

**Free Movement of Labor:**  
**UK Responses to the Eastern Enlargement and GATS Mode 4**

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May 2007

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May 2007

Printed in Israel

Editor: Colette Stoeber

Layout: Graphit Press, Ltd.

## **Biography**

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## **Acknowledgements**

This paper was first presented at the Israeli Association for International Studies Annual Conference, Jerusalem, 6 June 2006. I would like to thank Eytan Meyers and Alfred Tovas for their comments on an earlier version of the paper, Anat Illouz at the Davis Institute for her assistance, and Colette Stoeber for her editing.

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by Daniela Persin

**Abstract**

Limitations placed on the movement of labor are seen as major impediments to the growth both of trade in services and of the economy overall. The temporary movement of service providers is generally expected to be less politically sensitive than the permanent movement of labor. Therefore, it remains a puzzle why the UK, a major proponent of multilateral trade liberalization in services, made a slightly below-the-EU-average offer on the free movement of natural persons (Market Access Mode 4) as part of the first EU offer in the WTO Doha Round in February 2003, but then in 2004 chose not to limit the free movement of labor from the new Member States of the EU as most other “old” Member States did. The main argument is that the policy choices reflect the aim of the UK government to retain flexibility in and external sovereign control over labor immigration policies. This allows it to maintain flexible labor markets within the UK and the extended EU Internal Market, while at the same time obtaining the support for these policies from the two domestic societal actors—the trade unions and the employers—each for its own self-interested reasons. The study contributes to the literature on immigration control policies and trade in services.

## **1. Introduction**

Limiting the temporary or permanent movement of labor—an action that leads to the inflexibility and inefficiency of markets—is seen to be a major impediment to the growth both of services trade and of the economy in general. As with other factor movements, then, the main reasons for protectionism are political rather than economic. The temporary movement of service providers would be expected to be less politically sensitive than the permanent movement of labor. A puzzle therefore remains: *the UK, a major proponent of multilateral trade liberalization in services within the framework of the General Agreement of Trade in Services (GATS), gave a slightly below-the-EU-average offer on the free movement of natural persons (Market Access Mode 4) as part of the first EU offer of services trade in the WTO Doha Round in February 2003. However, in 2004 it chose not to impose the seven-year waiting period infringed by most other “old” EU Member States (MS) that limited the free movement of labor from the new MS.* As a result of this latter decision, between May 2004 and June 2005 the UK saw one of the largest labor immigration movements in modern history. It absorbed more than 230,000 migrants from Central and Eastern European countries (CEEC) into its labor markets—without, however, seeing a rise in its unemployment figures (Fuller 2005, 1).

This paper examines the political economic reasons for these two policy choices, focusing on the interests of the three actors affected by them: trade unions, employers, and the state. *The main argument is that the policy choices reflect the aim of the UK government to retain flexibility in and external sovereign control over labor immigration policies. This allows it to maintain flexible labor markets within the UK and the extended EU Internal Market, while at the same time obtaining the support for these policies from the two domestic societal actors—the trade unions and the employers—each for its own self-interested reasons.*

Chapter 2 provides the background of UK labor immigration policies. The third chapter lays down the theoretical groundwork of labor immigration policies and suggests three hypotheses with regard to the individual interests of labor unions, employers, and the state in the policy choices. Chapter 4 considers some alternative explanations, and Chapter 5 brings forth evidence to support each hypothesis. Chapter 6 presents my conclusions.

## **2. UK Labor Immigration Policies**

In the decades after World War II, immigration to the UK originated mainly from Commonwealth countries in Asia and Africa. Although in general the UK's immigration policies have, like those in most Anglo-Saxon countries, been geared toward permanent immigration, the UK has been more restrictive than others. On the other hand, no restrictions in the UK have been placed on immigration from Ireland, which constituted about three-quarters of all migration from Europe in 1994. In general, though, migration from Europe to the UK has been smaller than intra-European migration on the continent. Similarly, Britain's relative share of foreign population has been smaller than in most other Western European countries, although the UK has been catching up lately: in 1990 it was 3.2%, in 1997 it was 3.6%, and in 2002 it was 4.5%.<sup>1</sup> If foreign-born British subjects are added, the figures almost double (Coleman 1994; Meyers 2004, 63-83; and OECD 2005).

This growth in foreign population was parallel to an improved economic and labor market situation. The UK experienced a real GDP growth of 2.8% between 1997 and 2003, up from a negative growth of -1.4% in 1991. As a consequence, the unemployment rate constantly fell, from a high of 8.6% in 1991 to 6.9% in 1997—and 5.0% in 2003, the lowest in more than two decades. As a result, in 2003 the UK had a clearly below-the-average (8.1%) unemployment figure in Western Europe (OECD 2005).

Conservative government immigration policy from the 1980s to 1990s was largely focused on limiting the exponentially increasing stream of asylum seekers and illegal immigrants. Although the Labour government that came into power in May 1997 retained the same basic focus, it did loosen some of the restrictions on immigration and streamlined the asylum process (Meyers 2004, 75-77).

Continental Europe experienced even greater immigration pressures from both the south and the east during the 1980s and 1990s. Internal Market developments such as the Free Movement of Persons (FMP)<sup>2</sup> together with the so-called Schengen agreement (which entails the gradual elimination of border controls between the Schengen-agreement countries)

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<sup>1</sup> In comparison, the share of foreigners in Germany was 8.4% in 1990 and 8.9% in 2002, in France it was 6.3% in 1990 (no figure for 2002 available), and in Sweden it was 17.9% in 2002 (both foreign nationals and foreign-born included). Italy and Spain has had smaller but growing shares.

<sup>2</sup> This is one of the four freedoms of movement of the EU Internal Market, the other being goods, services, and capital.

convinced most EU MS of the need for common policies on asylum, immigration, and external border control. Thus, the Amsterdam Treaty brought these issues within the European Commission competence area. The UK however, along with Ireland and Denmark, opted out from this Title IV as well as from the Schengen agreement (see Appendix, and Weiss and Wooldridge 2002). This opt-out can be understood in light of the fact that UK immigration control, in contrast to many other European countries, has been based on external border control, whereas its internal control has remained rather lax (Brochmann 1996, 104-105). The UK, for example, has no official identity document in use.

In 1996, the UK government began a war against illegal immigrants and false asylum seekers, as well as the traffickers of these parties, by opening up its labor markets to seasonal farm workers from Eastern Europe.<sup>3</sup> This was accompanied by an aim to open up various other legal-entry options to workers—unskilled or (preferably) skilled—from non-EU countries. These programs marked a new chapter in UK immigration policies; foreign-worker programs had been virtually nonexistent for more than four decades. The forces behind this change in policy were the same as those behind the pull of illegal immigration: declining unemployment and increasing labor and skills shortages in certain sectors (such as farm and construction workers, nurses and doctors, and IT specialists) (Meyers 2004, 77-78).

In 2001, the Labour government introduced a renewed and flexible work permit program to fill labor shortages in various sectors on a temporary or more permanent basis. The main emphasis of the program was on highly skilled migrants, who, under the Highly Skilled Migrant Program launched in 2002, would not only receive an indefinitely renewable year-long work permit but be allowed to enter the UK in search of employment (Meyers).

When the EU expanded to the east in May 2004, only Sweden, the UK, and Ireland decided to extend the right of FMP to the new accession countries without a transition period. The UK and Ireland, however, excluded the rights to certain social benefits in order to limit the influx of “benefit shoppers,” which was the main concern of the public and the government.<sup>4</sup> Neither experience nor research predicted any invasion of East Europeans into the UK markets; on the contrary, the estimated numbers were very moderate (for an overview of surveys, see Fassmann and Münz, 2001). However, from May 2004 to June 2005, over

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<sup>3</sup> Restricted by a quota of 10,000, raised to 15,200 in 2001.

<sup>4</sup> See Appendix for a description of the differing labor market regimes that emerged for this transitory period of seven years.

230,000 East Europeans registered to work in the UK, more than half of whom were from Poland. Most of the jobs undertaken were in low-skilled positions: maids, farm hands, waiters, cleaners, sales assistants, and kitchen staff. But some 300 doctors and 125 dentists were also among the workers (Fuller 2005, 1, 4).

The economic policy of the UK has been liberal, promoting free trade since the nineteenth century. The UK has therefore been one of the most outspoken proponents of both multilateral and regional trade liberalization schemes, including the WTO/GATS and the EU Internal Market. The New Labour government of 1997 continued the neo-liberal economic policies of the previous Conservative governments, including the promotion of entrepreneurship, competition, public sector reform, and flexible labor markets. It stresses, though, that markets and trade have to be not only free but fair (Kavanagh 2001, 8).

The UK services exports between 1990 and 2003 nearly tripled to 147 billion USD, making UK the second largest exporter of services in the world. Since the imports of services also grew at a similar pace, the trade balance remained only slightly positive at 23.9 billion USD. However, the trade deficit in goods simultaneously grew to reach -78.5 billion USD in 2003, leaving the UK total trade balance at a deficit (OECD 2005). The fact that the only trade surplus in the last decade has been in the service sector helps to explain why the UK is pushing hard for continuing trade liberalization on that front.

