ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

EMPLOYMENT AND BUSINESS RELATED IMMIGRATION

Responses to the Questions raised at the ILPA Seminar on Thursday, 26th November 1998

at the offices of
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Mitre House, 160 Aldersgate Street, London, EC1A 4DD

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PANEL OF SPEAKERS

Representatives from the Department for Education and Employment

Roy Saxby	Senior Policy Manager
Steve Lamb	Senior Manager, Business & Commercial
Campbell Gilmore	Senior Manager, TWES, Sports & Entertainment

Representatives from the Home Office, Policy Section

Graham Hopkins	Immigration & Nationality Directorate
Clinton Nield	Executive Officer, Business Group
Peter Fisher	Executive Officer, Business Group
Debbie Kemp	Executive Officer, Immigration & Nationality Policy Directorate

Co-Chairs

Karen Sturtivant	Sturtivant & Co
Laura Devine	Eversheds
Julia Onslow-Cole	Cameron McKenna

Observers from the Department for Education and Employment

Sue Taylor	Sue Haynes
Jim Martin	Norma Campbell
Barry Joy	Ann Duncan

UPDATE FROM THE DEPARTMENT FOR EDUCATION & EMPLOYMENT

Roy Saxby from the Department for Education & Employment ("DfEE") introduced himself and his fellow representatives from the DfEE, Campbell Gilmore and Steve Lamb.

Roy Saxby confirmed that the DfEE have undergone a tremendous period of development in the last year and referred in particular to a recent set of presentations which had taken place to launch the DfEE's Website on the Internet. Roy Saxby confirmed that the new work permit application forms were working well and the DfEE have had another year of substantial growth. There had been a tremendous increase in the volume of applications, particularly on the business side. The DfEE had also experienced a considerable turnover of staff in recent months and this has had a detrimental effect upon the DfEE being unable to meet deadlines. There has been, however, an unprecedented period of growth whereby they received almost 70,000 applications in the last year. This represented a 10-15% increase with a higher level being on the business side.

Roy Saxby confirmed that the big news this year, however, had been the publishing of the new application forms and guidance notes on the Internet. There was now on-line guidance and the facility to download the application forms. He confirmed that the DfEE received approximately 40% of their applications on downloaded forms, therefore evidencing the wide-spread use of the Website. He also confirmed that there had been some 5,000 "hits" on the DfEE Website in the last two months.

Roy Saxby went on to confirm that the first stage in this new period of development had been the launch of the business & commercial application forms. The application forms in relation to Training & Work Experience Scheme, together with the application forms for Sportsmen & Entertainers, were in their final stages and should be available before Christmas. The official launch date however was 4th January 1999.

Once this last set of forms had been finalised, the DfEE were looking forward to a decline in general queries, due to the clarity of the new forms and their accompanying guidance notes.

UPDATE FROM THE HOME OFFICE

Graham Hopkins of the Immigration & Nationality Directorate introduced his fellow colleagues, Debbie Kemp from Policy and Clinton Nield and Peter Fisher from the Business Group. Graham Hopkins had recently taken over from Colin Birt and confirmed he was feeling very new to the position.

He confirmed that the most significant development which had a major effect on work at the Home Office was the recent publication of the Government's White Paper. In addition, the Immigration & Asylum Bill had been introduced during the Queen's Speech during the opening of Parliament earlier in November.

The Home Office were experiencing a current depletion in their expertise due to a turnover of staff and in particular, the Policy Section currently consisted of Debbie Kemp and himself.

Finally, Graham Hopkins confirmed that the Home Office was about to undergo a significant re-organisation of their administrative arrangements and that various issues in relation to these would be dealt with in further detail in answering questions 1-4 below.

Questions from ILPA members

Re-organisation at the Home Office

Q1. It is now possible to e-mail the Business Teams at the Department for Education and Employment ("DfEE") with enquiries. Are there any plans for the Home Office caseworking groups to be contactable by e-mail?

A1. Clinton Nield of the Business Group at the Home Office confirmed that there were currently no plans to launch a website at the Home Office. The only e-mail that would be available would be within the Integrated Caseworking Directorate ("ICD"). This would deal with all asylum/EC Directorate/After Entry & Appeals Directorate and part enforcement applications.

As of 7th December 1998, the ICD would have new telephone numbers and upon request, the Home Office representatives agreed to consider distributing a list to both ILPA members and seminar attenDfEEs.

Clinton confirmed that as part of the new re-organisation, all queries would go to the Immigration & Nationality Enquiry Bureau and <u>not</u> direct to the Caseworkers.

Q2. What will happen when Group 21, the specialist business group at the Home Office, is disbanded. Please explain and discuss.

A2. In the Integrated Caseworking Directorate cases formerly dealt with by Group 21 would be allocated via the Case Allocation Unit to persons in the Case Management Units, qualified to deal with such applications. As staff skills within the Units are developed, a large amount of caseworkers would be allocated cases which would have previously fallen under the Business Group remit and this would, in time, increase IND's effectiveness in dealing with these applications. Therefore, this should lead to a larger number of caseworkers dealing with the cases, thereby reducing the time frame.

One delegate was particularly concerned that following the disbanding of Group 21, caseworkers would be absorbed as mentors and also dealing with other categories of applications outside the ambit of their expertise.

Clinton Nield confirmed that whilst most of his expertise was in dealing with business applications, he hoped that as time went on, he could also consider other types of caseloads. This would clearly be dependant upon demand but he did not feel that this would in any way water down his expertise.

Q3. Will the integrated caseworking groups have any targets in which to deal with business applications?

A3. Clinton Nield confirmed that whilst there would not be any targets as such, all applications business or otherwise would be dealt with as quickly as possible. However, certain applications could be processed more quickly and investor applications were always dealt with as a priority. In time, it was hoped that the backlog would clear. Clinton Nield was further asked to explain how individuals would train others within the new Integrated Caseworking Directorate and he explained that a skilled caseworker would mentor others within his new team. As that progressed, more and more caseworkers would develop expertise within the new area.

A further question leading on from this was whether the new groups would be prioritising business work or any other cases. Clinton Nield confirmed that this was not intended and that cases would be prioritised in accordance with their needs. For example, if there were two business applications, an investor application and a judicial review, it is likely that the judicial review would be dealt with first. Depending on the type of case, priority would then filter down to where, for example, a client needed to travel urgently or if the sum of investment was very high. Clinton confirmed that it was the practitioners' responsibility to stress the level of priority required in considering the application.

Susan Rowlands, the General Secretary of ILPA, explained to the Home Office that she was very concerned at the thought of cases being put into "storage". She had also been trying to obtain an explanation of the general re-organisation at the Home Office and how it would be administered and felt that in general, there was a great hiatus. She then went on to refer to the letter which Mike O'Brien had written to various MPs and other individuals asking that they do not contact the Home Office or any of the caseworkers for some time, allowing them to deal with the reorganisation and their backlog. Susan Rowlands pleaded for the new phone numbers and details of the new caseworking sections to be distributed and was instructed to address her concerns and any questions to Russell Yates at the Home Office.

Graham Hopkins was familiar with this letter written by Mike O'Brien and confirmed that there would be a publicity campaign setting out the reorganisation at the Home Office. Susan Rowlands however felt this was too late.

Clinton Nield went on to further describe the new administration at the Home Office and confirmed that the new building where caseworkers would be transferred would not have the facility for holding files and therefore it was unlikely that a caseworker will be able to lay his/her hands on the file following a general enquiry from the practitioners. The Telephone Enquiry Bureau which dealt with enquiries, should be the first point of contact for all practitioners. It is envisaged that the process involved would be that the case would be sent, following receipt, to the Initial Consideration Unit ("ICU"). More complex cases would be allocated to the Case Management Unit ("CMU"). However, in the interim, these cases would be transferred to the Case Allocation Unit ("CAU") where it would remain until a caseworker made a request for a number of new cases.

Q4. What will happen to the existing queues of business applications when these are hived off to integrated caseworking groups?

A4. **Group 21 backlogs, as with all parts of IND would, with the closure of the unit, be placed in the Work In Progress Store. These cases would then be filtered via the CAU to qualified caseworkers as and when demand for these cases arose.**

Clinton Nield confirmed that cases would not be transferred with the caseworkers currently working within Group 21 and there was currently no timescale of how the filtering would work. All casework not dealt with by the time Group 21 closed, would be transferred to the Work In Progress Store.

Karen Sturtivant enquired as to what would happen, for example, to those cases that required a travel extension to cover an individual through this transitional period. Clinton advised that any applications received after 4th December 1998, should stress the need to travel within the application and request a travel extension by a specific date. The travel extension application would be dealt with by the ICU but it should always be remembered that the travel extension is discretionary approval of leave and not an automatic right.

Clinton Nield confirmed that Group 21 were currently hoping to deal with all sole representative and investor applications prior to 4th December 1998 as they were also trying to clear the backlog of applications made under paragraphs 200-210 of the Immigration Rules. All other cases currently in the queue were likely to be put into storage.

Students

Q5. In what circumstances would the Home Office consider a student switching status to a work permit holder? We have in mind a 28 year old mature student who studied abroad, came to England to further her studies and during that period of time and with the approval of the local job centre, carried out vacation work enhancing her skills. She has now been offered a job by a UK employer where advertising over a period has been unsuccessful?

A5. **Debbie Kemp of the Home Office confirmed that all cases were looked at on an individual basis. There was no provision within the Immigration Rules to allow an individual to switch into work permit employment if they were already here in another capacity. However, if an application for an individual was submitted and a permit approved by the Overseas Labour Service, the Home Office would consider granting leave to remain in line, having taken into account all the pertinent factors.**

In the event that the Overseas Labour Service did approve such an application, this would be on an exceptional basis and would be considered persuasive by the Home Office.

Q6. What is the rationale of the Rule that spouses of students are not allowed to work if the period of leave granted to the student is less than 12 months?

A6. **Debbie Kemp confirmed that Nicola Hurn of Section 4 of the Policy Directorate provided an answer to this question:**

"The rationale for the prohibition on employment for the spouse of a student where less than 12 months' leave is granted to the student is that to permit them to engage in employment would undermine the work permit regulations and, hence be likely to deprive UK residents of employment opportunities, otherwise available to them. The requirements of paragraph 76 of HC395, including those relating to maintenance and accommodation, have of course to be met whatever period of leave is being granted.

We allow the spouses of students to work when leave of 12 months or more is granted because, despite the above considerations, it would be unreasonable to expect them to interrupt their working life and refrain from engaging in any employment for such extended periods."

TWES

Q7. When will new TWES application forms be available?

A7. **It was hoped by the DfEE that the new TWES forms and revised guidance notes, together with the revised forms and guidance notes for applications for Sportsmen & Entertainers would be available from 4th January 1999. The DfEE intended to hold presentations in late January 1999 for both sets of revised guidance notes and the new forms. The DfEE confirmed that such presentations also provided an opportunity for practitioners to meet the teams involved in processing these applications. These presentations were likely to be held in both London and Sheffield.**

Q8. In what exceptional circumstances would the DfEE consider granting a further extension which would exceed the period originally requested in a work experience permit but total less than 24 months in aggregate. Are there any circumstances whereby a work experience permit may be extended beyond 24 months?

A8. **The DfEE confirmed that it was impossible to define "exceptional circumstances". All cases were considered on a case by case basis. They confirmed that, at the time of making a TWES permit application the employer was expected to present a well thought out planned programme. The DfEE were therefore slightly sceptical of any extension application. However, the DfEE did accept, for example, where an individual supervisor may have been ill and therefore not provided the overseas national with the necessary experience.**

Where a work experience permit is requested beyond 24 months, the DfEE referred the delegates of the seminar to paragraph 119(iv) of the Immigration Rules. This clearly set the limit to this category thereby tying the DfEE down to a maximum period of 24 months. However, they have had a recent application where an individual needed to return home for compassionate reasons for 3 months. In this instance, the DfEE stopped the clock, allowing the overseas national to return home and re-started the clock upon their return to the UK. If, during the course of a period of work experience, the individual for example fell ill, the DfEE may grant an extension to accommodate the full period of training. They did however, have reservations in doing this if this would present any difficulties at the Home Office.

Debbie Kemp of the Home Office confirmed that if the permit had been approved by the DfEE, it was unlikely that the Home Office would obstruct this further.

Work Permit Applications

Q9. To what extent are Ministers involved in making decisions on individual work permit applications?

A9. Steve Lamb of the DfEE confirmed that there were instances where ministers did become quite involved. Generally, however, the running of the Overseas Labour Service was left to respective sections on a day to day basis. Steve Lamb confirmed that the Secretary of State, David Blunkett, had overall responsibility for the DfEE but in practice, they dealt mostly with Margaret Hodge, the Lead Minister. Some issues overlapped with various governmental departments and the DfEE regularly had meetings with these departments.

The Trade Secretary, Peter Mandelson, had a particular interest in accelerating competitiveness in business, as did most ministers.

Q10. Can you give a more detailed definition of the third category of the work permit scheme's occupational skills criteria (the job must need high level technical or similar skills and substantial relevant specialised experience). What is the essential distinction between such workers and keyworkers?

A10. Roy Saxby confirmed that there was clearly a third category of the Work Permit Scheme. He confirmed that the first category was in relation to a graduate, plus; the second category dealt particularly with senior executives who had directly relevant experience but no degree; the third category was intended to cover those qualifications below degree level where the individual's experience more than compensated for their lack of degree. Therefore, these individuals were just as skilled and ought to qualify as someone doing a job akin to a graduate. This should be compared with key

workers, who tended not to have any academic qualifications, thereby having lower level skills.

Karen Sturtivant asked the DfEE whether they would differentiate in making a person with no qualifications but paid at a high level a key worker or consider their application under the main scheme?

Roy Saxby confirmed that if the individual was sufficiently senior in responsibility and still above the normal level expected of key workers, it was likely that such a person may well qualify for a work permit under the third category. They would, however, need to demonstrate their experience and expertise. Roy Saxby admitted that perhaps the category stating that it required a high level of technical or similar skills was misleading and perhaps should be re-visited.

Laura Devine asked the DfEE whether they would be prepared to be more lenient in relation to extensions for key workers.

Steve Lamb confirmed that things had moved on since the changes of October 1991. The category for key worker was aimed at covering the circumstances where an individual learned skills on the job. Once the maximum period of 3 years' was reached, there was normally a period of 12 months granted when justification was provided. This could occur, for example, in the hotel and catering industry and the DfEE were intending to make this scheme more practical to meet the needs of businesses in the UK.

Q11. Are any concessions made when considering work permit applications for senior academic staff at universities?

A11. It was confirmed that post-graduate work could be taken into account but its rationale was for 12 months to run permit-free and at that point to apply for an extension. There were very few individuals who qualified under this category and the DfEE would explore the issue further on a case by case basis.

Karen Sturtivant provided an example of research workers who perhaps had both a Masters Degree and PhD. Steve Lamb confirmed that in relation to research, usually where the individual had secured funding on the basis of this research, they would not encounter difficulties as the DfEE would try to take practical and commercial issues into consideration.

Q12. Describe the mechanics of the DfEE test check system.

A12. Steve Lamb confirmed that he had heard practitioners regularly querying the DfEE test check list. In essence, this was an internal quality requirement where a senior officer of the DfEE was required to endorse the application at a different level. Normally where a case was considered by an Executive Officer, the application had to go to a higher level for endorsement. Other

applications were quality checked and amounted to very few, relatively speaking.

Q13. Why does form WP1 ask how many employees are present in the UK? Why are details of allowances required?

A13. Roy Saxby confirmed that the DfEE required details of employers with under 20 individuals so that they may obtain an understanding of the nature of the application. This provided the DfEE with the context into which the applicant fitted within the organisation as a work permit holder.

With regard to any allowances that may be provided to the individual it was very important that the DfEE were satisfied that the basic salary was reflective of the position that the individual would be undertaking. Therefore, the DfEE subtract any allowances in order to ascertain an exact figure for the basic salary.

Laura Devine enquired whether the DfEE would discriminate against employers who had comparatively more work permit holders and Roy Saxby confirmed that they would not. The DfEE may need to look more closely at the need to employ a person who requires a work permit where, for example, a company only had one other employee, yet despite such a small corporate structure, wanted to employ a non-EEA national.

Q14. Does the DfEE always limit the period of approval in cases where the worker is joining a newly established firm? Does this cause problems at Immigration Control in view of the Immigration Rule requirement that a person in possession of a work permit which is valid for a period of 12 months or less intends to leave the UK at the end of the approved employment?

A14. The DfEE confirmed that they did always limit the period of approval in cases where the worker was joining a newly established firm. This was limited to 18 months which was considered to be a reasonable time frame in which the newly established company could produce accounts and trading records, etc. The DfEE felt that it would be unrealistic to require these documents within a shorter time period. There may be occasions where a shorter period was granted by the DfEE but this was unlikely.

Q34. Do the DfEE and the Home Office intend liaising with each other in relation to business applications that do not fall squarely within the Rules, often because of the applicant's shareholding? It has been commented that the Immigration Rules are archaic and exclude a large number of businesses that would provide a benefit to the UK. Is there any review of such applications anticipated?

A34. In answer to question 34, the Home Office felt that where an individual was employed by an UK company, then they should apply to the DfEE.

