

REPORT OF THE TRADE AND MIGRATION SEMINAR

**organised by the OECD, the International Organization for Migration and the
World Bank**

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TRADE AND MIGRATION SEMINAR

REPORT OF THE MEETING

EXECUTIVE SUMMARY

As part of the annual series of OECD Services Experts Meetings, the Trade Directorate, in cooperation with the World Bank and the International Organization for Migration, organized a seminar on trade and migration. Input was also provided by the OECD Directorate for Employment, Labour and Social Affairs. For IOM's membership, this seminar was the second inter-sessional of IOM's International Dialogue on Migration, and contributed to the dialogue's goal of enhancing understanding of migration and facilitating international co-operation in its management. The seminar, which was held in Geneva on 12-14 November 2003, focused on the temporary movement of service suppliers under mode 4 of the WTO General Agreement on Trade in Services (GATS). The meeting 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.

Mode 4, which has emerged as a major topic in the current WTO negotiations, raises a number of important and complex issues that go beyond the sphere of trade policy into the realm of migration policy and practices. The seminar responded to the need to build greater understanding between the trade and migration policy communities of the opportunities and challenges related to mode 4 movement. This meeting represented an important opportunity for an informal exchange of views between trade and migration policy-makers in a non-negotiating environment.

The agenda of the seminar was structured around three main issues. First, it explored the relationship between trade and migration, situating GATS mode 4 in the broader context of temporary labour migration. In this context, the meeting looked at existing schemes to facilitate temporary movement at the national, bilateral and regional levels and asked what could be drawn from these schemes for GATS mode 4. Second, it addressed issues related to the management of mode 4 and temporary labour migration more broadly, for both receiving and sending countries. Finally, the meeting explored what progress might be achieved in the current GATS negotiations and potential areas for future work.

The debate on mode 4 is taking place against the backdrop of significant worldwide increases in migration. Although some short term signals indicate a slow down in migration, long term factors suggest continued growth, especially for migration from low income to high income countries. Important structural determinants include increasing variations in per capita income among countries, differing demographic structures, ease of international communications and transport, converging educational levels and the globalisation of production processes. Today there are an estimated 175 million international migrants, nearly 3 percent of the world's population.

While migration is on the rise, there is no comprehensive international legal framework governing the cross-border movement of people. International legal instruments aimed at promoting the protection of

refugees and migrant workers, and at combating smuggling and trafficking of persons exist. To date, however, States have been reluctant to undertake binding international commitments that limit their sovereign right to determine who enters and remains within their territories and under what conditions, although they are increasingly recognising the need to facilitate certain types of movement. Movement associated with GATS Mode 4 covers only a very small percentage of annual cross-border movements of people. Put in context within the universe of migration, there is the subset of temporary migration, and within that subset, a further subset of employment- or labour- related migration. GATS mode 4 is a sub-subset within that category limited to the temporary movement of service suppliers. However, the precise boundaries of GATS mode 4 are not well-defined and are unclear and this lack of definitional clarity poses challenges for migration officials. Further, while the GATS is not a migration agreement, the wider and more ambitious the scope of GATS mode 4 becomes, the more it moves into the migration debate. Identifying the scope of mode 4 remains a major task, but a task on which some useful progress was made at this seminar.

As with other forms of liberalisation, there are potentially significant economic benefits on a global basis from greater labour mobility. One study estimates that liberalization of labour mobility to the level of 3% of the workforce of OECD countries could result in global welfare gains of up to USD 150 billion per year. Indeed, for developing countries, liberalisation of mode 4 could lead to significant benefits given their strong comparative advantage in labour-intensive services. Increased trade via mode 4 can also lead to increased trade by other modes of supply, facilitating inward and outward flows of investment as well as cross-border trade in services. Mode 4 is an important component of the remittance inflows which are of increasing importance to developing countries. Aware of the economic importance of mode 4 and of labour migration more generally, many countries of origin are establishing proactive government policies to leverage the skills and international comparative advantages of their populations. The Philippines, for example, has established an active policy of promoting and managing overseas labour migration. India is increasingly promoting linkages and complementarities among different modes of supply.

From the business perspective, global corporations want to be able to move personnel around as needs arise, and tend to invest in those countries that best facilitate this. While national laws usually accommodate most mobility needs of global corporations, their implementation is not always rational or efficient and creates additional costs for companies. The focus on temporary movement is also confusing; companies tend to view workers as long-term and want to facilitate international hiring.

Many destination countries also realise the benefits of temporary labour mobility and facilitate movement at the national, bilateral and regional level. These schemes provide valuable lessons for GATS mode 4. One key concern is that, while GATS commitments are binding, the needs of local labour markets fluctuate significantly and governments often choose to maintain needed flexibility by committing under GATS to less than their current levels of access while implementing other measures at the national, bilateral and regional level. National schemes explored in the seminar seek to balance the need to ensure border integrity with responsiveness to the needs of business. The emphasis is on facilitating entry for the highly skilled and streamlining related visa and work permit processes. The new security environment is posing challenges in this regard. The seminar also explored a number of schemes for facilitating mobility, under regional trade agreements. These ranged from those which facilitate entry but do not confer any rights of access (e.g., the APEC Business Travel Card) to those which provide access for certain types of service providers (e.g., NAFTA) to more ambitious schemes covering freedom of movement for the highly skilled (e.g., CARICOM). Bilateral labour agreements have also proved effective in securing a high degree of flexibility for countries to target specific groups, share responsibility for monitoring and managing the migration flows between countries of origin and destination and in minimising the potential impact of foreign workers on nationals – e.g., by requiring wage and social insurance parity.

In promoting greater labour mobility, distributional consequences need to be taken into account, as some groups of society may be negatively affected by liberalisation. From a trade union perspective, mode 4 liberalisation is perceived as having the potential to open the doors to unregulated migration with negative impacts on local employment, wages and conditions, especially for low skilled labour.

There are also a range of specific migration concerns related to Mode 4 including overstaying, brain-drain and general social externalities such as cultural and other integration issues and non-respect of social rights. The seminar highlighted that most of these concerns are manageable, given political will and appropriate policy responses. A number of countries are successfully combating overstaying, by mobilising resources for monitoring and focusing on employer obligations in sponsored entry programs. Sponsors need not only to ensure rights for employees, but also be responsible for workers' return travel and co-operate with the governments' monitoring of employees. Employers need to know there is a possibility of sanctions if found in breach of the requirements.

Similarly, social concerns of brain-drain can be minimised with policies that foster social support and brain-circulation, encouraging migrants to return with their newly acquired skills and experience to the country of origin. Evidence from bilateral agreements suggests that the most sustainable temporary migration programmes are those that are appropriately regulated and enforced, and also afford flexibility through economic and social incentives. Perhaps the most important incentive is to allow migrants to re-enter the receiving country in the future for business opportunities. Improved administration of visas and policies on residency to allow for re-admission of personnel also play an important role.

Better management of remittances can also be crucial in establishing an enabling environment for return, by helping to create opportunities in countries of origin and enhance the welfare of receiving families. In this regard, programs that support small and medium-size enterprises in countries of origin can be particularly beneficial, as is the establishment of remittance-friendly fiscal rules or community funds. Co-operation between sending and receiving countries and co-ordination between trade and migration officials at the national level is the most effective basis for obtaining significant results in terms of migration control and management.

The GATS is the first formal recognition by trading nations of the importance of the movement of natural persons in services trade. Despite this, little progress towards freer movement of natural persons has been achieved. From the seminar it emerged that countries' limited use of mode 4 is partly linked to the already mentioned factor of a lack of flexibility of GATS commitments in a context of rapidly changing needs, the complexity of the Agreement and the conceptual and terminology gap between GATS definitions and migration regimes.

Areas where progress could be explored in the current round of the GATS negotiations include:

- Expansion of existing commitments, including sectoral commitments, and elimination of explicit barriers such as quotas and economic needs tests.
- Reduction of administrative and procedural requirements, including by exploring the feasibility of a GATS visa. A GATS visa would separate mode 4 entrants clearly from permanent migrants, resulting in (a) reduced administrative costs, faster processing and approval; (b) fees limited to administrative costs; and (c) better records of mode 4 trade. Safeguards and employer sanctions built into the visa would prevent abuse and ensure the temporary nature of mode 4 movement. Questions were raised about the costs of implementing the visa, whether mode 4 entrants were an identifiable group for migration purposes, and whether a GATS visa would be sufficiently attractive to business.

- Improvements in effective access via regulatory transparency. Suggestions included members establishing “one-stop-shops” for all relevant information on mode 4 entry; prior consultation on new regulations affecting mode 4 or provision of additional information among WTO Members.

The seminar also highlighted that in terms of categories of workers, progress might be most likely for intra-corporate transferees, business visitors and highly skilled contractual service suppliers. It was suggested that it might be more difficult to make progress on foreign employees of domestic companies, given both disagreements about their coverage under mode 4 and the greater sensitivity this group may pose in terms of impact on the local labour market.

However, there are also several concerns that need to be taken into account and areas where reflection and further work may be warranted:

- Whereas, migration has historically been addressed at the national level, there is growing recognition of the need for international co-operation in managing migration, for example to combat trafficking and facilitate labour migration. Nonetheless, the time is not ripe for migration to be managed through an international treaty framework and in any case the WTO is not the correct forum for an overall migration debate. International dialogue on migration, such as in IOM's Council, is just now taking shape to identify common and complementary interests in more orderly movement of persons and should be encouraged. Equally, certain issues relating to labour and migration, such as labour rights or social security issues are best addressed in other international fora, such as the ILO.
- The scope of mode 4 remains unclear. Clarification, and how it relates to categories and concepts used in migration policy – such as the definition of “temporary”, and the relationship between employment-based and contact-based temporary movement – would be useful.
- Mode 4 is at present under-estimated in trade figures due to measurement problems and the economic benefits of increased movement of temporary services providers are not well documented. On-going efforts at the international level to improve mode 4 statistics and to enhance understanding of the welfare gains from mode 4 liberalisation, including in relation to intra-developing country movement, need to be supported.
- More work also needs to be undertaken to increase understanding of the range of complementary policies to manage the potential costs and reap the benefits of increased mode 4 liberalisation. These include: incentives to turn brain drain into brain circulation; leveraging mode 4 to increase other forms of trade; remittance management; and measures to manage the social and labour market impacts of temporary foreign workers.
- Binding commitments in the area of mode 4 are perceived as posing challenges for regulators in migrant receiving countries. Exploring possible mechanisms within the GATS that might assuage the concerns of migration regulators, while still meeting the desire of business for the predictability afforded by GATS commitments would be useful. In this context, the idea of “soft bindings”, i.e. periods of improved access which may or may not result in binding commitments, deserves further exploration.
- Other means of facilitating entry need further study, including ways to increase the transparency and user-friendliness of the relevant migration regulations and whether to build upon existing schemes for managing temporary entry or to explore the development of a GATS visa.

- Bilateral labour agreements tend to cover lower skilled workers and provide a possible avenue for dealing with such categories of workers in the short-term. However, bilateral agreements are not MFN, may not be covered by MFN exemptions and, given their diversity, are not always business friendly. It could be useful to examine the way in which the GATS and bilateral and regional labour agreements might co-exist in the short-term.
- Qualification requirements are one of the most difficult areas and can have a significant impact on the temporary movement of personnel. There is a need to explore how to promote greater recognition, including through the development of incentives for the negotiation of mutual recognition agreements and dialogue with the relevant professional groups.
- The capacities of many developing countries to manage migration are currently limited. Enhanced technical co-operation and capacity-building for migration managers in the developing world and promotion of co-operation between countries of origin and destination may need further emphasis to enable more effective management of movement of persons to reap maximum developmental benefits.

