

# **The Trade-Migration Linkage: GATS Mode IV**

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“Mode IV” is a technical term but one which evokes big issues: the freedom of global movement of people to match the free movement of capital across borders. In other words, an issue especially dear to countries in the “South” whose citizens often, too often, see their salvation in going to work in the “North.” More specifically, these people come to be referred to as “service providers” which therefore makes them part of the multilateral trade agenda. In the strike of a pen, they are freed from the legal ghetto of migration ministries and the ILO and brought under the spotlight of the global economic arena!

Formally, Mode IV is part of the General Agreement on Trade in Services (GATS) of the WTO, which attempts to ensure non-discrimination against service providers on the basis of their country of origin. Mode IV is unique in that it relates to the movement of individual service providers across borders and so implies a binding obligation on states to admit non-nationals on to their territory. Mode IV is so far very limited in scope, applying only to a narrow group of people – temporary, skilled, contractual service providers engaged in intra-firm movement - and will be limited to the specific visa commitments that individual states are prepared to make in the context of broader WTO negotiations.<sup>1</sup> This realm is sometimes referred to as ‘circular migration’, that is when someone travels temporarily across borders to work in another country but with the aim of coming back to their country of origin.

Nevertheless, Mode IV has potentially significant implications for human mobility and sovereign states’ ability to control access to their territory. Although it is impossible to fully assess its impact on human mobility, this memo provides a starting point for analysing the broader question of by attempting to unpack some of the political implications of Mode IV. In particular, it explores the implications of the migration-trade linkage inherent to Mode IV for the international politics of both trade and migration, and what conceptual tools might be useful for analysing these issues in greater depth.

One first way to tackle this question is to ask how such a trade-migration nexus will likely affect the likelihood of cooperation between states in both, and as a result patterns of liberalisation of movement of people as services providers. At first glance, one might imagine that institutionally linking trade and migration would have cooperation-

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<sup>1</sup> Interview with Alejandro Jara, Deputy Director of the WTO, July 2008; Interview with Antonia Carzaniga, WTO employee responsible for GATS Mode IV negotiations, July 2008.

enhancing consequences for both issue-areas. One might imagine that increased issue-linkage or issue-density would lead to increased opportunity for side-payments and so create incentives for cooperation (Keohane 1982; Haas 1980; Aggarwal 1998). For example, the migration-trade linkage might facilitate North-South cooperation through exchanging Northern visas for Southern market access. Indeed, the explicit linkage made at the origins was between Mode IV and the establishment facilitating provisions of the GATS: you take our American express offices and we will take your construction workers. On the other hand, however, when one moves beyond the unitary state to disaggregate interest groups at the domestic level (Moravcsik 1997; Milner 1992; Drezner 2007), a set of counter-veiling and possibly cooperation-diminishing implications arise. Because Mode IV implies the movement of people across borders and the abrogation of state discretion in controlling access to its territory it has social consequences that are less prevalent in the case of the movement of goods, services and capital than for human mobility. What people perceive in the host country is what we could call “face-to-face social dumping” (Nicolaidis and Schmidt, 2007) which in turn engenders a degree of resistance often stronger than in the context of long distance social dumping, where at least employees or workers do not feel undermined at their doorstep. As a result of the social implications inherent to human mobility, Mode IV potentially creates a series of tensions in domestic politics that may draw new interest groups and veto players into the international politics of both issue-areas. We then need to ask, how and to what extent national politicians, interior ministries and bureaucracies will reflect and amplify or control and dampen such social reactions.

Taking into account the domestic level therefore makes it questionable whether the cooperation-enhancing consequences of linkage will be outweighed by the cooperation-diminishing consequences of introducing new veto players. This memo provides a first cut at exploring how the possible domestic tensions created by Mode IV are likely to play out at the multilateral level in both the international politics of trade and migration. It explores the factors that may arbitrate whether the migration-trade linkage inherent to Mode IV leads to more or less multilateral cooperation in the two issue-areas.

### ***Domestic Tensions***

GATS Mode IV remains embryonic. Its scope and implementation rely upon reciprocal agreements that have not yet taken place on any meaningful scale. Furthermore, Mode IV is limited to certain narrow categories of temporary service providers. It nevertheless represents a potential paradigm shift in human mobility insofar as, once agreed, obligations under Mode IV represent a binding and enforceable obligation to admit foreign nationals on that state’s territory as service providers. If fully implemented, it would seriously constrain the discretion of a state to discriminate against temporary service providers coming from another WTO member state.

