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Mobility Norms in Free Trade Agreements

*Migration Governance in Asia between Regional Integration and Free Trade**

Flavia Jurje

University of Geneva

Flavia.jurje@unige.ch

Sandra Lavenex

University of Geneva

Sandra.lavenex@unige.ch

Abstract

Notwithstanding their traditional attachment to sovereignty, Southeast and East Asian countries have embraced a dynamic agenda of labour mobility liberalisation through trade agreements. This article assesses the free movement agenda within ASEAN from a multi-level perspective, comparing it to ASEAN countries' corresponding commitments within the World Trade Organisation's General Agreement on Trade in Services and Free Trade Agreements (FTAs) concluded as a group or individually with non-ASEAN countries. Contrary to other trade aspects it turns out that intra-regional commitments within ASEAN do not significantly exceed multilateral ones, and score below the level of liberalisation achieved in ASEAN+ and bilateral FTAs. This article interprets this discrepancy as a consequence of strong economic and labour market differences among ASEAN members as well as the lower sensitivity of allegedly technocratic FTAs for considerations of national sovereignty. The article concludes with the limits of this trade policy approach for migration governance and migrants' rights.

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Keywords

ASEAN – Asia – GATS – FTAS – labour mobility – migration – mode 4

Introduction

‘Often regarded as the last major redoubt of unfettered national sovereignty’,¹ migration policy today is regulated by a multitude of policies at different levels. Economic migration in particular has long been regulated by bilateral labour agreements, often informal Memoranda of Understanding signed between a labour-exporting and a labour-importing country. In the last decades, a new venue of economic migration governance has emerged which is linked to trade-related market liberalisation and integration. This trade venue has developed at two levels: in the framework of regional integration/economic communities and in purely trade-related instruments such as Free Trade Agreements (FTAs) and, at the multilateral level, the General Agreement on Trade in Services (GATS), where it has found entry under the so-called mode 4, movement of natural persons. Focusing on cooperation among Asian countries within the Association of South-East Asian Nations (ASEAN) and beyond, this article underlines the growing role of trade venues for regulating specific forms of mobility in the region, and investigates to what extent intra-regional cooperation within ASEAN actually exceeds the level of cooperation in FTAs signed between ASEAN and third countries.

Asia is a particularly interesting region for studying the emergence and proliferation of mobility norms² in trade-related agreements, for three reasons. First, an ambitious but geographically limited and legally rather ‘soft’ regional economic integration process within ASEAN coexists with an intensifying web of bilateral and plurilateral FTAs signed between ASEAN members and third countries. Second, the link between trade liberalisation and cooperation on mobility is particularly tight in ASEAN as the liberalisation of labour mobility went hand in hand with the liberalisation of services trade, starting with the 1995 ASEAN Framework Agreement on Services (AFAS). This contrasts with other regional integration frameworks, such as the European Union (EU) or

1 David A. Martin, ‘Effects of international law on migration policy and practice: the uses of hypocrisy’, *International Migration Review* 23, 3 (1989): 547–578, 547.

2 Throughout this article ‘mobility norms’ and ‘mobility commitments’ are used interchangeably and refer to the legal obligations on temporary mobility of labour undertaken by states in their multilateral, regional, plurilateral or bilateral trade agreements.

the Southern Common Market (Mercosur), where services-related mobility provisions have coupled with other, more comprehensive regional migration policies, e.g. free movement of people in the EU, residence and work rights for all citizens of Mercosur and associated countries.³ Third, Asia and the ASEAN region in particular are marked by significant migration flows, most of which, however, take place on an irregular basis and outside governmentally agreed channels. In this context, it is particularly pertinent to analyse which aspects of migration governance are addressed through trade integration, why trade instruments are chosen to address migration, and what difference the regional integration context of ASEAN makes in comparison with 'pure' free trade agreements.

Contextualising ASEAN integration in the wider context of East and South-east Asian trade cooperation, the article links up with the literature on Asian 'open regionalism' and its evolution.⁴ In contrast to the observation of Marise Cremona et al. that ASEAN countries' 'commitments vis-à-vis the external partners never exceed the commitments that have been made internally',⁵ we find that with regard to labour mobility, provisions embedded in bilateral FTAs among Asian nations or between ASEAN as a group and non-ASEAN countries do clearly exceed the level of commitment agreed within ASEAN as a community. This points to the relative weakness of intra-ASEAN dynamics for addressing migration governance, and to the perceived advantages that FTAs offer.

The article first introduces the trade–mobility nexus as it has emerged in two parallel venues: specific labour mobility linked to services trade liberalisation in FTAs, and wider mobility norms developed within regional integration frameworks. Linking up with the literature on 'open regionalism' in Asia, the second section turns to ASEAN states' trade-related mobility provisions inscribed at the multilateral level within the WTO/GATS agreements; at the regional level, with the adoption of the ASEAN Agreement on the Movement of Natural Persons (AMNP); and in bilateral FTAs concluded by ASEAN or individ-

3 See also Sandra Lavenex, Flavia Jurje, Terri Givens and Ross Buchanan, 'Regional migration governance', in *The Oxford Handbook of Regional Integration*, eds Tanja Börzel and Thomas Risse (Oxford: Oxford University Press, 2016).

