



***Mode 4 Trade in Services:
The temporary movement of service suppliers***

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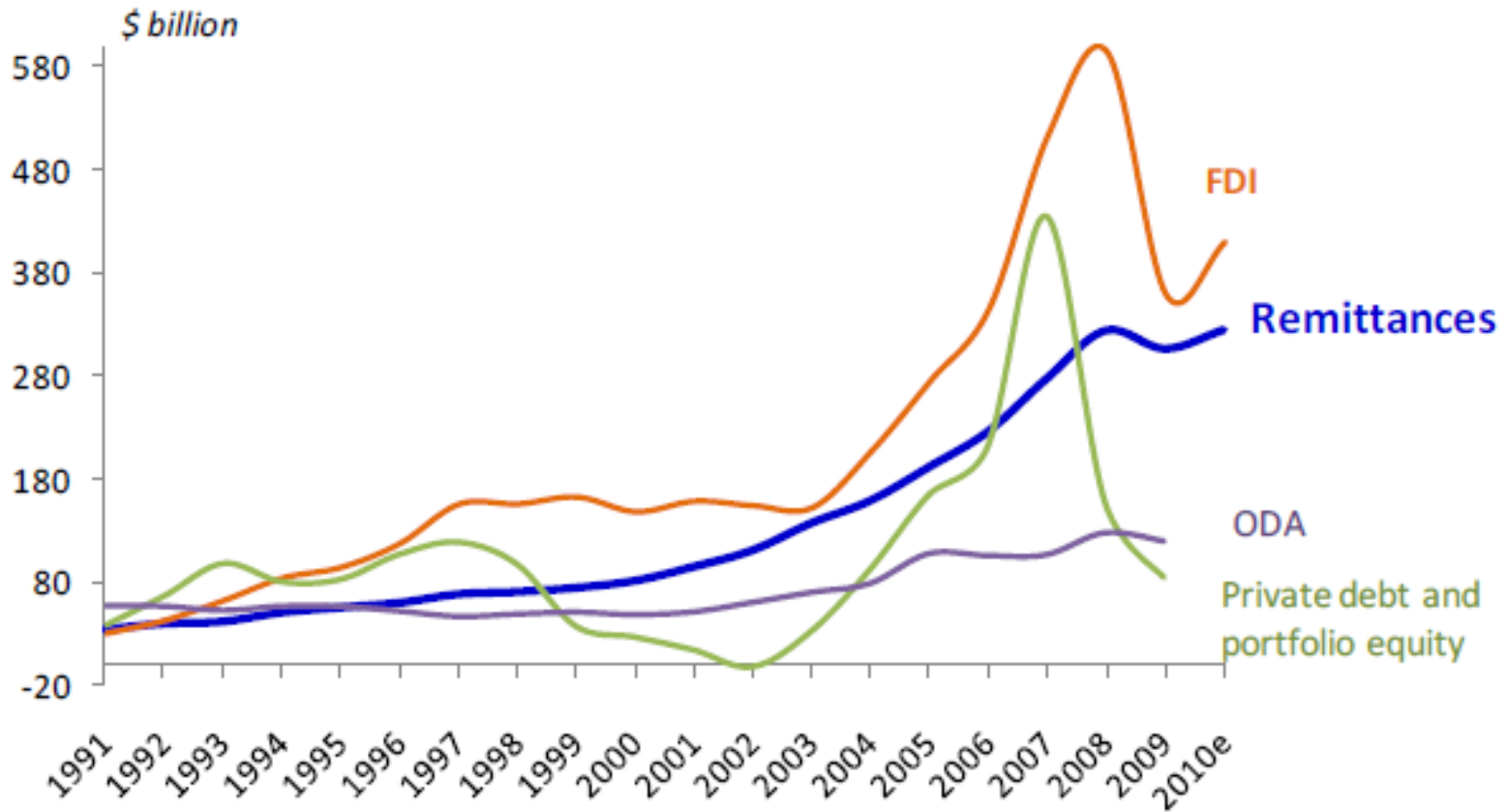
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The facts