Karen Sturtivant interjected by stating that the Immigration Rules had not kept pace with changes in business structures and practitioners often encountered individuals who did not fall within the category of "employee" or "entrepreneur", such as a small business importing an individual who in turn had a stake in the company.

Steve Lamb confirmed that the nature of the relationship between the individual and the UK company needed to be considered. The DfEE recognised that for people to come to the UK with a small shareholding which did not affect the employee relationship, this should not present difficulties. There was, however, a grey area as one moved away from single digit shareholdings. Julia Onslow-Cole said that during consultation with the DfEE and practitioners prior to the issue of the new work permit forms and guidance notes, there had been extensive discussions about giving stronger guidance on the amount of shares held by an individual. Roy Saxby confirmed that he had no real answer for this.

Karen Sturtivant also provided the example of a person who was prepared to transfer shares to the equitable owner, thereby frustrating the original intention. Steve Lamb confirmed that the DfEE always tried to accommodate various circumstances. Beneficial ownership was looked at where shares had been transferred to the wife or another individual and the DfEE had access to additional information. They wanted people to be honest. Roy Saxby confirmed that defining a level of shareholding which would be acceptable would probably cause as many problems as it would solve.

Julia Onslow-Cole said she felt that the form did not make this issue clear. Roy Saxby said this was a very valid point and welcomed views to be submitted to the DfEE, particularly via ILPA. He went on to confirm that certain governmental ministers had stated how such circumstances should be accommodated in order to encourage further investment in the UK but the DfEE had a problem of how to implement this. They felt therefore that perhaps the new form did not achieve what it had intended to.

The DfEE and Home Office were asked how they would deal with an individual who had perhaps 30%, 40% or 50% of the shares in a company and was unlikely to obtain a work permit despite his investment, not exceeding £200,000 plus and they confirmed that they would consider this issue further.

The Home Office confirmed that with cases that did not comply with the work permit scheme, liaison between themselves and the DfEE did not take place on a regular basis. The DfEE dealt with applicants who were to be employed by UK companies; those who owned businesses must enter the UK under the Business Rules or as an Investor. With regard to amendment of Business Rules, no current provisions applied. However, positive suggestions would always be given due consideration.

Karen Sturtivant invited the Home Office to take a point away in the light of what would be "good for Britain". It was requested that the Home Office

developed a new category to accommodate these individuals that did not qualify under the work permit scheme but likewise did not qualify as a businessman because of their shareholding of approximately 10-15%.

Q15. Do Immigration Officers usually admit without difficulty prospective workers coming to make domestic arrangements whilst the work permit application is under consideration?

A15. Again, the representatives from the Home Office confirmed that they had consulted a colleague on this point. He had confirmed that provided the immigration officer was satisfied that the individual met the requirements of the rules as a visitor, and was only coming to the UK to make arrangements, for example to look at property and indicated that he intended to leave at the end of the visit to await the outcome of the work permit application, he should normally be admitted without difficulties as a visitor. However, it was pointed out that the Home Office were concerned that in doing so, the prospective worker was assuming that his work permit application would be granted.

It was stressed that this was a separate issue from the Immigration Rules that state a visitor cannot switch to the status of a work permit holder in-country. The rules were clear and it should be remembered that when coming to the UK as a visitor, there must be an intention to leave at the end of a visit. To then subsequently apply to switch would be totally contrary to the original intention required of a visitor.

Q16. Do the DfEE make additional checks in cases where a person qualifies under the Tier 1 arrangement but is in the UK at the time of application, or has had a TWES permit in the last two years or a career development permit in the last six months?

A16. Where a person was seeking to obtain a work permit within 2 years of completing a TWES permit or within 6 months of a career development permit, they would not normally satisfy the skills criteria for a new permit. If they did so before starting the period under a TWES or career development, the DfEE would consider the application on its merits.

Q17. Mr O owns OLS Holdings Inc which in turn owns OLS Trading Inc, a US company and OLS Trading Ltd, a UK company. Mr O has no difficulty transferring workers from 'Inc' to 'Ltd' on inter company transfers (ICT) work permits.

Mr I on the other hand, started IND Trading Inc and built up an excellent reputation for visa services. He decided to develop the business by setting up IND Trading Ltd in the UK to carry on the same business here so he then wanted to transfer his systems experts from the USA as ICTs, but work permits were refused, on the grounds that 'Inc' and 'Ltd were not linked by common ownership in the way required under the work permit scheme. Please justify.

A17. **Karen Sturtivant had provided this question and sought to clarify it further by confirming that it related to intracompany transfers and confirmed that one instance provided an example of two companies linked by a holding company held by an individual compared with two companies not linked by a holding company.**

Steve Lamb confirmed that the DfEE applied the criteria to companies and not individuals and the question of common ownership had different interpretations. If companies had common share ownership, then this did not present any difficulties. The DfEE asked itself whether the companies operated as a global structure when dealing with such applications.

Q18. The DfEE regularly issue work permits in respect of people present in the UK on a preliminary visit. The person then exits and re-enters smoothly. However, if the visit (or a previous visit) was in progress when the work permit application was signed and lodged, the no switching provisions of the Immigration Rules mean that (as a result of Q9 form WP1) no work permit is issued, but an approval letter instead. When then the person departs it can take weeks, always an uncertain period of time, and it involves unnecessary duplication of work, to have a work permit printed. Surely however work permits as such could be printed in all cases but just heavily overprinted eg 'NOT VALID UNLESS ENDORSED BY UK IMMIGRATION OFFICER ON ENTRY OR BY IND'. Please consider.

A18. **This question was put to both the Home Office and the DfEE. Steve Lamb confirmed that the DfEE needed to know if a person was in the UK and if they were informed that the individual intended to travel, they aimed to accommodate this. They enquired where the person was at the time of the decision to approve the application. He also went on to confirm that letters of permission were not defined in law as had been proven in various judicial review cases in the High Court.**

Representatives from the Home Office confirmed that they needed to discuss this issue further with their colleagues.

Q19. Do the DfEE have a policy in relation to consultants from abroad coming to the UK to do productive work for several short periods, but never for a continuous period? Would they be prepared nevertheless to issue the permit for 48 months or is a separate application required each time? Further, due to the short term and urgent way in which consultants are required in the UK, if the DfEE cannot create a fast stream to deal with these applications, is it possible for short project management to be undertaken by business visitors? How can this problem be resolved to reflect the reality - that many overseas nationals coming on short term consultancy work for their overseas employer (a global company offering a global service), simply do come to the UK as a business visitor, regardless of the law and very rarely experience any difficulty?

A19. **The DfEE issued work permits to people who regularly worked in the UK over a period of time. Some of their work sometimes involved working on the Continent and there was a tendency to issue a work permit for approximately one year. There was no policy as such but they tried to accommodate working practices. Therefore, where there were regular substantial visits for working purposes, a work permit should be applied for.**

The DfEE confirmed that they would be interested to receive proposals from ILPA if this sort of practice was likely to be a regular feature. They may consider incorporating it into the current work permit scheme. To be practical, the DfEE sought to meet business needs but these needed to be justified. The confirmed that they would be receptive to a fast-track system in principle, to avoid, for example, ten applications for one person to cover a period of 5 months.

As far as the Home Office were concerned, if the purpose of the visit was not as a business visitor, or where practitioners were in doubt, they should speak to the Home Office. Where any individual was carrying out productive work in the UK, he would require a work permit.

In relation to visa nationals, the Home Office confirmed that the ECO may decide not to issue a visa to an individual as a business visitor.
Clinton Nield confirmed that an easy way of defining a business visitor was to look at how much time the individual spent in the UK. If the amount of time spent in the UK was high, this was likely to be considered to be productive work in the UK, regardless of how or where the individual was paid and therefore, not able to qualify under the rules for a business visitor. It should be noted however that the position would be different if a consultant was self-employed as opposed to being employed. Self-employment does not qualify for a work permit and the relationship between the employee and employer needed to be carefully considered.

Q20. The guidance for employers WP1 (Notes) states (page 1) a 'resident worker' is defined as a person who is a national of an EEA Member state or has settled status within the meaning of the Immigration Act 1971'. This definition excludes some people who are free to work in the UK without the need for a work permit. Some such people do not have an open-end right to work in the UK so their exclusion is understandable but there are some who do have such a right, for example, Commonwealth nationals holding a certificate of entitlement certifying that the holder has the right of abode in the UK. Can the DfEE justify the exclusion of such a group from the definition 'resident worker'? Can the DfEE justify the exclusion of family members of EEA nationals holding a current right of UK residence?

A20. **"Resident Worker" was defined in the Work Permit Guidance Notes. The spouse of an EEA national in the UK with a family permit and therefore free to work was not apparently in competition with foreign workers seeking a work permit.**

Roy Saxby confirmed that the idea of this definition was to clarify all individuals to whom it related. He accepted that many non-EEA nationals were able to work freely and it was the intention of the DfEE to look at the interests of the work force. If, however, it would be helpful to revise the definition in the guidance notes, the DfEE would be prepared to do so but confirmed that they were looking at a general type of person for whom they received applications. They did not however mean to exclude groups of people.

Q21. Where the DfEE waive the normal requirement for conventional recruitment advertising in the national press, it seems that there is still an absolute reluctance to accept arguments put forward by an employer, no matter how compelling, and that third party corroboration of the employer's assertion of non-availability of resident labour is nowadays invariably sought. Is it definite policy that the DfEE will not accept reasoning and always requires a piece of paper? Is the reason for this to comply with the DfEE audit procedures?

A21. Steve Lamb confirmed that a balance had to be struck. If no-one with the required skills could be identified and reasonable arguments were presented as to why there were little benefits in advertising, the DfEE would always try to consider these arguments. Sometimes, however, third party evidence was required. The DfEE did not want to promote a climate of bureaucracy and wanted to encourage effective consideration of all cases. Their prime concern was flexibility at all levels.

Q22. Paragraph 9 of WP1 (Notes) states 'we do not normally (sic) count experience which is gained through working illegally in the UK....'. Can the DfEE give examples of situations where they would count experience gained through working illegally here?

A22. The DfEE were not aware of any situation where this had or would be done.

Q23. The UK Government is obviously concerned about the effect the "Millennium Bug" will have on business in the UK and are actively encouraging both small and large businesses to attend to this as a matter of urgency, by highlighting the dangers via an advertising campaign and, at one stage, suggesting taking action against those firms who choose to ignore the warnings. The IT industry has for some time been telling the DfEE that there is an acute shortage of suitably qualified IT personnel in the UK, leaving very limited resources available to take care of the extra work involved in the Year 2000 project. Given the fact that there is now only 13 months left in which to address these serious problems, do the DfEE have any plans to add IT personnel to the official shortage occupations list?

A23. Roy Saxby confirmed that there was difficulty in the internal information available as to where the shortages lay. They were currently trying to get a fuller picture via surveys carried out by professional bodies as to whether actual shortages existed and to identify particular areas of shortage by

assessing this information received. The problem lay, however, in its application and also in view of rapid market changes where it was difficult to identify shortage in specific areas.

Q24. Could the DfEE provide an explanation of the GATS Agreement and how this operates in practice?

A24. Campbell Gilmore confirmed that the GATS application form and guidance notes were available, which set out full background information, together with details on procedure in relation to these applications. (see appendix for copy form and guidance notes).

To provide further additional background of this concession, he referred to the document published by the Department of Trade & Industry entitled "Liberalising Trade in Services - a Consultative Document on the 'GATS 2000' negotiations in the World Trade Organisation and forthcoming bilateral negotiations". This document set out that between now and the end of 1999, the Government would be preparing for detailed negotiations to liberalise trade in services between European Communities and other countries around the World.

Campbell Gilmore confirmed that he had helped DTI colleagues to forge UK interests to win UK business and investment in the UK. A number of concessions were subsequently introduced and everybody expected an upsurge in applications. Campbell Gilmore confirmed that in the last 2 years his department had received one application which was rejected under the GATS Concession but the permit was issued nevertheless. The concession was within the normal work permit rules and enabled persons whose employer did not have a commercial presence in the European Union to transfer employees to the UK for a maximum of 3 months in any one year.

It was confirmed during the course of the seminar that all delegates would be provided with a full copy of this DTI document.

Q25. Given the shift away from traditional style restaurants in the UK and the emergence of what may loosely be described as "nouvelle cuisine/modern European" type establishments, are the DfEE intending to update their requirements under the key worker category for catering staff, especially head/second chefs?

A25. The DfEE have made some changes to the guidance for keyworker hotel and catering staff to reflect the growth of specialist and ethnic cuisine. The DfEE undertook to continue to review this in the light of feed-back from customers and labour market changes.

Sole Representatives

Q26. How much cross reference exists between the Home Office and other governmental institutions when a businessman is applying for ILR. For example, a sole representative is providing advice on a consultancy basis on behalf of the company, but for some reason has been classified by the Inland Revenue as 'self-employed' despite it clearly being an employee of the overseas company. When this individual subsequently applies for ILR, will the fact that he has been classified as self-employed detrimentally affect his ability to demonstrate that he has been 'employed' as a sole representative?

A26. A sole representative should not be perceived in any instance to be offering consultancy or other services as a self-employed person. They must be a direct employee of an existing overseas company and, having established its registered branch or wholly owned subsidiary, should be classified as an employee. Any services provided were therefore provided by the UK registered branch or wholly owned subsidiary and not the individual concerned. Should the Inland Revenue feel that a particular working arrangement constituted self-employment this would necessitate further investigation of the circumstances of the case, given that the Immigration Rules required exclusive employment.

In such circumstances, the Home Office would investigate the case more fully and if they were satisfied that the individual was self-employed, they would also investigate how he obtained self-employment status from the Inland Revenue. Sole representatives must be exclusively employed. In addition, the Home Office would liaise with the Inland Revenue although both the Home Office and the Inland Revenue had disclosure limitations and may need the applicant's consent before being able to release the information relating to his financial matters.

Q27. The rules relating to sole representatives refer to the words "overseas firms". There was reference in the Rules that the sole representative cannot be a majority shareholder in the overseas firm implying that the overseas entity has to be a limited company. The rules however do not mention words "limited company". The words "firm" is defined as "persons who have entered into partnership with one another and for the purpose of this Act called collectively "a firm" (Section 4(1)) Partnership Act 1890). Please clarify the status of the overseas entity.

A27. As the Immigration Rules stated that the overseas body must comply with the requirements of the Rules, the Home Office believed that only a corporate body could do so. One of the first acts expected of a sole representative was to establish a company in the UK and then act as its representative through that branch. To have a place of business in the UK was not sufficient and it must be a registered branch or wholly owned subsidiary.

The overseas firm must be a corporate entity that was able to establish either as registered branch or a wholly owned subsidiary in the UK (paragraph 144(ii) of HC395), therefore it must be a limited company.

Domestic Workers

Q28. The Home Office concession regarding domestic servants - are any precautions taken by entry clearance officers to minimise the risk of domestic servants suffering abuse from their employers during their stay in the UK?

A28. Following concerns about the treatment of overseas domestic workers, the concession had been fully reviewed which resulted in a change to the criteria announced on 23rd July 1998. Overseas domestic workers were now expected to undertake tasks which exceeded the basic duties. This requirement was introduced to not only take account of the interests of the resident labour force but to try to confirm a closer employee/employer relationship, thereby reducing the likelihood of mistreatment. Another key feature of this law change was that domestics may change employers once in the UK. When applying initially for entry clearance, all domestic workers were required to be interviewed alone by an entry clearance officer. This prevented intimidation from the employer and helped the ECO to establish whether they were ill-treated. The new endorsement placed in the domestic worker's passport reads "for domestic employment" and not "this employer".

The representative from the Immigration & Nationality Policy Directorate (Debbie Kemp) confirmed that there was no need to notify the Home Office at the time a domestic was changing employer but that the domestic worker should do so when making his/her next extension application.

The Home Office also confirmed that where a domestic worker had been in the UK for say, three and a half years and then subsequently changed employer, the Home Office would not aggregate time prior to regularising their stay. If, for example, a domestic worker ran away from an abusing employer, but was able to provide evidence of 4 years in the UK as a domestic worker, they would be eligible to apply for indefinite leave to remain. Unless, however, they had a minimum of 4 years lawful leave in the UK, the clock would start running at the time the domestic worker commenced employment with a new employer.

The Home Office confirmed that where a domestic worker joined a new employer prior to July 1998, they would have been in breach of section 8 of the Employment Sanctions. The Home Office confirmed that Section 8 was not introduced to target employers within private households. Domestic workers were free to change their employers and not just when suffering from abuse.

European Applications

Q29. Will the Home Office or DfEE be implementing any policy changes since the two European cases *Gunaydin* and *Ertanir* on the interpretation of Article 6(1) of Decision 1/80 of the Council Association set up under the EU Association Agreement with Turkey in connection with automatic extension of leave for Turkish nationals who have been employed in the UK for at least 12 months.

A29. By way of background, Campbell Gilmore explained that the case of *Gunaydin* involved a Turkish national. The individual had spent some time studying in Germany and subsequently took employment with Siemens in Germany, signing an agreement to undertake training in preparation to subsequently returning to Turkey to manage a Turkish Siemens plant. After three years, he wanted to continue to work in Germany and remained there with his family. His employers were happy to accommodate this but the German authorities refused a work permit because Mr Gunaydin had signed an agreement that he would return to Turkey. The case was referred to the ECJ and was found in his favour.

