INTERNATIONAL
DIALOGUE
ON MIGRATION

MANAGING THE MOVEMENT OF PEOPLE: WHAT CAN BE LEARNED FOR MODE 4 OF THE GATS

The World Bank

IOM International Organization for Migration

WORLD TRADE ORGANIZATION

EXECUTIVE SUMMARY

What can we learn from the actual experiences of governments in managing the movement of people that may be of relevance for ongoing efforts to reduce barriers to trade in services? Global trade liberalization negotiations have resulted in substantial reduction of barriers to trade in goods and capital, resulting in substantial global economic gains. Barriers to the movement of people, however, have been identified as a continuing and substantial impediment to further global economic gains from trade liberalization, gains which are predicted both to exceed gains from further liberalization in other sectors and to benefit developing and developed economies alike. Against the backdrop of increasing international movement of people precipitated by transportation and communication revolutions, and demographic projections forecasting aging and declining populations in much of the developed world, global attention is focused on whether and how the global trading system can contribute to progressively facilitating the movement of people in an orderly, predictable, safe and mutually beneficial manner. The key first step to realizing the potential that the movement of people might bring to global economic growth is to bring together trade and migration policy makers and practitioners to explore the links between trade and migration and identify ways to improve the effectiveness of existing trade commitments regarding the movement of persons as providers of services and possibilities for further liberalization of trade in this field.

The seminar, held in Geneva on 4 – 5 October 2004, was a follow-up to the 12 – 14 November 2003 trade and migration seminar organized by the Organisation for Economic Co-operation and Development (OECD), the International Organization for Migration (IOM) and the World Bank. The 2003 seminar brought together for the first time trade and migration officials from 98 countries and from a wide range of international organizations, as well as representatives of business and civil society, for an informal exchange of views in a non-negotiating environment on the relationship between migration and trade. The 2003 seminar focused on the relationship between migration and the supply of services via the temporary cross-border movement of natural persons, or "Mode 4" of the WTO General Agreement on Trade in Services (GATS). Although the GATS is not a migration agreement, but rather an agreement concerned with trade in services, implementation of Mode 4 trade commitments occurs within the regulatory framework governing migration. The 2003 seminar provided an important opportunity to begin building greater understanding between the trade and migration policy communities of the issues, opportunities and challenges related to Mode 4 movement.

The 2004 seminar, jointly sponsored by IOM, the World Bank and the World Trade Organization (WTO), brought together trade and migration officials from 89 countries and numerous international organizations in addition to representatives of business and civil society, to explore in greater depth and detail some of the key issues identified in the 2003 seminar as requiring further collaborative work. The main objective of the 2004 seminar was to continue the dialogue between trade and migration stakeholders and further explore the intersection of the trade and migration worlds though consideration of the actual, practical experiences of governments in managing the temporary movement of persons. For IOM's membership of 109 states, plus 24 observer states and numerous observer intergovernmental and non-governmental organizations, the 2004 seminar was the fourth inter-sessional meeting of IOM's International Dialogue on Migration and contributed to the dialogue's goal of enhancing understanding of migration and facilitating international cooperation in its management.

The primary focus of the 2004 seminar was the examination of existing unilateral, bilateral and regional schemes for managing the movement and temporary stay of foreign workers to determine what can be learned from these schemes that is of relevance to GATS Mode 4. The agenda began with an overview of Mode 4, including the current status of Mode 4 negotiations and implementation issues relating to Mode 4 commitments. This was followed by an examination of national unilateral approaches to managing the movement and temporary stay of workers. Practices for managing the movement and temporary stay of foreign workers under existing bilateral labour agreements were then explored, followed by an exploration of practices under existing regional arrangements, including preferential trade agreements. Next the national implementation of international trade obligations undertaken by states at the regional and global level was considered. Afterward, employer and trade union representatives presented the perspectives of these important constituent groups on labour migration generally and Mode 4 migration specifically. Finally, the focus turned to a synopsis of the seminar discussions and an exploration of the implications for Mode 4 of what had been learned from the practical experiences conveyed over the course of the seminar.

Labour migration is a subset of overall migratory flows, covering only a percentage of the annual cross-border movement of people. Labour migration under Mode 4 is an even smaller subset of annual migratory flows as it concerns only the temporary movement of certain categories of natural persons who move in connection with the supply of a service, and does not apply to jobseekers or to measures related to citizenship, residence or permanent employment. But despite the relatively small number of persons implicated in Mode 4 movement, liberalization of Mode 4 trade has the potential to deliver significant financial benefits for both developed and developing countries.

Pursuant to the GATS, WTO members may undertake binding commitments on the movement of natural persons in connection with the supply of a service. However, those Mode 4 commitments that have been undertaken are to date limited – they predominantly cover highly skilled employees, in particular intra-

corporate transferees and business visitors, and are largely horizontal (i.e. applying to all sectors listed in the member's schedule). During the course of the seminar, a number of reasons for the restrictive nature of Mode 4 commitments were identified, including the lack of coherence between GATS definitions and concepts and those of migration regimes, the desire of states to remain flexible in matters involving migration, the need to guarantee the return of temporary migrants to their home countries and the lack of balance resulting from the fact that Mode 4 obligations currently only extend to host countries. With the hope of finding solutions to these and other barriers to making and implementing Mode 4 commitments, the seminar looked at existing unilateral, bilateral and regional schemes for managing the movement and temporary stay of foreign workers to determine what can be learned from these schemes that is relevant to GATS Mode 4.

In examining national unilateral approaches, it was found that such approaches have a number of clear advantages over bilateral, regional and multilateral approaches, including the flexibility to adjust to changed circumstances and the ability to protect domestic labour markets and the working conditions of domestic workers. The objectives of countries of destination and origin often differ, with the varying approaches taken by countries reflecting these differing objectives. In the United Kingdom, where both highly and lower-skilled foreign workers are recruited, various types of work permit arrangements exist. Work permits are granted through a scheme which balances the sometimes competing interests in enabling employers to recruit or transfer skilled people from abroad, on the one hand, and safeguarding the welfare of the domestic workforce, on the other hand.

In contrast to the United Kingdom's work permit scheme, which facilitates the inflow of foreign workers, the Philippines has developed a comprehensive overseas employment programme, which facilitates the outflow of Filipino workers. The Filipino programme includes elements aimed at three main objectives: enhancing the competitiveness of labour, empowering labour, and ensuring workers' welfare and protection. Elements

of the programme include a variety of welfare programmes for overseas workers (helping to ensure returns), pre-departure skills training and testing (targeted at labour demands in destination countries) and employer accreditation.

The bilateral labour agreements discussed in the seminar generally give countries the ability to manage temporary worker migration with a degree of flexibility that is absent from multilateral agreements, although the flexibility is not as great as that found in most unilateral approaches. For instance, states are often able to build flexible mechanisms into bilateral agreements that serve to protect their domestic labour markets, such as the requirement that there be a verified domestic labour shortage before migration can occur pursuant to the agreement (e.g. Canadian and Jamaican seasonal labour agreements). Two interesting protective mechanisms used by Germany include a quota adjustment clause, making quotas adjustable as a result of changes in the level of unemployment, and a regional market protection clause, which prevents labour migration into certain areas of Germany with very high unemployment rates.

The bilateral arrangements that were explored generally establish obligations for monitoring and managing migration flows for the country of origin as well as the country of destination. For example, many countries of origin are responsible for pre-departure screening (e.g. checking the qualifications and criminal record of potential employees and the reliability of employers). In addition, bilateral arrangements often include measures to ensure that both employers and workers have an interest in seeing workers return to their countries of origin after the expiry of their contracts. For example, employers may be sanctioned for the non-return of workers, providing employers with the incentive to facilitate and encourage return (and perhaps also providing workers with the incentive to return to avoid jeopardizing the future employment of other temporary migrant workers by that employer); or a particular worker may also become ineligible for future employment possibilities because of his/her failure to return. As a result of these mechanisms, the record of return of migrants moving under bilateral agreements is generally very good. Finally, both sending and receiving

countries often take measures relating to the protection of migrant workers in connection with bilateral agreements, such as designating liaison officers in destination countries to assist migrants and providing migrants with information on their legal rights.

In addition to exploring national and bilateral schemes, the seminar also explored approaches to facilitating mobility taken in regional trade arrangements, which often include labour mobility provisions connected with the supply of services and/or with other forms of movement directly related to trade and investment. Regional trade agreements on one end of the spectrum allow for mobility of people in general (i.e. beyond temporary labour migrants), while agreements on the other end of the spectrum are limited to facilitating certain kinds of movement related to trade or investment. The seminar specifically examined the Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC), which facilitates entry but does not confer any rights of access, and the NAFTA scheme, which confers rights of temporary entry to certain business persons. These successful methods of facilitating mobility provide ideas for facilitating mobility under Mode 4.

Through an exploration of the implementation at the national level of international trade obligations undertaken at the bilateral, regional and multilateral level, it became clear that bilateral and regional instruments are often more easily implemented than are multilateral agreements, primarily because domestic policies and frameworks frequently share definitions and concepts with bilateral and regional instruments. These shared features are often the result of bilateral and regional instruments shaping domestic migration policies and frameworks, and vice versa. Repre–sentatives from Mexico, Canada and Colombia each gave examples of experiences where regulations and/or administrative procedures were modified in connection with the implementation of international obligations. The case studies helped to illuminate obstacles to the effective implementation of Mode 4 commitments; in particular, it became increasingly clear throughout the course of the seminar that while effective implementation of Mode 4 commitments are not likely to be addressed through regulatory

uniformity across all countries, Mode 4 concepts and definitions must be better integrated into national regulatory schemes for successful implementation of Mode 4 commitments.

The seminar provided a forum for representatives of employers and workers to share their perspectives on labour migration generally and Mode 4 movement specifically. Employers generally support liberalized rules for the admission of foreign workers, both because they are interested in having access to a larger pool of labour from which they can select employees and because they are interested in having the ability to quickly and efficiently transfer workers to other locations. Employers often become frustrated with the time-intensive process involved in hiring foreign workers and transferring employees, as well as the lack of transparency in most states' migration policies and the lack of consistency between the migration policies of various states. From the perspective of employers, the distinction made in Mode 4 between the services and manufacturing sectors is senseless, because employers have an interest in liberalizing the movement of persons working in both sectors. The exclusive focus on temporary movement under Mode 4 is also frustrating to employers, who are often interested in longer-term involvement with foreign workers, especially in the case of highly skilled workers.

Trade unions are generally focused on protecting the interests of their members and workers in their countries. They are particularly concerned with protecting lower-skilled workers, who they view as being less well protected by economic and social arrangements than highly skilled workers. Accordingly, while current commitments under Mode 4 ordinarily do not raise concerns for trade unions as they primarily involve highly skilled workers, trade unions remain interested in Mode 4 discussions because an expansion of Mode 4 commitments to new occupations and sectors would likely implicate lower-skilled workers, which would raise concerns for trade unions. Concerns of trade unions with respect to temporary lower-skilled migrant workers include their payment into social security schemes from which they are unlikely to benefit and the lack of protection of their rights, especially in light of their frequent ineligibility to

join trade unions and the hesitancy of sending countries to pursue the enforcement of their citizens' rights for fear of host country reprisals.

The constructive dialogue at the seminar highlighted the potential for greater understanding between the trade and migration policy communities of the issues, opportunities and challenges related to Mode 4 movement. As importantly, the seminar served to build confidence between these communities in their ability to work together to achieve mutual and/or complementary goals. The seminar also demonstrated that an exploration of national, bilateral and regional experiences in labour migration management can yield valuable lessons for the more effective implementation of Mode 4 commitments. Over the course of the seminar, a range of conceptual tools and policy options were identified that can be utilized to advance Mode 4 objectives, including cooperation between sending and receiving countries on matters such as screening workers pre-departure (to establish qualifications as well as to verify identity), training workers in the sending country and ensuring the return of workers to their home countries; and building flexibility into Mode 4 commitments (for example, linking Mode 4 quotas with the unemployment rate). As evidence of this, participants suggested that a template approach be considered to capture the relevant successful components of bilateral and regional arrangements for possible introduction into the multilateral context, including commitments under Mode 4.

REPORT OF THE SEMINAR

What can we Learn from Existing Schemes for Managing the Movement and Temporary Stay of Foreign Workers that is Relevant for Mode 4 of the GATS?[1]

Objectives and Structure of the Meeting

Brunson McKinley, Director General, IOM
Aaditya Mattoo, Lead Economist, World Bank

In an increasingly interconnected world, the movement of persons is a key policy issue, as was underlined by the high turn out and the quality of the speakers who participated in the seminar on Trade and Migration 2004. The meeting represented a great opportunity to work in a cooperative spirit and to clarify the possibilities and challenges ahead with the benefit of the expertise of trade, labour and migration officials, and many IOM partner organizations.

[1] All speakers participated in their personal capacity. The views expressed are thus not necessarily those of their governments or employers.

The 2004 workshop on Trade and Migration was the third seminar on the subject of Mode 4 in recent years. In previous seminars, some progress had been made: a genuine dialogue between different stakeholders, migration and trade specialists, had been created and a deeper understanding of the subject had been achieved. The main objective of the 2004 seminar was to continue this process and to explore further the intersection of trade and migration worlds – the movement of natural persons to provide services under GATS Mode 4 – with a view to eventually finding solutions.

A second objective was to evaluate certain unilateral, bilateral and regional schemes in comparison to the multilateral agreement GATS in terms of their scope and the extent of liberalization they enabled. The purpose was to identify whether the progress made in these agreements can be attributed to departures from, or reaching beyond, what was done multilaterally. In particular, three types of distinctions were of central concern in terms of departures from the GATS:

- Selective liberalization as opposed to the principle of most favoured nation (MFN);
- Softer forms of cooperation as opposed to binding commitments; and
- Establishing mutual obligations as opposed to obligations solely for the receiving countries.

A third objective was to analyse the experiences of constituents and labour negotiators involved with existing unilateral, bilateral and regional agreements in order to gain insight into what can be learned for the GATS context in terms of realizing the large gains that can be achieved through labour mobility. It was important to identify whether provisions of these agreements could be usefully incorporated into the GATS and whether aspects of these agreements could continue in parallel to, and outside of, the GATS and yet facilitate liberalization within the GATS.

A final objective was to consider whether some critical liberalizing elements of these agreements are intrinsically distinct from what can be accomplished within the GATS and, if so, recognizing the limitations of the multilateral agreement, to consider alternative ways to deliver liberalization.

The structure of the seminar corresponded to these objectives, and covered the following topics:

- Trade and Migration context:
  - Outline of the main features of GATS Mode 4 and the current state of affairs in GATS Mode 4 negotiations in relation to temporary labour migration.

  - Introduction to the management, by governments, of the movement and temporary stay of labour migrants with a focus on the broad policy orientations adopted and the principal administrative mechanisms used towards their implementation.

- Unilateral, bilateral and regional approaches to managing the movement and temporary stay of workers: scope, aims, structure and mechanisms of managing the movement and temporary stay of workers applied at the national, bilateral and regional levels; strengths and weaknesses of these approaches in comparison to other types of agreements, including GATS Mode 4.

- National implementation of international obligations: perspectives of both recruiting and resource countries on ways of implementing at the national level the international trade obligations undertaken at the regional and multilateral levels.

- Perspectives of the business and labour communities on issues, practical impediments and concerns that arise in relation to temporary labour migration.

- The GATS and beyond: identification of the main concerns of the migration community with regard to Mode 4 and ways of addressing them; overview of the elements of existing unilateral, bilateral and regional schemes which can be brought into the Mode 4 framework; ways to build confidence and improve access through increasing the transparency of national policies and administrative procedures; the significance of the most favoured nation (MFN) principle and its impact on labour liberalization under Mode 4.

Session I: Trade and Migration Contexts: Setting the Scene

Chair: **Lakshmi Puri,** Director, Division on International Trade in Goods and Services, and Commodities, UNCTAD

This session was dedicated to analysing the trade and migration context. Trade and migration used to be seen as entirely separate and conducted with different mindsets until GATS Mode 4 brought these phenomena together. The aim of this meeting was to bring about an awareness of some of the values driving trade and those driving migration management. However, it was also considered important to keep in focus certain distinctions to enable trade liberalization to progress unhampered by some of the specific considerations that underline migration management.

Trade: Update on Mode 4

Brief presentation on the state of play in GATS Mode 4 negotiations, including on offers submitted thus far and the main issues of discussion in the negotiations.

Hamid Mamdouh, Director, Trade in Services, WTO Secretariat

The GATS is an agreement that is concerned with trade in services. The concept of trade in services is alien to non-trade

negotiators; it is also entirely different from any other form of trade. It can be defined as any transaction that involves the supply of services through any of the four modes. Mode 1 comprises cross-border supply (e.g. in telecommunications industry), where the service crosses the border in a way analogous to the trade in goods. Mode 2 involves cross-border consumption, where the consumer goes to the country of the supplier (e.g. tourist). In Mode 3, a service is supplied through commercial presence in another member country (e.g. establishment of a branch or subsidiary). Mode 4 encompasses the movement of natural persons, as in this case, a service supplier moves to another member country to provide a service (e.g. lawyer or doctor). Modes 3 and 4 involve the cross-border movement of factors of production, which is the revolutionary element in the GATS definition of trade in services. Mode 3 covers cross-border movement of capital, and is consequently linked to investment regulations and investment policies. Mode 4 involves the cross-border movement of people, and thus, relates to immigration policies. However, the GATS is concerned with these two factors of production incidentally, only to the extent that such movement relates to the supply of services.

Mode 4 is described as "the supply of a service .... by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member". The natural person concerned can be self-employed, a contractual service supplier or an employee of a service supplier.

Due to the complexity of immigration regulations and the necessity to deal with a broader range of concern than exclusively trade issues when addressing matters involving people, it was important to define more clearly what is included in the GATS. Such clarification is made in an Annex to the GATS, which defines the outer limits of this agreement. The GATS only covers specific cases of natural persons who are involved in supplying services. It does not apply to jobseekers or to measures related to citizenship and permanent stay. Governments can regulate the entry and temporary stay of natural persons on their territory as long as this does not impair their GATS commitments. In particular, as is mentioned in Footnote 1 of the Annex, differential visa requirements are not regarded as inconsistent with the GATS.

It is often claimed that Mode 4 commitments are not satisfactory. One of the specific weaknesses of Mode 4 is the limited range of categories of workers covered by its commitments. Mode 4 commitments are largely horizontal (i.e. apply to all sectors listed in the member's schedule) and predominantly cover highly skilled employees of juridical persons, in particular intra-corporate transferees, and business visitors. Consequently, a large part of commitments relate to the third Mode of supply, the establishment of commercial presence (60%). Contractual service providers that are employees of service suppliers represent a further 13 per cent and only 6 per cent of horizontal commitments concern independent service providers.

There are a number of reasons that can explain the restrictive nature of Mode 4 commitments. As liberalization of Mode 4 trade would raise issues related to migration and labour market policy, in the presence of a conceptual gap between GATS definitions and migration regimes, political and regulatory considerations profoundly affect levels of commitments under this agreement.