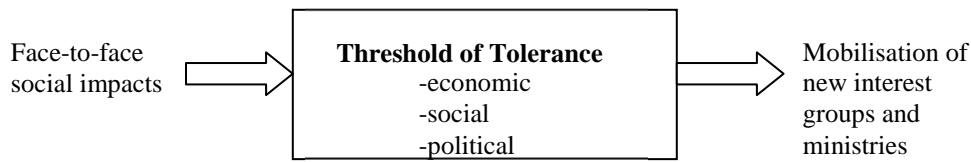
This paradigm already exists of course in the regional context of the EU. Indeed, stemming from the logic of facilitating the free movement of goods, services and factors of production, the EU presided over the free movement of goods, services and capital to labour. Formally therefore member states are prevented from discriminating against workers from other EU countries. But of course, the application of this general principle

has been fraught with conflict. Above all, member states have had to negotiate regarding which law is applicable to workers and their firms operating across borders (Nicolaidis and Schmidt, 2007; Nicolaidis 2004). What does it mean to apply host state rules when the only existing rules in the host state are those negotiated by trade unions under collective agreements? The case law of the European court of Justice remains in flux.

In spite of the limitations observed of the EU case, GATS Mode IV does not go nearly as far as the EU model of free movement of labour but is a step in the direction of the EU. However, this shift to a market-based logic governing human mobility engenders a number of potential tensions. The movement of people across borders – whether as labour or as service providers – has face-to-face social implications in a way that the movement of goods or capital, for example, do not. The crisis in Europe around the “no to the Polish plumber” testifies to the fact that when more efficient workers or service providers arrive from abroad and undercut domestic labour or service provision, this is often unwelcome among a range of interest groups whose livelihoods may be threatened. In certain cases, labour or service provision may be offered at prices lower than their market rate. As mentioned above, when this occurs, it might be conceived as a form of ‘dumping’, which can lead to social tensions. The current economic crisis can only exacerbate this situation.

Although the availability of cheaper, more efficient labour or service providers should represent a net welfare gain, it has redistributive consequences. Employers or service contractors are likely to benefit. In contrast, domestic labour and service providers are likely to lose. This differential impact will create competing and counter-veiling interest groups at the domestic level. Which interest groups prevail and how these conflicts are reconciled at the domestic level will depend on a range of factors. A society’s threshold of tolerance for domestic service providers being out-competed by service providers from abroad may, for example, relate to the country’s overall economic position, its social safety net, and social mores connected to the place on non nationals in the social fabric. In the context of the current global recession, British workers have protested and rioted against the loss of jobs to other European workers under the slogan of ‘British jobs for British workers’. Yet the British Government has been constrained by EU trade rules.

The threshold of tolerance that a given society has for the face-to-face social impacts of market liberalisation will therefore vary and will be shaped by a range of temporal/cyclical as well as structural factors on an economic, social and political level. However, it seems likely that since these impacts are mediated, the redistributive consequences of Mode IV will bring different interest groups into play in a range of ways.



*Figure 1: thresholds of tolerance mediate the domestic political impact of delegating authority for human mobility to a supranational body.*

An interesting question, then, is: how might these tensions at the domestic level play out and feed into the multilateral level? And, furthermore, what analytical tools can be used to understand the impact of these domestic tensions at the international level?

***Impact on the International Politics of Trade***

The multilateral negotiations on Mode IV involve Northern countries providing additional visas for categories or service providers from the South. In practice, the concessions in this area are largely by North to South since Northern service providers (e.g. managers and consultants) face few restrictions entering most Southern states. The potential gains for Northern states from making Mode IV concessions are two-fold. First, from an economic perspective, the concessions themselves should be win-win. They allow Northern businesses and consumers access to the most efficient service providers. Secondly, the concessions can be used to leverage concessions on market access in other areas of the negotiations – notably in agrinama and the other GATS modes.

For Robert Zoellick in 2003 and for successive US Trade Representatives since, Mode IV is a trade issue. However, for a range of other actors, Mode IV has been an immigration issue and has therefore constitutionally required the approval of Congress (which has the power to establish a uniform rule of naturalization).<sup>2</sup> Even though Mode IV explicitly allows derogation in situations related to national security, it was argued that Mode IV might provide routes into the US for terrorists. In practice, though, a significant part of the USTR versus Congress dispute has been attributed to personality disputes and turf wars relating to mandates. However, USTR has subsequently been blocked by Congress in making additional visa concessions under Mode IV. The human mobility implications of Mode IV thereby drew in an additional set of interest groups – not only Congress but also labour unions such as AFL-CIO, and advocates of reduced immigration such as the Federation for American Immigration Reform (FAIR).<sup>3</sup>

The contestation over bureaucratic authority to approve Mode IV agreements highlights how the trade-migration linkage has brought in additional veto players to the

<sup>2</sup> Interview with Paul Malar, Economic Counselor of the Australian Permanent Mission to the WTO, July 2008.

