign service providers should be defined. Given the advance level of development of higher education in the U.S., American service providers can contribute significantly in the human resource development in the Philippines. Under mode 1, research and graduate programs in almost all fields can be opened. Under mode 3, U.S. service providers can be allowed to establish joint venture arrangements with Philippine schools offering priority undergraduate and key graduate programs. Under mode 4 the Philippines can liberalize the entry of scientists, researchers and qualified professors in priority areas. The issue of national treatment in granting public subsidy, however, is problematic considering that the government operates directly and funds some 113 state colleges and universities. Foreign service providers may be entitled to the same subsidy granted by the government to priority programs of colleges and universities and thus, compete for public funds. Public subsidy, therefore, will have to be directed towards priority programs of the government that are consistent with the provision of public goods. Focus should be given on the ultimate objective. If the objective is access to students, then scholarship grants should be given directly to students. If the objective is to promote a priority program, the subsidy must be given to a priority program. In both cases, the provision of public subsidy is not based on the nationality of the institution but on priority programs that the government wants to promote.

One way of enhancing the competitiveness of Filipino workers in the global market is to establish mutual recognition agreements with partner countries pertaining to educational qualifications. The entry of professionals from one country to another is facilitated if requirements for the practice of a profession is recognized and accredited between the sending and host countries. Therefore, there is a need to have a mutual recognition on the qualifications and other requirements for Filipinos educated in the Philippines and who are seeking temporary employment in the U.S. National interest will prevail in determining the acceptability of education, qualification and experience, hence, the need for mutual recognition of professions.

Lastly, for the negotiating principle, the Philippine should adopt the positive-list approach. This will enable the Philippines to identify and offer sectors and professions that are ready for liberalization, instead of opening the entire services sector and listing the exemptions. This is consistent with the U.S. negotiating principle that follows a top-down approach or negative list approach which requires its trading partners to negotiate a reservation for a particular service or measure.

The matrix below summarizes the issues and policy options of the paper.

Issues	Pros	Cons	Policy Recommendations
<p><b>Definition</b> of the movement of natural persons (mode 4) under the GATS</p> <p>Movement of natural persons using U.S. non-immigrant visa</p>	<p>GATS definition covers intra-corporate transferees, technical and other related workers affiliated with transnational corporations</p> <p>This is the existing system under the H1-B and other skilled and special visas for non-immigrants of the U.S. Immigration.</p>	<p>GATS definition, however, is often in conjunction with mode 3 or commercial presence. Mode 4 if taken separately covers only independent professionals rendering service in a foreign country for a limited time period.</p> <p>There is no preventing temporary workers from changing to a resident visa or immigrant visa.</p>	<p>Regardless of the definition, Filipinos have established presence in more than 200 countries and trust territories worldwide. The issue is how to maximize the opportunities to be gained in lowering barriers to immigration.</p> <p>Adopt a visa similar to NAFTA visa that would include various classifications of professionals</p>
<p><b>Issue of access</b> The Philippines should push for similar provisions included in FTAs negotiated by the U.S. with other countries that would ease the entry of business visitors and professionals</p>	<p>This will provide similar benefits to the Philippines extended to NAFTA countries and Singapore where provisions in FTAs are considered liberal.</p>	<p>However, the Philippines should be prepared to make sacrifices for any request to be done. Consider the costs, sacrifices and the relative importance of Philippine request to overall country benefit.</p> <p>Considering the U.S. Congressional pronouncement on immigration following the U.S.-Singapore FTAs, can U.S. negotiators still accommodate requests similar to such FTA?</p>	<p>Adopt a NAFTA visa (TN). This could provide streamlined measures that could facilitate the freer movement of professionals and businesspersons</p> <p>L-1 visa could be further explored for it does not require labor market certification, numerical restrictions and compensation level. It is the most liberal visa given by the U.S. immigration office.</p>

Issues	Pros	Cons	Policy Recommendations
<p><b>Taxation of temporary workers</b> Should Filipino workers, professionals and businessmen on temporary assignment in the U.S. pay taxes and social security if they are not going to avail of the services in the future?</p>	<p>It will only be beneficial to Filipino workers who change their immigration status to permanent migrant.</p>	<p>Social savings are intended to benefit the workers when they retire. However, temporary workers are not expected to settle permanently in their host countries, the enjoyment of these social security benefits may not accrue to them in the future.</p>	<p>It should be proposed that contributions of temporary workers be refunded to the worker. This option is more practicable than outright exemption and may even induce return migration.</p>
<p><b>Negotiating principle and liberalization</b> Principle of reciprocity or preferential treatment?</p>	<p>Given the unequal status between the two countries, the Philippines may compromise national interest and the Constitutional restriction on the employment of foreigners under a reciprocal mode of negotiations.</p>	<p>A preferential treatment with a loose interpretation of reciprocity may still compromise other sectors in acceding to the demands of U.S. negotiators</p>	<p>The importance of each sector and the mode that is subjecting to concessions and commitments must be weighed carefully.</p>
<p><b>Mode of access</b> If the Philippines opens the educational sector to foreigners, under what criteria will market access be given to U.S. providers?</p>	<p>Given the advance level of development of higher education in the U.S., American service providers can contribute significantly in the human resource development of the Philippines. Under mode 1,</p>	<p>The issue of national treatment in the granting of public subsidy, however, is problematic given that the government operates directly and funds some 113 state colleges and universities. Should foreign service providers be entitled to the</p>	<p>Public subsidy will have to be directed towards priority programs of the government that are consistent with the provision of public goods.</p>

Issues	Pros	Cons	Policy Recommendations
	<p>research and graduate programs in almost all fields can be opened. Under mode 3, U.S. service providers can be allowed to establish joint venture arrangements with Philippine schools offering priority undergraduate and key graduate programs. Under mode 4 the Philippines can liberalize the entry of scientists, researchers and qualified professors in priority areas.</p>	<p>same subsidy granted by the government to priority programs of colleges and universities?</p>	
<p><b>Domestic regulation and MRAs</b> There is a need to have a mutual recognition on qualifications and other requirements for Filipinos educated here and who are seeking temporary employment in the U.S.</p>	<p>National interest will prevail in determining the acceptability of education, qualification and experience, hence the need for mutual recognition of professions.</p>	<p>There is a proliferation of diploma mills and accreditation mills.  Philippine educational system is deficient by two years as compared to U.S. educational system.</p>	<p>One way of enhancing the competitiveness of Filipino workers in the global market is to establish mutual recognition agreements with partner countries pertaining to educational qualifications. Entry of professional from one country to another is facilitated if requirements for the practice of a profession is recognized and accredited between the sending and host countries.</p>

Issues	Pros	Cons	Policy Recommendations
<p><b>National treatment of U.S. providers</b>            With the liberalization of educational services to U.S. service providers, the issue of national treatment becomes relevant in the light of significant public dimension of higher education.</p>	<p>Because higher education is a public good, the government extends financial assistance to higher educational institutions.</p>	<p>U.S. service providers might compete for public funds especially in the delivery of priority programs of the government.</p>	<p>Focus should be given on the ultimate objective. If the objective is access to students, then scholarship grants should be given directly to students. If the objective is to promote a priority program, the subsidy must be given to a priority program. In both cases, the provision of public subsidy is not based on the nationality of the institution but on priority programs that the government wants to promote.</p>
<p><b>Negotiating principle for the Philippines</b>            What approach should be adopted in negotiating?</p>	<p>The U.S. being a NAFTA member follows a top-down approach or negative list approach which requires its trading partners to negotiate a reservation for a particular service or measure.</p>	<p>Inconsistency with the Philippine approach of positive list, request offer or the bottom-up principle.</p>	<p>Adopt the positive-list approach. This will enable the Philippines to identify and offer sectors and professions that are ready for liberalization, instead of opening the entire services sector and listing the exemptions.</p>

## 2. Introduction

The historical ties that shaped the relationship between the Philippines and the United States has made a widespread impact on almost all aspects of Philippine society. Aside from being the leading economic partner of the Philippines for over a century, the country draws from the United States the major tenets of contemporary politics, education, language, and culture. While the flow of goods, funds, ideas, and influence from the U.S. to the Philippines has been immense over the decades, the counter flow is likewise considerable. For almost a century, the flows of Filipino workers and emigrants to the U.S. have been quite extensive and have been influenced by factors that shaped the contour of Philippine political, economic and cultural links with the United States.

Although migration flows of Filipinos to the U.S. over several decades have been quite considerable and has taken a defining role in Philippine-American relations, the pressures of globalization, however, may redirect this movement of persons into other spheres. As global trade in services expands, it may be interesting to consider the various modes of supply in a service sector quite relevant to both the Philippines and the U.S. Liberalization in educational services, a sector of particular interest to the U.S., for instance, may present complementary values to the two countries.

Educational service is a relevant sector to analyze in view of several factors. The Philippines and the United States both use English as the medium of instruction, inquiry and publication in educational institutions. The presence of an *English Milieu* in the Philippines can facilitate trade in educational services in several modes coming from the United States. Moreover, the educational system of the Philippines is largely patterned after the American model with some modifications and imperfections. The proliferation of privately-funded educational institutions at all levels in both countries, for example, is a feature that can make consumers of educational services understand the meaning of competition and even global competition that in turn, make them receptive to the entry of foreign service providers. The asymmetries in education in both countries can also be explored to find out whatever complementation may exist.

The advanced state of education in the United States may answer some of the pressing needs of the Philippines to improve its educational system. As a major producer of educational services, the U.S. can take advantage of the English milieu in the Philippines in securing this sizeable market. From the Philippine perspective, the country can benefit from such commercial interaction particularly in addressing the inadequacies of the educational system that include the problems of quality, equity and efficiency.

As countries enter into new modes of supply in a sector characterized by the presence of public goods, asymmetries in information, and externalities, it may not be easy to convince policy makers, as well as other stakeholders in liberalizing the sector and open it to foreign competition. The promotion of public interest on one hand, and the domestic protectionist pressures, on the other hand, may not lend the educational sector to the liberalization process even at a bilateral level.

With the current difficulties and slowdown in multilateral trade negotiations, countries, including the Philippines, are looking for other avenues that will liberalize trade within the region and with their major trading partners. This paper examines the implications of a bilateral economic partnership with the United States on the country's trade in services particularly on the movement of natural persons and the development of human capital. Policy options are listed in order to maximize the benefits of an enhanced economic partnership with the United States given the issues on market access, protection, and impact of such bilateral trade agreement on the movement of natural persons and the various modes of supply in educational services.

