

## Report of the Seminar

This report provides a detailed résumé of the issues raised at the seminar. Like the seminar itself, the report is structured around three main issues. First, it explores the relationship between trade and migration, situating GATS mode 4 in the broader context of temporary labour migration. Existing schemes to facilitate temporary movement at the national, bilateral and regional levels are explored, and the lessons that can be drawn for GATS mode 4 are examined. Second, issues related to the management of mode 4 and temporary labour migration in both receiving and sending countries are addressed. Finally, progress that might be achieved in the current GATS negotiations and potential areas for future work are explored. The seminar agenda is attached as an annex.

### WHAT IS THE RELATIONSHIP BETWEEN TRADE AND MIGRATION?<sup>1</sup>

**Chair: Amina Mohamed, Ambassador of Kenya to the United Nations,  
Chair of the IOM Council**

#### 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*

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

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 levels with schemes for facilitating temporary labour movement and lessons for mode 4.

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<sup>1</sup>. All speakers participated in their personal capacity. The views expressed are thus not necessarily those of their governments.

- Managing the impact of temporary labour migration: issues that arise for countries of origin and destination and approaches to dealing with them:
  - 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 origin and destination countries: ensuring temporariness (the problem of overstaying and successful return incentives); policy co-ordination between origin and destination countries and at the national level among trade, labour and migration officials.
- The GATS and beyond:
  - Overview of the categories of workers for which progress might be made.
  - Possible mechanisms for facilitating movement under the 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 through the development of complementary or supporting policies.

## Trade and migration contexts<sup>2</sup>

### *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*

In spite of the 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 a year in the OECD area, 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 slowdown. Supply clearly exceeds demand. It has been estimated that, each year, half a million people enter the European Union and 300 000 enter the United States clandestinely. Moreover, intra-developing country flows are characterised by presumably high, but largely untracked, movements.

There are few legal, official doors open for temporary labour migration, and there are many obstacles, including restrictions on recruitment, visa requirements, police records and other security checks, certification of where and for how long a person works, and insurance requirements. Nevertheless, many doors are in fact 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 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.

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

- *Geographic dimension:* The growth in temporary labour migration flows is highest among neighbouring countries, in particular if they have agreements with one another and are rich. Movement between developed countries is the most liberalised and often takes the form of movement within regions through special arrangements with neighbouring countries. Statistically, movement from developing to developed countries is significantly higher than movement among

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<sup>2</sup>. For background, please see Annexes A and B.

developing countries. However, the latter is badly documented and is presumably much higher than the statistics indicate.

- *Categories of workers:* Movement of highly skilled workers is the most liberalised, with flows growing very fast over the last five years. In the United Kingdom, for example, annual growth has reached 35%. However, the definition of highly skilled workers is very broad, encompassing categories as diverse as intra-corporate transferees, temporary guest worker programmes and student migration. Worldwide, 1.5 million students are registered in tertiary-level education abroad, and much of their mobility will eventually become 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*

A number of concepts need to be clarified to give precise meaning to mode 4 and, more generally, to temporary migration. In the first instance, a temporary permit cannot be equated with temporary migration and stay. In many countries a temporary permit does not necessarily mean temporary migration, and the type of permit is not a reliable indicator of the effective duration of stay in a host country. Furthermore, migration and permit regimes are very diverse, 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. Transfers from temporary to permanent permits are possible, but, in general, temporary permit regimes are intended to reflect temporary migration. Most other OECD countries have only temporary permits, which tend to evolve towards longer-term types of permit and eventually permanent residence. In these countries, early attempts to create purely temporary categories of workers, *e.g.* “guest workers”, foundered and led to a policy change towards more or less systematic permit renewals.

Additional problems arise from the fact that countries have different criteria for residency. In terms of migration, elements used to define residency and residency rights 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 what circumstances a foreigner is to be considered a resident of the receiving country. Similarly, mode 4 creates ambiguity with respect to the status of multi-year service providers: are they to be considered foreign residents engaged in trade or residents who are part of the productive capacity of the host country? Finally, to the extent that, in GATS terms, there is a dividing line between residents and non-residents, it remains unclear whether this can be assumed to be the conventional threshold of one year, which is customarily used from a migration perspective.

The suitability of granting freer access through mode 4 should be assessed in light of experience with the integration of immigrants. In OECD countries, experience is mixed. Although employment-based migration does not involve any initial fiscal burden on the host society and has a positive track record, 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 difficulty in preventing illegal entries and overstaying and in fostering integration of the foreign and foreign-born population. In many host countries, the 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.

Questions that need to be addressed in a debate on trade and migration include: whether there is a need for freer access when 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, *i.e.* whether it focuses 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 that firms will actually co-operate 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*

GATS mode 4 is part of the broader definition of trade in services under the GATS. The four modes of supply are designed to capture the complete range of situations in which a service may be supplied. They are based on the territorial presence of the supplier and the consumer of a service. Obviously, supply through modes 3 and 4 involves the cross-border movement of factors of production (capital and labour). Therefore, they depart from the traditional balance of payments scope of trade, defined as taking place between residents and non-residents. More specifically, mode 4 covers the supply of services via the presence of natural persons. It covers situations where a natural person temporarily resides in the territory of the “export market” *for the purpose of supplying the service*. Thus, mode 4’s coverage of migration is only incidental to the supply of a service. In such situations, the natural person involved could either be an employee of a service supplier (*e.g.* director or executive of a bank) or could be the service supplier proper (*e.g.* lawyer, accountant or software specialist).