The European Commission does not have exclusive competence over the external service trade negotiations but shares it with the EU MS. The MS are thereby free to make their own commitments under the GATS agreement, even though individual offers are composed into one common offer and negotiated by the EC (see also Appendix). All in all, the deepening of the Internal Market in tandem with the pressure to improve the common offer has led to a close similarity of MS offers. Mode 4 in the GATS relates to the “Free Movement of Natural Persons,” referring to the temporary movement of service suppliers. Despite the UK’s growing economy, strong stance for free trade, and recent pursuit of skilled foreign labor, its specific concessions in Mode 4 were below the average of the first EU offer in the Doha Round in February 2003 according to the calculations of Langhammer (2005).<sup>5</sup>

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<sup>5</sup> For the EU first DOHA round offer, see WTO 2003. It is important to note, however, that the UK and other EU MS offers are more generous than those of most other WTO members, including the USA.

Langhammer compared the EU MS concessions using the frequency indice approach developed by Hoekman for assessing the degree of restrictiveness to services imports (Hoekman 1996). The Hoekman indice is based on traditional frequency indices for assessing the importance of nontariff barriers to trade in goods. Hoekman allocated a number for the level of restrictiveness to each of the 155 service categories categorized in the GATS divided by the four modes of supply and the two areas of commitment (market access and national treatment). The least restrictive commitment (entry “none,” referring to no restrictions) was weighted at 0, and the most restrictive option (“unbound,” that is, no commitment at all) was weighted at 1. Any “bound” commitments containing either sectoral or horizontal restrictions was weighted at 0.5. (This final calculation does not, however, reveal the severity of the restrictions; moreover, the sectors with no commitments are not even considered in this exercise.) To analyze the EU MS commitments, Langhammer calculated the weighted shares of market access and national treatment concessions on the offered 113 sectors as a share of maximum possible for all modes (155 sectors x 4 modes x 2 MA/NT = 1240). The combined market access and national treatment concessions of the UK in Mode 4 over all sectors was 2.2 as a weighted average of the UK share in EU Gross National Income in 2000. In comparison, the unweighted EU average was 4.5 and the weighted EU average 3.8 (Langhammer 2005, 317).<sup>6</sup> It is the contradiction of this below-the-EU-average offer with regard to Market Access Mode 4 in February 2003 in light of the later less restrictive policy choices in 2004 that is the driving point of this paper.

The paper presents a qualitative, one-case study that tests three separate hypotheses on a case with two dependant variables. The case shows a shift in UK policy, as well as a policy that differs from that of the other major European countries.<sup>7</sup> The time frame of the study is

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<sup>6</sup> In contrast, France’s offer was 6.2, despite its generally more protectionist stance towards both trade and migration from East Europe. In comparison to Mode 4, UK’s binding concessions in Mode 1 (Cross-border supply) was 60.0, Mode 2 (Consumption abroad) 90.0, and Mode 3 (Commercial presence) 86.7, all slightly *above* the unweighted and weighted EU averages.

<sup>7</sup> The policy choices in the case of France seem to be opposite: France has the most generous offer of all EU MS in Mode 4 despite its negative stand on liberalization of trade in services. But it has limited the entry of CEEC nationals onto its markets with narrow quotas. Only Sweden and Ireland made decisions similar to the UK, and it could prove interesting to test the results of this research in those countries and compare them with the situation in for example France and Spain (the latter of which has the largest trade surplus in services in the EU). The one-case approach in this limited study naturally impairs its external validity. However, see my conclusions for an inference on the potential external validity of the hypotheses.

from the end of 1990s (analyzing prior developments) to 2002/3 (when each decision was presented). Primary sources consist of official publications and internet sites of the WTO, EU, UK government, Labour party, UK trade unions, and employers' unions or interest groups. Secondary sources are related articles in general newspapers and academic journals, books, and internet sites.

### **3. Theoretical Background and Hypotheses**

#### **3.1 Current Literature on Domestic Immigration Policy**

Literature on domestic policy regarding the movement of natural persons in the context of services supply is still in its infancy. Most studies concentrate on the benefits or developmental effects of the free movement of natural service providers on either the origin or the destination country. Alternatively, discussion is of the patterns and characteristics of or the barriers to natural service provider movements, mostly within the framework of the GATS (see for example Chanda 1999; Ghosh 1997; Grynberg 2002; Lavenex 2002; OECD 2002b). What is still lacking is research focusing on the actors and their interests behind the domestic policies.<sup>8</sup> One obvious reason for this gap is that the issue area is still so new: most effort has gone into laying the groundwork for general services trade research, especially with regard to the modes more open to liberalization. Another reason is likely the fact of issue sensitivity relating to this area's proximity to labor migration policies when efforts are being made to deny the connection and to only speak about trade liberalization.

In 2004, the OECD arranged a seminar on "Trade and Migration: Building Bridges for Global Labour Mobility," bringing together trade and migration officials from nearly one hundred countries to create a better understanding of the relationship between the regimes. They stated that even though Mode 4 is not a migration category or concept, it is in practice regulated by migration policies.<sup>9</sup> They defined GATS Mode 4 as a form of temporary labor migration, which itself is a subset of temporary migration (see OECD 2004, 20, 24). Grynberg

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<sup>8</sup> Research by Mattoo and Carzaniga (2003) is an exception in that it includes both the above and articles written from the perspectives of immigration officials' and trade union representative's. These will be referred to where relevant.

<sup>9</sup> Henry (2003) portrays Mode 4 to be in the intersection between immigration, labor and trade policies. He says that even if the overall state goals might be overriding, the language and rationale of the different policy communities often differ to the extent that misunderstandings, and even antagonisms, are not uncommon. The main reason is their difference in focus and preoccupation.

asserts that even though Mode 4 was not intended to provide immigration rights, it is in retrospect doing exactly that when, for example, countries commit to assure the rights of temporary movement of intracorporate transferees (Grynberg 2002, 83). According to Ghosh, however, the concept of nonresidency is central in the context of trade in services since it is a basis for the two essential characteristics of service transactions: time-specificity and distinctness of the activity (Ghosh 1997, 30).

Temporariness has not been clearly defined in the GATS documents. In general, however, it is understood to mean that the service provider enters the market to supply a pre-defined service and will return to the country of origin. Rather than a clear definition on what constitutes “temporary” movement, the definition is negative, explicitly excluding “permanent” movement (Carzaniga 2003, 23).<sup>10</sup> In a migration framework, this generally means a period of up to one year. But GATS is ambiguous; for example, it is unclear whether multi-year service providers should be considered foreign residents occupied in services trade or residents taking part in local service production (OECD 2004, 22-25). In addition, Grynberg notes that it is generally understood that the lack of a duration-of-stay commitment in a service sector schedule refers to an unbound commitment: that is, noncommitment (Grynberg 2002, 77 note 13). The definition of temporary and permanent migration relates mainly to the initial intention and perception of the receiving country vis-à-vis the migrant, not the actual result (Meyers 2004, 26). In practice, both temporary and permanent workers have to apply equally for work permits or visas (Chanda 1999, 15).

The FMP within the EU is even more ambiguous with regard to duration and status. The policy is meant to enable the free movement of labor on either a temporary or a permanent basis, and to provide for nondiscriminating national treatment from the start (including of the migrant’s family). The UK’s decision to exclude social benefits for CEEC nationals during a transitional period is mainly meant to discourage the entry of welfare shoppers, but it might also encourage more temporary labor migration. Because the FMP does

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<sup>10</sup> The definition was debated extensively during the GATS agreement negotiations. It was feared that a definition would bring rigidity into the framework agreement since different situations would demand variety in periods of stay (Self and Zutshi 2003, 35).

not restrict the duration of stay, I will consider it here as a kind of semi-permanent (labor) migration.<sup>11</sup>

Meyers notes that most studies on immigration control policies are single empirically oriented case studies that lack any general theoretical approach (Meyers 2004, 9). My research also studies only one country over a limited period. However, it seeks an explanation for a specific puzzle of policy differences relating to two forms of labor migration,<sup>12</sup> where the obvious explanations are contradictory. On a theoretical level, I will begin by testing the relevant hypotheses of Meyers' comprehensive *Theory of Immigration Policy* as they relate to labor migration. Then I will suggest two hypotheses based on some amendments to the generally assumed interests of the affected domestic interest groups: namely, labor and employers. Finally, I will present a third hypothesis relating to the sovereignty of the state.

### **3.2 Meyers' Theory of Immigration Policy**

Meyers combines elements from three main strands of theories into his own. The first strand considers economic competition between natives and immigrants; the second, the cultural discord between the two; and the third, the impact of international relations and multilateral agreements on immigration control policy. Meyers maintains that labor migration policies are mainly influenced by economic fluctuations and thus pertain to the first group of theories, which use both Marxist class and domestic politics/pluralist models. The Marxist class model pits the interests of the capitalist owners against the working class. The domestic politics and pluralist models see policy as the outcome of bargaining and compromises—the former between interest groups and the latter between parties (Gourevitch 1986). With regard to immigration policies, the two main actors in both Marxist and domestic approaches are employers and trade unions, the first pressuring for a sufficient supply of low-wage labor and the second looking for protection of employees and employment conditions—such as established wage-levels (Meyers 2004, 5-7). Periods of economic growth and low unemployment lead to less resistance from labor because the natives need not fear the loss of jobs. Further, workers, both low-skilled and high-skilled, can themselves improve their employment conditions by moving up the ladder when migrant labor fills the lower positions.

