

Service Providers on the Move

Labour Mobility and the WTO General Agreement on Trade in Services

Introduction

The development focus of the current multilateral trade negotiations launched in Doha in late 2001 has highlighted the need for trade liberalisation in areas of export interest for developing countries. When it comes to services, a key issue for these countries is the temporary movement of people across borders to supply services, for example in areas such as nursing or information technology.

One reason is that for many developing countries, sending people abroad to work temporarily is seen as virtually their only export interest in services. Some have indicated that their willingness to open their markets to foreign investment in services in the current World Trade Organization (WTO) talks will depend on whether there is meaningful progress on the movement of labour in the form of service suppliers. Mobility of labour has emerged as one of the “tests” of whether the negotiations deliver on the development promise laid down in the Doha Development Agenda (DDA) agreed by WTO ministers.

But labour mobility is also an issue for industrial countries. As business goes global, and product cycles shorten, companies need to be able to move more people – and more types of people – around more countries for shorter periods and at shorter notice. A range of businesses in developed countries have joined developing countries in pressing for progress on this issue. Services sectors, such as legal, health, information technology and construction, are seeing greater mobility of service providers and are increasingly focusing on this issue as they assess their interests in – or concerns about – the DDA.

At the same time, economic and technological developments continue to increase demand for skilled personnel, and an increasingly global market for skilled labour is emerging. Countries experiencing skills shortages in key areas look to temporary mobility as one solution, creating important new opportunities for some countries but giving rise in others to concerns about the loss of their skilled personnel, even temporarily. New patterns of

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mobility are also emerging, with some developed countries now major senders of personnel abroad and some developing countries major receivers. Underlying this are broader demographic shifts: over the next decade, many developed countries will face aging populations while in developing countries around 700 million young people will join the labour market.

This Policy Brief draws upon extensive OECD work on the question of temporary movement of people across borders to supply services, or “Mode 4” of the WTO General Agreement on Trade in Services (GATS). It covers definition and measurement; treatment of labour mobility under regional trade agreements (RTAs); the economic impact of Mode 4; options for progress in the current negotiations; and recognition of professional qualifications. ■

What is GATS Mode 4?

The GATS divides services trade into four modes of supply for the purposes of making market-opening commitments: cross-border supply (Mode 1); consumption abroad (Mode 2), supply via commercial presence (Mode 3) and supply via presence of natural persons (Mode 4). WTO members can choose to commit to providing market access and/or national treatment for each mode of supply for any number of the 160 or so possible services sectors and sub-sectors identified by the GATS.

Mode 4 is defined as the supply of a service by a supplier of one WTO member, through the presence of natural persons in the territory of another member on a temporary basis. While there is some debate about what exactly this means, Mode 4 service suppliers generally:

- gain entry for a specific purpose (e.g., to fulfil a service contract, either as self-employed or as an employee of a foreign service supplier);
- are confined to one sector (as opposed to workers who enter a country under general migration or asylum programs, who can move between sectors);
- are temporary – they are not migrating on a permanent basis nor seeking entry to the labour market in the host country. The GATS does not define “temporary” but it does specifically exclude permanent migration. In practice, the time frames set out in WTO member countries’ commitments on Mode 4 range from several weeks up to 3-5 years, depending on the countries, sectors and professions involved.

The GATS Mode 4 only covers movement of people supplying services; there are no parallel WTO rules covering movement of people in other areas such as

agriculture or manufacturing. And while in theory Mode 4 covers service suppliers at all skill levels, in practice WTO members’ commitments are limited to the higher skilled, usually managers, executives and specialists. ■

How big is this trade?

There are at present no reliable global figures for the size of Mode 4 trade. In terms of measuring *numbers* of people going into another country on a temporary basis to supply a service, available migration statistics are incomplete and not readily comparable between countries. It is also generally not possible to separate Mode 4 workers from broader groups. Even when migration data are sufficiently detailed to give occupations, such as “manager” for example, they do not separate those working in service sectors, as opposed to agriculture or manufacturing. Statistics to measure trade in services by *value* face a number of problems – for example, they have not traditionally been broken down by mode of supply and some of the proxies used to measure Mode 4, such as remittances from foreign workers, include persons beyond its scope. Despite progress, reliable figures are some way off. Nonetheless, the very rough estimates we do have suggest that Mode 4, valued at USD 30 billion in 1997, is the smallest of all the modes of services supply defined in the GATS. This is likely to be a significant under-estimate, however.