In the movement of natural persons, the issue of market access comes into fore. Immigration policies, national security concerns, domestic regulations, and even protectionist domestic interests can contribute in slowing down the movement of people across national boundaries. It is recognized, however, that the establishment of Mutual Recognition Agreements (MRAs) and other forms of professional accreditation mechanisms have contributed, to a certain extent, in easing the restrictions on the movement of people internationally. In this light, this paper explores the prospects of the inclusion of MRAs, other forms of professional accreditation, and criteria for temporary stay of business personnel in the proposed free trade agreement between the Philippines and the United States.

More than access, the protection of migrant workers especially the non-professional workers in the U.S. was likewise considered in this paper. In addition, a balanced treatment on the movement of natural persons internationally includes a discussion on the impact of such international movement of people on society in terms of brain drain and remittances.

### **A. Significance of the study**

In the light of the potential opportunities, as well as the consequences of a bilateral liberalization in educational services with the United States, an evaluation of these positive and negative points should be a significant inquiry to pursue. Thus, this paper is meant to weigh and evaluate the advantages relative to the disadvantages of enhancing trade in educational services at various modes of supply aside from considering the gains and costs of the movement of natural persons<sup>2</sup> between the two countries.

### **B. Objectives of the study**

The following are the objectives of this paper:

- a. Trace the structure of bilateral flows between the Philippines and the United States in terms of the movement of natural persons

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<sup>2</sup> Movement of natural persons is a technical definition of the General Agreement of Trade in Services that covers highly skilled workers, professionals, intra-corporate transferees and business visitors.

- b. Trace the structure of bilateral flows of educational services between the Philippines and the United States
- c. Identify the possible modes of supply in educational services that can be pursued in the light of globalization and enhanced bilateral economic partnership between the Philippines and the United States
- d. Identify specific provisions on the movement of natural persons in free trade agreements entered into by the United States with other countries
- e. Assess the various restrictive measures on the temporary movement of Filipino professionals and workers into the United States
- f. Analyze the various problems and concerns faced by OFWs in the United States
- g. Evaluate the impact of these migration flows and various modes of supply in educational services in the Philippines
- h. Proposed policy options that the Philippines can take in addressing the consequences of these flows and modes of supply in order to maximize their benefits and mitigate their negative consequences
- i. Proposed strategies for negotiation towards the formation of an R.P.-U.S. FTA

### **3. Bilateral flows between the Philippines and the United States**

#### **A. Flows of Filipinos to the United States**

Several phases divide the migration flows of Filipinos to the United States. These migration stages are greatly driven by events and features that ensued during the development of the Philippine-American bilateral bond.

The first group is composed of plantation workers. The entry of Filipino plantation workers in Hawaii and California was facilitated by the U.S. immigration restriction on the entry of foreign workers, mostly the Chinese and Japanese nationals, on one hand, and the colonial link between the Philippines and the U.S. on the other hand. Since the Philippines has been ceded to the United States in the Treaty of Paris, Filipinos, as nationals of an American colony, were not subjected to this U.S. immigration restriction. Since Filipinos were treated as U.S. nationals, they became the natural substitutes for Chinese and Japanese workers in the light of the immigration restriction. Many of these Filipino plantation workers settled permanently in Hawaii and California. However, with the passage of the Tydings-McDuffie Act or the Philippine Independence Act of 1934, a law that established a commonwealth government in the Philippines in preparation for its eventual independence, the unhampered entry of Filipinos to the U.S. for three decades ended (Espiritu 2002).

The second group of Filipinos entered the United States through military links by joining the U.S. Navy. Even without the privilege of American citizenship, Filipinos were allowed to join the U.S. military. This practice is understandable during the American colonial period but Filipino recruitment in the U.S. Navy persisted even after independence, albeit at a reduced level, due to a special provision in the 1947 Military Bases Agreement. Although a majority of the Filipino recruits took on menial

assignments in the U.S. navy (like stewards and mess attendants), this did not deter thousands, mostly educated, to apply for limited slots. The economic benefits were quite attractive and the possibility of permanent residence for their family became the major pull factors for this flow of educated Filipinos (Espiritu 2002).

The third wave of Filipinos that entered the U.S. was ushered by the liberalization of the American Immigration Act of 1965 that removed the nationality origin quotas. At the same time, the booming American economy experienced labor shortages in various fields. These two factors facilitated the entry of a large number of Filipino doctors, nurses, engineers, accountants, teachers, and other professionals into the United States. The initial entry of Filipino professionals was followed by their families that were subsequently petitioned under a provision of the immigration law that allows for family reunification (Espiritu 2002).

The fourth and current phase of migration flows is influenced to a great extent by the forces of globalization. The liberalization of trade in services expanded cross-border transaction as well as foreign direct investments. Accompanying these modes of supplying services globally is the movement of professionals and workers. Transnational corporations practice intra-corporate transfer of workers around the world for training and foreign posting. However, even smaller firms particularly those in the information communications technology (ICT) send their personnel abroad to conduct cross-border transactions. As a consequence, many IT professionals have moved to the U.S. on working visas initially, but have subsequently taken permanent residence there. The fluctuations in the labor markets for nurses and to some extent teachers have likewise facilitated the flows of Filipino nurses and teachers in more recent years.

Filipinos do not only leave the country to seek permanent residence abroad. For over several decades, there have been significant flows of temporary workers starting with construction and logging workers in Indonesia and Malaysia in the 1960s. The ubiquitous Filipino musicians and entertainers were seen in several major cities in Asia during the post-war years. Subsequently, the oil boom in the 1970s expanded several economies in the Middle East and this economic prosperity, in turn, has attracted all kinds of Filipino workers, both professionals and laborers, into the region. The rapid economic growth in more recent years in the economies in the East Asia region including Hong Kong, Taiwan, Singapore, Malaysia, Japan and South Korea has also attracted thousands of Filipino workers including entertainers, factory workers, domestic helpers and construction workers to these places. Recent estimates reveal that, overseas Filipino workers are in more than 200 countries, territories, islands and places all over the world.

Various factors have facilitated the movement of people across national boundaries and have contributed in the formation of an emerging migration culture among Filipinos. Limited employment opportunities in the country, rapid expansion of the labor force, and the relative lethargy of the domestic economy compared with its neighboring countries have pushed many of Filipinos to seek employment overseas. On the other hand, the tightening labor market, graying population, dislike for difficult jobs, and economic dynamism in receiving countries have served as pull factors for Filipinos

who are working abroad and the effective network they have created, the costs of migration have been substantially reduced. These three major factors reinforced each other in the migration culture among Filipinos (Tullao, Cortez & See 2004).

**Table 1. No. of registered Filipino emigrants by country of destination**

Year	USA	Canada	Australia	Japan	U.K.	Germany	New Zealand	Others	Total
1981	40,307	5,226	2,752	254	88	45	12	183	48,867
1985	38,653	2,097	3,458	126	276	213	52	394	45,269
1990	43,781	8,400	5,847	3,569	291	334	50	877	63,149
1995	34,614	11,288	2,966	4,883	151	661	579	1,100	56,242
2000	31,324	8,245	2,298	6,468	174	552	261	1,709	51,031
2001	31,287	9,737	1,965	6,021	176	507	284	2,077	52,054
2002	36,557	8,795	2,603	5,734	271	518	624	2,618	57,720

Source: Commission on Filipino Overseas in Phil. Stat. Yearbook 2003

The Filipino migration management model is currently being studied by fellow developing countries. Approximately 2,700 Filipinos leave the country to find employment in the global work place. They surpass immigration and work restriction of around 210 countries and trust territories worldwide considering that the World Trade Organization (WTO) only has around 140 members.

The United States remains to be the top destination especially to the skilled and professional work force. Table 1 above shows that around 40,000 Filipinos yearly apply for emigrant status in the United States. If Filipinos could not qualify to legal change of residency status, then there is no preventing them from turning into irregular migrants. Table 2 below shows that almost half the world total number of Filipino migrant workers is on temporary work basis. While not all could convert into permanent status, a significant number turn irregular. It is estimated that close to 100,000 Filipinos are in the U.S. on a temporary basis but over half a million have irregular immigration status. The U.S. has registered the highest number of Filipinos with irregular immigration status.

**Table 2. Stock estimate of overseas Filipinos****As of December 2003**

<b>REGION / COUNTRY</b>	<b>Permanent</b>	<b>Temporary</b>	<b>Irregular</b>	<b>Total</b>
<b>WORLD TOTAL</b>	<b>2,865,412</b>	<b>3,385,001</b>	<b>1,512,765</b>	<b>7,763,178</b>
<b>AFRICA</b>	<b>318</b>	<b>53,706</b>	<b>16,955</b>	<b>70,979</b>
EGYPT	54	2,383	1,280	3,717
EQUATORIAL GUINEA	0	1,471	150	1,621
LIBYA	75	5,982	485	6,542
NIGERIA	18	10,939	586	11,543
OTHERS / UNSPECIFIED	171	32,931	14,454	47,556
<b>ASIA, East &amp; South</b>	<b>85,570</b>	<b>944,129</b>	<b>503,173</b>	<b>1,532,872</b>
BRUNEI	26	21,043	1,500	22,569
HONG KONG	404	185,500	2,500	188,404
JAPAN	77,310	197,268	30,100	304,678
KOREA (South)	4,561	28,540	9,015	42,116
MACAU	56	16,000	1,000	17,056
MALAYSIA	311	59,599	363,000	422,910
SINGAPORE	152	58,194	71,917	130,263
TAIWAN	1,992	151,824	4,300	158,116
OTHERS / UNSPECIFIED	758	226,161	19,841	246,760
<b>ASIA, West</b>	<b>2,290</b>	<b>1,361,409</b>	<b>108,150</b>	<b>1,471,849</b>
BAHRAIN	63	28,238	5,000	33,301
ISRAEL	104	9,186	23,000	32,290
JORDAN	108	5,235	7,000	12,343
KUWAIT	93	69,217	10,000	79,310
LEBANON	19	21,521	5,500	27,040
OMAN	18	18,632	1,500	20,150
QATAR	13	44,279	1,000	45,292
SAUDI ARABIA	243	948,329	18,000	966,572
UAE	389	172,755	20,000	193,144
OTHERS / UNSPECIFIED	1,240	44,017	17,150	62,407
<b>EUROPE</b>	<b>165,030</b>	<b>459,042</b>	<b>143,810</b>	<b>767,882</b>
AUSTRIA	21,854	1,203	2,000	25,057
BELGIUM	3,473	2,524	4,933	10,930
FRANCE	1,082	4,808	26,121	32,011
GERMANY	42,489	7,015	4,392	53,896
GREECE	88	15,527	7,500	23,115
ITALY	4,075	70,113	50,000	124,188
NETHERLANDS	10,250	2,368	1,000	13,618
SPAIN	15,753	6,071	4,000	25,824
SWITZERLAND	842	5,971	6,199	13,012