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<sup>11</sup> I will not discuss the general immigration or asylum policies of the UK, but concentrate on labor migration issues and more specifically on the FMP extension to CEEC and GATS Mode 4.

<sup>12</sup> Even though it is oversimplification to define both as labor migration, I will do it here for comparison purposes because much of the support and objection to both in the public discourse is the same.

Meyers' hypothesis on labor migration policy builds on this argumentation, with the state of the economy being the main determinant of policy. The government administers the policy based on pressures from employers and trade unions. The former interest group may sometimes *de facto* take over the decision making. Although this determinant is more pre-eminent in the case of temporary labor migration policies, it also applies to more permanent policies (Meyers 2004, 5-7).<sup>13</sup>

When looking at the studied case, this hypothesis holds up to the point that the UK made its decision to open up its labor markets to the CEEC workers in a period of economic growth, low unemployment, and factual labor shortages in several sectors. However, it does not explain why GATS Mode 4 offers were less generous than the EU15 average when economic growth was faster than average. Moreover, Mode 4 is clearly temporary, and so it *should* take priority over permanent labor migration to adjust for economic cycles. A possible explanation for this contradiction is Meyers' observation that the UK has traditionally been a settler society; in other words, favoring permanent over temporary migration.<sup>14</sup> This "settler" identity, however, is based on ex-colonial foreign policy ties, which are no longer relevant—especially in this case. This factor thus cannot explain UK's preference for permanent or semi-permanent labor migration.

### 3.3 My First Hypothesis—The Unions

Could the interest groups have other or additional interests? I will first consider trade unions. Avci and McDonald, building on Haus' initial challenge to traditional assumptions

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<sup>13</sup> This is his hypothesis number 8. The other hypotheses relevant to this study are i) Hypothesis 6b-a, "Regional integration liberalizes the policies of the member states toward immigration from the others;" ii) Hypothesis 9, "Immigration control policy with regards to permanent immigration of dissimilar composition is influenced [mainly] by... the volume and composition of immigration;" and iii) Hypothesis 10a, "Immigration control policy with regard to permanent similar immigration tends to be more liberal than the policy with regard to permanent dissimilar immigration." These hypotheses will be discussed in relation to my hypothesis three, the state interest.

<sup>14</sup> The two main factors leading a country to become a settler society are a low population to land ratio and foreign policy considerations (that is, in order to maintain its international standing as well as its political and cultural ties with colonies or former colonies). The UK fell into the second group, accepting immigration from Commonwealth countries. For decades, large migration from these countries limited the need for other foreign worker programs. However, foreign policy considerations have declined in UK immigration policy making. (Meyers 2004, 81-82, 196-197). See further discussion in Chapter 3.

about the attitudes of trade unions to immigration, argue that the increased transnationalization of labor markets, especially at the EU level, in combination with the relative weakening of trade unions (seen in challenges to their legitimacy, membership, and recruitment, especially in traditionally nonunionized but growing sectors of the economy and among “untapped” worker groups), has changed the preferences of the trade unions. Any legislation that is likely to weaken the positions of migrant or of native workers, or their rights to membership in a union, is likely to be resisted both for reasons of ideology and self-interest. During the 1990s, trade unions in the UK turned their attention to services and part-time industries with the aim of spreading their activities and membership into these previously mostly uncovered sectors. Migrants are often over-represented in these sectors. They also strongly opposed acts—such as the 1996 Asylum and Immigration Act—that restrict workplace organizing (Avcı & McDonald 2000, 203, 205-206. See also Haus 1995, 285-313; and Wrench 2000, 219).

*My first hypothesis is that the labor unions in the UK supported the free entry of CEEC workers in order to increase their membership and strengthen their influence in the labor market, and that they restricted the GATS Mode 4 for the same reason.* Acknowledging the labor shortages in the services sector, the labor unions would prefer to have more long-term migrant workers to recruit to their membership. Temporary migrant workers via the GATS remain out of the reach and influence of the unions. By increasing their memberships towards migrants, the unions seek to unite the ranks and improve the working conditions overall. Reaching out to the CEEC workers would also reveal the union’s solidarity with them and increase their influence on a European level.

### **3.4 My Second Hypothesis—The Employers**

My second hypothesis relates to the interests of the employers. Employers want a labor pool that is abundant, appropriately-skilled, and low-cost. In addition, they require low costs in both hiring and firing (limiting the need for temporary contracts) so that they can adjust to economic cycles. This flexibility should also include the possibility of retaining good workers, including intracorporate transferees, for as long as they are needed (OECD 2004, 21).<sup>15</sup>

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<sup>15</sup> The concept of a flexible labor market is in popular rhetoric often misunderstood as the wish for employers to only employ on a temporary basis or even “to hire in order to fire.” Although it is true that

Because companies are often multinational, the geographical mobility of their staff is a vital interest for them. Accordingly, in the GATS negotiations, the *quad*<sup>16</sup> has been mainly concerned with gaining market access for intracorporate transferees and business visitors to complement market access in Modes 1 (Cross-border trade) and 3 (Commercial presence). Especially in the initial stages of foreign direct investment (FDI), the free movement of both groups is essential, and FDI plans can be seriously hindered without such market access. An export-oriented services industry, such as that of the UK, can therefore be expected to exert pressure on its government to negotiate expanded and deepened market access for its employees in relation to the other two modes, and use its own commitments in Mode 4 as a bargaining tool (or, as is common in WTO negotiations, to offer something else via issue linkage) (Grynberg 2002; Report of the Trade and Migration Seminar 2003, 37). The importing services industry, on the other hand, would get the needed workers through the other immigration channels mentioned above and would be expected to show less interest in the GATS negotiations. Similarly, it would be in the employers' interest to endorse the free movement of labor within the EU as a complement to the other Internal Market freedoms.

During the international seminar on trade and migration mentioned above, Lynn Shotwell, from the American Council on International Personnel (ACIP),<sup>17</sup> confirmed,

Global corporations tend to invest in those countries that best facilitate the global movement of personnel. From the company perspective it is irrelevant if this happens through a GATS visa or by other means. Mode 4, as it is now, is perceived as insufficient to meet the needs of global corporations. The focus on service suppliers is only incidental to the operations of global corporations, and attention to temporary movement is perceived as confusing. From a

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employers wish to ease the procedures and minimize the costs of hiring *and* firing, other aspects of flexibility can be as important, such as flexibility in employment patterns (in terms of flexibility both of hours and upgrading skills in the workplace); greater flexibility in pay arrangements; and increased locational mobility. [Source: Tutor2u Ltd. [http://www.tutor2u.net/economics/content/topics/unemp/flexible\\_labourmarkets.htm](http://www.tutor2u.net/economics/content/topics/unemp/flexible_labourmarkets.htm) accessed on 22.5.06]. Their aim is to enhance the employability of the workforce and allow for business cycle adjustments for the firms. On the other hand, the more involved intellectual property is and the higher the market labor shortages (and thereby recruitment costs) are, the greater lengths employers will go to in order to retain the good workers they already have.

<sup>16</sup> USA, EU, Japan, and Canada.

<sup>17</sup> The ACIP is a trade association of large multinational companies dedicated to facilitating the international movement of personnel.

corporation perspective, all workers are permanent workers and multinational corporations want to be able to move them around as needs arise. (Report of the Trade and Migration Seminar 2003, 12)

At the same time, short-term international projects have grown fastest of all Mode 4 trade; however, much of these are done with permanent employees (OECD 2004). Unlike the GATS, the FMP and the unilateral schemes of the UK cover both the duration and scope of labor movement needed.

Opening the labor market to the CEEC could therefore be seen as optimal from an employer perspective, because not only the scheme but CEEC workers themselves meet the above criteria. CEEC nationals are mostly appropriately skilled (since many shortages exist also in the low-skilled sectors) and have knowledge of English. Of course, a similar talent pool could be acquired through GATS MFN-wide recruitment, but employers' interest in pressuring the government for less restrictive commitments is likely lessened by other government labor immigration programs that better suit their needs.

The second hypothesis, then, is that *employers prefer labor migration programs that supply them with an abundant, appropriately skilled, and low-cost workforce with the flexibility to retain or fire workers as needed and to move their personnel as needed*, and they promote the legal means with the lowest resistance to that end.

