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**Movement of workers in the WTO negotiations:
a development perspective**

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Global Commission on International Migration

In his report on the 'Strengthening of the United Nations: an agenda for further change', UN Secretary-General Kofi Annan identified migration as a priority issue for the international community.

Wishing to provide the framework for the formulation of a coherent, comprehensive and global response to migration issues, and acting on the encouragement of the UN Secretary-General, Sweden and Switzerland, together with the governments of Brazil, Morocco, and the Philippines, decided to establish a Global Commission on International Migration (GCIM). Many additional countries subsequently supported this initiative and an open-ended Core Group of Governments established itself to support and follow the work of the Commission.

The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It is comprised of 19 Commissioners.

The mandate of the Commission is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, to examine the inter-linkages between migration and other global issues, and to present appropriate recommendations to the Secretary-General and other stakeholders.

The research paper series 'Global Migration Perspectives' is published by the GCIM Secretariat, and is intended to contribute to the current discourse on issues related to international migration. The opinions expressed in these papers are strictly those of the authors and do not represent the views of the Commission or its Secretariat. The series is edited by Dr Jeff Crisp and Dr Khalid Koser and managed by Rebekah Thomas.

Potential contributors to this series of research papers are invited to contact the GCIM Secretariat. Guidelines for authors can be found on the GCIM website.

Introduction

Perhaps one of the most complex and certainly less developed issues of international trade is currently that of persons crossing borders to work in a foreign country.¹ If the movement of human beings is done on a temporal basis then it falls under the coverage of the World Trade Organization (WTO) agreement dealing with trade in services, the GATS.

This rather particular kind of trade was regulated for the very first time by incorporating it within an original classification of “modes of supply”, one of the different forms under which a service can be delivered. The temporary movement of natural persons, or ‘Mode 4’ in GATS terminology, is especially interesting, not only in terms of the economic possibilities (still not completely explored), that it creates, but also since it touches upon social and cultural issues. In this sense, although technically not permanent migration due to its temporal character, it is closely linked to such movements. In short, mode 4 deals with nothing less than human beings crossing borders to work in another country. It is evident that the treatment of migrant workers and the relevant legislation surrounding mode 4 is much more complex than the simple exchange of merchandise. Indeed, the relation to migration issues is undeniable.

The relatively recent incorporation of this type of service supply into an international agreement and its social and economic components imply that there are still many issues to be explored and several questions remain unanswered. This explains some of the paradoxes surrounding Mode 4. Mode 4 is as important for small developing countries as it is for multinational companies. Nevertheless, nowadays, it is the least liberalized mode of services. This situation, added to the lack of complete statistics and information on the extent and value of this type of trade, renders the temporary movement of workers a somewhat grey area.

In other words, although everybody agrees on the need for liberalization, a great deal of uncertainty remains as to the real consequences, benefits and disadvantages it might bring for each party. The objective of this paper is to encourage a better understanding of the meaning of the movement of natural persons and, in particular, development perspectives of such movement.

The movement of natural persons as service providers will remain a controversial issue until the end of the current round of negotiations at the WTO. The controversy surrounding the need for greater market openness runs parallel to the debate on the extent of liberalization. The question remains: is it possible to draw a clear line between the interests of developed and developing countries in this field?

In order to answer this question, some further issues should be dealt with first: Is it possible to assess the gains from liberalizing mode 4? Do current national regimes distinguish between the temporary and permanent movement of persons? What is the

¹ This paper reflects exclusively the view of the author in her personal capacity and in no way reflects the opinions or positions of any government or institution.

existing level of mode 4 commitment? What are the political concerns involved in its liberalization? How do changes in the world economy affect the vision countries have in respect to the movement of natural persons? How is this question related to permanent migration?

With these questions in mind, this paper will try to explore the advantages and disadvantages of opening the market to foreign individual service providers, both from the perspective of developing and developed WTO Members. Moreover, the concerns and needs of these two categories will be looked at in more detail. The key question is to determine whether there is a clash of interests between them in this respect, and who would benefit or be disadvantaged from mode 4 liberalization.

GATS MODE 4:

General overview

The General Agreement on Trade in Services (hereinafter GATS) was drawn up as a result of the Uruguay round of negotiations that began in 1986 and ended in December 1993. These discussions led to nearly 30 legal agreements and a large number of supplementary decisions, all signed in April 1994 by over 100 countries. One of the main achievements of this round of negotiations was to create a new institution, the World Trade Organization (WTO).

The new GATS agreement extended the remit of internationally agreed rules of services, a rapidly growing area considered to represent some 20 per cent of the world's total trade.² In fact, as Chanda³ points out, the incorporation of such rules into the world trading system was a relatively inevitable result of the increasing importance of services, in both international trade and investment transactions. And this phenomenon can be explained by several factors; rapid advances in information technology, a rising demand for services in both developed and developing countries, the growing importance of multinational firms, and the increased outsourcing of many service activities by firms. Today, depending on the resources' structure and the level of economic development of a country, the share that services represent in the national structure of production and employment may be anything from under 30 to over 70 per cent.

Trade in services differs from the traditional international trade in goods in terms of the need for direct physical interaction between supplier and consumer. Therefore, the range of transactions covered by GATS is particularly broad. In this sense, Article I defines trade in services by means of four possible modes of supply: cross-border, consumption abroad, commercial presence in the consuming country, and the temporary movement of natural persons.⁴

² Balance of Payment (BOP) basis. Source: WTO Secretariat.

³ Chanda (1999).

⁴ GATS art. I:2. A note by the GATT Secretariat explains that the "modes are essentially defined on the basis of the *origin* of the service supplier and the consumer, and the degree of *territorial presence* which

Cross-border supply of services (Mode 1): is defined as the supply of a service “from the territory of one Member into the territory of another Member”. This mode corresponds to the traditional form of trade in goods, since it maintains a clear geographical separation between buyer and seller (only the service itself crosses national frontiers).

A clear example in the health services sector is telediagnosis taking place in country A of a patient in country B.

Consumption abroad (Mode 2): is defined as the supply of a service “in the territory of one Member to the service consumer of another Member”. Typical examples are a consumer who travels abroad for tourism or to attend an educational establishment.

Commercial presence (Mode 3): implies the supply of a service through the presence of the foreign supplier in the territory of another WTO member. Clear cases are the establishment of branches or agencies, for example, a hospital operator from country B who has a subsidiary in A. This is the most important mode of supply in terms of economic value and also the most frequently found in the GATS commitments.

Presence of natural persons (Mode 4): defined in art. 1:2 (d) of GATS as the supply of a service; “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member” which in practical terms means the admission of foreign nationals to another country to provide services there. A physician from country B that practices medicine in country A is a clear example.

Unfortunately, not everything is quite so clear cut, and in order to understand what is really covered by this general definition, a number of clarifications need to be made. The Annex on the Movement of Natural Persons Supplying Services under the Agreement elaborates further on this point. It applies to two categories:

Measures affecting natural persons who are service suppliers of a Member

Natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

This suggests that Mode 4 includes both service providers who are working abroad:

- a) In an individual capacity (independent services providers, such as professionals)
- b) Those who are part of a commercial establishment.

Generally, and following an OECD work on the subject,⁵ GATS Mode 4 is seen as covering:

they have at the moment the service is delivered” (GATT document MTN.GNS/W/164, 3 September 1993).

⁵ OECD (2002).

The provision of services where a foreign-service provider has obtained a contract to supply services to the host country company and sends his employees to do it

Independent service providers abroad: an individual selling services to a host country company or to an individual;

Persons employed abroad by foreign companies established in the host country (but excluding nationals of the host country).