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, two main categories are covered by the 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.

However, because the GATS covers all services sectors, mode 4 liberalisation may 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 co-ordination at both the national and international levels. The existence of a conceptual and terminological gap between GATS definitions and migration regimes creates difficulties for implementing provisions under mode 4 trade. Although mode 4 is not a migration category or concept, it is regulated by migration policies. While mode 4 issues will not determine overall policy on migration, because the GATS is an international treaty its 148 members have to find a way to integrate its legally binding provisions into the broader migration policy picture.

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.

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

Today, a number of difficult questions remain unanswered, 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 terminological gap between GATS definitions and those of migration regimes. There is also a new tendency towards sector-specific commitments, a 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 (ENTs) and labour market tests.

Other initiatives aim at strengthening disciplines on mutual recognition agreements (MRAs) and studying the feasibility of a GATS visa.

### ***Discussion***

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 has 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 owing 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 can therefore 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 policy issues that lie beyond the jurisdiction of the organisation.

### ***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*

Mode 4 is an area where developing countries stand to make clear gains, and greater concessions under mode 4 can contribute a needed element of balance to the GATS. Progress on mode 4 serves as a test of progress towards equity of treatment among 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 achieve 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 reduction of gender inequalities, as demonstrated by the positive gender impact and overall positive welfare effect of trade in nursing services.

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 suggest that the real value is double or triple this figure. Remittances are very important for both household consumption and the domestic economy and, in countries such as India and Sri Lanka, they exceed the economic value of the main export.

However, there are many challenges. First, mode 4 is a very sensitive area because of social, employment and migration issues as well as, more recently, security considerations. Negotiations and procedures are lengthy, slow and very bureaucratic. Improved statistics would provide a more solid basis for analysis and policy guidance and for 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 that regulate temporary movement. Third, it is necessary to move away from the perception that mode 4 means 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. Finally, the present level of mode 4 commitments needs to be improved, and dialogue between trade and migration communities is vital for disseminating information about the potential gains for both developing and developed countries.

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

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

The way forward for mode 4 movement lies in linking it to mode 3 trade (commercial presence). Fundamental features of the relationship between trade and migration could, if better understood, help policy makers to identify the appropriate channels for achieving greater movement of service suppliers.

One important issue is fear about the manageability of migration flows originating from mode 4 liberalisation. Whereas 80% of trade in goods and services takes place between rich countries, mode 4 opens up movement from lower-income countries and unleashes fears about migration which reduce the likelihood of swift progress in liberalising the movement of people across borders.

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

A third issue arises from the inconsistency between the requirement of “temporariness” for mode 4 service suppliers and government and international organisations’ efforts to grant and/or qualify equality of treatment for migrants (in terms of potential permanent migration). Differences between poor and rich countries are a motivating factor in international migration, and managing mode 4 implies the need to discriminate to keep “temporariness” effective.

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 service suppliers via the 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 as a way to move service providers.

### ***Discussion***

A number of participants took issue with the proposal that developing countries should focus on increasing their ability to establish subsidiaries abroad. Many 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, *i.e.* to include a wider range of temporary and low-skilled labour (*e.g.* in agriculture), the more the debate is 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 ways to implement their commitments through their national legislation.

**What is the reality in terms of temporary labour migration? What lessons can we learn for mode 4?**<sup>3</sup>

### ***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 we learn?*

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<sup>3</sup>. For background, please see Part II, Chapter 1.

In this session, the national systems of 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 constant efforts to refine domestic migration policies and procedures.

*Case study 1: United Kingdom*

*Nicholas Rollason, Solicitor, Kinglsey Napley*

In the United Kingdom, the management of migration is very transparent, and all relevant information is easily accessible on the government Web site. An important characteristic of the system is the frequent consultation with stakeholders which ensures a very open and flexible framework that is responsive to market needs. Requirements for obtaining a work permit are very basic: a degree, an equivalent qualification or three years experience for the job on offer. Temporary and permanent migration flows are dealt with in the same way, so that immigrants entering with a temporary permit can apply for residency. Approximately 25% of temporary entrants become residents. Service suppliers tend to return to their country of origin more often than other categories of workers.

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. Schemes for low-skilled labour are clearly temporary, and there are a number of sector-specific schemes, *e.g.* for food processing, manufacturing, catering and seasonal agriculture.

The United Kingdom had initially foreseen a dedicated track for GATS mode 4 entrants but found that it lacked flexibility and results were unsatisfactory. Moreover, the objectives of GATS mode 4 could be attained via other means, and the flexibility that characterises the UK system allows 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 the United Kingdom.

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

*Case study 2: United States*

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

Traditionally, the United States' infrastructure for migration policy has been very flexible. However, the United States is about to move away from the flexibility and proliferation of schemes on which it had depended until very recently. The increased security concerns of the last few years have added to the strain caused by 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.