4 Mark Beeson, 'ASEAN plus 3 and the rise of reactionary regionalism', *Contemporary South-east Asia* 23 2 (2003): 251–268; Marise Cremona, David Kleiman, Joris Larik, Rena Lee and Pascal Venesson, *ASEAN's External Agreements. Law, Practice and the Quest for Collective Action* (Cambridge: Cambridge University Press, 2015); John Ravenhill, 'East Asian regionalism: much ado about nothing?' *Review of International Studies* 35, Supplement S1 (2009): 215–235.

5 Cremona et al., *ASEAN's External Agreements*, 12.

ual members with third countries. This analysis assesses the scope and depth of liberalisation commitments in each venue and substantiates the intriguing finding of wider commitments in ‘open regionalism’ than in ‘regional regionalism’. The analysis is based on primary data coded from trade agreements (‘Mode 4 Data’) as well as face-to-face interviews with ASEAN government officials and other key stakeholders in Asia (China, India, South Korea) conducted by the authors between January 2014 and October 2015.

The conclusion interprets the reasons for the discrepancy between weak internal commitments and stronger external ones. Next to the diversity of economic development levels and labour market conditions among ASEAN countries, as well as, for some of these, limited regulatory capacity, an important barrier to stronger mobility liberalisation within the Association seems to stem from the nature of regional integration itself and the sovereignty concerns it raises with national governments. Notwithstanding the weak legal nature of ASEAN commitments and the lack of enforcement mechanisms, the wider agenda associated with intra-regional labour mobility and integration has fuelled hesitations with national governments. With their more technical and secluded scope, in contrast, ‘open regionalism’ FTAs allow addressing desired mobility flows more selectively. Although entailing legally binding commitments, this cooperation frames migration in purely commercial terms and thereby eludes the wider sovereignty concerns that thwart intra-regional integration.

The Trade–Mobility Nexus in a Multi-level Perspective

In contrast to the cross-border flows of goods and capital, where international regimes have been set up to ensure the openness of markets, states have been wary not to tie their hands to international commitments with regard to economically motivated migration.⁶ Largely shielded from wider debates on immigration policy, however, the trade liberalisation agenda has spilled over to migration. International norms have been introduced in trade and trade-related agreements facilitating the flows of ‘wanted’ workers. In these trade-related frameworks, migration constitutes the mobility of one factor of production among others. The European integration project has included this factor from the start, counting the mobility of workers (later ‘people’) together with

6 G. Lahav and S. Lavenex, ‘International migration’, in *The Handbook of International Relations*, eds W. Carlsnaes, T. Risse and B. Simmons (London: Sage, 2012).

capital, goods and services as one fundamental freedom of the single market. At the global level, this agenda is linked to two main developments: the new wave of trade liberalisation more generally and the rise of the service sector. In developing and emerging countries, the transition to service economies has not (yet) occurred. Nevertheless, these countries have strongly embraced the trade–mobility agenda—promoting it further and in a somewhat different direction than originally intended by the limited openings agreed by the developed countries.

The demand for and supply of foreign labour is no exception to the commodification of the factors of production. Whereas the potential exploitation of manual labour through the relocation of production processes from the industrial countries to low-wage economies in Africa and Asia has been observed from the 1970s onwards,⁷ newer trade policies promoted by developed countries and multinational corporations target the facilitation of flows for highly skilled migrants.⁸ Conversely, developing countries have discovered their surplus of lower-skilled workers, cheaper labour and the benefits of remittances as competitive advantages. This has led some of them (e.g. Bangladesh, China, Egypt, India, Indonesia, Pakistan, the Philippines, South Korea, Sri Lanka and Vietnam) to develop government-sponsored programmes to promote emigration in specific professions.⁹

Although labour is an integral factor to all modes of production, it is the rise of the service sector that has spurred the introduction of labour mobility in trade negotiations. The delivery of a service is often not separable from the physical presence of the person providing it.¹⁰ The expansion of trade in ser-

7 Folker Fröbel, Jürgen Heinrichs and Otto Kreye, *Die neue internationale Arbeitsteilung: strukturelle Arbeitslosigkeit in den Industrieländern und die Industrialisierung der Entwicklungsländer* [The new international division of labour: structural unemployment in industrialized countries and the industrialization of developing countries] (Reinbek: Rowohlt, 1977).

8 Flavia Jurje, 'The role of corporations in a multi-layered migration governance system: regulating the admission of labour', paper presented at the international conference 'Multilayered Governance: Gains for International Migration?' 27–28 April 2016, Bern (under review); L. Cerna, 'The varieties of high-skilled immigration policies: coalitions and policy outputs in advanced industrial countries', *Journal of European Public Policy* 16, 1 (2009): 144–161. On the concept of 'race for talent' and competitive immigration systems, see also A. Shachar, 'The race for talent: highly skilled migrants and competitive immigration regimes', *NYU Review* 81, 1 (2006): 148–206.

