

## **Labour Mobility Provisions in RTAs**

International Seminar on  
Selected Outstanding Issues in Migration

May 4, 2011

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### **Outline**

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### **Managing Labour Mobility under Current Agreements**

- International labour mobility, temporary or permanent, an important and sensitive facet of globalization today- 214 international migrants, 3.1% of world's population
- Many developing countries and regions are playing an important role in shaping global migration trends as sources and destinations
- Growing recognition among countries of difficulties in tackling labour mobility unilaterally and importance of interstate cooperation
- Many countries have entered into regional consultative dialogues and forums to promote cross-country and regional cooperation in managing labour mobility
- Several developing countries have been very active in GATS mode 4 negotiations
- More recently, many developing countries have entered into economic integration agreements that cover services, investment, other regulatory issues and disciplines that have a bearing on mode 4 in the context of trade and investment facilitation

#### GATS and Labour Mobility

- Mode 4 entails the “supply of a service...by the service supplier of one member, through the presence of natural persons of a member in the territory of any other member”
- But GATS mode 4 negotiations have not made progress
  - Unbound sectoral commitments
  - As commitments are horizontal, applicable to all sectors inscribed in member's schedule, don't address sectoral specificities and interests
  - As no sectoral distinctions, lowest common denominator to determine access conditions across sectors
  - Access limited to selected categories of persons-mainly bias towards persons linked to commercial presence and highly skilled persons
    - Close to 60 percent of GATS schedules have ICT, another 20% cover similar categories, BVs- 40% , only 15% include CSS and more rarely independent professionals
  - Defined duration of stay, ENTs and LMTs, residency and training requirements

- Two types of measures carved out from the scope of the GATS
  - Not apply to measures regarding citizenship, residence, or employment on a permanent basis
  - Not prevent WTO members from regulating the entry of natural persons provided that regulations not applied in such a manner as to nullify or impair benefits from specific commitments made
  
- Offers also on horizontal basis
  - As of January 2008, out of 71 offers, only half of WTO members proposed upgrading horizontal commitments in mode 4
  - Inclusion of new categories of natural persons not associated with commercial presence (IPs)
  - Expanded scope of activities
  - Some additional commitments on issues such as transparency of regulations, administrative procedures, visa requirements
  - Some restrictions removed
  - Duration of stay extended
  - Most upgrades concern ICTs or BVs, so skill bias remains and overall improvement very limited

- HK Declaration called for improved mode 4 commitments and plurilateral mode 4 process launched in March 2006 via submission of collective request to
  - focus on better commitments for CSS and IP, provide minimum duration of stay of one year, removal/reduction/clarification of ENTs, elimination of wage parity
  
- But unwillingness to liberalize mode 4 multilaterally remains
  
- Developed and developing have been equally conservative in their mode 4 commitments
  
- Policy issues regarding temporary movement of natural persons similar across countries regardless of the level of development

### Bilateral Labour Agreements and Labour Mobility

- BLAs are temporary migration agreements which are increasingly being used by source and host countries to address a variety of issues (return, welfare, recruitment, reintegration, institutional mechanisms)
- Go much beyond the GATS in terms of granting more significant access levels, especially for low skilled persons
- Motivated by host country desire to address labour shortages, stem irregular migration, regulate labour entry and return
- Tend to be unilateral arrangements as host countries retain lot of flexibility in determining access and conditions and choice of source countries based on political and strategic interests, historic and cultural links
- Source countries are increasingly using BLAs, MoUs to address issues of workers' rights, working conditions for less skilled, screening, return, taxes

### **Addressing Labour Mobility under RTAs**

- Labour mobility also addressed under RTAs , but motivation and approach here very different from that under BLAs as these are preferential trade/economic cooperation agreements and not labour mobility agreements per se
- While BLAs tend to address a wide range of issues, RTAs address temporary movement directly related to trade and investment, and mobility connected with supply of services
- RTAs are more closely aligned with the GATS in terms of their provisions and framework for dealing with labour mobility, though a symbiotic relationship exists with the GATS
  - NAFTA provided the model for GATS
  - Later RTAs have used the GATS model with some additional elements (EU-Mexico, US-Jordan)
  - Some replicated the GATS model (MERCOSUR)
  - RTAs have also mimicked each other on labour mobility issues

- RTAs typically cover Mode 4 under chapter on cross border trade in services with reservations to the Chapter's obligations listed in Annexes
- Often in addition to services chapters which provide disciplines for MNP, also horizontal chapters on MNP (e.g., temporary entry of business persons covering services and other sectors), provide entry conditions for defined categories
- Labour movement included under services chapters as provision of many services requires physical proximity of suppliers and consumers and trade agreements seek to free labour flows linked to services delivery
- Different approaches to labour mobility taken in RTAs
  - Some offer broad mobility, but exclude some sectors or apply special rules to selected sectors
  - Some cover all sectors but limit mobility to certain defined groups
- Main focus is on mobility related to certain kinds of trade and investment activities, though facilitated movement does not always mean right to provide specific services