The US system includes a number of different schemes and takes into account various modalities of entry: through "front doors" as legal immigrants, through "side doors" as non-immigrants (with 18 types of doors with various levels of transparency, size and criteria), and through "back doors", or clandestinely. Since the terrorist attacks of September 2001, there is a strong determination to maintain people in the category under which they entered the country. Previously, once they were in the United States, foreigners could adjust their status from non-immigrant (student, guest worker) to immigrant or from unauthorised to immigrant status. This was very common, as shown by the fact that 85% of the economic employment visas issued each year used to be granted to foreigners already in the United States.

H1-B permits are the main gateway for moving professionals into the United States. While the current Congressional quota for H1-B permits is 65 000, numbers expanded enormously in the late 1990s, with business petitioning for increases of up to several hundred thousand permits. However, the atmosphere has changed radically in the last few years. In 2003, for instance, free trade agreements with Singapore and Chile that granted these countries a certain quota within the unchanged overall ceiling of 65 000 H1-B permits generated a plethora of protests both within Congress and from outside groups (mainly unions), arguing that

trade should not affect migration policy. In the new climate, 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.

### ***Bilateral labour agreements***

*What kinds of agreements exist? What has been their purpose and what types 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 we learn?*

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*

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% of the country's infrastructure, magnifying existing structural weaknesses. With a 40% unemployment rate and more than 60% of the active population earning less than the minimum wage (USD 128 a 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 schemes regulating the mobility of unskilled workers.

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 five to eight 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 to 2002, 12 255 sailors were hired as contractual workers on foreign vessels for periods varying from six to ten months. A third bilateral scheme seeks to regularise illegal Honduran migrants to the United States and allows regularised workers to stay there legally for up to 18 months. This is an 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% of the population lives on remittances from relatives abroad.

#### *Case study 2: Germany*

*Torsten Christen, Federal Ministry of Economics and Labour, Germany*

Germany has a number of bilateral agreements, mostly with central and eastern European countries, that cover 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.

Seasonal workers mainly work in agriculture and the hotel and restaurant industry. Current regulations allow work for a maximum of three months a year. This is the largest category; in 2003, Germany had more than 300 000 seasonal workers, most of them for the maximum of three months. Of these, approximately 250 000 came from Poland and about 20 000 from Romania.

Guest worker agreements normally cover exchanges of 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, the programme is no longer very large.

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 subcontractor of a German company, and 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; according to the regional market clause, some regions in the eastern part of Germany are not allowed to employ foreign contract workers owing to high local unemployment rates.

From a migration perspective, Germany's 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 rapid response. A new law being discussed in the German parliament proposes, among other innovations, to substitute the current dual approval procedure required for limited employment stays with a "one-stop shop" where work and residence permits are granted via an internal consent procedure.

### ***What has been done to facilitate labour mobility at the regional level?***

*What kinds of schemes exist? What kinds of workers (e.g. in terms of skill level or sectors) are covered by these arrangements and how does this compare with GATS mode 4? What have been the strengths and weaknesses of these initiatives? What lessons can we learn?*

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 schemes take different approaches to regional labour mobility. While it is difficult to compare the agreements, they range from systems that do not provide access *per se* but facilitate the movement of certain groups by minimising migration procedures attached to their movement (the APEC Business Travel Card), to agreements that provide access for certain categories of service providers (NAFTA), to more ambitious schemes covering general freedom of movement for the highly skilled (CARICOM).<sup>4</sup>

#### *Case study 1: The APEC Business Travel Card*

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

The APEC Business Travel Card was not intended for the 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 among APEC member economies. While maintaining border integrity, the APEC Business Travel Card facilitates trade by reducing the costs and delays of bureaucratic procedures. It does so by simplifying short-term entry arrangements for business visitors, by streamlining processing for highly skilled workers seeking temporary residence and by ensuring transparent regulatory arrangements that allow for seamless cross-border movement.

When the programme was initiated in 1997, only three APEC members tried the card (Australia, the Philippines and Korea). A few other countries joined in 1999 as they recognised 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, which recognises the different capacities of the economies and allows them to join when they are able to do so; the initial extension to a very limited number of countries in order to prove viability; an open and co-operative method which boosts confidence about the card's operational strengths; technical assistance schemes designed to aid participating developing countries to implement the agreement successfully; a technology

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<sup>4</sup>. APEC's 21 members are: Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States; 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 five associate 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. The five associate members are Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands.

that requires deliberately low resources while ensuring robustness; and, finally, equal treatment of all participating countries.

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

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 country of origin and then by destination countries. Furthermore, countries maintain the right to control movement through borders and retain control over the eligibility of domestic applicants for the scheme.

*Case study 2: NAFTA entry for business visitors*

*Paul Henry, Trade Policy Advisor, Economic Policy and Programs, Citizenship and Immigration, Canada*

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 the GATS in covering movement related to manufacturing and all investment. The NAFTA mobility scheme applies to business visitors, traders, investors, intra-corporate transferees and professionals.

Prior to NAFTA, the normal process of admission for temporary entry for non-NAFTA applicants involved two basic regulatory hurdles: labour market tests and a work permit. Additional obstacles included requirements for prior approvals and petitions, labour certifications and numerical restrictions. The NAFTA provisions for temporary entry eliminated or reduced these hurdles. Business visitors are no longer required to hold work permits while traders, investors and intra-corporate transferees need permits, prior approval and petitions but do not have to provide labour certification or undergo other procedures and are not subject to numerical restrictions. Professionals only need work permits.

