

Dr. Alfredo J. Ganapin Advocacy Forum Series I
WTO GATS Mode 4: A Prescription for Migration?



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WELCOME REMARKS

Ellene Sana, Executive Director of the Center for Migrant Advocacy, welcomed the participants. The objective of the forum is to have a basic understanding of the issues and concerns regarding the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) and Mode 4. The forum also addresses the impact of GATS and Mode 4 on the rights and situation of migrants, particularly women migrants who dominate the service sectors.



Ellene Sana (CMA Photo Library)

INTRODUCTION TO GATS Mode 4

Ellene Sana, Executive Director, Center for Migrant Advocacy

According to a World Bank report, services accounted for sixty four percent (64%) of the global gross domestic product, which totaled US\$31 trillion in 2001. The T.R.A.D.E. Working Paper issued in 2004 stated, “If only industrialized countries will increase their quotas on movement of skilled and low-skilled temporary workers by an equivalent of 3% of their workforce in their countries, world welfare would rise by more than US\$150 billion a year.”

The WTO’s General Agreement on Trade in Services seeks to open up the service sectors, which is the largest sector in most economies today. GATS provides a multilateral framework to liberalize trade by way of four modalities or Modes:

Mode 1: Cross border supply

Services are delivered, wired, or transported across national boundaries (e.g. remittances through bank transfers, letters, cargos, services provided by call centers, and information and communication technology).

Mode 2: Consumption abroad

Individuals cross national boundaries and consume the service in the location of the service supplier (e.g. tourists who travel for entertainment or recreational purposes, or acquire medical treatment abroad).

Mode 3: Commercial presence

The service supplier establishes operations in another country to provide the service (e.g. foreign direct investments).

Mode 4: Temporary movement across borders of natural persons

Natural persons move across borders to provide services (e.g. overseas posting of expatriate managers, lawyers, accountants, and other highly-skilled professionals).

Under GATS, trade negotiation is done through a unique request-offer process. A member country can “request” another to open up certain service industries, while the latter can respond by making “offers” on how much it is prepared to liberalize.

Developing countries in the WTO lobbied for Mode 4 partly to boost their overseas employment. To date however, Mode 4 remains very restrictive.



Josefina “Gigi” Francisco (CMA Photo Library)

WTO GATS Mode 4: WHAT WE NEED TO KNOW

Josefa “Gigi” Francisco, Asian Coordinator, International Gender and Trade Network-Asia and Executive Director, Women and Gender Institute, Miriam College

The WTO sets the rules and regulations currently governing international trade which are binding on all member countries. It has different built-in mechanisms, for example for agriculture, and now for services. Originally, services was not included and it was incorporated only in the 80s-early 90s.

Developed countries included in the WTO’s GATS both the movements of juridical (multi- or transnational corporations) and natural persons because of their labor shortages

as a result of an aging population. Their corporations, investments and services targeted other countries where labor is cheaper.

Mode 4 covers the trading not of goods but of services of people or “natural” persons. It aims to facilitate and stabilize the multinational companies’ cheaper and more profitable global operations by expanding their access to the markets of developing economies. At the same time, the developed countries limit the access of labor from developing countries into their markets.

If developed countries want to invest in developing countries, the latter want to have access to the former’s labor market. For example, the Philippines cannot benefit from Mode 3 because we have no money to invest abroad. It is in the interest of the Philippines and similar countries, with labor surplus, to negotiate Mode 4.

Mode 4 redefines labor and migration arrangements. The natural persons who will be “traded” are service contractors not workers or employees. To date, the agreement covers only business visitors, senior executives, managers, specialists with proprietary knowledge of company technology, services salespersons and professionals. They are considered “temporary”; therefore, they have to return to their countries of origin after the expiration of their contracts. They can neither access the destination countries’ labor markets nor seek permanent employment, citizenship or permanent residence.

Mode 4 excludes foreign workers employed by local firms, most temporary migrant workers, and migrants of all categories, including domestic workers, entertainers, construction workers, permanent migrant workers, and those entering a country by virtue of family reunification.

Labor market integration schemes, such as between India and Nepal, are also not included in the modality. In addition, the United Nations Convention on the Protection of the Rights of Migrant Workers does not apply to Mode 4’s “service contractors”.

One of the critical issues in Mode 4 is the classification of job entrants on the basis of job skills instead of sectors. India, supported by the Philippines, Thailand and others, posits that if the horizontal approach is used, Mode 4 pertains only to specific job categories instead of the whole sector (e.g. mining sector, steel sector, health delivery sector). Some countries insist on a sectoral approach.

There is debate on the recognition of qualifications and licenses of workers from their countries of origin, prerequisite testing requirements and technical standards, transparency regarding hiring procedures, non-discrimination, and full disclosure of limits to market access.

International political economy that dictates Mode 4

The global economy is asymmetrical and unequal. There is a dependency relationship between northern or developed and southern or developing countries. The dependency relation is based on the economic structure of different countries. Rich countries subsidize their agriculture even if it does not contribute highly to their economy. Their

industries, on the other hand, are already shifting from an industrial to a post-industrial or services society. In fact, the US Trade Representative said that its economy is already a services economy. De-industrializing, developed and industrialized countries are different from de-industrializing, developing and non-industrialized countries, like the Philippines.

The WTO prefers developing countries to supply cheap labor instead of developing their economies. In the North, transnational corporations have restructured their production system into international production networks (e.g. different spare parts are manufactured, stored or distributed in different parts or subsidiaries of their global factory system). They need to ensure that the international production networks operate in the most efficient way possible. Thus, it is important that there are universal, predictable, stable rules that apply to all. In this way, they know what to expect and therefore minimize their risks.

In developing countries, governments neglect or penalize agriculture – they favor the landlords rather than implement agrarian reform. We are supposed to be developing like the other newly industrialized countries which were heavily supported in the past. Unfortunately, the Philippines still has no clear agricultural or industrial program. The savior of the economy is the overseas contract worker.

In the North, the emergent service sectors are in the fields of education, health, telecommunications, and technology. In most developing countries, the service sectors are latent, undeveloped or informal.

Mode 4 does not mention workers, employers, or employment. Rather, it talks about supply of services. For developed countries, Mode 4 means using their investments to expand market access. For developing countries, given their huge labor surplus, Mode 4 means expanding market access for their labor force and labor mobility in developed countries.

The labor sector is concerned with social protection issues such as wages, labor standards, non-discrimination, security of tenure and social benefits arising from the shift from “employee” to “service contractors”. Mode 4 employment is tied to the employer. It does not allow the worker to transfer from one employer to another because that implies entering the labor market. The GATS visa is also limited only to those with university degrees.

For migrants, Mode 4 fragments migrants’ concerns from the broader framework of migration rights. It will not benefit the majority of women migrant workers either.

In conclusion, Mode 4 is a new form of North-South dependency which is knowledge-intensive and service-led industrial dependence. It is not about migration or employment. It creates and privileges a new type of worker known as the service supplier and marginalizes all other types of migrants and workers. It is not about liberalization of labor. Rather, it is regulating labor in the service of transnational corporations.

RESPONSES



Gary Ador Dionisio (CMA Photo Library)

Labor and GATS Mode 4

Gary Ador Dionisio, Organizer and Educator, National Union of Workers in Hotels, Restaurants and Allied Industries – Alliance of Progressive Labor (NUWHRAIN-APL) and Lecturer, De La Salle University – College of Saint Benilde

Introduction

Migration begins for a variety of reasons – a desire for individual gain, an attempt to diversify risks to household income, a program of recruitment to satisfy employer demands for low-wage workers, international displacement of peasants by market penetration within peripheral regions, or some combination thereof. But the conditions that initiate it are across time and space. Although wage differentials, relative risks, recruitment efforts and market penetration may continue to cause people to move, new conditions that arise in the course of migration come to function as independent causes themselves - migrant networks spread, institutions supporting transnational movements develop, and the social meaning of work changes in labor-receiving societies.

With the recent developments on the world-scale, migrant concerns become inevitable. With the arrival of the WTO and the GATS which now covers migrant workers, its contours become more complex than ever.

Discussing WTO GATS Mode 4 is not an easy task. The issue is multifaceted as well as complex in its nature. By simply arguing that GATS is anchored on the WTO principles, it implies that all of its agreements (Modes 1-4) uphold the logic of free trade.