- Need to consider RTA chapters and provisions on labour mobility alongside liberalization commitments for particular services to understand real extent of market access provided and terms and conditions applicable post entry
- RTA commitments on mode 4 generally do not go beyond GATS horizontal commitments in market access
- Rights of partners to adopt or maintain any measure not inconsistent with GATS market access commitments, safeguarded with GATS type carve outs
  - Most RTAs are subject to general immigration legislation, with parties retaining discretion to grant, refuse, administer residence permits
  - Continued application of national regulations on licensing and qualifications for professionals from partner country
  - Exclude permanent migration and access to labour market
  - Don't impinge on right to regulate entry and stay of individuals

Continuum of approaches

- Some RTAs cover movement only under mode 4 in services chapter - MERCOSUR, US- Jordan
- Some group all mobility (investment and goods related) in a separate chapter - Japan-Singapore
- Some include reference to mobility of key personnel in investment provisions- ASEAN; or under sectoral chapters- EU-Mexico (financial services)
- Some allow full mobility of labour- EU, EEA, EFTA, COMESA, Trans Tasman Travel Arrangement
- Some provide market access for certain groups, going beyond service suppliers or include a separate chapter where all mobility is covered - CARICOM, NAFTA, Canada-Chile, Japan-Singapore

- Some RTAs have created special visa schemes or mechanisms to manage entry
  - Trade NAFTA visas
  - APEC Business Travel Card
- Some give access under existing visa schemes, some do not provide market access but facilitate entry - APEC, SAARC
- More diverse the membership, more scope given to operate existing visa regimes
- RTAs involving partners who are closer in terms of level of development, with greater administrative capacity, and with less concern over issues such as labour market impact, social and cultural integration, and security, tend to introduce alternative visa schemes
- Overall, labour mobility provisions and scope and depth of mode 4 commitments in RTAs calibrated to suit national requirements, sensitivities, geographic proximity, levels of development, cultural and historical ties

- Overall, as these are trade not migration agreements, protectionist interests prevail
  - Most limited commitments where mode 4 would have an adverse effect on wages, employment of local workers
  - Limited progress for those categories not linked with commercial presence
- Have members been more forthcoming in PTAs than under the GATS?
  - Generally not, though some additional categories and sectors covered, some limitations relaxed
  - Framework tends to be replicated, skill bias remains
  - Domestic regulations still regulate entry and stay
- How do labour mobility provisions in RTAs compare with those in BLAs?
  - RTAs much narrower in scope (skills, sectors, categories of persons)
  - RTAs do not reflect policy coordination and dialogue between migration and trade authorities
  - Do not reflect consideration of administrative capacity issues in implementing commitments

### **Approach under Asian RTAs**

- Increasingly countries entering into broad-based RTAs covering services, investment, other issues beyond goods trade
  - 76 PTAs featuring provisions on trade and investment in services notified to the WTO in 2010 (28% of all notified PTAs)
  - Mostly between developed and developing countries, but a growing number in recent years between developing countries
- Asia has seen an upswing in bilateral, regional, and cross-regional agreements
  - As of January 2010, 61 RTAs concluded in Asia versus only 3 in 2000, with another 86 new agreements either under negotiation or proposed
- Growing number of Asian RTAs covering major developing and developed countries and regional groupings have services and investment components, which provide scope to address labour mobility issues
  - For the most advanced countries in the region (Japan, Korea, and Singapore) more than 90% of the PTAs cover services
  - For major developing countries in Asia, over half of their RTAs cover services

PTAs featuring services for selected Asian countries, July 2010

Country	Total No. of PTAs	Total No. of PTAs Featuring Services Provisions	Services Provisions PTAs as a % of Total No. of PTAs
Bangladesh	5	3	60%
Cambodia	8	7	88%
China	20	19	95%
Hong-Kong	3	3	100%
India	23	14	61%
Indonesia	13	11	85%
Japan	18	18	100%
Korea	14	14	100%
Malaysia	18	14	78%
Pakistan	10	3	30%
Philippines	10	9	90%
Singapore	24	22	92%
Sri Lanka	5	3	60%
Thailand	17	13	76%

Source: <http://www.aric.adb.org/10.php>

(1) Architecture and scope with respect to mode 4

- Different approaches taken in Asian RTAs but basically adopt GATS mode 4 definition and provide for carve-outs with respect to measures affecting access to the employment market and regulations affecting entry of natural persons, similar to those under the GATS

*Dual coverage*

- Asian RTAs feature separate rules affecting mode 4 through an MNP chapter or annex in addition to disciplines with bearing on mode 4 given in services chapters of the RTAs
  - These additional rules tend to be self-standing provisions concerning entry of business persons active in goods and services sectors
  - Typically these rules define categories of business persons eligible for preferential treatment, including business visitors, sales persons, traders and investors, professionals, and intra-corporate transferees