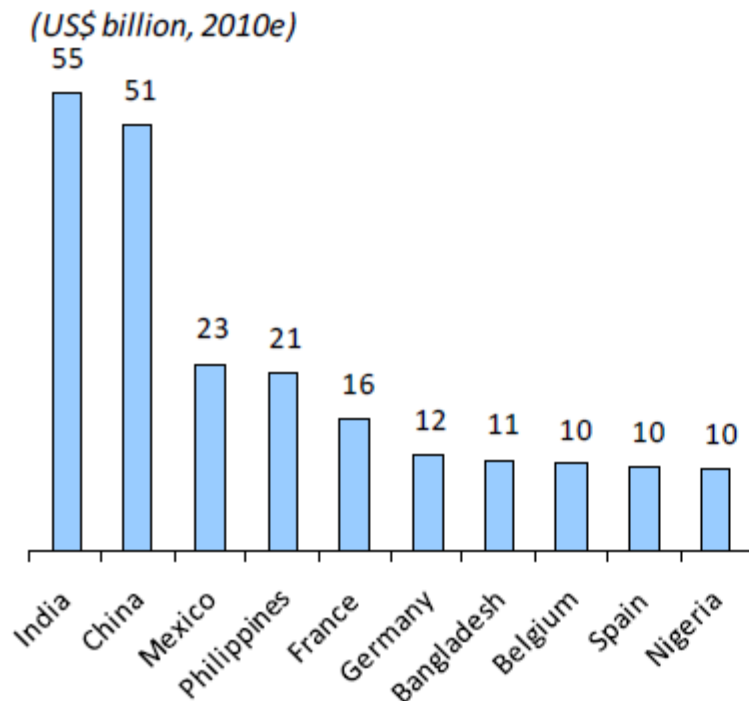
- Mobility of factor movement matters for development (K, L)
- Remittances are a major, stable and counter-cyclical source of external funding
- Empirical studies document very high returns from heightened temporary movement, especially if concentrated on lower/medium-skilled categories of workers – yet this is the hardest nut to crack in trade negotiations
- Strong mutuality of interest in sending and receiving countries:
 - Sending countries: growing supply all along the skill chain
 - Recipient countries: skills shortages; aging populations

Remittances flows



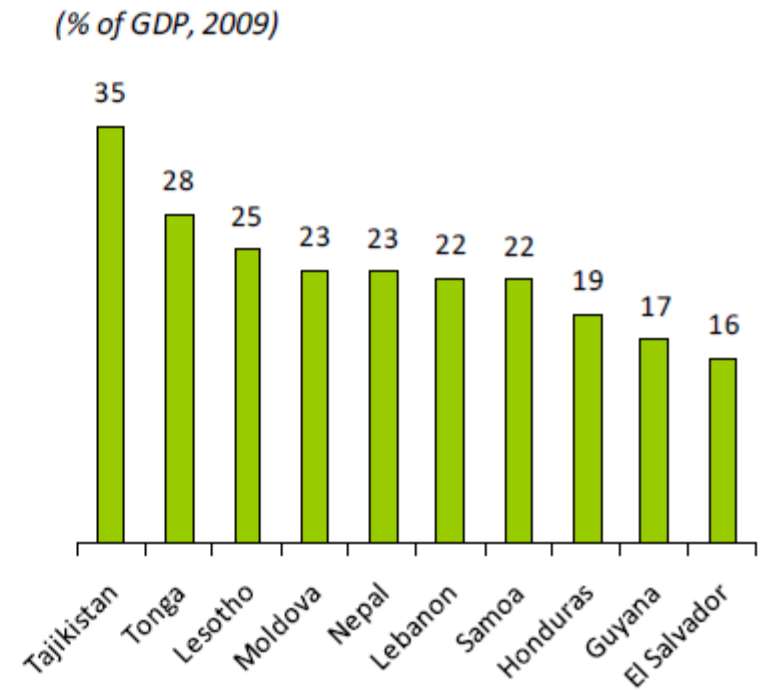
Remittances

Figure 2: Top 10 recipients of migrant remittances



Source: Migration and Remittances Factbook 2011.