The initial reaction of trade unions was a total rejection of all of these agreements since they resulted in mayhem and destruction of workers' lives and properties. If you look at the migration issue which is explicit in GATS Mode 4, we cannot simply reject this mode since we recognize the contributions of migration or migrant workers in the democratization and development of our society.

UN Secretary General Kofi Annan, in his report on the 'Strengthening of the United Nations: An Agenda for Further Change', identified migration as a priority issue for the international community. On December 9, 2003, the UN Secretary General established the Global Commission on International Migration based in Geneva in order to provide the framework for the formulation of a coherent, comprehensive and global response to migration. Its mandate is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, and to examine the inter-linkages between migration and other global issues.

The issue of migration has become the talk of the town nowadays, specifically at this juncture when our poor *kababayan* (compatriots) are facing problems. For example, the Japanese Government decided to ban the entry of entertainment workers in the next five years and Malaysia launched an inhumane crackdown on Filipino workers.

This paper aims to discuss GATS Mode 4 vis-à-vis the migration issue and its impact on the world economy. Some argue that GATS Mode 4 is a prescription for migration while others say that it is simply a 'labor trap for developing countries'.

GATS Mode 4: General Overview

The 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 agreementsⁱ 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 the creation of a new institution, the WTO¹.

The service sector is a rapidly growing area and represents around 20 percent of the world's total trade. According to Rupa Chanda (Movement of Natural Persons and Trade in Services: Liberalizing Temporary Movement of Labor under the GATS, Indian Council for Research on International Economic Relations, 1999), the incorporation of the GATS rules into the world trading system was an inevitable result of the increasing importance of services, in both the international trade and investment transactions. 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 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 percent.

¹ GATS 2000 Negotiations: Option for Developing Countries, South Center Trade Working Papers, 2000. Mashayehi Mina

Trade in services differs from the traditional international trade in goods due to the direct physical interaction between supplier and consumer. The range of transactions covered by GATS is particularly broad. 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 persons².

The Annex on the Movements of Natural Persons Supplying Services under the agreement applies to two categories, namely: a) natural persons who are service suppliers of a member, and b) natural persons of a member who are employed by a service supplier of a member. This suggests that Mode 4 includes both service providers who are working abroad: a) in an individual capacity (independent services providers, such as professionals), and b) those who are part of a commercial establishment.

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 is reflected in the Annex to the GATS that covers only persons seeking non-permanent entry to supply services abroad. 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. Therefore, members are provided with a fairly wide margin of discretion to interpret this concept, which varies according to the category of workers. In order to determine whether the requirement of transitory stay is fulfilled, as well as the condition of not seeking access to the labor market, Jolita Butkeviciene (Trade in Services Section, DITC, UNCTAD Secretariat 2002) suggested looking at the process leading to employment. Cases where the individual engages in an active search and solicits employment abroad are clearly outside the scope of the Annex. If a service company is looking for qualified persons, those individuals hired for a temporary period as a result of that search are covered by the Annex.

Another problem that this definition poses is the distinction between persons entering the labor market or not. In fact, a period of employment beyond three years is considered by some analysts as tantamount to entering the labor market.

These are only some examples of the difficulties that arise when trying to arrive at a single concept of Mode 4. Current definitions opt for a cumulative approach defining it both in terms of duration and purpose of stay. Service suppliers who enter the market for a specific purpose (to fulfill a service contract as self-employed person or as an employee of 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 labor market).

² GATS art. I (GATT document MTN. GNS/W/164, 3 September, 1993)

It is certain then that Mode 4 is different from migration. However, public debate increasingly links the importation of labor under Mode 4 to longer term migration. Several factors might explain this linkage, particularly the way countries regulate the entry of foreigners (workers) into their territories. Further concerns arise around the likelihood of temporary entry leading towards permanent residence. An example is when a visa allows a worker to change from temporary to permanent status, or when it allows for a change in the sector.

While figures are not complete, there appears to be little evidence of large scale transfer of workers from temporary to permanent status. A study showed 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 showed that in practice, only a small proportion opted to do so. The same conclusion was drawn based on the North America Free Trade Agreement (NAFTA) visa system, with respect to Canadians working in the US.

Available data 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 migrant stock increased 1.9%, which was not much more than the 1.8% population growth rate.

The same study provided some other interesting information: the overall effect of international migration is also much smaller than that of capital and 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 the world GDP; global labour migration was limited to around 120 million people or 2.3% of the world population³. Additionally, in 1995 migrants sent home about one – third of net capital flows. Finally it is important to consider that much labor mobility takes place between developing countries. In other words, most migrant stays within their regions.

Rating Mode 4

One of the main problems related to Mode 4 is the lack of reliable or complete sources of statistical information. The existing data and current knowledge about the actual movement of natural persons 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.

³ Trade in Services Section, DITC, UNCTAD Secretariat, 2002

Each statistical system was designed with a specific purpose and based on its own conceptual framework. This situation generates the need to translate the data each time in order to find aspects of relevance for GATS. For example, from the migrant's point of view, it is feasible for temporary workers to enter the labor market. But based on GATS Mode 4, it is not feasible. A 'temporary' stay of more than 12 months is allowed under GATS but for migration statistics that define 'temporary', it is less than a year. To make matters worse as explained above, there is not a definition of temporary under GATS Mode 4.

Despite the above, some groups were able to draw out some relevant conclusions on the current status of the temporary movement of natural persons. The temporary movement of natural persons is increasing, with short-term movements involving the largest number of people. Nonetheless, the temporary movement of workers remains small relative to the overall size of the labor 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, the temporary movement of persons is very important for some industries and for some countries. Labor mobility for skilled workers is also increasing and seems to be concentrated in the service sectors. Additionally, special programs generally facilitate movement of highly skilled workers⁴.

Issues and Concerns in GATS Mode 4

One particular issue that affects specifically the movement of natural persons but also the service sector is 'regulation vs. liberalization'. The service sector touches upon sensitive issues such as the provision of universal services, consumer protection and economy-wide externalities. Governments tend to regulate these areas, which mean that domestic measures are involved. Therefore, liberalization and market access require domestic legislative reforms, which are not always easy to achieve. The general policy is that no commitments are made with respect to the temporary movements of workers, except for those specifically written, which explains the restrictive nature of commitments.

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

Although developing countries consider it fair to have their professionals be 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. It is also argued that the procedures required for the demonstration of wage parity are often extremely complicated and time-consuming.

Another controversial issue is the restriction on employee transfers from one position to another. Again, the idea behind this measure is to prevent temporary workers from

⁴ Where Next for Young Labor Mobility under GATS? Brookings Institution, Young Allison, 2000

entering the permanent market. However, the argument against it is that it limits the flexibility to move a service provider to various client sites to render the service and thus discourage local employers from hiring foreign workers.

Another controversial issue is the possibility that temporary workers may turn into permanent ones. Governments, especially those of developed countries, know that it is easier for a worker already in the labor market to move from one position to another and to find a permanent job. Although the whole concept of Mode 4 is temporary trade, and despite the GATS safeguards, the limitation in the number and scope of commitments have been used as deterrents against this possibility.

Of special concern to trade unions, particularly in developed countries is the need to protect the internal labor market from foreign workers who receive lower pay than local ones for the same work. Since this situation is more likely to occur in relation to less skilled workers, governments are reluctant to commit this type of protection.

Costs and Benefits

In the *realpolitik* of world trade the different levels of commitment and policies that the developed and developing countries have presented are based on the principles of security, survival and self-help. The issue is how and what will be gained or lost in the agreements that they are entering into. Thus the North-South divide is an issue that should be reckoned with in GATS Mode 4.

But the major problem is that ‘workers rights and concerns’ are totally invincible in all levels of discussion in GATS Mode 4. Developed and developing countries are very much concerned about economies of scale, surplus value, etc., but are blind to the concerns of workers.

Non-trade issues such as workers’ rights, environmental protection and gender are always sacrificed in the altar of free trade. The developed countries want to ensure the flow of skilled workers from labor-sending countries. But despite the skills that these workers have, they are paid a much lower salary compared to the workers in the labor-receiving countries.

The temporary movement of natural persons can be thought of as migration. Workers enter a market temporarily to carry out a particular job. Thus, labor inputs in one economy are reduced, while those in another are increased. This in turn increases productivity and world aggregate output rises.