*Table 2. Continued.*

UNITED KINGDOM	46,234	38,256	7,125	91,615
OTHERS / UNSPECIFIED	18,890	305,186	30,540	354,616
<b>AMERICAS / TRUST TERRITORIES</b>	<b>2,386,036</b>	<b>286,103</b>	<b>709,676</b>	<b>3,381,815</b>
CANADA	359,118	30,027	2,975	392,120
UNITED STATES	1,979,408	99,815	510,000	2,589,223
CNMI	1,288	15,399	1201	17,888
GUAM	44,917	1,628	500	47,045
OTHERS / UNSPECIFIED	1,305	139,234	195,000	335,539
<b>OCEANIA</b>	<b>226,168</b>	<b>55,814</b>	<b>31,001</b>	<b>312,983</b>
AUSTRALIA	209,017	716	2,923	212,656
NEW ZEALAND	17,051	260	120	17,431
PALAU	5	3,266	400	3,671
PAPUA NEW GUINEA	64	4,140	7,339	11,543
OTHERS / UNSPECIFIED	31	47,432	20,219	67,682
<b>REGION UNSPECIFIED</b>		<b>8,767</b>		<b>8,767</b>
<b>SEABASED WORKERS</b>		<b>216,031</b>		<b>216,031</b>

*Prepared by the Commission on Filipinos Overseas from CFO, DFA, POEA and other sources covering 192 countries / territories.*

*Permanent - Immigrants or legal permanent residents abroad whose stay do not depend on work contracts.*

*Temporary - Persons whose stay overseas is employment related, and who are expected to return at the end of their work contracts.*

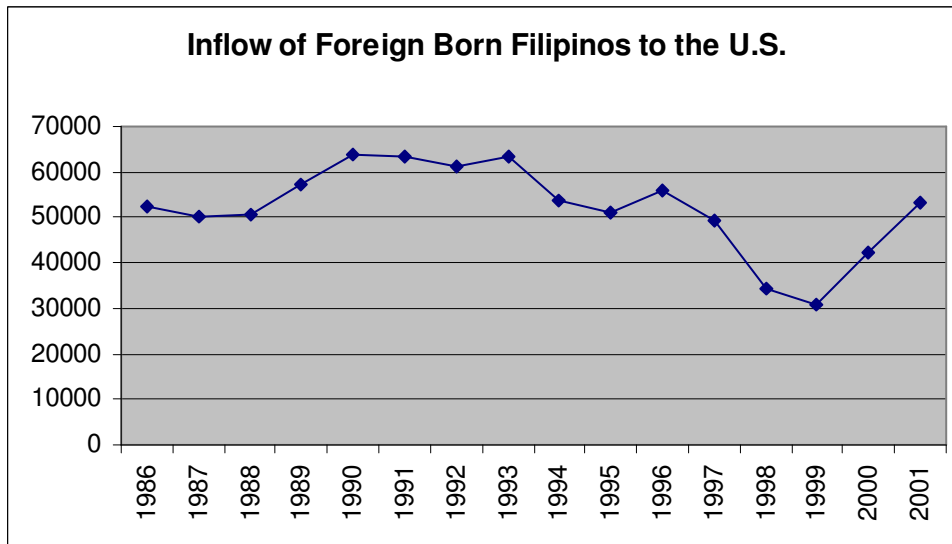
*Irregular - Those not properly documented or without valid residence or work permits, or who are overstaying in a foreign country.*

Source: POEA

There are approximately 1.4 million foreign born (from the Philippines) Filipinos in the United States and they represent the second largest immigrant group next to Mexicans (9.2 million). The states with the largest number of Filipinos are California (664,935) and Hawaii (102,063). Almost half of the total foreign born Filipinos in the U.S. are in California and half of the foreign born population of Hawaii. Migrant Filipinos account for less than five percent of the total foreign born. Interestingly, one-fourth of the foreign born in the armed forces of the United States were from the Philippines. Between 1990 and 2000, the inflow of foreign born Filipinos has increased by 50 percent (Migration Information Source 2003).

In 1986, there were approximately 52,558 Filipinos who entered the United States. The number dropped to around 50,000 in 1987 and 1988. It was highest in year 1990 and 1991 (63,756 and 63,596 respectively) and lowest in 1999 with 31,026.

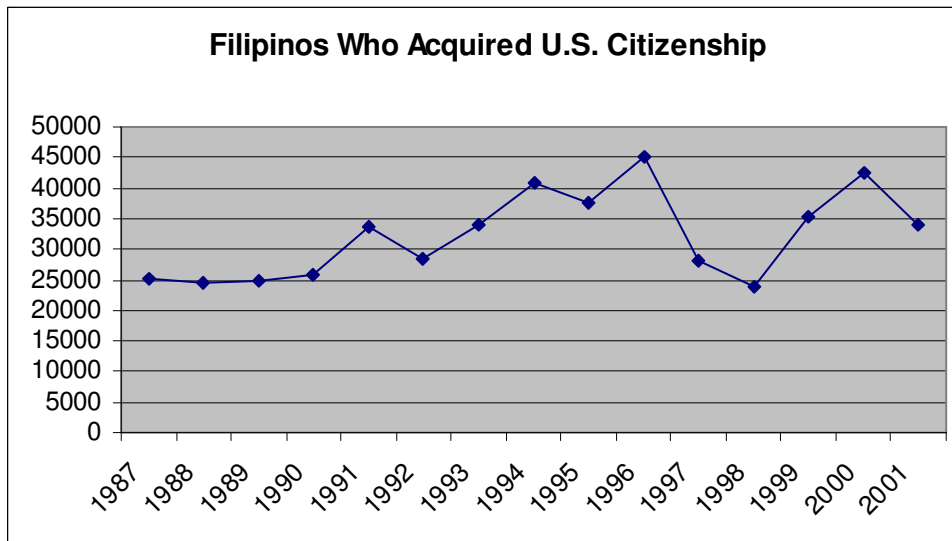
**Figure 1. Inflow of foreign born Filipinos to the U.S.**



Source: Migration Information Source (2003)

Most of the migrant Filipinos changed to U.S. citizenship as evidenced by the significant figures from Migration Information Source (2003). Almost half of the inflows per year have changed citizenship as can be seen in the graph below.

**Figure 2. Filipinos who acquired U.S. citizenship**



Source: Migration Information Source (2003)

Around 25,296 Filipinos changed to U.S. citizenship in 1987. The number was highest in 1997 with 45,210 in 1996. However, there was a significant drop in 1997 and in 1998 where the number was limited to only 23,809. In 2001, the number was back to its average 35,000 level.

## B. Flows of Americans to the Philippines

U.S. nationals ranked first among visitors to the Philippines in years 2003 and 2004 according to Department of Tourism statistics (Table 3). Of the total tourist arrivals in the country, 22 percent or a total of 292,277 Americans arrived in 2004. This is a 35 percent increase from 2003 where only 216,557 visitors entered the country.

**Table 3. Visitor Arrivals to the Philippines  
January to July 2003 & 2004**

<b>Rank</b>	<b>Country</b>	<b>2004</b>	<b>% share</b>	<b>2003</b>	<b>Growth %</b>
1	USA	292,277	22%	216,557	35%
2	Japan	217,986	16%	176,131	24%
3	Korea	210,219	16%	157,230	34%
4	Hong Kong	96,745	7%	72,531	33%
5	Taiwan	69,456	5%	47,906	45%
6	Australia	48,688	4%	35,890	36%
7	Canada	36,139	3%	27,220	33%
8	Singapore	34,448	3%	26,905	28%
9	United Kingdom	33,165	3%	26,907	28%
10	Germany	25,604	2%	21,186	21%
11	China	22,911	2%	17,264	33%
12	Guam	21,124	2%	16,564	28%

Source: Department of Tourism

The number of foreign students in the Philippines has been declining from 1994 to 2001. Of the 2,323 foreign students in the country, Americans have the highest number with 452 or 19.5 percent; followed by Koreans 394 (17 percent) and Taiwanese 325 (14 percent) (CHED 2004).

## C. U.S. role in Philippine economy and employment

The United States, being the top economic trading partner of the Philippines, brings in PhP 10.4 billion worth of foreign direct investments (FDI). American firms have significantly invested in various sectors of the Philippine economy. These include: America On-line, Arthur Andersen, Barnes & Noble, Bechtel, Caltex, Citibank, Fluor Daniel, James Martin and Procter and Gamble. American firms also invest in the Philippines service sector particularly the contact or call center industry.

The Labor Market Intelligence Report (2004) reveals priority sectors aimed at serving the U.S. market. These include ICT enabled servicing that would require skills on the application of information technology, customer contact, content development (animation, medical transcription, engineering and design, distance education), backroom operations services, and other forms of sub-contracting of electronic services. The

growth and contribution to employment potential of these sectors are seen to reach USD 50.4 billion for human resources services and USD 43.2 billion for customer contact services.

The Contact Center Association of the Philippines (CCAP), a grouping of contact center service providers in the country, estimated that the U.S. market alone would need 1.5 million IT workers to serve its requirements. CCAP pointed out that of the estimated USD 200 billion investments in ICT-enabled services in the next couple of years, around USD 42 billion would be the share of the contact center services. However, studies point that by year 2008, the contact industry would be obsolete as a result of improvements in technology and higher service efficiency. Nevertheless, the Philippines is maximizing these opportunities given the competencies of the labor force on service provision, language proficiency and assimilation with Western culture.

Another e-services sector where the Filipinos are seen to excel would be in medical transcription. More and more health institutions in the U.S. and other countries are outsourcing their medical transcriptions from outside their territory including the Philippines. The need for medical transcription services is currently at USD 10-USD 16 billion industry with an annual growth rate of 20 percent. Employment in the U.S. of medical transcriptionists is recorded at 230,000 per annum but their availability is declining by 10 percent annually (Labor Market Intelligence Report 2004).

Demand for Filipino e-services in animation also enormous in view of the inherent ingenuity, creativity and artistry of the Filipinos. Global revenues in animation are expected to increase from USD 16 billion in 2001 to USD 50 billion in 2004 to 2005. Current industry players numbered 22 firms to include 11 direct exporters. Existing markets are the U.S., Japan, Australia, Canada, and France for entertainment while China, Malaysia, Korea and Thailand are main markets of education/business modules (Labor Market Intelligence Report 2004).

The outlook for business process outsourcing and shared financial services looks bright as firms continue to consolidate their backroom operations on a regional level. There are around six financial and accounting centers not to mention those offering other backroom operations. The country is a major player in this area as Filipinos are regarded as globally competent accountants. The Philippines also produced a large pool of potential workers in this area as 80 to 100 thousand business-related students graduate yearly (Labor Market Intelligence Report 2004).

#### **D. Modes of supply in educational services**

Educational service is a relevant sector to analyze in view of several factors. The Philippines and the United States both use English as the medium of instruction, inquiry and publication in educational institutions. Moreover, the educational system of the Philippines is largely patterned after the American model with some modifications and

imperfections. The asymmetries in education in both countries can also be explored to find out whatever complementation may exist.