Mode 4 and migration

Although the temporary movement of natural persons is closely related to permanent migration issues there exists a clear separation between them. This situation is reflected in the Annex to the GATS that covers only persons seeking non-permanent entry to supply services abroad. Moreover, the Annex specifies that the agreement does not cover individuals looking for employment in another country, nor any requirement related to citizenship, residence or employment. That is to say, Mode 4 covers only temporary service suppliers.

The concept of “temporary” however, poses several problems since it is not defined anywhere in the Agreement in terms of a specific time period, and only in a negative way in the Annex (e.g. non-permanent). Therefore, Members are provided with a fairly wide margin of discretion to interpret this status, which usually varies according to the category of people dealt with⁶. In order to determine whether the requirement of transitory stay is fulfilled, as well as the condition of not seeking access to the labour market, Butkeviciene⁷ suggests looking at the process leading to employment. That is, those cases where the individual engages in an active search and solicits employment abroad are clearly outside the scope of the Annex. On the contrary, if it is the service company that is looking for qualified persons, those individuals hired for a temporary period of time as a result of that search are, in fact, covered by the Annex.

In practice, most specific commitments made by WTO members distinguish between:

- Business visitors: short term stays of a few months, often limited to 3, with no remuneration received in the host country
- Intra-corporate transferees: existing employees transferred within the same foreign controlled company, generally for periods of between 2 and 5 years

⁶ The Annex also specifies that it shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity, and to ensure the orderly movement of natural persons across its borders. In addition, the sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under specific commitments.

⁷ UNCTAD (2002).

- Service suppliers on specific term contracts with foreign or national owned firms
- Self-employed service providers whose remuneration is wholly or only partly received in the host country. (Following Arkell, 1998, cited by OECD 2000).

Another problem that this definition poses is the distinction between persons entering the labour market or not. In fact, a longer period, rising above 3 years, is considered by some commentators as tantamount to entering the labour market.

As noted by the OECD, these are only some examples of the difficulties that arise when trying to arrive at a single concept of Mode 4. Therefore, current definitions opt for a “cumulative approach” defining it both in terms of duration, and purpose of stay. In other words, those service suppliers who enter the market for a specific purpose (to fulfil a service contract as a self-employed person or as an employee of a foreign service supplier); are normally confined to one sector (as opposed to workers who enter under general migration or asylum programs who can move between sectors); and are temporary (they are neither migrating on a permanent basis nor seeking entry to the labour market)⁸.

It is certain then that Mode 4 movement is different from migration. Nevertheless, public debate increasingly assimilates the importation of labour, under mode 4, and longer-term migration. Several factors might explain this phenomenon, in particular the close relation to very sensitive issues, such as the way countries regulate the entry of foreigners (workers) into their territories. Further, concerns usually arise regarding the likelihood of temporary entrance leading towards permanent residence. For example, when a visa allows a worker to change from temporary to permanent status, or when it allows for a change in the sector of activity.

However, while figures are not complete, there appears to be little evidence of a large-scale transfer of workers from temporary to permanent status. An OECD study⁹ shows that this is the case in the United Kingdom, where the work permit system allows employees to apply for permanent settlement after four years of continuous employment. Figures show that, in practice, only a small proportion opt to do so¹⁰. The same conclusion was drawn by the NAFTA visa system, with respect to Canadians working in the US.

Moreover, available data also shows that the international migration of people in search of work has not increased significantly in recent decades. Annual migration flows from developing countries were no greater in 1995 than in 1970, relative to population size. During that period, the total migrant stock increased 1.9 %, not much more than the 1.8 % population growth rate.

⁸ OECD (2000).

⁹ OECD (2002).

¹⁰ In 1998, only 3.160 workers, from a total of 70-80.000 permits awarded, settled in the UK, according to information of the United Kingdom Home Office.

The same study provides some other interesting information: the overall effect of international migration is also much smaller than that of capital or trade. Only about 2% of people born in low and middle income countries do not live in their country of origin. In 1996 global exports of goods represented around 29% of world GDP; global labour migration was limited to around 120 million people, or 2.3 % of the world population. Additionally, in 1995, migrants sent home about one-third of net capital flows. Finally, it is important to consider that much labour mobility takes place between developing countries. In other words, most migrants stay within their regions.

Measuring mode 4

One of the main problems affecting Mode 4 is the lack of reliable or complete sources of statistical information. There is no need to look very closely at the existing data and current knowledge about the actual movement of natural persons to see that statistics in Mode 4 are far from satisfactory. No internationally comparable measure of trade created through the movement of natural persons is available to date. The existing statistical measures are, at best, incomplete or only indicative. In addition, few countries systematically collect data at a sufficient level of desegregation.

Due to the intangible and non-storable nature of services, it is generally difficult to assess the value added and trade in this sector. But when it comes to the movement of natural persons, it is even more difficult. Even where data exists, there is often a problem of comparability across different countries.

The major source of information for international trade in services related statistics is the IMF Balance of Payments (BMP 5). There are other useful sources, such as the UN Statistics of International Migrations and the International Labour Organization's employment statistics. Also the individual countries' databases may be of use. However, since no collection system in any country gives the complete coverage needed for measuring GATS, related to the movement of natural persons that work abroad, and the migration system is not concerned with the trade value generated by the international movement of workers, the existing information can only be used as an aid to assessments involving the use of further data collected within each country from unconnected systems such as enterprises, labour and household surveys.

Moreover, as noted by an OECD study, every statistical system was designed with a specific purpose and its own conceptual framework. This generates the need to "translate" each time in order to find aspects of relevance for GATS. For example, "temporary" workers entering the labour market are a feasible situation from the migration point of view, but not from GATS Mode 4. On the contrary, a "temporary" stay of more than 12 months is allowed under GATS, but not for migration statistics that define the term "temporary" as less than a year. To make matters worse, as explained above, there is not even a definition of "temporary" under GATS Mode 4.

In spite of the aforementioned circumstances, the OECD was able to draw out some relevant conclusions with respect to the current status of the international temporary movement of natural persons.¹¹

Temporary movement is increasing, with short-term movements being the highest growth area.

Nonetheless, the number of temporary movement of workers remains small for most countries relative to the overall size of the labour market (with the possible exception of the Arab Gulf countries).

The trade represented by these workers also remains small compared to overall trade in goods and services, and to other modes of trade in services.

Notwithstanding its small scale in total, temporary movement is very important for some industries and for some countries.

Labour mobility for skilled workers is also increasing and seems to be concentrated in the services sectors. Additionally, special programs generally facilitate movement of highly skilled workers.

Current state of play

One particularly delicate point that affects specifically the movement of natural persons, but also the whole services world in general, is that of “regulation vs. liberalization”. In fact, service sectors touch upon sensitive issues such as the provision of universal services, consumer protection and economy-wide externalities. Therefore, governments tend to regulate them, which means that there are several domestic measures involved. Therefore, liberalization and market access require domestic legislative reforms, not always easy to achieve.

Since the results achieved in the Uruguay round for services were less than comprehensive, the GATS itself includes the obligation of further negotiations. As a matter of fact, it is often said that the GATS was less a market opening agreement than a framework which established rules and laid the groundwork for future liberalization¹². And even for those modest general standards, very little was achieved in particular with respect to Mode 4. Indeed, by the end of the Round, the developing countries, that had been the main promoters of the liberalization on the movement of natural persons, were so concerned with the lack of results in this respect, that a special Negotiating Group on Movement of Natural Persons was created. However, the conclusion of the negotiations arrived in July 1995, without significant improvements.

It is not difficult to see that the degree of liberalization achieved so far with respect to the transitory movement of natural persons is less than comprehensive. These quite disappointing results are currently reflected in the lack of liberalization in an area considered key for developing countries. As Young notes¹³, precisely among the basic

¹¹ OECD (2002), page 27.

¹² OECD (2002).