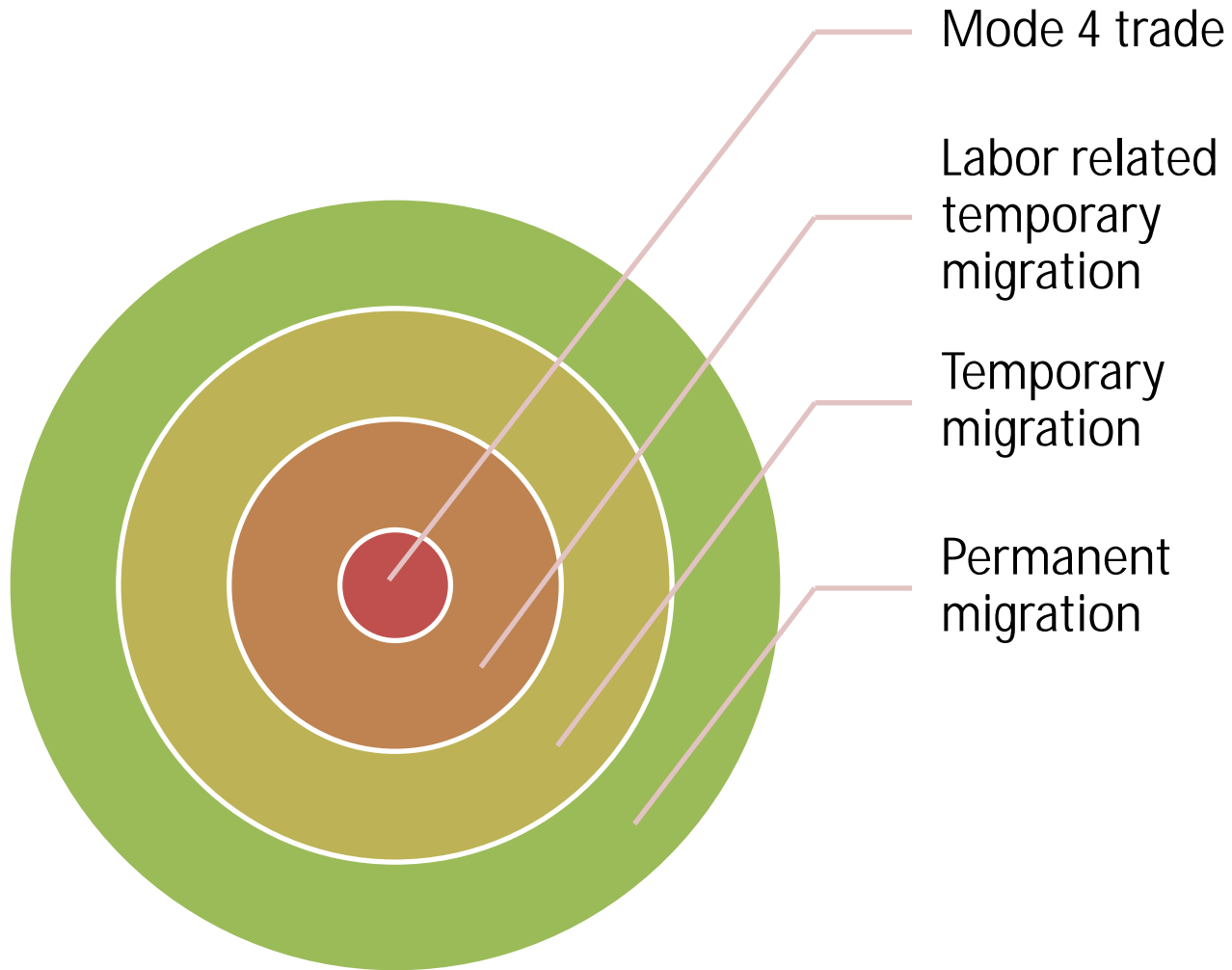
Figure 3: Top 10 recipients of migrant remittances as a share of GDP



Context

- Migration flows are no larger today relative to population size than they were in 1850-1915
 - Much remains inter-regional and inter-developing country
- But temporary movement has increased in recent years
 - More countries are exporters and importers
- New drivers
 - Technological change
 - Declining transport and communication costs
 - Global businesses and production chains

Context



Political economy considerations

- K more popular than L: reflected in negotiated commitments in GATS/PTAs (Mode 3 bias in GATS, and Mode 4 commitments linked to Mode 3 predominate)
- K is 25 to 50 times more likely to be committed than L!
- Mode 4 trade has emerged as a major negotiating challenge/stumbling block in the DDA, both *within* services (balance of benefits across modes of supply) and *between* major negotiating issues in the Round (agriculture, NAMA, SDT, etc.)