9 Douglas S. Massey, 'International migration at the dawn of the twenty-first century: the role of the state', *Population and Development Review* 25, 2 (1999): 303–322.

10 André Sapir, 'The General Agreement on Trade in Services. From 1994 to the year 2000', *Journal of World Trade* 33, 1 (1999): 51–66, 52.

vices began in the early 1980s and has far exceeded growth patterns for trade in goods. The same evolution has not yet occurred in emerging or developing countries. However, Asian nations have recognised the potential of services liberalisation for growth, including the mobility in particular of skilled workers. With more than 600 million consumers, the ASEAN region represents the seventh largest economy in the world and is widely predicted to be the fourth largest by 2050.¹¹ A recent study by the Asian Development Bank (ADB) and International Labour Organisation (ILO) suggests that closer integration under the ASEAN Economic Community (AEC) could increase production in the region by as much as 7 per cent and generate around 14 million additional jobs by 2025.¹² However, skills shortages and mismatches have been identified as major impediments to economic development, and are only projected to grow worse in the coming decade.¹³ In this context, ASEAN countries have embraced the idea of mobility liberalisation, however with a clear preference for skilled professionals. Corresponding commitments have been agreed at the multilateral level in the GATS, at the regional level in ASEAN, and at the plurilateral and bilateral level in FTAs.

The interlink between trade and migration has evolved since 1995 when the WTO's GATS treaty was adopted. The agreement covers the temporary movement of natural persons, under 'mode 4', defined as one out of four possible means for global trade in services. 'Mode 4' establishes a framework of rules for liberalising trade in services and national commitments on market access for services produced by foreign suppliers. The actual level of market access for mode 4 reached under the WTO/GATS is very limited, following a positive-listing approach and favouring the highly skilled.¹⁴ The largest share of commitments in mode 4 relates to intra-corporate transferees (43 per cent), followed by business visitors, which account for 24 per cent of all entries,¹⁵ categories

11 Asian Development Bank (ADB), *The Long Road Ahead: Status Report on the Implementation of the ASEAN Mutual Recognition Arrangements on Professional Services* (Mandaluyong City, Philippines: Asian Development Bank, 2017), 3.

12 International Labour Organisation (ILO) and ADB, *ASEAN Community 2015: Managing Integration for Better Jobs and Shared Prosperity* (Bangkok: ILO and ADB, 2014), xii, www.adb.org/sites/default/files/publication/42818/asean-community-2015-managing-integration.pdf.

13 ADB, *The Long Road Ahead*, 3.

14 Laura R. Dawson, 'Labour mobility and the WTO: the limits of GATS mode 4', *International Migration* 51, 1 (2013): 1–23.

15 UN ESCAP, *Regional Integration and Labour Mobility. Linking Trade, Migration and Development* (2014), http://www.unescap.org/sites/default/files/publications/STESCAP2688_No81.pdf.

which are both linked to commercial presence. Table 1 gives an overview of these categories, differentiating between highly skilled and other persons, and between categories that are linked to commercial presence, i.e. investment abroad—‘mode 3’—and categories unlinked from commercial presence. The bold entries reflect those categories for which the traditional trade hegemons (i.e. the US and the EU) have entered most commitments.

The general limits of labour mobility under the GATS are fixed in the Annex on Movement of Natural Persons. Its first paragraph states that commitments under this mode relate only to temporary admission of foreigners and the fourth paragraph contains a safeguard which won’t

prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

Notwithstanding these limitations, the GATS does have an important impact on national immigration systems. It seeks to abolish domestic regulations hindering the international mobility of service providers such as: visa requirement procedures; labour market regulations/working permits; regulations defining foreigners’ ability to work in individual areas. In particular, numerical quotas; licensing and qualification requirements; residency requirements and non-eligibility under subsidy schemes; discrimination on mandatory social insurance systems (e.g. denial of pension entitlements). Restrictions affecting the mobility of family members fall under the scope of the Treaty and may be captured either under the general horizontal or in specific sectoral commitments.¹⁶

In the following we map existing GATS mode 4 commitments undertaken by the ASEAN states at the WTO level.

As depicted in Table 2, the level of commitments on the temporary mobility of service providers inscribed by the ASEAN states within the GATS remains low. The majority of the provisions are linked to establishment in the form of ICTs, which refers to mobility of highly skilled managers, executives and spe-

¹⁶ WTO, *Council for Trade in Services, Presence of Natural Persons (Mode4)*, Background Note by the Secretariat, S/C/W/750/8.12.1998, 1998, 11 ff.

cialists within a multinational company, and bvs, who are people employed in their home countries entering another country for business-related purposes for short time periods and without remuneration received in the host country. These provisions are further conditioned upon domestic immigration and labour legislation as well as numerical quotas and/or economic needs tests. The only exceptions are Vietnam, which opened two sectors—computer-related services and engineering—to csss but nonetheless allowed for short periods of stay subject to a set of professional and legal requirements, and Malaysia, which specifies that certain professionals recognised by domestic professional bodies would be entitled to move. It should also be mentioned that two ASEAN members, namely the Philippines and Myanmar, have not made any commitments on mode 4, with the Philippines leaving an open option to revisit their schedule of commitments based on non-availability of local labour.

