

WHERE NEXT?

The 2004 seminar highlighted the value of bringing trade and migration policymakers and practitioners together to deepen and broaden understanding of the relationship between these fields, and to see what lessons could be drawn from the experiences of governments in managing temporary labour migration that could be of relevance to Mode 4. Although the seminar has greatly contributed to improving the understanding of various aspects of the trade and migration nexus, the discussion revealed that much more work needs to be done in this area. A selection of lessons learned and remarks on ways forward have been distilled from the seminar report and listed below for greater ease of reference.

1. **Continuing the dialogue** is the single most important means to create a better understanding and build trust between migration and trade communities, develop confidence in the ability to work together, and identify avenues and means for making progress, whether within Mode 4 or in pursuit of a broader goal of more effective and productively managed migration for work.
2. There is much to be done to clear some of the fog of misunderstanding surrounding complicated regulatory requirements related to Mode 4, all generally relevant to the notion of “transparency”. One of the areas where there is a particular need for progress is **increasing transparency of infor-**

mation about national migration procedures with a bearing on trade in services, with specific reference to temporary movement under the GATS. Governmental laws, policies and practices on these questions are simply not readily available and are even less well understood. IOM could help in collecting and disseminating this information.

3. In a related vein, there is a continuing need for **bridging the conceptual and regulatory gaps between trade and migration** by providing Mode 4 with an identity within domestic migration regulations. At a minimum, it is necessary to clearly indicate where within existing national migration regulations Mode 4 movement can be and is covered.
4. **Clarifying certain definitions, categories, criteria and conditions relevant to Mode 4 movement** could facilitate the current round of negotiations. These include: the definition of “temporary”; the criteria and conditions for ENTs and qualifications recognition. More discussion is required.
5. Similarly, **providing a broader coverage of categories for Mode 4 movement** may be needed, particularly for categories not linked with commercial presence. Consideration of contractual service providers and independent professionals warrants concerted attention.
6. Options need to be explored for **making access commitments more flexible, but in an objectively verifiable way**. A principal concern of migration regulators with Mode 4 is taking on binding multilateral commitments in a policy arena which has traditionally been regulated at the national level according to a multitude of changing national economic, social and other policy considerations. The concerns of migration regulators about the potential loss of flexibility to adapt to changing national circumstances might be addressed through adopting more flexible access commit-

ments, linked to objective criteria such as shortage lists in particular sectors, domestic unemployment ratios, etc. Creative thinking needs to be done to accommodate the need for flexibility.

7. One of the key lessons that emerged from the seminar is the fact that there is a need for **establishing a two-way set of commitments** as opposed to obligations solely for the receiving countries to make Mode 4 workable. Indeed, examples exist of what countries seeking market access can offer – potentially in terms of flanking migration measures – in exchange for access. Greater exploration is needed of what the countries seeking market access can bring to the negotiating table, such as commitments to verify the qualifications, identity and criminal records of potential service providers (as in the APEC systems as well as with the Philippines Overseas Employment Administration), to cooperate in efforts to reduce the incidence of irregular migration; to accept the return of nationals, etc.
8. At a more general level, there are many lessons that can be drawn from existing practice in domestic administrative procedures and national regulations, including elements from existing bilateral and regional migration and trade agreements. **Developing templates** could be considered to address regulatory policies and flanking measures that make temporary labour mobility successful, for possible consideration in the GATS Mode 4 context as well as in broader efforts to promote more effective management of migration.

Templates could cover such specific issues identified at the seminar as:

- tools for ensuring transparency of entry requirements, streamlining procedures and facilitating dialogue and information exchange among members. In particular it could include pre-clearance systems based on verification of qualifications, identity and criminal records of potential

service providers by the country of origin e.g. APEC Business Travel Card.

- more flexible access commitments based on objective criteria (i.e. shortages lists by sector, fixed and adjustable quotas); for instance, linking the number of temporary service providers to fluctuations of specified economic indicators, such as unemployment rates.
 - a model schedule/GATS visa and sanctions for misuse.
 - enforcement and return guarantees, including employer sanctions, penalties for absconding works, posting of bond, and
 - policy coordination between trade and migration officials.
9. Templates could be considered either as guidelines or form the basis for **granting market access to all states capable of meeting specified conditions**, i.e. those articulated in templates on such matters as mechanisms to ensure returns following temporary entry, mechanisms to ensure worker protection, etc. By drawing elements from existing bilateral and regional approaches, the necessary level of comfort for trading partners and migration and regulatory authorities could potentially be developed in the context of liberalizing and facilitating market access. Similarly, it may be possible to bring the flexibility and selectiveness of bilateral and regional agreements into GATS commitments through either a positive or negative list approach to specific commitments for the categories which are identified. Safeguards on security and labour market-related issues could be considered as well. Elements of Chapter XVI of NAFTA (concerning preferential trade relations between parties, willingness to facilitate temporary entry on a reciprocal basis and

establish transparent criteria and procedures for temporary entry, etc.), for example, could be extrapolated.

10. Consideration could be given to **linking investment in educational services or training facilities to the movement of skilled workers**. For example, professional training could be considered as a precursor to certain temporary movement of service providers under Mode 4, both as a means to better prepare workers for their overseas stay and as a means to stem and counteract the potential for brain drain.
11. Further consideration is needed to backdrop issues such as **ensuring the protection of the rights of temporary migrants moving as service providers** (e.g. social security, right to join a trade union, access to a personal grievance or other procedure, minimum wages and adequate working conditions, clarification of the application of labour laws, family reunion, etc.).

In short, there is much that has been learned and yet much further to go along the road to developing effective and efficient mechanisms to facilitate the mobility of skills in today's globalizing international economy. The path ahead points to further research, dialogue and sustained political commitment. The groundwork has been laid.