TRADE AND MIGRATION SEMINAR

REPORT OF THE MEETING

All speakers participated in their personal capacity. The views expressed are thus not necessarily those of their governments.

12 NOVEMBER: WHAT IS THE RELATIONSHIP BETWEEN TRADE AND MIGRATION?

Objectives and structure of the meeting

Gervais Appave – Director, Migration Policy and Research, IOM

Aaditya Mattoo – Senior Economist, World Bank

Julia Nielson – Senior Trade Policy Analyst, OECD.

1. The main objective of the seminar was to bring the migration and trade communities together to enhance the mutual understanding of the relationship between these domains, in particular GATS mode 4 and to gain a better insight into the opportunities and challenges ahead. A second objective was to have a better understanding of how temporary labour movement is – and can be – managed in both countries of origin and destination. The third objective was to consider what can and cannot be achieved through the GATS and to identify where alternative forms of international cooperation may be necessary. The final objective was to identify areas where more research and capacity building are needed.

2. The structure of the meeting reflected these objectives, with sessions covering:

- The trade and migration context: understanding mode 4 as a subset of temporary labour migration, itself a subset of temporary migration.
- Realities of temporary labour migration: experiences at the national, bilateral and regional level in schemes for facilitating temporary labour movement and lessons from these for mode 4.
- Managing the impact of temporary labour migration: issues that arise for countries of origin and destination and approaches to dealing with these.
 - Issues in countries of origin: turning brain drain into brain circulation, remittance management, leveraging mode 4 movement to promote other forms of trade.
 - Issues in destination countries: impact of temporary foreign workers on the labour market, social integration and security concerns.
 - Issues common to both origin and destination countries: ensuring temporariness (the problem of overstaying and successful return incentives) and policy coordination, both between origin and destination countries and at the national level between trade, labour and migration officials.

- GATS and beyond.
 - Overview of the categories of workers for which progress might be made.
 - Possible mechanisms for facilitating movement under GATS, such as a GATS visa.
 - Ways to increase effective access through improvements in regulatory transparency.
 - Possibilities for progress under the GATS in the short and longer-term, and areas where progress may best be achieved outside of the GATS, in the development of complementary or supporting policies.

Session I: Trade and migration contexts

A. Temporary labour migration and GATS mode 4

*What is the bigger picture in terms of the rise of temporary labour migration?
Manolo Abella – Chief, Migration Branch, International Labour Organisation*

3. In spite of many and increasing restrictions, migration has expanded hugely in the last decade. Over this period, growth in migration has been up to 17 percentage points per year in the OECD, but increased growth has taken place in all regions of the world. Long term factors (e.g. increasing variations in per capita income among countries, differing demographic structures, converging educational levels and globalisation of production processes) suggest continued growth although some short term signals indicate a slow-down. Supply clearly exceeds demand. It has been estimated that, each year, half a million people enter the European Union clandestinely and 300,000 the United States. Moreover, presumably high, but largely untracked, movements characterise intra-developing country flows.

4. Few are the legal, official doors open for temporary labour migration and many are the obstacles, including restrictions on recruitment, visa requirements, police records and other security checks, certifications on where and for how long one works and insurance requirements. Nevertheless, many doors are effectively used. While legal doors are largely meant to be revolving (i.e. people that enter the country are expected to leave after a given period), many people stay beyond the allowed period. Often both the temporary foreign workers themselves and their employers want them to stay, the latter because of the higher costs (e.g., in terms of training) involved in cycling employees in and out.

5. The main characteristics of current flows of temporary labour migration are the following:

- *Geographic dimension:* The growth in temporary labour migration flows is highest amongst neighbouring countries, in particular if those countries have agreements with one another and are rich. Intra-developed country movement is the most liberalised and often takes the form of movement of people within regions through special arrangements with neighbouring countries. Statistically, movement from developing to developed countries is significantly higher than intra-developing country movement. However, intra-developing country movement is badly documented and is presumably much higher than the statistics indicate.
- *Categories of workers:* Movement of high skilled workers is the most liberalised, with flows for this category growing very fast over the last 5 years. In the United Kingdom, for example, annual growth has reached a peak of 35 percent. However, the definition of high skilled workers is very broad, encompassing categories as diverse as intra-corporate transferees, temporary guest worker

programs and student migration. Worldwide 1.5 million students are registered in tertiary level education abroad and much of their mobility will eventually transform into labour migration.

Where does mode 4 fit in the broader context of temporary labour migration?

Georges Lemaître – Principal Administrator, Directorate for Employment, Labour and Social Affairs, OECD

6. From a migration perspective, a number of concepts need to be clarified to give a precise meaning to mode 4 and, more generally, to temporary migration.

7. From a definitional point of view, the temporariness of permits cannot be equated with the temporariness of migration and stay. In many countries a temporary permit does not necessarily mean temporary migration, and the type of permit held therefore is not a reliable indicator of the effective duration of stay in a host country. Furthermore, a great diversity in migration and permit regimes exists, to the detriment of the international comparability of migration practices. Within the traditional OECD countries of large-scale immigration — Australia, Canada, New Zealand and the United States there is a clear demarcation between temporary and permanent migration, in which transfers from temporary to permanent permits are possible but, in general, temporary permit regimes are intended to reflect temporary migration. Most other OECD countries only have temporary permits which tend to evolve towards longer term permit types and eventually permanent residence. In these countries, early attempts foundered to create purely temporary categories of workers, e.g. “guest workers”, and led to a policy change towards more or less systematic permit renewals.

8. Additional definitional problems arise from the fact that countries have different criteria for residency. Elements used to define residency and residency rights in migration terms include nationality, type of permit, definition of duration of stay and fiscal status. In terms of mode 4, the GATS does not specify when and under which circumstances a foreigner is to be considered a resident of the receiving country. Similarly, GATS mode 4 creates an ambiguity about the status of multi-year service providers: are they to be considered foreign residents engaging in trade or home residents forming part of the productive capacity of the host country?¹ Finally, to the extent that, in GATS terms, there is any dividing line between residents and non-residents, it remains unclear if this can be assumed to be the conventional threshold of one year, customarily used from a migration perspective.

9. The suitability of granting freer access through mode 4 should be assessed in light of the experience with the integration of immigrants. In OECD countries this experience is mixed. Although employment-based migration does not involve any initial fiscal burden on the host society and has a positive track-record, the current experience with migration is not all positive. Aging populations are leading to durable structural increases in demand for foreign and foreign-born labour. Demand is matched by extensive supply in the developing world. However, host countries have significant difficulties in preventing illegal entries and overstaying and in fostering integration of the foreign and foreign-born population. In many host countries, unemployment rates of foreign or foreign-born workers are significantly higher than those of the total labour force. Abuses of humanitarian channels entail costs for the host country and asylum seekers and refugees experience important difficulties in integrating.

1. From the speaker’s perspective the issues of residency are important as trade is traditionally considered, from a balance of payments point of view, to take place between residents and non-residents. However, the GATS goes beyond the traditional balance of payments scope of trade in covering mobility of factors of production (i.e., capital and labour) in terms of service delivery. Trade via GATS modes 3 (investment) and mode 4 (temporary movement of natural persons) is not captured by balance of payments statistics.

10. Questions that need to be addressed in a debate on trade and migration include: whether there is a need for freer access where there are generalised labour shortages in receiving countries; the suitability of mode 4 and other truly temporary schemes to address these labour shortages; the real aims of mode 4, that is, if it is focused on satisfying labour shortages in the context of overall employment or on promoting competitive market access in services provision; whether better access (i.e. faster processing of permits) also means freer access; the likelihood of firms actually cooperating to ensure temporary stay, given their limited incentives to cycle employees in and out; the appropriateness of distinguishing services provision from “human capital transfers”; and the real value of entering into “binding” commitments under the GATS.

GATS and mode 4

Hamid Mamdouh – Director, Trade in Services Division, WTO

11. The speaker gave an overview of the scope of application of mode 4. GATS Mode 4 is part of the bigger structure of GATS. GATS mode 4 is strictly incidental to migration in the sense that the GATS does not regulate migration. It simply defines one of four modes of supplying services. Mode 4 has a very narrow scope of application confined to service suppliers which are temporarily offering their services abroad. (See chapter XY for a detailed description of the application of mode 4 and GATS to migration issues).

12. The GATS defines mode 4 as “the supply of services via a service supplier of one member to another member through the presence of natural persons of a member in the territory of any other member”. Service suppliers can be juridical persons employing physical persons from the home country or can be independent service suppliers selling their services to residents of another country. Hence there are two main categories covered by GATS: employees of a juridical person and the self-employed, or contractual service suppliers. From a migration point of view, these categories are dealt with in completely different ways. The Annex to the GATS defines the outer limit of mode 4, stating that it does not apply to permanent employment, residency or citizenship. Governments are free to regulate in compliance with GATS principles, i.e. Members are free to regulate migration provided that this does not nullify or impair their GATS commitments.

13. However, due to the GATS coverage of all service sectors, mode 4 liberalisation can raise a broader range of domestic regulatory issues than would normally be addressed in a labour mobility agreement. This overlapping of competences requires an effort at coordination at both the national and international level. The existence of a conceptual and terminology gap between GATS definitions and migration regimes creates difficulties in implementing provisions under mode 4 trade. Although mode 4 is not a migration agreement, it is regulated by migration policies. While mode 4 issues will not determine overall policy on migration, the GATS, as an international treaty, means its 148 Members have to find a way to integrate its legally binding provisions into the broader migration policy picture.

14. Because of the binding nature of GATS commitments, WTO Members have tended to make limited concessions: commitments on mode 4 tend to be restrictive. Most mode 4 commitments are horizontal (i.e., not specific to individual sectors), and mainly target employees of juridical persons (93% of total commitments), while coverage of independent suppliers is scant (1% of the total). The overwhelming majority of commitments on mode 4 are linked to mode 3 (investment) and very few liberalise mode 4 as a stand alone mode.

15. In spite of the narrow scope and limited commitments under GATS mode 4, the reality of temporary movement of service providers is much bigger and the schemes used to this end are many and varied. The key reason for managing the temporary movement of service suppliers through alternative

channels is the lack of flexibility of GATS and mode 4 in a context of rapidly changing needs. Another reason may be the lack of consultation between national regulatory frameworks on trade and migration.

16. To date, a number of difficult questions remain unsolved, including how to reflect commitments in domestic legislation. Nonetheless, in the current negotiations, there are signs of a more concrete approach, with efforts at streamlining administrative procedures and increasing transparency and predictability. WTO members are increasingly trying to address the conceptual and terminology gap between GATS definitions and migration regimes. There is also a new tendency towards sector-specific commitments, more clearly defined scope of commitments, and more disaggregated and better defined categories for entrants. Similarly, WTO Members have demonstrated their willingness to identify multilateral criteria for addressing long-standing and controversial issues including economic needs tests and labour market tests. Other initiatives aim at strengthening disciplines on mutual recognition agreements (MRAs) and studying the feasibility of a GATS visa.