While the data are limited and problematic, they do allow us to draw an initial picture. It shows that temporary movement is increasing, with short-term movements (3-6 months) the highest growth area. However, the number of temporary workers remains small for most countries relative to the overall size of the labour market and the trade represented by these workers also remains small relative to overall trade in goods and services, and to other modes of trade in services. But notwithstanding its small scale, temporary movement is very important for some industries and for some countries. And this is not a “developed *versus* developing country” issue. Developed countries can be major exporters of labour, such as lawyers or consultancy professionals moving between the US and Europe, and some developing countries are significant importers – both Malaysia and South Africa, for example, receive workers from neighbouring countries. Mobility of skilled workers, generally concentrated in services sectors, is a peak growth area in both developed and developing countries, in part due to the creation of special programmes such as the fast-track visa procedures for nurses or special entry schemes for information and communications technology (ICT) workers introduced by a number of countries. ■

What is its economic impact?

Studies on the economic impact of liberalisation of Mode 4 suggest that it could generate global gains ranging from USD 150 million to over USD 300 million per year. Empirical measurement of the economic impact is still, however, at a preliminary stage. Several methodological problems, including those connected to the definition of Mode 4 and the absence of accurate statistical measures, make an empirical analysis difficult. Studies on the impact of liberalising Mode 4 may arguably over-estimate the gains from liberalisation (e.g., in assuming wage adjustment) and underestimate some of the costs, such as assistance for low skilled workers in coping with adjustment.

However, recent OECD studies have examined some of the implications of Mode 4 liberalisation, to help WTO members identify the issues at stake and the appropriate regulatory responses to freer temporary movement of people across borders to supply services. These studies show that:

- The economic impact of Mode 4 may vary considerably between countries and service sectors and will differ according to the type and skill levels of workers involved, as well as the governing regulatory framework. There is no single way of liberalising Mode 4. Liberalisation will have different impacts at the global, country, business and individual levels. In all cases, the regulatory environment will greatly determine the nature of the impact.
- For countries *sending* service suppliers abroad, Mode 4 can help reduce pressure on labour markets, and can increase both capital flows and human capital (in India, for example, some 115 000 engineers graduate each year, and the local labour market cannot absorb all of them). Remittances from service suppliers working abroad can also be an important source of revenue for many developing countries. (Remittances for 2001/02 in Bangladesh totalled USD 2.5 billion, representing almost 4% of GDP and one-third of gross export earnings). But there are also some risks associated with sending workers abroad, including the loss of scarce skilled personnel and the loss of public investment in education. However, these risks may be lessened by the temporary nature of Mode 4 movement.
- For *receiving* countries, Mode 4 can contribute to gains in competitiveness, and provide some short-term relief for labour market shortages. However, there are likely to be some adjustment costs, and Mode 4 liberalisation needs to be accompanied by appropriate regulation.

While developing countries are still the key *demanders* on Mode 4 and stand to see an especially

positive economic impact from liberalisation, it would be a mistake to think that temporary movement of service suppliers works in the interests of these countries alone. In absolute terms, developed countries are still the main beneficiaries. The mobility of persons under Mode 4 is not limited to movements from developing countries to developed countries. On the contrary, the flow of service suppliers between developed countries is very significant, as it is between developing countries. Flows from developed countries to developing countries are more limited. In any case, many of the real gains from Mode 4 accrue at the individual level (in terms of experience and income), and at enterprise level (in terms of efficiency and flexibility). ■

Why is liberalisation so difficult?

With all these “push” factors – changes in the world economy, GATS negotiations, as well as estimates of significant economic gains – why is liberalisation of movement of service providers so difficult?