<sup>3</sup> For an analysis of the US domestic interest groups affected by Mode IV, see, for example, Sarah Anderson, ‘U.S. Immigration Policy on the Table at the WTO’, Global Politician, [www.globalpolitician.com/21446-immigration](http://www.globalpolitician.com/21446-immigration)

negotiations. This situation is replicated to some extent in the South, where countries like India and the Philippines has special ministries established to represent the interests of labour and service providers overseas. These ministries as well as a range of additional private interests have been drawn into domestic debates on the trade negotiations. For India and the Philippines, Northern concessions in Mode IV therefore became far more important than they would previously have been because of the presence of new interest groups and government ministries shaping the national bargaining strategy.<sup>4</sup>

These additional migration-related interest groups and government ministries have fed back into the multilateral bargaining process in ways that may have exacerbated the impasse in the Doha Round. At the multilateral level, the significance of Mode IV in the overall negotiations should not be overstated. The lack of agreements in agrinama remains at the inter-ministerial agreements, before negotiators come to services, and even within service, the first three modes take precedence over Mode IV. Nevertheless, Mode IV is clearly linked to the negotiation of all other parts of the trade round. Mode IV is driven by the overall balance of WTO negotiations. Agrinama drives GATS and when agrinama expectations decline, GATS expectations decline. 'Offers' are made across the board through the process of states 'signalling' their intentions in terms of i) employment categories for visas and ii) countries to which they will apply. States partly base the offers they make in a given area of negotiations on the offers that other states make across the board within the development of a framework agreement.<sup>5</sup>

For a country like India, which has taken the lead on behalf of the coalition of developing countries in the Doha Round, Mode IV concessions – especially by the US – were seen as crucial. India is the major services exporter across GATS. It is goading other developing countries to make concessions across the board in the hope of attracting concessions in Mode IV. In the Geneva negotiations it is trying to lobby Congress for 250,000 US India bilateral H-1 B visas (directly through Congress rather than USTR).<sup>6</sup> India may be on a path that is significantly different from other developing countries but it remains the figurehead and is trying to speak on behalf of the developing world as a whole. Other developing countries are not doing research on demand and supply to know what they would benefit from.

Access to visas for service providers was one of the few tangible ways in which India, the Philippines, Pakistan, and Bangladesh, for example, could envisage gaining during Doha Round negotiations.<sup>7</sup> The entry of US veto players concerned with immigration control therefore had a significant impact on their prospect for deriving sufficient benefits from the negotiations to justify wider market access concessions.

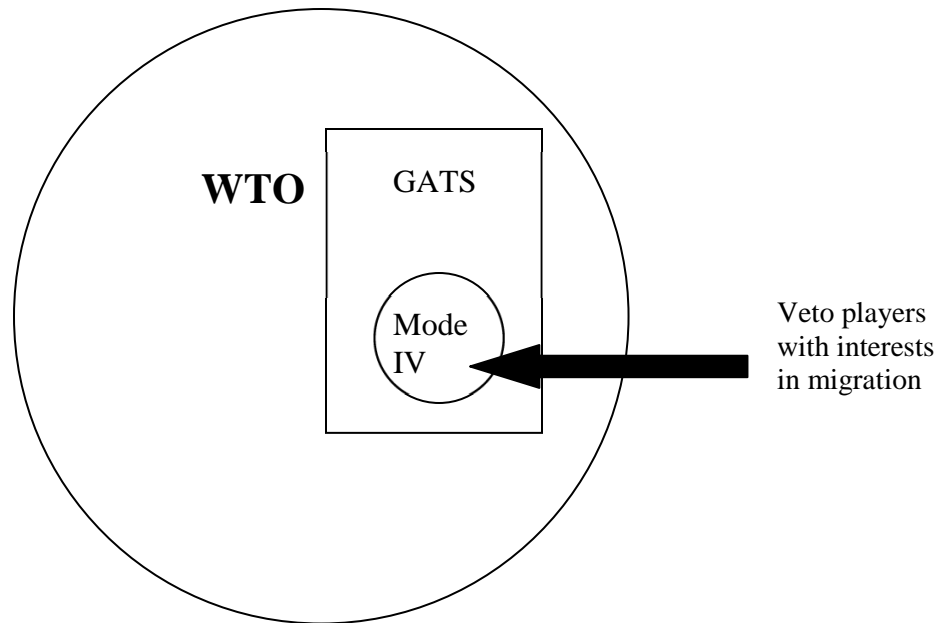
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<sup>4</sup> Interview with Johannes Bernabe of ICTSD, former negotiator for the Philippines on GATS, July 2008; interview with Shaista Sohail, Economic Counselor Permanent Mission of Pakistan to WTO, July 2008.