ASEAN Intra-regional Mobility: Hesitant Openings for the Highly Skilled

Mobility of service providers within the Southeast Asian region was not part of the original Declaration establishing ASEAN (1967); however, it has become an important aspect of regional economic integration with the adoption of the 1995 Agreement on Services and later with the initiative to conclude an agreement on Movement of Natural Persons (MNP). To this add Mutual Recognition Arrangements (MRAs) that further promote the mobility of selected skilled professionals. Aspects related to migrant workers' rights are covered in a regional Declaration signed by ASEAN leaders in 2007.

It should be mentioned that available data reveals that the overwhelming share of both recorded and unrecorded labour flows within ASEAN is actually in low- and semi-skilled labour, categories of migrants which are not addressed at the regional level.¹⁷ According to UNDESA/OECD,¹⁸ some 6.5 million ASEAN citizens were reported to reside in other ASEAN states, although this is probably a large underestimate, given unrecorded migration. In fact, it is acknowledged that the vast majority of migrants searching for work within ASEAN are low-skilled or semi-skilled.¹⁹ While flows of skilled labour in ASEAN

17 See ILO/ADB, *ASEAN Community 2015*; S. Huelser and A. Heal, *Moving Freely? Labour Mobility in ASEAN*, ARTNet Policy Brief (Bangkok: UN ESCAP, 2014).

18 UNDESA/OECD, *World Migration in Figures. Contribution to UN High Level Dialogue on Migration and Development*, 3–4 October 2013.

19 Huelser and Heal, *Moving Freely?*; A. Orbeta, Jr, *Enhancing Labor Mobility in ASEAN: Focus*

have increased, they remain small in comparison to the flows of low-skilled or semi-skilled labour migration. Orbeta estimates that nearly nine out of ten migrants from ASEAN moving within the region are low skilled²⁰ and OECD data (2014) shows that the majority of emigrants have only primary education, with low-skilled migration outstripping skilled migration significantly in Indonesia, Myanmar, Cambodia, Thailand and the Lao People's Democratic Republic.²¹ Available data from key destination states²² also reveals this gap between highly skilled and low-skilled migration: for example, in Thailand only about 3 per cent of workers are highly skilled, while in Singapore they account for nearly one quarter; however, the majority come from outside the region, including China, India, the US and the UK. As opposed to skilled mobility, it is not surprising that low-skilled migration is not on the AEC agenda, denoting clear political challenges associated with national sovereignty concerns and the reluctance of receiving countries to address the subject of low-skilled migration at the regional level. The main destination countries of the region are Malaysia and Singapore (mainly domestic helpers from the Philippines and Indonesia, construction workers and agricultural labour, especially from Indonesia to Malaysia), as well as Thailand, with workers from the CLM countries.²³

Trade-related ASEAN Regional Mobility Commitments: AFAS/AMNP

The labour mobility agenda linked to ASEAN's decision to liberalise trade in services has evolved relatively at the same time as the WTO/GATS mobility developments. As such, the temporary mobility of service providers or highly skilled professionals attached to trade was first addressed with the adoption of the 1995 ASEAN Framework Agreement on Services (AFAS), when members of the group agreed that 'there shall be a freer flow of capital, skilled labour and professionals among Member States'.²⁴ The goal of the movement of natural persons was to expand trade in services and deepen economic integration. In 2012 ASEAN states decided to conclude an agreement on the Movement of Natural Persons (AMNP), which actually supersedes the commitments made under

on *Lower-skilled Workers*, Discussion Paper 2013–2017 (Manila: Philippine Institute for Development Studies, 2013).

20 Orbeta, *Enhancing Labor Mobility in ASEAN*.

21 OECD Database DIOC-E in Huelser and Heal, *Moving Freely?*

22 Orbeta, *Enhancing Labor Mobility in ASEAN*; ILO/ADB 2015.

23 ILO/ADB, *ASEAN Community 2015*; G. Capannelli, 'Key issues on labour mobility in ASEAN', paper prepared for the 3rd Roundtable on Labour Migration in Asia, ADBI, 2013.

24 AFAS art. 4 (e).

the services agreements in relation to mode 4, and further aims to facilitate the movement of natural persons engaged in trade in goods, services and investment through streamlined immigration procedures for the temporary entry and stay of those persons. The AMNP came into force in June 2016, after its domestic ratification by all ASEAN members.