The main fear, both for the receiving and the sending country, is that persons who move under Mode 4 on a temporary basis will then try to establish themselves permanently in the host country. Security considerations, brought into sharper focus since the US terrorist attacks of 11 September 2001, have also changed the balance between the facilitation and enforcement aspects of immigration controls. Measures to facilitate the entry of foreign workers are increasingly coming under scrutiny to ensure that they do not become conduits for entry by illegal or undesirable individuals.

It is true that Mode 4 temporary movement can be a first step to permanent residence, either legally by changing visa categories or illegally by overstaying. But overstaying is a risk with all temporary entry, including tourists, and in fact increased Mode 4 movement could arguably help to discourage employers from illegally using undocumented workers by making temporary foreign workers available legally for seasonal activities. In the case of temporary workers legally applying to change status, this may serve as a useful pre-selection of candidates for future migration. Indeed, Mode 4 arguably makes it easier to control migration flows, in effect taking the place of certain kinds of clandestine or permanent migration. While it is difficult to determine a migrant worker's intentions before he or she arrives in the host country, objective criteria can be established for measuring the “risk” of permanent settlement.

And while there is little in the way of empirical measurement available, it would seem that Mode 4 is not a preferred channel for permanent immigration. The UK work permit system allows people to apply for

permanent settlement after four years of continuous employment, but in practice, a relatively small proportion seem to settle permanently (in 1998, 3 160 work permit holders settled in the UK, against approximately 70-80 000 work permits approved each year). Indeed, even where all, or most, barriers have been removed, floods of foreign workers have generally failed to materialise. Less than 2% of European Union citizens work in Europe outside their home countries and less than 0.5% move between member states each year. Even EU regions with relatively high unemployment are not experiencing significant movement of labour, due to elements such as language and cultural differences; lack of information; bureaucratic obstacles (especially related to recognition of qualifications); limits on transfer of pension rights; and tax differences.

However, one fundamental issue is that, while labour market conditions – and migration needs – fluctuate, GATS commitments do not. GATS commitments aim to provide certainty, guaranteeing minimum treatment from which a WTO member will not deviate without compensating other members. Governments typically wish to maintain maximum flexibility to regulate the flow of temporary entrants according to their needs and are reluctant to commit in perpetuity to their existing regimes. This is both good and bad news: while existing regimes for temporary entry are considerably more liberal than GATS commitments on Mode 4 would suggest, there may be little prospect of such access being bound (made the guaranteed minimum standard) in negotiations.

Further, from the point of view of migration authorities, Mode 4 movement represents a tiny proportion of the people crossing borders every day. The additional resources required to create special treatment for such persons may be hard to justify in the face of other priorities for larger groups and could be beyond the administrative capacities of some WTO members. ■

What impact on local pay and conditions?

Wages and conditions of temporary foreign workers are a key bone of contention. Should such workers receive the same wages and conditions as nationals employed in the same industry? In many developed countries, this is a legal obligation, and 50 WTO members have included this stipulation in their Mode 4 commitments. But some developing countries argue that this undermines the comparative advantage upon which their Mode 4 trade is based – their relatively inexpensive labour. Such arguments are met with fierce resistance from unions in developed countries, for fear that cheaper temporary foreign workers could undermine their hard-won gains. Indeed, to prevent foreign workers being used

as “strike breakers”, 22 WTO members have reserved the right to suspend Mode 4 commitments in the event of labour-management disputes. Even where foreign workers are not actually paid less, their presence is seen by some as a brake on reform. Unions in some countries have criticised governments for bringing in foreign nurses temporarily, for example, arguing that it allows the authorities to ignore the root causes of their nursing shortages – the need for better wages and conditions. Unions also argue that, as a temporary Indian worker in the United States has to meet US, not Indian, living costs, there is no justification for paying lower wages. And, they say, if temporary foreign workers are not brought fully under local labour law, they are highly vulnerable to exploitation.

However, equal treatment does not always result in equitable outcomes. Some foreign employees are required to contribute to social security programmes from which they receive no, or minimal, benefits. While unions are concerned that exemption from contributions could impact upon the competitiveness of foreign workers compared to nationals, they recognise the basic inequity in workers contributing to benefits that they will never be eligible to receive. One alternative could be for security charges from temporary migrant workers to be paid into separate funds and reimbursed upon the workers’ return to their home country.