### **3.5 My Third Hypothesis—The State**

As mentioned above, the UK has traditionally been a settler society, favoring permanent over temporary migration. The main influencing factor on immigration control policy with regards to permanent dissimilar immigration in a settler society, according to Meyers (2004, 18),<sup>18</sup> is the volume and composition of immigrants. In earlier periods of UK immigration policy, CEEC nationals have been treated as dissimilar, facing more restrictive reception than permanent similar immigrants from, for example, Ireland and other Anglo-Saxon countries.<sup>19</sup> It would, therefore, have been expected that the UK impose at least some numerical limit on CEEC immigration, as most other EU15 countries did. An overriding factor seems to have been the state of the economy, however, especially in combination with

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<sup>18</sup> Hypothesis 9, see fn 13 for a listing of the hypotheses.

<sup>19</sup> In accordance with Meyers' hypothesis 10a.

the fact that once they had EU membership,<sup>20</sup> CEEC nationals shifted toward an immigration category of “similar.”<sup>21</sup> In other words, in a settler society like the UK, a growth economy seems to override the fear of dissimilar permanent labor migration from new regional integration partners, whose nationals are now liberally treated like similar immigrants.

The main arguments against granting market access for natural persons under GATS Mode 4 are related to i) the fear of a flow of lower-priced labor (by both skilled and low-skilled sectors) and ii) the misuse of this temporary entry as a backdoor for permanent migration (especially from dissimilar origins) (See for example Self and Zutshi 2003, 41). Both of these were overcome in the UK with regard to CEEC workers. Why, then, would the UK government, a main promoter of multilateral liberalization in services, restrict the market access for Mode 4 to mainly business visits and high-skilled intracorporate transferees (related to Mode 3) on a level that was much stricter than its general labor immigration policies and lower than the EU average?

Simmons and Keohane argue that the state, even while fragmented by internal diversity and conflict, still tends to pursue some general, diffuse interests of its own. They highlight three interests in the context of immigration control policy: i) the perpetuation of economic security; ii) the pursuit of a rational-bureaucratic agenda; and iii) the search for continued legitimacy (which is achieved by reaching the first two goals). Since “the state’s objective in formulating immigration policy is to exercise legitimate power and control . . . it gears immigration policy towards the smooth running of the economy, the mediation of major social conflicts, and the pre-emption of crises and challenges from oppositional social movements” (Simmons and Keohane 1992, 426-428).<sup>22</sup> This state-centric institutionalist approach rightly acknowledges the influence of various domestic societal factors. However, it does not consider the interactive pressure in labor migration matters—between external

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<sup>20</sup> Hypothesis 6b-a. Nielson (2003, 94) also notes that geographical proximity and similar levels of development as well as cultural and historical ties tend to facilitate more liberal labor movement policies in regional trade agreements, even if this is not always the case.

<sup>21</sup> In other words, Meyers’ hypotheses 8 and 6b overriding his hypothesis 9.

<sup>22</sup> As Self and Zutshi (2003: 42) point out, the political accountability of governments always overrides pure economic logic even in labor immigration issues.

cooperation/interdependence versus the quest for external sovereignty<sup>23</sup>—that result from the pursuit of the three interests mentioned above.

This institutionalist view differs from that of the pure institutionalists, who maintain that political institutions are autonomous from societal pressures and act in the interests of the state. Researchers also disagree on the degree to which they see the state as monolithic (representing unified interests) or fragmented (various institutions pursuing their own interests). The latter approach is called the bureaucratic model (Meyers 2000, 1260-62). I will here consider the state as fairly monolithic and, following Simmons and Keohane, semi-autonomous from societal pressures.

As the state of the economy and the local labor market fluctuate, governments do not want to lose their autonomy to regulate labor immigration, even immigration of a temporary nature. Nevertheless, GATS commitments are binding and can only be retracted if compensated for in other areas. This lack of flexibility in the GATS is claimed as one of the main reasons governments are reluctant to make offers on Mode 4. But because governments realize the benefits of labor immigration, they embark on various bilateral and regional schemes. In these they can often better control the flow and especially labor market conditions (OECD 2004, 13 and OECD 2002b, 5. See also Henry 2003, 215). Such is the case with the UK government, which is strongly in favor of the Internal Market and understands that its efficient functioning requires free movement of labor. In spite of the inflexibility of the FMP scheme in itself, the labor movements have not proven to be large and disruptive: quite the contrary. Moreover, the conditions of the labor market and composition of the labor force are similar. If considerable problems arise, the MS have well-established negotiation relationships and forums to jointly solve them. These features are lacking at the multilateral level.

Because the movement of labor is about cross-border factor mobility, it affects the internal sovereignty of a nation. As with all immigration policies, the appearance of government control is essential for the public to retain confidence in the government and remain tolerant towards foreigners. If internal control is lax, as in the case of the UK, external control at least must appear tighter (Brochmann 1996, 104-6). As stated above, this is apparent in the UK decision to refrain from participating in the Schengen area or the external border control cooperation in Europe (Title IV).

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<sup>23</sup> Internal sovereignty refers to the supremacy of the state over all other authorities within a territory and population, whereas external sovereignty refers to independence of outside authorities (Reinicke 1998, 56).

Langhammer (2005, 318) observes that Mode 4 commitments seem to reflect general migration policies. The UK government, therefore, could be expected to seek to regulate immigration flow in order to i) maintain the internal consensus on flexible labor markets that has fostered the smooth running of the economy, and, at the same time, to ii) curb illegal labor immigration and therefore the possibility of unscrupulous employers misusing the lack of tough internal government control. A commitment to the free movement of service providers from wider sectors and levels on a MFN-basis would make it more difficult to flexibly regulate the flow and to protect domestic employment—and thus to pre-empt social crises. Relative sovereignty over labor immigration control, in consultation with domestic stakeholders, would enable the UK not only to direct the inflow of migrants to shortage areas, but to change temporary permits to permanent ones in the cases of those migrants who fulfill desired attributes. The preference for flexibility combined with sovereign control of immigration and borders could thereby be expected to be seen in the UK government policy.

*The third hypothesis, therefore, is that the UK government chose to open its labor markets to the CEEC nationals at an early stage to help fulfill labor market shortages because it had committed to extending the Internal Market to the CEEC in the mid-term, but that it chose simultaneously to retain the flexible and sovereign control of other labor movement, even though this would mean that its actual policies would be more liberal than its Mode 4 commitments. In addition, this policy choice was likely to further two other preferences of the UK government: to strengthen the EU Internal Market and to maintain Mode 4 market access as a bargaining tool to gain access to other WTO member markets.*

#### **4. Alternative Explanations**

In his eighth hypothesis, Meyers suggests that labor migration policies can also be influenced by a “war-migrant labor link” and foreign policy considerations (2004, 17). In the case under consideration here, the war link could pertain to the tightened security consciousness in the aftermath of 9/11. More specifically, it could relate to the relative security of admitting Christian CEEC nationals over other service providers from the 148 WTO member states, including third-world Muslims. Even under GATS, however, the inflow of unwanted nationals can be restricted through visa requirements. Moreover, most of the unilateral work permit schemes of the UK are not restricted to certain nationalities, but are open for anyone fulfilling the required criteria.

Foreign policy considerations could at a first glance be assumed to have a larger role, as the UK was one of the most vocal supporters of the Eastern Enlargement. In addition, the CEEC are closely allied with the UK both on foreign policy matters (for example, the war on Iraq) and in economic ideology. However, empirically we can see that this did not affect bilateral migration relations in the 1990s. In contrast, other EU15 countries, most notably Germany, have since 1989 signed various bilateral, quota-based temporary labor migration agreements with single CEEC (Garnier 2001, 143-146). Only in 1996, during a clear shortage of farm workers, did the UK keep with the state-of-the-economy hypothesis and allow the entry of a limited number of seasonal farm workers from the CEEC.

Apart from interest-group pressures, the domestic politics approach contains the pluralist party model. This maintains that parties are elected based on their programs, and while in power they aim to implement these either alone or in coalition with other parties in order to get re-elected. In 1997, the eighteen-year rule of the Conservative party gave way to the re-fashioned Labour party. The New Labour presented a “Third Way” between right and left. This essentially social-democratic party had a more liberal view on immigration, discarding certain restrictions on Commonwealth immigration. However, in general, economic management and, for example, labor immigration policies continued where the Conservatives left off in 1996, when they started opening doors abroad to fill labor shortages. The New Labour even distanced itself from the labor unions, their traditional supporters, stating that unions are only one group of many whose interests the government must consider. The positive approach to the Eastern Enlargement was also inherited from the Conservatives (Kavanagh 2001). It is, therefore, hard to perceive the policy choices would have differed much under a Conservative government.

According to neoliberal institutionalism (Keohane 1985), the result of cooperation in international institutions and regimes should be a coordination of policies. This explains much of the convergence between UK and other EU MS policies. However, this study asks why some of the UK policies differ.

## **5. Explaining the Policy Choices**

### **5.1 Labor Unions**

*My first hypothesis stated that the labor unions in the UK supported the free entry of CEEC workers in order to increase their membership and strengthen their influence in the*

*labor market, and that they restricted the GATS Mode 4 for the same reason.* By increasing their membership towards migrants, the unions seek to improve the working conditions overall and unite the ranks. The independent variable is thus the labor union interest. Its operational definition is explicit expressions of the Trade Union Congress' (TUC) objectives to increase its influence and membership among permanent labor immigrants and to encourage the extension of the FMP to CEEC nationals, as well as of its objections to GATS Mode 4. I will now consider possible evidence of this claim.