Although GATS commitments are made on a most favoured nation (MFN) basis, there is a possibility to give preferential treatment to those members who claimed exemptions from MFN when joining the GATS. There are a plethora of such exemptions, which tend to make guarantees of the commitments unclear and consequently contribute to more limited concessions on the part of the members. A predominant way of limiting access under Mode 4 is economic needs or labour market tests (ENTs / LMTs). The concept of ENTs in the GATS is about limiting access on a predetermined set of criteria. However, the ENTs in member schedules do not contain any defined criteria but carry a great degree of discretion, thereby negatively impacting on the certainty and predictability of commitments. Other exemptions related to Mode 4 are: limited scope, pre-employment requirements, quotas, nationality and residency requirements, training or education qualification, etc.

Another ambiguity related to GATS commitments is the issue of duration of stay. Mode 4 applies to service suppliers entering a member country on a temporary basis. However, no standard definition of "temporary" is provided; the only clarification is of

a negative nature: the stay should be “non-permanent”. As a result, each member is free to interpret the term “temporary” as it wishes. In most cases, the length of stay for intra-corporate transferees varies between three to five years, while the period of stay for contractual service suppliers is usually shorter: from three months to one year, and in rare cases up to two years.

Enforcement concerns and the issue of returns-guarantee are additional causes for limited concessions with respect to Mode 4.

In the current negotiations there are some signs of progress: seven new proposals addressing many of the above issues are being reviewed. Three proposals have been submitted by developing economies (i.e. India, Colombia and Kenya), and four by developed economies (i.e. the EC, the United States, Japan and Canada). A number of other sector-specific proposals containing Mode 4-related aspects have been submitted.

The proposals identify the necessity of enhancing clarity of definitions and introducing finer classification of categories covered in members’ GATS schedules, as well as development of sector-specific commitments. WTO members have also indicated their willingness to remove some of the barriers, in particular, to develop multilateral criteria for the economic needs test with the aim of achieving higher specificity, transparency and equivalent treatment of this controversial instrument. Similarly, efforts are directed towards increasing transparency with respect to migration regulations, as some domestic rules in this area affect trade in services. Another initiative currently examined is the possibility of developing a specific set of administrative procedures that would apply to Mode 4. There is some indication that more attention will be given to independent service suppliers, as is the case in the EC proposal.

At present, although a number of challenges remain, the Mode 4 debate has succeeded in focusing on specific issues. The negotiators are currently pursuing two main objectives: higher levels of liberalization and clarification of administrative procedures, particularly in relation to the implementation of existing commitments. The major obstacle to achieving these aims

is the lack of adequate reflection of Mode 4 concepts in domestic immigration regulatory frameworks. As Mode 4 is a trade concept, it has not been a focus of immigration officials. However, it is important to recognize that Mode 4 is a part of a much broader migration picture involving a wide range of issues, including security concerns and social and cultural considerations. It is necessary to bridge this conceptual and regulatory gap between trade and migration by providing Mode 4 with an identity within the domestic migration regulatory systems in order to accelerate the progress of Mode 4 negotiations.

Because security concerns are currently of particular significance, it is important to note that the GATS is structured to take account of such considerations. Within the GATS, national security concerns have priority over all commitments: there is no necessity test or legal constraint that would restrain the sovereign right to self-defence. Consequently, security concerns should not be an obstacle to advancing GATS negotiations.

Migration: Managing Movement and Temporary Stay of Labour Migrants: Policy and Implementation

Gervais Appave, Director, Migration Policy and Research, IOM

In trying to bridge the conceptual gap between trade and migration it is useful to identify what is at stake. On the one hand are important economic considerations: it is estimated that even modest liberalization of the movement of natural persons will yield between 150 and 200 billion US dollars annually. On the other hand are serious concerns of migration policy makers related to sovereignty, security, social cohesion and access to welfare and social services. Underlying these considerations, there is an unresolved debate regarding the impact of labour migration on domestic labour markets. The inflow of labour migrants may exert pressure on wage levels or levels of employment among local citizens, especially at the lower end of the market. If we are to resolve these concerns, we must bring

together practitioners who have, until now, addressed each set of issues separately.

Migratory flows are driven by a complex interplay of factors, chief among which are demographic trends and per capita income variations between countries. It is estimated that growth of the world population will persist until 2050, while the population of the developed world will continue ageing and declining. The trend of rising income disparities between countries will also persist. These factors suggest that new generations of workers in emerging economies will seek opportunities abroad, while in the industrialized world there will be an increased demand for labour, especially in such sectors as healthcare and information technology. However, estimates also show that the supply of labour in developing countries will considerably exceed the demand in the developed world.

Locating Mode 4 within this overall flow of population mobility is a difficult task. Currently there are 185 million migrants worldwide, 85 million of whom are labour migrants. Yet there are no migration statistics concerning temporary migration generally or Mode 4 migration specifically, which constitutes part of the overall migratory flow. The difficulty of placing Mode 4 within the general migration picture is related to the lack of uniform or even comparable definitions. First, the definition of “temporary” varies between different countries. In some cases, temporary workers are not classified as migrants at all because of the shortness of their stay. Secondly, since Mode 4 is external to migration regulations, migration statistics are not compiled to capture this category. Nevertheless, it is clear that in practice Mode 4 concerns a relatively small number of predominantly highly skilled workers. Therefore liberalization of Mode 4 trade should not be seen as a backdoor for liberalizing cross-border movement of people in general.

Despite covering a relatively small number of persons, Mode 4 has the potential to deliver significant financial benefits for both developed and developing countries. This fact underlines the importance of thoroughly understanding the nature of the relationship between the spheres of governmental policies and

practices in the field of migration management and Mode 4. Mode 4 and migration regulations represent two sets of realities that have evolved along separate but parallel tracks. Mode 4 is not a migration agreement; it is concerned with trade in services. However, its implementation occurs within the regulatory framework governing migration, and consequently practitioners in both fields need to understand the language and instruments employed in order to make progress possible. In pursuing this objective, the essential features of migration regulatory frameworks at the national and multilateral levels need to be understood.

Migration management begins first and foremost at the national level. National systems determine the categories of persons allowed to enter the country, duration of stay, permission to work, as well as ability to access social services. In the labour migration sector, national systems are increasingly involved in marketing labour migrants and preparing them for work and life abroad.

In analysing migration policies, a distinction between perspectives of countries of destination and origin needs to be made. Countries of destination have a broad range of objectives, including meeting demand for labour while protecting domestic jobs and wages, managing intra-corporate transferees, providing domestic business access to services and generally promoting business and investment. Among the instruments used to pursue these goals are admission policies, quotas and ceilings, labour market assessments and economic needs tests, employment permits, visas and skills recognition procedures.

The objectives of countries of origin partially differ from the aims of recipient countries and incorporate placement of excess labour overseas, acquisition of new skills and resources and facilitation of the flow of remittances from abroad. Increasingly sophisticated tool kits are being developed and utilized to achieve these objectives, an excellent example of which is the operation of the Philippines Overseas Employment Agency (POEA). The POEA has developed and implemented a comprehensive strategy covering the recruitment, screening and preparation of workers

as well as provision of support and advice to them while working overseas.

There is a growing recognition that migration, as a transnational phenomenon, cannot be effectively dealt with without transnational cooperation. Emergence of an increasingly globalized labour market is another reason for complementing national efforts with interstate cooperation. As a consequence, migration appears today to be an established feature on the international affairs agenda. It is most evident at the consultative level, where a significant increase in the number of consultative processes has been recently taking place. All consultative circles involved share a desire to identify common interests and challenges. The need for consultation is illustrated by the growth of IOM membership in recent years. Note should also be taken of broader multilateral efforts, for example the IOM International Dialogue on Migration, the Berne Initiative, the ILO effort to develop a non-binding framework on labour migration and the Global Commission on International Migration.

However, interstate cooperation mostly takes place in an informal setting. Despite some progress, efforts towards genuine, practical collaboration lag behind, as confidence building between states still requires careful nurturing. Nevertheless, governments are increasingly employing bilateral agreements as effective instruments for the management of labour migration. No ideal model of such agreements has emerged so far. A variety of approaches are currently in use, covering all skill levels and applying not only to the movement of migrant workers, but also to issues of integration, protection of rights and social security. Furthermore, a number of initiatives have been taken at the regional or subregional level, although here the progress is slower.

In conclusion, a better understanding of the relationship between trends in international migration and government policies and practices can help to identify their impact on Mode 4 and to find ways for improving the effectiveness of liberalizing Mode 4 trade. More specifically, it ought to lead to a more efficient implementation of current Mode 4 commitments and may facilitate exploration of possibilities for further liberalization.

Lakshmi Puri, Director, Division on International Trade in Goods and Services, and Commodities, UNCTAD

This session provides a clear exposition of the ways in which trade and migration contexts are brought together in the consideration of GATS Mode 4. In the course of the session, the main issues and challenges surrounding the movement of people in the context of Mode 4 and migration policy, which are deemed to be complex, sensitive and multidisciplinary, are addressed.

While trade and migration may be seen as representing two distinct universes, the presence of foreign nationals supplying services under the GATS abroad, though part of trade policy, also involves issues of immigration law, leading to some overlap and potentially to confusion. Being at the intersection between trade, development and globalization, trade and migration deserve deeper empirical analysis and proper synthesis. Hence, by its very nature, deliberation of these matters calls for the joint efforts of experts in the fields of migration and trade. Trade is generally recognized as one of the most progressive forces driving change, economic growth and development, with Mode 4 forming a part of this dynamic process. On the other hand, migration policy continues to be perceived as having a defensive function and as incapable of responding in a flexible manner to the dynamics of the markets. These two seemingly very different approaches and cultures need to be reconciled to make progress in the area of Mode 4 commitments and their implementation. To achieve progress, it is not enough for trade experts to seek to understand the migration context. It is equally important to recognize that Mode 4 represents one of the key negotiating interests of developing countries under the GATS – a fact which has been reflected in the WTO July framework agreement on the Doha Work Programme.

In the context of the multilateral services trade negotiations, Mode 4 has been singled out in the July framework for its particular importance to developing countries and as the area in which negotiations should aim to achieve progressively higher levels of liberalization. In overall terms, further progress in the GATS negotiations and the degree to which developing countries are likely to make specific commitments regarding market

opening will be determined by the extent to which commercially meaningful market access in Mode 4 is granted. Thus, it is necessary to bring together two communities – trade and migration – in order to raise awareness of the importance of this issue. While engaging in this dialogue, it is important, in the first place, to discern where the differences between Mode 4 concepts and migration policy lie. In this context, it would be helpful to establish areas where migration and labour policy improvements could help facilitate Mode 4 movement and, thereby, also help progress in the broader framework of the GATS and Doha negotiations.

It is important to be aware of the development context of trade in services in relation to Mode 4 and to the driving forces behind the related movement of people. In the work of UNCTAD, it has been stressed that trade-related movement of people is connected with both trade and poverty, and trade and gender, while the necessary development and human dimensions are provided by linking Mode 4 with the achievements of the Millennium Development Goals. The notion of mutually beneficial migration is gaining broader recognition and the so-called "major receiving countries" are more cognizant of the significance of migration not just as a transitory phenomenon but also as an important fact that requires a sustainable and balanced approach. It should be recognized that Mode 4 provides for orderly and rational economic migration and is the most effective tool and the best guarantee against irregular and illegal migration.

Effective liberalization has not brought equal outcome across all modes and factors of production. So far, the GATS commitments have been aiming at facilitating access for people with the highest skills, and have been linked to investment. Goods and capital are moving freely as barriers are being removed in the name of globalization; GATS-related movement of labour is curbed by myriad restrictions. Progress in liberalization of Mode 4 trade is as much a matter of fairness as of seeing it as a positive sum game for all – developed and developing countries. This is the area where trade liberalization stands to bring the most gain to all parties involved. In his statement during the UNCTAD Commission on Trade in Goods and Services and

Commodities, Professor Dani Rodrik stressed that removal of restrictions in markets for goods and financial assets has narrowed the scope of price differentials so that they rarely exceed the ratio of two to one. At the same time, wages of comparable individuals across markets differ by a factor of ten or more. Consequently, liberalization of Mode 4 labour movement could yield benefits that are up to 25 times larger than those that could be derived from focusing on traditional areas of negotiations.

Another issue often brought up in Mode 4 discussions is its relation to some highly sensitive matters in a variety of areas – political, cultural, ethnic, etc. One concern is the effect of labour migration on domestic labour markets. It should be taken into account however, that a certain degree of dislocation and adjustment in the labour market is an unavoidable effect of liberalization, which is not unique to Mode 4, but also occurs as a result of industry or trade deregulation. In many developing countries, liberalization of trade in goods has necessitated adjustment, which at times was painful and produced wage depression, social displacement and other negative societal effects. Liberalization of many services sectors is seen as challenging the very fabric of societies in developing countries. For example, liberalization of the financial sector, which is one of the most sensitive areas in developing countries, has been pursued despite considerable costs. In addition, these structural reforms are taking place in developing countries in the absence of social security nets which rich countries could afford to provide for their citizens. Without confronting these problems and rising to the challenges that changes bring, no liberalization efforts would have taken place to date.

Experience has amply demonstrated that individual countries acting on a unilateral basis cannot address the issues and problems associated with Mode 4. There is a need for a dialogue among countries at the multilateral level, especially since a significant proportion of labour flows under Mode 4 are interregional. The immigration community, trade policy makers and labour market regulators need to assess this issue from a broader perspective, delving beyond immigration and labour market concerns and linking them with potential gains. In

disentangling immigration and labour market concerns and identifying the underlying factors, this session and the seminar in general could help to bring progress and decrease tensions in the area of Mode 4-related mobility of persons. The UNCTAD Expert meeting on Mode 4 concluded that Mode 4 is the area where market forces should be allowed to operate more fully, thus recognizing that liberalization of Mode 4 trade in services is good both for the market and for development. Achieving freer cross-border movement of information, consumers and factors of production lies at the heart of the multilateral trading system. It is important to strengthen the multilateral framework by ensuring that commitments resulting from the ongoing negotiations would be development oriented.

General Discussion

Many participants highlighted the importance of imposing obligations on both host and source countries in order to establish predictable regimes.

In the course of the discussion, the appropriateness of Mode 4 as a tool for addressing structural labour shortages related to population ageing in the OECD countries was questioned. In response, it was pointed out that the purpose of Mode 4 is to allow supply of services through a particular type of movement of natural persons rather than to fill labour shortages. But although such an effect is incidental, Mode 4 is well suited for alleviating problems related to an ageing population. First of all, Mode 4 offers a good means for satisfying the growing demand for health and personal care workers. Secondly, it can provide a steady inflow of youthful population without imposing the burden of pension payments onto the host country at a later stage, since all migration under this scheme is temporary. It was also noted that it might be interesting to look at the relationship between the broader development of labour migration and Mode 4 from another perspective: whether migration growth can satisfy the needs of Mode 4.

One of the questions concerned the scope of Mode 4 specific commitments in relation to service providers. It was clarified that for the purposes of the GATS, the service supplier of another member might be either an individual or an entity, of which the natural person is an employee. It was underlined, however, that the GATS is focused on the nationality of the service suppler, not on the nationality of a natural person involved. For example, when an expatriate is working for a national service supplying entity, the service provider is domestic. Consequently, this case would not be covered by GATS obligations, although the individual concerned is a foreigner.

One of the participants enquired about the definition of the boundary between Mode 4 and immigration policy and, in particular, whether the boundary is determined by each country in its specific commitments. It was explained that although some of the elements that define this boundary are included in the members' schedules, the GATS itself draws some clear lines in terms of the scope of its application – notably, the GATS exclusively covers the temporary movement of people, and only where the temporary movement is related to the supply of services. Therefore, the boundaries between Mode 4 and immigration policy are to be found in the totality of both the GATS content and the individual schedules of the member states.

Session II: National Level Unilateral Approaches to Managing Movement and Temporary Stay of Workers

What approaches have countries taken at the national level to manage unilaterally the movement and temporary stay of workers? What has been their purpose and what types of movement (e.g. skill level, sector, duration of stay and type of contractual arrangements) do they cover and how does this compare with bilateral, regional and multilateral mechanisms, including GATS Mode 4? What have been the strengths and weaknesses of these initiatives? What lessons can we learn?

Chair: **G. Joseph,** Director, Department of Home Affairs, South Africa

Introduction

Frank Laczko, Director of Research, IOM

There is no global system for managing labour migration. For the most part, temporary labour migration today takes place within national schemes and outside of interstate labour agreements.

Countries employ a variety of temporary channels to manage the movement of labour. Understanding national frameworks within which labour migration is currently managed is of great use for GATS discussions, as their experience, strengths and weaknesses can provide valuable lessons for initiatives regarding Mode 4 movement. Moreover, by analysing current temporary labour migration arrangements, it is possible to understand how schemes more focused on Mode 4 categories can mesh with existing regimes.

With the aim of acquiring more comprehensive information regarding current temporary labour migration policies and practices across the globe, a survey was carried out in preparation for this conference. Questions included in the survey concerned bilateral and regional agreements and the extent to which states currently collect data on temporary labour migration. This questionnaire represents one of the most comprehensive attempts to collect information on these subjects and the first attempt to collect such a wide range of data from such a broad spectrum of countries. The questionnaire was sent to 181 countries, WTO and IOM members and observers. At the time of the seminar, 31 replies were already received, covering most regions of the world.

A number of challenges for the analysis of temporary labour migration can be identified from the responses collected. First of all, it has become evident that many states do not collect data on temporary movements of people, and either do not make any distinction between temporary and permanent entrants or this distinction is not clear-cut. In cases where a clear differentiation is made, definitions of temporary migrants, categories they are divided into, and periods of stay to which these categories are linked, vary greatly between countries. Finally, it needs to be recognized that an assessment of the number of people entering a country through temporary channels does not provide an accurate indicator of the quantity of temporary migrants, as a stay can be extended and the status of a migrant can be eventually changed to permanent. Nevertheless, responses to the survey reveal a considerable increase in the number of foreign workers as well as the efforts of labour importing countries to introduce measures facilitating the cross-border movement of workers.

Analysis of the types of domestic regulations for the management of temporary entry of workers shows that temporary programmes frequently share a number of specific restrictions, such as:

- Fixed-term employment contracts;
- Restrictions on changing employer or job market sector and geographical area;
- Requirement to leave country on expiry of contract if contract not renewed;
- Restrictions on changing employment;
- Restrictions on family reunion.

It is also evident that national temporary schemes are becoming increasingly selective (i.e. oriented towards recruiting particular workers for particular needs in different segments of the labour market). States apply a variety of entry regulations usually oriented either towards protecting their national labour force or testing the suitability of migrants for the employment conditions in the country, such as:

- Quotas/ceilings (country, regional or company)
- Labour Market Tests
- Use of economically oriented fees
- Individual labour market tests
- Regional/state level labour market tests

In terms of selection procedures regarding foreign labour, two systems can be identified: demand and supply driven. In a demand-driven system, migrants are admitted at the request of the employer. In supply-driven systems, the migrant initiates the process but has to meet the criteria set by the state.

Despite diversity, there is some convergence between systems of different states. Most countries favour highly skilled workers, especially in the IT and healthcare sectors. However, in developing countries, especially in Asia and the Gulf states, temporary workers are mainly semi- or low- skilled (e.g. in

Kuwait 500,000 of 700,000 foreign workers are semi/low-skilled). In the OECD countries there has also been a rise in the number of seasonal lower-skilled workers (e.g. the United States, Spain, Italy, the United Kingdom). Within Mode 4 movements, the fastest growth has been taking place in the mobility of intra-corporate transferees.