Mode 4 is also viewed by some as a source of insecurity, for incoming workers because they may face unstable, low-paying jobs and for local workers because of the risk of “social dumping” (that their conditions worsen, or their unemployment increases, due to competition from lower-cost foreign workers). While there are certainly abuses, and even cases of “modern slavery”, it would seem that generally it is not being a foreign service supplier that determines the degree of insecurity, but rather the nature of the job being performed. Service suppliers temporarily moving abroad are often the most dynamic and the best qualified, and are selected for this reason. These workers can be found at all levels of a company. Equally, in terms of wages, the differences observed may be attributable to productivity differentials as much as to “social dumping”. ■

What about the brain drain?

One of the chief obstacles to progress in negotiations to liberalise Mode 4 is fear of the “brain drain”. Some developing countries believe that they have more to lose from the departure of their scarce skilled personnel than they have to gain from the very limited access to other markets likely to be granted to lower-skilled workers in the negotiations. Brain drain is also an issue for some developed countries, for example

movement of highly-skilled workers from Australia to the US and UK, and from Canada to the US. And even the temporary loss of skilled workers can be a problem when foreign demand is high and domestic supply limited. Nursing is a case in point: under pressure from South Africa and countries in the Caribbean facing health crises with limited health care workers, the UK government has agreed not to recruit nurses from these countries to meet its own shortage.

However, recent years have seen a growing rate of return home by highly qualified workers, with the short-term costs of temporary movement of skilled people offset by the benefits to their home country when they come back with enhanced skills and international contacts. Mode 4 – by definition temporary – can contribute to this “brain circulation”. For example, while India may have exported a number of its skilled workers – in Silicon Valley, 30% of software engineers are estimated to be of Indian origin – the flow has not

been one-way. India increased its IT exports from USD 150 million in 1990 to USD 4 billion in 2000, with returnees from Silicon Valley, thanks to their upgraded skills, international links and experience, becoming a major force behind the growth of the Indian software industry. Even when they do not return, foreign workers often maintain close links with their home country and can contribute to its development in indirect ways. Indians who have found success in Silicon Valley, for example, have financed start-ups in India.

Opportunities in the home country can be an important determinant of whether skilled workers move and when they return to their home countries. As the market for skills becomes globalised, countries pay heavily for policy failures, but migrants return home as conditions improve. Some, such as Chinese Taipei, have been very successful in luring back their lost scientists via incentives, as well as broader economic reform. But there can be a less virtuous circle: skilled

Box 1. How open are countries' regimes?

Countries' GATS commitments are not a good indicator of the actual level of access provided to service suppliers under GATS Mode 4, as they generally do not reflect the current migration regime but rather, a baseline or “floor” of practice. To obtain an accurate picture, it is necessary to look at existing temporary entry schemes within the migration systems of WTO members.

However, Mode 4 is a trade concept, not a migration one. This means that no migration category is associated directly with Mode 4, so in order to measure current access it is necessary to identify which type of entrants might fall under Mode 4 and which visa categories might be relevant. This involves some interpretation, as the information required for migration purposes is not always the same as that required to judge the extent of Mode 4 coverage. Case studies mapping Mode 4 entry against the temporary entry regimes of both Australia and the United States highlight a few issues. Both systems separate temporary from permanent entry, and, within temporary entry, distinguish between short-term visits (often three months or less) and longer-term presence (e.g., up to four to five years). Both also distinguish between business visitors and tourists, and provide information on the country of origin of entrants and their type of occupation (in terms of skill level, sector, or specific profession). But several other issues arise:

- Migration categories generally do not distinguish between service and non-service activities. Although some visa categories are targeted toward certain sectors (e.g., medical practitioner), others refer to more general skills or positions, such as finance manager, company secretary, or human resources manager, without specifying the sector.
- It is not always possible to judge whether the activities covered by some visa categories are truly commercial and thus qualify as trade for GATS purposes. In some cases, the extent to which the activity is commercial is unclear (e.g., sports visas can include both amateurs and professionals). In others, such as occupational trainees or professional exchange programmes, it is hard to judge whether the work would qualify as the supply of a service under the GATS.
- Some visa categories include persons both consuming and supplying services. For example, trainees may engage in some on-the-job activities, but also may fall under Mode 2 (consumption abroad of training services). Exchange visitors could encompass both those consuming services (e.g., students participating in a given programme) and providing services (e.g., visiting lecturers). Such “mixed mode” categories can also occur when those entering to consume a service are granted limited working rights (e.g., students or certain types of tourist).