Discussion

17. Many questions concerned the impact of GATS mode 4 on migration policies and on its application in specific cases. It was explained that, so far, there had been no demonstrable impact of WTO agreements on migration policies and that it was unlikely that GATS mode 4 would interfere with overall migration policies, given the very limited scope of GATS mode 4. However, there was considerable confusion due to the fact that migration regulations do not use the same definitions as GATS mode 4. The distinction between service suppliers and generic job seekers was also explained. Job seekers are people seeking access to the employment market regardless of sector, while service suppliers normally enter to provide a specific service in a given sector (i.e., they have a contract for the delivery of a service upon entry). Mode 4 suppliers could thus be defined in terms of both duration (temporary) and purpose (specific provision of services in a given sector) of stay. It was also clarified that the WTO does not deal with temporary migration more generally because this involves many other policy issues that fall beyond the jurisdiction of the organisation.

B. The key challenges: what is at stake, trade and migration perspectives

Trade perspective: what is at stake for developing countries?

Lakshmi Puri – Head, Division on Trade in Goods, Services and Commodities, United Nations Conference on Trade and Development

18. The speaker underlined the economic importance of mode 4 for developing countries, as well as the systemic importance of mode 4 in the context of the growing importance of developing countries as both markets and producers.

19. From the perspective of developing countries, mode 4 is an area where they stand to make clear gains and greater concessions under mode 4 can contribute to a needed element of balance in the GATS. In this sense, progress on mode 4 serves as a test to check progress towards equity of treatment amongst countries at different levels of development, by allowing developing countries to exploit their natural comparative advantages in international trade, including in labour as a factor of production. It also allows the world production system to reach greater equity and balance between capital and labour flows. Furthermore, mode 4 can play a facilitating role, allowing developing countries greater access to international trade through linkages with other modes of supply. Mode 4 also contributes to poverty alleviation and to the reduction in gender inequalities, as demonstrated by the positive gender impact and overall positive welfare effect of trade in nursing services.

20. Remittances are also good indicators of developing countries interest in mode 4 trade. Officially, remittances are estimated at USD 72 billion worldwide (2001/02), but unofficial estimates predict that the real value is double or triple the recorded official figures. Remittances are very important to both household consumption and the domestic economy and, in countries such as India and Sri Lanka, exceed the economic value of the main export.

21. However, there are many challenges. First, mode 4 is treated as a very sensitive area because of social, employment and migration issues as well as, more recently, security considerations. Negotiations and procedures become lengthy, slow and very bureaucratic. Improved statistics would provide a more solid basis for analysis and policy guidance and a more dispassionate, concrete approach to negotiations. Second, greater efforts should be made to clearly separate temporary and permanent migration and to reduce the share of unilateral, discretionary systems regulating temporary movement. Third, there is a need to move away from the perception that mode 4 equates to migration and to build an orderly and predictable system for mode 4 movement. The perception that mode 4 leads to job losses must be demystified by pursuing sectoral and inter-modal analysis. There is much at stake in improving the present level of mode 4 commitments and dialogue between trade and migration communities is vital to disseminating the message about the potential gains for both developing and developed countries.

Migration perspective: what are the channels through which international movement of services suppliers is easiest?

Philip Martin – Professor of Agricultural and Resource Economics, University of California - Davis

22. The speaker suggested that the way forward for mode 4 movement lay in linking it to mode 3 trade (commercial presence). There are fundamental features of the relationship between trade and migration that, if understood, could help policy makers to identify the channels through which greater movement of service suppliers could be realised. These include fears about the manageability of migration flows originating from mode 4 liberalisation, the different functioning of negotiations in the trade and migration realms, the inconsistency of the ‘temporariness’ requirement for mode 4 service suppliers with government and international organisations’ efforts to grant and/or qualify equality of treatment to migrants (in terms of potential permanent migration) and, the links between mode 4 and mode 3 trade.

23. Whereas 80 % of trade in goods and services takes place between rich countries, mode 4 opens up a movement with lower income countries, unleashing fears about its manageability. Such fears reduce the likelihood of making swift progress in liberalising the movement of people across borders.

24. Furthermore, reconciling trade and migration negotiating mechanisms is very difficult. In trade, negotiations are structured so to grant progressive and continuous liberalisation while in migration, policy measures are taken in response to observed needs.

25. International migration is motivated by the existence of international differences between poor and rich countries, but the task of the international community and of governments is to grant and/or qualify equality. Moreover, managing mode 4 in this context implies a dilemma deriving from the need to discriminate again in order to keep “temporariness” effective.

26. Finally, building developing countries’ capacity in mode 3 could theoretically facilitate services exports via mode 4. Most services trade is carried out via Mode 3, and the best access conditions are given to mode 4 suppliers linked to mode 3 (i.e., those who are employees of juridical persons, rather than contractual service suppliers). Given that the immediate prospects for additional legislation on the movement of independent services suppliers via GATS or breakthrough advances in mode 4 are low, if the ultimate goal is to move more people, efforts should aim at helping developing countries set up more subsidiaries of their domestic firms through which to move service providers.

Discussion

27. A number of speakers took issue with the proposal that developing countries focus on increasing their ability to establish subsidiaries abroad. Many countries noted that scarce capital resources in developing countries suggest that obtaining mode 4 movement via mode 3 was a theoretical possibility but not an effective short-term solution. It was also observed that there is a compelling need to focus on the scope of mode 4. The broader its interpretation, that is, to include a wider range of temporary and low-skilled labour (e.g., in agriculture), the more the debate gets enmeshed with issues of general migration policy. However, it was observed that, while GATS mode 4 could pose real challenges for migration authorities, GATS is a binding treaty and countries are obliged to find some way to implement their commitments in their national legislation.

Session II: what is the reality in terms of temporary labour migration? What lessons can we learn including for mode 4?

A. National schemes

What approaches have countries taken at the national level to manage temporary labour migration? How do they fit with GATS mode 4? What have been the strengths and weaknesses of these initiatives? What lessons can be learnt?

28. In this session, the national systems in the United Kingdom and the United States were presented. Both countries are significant receivers of various types of temporary entrants and both systems are characterised by a constant effort in refining domestic migration policies and procedures.

Case study 1: United Kingdom

Nicholas Rollason - Solicitor, Kinglsey Napley

29. The management of migration in the United Kingdom is very transparent, with all information easily accessible through the government website. An important characteristic of the system is the frequent consultations with stakeholders which ensure a very open and flexible framework, responsive to market needs. The requirements for being granted a work permit are very basic: a degree, or an equivalent qualification or 3 years experience for the job on offer. Temporary and permanent migration flows are dealt with in the same manner, so that immigrants entering with a temporary permit can apply for residency. Approximately 25 percent of temporary entrants become residents. Services suppliers tend to return to their country of origin more often than other categories of workers.

30. The categories of entrants covered under mode 4 include intra-corporate transferees, managers, business visitors and contractual workers. Special regulations apply to entertainers and artists. The schemes for low skilled labour are clearly temporary, with a number of sector-specific schemes – for example for food processing, manufacturing, catering and seasonal agriculture.

31. The United Kingdom had initially foreseen a dedicated track for GATS mode 4 entrants but found that it lacked flexibility, and had unsatisfactory results, with its effective use remaining limited. Moreover, the same objectives of the GATS mode 4 scheme could be attained via other means. The flexibility characterising the British system allowed, in fact, existing schemes to be adapted to changing needs. For example, allowing foreign students to switch to work permits and to enter the British job market

was a clear policy decision to meet current national needs and policy objectives aimed at using the expertise created to the best advantage of Britain.

32. In sum, the strengths of the British system are its consultative, transparent, flexible, fast and business-oriented character. The remaining challenge is to convince the public of the economic advantages of having such an open system.

Case study 2: United States

Philip Martin – Professor of Agricultural and Resource Economics, University of California - Davis

33. Traditionally, the United States is characterised by a very flexible infrastructure for migration policy. However, unlike Britain, the United States is on the verge of moving away from the flexibility and proliferation of schemes which had been its approach until very recently. The increased security concerns of the last few years has added to the pre-existing strain of the existence of large communities of immigrants, non-immigrants (foreigners who are expected to leave the United States after a period of study or work), and non-authorized migrants.

34. The United States' system includes a number of different schemes and takes into account the existence of different modalities of entry: through front doors as legal immigrants, through side doors as non-immigrants – for whom 18 types of doors with various levels of transparency, size and criteria exist— and through back doors, clandestinely. Since the terrorist attacks of September 2001, there is a strong determination to keep people in the same track through which they entered the country. Previously, foreigners, once in the United States, could adjust their status from non-immigrant – student or guest worker – to immigrant as well as from unauthorized to immigrant status. This was a very common practice, as testified by the fact that 85 percent of the overall economic-employment visas issued each year used to be granted to foreigners already in the United States.

35. H1B permits are the main gateway for moving professionals into the United States. While the Congressional quota of H1B permits is 65 000, in the late 1990s its use expanded enormously, with business petitioning for increases up to several hundred thousand permits. However, the atmosphere has changed greatly in the last few years. In 2003, for instance, free trade agreements with Singapore and Chile granting these countries a certain quota within the unchanged overall ceiling of 65000 H1B permits generated a plethora of protests both within Congress and from outside groups (mainly unions) that trade should not be affecting migration policy. This new climate suggests that it is unlikely that the United States will create new doors for temporary entry of foreign workers in the near future, for instance by creating a GATS visa.

B. Bilateral Labour Agreements

What kinds of agreements exist? What has been their purpose and what type of workers (e.g., skill level and sector) do they cover? How do these compare with GATS mode 4? What have been the strengths and weaknesses of these initiatives? What lessons can be learnt?

36. This session discussed experiences with bilateral labour agreements concerning low skilled workers in one country of origin (Honduras) and one destination country (Germany). Bilateral agreements in these countries have led to the orderly management of migration and related policies such as health and social security.

Case study 1: Honduras

German Leitzelar – Minister of Labour, Honduras

37. The upward trend in emigration observed in Honduras in the last decades has been sustained by strong push factors. In 1998, hurricane Mitch destroyed 80 percent of the country's infrastructure, magnifying the impact of existing structural weaknesses. With a 40 percent unemployment rate and more than 60 percent of the active population earning less than the minimum wage (USD 128 per month), the government has designed a new national strategy for facilitating exports of labour. Important changes in the national labour legislation have brought more flexibility into the schemes regulating the mobility of unskilled workers.

38. Following this reform, Honduras put in place several initiatives aimed at securing strategic alliances with important partner countries. Honduras recently agreed the Seasonal Agricultural Worker Programme with Canada, through which Honduras sends rural workers to Canada for 5-8 months. A second successful scheme covers the temporary employment of Honduran crew in shipping companies from Greece, Italy, Netherlands, Norway, Spain and the United States. From 2000-2002, 12 255 sailors were hired as contractual workers on foreign vessels for periods varying between 6 to 10 months. A third bilateral scheme seeks to regularise illegal Honduran migrants to the United States and allows regularised workers to stay legally in the United States for up to 18 months. This is a very important programme for Honduras; it improves the working and social conditions of its population employed abroad as well as providing a source of capital in a country where 25 percent of the population lives off remittances from relatives abroad.

Case study 2: Germany

Torsten Christen – Federal Ministry of Economics and Labour of Germany

39. Germany has a number of bilateral agreements, mostly with Central and Eastern European countries, covering seasonal workers, guest workers, border commuters and contract workers. All bilateral agreements are subject to wage parity conditions (i.e., a requirement to pay wages equal to those paid to German nationals). The three most important types of workers are seasonal workers, guest workers and contract workers.

40. Seasonal workers are mainly in agriculture and the hotel and restaurant industry. The current regulations allow work for a maximum of 3 months per year. This category is the most important for Germany — in 2003, more than 300 000 seasonal workers worked in Germany, most of them for the maximum time of three months. Of these, approximately 250 000 came from Poland and about 20 000 from Romania.