Labor mobility has three dimensions:

- *Developed to developing country labor flows* are the so-called intra-corporate transfers (companies that relocate their specialists to plants in developing countries). Economic models based on this phenomenon show that business mobility increases world output.
- *Developing to developed country flows of skilled labor* result in well-known advantages to the economy in terms of knowledge and specialization. It is obvious

that this kind of movement might tend to benefit the labor-receiving country while causing a loss to the labor-sending country.

- *Developing to developed country flows of unskilled workers* is a trade reality that is politically much more difficult to handle for developed countries. However, some policy observers from OECD consider that these developed countries have more to gain from this kind of movement than that of skilled professionals⁵.

There are both costs and benefits for a country when exporting or receiving labor. Labor-sending countries lose domestic resources and educational investments which represent a substantial cost, although their real impact would be difficult to quantify. This problem which affects most developing countries is known as 'brain drain', which refers to the phenomenon of highly skilled workers moving abroad in order to increase returns on the educational investments made on them. It is likely to have a negative impact on development and the distribution of income.

A study conducted by the International Monetary Fund suggests that the majority of migrants from developing countries to the developed countries in the Organization for Economic Cooperation and Development (OECD) are much better educated than the rest of the population in their countries of origin. The immigration policies of OECD countries tend to favor skilled workers. Countries with a restrictive immigration policy, such as the US, have increased the supply of temporary visas for skilled workers over the last few years⁶.

Some developing countries may train highly skilled workers to a degree that their own labor markets could not absorb them. In this sense, migration also reflects a lack of opportunities in the country of origin. It does not mean that highly educated migrants are not useful to their own countries. The lack of opportunities might be seen only as another facet of the 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.

Is GATS Mode 4 a Worst Migraine to Developing Countries?

GATS Mode 4 encourages workers to seek work and even settle abroad which results in dislocation and brain drain of the best skilled workers of developing countries. With higher wages and prospects for a better future at stake, workers from developing countries have no choice but to jump on this opportunity without thinking of its impact on the domestic economy of their home states.

GATS Mode 4 warrants the uneven development between developed and developing countries which later on will result in an 'unbalanced economy'. It means the continuous polarization of developed and developing countries. It is the subscription of workers to exploitation. It locks-in developing countries to neo-liberal globalization.

⁵ An Analysis of the Removal of Restrictions on the Temporary Movement of Natural Persons, Mimeo, University of Sheffield, Walmsley, T.L. and Winters, L.A. (2002)

⁶ The Economic Implications of Liberalizing Mode 4 Trade, Winters, Allan (2002)

The World Systems Theory defines migration as a natural outgrowth of disruptions and dislocations that inevitably occur in the process of capitalist development. As capitalism expanded outward from its core in Western Europe, North America, Oceania, and Japan, ever larger portions of the globe and growing shares of the human populations have been incorporated into the world market economy. As land, raw materials, and labor within peripheral regions come under the influence and control of markets, migration flows are inevitably generated⁷.

International migration is a natural consequence of capitalist market formation in the developing world. The penetration of the global economy into peripheral regions is the catalyst for international movement. The international flow of labor follows the international flow of goods and capital, but in the opposite direction. Capitalist investment foments changes that create an uprooted, mobile population in peripheral countries while simultaneously forging strong material and cultural links with core countries, leading to transnational movements. Lastly, international migration stems from the globalization of the market economy. The way for governments to influence migration is by regulating the overseas investment activities of corporations and controlling international flows of capital and goods.

Instead of encouraging the developing countries to set their domestic economy in a strategic direction or sustainable growth and development by encouraging the government to invest in job creation and provide better opportunities to its skilled workers, GATS Mode 4 tends to reinforce the exportation of its human resources. It goes back to the old fashioned dependency of developing countries to the developed countries, a worst migraine for developing countries that, if left unchecked, will turn into a brain tumor.

End Notes:

1. GATS 2000 Negotiations: Option for Developing Countries, South Center Trade Working Papers, 2000, Mashayehi Mina
2. GATS art. 1:2 (GATT document MTN. GNS/W/164, 3 September, 1993)
3. Trade in Services Section, DITC, UNCTAD Secretariat, 2002
4. "Where Next for Young Labor Mobility under GATS? Brookings Institution, Young Allison, 2000
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6. The Economic Implications of Liberalizing Mode 4 Trade, Winters, Allan (2002)
7. Theories of International Migration, Population and Development Review, Douglas S. Massey, et.al. (1993)

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William Gois (CMA Photo Library)

EXAMINING GATS MODE 4 FROM A MIGRANT RIGHTS PERSPECTIVE

William Gois, Regional Coordinator, Migrant Forum in Asia

It is necessary to look at Mode 4 and the inter-relationships of the four modes from the perspective not only of labor-sending countries, that is, their need to address their problem of high unemployment, but also that of labor-receiving countries, that is, their need to ride on the services economy. Mode 4 so far is limited to professionals only. From experience, the “temporary” nature of jobs could easily lead to lack of documentation, which then results in crackdowns and mass deportations of workers. Mode 4 has left out the labor and migrant sectors, the human rights discourse and several existing multilateral frameworks developed under the International Labour Organization (ILO), United Nations Development Program (UNDP), and the United Nations Development Fund for Women (UNIFEM).

Gender perspective in GATS Mode 4

The “feminization of migration” refers to the increasing number of women migrant workers and increasing participation of women in the labor economy. Women comprise about half of the world’s migrants today and account for several billions of dollars of remittances received by developing countries.

According to Standing, in the current era of intensified global competition, supply-side macroeconomics and deregulation, employers have tried to ensure a more ‘flexible’ labor force by substituting lower paid women workers for men. This “feminization of labor” refers not only to the increased number of women in paid employment but also the transformation of male jobs where the conditions of work associated with them converge with the conditions associated with women’s work. Given the dominance of women’s

participation in international labor migration, their 'competitive advantage' as workers lies in their lower pay and poorer working conditions.

The UN Special Rapporteur on the Human Rights of Migrants noted in her 2004 report to the Commission on Human Rights (CHR) that various factors make women migrants, particularly women migrant domestic workers, highly vulnerable to human rights abuses. These factors include the lack of coverage of domestic work in labor legislation, employer-tied contracts, oppressive recruitment methods, and lack of mechanism for complaints and redress in cases of violations.

Currently, many developed countries, such as the OECD, recognize the need for women's work, especially in the household, caregiving and domestic sectors. This therefore makes female migrant labor an attractive source of "service supply" in the less skilled or unskilled category. This situation can result in the systematic violation of women's basic human rights, including the irreversible negative social effects to families left back home.

The following are proposed strategies to address Mode 4:

- Launch a massive information education campaign on the WTO, GATS, Mode 4 and their impact on migration among governments and civil society.
- Pressure governments to maintain their commitments outside the WTO. Governments should not make commitments to the WTO that are contrary to their commitments to UN and ILO conventions.
- Make labor-receiving governments protect the labor rights of workers whom they are hiring from other countries.
- Strengthen and continue existing advocacy and calls for labor standards and unity among migrant unions.
- Coordinate and link anti-WTO campaigns to promote solidarity.



Teresa Soriano (CMA Photo Library)

GATS MODE 4: ITS IMPLICATIONS ON MIGRATION

Teresa Soriano, Executive Director, Institute for Labor Studies, Department of Labor and Employment

GATS Mode 4 has an impact on two aspects, namely, (1) the entry and stay of foreign nationals in the Philippines for purposes of employment, where the Department of Labor and Employment (DOLE) has to issue a work permit prior to employment, and (2) entry and stay of overseas Filipino professionals and workers into other countries for employment, where the DOLE has to issue Rules and Regulations for the Recruitment and Deployment of Filipino Workers overseas and set in place development and safeguard mechanisms for their protection and welfare, and implemented through bilateral labor agreements with other countries.

To date, the Philippine government's commitment to GATS Mode 4 is only in the review of Article 40 of the Labor Code as amended (Employment of Non-Resident Aliens) to harmonize it with current Mode 4 terms of reference.

The Philippines is taking its time in offering its commitments and requests, if any, on GATS Mode 4. The WTO itself is still debating on whether migrant workers are covered by Mode 4 as Article 7 of the Agreement does not cover the Overseas Filipino Workers (OFWs). During an OECD-WTO-International Organization for Migration (IOM) event on Migration and GATS, the WTO Director in charge of services said Mode 4 includes migrant workers. The Philippine government also believes they are covered as the “central product classification” includes window cleaners.