¹³ Young (2000).

assumptions behind the interest of further liberalizing the movement of natural persons is the belief in its economical benefit, since it would allow human resources to move freely to areas where they are most productive. It is also noted that productivity is measured not only in terms of efficiency, but also in terms of the development of knowledge.

These considerations help us understand why the temporary movement of natural persons is considered of such importance in the current round of negotiations that began in 2000.

The liberalization of services trade under GATS is undertaken through horizontal (or cross-sectoral) and sector- specific commitments made by each country, with respect to Market Access (MA) and National Treatment (NT) obligations. Even though it is true that almost all WTO members have committed themselves with respect to mode 4, the sectoral coverage of those commitments is far from comprehensive. Only 50 per cent of service sectors have been included in developed country schedules, while developing members included only some 11 per cent. Also within a given sector, trade conditions for mode 4 tend to be significantly more restrictive than conditions in other modes of delivery.

The general policy is that no commitments are made with respect to the temporary movement of workers, except for those specifically written, therefore explaining the restrictive pattern of commitments. In what sense are they restrictive? In terms of numbers, types of workers and sectors covered, as well as the degree of liberalization. In general terms, it is clear that what the Uruguay Round commitments on the movement of natural persons achieved was to re-affirm the status quo, in some cases, failing to do even that. The GATS commitment structure actually takes the current level of restrictions and adds further limitations and restrictions.

Young¹⁴ recalls that during the Uruguay Round, multinational company providers of business services pressed for the liberalization of the movement of natural persons, with an emphasis on certain categories: managers, executives, specialists and professionals providing legal or accountancy and other such services. And their wishes mostly came true: more than two-thirds of the entries concern executives, managers and specialists, and about one-third focus explicitly on intra-corporate transferees. This constitutes a clear bias towards skilled personnel.

On the contrary, commitments in general do not provide for entry of the second category of natural persons covered by the Annex on the Movement of Natural Persons, that is, “service suppliers of a member”. This refers, for example, to self-employed suppliers who obtain their remuneration directly from customers. Some countries have, on the other hand, committed access for additional categories of natural persons¹⁵.

¹⁴ Young (2000).

¹⁵ For example, Canada committed access to “contract related natural persons” providing services that cover engineers, agrolologists, architects, forestry professionals, goomatic professionals and land surveyors for a period of three months. The United States has made commitments on “specialty occupations” up to 65,000 persons annually on a worldwide basis, in occupations requiring highly specialized knowledge and full state licensing, and very strict conditions. That might be, for instance, the case of an employer that has

Apart from those results, no other major improvement was achieved. The deepening of such liberalization is, therefore, one of the main goals of the current round of negotiations.

The difficulties arising when trying to quantify or measure trade in services, the general characteristic referred to previously, appears clearly when analysing mode 4 barriers. Before dealing with this, however, it is important to bear in mind that not all regulations are actual barriers to trade. Although it is difficult to determine which is which in abstract, in general terms it is possible to say that those measures addressing public policy concerns, such as consumer protection, public interest and security concerns, are usually not considered as barriers.

Most WTO members avoid comprehensive commitments. Partly because in many cases, commitments apply only to specific categories, mostly people with an advanced level of training and expertise. It is common to see Market Access limitations, such as numerical quotas, together with measures denying national treatment or, in terms of article XVII:3, “modifying the conditions of competition in favour of domestic service or service suppliers”, for persons not belonging to those higher categories. Relevant measures include residency requirements and non-eligibility under subsidies schemes.

In any case, it is possible to distinguish between four main categories of restrictions applying to the temporary movement of natural persons¹⁶:

Regulations concerning the entry and stay of services providers;
Regulations on recognition and qualifications, work experience and training;
Regulations on different treatment between domestic and foreign service personnel; and
Regulations on other modes of supply, which indirectly affects the scope for the movement of natural persons.

Regulations concerning the entry and stay of services providers

The regulations concerning the entry and stay of services providers come, in many cases, directly from immigration norms and, as such, are excluded from the scope of GATS. Nevertheless, it is usually considered that one of the main problems in this respect is, precisely, the lack of a correct distinction between temporary and permanent movement of labour. That is why immigration rules actually affect the provision of mode 4 services. Between the main problems arising from this type of legislation it is possible to mention strict eligibility conditions for the issuing of visas or work permits and cumbersome procedures for the actual application and processing of those visas and permits.

taken steps to recruit and train sufficient United States workers in the specialty occupation. Entry for such persons is limited to three years.

¹⁶ Following Chanda (1999).

A very controversial issue is that of so called “wage parity”. That means the requirement for wages to be paid to foreign service providers be at the same level as those that would have been paid to a local person with the same qualifications, under the same conditions. The principle underlying this kind of regulation is that foreign workers are to be hired in order to address the shortage of local workers, and not simply because the former are cheaper than the latter.

This is an extremely controversial issue since developing countries consider that although it is fair to have their professionals paid at the same level as those of the host country, it is also a way of undermining the comparative advantage they have, based on cost differentials. Moreover, it is also argued that the procedures required for the demonstration of wage parity are often extremely complicated and time-consuming.

There are also limitations on the length of stay of the services providers. Although this remains key to the very concept of mode 4 services, some countries—mostly developing ones—usually argue that the long and difficult renewal procedures are discouraging for local companies to hire foreign professionals.

Another controversial point refers to the restrictions on employee transfers from one position to another. Again, the idea behind this measure is to prevent a temporary worker from entering the permanent market. However, the argument against it is that they limit the flexibility to move a service provider to various client sites to render the service, and thus discouraging local employers from hiring foreign workers.

Finally, the fact that scheduled commitments under mode 4 may give rise to a wider discretion than other modes, because of definition problems (in vague terms such as “business visitors” and “senior executives”, to mention but a few), has an undesirable consequence: it usually opens the door for interpretation by immigration officials and other administrative authorities.

Regulations on recognition and qualifications, work experience and training;

Another type of regulation that may result in additional barriers is that of licensing and qualification requirements. For example, the necessity of a certain degree of education and training before a worker is allowed into the local market. Such requirements may not only prevent market access to the foreign worker, but also limit the scope of work to specific activities until the migrant has entered the overseas market.

It is common to find limitations scheduled by countries for Mode 4 based on functional and/or hierarchical criteria. These are related either to the type of people involved (e.g. executive, manager, specialist, etc.) or the purpose of their movement (e.g. establishment of commercial presence, negotiating sales contracts).

Usually, this kind of regulation is seen in the case of accredited services such as legal, accountancy and health services, where there are common norms and procedures. They

might be implemented through two different systems: publicly regulated (supervised directly by governments) or industry regulated (where industry or professional associations are in charge).

Although the reasons used to justify such measures are usually that of ensuring public interest and consumer protection, it is not excluded that they might also seek to protect current incumbents from new entrants. In the latter case, those measures fall into the category of barriers to trade.

Regulations on different treatment between domestic and foreign service personnel

Other measures might also be discriminatory against foreign workers, although they are generally less well-known. These include restrictions on the mobility of family members; regulations curtailing benefits under mandatory social insurance systems (for example, denial of pension entitlements); and restrictions on participation in government sponsored vocational training schemes. However, these are types of measures that would require a case-by-case study to determine its compatibility with GATS provisions.

Regulations on other modes of supply, which indirectly affects the scope for the movement of natural persons.

Finally, and although not directly related to mode 4, measures affecting other modes of supply, in particular those on commercial presence, may also create barriers to the movement of natural persons. For instance, restrictions on foreign equity participation in services, exclusion of certain service sector activities from foreign commercial presence or the obligation to have local management staff for certain activities.

All the above considerations are to be read in light of the interpretation problems mentioned earlier. In fact, the absence of generally agreed definitions and vague descriptions in many schedules necessarily generates interpretation problems, which are important not only for academics, but particularly for governments and private persons dealing directly with mode 4 trade.