Such convergence between different regulatory regimes can be explained by a number of factors, including the development of information and computer technology; free flow of goods and capital, which increases demand for employment and provision of training, expertise and services abroad; slow labour market adjustments, which cause labour shortages especially in lower-skilled occupations; and finally, population ageing in some OECD countries.

National unilateral approaches have a number of clear advantages, notably flexibility to adjust to economic cycles; ability to protect nationally important economic sectors and working conditions of domestic workers; and higher public acceptability compared to policies of free movement. Weaknesses include difficulty in selecting migrant workers in a cost-effective manner; lack of predictability and transparency regarding regulations; numerous restrictions placed on temporary migrants which reduce availability of human capital resources and limit trade-led growth; limited ability of sending states to protect citizens abroad; difficulty to enforce temporary stay of workers; and availability of relatively few channels for temporary migrants leading to a growing volume of irregular migration.

Thus, as factors driving the growth of migration are likely to persist, governments are faced with a challenge to find means to manage increasing temporary migration in the most expedient way and to create appropriate temporary entry channels.

Case Study 1: Philippines

Danilo P. Cruz, Under Secretary for Employment, Department of Labour and Employment, the Philippines

The Philippines is one of the major suppliers of migrant workers in the world with over 8 million Filipinos living or working abroad. It is recognized that Filipinos overseas continue to play a critical role in the economic and social stability of the country. Philippine foreign policy makes it imperative to provide protection and assistance to the overseas Filipino workers (OFWs), as was illustrated by the decision taken by the government in the case of Angelo de la Cruz, the truck driver of Saudi National Establishment who was taken hostage by Islamic militants in Iraq.

Philippine government regulation of overseas employment started to be developed at the beginning of the twentieth century. At first, it included only the licensing system provided for in Act 2486 of 1915 and orders issued by the Department of Labour, which spelled out minimum contract conditions, dollar remittances policy for salaries earned abroad, and procedural rules and regulations. However, in 1974 the Philippine international employment programme was institutionalized as a response to the surge of demand for Filipino workers in the Middle East. This programme was originally envisaged as a temporary measure aimed at easing the unemployment problem and generating foreign exchange, but the increasing number of Filipinos overseas and growing competition has lead to the development of a comprehensive overseas employment programme, which now includes elements aimed at three main objectives: enhancing the competitiveness of labour, empowering labour, and ensuring workers' welfare and protection.

Currently, there are two agencies attached to the Department of Labour and Employment, specifically catering to the needs of OFWs, namely, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA). Acting on the principle that the best employment mechanism is the provision of a good welfare system, the Philippine government has developed a variety of welfare programmes for OFWs and their families for the period before their departure up to their reintegration into the domestic labour market.

In order to provide a high degree of protection of OFWs, the government uses a system of employer accreditation and a set of provisions regarding the licensing and regulation of recruitment and manning agencies. Such licensing is carried out by the POEA, which is also responsible for monitoring the performance of the recruiting agencies, prosecuting illegal recruiters and regulating placement fees. The POEA maintains a policy of joint liability of recruitment agencies and foreign employers for the claims of OFWs and adjudicates contractual conflicts between Filipino workers and their employers in accordance with this principle.

Foreign employers are only able to recruit Filipino workers once their accreditation documents are verified by labour officers posted abroad and authenticated by embassy officials. Recruitment is then carried out by the employment agencies pursuant to the terms of a recruitment agreement with the employer. Every OFW's employment contract has to be approved by the POEA. Model employment contracts have been developed on the basis of internationally accepted principles of labour and employment administration and in compliance with the laws of the Philippines and host government laws.

To prepare Filipino citizens for work abroad and ensure their competitiveness on the global labour market, intensified skills training and development training programmes which correspond to the demands of the labour market, as well as skills testing, are carried out. Prior to departure, all OFWs are provided with mandatory life and personal accident protection at no additional cost. They also join an OFW Flexi-Fund Programme, which acts as a retirement protection scheme. The Labour Department issues a permanent identification card, the OFW E-card, to all Filipino citizens departing to work abroad. The E-card serves a number of purposes: it provides a proof of a worker's legal status as an OFW and a member of the OWWA, facilitates travel tax exemptions, and acts as an international ATM card. Other services available to OFWs include two types of information services, the POEA SMS service and interactive databases, which provide information on licensed recruitment agencies, job vacancies, pending adjudication cases, seafarers' certification and other details on overseas employment.

The overseas employment programme incorporates policies aimed at catering to the needs of Filipino workers while in the receiving countries. Labour Attachés, doctors, and welfare and social officers are deployed in host countries in order to provide juridical, medical and psychological assistance to Filipino workers and their families. A network of resource centres was developed with the aim of promoting and protecting workers' interests as well as preparing them for reintegration on return home. As a result of the OFW Family Congress held last year, a network of OFW families was established and now serves as a mutual support group assisting its members to access government social services. Family circles help to facilitate faster repatriation of OFWs when required and act as a vehicle in providing psychosocial services for a smoother reunion of Filipino workers with their families.

Reintegration preparation constitutes an important element of the Philippine employment management programme. Reintegration programmes help to maximize gains of overseas employment and cover both social and economic aspects, including counselling for OFWs and their families, skills training, educational assistance for children, micro-credit assistance and investment advice.

Comprehensive and fully integrated welfare services provided by the Philippine government benefit not only its citizens but also the host countries. The regulatory system in place ensures that Filipino workers return home at the end of their contracts, thus saving the receiving countries the costs of integrating and assimilating them into the local culture, the labour market and social security arrangements.

At present, the Philippine government is working on improving the overseas employment programme, which is seen as a strategy for economic development. Currently, efforts are aimed at enhancing the competitiveness of Filipino workers both through improving their quality by providing necessary training and technical education, and by exploring more and better markets for overseas employment to understand their labour demands.

The Philippine government is also working on forging or upgrading bilateral and multilateral agreements with host countries. Experience has shown that overseas migration can become truly protective and effective only if managed through collective, rather than exclusively unilateral channels. It is particularly important that international migration be viewed not only from the perspective of receiving countries, but equally so from the standpoint of sending states. It should be acknowledged that sending and receiving countries have significant common interests related to migration, but lack the capacity to jointly manage these issues for mutual benefit.

Case Study 2: Bahrain

Ausamah Al-Absi, Director of Employment, Ministry of Labour and Social Affairs, Bahrain

The Gulf represents a unique case with regard to migrant labour policy: expatriates constitute over 60 per cent of the labour force and, consequently, regulations which in most countries are introduced as an exception are a rule in the region.

The Gulf economies discovered oil in the 1930s-1940s, which necessitated fast infrastructural development and required a large supply of labour. The domestic population was not able to satisfy the workforce demand and consequently borders were opened to foreign workers.

However, 50 years after the adoption of this policy, the situation in Bahrain has changed. Over the last 20 years there was a 16 per cent reduction in wage level. The current unemployment rate is at 20 per cent and 65 per cent of the population is under 25 years of age. A 95 per cent increase in the labour force in Bahrain is expected by 2013 and a serious unemployment problem is imminent.

There is no closed border policy in Bahrain in the sense that local companies are allowed to bring workers from abroad when

need arises, but at the same time, the labour market is highly regulated. Expatriates are not allowed to change employers and, as a result, the secondary market for labour is very limited. There are also strict "Bahranization" policies, which require companies to employ a certain percentage of local people.

Such regulations led to the emergence of two distinct labour markets with different working environments: one market for expatriates and one for domestic employees. Typically, jobs not taken by locals are given to expatriates. One problem is that the majority of the local population wish to work for the public sector. But as a result of having access to an inexpensive imported labour force, the economy is dependent on labour intensive industries, and the rate of "desirable" jobs created is considerably lower than the population growth rate.

In order to alleviate these unemployment-related problems, a comprehensive reform was devised covering the economic, education and labour market sectors. The labour market reform aims to eliminate market distortions in order to make education and economic reforms effective. The objective of the economic reform is to stimulate private sector job creation, especially in the medium and high wage segments. The education and training reform is intended to improve skills of the domestic labour force in order to better meet job market demand.

The first step in developing the reform process was diagnostic: McKinsey and Co. was commissioned to do research for the Kingdom of Bahrain. Then a consultation process with social partners was carried out and in September 2004 a total reform package was announced and a social dialogue was started. The next stage will commence in 2005, when implementation will be prepared and, finally, a three-year gradual reform process will begin. The reform process was initiated by H.H. the Crown Prince of the Kingdom of Bahrain, which means that it carries a strong political commitment.

The labour market reform, as the most challenging, was launched first, and will be followed by economic and education reforms in the first quarter of 2005. The main objectives of the

labour market reform include: deregulation of the market, equalization of the cost differential between domestic and foreign workers, upgrading of working standards through competition, and provision of equal rights and choices to both the employers and the employees (for instance, by eliminating the mobility constraint for expatriates).

By allowing expatriates to change employers at will and unifying social benefits, the government is hoping to abolish employer control over expatriate workers and create a secondary market for foreign workers. This policy is likely to increase expatriate wages to a certain extent. But in order to equalize the cost of recruiting domestic and foreign labour, eliminate unfair competition and promote technology penetration, fees on expatriate work permits paid by the employer will be raised. The revenue from the work permit fees will be invested in upgrading the economy and human development.

The reform will eliminate the "Bahranization policy" and deregulate "hiring and firing" procedures, making employment of a domestic labour force a business decision rather than an obligation.

In general terms, the reform will dramatically reduce the role of the government in the economy. As the labour market is a part of the economic system, it cannot continue to be highly regulated while the rest of the economy is being deregulated. Thus, it is essential that open market forces be allowed to take control of the labour market mechanism. A full economic impact assessment of the reform project was also made and reviewed by a group of international experts. The reform builds on the experience of other countries such as Singapore, and is fully compatible with ILO and WTO principles.

Case Study 3: United Kingdom

Lesley Maundrell, Policy Development Manager, Home Office, Work Permits (UK), Policy Team, United Kingdom

Work Permits (UK) is a part of the Home Office Immigration and Nationality Directorate. It is responsible for administering UK work permit arrangements, which is done based on the principle of achieving the right balance between enabling employers to recruit or transfer skilled people from abroad whilst safeguarding the interests of the domestic workforce.

To achieve these objectives, the UK government uses the following types of immigration employment documents:

- Business and Commercial
- Multiple Entry Work Permit (MEWPS)
- Training and Work Experience (TWES)
- Sports and Entertainers
- Sector Based Scheme (SBS)
- Highly Skilled Migrant Programme (HSMP)
- General Agreement on Trade in Services (GATS)

The Business and Commercial category includes two tiers. Tier 1 covers intra-corporate transfers, board level posts, inward investment (i.e. new posts essential to an inward investment project), shortage occupations (where there is a very short supply of suitably qualified people within the UK) and sponsored researchers. Tier 2 incorporates all applications not included in tier 1. For all cases falling under tier 2, employers are required to conduct an economic needs test (i.e. to demonstrate that the post could not be filled with a resident worker and give details of recruitment methods).

The Multiple Entry Work Permit is designed for employers wishing to bring a particular person to the United Kingdom for short periods of time on a regular basis. The advantage of this permit is increased flexibility of the work permit arrangements. The MEWPS is used primarily for intra-corporate transferees and entertainers.

The Training and Work Experience scheme enables individuals to gain skills and experience through work-based learning, building on their previous education and training. The

TWES includes two elements: work-based training for a professional or specialist qualification and a period of work experience. This category covers individuals with an intention to leave the United Kingdom at the end of the agreed period to use their new skills overseas.

The Sports and Entertainers programme covers well-established sportspeople and entertainers who perform at the highest level, as well as people and groups who are engaged to perform or undertake work that only they can do. Only sportspeople whose employment will make a significant contribution to the development of sport in the United Kingdom and entertainers with a reputation in their profession are granted this type of permit.

Sector Based Scheme arrangements allow UK-based employers to recruit overseas workers into specific posts for specific sectors. The SBS is intended for workers whose skill or qualification level does not meet Business and Commercial permit requirements and currently includes hospitality and food manufacturing sectors. This scheme operates on the basis of a quota, which is reviewed annually.

The aim of the Highly Skilled Migrant Programme is to allow people of outstanding ability to come or migrate to the United Kingdom, to seek or accept work, to develop self-employment or to pursue other entrepreneurial opportunities. This scheme was revised in October 2003 to attract and retain more highly skilled migrants to the United Kingdom. One of the advantages of the HSMP is flexibility: it allows individuals to make an application whilst in the United Kingdom.

The General Agreement on Trade in Services permit is a concessionary arrangement within normal work permit rules. The arrangement allows individuals whose employer does not have a commercial presence in the EU to work in the United Kingdom on a service contract awarded to their employer by a UK-based organization. The GATS permit only extends to organizations of WTO member states which have signed up to the GATS. The purpose of the arrangement is to facilitate access to UK service

contracts by non-EU based companies that employ highly skilled persons.

Compared to the previous period, the number of work permits approved in the financial year ending on the thirty-first of March 2004 has increased by 1.5 per cent. The top three industry sectors for which the United Kingdom has approved work permits are health and medical services, hospitality and catering, and computer services.

In order to meet the interests of businesses and be aware of their needs, sector panels were established in the year 2000 to consult with the Home Office UK. These panels are comprised of key industry representatives and governing bodies and currently include representatives from engineering, healthcare, hotel and catering, information technology, teachers and sponsored researchers. The aim of the consultations is to ensure that Home Office UK's policy reflects the demands of the labour market and trends, and to assist employers in recruiting from overseas.

General Discussion

The flexibility and selectiveness of unilateral schemes was emphasized. In this context, the necessity of exploring the relation between the GATS and national provisions was highlighted.

In response to a question from one of the participants, it was clarified that the national migration regulations of the countries represented in the session do not distinguish persons entering with the aim of working in the service sector from those with the aim of working in other sectors of the economy. In some cases, no need for such a distinction was found; in others, it was feared that special conditions for a certain sector might become a back door to the black market.

One of the participants enquired about the dynamics of temporary migration in Bahrain and whether it remains temporary in practice. It was explained that although expatriates

tend to remain in Bahrain over long periods of time (in some cases, for 20–25 years), legally, they retain the status of temporary migrants. Therefore, most foreign workers are supposed to leave the country after their employment is terminated (although there is a provision for higher-skilled persons to retire in Bahrain, it applies only in very limited cases).

In response to a number of questions, the details of UK immigration practice concerning highly skilled and lower-skilled programmes, the speed of processing applications, and the GATS visa popularity were presented. There is a demand in the UK labour market for both highly skilled and lower-skilled workers. While the general work permit arrangements tend to cover all skill levels, there is also a highly skilled migrant programme and a sector-based scheme aimed specifically towards lower-skilled workers, which currently includes the food manufacturing and hospitality sectors and is quota based. The highly skilled worker programme operates on the basis of a point system, where potential employees get points based on their qualifications and achievements (e.g. the number of papers published, degrees obtained, etc.). Recently, the criteria for awarding points were made more flexible and now achievements of the applicants' dependents are also taken into account. As a result of this reform, entries under this category have almost doubled.

The participants were also informed that in the United Kingdom, work permit applications are processed within 24 to 48 hours. However, the process may take longer if the applications are incomplete.

Next, it was mentioned that there were very few applications for the GATS visa, as other UK work permit arrangements accommodate the categories of persons eligible for this scheme and are more flexible and beneficial.

A lot of interest was shown regarding the operation of the Philippine migration system. Questions addressed the monitoring of remittances by the government, the functioning of the bodies providing services to expatriates in host countries and training programmes for future migrant workers. It was clarified that the

central bank monitors the inflow of remittances coming through the banking system; however, funds channelled through non-banking institutions operating both in the Philippines and in some of the host countries cannot be traced. The services provided for overseas workers in host countries are mainly through Filipino government schemes and are provided by the embassies. As Filipino labour migration takes place largely on a unilateral basis, the Government of the Philippines is responsible for collecting information on labour needs in the international labour market in order to determine in which sectors to invest in terms of training. The strategy for training programmes is derived from reports made by the Filipino labour attachés located in host countries. These reports include information on the present and potential future labour market requirements of a particular country.

Session III: Bilateral Approaches to Managing the Movement and Temporary Stay of Workers

How are bilateral agreements for managing temporary labour migration designed? What kinds of agreements exist? How do they address labour market and administrative issues, and what lessons can we learn, including for Mode 4? What have been the strengths and weaknesses of such agreements? What has been their purpose and what types of movement (e.g. skill level, sector, duration of stay and type of contractual arrangements) do they cover and how does this compare with GATS Mode 4? What have been the strengths and weaknesses of these initiatives? What lessons can we learn?

Chair: **Irena Omelaniuk**, Editor-in-Chief, *World Migration 2005*

This session looked at the strengths and weaknesses of bilateral approaches in order to identify effective ways to bridge gaps between trade and migration.

Introduction

Georges Lemaître, Principal Administrator, Directorate for Employment, Labour and Social Affairs (DELSA), OECD

Regional labour agreements are relatively common – there are more than 150 such agreements involving OECD countries. However, the number of workers covered is usually low, with the exception of treaties between neighbouring countries.

By definition, bilateral agreements accord specific nationalities privileged labour market access. They tend to focus on low-skilled jobs or workers with age limits and are usually restricted by quotas. A useful typology of bilateral labour agreements can be drawn on the basis of categories of workers covered, such as: guest workers, seasonal workers, cross-border workers, contract or project-linked workers, trainees or working holiday makers.

States pursue various objectives when concluding bilateral agreements. States bordering each other or located within one region may be interested in creating cross-border regional labour markets and promoting cultural and political ties and exchanges. It is useful to differentiate between the aims of sending and receiving countries in establishing bilateral agreements. The main objectives of receiving countries are offsetting labour shortages and encouraging interstate cooperation, while sending countries typically wish to provide employment for surplus labour, ensure protection of the rights of their citizens when abroad and enhance domestic welfare (e.g. through remittances).

Implementation of bilateral labour agreements often involves promotion and advertising of the programme followed by recruitment, testing and certification of applicants. Participating states engage in information sharing among administrators, intermediaries, employers and migrants. However, the desire to manage labour movement under bilateral agreements can result in the development of additional procedures and restrictions that complicate the process, although less bureaucratic bilateral schemes seem to be the most successful ones.

Recruitment under bilateral labour agreements is carried out by private agencies located in either sending or receiving countries, public administrations or migrant networks. The agencies perform either a simple matching function or provide a comprehensive hiring package. When public administrations are

involved in the process, they offer recruitment services to employers (receiving countries) or screen potential migrants (sending countries). The role of migrant networks in facilitating the process of labour movement has become increasingly important over time.

Return of migrants to their home country after the expiry of their contracts is an important issue in temporary labour migration management. In bilateral agreements, all interested parties, public administration, intermediaries, employer and workers, are involved in policies aimed at ensuring returns. As a rule, the record of return of immigrants moving under bilateral agreements is very good. The reason for this is, for the employer, the possibility of rehiring the same workers subsequently; for workers, the possibility of a return to the host country for further work in the future; but especially, the fact that bilateral agreements tend to concern jobs that are by nature temporary.

In sum, the main attraction of bilateral agreements is the ability of participating states to manage the process of temporary worker migration. Such schemes work best when dealing with labour needs that are temporary by definition. The main drawback of bilateral agreements is that the demand by workers for places under such agreements tends to outweigh the supply.