The system introduces elements of harmonisation while ensuring faster processing for professional and business people by extending US immigration regulations to seven Canadian airports. Moreover, to date, it has not presented major contentious issues or problems for most 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 will 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*

The CARICOM framework for labour mobility is shaped on the European Union (EU) model. The CARICOM Single Market and Economy (CSME) seeks to merge its 15 member states into a single, enlarged economic entity as near to a single market and single economy as possible but does not envisage political integration. It is intended to provide an open market without cross-border restrictions and therefore to facilitate the free movement of final products, goods, labour and services.

The free movement of people is a critical factor. 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.

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 help to attract more highly skilled and medium-level skilled service providers from outside the CARICOM region and thus contribute to equilibrium in the labour market.

At present, the CARICOM framework 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.

CARICOM member states need to respond to a number of challenges in order to promote 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 national labour markets. They have to adopt a regional approach to human resources development, e.g. by establishing a Caribbean association of national training agencies with a regional certification body and national bodies.

## MANAGING MOVEMENT

**Chairs: John Martin, Director, DELSA, OECD  
and  
Carlos Primo Braga, Senior Adviser, World Bank**

### **Managing the impact of temporary foreign workers on countries of origin and destination<sup>5</sup>**

#### *Issues in destination countries: labour market, social and security issues*

*What is the impact of temporary foreign workers on the labour market of receiving countries and does the impact of mode 4 service suppliers differ? What is the impact, if any, of temporary foreign workers, including mode 4 service suppliers, on the pay and working conditions of nationals? What is their impact on unemployment? What is the relationship between availability of temporary foreign workers, including mode 4 service suppliers, and the trend towards contracting out of services? What are the social impacts of mode 4 service suppliers and how does this differ from other kinds of migration? How has the new security climate affected movement?*

#### *Trade union perspective*

*Marion Hellmann, International Federation of Building and Woodworkers*

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

Mode 4 liberalisation has the potential to open the doors to unregulated migration, especially if future negotiations address facilitating movement of low-skilled workers. 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, definitions and characterisations change from country to country. Finally, outsourcing, subcontracting and the existence of triangular relationships (*i.e.* between principal contractor, intermediary and employee) are potential threats to the enforcement of social 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.

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

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<sup>5</sup>. For background, please see Part II, Chapter 2.

- In Iceland, 600 Portuguese construction workers were 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 a day paid at EUR 6 per hour.
- In Germany, an agreement between the social partners reduced the minimum wage in the former East Germany to allow firms to compete with firms from eastern Europe.

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 – on a case-by-case basis – or by regional agreements. The multilateral level grants too little flexibility.
- Movement of labour regulated by GATS mode 4 should only take place if it is 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, Legal Counsel and Director of Government Relations, American Council on International Personnel (ACIP)<sup>6</sup>*

Global corporations tend to invest in countries that facilitate the global movement of personnel. From the company's perspective it is irrelevant whether 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 the corporation's perspective, all workers are permanent workers and multinational corporations want to be able to move them around as needs arise.

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. This can create real costs for companies – in terms of paperwork, 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 current schemes for the movement of people only partly meet the needs of multinationals, they use alternative channels. For example, intra-corporate transferees are often placed on a permanent visa to allow spouses to work and to facilitate integration in destination countries. Even temporary visa schemes for professionals can be problematic. The H1-B 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.

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

- *Temporary business entrants*: workers that move abroad for less than six months without family. The biggest obstacles for this category of workers are delays in obtaining visas and permits. This type of worker usually needs to move on less than two 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

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<sup>6</sup>. The ACIP is a trade association of large multinational companies dedicated to facilitating the international movement of personnel.

in every country. However, national legislation and definitions are different from country to country. GATS could help to harmonise 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.

#### *Government perspective*

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

Traditionally a country of high emigration, Ireland has recently become the preferred location for many multinationals' European or global headquarters. The Irish viewpoint is particularly interesting because it reflects the lessons learned 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. Following some serious economic mistakes in the 1970s and 1980s, the economy recovered and experienced "jobless growth" in the period between 1987 and 1993. Since 1994, employment increased rapidly to full employment and beyond, triggering a significant inflow of foreign workers.

The country's economic migration policy has been responsive to experience. Following a very large 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. Another example of the system's responsiveness is illustrated by employment agencies. Economic migration has traditionally been vacancy-driven and illegal employment did not carry sanctions for employers. However, in the last few years, employment agencies have been responsible for several abuses, and the government changed the relevant legislation in April 2003. The feasibility of pre-clearance mechanisms for screening employers is now being studied.

An issue that has been widely debated in Ireland is whether permits and visas should be temporary or permanent. The immigration authorities are very attentive to both domestic and foreign experiences in managing migration. This led them to design a system that is formally temporary but can evolve 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 because employers, guided by employment agencies, seek new and cheaper sources of labour. Other concerns hinge on assuring a minimum level of quality.