This case had implications for the Training & Work Experience Scheme as under TWES, an employer signs a declaration confirming that individuals will return abroad at the end of their training. There had recently been a case on behalf of a London company employing a Turkish national who obtained a TWES permit in November 1996. The company subsequently submitted an application for a work permit for 48 months and this has been referred to the legal advisers of the DfEE. If the Turkish individual was issued with a work permit, the DfEE would reflect this in their guidance given to caseworkers in the future.

Q31. What is the current situation at the EC Group? In particular, what is being done to decrease the enormous backlog of applications and why are travel extensions not being issued?

Q32. Is it proposed that straightforward EC resident applications are to be dealt with by the new Initial Consideration Unit due to replace the existing Document Reception Centre?

A31. & A32. In relation to Questions 31 and 32, the Home Office consulted colleagues within the European Directorate who provided the following statement:

"In the past 12 months there has been an upward trend in intake. In 5 of those months, the intake is over 1,000. In September it was 1,173, the highest over two years. Because of its small size, self-contained nature and the specialised nature of the work, the steps available to the EC Group to reduce arrears are not as varied as those in larger directorates. A streamlined system for deciding residence permit applications was introduced in September 1996. The Group did not feel the benefits of this because it was under-complimented for a long period. Streamlined criteria for selecting potential

marriages of convenience for further investigation were introduced in October 1997. Last October approval was given to recruit four casual AAs which enabled us to temporarily promote three people to AO. To give more impetus to the backlog unit, almost all AOs are now engaged deciding residence permits/residence document cases. I understand that staff are now considering residence permits/residence documents and rules based applications made in January 1998. In order to minimise the effects of the delay in deciding applications, passports and other documents in EC law cases are returned to applicants on receipt with a proforma that makes clear that a non-EEA family member may take employment pending a decision on their residence document application.

A period of overtime was introduced for 4 weeks in July/August and again in September to deal mainly with rules based applications. In addition to this, the roll-out of the ICT will help. The Initial Consideration Unit ("ICU") will handle fast-track residence permit applications and the Public Caller Unit ("PCU") will do some over the counter work."

Q33. Is it the Home Office view that key personnel within the meaning of the Europe Agreements will require work permits in order to transfer from a Europe Agreement company to a subsidiary in the UK?

A33. For clarity, European Agreements were the EC Agreements.

The view of the Home Office was that it did not prevent companies from requiring work permits for key personnel of those exercising rights of establishment under the Agreement. This was not only because the article referred to the "work permits of such employees but because the entitlement bestowed by the article was in accordance with legislation in force in the host country of establishment". Non-EEA nationals working in the UK, if they did not qualify as visitors or under the permit-free provisions of the immigration rules, required work permit pursuant to legislation.

The Home Office also believed that the authorities in the host country, in this case, the DfEE, were entitled to assess written information about the role of the individual seeking to qualify its key personnel in order to determine whether the applicant satisfied the criteria set out in the article.

Dependants

Q30. Can the spouse of a UK national make a work permit application in-country? What procedure should be followed if the non-EEA spouse satisfies the criteria for an ICT?

A30. It was presumed that the question referred to the marriage between an EEA spouse and a non-EEA spouse had broken down. There was no provision to allow switching in-country to the capacity of a work permit holder but

various delegates confirmed that they have had such applications regularly approved. Clinton Nield confirmed that each case was decided on its individual merits.

Practicalities of Travel

Q35. We understand that, where an overseas national's passport expires and he obtains a new passport, the Home Office is unable to transfer a leave to enter endorsement placed by an immigration officer from the previous passport to the new passport. We understand that this is because a distinction is made between leave to enter and leave to remain. Please confirm the basis on which the Secretary of State cannot endorse passports with leave to enter (ie relevant statute and section).

A35. The Home Office confirmed that immigration officers had a power to grant leave to enter under the Immigration Act 1971, Part I, Section 4(1) which reads:

"The power under this Act to give or refuse leave to enter the UK shall be exercised by immigration officers and the power to give leave to remain in the UK, or to vary any leave under Section 3(3)(a) whether as regard duration of conditions, shall be exercised by the Secretary of State..."

Therefore, only immigration officers could give leave to enter; so called, because it was given on entry to the UK. After entry work was done by caseworkers. These caseworkers could only therefore give leave to remain, "after entry" decisions.

It followed therefore that leave to enter could not be transferred by anyone other than an immigration officer. If travellers who had renewed their travel documents wished to have leave to enter transferred, then the simplest option was to travel with both the old and new passport together and request that the immigration officer endorsed the new passport upon return to the UK.

Q36. What guidelines does the Home Office have for visa nationals in the process of extending or varying their current leave who are then required to travel overseas. A two month extension placed by an immigration officer at port of entry removes their visa- exempt status, which often creates difficulties where the overseas national is required to travel regularly on business. In particular, is it feasible for the overseas national to request that an immigration officer refrain from endorsing their passport on the basis that an application to extend or vary leave is pending.

A36. Graham Hopkins confirmed that a colleague had provided the answer to this question:

"In accordance with paragraph 34 of HC395, when a person who has lodged

an application for leave to enter or remain requests the return of his passport in order to travel outside the common travel area, the application for variation of leave shall, provided it has not already been determined, be treated as withdrawn as soon as the passport is returned in response to the request. The withdrawal is effective, irrespective of whether the applicant subsequently travels. However, in the following instances, applicants may be granted leave to remain for three months:

- where the applicant is indicating an intention to return to the UK within 3 months; and either
- the application being withdrawn was for an extension of stay in the same capacity and within any maximum of stay in that capacity described in the rules; or
- the application being withdrawn was for switching between categories permitted in the Rules.

This facility will be used primarily for work permit holders and businessmen.

It was always confirmed that persons who have applied for indefinite leave to remain in the UK on the basis that they are nearing completion of have, since applying, completed the appropriate period of limited leave prescribed in the Immigration Rules, may request and should normally be eligible to receive 3 months' leave in relation to the current travel extension concession the IND are presently operating.

In relation to the second part of the question, there is no point in asking an immigration officer not to stamp a passport "because an application to extend or vary leave is pending". The Act says that all leave lapses on leaving the common travel area (Section 3(4)) and the rules say about applications having been DfEEmed as withdrawn on leaving the common travel area (paragraph 34).

It is common practice for immigration officers to give 2 months' leave to enter to work permit holders who have travelled outside the UK and then seek to return here but have less than 8 weeks of their original leave left. The immigration officers tend not to .... (3)(3) over (b) such people and give them the 2 months' leave to enter instead to give them time to sort out their affairs here - either applying for a work permit extension or leave.

Advice given in the Immigration Directorate's Instructions do not oblige the immigration officer to stamp a passport with 2 months' leave to enter. It is not in the rules - but it is normal policy to do so. The passenger could ask the immigration officer to re-admit them on (3)(3)(b) terms but it is really up to the immigration officer what they give. The immigration officer has absolute discretion for giving further leave to enter. Therefore, if a person who has been given a 2 months' leave to enter extension on returning to the UK travels abroad, then they will need a fresh visa to return to the UK if they are a visa national."

Q37. Are there any plans to review the practice of conducting security checks on Russian nationals? Checks are typically conducted on the same national more than once, for example, where a work permit application is submitted, again when a visa application is submitted and then again if a subsequent work permit extension application is submitted. Will multiple security checks continue or will a practice be established whereby checks need only be conducted once for each individual?

A37. Conducting Russian security checks in this way was Home Office policy. There were no plans to review this practice at this time.

Public Enquiry Office

Q38. Are there any figures available on the success to date of the Home Office PEO fast track service? Are there any plans to extend the service to accept a wider variety of applications?

A38. All practitioners and ILPA members had been provided with a letter the previous day in relation to the Public Enquiry Office and new procedures taking place. Details were also provided in relation to the 24-hour postal service and this had been circulated to representatives.

Q39. There has been a recent change in policy resulting in the PEO no longer processing applications for travel extensions. Could some form of policy be implemented whereby practitioners affected by new policies, such as this, could be notified?

A39. The representatives from the Home Office conceded that this was a fair point being raised in this question. An example was given that, previously we had understood that it was possible to make a travel extension application under the fast-track system and that we had advised our clients accordingly. Then, without notification, the policy has changed. Graham Hopkins agreed to relay this point to the PEO.

Supplementary Questions

SQ1. Peter Alfandary of Warner Cranston presented the following question to both the Home Office and the DfEE:

Where, for example, an individual holds a 4 year work permit but subsequently changes employers - His new employer submits an application to the DfEE who accordingly approves the new application. Is it really necessary to involve the Home Office at this point. Is it not possible that the DfEE could approve the employer and the person can commence working immediately following the

approval of the DfEE. In turn, this must surely present an advantage to the Home Office for avoiding further administration.

SA1. In answering this question, it was agreed that the difficulty was in the stamping of the individual's passport. Steve Lamb of the DfEE accepted that this had been raised before and he was happy to lessen workload if there was a way to do it. The DfEE were concerned whether it would have a knock-on effect on the Immigration Rules at the Home Office. The Home Office, in turn, agreed to consider this point.

SQ2. Philip Barth referred to an article in the Business Section of the Mail on Sunday of 8th November 1998 (copy article attached). Within this article, Peter Mandelson proposed a scheme which would make it easier for UK companies to hire talented foreigners through a new fast-track work permit system.

SA2. Roy Saxby was very grateful for having been forwarded a copy of this article as were his colleagues in the DTI and press office of the DfEE. Roy Saxby confirmed that there was no new fast-track work permit system in existence at the current time.

SQ3. Would a work permit be issued where it is admitted that an EEA national does fulfil the requirements and could carry out the job but a non-EEA national had the edge.

SA3. Steve Lamb confirmed that the resident labour force should be given priority regardless of whether they were not necessarily the best person for the job. Therefore, the employer could encounter difficulties signing the declaration if they ignored this issue.

Conclusion

Philip Barth concluded the seminar by thanking the respective representatives for their valuable input.

He confirmed that as Treasurer of ILPA, the seminar was one of the biggest fund-raising events for the Association. This was vital to the continued development and growth of ILPA.

He was optimistic that this annual event could continue and drew the attention of the delegates to the turn out of the Government Departments which in turn reflected the respect commanded by ILPA and the role and conscience of well trained and scrupulous immigration advisers. The 14 representatives from both the Home Office and the DfEE combined, reflected their commitment to ILPA.

Philip Barth also gave an open invitation to all members of ILPA to the Business Group Sub-Committee and undertook to publicise the details and dates of meetings which normally took place approximately every 6 weeks.

D/EE

Department for
Education and Employment

OVERSEAS LABOUR SERVICE

Immigration Act 1971: Work Permit Arrangements

Guide for overseas employers: work permit applications for workers engaged in contracts for services inside the UK under the General Agreement on Trade in Services (GATS).

0519/1

1. Introduction

This leaflet gives advice on how to apply for a work permit for England, Scotland and Wales for employees delivering services on contract under the General Agreement on Trade in Services (GATS).

If you wish to apply for a work permit for Northern Ireland, the Isle of Man or the Channel Islands please see paragraph 24 for information.

2. What is the GATS Agreement?

The GATS agreement is a special concessionary arrangement within the normal Work Permit rules enabling persons, **whose employer does not have a commercial presence in the European Union (EU)**, to work in the UK on a service contract awarded to their employer by a UK based organisation. The concession is intended to facilitate the access to UK service contracts by non-EU based companies or organisations who employ persons having high level professional skills whose entry to the UK would otherwise be subject to visa and work permit restrictions.

3. What rules apply to the Agreement?

- The GATS agreement only extends to organisations of those countries who are members of the World Trade Organisation (WTO) and who have signed up to the agreement. Please contact your nearest British Diplomatic post for further advice.
- **The service contract must not exceed a period of 3 calendar months;**
- The person will not, therefore, be permitted to stay in the UK under this agreement beyond 3 calendar months in any 12 month period;
- The service provided must fall within one of the service sectors listed in paragraph 7;
- The person must have the qualifications and experience as outlined in paragraph 8;
- They should normally have spent the last 12 months in your employment, as a formal salaried employee;

NB. the agreement does not extend to self-employed individuals, or to employment agencies or similar organisations who do not formally employ workers but simply supply or hire them out.

- The contract must have been awarded through an open tendering procedure or any other procedure which guarantees the bona fide nature of the contract.

In addition, permission for employment in the UK is granted on the condition that there is an intention to leave the UK once the work on the service contract has been completed or the maximum period of 3 calendar months in 12 has been reached.

4. Which non-UK nationals need a work permit?

Anyone coming to work in the UK who is subject to immigration control and is not one of the groups described in paragraph 5 or 6.

If you are in any doubt about whether a work permit is needed, you should contact the appropriate UK representative in your own country, for example, the British Embassy, Consulate or High Commission.

5. Do all non-UK nationals need work permits?

Permits are not needed for:

- European Economic Area (EEA) nationals (members are: Austria, Belgium, Denmark, Eire, Finland, France, Germany, Greece, Holland, Iceland, Italy, Liechtenstein, Luxembourg, Norway, Portugal, Spain, Sweden, United Kingdom).
- Gibraltarians;

- Commonwealth citizens given leave to enter or remain in the UK on the basis that a grandparent was born here;
- spouses and dependent children under 18 of work permit holders and of any of the above, or of the people listed in paragraph 6.

6. Do all non-UK nationals not listed in paragraph 5 need a work permit in all circumstances?

Under the United Kingdom Immigration Rules, permits are not needed if the Immigration and Nationality Directorate at the Home Office, which is the Government Department which administers the Immigration Rules, agree that the person qualifies under one of the following categories:

- those coming to the UK to establish a new business or to take over or join an existing business as a partner or director or as a sole trader,
- ministers of religion;
- representatives of overseas newspapers, news agencies and broadcasting organisations;
- private servants of diplomatic staff;
- sole representatives of overseas firms;
- teachers and language assistants under approved exchange schemes;
- employees of an overseas Government or international organisation;
- seamen under contract to join a ship due to leave British waters on an international voyage;
- senior operational ground staff of overseas owned airlines based at international airports;
- seasonal workers at agricultural camps under approved schemes;
- doctors and dentists in post-graduate training;
- people admitted as business visitors.

7. For which service sectors, occupations or industries are GATS work permits issued for?

Permits are issued for work on service contracts in the following sectors:

- Legal Services
- Accountancy Services
- Bookkeeping Services
- Taxation Advisory Services
- Architectural Services, Urban Planning & Landscape Architectural Services
- Engineering Services*
- Integrated Engineering Services*
- Advertising*
- Management Consulting Services*
- Services Related to Management Consulting*
- Technical Testing and Analysis Services*
- Translation Services*
- Site Investigation Services*

For applications within the service sectors marked*, shown above, we will need to be provided with information to confirm that the service contract has met the requirements of an "economic needs test", i.e., that the UK contractor has justified the need to award the contract to an organisation outside the EU.

You will not have to provide this information, instead, we will contact the UK contractor direct once we have received and considered your application. You should, however, take this into account when making an application since this process is likely to prolong the time it will take to make a final decision.

It will be necessary to provide evidence that you have obtained the service contract through an open tendering procedure or any other procedure which guarantees the legitimacy of the contract. If you replied to an advertisement, we would need to see a copy of the advertisement itself. The copy should be of the whole page showing the name and date of the publication. If any other means were used whereby you became aware of the contract on offer you will need to supply full details and supporting documentation

8. Who can be eligible for the issue of a GATS work permit?

The person(s) required to work on the contract in the UK must possess:

- a recognised degree level qualification; and
- professional qualifications; and
- 3 years professional experience in the sector, the last 12 months of which should have been as a formal salaried employee of the organisation who have been awarded the service contract.

The following services are exceptions:

- Advertising and Translation Services relevant qualifications and 3 years professional experience;
- Services related to Management Consulting - University Degree or technical qualifications demonstrating technical knowledge and 3 years professional experience;
- Management Consulting (except for Managers and Senior Consultants) - University Degree and 3 years professional experience;

NB. the last 12 months of which should still have been spent in your employment as a salaried employee.

9. Who applies?

You, the overseas employer must apply for the GATS work permit. You may wish to submit your application via a solicitor or other representative. However, this is not necessary and will not mean that a permit can be obtained more quickly. You the employer, must still sign the application form. We do not enter into correspondence with the person for whom the work permit is required.

10. When should I apply?

As soon as you have identified the employee(s) that you wish to send to the UK to work on the service contract. Applications should be made no later than 6 months before you wish to send them to the UK. If your employee is already in the UK, you should apply no more than 3 months before their leave to remain expires.

Some non-EU nationals may also need an entry visa to enter the UK. The spouses and children under 18 of work permit holders need entry clearance in all cases, whatever their nationality. Applications for visa and entry clearance should be made to the nearest British diplomatic post in your country. Some non-EU nationals will need to produce a GATS permit to get an exit visa from their own Government. You should allow additional time for these formalities.

11. How do I apply?

You must use form GATSA, to apply for a GATS work permit. It is first advisable to read the eligibility rules explained in this note fully, before making the application.

