

INTERNATIONAL MIGRATION AND DEVELOPMENT: A PERSPECTIVE
FROM THE WORLD TRADE ORGANIZATION

World Trade Organization (WTO)

A. THE WORLD TRADE ORGANIZATION AND INTERNATIONAL MIGRATION

The World Trade Organization (WTO) is concerned with the rules of trade among nations. At its core lies a body of trade agreements, of which the General Agreement on Trade in Services (GATS) is one of the main constituents. The GATS provides a set of predictable and legally enforceable conditions for services trade. The Agreement aims to progressively expand trade in services, as a means of promoting growth and development.

The concept of “trade in services” in the GATS is wider than the conventional notion of trade, reflecting the need for physical proximity between provider and consumer in many service transactions. The GATS applies not only to the traditional mode of trade, i.e. cross-border supply (“mode 1”), but encompasses three additional ways of trading services internationally: cross-border consumption (“mode 2”), establishment of a commercial presence (“mode 3”) and, significantly, presence of natural persons (“Mode 4”).

Mode 4 relates to the entry and stay of natural persons of one WTO member in the territory of another for the purpose of supplying a service. As Mode 4 involves the cross-border movement of people, the GATS is consequently concerned with international migration. However, the GATS is not a migration agreement. Its focus on migration is incidental, as migration under the GATS is not an end *per se*, but rather a means to the end of trading services.

B. MODE 4 AND THE OBLIGATIONS OF WTO MEMBERS

Mode 4 encompasses the movement of natural persons who are either service suppliers (such as independent professionals) or who are employees of a service supplier and who are present in the territory of another member for the purpose of supplying a service. However, the GATS does not apply to measures affecting persons seeking access to the labour market of the host country, nor does it cover measures regarding citizenship, residence or employment on a permanent basis. The latter exclusion explains why Mode 4 is usually referred to as the “temporary” presence of natural persons.

Under the GATS, all WTO members are bound to respect the Most Favoured Nation (MFN) obligation, which prohibits discrimination between Mode 4 foreign suppliers of different origin.¹ Each WTO member also has an obligation to submit a schedule of specific commitments, where it indicates the sectors in which it guarantees market opening for foreign Mode 4 suppliers, as well as the level of opening granted. There is no prescribed minimum level of sectoral coverage or of market opening that has to be inscribed in schedules.

C. MODE 4 AND DEVELOPMENT

Reducing barriers to Mode 4 trade is expected to produce substantial global economic benefits. It is estimated that an increase in industrial countries’ quotas on the inward movement of both skilled and unskilled temporary workers equivalent to four per cent of their work forces would generate an increase in world welfare of more than US\$150 billion a year (Winters, 2003). These gains would be shared

between developed and developing countries. Although the type of movement considered in this study is wider in scope than Mode 4, the benefits from greater liberalisation of Mode 4 are nevertheless likely to be significant.

Amongst the potential beneficial effects of liberalising Mode 4 for the country of origin are: (a) reduced pressure on the labour markets and wages caused by high levels of unemployment; (b) inflows of remittances, which are likely to be boosted by the temporary nature of Mode 4 movement, given the inverse relationship between the amounts remitted and the duration of time spent abroad, and (c) technology transfer and development of human capital, as temporary service suppliers make their experiences acquired abroad available to the country of origin upon returning (thus averting some of the costs of “brain drain”, typically associated with permanent migration).

Beneficial effects for the receiving country could include: (a) the possibility of addressing labour shortages, while averting some of the social and political costs of permanent migration; (b) alleviating the demographic challenges caused by an ageing population, and (c) reducing the pressure of undocumented migration by providing an alternative through temporary movement.

Mode 4 liberalisation is also expected to generate significant indirect effects on merchandise trade and services trade through other modes of supply, by facilitating cross-border trade as well as investment by skill and technology transfers, development of specific knowledge, creation of networks and overseas contacts and reputation effects (Jansen and Piermartini, 2004).

Furthermore, Mode 4 access conditions in GATS schedules are legally binding and enforceable through the dispute settlement mechanism of the WTO, thus providing foreign suppliers with certainty and predictability. Such a stable regime for temporary movement is likely to be more conducive to regular and return migration.

D. CURRENT MODE 4 COMMITMENTS AND STATE OF PLAY IN THE ON-GOING NEGOTIATIONS

The level of Mode 4 liberalisation by countries specified in GATS schedules is rather low. Only very few members have undertaken fully liberal commitments in this mode of supply and in most cases admission has been limited to intra-corporate transfers of managers, executives and highly-skilled specialists and to business visitors. Also, access conditions tend to be identical in all the different services sectors included in a member’s schedule. In practice, this absence of sectoral differentiation implies that the lowest common denominator has determined access conditions across the committed sectors.

In addition to limiting admission to certain categories of persons, other restrictions frequently encountered in Mode 4 schedules include: (a) short-term durations of stay; (b) quotas; (c) requirements to pass “economic needs tests” or “labour market tests”, generally without any further indication as to the criteria of application; (d) pre-employment conditions, and (e) residency and training requirements.