Balance is the real challenge: migration policy should be responsive and socially accepted. Flexibility and transparency are also important as part of achieving the goal of full employment. For example, because of labour shortages in construction, foreign workers have been allowed in this sector; however, if employment levels of national construction workers fall, this may be reviewed. GATS provisions could complement 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*

Many comments and questions reflected a 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 spouses, non-recognition of *de facto* couples and definition of the family unit. For example, child minders or grandparents are often not recognised as part of the family unit and hence denied the right to relocate abroad with the family. In Ireland, spouses can 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; in many countries, for example, employees with a spouse of different nationality face more problems and bureaucratic processing than employees with a spouse of the same nationality. Others asked about the accessibility of information on immigration rules and procedures. From the perspective of the business community the problem was not access to information – nowadays facilitated by the Internet – but the implementation of laws in a non-transparent and subjective manner, unduly influenced by back-door 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 ten years and why measures that are recognised as protectionist in manufacturing should be accepted in services trade as legitimate. The trade union position is that if there is capacity in the home country to provide a service, it should be provided domestically in order to preserve social stability.

### ***Issues in countries of origin: remittances, brain circulation and broader trade linkages***

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

#### ***Promoting labour exports: the example of the Philippines***

*Maria Teresa Soriano, Executive Director, Institute for Labour Studies, the Philippines*

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

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. The system has gradually been transformed into one of management of overseas emigration, culminating in 1995 in the "Migrant Workers and Overseas Filipinos Act", which put in place policies for overseas employment and established a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress.

Currently, the government is actively exploring better employment opportunities and modes of engagement in overseas labour markets and promotes the reintegration of migrants upon their 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) that provide legal, medical and psycho-social assistance to Filipino overseas workers; a network of resource centres for the protection and promotion of workers' welfare and interests; and reintegration programmes that provide skills training and assist returning migrants to invest their remittances and develop entrepreneurship.

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 including 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.

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 optimise the gains from overseas employment.

*Links between mode 4 and other types of trade*

*Dr. Rupa Chanda, Associate Professor, Economics and Social Sciences, Indian Institute of Management, Bangalore*

To date, GATS negotiations have tended to focus on individual modes. However, as there are real linkages between mode 4 and other types of services trade, countries should take a cross-modal approach to both domestic policy making and GATS negotiations to liberalise and facilitate trade and investment in services.

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 characterised by growing interdependence across modes of supply owing to the globalisation 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.

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. The Indian information technology (IT) sector is an example of this.

The relationship between mode 4 and mode 1 is instructive. Despite the common perception that modes 4 and 1 are substitutes, the nature of their connection actually depends upon the level of specialisation 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.

Substitutability takes place mostly at the low end of the specialisation chain (*e.g.* a call centre). Even here, there is scope for mode 4 trade, as mode 1 often requires the temporary presence of senior managers from the outsourcing company to determine requirements or other personnel to conduct training. Further along the value chain, the relationship becomes 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 are well-established, the company may set up subsidiaries (mode 3).

This presence in overseas markets and the exposure resulting from movement of service providers may also induce foreign direct investment (FDI) in the home country of workers. The credibility and viability of Indian expertise and the abilities acquired by Indian IT specialists working in the United States have induced FDI in India's IT sector by US multinationals. Thus, movement of labour may induce movement of capital, both inward and outward. The reverse may also occur, with the 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).

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

Domestic policies and international strategies need to recognise the complementary relationship that exists across the different modes of supply. If governments take an integrated approach, 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.

There are two broad areas for domestic policy action to maximise inter-modal 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, establishing minimum standards and quality control across sectors, and enhancing the overall market competitiveness 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*

Participants asked about the resource requirements of the policies followed by the government of the Philippines. In the Filipino experience, resources for the management of migration have been limited. Costly training in specialised areas, including medicine and nursing, is managed by setting aside part of the revenue 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, it was explained that India was at first unaware of the interlinkages between modes of supply, and ways of attracting emigrants back to India are only starting to be developed. Nonetheless, the interlinkages were the result of 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 H1-B visas.

#### *Managing remittances*

*Alberto Islas, Technical Co-ordinator Director, Banco del Ahorro Nacional (Bank of National Savings and Financial Services), Mexico*

The management of remittances in Mexico, particularly in relation to the US Hispanic migration population, clearly concerns a group that is much broader than the services providers covered by mode 4. Mexico is the second largest remittances market worldwide after India, accounting for almost USD 10 billion and growing at a rate of 30% in 2003. Not only has the number of Hispanics in the United States 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 cheques are relatively insignificant.

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

Under the "Partnership for Prosperity", the US and Mexican governments have undertaken several initiatives to provide a more secure and competitive service to migrants. These include endeavours to: *i*) increase the number of citizens using formal financial systems and to promote competition and innovation in these institutions; *ii*) improve transparency in the system, so that consumers are aware of relevant information, including prices, before they undertake a transaction; and *iii*) link remittances to access, through different savings mechanisms, to Mexican government programmes like housing and medical insurance.

#### *Maximising brain circulation*

*Reynald Blion, Director, International Migration and Media Programme, Institut Panos, Paris*

A key issue in labour mobility is to maximise brain circulation and ensure that it can benefit the public in both receiving and sending countries. Immigration in industrialised countries is inevitable because of demographic change and, if it is appropriately managed, it can benefit both origin and receiving countries. It is important to recognise that migration involves a complex set of issues relating to transfers 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, further benefits may result from migrants' immersion in receiving countries' policies and culture. The experience and ideas that migrants take back to their countries of origin can play an important role in the development of these countries.