- Dual coverage of mode 4 creates some ambiguities as relationship between provisions in services chapter and in the horizontal MNP chapter can be complementary or overlapping
- Complementarity can arise because:
  - Disciplines in services chapter apply to market access and national treatment, barriers affecting mode 4 whereas MNP chapters focus more narrowly on matters related to the entry of foreign individuals
  - MNP chapters establish certain transparency obligations not available in services chapters and offer horizontal treatment for individuals engaged in trade in goods and trade in services and investment
- Overlaps may arise because:
  - Services disciplines can also apply to entry measures concerning mode 4 as these can fall under the definition of market access, national treatment, or MFN
  - Overlapping coverage may give rise to inconsistencies and not clear which chapter (services one or the MNP one) would prevail if a measure is allowed by one chapter, but prohibited by the other chapter

- Most Asian FTAs that provide for dual coverage of MNP also specify rules that define the relationship between disciplines in the services and MNP chapters
- Some agreements clarify that ‘immigration measures’ are exclusively dealt with by the MNP chapter, thus carving out measures affecting the entry of foreign individuals from the scope of the services chapter
- Some agreements specify that commitments in the MNP chapter are subject to limitations scheduled under the agreement’s services chapter
  - Implies that commitments on MNP relate to the MNP chapter, with coverage limited to the sectors included in the services commitments, further qualified by limitations for specific service activities as detailed in the services schedule
- In some agreements (Japan–Malaysia EPA), relevant provisions take precedence over services disciplines

- Some agreements (EFTA–Korea FTA, EFTA–Singapore FTA, Japan–Malaysia EPA) offer additional benefits for foreign natural persons through provisions outside the MNP chapters
  - Use provisions in investment chapters which grant temporary entry for investors and certain key personnel
  - These undertakings are subject to immigration laws and regulations relating to entry, stay, and work of natural persons
- But relationship between provisions concerning mode 4 in different parts of the PTAs (services, MNP, and other chapters) is not always clear, creating scope for potential inconsistencies and non-transparency

#### Architecture and definitional issues concerning mode 4 in selected Asian PTAs

Agreement(s)	Definition of mode 4	Separate chapter or agreement related to the movement of natural persons
<i>Positive list agreements</i>		
ASEAN–China TIS Agreement, Jordan-Singapore FTA, New Zealand-Singapore FTA, US–Vietnam BTA	GATS	–
Lao PDR–US BTA	GATS, but limited to services sales persons and intra-corporate transferees	–
ASEAN (AFAS)	GATS	AESAN Framework Agreement on Visa Exemption
Australia–Thailand FTA	GATS	Chapter on movement of natural persons, providing for additional rights and obligations to those set out in the services and investment chapters

EFTA–Korea FTA, EFTA–Singapore FTA, Japan–Malaysia EPA	GATS	Provision on key personnel in investment chapter (or BIT)
India–Singapore ECA	GATS	Chapter on movement of natural persons, commitments subject to reservations scheduled under services chapter
Japan–Singapore EPA	GATS (weaker exception)	Chapter on movement of natural persons, commitments apply only to sectors included in a party's services schedule
Japan–Philippines EPA	GATS	Chapter on movement of natural persons, relationship to services chapter not further defined
Mainland–Hong Kong CEPA, Mainland–Macao CEPA	No definition	–

<i>Negative list agreements</i>		
Australia–Singapore FTA, Panama–Singapore FTA	GATS	Chapter (or annex) on movement of natural persons, commitments subject to reservations scheduled under services and investment chapters
Panama–Taiwan (China) FTA	GATS	Chapter on movement of natural persons, prevailing over services chapter as far as 'immigration measures' are concerned
Nicaragua–Taiwan (China) FTA	GATS (weaker exception)	Chapter on movement of natural persons, relationship to services chapter not further defined

Agreement(s)	Definition of mode 4	Separate chapter or agreement related to the movement of natural persons
Chile-Korea FTA, Guatemala-Taiwan (China) FTA, Korea-Singapore FTA, Singapore-US FTA	NAFTA	Chapter on movement of natural persons, prevailing over services chapter as far as 'immigration measures' are concerned
Japan-Mexico EPA	NAFTA	Chapter on movement of natural persons, relationship to services chapter not further defined
Trans-Pacific EPA	NAFTA	'Soft-law' chapter on movement of natural persons

(2) Key provisions and treatment of issues

(i) *Rules of origin for natural persons*

- Some agreements extend benefits to individuals that have the right to permanent residency in an FTA member
- In certain cases, permanent residents only qualify for trade preferences, if the importing party accords substantially the same treatment to permanent residents as to nationals in respect of measures affecting services trade
- Provided nationality or right to permanent residency conditions are met, agreements generally extend FTA benefits regardless of whether individuals actually reside in the territory of an FTA party

*(ii) Mutual Recognition*

- Most repeat GATS clauses regarding according recognition autonomously, or through mutual arrangement/harmonization and of providing opportunity to other parties, but some go further
- Some RTAs identify specific professions for priority in negotiations, give 1–3 year timeframe after entry into force of the RTA, call ‘for an early outcome’
- But some exclusions
  - Reference to international standards made under GATS often missing in the PTAs
  - No reference to according adequate opportunity to extend the arrangements reached between the two parties to third countries or to non discriminatory application of criteria or standards to suppliers of other countries
  - Many Asian FTAs contain ‘soft-law’ provisions, which encourage parties, or competent regulatory bodies to enter into negotiations for recognition of professional qualifications
  - Few Asian RTAs have binding commitments to recognize foreign qualifications

