

Mode four and workers

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Under the WTO's General Agreement on Trade in Services (GATS) there are four recognised ways in which services trade can occur – called 'modes of trade' in WTO jargon. This article deals with what is called mode 4 trade – the temporary movement of a service provider (a firm or an individual) to another country to provide a service.

It has generally been accepted that the kinds of people we are talking about are:

- Senior company executives of multinationals who are being transferred to the host country for a short period – intra-company transferees
- Someone who is visiting current or potential clients in the host country with whom they have/seek a service contract
- Contractual service suppliers – usually self-employed professionals such as architects, engineers, IT specialists, project supervisors working on buildings, airport construction, etc.
- Trainees – workers being sent by their parent company to a host country subsidiary/branch for training/development.

Up until now, ordinary workers in most sectors have not been considered as being covered by Mode 4 because most countries do not want to make irreversible WTO GATS commitments that allow all kinds of migrant workers to access the host country labour market.

It is not possible to evaluate whether Mode 4 commitments have made or will make much difference to the amount of temporary movement of service suppliers. This is because, when governments made their first commitments under Mode 4 when GATS was first agreed in 1995, they usually simply said nothing about this or they just committed themselves to their practice at the time – no new market openings

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were made. Since then, no new commitments have been made so we do not know what impact any new commitments might have.

That being so, the only indicators of likely impacts are examples of so-called temporary migration into the labour force under ordinary policies currently exercised by governments. In this regard, it should be noted that trade unions are very supportive of the full respect of worker and trade union rights for migrant workers and of legal entry for migrant workers under properly regulated conditions. However, unions are worried that much of the interest from governments, in developed or developing countries alike and whether for Mode 4 or ordinary migration, seems aimed at replacing permanent migration with temporary migration.

Mode 4 commitments in GATS are fixed and difficult to change, and based on ever further liberalisation which is not appropriate to the cyclical nature of labour demand, in particular in services jobs.

Trade unions believe that, because all of that the rest of this paper suggest about likely impacts on labour conditions, labour standards and labour markets in host countries, the idea that the WTO can be used as an arena in which these matters are negotiated outside of the purview of the ILO or ministries of labour and immigration is unacceptable. We therefore argue that Mode 4 of the GATS has no place in the WTO. These are labour, migration and social issues that belong to national governments and in the ILO and UN systems, not in the WTO.

If any governments do nonetheless make Mode IV offers that would include the temporary movement of workers, these must be agreed with the trade unions concerned on a prior basis and ensure:

- Observance of core labour standards, national labour law (incorporating and going beyond those standards) in the country where the service is delivered;
- Observance of existing collective agreements in the host country by all parties, with regard to all workers concerned;
- Full involvement of the ILO, especially as regards acceptable labour standards;

- Protection of the workers concerned against all forms of discrimination and exploitation; and
- Guarantees of the remittance of their contributions to social security and insurance schemes.

In the absence of such conditions, GATS negotiations and commitments under Mode IV should not go forward.

The shift by many governments to a preference for temporary migrants rather than permanent/long-term migrants results in two things:

- Migrant workers subsisting in a buffer zone of insecurity, such that they can be thrown out when the economic situation worsens, as is happening now in the European Union and the Gulf States especially; and
- These workers being denied ordinary workers' rights, such as forming or joining trade unions and being able to use labour legislation to protect themselves against abuse and exploitation, since that legislation does not generally apply to temporary migrants

Strictly speaking, a traditional understanding of the GATS text makes it clear that Mode 4 was meant to be applied to the four categories of people outlined at the beginning of this paper (business visitors, etc.) and that it was to cover temporary movement. However, that is not specifically spelled out in the text and there is no common definition of 'temporary' – some countries regard temporary as meaning several months while many others regard it as meaning three to five years. It is standard WTO dogma that Mode 4 movement does not involve migration and does not allow entry of such service providers into the host country labour market.

However, in the current round of GATS negotiations that are part of the WTO Doha Round, many developing countries are seeking both to extend the range of workers who can be covered and to allow any temporary entry to be renewable. In other words, they are seeking the possibility that a full range of workers could work for up to 10 – 15 years in the host country. So, in spite of claims about Mode 4 not involving migration or labour market entry, Mode 4 commitments will involve effective migration

and entry into or impacts on the domestic labour market of host countries as the following examples of current temporary migration patterns show:

- The World Health Organisation has evidence of a revolving pool of Bangladeshi nurses who work in care homes in the northwest of England. They all come from a particular district in Bangladesh and the local community arranges a fresh group of people to go to the UK when the permits for the current group expire. The nursing homes benefit; the Bangladesh community has every incentive to make sure that it sends good workers, so that the skills and remittances keep on returning. However, although each person may be a temporary worker, there is a permanent presence in the UK labour force.
- There is evidence of temporary migration being used as an 'apprenticeship' for later permanent migration. There are claims that South African nurses who have worked on a temporary basis in the UK and who have been identified as desirable employees will, on their return to South Africa, be helped by UK employers to get a permanent job back in the UK. WTO and most immigration data do not pick up that kind of arrangement – they just note that the temporary worker went back home.
- The German construction workers union gives the example of temporary migrant workers who are employed on a series of short-term labour contracts in the German construction industry that has had a deleterious impact on wages and conditions in the rest of that sector.

In general, there are no problems for trade unions with intra-company transfers, business visitors or contractual service suppliers (individuals such as architects, engineers, etc. working on projects) who, as noted, are the typical Mode 4 temporary service provider. There are some concerns, however, with the extension of Mode 4 coverage by the EU to trainees – are they really getting training or is this a glorified cheap/free intern scheme that has these people doing work that is normally part of the regular labour market?