For example, it has proved difficult in several cases to distinguish between the "standard" categories of persons most frequently referred to in schedules - executives, managers and specialists - and to reconcile these with alternative classifications used by some members. Moreover, a particular term (e.g. executive) may not have been used consistently by the members concerned to describe the same function (e.g. decision making at an advanced hierarchical level).

These interpretation and classification problems may entail significant policy implications in practice, such as opening the ground for administrative discretion. This is a particular concern for Mode 4 movements where the relevant rules are normally applied on a highly decentralized basis. The predictability of actual entry conditions is further

affected by members' failure to specify the relevant criteria in cases in which they have reserved the right to operate economic needs testing.

In short, the assessment of GATS commitments on the movement of natural persons reveals that, far from being comprehensive, liberalization in this sector is more than limited: it has been done on a horizontal basis, not considering the particular needs of certain sectors and categories of workers; commitments are highly conditioned; they favour the most qualified categories of workers, and are extremely limited by qualification and other licensing requirements; and the lack of clarity of their terms make interpretation even more discretionary.

What are the reasons behind this tendency to limit commitments relating to the movement of natural persons? Authors and negotiators usually identify several peculiar characteristics of this type of trade. Notably, the enforcement difficulties that measures dealing with human beings might imply.

Another very controversial aspect refers to the possibility that temporary workers may turn into permanent ones. Governments, especially those of developed countries, usually recall that it might be easier for somebody already in the labour market to move from one position to another and to find a permanent job. Although the whole concept of mode 4 is trade temporality, and in spite of the safeguards that GATS implies in this respect, the limitation in the number and scope of commitments has been usually used as a tool against this kind of danger.

There is another kind of factor to consider, as well, of special concern for trade unions, particularly in developed countries: the need to protect the internal labour market from the fact that foreign workers receive a lower pay than local ones, for the same work. Since it is considered that this situation is more likely to occur with regard to less skilled workers, governments are reluctant to commit to this type of protection.

All the above-mentioned considerations create a difficult situation. It should therefore not come as a surprise that WTO members have yet to achieve consensus on what limitations on the movement of natural persons should exist. The interests are diverse, as are positions with respect to the benefits and damages that certain measures affecting mode 4 trade might have. This is the scenario in which the current Round is taking place in Geneva. From the current negotiating proposals on the table, it is easy to extract the different positions that this matter raises.

Since the beginning of negotiations, only very few proposals have dealt specifically with the movement of natural persons. However, many sectoral proposals make reference to related aspects of this issue, as applied to a specific sector. Moreover, horizontal proposals usually touch upon matters of great significance for mode 4, as well.

In general, it is possible to see that several common issues are repeatedly raised by WTO members in respect of mode 4. Countries normally agree that there is a general lack of clarity in respect to commitments. Therefore, there is a clear interest in clarifying

definition and harmonization of terms, as well as in improving classification systems concerning mode 4. Better access to information is another issue that is on the table.

Some countries consider it important to reach agreement on a clearer separation between modes 3 and 4 commitments. And, of course, there is also the need to deal with barriers and restrictions on the entry and stay of services providers in specific sectors. These last two points are of particular importance.

It is usually recalled the need to clarify the relationship between modes 3 (commercial presence) and 4 in certain sectors where the liberalization of one mode depends on the other. Examples of these situations are measures deemed necessary to protect consumers, such as requirements for partnership with local services suppliers or the requirement that top managers be locally licensed professionals.

Moreover, where the requirement for previous employment exists, this means that there is also a link between that employee (mode 4) and commercial presence (mode 3). In other words, it means only limiting access to those with the resources to engage in commercial presence. Developing countries claim that this movement should not be limited either to key personnel nor limited by pre-employment requirements, but rather be open to all services providers.

Another issue that is usually considered worthy of further examination refers to the need to make countries' domestic regulations less discriminatory. In particular, the concept of "necessity", in article VI.4 GATS¹⁷ should be further defined.

Furthermore, the elimination of barriers, or the ease of entry, has been subject to several proposals. In this sense, a "GATS Visa" regime was suggested. Multinational companies favour this regime to provide for the entry of key personnel who are already employed and who would enter the country for less than one year with no intention of establishing permanent residency. Other proposals provide for tax exemptions depending on the length of stay.

To resume, the level of liberalization achieved with respect to the temporary entry of natural persons is clearly among the least developed in the context of the WTO. This situation can be explained by several elements, notably, the fact that it was an almost unknown area when the Uruguay Round commitments were negotiated. Also practical aspects, such as the lack of time to terminate negotiations on this particular aspect (it should be recalled that mode 4 was only effectively on the agenda during the last two years of the whole Round), are partly responsible.

¹⁷ Article V:4 GATS reads as follows: "With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. (...)".

Nonetheless, the peculiar characteristics of the subject cannot be ignored. When dealing with mode 4, immigration, labour, social and economic factors are at stake. That is why it is even more difficult to achieve consensus and liberalize.

Costs and benefits

When considering the different levels of commitment and the negotiating proposals on the table at the current round of discussion, it seems that developing countries are defending certain interests that do not necessarily agree with those of developed country members of the WTO. However, this might only be a first impression. Is this a “North-South” issue, or is the level of development not the main barrier to consensus?

During the Uruguay Round, when services were first included in negotiations as a trade issue, developing and developed countries of the WTO offered different perceptions on the possible impact that multilateral rules might bring to their economies and interests. Although at the time it was not yet clear what those services disciplines could be, there were fears and anxieties about the influence that these new rules might have in terms of developing possibilities, given the significance of the sector.

In the very beginning, the promoters including trade services in the round of talks were developed countries, interested in defending what had become their newest output, thanks mainly to technological development. In particular, the United States was initially the only proponent, not only of a new round of negotiations, but also of the inclusion of services. This interest in promoting a commitment to services might be explained by purely economical factors, in particular the interest in strengthening its own industry.

While the European Communities kept a neutral or indifferent position in respect of US demands, a group of developing countries, including Brazil and India, strongly resisted the proposal. Their reasons were, among others, consideration of their infant industry, concerns about national sovereignty and fear that the new issues would deflect attention from their own trade interests in areas such as textiles and clothing.¹⁸

Later on, however, services, and in particular, Mode 4, became a very important issue, and the developing members became more enthusiastic advocates. In particular, they started to argue that services supplied by the movement of natural persons across borders were as legitimate as services supplied through commercial presence, and therefore needed to be taken into account by the GATS.

As Young points out,¹⁹ a new interest in striking a balance between liberalizing of the movement of natural persons and that in the movement of capitals became a major issue among developing and less-developed participants of the Uruguay Round. Furthermore, they hoped that a market opening for the movement of natural persons could help as a counterweight to negotiate concessions made with regard to mode 3.

¹⁸ Adlung (2000).

¹⁹ Young (2002).

However, the history showed that those objectives were not accomplished. As already noted, the results of the Uruguay Round negotiations were modest in respect to mode 4 trade and the small amount of concessions achieved were biased in favour of highly skilled workers being deployed in conjunction with mode 3. In the eyes of many developing countries, the consequence was a great imbalance between capital and labour. How can these results be explained? Self and Zutshi mention two main groups of concerns that might help understand the lack of more substantial commitments in respect of the movement of natural persons: those relating to enforcement issues and those concerning the protection of labour markets.

Enforcement concerns

Enforcement concerns relate to the ability of national authorities to enforce their laws governing temporary entry. In fact, the main concerns are the abuses of the visa system thought to give temporary entrance to service suppliers. The fact that some of these temporary visas are used to find permanent residence in the country has become a sensitive political issue and has created a sentiment favouring increased restrictions on issuing such permits. Moreover, this seems to lead to violations of the MFN principle since, usually, more restrictions are placed on applicants of countries with a record of abuse in this respect. However it has to be borne in mind that the Annex on the Movement of Natural Persons Supplying Services under the Agreement is flexible, since it excludes any measure relating to citizenship, residence or permanent employment. In any case, this concern exists and has, doubtlessly influenced the lack of deeper commitment to mode 4.