After eight rounds of services negotiations, most of the commitments inscribed in AFAS and subsequently in the AMNP cover mainly highly skilled professionals attached to commercial presence (see Table 3). Similarly to the WTO/GATS commitments, these categories refer to ICTs (duration of stay in a member country initially of two or three years, with the possibility of extension to a maximum stay of ten years in Malaysia) and BVs (allowed for 30 to 120 days, which may be extended up to a total duration of stay of one year in the Philippines). Only Vietnam, Cambodia and the Philippines have inscribed provisions on CSSS, which are service providers de-linked from commercial establishment, moving as employees of a foreign company that will fulfil a contract with a host country client, for a limited duration of stay (e.g. a maximum 90 days in Vietnam and up to five years in Cambodia) and subject to education and experience requirements.

In practice, trade-related labour mobility is seen as only facilitating the movement of professionals, managers and qualified staff under the intra-corporate transferee category,²⁵ the other categories being generally conditioned upon a number of domestic regulations, including numerical quotas and economic needs tests together with pre-employment requirements (health clearances, security clearances and personal and professional references), surcharges fees²⁶ and technological transfer conditions.

25 D. Nikomborirak and S. Jitdumrong, 'ASEAN trade in services', in *ASEAN Economic Community. A Work in Progress*, eds Sanchita Basu Das, Jayant Menon, Rodolfo C. Severino and Omkar Lal Shrestha (Singapore: ADB & Institute of Southeast Asian Studies, 2013); ILO/ADB, *ASEAN Community 2015*; Chris Manning and Pradip Bhatnagar, *Liberalizing and Facilitating the Movement of Individual Service Providers under AFAS: Implications for Labour and Immigration Policies and Procedures in ASEAN*, REPSF Project 02/004 final report (2004), http://aadcp2.org/file/02-004-FinalMainReportOnly_ApendifNotIncluded.pdf.

26 For example, the Indonesian government is requesting a so-called 'compensation fee' of USD 100/month per expatriate employee to offset the costs of training Indonesians (Interview member of trade union, Indonesia). Some of these measures, e.g. technological transfer or compensation fees for investing in domestic education, are justified as part of broader developing policies employed by those countries.

Mutual Recognition of Qualifications

To the regional agenda on services-related labour mobility are added a number of Mutual Recognition Arrangements (MRAs) that further promote the movement of selected skilled professionals through recognition of authorisation, licensing or certification of professional service suppliers, while taking into account 'domestic regulations and market demand conditions'.²⁷ So far, MRAs have been concluded for professions covering engineering, accountancy, architecture, surveying, nursing, dental and medical practitioners, and tourism.²⁸ The level of implementation, however, varies considerably across the different professions, depending mostly on the national regulatory capacities. So far, only for a few professions, such as engineering and architecture, have regional bodies in the form of Chartered Professional Coordinating Committees been designed to develop and monitor mutually acceptable standards and criteria for facilitating practice of the respective professions within the ASEAN states. To obtain the standard certification, the applicant must hold a professional licence issued by the regulatory body in the home country, which will then be reviewed by the ASEAN Chartered Professional Engineers Coordinating Committee or the ASEAN Architect Council. If the application is approved, a professional is allowed to work as a 'Registered Foreign Professional Engineer' in another ASEAN country, but nevertheless is subject to domestic rules and regulation. The ASEAN-level registry body is meant to streamline and centralise the recognition and certification process as major differences in education and certification procedures exist among ASEAN states. At the same time, it is explicitly acknowledged that each ASEAN state has the right to regulate the sectors covered, including the actions of individual practitioners. This further highlights the bottom-up nature of skill mobility in the region and the desire of individual members to maintain national regulations in place over regional standardisation.

Nationality/citizenship requirements could thus constitute barriers to the movement of professionals within the region. Hence, an MRA does not equate to automatic recognition and does not imply free movement of professionals in the ASEAN region.²⁹ For other professions, the MRAs in place have laid down the principles and framework for negotiating the recognition and mobility conditions for professionals on a bilateral or multilateral basis and are governed by various national regulations. For instance, although the MRA for nursing in

27 ASEAN, *ASEAN Integration in Services* (2009), [www.asean.org/storage/2015/12/ASEAN-Integration-in-Services-\(Dec%202015\).pdf](http://www.asean.org/storage/2015/12/ASEAN-Integration-in-Services-(Dec%202015).pdf).