These guidance notes are designed to help you complete the application form. However, if you need further information or advice please contact the nearest British Diplomatic Post or Embassy in your country, or contact us on 44 114 2594074.

You should complete the form in English, and supply translations of any supporting documentation. If we have to arrange for a translation ourselves, then this would add considerably to the time it will take to consider the application.

12. What do I need to send with the application form?

As explained in paragraph 7 we will need to see the following:

- a copy of the advertisement to which you responded to when submitting your tender for the contract on offer. The copy should be of the whole page of the newspaper or journal, etc, used, so as to show the publication's name and date. If this is not available, we will require a copy of the text used and an invoice for the advertisement as this will also show the name and date of the newspaper or journal used by the UK Contractor;
- if you did not respond to an advertisement; details and relevant documentary evidence to show how you became aware of the service contract on offer;
- a copy of the service contract awarded to you by the UK Contractor. If possible, the contract should be signed by both parties and show a start and end date.

NB. It is normally your responsibility to supply the information requested in the application form, or subsequently requested by this Department. If the information requested is not available to you, you should arrange for the UK Contractor to send it direct to this Department quoting any available reference numbers. We will only approach the UK Contractor ourselves if there are genuine reasons why you are unable to supply the information requested.

13. Where do I send the completed application?

Send it to us at:

Department for Education & Employment
Overseas Labour Service
Level W5
Moorfoot
Sheffield
United Kingdom
S1 4PQ

14. What happens next?

Your application will be formally acknowledged as soon as it has been received. We may need to contact you by letter, facsimile, or telephone to clarify details of your application or to request further information. However, if all the information requested on the form is supplied it should not be necessary to contact you further until we have made our decision.

The application form will ask you to state the date the permit is needed by and we will try to reach a decision, in most cases, by this date. If the Home Office (see paragraph 17), or other Government Departments are involved in the case or we have to contact the UK contractor (see paragraph 7), a longer period should be allowed.

We try to keep delays to a minimum, but there will be a small number of cases where a decision will take longer to reach as a result of this consultation.

15. Where will OLS send the GATS work permit and other correspondence?

We will normally send all correspondence to you the employer, i.e., the service supplier, named on the application form, unless you are using a solicitor or other representative. In such cases, we will send the permit and all letters to them. However, in certain circumstances, as explained in paragraph 7, we will have to contact the UK contractor direct to supply any necessary information.

16. How long is a GATS work permit valid?

GATS work permits will be issued for the period requested on the application form commencing on the date your employee enters the UK. This period should, therefore, be the same as the length of the contract.

A GATS permit will not be approved beyond the maximum period allowed under the Agreement, i.e., 3 calendar months in 12.

Your employee, however, will only be allowed to stay in the UK while they are working on the service contract, and should leave the UK once the contract has been completed. If they do not enter the UK within 6 months of the date of issue, the permit will no longer be valid for entry. If this happens, or you foresee it happening, please return the permit to us with a covering letter.

You should also bear in mind that nationals of certain countries will also require a visa, in addition to the work permit, to enter and work in the UK, and may have less than 6 months in which to use the permit to enter the UK.

We cannot issue duplicate permits and can only issue a replacement if the original is first returned to us.

17. If my employee is already in the UK how does this affect the application?

We do not issue permits where a non-EU national is already in the UK. Instead we make a recommendation to the UK Home Office Immigration and Nationality Directorate who administer UK immigration controls.

We will acknowledge your application, and, once it has been considered, will make a recommendation to the Home Office. At the same time, we will write to you informing you of our recommendation. The Home Office will consider the immigration aspects of the case and will contact your employee, via the UK Contractor, with their decision. The Home Office will not enter into direct correspondence with you.

If the Home Office agree to allow your employee to stay and work in the UK, they will request your employee's passport, either from the person themselves or via the UK contractor, to alter or amend the stamp in their passport and extend their leave to remain in the UK. **It is important, therefore, that at Question 9 on the application form, you clearly indicate the UK address where your employee can be contacted.**

You should be aware, however that the UK Immigration Rules state that a non-EU national should be abroad when the work permit application is made. Under these rules, those already admitted to the UK as visitors, or for another purpose, are not normally permitted to change their immigration status to allow them to take up employment. Permission to change immigration status will be at the discretion of the Home Office and will only be granted in exceptional circumstances and should not be expected.

UNLESS THE APPLICATION HAS BEEN APPROVED BY THE HOME OFFICE AND THEY HAVE AMENDED YOUR EMPLOYEES' LEAVE TO REMAIN IN THEIR PASSPORT, THEY MUST NOT START WORK ON THE CONTRACT.

18. What if I want my employee to transfer to another contract whilst in the UK?

The agreement will allow a person to change to another contract either with the same UK contractor or a different one. **However, as per paragraph 3, the agreement will not allow the person's stay in the UK to exceed an aggregate of 3 calendar months in any 12 month period.**

If your employee is required to work on a different contract with the same UK contractor, we will need:

- a letter informing us of the new details, i.e., location, length of contract;
- a copy of the new contract which should be signed by both parties and show a start and end date;

We will consider this situation as a "Technical Change of Contract".

If, however, your employee is required to work on a new contract with a different UK contractor, we will need:

- a fresh application form;
- a copy of the new contract which should be signed by both parties and show a start and end date.

We will consider this situation as a "Full Change of Contract".

In **both** cases we will still apply the full rules of the agreement and will need to see evidence that the contract has been awarded through an Open Tendering procedure as detailed in paragraph 7. Therefore, you will also need to supply the details as per paragraph 12.

Again, we may also have to request further information from the UK contractor to show why they have awarded the contract to a non-EU service supplier.

19. What if the contract is completed ahead of schedule or the person is no longer required to work in the UK?

If a person has completed the work on the contract ahead of schedule, or is no longer required to work on the service contract, **you should notify us as soon as possible.** If there is a substantial amount of time left on the permit, the person should return it to us.

20. What if I want to extend my employee's work permit?

Under the GATS agreement, a contract is strictly limited to a maximum period of 3 months and does not allow for any extensions that will take the contract beyond this period.

In addition, your employee's stay in the UK to work on the contract should not exceed 3 calendar months in any 12 month period.

Therefore, we can only consider extending your employee's service contract employment in the UK if:

- they have sufficient time remaining up to their maximum limit of 3 calendar months in 12;

and

- the contract itself, **inclusive of any extensions,** does not exceed the maximum aggregate period of 3 months in total.

If the work is not completed by 3 calendar months therefore, your employee must leave the UK, and will not be permitted under the GATS agreement to return to the UK for a further 12 months.

If, however, you wish to extend the work permit of an employee who still has time remaining on their stay in the UK under the GATS agreement, you may apply to this Department by letter enclosing a copy of the contract extension or related documents.

Any extension to a person's service contract employment in the UK will not, however, exceed the aggregate maximum of 3 calendar months in 12.

21. What if I need more GATS work permit application forms?

You may obtain more application forms from the nearest British Embassy, Consulate or High Commission.

22. What if I need more information about work permits?

You should firstly contact the appropriate UK representative in your own country, for example, the British Embassy, Consulate or High Commission.

If further information is then required you can contact us at the :

Department for Education & Employment
Overseas Labour Service
Level W5
Moorfoot
Sheffield
United Kingdom, S1 4PQ

Telephone: 44 0114 2594074

Facsimile: 44 0114 2593728

23. What if I need more information about UK immigration matters?

Again you will need to contact the appropriate UK representative in your own country as in paragraph 22 or alternatively you can contact the:

Home Office
Immigration and Nationality Directorate
Lunar House
Wellesley Road
Croydon
United Kingdom, CR9 2BY

Telephone: 44 0181 686 0688

24. What if I need information about work permits for Northern Ireland, the Isle of Man and the Channel Islands?

For applications for work in **Northern Ireland**, please contact:

Training and Employment Agency
Work Permits Branch
Clarendon House
9-21 Adelaide Street
Belfast
Northern Ireland
BT2 8DJ

Telephone: 44 01232 541713

For applications for work in the **Isle of Man**, please contact:

Overseas Labour Section Employment Division
Department of Industry
Nivision House
31 Prospect Hill
Douglas
Isle of Man
IM1 1PJ

Telephone: 44 01624 687025

For applications to work in **Jersey**, please contact:

Chief Immigration Officer
Immigration and Nationality Department
Weighbridge
St Helier
Jersey
JE2 2ND

Telephone: 44 01534 30358

For applications to work in other **Channel Islands**, please contact:

Chief Immigration Officer
Immigration and Nationality Department
White Rock
New Jetty
St Peter Port
Guernsey

Telephone: 44 01481 726911

Permit plan to block high-tech brain drain

A 'BEAT the brain drain' scheme to boost high-tech companies is being considered by Trade Secretary Peter Mandelson.

The sector is seen as crucial to the growth of the economy, but its development is being held back by a shortage of top staff.

Employers complain of a lack of highly qualified applicants

By RICHARD HALSTEAD

in science and engineering with many of the best lured to jobs abroad.

The proposed scheme would make it easier for UK companies to retaliate by hiring talented foreigners through a new fast-track work permit system.

Firms would be able to hire top overseas talent within weeks or even days, instead of having to wait months and wade through red tape.

The new work permit rules for high-tech talent may be based on those in football, where overseas stars can be granted permits almost immediately on signing with a UK club.

At the Confederation of British Industry's conference last week, Mandelson said: 'America gives 30,000 work visas a year to software engineers from India to help create wealth in Silicon Valley. That is an excellent way of staying ahead of the competition.'

His views were echoed by entrepreneur James Dyson, who said he had found difficulty in recruiting 200 scientists and engineers to help him expand his vacuum cleaner business.

While any citizen of the European Union has the right to work in the UK, firms are keen to attract talent from eastern Europe, Russia, India, Israel and China.

Workers from those countries tend to be well educated, but are usually badly paid by western standards and are often keen to move here.

Companies would also like to attract top people from other countries, such as the US and Canada.

The government would probably introduce strict controls to ensure that companies did not ship in cheap foreign labour for jobs that could be done by British employees, and to prevent the scheme being abused by bogus immigrants.

The move may cause controversy because it would create a two-class system of immigration that would discriminate against those without a good education.

Herman Hauser, founder of Acorn Computers who now runs a £50 million venture capital fund, says there is no reason why Britain could not attract the best high-tech minds in the world, including those from Silicon Valley.

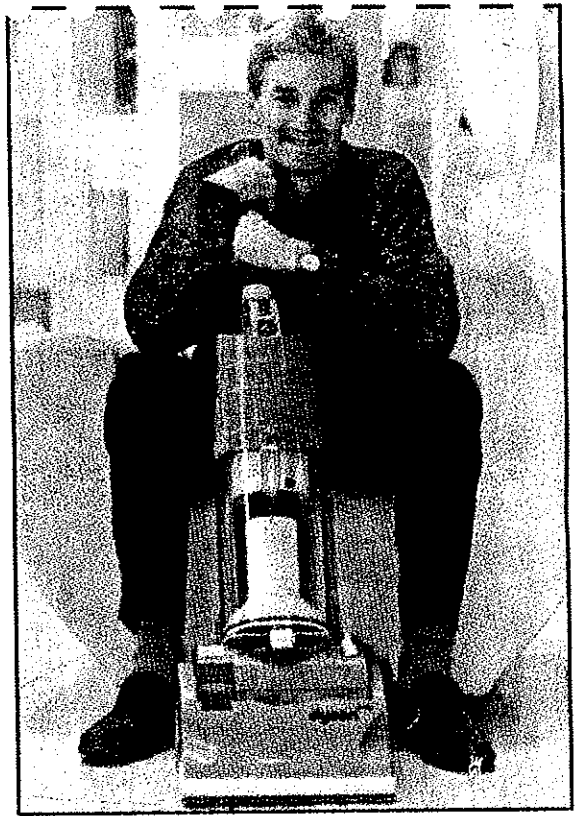
'What we need is a reverse brain drain,' he says.

David Gill, head of the innovation and growth unit at Midland bank, says: 'An advanced economy like ours needs to move to high-technology areas and we need to do everything we can to make ourselves the magnet for the world's best scientists and engineers.'

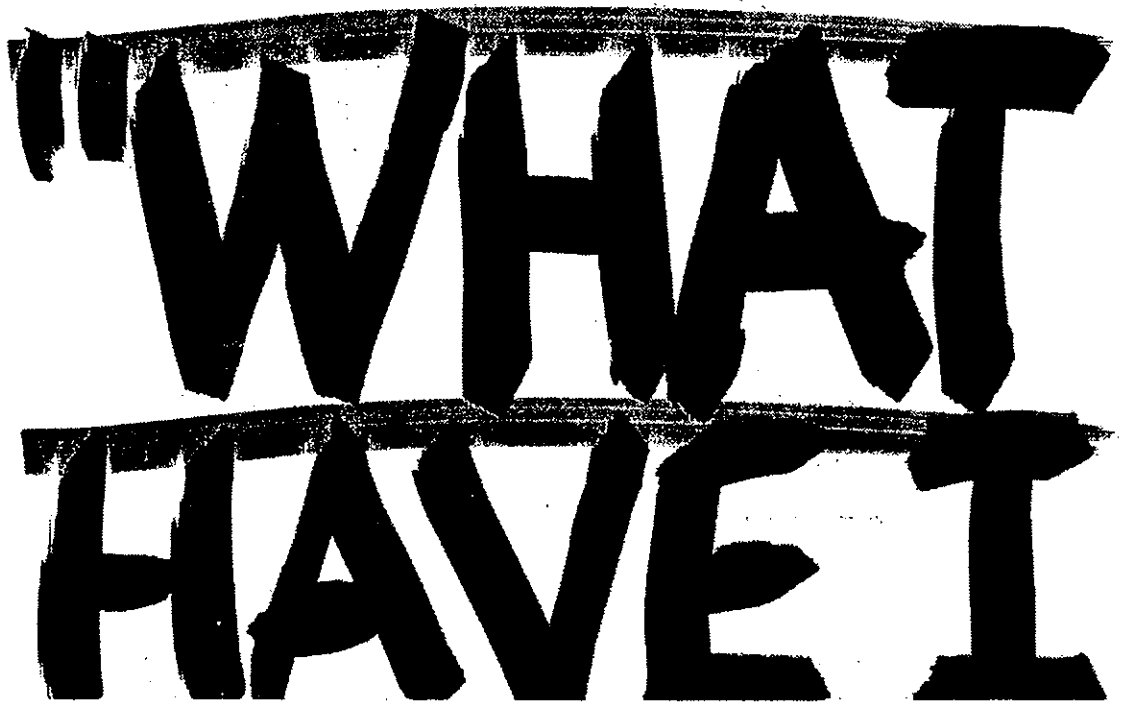
But other entrepreneurs feel that the right people to create Britain's own Silicon Valley are already living and working in the UK, but have not been given the opportunity, either by the banks or the government.

Dr Geoffrey Forster, founder of Scientia, a software company in Cambridge, says: 'We have the people. What we need is the government to put funding into new technology by sponsoring research and development.

'It is nice to get £30,000 awards for new products, but what we need is grants of £300,000 to turn ideas into reality.'



James Dyson had difficulty in recruiting scientists



Lack of interest

George's Not

The Mail on Sunday - 26.11.95

DfEE

Department for Education and Employment

OVERSEAS LABOUR SERVICE

Immigration Act 1971: Work Permit Arrangements

Work permit application - For Contracted Services

0520/1

Notes:
- Only use this form if your organisation has no trading presence in the UK and you have an employee who is required to work in the UK on a contract with a UK based organisation.
- Please read the enclosed GATS (Notes) before completing this form.
- Please type or print in **black** ink and use CAPITALS.
- Work permits are processed by a computer system which is subject to the Data Protection Act 1984.

GENERAL INFORMATION

Details of person required on the contract

1 Surname/family name — Mr/Mrs Miss/Ms

2 Surname/family name at birth *(if different)*

3 Forenames

4 Sex — Male ☐ Female ☐

5 Date of birth — Day | Month | Year

6 Nationality

7 Passport Number *(if known)*

8 Issuing Government

9 Is this person currently in the UK or the Irish Republic? Yes ☐ No ☐ ▶ ***go to question 10***

In what capacity?

UK Contact Address

Postcode

10 Has the person worked in the UK before? *(Include both employment on a service contract and direct employment for a UK employer. Holiday visits and business trips of less than one month need not be included).*

Yes ☐ No ☐ ▶ ***go to question 11***

Dates

Capacity

Home Office reference *(If known)*

Workers reference number
(This is on the work permit, it is not the permit number)

Details of person's current employer

11 Full name of company/organisation

12 Address

Postcode

13 Telephone number *(include international dialling code)*

14 Facsimile number *(include international dialling code)*

15 Please give name of contact in your company

Position

16 Nature of business

Details of UK Contractor

17 Full name of company/organisation

18 UK Address

Postcode

Telephone Number

19 Name of contact

Position

20 Nature of business in the UK

21 Will the person be working at the address in question 18?

Yes ☐ ▶ ***go to question 22***

No ☐ ▼ Where will the person be working?

UK Address

Postcode

22 Is there a representative dealing with this application on your behalf? If so, all correspondence and any permits issued will be sent to them.