<sup>5</sup> Interview with Johannes Bernabe of ICTSD, former negotiator for the Philippines on GATS, July 2008.

<sup>6</sup> Ibid.

<sup>7</sup> Interview with, First Secretary to the Philippines Permanent Mission to the WTO, July 2008.



*Figure 2: The nesting of Mode IV within the WTO draws in additional veto players to the negotiations.*

***Impact on the International Politics of Migration***

Mode IV potentially has redistributive implications within a given state. In a Northern ‘receiving’ state, service contractors will benefit from access to cheaper and more efficient services while inefficient domestic service providers and workers will lose contracts. Meanwhile, socially and politically, the state will have to adjust to the presence of a greater number of non-nationals working within the economy. Different interests groups will therefore gain and lose in different ways. The economist Phil Martin has characterised part of this as a ‘rights v numbers’ normative divide. On the one hand, large businesses aspire to attract large numbers of efficient workers; on the other hand, trade unions, workers and social democratic constituencies often aspire to preserve rights, even at the expense of efficiency.

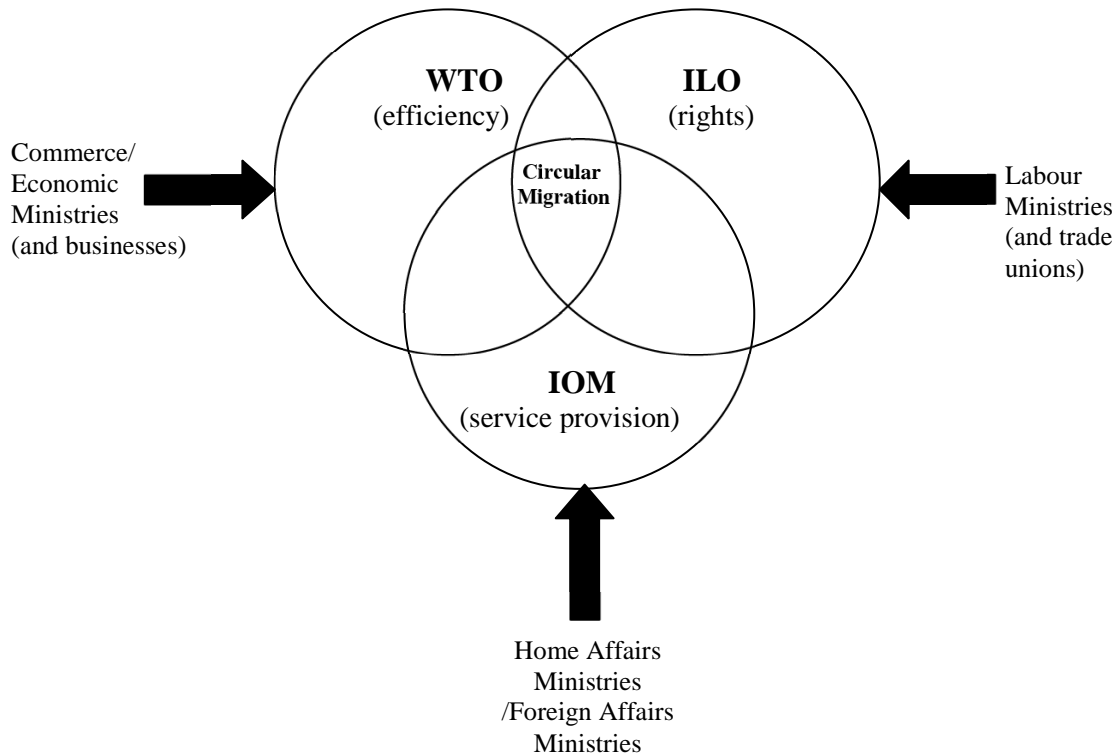
In most countries, there is no ‘migration ministry’. ‘Migration’ does not exist as a single, coherent policy field and responsibility for different aspects of human mobility is dispersed across different government ministries. There is rarely ‘joined-up government’ across ministries in the area of migration. Labour ministries, state departments (foreign affairs), homeland security (justice and home affairs), overseas development, commerce departments (trade and industry), and national treasuries, for example, all have some role in the formulation of policies relating to human mobility.