*ASEAN*

- Members concluded mutual recognition agreements for engineers and nursing professionals, plus minimum qualification requirements

*Korea-Singapore FTA*

- Both parties committed to recognize the professional qualifications of engineers from 20 Korean universities and 2 Singaporean universities, with selection of universities ‘based on mutual trust and common benchmarks’

*JPEPA*

- Nurses meeting certain qualification standards in the Philippines can enter Japan to obtain additional training to eventually supply their services in Japan
- Though falls short of full recognition, provides benefit to Filipino nurses as they do not have to re-qualify ‘from scratch’ in Japan

*China-ASEAN FTA*

- Includes specific paragraph which says that two or more parties may enter into or encourage their relevant competent bodies to enter into negotiations on recognition of qualification and licensing requirements and procedures in order to fulfill their respective standards or criteria for authorization, licensing or certification

*China-Pakistan FTA*

- Both sides to facilitate the development of MRAs among professional or regulatory bodies via discussions and exchange of information

*India-Singapore CECA*

- Calls upon parties to ensure that their respective professional bodies in specific services (accounting and auditing, architecture, medical, dental and nursing) negotiate and conclude within a year of the CECA's entry into force, MRAs
- In other regulated sectors, if request made for discussions, then parties would encourage their relevant professional bodies to enter into negotiations
- Mutual recognition to be granted to degrees issued by specified universities and technical education boards of both countries for issuance of multiple entry visas
- Aim is to remove duplicity of testing and conformity assessments through MRAs, allow professionals in above areas to practice in both countries
  - Professional bodies such as Medical Council of India, Institute of Chartered Accountants of India) supposed to work out arrangements to recognize qualifications for professionals

- But CECA provisions on MR are rather soft on implementation and timelines
  - Delays or failures to conclude such arrangements not to be regarded as a breach of obligations and not subject to dispute settlement provisions
  - Disputes arising out of or under such arrangements will not be covered under the dispute settlement mechanism of this PTA
- So far progress on MR under India-Singapore CECA has been poor
- Though CECA has entered its second phase, issue not resolved
- One problem has been to find a way to recognize educational qualifications of capable professionals from second grade Indian institutions
- Initiative lacking from professional bodies on Indian side

*(iii) Domestic regulation*

- Most services agreements establish disciplines on domestic regulation for purposes such as protecting consumers, remedying market failures, and ensuring the quality of services
- Asian RTAs broadly in line with the GATS' domestic regulatory principles but underlying principles of objectivity, transparency, impartial review, continue to apply
- But several Asian RTAs include some additional elements or conditional statements not present in the GATS
- Some involve outright exclusions from scope of DR discipline

- GATS has a ‘weak’ necessity test for certain regulatory measures
  - WTO members required to ensure that licensing and qualification requirements and technical standards based on objective and transparent criteria, not more burdensome than needed to ensure service quality
  - Licensing procedures should not in themselves pose restriction on the supply of a service, can only be invoked if relevant regulatory measures nullify or impair specific commitments and could not reasonably have been expected when specific commitments were made
- Several Asian FTAs have replicated the weak necessity test of the GATS
- Some adopt language similar to the GATS, but the necessity test applies only on a best endeavor basis-so even weaker

*India-Singapore and India-Korea RTAs*

- Specific mention of joint review of results of negotiations on disciplines pertaining to qualification and licensing requirements and procedures and technical standards with a view to their incorporation into the services chapter
- Clause requiring parties to ensure that such requirements and procedures do not nullify or impair their specific commitments is made contingent on the incorporation of the disciplines developed in this regard under the WTO
- These RTAs not only use the GATS as a reference for domestic regulatory principles but also look ahead at prospective developments in the GATS for their inclusion into the agreement’s text

*China-Pakistan FTA*

- Although mostly similar in its provision on domestic regulation as the GATS, has an additional clause
- Requires the parties to consult periodically to determine the feasibility of removing any remaining nationality requirements for licensing and certification of each other's service suppliers
- So specific issue of domestic regulations which link provision of a service to nationality is given importance

*China-ASEAN agreement*

- Includes additional detailed clauses
- Sub-clause which requires competent authorities to identify all additional information in case of an incomplete application and to remedy any deficiencies, to provide scope for resubmission of an application

*US-Korea agreement*

- Includes additional conditionalities
- One of the clauses on domestic regulation states, "while recognizing the right to regulate and to introduce new regulations for meeting national policy objectives" when noting that qualification requirement and procedures, technical standards, and licensing requirements not to constitute unnecessary barriers to services trade
- So provision is bit more nuanced and flexible by specifying the need for domestic regulations to meet national objectives

*Japan-Singapore PTA*

- Specific reference to commitments regarding professional services and provision of adequate procedures to verify the competence of professionals, which is present in the GATS, missing in the PTA
- So scope narrower in this PTA compared to the GATS as parties are not mandated to ensure such procedures even where commitments have been taken