Yes ☐ ▼

No ☐ ▶ ***go to question 23***

Name of representative

Address

Postcode

Name of contact

Telephone number *(include international dialling code)*

Facsimile number *(include international dialling code)*

Qualifications and Experience

23 Please give details of the person's academic qualifications.

Dates	Degree level or technical qualifications	Awarding establishment

24 Please give details of the person's professional qualifications.

Dates	Professional qualifications	Professional memberships

25 Please give details of the person's employment history.
(Please do not attach CVs.)

Dates *(month/year)*		Name and address of employer	Type of business	Occupation
From	To			

Details of Service Provided

26 For how long in total are the services of the person required in the UK *(You must specify a period but this should not exceed 3 months.)*

From	To		
(date)	*(date)*	or for	*(weeks/months)*

27 Service Provided

28 Please give the person's job title, if appropriate, and describe the duties, responsibilities and tasks the person will be performing while working on the contract in the UK.

29 Normal weekly hours of work while working in the UK

30 Before deductions, how much will you guarantee to pay the person? *(excluding accommodation allowance)*

£ *(a year)*

31 If an accommodation allowance is paid, please state the amount

£

32 Please state how you became aware of the service contract on offer. If this was through an advertisement, please give the name and date of the publication

Please check that you have enclosed:

- a copy of the service contract with the UK organisation ☐
- a copy of the advertisement inviting applications for tender of the contract. ☐
  (The copy should be of the whole page showing the name and date of the publication used.)

Declaration

The declaration must be signed by the Employer named in Question 11, not a representative.

- The details given in this application are true and complete to the best of my knowledge and belief. I understand that it is an offence under the UK Immigration Act 1971 to make a false statement.
- I confirm that my organisation does not have a trading presence within any member state of the European Union (EU).
- I understand that the service contract must not exceed a period of 3 calendar months.
- I understand that the person named in this application will not be permitted to stay in the UK, under these arrangements, beyond 3 calendar months in any 12 month period.
- The person named in this form agrees to abide by the terms and conditions of the GATS Work Permit arrangements, as determined by the Secretary of State for Education and Employment.
- I am authorised to make this application on behalf of the employer named in this application.

Signed	
Name	Mr/Mrs Miss/Ms
Date	
Position	
For and on behalf of *(the employer)*	

Date by which you require the permit:

Please allow time after receipt of forms for any other necessary immigration procedures.

Please return this form to:

Department for Education and Employment
Overseas Labour Service
W5 Moorfoot
Sheffield
United Kingdom
S1 4PQ

Telephone: **44 0114 2594074** Fax: **44 0114 2593728**

D/EE

Department for
Education and Employment

OVERSEAS LABOUR SERVICE

Immigration Act 1971: Work Permit Arrangements

0521/1

Work permit application - Supplement

Note: • For applications made under the General Agreement on Trade in Services (GATS).

EVIDENCE OF ECONOMIC NEEDS TEST

Details of need to award service contract outside of the UK or European Economic Area (EEA)

1 Name of Overseas Service Supplier

OLS Reference Number

2 Please give details and supporting evidence to show what action you have taken to attract a service supplier from the UK or EEA.

3 If applicable, please give reasons why the contract was advertised for tender outside the UK/EEA.

4 Please give details of the responses received to your advertisement inviting applications to tender

- Contract advertised in
- Date
- A copy of the advertisement enclosed showing name and date of publication.
- Number of respondents ____ of which ____ were from suppliers within the UK or EEA

- Reasons why each UK or EEA service supplier who responded to your advertisement was not awarded the contract. Reasons should be given for each individual supplier.

(Continue on a separate sheet if necessary)

5 Reasons why you awarded the contract to the service supplier named on page 1.

(Continue on a separate sheet if necessary)

6 Other methods used to invite tenders and reasons why they were preferred to advertising.

(Continue on a separate sheet if necessary)

7 **Undertaking**

I declare that the information given in this proforma is true to the best of my knowledge and belief.

Signature of employer

Position held

Date

Company Stamp

Liberalising trade in services

A consultative document on the "GATS 2000" negotiations in the World Trade Organisation and forthcoming bilateral negotiations

dti
Department of Trade and Industry

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Foreword by

The Rt Hon Peter Mandelson MP

Secretary of State for Trade and Industry

I hope this consultation paper will encourage you to give my Department your views on the important negotiations on international trade in services that are due to begin by January 2000. These negotiations - "GATS 2000" - will take place in the World Trade Organisation and may, if WTO Members so decide next year, form part of what we hope will be a new comprehensive round of multilateral trade negotiations.

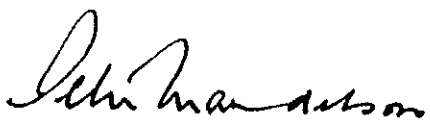
The UK has a vital economic interest in seeing services markets liberalised around the world. We are among the world's top services exporters, second only to the US in 1997. Last year our exports of services were worth £53 billion, equivalent to eight per cent of our GDP. And 44% of our net outward investment is in service activities.

Our own markets are largely open to foreign services suppliers. Yet many markets around the world have significant barriers to trade in services - more so than for goods. These barriers hold back potential economic growth and development.

The main barriers to trade in services are found in national regulations - particularly restrictions on foreign ownership and on cross-border services. We need your advice on the trade barriers that concern you most. Within the European Community we will be drawing up request lists country-by-country and sector-by-sector. These negotiating positions must reflect UK business priorities. So please tell us which markets and which restrictive regulations you think we should concentrate on.

Consultation proved to be crucial to last year's successful outcome to WTO negotiations on financial services. I am keen to follow this example in the preparations for GATS 2000. The UK is in a strong position, both within the EC and more widely, to have its voice heard.

Your responses will of course be treated in strict confidence. If my staff can help you in any way with this consultation, please do not hesitate to contact them as shown on page 8.



Chapter 1

INTRODUCTION

New negotiations on trade in services

1.1 Between now and the end of 1999, the Government will be preparing for detailed negotiations to liberalise trade in services between the European Community and other countries around the world.

1.2 At a multilateral level, these negotiations will form part of a broad-ranging set of negotiations to be conducted with the 132 Member governments of the World Trade Organisation, and which for services will start during 2000 - the negotiations have been coined "GATS 2000". At a bilateral level, negotiations will take place with a number of countries, most notably in 1998-1999 with the United States under the Transatlantic Economic Partnership agreed at the EU/US Summit in May.

1.3 These negotiations are explained in this Consultative Document. In our view, one of the keys to success lies in fully involving business and other interested parties in the process from the start. Businesses carry out their own strategic planning but need to work with government negotiators to try to remove obstacles to the development of these commercial objectives. Consumers and non-governmental organisations will want to know how their their interests will benefit from globalisation and not jeopardised in the quest for freer trade.

1.4 In this document we explain the background to the negotiations, including how services were incorporated into the world trading system during the Uruguay Round, the provisions of the General Agreement on Trade in Services ("the GATS"), and how the WTO aims to improve the conditions under which companies can provide services in other countries.

1.5 As you read this consultative document (and you will only need to refer to the sectors in Chapter 4 of interest to your business) we would like you to consider the following questions:

- **Which are, or should be, your most important markets?**
- **What are the regulatory obstacles you face to doing business there?**
- **How do you get round those obstacles (if you do)?**
- **How could your business be made easier and more profitable as a result of further liberalisation?**
- **What would you like to see UK and European Commission negotiators concentrate on?**
- **Given that negotiations imply give and take, what further liberalisation could you envisage in the UK and the European Community, and what current restrictions inhibiting foreign competition do you think are justified, and why?**

Progressive liberalisation

1.6 The mandate for new negotiations on services is built into the GATS. Article XIX says that:

> **"Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalisation."**

In other words, negotiations must begin no later than 1 January 2000, five years after the WTO Agreements came into force on 1 January 1995.

1.7 Whereas restrictions on trade in goods are characterised typically by frontier barriers such as tariffs and quotas, as well as non-tariff barriers such as standards etc, restrictions on trade in services are found almost entirely in the way services are regulated domestically. Although some sectors are relatively unrestricted, others such as financial services or the utilities are more tightly regulated, mainly for consumer protection reasons. Examples include restrictions on foreign investment holdings; nationality and other restrictions on directors and professional qualifications; quotas on the number of licences granted to new market entrants. All these issues will no doubt be raised during the negotiations.

1.8 Under the GATS, services are classified according to four "modes" by which a service can be supplied:

- **Mode 1 (cross-border)**: ie, from the territory of one Member into the territory of any other; eg advertising or telecommunications;
- **Mode 2 (consumption abroad)**: ie in the territory of one Member to the service consumer of any other Member; eg tourism or, again, telecommunications;
- **Mode 3 (establishment abroad)**: ie by a service supplier of one Member through commercial presence in the territory of any other Member;
- **Mode 4 (movement of personnel)**: ie by a service supplier of one Member through presence of natural persons of a Member in the territory of any other Member.

1.9 Preparations for the GATS 2000 negotiations are already underway in the WTO Council for Trade in Services. It was agreed at the WTO Ministerial Conference in Singapore in 1996 that these would begin with an information exchange programme, aimed at enabling WTO Members to understand the way individual services sectors operate, how they are regulated, to what extent WTO Members made market opening commitments in particular sectors, and what the key remaining trade barriers are. This information exchange began in June.

1.10 The information exchange will serve two main purposes. At a general level, it should provide all WTO Members with a shared information base, and could offer pointers to issues which Members need to analyse collectively. At the level of individual WTO Members, it could contribute to identification of negotiating "targets", though these will also need to be developed through consultation with national services industries.

How the Government will be involved

1.11 The UK will participate in these negotiations as both a Member of the WTO and a Member State of the European Community.

1.12 Under EC law, trade in services is an area of "mixed competence", which means that both the European

Community and individual Member States have responsibility for the conduct of the negotiations and for deciding on the outcome in respect of their respective powers and interests. The full implementation of the obligations under the GATS requires the participation in the Agreement of the European Community and the Member States together.

1.13 By arrangement the European Commission acts as lead negotiator and speaks on behalf of the Member States in the WTO on the basis of positions agreed unanimously with all Member States. However, Member States take full part in individual face-to-face bilateral negotiations with other countries. This means UK negotiators will therefore have the opportunity to pursue UK interests directly with other trading partners.

1.14 The Government directly influences the position taken by the European Community as a whole. To do this we need to know fully the interests and concerns of UK stakeholders.

Consultation with interested parties

1.15 The purpose of this document is therefore to start the process of consultation. We want your views on the issues we will have to address and your priorities for inclusion in the UK and EC negotiating objectives.

1.16 In this document we identify some of the main issues that we think may arise during the negotiations, although we have deliberately not indicated here what our priorities might be other than to put the negotiations into the context of the Government's overall trade policy, most recently publicly stated by the Prime Minister in the WTO in Geneva in May (see **Annex 1**). We invite your responses to some specific issues discussed further in **Chapter 5**. Your comments do not, however, have to be limited to these questions.

1.17 While DTI will act as lead negotiators for the GATS 2000 negotiations as a whole, we will work very closely with individual services sector specialists throughout HMG, many of whom may be your normal contacts (see panel below). Together we will be ready to discuss the negotiations further with your company or association, as we will need to maintain close contacts as the negotiations progress.

Where and when to send your comments

1.18 We invite you to send your comments to the address in the panel below. It would be helpful to receive initial comments by **30 November 1998**. Further consultation will undoubtedly be necessary. If you wish to continue to be consulted, please let us know.

Please send your comments to:

Malcolm McKinnon
Head of Trade in Services
Trade Policy and Europe Directorate 2
Department of Trade and Industry
Kingsgate House
66-74 Victoria Street
London SW1E 6SW
fax: 0171-215 4252
e-mail: malcolm.mckinnon@eirv.dti.gov.uk

Telephone numbers for DTI lead services negotiators:

Malcolm McKinnon	0171-215 4555
Alistair Abercrombie	0171-215 4248
Martin Corry	0171-215 8420
Fax	*0171-215 4252*

HMG services sector specialists:

Accountancy	*Vivien Brighton, DTI*	*0171-215-0217*
Air services	*John Parkinson, DETR*	*0171-890-5937*
Audio-visual	*Carolyn Morrison, DCMS*	*0171-211-6444*
Construction and engineering	*David Broyd, DETR*	*0171-890-5655*
Courier	*Steve Halls, DTI*	*0171-215-2963*
Distribution and marketing	*Lesley Forsdike, DTI*	*0171-215-4153*
Educational	*Barnaby Shaw, DFEE*	*0171-273-5816*
Electricity	*Sue Harrison, DTI*	*0171-215-2778*
Environmental	*Janet Jennings, DTI*	*0171-215-1633*
Financial	*Ian Kemsley, HMT*	*0171-270-5298*
Gas	*David Tyrrell, DTI*	*0171-215-5150*
Health	*Peter McConn, DoH*	*0171-210-4858*
Legal	*Edwin Kilby, LCD*	*0171-210-0740*
Postal	*Jan Wright, DTI*	*0171-215-1793*
Shipping	*David Milroy, DETR*	*0171-890-5423*
Telecommunications	*Neil Feinson, DTI*	*0171-215-1812*
Tourism	*Claire Man, DCMS*	*0171-211-6313*
Export promotion interests	*Debbie Gillat, DTI*	*0171-215-8248*
Development interests	*Anna Wechsberg, DFID*	*0171-917-0157*

Chapter 2

THE GENERAL AGREEMENT ON TRADE IN SERVICES

What the GATS is for

2.1 The GATS is a government to government agreement between the 132 Members of the WTO and sets out a framework of legally-binding rules governing the conduct of world trade in services. It has been formulated with a view to ensuring that government regulations and other government measures affecting trade in services are fully transparent, and to securing the progressive removal of measures which discriminate against foreign services suppliers.

2.2 An important feature of the Agreement is the package of specific liberalisation commitments made by individual WTO Members across the range of services sectors. The national schedules of commitments (see paragraph 2.9 below) indicate which services sectors are open to foreign firms and those in which restrictive measures have been retained. Restrictions which remain in place will be the subject of future negotiating rounds, the next due to commence in January 2000.

The origins of the GATS

2.3 The most recent round of multilateral trade negotiations (the "Uruguay Round") got under way in 1986 and was concluded at the end of 1993. It took place under the auspices of the then General Agreement on Tariffs and Trade (GATT), which had been the negotiating forum for the liberalisation of trade in goods since the 1940s.

2.4 When they met in Uruguay in 1986 Ministers, following representations from industry, decided to broaden the negotiating agenda for the Round by including for the first time negotiations on trade in services. In the early stages of the Round, consideration was given as to whether, given the different nature of goods and services trade (and the barriers which exist), GATT-type rules and disciplines could be employed in the services area. At a later stage, once the main framework rules had been formulated, negotiations began with regard to the specific liberalisation commitments which the individual participating countries could make.

How the GATS works: the main provisions

• *Scope of the GATS*

2.5 The Agreement applies to all "measures by Members affecting trade in services". A relevant measure can take the form of a law, regulation, rule, procedure, decision or administrative action. It can be applied by a central, regional or local government authority or by a non-governmental body in the exercise of powers delegated by a government authority. However, some

measures, provided they do not act as disguised restrictions on trade, are carved out specifically from coverage under the GATS. These are measures:

(a) necessary to protect public morals or maintain public order;

(b) necessary to protect human, animal or plant life and health;

(c) necessary to secure compliance with laws or regulations, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) relating to the equitable or effective imposition or collection of direct taxes;

(e) relating to double taxation agreements.

There are also a number of "security" exceptions.

2.6 As regards sectoral coverage, the GATS applies to any service in any sector, except services supplied in the exercise of governmental authority - ie services supplied neither on a commercial basis nor in competition with one or more service suppliers. In addition, an Annex to the GATS stipulates that, at least at this stage, the Agreement applies only to a limited number of activities in the air transport sector. Another area temporarily excluded from GATS coverage is government procurement (see paragraph 2.26 below).

• *Most-favoured nation principle (MFN)*

2.7 This concept was the corner-stone of the original GATT and has been carried forward into the GATS. Essentially, each WTO Member is obliged to grant all other WTO Members the same treatment that it gives to any other country (ie whether or not that country is a WTO Member).

2.8 Because MFN is a general discipline within the GATS framework, the rule must be respected whether or not an individual country has made liberalisation commitments in a specific sector (see following section). However, WTO Members which wished to maintain the ability to discriminate between fellow Members in certain areas had the opportunity at the end of the Uruguay Round - and at the conclusion of the subsequent sectoral negotiations under GATS - to lodge lists of MFN exemptions (ie derogations). It is understood that, in line with the concept of progressive liberalisation which is built into the GATS, these exemptions will be negotiated away over time[1].

• *Schedules of Specific Commitments*

2.9 Each WTO Member is obliged to deposit a schedule of specific commitments covering services trade.

---

[1] Note:

(i) Countries which engage in a more ambitious liberalisation programme in the context of an economic integration agreement among a limited number of parties do not have to extend the benefits resulting from such negotiations to other WTO Members, provided certain criteria are satisfied (see paragraph 2.23 below).

(ii) Countries negotiating their accession to the WTO are entitled to lodge MFN exemption lists, provided these prove to be acceptable to their negotiating partners.