Case Study 1: Hispano-Ecuatoriano Bilateral Labour Agreement

Victoria Galvani, Jefe de Coordinación, Subdirección Gral. de Régimen Jurídico, Dirección Gral de Inmigración, Secretaría de Estado de Inmigración y Emigración, Ministerio de Trabajo y Asuntos Sociales, Spain

Spanish migration policy, as set up by the Spanish government, is based on four fundamental pillars:

- managing migration flows;

- coordinating migration agreements with the needs of the labour market;
- fighting irregular migration with adequate border control and repatriation of migrants in cases of irregular migration; and
- social integration of migrants and cooperation with countries of origin whose citizens constitute a significant proportion of migrants in Spain.

The management of labour migration flows has to consolidate two mechanisms that already exist in the Spanish regulatory system: first, recruitment of foreign workers on a contract basis while taking into account the situation of the national job market, and second, the general labour regime (until recently, hiring of persons required obtaining a work visa in the country of origin).

The agreement of the Council of Ministers of the twenty-first of September 2001 approved recruitment of foreign workers, subject to the conditions of the national labour market.

Business organizations, trade unions and various bodies of public administration participate in establishing the number of foreign workers consistent with real occupational demands that cannot be covered by local workers and permanent migrants. Business organizations estimate the number of vacancies that, according to forecasts, will not be filled by the domestic labour force, classifying them by sectors of activity and occupation, as well as by intended duration of contracts. Trade unions make assessments of the manpower shortage on a regional level, by sectors of activity and occupation. Finally, public administration offices are responsible for developing concrete proposals and guiding the procedures, ensuring that the contract workers who were hired on a contract basis in the countries of origin are incorporated effectively into the new work environment. This mechanism is adjusted on a continuous basis, through the analysis of each sector of the national labour market and the assessment of the availability of workers who have priority in occupying available positions: nationals and foreigners authorized to take up employment in Spain.

Spain has signed a number of bilateral agreements with various countries (i.e. Poland, Romania, Bulgaria, Ecuador, Colombia, Dominican Republic and Morocco) addressing the issues of management and regulation of migration flows, and, in particular, the possibility of selecting workers in the countries of origin. Selection Committees were established in the countries participating in the bilateral agreements with the aim of providing transparency and efficiency in hiring contract workers. Currently, Spain offers work opportunities predominantly to migrants from the countries with which such agreements were concluded.

Selection of workers and signing of work contracts in the country of origin solves some of the problems associated with the management of labour migration. However, these mechanisms have some drawbacks, such as a lack of flexibility, a degree of disconnectedness in the procedures, lack of information and direct communication between the organs in charge of selecting workers and governmental offices responsible for taking decisions, etc.

The bilateral agreement between Spain and Ecuador was signed in 2001 and incorporates the above mechanisms. The competent authorities and the definition of migrant workers are covered in the preliminary chapter of the Agreement. There are also six chapters and 22 articles that define the job offers; assessment of the necessary professional qualifications, travel and reception of migrant workers; rights and work and social conditions of migrant workers; and special provisions regarding temporary workers and their return. Chapter VI establishes provisions for application and implementation of the Agreement.

In January 2002, a meeting of the Spanish-Ecuadorian delegations was held in Quito, Ecuador with the objective of forming a joint committee foreseen in article 21 of the Agreement. During the meeting, the designated contact mechanisms and competent institutions for transactions established by the agreement were discussed. It also addressed issues related to the development of Ecuadorian residents in Spain, the situation of the Spanish community in Ecuador, and the functioning of the Selection Commission aimed at professional pre-selection of potential migrants.

Between the years 2000 and 2004, the number of Ecuadorian citizens with valid residence permits in Spain increased by approximately 519 per cent. Currently, 11 per cent of all foreign citizens legally residing in Spain are from Ecuador. In addition, 1,951 persons who were born in Ecuador acquired Spanish citizenship between 1997 and 2003.

The number of work permits granted by the Spanish authorities to Ecuadorians has also increased sharply in recent years: from 19,995 work permits in 2003 to 29,641 just in the period between the first of January and the thirty-first of August 2004. As of the thirty-first of August 2004, 14 per cent of all foreign workers participating in the Spanish social security system were from Ecuador.

These numbers demonstrate the closeness of the cooperative relationship between the two countries, reflecting the commitment expressed in the General Agreement of Cooperation and Friendship signed by the King of Spain and the Republic of Ecuador in June 1999.

In terms of broader agreements involving provisions for the facilitation of international labour mobility, it should be noted that Spain is a part of the EU-MERCOSUR committee, created within the framework of the general agreement between the European Union and the member countries of MERCOSUR. Politically, Spain shares profound historical ties with the MERCOSUR member states and, therefore, has a favourable disposition towards them.

Case Study 2: Canadian Seasonal Agricultural Worker Programme

Elizabeth Ruddick, Director, Strategic Research and Statistics; Priorities, Planning and Research Branch, Citizenship and Immigration Canada

While Canada has fairly liberal policies for the entry of professionals to work on a temporary basis, the ability of

employers to engage low-skilled foreign temporary workers is more tightly controlled. The seasonal agricultural worker programme (SAWP) is one example of bilateral agreements aimed at facilitating the organized entry of foreign workers to meet specific skill shortages.

The seasonal agricultural worker programme allows the organized movement of foreign workers to meet the temporary seasonal needs of Canadian agricultural producers during peak harvesting and planting periods when there are traditionally shortages of qualified Canadian workers. The programme operates in the context of a national labour market policy that ensures protection of the domestic labour market. Employment opportunities are made available to qualified and reliable Canadian citizens and permanent residents before recourse is made to the SAWP (known as the "Canadians first" policy).

The key to the seasonal agricultural worker scheme is the seasonal nature of employment and the organized entry of foreign workers.

The programme was first introduced in 1966 following negotiations between Canada and Jamaica. Trinidad-Tobago and Barbados became participants in 1967, and in 1974 an agreement was signed with Mexico. In 1976, the scheme was extended to include the Organisation of East Caribbean States. In other words, the programme is a series of bilateral agreements operating under the umbrella or framework of the SAWP.

Over the past 20 years, the flow of workers has increased from just under 6,000 in 1980 to 18,700 in 2003. Of these, approximately 10,000 are from Mexico and 8,000 are from Caribbean states. Within Canada, workers are destined mainly for Ontario and Quebec, although the programme also operates in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island. Earlier this year an agreement was reached with the Province of British Columbia to extend the programme to that region in order to allow the hire of seasonal agricultural workers from Mexico.

The programme is a partnership managed by Human Resources and Skills Development Canada (the federal employment and labour ministry), Citizenship and Immigration Canada, Provincial governments, signatory foreign governments, and employers in Canada.

The SAWP has evolved over time. In Ontario and Quebec, for example, industry representatives have organized to form the Foreign Agricultural Resource Management Services (FARMS) in Ontario, and in Québec, the Foundation des Entreprises de Recruitement de Main-d'Ouevre Agricole Etrangere (FERME). In Ontario, FARMS is a private sector, non-profit federally incorporated organization. It assists in processing requests for seasonal agricultural workers and communicates these to the governments of the supplying countries. FARMS collects a user fee to cover the cost of its administrative services.

Using the Ontario programme as an example, the partners involved in the implementation of the scheme include the employers and FARMS, the federal employment ministry through its local and regional offices, Citizenship and Immigration Canada through its offices outside Canada, the liaison or consular officer in Canada from the sending country, and the designated travel agency, which arranges the transportation of the workers to and from Canada.

The regional employment office develops policy and operational guidelines and maintains continuous liaison with senior Mexican and Caribbean government officials and immigration officers. The industry representative, in this case FARMS, manages the general administration of the programme, notifies government services of employers' requests for workers, and communicates with the appropriate Canadian embassy regarding these requests. It also provides agricultural and government agencies with updates as required, facilitates the movement of work orders and checks the period of employment and total entitlement of workers.

The local employment office is responsible for approving the offer of employment to foreign workers and transmitting the

orders to FARMS, obtaining the employer's signature on employment contracts and sending them to the liaison office of the foreign government. The consular or liaison services of the foreign government recruits workers in conjunction with the local Ministry of Labour, audits pay, attends to problems on site, working together with foreign labour, interior and health ministries, and coordinates movement of workers with the travel agent. The Canadian Embassy or High Commission in the sending country prepares the necessary employment authorizations and visas for approved requests received from FARMS and reviews workers' medical examinations. Finally, the specified travel agency arranges the journey for the workers and advises liaison and consular services of confirmed flights.

The employer must sign a contract specifying roles and responsibilities, and terms and conditions of employment. The employment agreement is signed by the employer, the worker and the foreign government agent.

This agreement specifies the period of employment and hours of work – typically not less than 240 hours for a period of six weeks or less and no more than eight months within the peak demand time frames identified for the approved commodity sectors. The agreement stipulates the obligations of each party with respect to the provision of free seasonal housing, transportation costs and subsidies, working conditions, wages, meals, and repatriation.

Employers are required to pay the highest of the minimum provincial agricultural wage, the prevailing wage as determined by the federal employment ministry, and the rate being paid by the employer involved to Canadians doing the same work. The contracts include stipulations regarding heath insurance and occupational health and safety. The agreements vary slightly by Province and sending country.

The importance of remittances is also reflected in some of the agreements – for example, remittances are facilitated for Mexican workers through arrangements with Canadian banks, which establish accounts for agricultural workers and arrangements to

facilitate access by family to earnings of the worker in Canada. The agreement with the Caribbean countries specifies automatic and formal remittances from the worker's earnings to his/her home country.

The liaison officer of the sending country plays a key role in the implementation of the SAWP. S/he is involved in monitoring the work conditions and pay of the foreign worker, in resolving issues on site, etc.

Sanctions may be applied against the employer in the event of abuse in the area of non-compliance with Canadian immigration laws. For example, sanctions may be used against the employer if foreign workers do not return to their home country at the end of their employment contract. Sanctions include termination of further assistance to the employer in facilitating inter-country movement of seasonal foreign workers. In practice, however, the rate of return of workers is high and so is the level of compliance, so sanctions are rarely if ever required.

Canadian immigration and employment legislation and regulations provide flexibility for the development of analogous programmes outside of the SAWP. More specifically, the Province of Quebec and the Government of Guatemala have engaged in a similar scheme for agricultural workers from Guatemala to the Province of Quebec. The objectives and principles of this scheme are the same as for the SAWP, but it is managed in a slightly different manner. The federal employment ministry approves the offers of employment on an individual basis. IOM provides technical assistance with respect to the development of a list of qualified Guatemalan workers, transportation of the workers to Canada and, in conjunction with FERME, the return of the workers to Guatemala once their contract has ended.

The SWAP is a highly successful scheme and is often cited as model for similar agreements. But in order to see whether this programme can be replicated in other countries, it is important to understand specific characteristics that contributed to its success, among which are seasonality of the scheme and lack of alternative sources of labour for employers (i.e. no irregular

populations). However, the main reason behind the success of the SAWP is the fact that all parties have a vested interest in the scheme: foreign countries obtain a stable source of employment for their nationals, while being guaranteed their return; employers can continue their farm operations; and workers benefit from agreements which respect Canadian labour legislation and wage standards.

Discussants

Veronica Robinson, Deputy Director, Manpower Services (Work Permits, Local Employment and Overseas Migration Programme), Ministry of Labour and Social Security, Jamaica

Jamaica has bilateral seasonal labour agreements with the United States and Canada. As these agreements are inter–governmental, they are not based on a treaty, and the parties determine the rules for their operation.

Principal reasons for starting both programmes were labour shortages in the recipient countries and labour availability in Jamaica. For example, the US programme began in 1946, when the United States needed to resuscitate its agricultural sector. This scheme has been continuing ever since. Currently, Jamaicans are mainly employed in the United States as fruit and vegetable pickers; however, there is also some demand in the lower-skilled segment of the tourism sector.

The Canadian programme started in 1966. The agreement with Canada is expressed in a memorandum of understanding between the two governments, which provides stability and continuity of the programme. Guidelines are set out in the memorandum of understanding stipulating the distribution of responsibility for the recruitment and selection of workers.

The implementation of the agreements with both the United States and Canada is fundamentally similar to the way the Canadian Seasonal Agricultural Worker Programme is managed.

In particular, the responsibility is shared between sending and receiving countries and distributed in a way analogous to the SAWP. Also, terms and conditions of employment are specified in a worker agreement which includes, for example, a requirement to maintain work records for each employee and mobility limitations.

In order to protect the domestic labour markets of the recipient states, there is a requirement to verify local labour market shortages before Jamaican workers are admitted to the United States or Canada.

The main strength of bilateral labour agreements is the degree of organization and control they offer: they provide effective instruments for monitoring the movement of workers, as well as ensuring their security and protecting their welfare. As a result of bilateral schemes with Canada and the United States, Jamaica has reaped considerable economic benefits, both through remittances and through the improvement of foreign exchange rates.

The US-Jamaica and the Canada-Jamaica agreements both differ from GATS provisions, and it is doubtful whether they can be developed and brought into the GATS framework. There will be practical and administrative difficulties in managing the wide range of workers covered by the GATS, which may undermine the current success of bilateral schemes.

Dr Torsten Christen, Deputy Head of Division, Federal Ministry of Economics and Labour, Germany

This seminar offers a great opportunity to exchange views and experiences regarding legal and economic aspects of migration.

Germany has a variety of bilateral labour agreements with more than ten countries, mostly central and eastern European. Labour schemes to which Germany has committed can be divided into a number of categories. The first group is seasonal worker agreements, which were signed with approximately ten countries. The economic background for signing these agreements is labour shortages following German unification. This scheme mostly

applies to seasonal workers occupied in agricultural, hotel and restaurant sectors. Currently workers who enter Germany in this category can be employed in the country for a maximum of four months. In 2003, Germany admitted more than 300,000 seasonal workers.

Under the next category of programmes, the guest worker or trainee agreements, entry is allowed for a maximum of 18 months. This scheme was organized with the aim of facilitating the exchange of skilled workers for the purpose of improving language and other skills. In 2003, approximately 3,500 persons entered Germany as guest workers.

Finally, contract worker agreements were signed by Germany with 13 countries in order to alleviate labour shortages at the beginning of the 1990s. Another objective was to enable know–ledge exchange and establish closer contact between Germany and central and eastern European countries.

In analysing these bilateral agreements, a number of key elements can be identified which might be significant for the Mode 4 discussion. First of all, a bilateral agreement might be either quota- or economic needs test-based. Secondly, either a fixed or adjustable quota can be used. Germany has experience with the quota adjustment process, which might be used in Mode 4 negotiations. The quota is fixed when the agreement is signed; however, a mechanism for its future alteration is also agreed on. For example, in Germany quota adjustments depend on the level of unemployment: the quota is to be raised by 5 per cent for each percentage point of decrease of unemployment rate, and vice versa.

Another useful element that might be adopted under Mode 4 is the so-called “Regional Labour Market Protection Clause” used by Germany in some agreements. This provision safeguards the labour market in areas with a very high unemployment rate.

Germany also applies a system of sub-quotas for certain sectors – for example, in addition to a general quota for construction workers, there is a sub-quota for special businesses within the construction sector.

The main advantage of bilateral agreements is flexibility: they allow for a high level of adaptation and adjustment. But on the negative side, there are high bureaucratic costs involved.

It is important to remember that labour agreements are part of a very sensitive area between migration and trade, and it is crucial that labour market circumstances in both destination and source countries are taken into account. Another point to consider is the background of the national migration law, as every country has its own traditions and history.

General Discussion

Questions and comments reflected the interest of the participants in the issue of collaboration between sending and receiving countries in areas such as ensuring returns and protection of migrant workers.

Participants enquired about the level of success of returns provisions and enforcement mechanisms of bilateral agreements. It was stated that existing returns provisions have been sufficiently effective and none of the bilateral agreements have been denounced because of problems in this respect. It was emphasized that essential conditions for the success of returns provisions are the temporary nature of employment and the interest of all parties in ensuring returns. In the guest worker schemes of the 1950s and 1960s for example, returns failed, as these conditions were absent. In addition, there were many pressures in favour of workers remaining in the host country: guest worker agreements did not deal with employment that is temporary by nature, employers wished to maintain existing workers in order to avoid re-training, workers were interested in staying due to higher salaries, and governments perceived this situation as contributing to economic growth.

Observations were made with regard to some additional features of bilateral agreements that might be contributing to the high rate of returns. For instance, it was pointed out that the

collective organization of seasonal worker agreements might involve social pressure on individual workers to return to their country of origin, as absconding might lead to sanctioning of the employer and thus, by reducing the number of potential employers, jeopardize the possibility of future employment for other workers. It was noted that such a collective arrangement could also be used in the GATS with respect to contractual service providers. Another element of bilateral agreements that was mentioned as potentially applicable to Mode 4 was provisions for sanctioning employers for non-return of workers. As Mode 4 covers cases where the employer is a foreign enterprise, the possibility of establishing penalties for absconding workers was suggested. One of the participants proposed that a bond could be paid by companies requesting employees from abroad and repaid to the employer once the expatriate leaves the host country. This mechanism would ensure that the employer is interested in guaranteeing returns of its foreign workers.

It was emphasized that one of the aspects of bilateral agreements potentially most relevant in the GATS context is that the source as well as host countries assume certain obligations. In response to an enquiry of one of the participants, it was reiterated that within the bilateral agreements, obligations of source countries usually include the responsibility for verifying the qualifications and criminal record of potential employees and the reliability of the employers. It was also explained that the GATS focuses on the treatment of service suppliers of other members by the host country, and although it contains a concept that the country of origin is presumed to have certain responsibilities, this principle is not developed. The possibility of imposing obligations on source countries that would provide guarantees in a way that would facilitate Mode 4 flows needs to be further explored in the GATS context.

Another issue discussed concerned the common interests of sending and receiving countries. In this context, the possibility of tying investment in professional training to labour migration inflows under Mode 4 was suggested. Many participants considered it a highly interesting proposition, as linking investment in education services or training facilities to the

temporary migration of skilled professionals would alleviate concerns about brain drain, especially in developing countries where subsidized education often leads to the migration of citizens. Establishing a connection between training and temporary migration programmes could lead not only to a more desirable circular movement of temporary workers, but also to an increase in the level of investment in training programmes of the countries of origin, as the destination countries would be effectively investing in the development of their future labour force. It was pointed out that these types of mechanisms already exist and are popular in healthcare, as they offer a possibility to overcome the problem of qualification recognition. For example, there are bilateral agreements between regions of Northern Italy and Romania providing for the training of Romanian nurses prior to their arrival to Italy, where there is a shortage of healthcare workers. The question about the existence of such training programmes within the GATS context was raised. It was clarified that although training in the country of origin is sometimes necessary in order to develop human skills in workers destined for certain markets, there is no obligation in the GATS or in the schedule of commitments to develop such schemes.

A suggestion was also made that professional training in the county of origin could be accompanied by the establishment of development projects. It was observed that it is a complex and little explored issue. While developed countries might find it beneficial to invest in the training of potential migrants in source countries, there is a question about the aim of such development projects: would it be to stabilize the population and decrease departures or to prepare potential migrants for work abroad?