The century-long strong link between the Labour party and its trade union affiliates weakened considerably during the 1990s when the New Labour embraced the neo-liberal economic policies of the Conservative government, making it clear that the labor unions would receive fairness but no favors. In practice, the government has repeatedly sided with the Confederation of British Industry (CBI) against the TUC (See Ludlam 2004, 70-87; and Taylor 2001, 245-270).

The TUC opposed European integration in the early 1980s. But since then, it has found that its interests have been better forwarded by European institutions than by its own national government, and it has even sought to exert pressure on the government via European-level cooperation. Combined with the transnationalization of labor markets and other globalization pressures, the TUC shifted to support the common market, FMP, and enlargement. In addition, the TUC admits that a competitive economy needs a flexible labor market, insisting however that the markets have to be fair and respect workers' rights to, *inter alia*, minimum wages, effective collective bargaining, freedom of association, and nondiscrimination.<sup>24</sup> As an extension of the latter, the TUC advocates the right to inform migrants of their rights and "in part this should include an increase in trade union membership amongst migrants. . . . [P]rogrammes aimed at increasing trade union membership would be effective in defending them [migrants] from unfair exploitation" (TUC 2001/2002). Or, in the words of Mick Connolly, regional secretary for SERTUC (TUC in London, the South East, and the East of England), "*We want to welcome workers to the UK, bring them into the movement, argue their cause and defend them from exploitation*" (Italics original) (TUC 2002). The main aim is to curb illegal immigration and outside-collective agreement working conditions.

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<sup>24</sup> See statements and position papers on [www.tuc.org.uk/international](http://www.tuc.org.uk/international). See for similar concerns Waghorne 2003, 204.

The trade unions also strongly favored the extension of the FMP to CEEC nationals. Prior to the government's announcement on possible labor migration from new EU member states, TUC General Secretary Brendan Barber wrote in a letter to Prime Minister Tony Blair:

I hope that when the government's statement is made today you will honour your earlier commitment to permit citizens of the new EU member states to work in Britain from 1 May this year. The TUC takes the view that the free movement of goods, capital and services within the EU should be matched by freedom for European workers to take jobs anywhere in the EU. . . . Workers from other EU nations can make an important contribution to our country and help overcome skill shortages that would otherwise hold our economy back. That positive dimension to free movement of labour must not be damaged by weak employment protection arrangements that lead to exploitation and undercutting of decent standards. (TUC 2004)

In order to provide the CEEC labor migrants with information about their legal rights to work in the UK, the TUC translated one of its leaflets into several of the new EU accession state languages.

Nevertheless, in keeping with the first hypothesis, the TUC together with its European counterparts has objected to temporary labor migration via Mode 4:

With regard to "Mode IV" (i.e. temporary cross-border movement of natural persons), the trade union movement opposes any increase in clandestine migration to the detriment of workers and communities both in the countries of origin and of destination. *We underline the far greater desirability of orderly arrangements for permanent migration where necessary*, including full measures to guarantee migrant workers equal rights, encourage their full integration (including through acquired rights to permanent residence and citizenship), prevent exploitation by employers and protect them against all forms of discrimination. *Temporary migration such as that contemplated under "Mode IV", by contrast, does not enable such rights to be defended effectively and leaves the men and women migrant workers concerned extremely vulnerable to exploitation.* The competences and structure of the WTO do not enable it to regulate migratory movements, including those on a

temporary basis such as under Mode IV, in a manner that protects migrant workers' rights. If any governments do nonetheless make Mode IV offers that would include the temporary movement of workers, these must be agreed with the trade unions concerned on a prior basis and ensure: observance of core labour standards, national labour law (incorporating and going beyond those standards) in the country where the service is delivered, and existing collective agreements in the host country by all parties, with regard to all workers concerned; full involvement of the ILO; protection of the workers concerned against all forms of discrimination and exploitation; and guarantees of the remittance of their contributions to social security and insurance schemes. *In the absence of such conditions, GATS negotiations and commitments under Mode IV should not go forward.* [Italics mine.] (TUC 2005, Para. 39)<sup>25</sup>

This statement, even if issued after the EU first Doha Round offer, clearly shows the preference of trade unions for orderly permanent migration over temporary migration in order to protect their interests of enforcement of workers' rights, labor standards, and wage levels. Moreover, a general ideological solidarity with migrant workers irrespective of their national or racial background is evident in all TUC communication.

Evidence thus reveals that the interests of labor unions in transnationalized labor markets in the developed countries shifted from general protectionism to acceptance of the movement of labor—as long as their general interests and influence in the market were not diminished. The difference in the degree of openness to labor migration between countries in general then is the state of the economy. We could perhaps paraphrase and generalize the hypothesis: *Labor unions in transnational markets prefer permanent over temporary labor migration in order to increase their membership and influence on the labor markets.* In this case, the labor unions in the UK supported the free entry for CEEC workers (potentially permanent) in order to strengthen their influence in the labor market, and they restricted the GATS Mode 4 (temporary by definition) for the same reason.

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<sup>25</sup> This statement has been endorsed by the Global Unions Group, the World Confederation of Labour (WCL), and the European Trade Union Confederation (ETUC).

## 5.2 Employers

To briefly recap my second hypothesis: *employers prefer labor migration programs that supply them with an abundant, appropriately skilled, and low-cost workforce and provide them with the flexibility to retain, fire, or move workers as needed, and they promote the legal means with the lowest resistance to that end.* In this case, the potentially more permanent labor provided by CEEC is preferable to the temporary labor via GATS Mode 4. The pressure to go with GATS Mode 4 is lessened as well by the labor migration schemes of the government. The independent variable is thereby the employers' interest. Its operational definition is explicit demand for more permanent labor migration (favoring FMP to CEEC nationals), and low demand for GATS Mode 4 beyond the current UK offer on intracorporate transferees, specialists, and business visitors (that is, not demanding more than they themselves offer).

The position of CBI<sup>26</sup> on labor immigration is fairly straightforward and typical of employers. It wants a sufficiently abundant supply of workers guaranteed by a flexible, simple, and transparent system that enables employers to fill vacant positions with suitably skilled workers for as long as they are needed and that allows them to move workers to other tasks as required (the current and the planned multi-tier points system is criticized mainly only on these latter points). Employers want the option to, for example, change the work permit status of employees from clearly short-term “visiting worker” to longer-term “very highly skilled worker with [or without] an employer sponsor,” provided the employee pass the required points test and the permit is not close to expiry. CBI stresses the need for geographical mobility and extension of work permits for intracorporate transferees (CBI 2005). This confirms the general hypothesis.

The UK government has striven to answer the employer demands by designing a flexible multi-tier labor migration system geared to respond to the fluctuations of the labor market in close consultation with CBI and other representatives of the employers, as well as with—in part—the labor unions. Certain labor and skills shortage sectors are identified and continuously amended to facilitate a fast and simple work permit procedure that has no

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<sup>26</sup> The CBI is the main interest group representing employers in the UK. It has a direct corporate membership of over four million and a trade association membership of over six million. It is often the main consulted partner of the government in business-related matters as well as representative of the UK in several international business and trade forums.

requirements for labor market tests. The system targets mainly high-skilled workers, but it also includes special programs for low-skilled workers, in this case, mainly seasonal workers. The blurring of temporary and permanent labor migration becomes evident in the UK case because they share the same entry point into the labor market. Once in the UK, almost any group of labor migrants can extend their permits up to five years and apply for permanent residency after the fourth. In other words, the policy aims for *managed migration serving business needs*.<sup>27</sup> It could therefore be argued that the interest group representing the employers has more or less taken over, or at least has a dominating influence on the decision making related to labor migration.

The UK system is considerably more flexible, more inclusive (with a wider range of skill levels and sector coverage, including nonservice workers), and requires lower qualifications of the workers than the GATS Mode 4. It is noteworthy that certain sectors listed in the unilateral UK schemes as shortage sectors (such as the hotel, catering, and ICT sectors) and thereby open to world-wide recruitment were either excluded from or restricted in the UK GATS offer.

Employers embrace the managed migration approach of the government, including skills advisory boards (to quickly detect trends in the labor market) and resident labor market tests (“as a way for employers to pro-actively demonstrate the need for a work permit”) (CBI 2005, 8). However, they call for a more stringent and specific government approach on employment of illegal immigrants and breaches of employment law to avoid spreading the administrative burden to all employers (CBI 2005).

In its position paper before the 2001 GATS negotiations, the CBI called for a new comprehensive round with a single aim: to achieve greater liberalization in all four modes of market access. They highlighted three particular areas needing progress: i) movement of personnel, ii) domestic regulation, and iii) e-commerce (CBI 2001, 5). The first refers exclusively to the employees of a judicial person—not independent service providers. As such, it is in most cases linked to Mode 3 (commercial presence) and is usually limited to intracorporate transferees, specialists, and business visitors (like in the UK’s own offer). Thereby, there was no attempt to push for liberalization in Mode 4 in other countries greater than that which the UK was ready to commit itself.