41. Guest worker agreements cover exchanges of normally up to one year. The inflow of guest workers – a term derived from the German word “*Gastarbeiter*” – has been historically very important for Germany, which recruited millions of workers, mainly from Turkey, for its post-World War II economic revival. However, nowadays, this program is not big.

42. Contract worker agreements have been signed by Germany with 12 Central and Eastern European countries and with Turkey. These agreements include country-specific quotas and enable employees of foreign companies to work in Germany as contract workers. The foreign company acts as a sub-contractor of a German company, while the contract workers remain subject to the national legislation of their employer. The scheme is subject to a labour market clause and to a regional market clause. According to the labour market clause, national quotas are adjusted to meet market needs while, according

to the regional market clause, some regions in the Eastern part of Germany are not allowed to employ foreign contract workers due to their high local unemployment rates.

43. From a migration perspective, the German experience shows that it is important to take into account the specificities of the market situation when designing labour migration policies. Similarly, it is important to guarantee transparency and rapidity of response. A new law is being discussed in the German parliament that, among other innovations, proposes to substitute the current twofold approval procedure required for limited employment stays with a “one-stop-shop” where work and residence permits are granted via an internal consent procedure.

C. What has been done to facilitate labour mobility at the regional level?

44. This section describes three types of schemes operating pursuant to regional agreements: the APEC Business Travel Card, the NAFTA provisions for temporary entry of business visitors and the CARICOM framework for labour mobility. The three cases represent different approaches to regional labour mobility. While comparison between agreements is difficult, broadly speaking, they can be said to range from systems which do not provide access *per se* but facilitate the movement of certain groups by minimising the migration procedures attached to their movement (such as the APEC Business Travel Card), to agreements which provide access for certain categories of service providers (NAFTA), through to more ambitious schemes covering general freedom of movement for the highly skilled (CARICOM)².

Case study 1: The APEC Business Travel Card

David Watt – Counsellor (Immigration), Australian High Commission, London

45. The APEC Business Travel Card was not intended for GATS but it covers very similar territory. Its story is one of balance between the integrity of national borders and the need to simplify procedures to boost competitiveness and trade amongst APEC member economies. While maintaining border integrity, the APEC Business Travel Card facilitates trade by reducing the costs and time of bureaucratic procedures. It does so by simplifying the short-term entry arrangements for business visitors, by streamlining the processing for highly skilled workers seeking temporary residence and by ensuring transparent regulatory arrangements that allow for seamless cross border movement.

46. When the programme was initiated, in 1997, only 3 APEC members tried the card (Australia, the Philippines and South Korea). A few other countries joined in 1999 as they saw the benefits and as their capacity and confidence in the scheme increased. By 2003, the scheme covered 15 countries. The success of the APEC Business Travel Card is due to a range of factors including: its pathfinder approach that recognises the different capacities of the economies and allows them to join when they are able to; the initial extension to a very limited number of countries in order to provide viability; its open and cooperative method which boosts confidence about the Card’s operational strengths; its technical assistance schemes designed to aid participating developing countries to successfully implement the

² APEC stands for the Asia Pacific Economic Cooperation forum, whose 21 members are: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States of America and Vietnam. NAFTA is the North American Free Trade Agreement between the United States, Canada and Mexico. CARICOM is the Caribbean Community consisting of 15 members and 5 associated member countries. The 15 members are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago while the 5 associated members are Anguilla, Bermuda, British Virgin Islands, Cayman Islands and Turks and Caicos Islands

agreement; the deliberately low resources technology used while ensuring robustness; and, finally, the equal treatment of all participating countries.

47. The benefits for the card holders include a mechanism of pre-clearance for short-term entry to participating economies, with one single application (no need to individually apply for visa or entry permits for each entry), a scheme for multiple short-term entry (60 to 90 days per stay with overall card validity of 3 years) and fast immigration clearance on arrival and departure through preferential APEC lanes at major airports.

48. Participating APEC member economies benefit mainly from the consistency of approach for temporary business entry and from a double vetting procedure according to which business visitors are checked first by their own country of origin and then by the destination countries. Furthermore, countries maintain the right to control movement through borders and retain control over the eligibility of home economy applicants for the APEC Business Travel Card scheme.

Case study 2: NAFTA entry for business visitors

Paul Henry – Trade Policy Advisor, Economic policy and Programs, Citizenship and Immigration of Canada

49. NAFTA aims to increase economic growth and living standards and to strengthen rules and procedures for regional trade and investment. It has a top-down and negative list structure for trade in services (i.e., unlike the GATS, all sectors are included unless they are specifically listed as excluded). The agreement covers citizens of NAFTA countries' and is wider than GATS in covering movement related to goods [manufacturing?] and investment. The NAFTA mobility scheme applies to business visitors, traders, investors, intra-corporate transferees and professionals.

50. The normal process of admission involves two basic regulatory hurdles for the applicant: labour market tests and a work permit. Additional obstacles include the requirements for prior approvals and petitions, labour certifications, and numerical restrictions. The NAFTA provisions for temporary entry eliminate or reduce these hurdles. Business visitors are not required to hold work permits while traders, investors and intra-corporate transferees need permits, prior approvals and petitions but do not have to provide labour certifications or undergo other procedures and are not subject to numerical restrictions. Professionals need only work permits.

51. The system introduces elements of harmonisation while ensuring faster processing for professional and business people by extending US immigration regulation to seven Canadian airports. Moreover, to date, it has neither presented major contentious issues nor problems for the majority of travellers. However, the system has some weaknesses. It is rigid, complex and opaque and lacks provisions regarding lengths of stay, processing times and other elements of transparency. It is also very difficult to expand its coverage to other categories of workers. Finally, while many business people are aware of its existence, they wrongly assume that it is able to solve all their problems.

Case study 3: CARICOM

Madhuri Supersad – Director, Research and Planning, Ministry of Labour and Small and Micro Enterprise Development, Trinidad and Tobago.

52. The CARICOM framework for labour mobility is shaped on the EU model. The Caribbean Community (CARICOM) Single Market & Economy (CSME) seeks to convert its 15 Member States into a single, enlarged economic entity as near to a single market and single economy as possible, without political integration. It is intended to provide an open market without cross-border restrictions and therefore seeks to facilitate the free movement of final products, goods, labour and services.

53. The free movement of people is a critical factor in the integration process of the CSME. The Treaty on the CSME abolishes discrimination on the grounds of nationality in all Member States, granting professionals and their families – spouses and immediate dependents – the right to move freely within the CSME area.

54. CARICOM regulations for the movement of natural persons concern the free movement of skills and service suppliers, the right of establishment and the facilitation of travel. Mode 4 is seen as an additional global labour market tool that can contribute to attracting more highly skilled and medium level skilled service providers from outside the CARICOM region and, in so doing, to contribute to equilibrium in the labour market.

55. The CARICOM framework, at present, covers university graduates, artists, musicians, media workers, sportsmen and suppliers of services but coverage is expected to increase in accordance with the CARICOM plan of full removal of internal barriers envisaged for 2005.

56. CARICOM member states need to respond to a number of challenges in promoting free movement. They need to improve administrative infrastructure and procedures and to harmonise labour regulations and standards. They must assist national and regional decision makers with studies on the impact of liberalisation on the national labour markets. They have to adopt a regional approach to human resources development – for instance by establishing a Caribbean association of national training agencies with a regional certification body and national bodies.

13 NOVEMBER: MANAGING MOVEMENT

Session III: Managing the impact of temporary foreign workers in countries of origin and destination

A. Issues in the destination countries: labour market, social and security

Trade Union Perspective

Marion Hellmann – International Federation of Building and Woodworkers

57. Trade unions have important concerns regarding the possible disruptive social implications of allowing the free movement of temporary foreign workers. Trade unions' concerns are particularly deep in relation to the risk of social dumping and abuse of working conditions. Furthermore, liberalisation under GATS and, within Europe, including via enlargement of the European Union, are important challenges as they will considerably increase cross-border mobility of workers.

58. Mode 4 GATS liberalisation has the potential to open doors to unregulated migration, especially if future negotiations address facilitating movement of the low skilled. Many definitions used in the GATS are confusing, ambiguous and subject to interpretation – What is a manager? What is a specialist? Is a plumber a specialist? Furthermore, these definitions and characterisations change from country to country. Finally, outsourcing, subcontracting and the existence of triangular relationships (i.e. between a principal contractor, intermediary and employee) are potential threats to the enforcement of social security conditions because the attribution of responsibilities and liabilities, the application of labour legislation and the functioning of the overall social security system become less accountable.

59. Examples of the negative effects of liberalisation of labour mobility include:

- In Iceland, 600 Portuguese construction workers had been hired by labour agencies for Italian principal contractors to build a dam and a tunnel. They reported poor medical assistance, non-compliance with health and safety standards, bad food and 16 hours of work per day paid at 6 Euros per hour.
- In Germany, an agreement between social partners agreed on reduction of the minimum wage in East Germany to be able to compete with firms from Eastern European countries.

The way forward should be based on five guiding principles:

- The movement of labour should be regulated by labour legislation and social protection legislation, not by trade agreements.
- Visa and work permit problems are best solved bilaterally – case by case – or by regional agreements. The multilateral level grants too little flexibility.
- Movement of labour regulated by GATS mode 4 should only take place if linked to one of the other modes of supplying a service, never as a stand-alone mode.
- Mode 4 workers must be subject to national legislation, prevailing collective agreements and international conventions ratified by the host country. The results of mode 4 movement should be assessed at country level by all social partners.
- Abuse of mode 4 should be sanctioned.

Employer Perspective

*Lynn Shotwell - American Council on International Personnel (ACIP)*³

60. Global corporations tend to invest in those countries that best facilitate the global movement of personnel. From the company perspective it is irrelevant if this happens through a GATS visa or by other means. Mode 4, as it is now, is perceived as insufficient to meet the needs of global corporations. The focus on service suppliers is only incidental to the operations of global corporations, and attention to temporary movement is perceived as confusing. From a corporation perspective, all workers are permanent workers and multinational corporations want to be able to move them around as needs arise.

61. When a corporation needs to move people, it is confronted with migration systems. While national laws usually accommodate most mobility needs of global corporations, their implementation is not always rational or efficient. These can create real costs for companies — in terms of paperwork processing, penalties when contracts are broken because personnel were not in place in a timely manner, or productivity losses due to employees' anxiety about their unclear status. As the current schemes for the movement of people only partially meet the needs of the multinationals, they use alternative channels. For example, intra-corporate transferees are often placed on a permanent visa to allow spouses to work and to foster integration in destination countries. Even temporary visa schemes for professionals can be problematic. The H1B visa scheme requires the employer to pay social security and other charges according to the local legislation, thus entailing duplication of costs for multinationals which have their own global compensation package.

62. Governments should adapt their mobility schemes to meet the needs of four employment groups:

- *Temporary business entrants*: workers that move abroad for less than 6 months and without family. The biggest obstacles for this category of workers are the delays in obtaining visas and permits. This type of worker usually needs to move on less than 2 weeks' notice. While this category could be dealt with using existing business visas, some problems could also be handled via the GATS.
- *International assignees*: includes junior staff moved around for training purposes or senior personnel moved to oversee projects. From a corporate point of view, an executive is an executive in every country. However, national legislation and definitions are different from country to country. GATS could help harmonizing this and other basic concepts across countries.
- *High potential international hires*: top graduates or highly talented individuals who can bring significant intellectual capital to an organisation over time. Employers want them to be treated as intra-corporate transferees, without pre-employment requirements.
- *Shortage workers*: these workers are usually hired locally. From a corporate perspective, the GATS is not useful for this category.