28 Interviews ASEAN Secretariat, officials Ministry of Trade across ASEAN states.

29 Interview official ASEAN Secretariat.

principle provides a great opportunity for nurses to practise in another country, language requirements could in fact raise serious barriers to mobility, the candidate having to pass licensing exams in the language of the host country.³⁰

Summing up, labour mobility commitments within ASEAN do not go much beyond the level of commitments agreed by ASEAN countries at the multilateral level in the GATS. The leading economies in ASEAN, Singapore and Malaysia, are also the ones which have agreed on the widest commitments at the GATS level; their commitments within ASEAN/AFAS, however, mainly affirm these multilateral commitments and do not go beyond them. As one of our interview partners from Indonesia pointed out, 'for the time being there is no necessity for further liberalisation on mobility as we need to protect our own labour force, and this view is shared by other ASEAN members, such as Singapore, Malaysia, and Thailand'.³¹ Furthermore, Malaysia has retained a large number of domestic restrictions pertaining to immigration regulations on these regional commitments, thereby further circumscribing their practical scope. Those countries which have slightly exceeded their multilateral commitments in AFAS are the poorer ASEAN nations that have joined the WTO relatively recently, i.e. the Philippines, Brunei and Myanmar. Manning and Bhagnagar therefore conclude that

The fact that the more developed and dynamic economies of Singapore, Malaysia and Thailand have only marginally improved upon their GATS commitments has constrained the broader objective of greater economic integration of the region through the movement of workers via Mode 4.³²

Exceeding Commitments? ASEAN Extra-regional Mobility with Third Countries

The 'variable geometry' or 'arithmetic' architecture of Southeast Asian integration is well known.³³ Rather than pursuing a strategy of bounded regional

30 See also ILO/ADB, *ASEAN Community 2015*.

31 Interview government official, Ministry of Trade, Indonesia.

32 Manning and Bhagnagar, *Liberalizing and Facilitating the Movement of Individual Service Providers under AFAS*, 20.

33 Amitav Acharya, 'The future of ASEAN: obsolescent or resilient?', in *ASEAN Matters: Reflecting on the Association of Southeast Asian Nations*, ed. Yoong Yoong Lee (Singapore: World Scientific Publishing, 2011); Beeson, 'ASEAN plus 3 and the rise of reactionary regionalism'; Anja Jetschke and Saori N. Katada, 'Asia', in *The Oxford Handbook of Regional Integration*,

economic integration among themselves, ASEAN countries have privileged an 'open regionalism' extending trade concessions to other Asian nations to the northeast (China, India, Japan, South Korea) and the south (Australia and New Zealand). In so far as these agreements also include trade in services, the question is how commitments agreed therein relate to the level of liberalisation among ASEAN countries. A recent analysis focusing mainly on trade in goods has found that generally 'ASEAN +1' agreements do not go beyond the level of commitments agreed in ASEAN.³⁴ This finding substantiates the priority ASEAN countries give to intra-regional integration within their Association. Given the sensitivity of the mobility agenda and the hesitant internal liberalisation documented above, we now examine how far mode 4 liberalisation has remained limited in these FTAs, or whether we observe a level of liberalisation superior to that within ASEAN.

As transpires from Figure 1, some more ambitious mobility commitments have indeed been included in extra-regional trade agreements signed by ASEAN as a group or signed bilaterally by individual ASEAN members with third countries. The columns indicate what percentage of all FTAs signed by ASEAN/an ASEAN country and covering trade in services contain mobility provisions for the indicated categories of service providers. The numbers in brackets next to the country indicate the total number of FTAs covering trade in services that this country has signed.³⁵

A prominent example is the comprehensive ASEAN–Australia–New Zealand FTA (signed in 2009), the first trade agreement concluded by ASEAN states that incorporated a separate chapter on the movement of natural persons.³⁶ The agreement delineates more categories of service suppliers (e.g. installers), and it further includes CSSS and IPs, natural persons de-linked from commercial presence. Similarly, the FTA with China also covers the categories of CSSS or installers, provisions which overtake the level of commitments liberalised internally in the AMNP.

Besides covering more categories of service providers, ASEAN+ FTAs are also qualitatively more far-reaching than the internal level of mode 4 provisions. For instance, there are provisions related to social rights of migrants and their fam-

eds Tanja Börzel and Thomas Risse (Oxford: Oxford University Press, 2015); Ravenhill, 'East Asian regionalism'.

34 Cremona et al., *ASEAN's External Agreements*.

35 Two countries, Indonesia and Brunei, have only concluded one FTA covering trade in services with a non-ASEAN member, therefore their commitments on the respective categories reach 100 per cent.