Mode 4 - Article I.2(d) definition

- The supply of a service by:

“a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”

Defining mode IV

- Temporary movement of natural persons to supply services
- **Temporary**
 - Not defined, commitments range from several weeks (business visitors) to 3-5 years (intra-corporate transferees)
 - BUT permanent migration is explicitly excluded
 - Also those seeking access to the employment market

What natural persons?

- Natural persons who are service suppliers of a Member
 - Self-employed
- Natural persons of a Member who are employed by a service supplier of a Member and sent abroad to supply a service
 - For the 'same' company which has commercial presence in another Member's territory (Intra-corporate Transferees)
 - To a consumer in the territory of another Member. The contract is made between the home and host companies (juridical contractual service supplier)

Mode IV coverage

Included	Excluded	Debated
Temporary movement (undefined)	Permanent migration (residence, citizenship or employment in a permanent basis)	
Related to the supply of services	Persons working in non-service sectors – agriculture, manufacturing	Scope of activities included in “services incidental to agriculture/ manufacturing”
All skill levels (in practice, commitments are for highly skilled)		
Foreign employees of foreign companies established in host country	Domestic (nationals of host country) employees of foreign companies established in the host country	Foreign employees of domestic companies
Business visitors Intra-corporate transferees Contractual service suppliers (self-employed or as employee of a foreign service supplier)		

The Annex on the Movement of Natural Persons

- The GATS does **NOT** cover:
 - natural persons seeking access to the employment market
 - measures regarding citizenship, residence or employment on a permanent basis
- Governments are free to regulate entry and temporary stay, provided these measures do not nullify or impair the commitments
 - footnote 1: differential visa requirements, not to be regarded as nullifying or impairing benefits under a specific commitment

The need for extended Uruguay Round negotiations

- A number of developing countries were dissatisfied with the level of mode 4 commitments
- Negotiations were extended until June 1995
- But no major breakthrough – slight improvements by Australia, Canada, EC, India, Norway, Switzerland

A snapshot of current Mode 4 commitments

- Governed exclusively by horizontal commitments
- Positive listing of measures:
“Unbound except ...”
- Complete absence of full liberalization – no
“none”
- Access mostly for those with high-level of training and expertise, often as intra-corporate transferees (favours capital-exporting countries)
- Specified duration of stay: 3 months to 5 years

Main limitations scheduled

- Limited categories of workers included
- Pre-employment requirements
- Economic Needs Tests (ENTs)/Labor Market Tests (LMTs)
- Quotas
- Wage parity/benefits requirements
- Residency and nationality requirements
- Training/education/ qualification requirements
- Authorisation and registration requirements

Structure of Horizontal Commitments

- Movements linked to Mode 3: ~60% (Intra-company transferees)
- Contractual Service Suppliers (employees of juridical persons): ~13%>
- Independent suppliers: ~6%>
- Length of stay: 3-5 years for ICTs; shorter for CSS: 3 months - 1 year (very few with > 2 years)

Possible reasons for the less liberal commitments in Mode 4

- Political, cultural, security and regulatory concerns profoundly affected levels attitudes towards Mode 4 commitments
- Enforcement concerns and the problem of temporary entry leading to permanent stay
- Protection of labour markets associated with lower paid foreign services suppliers

Negotiating Proposals in the Doha Round

- 7 specific proposals
 - Developing economies- India, Colombia, Kenya; why not Mexico and the Philippines?
 - Developed economies - EC, US, Japan, Canada
- Other sector-specific proposals relate to Mode 4, e.g., professional services
- Collective request on Mode 4 by a group of developing countries

Barriers identified in negotiating proposals

- Structure and coverage of existing commitments
- Economic Needs Tests (ENTs)
- Definitional problems (ILO class.)
- Administrative practices, access to information and transparency
- Recognition of qualifications

Some of the solutions proposed...