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<sup>27</sup> For descriptions of the system, see e.g. [www.workingintheuk.co.uk](http://www.workingintheuk.co.uk), <http://www.ind.homeoffice.gov.uk/>; UK Home Office 2002; Rollason 2004; and McLaughlan and Salt 2002.

The CBI welcomed the FMP from the new accession countries, anticipating a similar stance to be taken by the government with regard to upcoming accessions, provided that the labor shortages in the UK persist. They see the role of CEEC nationals as filling sector shortages, and especially low-skilled vacancies (CBI 2005, 2, 6).<sup>28</sup>

Regarding flexible labor markets, CBI General Secretary John Monks has said, “We know that modern organizations need to be flexible to do well in an increasingly competitive world. Hire and fire, though, is not flexibility. That’s exploitation.” The CBI defined flexible labor markets along the following dimensions: i) functional flexibility; ii) skills flexibility (including employer-sponsored training to achieve it);<sup>29</sup> iii) numerical flexibility; iv) flexible working patterns; v) wage flexibility; and vi) geographical mobility between different regions and different European member states (CBI 1997). This definition reflects the same attitude apparent in the theoretical section of this paper: employers see their workers as primarily permanent provided the workforce and labor regulations are flexible in the dimensions laid out above.

To sum up, evidence for the first part of the second hypothesis is not definite, as we could find no explicit demands for the possibility of more permanent labor migration. However, this trend is suggested through employer requests for changing temporary working permits to those more long-term and their concern over the extendibility of intracorporate transferee permits. Moreover, examination of the next hypothesis will reveal that the managed migration system of the UK government is *employer-led*. The design of this system—which is geared towards easily renewable work permits and the possibility of permanent residency, especially, but not solely, for high-skilled workers—therefore gives us a clear understanding of employer preferences. The second part of the operational definition—CBI support of extension of the FMP to CEEC—found explicit evidence. And the third part—low demands for GATS Mode 4 above the current UK offer—is reflected in the fact that only the movement of personnel is deemed important. Moreover, the topic is generally absent from the CBI website and other policy papers on labor migration, clearly exhibiting a rather low priority in CBI preferences. Websites of other employer unions support these findings: GATS Mode 4 is not an issue that is pursued.

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<sup>28</sup> See also the 2002 quotation of Foreign Secretary Jack Straw 2002 in the next subsection.

<sup>29</sup> In fact, the UK employers spend more than the average European employer on training (CBI 2005, 2).

### 5.3 The State

*The third hypothesis was that the UK government chose to open its labor markets to the CEEC at an early stage to meet labor market shortages since they had committed themselves to extend the Internal Market to the CEEC in the mid-term, but at the same time they chose to retain the flexible and sovereign control of other labor movement, even though this would mean that their actual policies would be more liberal than their Mode 4 commitments. In addition, this policy choice was likely to further two preferences of the UK government: to strengthen the EU Internal Market and to maintain Mode 4 market access as a bargaining tool for access to other WTO member markets. The independent variable is the state interest. Its operational definition is explicit expressions of state interest in i) flexibility in labor migration policy as a reason for the low GATS Mode 4 offer, and ii) the current labor shortage as a reason for earlier than “necessary” extension of FMP to CEEC nationals.*

In 2002, the UK Home Office published a White Paper on Immigration and Asylum policy called “Secure Borders, Safe Haven: Integration with Diversity in Britain.” In the foreword, Home Secretary David Blunkett stated that the aim was to formulate a modern, flexible, and coherent immigration policy. The policy would have two parts: the first would provide for rational and controlled routes for economic migration; and the second would provide fair but robust procedures for asylum. The message that they wanted out was that Britain is neither a “Fortress” nor open to abuse (through illegal immigration or false asylum seekers, the flow of which was now the second largest in Europe after Germany). He noted the misperception that the UK was not in line with the rest of the EU in how it dealt with illegal immigration and asylum seekers, which was partly due to its use of external rather than internal controls (UK Home Office 2002).

Around the time of the release of the White Paper, Prime Minister Tony Blair stated that the overall plan was to “regain the initiative” on asylum and immigration. He introduced the concept of “managed migration” to admit needed workers. The migrants were essential for a more flexible labor market that could respond to fluctuations on demand (“UK: Asylum, Labor” 2002). Rather than imposing a rigid and arbitrary quota, the government was to encourage migrants to work through this flexible system, designed to be *employer-led* and responsive to market needs (HM Government 2005, 15). In a press briefing, the prime minister’s official spokesman (PMOS) remarked that the *key to managed migration was flexibility and control*. Control was exercised, *inter alia*, via work permits (PMOS 2005). The

White Paper not only referred to flexible labor markets, but added full employment as the government's goal. For the labor unions, this was a welcome addition (UK Home Office 2002, para. 3.1).

As mentioned in Chapter 1, and in the words of former Foreign Secretary Robin Cook, the UK is a “champion of enlargement.” The UK consistently supported the early accession of the new members as soon as they were ready. The accession negotiations themselves were launched under the UK presidency of the EU in March 1998 (UK DTI, Information on the Enlargement). In December 2002, Foreign Secretary Jack Straw announced that the government would extend the same full rights to work in the UK as those enjoyed by existing EU citizens to the citizens of the new EU MS from the date of their planned accession on 1 May 2004. Mr. Straw said,

This decision is in the UK's interest. It will attract workers we need in key sectors and is *part of our managed migration agenda*. It will ensure they can work here without restrictions and not be a burden on the public purse. It makes sense financially, as we can focus resources on the real immigration problems, rather than trying to stop EU citizens enjoying normal EU rights. And it makes sense for UK citizens. Already thousands work in the future Member States under work permit systems. They and others will have full rights to work in the new Member States, free of controls.

There will be *safeguards*. These will *allow us to reintroduce restrictions* in the event of an unexpected threat to a region or sector in the labour markets. This is the right thing to do. The citizens of the new Member States should enjoy the same rights as British, French, German and other citizens within the EU, from the start of accession.

The decision to grant the full rights to work in the UK to the citizens of new Member States has been taken after careful analysis of successive independent studies which show *that there is unlikely to be a large influx of workers to the UK after accession*. [Italics mine.] (Foreign and Commonwealth Office [FCO] 2002)

A footnote to the announcement indicated that both the CBI and TUC showed support of the initiative.

A Home Office forecast analysis of 2003, the year before the accession of the new EU member countries, estimated 5,000 to 13,000 annual migrants to the UK. According to the forecast, even if Germany closed its borders, the figures would rise only slightly (Dustman et al. 2003, 58). These estimates were low compared to the total number of work permit holders that entered the UK in 1999 (53,500, not including EU nationals) (Dobson et al. 2001, 17) and the estimated over half-a-million vacant positions in the labor market. Nevertheless, the government was to impose a worker registration system to closely monitor the numbers of people coming to the UK from the CEEC and judge whether restrictions were necessary (UK DTI, FAQs).<sup>30</sup> Moreover, “benefit-shopping” was restricted. On the other hand, the PMOS stressed the importance for the public to understand that the UK was in need of skilled workers in fields like hospitality, catering, and agriculture. According to him, this was the reason the extension received support from the CBI and the TUC (PMOS 2004). It is worth noting in the context of this study that both interest groups were apparently singled out and consulted before the decision.

The PMOS made a distinction between a free market and an internal market. The free movement of workers within the EU was part of the latter. He said that in terms of macroeconomics, *the government supported the Internal Market and managed migration*, since they suited the UK economy (PMOS 2004). There seem to be a clear order of priority between the Internal Market and the free movement of labor and other immigration. In fact, employers are required to test the labor market in the UK and the EU before they are allowed to recruit from other countries.

All of this is evidence to support the hypothesis with regard to the economic motivations of the government in extending FMP rights to CEEC nationals. The government could address the labor shortage, while at the same time retaining the right to regulate immigration flow if needed—that is, combining flexibility and control. A year after the entry into force of the FMP extension, the unexpected flood of migrants that resulted was still welcomed and even encouraged as a result both of continuing labor shortages and of positive experience with CEEC nationals (Fuller, 2005).