*JPEPA*

- Deviation with regard to nomenclature used for DR provision
- No discipline termed, “Domestic Regulation” but appears under a “Authorization, Licensing or Qualifications”
- Though principles are the same in terms of ensuring objectivity, transparency, not more burdensome than required, and not constituting disguised restrictions, scope considerably narrower than under the GATS as only subset of DR pertaining to qualification and licensing issues covered

*(iv) Movement of Natural Persons*

- Compared to the GATS, the PTAs go further in evolving disciplines concerning the movement of natural persons (MNP)
- Provide greater detail on the scope of the MNP provisions, explicitly making note of the different categories of natural persons, what they cover, link MNP to other regulatory issues

*Indian RTAs*

- Contain detailed chapters on movement of natural persons, with detailed definition of different categories of natural persons
- Specify terms and conditions for entry and stay for different categories- period for which entry would be granted for a single visit, maximum period of stay allowed
- Exempt natural persons from making social security contributions
- Specify documentation and administrative requirements for different kinds of natural persons, conditions applicable to spouses and dependants
- List occupations specified under professional category covered by MNP provisions

*JPEPA*

- Provisions regarding coverage of natural persons, restrictions that may not be imposed, requirements and procedures for entry and stay of a natural person
  - In addition to usual categories of short term business visitors, ICTs, and professionals working on contracts, additional category of investors, nurses or certified careworkers covered
  - Institutional issues addressed-provision for establishing a sub-committee on MNP with functions outlined
- 
- Overall, PTAs tend to go further than the GATS in developing rules and in defining scope of measures affecting MNP
  - North-South PTAs involving important supplier countries (India, Philippines) have more substantive chapters, reflecting interest in trading through mode 4 and related sensitivities on import side

*(v) Nature of mode 4 commitments*

- These vary in depth and scope but generally specify length of stay, eligibility conditions, applicable numerical quotas, and possible safeguards
- In Asian RTAs, most countries replicate their mode 4 commitments from the GATS
- Coverage tends to be limited to BUSINESS VISITORS(BV), INTRA-CORPORATE TRANSFERS(ICT), AND PROFESSIONALS/SPECIALISTS, for stipulated periods of stay (tends to be similar across the signatories)
- Commitments are horizontal as under GATS, so sectoral-specificities not addressed
- But some limited improvements seen in certain Asian RTAs
  - Some RTAs offer commitments with flexible duration of stay for ICTs, some allow for an undefined duration of stay (India-Sri Lanka)
  - Improved specification of ‘natural persons who are allowed temporary entry’ relative to that under GATS (Sri Lanka, Philippines)
    - Extension of ICT category to include BVs (as under India-Singapore CECA)
    - Deeper commitments with fewer limitations, expanded scope in some cases

Members involved in the PTAs	BVs	ICTs	CSSs	IPs	Others
<b>Bahrain</b>					
<b>Brunei</b>					
<b>Cambodia</b>					
<b>China</b>					
<b>Chinese Taipei</b>	+				Δ
<b>India</b>		+	Δ	+	Δ
<b>Indonesia</b>	Δ	+			
<b>Japan</b>			Δ	+*	Δ
<b>Jordan</b>					Δ
<b>Republic of Korea</b>	+	+	Δ		Δ
<b>Malaysia</b>					
<b>Philippines</b>	+	+		+*	+
<b>Singapore</b>	Δ	+	Δ	Δ	Δ
<b>Thailand</b>	+	+	Δ	Δ*	Δ
<b>Vietnam</b>					

**Note:**  
Δ: category newly included in the PTA  
+: access conditions improved in the PTA  
\*: attribution to the category is tentative  
The table illustrates the **best conditions** that each WTO member has granted, in **any of its PTAs**

	CHINA	INDONESIA	MALAYSIA	PHILIPPINES	THAILAND	SINGAPORE
<b>GATS</b>	<b>ICT:</b> specialists, executives and managers allowed: < 3 years <b>BV:</b> <90 days	<b>ICT:</b> Directors, Managers, technical experts allowed: < 2 years( max. Of 3 years)	<b>ICT:</b> specialists, executives and managers allowed: < 5 years <b>BV:</b> <90 days	A foreign individual may be appointed for the supply of a service, only upon the non-availability of a Filipino for the same	<b>ICT:</b> specialists, executives and managers allowed: < 3 years maximum <b>BV:</b> <90 days	Natural persons under the following category: <b>ICT:</b> (managers, executives & specialists): 3 years (ext. to 5 years)
<b>Notes</b>		ICT allowed based on economic needs test				
<b>MODE 4(RTA)-China-ASEAN</b>	Horizontal (uniformly applied to all sectors scheduled)	Horizontal (uniformly applied to all sectors scheduled)	Horizontal (uniformly applied to all sectors scheduled)	Horizontal( though most sectors excluded, i.e. left UB)	Horizontal (uniformly applied to all sectors scheduled)	Horizontal (uniformly applied to all sectors scheduled)

<sup>[1]</sup> Includes Engineering, medical, construction, accounting, architectural, urban planning, computer, education and tourism services  
<sup>[2]</sup> Employment of spouses/dependents