A number of participants expressed concern regarding the vulnerability of temporary migrant workers, who are often not sufficiently familiar with labour legislation concerning their rights and possibilities of legal redress and accessing authorities in the host country. It was requested that mechanisms to protect temporary migrant workers existing under bilateral agreements be clarified. All panellists assured that their governments are making extensive efforts to protect temporary migrant workers. In Canada, the liaison officer is a key to providing adequate

protection of the rights of migrant workers; in particular, s/he assists workers in filing complaints in cases of rights violation. Spanish legislation contains comprehensive provisions aimed at protecting migrant workers, including regulation of the type of accommodation that an employer has to provide for temporary workers. Working conditions of temporary workers are controlled by the Ministry of Labour, and in case of abuse, expatriates can access both Spanish authorities and representatives of their national governments. The German authorities publicize information about the legal aspects of employment on the Internet, and require labour agencies to inform foreign employees about their rights and possibilities for legal redress. Jamaican workers are counselled prior to departure on their rights and social and health policies, and are represented by the liaison officers once in the destination country. But despite available legal provisions, many workers do not inform authorities of mistreatment, fearing sanctions or expulsion from the country.

Interest was expressed with respect to the quota mechanism used in Germany, according to which the number of migrant workers admitted is dependent on the fluctuations of an economic indicator, for example the level of unemployment. It was remarked that such a mechanism could be adapted for setting concessions within Mode 4.

Session IV: Regional Arrangements for Managing the Movement and Temporary Stay of Workers

How do regional trade agreements and other regional arrangements for managing temporary labour migration actually work? What kinds of agreements exist? What has been their purpose and what types of movement (e.g. skill level, sector, duration of stay and type of contractual arrangements) do they cover and how does this compare with GATS Mode 4? What have been their strengths and weaknesses? What lessons can we learn, including for Mode 4?

Chair: **Carlos Primo Braga,** Senior Adviser, World Bank

Introduction

Julia Nielson, Trade Directorate, OECD

While the focus of the previous sessions was mainly on agreements concerning labour mobility and facilitation of labour movement, the focus of this session was on labour mobility provisions within preferential trade agreements. Most of the mobility provisions within these agreements are connected with the supply of services and other forms of movement directly related to trade and investment.

An exceptional group within preferential trade agreements is deep integration agreements, which aim for the creation of a single economic space, allowing for broader mobility of people, beyond that related to trade or even employment.

Generally, there is a continuum of approaches to labour mobility in preferential regional trade agreements (RTAs) representing varying degrees of liberalization. Some agreements allow for mobility of people in general, including permanent migration and non-workers (e.g. the EU). Others provide for the free movement of labour, including entry to the local labour market, while yet others are limited to facilitating certain kinds of movement related to trade or investment. Finally, a number of agreements simply follow the GATS model; that is, they provide for temporary movement only and only for service suppliers. This variety of approaches reflects a wide range of factors: geographical proximity, levels of development and cultural and historical ties between the parties.

There is a symbiotic relationship between RTAs and the GATS: NAFTA provided a model for the GATS, while other regional agreements use and replicate the GATS model (e.g. EU-Mexico, US-Jordan). RTAs also often provide the model for each other, as is the case, for example, with agreements in Latin America, or provisions in the US-Chile and US-Singapore agreements that are similar to NAFTA.

It is essential to be careful when comparing RTAs and the labour mobility provisions within them, as some RTAs may offer broad mobility but exclude some sectors, while others might cover all sectors but limit mobility to certain groups. It is also important to bear in mind that facilitated movement of people does not always equal a right to provide specific services (e.g. lawyers, accountants). It is necessary to read the labour mobility provisions in these agreements in conjunction with liberalization commitments on particular service sectors; RTAs can also exclude certain sectors from coverage or apply special rules to specific sectors. In any event, national regulations on licensing and qualification requirements governing the right to practice particular professions still apply.

RTAs that do not provide full labour mobility tend to use GATS-type exclusions; that is, they exclude permanent migration or access to the labour market. In almost all cases, all general migration conditions continue to apply and parties to RTAs retain discretion to grant, refuse and administer residence permits.

RTAs treat labour mobility in a variety of ways: in some cases, the only type of labour mobility covered is Mode 4 under the trade in services chapter (e.g. MERCOSUR); sometimes all mobility – investment and goods related – is grouped in a separate chapter (e.g. Group of Three or, for services investment and intra-corporate transferees, Japan-Singapore); in other instances, reference to mobility of key personnel is included in investment provisions (e.g. ASEAN), or sectoral chapters (e.g. EU-Mexico on financial services).

Another useful way to categorize RTAs is by the content of the agreements. One group of RTAs covers full mobility of labour (e.g. EU, EEA, EFTA). The second broad category features agreements allowing market access for certain groups, including beyond service suppliers and/or agreements grouping all mobility in a separate chapter (such as CARICOM for the highly skilled, NAFTA, Japan-Singapore). The next type of RTAs use the GATS model but also contain some additional elements (e.g. US-Jordan, which provides for special visa arrangements and includes traders and investors, EU-Mexico, AFTA), while yet another group basically only use the GATS model (e.g. MERCOSUR). Some agreements provide no market access per se but only facilitate entry for certain kinds of persons related to trade and investment (e.g. APEC, SAARC), and, finally, some agreements remain works in progress (e.g. SADC).

Additionally, some RTAs create special visa schemes or other types of managed entry, as in the cases of trade NAFTA visas and the APEC Business Travel Card, whereas others try to give access under existing visa schemes. Where existing visa schemes are used, there can be difficult intra-governmental discussions at the national level about who gets to determine visa policy. Experience of the first type of regional agreements might be very interesting for GATS Mode 4; however, administrative capacity is a fundamental issue in this case.

The analysis of RTAs can provide some useful lessons for GATS Mode 4 negotiations. Provisions in RTAs related to labour mobility illustrate a range of options for access, calibrated to national needs, demonstrate the need for close policy coordination and dialogue between migration and trade authorities, and underline the necessity to consider ways of implementing commitments and administrative capacity required.

Case Study 1: APEC Business Travel Card

What exactly does it provide, how does it work, and what lessons can we draw from it for Mode 4?

David Watt, Department of Immigration, Multicultural and Indigenous Affairs, Australia

The Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC) scheme applies to business visitors, the second most popular category under GATS Mode 4. The ABTC serves the needs of the business community for streamlined entry to member economies for trade and investment activities, while maintaining border integrity. This programme helps to enhance member states' capacity to implement efficient and streamlined immigration practices and builds confidence by ensuring transparency of entry requirements and facilitating dialogue and information exchange among members.

The scheme began in 1997, when the importance of the movement of labour for economic development was recognized. Having started with three economies (South Korea, Philippines and Australia), it now includes 16 member countries. Until recently, the number of applicants to the programme grew relatively slowly; however, in the financial year 2003-04, activity in the scheme rose by nearly 190 per cent. Such growth can be attributed to the increase in the number of participating countries, which made the card more attractive to business people (during the past 18 months, the number of participating countries doubled).

The ABTC success is a result of a number of factors including: a pathfinder approach, which recognizes differing capabilities of economies and allows countries to join when they are prepared; validity of the scheme proved by a trial by a limited number of economies at the start of the programme; open and cooperative approach applied, which builds confidence and improves ABTC operational strength; technical assistance provided to developing economies to ensure successful implementation of the agreement; and finally, equal treatment of developed and developing countries.

The key principles and procedures of the programme are set out in the ABTC Operating Framework. It includes provisions on such operational matters as card eligibility criteria, service standards and card manufacture standards (i.e. for the basic format of the card). This document was developed and agreed to by the economies participating in the scheme. As preservation of national sovereignty is a key principle underpinning the ABTC Operating Framework, it is not legally binding and all participating states agree to abide by its provisions on a "best-endeavours" basis.

The ABTC Operating Framework is a publicly available document and represents an important part of the information exchange between member economies and the business community. Economy-specific ABTC information is made available via the "APEC Business Travel Handbook" on the business mobility website (www.businessmobility.org).

Applications for the ABTC card are made to the designated home country agency (each state determines which particular agency accepts applications). The home country then carries out necessary vetting procedures in order to select bona fide applicants: it was agreed that the country of origin is in the best position to implement the specific procedures to determine who is eligible for the ABTC, and thereby maintain the integrity of the scheme. Although the basic eligibility requirements are set out in the Operating Framework, economies may use additional criteria to ensure bona fide applicants. Applications approved by the country of origin are sent to the participating economies

and, if accepted, are given pre-clearance permission. Member states are not required to give reasons for refusing pre-clearance to any applicants. Finally, the home country can issue the ABTC card, which allows entry into all economies that have given a pre-clearance permission.

The ABTC pre-clearance system ensures that states retain the control over the movement of people through their borders, and over the eligibility of domestic applicants. The ABTC members also benefit from the increased integrity of the scheme, which results from the double screening procedure, by home and destination countries. The programme inspires a high degree of confidence in both government officials and the business community: in the history of the ABTC, no instances of fraud have been discovered.

As the ABTC has substantial crossovers with Mode 4, it is an excellent example of a development in the migration sphere which has Mode 4 implications and from which lessons can be drawn. In particular, the APEC has a lot of resonance in terms of cooperation between sending and receiving countries, both in working together on issues of concern, such as security, and in capacity building.

Discussant

Johannes Bernabe, Labour Attaché, Permanent Mission of the Philippines to the United Nations Office in Geneva

As far as cooperation between sending and receiving countries is concerned, the ABTC gives the impression of being a front-loaded provision: most obligations have to be complied with by the home economy, while the commitment of host countries appears to be limited to the admission of business visitors already vetted by the countries of origin.

A clarification is also needed on what the crossovers between the ABTC and GATS Mode 4 mentioned in the presentation are.

Some elements critical for the operation of the ABTC were enumerated: transparency and legal and technical infrastructure. However, it is not clear how the gap towards market access can be bridged once these initial requirements are met. The ABTC appears to be an agreement meant to be purely facilitative: it does not address issues which confront GATS negotiators concerns, in particular, relating to market access and regulatory measures.

Reactions to the Comments

David Watt, Department of Immigration, Multicultural and Indigenous Affairs, Australia

The ABTC is a scheme that facilitates the movement of business visitors and creates a transparent mechanism for access, which is necessary for trade and investment. It is the case that the ABTC is not concerned with market access, but rather with ensuring that the travel can happen without refusals and burdensome administrative procedures. However, some of the difficulties with providing market access are related precisely to such issues as trust, security and returns, which the ABTC is working to address.

Julia Nielson, Trade Directorate, OECD

The solutions to such concerns found in schemes like the ABTC and the kinds of relationships that are built in doing so might be the path to providing market access. In this regard, countries might think about how the kinds of trust between regulators and solutions to issues of managing movement created in the context of these and other bilateral arrangements might be, over time, extended on a MFN basis. That is, arrangements for managing movement at the bilateral or regional level could form the template for arrangements involving a wider set of countries. Thus, a country that had negotiated certain arrangements (e.g. mechanisms to ensure returns and provide worker protection) with a select set of countries could open access to all states capable of meeting these conditions.

Case Study 2: NAFTA

How does NAFTA cover temporary labour movement, how does it work, and what lessons can we draw from it for Mode 4?

Luz María Servín Sotres, Director for International Affairs, Ministry of the Interior, National Migration Institute, Mexico

The North American Free Trade Agreement (NAFTA) was negotiated among Canada, the United States of America and Mexico between 1991 and 1993 with the objective to establish tariff-free trade. Since its entry into force on the first of January 1994, the NAFTA has sought to remove most cross-border trade and investment barriers between its member-states by 2005.

Chapter XVI of the NAFTA establishes general principles and obligations in relation to temporary entry for business persons. Provisions of this chapter include the preferential trade relations between the parties, the willingness to facilitate temporary entry on a reciprocal basis and establish transparent criteria and procedures for temporary entry, and protection of the domestic labour force. Each party is obliged to apply its own measures to avoid unduly delaying or impairing trade in goods and services or conduct of business activities under this agreement. For the purposes of this chapter, "business person" means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities. "Temporary entry" means entry into the territory of a Party by a business person of another Party without the intent of establishing permanent residence.

A temporary entry working group comprised of the representatives of each Party was created in order to consider the implementation and administration of Chapter XVI; the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; the removal/waiver of labour certification tests or similar procedures for spouses of business persons who have been granted temporary entry for more than one year; and, finally, to propose modifications or additions to this chapter.

The working group meets once a year and its activities are complementary to internal regulations controlling entry of temporary migrant workers. The National Migration Institute is responsible for administering the provisions of this chapter to facilitate the entry of NAFTA nationals to Mexico and granting visa exemptions and working permits for spouses. In this working group, the Mexican government has been encouraging a matching policy by NAFTA states regarding business persons mobility in other international forums such as the APEC.

Four migratory modes are distinguished within the business persons category. The first group is Business Visitors, which covers business persons wishing to perform business activities related to research and design, agriculture and manufacturing, marketing, sales, distribution, after sales service, general service, and trade and sales.

Traders and Investors is a category applied to persons intending to carry out trade in goods or services or to establish, develop, administer or provide advice or technical services to the operation of an investment to which the business person's enterprise has committed an amount of capital in a capacity that is supervisory, executive or involves essential skills.

Intra-Company Transferees represent another category that covers business persons who seek to render their services to an enterprise, a subsidiary or an affiliate in a capacity that is managerial, executive or involves specialized knowledge.

Professionals are business persons seeking to engage in a business activity at a professional level in categories set out in Chapter XVI (the list includes 56 professions).

In order to facilitate the entry of business persons, in April 1994, the Mexican government issued a new Migratory Form in accordance with the General Population Law and its Regulations. The Form is available in Spanish, English and French and is provided by Mexican consulates abroad, as well as travel agencies, airlines and migration personnel at all points of entry. For transparency purposes, the Migratory Form for tourists,

people in transit and business or counsellor visitors, commonly named FMTTV, replaced the Migratory Form for Business (FMN). The FMTTV is the only document NAFTA travellers need to fill in in order to enter Mexico, as there is a visa waiver agreement between Mexico and other NAFTA parties. This document allows Canadian and American business persons to stay between 30 to 90 days and can be renewed for up to four years.

There is a special visa for Canadian and Mexican professionals wishing to enter the United States, the Trade NAFTA visa (TN visa). The TN visa has a considerable disadvantage: with a maximum duration of only one year, it requires frequent renewals. To be eligible for this type of visa, an individual must be employed in one of the professions listed in the Federal Regulations and have at least a Bachelors degree unless alternative credentials are specified. The list includes university professors and researchers in addition to many other professions. For Mexican citizens, the approximate length of the approval process is between six to eight weeks. Mexican citizens applying for a TN visa face certain additional requirements that Canadian citizens may not. For example, a Mexican must obtain a TN visa at an American consulate before s/he can enter the United States in the TN status. In order to be issued a TN visa, a Mexican citizen needs to be a beneficiary of an approved labour-condition application and a petition from a non-immigrant worker.

In terms of migratory movements under NAFTA, statistics show that in the period between 2000 and 2001, significantly fewer Mexicans entered both the United States and Canada than Canadians and Americans, respectively.

From April 1994 to August 2004, Mexico granted a total of 2,067,123 FMTTV visas. The annual growth rate of entries in Mexico under the NAFTA agreement in the period between 1995 and 2003 was 21.6 per cent.

Since the entry into force of NAFTA, American citizens have constituted 93.5 per cent, and Canadian citizens only 6.5 per cent of all entries under FWTTV format. Between April 1994 and August 2004, the following proportions of business persons

categories entered Mexico: 82.5 per cent business visitors, 14.3 per cent professionals, 2.2 per cent traders and investors, and 1 per cent intra-company transferees.

NAFTA members did not modify their migration procedures in a substantial way in order to further facilitate the entry of business persons. Due to the need to strengthen border security, migration regulations have become more rigid in the member countries. These regulations have negatively affected business persons mobility.

For Mexico, NAFTA has represented an opportunity for historical openness and liberalization. Repeatedly, NAFTA has been used as a basic format for other free trade agreements. Since 1994, Mexico has signed similar agreements with Colombia, Venezuela, Costa Rica, Bolivia, Nicaragua, Chile, Salvador, Guatemala, Honduras, Uruguay, Israel, the EU and others.

There has been a strong commitment and a strong will for liberalization and for eliminating protectionist principles. Mexico intends to develop higher quality standards to match Canada and the United States in such areas as security, transfer of goods, and movement of persons.

Discussant

Johannes Bernabe, Labour Attaché, Permanent Mission of the Philippines to the United Nations Office in Geneva

As was discussed earlier, APEC is mainly facilitative of the movement of natural persons engaged in provision of services. On the other hand, NAFTA appears to be more than just facilitative as it includes some concrete references to liberalization of market access for Mode 4. If NAFTA does provide for the kind of market access and regulatory reform on Mode 4 that a lot of developing countries are looking for, then perhaps lessons can be drawn from its experience.

It is important to identify the elements in NAFTA that allowed migration authorities to be more comfortable with permitting freer movement of people. It can be either a consequence of political considerations that arise out of a free trade arrangement, or perhaps a result of provisions in Chapter XVI, which ensures that a sufficient level of comfort is reached among the various immigration authorities, particularly given the strictly temporary nature of migration covered by the agreement. In the first case, a political signal from higher authorities would be sufficient for the migration system to be reformed and liberalized. In the second case, perhaps certain parts of Chapter XVI should be used as a basis, which negotiators, regulators and migration authorities could apply to further liberalize markets.

In any case, it is important to identify elements of regional agreements that can be used for the liberalization of Mode 4 trade under the GATS. One particular example which may be worth further consideration is whether there are obligations or criteria which could be imposed on or met by sending countries similar to the pre-clearance condition within NAFTA and APEC or the vetting procedures used in the Philippine system.

General Discussion

The discussion focused on possible ways of bringing the achievements of bilateral and regional agreements into the GATS context. Several participants emphasized the importance of political will underlining every legal instrument, treaty or movement in order to achieve progress in trade liberalization on any issue. Therefore there is a need to find common ground for political agreement and work on developing ways of assuaging doubts or concerns that migration authorities might have. While liberalization should not be confused with facilitation, the latter is essential for making market access effective. The participants stressed the potential for drawing elements from bilateral and regional approaches, which could both provide the level of comfort for the trading partners, migration and regulatory authorities necessary for liberalizing market access in the context of Mode 4, and help to facilitate it.

Among the strengths of bilateral and regional agreements highlighted were their capacity building aspect, high level of trust between regulators and ability to encourage domestic reforms and creative solutions to such problems as brain drain, returns and labour market impact. One of the participants suggested that a template approach might allow for the harnessing of regulatory policies and flanking measures that make mobility successful within the agreements among smaller groups of countries and introduce them into the multilateral context. Concerns were expressed with regard to the possibility of the template approach being used as a condition imposed on some countries rather than a tool of liberalization and transparency. In reply, it was noted that labour mobility is already subject to conditions and the purpose of templates would be to make them more transparent. Moreover, as some agreements provide better market access subject to certain conditions, the template approach would ensure that more countries are eligible for such arrangements.

Some queries reflected interest in the operation of the APEC Business Travel Card scheme. The ABTC pre-clearance procedure was pointed to as a useful instrument, especially in current conditions of heightened security concerns. One of the participants asked whether the ability of every member country to refuse access to any ABTC applicant without offering any justification is essential for the operation of this scheme. The opinion of the panellists was that the ABTC would not be feasible if the countries could no longer reject some applications, as such an alteration would significantly complicate the administrative procedures, while the success of the whole scheme is based on processing a high volume of applications at a minimum cost.