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

- Improve the administration of visas, *e.g.* greater flexibility regarding length of stay, which may be insufficient for certain projects if stays are too short.
- Design and implement better policies on residency, *e.g.* flexibility for re-admission of personnel who may need to return to the originating country to undertake or finalise a project and then go back 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 via the Internet.
- Promote migrants' participation 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***

The presentations raised several questions and comments, particularly from representatives of developing countries. 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, programmes that help to set up and operate small and medium-sized enterprises (SMEs) can be particularly beneficial for the well-being of families in receiving countries, given that SMEs comprise most of the businesses in 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 the host country, to avoid problems of currency devaluation. One participant asked about the effects of mode 4 on the Mexican *maquiladoras* (free trade zones). In reply, it was pointed out that, given the recent economic downturn, particularly in the United States, the *maquiladoras* have experienced decelerating growth and a decrease in 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.

### ***Ensuring temporariness: overstaying and return incentives***

*How can countries of origin and destination co-operate 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?*

*Australia's Temporary Business Entry Program*

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

For governments, ensuring temporariness is a matter of choice; 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.

There are considerable economic benefits, including increased trade and investment, to facilitating the movement of business people. Australia's Temporary Business Entry Program (TBEP) responds to business

needs and enables businesses to bring personnel into Australia quickly. However, this is balanced with the need to ensure local employment and border integrity.

Because Australia is a mature economy, employment opportunities are in capital- and knowledge-intensive industries. Therefore, the TBEP is for skilled professionals, managers and technical personnel, for whom the local employment rate 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.

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

- *A universal visa system.* This allows quick immigration clearance as passenger details are known before arrival. Databases also make it possible to identify 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 worldwide.
- *Employer obligations.* Sponsors must, besides ensuring certain employee rights, 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 can be sanctioned if they are found in breach of the requirements. The sanctions range from bans on sponsorship to financial fines. To date, compliance rates have been very high.

#### *Dealing with overstaying*

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

There are serious concerns in receiving countries about labour migrants who stay beyond the duration of their contracts. Other concerns relate to the fact that if migrants are sent back and encounter very difficult conditions they will find other ways to try to access the global labour market. Labour programmes that provide secure return arrangements, for example by allowing re-entry to the receiving country for future work opportunities, are more likely to help stabilise movement.

Ensuring return can be greatly facilitated by the social networks maintained in the country of origin and can be essential to: *i)* increase the perception in the global community of good governance in the sending country and of orderly regulation of migration by the receiving country; *ii)* bring significant dividends for countries of origin; *iii)* return newly acquired skills/experience to contribute to development and growth of the country of origin; and *iv)* increase confidence in liberalised forms of labour movement. However, governments often give little attention to the issue of return, perhaps because of a lack of international experience in the labour field or of resources to monitor and enforce return.

The temporary movement of workers increasingly takes 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.

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

However, evidence from some bilateral agreements suggests that the most sustainable programmes are those that are appropriately regulated and enforced but 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 future for work 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 sanction employers who do not honour their commitments.

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 of opportunity through fiscal rules whereby remittances are not taxed. Other countries have incentive schemes as part of diaspora management strategies, such as loans to support small businesses for returnees and diaspora. Finally, the exchange of information and co-operation between sending and receiving countries can lead to significant results in this area.

### ***Policy co-ordination***

*How can we promote greater policy co-ordination between countries of origin and destination and between trade and migration officials at the national level? How can we ensure stakeholders' involvement?*

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

Since the 1980s, Italy, which had previously been a land of emigration, has become a land of immigration. In view of increasing public concerns about the growing number of immigrants, Italy began to adopt new mechanisms to cope with this phenomenon.

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 co-operation of the sending countries. Also, policies should reflect the needs of the economic system and the country's scope for absorbing foreign labour. Useful instruments include:

- Electronic systems able to identify demand from industry.
- Professional training schools for foreign workers in Italy or the sending country.
- Agreements with foreign countries for selection of 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.

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.
- Programmes 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.

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 their increased financial resources, know-how and often a more business-oriented mentality. In this regard, particular care should be taken to ensure productive management of remittances.

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 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 co-ordination with the Ministries of the Interior and of Foreign Affairs.

*Shahidul Haque, Regional Representative for Southern Asia, IOM*

Trade, development and migration are inextricably linked, although migration seems to have been excluded in the current phase of globalisation. Trade and migration can reduce poverty through several channels, including the creation of employment, reduction of the vulnerability of families, and exchange of knowledge.

A framework for co-operation between the trade and migration policy communities should be established and there should be greater 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 have an important role to play.

At the national level, migration should be mainstreamed into development planning. A national programme approach (programme-based migration management) could include the following strategy: *i*) government-led country-wide needs assessment to ascertain the situation, priorities, needs and concerns; *ii*) a plan of action for the implementation of assessment recommendations; and *iii*) capacity development of individuals, institutions and societies in an integrated manner.