As noted, many developing countries **are** seeking longer term, renewable 'temporary' contracts for a much wider range of occupations and skills that would have impacts on the domestic labour market. For unions, the concerns here are:

- The lowering of wage floors for the rest of the relevant sector in the host country;
- The erosion of working conditions and health and safety standards – it should be noted that, according to Migranté Internationale, every day of the year two Filipino workers arrive home dead as a result of the conditions under which such people work in many countries. There is plenty of evidence that improperly managed migration policies result in women and children especially being subject to gross exploitation;
- The loss of worker and trade union rights. As noted already, in many countries, migrant workers are not covered by labour legislation, may not be allowed to join or be represented by trade unions and may not have access to grievance or anti-discrimination procedures. It is not surprising, therefore, that the AFL-CIO, for example, has reached the general conclusion that the disregard for the rights of migrant workers also weakens the rights of all workers, so we have to thwart attempts by employers to make workers compete; and
- The living standards and conditions for such workers are at risk. They may be earning very low wages (perhaps even the very low wages of their sending country) but paying full costs of living in the host country. Some would argue that this is voided by the fact that the ‘employer’ pays for all accommodation and daily living costs, including food but:
 - There is plenty of evidence of such provision being woefully below acceptable standards; and
 - The ILO Conventions on how such employer-provided ‘benefits’ should be handled are often violated.

There is much debate as to whether the kind of temporary migration covered by Mode 4 involves brain drain, brain gain or brain circulation. In fact, there seems to be evidence supporting all three, varying from country to country, sector to sector and time to time. However, in evaluating this matter, two questions need to be kept in mind:

- In some cases, it is not the **mass** movement of people that leads to important brain drain but the loss of one or two key people in small countries. One Caribbean nation had to close its only intensive care unit because it lost its only anaesthetist. We need effective ethical recruitment agreements between governments of countries of origin and destination countries so that the latter cannot 'steal' key workers and so that any losses (training costs in the country of origin) are recompensed
- Too many countries put more stress on remittances than on the developmental impacts of brain drain/gain. Some clearly allow or even encourage exploitation of their nationals abroad in order to keep the remittances flowing. In the Americas, the management of migration flows are still determined by rigid economic approaches and alleged national security concerns, not by concerns about defending the rights of migrant workers.

I personally know of the following case of one South Asian country: the labour attaché of that country was in a Gulf State where many of his country's nationals were working. He became aware of the gross exploitation of his nationals and contacted his home capital to ask whether they should lodge a complaint to the host country government. He was told in no uncertain terms: *You just shut up. If we complain, they will simply throw our people out and get replacements from another South Asian country.* No, it's all about remittances, not rights.

There are even demands in the current GATS negotiations from some developing countries for not even minimum standards to be observed with respect to any Mode 4 workers. Several developing countries object to demands that their workers be entitled to full worker/union rights in the host country, including, in the case of India, a suggestion that even paying the minimum wage constitutes an unfair barrier to the employment of Indian nationals abroad (see below for more on this).

The supposed reason for this demand for 'no 'local standards' is the myth that full respect of workers' rights leads to a loss of the competitive advantage that labour from developing countries can exploit – *if our people have to be treated equally with local workers, they won't get the jobs in the first place.* What are the facts?

- Such workers will often take on the dirty, dangerous and demeaning work that host country workers will not. Payment of full wages and respect of proper working conditions as per collective agreements will not diminish the number of migrant workers doing this kind of work or the job offers that they will get.
- Rural and poor urban areas: there is evidence from several countries that migrant doctors, nurses, teachers, etc. are prepared to work in rural areas and poverty-dominated urban areas that local professionals will not go to. In the UK, France, Australia and New Zealand, many of these areas would not be served by doctors, nurses and teachers if migrant professionals were not there. This does not stop these professionals from getting good wages and conditions – in fact, in some countries, they may get better wage rates or special allowances because governments will offer incentives for people to serve these areas.
- Shift-work and Sunday work for health service workers: there is ILO evidence that migrant health workers are more prepared to work night shifts and on Sundays – times that locals regard as unsocial – and, again, this often attracts penal rates, not lower wages. ILO Labour Force Survey data for European countries shows that 13% of migrant workers work more than 40 hours per week compared with 7% of native-born workers; and that twice as many migrant doctor and nurses work night shifts and on Sundays as do native-born workers.

Insisting on equal treatment of migrant workers with local workers will not diminish the job opportunities for workers from developing countries. Rather, the problem is making sure that they actually get such treatment.

Some people ask whether the hidden union message here amounts to trade unions saying that workers, especially key workers, should not be allowed to migrate. On the contrary, unions support both the freedom of people to move **and** the freedom of people to stay at home. Many migrants would prefer not to have to leave their families, communities and countries to seek good wages and working conditions if they had the option of getting such wages and conditions in their own place. That 'push' factor is what leads to much migration (especially so-called illegal migration)

and unions in the developed and developing countries have all supported campaigns to force governments and private sector employers to pay decent wages, to respect decent working conditions and to have full implementation of all of the ILO core labour standards so that people can stay in their own country and contribute to its sustainable development.

It is important to respect both of these freedoms – to leave or to stay - since, as we all know, immigration to the U.S. and other developed countries from countries in Latin American or developing countries is increasingly linked to the issue of child- /women- and migrant-trafficking and slave labour. We don't want or support compulsion at either end of this chain.

As the XIVth Congress says: "The growing dynamism of labor migration on the continent needs to install a new challenge for the countries of departure: reducing the tendency to migrate through, as in the ICFTU concept, "employing workers" instead of "sending employees to work." In other words, we must ensure that people have not only their right to emigrate, but also "not to emigrate," by addressing the expectations of the sectors likely and more likely to move, such as the young".

Either way, unions insist that Mode 4 has no place in the WTO.