With regard to the UK government position on GATS Mode 4, Nicholas Rollason, an involved solicitor, shared the insider’s knowledge that

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<sup>30</sup> These restrictions are in effect until the end of the transition period, 2011.

the United Kingdom had initially foreseen a dedicate track for GATS mode 4 entrants but found that it *lacked flexibility*, and had unsatisfactory results, with its effective use remaining limited. Moreover, the same objectives of the GATS mode 4 scheme could be attained via other means. The flexibility characterising the British system allowed, in fact, existing schemes to be adapted to changing needs. [Italics mine] (OECD 2004, 28)

In the summary of responses and government's reply to the DTI consultation on GATS in 2003, the DTI maintained that

[b]roadly speaking, responses were positive [to the Mode 4 request of other WTO Members]. The UK, where *Work Permits UK already operates a GATS visa system of sorts* and which has an extremely transparent system and website, *was therefore able largely to support the Mode 4 proposals from the Commission. The main concerns*, which did not emerge until the summer, after the EC had submitted its initial offer, *related to the impact on the UK's IT sector, where there is now a labour market surplus and the sector has now been removed from the UK's skills shortages list.* These concerns were, however, balanced by the views of business that such labour market changes are cyclical and that, in any event, the UK is one of the world's leading exporters of computer services. We were, however, already aware of labour sensitivities in this sector and reflected this in our approach to the EC's offer. [Italics mine.] (UK DTI 2003, 21)

We can see that although the government position was closely aligned with that of the EC, concerns about the rigidity of the commitment limited its willingness to make them. In practice, the UK bound fewer sectors than many other EU MS, among them France. One of the unbound sectors, reflected in the concerns cited above, was that of IT services. The fear was that changes in the labor market would occur after the binding of commitments. So although the GATS consultation documents do not explicitly state the lack of flexibility as the reason for low commitments, this motivation can quite clearly be read in, for example, the statement above.

In the initial consultation document, the DTI stated that it is not only the developing countries that have an interest in the liberalization of Mode 4: the developed countries do as

well. More specifically, these latter have a keen interest in being able to move qualified professionals internationally. The UK has expressed major export interests in professional services such as accountancy, law, architecture, and engineering. (UK DTI 2002, 57) The GATS negotiations provide a natural means to bargain for market access for service exports. All in all, the EU MS have made one of the most far-reaching, albeit very limited, offer on Mode 4 access to their markets.

Nevertheless, the UK Mode 4 offers are markedly distinct both from the unilateral schemes (for a comparative study, see Guild and Barth 1999, 395-415) and from the FMP within the European Economic Area. Apart from those differences mentioned above and in the Appendix, the most noteworthy is the difference in duration and scope between GATS Mode 4 and the unilateral/FMP scheme. Permits under the latter can be for up to five years and can be extended to permanent residency, and workers may change employers or even enter the country in order to seek a job. The former, in the case of “intra-corporate transferees” (managers and specialists), offers a maximum of three years, is nonextendable, and is limited to one employer. For “contractual service suppliers” and “independent professionals,” the cumulative duration is limited to six months in any twelve-month period. In addition, the sectors where workers are allowed to provide services are highly restricted and the contracts have to be pre-arranged. No such restrictions are generally to be found in the unilateral schemes or FMP (apart from public services, which are excluded in most cases). In addition, the skills levels required are high in Mode 4, whereas the other schemes include programs for all skills levels (even domestic maids can change employers and get permanent residency).

Even though the government maintains that GATS Mode 4 is integrated in their work permit system, it is mentioned only briefly in the White Paper and not at all in the HM Government agenda paper “Controlling our Borders: Making Migration Work for Britain” (Garnier 2001, 143-146; TUC 2002). The question of whether it is part of the labor migration policy or trade is clearly controversial, which keeps it out of the general discussion of managed migration. It thus remains hidden, a situation that raises the question of how aware employers and employees are of the agreements made. Although much information is available on the work permit system, it is harder to find anything at all on the GATS system.<sup>31</sup>

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<sup>31</sup> Current GATS Mode 4 information for employers wishing to apply for GATS permit can be found on the Work Permits UK site (Only under information for employers, otherwise no information exists. It does not

The CBI does not provide its members with any practical advice or links to GATS information on its website. If the agreement is not made operational, it is hardly likely to be used. Rollason's comment that a dedicated Mode 4 track had had "unsatisfactory results" with its effective use remaining limited could be explained perhaps by this lack of information. In any case, evidence reveals that GATS Mode 4 is quite clearly a low priority and a controversial issue.

As noted above, at the end of 2004, over half a million vacancies remained, a large proportion of which were in low-skills services. It is unlikely that these could be quickly filled even through the worldwide recruitment of GATS, especially as GATS is for short-term employment only. The solution therefore is not to be found within the general "labor-market protection" presumption, but will likely follow from the third hypothesis, here rephrased:

*Flexible labor markets with a lack of tight government internal control require the capacity of the state to flexibly regulate and control the flow of immigrants at the border. In times of economic growth and labor shortages, it is in the state's interest to welcome even large-scale, low-skilled labor immigration from regional integration partners, while maintaining flexibility and sovereign control over labor immigration from other sources.*

## **6. Conclusions**

The transnationalization of labor markets in this era of globalization has brought the issues of temporary and permanent labor migration on both a regional and global level to the forefront of the national political agenda. In the words of Saskia Sassen, "Economic globalization denationalizes national economies; in contrast, immigration is renationalizing politics" (Sassen 1996, 59). Governments acknowledge, for example, the need of companies to move personnel across borders to execute certain specialized tasks. To facilitate this, they have entered into regional or multilateral cooperation with other states, or simply allowed unilateral entry into their home markets. The latter is problematic as it guarantees one-way movement only. The former leads to the loss of external sovereignty in immigration matters. Both affect the internal sovereignty of a state.

The UK, among others, has been faced with the problem of how to find a suitable balance between the multilateral, regional, bilateral, and unilateral approaches to labor

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even appear as a search word.): [http://www.workingintheuk.gov.uk/working\\_in\\_the\\_uk/en/homepage/work\\_permits/applying\\_for\\_a\\_work/gats.html](http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/applying_for_a_work/gats.html)? Accessed on 18.12.2005.

migration, including the temporary movement of service suppliers. The UK has in general been a strong proponent of world trade liberalization, including services (of which it is the second largest exporter and fourth largest importer in the world), as well as of the European Internal Market. It would, therefore, have been expected that the UK would have taken a liberal stand on the movement of labor via both the multilateral and regional channels in the early twenty-first century, especially as it enjoyed the lowest unemployment levels in two decades and large skills and labor shortages as a result of strong economic growth. Nevertheless, whereas the UK did take a liberal stand at the regional EU level, allowing the entry of new EU citizens, it did not do so at the multilateral GATS level. Thereby, it partly diverged from the decisions of most other old EU Member States.

The positive state of the economy shaped the permissive condition for the three main domestic actors—labor, employers, and the state—to agree on the need for labor immigration. It did not, however, define who would decide (and with what criteria) the type of and channels for labor immigration. This research aimed to look into the additional preferences of these three affected actors in order to identify the domestic reasons for the apparently contradictory decisions on the two types and channels of labor migration.

As a conclusion of the research, it seems that the UK government realized what Saskia has claimed in another of her books: “Migrations do not simply happen. They are produced. And migrations do not involve just any possible combination of countries. They are patterned. Further, immigrant employment is patterned as well; immigrants rarely have the same occupational and industrial distribution as nationals in receiving countries” (Sassen 1999, 155). And if we accept the notion that “immigration is a bounded and differentiated process rather than a mass invasion from poor countries, then making immigration policy is more manageable” (Sassen). Prime Minister Blair expressed this thought in the government goal to “regain the initiative” on asylum and immigration. As part of that initiative, he introduced the concept of “*managed migration*” of labor. Although the seeds of the concept of migration policy were sown in the late Conservative government program, only at this time was it enabled by the economic and labor market situation and demanded by the flood of illegal immigrants and asylum seekers.

Managed migration was to be an application of the government’s neoliberal economic management policies. It extended the principle of flexible labor markets—embraced by the employers and accepted by the labor unions—to include first and foremost the enlarged

European labor markets (including the new accession countries). The needs of business demanded, however, a wider approach. The unilateral managed migration scheme is in practice employer-led but facilitated and administered by the Work Permit UK, which is part of Home Office UK. The scheme could therefore be said to be economics and business-led rather than politics-led, which is a shift from the earlier settlement migration policies based on foreign policy considerations, and even from those few rigid quota-based programs of the mid- and late-1990s.

Nevertheless, this policy furthers the overriding goal of the state to exercise legitimate power and control, as Simmons and Keohane have argued, by *inter alia* managing the immigration policy in such a way that the smooth running of the economy is guaranteed at all times. For the state, the overriding goal of the managed migration scheme is flexibility and control. The rigidity of the multilateral GATS commitments is not compatible with this goal, which explains the unwillingness of the UK government to make more far-reaching commitments. The FMP extension to CEEC nationals, on the other hand, suited the needs of the UK labor market at this time of shortages and was part of the Internal Market embraced by the UK. In any event, the government did not expect a large inflow of labor migrants, and reserved the right to regulate entry during the seven years allowed in case unemployment increased. It was thereby, as stated by Foreign Secretary Jack Straw, part of the government's managed migration agenda.

One scenario of the domestic politics model is that one interest group *de facto* takes over the decision making. This seems to be the case with regards to the managed migration scheme—in practice it is employer-led. Nevertheless, because the state and employers share similar economic goals and agree in general on the same neoliberal economic management principles (with the state naturally carrying additional concerns of high employment and distributional effects), distinguishing the actual power balance is difficult. With regards to the puzzle that is the focus of this research, the employers agreed with the government's decision to open up the borders to the CEEC nationals because it would fill vacancies, especially those in low-skilled positions. The managed migration scheme responds flexibly to the other foreign labor needs of the employers, especially to their need for long-term employees, diminishing pressure to make further commitments through the GATS Mode 4.