In response to a question on the dynamics of the ABTC flows, it was explained that a total of 6,000 APEC Business Travel Cards were issued in 2004, which, while representing a very small fraction of overall cross-border labour movement, can be considered a good result for a relatively new scheme orientated towards a very specific group of people. Since the beginning of the programme, the number of APEC cards issued doubled every year, so further rapid increase in the popularity of the scheme can be expected. So far, almost a half of all cards have been granted

to Australians, which is due to the duration of Australian participation in the scheme and the amount of publicity devoted to it.

A question of whether trade agreements have to include labour mobility in order to be consistent with the WTO requirements was raised. It was clarified that within the WTO framework, trade agreements should be "substantially all trade", and therefore cannot *a priori* exclude any mode of supply. Consequently, Mode 4 has to be covered by trade agreements. However, there is no requirement regarding the comprehensiveness of Mode 4 commitments or inclusion of broader labour mobility.

It was observed that in analysing labour mobility between Canada and the United States, it is important to consider flows within a variety of entry categories rather than exclusively within NAFTA. For example, more Americans enter Canada under general provisions than under NAFTA, as these provisions are more liberal and offer better conditions. However, the reverse is true with regard to the American general provisions in comparison to the NAFTA conditions. As a result, significantly more Canadians are using the NAFTA TN visa rather than the H-1B visa to enter the United States.

In response to a query, it was explained that within NAFTA, a negative list approach is used: there is a general rule to which all countries agree and all schedules that are not included are listed in the annex of the agreement. However, Chapter XVI of NAFTA is a positive list, as it covers only certain categories.

Session V: National Implementation of International Obligations

How do states implement at the national level the international trade obligations they undertake at the regional and multilateral level with respect to movement of persons?

Chair: **Alejandro Jara,** Ambassador of Chile to the WTO and Chair of the Services Negotiations

Introduction

Carlo Gamberale, Trade in Services, WTO

The theme of this session is the relationship between the international treaty obligations undertaken by states at the bilateral, regional and multilateral level and domestic implementation of such obligations. This subject is central to the seminar as whole.

In the preceding sessions national management of the temporary movement of natural persons through bilateral and regional agreements and the place of such schemes within domestic regulatory frameworks were analysed. The GATS is the only multilateral agreement that allows states to undertake

binding commitments on the movement of certain categories of natural persons and, as such, raises some very specific issues relating to its national implementation.

In discussing national implementation, a general distinction must be made between the implementation of bilateral and deep regional integration agreements as opposed to the imple–mentation of multilateral instruments (i.e. Mode 4 commitments). Preferential trade agreements, unlike deep integration agree–ments, generally present implementation problems similar to Mode 4.

As bilateral and regional instruments are in some cases used to shape domestic policies and regulatory frameworks and vice versa, they often share most definitions and, consequently, are better accommodated within domestic provisions than multilateral agreements.

Ideally, Mode 4 should be brought into domestic laws using ad hoc – that is to say, Mode 4-specific — instruments reflecting definitions and concepts of these multilateral provisions. However, there is no close relationship between Mode 4 and the formation of domestic regulatory policies and frameworks. It is probably unrealistic to expect Mode 4 to shape the migration regulations of almost 150 WTO members, although it is understandable why bilateral and regional instruments are sometimes used for this purpose, taking into account such factors as geographical proximity, level of development and cultural and historical ties. Indeed, the closeness between domestic regulatory frameworks and some bilateral and regional agreements is justified by the implementation of migration and trade policies dictated by concerns and interests shared by the member countries.

Moreover, regional and especially bilateral agreements are generally much broader in their coverage than Mode 4. First of all, they generally cover temporary movement of workers regardless of any distinction between the services and manufacturing sectors. Secondly, they incorporate many aspects of migration that go beyond the trade concept of market access

and the reach of Mode 4. However, some of these measures may arguably provide a favourable backdrop for Mode 4 commitments, such as obligations on source and host countries concerning the management of migratory flows, measures to offset labour shortages, creation of cross-border labour markets, protection of migrant rights, etc.

The same cannot be said about Mode 4 implementation, which is limited to a set of access commitments. WTO members agreed to liberalize Mode 4 trade, but without prejudice to their unilateral, bilateral or regional migration policies. After all, Mode 4 is not concerned with liberalizing migratory policies but with liberalizing the supply of services, which involves the movement of natural persons.

The GATS does not directly regulate relevant policy areas of its members. Indeed, WTO members remain free to shape their domestic policies and laws, provided they respect their international obligations under the GATS.

WTO members agree on binding commitments of liberalization based on a set of GATS concepts and definitions, which are not necessarily reflected in national laws despite endeavours to do so. In most cases, Mode 4 commitments are "accommodated" within existing regulatory frameworks, which are only adapted to reflect the multilateral obligations when absolutely necessary.

Another difficulty is that Mode 4 commitments are confined to the movement of natural persons in connection with the supply of services, while the vast majority of national regimes do not distinguish between workers in the services sector and those in the manufacturing sector.

Therefore, the main drawback of this type of implementation is the difficulty of reconciling Mode 4 provisions with categories and concepts used in national regulatory frameworks, which results in administrative and procedural obstacles to the movement of natural persons under Mode 4 provisions. Thus, while a full integration of Mode 4 concepts into national

regulatory frameworks is unrealistic and possibly unnecessary, a certain degree of Mode 4-specific national implementation is desirable, and in order to facilitate it, more effort needs to be directed towards developing common categories and definitions.

It should be pointed out in this context that more clarity and precision in defining Mode 4 categories might also contribute to its liberalization insofar as it would reveal to regulators its limited scope within the migration field. Indeed, the absence of clear distinctions between Mode 4 and other types of temporary movement may constitute a drag factor in the liberalization of this category.

Two key approaches to improving Mode 4 commitments and their national implementation have so far been proposed. The first suggests a focus on developing common categories and definitions for Mode 4. The second approach favours the adoption of flexible national implementing instruments, such as the "GATS visa", and addressing some of the most trade restrictive administrative and procedural barriers that result from the incompatibility between Mode 4 commitments and national regulatory frameworks.

To conclude, concerns relating to the effective implementation of Mode 4 commitments cannot be addressed through regulatory uniformity within migration policies and laws. It is nevertheless crucial to the implementation and to the expansion of specific commitments on the movement of natural persons that Mode 4 concepts and definitions are better integrated into national regulatory frameworks.

Case Study 1: Mexico

Luz Maria Servin Sotres, Director for International Affairs, Ministry of the Interior, National Migration Institute, Mexico

Mexico is in the vanguard of the globalized world in its policy of harmonizing international needs and domestic interests. In

order to encourage economic development, Mexico has signed a number of international agreements.

International treaties are the responsibility of the Ministry of Economy. The National Migration Institute, which is part of the Interior Ministry, has a role in agreements concerning migration. It also has the authorization to sign international treaties without needing further approval by the Senate, which makes the process more agile. In all other cases, international agreements have to be ratified by the Senate. Before any treaty can enter into force, it has to be published in the official journal of Mexico.

A law regulating the process of adopting international agreements establishes that treaties can only be signed between the Government of Mexico and one or several subjects of international law. Therefore inter-institutional agreements have to be signed by a representative body of the Mexican government and a body of the foreign government. This is a method used by the National Migration Institute to form agreements with its counterparts (e.g. the Memorandum of Understanding recently signed with the IOM regarding assisted voluntary returns).

In order to explain the position of international treaties in Mexican legislation, the structure of Mexican legislation needs to be clarified first. The hierarchy of Mexican legislation can be represented by the Kelsen Pyramid: on top of the pyramid is the constitution, from which other legal instruments are derived to form the general legal framework. The main requirement of the system is that provisions of international agreements should not contradict the Constitution; when there is such a contradiction, the latter is valid.

The Mexican legal system gives the president the authority to adapt regulations and other implementing instruments to ensure that they correspond to the objectives of legal provisions; in other words, the responsibility for the implementation of treaties lies with the executive. For example, in the case of NAFTA, over a hundred articles in Mexican legislation had to be modified in order to make provisions of the treaty functional.

With regard to free trade agreements, Mexico has followed a trend similar to the general guidelines for treaties. Most international agreements, except those signed with the European Union, Israel and Panama, include articles on the movement of persons. These articles are very uniform: their main objective is to facilitate the movement of people, particularly business persons, and they include reciprocal clauses.

Sometimes a free trade agreement can lead to other provisions, as was the case with the system of cooperation between Mexico and the United States for border security. In March 2002, Mexico signed an Action Plan for Border Security aimed at regulating cross-border movement of people between the two countries. The Action Plan includes provisions for ensuring security at the borders, prevention campaigns for migrants from risk zones, deterrence of undocumented migration and prevention of border violence. In order to implement the Action Plan, coordination work with border control and other relevant bodies was carried out and publicity campaigns were organized.

The implementation of treaties has also generated a number of reforms: the Interior Ministry has started publicizing all international agreements on its website, a telephone enquiry service was introduced to provide information on provisions of the treaties, exchange programmes with businesses were developed, etc.

Case Study 2: Canada

Paul Henry, Trade Policy Adviser, Citizenship and Immigration Canada

The subject of the presentation is Canada's international obligations in international trade agreements on the temporary entry of business persons (i.e. work permits and labour market opinions) allowing for more "facilitated" or "liberal" access to Canadian markets for business persons engaged in certain business activities.

On the national level, Canada implements its temporary entry obligations in bilateral, regional and multilateral agreements, when necessary, through changes to its regulations and administrative instructions or guidelines. In analysing national implementation it is important to consider firstly, the general (or universal) provisions and regulations concerning temporary workers in Canada's Immigration Act and regulations, and secondly, Canada's obligations in such important international agreements as the Canada-Chile Free Trade Agreement, NAFTA and the GATS. In general, those international obligations on temporary entry are equivalent to, compatible with, or different from, the general provisions. In the Canadian case, like many other countries, there are important relationships between national laws and regulations, and obligations undertaken in international trade agreements. Those relationships may differ in important ways, depending on the categories of business persons covered by the international trade agreements. Generally speaking, Canada's general provisions on temporary entry stipulate that foreign persons need work permits to be temporarily employed in Canada. Before a work permit can be issued, the Canadian employer or client of the prospective foreign worker needs to apply for a labour market opinion of the job offer. In international trade agreements, Canada has undertaken obligations allowing "facilitated" or "liberal" temporary entry for the following main types of foreign workers: business visitors, traders and investors, intra-corporate transferees, and professionals on contract. Qualifying business visitors do not need work permits. Qualifying traders, investors, and intra-company transferees need work permits, but not labour market opinions. These obligations were easily accommodated in the Canadian system, because they were primarily equivalent to or compatible with existing general provisions. They were implemented by changes to administrative instructions or guidelines.

In the case of professionals, however, accommodating the international obligations in the Canadian system occurred through regulatory changes. Canada's international obligations resulted in certain professionals being allowed work permits without the need for labour market opinions. To implement those obligations, an existing, regulatory exception to the general rule

requiring a labour market opinion was used. Generally, there was no need to introduce new rules or major changes into the Canadian legislation to accommodate the international obligations in the Canada-Chile FTA, NAFTA and the GATS. Canada's international obligations were liberalizing to the extent that they legally bound certain existing general provisions. The international obligations on certain professionals were more liberalizing because waiving the labour market opinions was a significant elimination of an existing temporary barrier. However, implementation was not complicated because of the existing exception.

Finally, a distinction between market access and administrative procedures was made in previous discussions. Speakers were differentiating between two sets of temporary entry problems. However, there are temporary entry measures (i.e. laws, regulations, policies, practices or administrative procedures) running through and complicating both cases. Market access barriers are often more easily seen in the country's international obligations or its temporary entry laws and regulations; but there are many, less obvious barriers to mobility of business persons in the implementation and administration of a country's international obligations or its relevant general provisions. One of the biggest problems for business people and trade negotiators with respect to the implementation of international obligations is the lack of transparency in national administrative procedures.

Case Study 3: Colombia

Adriana Suarez, Consejera Comercial, Permanent Mission of Colombia in Geneva

The expansion of global trade in goods and services as well as investment requires multiple actions on a national level, including actions in areas like financial services, communications, infrastructure, customs systems, and facilitation of procedures

essential for the movement of natural persons involved in business activities. An increase in the volume of trade in services in the last decade has led to the liberalization of capital as a production factor, but the same tendency has not been achieved with respect to the movement of labour. The level of commitments related to the movement of natural persons and particularly to the facilitation of labour mobility in the multilateral context falls far behind the achievements made within bilateral and regional frameworks.

In the last decade, Colombia has signed agreements concerning the temporary movement of persons within bilateral, regional and multilateral frameworks. The main purpose of these agreements is to improve trade in goods and services and to promote investment into the national economy. During the last three years, the Colombian government has been working on improving mechanisms for implementing obligations assumed in the international agreements.

Within the regional context, Colombia, as part of the Andean Community, has agreed to put in place a scheme that allows the free movement of persons within the region. This scheme has similar objectives to the one established by the EC member states. The Andean subregion has 120 million inhabitants and exports valued at six billion US dollars annually. Obligations adopted within the Andean Community framework aim at facilitating entry of tourists and business persons into the regional labour market. This type of agreement goes beyond the provisions for commercial and trade movements within the GATS, NAFTA, APEC and other analogous cases.

Colombia has also signed bilateral agreements concerning the movement of persons; for example, the Group of Three Agreement (G-3) with Mexico and Venezuela. The Agreement establishes principles with a view to facilitating the movement of professional and business people, including categories such as intra-company transferees, business visitors and investors. Within the multilateral context, Colombia has entered the GATS and has made some horizontal commitments related to Mode 4.

To understand what was done by Colombia on the domestic level in order to implement these international and bilateral agreements, it is necessary to analyse relevant provisions of the national legislation. Migration policy maintains sovereignty as the basic principle, but also aims at achieving transparency and cooperation between the parties involved. Furthermore, immigration provisions are regulated according to social, demographic, economic, scientific, cultural, sanitary and other needs and interests of the state.

In order to find appropriate mechanisms to facilitate administrative procedures, Colombian legislation differentiates between temporary and permanent entry of persons. This distinction has helped to protect the domestic labour market, which is a high priority due to unemployment ranging between 15 and 20 per cent for the last four years; it has also allowed the development of effective procedures for facilitating the movement of certain categories of persons. Thus, national migration policy includes the Temporary Visa, which regulates the entrance of foreign people who come to Colombia for a limited period of time. The Temporary Visa establishes clear requirements and procedures for a number of categories of people, simplifying and expediting administrative measures and facilitating control. Under the Temporary Entry Permit category, there are specific types of visas which include certain groups of persons such as business visitors, intra-company transferees, workers, investors, professionals, teachers and scientists, artists, experts required for technology transfer, etc. Depending on the kind of activity and terms of the contract, each person entering the country needs the appropriate type of entry document.

The first type of entry document covers contract workers and persons coming to Colombia to undertake a particular task within their area of specialization, journalists, missionaries, technical directors and administrative personnel of foreign public or private bodies operating in Colombia. To obtain this type of visa, the company contracting the person is required to present an application in his/her name. Two-year multiple entry visas are issued for this category, but only under the responsibility of the company of a natural person requesting it.

The next type of entry document available in Colombia is the Business Visa, intended for business visitors (managers and executives of foreign companies which have economic links with a national company). This group is covered in Mode 4 commit–ments, and its purpose is to facilitate the development of business and investment into the Colombian economy. Persons who fall into this category have a right of multiple entry into the country for up to five years.

The third type of entry document is for visitors. A visitors' visa is issued in cases where there is no link with the domestic labour market and no salaries or fees are paid in the country. It is offered to foreigners wishing to enter Colombia on a non-permanent basis and usually applies to persons such as photographers, entrepreneurs, academics wanting to participate in seminars, symposia, etc.

Another type of entry document is issued to foreigners entering the country for medical treatment, investments and for other personal reasons. Furthermore, there are visas for students and priests.

In the process of accommodating international and bilateral agreements into the national system, many restrictions were eliminated from the domestic administrative procedures, making the whole process more efficient. Today, visa applications are processed within 48 hours from the time of submission of the required documents. It is an agile procedure aimed at facilitating exchanges among countries and businesses.

Responding to some earlier comments, it should be noted that Colombia is not interested in achieving harmonization of categories for the domestic regimes within the international framework, as the definitions currently used in Colombia are a good starting point for adapting its national legislation to international treaties. However, it is in Colombia's interest to see meaningful Mode 4 commitments under the GATS. Conse–quently, it is necessary to work on the clarification of existing definitions and different service provider categories. Having a better understanding of the commitments would contribute to

increased predictability and transparency of Mode 4; however, it will not guarantee real market access.

Discussant

Sumanta Chaudhuri, WTO Mission, India

Earlier discussions had suggested that bilateral and regional agreements are often very unlike the GATS in terms of categories of persons covered. It was also observed that national laws concerning migration greatly differ from each other. However, in the course of the discussion, it became apparent that the differences are much narrower than previously thought and there is an overlap between national migration regulations and categories included in the GATS. In particular, in the Canadian example, national provisions for two groups of migrant workers — business visitors and intra-corporate transferees — were substantially similar to Mode 4. It has also emerged that certain categories which are being discussed in the GATS context, such as contractual service suppliers and independent professionals, are prevalent in a number of multilateral schedules and in some bilateral and regional agreements. So there is an indication that for certain categories, it may be easier to establish a cor–respondence between national regimes and international obligations, including regional trading arrangements, than for others. Concentrating on such categories of migrant workers might help to advance GATS progress.

Focusing on commonalities between different national experiences can offer another way of achieving progress in GATS negotiations. It is in this context that proposals have been made relating to adoption of certain common templates for Mode 4 trade liberalization, such as the model schedule, including the concept of a GATS visa. Such templates can be useful multilateral tools: they would provide a greater degree of certainty, while retaining significant flexibility within the policy making process. The Colombian case, in which implementation of international obligations was used to simplify domestic administrative

procedures, suggests that there might be a value in creating templates for administrative procedures as well as national regulations.

One of the arguments used in favour of bilateral and regional agreements is that they are far more flexible than the GATS in being selective and covering very specific areas of mutual interest among the parties concerned. The GATS uses a positive list approach, but most bilateral and regional agreements choose to cover specific areas so as to have the ability to be more selective and benefit from drawing on areas of greatest mutual interest in terms of sectors or occupations. It appears that there is no intrinsic conflict between these two approaches. There might therefore be a possibility of bringing the flexibility and selectiveness of bilateral and regional agreements into the GATS commitments through using either the positive list or the negative list approach for specific commitments under Mode 4 for the various categories identified.

Finally, a number of concerns were brought up which, while remaining within national frameworks, spill over into the international commitments – in particular, security and labour market related issues. Again, experience with bilateral and regional agreements can be used to help alleviate these problems within the multinational framework. For example, a number of safeguards can be borrowed from existing bilateral and regional agreements and adapted for the GATS commitments wherever they are suitable. Further, the model schedule advocated earlier has also suggested a number of mechanisms to provide disincentives to stakeholders who misuse the GATS visa and therefore prevent its inappropriate application.

General Discussion

The discussion was lively and focused on the interface between Mode 4 obligations and the feasibility of their implementation within domestic regulatory frameworks. The challenge surrounded the dichotomy between the possibility of deeper and

quicker liberalization of narrow sectors of labour mobility and the realities of domestic immigration policies and regulations, which do not recognize certain of the distinctions made under Mode 4.