Notwithstanding these difficulties, it can be observed that the actual US and Australian migration systems for temporary entry are broader, more detailed, and more flexible than those countries' GATS commitments. Actual trade under Mode 4 is much greater than the commitments would suggest, with temporary entry increasing for both countries. The case studies also underline the need for dialogue at national level among trade, migration, and labour authorities to gain an understanding of the relationship between temporary entry schemes and Mode 4 of the GATS.

persons tend to attract other skilled persons, leaving weaker communities even further depleted. Some developing countries point to out-sourcing of work, including over the Internet, as an alternative to sending their qualified people abroad. ■

What is being done under regional trade agreements?

Regional trade agreements (RTAs) take a variety of approaches to labour mobility. Some agreements cover the mobility of all persons (including permanent migration and non-workers); others offer free movement of labour (including entry into the local labour market); others are limited to facilitated movement for certain kinds of trade- or investment- related activities; and others, like the GATS, are confined to temporary movement and cover only service suppliers, explicitly excluding access to the labour market or permanent migration. Additionally, some cover workers at all skill levels, while others are limited to the highly skilled.

These differing approaches in RTAs reflect a range of factors, including the degree of geographical proximity and the extent of similarities in the levels of development of the parties, as well as other cultural and historical ties. While generally, agreements among

countries enjoying geographic proximity and similar levels of development have a more liberal approach to labour mobility, this is not always the case.

To assess the degree of actual liberalisation offered in an RTA, provisions related to labour mobility should be read in conjunction with provisions related to supply of services. Easier movement of people does not always automatically entail the right to provide specific services; actual opportunities will also depend upon the degree of liberalisation in particular service sectors. Generally, the right of labour mobility does not automatically entail the right to practice a certain profession; candidates must still meet all conditions under national regulations regarding licensing and recognition of qualifications. Also, labour mobility does not generally over-ride general migration requirements and parties retain broad discretion to grant, refuse and administer residence permits and visas. ■

What is on the table in the GATS negotiations?

Proposals on the table in the WTO negotiations seek either to increase market access (mostly developing country proposals) or to increase the effectiveness of existing market access (supported by most major developed countries) (see Box 2). ■

Box 2. Some proposals on the table in the negotiations

Greater clarity and predictability in WTO members' commitments: e.g., by *i)* agreeing common definitions for the main categories of personnel included in many WTO members' commitments (many refer to "executives, managers, specialists", but there is no common understanding of who is covered by these categories); *ii)* providing information on economic needs tests (i.e., where entry of foreigners is subject to an assessment of needs in the domestic market), such as the criteria used, the authorities responsible, likely time frame for determinations and record of recent decisions.

Greater transparency: existing access is not always used because service suppliers lack information on the necessary requirements and procedures. WTO members could provide one-stop information on all relevant procedures and requirements via a dedicated web-site covering all WTO members; via notifications to the WTO, or by creating a one-stop contact point at national level. Other suggestions include prior consultation on regulatory changes, timely responses to applications and the right of appeal.

GATS visa: to facilitate entry of Mode 4 workers, including by avoiding the detailed visa procedures currently required in many countries (often not separated from permanent migration). The visa would be issued rapidly, be time-limited, cover both independent service suppliers and intra-corporate transferees, include appeal rights and be backed up by a bond, with sanctions for abuse.

More market access: *i)* Commitments for particular service sectors of high demand (e.g., ICT, professional services) rather than the current blanket treatment for Mode 4 entry across all sectors; *ii)* Better access for some groups, in particular intra-corporate transferees, via "blanket" applications by companies or by charging companies for streamlined processing (including via a GATS visa); *iii)* More access for other types of skilled, but not necessarily highly skilled, personnel such as "technical support personnel" or "non-professional essential personnel" or for trainees (future executives).