### ***Discussion***

Some participants stressed that there is no “one size fits all” approach to managing migration. Different models need to be applied in different situations to allow for flexibility and to respond better to labour market needs. Others argued that migration is inevitable and that it is therefore advisable to put in place a framework that will ensure that it occurs in an orderly, predictable and humane manner. International agreements can play an important role; however, ways of improving co-ordination among organisations working in this area need to be found. It was also pointed out that countries already have a range of tools to eliminate or minimise problems resulting from migration, such as overstaying (*e.g.* imposing appropriate sanctions on employers). The possibility of drawing lessons from bilateral agreements was also mentioned, as was the issue of the compatibility of such agreements with the non-discrimination (most-favoured nation – MFN) requirement of the multilateral trading system. It was explained that, for trade in services, WTO members are allowed to deviate from the MFN principle under certain circumstances. For example, they may deviate from the MFN requirement in the case of regional trade agreements which meet the criteria of GATS Article V, and it is possible that labour arrangements that form part of these agreements may fall under the MFN exemption. Also, given the uncertainties about the scope of mode 4, certain types of bilateral labour agreements may not fall within the scope of the GATS; it could be argued, for example, that bilateral labour agreements for agricultural workers do not fall within the scope of the GATS as such workers are arguably not service suppliers.

## **PROSPECTS FOR THE GATS NEGOTIATIONS FOR MANAGING MOVEMENT**

**Chair: Anders Ahnlid, Deputy Director-General,  
Ministry of Foreign Affairs, Sweden**

## Facilitating access under the GATS<sup>7</sup>

### *For which categories of workers can we make progress?*

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

*Adriana Suarez, Permanent Mission of Colombia to the WTO*

There is increasing awareness of the benefits that liberalisation of mode 4 can bring both to industrialised and developing countries. Progress achieved in bilateral agreements, including with respect to different categories of workers, shows that there is scope for advancing these issues at the multilateral level. This would help to ensure that developing countries increasingly participate in the multilateral trading system and that progress is achieved in sectors and modes of supply of interest to them. It would also bring about benefits to industrialised countries, in particular with respect to the link between modes 3 and 4.

Three main areas are relevant to understanding the issues involved in relation to the different categories of workers under mode 4:

- *Progress achieved in the Uruguay Round.* The GATS Annex on mode 4 includes two main categories of workers: *i*) natural persons who are service suppliers of a member (or who are self-employed); and *ii*) 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 have 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 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.
- *Categories of service providers contained in current negotiating proposals, requests and offers.* In the current GATS negotiations, several requests have been made concerning contractual service suppliers, in particular independent service suppliers in that category. A number of requests have also been 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.
- *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.

*Martin Hirsbrunner, Lawyer, Swiss Federal Office for Migration/IMES*

Swiss commitments on mode 4 from the Uruguay Round are substantial. They include several categories of highly skilled workers, such as managers, executives and intra-corporate transferees. There is a system of quotas, but there are no economic needs tests and no priority by nationality. Authorisations are issued by

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<sup>7</sup> For background, please see Part II, Chapter 3.

cantons and requests for entry are not generally submitted in relation to the GATS mode 4; workers are often authorised to enter the market without knowing about the existence of mode 4 commitments.

While the GATS is an agreement to facilitate and enhance trade and not a migration agreement, it is difficult to discuss mode 4 without becoming involved in the migration debate. The percentage of foreign workers in Switzerland is quite high, up to 20% 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.

In terms of the GATS, the Swiss position is clear:

- Most labour migration schemes in Switzerland relate to highly skilled labour, with lengths of stay depending on the category of workers; programmes 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.
- Switzerland's scheme, like the GATS, 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.

*Mark Hatcher, European Services Forum*

It is important for WTO members to work towards rebuilding the momentum for a successful round of negotiations. Businesses increasingly operate in international markets; if they cannot move their personnel around, their competitiveness is likely to be affected. Bilateral efforts play an important role in liberalising movement of mode 4 type workers but should not be a substitute for multilateral liberalisation under the GATS.

It is important, however, to be realistic about what can be achieved in the current round of talks. Overly ambitious goals, particularly in relation to low-skilled labour, may have a negative impact on the overall negotiations. It is probably better to address 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, 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.

The European Services Forum has developed a model schedule as a basis for focusing 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***

The discussion was lively. The importance of defining 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 such 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.

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 or 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 it is not a requirement to grant recognition).

Several developing country 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 more scope to make progress in this area under bilateral agreements.

### ***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?*

*Sumanta Chaudhuri, Permanent Mission of India to the WTO*

It is important to ease and streamline visa procedures and conditions for effective market access. Inefficient visa formalities, including lack of transparency, onerous administrative procedures and delays, might nullify or impair GATS commitments. 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 service suppliers (both juridical entities and independent professionals).

The visa would stipulate specific conditions, such 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 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.

Furthermore, the GATS visa represents a mechanism for achieving the separation of temporary movement under the GATS from permanent migration. Without this differentiation, the concerns of overall migration policy and security issues overshadow all other trade considerations for temporary movement under GATS.

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.

*Bimal Ghosh, Consultant to the IOM*

The GATS is the first formal recognition by trading nations of the importance of movement of natural persons in services trade. However, little real progress towards freer movement of natural persons has so far been achieved. 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.

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 problems that need to be addressed. These include 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 subcontracted to a local firm.

Ideas on how to move forward include:

- 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 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.
- In order to be of interest to both developed and developing countries, give consideration to “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 assistance by relevant organisations.

### ***Discussion***

Several participants stressed the importance of streamlining administrative procedures for visas and work permits. Some questioned the feasibility of a GATS visa, suggesting instead that the framework could be used flexibly to design schemes that best suit local needs and conditions. Given the existence in some OECD countries of a range of schemes providing access for several different types of mode 4 entrants, it was noted that if a special GATS visa was to be attractive to business it would have 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 the events of September 11, 2001. The importance of ensuring consistency between any new commitments 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.