36 AANZFTA Chapter 9.

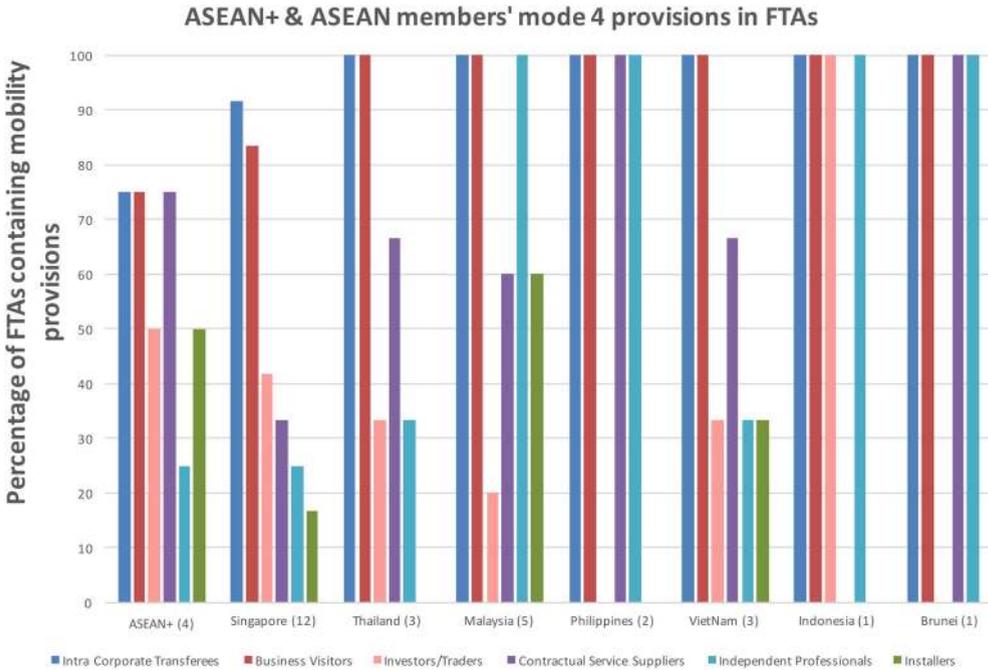


FIGURE 1 Mobility-related provisions in ASEAN+ and individual ASEAN states' bilateral free trade agreements (authors' calculations based on coded primary data). See Annex for the list of all agreements coded

ilies, as is the case of the AANZFTA, with Australia granting full working rights to family members for those service suppliers staying on its territory for more than 12 months.

Also, the bilateral FTAs signed by ASEAN member states individually contain provisions that exceed the scope of commitments within ASEAN. Notably, Singapore has concluded trade agreements encompassing generous mode 4 commitments with industrialised countries such as the US, New Zealand, Korea, Japan and, most recently, the EU, but also with developing economies including India and China. The far-reaching US–Singapore FTA even entails visa concessions from the US side, allowing for Singaporean professionals to enter the US under a specific visa (H1-B1) without any labour market tests.³⁷ Within the

37 The inclusion of visa and hence immigration concessions in a trade agreement elicited strong controversies in the US Congress which found that the trade authorities had overstepped their mandate and ruled that no such concessions should be made in future trade deals.

FTAs with Korea and Japan, the category of CSSS and a number of professional service providers were liberalised. Similarly, these categories de-linked from commercial presence were included in the agreements signed by Singapore with India and China respectively. Other bilateral agreements broadening the scope of mode 4 commitments are for instance those concluded by the Philippines, Thailand and Malaysia with Japan, as well as Malaysia with New Zealand, Australia, Korea, India and China, among others. In addition to ICTs and BVs, these agreements also cover CSSS and specific independent professions (such as cooks, instructors and care-workers, among others). Additional bilateral FTAs are currently under negotiation, including some launched by the EU with Vietnam, Thailand and Malaysia.³⁸ It is worth mentioning that four members (Singapore, Malaysia, Brunei Darussalam and Vietnam) are part of the Trans-Pacific Partnership (TPP) agreement, recently renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which also includes mobility of persons on the agenda.³⁹

In sum, intra-ASEAN movement of natural persons has sought to deepen regional economic integration and a series of reforms have been initiated to achieve this goal, notably the developments occurring within AFAS/MNP and the establishment of various MRAs. Nevertheless, the commitments undertaken by members have so far been confined to labour mobility related to investment and commercial presence. The flow of lower-skilled workers is not covered in the AEC. In various instances ENTs or numerical quotas restrict the mobility of professionals, and domestic regulations prevail when it comes to accreditation of qualifications. Reasons for this are often associated with regulatory heterogeneity across countries in the region—in some cases, problematic institutional capacity—and lack of enforcement mechanism, which adds an overall lack of trust in fellow countries and apprehension of member states in making comprehensive binding commitments.⁴⁰

In contrast, ASEAN states have achieved and offered more concessions extra-regionally. Various ASEAN–third country agreements and bilateral FTAs signed by individual member states have broader and deeper chapters on the mobil-

38 Interviews government official, Delegation of the European Union to Indonesia and EU Delegation to Singapore.

39 It should be mentioned that despite US President Trump's decision to withdraw from the TPP, the negotiations advanced, with the treaty now entering the domestic consultation phase (Australian Government, <http://dfat.gov.au/trade/agreements/tpp/news/Pages/trans-pacific-partnership-ministerial-statement.aspx>).