Recognition of qualifications

Some developing countries have highlighted recognition of the qualifications or expertise of their service suppliers as a significant issue for the negotiations; without such recognition, market access is of limited value.

GATS disciplines leave considerable regulatory flexibility to WTO members to accord recognition as they see fit. WTO members may grant recognition to some WTO members and not others, provided they afford other interested WTO members adequate opportunity to negotiate their accession to the agreement or to negotiate similar ones, and that they apply the same standards to all WTO members. Where a member commits to allow market access for professional services, it must also provide adequate procedures for verifying the competence of professionals from all other WTO members.

Many mutual recognition agreements (MRAs) are undertaken by neighbouring countries, often as part of broader integration initiatives, or between countries with historical links. Most are between developed countries – agreements among developing countries are largely limited to Latin America. Some developing countries are included in recognition arrangements with OECD countries, in particular in MRAs pursued by professional bodies or as part of RTAs. In general, industry agreements have made more progress in terms of the recognition achieved and breadth of membership. While an overall assessment is difficult, MRAs have generally made relatively limited progress.

Several ideas have been put forward for improving MRAs. These include improving the implementation of GATS disciplines, including increased transparency; developing a model MRA; and developing multilateral norms on specific elements of recognition of interest to developing countries. Countries can also use the DDA negotiations to seek information on the recognition procedures of their trading partners and to encourage improvements in those procedures.

However, the problem is not only that MRAs do not seem to be happening, but that one cannot make them happen. The fundamental issue is one of incentives – MRAs are demand-driven, requiring industry interest in accessing another country's market, or a skill shortage in the home country, to make complex and resource-intensive negotiations worthwhile. Technical assistance could help developing countries to both negotiate MRAs and meet relevant standards. The process of negotiating MRAs itself disseminates best practice and can act as a spur to domestic reform. ■

Prospects for Mode 4 in the current WTO talks

Expectations are high for progress on Mode 4 in the WTO negotiations under the Doha Development Agenda (DDA). While the gains from liberalisation of Mode 4 are potentially great, a number of concerns will need to be addressed and appropriate regulatory responses found. None of the problems associated with Mode 4 movement of service suppliers are necessarily insurmountable, but they require a new level of policy co-ordination and dialogue between trade, labour and migration authorities, both at the national and international level, to find workable solutions.

Two things are certain. One is that Mode 4 will always present challenges in services trade liberalisation because it deals directly with global movements of human beings, with all the complexities – economic, political and social – that entails. The other is that, one way or another, people will continue to move. The global movement of service suppliers such as nurses, construction and ICT workers that has grown in the absence of GATS commitments is thus likely to continue, whatever the outcome of the negotiations. ■

For further information

For further information about the OECD's work in this area, contact Julia Nielson, Tel.: (33-1) 45 24 88 90 (email: julia.nielson@oecd.org). ■

For further reading

- **Opening up Trade in Services: Opportunities and Gains for Developing Countries**, OECD, August 2003, available at www.oecd.org/publications under Policy Brief.
- **Regionalism and the Multilateral Trading System**, OECD, August 2003, available at www.oecd.org/publications under Policy Brief.
- **Service Providers on the Move: a Closer Look at Labour Mobility and the GATS**, available at www.oecd.org/trade under Publications and Documents/Case Studies.
- **Labour Mobility in Regional Trade Agreements and the Multilateral Trading System**, available at www.oecd.org/trade under Publications and Documents/Case Studies.
- **Service Providers on the Move: the Economic Impact of Mode 4**, available at www.oecd.org/trade under Publications and Documents/Case Studies.
- **Current Regimes for the Temporary Entry of Service Providers: Case Study of Australia**, available at www.oecd.org/trade under Publications and Documents/Case Studies.
- **Current Regimes for the Temporary Movement of Service Providers: Case Study of the United States**, available at www.oecd.org/trade under Publications and Documents/Case Studies.
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