It is more surprising, however, that the labor unions supported the government's decisions. Traditional union objections to labor immigration, even in economically good

times, are related to wage and work-conditions—lowering pressures, job loss, as well as the use of temporary migration as a backdoor for permanent migration. But the labor unions favored the entry of CEEC nationals into the labor market and accepted the general managed migration agenda of the government. Therefore, these cannot be the reasons for the resistance to further GATS Mode 4 commitments. Based on the works of Avci and McDonald, and the earlier Haus, I suggested that the reason for union resistance to the temporary movement of service suppliers was precisely its temporary character. In the time of transnationalization of labor markets and the decreasing influence of labor unions, which is evidently the case in the UK, labor unions prefer permanent to temporary migration. Their aim is to increase their influence on the labor market by recruiting and representing migrant populations. This hypothesis was explicitly confirmed. However, the same weakening of the trade unions that the unions were trying to counter decreased their weight in the decision-making process. Even if not a decisive factor, though, their standpoint can be said to have been an enabling one, ensuring the societal consensus and calm. Both the CBI and the TUC were explicitly consulted in the government's decision-making process. Within the framework of this research, it is impossible to estimate what the case would have been if, for example, the labor unions had strongly opposed the extension of FMP to the CEEC nationals.

Evidence was found to support all three hypotheses. The shared objective of neoliberal economic management, including flexible labor (immigration) markets and thereby economic security, united the interests of both the state and employers and was accepted by labor. All three actors also shared in general the preference for long-term or permanent to temporary labor migration. In sum, the main argument of the research is that the policy choice related to the puzzle reflects the aim of the UK government to retain flexibility in and external sovereign control over labor immigration policies so that it could maintain flexible labor markets within the UK and the extended EU Internal Market, while getting the support for the policies from the two domestic societal actors, both for their own self-interested reasons.

The overall similar policy choices across Europe and other developed countries—that is, the preference for regional to multilateral, longer-term to temporary (under one year), and skill-based to nationality-based migrants—might be partly a reflection of the rephrased hypotheses presented here (in Chapter 5). We could expect to find support for these hypotheses in the Anglo-Saxon countries that have a neoliberal ideology similar to the UK and a higher economic growth in general than the Continental European countries.

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## Appendix:

### A Comparison of GATS Mode 4 and the Free Movement of Persons in the EC<sup>32</sup>

#### Scope

The GATS Mode 4 concerning the Free Movement of Natural Persons is defined to cover “the supply of a service by a service supplier of one [WTO] Member, through presence of natural persons of a Member in the territory of any other Member.” The Annex on Movement of Natural Persons specifies this to cover natural persons providing *services*<sup>33</sup> either in an employed or self-employed position. It excludes natural persons seeking access to the employment market of another Member as well as measures related to citizenship, residence, or employment on a permanent basis. Member States are allowed to control the entry into and temporary stay within their territory by, for example, issuing work permits or entry and residence visas,<sup>34</sup> as long as these measures do not nullify or impair the specific commitments made by that Member. The right to supply services under Mode 4 is, like the other Modes of GATS, subject to the specific horizontal or vertical (sector-specific) commitments made by the individual WTO Members.

The Free Movement of Persons (FMP) within the EC as stipulated in the EC Treaty and its subsequent amendments,<sup>35</sup> on the other hand, covers *workers* in all sectors be they employed or self-employed. In a similar manner to the GATS, the FMP does not cover employment in the public service. This free movement is enhanced by the right of establishment and right to provide and receive services. Apart from workers taking on an employment already offered, the FMP entitles people *seeking work* to reside in another MS for a reasonably long time (normally a maximum of six months) in order to enable them to actively seek employment.

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<sup>32</sup> This brief overview concentrating on labor movements is drawn upon the GATS Agreement as well as Weiss and Wooldridge (2002). For a comparative overview of the regional agreements on the movement of labor separate from or based on GATS, see OECD 2002a.

<sup>33</sup> Any services except services supplied in the exercise of governmental authority.

<sup>34</sup> Do not need to be required on a non-discriminatory basis. In the Uruguay Round commitments, seventeen developed (EU-12 counted as one) and developing countries issued MFN-exemptions to entry and residence visas and work permits. (Ghosh 1997, 111, 107. See also Carzaniga 2003, 23).

<sup>35</sup> The Single European Act, the Treaty of Maastricht, and the Treaty of Amsterdam.

### **Duration of Permissible Stay in another Member State**

“Temporary” is not defined in GATS, but most Special Commitments stipulate a three to twelve month period after which the service supplier is supposed to return to his country of origin. The stay of intracorporate transferees is generally limited to two to five years (Carzaniga 2003, 23).

FMP covers the job-seeking period, temporary and permanent employment, as well as the entitlement to change the place or mode of employment. Moreover, granted that the employee fulfills certain criteria, he is permitted to reside in the country even after the (permanent) employment has finished.

### **Family Members**

Family members are not covered by the GATS.

Under the FMP, family members of a migrant worker, irrespective of their nationality, have the right to enter and reside with the worker as well as take up employment. If the worker is permitted to remain after employment, so is his/her family (if certain criteria is fulfilled), even in case of his/her death or divorce. The children, and in certain cases the worker and other family members, have the right to education and training.

### **National Treatment**

Under the GATS, national treatment—that is, nondiscrimination based on nationality and thereby equal opportunity to compete—should be granted to service suppliers of all WTO MS unless specifically limited in the special commitments of a MS. The limitations may include discriminatory subsidies or taxes, residency requirements, work permits, etc. One clear *de facto* limitation, especially in regulated service sectors, is the nonrecognition of education or other qualifications that the service supplier has acquired abroad. Article VII aims to amend this problem by encouraging autonomous recognition or mutual recognition agreements, requiring that the parties give opportunity for any WTO Member to demonstrate that their certifications qualify for recognition. Nevertheless, in practice, most of the few Mutual Recognition Agreements notified to WTO are done so under Article V (Economic Integration), thus circumventing the MFN-principle of Article VII. The EU MS Doha round first offer, for instance, explicitly states that “EC directives on mutual recognition of diplomas do not apply to nationals of third countries. The right to practice a regulated professional

service in one Member State does not grant the right to practice in another Member State” (WTO 2003).

FMP prohibits both direct and indirect discrimination based on nationality.<sup>36</sup> The EEC regulations extend the same rights and obligations to those residing in a MS territory as to their nationals. That includes social security, apart from social or medical assistance. As stated above, the EU MS have agreed on a mutual recognition of diplomas. However, there are still many practical obstacles relating to it (for example, with regard to the IT sector).

### **Competence of the EC and the EU Member States**

The EU MS have a shared competence with the EC in relation to certain Internal Market service sector matters, such as domestic regulation of professional qualifications. Likewise, they have shared competence in service sector matters in the Common Commercial Policy of the EU. Thereby they are direct members of the GATS agreement and free to negotiate bilateral agreements with other WTO members or even non-WTO members. However, the EU MS coordinate their GATS offers with the Commission, who then presents the combined proposal to the GATS. In contrast, in GATT matters the EC has exclusive competence to negotiate on behalf of the EU MS (Langhammer 2005, 311-325 and Leal-Arcas 2003, 3-14).

The FMP within the EC is stipulated in the EC Treaty and its subsequent amendments, as mentioned earlier. It is part of the Single Market, which belongs to the First Pillar of the Maastricht Treaty. The Court, the Commission, the Council, and the European Parliament exercise their normal competencies with regard to regulations and directives.

The Amsterdam Treaty brought asylum, immigration, external border controls, and judicial cooperation in civil matters under Pillar I from its original place in Pillar III. The UK, Ireland, and Denmark decided to opt out from this Title IV as well as from the Schengen agreement, which aims for the gradual elimination of intra-Schengen area border controls for nationals of the Schengen countries.

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<sup>36</sup> The Right of Movement for Third Country Nationals staying in one EC MS is limited. See Ch. 9 in Weiss and Wooldridge (2002) for elaboration of the issue.

## **FMP and the Eastern Enlargement of the European Union**

The right to the FMP was extended in an unrestricted manner to only two new Mediterranean Members of the EU: Cyprus and Malta. The other new MS were subjected to transitory restrictions on the movement of their labor to the EU15, varying by recipient (and even by sending) country. The initial transitory period is two years, but the EU15 countries have the right to extend it by another five years. Only Sweden decided to grant unlimited access to its labor markets.

This has resulted in four different labor market regimes applied in EU15 towards the new Eastern Members since their accession date of 1 May 2004:

- Restrictive, equal to non-EEA citizen treatment (Belgium, Finland, Germany, Greece, France, Luxembourg, and Spain).
- Restrictive, access according to quotas (Austria, Italy, the Netherlands, Portugal).
- General labor access with limited welfare benefits (Ireland, UK).
- No restrictions (Sweden). (Traser 2005)<sup>37</sup>

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<sup>37</sup> For individual national measures referring to migrant workers from the individual Eastern European countries, see also the EURES portal on (<http://europa.eu.int/eures/index.jsp>).