The following are the modes of supply using the General Agreement on Trade in Services (GATS) framework:

*Mode 1 - Cross-border transaction.* With the rapid developments in information technology, many educational service providers are now offering distance education.

*Mode 2 - Consumption abroad.* Exchange students and scholars consume the services of a foreign-based educational services institution.

*Mode 3 - Commercial presence.* Amidst stiff competition and declining number of enrollees, American colleges and universities seek broader markets by establishing branches and affiliates overseas. This is evidenced by the presence of American schools in the Philippines like the Brent School.

*Mode 4 - Movement of natural persons.* In their own capacity as service providers, professors, doctors, nurses and other skilled and professional workers are allowed movement.

## **E. Bilateral flows in educational services**

For *cross-border* transactions, the Philippines have the old style correspondence schools and the distance education and on-line education of recent vintage.

Under the *consumption abroad*, a large number of Filipino students and scholars went to American universities under various scholarship and fellowship programs. The counter flow to this mode, although quite minimal, are American exchange students pursuing studies in the Philippines.

The entry of foreign students is regulated by the Commission on Higher Education. Executive Order (E.O.) 285 issued in 2000 amended the previous rules and regulations governing the admission and stay of foreign students. Although the objective of E.O. 285 is to promote the country as a center for education in the Asia-Pacific region, “there are a number of conditions required on students and higher educational institutions (HEI) by various government agencies including CHED, DFA, and NBI that may have contributed to the decline in the enrollment of foreign students in recent years”. Despite this decline, the Americans still lead the number of foreign students in the country accounting for almost one fourth of the total number of students enrolled. Medicine and health related programs account for the top academic programs where foreign students enroll (Tullao 2003).

The stringent requirements enforced by various government agencies on foreign students and HEIs may not be contributing to the promotion of the country as an educational center in the region but these requirements are for the promotion of national security. Because many of the HEIs that are not accredited, “these HEIs became efficient routes for entering the Philippines to pursue non-educational activities.” In addition, “because of the potential threat of foreign students on national security, an inter-agency committee on the entry of foreign students has been established composed of government agencies including those involved in police and national security matters” (Tullao, 2003).

There are a number of foreign students who enter the country as tourists and take short courses or seminars in learning English as a second language. The competitive tuition fees in the Philippines make it convenient for foreigners to study English here and enter the country via a tourist visa. With the new rules and collection of higher fees, short-term courses could become more expensive (Tullao 2003).

Under *commercial presence*, the operation of the International School and the establishment of sectarian schools, were controlled, at least initially, by foreigners including Americans. In more recent years, the establishment of branches of American universities overseas and the other cooperative efforts undertaken by foreign schools with domestic education service providers were observed.

There are several examples that can proceed from this mode through the internationalization of higher education. Branch campuses, franchising, twinning or offshore programs are just a few examples. “Under branch campuses, a provider institution sets-up a full-fledged campus in a foreign country. Programs of the provider institution are offered in the branch campus and programs are implemented fully from admission to graduation. This can be fully owned by the provider institution or a joint venture with local partners” (Bernardo 2003). Under franchising arrangement, a foreign institution grants a host institution a license or permission to offer the foreign institution degree under certain conditions. The concept of twinning, on the other hand, involves the implementation of an educational degree program in two sites: the provider institution and host institution (Bernardo 2003). The relationship may take the form of corporate partnership or joint venture.

Twinning programs are allowed by CHED CMO No.1 Series 2000. The objective is to promote and facilitate the international mobility of teaching staff and students as an essential part of quality and relevance of higher education. Cooperative programs are likewise established to upgrade the quality of academic programs through collaborative activities, effective exchange of faculty and cooperation in research. The twinning program can be done through faculty-student exchange, collaborative research, scholarship grants and short and long-term training.

There are certain regulations, however, involved in the conduct of twinning programs. HEIs in the Philippines shall seek the approval of CHED in joining academic consortia and network with programs leading to the awarding of undergraduate, graduate and post graduate degrees. “The thrust of CHED is not meant to discourage the formation

of cooperative partnerships but part of its standard-setting function. Both local and foreign institutions are required to accredited programs to ensure that academic seriousness takes precedence over commercial consideration” (Tullao, 2003).

The *movement of natural persons* has often been associated with other modes of supply. A number of Filipino scholars who have pursued studies in the United States, an example of consumption abroad, has not returned and has contributed to the problem of ‘brain-drain’. The establishment of American university branches in the Philippines and other examples of commercial presence in educational services may likewise require the movement of American personnel and professors.

The entry of foreign professor is governed by the Labor Code that restricts entry of foreigners for employment purposes. However, the Department of Labor may issue an employment permit to a non-resident alien after fulfilling a labor market test. For those seeking employment in higher education, they have get an endorsement of the Commission on Higher Education (CHED) after submitting the following requirements including the need for a foreign professor, visa, passport, birth certificate, academic and professorial credentials of the foreign professor.

#### **4. Free trade agreements of the United States**

This section identifies the provisions of the FTAs the United States has entered into with other countries and regions regarding the movement of natural persons. Lessons from these FTAs are analyzed to determine the applicability of the provisions for the proposed R.P.-U.S. FTA. These provisions may provide insights on how the Philippines can craft the proposed FTA with the U.S. as regards to the movement of professionals and businessmen into the U.S. on temporary assignments.

Given the present state of higher education in the Philippines, the movement of professors may be considered as a preferred alternative in the provision of educational services relative to other supply modes. The other options may threaten the existing domestic educational service providers and may not address the pressing problems of higher education in the country. Moreover, in the light of an overly expanded higher education in the Philippines, movement of natural persons may have a significant impact in addressing the key issues and problems of higher education.

Latin American and Caribbean (LAC) countries have shown capacity to liberalize faster than at the multilateral level and includes nearly universal coverage of trade liberalization in industrial goods. Deep integration and positive rule making behind the border is a central defining feature of the new regionalism in LAC. Deep integration involves aspects such as investment, services, product and production process standards, and mutual recognition issues. In a 2000 study by Sherry Stephenson, she examines what has been done by members of regional trading arrangements in the Western hemisphere to promote stronger disciplines for domestic regulation and recognition agreements in the area of trade in services. She compared the disciplines on domestic regulation contained

in four sub-regional agreements in the Western Hemisphere – NAFTA, the Andean Community, MERCOSUR and CARICOM – to those contained in GATS Article VI on domestic regulation, and similar comparison in the area of recognition of qualifications for foreign-service providers with GATS Article VII (Stephenson 2000 in Salazar-Xirinachs 2001).

Stephenson’s hypothesis is that because “members have similar preferences and face fewer costs when designing more detailed common rules on services trade than in the multilateral context, then one might expect to find more detailed disciplines on non-discriminatory regulatory measures affecting trade at the sub-regional than at the multilateral level”. With respect to domestic regulation, her analysis provided mixed results in the sense that some RTAs adopt principles that have a higher degree of generality than those of the GATS, other RTAs, most notably NAFTA and MERCOSUR, apply more stringent disciplines on the GATS. With respect to recognition, the analysis shows that the sub-regional integration schemes examined do go beyond GATS in encouraging or requiring the formation of recognition agreements (Salazar-Xirinachs 2001).

In a 2002 study by Stephenson, she revealed that regional trading go beyond multilateral trading in terms of liberalizing content of their disciplines for services trade. The following are salient provisions:

*Standard of treatment:* the NAFTA and NAFTA-type agreements include a clause to this effect requiring that the better of either MFN or national treatment to be given to a service provider from a member

*Ratcheting provision:* NAFTA and NAFTA-type agreements obliges members to an agreement to consolidate any new liberalizing measure they may take which improves the conditions afforded to service providers.

*No local presence requirement:* NAFTA and NAFTA-type agreements do not require local presence as a condition for foreign-service providers to provide a service, thus allowing service firms and individuals to determine the most cost-efficient way possible for them to carry out their trade.

*No citizenship or permanent residency requirement:* Members of NAFTA and NAFTA-type agreements have included a strongly liberalizing provision such that no citizenship or permanent residency requirement be required to license or certify professional service providers of another member.

*Unconditional MFN and national treatment:* The MERCOSUR and the Andean Community agreements require the unconditional approach of both the MFN and national treatment principles among members, thus setting out a level of discipline that is absolute in services trade.

*Liberal origin requirement:* Nearly all of the RTAs in the Western Hemisphere offer a more original provision to qualify service providers as beneficiaries of the provisions of the agreement (under the ‘denial of benefits’ provision) than does the GATS.

Chapter XVI of the NAFTA covers the Temporary Entry of Business People. The chapter tries to incorporate various factors in establishing a mechanism towards the reciprocal facilitation of temporary entry of business persons including a transparent criteria and procedures for temporary entry, ensuring border security, and the protection of the domestic labor force and permanent employment in their respective territories. In this light the three countries established the Temporary Entry Working Group whose objective is implement the provisions of Chapter XVI, develop measures that would further facilitate entry of business persons on a reciprocal basis and waiving the labor certificate test on spouses of business person allowed to stay for more than one year.

Business persons are citizens of any of the three NAFTA member countries, who are engaged in the trade of goods, the provision of services or who perform investment activities. Business persons are divided into two major categories: business visitors (traders and investors and intra-corporate transferees) and professionals. Business visitors are business persons who intend to perform business activities related to research; design; trade and sales, among others; while traders and investors, on the other hand, are business persons who intend to carry out commercial exchange of goods and services. Intra-company transferees are business persons who intend to carry out management functions in a company or within the subsidiary of a transnational enterprise. Professionals are business persons who intend to perform any professional activity established in Chapter 16 (there are 56 professions considered in NAFTA) (Salazar-Xirinachs 2001).

#### **A. U.S.-Singapore FTA**

The United States, in general, provided full national treatment in all services sectors with a few exceptions. U.S. commitments include:

- Immediate national treatment in substantially all services sectors with posted exemptions
- Sub-federal and local market opening commitments
- Full, future liberalization of exemptions
- Regulatory transparency

The U.S.-Singapore FTA on the movement of natural persons provides for freer movement with some qualifications as quoted below:

*Creates separate categories of entry for citizens of each party to conduct a wide variety of business and investment activities on a temporary basis. Singapore citizens who are business visitors can enter the U.S. to conduct*

*business activities up to 90 days without the need for labor market test, subject to usual immigration and security measures.*

The U.S. Singapore FTA more than covers the movement of traders and investors and business visitors. It provides for the movement of intra-corporate transferees (managers, executives and specialists). The movement of professionals to perform services are also allowed provided they comply with immigration measures applicable to temporary entry. Further, the U.S.-Singapore FTA provides for the movement of professionals that “ *a party shall not as a condition for temporary entry, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or impose or maintain any numerical restriction relating to temporary entry*”.