Protection of labour markets

The protection of labour markets is also a rather political matter, which clearly divides developed and developing countries. Although the logic of the economy seems to say that the more competition the better, both in terms of skill level and wages, the social perception in industrialized countries tends to fear a “flood” of foreign workers, especially to the lowest levels of specialization, that could take away positions from nationals.

It is this delicate concern that actually leads the decision making process in developed countries. Their developing counterparts, on the other hand, present comparative advantages for lower skilled workers and lower salaries. Therefore, the conflict of interests necessary arises when negotiating.

Although it cannot be considered as the sole, or even the main, cause of the relative failure of the Uruguay Round negotiations in respect to the temporary movement of natural persons, the above-mentioned concerns and differing interests are one of the reasons for the lack of convincing results achieved so far. The debate polarized countries

and provoked a very strong defensive position on both sides, cautious of the consequences of any commitment.

In fact, this subject is one key example of the links existing between WTO matters and so-called “non-trade” issues, such as labour rights. It is quite clear nowadays that there are several factors not directly linked to trade that affect the decision-making process in the organization²⁰. Those concerns might be addressed in different forms, for instance, by refusing to increase WTO obligations.

The current round of negotiations on trade in services is facing this problem and several proposals intend to extend commitments to the movement of natural persons. However, they are being greeted with caution, since in case of acceptance they would most certainly narrow the discretionary power of governments to regulate this delicate aspect of their economy. This is a point that has been carefully recalled by developed members of the WTO, when analysing the pros and cons of mode 4 liberalization.

In spite of this apparent conflict, it is difficult to know whether it is developed or developing countries that stand to benefit more under mode 4 trade. Both OECD and non- OECD countries are importers as well as exporters of temporary workers. While the first category seems to account for the majority of both exporters and importers by some value indicators (e.g., compensation of employees), the contrary is true elsewhere (e.g., the major receivers of remittances are mostly developing countries). The situation might differ, however, in terms of the number of workers, since statistics are not sufficient to enable a full judgment.

In this context of a lack of statistical information, the existing data does not suggest, however, an easy dichotomy of developed-versus-developing.²¹ In any case, some economists have dedicated their analysis to the general effects of trade in both groups of countries. Although the existing analytical models, such as goods or migration theories, are not completely adequate to fully understand mode 4 trade, and bearing in mind the need for important adjustments, the traditional models have been used to study the possible effects of the movement of natural persons, both from the point of view of developing and developed countries. The results of these analyses will be explained further in the following paragraphs.

A traditional goods model

In the first case, it is argued that trade in services is not different from trade in goods. For example, an academic travelling to Rome to deliver a paper he wrote is not different

²⁰ As Alvarez explains, “WTO members might be tempted to link their organization to ostensibly non trade issues for many different reasons, from the strategic to the intensely moralistic. The trade regime might incorporate new issues because such linkage may facilitate deeper trade liberalization or because negative externalities or other “races to the bottom” threatens the success achieved by the WTO (...)”. (Alvarez 2002).

²¹ See OECD (2001).

from that paper being sent in hard copy or electronic form. In this sense, the general benefits arising from a liberalization of trade in goods might perfectly well be expected from a liberalization of trade in services:

- Reaping economies of scale;
- The benefits of liberalization according to comparative advantages;
- Learning by doing and developing expertise by concentrating on particular sectors;
- Importing better technologies;
- Stronger competition; etc.

Additionally, according to this conception, the benefits from liberalizing trade in services might be even greater than that of goods, due to particular features of the services world:²² barriers are generally greater in services than in goods (with some notable exceptions, such as agriculture); many barriers explicitly reduce competition in the services sectors; many services are necessary to efficiency and competition in other parts of the economy (e.g. communications, transportation, banking); services as a whole account for a greater share of income (and frequently, employment) than industry and agriculture combined.

If trade in services (including the temporary movement of natural persons) might be considered to function in the same way as trade in goods, it is useful to take a look at how the traditional economic models for trade explain reality. The typical neoclassical model sees the exchange of goods between two given countries in terms of endowments of capital and labour. In this model, under standard assumptions - including identical conditions of production and the absence of economies of scale - trade acts as a substitute for factor mobility (migration) by eliminating differences in payment factors across countries.

Therefore, the fundamental premise is that the incentive to trade arises from countries' differences in relative costs of producing different goods. In this sense, countries well endowed in labour will specialise in labour-intensive products and countries well endowed in capital will do the same with capital-intensive goods.

The problem is that it is not always easy or appropriate to apply this kind of traditional model concerning goods to trade in services. Although GATS modes 1 and 2 (cross-border transaction and consumption abroad) might still follow within the logic of the traditional model, this is not the case for modes 3 and 4 (that is, commercial presence and movement of natural persons).

As explained by Chanda²³, there are two important obstacles: firstly, unlike goods, when trade takes place with respect to services it results in a change in factor endowments. Secondly, trade is not a substitute for factor mobility but is rather represented by the

²² Following Winters (2002).

²³ Chanda (1999).

labour or capital that moves across borders. In other words, when considering the cases of commercial presence and movement of natural persons for trade in services, trade and factor movements are no longer distinguishable.

In any case, the theory of comparative advantages as explained by the traditional economic model for trade in goods might be applicable to services, provided some modifications are made. The very notion of factor endowments needs to be revised, so as to look at the labour factor at a disaggregated level. The reason for this is the heterogeneous nature of tradable services. For instance, many developing countries may have a better endowment of unskilled labour, but have a comparative advantage in exporting certain kinds of highly skilled workers, such as professionals. This also means that countries may have advantages in trading in different classes of labour-based services, skilled and unskilled.

Another difference to be taken into consideration is that labour and capital might not be two alternative modes of delivery, but might actually complement each other. This would be the case for example, of professionals moving to a firm that has been established abroad.

If those points are considered, it is possible to say that comparative advantages in services are still based on differences in endowments and relative costs. It is also possible to believe that the direction and nature of the flow factor is based on comparative advantages. The movement of natural persons for trade in services reflects the comparative advantage of the home country in that particular category of labour services, which could be unskilled, semi-skilled, professional or technical.

If the statistics demonstrating that developing countries are generally recipients of income from labour from developed countries are taken into account, it is possible to conclude that -in the terms of the theories explained above—developing countries tend to have a comparative advantage in exporting labour intensive goods and services and are therefore likely to be interested in promoting temporary labour flows as a source of trade earnings.

The migration models

Other theories try to explain the reasons behind the movement of natural persons and the trade in services in general. So for the theory of international labour migration, which utilizes factors such as geographic wage differentials, productivity and employment rates, imbalances between supply and demand, the need for a diversification of income, risk and search for capital and credit.

The temporary movement of natural persons can be thought of as migration: workers enter a market temporarily to carry out particular jobs and thus labour inputs in one economy are reduced, while those in another are increased. A very simplified model explains the motives behind a person working abroad due to higher wages. This in turn

increases productivity and world aggregated output rises, offering scope for economic gains.

Following Winters, it is possible to distinguish three particular dimensions of labour mobility: the flow of unskilled workers from developing to developed countries; the flow of skilled and professional workers from developed to developing countries; and the flow of skilled professionals and in particular, business workers from developing to developed countries.

Developed to Developing country labour flows

This is mostly the case of the so-called intra-corporate transfers (companies that relocate their specialists to plants in developing countries). Economic models thought to study this phenomenon²⁴ have demonstrated that, as with most migration driven by wage differences, business mobility increases world output. These studies have found that such a movement narrows the skill gap (the differences between skilled and unskilled wages) in the developing host countries, by raising unskilled salaries, while widening it in developed countries. This is due to the fact that in the home country, unskilled workers suffer from having fewer skilled workers to cooperate with and also from the competition from cheaper unskilled labour abroad. At the same time, the developing country's output increases, part of which accumulates at home in terms of higher unskilled wages and tax revenue.