<b>China-ASEAN (RTA)</b>	<b>ICT:</b> specialists, executives and managers allowed: < 3 years <b>BV:</b> <90 days <b>CSS:</b> < 1 year	<b>ICT:</b> Directors, Managers, technical experts allowed: < 2 years( ext. Twice, for 2 year prd each) <b>BV:</b> <60 days ( max 120 days)		<b>HC:</b> Non-resident aliens can apply, only on the non-availability of an able, qualified, Filipino	<b>ICT:</b> specialists, executives and managers allowed: < 1 year( ext. To 3 years) <b>BV:</b> <90 days ( max. To 1 year)	Only ICT allowed: <b>ICT:</b> specialists, executives and managers allowed: < 2 years( ext. To a max.of 8 years)
<b>Notes</b>		Categories listed above should pertain to immigration laws/procedures ICT subject to economic needs tests		<b>HC (above) applicable only to the Business and Tourism service sectors</b>	Categories listed above should pertain to immigration laws/procedures Mode 4 commitments vary across sectors, conditionalities in addition to HC applied	
<b>E.S</b>	Not covered by the agreement					
<b>M.A</b>	Replicates the GATS(Market access is conditional, though parties cannot impose limitations on total value of service transaction, total number of MNP allowed, type of legal entities allowed, etc)					
<b>N.T</b>	Replicates the GATS					

	<b>INDIA-KOREA</b>		<b>INDIA-SINGAPORE</b>	
	<b>INDIA</b>	<b>KOREA</b>	<b>INDIA</b>	<b>SINGAPORE</b>
<b>GATS</b>	Natural persons under the following categories: a.BV: (for business negotiations + est. Commercial presence): < 90 days b.ICT: (managers, executives & specialists): maximum of 5 years c. Professionals (in fields of engineering, physical and other natural sciences): maximum of 1 year(ext. To 3 months)	Natural persons who are: a. <b>ICT:</b> Employed by certain firms and are senior managers, executives and specialists: < 3 years b. <b>BV:</b> - responsible for setting up a commercial presence: < 90 days -not based in korea, but represent a service supplier for negotiating sale of services: < 90 days	Natural persons under the following categories: a.BV: (for business negotiations + est. Commercial presence): < 90 days b.ICT: (managers, executives & specialists): maximum of 5 years c. Professionals (in fields of engineering, physical and other natural sciences): maximum of 1 year(ext. To 3 months)	Natural persons under the following category: ICT: (managers, executives & specialists): 3 years (ext. to 5 years)

[11](#) 100% foreign equity ownership and joint venture firms established in Korea  
[12](#) Identified in the profession set outlined in annex 8-A of CEPA

<b>Mode 4 Commitments in India-Korea CEPA and India- Singapore CECA</b>	<b>HORIZONTAL</b> (UNBOUND except as per commitments listed in MNP chapter(given below))		<b>HORIZONTAL</b> (UNBOUND except as per commitments listed in MNP chapter(given below))
<b>MNP (chapter from agreement text)</b>	<u>Temporary Stay:</u> a. <b>BV</b> : maximum of 180 days (for longer duration, maximum of 5 years, with a stipulation of 180 days stay on a single visit) b. <b>ICT</b> : initial 2 year term/period of contract (whichever is less) (ext. On a year to year basis, with total term not exceeding 5 years) c. <b>Professionals</b> : CSS/indep endent professional for 1 year/period of contract	<u>Temporary Stay:</u> a. <b>BV</b> : maximum of 90 days b. <b>ICT</b> : initial 2 year term/period of contract (whichever is less) (ext. As long as required for the contract/project completion) c. <b>Professionals</b> : CSS/independ ent professional for 1 year/ period of contract (whichever is less)	<u>Temporary Stay:</u> a. <b>BV</b> : upto 2 months( ext. To 3 months for holders of multiple journey visas) b. <b>Short-term service suppliers</b> : < 90 days( maximum of 180 days/period of contract) c. <b>ICT</b> : up to 2 years/period of contract (can be extended, total term should be under 8 years) d. <b>Professionals</b> : up to 1 year/period of contract

<b>Notes</b>	<b><u>1.Labour Market test not required and numerical restrictions not imposed for persons in (a) and (b)</u></b> 2. All the categories listed above need to comply with the standard immigration requirements	1. the categories (a), (b) and (d) listed above need to comply with the standard immigration requirements
<b>Employment of spouses/ dependents</b>	<b>Work Permit is provided</b>	Work permit granted upon application ( the dependent allowed to apply independently in their capacity, for the positions listed above)
<b>Mutual Recognition</b>	Same as GATS	Same as GATS
<b>Investment</b>	Labor mobility/Mnp not covered in the Investment chapter	Labor mobility/Mnp not covered in the Investment chapter
<b>DISPUTE SETTLEMENT</b>	This provision cannot be invoked unless it involves pattern of practice and its natural persons have exhausted the available remedies	This provision cannot be invoked unless it involves pattern of practice and its natural persons have exhausted the available remedies
<b>MARKET ACCESS</b>	Replicates the GATS(Market access is conditional, though parties cannot impose limitations on total value of service transaction, total number of MNP allowed, type of legal entities allowed, etc)	Replicates the GATS(Market access is conditional, though parties cannot impose limitations on total value of service transaction, total number of MNP allowed, type of legal entities allowed, etc)
<b>NATIONAL TREATMENT</b>	Replicates the GATS	Replicates the GATS