During the Uruguay Round, and in the subsequent sectoral negotiations, Members chose the services sectors in which they wished to make offers of commitments ("positive listing") and inscribed any market access or national treatment restrictions or limitations which they intended to maintain. Any such reservations were listed according to the four "modes"

2.10 After the tabling of initial offers, WTO Members negotiated improved commitments with their trading partners. In sectors where a Member has made a commitment - either on the basis of a fully open market or with specific reservations listed - that Member cannot introduce more restrictive measures in the future. Thus, even where a Member maintains discriminatory measures in a particular sector, the scheduling of those measures has a value for foreign firms because they are guaranteed that the level of any such discrimination cannot be increased.

• *Market access*

2.11 A WTO Member making liberalisation commitments in a particular sector would have to list as reservations in its schedule any of the following types of restriction or limitation which are being maintained:

(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive services suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment.

2.12 This represents an exhaustive list of the types of market access restrictions or limitations which have to be inscribed in schedules. Any measure of a regulatory nature, while not necessarily subject to scheduling, has to comply with the GATS provisions on domestic regulation (see below).

• *National treatment*

2.13 Unlike the approach followed in the GATT, there is no general obligation in the GATS for a WTO Member to give national treatment to foreign firms established in its market, ie treatment no less favourable than that accorded to domestic services suppliers. However, in sectors where a Member has taken on specific commitments, any limitations on national treatment have to be inscribed in that country's schedule.

- ***"Additional commitments"***

2.14 WTO Members are free to negotiate commitments with respect to measures which are not subject to scheduling under the market access and national treatment provisions of the GATS. As possible examples, the Agreement cites measures regarding qualifications, standards or licensing matters. So far, few Members have inscribed such commitments in their schedules.

2.15 That said, however, when the negotiations aimed at liberalising trade in basic telecommunications services concluded in February 1997 (see paragraph 4.21-4.22 below), a large number of countries agreed to include in their commitments a set of additional rules, particularly competitive safeguards provisions, pertaining to that sector. It is possible that, in the 2000 round of negotiations, a similar approach to liberalisation will be explored for other services sectors.

2.16 In addition, in the absence of GATS disciplines concerning government procurement, WTO Members might wish during the 2000 round to explore the possibility of inscribing "additional commitments" as a first step towards covering that important area under the GATS.

- ***Domestic regulation***

2.17 The GATS imposes a number of obligations with regard to the way in which WTO Members operate their domestic regulatory regimes. Some of these are general obligations, while others apply only in respect of services sectors in which a Member has taken on specific commitments. For example, in sectors where specific commitments have been undertaken, each Member is obliged to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2.18 When concluding the GATS framework at the end of 1993, Members recognised that, in some services sectors, the nature of regulatory barriers is more significant than those addressed under the market access and national treatment articles of the Agreement. It was agreed, therefore, to carry out further work in this area. The WTO Council for Trade in Services is required to develop any necessary disciplines with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. The aim of any such disciplines is to ensure that such requirements are *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

2.19 Pending the entry into force of the general disciplines, Members are obliged to ensure that, in sectors in which they have undertaken specific commitments, licensing and qualification requirements and technical standards are applied in accordance with the criteria listed above. As a first step, the WTO Working Party on Professional Services is developing disciplines for the accountancy sector (see paragraph 4.11 below).

• *Mutual recognition*

2.20 The GATS views recognition of qualifications, licences, etc as a positive step towards liberalisation. It therefore welcomes moves towards harmonisation in such areas, as well as steps taken by individual Members to recognise others' qualifications, etc autonomously or to engage in negotiations aimed at concluding recognition agreements or arrangements.

2.21 In order to preserve a multilateral dimension, the GATS obliges Members which are embarking on such negotiations to submit a formal notification to that effect to the WTO, thus giving other countries the opportunity to participate. It should be noted, however, that, while the intention is to open up negotiations to interested countries, there is no obligation to conclude an agreement or arrangement. An additional obligation is that Members shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

• *Monopolies and restrictive business practices*

2.22 The GATS recognises that monopolies will continue to exist in services sectors; but the Agreement does impose some obligations on WTO Members with regard to their activities. First, Members have to ensure that a monopoly supplier of a service, in the supply of the monopoly service, acts in a manner which is fully consistent with that Member's obligations under those GATS articles concerned with MFN, market access and national treatment. Secondly, where a monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights, and that service is subject to the Member's specific commitments, the Member has to ensure that the monopoly supplier does not abuse its position to act in a manner inconsistent with those specific commitments.

• *Economic integration*

2.23 The GATS acknowledges that countries might wish to join others in negotiating agreements which take the level of liberalisation in services trade beyond that achieved under the GATS. Such an agreement has to comply with reasonably strict criteria. It has to:

- have substantial sectoral coverage;
- provide for the elimination of substantially all restrictions regarding national treatment, either when the agreement enters into force or on the basis of a reasonable time-frame;
- be designed to facilitate trade between the parties and cannot, in respect of WTO Members outside the agreement, raise the overall level of barriers to trade in services within the sectors covered by the agreement in comparison with the situation which existed before the agreement.

2.24 The WTO Committee on Regional Trade Agreements is charged with the responsibility of examining whether agreements formally notified to the WTO comply with these criteria. A number of such agreements have been notified: the EC of 12 Member states, the enlarged EC of 15 Member states, the North America Free Trade Agreement, the EC's Association Agreements with Hungary, Poland and

the Slovak Republic, the EC's Association Agreements with the Baltic states, and the Australia/New Zealand Closer Economic Relations Trade Agreement. The Committee on Regional Trade Agreements has reached no conclusion as yet as to the compatibility of any of these agreements with the relevant GATS provisions.

• *Outstanding work on GATS rules*

2.25 At the end of the Uruguay Round negotiations, it was agreed that negotiations would have to continue in order to formulate any necessary rules covering three important areas. One consideration is whether provisions on **emergency safeguards** are needed so that a WTO Member, faced with an unforeseeable influx of foreign services, can take action to support its industry, without facing any penalty, through the temporary suspension of its relevant commitments. There remains a lack of agreement among WTO Members as to whether such provisions would be appropriate.

2.26 Similarly, it was not possible during the Uruguay Round to formulate rules governing **government procurement** in services. At this stage, therefore, government procurement activities are not subject to GATS disciplines. Work to develop such rules has proceeded slowly and will likely spill over into the 2000 round of negotiations.

2.27 The third area of on-going negotiations is **subsidies**. Unlike trade in goods, there are as yet no multilateral disciplines governing subsidies granted to services industries, but negotiators are charged with developing such disciplines. Again, work in this area is likely to continue as part of the 2000 round of negotiations.

Chapter 3

BILATERAL NEGOTIATIONS

Scope for bilateral liberalisation

3.1 As well as the negotiations taking place at a multilateral level under the GATS, the UK and the European Community take part in negotiations with individual countries at a bilateral level or with various groups of countries. For example, the UK has regularly negotiated air services agreements on a bilateral basis, has developed a network of close multilateral ties in maritime transport through international organisations, and has negotiated the largest number of bilateral double taxation agreements together with numerous investment promotion and protection agreements. For its part, the European Community has concluded association or trade and partnership agreements with a growing number of countries, in particular the countries of Central and Eastern Europe, the Commonwealth of Independent States (formerly USSR), and the EC's Mediterranean neighbour States.

3.2 More recently, the European Commission has begun to pursue bilateral trade agreements. Those mooted or under negotiation so far include agreements with South Africa, Mexico and the Mercosur group of South American countries.

The EU/US Summit and the Transatlantic Economic Partnership

3.3 There has been much reporting of one such European Commission initiative to negotiate an agreement in services with the US as part of a package of trade liberalising proposals. This culminated in the Transatlantic Economic Partnership (TEP) agreed at the EU/US Summit in London in May 1998.

3.4 The TEP aims to build on an earlier initiative - the New Transatlantic Agenda - signed in 1995. It has two elements: multilateral and bilateral. The aim of the multilateral part is for the EU and US to make firm commitments to liberalisation in the next round of WTO negotiations. On the bilateral side, the aim is to remove as many transatlantic barriers to trade and investment as possible.

3.5 As far as services are concerned, the TEP provides:

- at the multilateral level, for a shared objective of ambitious liberalisation of services in forthcoming WTO negotiations;
- at the bilateral level, for negotiations between the EC and US to support the primary goal of multilateral liberalisation, to remove regulatory barriers that hinder market opportunities for services, for the benefit of consumers business; and
- extending work on mutual recognition agreements to cover services as well as goods.

Relationship between GATS 2000 and bilateral trade agreements covering services

3.6 Where such agreements are pursued, to comply with the GATS they must of course meet the criteria for economic integration agreements mentioned in paragraph 2.23 above.

3.7. In seeking your comments on services liberalisation, we would particularly like your comments on how these government to government negotiations with the US and other markets mentioned in this Chapter could help your business objectives, as negotiations are likely to begin earlier than those in the WTO.

Chapter 4

SERVICES SECTORS

Sectoral negotiations

4.1 Whether the focus is on the main GATS 2000 negotiations or those which may take place at a bilateral level, the negotiations to liberalise trade in services come down in the end mainly to a sector-by-sector and country-by-country approach.

4.2 The purpose of this Chapter is to help you give us your priorities for negotiating away barriers you face in other markets and which you would like us to try to remove.

4.3 In this Chapter, to stimulate your reactions, we describe the services sectors covered by the GATS, the liberalisation achieved during the Uruguay Round and the main kinds of restrictions which UK industry may still continue to face.

Barriers to services trade

4.4 There may be a number of reasons why UK and EC businesses experience difficulties in exporting their services to other WTO Member countries. These may be because some countries have not yet given commitments to open certain services markets to foreign competition, or because other barriers to trade exist in those sectors.

4.5 Common barriers to trade include restrictions on the establishment of and operation of a commercial presence by foreign firms, limitations on foreign ownership or requirements to enter joint ventures, an economic needs test requirement for commercial presence or limits on the contract size available for foreign firms. In some sectors (eg construction or environmental services), subsidies and tax incentives are available to promote the development of certain projects. If they are granted only to national suppliers then they can also act as a barrier to foreign trade. The foreign investment regime can also have a decisive impact on the ability of foreign firms to supply competing services.

4.6 Other barriers to trade can include a lack of transparency in the requirements for acquiring permits or licences etc. and for registration fees, some of which can be administered either by a large number of national and local authorities, or by industry associations over which national authorities have no control. Other aspects of domestic regulation can act as barriers to trade. Restrictions may also occur through the lack of recognition of qualifications gained abroad or for a requirement for relevant experience in the importing country.

4.7 Also, whilst there may be sound prudential or social reasons why some countries are not ready to open up specific service sectors to foreign competition, it should be remembered that the provision of some services are dependent upon the availability of associated service industries. Therefore, although certain service sectors in WTO Member countries may, in theory, be open to foreign

competition, in practice the supply of those services by foreigners may be restricted because of the existence of restrictions on the import of supporting services upon which those services are dependent.

Classification of Services Sectors

4.8 Most WTO Members have made their services commitments with reference to the UN Central Product Classification (CPC). This places all service sectors into eleven broad categories plus a catch-all "other" category (see panel below), broken down into more detailed descriptions of services trade. We use these broad categories in this document, including in our commentaries on the degree of liberalisation secured so far in some selected services sectors.

WTO STANDARD CLASSIFICATION LIST

Business services, including professional, computer, R&D, real estate, rental/leasing, advertising, marketing, management consultancy etc

Communication services, including telecoms, postal, audio-visual

Construction and related engineering services

Distribution services

Educational services

Environmental services, including environmental protection, refuse disposal etc

Financial services, including insurance, banking, securities, asset management and financial information

Health related and social services

Tourism and travel related services

Recreational, cultural and sporting services

Transport services, including sea, air, rail, road and auxiliary services

Other

Business services

- *Professional services, including legal services; accounting, auditing and bookkeeping services; taxation services; architectural services (including urban planning and landscape architectural services); engineering and integrated engineering services; medical, dental and veterinary services and other professional services;*
- *Computer and related services;*
- *Research and development services;*
- *Real estate services;*
- *Rental/leasing services without operators, including services relating to ships, aircraft; other transport equipment and other machinery and equipment;*
- *Other business services, including advertising and market research services; management consulting and related services; technical testing and analysis services; services incidental to agriculture, hunting, forestry, fishing, mining; manufacturing and energy distribution; placement and supply of personnel, investigation and security, equipment maintenance and repair; building-cleaning services; photographic services; printing and publishing; convention services and other business services.*

4.9 The liberalisation of **professional services** is important for European industry generally but especially for the UK. Currently, professional services are often regulated by national laws or by professional bodies or associations, all of which attach great importance to regulating the standards of qualification and experience of individuals. In many cases knowledge of the local law is a particular requirement for qualification to practice professional services.

4.10 Although the rationale for regulation may be protection of the consumer and public interest in general, many of the access conditions to the professions nevertheless constitute real barriers to international trade. Regulatory barriers may include nationality requirements, restrictions on the movement of professional, managerial and technical personnel, restrictions on legal form and restrictions on foreign equity. Important national treatment limitations may include restrictions on partnership with local professionals, restrictions on the hiring of local professionals, restrictions on the use of international and foreign firm names, residency requirements and discrimination in the licensing process.

4.11 The professional services sector lends itself particularly well to market opening based on mutual recognition. The WTO has established a working party on professional services to improve the opportunities for accountancy professionals wishing to practise outside their home countries. The WTO Council for Trade in Services has adopted a set of guidelines for mutual recognition agreements in the accountancy sector. These are designed to give guidance to parties wishing to negotiate agreements, and to stimulate opportunities for the movement of accountancy professionals across borders. The Working Party has already established guidelines for GATS Members who are looking to enter into mutual recognition agreements, and work is continuing on a basic set of rules on the regulation of the accountancy sector. This work is based on the provision of Article VI of the GATS.

4.12 In the Uruguay Round, 42 WTO Members made commitments in legal services. Of these, 21 made commitments covering the provision of advice on host country law (19 on representation), 39 regarding advice on international law (20 on representation) and 39 regarding advice on home country law (20 on representation).

4.13 So far 55 WTO Members have made commitments in at least one of the sub-sectors covering architectural services, engineering services, integrated engineering services or urban planning and landscape architectural services. The largest number of Members (54) made commitments in engineering services followed by architectural services (46). For the remaining two sectors just under 30 Members made commitments.

4.14 Other sectors in this category are less closely regulated. Suppliers of **computer services** are more likely to encounter restrictions on temporary entry for personnel, a key concern for developing countries looking for access opportunities in the more developed countries. In **advertising and marketing**, restrictions apply mainly to content, rather than market access *per se*, though the sector is dominated by a few large multinational companies with whom joint ventures offer a more usual method of market entry.

4.15 WTO Members have made commitments on **computer and related services**. These are broken down into consultancy services related to the installation of hardware (49 countries); software implementation services (54); data processing services (52); data base services (46) and; "other" (such as maintenance and repair) services (27). No WTO Members have listed specific MFN exemptions in the sector but, given the importance of commercial presence and movement of natural persons, some countries' across-the-board restrictions on MFN would likely have an impact.

4.16 A number of other factors can have an effect on the growth and development of these services. These can include issues such as labour policies (work permits/visas, education and training), research and development support, protection of intellectual property rights to address software piracy, technical standards, tariffs on computer equipment, and government procurement of information services. Other factors can include issues of legal contract/software licence enforcement, authentication, encryption and protection of individual privacy. For large scale projects, government procurement practices can be particularly influential on the service chosen.

4.17 WTO Members have made commitments on **advertising services**. The majority of commitments (37) in the sector are without economically significant limitations on Market Access and National Treatment except for Mode 4. Most commitments cover the sector in full but, where there are exceptions, the majority concern advertisements for goods which may be considered sensitive for health and safety reasons and/or those which have been made subject to import restrictions.

4.18 One sector in which both the EC and the US believe that the 2000 round of negotiations could bring about liberalisation is **energy-related services**. This is an area that is currently undergoing deregulation and the opening up of monopoly industries to competition. So far, very few WTO Members have made commitments covering activities in the sector and those that have have done so in a piecemeal fashion. Both the EC and US are currently considering how best to classify energy services so that liberalisation negotiations can get under way in the context of the next negotiating round.

Communication services

- *Postal services;*
- *Courier services;*
- *Telecommunication services, both basic and value added, including voice telephony, data transmission and other associated services, private leased circuit services; on-line information and data retrieval and processing services and other related telecommunications services;*
- *Audio-visual services, including motion picture and video tape production services; motion picture projection services; radio and television services, radio and television transmission services; sound recording and other audio-visual services.*

4.19 For **postal services**, in most countries a national public monopoly still applies on items up to a certain weight. National regulation usually requires national postal suppliers to be responsible for providing a universal service in terms of tariffs, accessibility of post boxes and post offices and certain standards for quality of service. However, private courier companies can often provide services that are more dependable, faster and cheaper than those offered by the national postal suppliers, and there are an increasing number of express delivery service providers operating internationally.

4.20 Since 1874, international regulation of postal services has been conducted under the auspices of the Universal Postal Union (UPU) whose Members negotiate agreements and other instruments that address the issues concerning the cross border transit of mail. Six WTO Members have scheduled commitments with regard to postal services and of those only two have appeared to have committed to fully open their markets to foreign suppliers. Two of the other commitments are limited to "accelerated international mail" and one other commitment is limited to postal items above a certain weight level. One of the six schedules lists services as being reserved for a monopoly. 33 WTO Members have scheduled commitments on courier services.