On the other hand, the analyses have indicated the danger that this type of movement might entail, by reducing the incentive for education and even for local training by the multinational company in the developing country. Therefore, the risk of longer-term costs is also present, which has some commonalities with the problem of brain drain that will be dealt with later on in this Chapter.

Developing to Developed country flows of skilled labour

The advantages to the economy of knowledge and specialization being well known, it is relatively obvious that this kind of movement might tend to benefit the receiving country, while causing a loss to the sending country. As noted by Winters, the loss of services by skilled people, even temporarily, reduces the total output and, hence, the tax base and scale economies. Depending on the extent of the skilled workers' absence, it could also reduce an economy's entrepreneurship, the ability to absorb new technologies, and various positive spillovers from skilled to other workers and society in general.

Nevertheless, it is considered that those negative effects are much smaller in the case of mode 4 trade, than in the event of permanent migration. Moreover, the positive side of this movement for the home country is that workers abroad might be a source of ideas, technology, markets or networks for those who remain, increasing their productivity and

²⁴ Tang and Wood (1999).

market opportunities. Another possibility is that the temporary movement of natural persons increases the returns to education and that the resulting increase in the supply of skills exceeds the actual loss of skilled inputs though that temporary movement, leaving the domestic economy in the developing country a net gainer of skills.²⁵

It is precisely these different considerations that, according to migration theories, should lead countries (especially, developing ones) to realise the convenience of migration of their skilled workers and professionals. It will also depend on the particular characteristics of the home country, in particular the size of their economies. However, all these are only theoretical approaches and there is not a unique and universal answer applicable in all circumstances and to all countries.

Developing to Developed country flows of unskilled workers

It is a reality that this kind of trade is politically much more difficult to handle for developed countries, than that of skilled workers. However, some authors²⁶ consider that those countries have more to gain from this kind of movement than that of skilled professionals. Nevertheless, the difficulties on this issue still arise mostly from the political resistance generated by the idea of allowing less skilled workers into the market.

Here again, it is possible to consider that the movement of natural persons reduces largely the inconvenience arising from that kind of trade, since culture and social concerns of permanent migration should not enter into account. Moreover, as their populations' age and average level of training and education rise, the scarcity of less skilled labour in developed countries will worsen. And given the fact that there is no substitute for human work in several areas, the importance and convenience of the temporary movement of natural persons of unskilled workers is likely to increase in the near future.

At this point, the major considerations of a model based on the migration principles have been analysed. And although some very important conclusions can be obtained from it, it is necessary to recall that they might also fail to capture essential elements related to mode 4 trade. In particular, this is due to the fact that the temporary movement of natural persons has by definition a temporal element and that it normally occurs only within, and not between sectors.²⁷

All the above-mentioned theories help us understand the way in which the movement of natural persons affects the economic development of a nation. In any case, from a general point of view, it is clear that there are both costs and benefits for a country when exporting or receiving labour.

²⁵ See Commander, Kangasniemi and Winters (2002) for a detailed analysis.

²⁶ Winters (2002).

²⁷ For more information on migration theories see: World Bank "International Migration: implications for the World Bank", Human Capital Development and Operations Policy Division, Number 54, May 1995.

In this sense, the sending country (the exporter), might benefit in terms of specialisation, economies of scale and scope. There is also a reward in terms of remittances. This factor, which has not been considered by scientists and economists until very recently, has proved quite significant, particularly for developing countries. It has been demonstrated that these countries receive some 60 million US dollars through official channels, and more, perhaps another 15 billion US dollars, in various unreported ways.²⁸

However, it can also face the cost of losing domestic resources and of educational investment. This problem, known as the “brain drain”, is likely to have a negative impact on development and the distribution of income. This concept refers to the phenomenon arising from highly skilled workers moving abroad in order to increase returns on the educational investments made on them. This is a situation that affects most developing countries.

A study conducted by the International Monetary Fund suggests that the majority of migrants from developing countries to OECD members are much better educated than the rest of the population of their country of origin.²⁹ The reasons for this situation might be found in the immigration policies of OECD countries that, as explained, tend to favour skilled workers. In fact, countries with a restrictive immigration policy, such as the United States, have nevertheless increased the supply of temporary visas for skilled workers over the last few years. The same has occurred in Australia and Canada, for example.³⁰

To resume, it is generally easier for better-educated individuals to travel abroad and cover migration costs. Several surveys conducted on these issues show that the majority of emigrants from Asia, Africa and South America have advanced levels of education. Moreover, they are, on average, more educated than the population born in the country into which they immigrate.³¹

For the sending country, the brain drain represents a substantial cost, although its real impact would be difficult to quantify. On the other hand, it is also true that some countries may train highly skilled workers to a greater degree than their own labour market is able to absorb. In this sense, migration also reflects a lack of opportunities in the country of origin.

In any case, this situation does not mean that highly educated migrants are not useful to their own country. The lack of opportunities might be seen only as another facet of the

²⁸ The Economist, September 28, 2002, page 30.

²⁹ International Monetary Fund, “How big is the brain drain?” Working Paper 98/102 (July 1998).

³⁰ The Economist, September 28, 2002, page 29.

³¹ Idem, *supra* note 63. A survey of new legal immigrants to the US finds that about 21% of them have at least 17 years of education, implying postgraduate study, compared with only 8% of native-born Americans.

same problem: economic problems force migration. In turn, this may produce a vicious cycle. In other words, without skilled workers, economic development is not possible.³²

The other side of the coin is the ever-growing need for skilled workers in developed countries, arising from the transformation of their economies, due particularly to IT and communication technology developments. Recent studies³³ show that OECD countries are concerned with labour bottlenecks and skill mismatches, as well as with the fear of a possible gap between the skills of current and future high tech workers and those needed by large firms. One of the possible solutions for dealing with this matter – although only short-term — is an immigration policy focused on highly skilled professionals.

The biased growth of skilled employment is now a confirmed tendency in OECD countries. This situation is doubtless related to the fact that knowledge and human capital are increasingly regarded as major factors in growth and development. This consensus is moulding OECD countries' policies on labour, migration and GATS negotiations.

Although measuring labour shortage is a difficult task and figures are not always precise, some studies have analysed the impact of the problem. In the United States, for instance, the “skills gap” in the Information Technology (IT) sector has been calculated at around 425,000 workers, or 4 per cent of the IT workforce. In Europe, the situation is scarcely different: a demand for 11.2 million IT workers was estimated for 2001, three quarters of whom possessed high-level professional skills. In addition, a request for 3.9 million workers with e-business skills (a combination of technical and business/management skills) was also detected. And the tendency is that the demand will continue to grow in 2003.

Such a dilemma can be addressed by applying internal or external strategies. The first relate to the use of the existing workforce in a more effective and productive way. The second implies expanding the pool of potential employees and either attracting new recruits or using external workers. In choosing a strategy, particular consideration has to be given to whether it is about short or long- term needs.

In fact, foreign workers are an important source of labour and play an increasingly important role in the context of tight national labour markets. Immigrants, both permanent and transitory, fall within this category. However, their power to help weak markets is not enough to resolve the need for cyclical adjustments.

In any case, for occupations or skills in high demand, five types of measure are usually taken to facilitate the admission of foreigners³⁴:

³² However, another point of view recalled in some OECD papers is that scientists and engineers working overseas may represent a “brain bank” that can be drawn upon to encourage innovative development at home.

³³ On this issue see OECD 10 (2002).

³⁴ Following OECD 10 (2002).