³

The ACIP is a trade association of large multinational companies dedicated to facilitating the international movement of personnel.

Government Perspective

Michael Cunniffe – Department of Enterprise, Trade and Employment of Ireland

63. Ireland has traditionally been a country of high emigration that has recently turned into the preferred location for many multinationals' European or global headquarters. The Irish viewpoint is particularly interesting because it reflects the lessons learnt in managing a system that moved from 70% unemployment to full employment and where work permits issued jumped from 6 000 in 1999 to 43 000 in 2003. The historically persistently high emigration trends had a temporary reversal in the late 1960s. After serious economic mistakes in the 1970s and 1980s, the economy recovered and experienced a "jobless growth" in the period between 1987 and 1993. Since 1994, employment has rapidly increased to full employment and beyond, triggering a significant inflow of foreign workers.

64. The Irish economic migration policy has responded to experience. Following a very high number of abuses, two categories of permits, intra-corporate transferees and trainees, were discontinued. The Irish immigration system is presently managed through three main instruments: work permits, working visas or authorisations and contract service suppliers.

65. Another example of the responsiveness to experience of the Irish system can be illustrated through the case of employment agencies. Economic migration has traditionally been vacancy-driven and did not include any employer sanction for illegal employment. However, in the last few years, employment agencies have been responsible for several abuses, leading the government to change the legislation. Under the new legislation of April 2003, the government is now studying the feasibility of pre-clearance mechanisms for screening employers.

66. An issue that has been widely debated in Ireland is whether permits and visas should be temporary or permanent. The Irish immigration authorities are very attentive to both domestic and foreign experiences in managing migration. This led them to design a formally temporary system that can, however, develop towards more permanent arrangements. Job stability can, in fact, lead to eligibility for naturalisation. The impact on society has also been an issue of concern. Recent research suggests that lower pay in certain areas of strong immigrant employment may have helped to ease wage pressures. Concerns about abuses and pressures are still high due to the fact that employers, guided by employment agencies, seek new and cheaper sources of labour. Other concerns hinge on assuring a minimum level of quality.

67. In the Irish experience, balance is the real challenge: migration policy should be able to put in place a system that is responsive and socially accepted. Other important features are flexibility and transparency in order to allow targeting the goal of full employment. For example, full employment and labour shortages in construction has led to foreign workers being permitted in this sector; however, this may be reviewed should the employment levels of national construction workers fall. GATS provisions could be complementary to other immigration policies. One advantage of the GATS is that it addresses the employer and this could be an important safeguard when dealing with contract workers.

Discussion

68. Many comments and questions reflected the lack of awareness about the needs of multinationals, while expressing interest in meeting some of their concerns. A number of participants sought clarification of the situation and working rights of family members accompanying temporary foreign workers. Family issues include employment rights for the spouses, non recognition of de-facto couples and definition of the family unit – e.g. often child minders or grandparents are not recognised as part of the family unit and hence denied the right to relocate abroad with the family. In Ireland, however, the immigration policy allows spouses to relocate with their partners provided that they have a job, while child minders can follow

the family with a facilitated procedure provided that the person has lived with the family for at least 12 months. In response to a question on how the international community should best deal with family issues, it was answered that decisions should be taken at the multilateral level in order not to discriminate among employees – e.g. employees with a spouse of different nationality face, in many countries, more problems and bureaucratic processing than employees with a spouse of the same nationality. Others asked about the accessibility of information on rules and procedures of immigration. From the perspective of the business community it was not access to information – nowadays facilitated by the Internet – that was the problem, but the implementation of laws in a non-transparent and subjective manner, unduly influenced by backdoor politics. Finally, it was asked why mode 4 should be seen as posing different issues from the liberalisation of manufactures and the accompanying labour adjustment of the last 10 years and why measures that are recognised as protectionist in manufacturing, should be accepted in services trade as legitimate. From a trade union perspective, if there is capacity in the home country to provide a service, it should be provided domestically in order to preserve domestic social stability

B. Issues in the country of origin: remittances, brain circulation and broader trade linkages

Promoting Labour Exports: the example of the Philippines

Maria Teresa Soriano — Executive Director, Institute for Labour Studies of Philippines

69. As the top supplier of nurses, medical professionals, and merchant marine crew in the world, the Philippines is known as the “world’s largest labour-exporting nation”. The Philippines has deployed over 800 000 overseas Filipino workers (OFWs) in the last four years who have sent home over USD 6 billion of remittances since 1999. In the Philippines there are over 1 400 agencies recruiting workers for overseas labour markets.

70. The Philippine government first adopted an international labour migration policy in 1974 as a temporary, stop-gap measure to ease domestic unemployment, poverty, and a struggling financial system. Gradually the system has transformed into one of management of overseas emigration. This culminated in 1995 in the “Migrant Workers and Overseas Filipinos Act”, instituting policies for overseas employment and establishing a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress.

71. Currently, the government actively explores better employment opportunities and modes of engagement in overseas labour markets and promotes the reintegration of migrants into the local society upon return. Instruments developed to this end include: pre-departure orientation seminars on the laws, customs and practices of destination countries; model employment contracts ensuring that the prevailing market conditions are respected and protecting the welfare of overseas workers; a system of accreditation of foreign employers; the establishment of overseas labour offices (POLOs) providing legal, medical and psycho-social assistance to Filipino overseas workers; a network of resource centres for protection and promotion of workers’ welfare and interests; and reintegration programmes providing skills training and assisting the returning migrants to invest their remittances and develop entrepreneurship.

72. The current debate hinges upon two issues:

- First, how deregulation and liberalisation will change the migration services of recruitment entities. Liberalisation, envisaged in the 1995 Act, foresees that the migration of workers will eventually be a matter between the worker and his/her foreign employer.
- Second, whether or not the government should shift its policy from “managing” the flow of overseas migration, which is reactive, to “promoting” labour migration, which is proactive. Such

a shift would require the inclusion of overseas Filipino workers in the national development agenda, and the professionalisation of the deployment and even the qualification of these overseas workers. The entire system of training, deploying, and securing Filipinos in overseas workplaces would be revised accordingly.

73. Dialogue and convergence of efforts at all levels among all stakeholders (government entities, private sector, destination countries, sending countries and migrants) are crucial to ensure adequate protection and welfare services to the migrants and to optimize the gains from overseas employment.

Links between mode 4 and other types of trade

Rupa Chanda – Associate Professor, Economics and Social Sciences Area, Indian Institute of Management Bangalore

74. To date, GATS negotiations have tended to focus on individual modes. However, as real linkages exist between mode 4 and other types of service trade, countries should take a cross-modal approach to both domestic policy-making and the GATS negotiations for liberalising and facilitating trade and investment in services.

75. Services tend to be supplied simultaneously via several modes or in a phased manner through more than one mode of supply. Services trade can be embodied in information and data flows, financial flows, human capital flows, or in goods, and can be subject to numerous policy constraints and technical and infrastructural barriers. In recent years, trade in services has been characterized by growing interdependence across modes of supply due to the globalization of production, economic liberalisation and technological advances. These factors have made possible trade in many previously non-tradable services and justify a cross-modal approach to understanding services trade and policy options. An integrated perspective on services trade can help to identify appropriate domestic policies and international strategies to enable leveraging of cross modal trade opportunities in services.

76. Mode 4 facilitates inward and outward flows of capital via skill and technical transfers, development of specific knowledge, facilitation of networks and overseas contacts, access to funding, reputation effects and risk mitigation. An example of this is the Indian information technology (IT) sector.

77. The relationship between mode 4 and mode 1 is instructive. Despite the common perception that mode 4 and 1 are substitutes, the nature of their connection actually depends upon the level of specialization and the nature of the services traded. In general, mode 4 leads to mode 1 trade and mode 4 can be important at all stages of mode 1 trade, but mode 1 can change the frequency, duration, and level of mode 4 movement, including allowing for a shift to higher level personnel.

78. Substitutability takes place mostly at the low end of the specialization chain – such as the call centre. Even in this case, there is scope for mode 4 trade, as mode 1 often requires the temporary presence of senior managers from the out-sourcing company to determine requirements, or other personnel to conduct training. Further along the value chain, the relationship gets more complex. For instance, a company may be involved in sending its professionals to provide on-site services. Over time, once it has acquired a reputation and its activities, this company may set up subsidiaries (mode 3).

79. This presence in overseas markets and the exposure resulting from movement of service providers may also induce FDI in the home country of the company. The credibility and viability of Indian expertise and abilities acquired by Indian IT specialists working in the United States have induced FDI by United States multinationals in India's IT sector. Thus, movement of labour may induce movement of capital, both inward and outward. The reverse might also occur, with setting up of commercial presence

(mode 3) followed by staffing of the overseas establishment with home country service providers (mode 4), possibly in a managerial capacity. Likewise, commercial presence in a country (mode 3) can create opportunities to export various services through outsourcing and electronic delivery to the source country of the investment or even to third countries (mode 1).

80. Particularly important in the success of the Indian IT domestic industry has been the role of the diaspora community. Returning professionals have helped tap existing diaspora networks and make them aware of opportunities of doing business with Indian firms or starting business in India. Indian professionals who have worked abroad have helped to establish and manage subsidiaries of global corporations in India.

81. Domestic policies and international strategies need to recognize the complementary relationship that exists across the different modes of supply. If governments take an integrated approach then a virtuous self-sustaining momentum can be created in services trade, which clearly results in a positive sum game for exporting and importing countries. Mode 4 can play a central role in generating this momentum.

82. There are two broad areas for domestic policy action to maximise these intermodal linkages. First, governments must address the domestic, policy-based infrastructural and other constraints affecting trade in mode 4 and other modes. These include investing in quality education and training and establishing minimum standards and quality control across sectors and enhancing the overall market competition of the domestic service sectors. Second, they must increase the effectiveness of the main channels by which mode 4 influences the other modes, namely return migration, diaspora investment and openness to FDI.

Discussion

83. Participants asked about the resource requirements of the policies followed by the government of the Philippines. In the Filipino experience, resource requirements for the management of migration have been limited. Costly training in very specialised areas including medicine and nursing, is managed by setting aside part of the revenues from overseas workers. In terms of how other countries can emulate the positive experience of India in leveraging the interlinkages between mode 3 and mode 4, the seminar was told that, at first, in India there was no awareness of the interlinkages between modes of supply, and ways of attracting diaspora back to India are only starting to be developed. Nonetheless, the interlinkages were created by a proactive government policy that leveraged the skills of a highly educated workforce. To a large extent, exports through mode 4 to the United States have been facilitated by the existence of H1B visas.

How can countries best maximise the linkages between temporary movement and other forms of trade and growth (e.g. out-sourcing or FDI)? What are the best practices in managing remittances?

Managing remittances

Mr. Alberto Islas — Technical coordinator Director, Banco del Ahorro Nacional (Bank of National Savings and Financial Services) Mexico

84. The speaker outlined how remittances are managed in Mexico, particularly in relation to the US Hispanic migration population, although it was acknowledged that this group was clearly much broader than the movement of services providers under mode 4. Mexico is the second largest worldwide remittances market after India, accounting for almost US\$ 10 billion and growing at a rate of 30 percent in 2003. This is due to the fact that not only has the number of Hispanics in the US grown, but their GDP per capita has also increased. Electronic transfers dominate the remittance market, followed by money orders, while transfers of cash and personal checks are quite low.