- More and better commitments
more categories, improved definitions, finer classification,
“sector-specific” commitments
- Removal of barriers
multilateral criteria for ENTs - to be more specific, transparent
and non-discriminatory
- Model Schedule/“GATS visa”
- Additional Commitments on transparency and
regulation
- Greater progress on mutual recognition (MRAs)

Improvements in Doha Round offers

- Inclusion of new categories of natural persons/broadening coverage of definition
- Expansion of sectoral coverage/additional sectors to which services could be provided
- Defining/extending the period of stay; providing for renewability of permits
- Clarification of the application/reduction of the scope of ENTs/LMTs
- Some entries in the Additional Commitments column (Art. XVIII)
- Mode 4 is the only Mode where acceding countries have not made systematic WTO+ commitments in their protocols

Recognition of qualifications

- Without recognition of qualifications, market access benefits for Mode 4 suppliers can be significantly diminished
 - Non-recognition can also result in brain loss, where neither country benefits from skills
 - Non-recognition can increase prospects for exploitation
- Solutions – MRAs, trade in education services
 - BUT recognition can facilitate brain drain

The Way Ahead?

- Recent adverse trends in US and EU (recent US FTAs exclude Mode 4; outsourcing concerns; EU services directive and the home country rule aimed at hindering intra-EU labour mobility or lessening its competitive impact)
- 3 problems to overcome:
 - Mode 3 bias in GATS + bias towards highly skilled professions and intra-company transferees;
 - aversion to MFN liberalization of Mode 4 trade on the part of WTO Members; and
 - cyclical labour markets vs. permanent GATS commitments
- Demographics/aging; labour shortages; supply of skills from developing countries all remain favourable

Concluding thoughts

- Three major challenges to making progress:
 - Flexibility of migration regimes vs certainty of GATS commitments
 - MFN GATS commitments vs special migration arrangements for certain countries
 - Lack of understanding between trade and migration policy communities
 - Limited culture of negotiation in migration
- These tensions are not easily resolved and a degree of pragmatism might be necessary
- Need to aim for concrete gains which can actually be achieved
 - Liberalization on the ground more important than seeing all reflected in GATS commitments
 - Danger of going backwards if insist on all bound
- Increasing dialogue between trade and migration policy communities
 - Dialogue to understand needs and constraints
 - Policy coordination to identify possible avenues for progress
 - Identifying necessary complementary measures

What can be done under the GATS negotiations?

- **Intracorporate transferees**
 - Developing countries increasingly becoming investors, including via joint ventures from own mode 3 liberalization
 - Link to outsourcing
- **Contractual service suppliers (individuals or companies)**
 - Clearly trade, not tied to investment and some scope for including lower-skilled labor
- **Housekeeping**
 - Common definitions key terms
 - Transparency, including for labor market tests
- **Linkages**
 - Mode 4 and outsourcing
 - Mode 4 and FDI/creating opportunities at home
 - Mode 4 and trade in education services

What else can be done?

- Encourage the development of bilateral or regional agreements on labor mobility
 - More likely to cover lower-skilled workers
 - Can negotiate additional terms not available under GATS to address specific issues
 - Technical assistance and training to combat brain drain and loss of investment in education
 - Mechanisms for improved remittance transfer
 - Incentives and cooperative mechanisms to ensure return
 - Incentives and mechanisms for recognition of particular professions, including necessary technical assistance
 - More scope for regulatory experimentation and creativity
 - Greater ability to create or renegotiate flexible deals

The basic message

- **GATS negotiations are a critical opportunity to get international negotiations on labor mobility going**
 - Can deliver some real progress in some areas
 - Introduce negotiation to migration community
 - Create pressure and a sense of urgency
- **But GATS is not the only option for facilitating increased global labor mobility**
 - Trade is not limited to WTO negotiations
 - Labor mobility is not limited to trade
- **Need to explore all options to realise gains**

Thank You!

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