## **B. U.S.-Thailand FTA Negotiations**

The movement of natural persons concern of Thailand is different from Singapore. Their priority regarding Mode 4 includes Thai chefs and skilled culinary workers that can fall within the uniquely skilled classification of the United States. This demand favors Thailand because few native born American citizens can fill positions requiring expert knowledge of Thai culinary arts (Hunton & William 2004).

## **C. U.S.-Vietnam FTA Negotiations**

Vietnam accords immediately and unconditionally most favored nation treatment to U.S. persons and firms. Vietnam agrees to grant national treatment to U.S. persons and firms, and to permit them to enter within three to five years its markets in the full range of service industries, including financial services (insurance and banking), telecommunications, distribution, audio-visual, legal, accounting, engineering, computer and related services, market research, construction, education, health and related services, and tourism (Tai 2004).

Movement of natural persons is particularly relevant to the Vietnam’s educational services sector because although they will not provide market access or national treatment for the cross-border supply of educational services, for the first seven years after the entry-into-force of the bilateral trading agreement, U.S. companies may establish commercial presence through a joint venture. After that, schools with 100 percent U.S. invested capital may be established. Foreign teachers employed by educational units with U.S. invested capital must have five years teaching experience and be recognized by the Ministry of Education.

Licensing for accounting, auditing, bookkeeping, taxation, architectural services will be granted on a case to case basis. Initially, U.S. invested firms may service only foreign invested enterprises. Branching is not permitted.

For legal services, 100 percent equity ownership in companies, joint ventures, and branches is permitted. U.S. lawyers may not appear before Vietnamese courts. However, U.S. firms may advise on Vietnamese law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to like Vietnamese practitioners. Branches of law firms may receive a five-year renewable license. In July 2003, the government promulgated Decree 87 significantly reforming the regulatory framework for the operations of foreign law practices and foreign law firms. The decree substantially broadened the scope of practice of foreign law firms in Vietnam. Foreign law practices are permitted to provide advice on foreign and international law in the areas of business, investment and commerce, which had been prohibited previously. By virtue of these reforms, foreign law firms may now offer a full range of legal services and employ Vietnamese lawyers.

For management consulting, U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the bilateral trading agreement has been in effect for 5 years, enterprises with 100 percent U.S. ownership will be permitted.

#### **D. U.S.-Chile FTA**

The U.S.-Chile FTA follows the standard provisions for the temporary entry of business visitors. However, the entry of professionals is provided based on defined professions with required educational requirements and nature and sets a permanent numerical limitation on annual entries into the U.S. under the admission category.

#### **E. U.S.-Jordan**

Jordan and the United States have agreed to liberalize the four modes of supply of services between them, encourage the establishment of joint services projects, and to permit full ownership of a services project by the nationals of either country unless such permission violates local laws governing the operations of the respective sectors. Service commitments have included the related services in the 12 known sectors as follows:

- Business Services (including professional and computer services)
- Financial (insurance and banking)
- Telecommunications
- Health
- Construction and Engineering
- Travel and tourism
- Distribution
- Recreational, Cultural, and Sports
- Education
- Transportation
- Environment
- Any other services not elsewhere

Removing restrictions and facilitating access to markets liberalized trade in services. Both countries have agreed to grant services and providers of these services the rights of National Treatment in the Agreement. Jordan considered that the U.S. service provider is eligible for “reciprocal treatment” in a number of specific sectors.

Jordan’s commitments to liberalize services were meant to provide the U.S. service provider with the opportunity to invest and compete in the following services:

- Health and Education
- Tourism and Conferences
- Research and development, printing and publishing
- Sight and sound media, courier services, transportation, and railroads.
- Specialized and new financial and banking services

## **5. Barriers to the movement of natural persons**

### **A. Priorities of the United States for migrant workers**

1. The U.S. prioritizes foreigners with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. The cap is 40,040 per year including family members;
2. Secondly, professionals with advanced degrees or persons of exceptional ability are preferred with a maximum number of 40,040 (plus visas not used in higher preferences) per year including family members;
3. Third, skilled and other workers. The maximum is 40,040 per year plus visas not used in higher preferences (including families, but with an annual limit of 10,000 visas for unskilled workers);
4. Special immigrants – maximum of 9,940 per year (including families, with a maximum of 5,000 religious workers);
5. Employment creation workers – maximum of 9,940 per year (including families) (Martin, Chen & Madamba 2000)

### **B. Restrictive measures of the U.S. on the temporary movement of Filipino workers**

#### **Congressional involvement on movement of natural persons (Singapore and Chile)**

The most serious threat to the passage of the Singapore and Chile FTA’s came not from a particular industry, but rather due to the inclusion of immigration worker provisions in the agreements that threatened the primacy in immigration policy set aside for the Congress by the U.S. Constitution. In July 2003, a bipartisan group of U.S. Senators demanded the Administration withdraw the treaties from congressional consideration to

strip out immigration language included to facilitate the movement of persons under the services chapter. Previously, the House Judiciary Committee passed the implementing legislation, but vowed to “never” pass a bill with similar immigration provisions to that contained in the Singapore and Chile texts (Hunton & William 2004).

## **Visa Requirements**

The United States admits non-immigrant foreigners for employment with 19 different types of visas, which range from A for ambassadors to TN for professionals from NAFTA countries. These include:

- Representative of foreign government visa
- Tourist / Business Visa
- Transit / Crew Visa
- Treaty Trader / Investor Visa
- Student Visa
- Work Visas
- Representatives of foreign media visa
- Exchange visitor visa
- Fiancée of U.S. citizen visa
- Spouse / Child of U.S. Resident / Legal Permanent Resident Visa
- Temporary Worker with Extraordinary Ability
- Entertainer, Athlete and other performers’ visa
- Participant in Cultural Exchange Program Visa
- Temporary Religious Worker Visa

The following non-immigrant visas apply for temporary workers and temporary visitors:

### **H-1B Visa**

The H-1B categories apply to aliens coming temporarily to perform services in a specialty occupation, or as a fashion model of distinguished merit and ability.

The H-1B1 category applies to an alien coming temporarily to perform services in a specialty occupation which requires the theoretical and practical application of highly specialized knowledge requiring completion of a specific course of higher education.

The H-1B2 category applies to an alien coming temporarily to perform services of an exceptional nature relating to a cooperative research and development project administered by the Department of Defense.

The H-1B3 category applies to a fashion model that is nationally or internationally recognized for achievements, to be employed in a position requiring someone of distinguished merit and ability.

Entry into the United States is generally only possible if there is a prior offer of employment with a U.S.-based firm under the specialty occupations provisions (H1-B) or as an intra-corporate transferee. The U.S. commitment in the GATS is to permit individuals with highly specialized knowledge an initial stay of three years, under the H1-B program. The worker must be professionally qualified, i.e., have a U.S. bachelor's degree or equivalent and be offered a skilled job position related to the worker's professional background. The worker must obtain full licensure in a U.S. state to practice the occupation, if such licensure is required by the state (Chaudhuri, Mattoo & Self 2004).

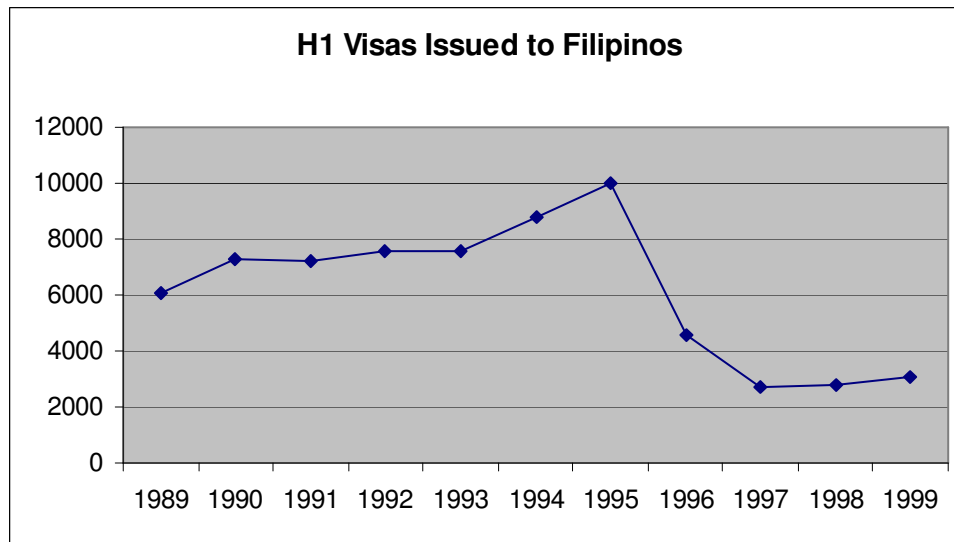
Actually, H1-B visa workers can stay for an initial period of three years as committed, but can extend their stay for a maximum of six years. There is an annual cap on the number of approved H1-B visa petitions totaling 195,000 for the 2001-03 fiscal periods. In the absence of legislation, the cap will revert to only 65,000 from 2004 onwards. H1-B worker dependent companies are also required to advertise positions in the U.S. before petitioning an H1-B worker (Chaudhuri, Mattoo & Self 2004).

Even the regional and bilateral agreements involving the U.S.-NAFTA, U.S.-Chile and U.S.-Singapore – only allow for employment based movement of professionals though in each case, movement has been facilitated by the creation of a special streamlined visa. The skill threshold in each case is a bachelor's degree or equivalent. In NAFTA, only Mexican professionals were subject to a temporary annual quota of 5,500 which expired on January 2004, while Chilean and Singaporean professionals are subject to an annual quota of 1,400 and 4,300 respectively (Chaudhuri, Mattoo & Self 2004).

Lowell revealed that most H1-B visa workers convert to permanent residency status. Following the Immigration Act of 1990, nearly 50 percent of H1-B visa holders adjusted to permanent residency (Lowell 2000).

Approximately 6,055 Filipinos were H1-B visa holders in 1989 and this grew steadily until 1995 to 10,026. However, as a result of legislation and the cap on H1-B visas, only 4,601 Filipinos obtained H1-B visas. The number was limited likewise in succeeding years (Lowell 2000).

**Figure 3. H1 visas issued to Filipinos**



### **H1-C Visa for Registered Nurses**

The H-1C category applies to an alien coming temporarily to perform services as a registered nurse in a health professional shortage area as determined by the United States Department of Labor. Only 500 nurses can be granted H-1C status in a fiscal year nationally. There are also numerical limitations for each state based on the state's population. The cap for states with populations in excess of 9 million is 50 per fiscal year. The cap on states with populations of 9 million or less is 25 per fiscal year.

### **H2A – Agricultural worker**

The H-2A classification applies to an alien coming temporarily to engage in temporary or seasonal agricultural employment.