Currently, the Philippines is upscaling the skills of domestic workers and entertainers. The Technical Education and Skills Development Authority (TESDA) is now developing

competencies and tests to elevate them to a certified or professional level. The government believes this approach will better protect them.

As early as 2000, the Professional Regulations Commission (PRC) has been issuing an Alien Employment Permit in mutual recognition of qualifications. Article 40 of the Labor Code requires that this be granted but only after it has been determined that there are no qualified Filipinos for the job.

In the GATS negotiations, the Philippines is in the compliance mode, i.e. its commitment covers administrative system upgrading, untangling institutional barriers to facilitate entry of investors' employees as well as registering local professionals in a database. The Philippines has yet to choose which country to request from. Since the Philippines already has a well-organized labor marketing system, Mode 4 can negatively affect the country's labor export. For example, Mode 4 can negatively impact existing bilateral "favored nation" arrangements with 203 countries worldwide, including the Japan-Philippine Employment Partnership Agreement, where the issue is how to harmonize differing definitions of caregivers and nurses.

The concern is how Mode 4 will affect the country's labor export program and how it can further benefit the OFWs. What skills should be liberalized? Where to widen access? Where is the country competitive? WTO GATS is here to stay and so the Philippines needs to analyze its competitive services. What are not competitive? What are not competitive but have potential? There is a need to develop the qualitative and quantitative competitive advantages and improve labor intelligence.

To address GATS Mode 4, it is important to:

- Improve the structure of commitments (horizontal and sectoral commitments and finer classification of categories).
- Remove existing limitations (economic needs test, administrative procedures relating to visas and work permits).
- Strengthen GATS Norms and Disciplines on Recognition of Qualifications Establishment of Multilateral Norms to Facilitate Mutual Recognition Agreements (MRAs).

OPEN FORUM



Kim Rasing, Achieve



Roger Cordero, MMOA

Role of the Philippine government in mitigating the negative impact of Mode 4

Gary Dionisio: We believe that the government should invest in job development and job creation and address labor problems while recognizing the contributions of migrants. The Labor Code needs to be updated, strengthened and implemented. The terms of engagement on migration should not sacrifice workers and migrants.

Gigi Francisco: The government is more in the labor marketing mode because it is realistic. But I am more in the mode of “Never say die”. The government should regenerate our economy for local employment. Given that we have been exporting labor since the 70s, what is there to show for it? There should be clear human resource management and the government needs to prepare the economy to efficiently convert remittances into investments. Since Mode 4 is relatively limited than our labor export program, I recommend that the Philippines does not go into Mode 4.

Teresa Soriano: The government’s concern is to protect our citizens and therefore, our interventions are to protect our workers and to promote better terms. Thus, our only commitment since 1996 is to revise Article 40 of the Labor Code. Mutual recognition of skills and qualifications is a protective mechanism. There is also the ASEAN framework of agreement in services that is moving towards structural recognition.

CLOSING REMARKS

Tos Anonuevo, Program Coordinator, Friedrich Ebert Stiftung

The danger of Mode 4 is that the globalizing first world nationals get higher pay and benefits. There is also the entry of multinational corporations into developing countries. A paradox exists with high skilled workers from developing countries contributing to the society of developed countries but their human rights are not protected. It is important to find instruments that promote and protect migrant workers. Mode 4 should guarantee better protection of labor.

PROGRAM

Dr. Alfredo J. Ganapin Advocacy Forum Series
WTO GATS MODE 4: A Prescription for Migration?
March 18, 2005
UP Balay Kalinaw, Quezon City

The forum was organized to have a basic understanding of the issues and concerns regarding the World Trade Organization's General Agreement on Trade in Services (GATS) and Mode 4 and how these affect the rights and situation of migrants, particularly women migrants who dominate the service sector.

Welcome Remarks

Ellene Sana, Executive Director, Center for Migrant Advocacy

Panel Presentations

Introduction to GATS Mode 4

Ellene Sana, Center for Migrant Advocacy

WTO GATS Mode 4: What We Need to Know

Josefa "Gigi" Francisco, Asian Coordinator, International Gender and Trade Network-Asia and Executive Director, Women and Gender Institute, Miriam College

Responses

Labor and GATS Mode 4

Gary Ador Dionisio, Political, Legislative and External Affairs Officer, Alliance of Progressive Labor and National Union of Workers in Hotel Restaurant and Allied Industries

Examining GATS Mode 4 from a Migrant Rights Perspective

William Gois, Regional Coordinator, Migrant Forum in Asia

GATS Mode 4: Its Implications on Migration

Teresa Soriano, Executive Director, Institute for Labor Studies

Open Forum

Moderator: Ellene Sana, Center for Migrant Advocacy

Closing Remarks

Tos Anonuevo, Program Coordinator, Friedrich Ebert-Stiftung

List of Participants

William Gois – Migrant Forum in Asia
Teresa Soriano – Institute for Labor Studies, Department of Labor and Employment
Gigi Francisco – Women and Gender Institute
Gary Dionisio – National Union of Workers in Hotels, Restaurants and Related Industries-Alliance of Progressive Labor
Anna Navarro – Center for Migrant Advocacy
Rhodora Abaño – Center for Migrant Advocacy
Ellene Sana – Center for Migrant Advocacy
Imelda Rebata – Kanlungan Center Foundation
Rosalina Ladaran – NCH
Roger Cordero – Merchant Marines Overseas Association
Milton Unso – Mariners Association for International and Regional Networking Organization
Atty. Tess Lora – National Labor Relations’ Commission
Loida Bernabe – Kanlungan Center Foundation
Maya Bans Cortina – Kanlungan Center Foundation
Alice Ganapin
Delfin Ganapin Sr.
Blezie Ganapin
Jose Tabada – National Center for Public Administration and Governance, University of the Philippines
Julie Javellana – Arab News
Kim Rasing – Action for Health Initiatives
Sibille Etling – Friedrich Ebert Stiftung
May Flor Artagame – Kanlungan Center Foundation
Ande Anolin – Batis Center for Women
Atty. Christopher Lomibao – Special Committee on Overseas Workers Affairs, House of Representatives
Helen Dabu – Kanlungan Center Foundation
Mylene Hega – Makalaya
Tos Añonuevo – Friedrich Ebert Stiftung
Patrick San Juan – Philippine Rural Reconstruction Movement
Marivi David – Unlad Kabayan Migrant Services
Achie Acuba Cainglet – Coalition against Trafficking in Women
Fatima de Vega – House of Representatives
Atty. Henry Rojas – Center for Migrant Advocacy
Vim Santos – Peoples’ Global Exchange
Atty. Virginia Calvez – Philippine Overseas Employment Administration
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Cristy Virtusio – Kanlungan
Ginger de Guzman – Kanlungan

Millet Apostol – Committee on Foreign Affairs, House of Representatives
Carrie Tharan – Migrant Forum in Asia
Jeremiah Opiniano – OFW Journalism Consortium
Ivy Asuncion – Committee on Foreign Affairs, House of Representatives
Debbie Anne Soriano-Garcia – Committee on Suffrage, House of Representatives
Eden Layan – Asian Center, University of the Philippines
Julius Cainglet – Federation of Filipino Workers
Joy Obara – Peoples’ Global Exchange
JV Villanueva – Akbayan
Congressman Mario Aguja – Akbayan Partylist, House of Representatives
Rene Raya – Action for Economic Reforms
Lorie de Lara - Sarilaya

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PowerPoint Presentation: WTO GATS Mode 4: What We Need to Know. *Josefa "Gigi" Francisco*

PowerPoint Presentation: Labor and GATS Mode 4. *Gary Ador Dionisio*

PowerPoint Presentation: Examining GATS Mode 4 from a Migrant Rights Perspective. *William Gois*

PowerPoint Presentation: GATS Mode 4: Its Implications on Migration. *Teresa Soriano*

MODE 4 of GATS: Development for the South?

Joel B. Lasam

The Services Sector and Global Trade: Trends and Directions in Asia

The services sector is figuring to be one of the most important determinants of global trade. In fact, it registered the fastest growing component of international trade for the period 1985-1999, hitting 9 percent per annum covering cross-border supply of services and consumption abroad, compared to 8.2 percent per annum for merchandise (Tullao and Cortez, 2003). From US\$0.4 trillion in 1985, services jumped to US\$1.4 trillion in 1999, which is equal to about one-quarter of global trade in goods and three-fifths of foreign direct investment flows (Mashayekhi, 2002). While industrial countries account for about two-thirds of trade in services, developing countries experienced a rapid rise in their service exports and an increase in their share in world service trade from 14 percent in 1985-89 to 18 percent in 1995-98 (Tullao and Cortez, 2003).