- Relaxing quantitative constraints (e.g. United States);
- Setting up special inward migration programmes for occupations with shortages (e.g. Canada, Germany, Australia);
- Facilitating recruitment conditions or procedures and relaxing criteria for issuing employment visas for highly skilled workers (e.g. Australia, Canada, France, Japan, New Zealand, Norway, United Kingdom);
- Increasing non-wage incentives for skilled foreign workers (e.g. Australia);
- Allowing foreign students to change status at the end of their studies (e.g. Germany, Switzerland, Australia, United States).

It is true, however, that in the case of temporary labour outflows the costs tend to be smaller, since there are gains in the form of experience and skills, as well as remittances. Again, in the case of temporary movement the benefits tend to be higher and the disadvantages lower. However, those two kinds of movements are not always easy to distinguish.

The economic effects of the movement of labour for the recipient country are also dependent on several variable factors, including timing, sector, occupation, and type of movement. The degree to which the receiving market will be affected has to be measured in terms of the impact of new workers on productivity, the factor intensity of production and the degree of substitutability or complementarity between foreign and domestic workers. In this sense, gains are more likely to arise from a transfer of skills and also the lowering of costs. The negative effects, on the other hand, are to be seen in the displacement of domestic workers, social security, health and education costs. Again, those costs are usually smaller in the case of temporary movement of workers.

On the positive side, the temporary movement of labour may also help avoid some of the burdens associated with permanent migration, in particular social security welfare costs, and the impact on the health and education system of the recipient country.

Particular consideration is needed with regards to the cost of workers. Through mode 4 trade, skills and knowledge embodied in foreign personnel may be accessed at lower than average domestic “production” costs. In this sense, potential host countries have sought to eliminate “disloyal” foreign competition by ensuring compliance with domestic arrangements governing wages, prices, or other supply conditions. These measures might, on the other hand, deprive potential entrants of a genuine economic advantage. This is precisely one of the main subjects of discussion in the current round of WTO negotiations.

In order to complete the analysis of the possible effects on developed and developing countries that the movement of natural persons might have, it is interesting to recall the results of an analytical model developed by Walmsley and Winters³⁵. The model tries to answer the question of who would benefit from liberalizing the restrictions on the temporary movement of natural persons and by how much?

³⁵ For a detailed explanation see Walmsley and Winters (2002).

The main simulation conducted was an increase in quotas for inflows of skilled and unskilled temporary workers into developed countries. Following this, the authors examined the effects of other issues, such as the relative importance of skilled versus unskilled mobility, and the sectoral division of mobile workers.

The results are surprising: increasing developed countries' quotas on both skilled and unskilled temporary workers, to an amount equivalent to 3 % of the receiving countries workforce, increases world welfare by an estimated 156 billion US dollars (about 0.6 % of world income), per year. The study concludes that those gains would be shared between developed and developing countries and owe more to unskilled than to skilled labour mobility.

In aggregated terms –following the theoretical model—the main gainers for liberalizing mode 4 are the initial residents of the developing (labour exporters) economies. Most of this increase is the result of higher incomes earned by those who may become temporary migrants as a result of the relaxation in quotas (they are now able to gain higher wages in developing countries). On the other hand, and despite remittances that they receive, permanent residents in the developing countries generally lose from the outflow of temporary migrants, because the decrease in labour supply reduces the returns to capital and other factors of production.

Finally, the model shows that agriculture is the sector less affected by temporary labour movement in both developed and developing economies. In developed economies, output of services and most manufacturing sectors increase significantly with the labour inflows, while primary sectors and utilities show only small increases. The impact on production in developing countries is almost the mirror image of the situation just described.

A look at commitments

After having analysed the main concerns, the advantages and disadvantages of a mode 4-liberalization from a theoretical point of view, it is useful to take a look at how both developed and developing countries have dealt with this matter in practice, i.e. in their WTO schedules of concessions.

In general terms it is possible to say that no significant differences exist between the commitments scheduled by developing and developed countries. Actually, both groups seem to have been equally hesitant to undertake very liberal commitments towards mode 4. The same can also be said in respect of the so-called “recently acceded members” (e.g., those who acceded the WTO after 1995), a difference with respect to other modes in which generally deeper commitments were undertaken by this category.

Let's begin the analysis by taking a quick look at the group of developed nations that form the so-called “Quad” group: the United States, Japan, Canada and the European Communities.

The United States of America's mode 4 commitments allow horizontally bound temporary entry and stay for services salespersons, intra-corporate transferees (managers, executives and specialists), personnel engaged in establishment, and fashion models and specialty occupations³⁶. At the sectoral level, some additional limitations exist for both market access and national treatment, they are usually listed by state, and they often relate to in-state residency or citizenship requirements.

One important consideration is that the United States' commitments for mode 4 bind the status quo. This means that, for example in the case of intra-corporate transferees, although unfettered entrance appeared to be provided in the schedules, it is still necessary to apply for an appropriate visa. And one of the main requirements for obtaining such a visa is that the petitioning company had continually employed the person for at least one of the preceding three years.

Moreover, the category of fashion models and specialty occupations are subject to a specific quota each year. It is interesting to note that this measure is used instead of the Economic Needs Tests, which is highly opposed by local medium and small-size companies³⁷. This situation differentiates the United States from the other three quad-countries, which do not limit the number of foreigners eligible to enter and work in the country. They impose, however, other kinds of limitations. Canada and Japan, for example, limit the professions in which foreigners can work³⁸, and they do not employ Economic Needs Tests in their schedules. The European Union also limits the professions allowed for foreigners, but it is still common to find Economic Tests in several European countries, without a defined criteria.³⁹

Japan lists the number of professions under which foreigners might enter, six, and does so with pre-employment criteria. Canada listed nine professions without a pre-employment requirement, and the European Union list includes seventeen permitted areas.

Generally speaking, it is likely that in the current round of negotiations, the United States will face demands to increase the specialty occupation quotas and to eliminate entry requirements, such as petitioning in the intra-corporate transferees category. In the case of Japan, the targets will probably be the pre-employment criteria, as well as the list of professions it is willing to bind. In turn, some European Union countries will face demands with regard to their Economic Needs Tests, requests to lengthen the time of stay for foreign workers under mode 4 and to ease the requirements on third-country nationals. The richest WTO members are not the only ones facing demands for liberalization in mode 4 commitments. The developing countries are also subject to requests coming from multinational companies that see in them a growing market for professional services. As

³⁶ The United States of America, Schedule of Specific Commitments, GATS/SC/90 (April 1994).

³⁷ Young (2000)

³⁸ See Canada, Schedule of Specific Commitments, GATS/SC/16 (April 1994) and GATS/SC/16/Suppl.2 (July 28, 1995); Japan, Schedule of Specific Commitments, GATS/SC/46 (April 1994).

³⁹ European Communities and Their Member States, Schedule of Specific Commitments, GATS/SC/31 (April 1994) and GATS/SC/31/Suppl.2 (July 28, 1995).

an example, it is possible to look at the schedules of commitments of India, the Philippines and Mexico⁴⁰.

There is not much difference in the way India schedules its commitments and that of the Quad countries. It is organized in terms of business visitors, intra-corporate transferees and professionals. The two first categories are fairly open, with a maximum stay of five years. The professional category is, however, less liberal, with entry limited to the fields of physical sciences, engineering, and other natural sciences, and for a period of only one year, extendable for up to three months.

The Philippine's schedule of specific commitments is very limited in respect of mode 4 and depends on Economic Needs Tests. Moreover, special conditions apply for entry into certain sectors, such as tourism, where the general rule is that only national citizens can be employed.

In the case of Mexico, business visitors are allowed for a maximum stay of ninety days. The situation is less clear with respect to intra-corporate transferees (managers, executives and specialists) for whom, in spite of being mentioned in the schedules, it is not clear how long they are allowed to work in the country. Finally, professionals are not included in the schedules.