### **H2B – Temporary / seasonal workers**

U.S. employers may petition for skilled or unskilled alien workers to meet temporary or seasonal needs in positions for which qualified U.S. workers are not available. It is important to note that the employer's need for such services must be temporary. There is currently an annual cap of 66,000 visas for H-2B workers. There is currently no annual cap on visas for H-2A workers.

### **H3 – Alien Trainee**

The H-3 classification applies to aliens (beneficiaries) coming temporarily to the U.S. to participate in a training program. There are general H-3's, and those coming for special education training. There is currently no annual cap on H-3 admissions to the U.S.

The petitioning employer or sponsors must demonstrate that the:

- Proposed training is not available in the beneficiary's home country
- Beneficiary will not be placed in a position which is in the normal operation of the business, and in which citizens and resident alien workers are regularly employed
- Beneficiary will not be productively employed except as incidental to training
- Training will benefit beneficiary in pursuing a career outside the U.S.

H-3 status is not appropriate for graduate education, including medical training, except under special circumstances. Petitioning employers may not use H-3 classification for training programs primarily designed to benefit the U.S. companies and/or where U.S. workers would be employed but for the trainees' services.

### **J-1 and Q-1 visa**

The Immigration and Nationality Act (INA) provides two nonimmigrant visa categories for persons to participate in exchange visitor programs in the United States. The "J" visa is for educational and cultural exchange programs designated by the Department of State, Bureau of Consular Affairs, and the "Q" visa is for international cultural exchange programs designated by the U.S. Citizenship and Immigration Services (USCIS 2004).

The "J" exchange visitor program is designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences. Participants include students at all academic levels; trainees obtaining on-the-job training with firms, institutions, and agencies; teachers of primary, secondary, and specialized schools; professors coming to teach or do research at institutions of higher learning; research scholars; professional trainees in the medical and allied fields; and international visitors coming for the purpose of traveling, observing, consulting, conducting research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs.

The "Q" international cultural exchange program is for the purpose of providing practical training and employment, and the sharing of the history, culture, and traditions of the participant's home country in the United States.

## **L-1 – Intra-corporate Transferees**

Intra-corporate transferees is one of the most liberal categories within mode 4, but most existing commitments pertain only to managers, executives and specialists. The emergence of IT, audiovisual, and construction multinationals implies that developing countries like Brazil and India also have a strong interest in intra-corporate movement.

The L-1 category applies to aliens who work for a company with a parent, subsidiary, branch, or affiliate in the U.S. These workers come to the U.S. as intra-company transferees who are coming temporarily to perform services either in a managerial or executive capacity (L-1A) or which entail specialized knowledge (L-1B) for a parent, branch, subsidiary or affiliate of the same employer that employed the professional abroad. The employee must have been employed abroad for the corporation, firm, or other legal entity (or an affiliate or subsidiary thereof) on a full-time basis for at least one continuous year out of the last three-year period to qualify. There is currently no annual cap on L-1 visas. The employer is not required to obtain a labor certification prior to petitioning in this category. Compensation level is not prescribed, but U.S. income must be sufficient to prevent the alien from becoming a public charge.

## **F-1 and M-1 student visa**

The Immigration and Nationality Act (INA) provides two nonimmigrant visa categories for persons wishing to study in the U.S. at an educational institution approved by the Bureau of Citizenship and Immigration Services, the "F" visa is for academic studies, and the "M" visa is for nonacademic or vocational studies.

## **O Visa**

The extraordinary individual visa is for those individuals whose extraordinary skills and abilities in the areas of science, the arts, education, business, or athletics has been demonstrated by sustained national or international acclaim, or who has a demonstrated record of extraordinary achievement in motion picture and television productions. Most artists and athletes will require either a (P) or (B1) visa.

## **O-2 Support Personnel**

The O-2 category applies to aliens accompanying an O-1 artist or athlete to assist in a specific event or performance. This person would be acting as an essential and integral part of the artistic or athletic performance of an O-1 artist or athlete because he or she performs support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1.

## **P-1 Athletes and Artists**

The P-1 classification applies to an alien coming to the U.S. temporarily to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. The P-1 classification also applies to an alien coming temporarily to perform as a member of a foreign-based entertainment group that has been recognized internationally as outstanding in the discipline for a sustained and substantial period of time. This person also must have had a sustained and substantial relationship with the group (ordinarily for at least one year) and/or provide functions integral to the group's performance.

## **Q-1 Cultural Exchange Visa**

The Q-1 classification applies to participants in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and to share the history, culture, and traditions of the alien's home country.

## **R-1 Religious Worker**

The R-1 classification applies to a religious worker. This is an alien coming to the U.S. temporarily to work: as a minister of religion; as a professional in a religious vocation or occupation, or for a bona fide nonprofit religious organization at the request of the organization, in a religious occupation which relates to a traditional religious function.

## **TN – NAFTA Visa for Canadians and Mexicans**

The 1994 North American Free Trade Agreement (NAFTA) makes temporary employment in the U.S. easier for certain Canadian and Mexican workers. NAFTA created a new classification, "TN," for eligible Canadian and Mexican professional workers and also affected terms of admission for Canadians admitted to the U.S. under other non-immigrant classifications. TN employment must be in a profession listed in Appendix 1603.0.1 to NAFTA and the TN employee must possess the credentials required. There is no annual limit on TN-1 admissions from Canada. There is a yearly cap for Mexican TN professionals of 5,500 admissions.

Table 4 summarizes the length of initial and extended temporary stay of foreign workers in the United States.

**Table 4. Maximum Stay Information for Temporary Employment Visas**

Class	Initial Stay	Extension of Stay
E-1	Two (2) years	Up to 2 years per extension. No maximum number of extensions, with some exceptions.
E-2	Two (2) years	Up to 2 years per extension. No maximum number of extensions, with some exceptions.
H-1B1	Up to 3 years	Increment of up to 3 years. Total stay limited to 6 years.
H-1B2	Up to 3 years	Increment of up to 3 years. Total stay limited to 6 years, with some exceptions.
H-1C	Up to 3 years	Total stay limited to 3 years.
H-2A and H-2B	Same as validity of labor certification, with maximum of 1 year.	Same as validity of labor certification (increments of up to 1 year). Total stay limited to 3 years.
H-3	Special Education Training-up to 18 months. Other Trainee-up to 2 years	Special Education Trainee-total stay limited to 18 months. Other Trainee-total stay limited to 2 years.
L-1A	Coming to existing office-up to 3 years. Coming to new office-up to 1 year.	Increments of up to 2 years. Total stay limited to 7 years.
L-1B	Coming to existing office-up to 3 years. Coming to new office-up to 1 year	One increment of up to 2 years. Total stay limited to 5 years.
O-1 and O-2	Up to 3 years	Increments of up to 1 year
P-1, P-2, P-3 and their support personnel	Individual athlete-up to 5 years. Athletic groups and Entertainment groups-up to 1 year.	Individual athlete-Increments of up to 5 years. Total stay limited to 10 years. Athletic groups and entertainment groups-Increments of 1 year.
Q-1	Up to 15 months.	Total stay limited to 15 months

		(Note: definition of each class of visa should display once only per chart)
R-1 and R-2	Up to 3 years	Increments of up to 2 years. Total stay limited to 5 years.
All other	Up to 1 year	Increments of up to 1 year

Source: [www.uscis.gov](http://www.uscis.gov)

### **C. Problems and concerns faced by OFWs**

Employers and their lawyers complain about the delays and costs in proving that the foreigners they want have the extraordinary ability, or that there are no U.S. worker available. There are two main complaints: (1) delays often lead to complications because for example, a foreigner whose immigration status the employer wants may acquire an illegal status owing to delays in obtaining the desired immigrant visa; and (ii) most employers feel compelled to hire immigration lawyers to help them through the labor certification process with a consequent increase in cost (Martin, Chen & Madamba 2000).

United States immigration law assumes that foreigners applying for non-immigrant visas are intending immigrants, and places the burden on the foreigner to prove that he or she will abide by the terms of the non-immigrant visa being sought. Two separate agencies – the Department of State and the Immigration and Naturalization Service have the authority to decide that a temporary visitor is in reality an intending immigrant, and to deny that person admission, even if his or her United States employer has received certification to employ that person temporarily.

### **D. Restrictive measures on the movement of Americans to the Philippines**

The Philippines has an inherent constitutional limitation on the practice of licensed professions. Only Filipino citizens are allowed to provide professional service and employing a foreign national would have to undergo a labor market test. Under Constitutional provisions Article 40 of the Labor Code, as amended, provides that: “Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor and Employment. The employment permit may be issued to a non-resident alien or to the applicant employer after the determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.” U.S. businessmen seek amendments in the Philippine constitution in order to eradicate existing trade restrictions on foreign equity and practice of profession.

Nevertheless, intra-corporate transferees find their way to the Philippine labor market after securing the appropriate work permits from the Department of Labor and Employment and Bureau of Immigration and Deportation.

The Philippine Immigration Act provides for admission of aliens as non-immigrants under the following conditions:

*Temporary Visitor's Visa [9(a) Visa]* – temporary visitor coming for business or for pleasure or for reasons of health;

*Transient's Visa [9(b) Visa]* – person in transit to a destination outside the Philippines

*Seaman's Visa [9(c) Visa]* – a seaman serving as such on a vessel arriving at a port of the Philippines and seeking to enter temporarily and solely in the pursuit of his calling as seaman

*Treaty Trader / Investor Visa [9(d) Visa]* – an alien entitled to enter the Philippines under and in pursuant of the provisions of a treaty of commerce and navigation

*Diplomatic Visa [9(e) Visa]* – an accredited official of a foreign government recognized by the Government of the Philippines, his family, attendants, servants and employees

*Student Visa [9(f) Visa]* - a student having means sufficient for his education and support in the Philippines, who is at least fifteen years of age and who seeks to enter the Philippines temporarily and solely for the purpose of taking up a course of study higher than high school at a university, seminary, academy, college or school approved for such alien students

*Pre-arranged Employment Visa* – an alien coming to pre-arranged employment, his wife and his unmarried children under twenty-one years of age

*Special Non-immigrant Visa* – granted by the president through appropriate government agencies to foreign personnel of oil drilling companies, Philippine Economic Zone Authority registered enterprises and Board of Investment registered enterprises.

Other visas are also granted depending on the special investor arrangement

## **6. Impact of the movement of natural persons on the Philippines**

### **A. Profile of Filipino migrants to the United States**

Overseas deployment of IT professionals declined in 2001. From 593 in 2001, the total number of newly hired IT professionals processed by the POEA went down by 24.11 percent to 450 in 2002. The decline was attributed to worldwide economic slowdown

In addition to IT professionals and nurses, there is also a surge in labor migration of Filipino teachers to the U.S. The demand for nurses is projected to increase by 25.3

percent during the decade. On the other hand, teacher demand is caused by the attrition of teachers, class size reduction and increase enrolment in the U.S.