Table 1: Structure of the Economy, 1996

ASEAN Countries	Services (in Percent)	Industry (in Percent)
Indonesia	42	43
Malaysia	41	47
Philippines	43	36
Singapore	63	37
Thailand	47	43
Vietnam	39	39

Source: ADB (1997)/n Wickramasekera 2002 and in Tullao and Cortez, 2003

In the ASEAN region, the services sector is fast outstripping industry and agriculture in terms of the structure of the domestic economy. As a proportion of GDP, the share of services in GDP remains approximately 40 percent. Moreover, some developing countries find services as a source of economic growth. India, for example, rode in the crest of the information technology boom. Its software exports grew by about 50 percent from US\$225 million in 1992-93 to US\$1.75 billion in 1997-98. The World Bank (2002) projects that the IT sector could grow further to 35 percent of India's exports by 2008 and attract about US\$5 billion of foreign direct investment per year.

The services sector is experiencing great transformations in Asia. The employment mix, both at the domestic front and overseas, reflects the movement of human resources and the transformation of labor markets. In Asia, labor migration is a phenomenon, both for the "push" and "pull" factors experienced by most developing countries in the region. For the most part, the push factors include unemployment and poverty, which leave people with negligible opportunities in their home countries, but to look for greener pastures abroad. A significant proportion of these are women. What lures them to work overseas

are the employment opportunities, wage differentials and the better quality of life they would experience, all of which comprise the pull factors of labor migration. Table 2 highlights the status of export of labor in some countries in Asia.

The Philippines is exceptional in terms of benefiting from movement of labor overseas. Having compensation of employees overseas in the balance of payments as an indicator of trade flows, the Philippines figures prominently as one of the top exporters of services overseas, mainly female labor. Table 3 below shows that among the top labor exporting countries measured in terms of the compensation of employees, only the Philippines and Thailand were the developing countries included in the top ten countries in 1999 dominated by European countries.

Table 2: Labor-Sending and Labor-Receiving Countries in Asia

Top Exporters	Compensation	Top Importers	Compensation
1 France	8904	1 US	7589
2 Philippines	6794	2 Switzerland	5389
3 Belgium-Luxembourg	3892	3 Germany	4673
4 Germany	3749	4 Belgium-Lux	2794
5 US	2208	5 Israel	2407
6 Italy	1581	6 Italy	1927
7 UK	1551	7 UK	1228
8 Thailand	1460	8 France	1093
9 Switzerland	1058	9 Netherlands	969
10 Austria	1019	10 Denmark	694

Source: Wickramasekera (2002) in Tullao and Cortez, 2003.

In view of the foregoing observations, the rise of services in the domestic and global economy underscores the strategic importance of “trade in services and also brings about new dynamics not only between labor- sending and labor-receiving nations, but also between the North and the South, as well as the divergent views within the South itself.

Table 3: Trade Flows (BOP Compensation of Employees. US\$M. 1999)

Labor-Sending Countries Receiving	Labor-Sending and Receiving Countries	Labor- Countries
Bangladesh, China, Indonesia, Countries	India, Malaysia, Pakistan, Thailand	Middle East Brunei,
Nepal, Philippines, Sri Lanka, Taiwan,		

Vietnam
Hong

Japan, Korea,
Kong,

Singapore

Source: Collantes, 2003.

What is GATS?

The North has benefited from the globalization of capital through trade in services, particularly commercial presence. That is, services are sold in a country by foreign firms and entities that have established commercial presence therein. The reluctance to recognize “labor”, another important factor of production, which is perceived to be the comparative advantage of the South, given the abundance of human resources that could fill the labor supply gap in the more advanced countries in the North and even in the South, underscores the motivations that continue to perpetuate unequal relations, structures and norms. Services liberalization has created a strong bias for the movement of capital and technology-intensive services. For example, transnational corporations based overseas comprise about 33 percent of global services, compared to only about 1 percent share for labor movement (McCulloghy, Winters and Cicera, 2001; Oxfam, 2002).

In this regard! the General Agreement on Trade in Services (GATS) was proffered to balance the trade in goods dominated by the North and therefore was advocated on the merit of what was deemed by the North as a “development-friendly” instrument. The paradox of this advocacy is exposed as one understands the realities of services liberalization. There are four (4) modes of supplying services under GATS. These include the following (Rajivan, 2003 and Hoekman and Kostecki, 1995):

- *Cross-border supply*, which does not require the physical movement of supplier or consumer, examples of which include telecommunications! courier and internet services.
- *Consumption abroad*, which involves movement of the consumer to the country of the supplier. For -xample, people move overseas for tourism and leisure services, as wel’ as for health and edLcation services, among other examples.
- *Foreign commercial presence*, which involves foreign service providers locating their businesses and operations in a country or territory other than their own. Examples of commercial presence include bank branches, subsidiaries of foreign firms, and other forms of foreign investment,
- *Movement of natural persons (MNP)*, which means that the provision of services require the temporary movement of “natural persons” or overseas workers.

It is worth noting that the first three modes of GATS are known to be in favor of the North more than the South. Cross-border supply and commercial presence have always been a feature of the more advanced economies. Moreover, consumers are likely to move to “buy” health and education services in the more advanced nations, given their long

tradition of expertise and good standing. Tourism also benefits the North as much as it does the South.

Only in MNP and intermittently in consumption abroad do countries of the South perceive some potential advantages. Foreign consumers may move to demand certain services from the South, e.g., tourism and entertainment services, if only for much cheaper consumption compared with that in the North. The influx of foreign tourists, for example, is an indication of comparable satisfaction they get for visiting destinations in the South, often associated with history and culture and entertainment, at much affordable prices. Governments of the South welcome this, as it brings much needed foreign currency into the domestic economy. MNP, on the other hand, is expected to benefit labor-surplus economies of the South, in terms of foreign currency remittances from overseas.

MNP: nothing but restrictions

Of all the modes of GATS, mode 4 or the movement of natural persons (MNP) has been touted as the developmental mode for the South. The initial euphoria is based on the assumption that labor surplus in the South would finally find its way to fill the demand for human resources overseas. That globalization of labor will finally mean redistributing employment opportunities to the world's people, addressing therefore one of the root causes of poverty in the South, which is the lack of decent and productive employment.

However, interpreting mode 4 as such is bereft of understanding the limited intentions of GATS. At the outset, mode 4 should be demystified, in the light of the "development myth" it proffers. Following are what mode 4 or MNP is not:

MNP is not about labor migration. Rather it is about temporary cross-border movement of labor in the services sector. The imbalance between the movement of capital and that of labor has had to do with the restrictions that impede the latter, mostly as a result of the fears of advanced economies that a liberal MNP orientation might induce the exodus of the world's poor into their fold, exposing them to socio-economic vulnerability.

MNP is not liberal in orientation. It is, in fact, highly restrictive, protecting the interests of the North. MNP is beset by the lack of meaningful commitments from the industrial countries. It has been held hostage by a set of narrow commitments, which include (1) intra-company transferees deemed "essential personnel" of a company with commercial presence in a country or territory, e.g., managers and technical personnel, and (2) business visitors who are short-term visitors not gainfully employed in the host country. Mode 4 has been locked into mode 3 (commercial presence). In other words, advanced economies want to define "natural persons" as those who are only part of the essential personnel of multinational companies located in host countries or "business visitors". This perpetuates asymmetry of the highest order. Because MNP would be exclusive to managerial and scientific personnel linked to mode 3, MNP commitments will therefore benefit the North more than the South.

MNP is not inclusive; it is biased to cater to the movement of skilled workers and professionals. Semi- and unskilled workers remain relegated to the periphery of MNP

discussions. Instead of recognizing the importance of unskilled labor, which in advanced economies remain declining and therefore needs to be filled by surplus labor from the South, there seems to be a deliberate structural and institutional bias against the movement of unskilled labor.

MNP is not about “market access”. It is more about the regulatory restrictions and barriers that impede the free flow of labor. Among the barriers to market access are visa, nationality, residency and licensing requirements; lack of recognition of qualifications and the existence of wage comparisons; and economic needs tests.

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Migrants' Human Rights: Could GATS Help?