85. The cost of sending remittances from the US to Mexico, which is composed of a service fee and the exchange rate, has been declining, but the market could be more efficient. The price of the service is set in the originators' networks, including US remittance agents, banks and credit unions, as they determine the price and the exchange rate that will be applied. The remittances are then collected in Mexican distribution networks, including banks, post offices, and convenience stores. There is still room for lower prices given the scale and growth of the market and technological innovation in financial services.

86. The US and Mexican Governments under the "Partnership for Prosperity" have undertaken several initiatives to provide a more secure and competitive service to migrants. These include endeavours to: 1) increase the number of citizens using formal financial systems and to promote competition and innovation in these institutions; 2) improve transparency in the system, so that consumers are aware of relevant information, including prices, before they undertake the transactions; and 3) link remittances to access, through different savings mechanisms, to Mexican Government programs like housing and medical insurance.

Maximising brain circulation

Mr. Reynald Blion — Director, International Migration & Media Programme, Institut Panos, Paris

87. The speaker focused his remarks on ways to maximise brain circulation and ensure that it can benefit the public in both receiving and sending countries. He first set out a number of points addressing fears of "brain drain" in developing countries and the sometimes negative public opinion in industrialised countries. Immigration in industrialised countries is inevitable because of demographic change and, if appropriately managed, can benefit origin and receiving countries. It is also important to recognise that migration involves a complex set of issues in relation to transfer of knowledge, skills and culture. For instance, while receiving countries can benefit from the knowledge and competencies of migrants, the latter may also return to their countries of origin with new skills and knowledge acquired abroad. In addition, there are further benefits that may result from migrants' immersion in receiving countries' policies and culture. The experience and new ideas that migrants can take back to their countries of origin can play an important development role for these countries.

88. There are a number of ways to maximise brain circulation, including:

- Improve the administration of visas, e.g. greater flexibility on the length of stay, which if too short, may not be sufficient for certain projects.
- Design and implement better policies on residency, e.g. flexibility for re-admission of personnel who may need to go back to the originating country to undertake or finalise a project and then return to the receiving country.
- Increase the economic, social and political rights of migrants in both sending and receiving countries.
- Invest in information technology tools as competencies and knowledge can also circulate virtually through the internet.
- Promote the participation of migrants in the development of their country of origin, e.g. establish programmes that enable migrants to return for given periods of time to their home countries to share their acquired knowledge in both the private and public sectors.

Discussion

89. The presentations raised several questions and comments, particularly from developing countries' representatives. Most interventions stressed that remittances are a very significant source of income for many developing countries, and that there is a need to better manage them in order to decrease costs and enhance the welfare of receiving families. In this regard, programs that help to set up and operate small and medium-sized enterprises (SMEs) can be particularly beneficial for the wellbeing of families in receiving countries, given that SMEs make up most of the businesses of developing countries. Other ideas for managing remittances include the establishment of community funds in the countries of origin or the possibility of giving migrant workers the choice to preserve their remittances in the currency of their host country, to avoid problems of currency devaluation. One participant asked about the effects of mode 4 on the Mexican maquiladoras (or free-trade zones). The panel answered that, given the recent economic downturn, particularly in the US, the maquiladoras have experienced decelerating growth and decreased labour movement, so that the impact of mode 4 is difficult to assess. It was also stressed that remittances came from a much larger group than mode 4 workers (e.g., remittances were also sent from permanent migrants, and those working in sectors other than services) so that care should be taken in using remittances as a measurement of mode 4 trade. At present, it is not possible to break down remittances to isolate the proportion coming from workers who would fall under GATS mode 4.

C. Ensuring temporariness: overstaying and return incentives

How can countries of origin and destination cooperate to prevent overstaying? What kinds of schemes have been successful in promoting return migration? What are the problems? What are the links between temporary and permanent migration?

Mr. David Watt — Department of Immigration, Multicultural and Indigenous affairs, Australia

90. The speaker focused his remarks on Australia's Temporary Business Entry Program (TBEP), including its design, implementation and evaluation. He stated at the outset that ensuring temporariness is a matter of choice for governments, it is possible to keep temporary movement temporary, but it may not always be viewed by the governments concerned as being desirable to do so.

91. There are considerable economic benefits to facilitating the movement of business people, including increased trade and investment. Australia's current arrangements respond to business needs and enable businesses to bring in personnel quickly. However, this is balanced with the need to ensure local employment and border integrity.

92. Australia is a mature economy and, as such, employment opportunities are in capital and knowledge intensive industries. So, the TBEP is for skilled professionals, managers and technical personnel, as the local employment rate for these is relatively high. The system includes a business visa for short stays (for negotiations, meetings, etc. not remunerated in Australia) and for long stays. The latter requires sponsorship by the prospective employer and can provide for up to four-year periods of stay. It includes only skilled occupations which are paid at or above a minimum specified salary level.

93. In both cases the overstay rate is very low at 1 or 2 percent. Australia ensures such temporariness in the following ways:

- *A universal visa system.* This allows quick immigration clearance as passenger details are known before arrival. Databases also allow identification of people who do not leave when their visas expire.

- *Focus on skills.* Long stay applicants must have managerial, professional or technical skills, which are in demand world-wide.
- *Employer obligations.* Sponsors must, besides ensuring certain rights to employees such as award-level wages or responsibility for medical costs, be responsible for workers' return travel and co-operate with the Government's monitoring of employees.
- *Monitoring and compliance.* Sponsors are regularly monitored and, when they are found in breach of the requirements, can be sanctioned. The sanctions range from bans on sponsorship to financial fines. To date, the rates of compliance have been very high.

Ms. Irena Omelaniuk — Director of Migration Management Services, IOM

94. The speaker began by stating that there are deep concerns in receiving countries about labour migrants who stay beyond the duration of their contracts. However, other concerns relate to the fact that if the migrants are sent back to very difficult conditions they will find other ways to try to access the global labour market. Labour programs that provide secure return arrangements, for example by allowing re-entry to the receiving country for future working opportunities, are more likely to help stabilise movement.

95. Ensuring return can be facilitated greatly by the social networks maintained in the country of origin and can be essential to: 1) increase the perception in the global community of good governance in the sending country and of orderly regulation of migration by the receiving country; 2) bring significant dividends for countries of origin; 3) return newly acquired skills/experience to contribute to development and growth of the country of origin; and 4) increase confidence in liberalised forms of labour movement. This notwithstanding, there is often little government attention to the issue of return, perhaps due to lack of global experience in the labour field, or lack of resources to monitor and enforce return.

96. The temporary movement of workers is increasingly taking place through bilateral labour agreements. A noteworthy characteristic of bilateral labour agreements is that they allow for the temporary movement of unskilled labour, a group largely excluded from current scheduled GATS commitments on mode 4.

97. There is a clear distinction between the conditions of skilled and unskilled labour in receiving countries. The former is likely to enjoy the most favourable residence status, and it is with respect to these workers that the distinction between temporary and permanent is becoming increasingly blurred. By contrast, unskilled labour migration programs are designed to treat the migrants as guests and to preclude their integration, in an effort to ensure return.

98. However, evidence from some bilateral agreements suggests that the most sustainable programs are those that are appropriately regulated and enforced, but that also afford flexibility through economic incentives and social support. Perhaps the most important incentive is to allow migrants to re-enter the receiving country in the future for business opportunities, including the possibility of receiving higher wages if the migrant comes for a second time or is personally nominated by the employer. Enforcement is best ensured through regulations that involve employers in the process, and which include sanctioning employers who do not honour their commitments.

99. Governments in the home countries of temporary labour migrants can also help by establishing an enabling environment for return. For example, some countries have created a climate for new opportunities through remittances friendly fiscal rules, whereby the remittances are not taxed. Other countries have put in place incentive schemes embedded in diaspora management strategies, such as loans

for returnees and diaspora to support small business. Finally, the exchange of information and co-operation between sending and receiving countries can also lead to significant results in this area.

D. Policy Coordination

How can we promote greater policy coordination between countries of origin and destination? What about trade and migration officials at the national level? How can we ensure stakeholders' involvement?

Mr. Sandro Siggia — Deputy Director-General, Italians Abroad and Migration Policies, Ministry of Foreign Affairs, Italy

100. The speaker focused his remarks on the Italian experience on policy co-ordination between sending and receiving countries and between trade and migration officials at the national level. Since the 1980s Italy has become a land of immigration, while before it was one of emigration. In order to address increasing public concerns related to the growing number of immigrants in the country, Italy began to study and adopt new mechanisms to cope with this phenomenon.

101. Italy's immigration policy is based on the assumption that it is not possible to obtain significant results in terms of migration control and management without the cooperation of the sending countries. Also, policies should reflect the needs of the economic system and the existing scope for the country to absorb foreign labour. Useful instruments include:

- Electronic systems which are able to identify the demand coming from industry.
- Professional training schools for foreign workers in Italy or the sending country.
- Agreements with foreign countries for the selection of the workers in particular skill categories.
- Offices for the assistance of foreign workers in Italy.
- An "observatory on migration" aimed at improving knowledge of migration.
- Agreements with foreign countries on temporary migration.

102. Italy has negotiated a number of bilateral labour agreements. Mechanisms to facilitate return include:

- Readmission agreements, which lay down the conditions and procedures for identifying and repatriating illegal immigrants. These are often linked to development assistance agreements.
- Programs linking economic assistance to the progress of sending countries in implementing policies to prevent trafficking and exploitation of human beings and to combat criminal organisations.
- Schemes linking a country's quota of work permits to its record on facilitating return of its nationals.

103. It is essential to encourage immigrants to maintain links with their countries of origin in order to protect their cultural identity and to facilitate their reintegration in their societies, with increased financial resources, know-how and often a more business-oriented mentality. In this regard, particular care should be taken in ensuring productive management of remittances.

104. Policy co-ordination within Italy is undertaken by the Ministry of Labour, which handles requests from the different Italian regions. The regions receive requests for labour (skilled, seasonal, permanent workers, etc.) from their local employers. The Ministry of Labour then establishes the total number of workers needed during the year and allocates quotas to selected foreign countries. This operation is undertaken in coordination with the Ministries of Interior and of Foreign Affairs.

Mr. Shahidul Haque — Regional Representative for Southern Asia, IOM

105. The speaker began by stressing the importance of migration, as a complement to trade for economic development. Trade, development and migration are inextricably linked, although migration seems to have been excluded from the current phase of globalisation. Trade and migration could reduce poverty through several channels, including the creation of employment, reduction of the vulnerability of families, and exchange of knowledge.

106. A framework for cooperation between the trade and migration policy communities should be established and there should be increased awareness of the links between them. The framework should include origin and destination countries in order to deal appropriately with the difficult issues involved. Regional arrangements and relevant international organisations also had an important role to play.

107. At the national level, migration should be mainstreamed into development planning. A national program approach (called Program Based Migration Management) could include the following strategy: 1) government-led country-wide needs assessment to ascertain the migration situation, priorities, needs and concerns; 2) a plan of action for the implementation of assessment recommendations; and 3) capacity development of individuals, institutions and societies in an integrated manner.