One group of participants maintained that the process of liberalization and implementation of international commitments would be facilitated by developing narrow and clearly defined categories of persons covered by Mode 4 obligations and ensuring that the negotiators are comfortable with them. One of the participants suggested that categorization should be designed to take into account both the needs of Mode 4 and the general structure of domestic immigration systems, and carried out on two levels. The first level of distinction would be made between persons entering a country to work in the service sector as opposed to other sectors of the economy. The second level of differentiation would include two types of categorizations: firstly, the general categorization found in the existing schedules and made according to the position of a migrant worker (e.g. manager, executive, specialist, etc.); secondly, categorization according to the particular sector of service (e.g. banking, telecommunications, accountancy, etc.). Such approach would allow liberalization of very narrow and specific segments of the market, which would be considerably easier to negotiate and to implement than liberalization applying to the entirety of labour mobility across the national border, provided that these categories are reflected in national regulatory frameworks. It was argued that, in the absence of clearly defined groups of people, implementation of international obligations takes place within the general rules regulating the totality of national immigration flows, which, with limited exceptions in instances of very liberal national regimes, means that liberalization is hampered by the need to follow the slowest pace of opening.

Another group of participants pointed out that the majority of national immigration regimes do not differentiate between service suppliers and other sectors of the economy. In the few instances where there is a separate provision for service suppliers, it is not widely used because general national provisions are more beneficial. It was argued that Mode 4 is an artificial construct:

from the perspective of domestic policy and administration, the concept of service providers is inadequate and the creation of multiple narrow categories is cumbersome. Moreover, the lack of awareness about the GATS among the business community was cited as an indication of the irrelevance of this agreement for the needs of business people. It was suggested that both migration authorities and businesses are interested in having a broader category of labour covered by Mode 4. At the same time, as current national regulations and Mode 4 obligations do not provide a sufficient level of labour mobility, some changes are required.

It was reiterated that the purpose of Mode 4 was to circumscribe the area of intervention into domestic immigration policies and regulations with the aim of faster liberalization in this area, but such a demarcation made accommodation of the agreement within national regulatory systems problematic. While a broader agreement might be more compatible with national regulatory systems and be easier to implement, it might not provide the same potential for liberalization. This was widely understood to be an important dilemma which needs to be addressed. One of the participants suggested that partial solution for this problem can be provided by focusing on contractual service suppliers, which can represent a horizontal category not limited to employment in the services sector. Contractual service providers can be seen as an across-the-board genuinely temporary category, relevant for the business community and not artificially constrained by employment in a particular sector.

A question regarding bilateral investment treaties was raised, in particular whether some of such agreements have provisions covering the movement of natural persons and their correspondence to Mode 4. In reply, it was explained that in the case of Canadian foreign investment protection agreements, for example, although some reference to the movement of people, primarily investors, is made, it could not be likened to the full provisions found in the GATS.

One of the participants expressed concern with respect to the fact that international trade obligations taken by countries in some

cases bind the status quo rather than provide further liberalization. In response, it was suggested that agreements binding the status quo are still significant as they provide an assurance that a country will not move away from its regular trade position in the direction of less openness.

Session VI: A View from the Constituents

Chair: **Piyasiri Wickramasekara,** Senior Migration Specialist, International Migration Branch, ILO

This session of the conference was devoted to hearing the views of employers and workers organizations – key constituents of the International Labour Office (ILO). Workers and employers have a direct and vital interest in moves to liberalize trade and migration. Employers have always advocated more liberal rules for the admission of foreign workers in order to have access to skills and expertise that may not be easily obtainable at home. Trade unions, on the other hand, have always sought to protect the interests of their members and of all workers employed in their countries.

The International Labour Office (ILO), as a unique tripartite institution representing governments, workers and employers, considers these discussions to be of enormous significance to the interests and stakes of its key constituents. The Director General of the ILO, Mr Juan Somavia, has recently brought to the attention of the heads of states attending the UN General Assembly in New York the report of the World Commission on the Social Dimension of Globalisation. It is clear that liberalization of trade and capital flows, as well as the cross-border movements of people, have profound social dimensions which must be taken into account if globalization is to bring about improvements in welfare.

At the International Labour Conference held in June 2004 in Geneva, the issue of labour migration was on the top of the agenda discussed by tripartite delegations from the 177 member states of the ILO. The General Discussion held as a part of the conference led to the adoption of a resolution requesting the ILO to implement a Plan of Action on migration, including the development of a "non-binding multilateral framework for a rights-based approach to labour migration." It can be regarded as a significant achievement to reach agreement on a subject as controversial as migration. The conference went as far as to specify what policy issues, ranging from admission to treatment, from remittances to return, would need to be covered by such a framework. The ILO will develop the guidelines on improving state policies and practices for the mutual benefit of all parties in consultation with other concerned agencies.

These developments are highly relevant to the theme of the current session as there is a convergence in what migration, labour and trade specialists are trying to achieve. In the sphere of movement of natural persons, the aim is to develop a multilateral framework acceptable to all states, which would facilitate the cross-border provision of services by individual workers of different skill levels. The ILO has a vital interest in ensuring that such a framework will lead to the opening of more opportunities for decent employment, and protection of workers. The experience of the ILO indicates that the best guarantee of reaching this objective is to engage governments, employers and worker organizations in a social dialogue.

Employer Perspective

What are the practical impediments to moving highly-skilled and other temporary workers? What is the actual experience?

Ellen Yost, Partner, Fragomen, Del Rey, Bernsen & Loewy, LLP, US-based International Business Immigration Law Firm

This presentation addressed some of the practical impediments to moving highly skilled temporary workers experienced by the

clients of Fragomen – who are corporations operating inter–nationally and small and medium-sized businesses located in various countries – wishing to move their workers from one country to another in the most efficient way possible. Looking at the development and activities of Fragomen can provide an illustration of the amount of resources companies have to spend in order to achieve this objective.

The firm was founded in 1951, but has grown explosively in the past decade as a result of the increase in the cross-border movement of persons and the tightening regulation of this movement. Currently, Fragomen assists in cross-border relocation of employees of its clients, which involves obtaining work permits, residence permits and visas. It provides advice regarding US compliance issues, export controls and government regulations, and monitors and maintains the status of employees and their families in the receiving country. Fragomen also informs clients of changes in laws and regulations in jurisdictions where they operate.

International trade, which is considered today as a source of wealth and development, entails not only the movement of goods and capital, but also the movement of people. This is not migration in the traditional sense because in this case, the movement of persons is not an end in itself, but rather a way to further a business purpose.

In order to be able to do business globally, it is necessary to send employees wherever in the world they are needed, quickly and with a minimum amount of effort and expense. Employers wish to have access to the best and the brightest employees and to build a cadre of skilled workers who can be transferred anywhere on short notice to meet business needs. Their goal is to have the right person in the right place at the right time.

The movement of skilled business persons is a tool to accomplish business objectives, including starting new business operations; transferring knowledge or culture to other parts of an organization; building an international group of personnel capable of working anywhere on short notice; increasing customer satisfaction; increasing employee productivity; and

generating cost-savings. Educating, training, recruiting and relocating workers on a global basis are as important as manufacturing, investing and marketing on a global basis. Many companies, when deciding where to open new subsidiaries, take into account the level of openness of national migration policies. Australia and Canada are among the countries changing their laws and procedures to attract highly skilled workers, foreign students and investment.

Fragomen is working with three broad categories of employee transfers. In all three categories the workers are highly skilled and often are paid more than the local work force. All the employees are permanent, or the companies would not wish to invest in them. Except for some short-term trips, companies often do not know how long a transfer will be.

The first category is "short-term transferees". In these cases, it is usual for the assignment to last less than six months, the worker to remain on the home payroll and the family to remain at home while the worker visits frequently. Short-term transferees often leave on two-weeks' notice, and there is a need for them to do productive work as soon as they arrive. In the United States and in some other jurisdictions, short-term workers cannot enter on business visitor visas, or under the visa waiver programme, because visitors cannot perform any productive services on behalf of a local employer. The short-term worker must instead obtain a visa that authorizes employment (i.e. a work permit). Short-term transfers are increasingly common and there is a need for speed and predictability. The GATS could play an important role in providing both.

The second category is "international assignees", either long term or short term. Families usually accompany international assignees in moving abroad. Traditionally, companies sent executives and managers abroad for three or four years to work on the payroll of a foreign subsidiary or parent company. Increasingly, international assignees include not only executives, but also employees at a variety of levels in the company. They may be sent abroad for training or to perform a specific function. More and more of these assignments are short term. In this

category, the major difficulties confronting Fragomen and its clients are the differences in provisions and categories in the various national laws. The GATS can make a significant difference by helping to harmonize national definitions.

The third category is "high-potential" employees, who can be either temporary or permanent. High-potential employees are typically recent university graduates who have not worked for the company concerned, and therefore are not eligible for international assignee status. Providing entry for this category will be an increasingly serious problem in the United States. This year, the entire annual quota for the H-1B visa — the visa status available for high-potential new hires — was filled within one day as a result of a high volume of applications. Consequently, absent Congressional intervention, businesses will not be able to recruit new high-potential workers for a year, with the exception of Canadian, Mexican, Chilean or Singaporean workers in certain professions who might qualify for visas under US Free Trade Agreements.

National immigration laws and procedures often create barriers to international mobility and therefore to the interests of business. Although most countries' laws will accommodate the needs of multinational corporations, the procedures for obtaining permission to work are time consuming and differ greatly from country to country, and there often is a lack of transparency in administrative procedures. Security issues, visa problems, and numerical limitations may force companies to locate their operations elsewhere. Free Trade Agreements have not removed all barriers to the movement of business persons. Yet, when international trade agreements are negotiated, it is essential that provisions relating to the temporary entry of business persons be included.

The North American Free Trade Agreement (NAFTA) simplified entry for certain citizens of one party into another; however, the scope of the NAFTA is limited. The United States has nearly 40 types of non-immigrant visa categories, but the NAFTA facilitates entry for only four categories: business visitors, intra-company transferees, professionals, and traders and

investors. Nevertheless, the advantages of NAFTA are considerable. The NAFTA provisions are broader than the GATS services provisions; the administrative procedures involved, particularly border-processing, are very efficient; and the new TN category is increasingly useful for certain professionals in times of visa shortages. One of the main shortcomings of the NAFTA is the lack of clarity as to who qualifies in some of the professional categories. Another problem is the difficulty of amending the original list of 63 qualifying professions.

Despite the NAFTA, it is more difficult for Canadian citizens to enter the United States to work now than it was in 1989 due to subsequent restrictions to general US immigration law and procedures. NAFTA currently provides the only flexible and efficient route for the mobility of business persons within the largest trading relationship in the world.

Businesses are looking for more international cooperation systems similar to the Schengen zone in Europe, systems where a business person acceptable to one country could also be acceptable to another. That means that the work of the Global Commission on International Migration and other cooperative efforts on migration should be promoted and sustained, and significantly more effort should be directed towards developing international cooperation in labour mobility.

With regard to the GATS, employers believe that its scope is too narrow. From the business point of view, separating services from production does not make sense. In order to ensure economic growth and business development, governments should consult with employers through trade associations and coalitions when formulating policies.

Union Perspective

What are the concerns of trade unions and how can these be addressed in managed approaches to the movement of temporary workers (e.g. social security, human rights protection, etc.)?

Mike Waghorne, Public Services International

Public Services International (PSI) is a global union federation, representing 20 million public sector trade unionists around the world. It has 627 affiliates in 149 countries. PSI is an autonomous body, which works in association with federations covering other sectors of the workforce and with the International Confederation of Free Trade Unions (ICFTU). PSI is an officially recognized non-governmental organization for the public sector within the International Labour Office and has consultative status with ECOSOC and observer status with other UN bodies such as the UNCTAD and UNESCO.

It should be noted that the following comments relate exclusively to Mode 4 issues, as observations on broader migration issues would touch upon a number of wider topics.

From the outset, it is important to note that there is much confusion in debates on issues raised by Mode 4. In particular, two fundamental distinctions often fail to be made: first is the distinction between temporary and permanent migration, and second is the distinction between temporary migration that is Mode 4-based and other temporary migration which happens regardless of the GATS. Much of the polemical debate around GATS negotiations is caused by the inability or unwillingness to make these distinctions. As a result, much that is said about Mode 4 is irrelevant to it. Part of the difficulty stems from the fact that the boundaries between all these issues are porous. However, it is important that attempts are made in discussions to identify specifics. Failure to do so serves the interests of some particular groups in society for which the confusion between issues relevant and irrelevant to the GATS is convenient, for example, some racist and nationalist organizations.

There are ten different global union federations, each covering a specific sector. These comments reflect PSI's position but are thought to correspond to the standpoints of other unions.

Unions would share some of the concerns expressed by Ellen Yost in her presentation of the employer's perspective, insofar as

representatives of the top levels of professional and managerial staff would agree on the need to resolve visa problems more expeditiously. However, for many other categories of workers, there are other areas of concern.

One of the problems is related to social security: temporary workers in a host country are often required to pay into social security or similar schemes from which they are very unlikely to benefit. In some cases there is an agreement between the host country and the sending country that money that is being collected through social security payments is sent back to the country of origin as part of the remittances. But it is not universally the case and a wider solution is needed. It is also necessary to address the question of whether temporary workers get access to social and other services in their host country.

The current use of Mode 4 to cover top-level workers does not raise too many concerns for unions because they tend to be well protected. However, any extension of Mode 4 coverage to a larger and wider set of occupations and sectors will apply to many more workers, whose concerns are not necessarily well catered for by economic and social arrangements. This is the reason for the willingness of the unions to be involved in these discussions.

There are also general concerns regarding the potential impact of Mode 4 on labour markets. Mode 4 specifically does not cover the entry of people to the host labour market, because governments would not be willing to place such a sensitive social policy area under the control of the WTO rules. The current problems being faced by the United States Trade Representative with the US Congress merely illustrate this point.

There is a whole set of issues around labour and trade union rights: whether temporary migrant workers have the right to join a trade union in the host country; whether they have access to personal grievance or other such procedures and are covered by collective agreements and contracts in terms of wages and conditions; and whether they are protected under laws dealing with sexual, racial or other discrimination. In this regard, it should be noted that there are many examples of gross discrimination

against migrant workers: racism, sexual harassment or outright abuse, workplace discrimination, etc. Many developing countries rely on remittances from their citizens working abroad and are therefore interested in sustaining good relations with the host countries. In these circumstances, the rights of migrant workers are sometimes compromised. For example, there was a case of a Labour Attaché who, having witnessed severe abuses of the rights of migrant workers from his/her country, duly informed the relevant authorities and was instructed by his/her capital not to take any steps to prevent the continuation of this situation. The sending country authorities feared that complaints about mistreatment of their workers would result in the host country importing temporary labour from another state. Thus, it is important to realize that discrimination and abuse occur and a way of dealing with this problem needs to be found.

Another subject raised in the context of labour mobility discussions is the issue of comparative advantage. Some developing countries believe that trade union demands on issues such as wage parity will obliterate their comparative advantage. However, this is a misconception. In reality, in spite of any mutual recognition agreements, it is very rare for the qualifications and experience of a migrant worker to be fully taken into account. In most cases, the foreign worker is placed lower on a salary scale compared to the domestic workers who have the same professional characteristics. In addition, even if migrant workers do receive payment equal to domestic wages, they might be prepared to work in areas which domestic employees are not willing to serve, for example, in isolated rural regions. Thus, equality of treatment and wage parity, advocated by trade unions, will not destroy the comparative advantage of sending countries. The aim of the unions is to ensure that once a fair decision has been made as to where a person will be placed on a payment scale, s/he is treated equally with domestic workers in all respects, and no discrimination occurs on national or racial grounds.

There is also clear evidence of employers who falsely describe their employees as intra-company transferees, independent contractors or partners, exploiting entry provisions in order to

get contracts that adherence to the law would prohibit. In some countries and in some sectors (e.g. the German construction sector), such falsely described workers constitute 10 per cent of the sector's workforce, which seriously erodes wages and conditions. Such employer practices create trade union opposition and explain the eagerness of the unions to be involved in setting the rules concerning migration issues.

Finally, there are brain drain concerns. It has to be pointed out that the brain drain debate should not focus exclusively on mass movements of people. In some countries, the loss of only one person can be devastating. There is an example of a Caribbean island that lost its intensive care unit because its only anaesthetist quit. It is therefore important that countries adopt an ethical hiring policy ensuring that recruitment or government agencies such as the UK NHS are more sensitive about these issues and discuss them with target country governments.

General Discussion

The necessity to take further actions in order to make Mode 4 more operational from the employers' perspective was emphasized, both in terms of eliminating barriers and providing more clarity and transparency.

One of the participants enquired whether there is any corporate interest in greater movement of lower-skilled workers. It was clarified that, at present, admission of unskilled workers into the United States has nearly stopped. The business community is not concerned with increasing the inflow of lower-skilled workers into the United States, as presently there are no shortages of this category of workers in the domestic labour market. Furthermore, the issue of the movement of lower-skilled workers is very political, given its relation to concerns regarding the domestic labour market.

It was observed in relation to highly skilled professionals that medium and longer-term migration involves the movement of

the family unit and is therefore related to such issues as employment possibilities for spouses and access to housing, education and healthcare. The question of how these issues are resolved and whether they represent a barrier to the movement of workers was raised.

In reply, it was noted that family issues are of great importance in labour movement, particularly the possibility of employment for spouses and children of migrants. Participants were informed that the US law was recently changed following seven years of lobbing by the business community. At present, spouses of intra-corporate transferees and investors can be entitled to work authorization under NAFTA. However, this change does not affect all categories; for instance, there is no discussion of allowing spouses of H-1B migrants to be employed in the United States. In France, a recent reform has introduced the possibility of employment for the spouses of expatriate executives or persons with an annual wage of over 60,000 Euros. Limitations on employment for family members of expatriates prevent some people from moving, in effect constituting a barrier to trade, and in some cases, result in the corruption of the system. For instance, to avoid restrictions on employment of family members of temporary migrants in the United States, foreign workers often apply for permanent residence instead of using temporary channels. There is a need to move in the direction of the policies applied in such countries as the United Kingdom and Australia, which authorize the employment of temporary migrants' spouses.

Another issue discussed concerned the protection of temporary migrant workers' rights. A question was posed about the ability of temporary migrant workers to join trade unions in the host country. It was explained that although trade unions encourage membership of temporary migrant workers, it is not always possible, because legislation of some countries does not permit it.

It was noted that the WTO does not have a mandate to ensure the protection of workers under Mode 4 movement. The United Nations and the International Labour Office Conventions include a very comprehensive coverage of all aspects related to the rights

of migrant workers and their families. However, as these instruments were developed before Mode 4 came into existence, they do not adequately cover Mode 4 specific issues and make no distinction between temporary and permanent migrants, maintaining that all workers should be treated equally. A more general problem is that these conventions have not been widely ratified; in particular, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families has been ratified by only 26 states, the majority of which are sending countries. Another challenge is enforcement. It was emphasized that protection of the rights of migrant workers requires a combination of efforts of trade unions, human rights bodies, NGOs and watchdog mechanisms.

Another aspect of migrant labour protection that was discussed was the application of standard laws to contractual service suppliers, as often the employer, who is responsible for the application of labour law, and the employee are located in different countries, and therefore within different legal jurisdictions. It was explained that there are three possible situations with regard to contractual service suppliers. In the first case, where an employee of a foreign company is sent to another country for a short period of time and does not receive any remuneration in the host country, the sending country's legislation applies. In the second case, a temporary worker provides services directly to an employer of the host country and therefore the labour law of the host country applies. The difficulty arises in the third situation, in which a worker is an employee of a company in the sending country, but is providing services to the host country customers. In this case, there is lack of clarity with regard to which country's labour law applies. One of the participants stressed the importance of clarifying the application of labour law to temporary workers and underlined the role of trade unions in finding a solution.