### ***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?*



*Paul Henry, Senior Policy Analyst, Economic Policy and Programs, Citizenship and Immigration, Canada*

In the area of mode 4, transparency is vital. The business community is concerned because they find temporary entry laws, regulations, administrative procedures and guidelines 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 SMEs, which generally lack the capacity to obtain the information they need.

Ensuring transparency also entails costs; it requires time, effort 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 the risks of doing business. For governments, administrative costs can be decreased and overall efficiency can be enhanced. Transparency can not only foster international trade and investment, it can also help countries better manage immigration issues, because they can more readily obtain and exchange information.

Mode 4 commitments, as currently spelled out, are difficult for business to understand, although they should be the main beneficiary of such commitments. Even negotiators do not 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.

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 increase the value and priority of the GATS.

### ***Discussion***

One participant stressed the importance of transparency in facilitating business operations and increasing overall economic efficiency. Areas of particular concern identified include: *i*) the lack of specific criteria, *e.g.* in labour market tests, which leave scope for discretion; *ii*) the lack of clarity in, and the complexity of, schedules of commitments; *iii*) the lack of information on deadlines for applications; and *iv*) failure to provide information on reasons for refusal of applications. One area where progress could be made is 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 that 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 remarked that further convergence in the definition of categories of services providers would also improve transparency. Other speakers emphasised the importance of transparency, including in relation to immigration laws and regulations. It was stressed that information needed not simply to be made available, but to be made more “digestible” so that is 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.

### **Where can we go from here?**

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| <p><i>What progress may be feasible in the context of the GATS negotiations? What are other ways to make progress? What policies are important in managing movement?</i></p> |
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*Jan Karlsson, Chair, Global Commission on International Migration, Sweden*

Trade, especially trade in services, and migration will continue to increase 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 can 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 increase in importance as there will be greater 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 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*

In terms of the current GATS negotiations, around 39 offers had been tabled so far, but many members still need to participate more actively in the process. In addition, the offers on the table so far 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 in terms of mode 4 a few members have made some limited movement towards liberalisation.

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. 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 remains 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 is 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.

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

*Hamid Mamdouh, Director, Trade in Services Division, WTO*

There are four main areas where progress needs to be made. First, there is a need to contribute to the policy debate, 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 service suppliers; how countries manage migration is for them to decide. Third, qualification requirements is 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 problems relating to qualification requirements. Finally, better co-ordination at both the national and international levels is crucial.

*Ms. Anya Oram, Directorate General Trade, European Commission*

With mode 4, the GATS created an artificial concept which does not match the reality of migration. The question is how to adapt it to that reality, particularly since the GATS, as a WTO agreement, is here to stay. There are 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 that are better addressed in

other forums such as the ILO. Governments should also ensure appropriate co-ordination at the national and international levels. In relation to the current round of negotiations, it is important not to raise expectations 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 has shown that overstaying is a problem that can be addressed.

*Aaditya Mattoo, Senior Economist, World Bank*

Several areas of interest have emerged from the seminar. As with other forms of liberalisation, there are potentially significant net economic benefits from greater labour mobility, but distributional consequences also need to be taken into account, as some groups of society will be negatively affected. In addition, there is 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 been identified, *e.g.* in relation to overstaying, which seem to be manageable if there is the will to do so.

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: *i)* elimination of explicit barriers such as quotas; *ii)* reduction of administrative and procedural requirements; and *iii)* improvements in the area of transparency.

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 countries' ability 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 should be made in the area of semi-skilled labour. Co-operation between sending and receiving countries in relation to managing overstaying could prove very useful to this end.

### ***Discussion***

Several speakers stressed the importance of achieving progress on mode 4, in particular for developing countries. There was agreement on the importance of increasing co-ordination between the trade and migration communities at both the national and international levels, to address the complex issues raised during the meeting. The need to explore the synergy between bilateral initiatives and the multilateral trading system was also raised. It was suggested that further work could explore the south-south aspects, *i.e.* mode 4 and migration issues between developing countries.

### **Concluding remarks**

*Ken Heydon, Deputy Director, Trade Directorate, OECD*

This kind of meeting is extremely useful for enhancing mutual understanding in the trade and migration fields. Although gaps in perception remain, there is now more transparency and better understanding between the two policy communities. In terms of what can and cannot be done by the WTO in the framework of mode 4, the GATS is not a migration agreement, as was mentioned several times in the course of the meeting. However, it also appears that the wider and more ambitious the GATS becomes, the closer it gets to 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 the 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, owing to their diversity, are not always business-friendly.

Three other areas of potential future work have been raised: *i)* improved understanding of the welfare gains from mode 4 liberalisation; *ii)* better understanding of the importance of binding commitments and the implications for the migration community; and *iii)* examination of the way in which the GATS and the bilateral agreements might co-exist.

*Brunson McKinley, Director General, IOM*

Both migration and trade will grow in years to come. This underlines the need for better co-ordination and co-operation 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 efforts at the practical level is capacity building for developing countries, to assist them to manage the challenges posed by demographic and economic changes and to harness opportunities for development. An important component 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.