<b>INDIA-SRI LANKA</b>		
	<b>INDIA</b>	<b>SRI LANKA</b>
<b>GATS</b>	Natural persons under the following categories: <b>a.BV:</b> (for business negotiations + est. Commercial presence): < 90 days <b>b.ICT:</b> (managers, executives & specialists): maximum of 5 years <b>c. Professionals (in fields of engineering, physical and other natural sciences): maximum of 1 year</b> (ext. To 3 months)	MNP- subject to immigration, consumer and other relevant laws Individuals must comply with immigration requirements and obtain relevant work permits to work/ start a business in SI
<b>Mode 4 Commitments ( in the India-Sri Lanka CEPA)</b>	Schedule of commitments(service sectors covered) <b>not available</b>	

<sup>[1]</sup> <http://www.dfat.gov.au/fta/anzcerta/index.html>

<sup>[2]</sup> Service suppliers not uniquely identified in the agreement text( though the services provided by each country is included)

<b>MNP( chapter from the agreement text)</b>	BV, ICT (managers, executives & specialists), contractual services suppliers as well as Professionals are allowed temporary entry (multiple journey visas granted) but for an <b>undecided duration</b>	MNP/Labor Mobility not covered in the text of the agreement( i.e. not covered in the chapter on Trade in Services, nor covered in a separate chapter)
<b>Notes</b>	All categories listed above <b>need to comply with the standard immigration measures</b> ( obtain immigration visa, etc)	
<b>Employment of spouses/ dependents</b>	<b>Work Permit provided to individuals with long-term temporary entry ( and can apply independently)</b>	Not covered
<b>Mutual Recognition</b>	Same as GATS	Not covered

<b>Investment Chapter</b>	Labor mobility/MNP not covered in the Investment chapter	Provisions of the Protocol apply to foreign investment policies of both member states
<b>MARKET ACCESS</b>	Replicates the GATS(Market access is conditional, though parties cannot impose limitations on total value of service transaction, total number of MNP allowed, type of legal entities allowed, etc)	<b>Complete access rights to each others' markets provided</b>
<b>NATIONAL TREATMENT</b>	Replicates the GATS	<b>Full N.T. provided to service suppliers</b> though difference in treatment may exist, to the extent considered necessary for health, consumer protection or safety reasons
<b>DISPUTE SETTLEMENT</b>	This provision cannot be invoked unless it involves pattern of practice and its natural persons have exhausted the available remedies	This provision cannot be invoked unless it involves pattern of practice and its natural persons have exhausted the available remedies

	<b>JPEPA</b>	
	<b>JAPAN</b>	<b>PHILIPPINES</b>
<b>GATS</b>	Natural persons under the following categories: a. <b>BV</b> :not based in Japan, but represent a service supplier for negotiating sale of services and est. A commercial presence: < 90 days b.ICT: (managers, executives & specialists): < 5 years c. Professionals (in legal, accounting, consulting, bookkeeping and taxation services): < 5 years	A foreign individual may be appointed for the supply of a service, only upon the non-availability of a Filipino for the same

[\[i\]](#) As outlined in Appendix 1603.A.1  
[\[ii\]](#) As outlined in Appendix 1603.D.1

<b>MNP (JPEPA)</b>	<u>Temporary Stay:</u> <b>a.BV:</b> < 90 days( can be extended) <b>b.ICT:</b> :1/3 years( can be extended) <b>c.Investors:</b> ( those who invest, or manage or conduct business in Japan) : 1/3 years ( can be extended) <b>d.Professionals:</b> ( legal, accounting, auditing, consulting, bookkeeping and taxation services): 1-3 years ( can be extended) <b>e.Other Professionals:</b> included engineers, specialists in 'humanities/international services': 1-3 years <b>Nurses/Care workers and Related fields:</b> 1-3 years	<u>Temporary Stay:</u> <b>a.BV:</b> < 59 days( max. Of 1 year) <b>b.ICT:</b> (managers, specialists and executives) < 1 year(can be extended) <b>c.Investors:</b> ( those who invest, or manage or conduct business in Philippines) : 1 year ( can be extended) <b>d.Professionals:</b> Engineers and others requiring specialised skills: < 1 year ( can be extended) <b>Nurses/Care workers and Related fields:</b> 6 months – 1 year Barring (a), all natural persons ( from Japan) <b>are required to obtain AEP</b> (Alien Employment Permit) from DOLE (Department of Labor and Employment)[
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<b>Notes</b>	<b>The MNP chapter elaborates on qualification and training requirements for nurses/care workers for both nations</b>
<b>Employment of spouses/ dependents</b>	<b>Not covered</b>
<b>Mutual Recognition</b>	Replicates the GATS
<b>Investment</b>	Labor mobility/MNP not covered in the Investment chapter
<b>DISPUTE SETTLEMENT</b>	This provision cannot be invoked unless it involves pattern of practice and its natural persons have exhausted the available remedies
<b>MARKET ACCESS</b>	Replicates the GATS(Market access is conditional, though parties cannot impose limitations on total value of service transaction, total number of MNP allowed, type of legal entities allowed, etc)
<b>NATIONAL TREATMENT</b>	Replicates the GATS