Discussion

108. Some speakers stressed that there is no “one-size-fits-all” approach to managing migration. Different models need to be applied in different situations to allow flexibility and to better respond to labour market needs. Other speakers argued that migration is a phenomenon that is going to happen no matter what, and that it is therefore advisable to put in place a framework which can ensure that it takes place in an orderly, predictable and humane manner. International agreements could play an important role in ensuring this; however, it was noted that ways of improving co-ordination among organisations working in this area needed to be found. It was also pointed out that countries already have at their disposal a range of appropriate tools to eliminate or minimise problems resulting from migration, such as overstaying (e.g. imposing appropriate sanctions on the employers). The possibility of drawing lessons from bilateral agreements was also mentioned, as was the question of compatibility of such agreements with the non-discrimination (Most-Favoured Nation or MFN) requirement of the multilateral trading system. It was explained that WTO Members are allowed to deviate from the MFN principle in certain circumstances in the case of trade in services. For example, countries may deviate from MFN in the case of regional trade agreements which meet the criteria of GATS Article V, and it is possible that labour arrangements which formed part of these agreements could fall under the MFN exemption. Equally, given the uncertainties about the scope of mode 4, certain types of bilateral labour agreements may not fall under the scope of the GATS – e.g., it could be argued that bilateral labour agreements for agricultural workers did not fall under the scope of GATS as such workers might be argued not to be service suppliers.

14 NOVEMBER: PROSPECTS FOR THE GATS NEGOTIATIONS FOR MANAGING MOVEMENT

Session IV: facilitating access under the GATS

A. For which categories of workers can we make progress?

What are the issues arising for different categories of workers in terms of skill level? And duration of stay? What about the nature of the contractual relationship (i.e. employment based, contractual service suppliers and intra-corporate transferees)?

Ms. Adriana Suarez — Colombia

109. The speaker began her remarks by highlighting that there is increasing awareness of the benefits that liberalisation of mode 4 could bring both to industrialised and developing countries. The progress achieved in bilateral agreements, including with respect to different categories of workers, shows that there is scope to advance on these issues at the multilateral level. This would be beneficial in ensuring that developing countries increasingly participate in the multilateral trading system and that progress in sectors and modes of supply of interest to them is achieved. It would also bring about benefits to industrialised countries, in particular with respect to the link between modes 3 and 4.

110. There are three main areas that are relevant to understanding the issues involved in relation to the different categories of workers under mode 4:

1. *Progress achieved in the Uruguay Round.* The GATS Annex on mode 4 includes two main categories of workers: 1) natural persons who are service suppliers of a Member (or who are self employed); and 2) natural persons of a Member who are employed by a service supplier of a Member. There is no mention in the Annex of any exclusion of service suppliers in relation to skill level. The majority of commitments on mode 4 are in the horizontal section of the schedules and very few members made sector-specific commitments on mode 4. Most commitments concern intra-corporate transferees, business visitors and highly skilled labour in general. There are very few commitments for contractual service suppliers, in particular for those who are independent service suppliers (i.e. not employees of a juridical person). The nature of the commitments has created a lack of balance vis-à-vis developing countries, which have a comparative advantage in independent service suppliers.
2. *Categories of service providers contained in current negotiating proposals, requests and offers.* In the current GATS negotiations, several requests were made concerning contractual service suppliers, in particular independent service suppliers within that category. A number of requests were also made for sectoral commitments on mode 4. Some general negotiating proposals from the first phase of the negotiations also address the need to include independent service suppliers. However, only a few offers to date have proposed changes on mode 4, mostly in relation to intra-corporate transferees, trainees, specialists, and contract-based services.
3. *Concerns and areas where progress is needed.* Perhaps the most important concern relates to ensuring temporariness. However, this should be done at the national level by the migration authorities, and not at the WTO. In order to take into account the interests of developing countries, progress needs to be achieved in the area of independent workers. There is also a need to make greater sectoral commitments on mode 4 and to decrease the administrative burden of visas and work permits. Progress on the issue of definition of categories of service providers under the GATS will also be important.

Mr. Martin Hirsbrunner — Switzerland

111. The speaker stated that overall the Swiss commitments on mode 4 from the Uruguay Round are substantive. They include several categories of highly skilled workers such as managers, executives and intra-corporate transferees. There is a system of quotas in place, no economic needs tests and no priority by nationality. Authorisations are issued by cantons and requests for entry are not generally submitted in relation to the GATS mode 4 — often workers are authorised to enter the market without knowing about the existence of mode 4 commitments.

112. While the GATS is an agreement to facilitate and enhance trade, and not a migration agreement, it is difficult to discuss mode 4 without getting into the migration debate. The percentage of foreign workers in Switzerland is quite high, up to 20 percent of the total. Rules restricting foreign entry are in place mostly to ensure employment for Swiss nationals and to strike the right balance between foreign and domestic workers.

113. In terms of the GATS, the Swiss position was clear:

- Most labour migration schemes in Switzerland relate to highly skilled labour, with lengths of stay depending on the category of workers; programs for low skilled labour are not contemplated at this stage.
- For Switzerland, the definitions contained in GATS commitments relating to managers, specialists, etc. are sufficiently clear; it is also important to allow countries to maintain flexibility given the variety of approaches used.
- As with the GATS, Switzerland's scheme does not apply to the movement of persons seeking access to the employment market.
- A GATS visa seems neither necessary nor feasible from Switzerland's standpoint. Authorisation by the cantons is rapid, provided that certain conditions are met, and no special GATS visa is under consideration.
- Transparency is crucial to all parties involved. Laws, rules and regulations should be easily accessible, including via the internet.

Mr. Mark Hatcher — European Services Forum

114. Highlighting the disappointment of the failure of Cancún, the speaker called on WTO Members to work towards re-building the momentum for a successful round of negotiations. Businesses increasingly operate in international markets; if they can't move their personnel around, then their competitiveness is likely to be affected. Efforts at the bilateral level are playing an important role in liberalising movement of mode 4 type workers, but this should not be a substitute for multilateral liberalisation under the GATS.

115. It is important, however, to be realistic on what can be achieved in the current round of talks. Being overly ambitious, particularly in relation to low skilled labour, may have a negative impact on the overall negotiations. It is probably better to pursue low skilled labour in bilateral agreements, at least at this stage. Areas where progress can be achieved at the multilateral level include the following:

- Expansion of horizontal commitments for certain types of skilled workers, instead of sectoral commitments, which may prove too difficult. These could include executives, managers, etc., but also people undergoing training and development at all levels;
- Improvement of issues of definition and classification, although it is important to allow flexibility, including in light of the fact that categories of service providers may change over time (e.g. in the IT sector);
- Reduction of administrative burdens, which can unduly delay business operations;
- Enhancement of transparency, including in relation to the period of stay, information on which should be specific and easily accessible to the public.

116. The European Services Forum has developed a *model schedule* as a basis to focus negotiations on the temporary entry of natural persons. It provides for ways to improve existing market access and national treatment commitments in the WTO for certain categories of service providers, calls for efforts to increase transparency and reduce procedural and administrative burdens relating to the movement of personnel, and foresees safeguards and penalties to protect against abuse.

Discussion

117. The discussion was lively. The importance of definition of contract-based versus employment-based movement was raised by several participants; for example, contract-based service providers tend to have shorter stays and tend not to be entitled to the same social and labour rights in the receiving country. Some participants raised concerns relating to workers that attempt to change their status once in the country. However, other speakers reiterated the possibility of establishing safeguards to address related problems, e.g. not allowing visa-holders to change categories, fines for non-compliance, exclusion from future schemes or monitoring. Participants also emphasised the importance of qualification requirements for professionals.

118. In response to a question on the current GATS provisions in relation to recognition, it was explained that the GATS permits recognition as an exception to MFN (i.e., WTO Members can recognise qualifications or experience gained in some countries but not others) but does not require recognition to be granted. Further, the GATS does not require any particular approach to recognition, nor the use of any particular criteria. The main requirement is that WTO Members do not discriminate in the application of their criteria for recognition (i.e., they can use whatever criteria they like, so long as they apply the same criteria to all Members). Further, WTO Members should notify recognition agreements to which they are a party to the WTO and give other interested WTO Members the opportunity to negotiate to join those agreements or to negotiate a similar agreement if they wish (again, this is only a requirement to provide an opportunity for other Members to show that they meet the required standards, but not a requirement to grant recognition).

119. Several developing countries' participants pointed out that progress on mode 4, to be useful to developing countries, must include low skilled labour. A number of speakers reiterated that progress on low skilled workers is probably unrealistic under the GATS at this stage, but that there might be currently more scope to make progress in this area under bilateral agreements.

B. What measures can be taken to facilitate movement under mode 4?

GATS mode 4 is a logical grouping from a trade perspective, but how does it fit with existing migration schemes? Can mode 4 be separated and treated differently from other kinds of temporary migration?

Mr. Sumanta Chaudhuri — Permanent Mission of India to the WTO

120. The speaker stressed the importance of easing and streamlining visa procedures and conditions for effective market access. Inefficient visa formalities, including lack of transparency, onerous administrative procedures and delays, could have the effect of nullifying or impairing GATS commitments. He outlined the features of a possible GATS visa.

121. A GATS visa would provide for less stringent conditions for entry and stay and would apply to both horizontal and sectoral commitments. Separate sets of conditions would apply for each category of workers, e.g. intra-corporate transferees, business visitors, or contractual services suppliers (both juridical entities and independent professionals).

122. The visa would stipulate specific conditions, as periods of validity, multiple entry or conditions for renewal. Furthermore, documentation requirements would be clearly laid down, related fees would reflect administrative costs and time deadlines, including in relation to documentation and appeal procedures in case of denial, would be clearly set out. Finally, in order to ensure temporariness, the visa would include safeguard provisions such as penalties for abuse and establishment of patterns of frequent misuse by companies.

123. Furthermore, the speaker pointed out that the GATS visa also represents a mechanism for achieving a separation of temporary movement under GATS from permanent migration. Without such a differentiation, the concerns of overall migration policy and security considerations overshadow all other trade considerations for temporary movement under GATS.

124. Future research could, *inter alia*, usefully survey existing practices in Member regimes, consider the administrative structures that would be needed to implement a GATS visa, and assess the potential costs and benefits involved.

Mr. Bimal Ghosh — Consultant to IOM

125. The speaker began by noting that the GATS is the first formal recognition by trading nations of the importance of movement of natural persons in services trade. Despite this, little real progress towards freer movement of natural persons has so far been achieved.

126. This is basically due to the confusion between the movement of service-providing persons and labour migration. It is important, therefore, to clarify the distinction between a service-providing person and a labour migrant. While the GATS provides for the movement of natural persons, regardless of their levels of skills, it explicitly excludes natural persons seeking access to the employment market of a Member.

127. Greater liberalisation of mode 4 could bring significant benefits to all countries and in particular to countries at lower levels of development. Indeed, there is a wide range of services in which developing countries have a comparative advantage and mode 4 is key to the delivery of such services. Nevertheless, there are also some problems that need to be taken into account. This includes the possible resistance of trade unions to the presence of large numbers of foreign personnel, and body “shopping” under which professionals attached to a firm in a foreign country may be lent or sub-contracted to a local firm.

128. Ideas on how to move forward include:

- In the GATS focus on deepening national commitments on freer movement of service providers in cases where the GATS provisions are clear — attempts to overburden the GATS by bringing labour migration within its scope should be avoided.
- Focus on the following categories: intra-company transfers, including placement of trainees; movement on the basis of service trade contracts between firms; and movement of self-employed professionals based on service trade contracts.
- Give consideration, in order to be of interest to both developed and developing countries, to propose ‘packages’ that include both modes 3 and 4.
- Make better use of enquiry points to increase transparency.
- Be aware, and make better use of, the flexibility allowed by the WTO in scheduling commitments.
- Take advantage of regional and inter-regional MRAs.
- Pursue the idea of a special visa regime as a facilitating and monitoring tool.
- Encourage developing countries to take full advantage of the assistance of relevant organisations.

