

Briefing Paper

Quaker United Nations Office - Geneva

Understanding GATS Mode 4: Return Migration of Temporary Workers

This briefing paper is an executive summary of a QUNO study entitled “*Ensuring Temporariness: Bilateral Mechanisms to Incentivise Return Migration in the context of GATS Mode 4 and Least Developed Country Interests*” by Uri Friedman and David Zafar Ahmed.

During negotiations in the Doha Development Round at the World Trade Organisation, least developed countries (LDCs) have expressed a strong interest in gaining market access for their service providers to work abroad on a temporary basis. In particular, LDCs are interested in securing market access abroad for their semi-skilled and unskilled service providers in sectors where they believe these workers possess a competitive advantage. This discussion about cross-border movement of service providers is taking place under the rubric of the General Agreement on Trade in Services (GATS). The presence of natural persons has been defined as the fourth mode in which traded services are supplied, and is thus referred to as GATS Mode 4. LDCs cite the potential benefits from the development dividends of this process, namely the remittances sent home by workers overseas and the knowledge and skills acquired abroad that workers would bring back on returning to their countries of origin.

However, trade negotiators and politicians from the US and EU argue that GATS Mode 4 is unworkable, particularly for semi-skilled and unskilled service providers, if source countries cannot guarantee the return (and hence the ‘temporariness’) of their service providers working abroad. Failure to return makes GATS Mode 4 a migration issue rather than a trade issue, and thus politically unpalatable to discuss in many developed countries. But existing bilateral agreements between certain developed and developing countries have enabled workers from the latter to enter the former on a temporary basis. These indicate that the GATS Mode 4 process may be feasible for all parties. By analysing the ways these bilateral agreements ensure the return of migrant workers, LDCs can consider policies they may implement to strengthen their position at negotiations on trade in services. Of particular interest in these bilateral agreements are the incentive mechanisms used to ensure the return of temporary migrant workers. Broadly speaking, there are negative incentives, including systems of monitoring and penalties for overstay, and positive incentives, such as investment and training schemes that enable workers to integrate both in the host country where they hold temporary work contracts and on their return home after the duration of their contract.

The bilateral accord from 2001 between Spain and Ecuador has seen a substantial rise in Ecuadorian temporary workers entering Spain on short-term contracts. Both countries have played an active part in creating a multi-faceted screening process for participants in the work programme. Their bilateral agreement uses both negative incentive mechanisms such as premature repatriation, worker disqualification and employer sanctions linked to the social security system, as well as positive incentive mechanisms. Interestingly, the positive incentives are also incorporated into the Ecuadorian government’s policy and investment initiatives. Specifically, legislation allows extension on short-term contracts of temporary workers and does not permit national employment situations to influence the decision of authorities in allowing re-entry of seasonal workers into the country. Grassroots facilities such as social networks, free transfer of savings to the home country and investments for property procurement in Ecua-

Continued overleaf ►



dor have provided incentives for the return of temporary workers. It is also important to note the role of co-development between Spanish and Ecuadorian municipal authorities to improve living conditions, both on a local level in Ecuador and also for labour conditions and social insertion in Spain. These steps forge a positive relationship between the source country and host community and facilitate circular migration of Ecuadorian temporary workers in Spain.

Canada has developed mechanisms with its Mexican and Caribbean neighbours to allow temporary workers to enter the country under the Canadian Seasonal Agricultural Workers' Programme. Data from recent years points to a high return rate of Mexicans and Jamaicans participating in the programme, although these participants form only a small percentage of the total number of workers employed in the regional labour market. Canada has developed an elaborate process of selection and screening for Mexican workers in collaboration with various Mexican government ministries, as well as with support from Canadian employers' organisations. Restricting worker mobility is a major negative incentive mechanism used by Canada to ensure the return of temporary workers, with penalties both for employers and employees when workers are hired illegally outside the remit of the programme. Premature repatriation is also enforced in the case of workers' non-compliance in the framework of the programme. Positive incentive mechanisms for return include flexible contracts, prioritising name-hiring based on an individual's past record in the programme, the covering of transport costs by employers from source country to host country, loyalty recognition payments, systems to avoid double taxation and mandatory remittance transfers to the home country. However participants in the programme have criticised some of these mechanisms, questioning both their effectiveness and the available opportunities for exploitation by employers.

The Philippines has been sending its workers abroad for over three decades, notably to West Asia and the United States, to work on short-term contracts. Many of these migrant workers are employed in the semi-skilled sector. However, the Philippines does not incorporate its temporary work programmes overseas as part of its economic development objectives. These temporary work programmes are managed by the Philippines Overseas Employment Administration and Overseas Workers Welfare Administration which use highly developed screening mechanisms along with pre- and on-the job training facilities. The Philippines has been particularly effective in engaging the private sector in the recruitment process and creating networks in the host country to which Filipino workers are sent. Despite issues with illegal immigration and recruitment, the Philippine authorities have collaborated with agencies to resolve cases of illegal recruitment and map the location of overseas Filipino workers. Alongside penalties for over-stay and illegal recruitment, the Philippines government has also invested in many positive mechanisms such as resource and advisory centres in the countries where their workers are employed. The interests of Filipino migrant workers are also represented at parliamentary level. The government has worked alongside many non-governmental organisations on extensive programmes for the education and training of migrant workers, as well as developing savings and investment schemes for their remittances sent home. Importantly, the government and NGOs have created programmes to assist with the re-integration of migrant workers on their return to the Philippines in order to benefit from the knowledge and entrepreneurial skills acquired by Filipinos who have worked for short periods overseas.

Due to a lack of data on return rates of participants in the programmes detailed in this report, it is difficult to conclusively state which mechanisms ensure the return of temporary workers. However, studies indicate that many migrant workers do desire to return to their home countries yet conditions and opportunities available to them in their countries of origin are a major factor in encouraging their return. These factors, alongside capacity building to develop incentive mechanisms, are issues which LDCs should be mindful of when developing policies and negotiating positions to gain market access for their service providers on a temporary basis. It is important to note that many of the levers developing countries have in the bilateral context, such as the joint development of regulatory systems and historical, cultural and linguistic affinities with partner countries in the agreements, are not necessarily available at negotiations on a multilateral level. The WTO negotiating mechanism presents both deficiencies and strengths for LDCs in meeting their policy objectives on trade in services.