4.21 In the **telecommunications** area, value-added services are already largely liberalised. But basic telecommunications has traditionally been the domain of national state monopoly operators, though the sector is undergoing rapid change.

4.22 The Basic Telecommunications Agreement which came into force on 5 February 1998 has 69 signatories and accounts for over 93% of the world revenues in telecommunications services. The Agreement covers all aspects of telecommunications services and all methods of transmission. The majority of schedules contain commitments on regulatory principles, including competition safeguards on abuse of dominant position by major suppliers. The EC regards the implementation of these commitments as a very high priority over the coming years.

4.23 In most countries, **audio-visual** media are regulated more closely than other forms of media often by means of imposing a licensing requirement. This takes account of the fact that audio-visual media have a greater potential for social, economic and cultural influence. Additionally, a number of WTO Member countries give subsidies for the proportion of domestic content. Only

twelve countries have scheduled commitments in the audio-visual sector. The EC made no commitments and took comprehensive MFN exemptions covering all aspects of its policies. Some other countries took out MFN exemptions to protect co-production agreements and limited regional broadcasting. Only three countries scheduled commitments relating to new technologies in the transmission or tele-distribution of audio-visual services. These issues are likely to play an important part in future negotiations.

Construction and related engineering services

- *General construction work for buildings;*
- *General construction work for civil engineering;*
- *Installation and assembly work;*
- *Building completion and finishing work.*
- *Other construction and related engineering services.*

4.24 This category covers construction and related engineering services except those services such as architectural and engineering services which are provided by qualified professionals and therefore covered under business services (see paragraph 4.9 above).

4.25 In **construction services**, 55 WTO Members, including the major developed countries and some developing countries, have made commitments for at least one of the sub-sectors. 22 Members have made commitments in all sub-sectors. The EC has made a liberal commitment in this sector by permitting the establishment of foreign firms and applying almost no market access restrictions.

4.26 The construction sector is subject to many different aspects of domestic regulation, either at national, sub-federal or local government level. These include controls on land use including environmental regulation or planning restrictions, building regulations and technical requirements, building permits and inspection, registration of proprietors, contractors and professionals, regulation of fees and remunerations, etc. Whilst there are a number of reasons why these controls need to be applied, such as for safety, environmental protection or the implementation of urban and land use planning, even if they are applied equally to both domestic and foreign suppliers they may be found to be more onerous to foreign suppliers. As the construction sector is particularly labour intensive and involves a number of associated services such as transport and insurance, any measures which restrict the movement of people, equipment or the supply of other services have a particular impact on this sector.

Distribution services

- *Commission agents services;*
- *Wholesale trade services;*
- *Retailing services;*
- *Franchising;*
- *Other distribution services.*

4.27 So far only 21 WTO Members have made commitments in **distribution services**. This includes the major developed and some developing counties, including 11 Members who have made commitments in all of the first four sub-sectors. The EC grants full national treatment for foreign firms to supply cross-border and through commercial presence, though a few limitations on market access still remain.

4.28 The distribution sector (especially retailing) is particularly labour intensive and any measures which restrict the movement of people have a particular impact on this sector. Particular domestic regulations that affect distribution services include restrictions on large-scale outlets, shop opening hours and zoning and planning laws. Other relevant legislation includes restrictions on pricing and promotion, vertical restraints and labour market limitations. Many of the regulations which affect the distribution sector are implemented by local authorities who are influential on authorising new stores and setting the conditions under which they operate. The establishment and operation of large "out of town" retail stores may be subject to a number of restrictions based on environmental grounds or the impact that their establishment may have on small local shops.

Educational services

- *Primary education services;*
- *Secondary education services;*
- *Higher education services;*
- *Adult education services;*
- *Other education services.*

4.29 Only a few WTO Members made liberalisation commitments in this sector during the Uruguay Round. Those which did, generally limited the scope of their commitments to the area of **privately funded education services**. Establishment/commercial presence is the key mode of supply for such services. Those countries with commitments inscribed few restrictions. An activity of particular interest to the UK is English language training. Since the end of the Uruguay Round, we have been particularly keen for countries negotiating their accession to the WTO to make open commitments in this area (eg Taiwan).

Environmental services

- *Sewage services;*
- *Refuse disposal services;*
- *Sanitation and similar services;*
- *Other environmental services (including cleaning services of exhaust gases, noise abatement services and nature and landscape protection services).*

4.30 In **environmental services**, 35 WTO Members have made commitments in at least one of the sub-sectors including the major developed and some developing countries. 25 Members have made commitments in the first three sub-sectors.

4.31 In the past, the opportunities for trade in environmental services have been limited as many of the major environmental services were supplied by governments and often formed natural monopolies because of the high level of investment required to create the necessary infrastructure to provide competing services. However, as a consequence of the pressure to achieve environmental objectives in an economically efficient way, the situation is changing. Now, even for those utilities where the cost of building a competing infrastructure would be prohibitive, governments are privatising those services, but making the provision of those services subject to regulatory conditions.

4.32 However, even though governments are increasingly privatising environmental services, they still continue to procure those services themselves. Public procurement practices are covered by various sets of national and plurilateral rules, but all are limited in scope. In the WTO, the Agreement on Government Procurement (GPA) now has 26 signatories. Nearly all the signatories to the GPA have included the full range of environmental services within the scope of their commitments. However, this does not necessarily ensure that all procurement takes place on a non-discriminatory basis. The GPA rules apply only above certain thresholds, only to the covered entities, and parties to the Agreement have listed a number of derogations from its key disciplines.

4.33 The environmental services sector is affected by a wide range of government regulations. On one hand there are the environmental regulations which apply to all industries (such as restrictions or taxes on the emission of pollutants) and, therefore influence the demand for environmental services. On the other hand there are regulations which affect the location or operation of environmental services. These include urban planning restrictions on the location of disposal sites or standards for the discharge of effluents. Where regulations are more burdensome than necessary they can cause an excessive increase in the cost of supplying the service and become in themselves barriers to trade.

4.34 The environmental services sector may also be affected by a wide range of technical barriers to trade. If different technologies produce equivalent results in terms of environmental quality, then we believe a purchaser should be free to choose the type of technology rather than to be obliged to buy from a domestic source because of specific technology requirements.

Financial services

- *All insurance and insurance-related services, including life and non-life insurance services; reinsurance and retrocession and services auxiliary to insurance;*
- *Banking and other financial services, including the acceptance of deposits and other repayable funds from the public; lending of all types; financial leasing; payment and money transmission services; guarantees and commitments; trading for own account or for account of customers; securities related services; money broking; asset management; financial advice; provision of financial information and other financial services.*

4.35 An Annex to the GATS expands on how the basic GATS framework rules apply to the **financial services** sector. It also contains a list of specific sub-sectors on which WTO Members might make commitments. A key feature of the Annex is the "prudential carve-out" which recognises the need for supervisory and regulatory authorities to take prudential measures for the protection of investors or to ensure the integrity of the financial system.

4.36 The GATS also includes an "Understanding on Commitments in Financial Services", which places a higher level of minimum obligations than that provided for in the basic GATS provisions. The Understanding includes a standstill commitment requiring Members not to introduce any new restrictive measures and also a far-reaching right for Members to establish and to expand a commercial presence in all possible forms. So far, only the developed countries and a few developing countries have scheduled their financial services commitments in this way

4.37 The first round of commitments on financial services were made at the end of the Uruguay Round, when 82 countries made commitments to open their markets to foreign service providers. In 1995, a second set of commitments were made when 43 countries agreed to improve their commitments. The US, however, declined to confirm her commitments, viewing the overall package as unsatisfactory. The latest round of negotiations were completed on 12 December 1997, when 72 countries, including the US, agreed to make further improvements to their offers. This brings the total number of WTO Members with commitments in financial services to 102. The 1997 agreement represents a major contribution to opening domestic banking, insurance, securities and other financial services on a non-discriminatory basis to foreign financial service suppliers. Assuming that the countries concerned complete their internal ratification procedures on time, the commitments resulting from the agreement will enter into force on 1 March 1999.

Health related and social services

- *Hospital services;*
- *Other human health services;*
- *Social services;*
- *Other health related and social services.*

4.38 This is another sector where relatively few liberalisation commitments were made during the Uruguay Round; and it is not clear whether, in the next negotiating round, there will be much scope for broadening those commitments. Those developed countries with commitments in the sector have limited those commitments to the provision of such services by entities within the private sector. Many restrictions exist both with regard to market access (eg on levels of foreign ownership) and national treatment.

Tourism and travel related services

- *Hotels and restaurants (including catering);*
- *Travel agencies and tour operator services;*
- *Tourist guides services;*
- *Other tourism and travel related services*

4.39 107 countries have made commitments in this sector, showing the relatively widespread willingness of WTO Members to bind their legislation in this sector. That said, remaining restrictions in this sector include regulations on travel agencies and tour operators abroad. In some countries foreign ownership and presence are restricted and foreign computer reservation systems are not allowed in locally-owned travel agencies or foreign-owned offices. The EC hotel, restaurant and catering industries are major investors abroad and these can only be supplied through a commercial presence. Therefore any discrimination against foreign firms can still have a substantial impact on the ability of foreign firms to provide these services.

Recreational, cultural and sporting services

- *Entertainment services, including theatre, live bands and circus services;*
- *News agency services;*
- *Libraries, archives, museums and other cultural services;*
- *Sporting and other recreational services;*
- *Other recreational and sporting services.*

4.40 An economically important sector falling within this broad category of services is **news agency services**. Most developed countries have made commitments in the sector; and few have inscribed restrictions. Overall, however, the GATS coverage of the sector is poor, with no developing countries making commitments. In recent years, most countries' regulatory regimes have been made less restrictive. This, therefore, is an area in which broader and improved commitments should be sought during the next negotiating round.

4.41 **Entertainment services** is an area of some interest to developing countries. The movement of personnel is clearly an important element in such services. Developing countries are likely to press the industrialised countries during the 2000 round of negotiations for improved commitments in this area.

Transport services

- *Maritime transport services, including passenger and freight transportation, rental of vessels with crew, maintenance and repair of vessels, pushing and towing services and supporting services for maritime transport;*
- *Internal waterways transport, including passenger and freight transportation, rental of vessels with crew, maintenance and repair of vessels, pushing and towing services and supporting services for internal waterway transport;*
- *Air transport services, including passenger and freight transportation, rental of aircraft with crew, maintenance and repair of aircraft and supporting services for air transport;*
- *Space transport;*
- *Rail transport services including passenger and freight transportation, pushing and towing services, maintenance and repair of rail transport equipment and supporting services for rail transport services;*
- *Road transport services, including passenger and freight transportation, rental of commercial vehicles with operator, maintenance and repair of road transport equipment and supporting services for road transport services;*
- *Pipeline transport including transportation of fuels and transportation of other goods;*
- *Services auxiliary to all modes of transport, including cargo-handling services, storage and warehouse services, freight transport agency services and other services auxiliary to all modes of transport;*
- *Other transport services.*

4.42 **Maritime transport services** were the subject of negotiations both during the Uruguay Round and in extended negotiations, which concluded, without success, in 1996. Negotiations focused on three main "pillars":

- international traffic of freight and passengers;
- commercially-related auxiliary services (eg cargo handling, storage and warehousing, customs clearance, container stations and depots, and freight forwarding) and;
- access to and use of port services (eg pilotage, towing, fuelling, emergency repairs and berthing).

On the international side, the negotiations concentrated not only on the elimination of cargo sharing and unilateral cargo reservation practices but also on facilitating the multi-modal integration and free marketing of shipping services.

4.43 Despite attempts at building a package of meaningful commitments, the US remained sceptical about the value of the offers made and declined to table any liberalisation offer. That being the case, most of the countries which had tabled offers withdrew them and negotiations were suspended in June 1996. Negotiations in the sector will start again in the context of GATS 2000. In the meantime, the application of MFN to maritime transport services has been suspended; and a "standstill" clause is in operation which prevents the introduction of more restrictive measures in the sector until the end of the resumed negotiations.

4.44 The Uruguay Round negotiations paid little attention to **land transport services**. Many GATS Members have so far chosen to take MFN exemptions on these services and to enter into bilateral or plurilateral arrangements as the liberalisation of passenger and freight transport is usually only of interest to neighbouring countries. There was also little demand for negotiations to open **rail transport** because in many instances it was provided by public entities or monopolies.

4.45 Because of the plethora of bilateral agreements which exist in **air transport services**, it was agreed during the Uruguay Round that it was unrealistic to attempt to subject so-called "hard rights" (eg traffic rights) to multilateral disciplines. The GATS, therefore, includes an annex excluding such services from coverage under the Agreement. The Annex, however, lists three auxiliary services (aircraft repair and maintenance, selling and marketing of air transport services and computer reservation system services) which are covered by the GATS and on which some countries have chosen to make liberalisation commitments. The Annex provides that the coverage of air transport services under the GATS will be reviewed at least every five years. The possibility of more aspects of air transport services being covered by GATS disciplines will need to be considered in the context of trends towards privatisation, deregulation and globalisation in the aviation sector.

Other issues

• *Temporary entry of personnel*

4.46 As noted at section 1.7 above, this was identified as one of the four "modes" by which a service can be delivered. In terms of the inscription of liberalisation commitments, however, it proved difficult during Uruguay Round, and in extended negotiations which concluded in 1995, to strike a balance between the desires of services suppliers, who would like personnel regarded as essential to have the freedom to move, and the need to respect immigration requirements. These issues will re-emerge during the new round of negotiations. Developing countries in particular will be keen to press for improved commitments from other WTO Members making it easier for their semi-skilled and non-skilled personnel to provide services overseas.

• *Electronic commerce*

4.47 The GATS general principles and obligations apply to services provided either by traditional means or electronically. The provision of services via electronic form, therefore, does not alter the legal treatment of those services under the GATS. That said, however, it is acknowledged that some aspects of electronic commerce raise issues which merit discussion within the WTO. In the autumn, Members will produce a work programme to be taken forward by the various WTO bodies, including the Council for Trade in Services.

Chapter 5

ISSUES FOR DISCUSSION

Introduction

5.1 In this final Chapter, we focus on a number of issues already discussed elsewhere in this document on which we would particularly like to concentrate your attention and invite your comments.

Market opportunities

5.2 The key focus in these negotiations will be on removing barriers and opening markets to business. Consider your international business strategies. **Which markets offer the most business potential for your sector? In which ways are your goals inhibited by measures which are either so prohibitive as to prevent you from doing business there or which force you to find a long way round them? How would their removal make your business easier?**

Market access and national treatment

5.3 Most restrictions discussed in this document relate to restrictions on foreign ownership (eg legal form and maximum foreign equity participation), quotas on licences for new market entrants, restrictions on services which may be provided on a cross-border basis, etc. Other restrictions can be in the form of discrimination against foreign services suppliers in favour of domestic companies.

5.4 Do you experience any of these restrictions? If so, let us know? There may be a need for us to set priorities, so it would be helpful if you could indicate your priorities in the comments you send us.

5.5 There have been suggestions that liberalisation of market access and national treatment restrictions could be furthered by developing a "negative listing" of national restrictions, ie that all sectors are liberalised except where indicated in the schedules of specific commitments. As well as being more liberal, a further possible advantage of such an approach might be an easier schedule to read and a more transparent explanation of remaining restrictions. The current system of "positive listing" was developed in the Uruguay Round because some countries wanted to take deliberate and conscious decisions to liberalise sector by sector; and they may still want to.

5.6 If you are familiar with the way GATS schedules are drafted, in what ways do you think they could be made more easily understandable? What views if any do you have about the value of and negotiability of a "negative listing" approach?

Regulatory reform and consumer protection

5.7 The purpose of domestic regulation is often to protect consumers. There is no automatic incompatibility between trade liberalisation and genuine

consumer protection. But some regulation is more onerous than it needs to be. Business has already begun to indicate a need to re-examine national regulation to ensure that the regulatory environment is the minimum necessary to meet particular objectives.

5.8 What are the more important examples of over-regulation that you experience in the services field in particular markets? What are the regulatory safeguards that you feel are justified? What scope do you see for reducing regulation of the services sector? For example, some regulation is maintained for prudential reasons, but other markets may be more tightly regulated than necessary such that prudential regulation acts as a disguised restriction on trade.

Mutual recognition

5.9 Mutual recognition offers a method of liberalisation in regulated sectors where market access offered on an MFN basis would not be appropriate, eg because minimum standards were necessary. An obvious example are the qualifications required by national institutions for permitting professionals to practise in the national market. Other examples could be prudential supervision of financial services providers.

5.10 How important are the restrictions you face in other markets against qualifications obtained in the UK? What scope is there for mutual recognition of foreign qualifications and supervisory practices?

Regulatory convergence

5.11 A further development of pure mutual recognition would be some form of regulatory convergence (ie movement towards each other's regulatory requirements without full-scale harmonisation. The EC has already developed minimum levels of supervisory regulation between Member States in sectors such as financial services and telecommunications.