By Caroline Dommen
3D - Trade - Human Rights - Equitable
Economy

March 1, 2005

The General Agreement in Trade and Services (GATS) is one of the central parts of the World Trade Organization (WTO) Agreement. The provision of services takes many forms, or "modes" in WTO parlance, and Mode 4 of GATS specifically addresses the temporary movement of individuals. GATS is thus an important intergovernmental framework facilitating the temporary movement of service suppliers.

Related Articles:

- [Temporary Movement of Labor Fuels GATS Debate](#)
- [Promise and Prospects of the UN's Convention on the Human Rights of Migrant Workers](#)
- [Protecting Migrant Workers in a Globalized World](#)

From a human rights perspective, Mode 4 can be an important tool because it can permit individuals and families to earn money in places — often abroad — where jobs are available, and to send that money home. This is particularly important in today's globalized world, where the international dimensions of human rights obligations are increasingly recognized.

In current GATS negotiations in the WTO, all 148 member countries are being encouraged to further open their service sectors, including Mode 4, to international competition. Could these negotiations provide an opportunity to address the human rights risks linked to migration?

Although often discussed in the context of migration policies, the actual scope of Mode 4 is extremely limited. It applies only to people who cross a border temporarily for the purpose of supplying services (GATS does not define "temporary," but WTO members have agreed to Mode 4 for periods ranging from a few weeks to three to five years). Therefore, it is not an instrument designed to enable people to cross borders in search of employment. Rather, it aims to create a multilateral framework for the predictable provision of skills and expertise in the service sectors.

Because industrialized countries, which are sensitive to their electorates, want to protect local labor markets and tightly control migration flows, discussions of Mode 4 have been difficult and controversial. As a result, the scope and impact of Mode 4 have been limited by the fact that few WTO Members have made commitments in this area, and even fewer are proposing to expand them in the current negotiations.

This is not to say that Mode 4 cannot protect the human rights of migrants in migrant-sending countries. As discussed below, it does have this potential, but human rights advocates should not expect Mode 4 to solve all the human rights-related problems of labor migration, as it only addresses a small part of this puzzle.

Right to Work

International human rights law includes a right to work, which is recognized in many international treaties. This could have far-reaching consequences for GATS Mode 4 negotiations.

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR — [see full text here](#)) is one of the key provisions protecting this right, spelling out that the right to work includes "the right of everyone to the opportunity to gain his living by work."

The ICESCR goes on, in its Article 7, to specify that countries must ensure just and favorable conditions of work, including fair remuneration. It is generally acknowledged that the right to work is a fundamental right, as well as one of the keys to exercising other rights.

The UN Committee on Economic, Social and Cultural Rights (CESCR) is currently considering a "General Comment" on the right to work. General Comments are authoritative interpretations of the covenant's provisions. The draft version of the General Comment acknowledges that high unemployment and the lack of secure employment induce migrant workers to take employment in the black economy, and calls on states to take measures to reduce the number of workers outside the formal economy, who, as a result of that situation, lack legal protection.

The right to work is a fundamental right, as well as one of the keys to exercising other rights.

Although the General Comment does acknowledge that migrant workers are entitled to equality of opportunity and treatment regarding employment and occupation, it puts more emphasis on migrants who are legally employed. Thus, it stops short of exploring how the right to work, as well as other human rights, are affected when people are pushed by lack of work at home into the informal economy of another country.

It does, however, recognize the need for appropriate economic policies and the existence of obstacles beyond the control of states that hinder their full implementation of Article 6.

The General Comment also asserts that a country's failure to consider its legal obligations regarding the right to work when entering into bilateral or multilateral agreements with other states, international organizations and other entities — such as multinational entities — constitutes a violation of its obligations.

This perspective implies that industrialized countries must cooperate to realize the right to work, and that these countries would be in violation of their obligations if they undermine the possibility for new work opportunities through the WTO.

The international dimensions of human rights are receiving more and more attention today. The CESCR has, for instance, often expressed concern about the way countries' international trade-related obligations affect human rights. Although individual states' actual international human rights obligations still need further clarification, it is clear that their trade and development policies impact the lives of individuals around the world and thus warrant consideration.

As multinational companies benefit from moving both low- and high-skilled jobs around the world through GATS Mode 3 (investment-related) provisions, it seems legitimate to ask whether it is development- or human rights-consistent for rich countries — which have made so few Mode 4 commitments — to limit the capacity of workers to seek employment in the countries where jobs are available.

Wages and Working Conditions

GATS currently covers the most privileged of migrant workers, who also face fewer human rights risks: high-skilled people who are paid well and have an employment contract before they move. This group includes expatriate executives, who move from one country to another within the same multinational corporation. In addition to arranging their residence and work permits, corporations usually provide relocation benefits, language, and culture training.

Although GATS does not define the skill level of the services to which Mode 4 applies, hardly any states have made GATS commitments for low-skilled workers.

Yet, workers at the lower end of the skills spectrum are more vulnerable to discrimination and human rights violations. They are often the victims of abusive working conditions and the targets of suspicion or hostility in the communities where they live and work. Many lose the ability to enjoy specific rights, such as the right to food, housing, and health care.

Migrant workers are often prepared to work for lower wages than local workers. Labor unions and human rights advocates fear that the availability of relatively cheap labor will undermine wage levels and labor standards.

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ([see related article](#)) expressly provides that migrant workers must not be treated less favorably than nationals of the state regarding pay and other conditions of work and terms of employment.

Most countries that have made GATS Mode 4 commitments also provide for wage and labor standard parity.

Most countries that have made GATS Mode 4 commitments also provide for wage and labor standard parity. Over 50 WTO members have included the wage-parity stipulation in their Mode 4 commitments. In addition, to prevent foreign "strike breakers," 22 members have reserved the right to suspend Mode 4 commitments in the event of labor-management disputes.

While labor unions have generally welcomed these moves, there are various perspectives on wage parity. Many in the human rights community and labor movement point to examples where international competition for jobs in rich countries has resulted in lowering labor standards and wages, to the detriment of local and foreign workers alike.

Others, though, contend that such provisions undermine the comparative advantage upon which Mode 4 trade should be based, namely the relatively inexpensive labor of sending countries. Prices for goods and services differ from across developed and developing countries by a factor of 1 to 2, or at most 1 to 3.

But in the case of similarly qualified workers, wage differences are on the order of up to 1 to 10, with the greatest difference in lower-skilled jobs. In the WTO, some developing countries have hinted that wage-parity conditions might undermine their comparative advantage by pricing their workers out of foreign markets, but this view is generally not explicitly stated.

The comparative advantage argument is of dubious application to Mode 4 services trade, though, as someone from a low-wage country working in a more expensive country will have the same living expenses as a local employee, making the wage level of the country of origin irrelevant. And although wage parity can help prevent the erosion of labor standards, such wage-parity obligations could discourage companies from hiring foreign workers.

How GATS Could Help

Attempts to improve levels of legal migration within the WTO framework can provide means for individuals around the world to seek legal income in countries where employment is available. By offering new, predictable opportunities for legal migration, particularly for lower-skilled workers, GATS could reduce illegal migration and the human rights violations that come with it, issues that concern all countries and human rights advocates.

And by offering a framework into which incentives can be built for temporary workers to come and go on a predictable basis, Mode 4 migration can reduce problems linked to visa overstaying, including the fact that some legal migrants are pushed into illegality by fearing that if they leave, they will not be able to return.

Current Mode 4 commitments have also demonstrated that the WTO can uphold measures to protect the rights of workers in foreign countries, and reduce the scope for depressing wages or labor standards.

Moreover, the CESCR's draft General Comment on the right to work, if adopted, could enhance the ability to hold industrialized country policymakers accountable for ensuring their GATS commitments promote rather than undermine opportunities for people to find work, whether in their home country or abroad. It also goes a long way towards protecting the rights of migrant workers.

By offering new, predictable opportunities for legal migration, GATS could reduce illegal migration and the human rights violations that come with it.

What GATS Cannot Accomplish

There is a growing recognition that trade law is behind the times, encouraging the movements of goods, capital, and delivery of services, but essentially ignoring the movement of people. Discussions on labor migration issues are fragmented among the International Labor Organization (ILO), human rights bodies, the WTO, and others. Bilateral agreements are also a critical component of global labor migration. As a result, it is extremely difficult to find common ground.