## **B. Impact on brain drain**

Many of the Filipinos who have migrated and settled in the U.S. are mostly educated professionals. This is quite a drain not only on the human resources of the Philippines but also on its limited educational resources especially if the government has subsidized the education of these emigrants. A phenomenon of reverse transfer of technology emerges as a developing country like the Philippines subsidizes the education of migrant workers and professionals working in the United States.

Although remittances have been considered as a major rationale for encouraging migration, its impact may not be that sizeable since many of the Filipinos who have migrated to the United States have settled there permanently. In addition, many of them have also petitioned their families to join them. Thus, the remittance income from this type of migration flow is expected not to be that huge compared with the remittance income sent by OFWs or those deployed on a temporary employment basis.

The liberalization of the entry of professors, researchers and scientists into the Philippines will have positive contributions on the development of research and instruction in higher educational institutions (HEIs) in the country. Relative to the other modes of supply of educational services, the entry of natural persons cannot be expected to displace local private colleges and universities. Even if they can contribute to the development of higher education in the Philippine, however, the entry of foreign professionals may threaten domestic professionals. The criteria for economic needs tests will have to be transparent so that it may not be used as a protective shield and barrier to trade.

## **7. Policy options**

### **A. Role of domestic regulation**

The regulatory framework of the country with regards to the provision of educational services is a crucial dimension in the liberalization of trade in educational services. In the interest of the common good, the promotion of consumer welfare and in addressing the asymmetries in information, domestic consumers of educational services should be protected from unscrupulous service providers both domestic and foreign through strict compliance with domestic regulations. Thus, the rules that pertain to the operation of existing schools should also be applied to foreign service-providers.

In this light, there is a need for government agencies including the Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA) and the Department of Education (DepEd) to formulate policies on the

provision of educational services under the four modes of supply which require different regulatory measures. Rules pertaining to cross-border transaction may be different from rules that should govern consumption abroad. In the case of commercial presence, foreign-service providers may demand that they are not under CHED but under the Securities and Exchange Commission particularly, if foreign educational institutions grant their course offerings and academic degrees. The formulation of regulatory measures on these four modes of supply becomes more difficult since these supply modes are often times not mutually exclusive.

From the point of view of the United States, domestic regulation actions are currently used to restrict the entry of foreign workers. In the light of the 9/11 attacks, the United States government has adopted measures to prevent the occurrence of similar incidents. However, such procedures and rules have made temporary entry into the U.S. quite burdensome.

## **B. Role of accreditation and mutual recognition agreement**

With the emergence of the various modes of service providers all over the world, the question of asymmetric information becomes paramount. Regulation is not for the sake of controlling the sector and limiting the foreign flows but more importantly to make the information even to all potential consumers. If this is the objective of domestic regulation, accreditation can play an important role that can address this uneven information. Accreditation should be an essential element of the regulatory framework in the Philippines. The accrediting bodies in the country should assist the various government agencies in charge of regulating the provision of educational services. In addition, they should be linked with recognized accrediting bodies abroad to assist them in evaluating the accreditation status of foreign service-providers.

In the light of a possible Philippine-American trade agreement, the question of asymmetric information on the qualifications of professionals, as well as the issue of liberalizing the movement of natural persons between the two countries can be resolved through the formation of Mutual Recognition Agreements (MRAs) in various professions. There will be a discussion on the various items that should be included in MRAs and how these MRAs can be incorporated in the R.P.-U.S. Free Trade Agreement.

The formation of an MRA will require tremendous requirements on the part of the Philippines. To prepare Filipino professionals and skilled workers for an MRA with their American counterparts, technical assistance and various cooperative programs aimed at upgrading Filipino professionals and skilled workers will be needed.

## **C. Economic needs test in educational services**

With more than 1,300 HEIs in the Philippines, some groups in the educational sector may question whether the entry of foreign-service providers is still needed. Can

the market absorb this additional supply? Will the entry of foreign educational service providers create competition or just lead to further expansion of higher education in the country with all its attendant problems?

Many private higher educational institutions in the Philippines are worried that the entry of foreign service-providers may displace them since they come to exploit the domestic market. What will be the proper response of the government to such apprehension? Should the economic needs tests and limitations on the number of foreign educational service providers be applied as a way of protecting the domestic schools? Should protect local schools or the domestic consumers of educational services? What options can be taken to allow the entry and at the same time not saturate the country with too many educational institutions?

In the light of existing problems and challenges faced by higher educational institutions in the country, there is a need to improve on the quality of instruction, develop research, and enhance graduate education so that indeed higher education can contribute in hastening the development of the country. The entry of foreign service-providers should be premised in assisting the development of higher education in the country and not merely in enhancing market access, expanding market share, and creating greater competition that may often times displace existing educational institutions.

## **8. Strategies for negotiating an R.P.-U.S. FTA**

The strategies for negotiation would include specific proposals that the Philippine panel could bring during the discussion with their U.S. counterparts. At the other end, Philippine negotiations should also be prepared for proposals that the U.S. may ask for during the discussion in the liberalization of movement of natural persons as they affect their commercial interests in the Philippines. The strategies should be grounded on the promotion of Philippine interests, expansion of trade, and development of human capital in the Philippines and the mitigation of the social costs that movement of natural persons entails.

The movement of natural persons between two countries involved issues both from the sending country and the host country. From the sending country, the various consequences, both economic and social, should be evaluated with the positive effects on remittances and enhanced trade between the two countries. From the host country, the entry of foreigners into their territories especially on a temporary basis will have to be evaluated in terms of the issue of their sovereign power to define the restrictions of movement of people into their territories. In addition, it should also be considered in terms of the security measures related to the movement of people. Entry of foreigners will have to entail the entry of new culture from foreign lands and there will be an issue of social cohesion not only in the work environment but in a community level. Lastly, a massive entry of foreigners may put pressures on various social services provided by the government. Who should avail of these services and the eligibility of the temporary workers?

On the labor market, the entry of foreign workers may depress wages in the host economy and push it in the sending country. In addition both countries will likewise adjust in the loss of jobs of local workers, particularly the low-skilled ones, to cheap foreign workers in the host countries. On the other hand, the sending country may experience a hallowing effect due to the increase in the reservation wage and contraction of the supply of labor (Tullao, Cortez & See 2004).

## **9. Major issues and points for discussion**

### **A. Definition of movement of natural persons**

The GATS definition of movement of natural persons is confined primarily with intra-corporate transferees composed of professionals, technical and other related workers affiliated with transnational corporations. Thus, the movement of natural persons takes place more often in conjunction with the supply mode of commercial presence (mode 3). An independent professional, who is invited to render a service in a foreign country for a limited time period, however, is also included under the GATS definition of movement of natural persons.

The second definition of MNP that Philippine negotiators may want to utilize in the discussion is related with the classification of workers granted non-immigrant visa by the U.S. Immigration office. Without encouraging the massive outflow of Filipino professionals into the U.S., this second definition may be consistent with the Philippine interest given the large number of Filipinos going to the U.S. and the insignificant flows of Filipino FDI (commercial presence) into the U.S. Similarly, the Philippines can also adopt the definition of businesspersons (business visitors and professionals) under the NAFTA including the various classifications of professionals.

At the Philippine end, MNP can be seen not only as a way of facilitating the flow of U.S. businessmen into the country but more so as the flow of professionals into the educational institutions. In the era of globalization, internationalization of higher education, exchange of students and professors under various modes of educational provision may benefit the formation of human resources and the academic programs of HEIs in the Philippines.

There seems to be a conflict leading to a misinterpretation on the meaning of movement of natural persons as stated in the GATS text and the Annex. Under the GATS main document, Mode 4 consist of the production, distribution, marketing, sale and delivery of a service abroad by a natural person or a juridical person, if the latter employs foreign nationals in the host country. While the Annex established MNP as seeking non-permanent entry to supply services abroad (Manzala, 2004).

The difference is also seen in the scope. The main text refers to the stock of foreign service providers while the Annex addressed the movement or trade flows.

However, according to the Annex, such persons should not be seeking access to the employment market. This provision should be clarified not to contradict the definition of Mode 4 in GATS itself-where foreign nationals are covered by GATS as part of the labor market when employed by a foreign entity or as self-employed. The explanation rests on how the employment takes place. Those cases where the natural person engages in the active job search and solicits employment abroad are clearly outside the scope of the Annex. Hence, when it is a service company that is looking for qualified persons either through placing advertisements, ob orders and accessing individuals through the electronic medium and individuals or natural persons hired for a temporary period as a result of this process, are covered by the Annex (Manzala 2004).

Thus, whether or not the definition of the MNP of GATS is used or through the non-immigrant visa category, the critical issue, given the propensity of Filipino nationals to gain entry in foreign labor markets, is how to maximize the opportunities to be gained in lowering the threshold of barriers relating to immigration, qualification, administrative requirements of entry that can be negotiated through FTA (Manzala 2004).

## **B. Issue of Access**

The Philippines should push for similar provisions included in FTAs negotiated by the U.S. with other countries that would ease the entry of business visitors and professionals. For example, under the U.S.-Singapore FTA, movement of natural persons “may not require prior approval procedures, petitions, labor certification test or other procedures of similar effect”. In addition, there are no numerical restrictions on temporary stay of business visitors in the U.S. Since conditions on prior offer of employment and educational qualification requirements may also have restrictive impact on MNP, can the Philippines take these conditions up in the negotiating table as possible items for liberalization?

However, Philippine negotiators should take note that such liberalization measures in U.S. immigration polices may entail some sacrifices on the part of the Philippines. What, then, are the negotiating costs of these specific Philippine requests? Can the Philippines afford these costs? Given these costs and the relative importance of these requests, does the country still want to pursue these immigration liberalization measures?

In the light of the U.S. Congressional pronouncement on the primacy of immigration policy over the facilitation of trade through movement of people, how much leeway are given to U.S. trade negotiators in acceding with Philippine requests? Are the U.S. negotiators bound in following the Congressional instruction? Specifically, are they really serious in down playing the immigration language to facilitate the MNP in their FTA negotiations with other countries, including the Philippines?

Given the difficulties of removing these restrictions in the light of the Congressional instruction on the primacy of immigration policy, the Philippines can

propose the creation of a special streamlined visa similar to the NAFTA Visa (TN) for Canadians and Mexicans. However, even this type of visa has certain restrictions in terms of professions covered and possession of certain credentials. Although the NAFTA does not alter the immigration policies of member countries, it provides programs that streamline procedures to facilitate the movement of businesspersons. Within NAFTA, the Temporary Entry Working Group serves as a technical committee that establishes these facilitation measures. Aside from adopting the NAFTA Visa, Philippine negotiators can likewise define what is meant by businesspersons and identify the various professionals that will be treated as businesspersons to avail of the streamlined entry procedures into the member country. It can also be considered how these conditions for intra-corporate transferees (L-1) visa can be adopted in facilitating MNP between the Philippines and U.S. The L-1 visa has no labor market certification, no numerical restrictions and no compensation level requirement making it the most liberal non-immigrant visa given by the U.S. immigration office.