In light of the above, Mode 4 has attracted considerable attention in the current round of WTO negotiations and the Doha Development Agenda (DDA), which was launched in November 2001.² Developing country members in particular have identified the movement of natural persons as one of the key areas where they seek improved commitments. Their main interest lies in obtaining better access for categories of natural persons not associated with the establishment of a commercial presence, such as independent service professionals and “contractual service suppliers” (i.e. persons employed in their home country and sent abroad to supply a service pursuant to a services contract between their employer and a local consumer).

Until the end of 2005, the negotiations in Mode 4, as in all other services areas, proceeded on the basis of bilateral request-offer exchanges. The bilateral negotiating process, however, was considered by many commentators to have yielded very modest results.³ Out of a total of 70 offers (counting the European Communities as one entity), only just over 30 proposed upgrading Mode 4 commitments.

In spite of the lack of commitments by members, services talks were brought back by the Sixth WTO Ministerial Meeting in Hong Kong Special Administrative Region of China, from 13 to 18 December 2005. In Hong Kong Special Administrative Region of China members agreed to intensify negotiations in accordance with a set of objectives, some of which relate specifically to Mode 4 and foresaw the possibility of pursuing the request-offer negotiations also on a plurilateral basis.

In keeping with this mandate, a plurilateral Mode 4 process was launched in March 2006 through the submission of a collective request sponsored by 15 developing countries and addressed to nine developed country members. The focus of the request is on better commitments for categories of natural persons whose movement is unrelated to the establishment of a commercial presence abroad. Least developed countries also submitted a collective Mode 4 request, with a largely similar focus.

The plurilateral negotiating format is presently exhausted. In order to assess its impact on the Mode 4 negotiations, it will be necessary to wait for a new round of offers, for which there is currently no timeline.

Meanwhile, a Services Signalling Conference was held in Geneva, Switzerland, on 26 July 2008. About 32 Ministers exchanged ideas on how their governments' current services offers might be improved in response to requests that had been received, as well as on the contributions they expected from others. Overall, most participants indicated their readiness to improve access conditions for Mode 4. In several statements, these signals were linked to the development character of the DDA negotiations.

E. OTHER MODE 4-RELATED ACTIVITIES

As is the case with many services activities, the measurement of Mode 4 flows poses significant challenges. Even if no clear statistical framework is currently in place to assess the size of Mode 4 trade, conceptual work on the issue is under way by the United Nations Inter-agency Task Force on Statistics of International Trade in Services, in which the WTO participates. The Task Force is currently revising the Manual on Statistics of International Trade in Services (United Nations, 2002). Based on the GATS definition, the revised draft manual introduces the statistical conceptualization of Mode 4, proposes a number of relevant transactions in individual services sectors to measure the value of Mode 4 trade and indicates how existing migration and tourism statistics could be used to assess the physical movements and presence of persons.

In addition, at WTO members' request, a symposium on the movement of natural persons was held in Geneva, Switzerland, from 22 to 23 September 2008. The symposium, titled Mode 4 of the GATS—Taking Stock and Moving Forward, provided a platform for information exchange and discussion on Mode 4, with contributions from government officials, representatives of international organizations, academic researchers and private sector experts.⁴

F. CONCLUDING REMARKS

Mode 4 occupies a small place on the international migration agenda. The GATS is an agreement concerned with trade in services, not with migration. It covers the cross-border movement of persons only to the extent that such movement relates to the supply of services.

However, the implementation of Mode 4 commitments occurs within the regulatory framework governing migration. One of the major obstacles towards greater liberalisation of the movement of natural persons in the GATS lies precisely in the lack of adequate reflection of Mode 4 concepts in domestic immigration regimes. Trade is not an area that labour or immigration experts would normally be concerned with, the GATS is a relatively complex agreement and there is a conceptual and terminology gap between Mode 4 definitions and immigration regimes. Fostering a better-informed dialogue between the trade and migration communities would be valuable in providing impetus towards greater Mode 4 liberalisation.

NOTES

¹ The MFN obligation may be waived under certain conditions. These include the listing of MFN exemptions (a one-off possibility at the time of the GATS entry into force or, if later, of WTO accession) and the membership in economic integration agreements.

² For more information on the Doha Development Agenda, see [Http://www.wto.org/english/tratop_e/dda_e/dda_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (accessed 21 January 2009).

³ The Chairman of the WTO body overseeing the services negotiations summarized the prevailing sentiment about progress in the negotiations after two rounds of offers by stating that “it was widely acknowledged that the overall quality of initial and revised offers is unsatisfactory. Few, if any, new commercial opportunities would ensue for services suppliers” (WTO document TN/S/20, dated 11 July 2005).

⁴ The programme and the material presented at the symposium are available at: http://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/sym_sept08_e/sym_sept08_e.htm (accessed 20 January 2009).

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