Although Mode 4 could be useful in solving the problems underlying migrant workers' human rights violations, it does not address migration's human dimension. It considers movement of labor essentially in terms of numbers (how many commitments, how many service providers?) and with reference to purely local situations, as countries limit their Mode 4 commitments to their own economic needs and political priorities, with little regard for the international dimensions.

Mode 4 also does not address the social impacts of limiting migrants' stay in foreign countries to a few months or years, the impact on separated families, or the fact that some people might be seeking opportunities abroad because they cannot earn enough money at home.

Moreover, while the WTO framework and GATS have shown they can uphold countries' domestic labor standards, the organization is a trade body and therefore not the appropriate forum for setting social or labor standards and protecting workers around the world.

Within the GATS discussion, governments are reluctant to incorporate an understanding of migration that includes the development impact. Many advocates for workers and those who see migration as a way to relieve poverty believe this is a missed opportunity to reframe the migration and rights discussion.

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MFA

Examining GATS MODE from a Migrants Rights Perspective



William Gois
Migrant Forum in Asia

1

Migrant Forum in Asia

March 2005



MFA

Labor Migration and Its Driving Force

- International migration today is driven by economic reasons, but in many cases, also a quest for survival from hunger and extreme poverty.
- Of the 175 million international migrants today, about 86 million are economically active, including migrants, immigrant workers and refugees.
- Push and pull economic factors driving migration, ie. in sending and host countries.
- Key word: "remittances"
- Remittances defined: the portion of an international migrant's earnings sent back from a host country to the migrant's country of origin.
- The consequent growing dependence of many developing countries on the remittances of their migrant workers abroad – backlash and unsustainability.

2

Migrant Forum in Asia

March 2005



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Box 1. ILO Facts on Migrant Labor

•An estimated 175 million migrant workers, permanent immigrants, refugees and their dependents were living outside their country of origin or citizenship in the year 2000.

•Of this total, some 86 million are economically active migrant and immigrant workers, including refugees, and broken down as follows:

- Africa: 7.1 million
- Asia, including
- Middle East: 25 million
- Europe, including Russia: 28.5 million
- Latin America and the Caribbean: 2.5 million
- North America: 20.5 million
- Oceania: 2.9 million

•Women now constitute 49% of migrants worldwide and more than 50% in Asia, Europe, Latin America, North America and Oceania.

•The global annual flow of remittances to developing countries is estimated at US\$100 billion annually. This amount far exceeds the total overseas development assistance (ODA) flow to developing countries and second only to the value of global petroleum exports in international commodity trade.

- Adapted from *Facts on Migrant Labor*,
International Labor Office, Geneva, June 2004.

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Remittances as the "new development mantra?" (1)

- WB reports official global remittance flows at US\$72.3 billion in 2001.
- Yet including flows that do not go through official channels, total global remittances is estimated at US\$100 billion annually.
- These remittance flows are now higher than ODA flows to developing countries, and comparable to FDIs and world petroleum export earnings (see Box 2. Top 20 DC Recipients of Remittances).
- Daves Kapur's (2003) five interesting features of remittances today:
 - Remittances becoming an increasingly significant & stable source of external development finance;
 - Remittances flow to developing countries of all income levels; (see Box 2)
 - Remittances as stable source of financial flows for economies in strife, e.g. in cases of economic shocks or domestic conflict;
 - Remittances as main source of income, in addition to tourism, for people in small island economies;
 - Remittances as peoples' way of "self-help."

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Remittances as the “new development mantra?” (2)

Remittances and Poverty Reduction

- WB reports in a study of 74 low and middle income countries: on the average, a 10% increase in the number of international migrants in a country's population can lead to a 1.6% decline in poverty headcount.
- Same WB report also says that a 10% in the share of remittances in a country's GDP can lead to a 1.2% decline in poverty.

At community and family level

- Remittances towards basic social spending, e.g. nutrition, health care, housing, clothing, and education.
- Remittances as investments in community development projects and social infrastructures
 - Emerging role of NGOs and migrant networks, i.e. MSAI Model – Migrants' Savings for Alternative Investments Model

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Remittances as the “new development mantra?” (3)

Negative impacts of Remittances (as a consequence of labor migration):

In the host countries:

- Violations of migrants' human rights
- Exploitation and abuses on migrant workers
- Social exclusion
- Racism, racial discrimination, and xenophobia
- Clandestine migration and migrant deaths

Countries of origin:

- Brain drain and the depletion of the country's social capital
 - E.g. PSI report on the impact of brain drain on the the health sector and women migrants in selected developing countries.
- Social impacts, i.e. disintegration of families, gender-based discrimination, social stratification, and creation of a “migration culture,” among others.
- Further exacerbated by policies to promote labor exportation in order to abate economic pressures, such as balance-of-payment deficits and debt servicing.

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The Argument for Liberalization of Services (1)

Pros:

- Trade in Services – a means to economic growth and increased participation of developing countries in the multilateral rules-based trading system of the World Trade Organization (WTO).
- Increase in world welfare: i.e. If developed countries would remove barriers to workers from the developing countries by as much as 3% of their labor force, gains of over US\$150 billion will be generated annually. (Winters, 2002).
- Trade in services in GATS Mode 4 will effectively increase access to legal channels for the movement of labor [labor migration].
- GATS Mode 4, when pursued, will significantly increase the participation in global trade by developing countries through their comparative advantage: a rich supply of cheap and available labor.

The General Agreement on Trade in Services Mode 4 (GATS Mode 4)- applies to the “temporary of natural persons across borders as service providers” (TMNP), i.e. temporary workers, both skilled and unskilled, on a contract-basis. The UN defines these workers as migrant workers. However, by definition of WTO’s GATS Mode 4, they are not the same.

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The Argument for Liberalization of Services (2)

Cons:

- GATS Mode 4 is only concerned with the provision of services. It does not apply to “access to the local labor market, citizenship, residence, or employment on a permanent basis.” In other words, it is *outside of labor migration*, or does not concern itself with labor migration.
- Economic inefficiency and cost – Bohning (1996) argues that moving workers on purely seasonal or temporary basis is economically wasteful, i.e. recurrence of cost in transport, training, bureaucratic documentation and processing, training, and familiarization of work. (Eventually, countries would want their workers to stay, e.g. the case of Western Europe employers in 1950s and 1960s eventually deciding to retain workers on a permanent basis.
- But most importantly, GATS Mode 4 risks tremendous costs to the human rights, labor rights, and social security of workers and their families.

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GATS Mode 4 and the Protection of Migrant Workers' Rights

- From the perspective of migration and human rights, the movement of natural persons in GATS Mode 4 is a dangerous path to tread without careful and deliberate treatment, vis-à-vis current migration policy debate and the necessary human rights mandate.

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Issues under GATS Mode 4 and Migrant Workers' Rights (1)

- Denial of basic human rights and worker protections
 - Human rights are indivisible, non-derogable, and inherent in every human being. (UDHR, seven core UN Human Rights Instruments, including the UN Migrant Workers Convention).
 - A worker is a worker and has rights.
 - Rights of non-citizens.

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Issues under GATS Mode 4 and Migrant Workers' Rights (2)

• Gender perspective in GATS Mode 4

- The "feminization of migration," i.e. increasing participation of women in the labor economy. Women comprise about half of the world's international migrants today.
- Standing (1989,1999) argues that in the current era of intensified global competition, the supply-side macroeconomics and deregulation, employers have tried to ensure a more 'flexible' labor force by substituting lower paid women workers for men. This "feminization of labor" is also the transformation of male jobs where the conditions of work associated with them converge with the conditions associated with women's work.
- Given this dominant characteristic of women's participation in international labor migration, their 'competitive advantage' as workers lies in their lower pay and poorer working conditions.
- The Special Rapporteur on the Human Rights of Migrants notes in her report to the CHR 2004 that various factors make women migrants, particularly women migrant domestic workers, highly vulnerable to human rights abuses. These factors include the lack of coverage of domestic work in labor legislation, employer-tied contracts, oppressive recruitment methods, and lack of mechanism for complaints and redress in cases of violations.
- Currently, there is the recognized need by many developed countries, e.g. OECD, of women's work, especially in the household, care giving and domestic sectors. This therefore makes female migrant labor an attractive source of "service supply" in the less skilled or unskilled TMNP. The proliferation of this scheme can result to the systematic violation of women's basic human rights, including the irreversible negative social impacts to families left back home.