Session VII: Where Do We Go from Here? Implications for Mode 4

Chair: **Hamid Mamdouh**, Director, Trade in Services, WTO

Introduction

Synopsis of the seminar discussions and focus on key questions from here

Aaditya Mattoo, Lead Economist, World Bank

Three types of arrangements were examined during the seminar: national unilateral programmes, regional trade schemes and bilateral labour agreements. It has become evident that there is a poor correspondence between GATS Mode 4 and existing migration regimes. Although Mode 4 is nested in the broader immigration regime, its implementation is not always directly identifiable.

It can be argued that most arrangements, such as the US H-1B scheme or the special programmes for skilled labour which exist in Canada, Australia or the United States, are not truly temporary schemes at all, but rather stepping stones to permanent migration.

It would perhaps be most fruitful for the Mode 4 negotiations to concentrate on contractual service providers. First of all, the

main advantage of contract worker agreements is that they are genuinely temporary arrangements, which do not formally intrude on host country labour markets. Therefore, negotiating the movement of contractual service providers is genuinely close in spirit to negotiating a trade agreement. Secondly, it is artificial to allow service suppliers to work only for the service providers of another member: it does not correspond to the needs of the private sector or the way immigration regimes work. The category of contractual service providers is arguably more general. It might seem to be a gimmick of nomenclature to call a fruit picker a provider of fruit-picking services, but perhaps it can be seen instead as the kind of imaginative action that negotiators need to take in order to make Mode 4 match more closely the needs of both the immigration regimes and the business community.

The second set of schemes analysed in the course of the meeting were regional trade agreements. Although these agreements focus on trade, labour is embedded within them, usually within the provisions for the movement of service providers. It emerged that even without considering deep integration agreements (like the European Union), there are a number of programmes, like NAFTA for example, which have achieved a certain degree of liberalization of the movement of skilled workers. There was also the very interesting example of the APEC visa scheme which, while not focused on improving market access, is a remarkable device for simplifying entry procedures.

The survey of bilateral labour agreements that deal directly with the movement of labour was perhaps even more interesting. Agreements between Spain and Ecuador, Germany and the eastern European countries, and Canada and the Caribbean were examined. As economic logic suggests that some of the biggest gains lie in the movement of unskilled workers, it is particularly notable that this category was included in some of the bilateral schemes, if only to a limited extent.

The question arises as to why there has been such limited success within the GATS framework compared to other agreements.

It can be suggested that the GATS goes both too far and not far enough. There are a number of key differences between other agreements and the GATS. First of all, obligations within the GATS are extended only to the host country, whereas other agreements usually include **obligations on the source countries too**. Some of these commitments apply pre-movement and help to avoid the adverse selection problem (e.g. security screening, qualification verification), whereas other obligations cover post-entry measures (e.g. accepting and facilitating return). The necessity of ensuring return has been repeatedly emphasized during the seminar. Implicit in this issue is also the commitment of the host country to send migrants back. This dual obligation created by bilateral agreements succeeds in ensuring what Mode 4 is aimed at creating – a revolving door of temporary presence.

Another critical aspect of bilateral and regional agreements which is lacking in the GATS is **flexibility**. Therefore, there is a need to explore options for making access commitments more flexible but in an objectively verifiable way, without letting them degenerate into the completely open-ended economic needs tests found in the GATS schedule. A very interesting idea can be drawn from the German scheme, where a temporary migration quota was established but made dependent on fluctuations of the unemployment level in the host country. This example has great appeal, as it involves an objectively verifiable link between domestic economic conditions and the level of liberalization commitment.

Finally, the GATS negotiations are conducted under the **MFN rule**, while regional and bilateral schemes are preferential arrangements. Equality of treatment of all parties is a feature of the GATS that offers a possibility of achieving something genuinely different from what is already being done within the frameworks of other agreements. Furthermore, significant benefits can be reaped if the reciprocal access principle used in the trade of goods can be brought into the labour mobility field. However, it is necessary to address issues that have been mentioned which are peculiar to labour movement because the ability to deal with the specificities of labour movement in the

multilateral context could give valuable dynamism to the whole services negotiations.

There are several areas in which progress can be made in Mode 4 negotiations. First, elements of bilateral agreements could be incorporated into the negotiation context. Many valuable suggestions on means to achieve this objective were made. Access of migrants can be made conditional on their home country meeting a certain set of conditions. The principle here would be analogous to the qualification requirements an individual professional has to meet, but the conditions would concern certain policies and regulations of the source country. This idea raises an interesting MFN question: whether people with equivalent qualifications but from countries which have different policies on screening and ensuring return of their nationals should be treated equally. This is another case where a real gain can be achieved by negotiating such conditions multilaterally, rather than on an often-unequal bilateral basis. If a set of conditions and, more ambitiously, a mechanism for confirming that a source country meets these conditions could be developed and approved by all the members, then it might become a way of reconciling non-discrimination on the one hand, with the incorporation of reasonable obligations on the source country on the other.

Anya Oram, Administrator, Directorate General Trade, European Commission

Communication between trade and migration communities is essential if progress is to be made in trade agreements with labour mobility elements. It is a good sign that discussions have become more constructive and focused over the last year. However, it is important to ensure that cooperation between trade and migration specialists is a continual process and not limited to occasions such as this seminar.

In analysing the significance of Mode 4, it is essential to avoid both over- and underestimating its importance. Mode 4 covers a very small part of international migration and a very small part of international trade. But, at the same time, development of Mode 4 is a crucial element for the success of the GATS nego–tiations as a whole.

This seminar has demonstrated that unilateral, bilateral and regional approaches have definite attractive features over GATS Mode 4 for both sending and receiving countries: they cover labour migration more broadly, include a wider range of issues (e.g. returnability and worker protection), allow a higher level of flexibility to adapt to changing circumstances, and are based on considerable mutual trust.

It has been said that the European Union is not a suitable model for Mode 4 as it is a very deep integration agreement. Never–theless, some EU experiences concerning the process of liberalizing the movement of people can be instructive for the GATS. First of all, it is worth bearing in mind that establishment of free movement of people within the EU has been a very long process, which is not yet complete. For instance, recognition of qualifications is still an unresolved issue. Another area requiring a lot of attention is policies regarding entry of third-country nationals into the EU.

The European Commission made a proposal concerning these and other migration matters in 2001, which was supported by the European Parliament and the business community. The proposal covered all economic migration, a wide range of issues (including rights of migrants) and administrative procedures. However, the proposal was probably too ambitious: differences between member states and the Commission were too great, as the states were unwilling to alter their domestic regimes. This case shows that it might be easier to achieve success by taking smaller steps.

This seminar helped to identify the main concerns of the migration community with regard to the GATS, which include returnability, impact on the domestic labour market, abuse of the system, lack of flexibility, and especially, the binding nature of multilateral obligations.

A number of possibilities to alleviate these problems emerged in the discussions and need to be carefully considered. First of all, a reference was made to shortage lists and floating quotas as ways to increase the flexibility of Mode 4 commitments. However,

such measures might lead down a slippery slope and negatively affect other modes of supply.

Another suggestion concerned means to raise the confidence levels of migration officials, which included development of common categories and definitions, and increasing transparency of national regulations.

The role of home countries in the process of labour migration was also discussed. It is important to consider whether and how it might be possible to incorporate home country commitments into the GATS structure.

Finally, the relation between bilateral / regional initiatives and the GATS needs to be analysed. These agreements may be a way to alleviate some of the pressures on Mode 4. However, considerable difficulties might arise in making bilateral and regional schemes compatible with the GATS, as these initiatives are preferential by definition whereas the WTO agreement incorporates the MFN principle.

Ambassador Sergio Marchi, Former Canadian WTO Representative and Minister of Citizenship and Immigration Canada; Commissioner, Global Commission on International Migration

Migration and trade authorities have to come together and build a common ground. It has been popular to see trade and migration as distinct and in some ways opposite: trade has been perceived as dynamic and open and migration as controlled and restricted. However, the overlap between trade and migration is increasing, and today more unites these two phenomena than divides them.

Millions of people are migrating already, and it is expected that both trade and migration will continue growing. Unfortunately, both disciplines are placed on the defensive. So it is vital that both trade and migration are recognized as positive forces, which help to build nations rather than undermine them. Mode 4 is not about conflicting interests and opposition between

North and South, East and West; it is about cooperation and striving towards common objectives.

Both disciplines will prosper from greater policy coherence at the international level. With regards to migration, it is clear that while every organization is doing their utmost both on policy and administration, more effort needs to be made. Likewise, while the WTO might provide the right instruments for trade liberalization, this process is not complete: more work needs to be done on creating new rules, ensuring that all countries participate in WTO agreements and correlating hundreds of flourishing bilateral and regional agreements with the WTO framework. Therefore, in order to achieve coherence between migration and trade, the focus needs to be made on their intersection, which is Mode 4. Trade negotiators have to try to fit Mode 4 within the migration world with its own categories and definitions and, at the same time, migration authorities have to understand the relatively narrow perspective that is being demanded of them in terms of Mode 4, given that it is temporary and related to services, and does not constitute an attempt to take over the immigration programme.

In order to move forward together, trade and migration communities need to find answers to a number of pertinent issues:

- It is necessary to clarify the definition of "temporary" under the GATS, and whether and in what way renewals should be encouraged or discouraged.

- Some careful consideration needs to be given to methods of ensuring that temporary migration remains temporary, and to mitigate the danger of creating permanent underground migrants. The question here is how to refrain from taxing an already burdened migration system internationally and avoid inflaming the control and security mentality that is already beginning to grip the migration community.

- It is important to explicate what kind of labour is involved in temporary labour migration, as skilled, semi-skilled and

unskilled migrant workers trigger different public and political reactions.

- The GATS represents a voluntary, bottom up scheme based on the principle of reciprocity. Migration authorities are hoping that at the end of Mode 4 negotiations, a level playfield for different countries will be developed. However, it is not clear whether such an outcome will be achieved and whether Mode 4 will enhance the symmetry and coherence of the system at the end of the negotiations. It is possible that instead, Mode 4 negotiations will consist of bargaining on other services, and the outcome will be contrary to the wishes of the migration community.

- The very sensitive issue of migrant rights has been repeatedly brought up. While there is no hope that the WTO will provide a solution for these problems, it is useful to try to see the migration authorities concerns from the trade negotiators perspective. The following questions arise in relation to this issue: arrangements for the family members of temporary migrant workers, access to social security benefits, legal protection, etc.

- It is important to ensure that benefits of Mode 4 obligations outweigh the costs for the participating states. In this context, instruments such as adjustable quotas and return mechanisms should be considered.

Today, the two fascinating worlds of trade and migration are becoming one. Misconceptions abound and emotions run high, but what is required is a dispassionate and reasonable discourse with a view toward providing maximum benefits and opportunities for the growing number of people who are moving between different countries. The two subsets of policy makers

are charged with the task of creating a policy framework to facilitate movement in an efficient, secure and beneficial way for the migrants, the private sector and for the countries. It is possible to achieve this objective if both trade and migration communities adopt a positive "can do" attitude.

Ambassador Chandrasekhar, Permanent Representative of India to the WTO

In previous discussions, the importance of coherence between migration policy and trade negotiations was mentioned. However, it should be emphasized that trade negotiators are looking for coherence not only in this particular sector but also within the entire framework of negotiations. The objective of liberalization in the long run means liberalization in each sub-sector of the totality that comprises trade negotiations. All sectors are interrelated and protectionism in one area always engenders protectionism in another. Liberalization is a step-by-step process in which one sector needs to keep pace with another. Therefore, a phased and integrated approach should be maintained in the process of negotiations, which will allow the achievement of progress on all fronts. The Doha declaration is aimed at attaining this kind of momentum. The Framework Agreement, which was completed in July 2004, is one more step forward.

The main constraint to Mode 4 movement is that overall concerns relating to migration sometimes overshadow it. However, it also needs to be appreciated that not all problems relating to temporary movement of natural persons can be forced through a trade agenda. So, a balance between trade and migration considerations should be maintained.

One of the issues brought up in the seminar requiring close attention is the need to distinguish more clearly between temporary and permanent migration. Another matter that needs to be considered is finding the right balance between the responsibilities of the source country vis-à-vis the host country. In both cases, the way forward is in continuing the discussions and actively looking for the solutions.

Some suggestions can be drawn from earlier discussions. Notably, a point was made earlier about the need for broader coverage of categories within Mode 4 movement, especially the categories not linked with commercial presence. Existing commitments on such categories are virtually absent. A particular stress should be made on some categories that have attracted a lot of attention, such as contractual service suppliers and independent professionals. There are problems regarding correspondence of such categories with the general migration regime, but these concerns are not insurmountable. During the seminar, some progress was made in relation to this issue. Alterations in regulations and laws may be called for, but these will not be different from the changes that may be required from WTO members in various other areas of negotiations.

The next important issue mentioned is transparency of commitments with regard to various categories of movement covered by the commitments. Presently, information is available only on overall immigration policies, without specific reference to temporary movement under the GATS. Along with transparency, administrative procedures relating to work permits and visas need to be streamlined and simplified.

Another significant area on which the development of Mode 4 depends is recognition of qualifications, as progress on all other fronts can be negated if current levels of discretion are not disciplined. Governments will maintain their sovereign right to lay down qualification requirements and procedures, but it needs to be ensured that such requirements do not act as barriers to trade and are least trade restrictive. Adding transparency, clear criteria and conditions for awarding qualification recognition might help to alleviate this concern.

In the course of the seminar, some provocative new suggestions were made, which need to be carefully considered. For example, the model schedule idea was mentioned, and as it is supported by business associations across the globe, it is worth pursuing.

Mode 4 trade liberalization is far from being a resolved issue. It is part of a bigger challenge to maximize global development

within the shortest possible time, which is one of the fundamental aims of trade negotiators working on the Doha round. This seminar was very useful for furthering this objective. More such events should be held not only on the specific issue of Mode 4, but also on the overall context of negotiations, in order to achieve the goal of self-sustained and rapid growth.

General Discussion

The significance of the development of a truly globally mobile atmosphere for the business community was emphasized. It was argued that in the face of uncertainty with regard to further liberalization of Mode 4 trade, many industries attempt to compensate through increasing usage of Modes 1 and 2 (i.e. global outsourcing), which creates a new dynamic concerning services trade, infrastructure and skills development within emerging economies. However, another speaker pointed out that it is important not to consider the situation from the perspective of intermodal competition: all modes of supply are linked and should be perceived as complementary.

Concern was expressed that Mode 4 trade liberalization is increasingly perceived as a panacea for developing countries. It was highlighted that the financial benefits which are projected to result for the emerging economies from the liberalization of Mode 4 trade would ensure development only if successful solutions are found for such issues as returns, brain drain, effective investment of remittances, etc. Resolving these concerns requires regulatory creativity and careful consideration of a multitude of cultural, administrative and regulatory differences existing worldwide.

The issue of bringing bilateral and regional schemes into the multilateral framework was discussed. One of the participants suggested that although bilateral and regional schemes favour certain regions due to their objective advantages in supplying workers to the member countries (e.g. geographical proximity), this need not prevent multilateralization of these agreements. It was suggested that competitive liberalization might be a possible

way to expand bilateral and regional schemes and ensure non-discrimination in the multilateral context. Such approach would involve host countries setting certain standards and requirements for all states wishing to supply workers to their markets. In reaction to the above proposal, the necessity of fixing such standards in a very objective way in order to avoid an appearance of subjectivity was stressed. Confidence was expressed with respect to the possibility of importing best practices and elements of coherence adopted within regional and bilateral agreements into the multilateral context. However, it was noted that in order to serve the cause of Mode 4 and interests of the participating countries, multilateralization of bilateral and regional agreements should be a gradual, evolutionary process.

A reference was made to the concerns of labour unions about the influx of certain types of migrant workers into the domestic market. It was observed that not enough has been done so far to alleviate such apprehensions, and although ensuring that there is a clear distinction between permanent and temporary migration is a necessary measure, it is not a sufficient one.

Another area where progress should be made is increasing transparency in relation to immigration laws and regulations, where there is currently a big knowledge gap. It was remarked that although a questionnaire distributed by the IOM is a significant contribution to bridging this gap, a more systematic approach to collecting information about individual country regimes and temporary migration should be made.

Closing Remarks

Gervais Appave, Director, Migration Policy and Research, IOM

This seminar has demonstrated that an exploration of national, bilateral and regional experiences in the management of labour migration can yield valuable lessons towards the more effective implementation of Mode 4 of the GATS.

It is true that trade regulators and migration managers live in contrasting work environments and are confronted with specific policy challenges. But the differences ought not to be overstated. The cliché that trade negotiators are eager to dismantle barriers while migration officials are bent on creating new ones does not hold up to scrutiny. There is, in reality, much convergence between the interests and concerns of the two communities, and the languages they use is at least mutually intelligible. Once that language problem is resolved, in other words, once common terms of reference and analysis are adopted, it is possible to identify a range of conceptual tools and policy options that may have been developed for the purpose of managing temporary labour migration, but can nevertheless be made use of to advance Mode 4 objectives.

A number of policy strategies and priorities were identified in discussion. It was agreed, first of all, that a properly functioning comprehensive migration management framework is essential if the movement of skilled workers is to be facilitated. Such a framework would enable the verification of the bona fides of persons migrating. It would also ensure the return of workers at the end of their temporary stay. Furthermore, it would address effectively issues surrounding the recognition of professional and technical qualifications. A range of mechanisms that are applied in different countries to address some of these concerns was presented and discussed during the seminar. For instance, a number of useful ideas can be borrowed from the Philippine national approach to screening and preparing workers for overseas employment. The APEC pre-clearance mechanism offers an interesting model for the facilitation of business travel. Canada's seasonal agricultural worker programme offers some effective strategies for ensuring returns. In more general terms, experiences of Jamaica and other countries show that countries of origin have much to offer to countries of destination in terms of cooperation, for instance, by addressing security and other issues with respect to their nationals moving abroad and in ensuring their return. Other suggestions were made for using training and capacity building in order to prepare workers for overseas employment and enable governments to be in a better position to manage temporary migration and, consequently, undertake reciprocal commitments.

This seminar has underlined the potential for confidence building between the trade and migration communities. The discussion was characterized by great intellectual rigour and an even and level tone, creating a climate for the free and open exchange of ideas. Not only has the tone of the exchange been notably constructive and mature over the course of the meeting, but also specific ideas for further cooperation have been suggested.

Many new ideas were developed, notably the possibility of distilling best practices from bilateral and regional schemes through the use of templates. Another promising direction for further work is to focus on specific sectors. For example, at the most recent World Health Assembly (WHA), governments asked the WHO to analyze the impact of trade agreements on the migration of healthcare workers. Currently, the WHO is collaborating with the IOM, ILO and the OECD to explore this relationship with the aim of developing a report on this issue for the next WHA.

Finally, it is worth noting that many participants expressed a desire for this dialogue to continue. For this to be possible it will be necessary for the discussions to be supported by better data. All participants are therefore encouraged to give more attention to the collection and sharing of pertinent data.