Following Young, it is possible to conclude that the way commitments have been made by the three countries analysed above indicate that the movement of service providers is considered important for development-related objectives. The relation with investment in those countries is still unknown, but it is clear that multinational companies will in any case demand the deepening of commitments from the part of developing countries as well.

Perspectives for the current round of negotiations

At this point in time, the one-million dollar question is whether or not it is possible to distinguish clearly between developing and developed countries' interests with respect to opening markets for the temporary movement of workers. In spite of the fact that the perception of the potential advantages and disadvantages has changed since the Uruguay Round days, inflexible positions and preconceptions remain. And it is also clear that the reticence responds not only to strictly economic concerns by governments.

Although major problems such as brain drain exist, most economic theories tend to defend the virtues of the movement of workers, both for the exporter countries as well as for the receivers. The stress has to be made, though, in the temporary character of such a movement.

⁴⁰ India, Schedule of Specific Commitments, GATS/SC/42 (April 1994); Philippines, Schedule of Specific Commitments, GATS/SC/70 (April 1994) and Mexico, Schedule of Specific Commitments, GATS/SC/56 (April 1994).

A key factor is that the interest of the private sector of both groups does not always coincide. Major industrial country firms want greater freedom to take managers and other professionals with them when they establish overseas. In this sense, many US and European services firms understand they must push their governments for an opening of labour markets if their own objectives are to be met in new markets. That ought to be possible since labour shortages in many sectors are evident in the OECD countries. Yet, many governments in Europe as well as the US Administration face ever-stronger domestic political pressures on immigration.

Developing countries, in turn, want greater opportunity to sell their own labour, skilled and unskilled, abroad. Facing contradictory needs such as that of remittances, and the need not to lose key people, those countries have not yet found the right balance.

In practice, an overall assessment of the commitments made with respect to mode 4 shows a clear bias towards higher-level personnel, typically associated with foreign commercial presence with high capital requirements. Even though there is no difference between the schedules of developing and developed country members in this respect, it is clear that the greatest losers of this tendency are the poorest nations. This is so since developing countries are typically capital-poor and recipients of foreign investment, rather than a source of it. Therefore, the commitments made in respect to the movement of natural persons avoid the aspect that would benefit them most: labour-intensive services.

In any case, it is clear that there is room for improvement but also that the extent to which WTO members will agree to commit themselves in the current round of negotiations will depend, once again, on the balance made with respect to benefits and costs, in economical, social and political terms. It follows that there is still much to do in the field of the temporary movement of natural persons. The GATS itself provides room for the improvement of trade in services, although the international coordination is somehow still missing.

Scholars are generally optimistic about the perspectives of the current round of negotiations in the WTO, in the sense that some important progress in the movement of natural persons might be achieved. This positive view relies on the fact that almost nine years of GATS have been useful to learn about the need of greater clarity and the lack of danger surrounding it. Also, it is based in the fact that mode 4 negotiations are closely linked to other issues at stake.

It is important to keep in mind, however, that any solution chosen to deal with this matter has to consider the tensions existing between conceptions of “trade” and “migration”, the latter being more defensive in terms of admitting new individuals to the borders. Precisely, the fact that current commitments are scheduled in a horizontal way, reflecting a migration approach, instead of the specific sectoral needs of trade, is one of the main causes of debate. Here the problem resides in identifying, however, what sectors might be of interest to all the players, avoiding the risk of benefitting only the most developed parties.

The analysis made by several specialists –as reflected in this work- seems to imply that there is no such a thing as a single position among developing countries, and that they are not necessarily confronted with developed members in all aspects related to the movement of natural persons. As for the defensive interests, restrictive conditions are present in both cases. Differences seem to be clearer in respect to the offensive aspect, that is, the categories of persons allowed entrance and work permits. The scarce results achieved in the Uruguay Round can be attributed, at least partially, to this dynamic of unnecessary polarization between developed and developing countries.

Another reason for that situation, as identified by Self and Zutshi, was the lack of active pressure from stakeholders and interest groups to try and open markets for their branch of activity –in contrast with those related to mode 3 (commercial presence), who were really active during those negotiations. That reality has changed and nowadays the globalized economy means that those stakeholders exist both in the developing and the developed world, which allows us to think that the interest in accelerated procedures for the temporary entrance of workers will extend progressively as well.

In any case, the challenge seems to be finding a way of improving existing commitments so as to make them much more effective and much clearer, without undertaking fundamental changes that might encounter strong resistance. All this is related to the clarification both of the GATS and of commitments schedules by members; the deepening of market access and the creation of new markets for mode 4 in all the sectors of interest for developed and developing countries; and the adaptation of domestic regulations to face those requirements. All this surrounded by the urgent need of defining an efficient and fair negotiating technique.

All the above-mentioned objectives are to be seen in light of the basic idea of fair trade, one of the pillars of the WTO. In this sense, even though nowadays it is clear that it is not a question of developing versus OECD countries, and that both groups share some common interests, the development objectives of the current round should not be forgotten. Since mode 4 deals with resources that developing countries do have in plenitude (in opposition to other modes, in particular 1 and 3), the sectors of interest for those countries will certainly play a pivotal role in the success of the round as a whole.

General Conclusions

Is it possible to say whom a mode 4 liberalization will benefit the most? The question that this work has tried to analyse remains a complex one, but some conclusions can, at least, be drawn in that respect.

As it has already been explained, the lack of complete statistics in respect to mode 4 constitutes a serious obstacle to assessment of the interests at stake. This may be one of the reasons why some misconceptions have been installed, in particular in respect of developing countries. A study undertaken by Dorothy Riddle - that includes the analyses

of service exporters of 30 developing countries- shows that those nations' services export capacity is larger than it might seem at first sight.⁴¹

Both the international community and those countries' own governments tend to pass over it, creating some sort of vicious circle: no government support, no development for the services industry, no increasing of their foreign and local clients, no import substitution. This, in turn, is reflected in the multilateral negotiations, since there seems to be a general presumption that developing countries only interest with regard to services exports are tourism and transportation. Riddle's research proves that developing countries not only have the capacity to export other services, but that they actually do it.

This allows us to conclude that both the North and the South have a significant interest in the movement of natural persons. Does this mean that they are on an equal footing and their interest goes in the same direction? This is most certainly not the case, since the developing world is always the weakest in terms of negotiation capacity.

Developing countries are also the ones that would have more to win if the liberalization achieved went further, instead of remaining just an improved copy of the Uruguay Round results. Actually, the current situation seems to reflect more the concerns of big multinational companies than those of exporters from small developing countries. The fact that in general all the schedules of commitments of WTO members reflect a similar degree of restriction might be interpreted more as the result of those negotiations than as a similar degree of defensive intentions. It is not to be forgotten, however, that what is at stake here is nothing less than human beings crossing borders. Therefore, many other non-economic considerations are also present, notably social, cultural and political ones.

In any case, the environment in the current round of negotiations seems much more propitious than in the past for achieving results in respect of mode 4. This is partially due to the fact that both the North and the South are now more aware of the importance that such trade implies for them. Nothing miraculous, however, is to be expected. The concerns mentioned above are not likely to leave room for a revolution, but an evolution might be possible. This would not only require agreement at a multilateral level, but also changes in national legislation.

Mode 4 trade is as interesting for the poorest nations in the world as for big multinational companies. In spite of this importance, the level of liberalization achieved is the smallest of any GATS subject. The statistics regarding the real level and value of the movement of natural persons are, at least, incomplete. These are just some of the paradoxes surrounding GATS mode 4. The complexity of the issue makes it even more important for trade negotiators to try and solve, at least, some of these problems in the current WTO round.

⁴¹ Riddle (2002).

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