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Issues under GATS Mode 4 and Migrant Workers' Rights (3)

• The case against temporary work

- The vulnerability of migrant workers in a temporary contract – short term, lack of incentives to or absence of integration, project/employer-tied, and time limitation.
- In TMNP, integration in the labor market of host country is forbidden, and so is the opportunity to access training and development for advancement and better work opportunities (as defined in ILO Conventions and UN MWC).
- "Temporary workers are rarely accorded the same treatment given to permanent workers as a matter of a policy aimed at discouraging settlement" (ILO Report VI to the ILC 2004).
- The combination of unequal treatment, vulnerability, and the dire economic need can lead to temporary workers becoming undocumented, therefore falling into the cracks of clandestine migration, human smuggling, and trafficking.

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Issues under GATS Mode 4 and Migrant Workers' Rights (4)

Brain drain

- The global transfer of skills and labor from poor and developing countries in the South, to the rich industrialized countries of the North.
- Depletion of social capital, which is essential to spur economic growth and achieve sustainable development.
- Competing discourses on "brain drain," "brain gain," and "brain circulation."
- ILO studies to mitigate brain drain: ensure compensation and investment by developed countries to developing countries, which are supplying the skilled labor.
- GATS Mode 4: keeping them temporary to ensure workers' return.
- Ultimately, the scale is still tilted to serve the economic interests of countries in the North. The adherence only to skilled labor in the current state of Mode 4 negotiations and commitments reflects this interest. The rules of the game are dictated by the rich countries – resistance to Mode 4 – and difficult negotiations – work according to the dictate of rich countries' interest.
- In the end, there is still the brain drain.

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Issues under GATS Mode 4 and Migrant Workers' Rights (5)

TMNP, Irregular Migration, and Trafficking

- In relation to the temporary work (as substantively explained above), it can be further argued that because of the nature of their time-bound employment yet the dire economic need of workers (root causes), TMNPs are at risk of falling into the cracks of irregular migration channels, e.g. see case of crackdown of irregular migrant workers in Korea, Malaysia, Japan, the irregular migrant workers in Europe, etc. TMNP can create consequential link to irregular migration and trafficking.

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Issues under GATS Mode 4 and Migrant Workers' Rights (6)

The unsustainability and injustices of a labor exportation regime

- Promoting migration for development is risking the countries' most basic asset – its people.
- Exploitative, unfair to the citizens (migrant workers).
- A violation of peoples ESC rights – thus they resort to self-help, and thus have to migrate.
- Migration for development – i.e. migration so that the country could develop - is inherently flawed and problematic. The negative impacts are huge and may be irreversible and long-term.
- At the same time, labor exportation (which likewise perpetuates labor exploitation) supports the dominant imbalance in world welfare. Labor exportation fully satisfies the economic interests of the rich developed countries in the North at the expense of poor developing countries and migrant workers in the South.
- Work for sustainable development, equitable growth, and creating the right economic and political climate at home.

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Questioning the legitimacy of the WTO in dealing with movement of workers (1)

Addressing the legitimacy and mandate of the WTO:

- GATS Mode 4 inherently deals with the movement and trade in services of real human beings who have human rights. Mandate, compliance, and competence in the area of human rights and labor standards are absent in the WTO.
- Moreover, the current state of play of WTO negotiations is highly criticized, e.g. democratic processes, dominant rule of rich industrialized countries versus the lack of capacity and exclusion of developing countries, lack or impact assessments, rhetoric in the development agenda.
- These temporary workers must never be treated as commodities or mere "factors of production," they are human beings with inherent and non-derogable rights. Question of the legitimacy and mandate of the WTO in these issue areas.

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Other Alternatives for Opening Legal Channels for Migration (1)

In response to the claim that GATS Mode 4 can now be the mode to open legal channels for labor mobility, below offers our line of thinking:

- With labor migration fueling the economies of both migrant-sending and host countries today, increasing legal channels for the mobility of workers will become an inevitable part of globalization. Meanwhile economic push-and-pull factors will continue to drive migration flows, adding to the fact that there are demographic challenges (ageing populations) currently faced by the countries in the North.
- In one way or the other, the pressure to establish migration channels will increase. The imperative, therefore, is to set these channels within a rights-based, sustainable, international migration policy landscape.
- The current international migration policy debate, where there is at best the participation of a variety of stakeholders, e.g. governments, international agencies, private sectors, and NGOs, including the migrants themselves, offers the best venue for the creation of such multilateral cooperation on international migration. This international migration policy landscape has already achieved reliable multilateral frameworks and institutional arrangements in human rights and labor standards-setting, which are the two most essential components of an international migration policy. The multilateral rules-based global trading system of the WTO cannot be allowed to undermine these landmark achievements of humanity.

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Other Alternatives for Opening Legal Channels for Migration (2)

- Pursuing legal migration channels through **bilateral labor agreements (BLAs)** or bilateral labor frameworks offer the most practicable and potentially, the rights-respecting mode for moving services or migrant labor
- However, BLAs, by their terms, are not consistent with the MFN principle in the WTO. Yet at the same time, they can be made consistent, provided, that BLAs covering Mode 4 are covered by a specific MFN exemption. Meanwhile, there are those of the view that BLAs are not trade agreements, in the same manner that Mode 4 are not migration agreements. Thus the question lies, is the GATS Mode 4 really the best mode for opening legal channels for labor mobility?

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Questioning the legitimacy of the WTO in dealing with movement of workers (1)

Strengthening multilateral cooperation to protect human rights and labor standards (a)

- It is imperative for the WTO to cooperate and collaborate with other agencies, i.e. UN and ILO if it wishes to pursue Mode 4.
- At same time, we need to enhance the multilateral governance and implementation structures of the UN and the ILO. For example:
 - Push for universal ratification of the UN Migrant Workers Convention—as this is the best available human rights law instrument that can respond to Mode 4 worker protection.
 - Strengthen existing UN human rights mechanisms for migrants, e.g. reporting and monitoring of human rights compliance via the UN Treaty bodies, and strengthening the Commission on Human Rights.
 - Push for ratification of key ILO instruments, the ILO Migrant Worker Conventions 97 & 143, and uphold the Fundamental Principles and Rights at Work.
 - Support the ILO Action Plan on Migrant Workers, i.e. the establishment of a non-binding multilateral rights-based framework on labor migration.

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Questioning the legitimacy of the WTO in dealing with movement of workers (2)

Strengthening multilateral cooperation to protect human rights and labor standards (b)

- Include the participation of other UN agencies, e.g. UNCTAD, UNDP, and UNIFEM.
- Encourage cooperation among other interested players – e.g. WB, IOM, OECD, and other development agencies wanting to capture the benefits of labor migration need to do the same – in the larger frame of international migration and its debates and processes.

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STRATEGIES

- Massive information education campaign on WTO, GATS, MODE4 and its impact on migration among, governments and civil society
- Pressure governments to be accountable for their commitments outside WTO. Governments should not make commitments in WTO that are contrary to their commitments in UN, ILO conventions

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STRATEGIES

- Make labor receiving governments accountable for labor rights of workers that they are importing from other countries
- Strengthening and continuing of existing advocacy and calls for labor standards and unity among migrant unions
- Coordinating and linking anti-WTO campaigns to promote solidarity

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The Dr. Alfredo J. Ganapin Advocacy Forum Series is a quarterly public forum of CMA. It focuses on labor migration and issues affecting overseas Filipino workers.

The Center for Migrant Advocacy honors the memory of Dr. Alfred J. Ganapin, an overseas Filipino worker and committed advocate, by naming the forum after him. Alfred passed away in Riyadh, Saudi Arabia in 2004. Alfred advocated for the integration of the concerns of Filipino migrant workers in the national agenda. He engaged and called on government officials and legislators to serve and protect the interests of migrant workers. He was a reliable *kababayan* (compatriot) who helped migrant workers in Saudi Arabia and other places.

The **Center for Migrant Advocacy Philippines (CMA)** is an independent policy advocacy group that promotes the rights and interests of overseas Filipinos, particularly the disadvantaged and marginalized sectors. CMA works to improve the economic, social and political conditions of migrant Filipinos and their families through policy advocacy, information, networking, capacity-building and assistance facilitation for migrants in distress.

CMA is a member of the Philippine Migrants' Rights Watch (PMRW), the Network Opposed to Violence Against Women Migrants (NOVA) and the Freedom from Debt Coalition (FDC) in the Philippines. It is also a member of the Migrant Forum in Asia (MFA).

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