Discussion

129. Several participants stressed the importance of streamlining administrative procedures for visas and work permits. Some interventions also questioned the feasibility of a GATS visa in the WTO, suggesting that instead the framework could be used flexibly to design schemes that best suit local needs and conditions. It was noted that, given the existence in some OECD countries of a range of schemes providing access for several different types of mode 4 entrants, for a special GATS visa to be attractive to business it would need to be faster, cheaper and easier than existing schemes. There was some speculation about whether this would be the case. Several speakers also questioned the feasibility of a new GATS visa from a security standpoint, particularly after September 11, 2001. The importance of ensuring consistency between any new commitment and those made in the Uruguay Round was also raised, including to avoid backtracking – i.e., situations where the new negotiations actually resulted in reduced access.

C. Increasing effective access via regulatory transparency

What gains can be made in mode 4 access by increasing regulatory transparency? What sorts of improvements might be considered? What are the implications, including in terms of resources, for migration and trade authorities?

Mr. Paul Henry — Senior Policy Analyst, Citizenship and Immigration, Canada

130. Transparency in the area of mode 4 is vital. The business community has voiced concerns that temporary entry laws, regulations, administrative procedures and guidelines are complex and mysterious. The information currently provided by governments, although potentially useful, is often out-of-date or incomplete. This can be particularly problematic for small and medium size enterprises, which generally lack the capacity to obtain appropriate information.

131. Ensuring transparency also entails costs; it requires time, efforts and resources. However, the resulting benefits may well offset the costs. For business, improved information means getting ready ahead of time, better planning and business strategies, and reducing risks of doing business. For governments, administrative costs can be decreased and overall efficiency can be enhanced. Improving transparency can not only foster international trade and investment, but can also help countries better manage immigration issues, through an improved ability to obtain and exchange information.

132. Mode 4 commitments, as currently spelled out, are difficult to understand for business, which should be the main beneficiary of such commitments. Even negotiators don't always know how liberal their initial offers are. Canada has attempted to find ways to reduce these problems by tabling a proposal in current GATS negotiations for a complementary exchange of relevant information through bilateral processes. The results of such exchanges would then be shared with all the other Members.

133. Lack of transparency means that it is hard for trade negotiators to convince the business community and other stakeholders of the benefits of liberalisation. More and better information on mode 4 can thus increase the value and priority of the GATS.

Discussion

134. In discussion, one participant stressed the importance of transparency in facilitating operations of business and increasing overall economic efficiency. Areas of particular concern identified include: 1) the lack of specific criteria, e.g. in labour market tests, which leave scope for discretion; 2) the lack of clarity in, and complexity of, schedules of commitments; 3) the lack of information on time deadlines for applications; and 4) failure to provide information on reasons for refusal of applications. One area where progress could be made was in requiring countries to undertake prior consultation on new regulations affecting mode 4 (i.e., providing other WTO Members with an opportunity to view and comment upon new regulations which affect trade in mode 4 before they are introduced). However, it was noted that this requirement might be administratively burdensome for countries at lower levels of development. There were also calls for improvement to existing notification requirements, allowing for more frequent and detailed provision of information. It was also noted that greater convergence in the definition of categories of services providers would also serve an important transparency function. Other speakers emphasised the importance of transparency, including in relation to immigration laws and regulations. It was also stressed that information needed not simply to be made available, but to be made more 'digestible' so that it could be of greater use to business. One participant also raised the possibility of including additional information on laws and regulations in the schedules of commitments on a voluntary basis.

Session V: Where can we go from here?

What progress might be feasible in the context of the GATS negotiations? What other ways are there to make progress? What policies are important in managing movement?

Mr. Jan Karlsson — Chair, Global Commission on International Migration, Sweden

135. The speaker pointed out that trade, and especially trade in services, and migration will continue to grow in years to come and it is important to keep the issues in a dynamic context. Projecting the issues under discussion into the future, some observations could be made:

- Current discussions focus on limiting the scope of the GATS, e.g. temporary versus permanent or certain skill levels. However, demographic changes in industrialised countries will mean that labour shortages will grow and that there will be an increasing need for foreign workers. Scarcity will mean that governments will put in place mechanisms to attract foreign workers.

- The categories of workers will also change in time so that although issues of definition and classification are important, there is also a need for flexibility; for example, IT service providers did not exist a few years ago.
- The gender aspect will be growing in importance as there will increasingly be a need for domestic and other services and movement of women is likely to increase.
- Although bilateral trade agreements can play an important role, they cannot be substitutes for the multilateral trading system. In the future, there will also be a need to regulate migration at the multilateral level.

Alejandro Jara — Ambassador of Chile to the WTO and Chair of Services Negotiations

136. The speaker focused his remarks on progress in current GATS negotiations. He noted that around 39 offers had been tabled so far, but that many Members still needed to participate more actively in the process. In addition, so far the offers on the table generally represent a “standstill” exercise, in the sense that the commitments offered reflect an “existing” situation and consequently no new business opportunities are being created. This being said, it seems that on mode 4 a few Members have made some limited movement towards liberalisation.

137. While a number of developing countries had submitted requests and offers, more needed to be done to encourage and assist other developing countries to do so. In this light, it was recalled that there is also a need to strike a balance in the negotiations, so that both developed and developing countries can reap the full benefits of liberalisation. Equally, much remained to be done to demonstrate to the business community the potential benefits of liberalisation, and to encourage their more active involvement in the negotiations. Not unrelated to this was the need to make the system more user-friendly, including through increased transparency and public scrutiny. On mode 4, involvement of the migration policy community in the negotiations would obviously be central to making real progress.

138. Finally, while much of the current focus was on the market access negotiations, important negotiations on rules under the GATS were also in progress. There was still a lot of work to be done in these negotiations, which covered government procurement, subsidies, possible disciplines on certain types of domestic regulation and a possible emergency safeguard for trade in services.

Mr. Hamid Mamdouh — Director, Trade in Services Division, WTO

139. The speaker highlighted four main areas where progress needs to be achieved. First, there is a need to contribute to the policy debate, and in particular on ways to reconcile the economics of liberalising trade under mode 4 with issues of migration, employment and security. Liberalisation can be beneficial if undertaken at the right pace and under the right conditions. Second, it is important to find ways to bridge the gap between the trade and migration communities. The GATS is a trade agreement which aims at increasing market access for services suppliers; how countries manage migration is for them to decide. Third, qualification requirements are one of the most difficult areas and can have a significant impact on the temporary movement of personnel. There is a need to develop mechanisms, such as mutual recognition agreements, to minimise qualification requirements’ related problems. Lastly, better coordination at both the national and international levels is crucial.

Ms. Anya Oram — DG Trade, European Commission

140. The speaker stressed that the GATS created an artificial concept — that of mode 4 — which does not match the reality of migration. The question then is how to adapt it to reality, particularly in light of the fact that the GATS as a WTO agreement is here to stay. There are some issues relating to labour and migration, namely labour rights, brain circulation and social security issues, that should not be dealt with in the WTO. These are very important issues but they are better addressed in other fora such as the ILO. Governments should also ensure appropriate coordination at the national and international levels. In relation to the current round of negotiations, it is important not to allow expectations to be raised too high, particularly in relation to unskilled labour. At the same time, if there is the political will, a great deal can be achieved on mode 4. For example, the seminar showed that overstaying is a problem that can be addressed.

Mr. Aaditya Mattoo — Senior Economist, World Bank

141. The speaker identified several areas of interest emerging from the seminar. As for other forms of liberalisation, there are potentially significant economic benefits resulting from greater labour mobility on a net basis, but distributional consequences also need to be taken into account, as some groups of society will be negatively affected by liberalisation. In addition, there are a range of specific migration concerns including overstaying, social externalities such as lack of respect of social rights, cultural and integration issues, and security issues. Some remedial policies for these have also been identified, e.g. in relation to overstaying — which seems to be manageable if there is the will to do so.

142. An important element of current negotiations relates to reciprocal liberalisation, i.e. countries have an incentive to move forward if they are tempted by improved market access in trading partners. Areas where progress can reasonably be expected include: 1) elimination of explicit barriers such as quotas; 2) reduction of administrative and procedural requirements; and 3) improvements in the area of transparency.

143. However, there are also problems and concerns that need to be taken into account. With respect to coverage, focusing only on trade in services appears artificial, including in relation to the categories created in the GATS. Consideration should be given to whether there is a need to go beyond the GATS mandate - that is, beyond service suppliers - to better reflect the reality of temporary migration. Further, flexibility may be needed in relation to binding commitments, as these may curtail the ability of countries to address cycles in the labour market and migration. In this context, the idea of “soft bindings”, i. e. periods of generosity which may or may not result in binding commitments, deserves further exploration. Finally, in relation to skills, in order to ensure that the GATS is a genuinely multilateral agreement, improvements in the area of semi-skilled labour should be made. Cooperation between sending and receiving countries in relation to managing overstaying could prove very useful to this end.

Discussion

144. Several speakers stressed the importance of achieving progress on mode 4, and in particular for developing countries. There was agreement on the importance of increasing coordination between the two communities at both the national and international levels, including to address the complex issues raised during the meeting. The need to explore synergies between bilateral initiatives and the multilateral trading system was also raised. One speaker suggested that further work could explore the south-south aspects, that is mode 4 and migration issues between developing countries.

Concluding remarks

Mr. Ken Heydon — Deputy Director, Trade Directorate, OECD

145. The speaker highlighted the usefulness of this kind of meeting to enhance mutual understanding of the two policy fields. Although gaps in perceptions remain, these are now more transparent and better understood by the two policy communities. In terms of what can and cannot be done by the WTO in the framework of mode 4, as mentioned several times in the course of the meeting, the GATS is not a migration agreement. However, it also appears that the wider and more ambitious the GATS becomes, the closer it gets into the migration debate. In order to bring coherence to that debate, a number of key requirements were identified, notably involving greater transparency, clarity and flexibility, both within the GATS and in domestic regulations dealing with migration. Another important element of coherence will be to look at potential complementarities between the multilateral approach, via GATS, and bilateral approaches, given that the latter, unlike the GATS, tend to cover unskilled workers. The bilateral agreements, however, tend not to be bound, are not MFN and, through their diversity, are not always business-friendly.

146. Three other areas of potential future work were raised: 1) improved understanding of the welfare gains from mode 4 liberalisation; 2) a clearer understanding of the importance of binding commitments and the implications of this for the migration community; and 3) an examination of the way in which the GATS and the bilateral agreements might co-exist.

Mr. Brunson McKinley — Director General, IOM

147. The speaker highlighted the fact that both migration and trade will grow in years to come. This underlined the need for better coordination and cooperation between the two policy communities, and for the continuing involvement of other stakeholders, including civil society, in the policy dialogue. A key area for current and future energies at the practical level was capacity building for developing countries, to assist them to manage the challenges posed by demographic and economic changes and to harness the opportunities for development. An important component of this would be building capacity for migration training in education and other government systems. Further work could also usefully focus in more detail on some of the key issues for migration policy managers, such as overstaying or managing remittances. Continuation of discussions such as this between the trade and migration communities is an important component of the overall effort to improve the management of migration at the international level to make it more orderly, predictable and safe and to reap its positive potential more widely.