5.12 Is more internationally-based regulatory convergence feasible in your sector? Could you give details?

Competitive safeguards

5.13 As mentioned above, liberalisation of the basic telecommunications sector was accompanied by a set of pro-competitive regulatory principles covering such issues as interconnection and universal service obligations. These were important as the sector was traditionally supplied by state monopolies, and negotiators wanted to ensure that foreign companies would not be frustrated by anti-competitive control of market entry points by existing dominant operators. Other sectors where state monopolies have traditionally featured, and where similar issues may arise, include postal, energy and other utilities sectors.

5.14 How important would pro-competitive safeguards be for your sector? What safeguards would you be looking for?

Other issues

5.15 If you have comments on any other issues which you think should be relevant to the negotiations, and on which we have not specifically invited your views, please feel free to include any such comments in your responses.

Annex 1:

THE PRIME MINISTER'S STATEMENT AT THE 50TH ANNIVERSARY OF THE MULTILATERAL TRADING SYSTEM

Britain has been a whole-hearted supporter of free trade since the GATT's establishment. We remain an unashamed champion of free trade today. The GATT's system of trade rules and agreements has contributed massively to global prosperity. It is not something we should take for granted. It has helped to increase world trade 16 times in half a century.

It is hard to over-estimate the effect increasing trade and investment can have. In three days the people of Northern Ireland, and the Republic of Ireland, will vote in referendums on an agreement that I hope will bring political stability and peace. I believe there will be a "yes" vote; that this will lead to an end to violence for good, and that this in turn can provide a surge in investment and trade. This prospect may not in itself be a reason for voting yes. The issues at stake are different. But it is a simple fact that more investment is likely to follow a yes vote.

So I hope that, when you return home, you will all encourage your companies to look at the new opportunities for trade and investment in Northern Ireland the agreement will bring. That you will help us bring the economic prosperity needed to underpin peace. We must not let pass by the best chance for many years for real peace in Northern Ireland.

Let that then be a signal for peace throughout the troubled parts of the world.

The world is opening up with freer travel, common mass media, open communication systems. Free trade is a vital part of this movement. The emergence of Mercosur, NAFTA, ASEAN and of course the EC shows how strongly the tide is turning in favour of free trade. It may be regional for now, but it all strengthens the move to wider free trade - as long as we keep these trading areas open to the rest of the world, as the EU is and must remain.

So the question now is not so much whether there should be free trade, but how best to manage what I believe is an irreversible and irresistible trend so that all countries and all peoples can benefit. That is the millennium challenge - for us and for the WTO.

Everywhere, on all fronts of human existence, all people face the challenge of change. Technology transforms their workplaces. Globalisation alters the structures in which they work. Financial markets that with the push of a button move sums of money beyond contemplation across international frontiers with stunning rapidity, can move whole economies. These are powerful impulses of economic change that leave people feeling powerless and insecure about their future. And in the wake of economic change, social change. Communities disintegrating, families destabilized, crime and drugs and social exclusion. The possibilities of our new world may be infinite but for many millions of our citizens, it is the dangers that are more real.

Our choice is clear. To resist change, let it happen or act together to manage its consequences so that our people are equipped for change and given the chances and security they need. Resistance is easy to demand, but won't work and will spoil the good that globalisation can bring. Laissez-faire will leave us divided and bitter. Working together to maximize the good and minimize the bad is the only realistic option. Nowhere is that clearer than in the way we trade with each other.

I believe that there are five key tasks:

First we must spread the benefits of globalisation. The global economy is a fact. The expansion of world trade - with exports up over 50 per cent since 1990 - has created millions of new jobs and offered many the chance to move from poverty towards prosperity. Foreign direct investment has grown by 14 per cent a year. Ten developing countries, comprising a third of the world's population, have more than doubled their income per head since 1980. But its benefits have not been felt evenly. In some developing countries trade and investment are lagging. The G8 Summit this weekend underlined the need to help developing countries integrate into the global economy and thereby benefit from the opportunities of globalisation. I am pleased to announce that the UK is setting aside $10 million for technical assistance for these countries to help prepare for liberalisation over this year and next. The Least-Developed Countries in particular need special attention. We must all commit to zero tariffs for their exports. At the same time, individual governments must also play their part by: maintaining stable macro economic policies, adopting transparent financial systems, encouraging savings and investment in economic infrastructure, promoting competition and investing in education.

Second, we must keep markets open and fair. It is hard to conceive of a return to the full-blown protectionism and strangulation of trade which disfigured the 1930s. That lesson has surely been learned. But subtle forms of protectionism remain and pressures rise in a crisis. We must ensure that the current financial difficulties in Asia do not lead to a retreat into protectionism. I was therefore delighted that at the Asia Europe Meeting in London, leaders of 25 countries, representing half the world's GDP, pledged themselves to resist protectionism, keep markets open, and press ahead with multilateral liberalisation. In Birmingham last weekend, the G8 resolved to keep its markets open in response to the Asian crisis and called on others to do likewise. And at the EU/US Summit in London yesterday we moved to reduce further obstacles to trade between the US and Europe and found an effective way to deal with US sanctions on our trade with Cuba, Libya and Iran.

Third, we need to extend trade liberalisation. I know that implementing the Uruguay Round has not been easy, particularly for developing countries. But it is vital for us all to live up to our commitments. We must also press onwards. The negotiations on agriculture and services, starting in the year 2000, will require great efforts. But the potential gains are huge. Existing levels of agricultural support are expensive and inefficient. I do not believe they serve the needs of the environment or wider rural community. We need to prepare for these negotiations now, by taking a comprehensive approach and injecting a sense of urgency, if we are to bring them to a successful and early conclusion.

But fourth, as we look to expand world trade, we must also ensure that this is not done at any cost. I believe protecting the world's environment is perhaps the major challenge we face as we head towards the next century. Governments need to consider the environmental impact of everything they do, including in the trade sphere. Trade rules should not be used to impose unfair standards on developing countries, nor to discriminate against their exports. I believe that by building new partnerships increased economic prosperity and trade can go hand-in-hand with environmental protection. At the same time, we must work, in the ILO and elsewhere, for the world-wide observance of core-labour standards for all workers. Again, not as a barrier to trade, or a block on exports from developing countries. But because all workers deserve decent conditions in their workplace, wherever they live. We must also avoid the exploitation of children.

Finally, we must maximize the benefits of the electronic age and the borderless economy. The electronic revolution challenges each one of us. The G8 has just put forward a set of principles for a coherent international environment in which electronic commerce can flourish under private sector leadership, while respecting consumer and public interests. Through its Telecomms and IT Agreements, the WTO has already made a contribution. But regulating and developing electronic commerce will require much more attention in the future.

Mr. President, the GATT, and now the WTO have a proud record of achievement. I have set out the tasks ahead. But to carry them through, we need popular, public support for the work of the WTO. We must send this clear message:

- that protectionism does not bring prosperity;
- that 50 years of trade liberalisation have generated unprecedented growth; the global economy and electronic revolution can help to spread prosperity more widely;
- that we, the Members of the WTO, will settle our differences on the basis of rules, not of power; oppose damaging discrimination; and respect agreements reached freely by consensus;
- that we will work for the further expansion of world trade in a responsible way, sensitive to the needs of all, so as to raise living standards, combat poverty, promote sustainable development and protection of the environment and contribute to international security;
- and, above all that more open markets and more trade mean growth and new jobs for the benefit of all our people.

That is the message we at this meeting should be sending to all our peoples as we celebrate the 50th Anniversary of the GATT and look forward to the next 50 years of the multilateral trading system.

Annex 2:

WTO MINISTERIAL DECLARATION, GENEVA 1998

1. This Second Session of the Ministerial Conference of the WTO is taking place at a particularly significant time for the multilateral trading system, when the fiftieth anniversary of its establishment is being commemorated. On this occasion we pay tribute to the system's important contribution over the past half-century to growth, employment and stability by promoting the liberalisation and expansion of trade and providing a framework for the conduct of international trade relations, in accordance with the objectives embodied in the Preambles to the General Agreement on Tariffs and Trade and the World Trade Organisation Agreement. We agree, however, that more remains to be done to enable all the world's peoples to share fully and equitably in these achievements.

2. We underline the crucial importance of the multilateral rule-based trading system. We reaffirm the commitments and assessments we made at Singapore, and we note that the work under existing agreements and decisions has resulted in significant new steps forward since we last met. In particular, we welcome the successful conclusion of the negotiations on basic telecommunications and financial services and we take note of the implementation of the Information Technology Agreement. We renew our commitment to achieve progressive liberalisation of trade in goods and services.

3. The fiftieth anniversary comes at a time when the economies of a number of WTO Members are experiencing difficulties as a result of disturbances in financial markets. We take this opportunity to underline that keeping all markets open must be a key element in a durable solution to these difficulties. With this in mind, we reject the use of any protectionist measures and agree to work together in the WTO as in the IMF and the World Bank to improve the coherence of international economic policy-making with a view to maximizing the contribution that an open, rule-based trading system can make to fostering stable growth for economies at all levels of development.

4. We recognize the importance of enhancing public understanding of the benefits of the multilateral trading system in order to build support for it and agree to work towards this end. In this context we will consider how to improve the transparency of WTO operations. We shall also continue to improve our efforts towards the objectives of sustained economic growth and sustainable development.

5. We renew our commitment to ensuring that the benefits of the multilateral trading system are extended as widely as possible. We recognize the need for the system to make its own contribution in response to the particular trade interests and development needs of developing-country Members. We welcome the work already underway in the Committee on Trade and Development for reviewing the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular the least-developed among them. We agree on the need for effective implementation of these special provisions.

6. We remain deeply concerned over the marginalisation of least-developed countries and certain small economies, and recognize the urgent need to address this issue which has been compounded by the chronic foreign debt problem facing many of them. In this context we

welcome the initiatives taken by the WTO in cooperation with other agencies to implement in an integrated manner the Plan of Action for the least-developed countries which we agreed at Singapore, especially through the High-Level Meeting on Least-Developed Countries held in Geneva in October 1997. We also welcome the report of the Director-General on the follow-up of this initiative, to which we attach great importance. We commit ourselves to continue to improve market access conditions for products exported by the leastdeveloped countries on as broad and liberal a basis as possible. We urge Members to implement the market-access commitments that they have undertaken at the High-Level Meeting.

7. We welcome the WTO Members who have joined since we met in Singapore: Congo, Democratic Republic of Congo, Mongolia, Niger and Panama. We welcome the progress made with 31 applicants currently negotiating their accession and renew our resolution to ensure that the accession processes proceed as rapidly as possible. We recall that accession to the WTO requires full respect of WTO rules and disciplines as well as meaningful market access commitments on the part of acceding candidates.

8. Full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of living in all parts of the world. When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realisation of their objectives. Such evaluation would cover, inter alia, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed.

9. We recall that the Marrakesh Agreement Establishing the World Trade Organisation states that the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to the Agreement, and that it may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference. In the light of paragraphs 1-8 above, we decide that a process will be established under the direction of the General Council to ensure full and faithful implementation of existing agreements, and to prepare for the Third Session of the Ministerial Conference. This process shall enable the General Council to submit recommendations regarding the WTO's work programme, including further liberalisation sufficiently broad-based to respond to the range of interests and concerns of all Members, within the WTO framework, that will enable us to take decisions at the Third Session of the Ministerial Conference. In this regard, the General Council will meet in special session in September 1998 and periodically thereafter to ensure full and timely completion of its work, fully respecting the principle of decision-making by consensus. The General Council's work programme shall encompass the following:

(a) recommendations concerning:

(i) the issues, including those brought forward by Members, relating to implementation of existing agreements and decisions;

(ii) the negotiations already mandated at Marrakesh, to ensure that such negotiations begin on schedule;

(iii) future work already provided for under other existing agreements and decisions taken at Marrakesh;

(b) recommendations concerning other possible future work on the basis of the work programme initiated at Singapore;

(c) recommendations on the follow-up to the High-Level Meeting on Least-Developed Countries;

(d) recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations.

10. The General Council will also submit to the Third Session of the Ministerial Conference, on the basis of consensus, recommendations for decision concerning the further organisation and management of the work programme arising from the above, including the scope, structure and time-frames, that will ensure that the work programme is begun and concluded expeditiously.

11. The above work programme shall be aimed at achieving overall balance of interests of all Members.

DECLARATION ON GLOBAL ELECTRONIC COMMERCE

Ministers,

Recognizing that global electronic commerce is growing and creating new opportunities for trade,

Declare that:

The General Council shall, by its next meeting in special session, establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, including those issues identified by Members. The work programme will involve the relevant World Trade Organisation ("WTO") bodies, take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora. The General Council should produce a report on the progress of the work programme and any recommendations for action to be submitted at our third session. Without prejudice to the outcome of the work programme or the rights and obligations of Members under the WTO Agreements, we also declare that Members will continue their current practice of not imposing customs duties on electronic transmissions. When reporting to our third session, the General Council will review this declaration, the extension of which will be decided by consensus, taking into account the progress of the work programme.

Annex 3:

CURRENT WTO MEMBERS

Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Congo
Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Czech Republic
Dem. Rep. of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
European Community
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Honduras
Hong Kong, China
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea
Kuwait
Lesotho
Liechtenstein
Luxembourg
Macau
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Netherlands (Kingdom in Europe and Netherlands Antilles)
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom
United States
Uruguay
Venezuela
Zambia
Zimbabwe

Annex 4:

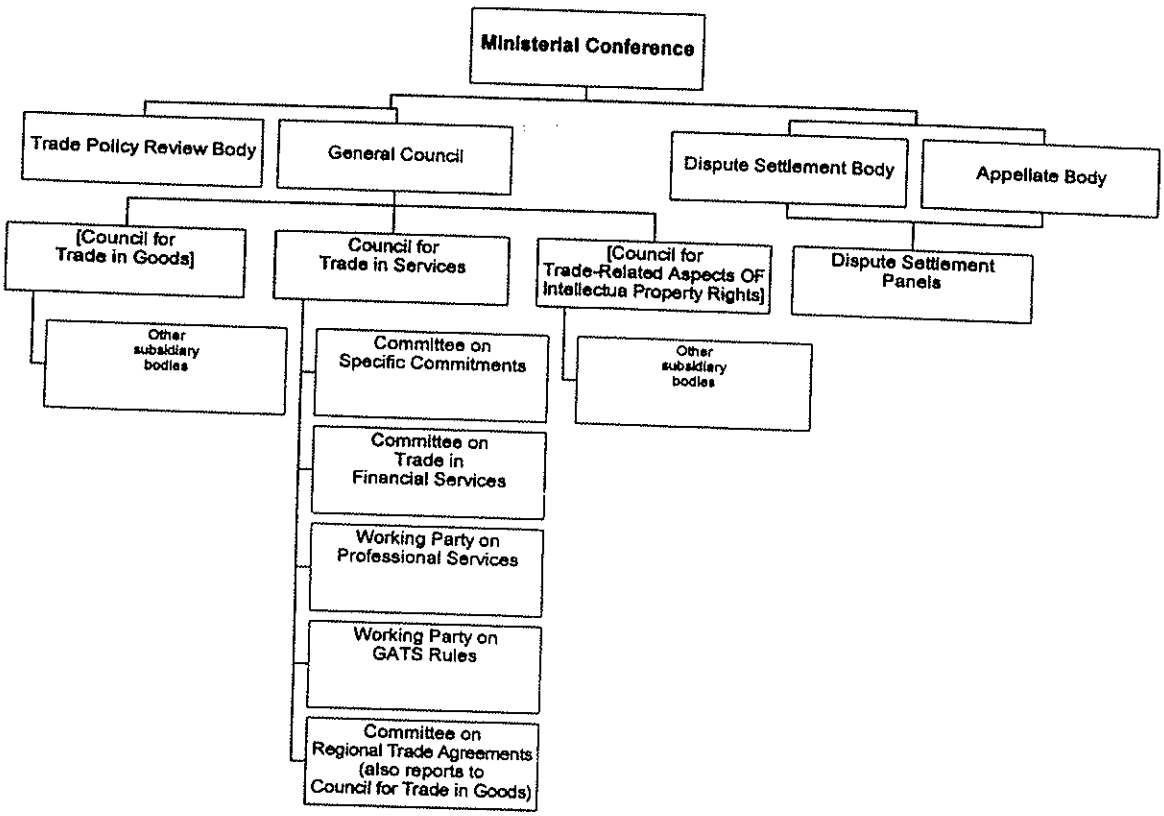
APPLICANTS FOR WTO MEMBERSHIP

Albania
Algeria
Andorra
Armenia
Azerbaijan
Belarus
Cambodia
China
Chinese Taipei
Croatia
Estonia
Former Yugoslav Republic of Macedonia
Georgia
Jordan
Iran (*)
Kazakhstan
Kyrgyz Republic
Lao People's Democratic Republic
Latvia
Lithuania
Moldova
Nepal
Oman
Russian Federation
Samoa
Saudi Arabia
Seychelles
Sudan
Tonga
Ukraine
Uzbekistan
Vanuatu
Vietnam
Federal Republic of Yugoslavia (*)

(*) Note: Requests for membership not yet accepted by the WTO General Council

Annex 5:

WTO STRUCTURE
SHOWING COMMITTEES COVERING TRADE IN SERVICES



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