Outside NAFTA, Philippine negotiators can also propose the adoption of a mechanism similar to the APEC Business Travel Card Scheme (ABTC). The scheme answers the needs of businessmen of streamlined and efficient immigration practices while maintaining the sovereignty of member economies of APEC. The economies are still in control of the movement of people to their respective territories.

### **C. Taxation of Temporary Workers**

One basic question on temporary movement is the payment of tax and social security. Why should Filipino workers, professionals and businessmen on temporary assignments in the U.S. pay taxes including social security taxes since they are not going to avail of the services of these taxes in the future?

Although movement of people for consumption purposes (cross border transactions for example) are not covered with the imposition of income taxes and social security contributions, temporary movement of people for production purposes are subject to income and social security taxes. These social savings are intended to benefit the workers when they retire. However, since many temporary workers will not settle in the host country permanently, the enjoyment of these social security benefits may not accrue to them in the future. Although it is recognized that a large proportion of Filipinos who enter the U.S. on a temporary working permit apply for permanent residency afterwards, there should be a mechanisms for exempting temporary workers who return home from paying SSS taxes in the U.S. One alternative is an outright exemption for all non-immigrant temporary workers. However, since there are a large number of temporary workers who subsequently apply for permanent residency after completing their temporary work assignment, the Philippines can still agree with the imposition of SSS taxes on temporary workers while in the U.S. However, upon return of the temporary worker to the Philippines, it should be proposed that these contributions should be refunded to the worker. This option is more practicable than outright exemption and may even induce return migration.

To push the argument even further, since income tax and SSS contributions are forms of intergenerational transfers, another option that can be considered by the Philippines is the refund of SSS contributions to the workers who return to the Philippines; and the transmittal of income taxes paid by these workers to the government of the Philippines. This is another measure of taxing the brain drain and can compensate the Philippines for the cost of human capital formation and the social loss incurred with the migration of these highly educated professionals.

#### **D. Negotiating principle and liberalization**

Will the Philippines negotiate under the principle of reciprocity or push for a preferential treatment in the movement of natural persons? Under reciprocity principle, what is given in one sector or mode of supply should be match in the same sector or mode of supply. Can the Philippines trade sectors for mode and still within the principle of reciprocity?

Given the unequal status between the two countries, the Philippines may compromise national interest and the Constitutional restriction on the employment of foreigners under a reciprocal mode of negotiation. In addition, if a mode of supply is being traded with a sector, can the Philippines afford to sacrifice one sector to accommodate its request with the U.S. on the liberalization of their policies regarding the movement of natural persons? How important is the liberalization in MNP in the overall Philippine negotiating interest?

A preferential treatment even with a loose interpretation of reciprocity may still compromise other sectors in acceding with the demands of the U.S. negotiators. Thus, the importance of each sector and the mode that is subjecting to concessions and commitments must be weighed carefully.

#### **E. Mode of access**

Given the English milieu, the Philippines is a potent market for U.S.-based educational service providers under various modes. The stance of the Philippines on the request of the U.S. on educational services will be defined by the Constitutional provision, protection of the consuming public and the contributions of these modes to the development of human resources in the Philippines particularly higher education in the country.

The Philippines should push for the primacy of the Constitutional provision. In addition, public interest demands that Filipinos who avail of these educational services must be guaranteed that these U.S. educational service providers are legitimate with appropriate accreditation and not merely commercial institutions for profit purposes. Philippine negotiators should be open to the movement of natural persons from the U.S.

particularly professors and scientists who can contribute significantly in the development of academic programs and the research culture in the country. The Philippines should also explore the possibility of establishing twinning and partnership programs in the training of skills for health care and other manpower needs of the U.S. Such partnership can contribute in improving the country's capacity to develop its human resources and make these individuals globally competitive.

If the Philippines opens the educational sector to foreigners, under what criteria will market access be given to U.S. providers? Definitely, basic education is out of the question. Post-basic education including technical education can benefit from the entry of U.S. providers. Given the over-expansion of both public and private higher educational institutions in the country, graduate programs in key areas like the natural sciences, mathematics, engineering and information technology may be opened to American educational providers. Given the advance level of development of higher education in the U.S., these American service providers can contribute significantly in the human resources development of the Philippines. In addition, the Philippines can likewise open some undergraduate programs including among others, health professionals, maritime and other technical- vocational fields where graduates of these programs are absorbed by the global market. In terms of mode of supply, under cross border transactions (mode 1), research and graduate programs in almost all fields can be opened. Under commercial presence (mode 3), U.S. service providers can be allowed to establish joint venture arrangements with Philippine schools offering priority undergraduate and key graduate programs. Under movement of natural persons (mode 4), the country can liberalize the entry of scientists, researchers and qualified professors in priority areas.

The entry of U.S. service providers in higher education should be considered as another extension of the growing role of the private sector in the provision of higher education. Private higher education has been with the country for over a century now. The contributions of private colleges and universities have been recognized by the government over the years and these schools continue to dominate higher education absorbing almost 80 percent of the over two million students enrolled in collegiate programs. Private schools in the Philippines are familiar with mechanisms of the market, competition and even-playing field. These schools are not against their entry foreign educational service providers provided they operate within existing rules applied to domestic providers. However, since entry of foreign-service providers can be done through the four modes of supply, the principle of even-playing field may be violated since there are different rules governing the four modes of supply.

Although there are Constitutional as well as legal restrictions on the entry and employment of professionals, exemptions can be made for the entry of highly qualified professors, researchers and scientists who can contribute in the development of graduate education, research as well as enhance undergraduate programs where students for the global market are trained. Thus the entry of these individuals can significantly contribute in the human resource development of the country.

The issue of national treatment in the granting of public subsidy, however, is problematic given that the government operates directly and funds some 113 state colleges and universities. The granting of public subsidies to foreign-service providers based on the principle of national treatment will open a Pandora's Box. What will prevent the over 1,000 private colleges and universities from asking the government similar public subsidy if foreigners are granted government support? Given the limitations of public funds, what should be the practicable reply to this issue? As mentioned earlier, public subsidy will have to be directed towards priority programs of the government that are consistent with the provision of public goods.

## **F. Domestic regulations and MRAs**

Since educational qualifications is a major requirement and a potent immigration restriction in several professions; and since the number of years of basic education in the country is deficient by two years, there is a need to have a mutual recognition on qualifications and other requirements for Filipinos educated here and who are seeking temporary employment in the U.S.

In addition, in the light of the proliferation of degree or diploma mills and accreditation mills, there should be common standards for various degrees and accrediting agencies acceptable to both countries. Will these standards be defined by the trade negotiators in a bilateral trade agreement or will this be defined by educators and accrediting agencies under a mutual recognition agreement? The current criticism of the educators on the liberalization of trade in educational services is the power of trade negotiators in determining the fate of higher education. Educators should have a say in the internationalization of higher education. Thus, there is a need to have representatives from HEIs to be included in the formulation of mutual recognition of educational qualifications as well in quality assurance schemes.

In the light of numerous private and public providers of educational services in the country, does the country need additional private educational providers from the U.S.? What should be the appropriate measure of ensuring public interest and the protection of the consuming public? How will public interest be served well in the limitation of entry of U.S. educational providers? Will it be done by an educational needs test or a simple quality assurance test or a requirement for appropriate accreditation?

One way of enhancing the competitiveness of Filipino workers in the global market is to establish mutual recognition agreements with partner countries pertaining to the educational qualifications, licensing procedures, professional experience and other requirements for professionals. The entry of professionals from one country to another territory is facilitated if requirements for the practice of a profession are recognized and accredited between the sending and host countries. One major limitation of Filipino professionals in practicing in other countries is the two year deficiency of basic education as compared to most countries in the world. However, with the entry of American educational providers this handicap can be minimized since the entry of foreign providers

would facilitate recognition of educational qualifications and transfer of credits. Although accreditation among HEIs is still voluntary, accreditation serves as a strong signal that schools offer quality programs. In this light, the entry of U.S. providers should be allowed under mode 3 on a joint venture basis for U.S. accredited educational institutions. Similarly, partner institutions in the Philippines should be accredited. Moreover, it may serve as well if accrediting institutions are likewise accredited or affiliated with international accrediting institutions. It has to be ensured that the public is well served and protected from scrupulous foreign-service providers. Requiring foreign-service providers and partner institutions to be accredited by accredited accrediting institutions will not only enhance quality but ensure the transfer of credits and move towards mutual recognition of professionals and degrees.

### **G. National treatment of U.S. providers**

With the liberalization of educational services to U.S. providers, the issue of national treatment becomes relevant in the light of the significant public dimension of higher education. Because higher educational institutions (HEIs) provide society with public goods, the government extends financial assistance, and to some extent, directly operate these educational institutions to ensure that these socially-valuable public goods are appropriately produced. If this is so, are American service providers eligible for government subsidy under the GATS principle of national treatment? Theoretically, American service providers are eligible for public subsidy since they also produce public goods and they cannot be discriminated on the basis of their nationality. A way of tackling this sensitive issue is to focus the subsidy on the ultimate objective. If the objective is to give access to students, then voucher and scholarship grants should be given directly to students. If the objective is to promote a public good, the subsidy must be given to a priority program. In both cases, the provision of public subsidy is not based on the nationality of the institution but on priority programs that the government wants to promote. The issue of discrimination based on nationality of the institution cannot be raised since it is the students that choose where to use their voucher or scholarship grants. Similarly, the recipient of public subsidy was not chosen on the basis of the nationality nor type of ownership of the institution but solely on the basis of government priority area.

### **H. Negotiating Principle for the Philippines**

The Philippines' negotiating principle is a positive-list, request-offer approach or the bottom-up principle/ approach where services that are ready for liberalization are committed in the Agreement. So while FTAs creates legally enforceable obligations backed-up by trade sanctions, these may only apply to those services the Philippines choose to include in their schedule of commitments.

The U.S. being a member of the NAFTA and through its own principle followed in its Free Trade Area of the America (FTAA)- the U.S. Summary Negotiating Position,

may want to apply the “top-down” or negative list approach which requires its trading partner-the Philippines in this instance, to negotiate a reservation for a particular service or measure. This approach is not only a major step away from the GATS bottoms-up approach, but the requirement to negotiate and to list all the reservations and those that are inconsistent with market access and national treatment will place a great burden on the Philippines (Manzala, 2004).

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