This means that different access points are available to different sets of interest groups wishing to influence the politics of migration. Indeed, different interest groups tend to

lobby different ministries. Businesses aspiring to attract cheaper labour generally work through departments of trade and commerce. Trade unions attempting to support labour rights frequently work through labour ministries. Those with concerns relating to security and social cohesion are more likely to lobby departments of state and homeland security.

So how does this contestation play out at the international level? At the level of international institutions, Mode IV has led to even greater regime complexity in the area of migration (Alter and Meunier 2009; Snidal et al 2008; Raustiala and Victor 2004). WTO, ILO and IOM all have mandates that in some way relate to circular migration. The WTO has a role in facilitating the elimination of barriers to the movement of service providers; the ILO has responsibility for upholding norms relating to migrant workers including service providers; IOM is engaged in a range of projects relating to facilitating circular migration. Crudely speaking, these different multilateral regimes are driven by different normative concerns which in turn dictate different specific rules. WTO has a normative concern with free movement; the ILO with rights, and IOM with efficiency, in other words has no normative agenda other than to provide services to states that are prepared to pay for those services.

This begs the question of how states choose between different competing institutional frameworks to engage in the politics of circular migration? Unsurprisingly, we find that in the absence of coherent 'joined-up' government, different ministries work through different 'preferred' international organizations and institutional frameworks depending on how their ministerial mandates (and constituencies) align with the normative agenda of the given IO. In other words, it is not so much unitary states that engage in 'forum-shopping' as individual government ministries, each of which has its own reasons for working primarily through a given institutional framework. Different ministries even have different diplomatic routes to the international level. For example, in Geneva, most states have a Permanent Mission to the WTO and a Permanent Mission to the UN. In most cases, these Missions are not in direct contact with one another and are instead accountable to separate government departments in the capital, which often convey very different messages on behalf of different constituencies.



*Figure 3: how mandate overlap between the WTO, ILO and IOM on circular migration creates opportunities for ministerial forum-shopping.*

In other words, rather than unitary states engaging in forum-shopping in the area of circular migration, different government ministries forum-shop on the basis of the normative agendas and constituencies that they represent. This contributes to incoherence and a lack of a basis for cooperation at the multilateral level in the area of migration. Impasses arise at the multilateral level because the unitary state simply does not turn up at multilateral debates in Geneva. Instead, the narrow interests of particular ministries are represented in different fora and little progress is made when provisional decisions are returned to state capitals. In the absence of coherence and progress at the inclusive multilateral level, states increasingly bypass and circumvent the UN system entirely in the area of migration, choosing to work through informal dialogues (such as so-called Regional Consultative Processes) and bilateral agreements.

### ***Tentative Conclusions***

- Mode IV affects both the international politics of trade and migration. It therefore falls under the broad category of “trade and...” issues.

- In order to understand the impact on the multilateral level, it is necessary to look at how Mode IV is mediated by domestic and bureaucratic politics.

- The degree to which Mode IV mobilises new actors will depend partly upon certain domestic ‘thresholds of tolerance’ through which the social impacts of market liberalisation are mediated.
- Mode IV affects the politics of trade by drawing in a range of interests groups and government departments with interests in migration. This leads to the emergence of new *veto players* at the multilateral level.
- Mode IV affects the politics of migration because its social consequences draw in different government ministries. This leads different ministries to engage in different strategies of *ministerial forum-shopping* and institutional choice at the multilateral level.
- Because of its domestic and bureaucratic implications the migration-trade linkage inherent to Mode IV appears to be cooperation-diminishing rather than cooperation-enhancing for both issue-areas.
- On a theoretical level, the analysis highlights interesting elements of the relationship between regime complexity and domestic politics:
  - 1) Whether or not complexity is cooperation-enhancing or cooperation-diminishing will be mediated by conditions at the domestic level.
  - 2) In the context of complexity, it is not only unitary states that engage in forum shopping and cross-institutional strategies but also different government ministries pursuing specific agendas and normative goals.
- So the analytical challenge before us is to assess how the different veto players at the domestic and multilateral level will interact with trade circles and what factors will affect outcomes at different moments in time to

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