*India-Singapore CECA*

- Eased visa restrictions for Indian professionals in 127 categories across broad range of sectors (IT, medicine, engineering, nursing accountancy university lecturers)
- These professionals can enter and stay for upto 1 year, complemented by MRAs to be arranged for professionals
- BVs can get temporary visa for engaging in business-related activities for upto 2 months, provision for 1 month extension
- Short term service suppliers can get entry for upto 90 days to provide a specific service, provision for further 90 day extension
- ICTs of both countries can apply for visa with validity of upto 2 years, provision for extensions of upto 3 years, total term of max 8 years
- Removed wage parity requirement for Indian professionals entering Singapore
- Countries have committed to simplification of procedures and expedited granting of visas

*India-Korea CEPA*

- Both countries have allowed each other's skilled professionals (computer engineers, consultants, scientists, public relations experts, English teachers and other professionals in various services) to enter each other's markets on temporary basis by easing conditions for short term visas
- 163 professions identified for easier access to the Korean services market
  - First time Korea has agreed to such a commitment in a bilateral FTA, offering opportunities for Indian English teachers and software engineers to work in Korea
- Indian service providers to gain market access to Korean market
  - Independent professionals, business visitors, contractual service suppliers, intracorporate transferees
- But while manpower exchanges between the two countries are expected to grow and the Indian services sector is likely to benefit, Korea will continue to control the number of Indian workers and professionals, medical sector will not be accessible

*JPEPA*

- Japan has given Philippines some additional concessions, such as for specialists in humanities or international services, nurses and caregivers
- Bound access for BVs, ICTs, investors, and personal contract suppliers supplying engineering services and services requiring technology or knowledge at an advanced level, and specialised skills in a certain domain
- Japan has got concessions which go beyond GATS, including BVs, investors, possibility of extended stay

*Japan-Thailand*

- Japan made commitments for Thai instructors in certain areas and personal contract suppliers of Thai cuisine
- Japanese ICTs don't have to meet the Management Needs test requirement, but access is subject to a quota

- Overall, while GATS serves as a reference for RTA commitments in mode 4, some value addition exists
- Some improvements at sectoral level given expanded scope of sectoral commitments in some RTAs and thus horizontal commitments, would apply to a wider range of services, so more meaningful
- Some new bindings in other categories which cover variety of persons, traders, investors, spouses of suppliers to employees, resulting from separate chapters on temporary entry
- But categories are generally broadly related to business activities, not just for service activities
- Tend to see improvements for categories linked to commercial presence, with more limited progress for CSS and IPs

(vi) *Institutional issues*

- Several MNP chapters in RTAs contain reference to institutional mechanisms
  - Call for establishment of sub-committees
  - Regulatory transparency, i.e., providing contact points to provide information and facilitating the exchange of information, articles pertaining to settlement of disputes concerning MNP
  - But operating guidelines, timeframes, and constitution not covered

### **Looking Ahead**

- In addition to BLAs, temporary entry provisions in RTAs provide an increasingly popular avenue for labour mobility
- Increasingly recognized that facilitating movement of persons under trade agreements important for source and host countries
- But a mixed picture emerges of advances in WTO member commitments in mode 4 under RTAs as latter are generally not GATS+, though some offer additional access
- Evidence suggests that BLAs may offer more scope for customized agreements and address a wider range of issues and types of suppliers than RTAs

- However, RTAs show promise in three respects
  - (a) More open to regulatory cooperation, especially on recognition of professional qualifications, which may not be feasible to a similar extent under the GATS
    - But given differences in regulatory systems and capacity, progress likely to be slow and soft-law approach which encourages dialogue more appropriate
  - (b) Countries tend to be willing to go a bit further and deeper, with more detailing on scope in RTAs compared to the GATS
  - (c) Labour mobility negotiations under RTAs could be a learning process for GATS mode 4 discussions by
    - Providing experience to negotiate difficult issues- visas, taxes, recognition
    - Enabling regulatory and institutional capacity building
    - Enabling investments in technology and data concerning mode 4
    - Helping develop common positions on cross cutting issues relevant to GATS
    - Instilling confidence to move towards more liberal multilateral commitments
    - Providing opportunity to test impact of mode 4 liberalization
    - Enabling domestic stock taking of factors affecting labour mobility
    - Enabling unified position by regional blocs on mode 4

- But labour mobility negotiations under RTAs could also hinder GATS discussions on mode 4
  - By diverting attention from multilateral process
  - Buying out key demandeur countries and groups
  - Creating inconsistencies between what is agreed at regional/bilateral level by developing countries and what requested at multilateral level

Thank you