40 Interview ASEAN Secretariat.

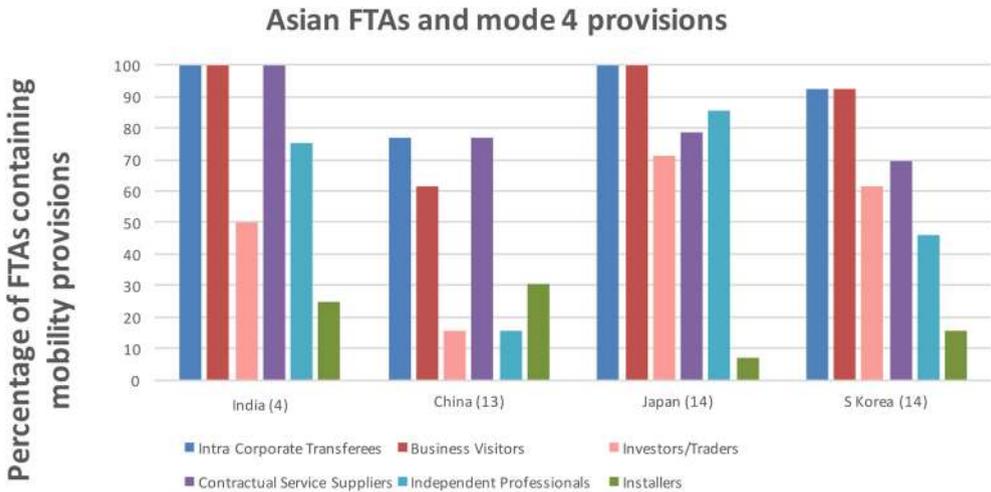


FIGURE 2 Mobility-related provisions in Asian FTAs: India, China, Japan, South Korea (authors' calculations based on coded primary data). See Annex for the list of all agreements coded

ity of natural people. Movement of labour has been liberalised at different skill levels, and provisions for service providers detached from investment/commercial establishment occur more often. In the following, we discuss the wider tapestry of mode 4 liberalisation in Asian FTAs and thereby put developments within ASEAN in the broader context of trade-related mobility governance in the region.

Trade-related Mobility in Asian FTAs

The model of addressing labour mobility through trade agreements is not specific to ASEAN countries. Since the institutionalisation of the trade–mobility nexus in the GATS agreement a number of Asian economies, and especially emerging markets such as India and China, have been pushing for more ambitious mode 4 provisions in their trade negotiations. India is also acknowledged to be leading the mode 4 agenda within the Regional Comprehensive Economic Partnership (RCEP) or ASEAN +6 trade agreement negotiations.⁴¹ While at the WTO level, the Doha round has not allowed for progress in this respect, these countries have been very active bilaterally, concluding FTAs with extensive mobility provisions with both Western and other Asian trading part-

41 Interview Ministry of Trade, Indonesia.

ners. Figure 2 offers an overview of the mode 4 commitments inserted in FTAs by these two emerging markets and two other major Asian economies that are, together with China, India, Australia and New Zealand, also part of the RCEP negotiations: Japan and South Korea. As in Figure 1, the columns indicate the percentages of all FTAs signed by the respective country and cover trade in services containing mobility provisions for the indicated categories of service providers. The numbers in brackets next to the country indicate the total number of FTAs covering trade in services that this country has signed.

India has so far concluded four FTAs covering trade in services, with Singapore (2005), Korea (2010), Malaysia and Japan (2011). All these FTAs cover sub-categories of service suppliers de-linked from commercial presence, including for CSSS and IPs, categories that appear in almost all agreements. Furthermore, there is no mention of ENTs or quota restrictions, and generally the requirements with regard to visa and duration of stay are clearly outlined. Similarly to ASEAN external FTAs, the agreements concluded by India also cover mobility and working rights for families (spouses, dependents) of service providers. India's trading partners have offered commitments that are similar or, in some cases, even exceed them. For example, in the FTA with Japan, the duration of stay for IPs and CSSS coming from India is initially agreed for one or three years, with the possibility of renewal, while India offered the Japanese IPs and CSSS a maximum period of one year. Japan has further liberalised services to IPs coming from India in particular sectors, covering nurse practitioners, yoga or English-language instructors, cooks, etc.

Also for China, GATS mode 4 commitments represent principal offensive interests when negotiating bilateral trade agreements. In fact, China has to date concluded 13 FTAs which have chapters on services and mobility of services providers, among which are some with well-established OECD economies, such as Australia, New Zealand and Switzerland. Besides covering substantial commitments for the categories de-linked from commercial establishment, these FTAs also encompass mobility and work rights for families. The China–Australia FTA is particularly relevant, with Australia granting China 'guaranteed access' for a quota of up to 1,800 CSSS annually in certain occupations, along with up to 5,000 visas issued annually for a 'Work and Holiday' arrangement. The two countries also commit to expeditious and transparent immigration procedures and cooperation on mutual skill recognition. Finally, a Memorandum of Understanding allowing for Investment Facilitation Arrangements (IFAs) gives Chinese-owned companies, registered in Australia and engaged in large infrastructure projects (over USD 150 million capital expenditure), the possibility of bringing in Chinese workers (not necessary highly skilled) for the

duration of the projects.⁴² Not least, China's trade relations with ASEAN countries also reflect the importance of labour mobility. For instance, the Trade in Services Agreement, concluded under the Framework Agreement on Comprehensive Economic Cooperation between China and the ASEAN, provides for improved market access and national treatment for select service suppliers with the objective of facilitating greater investment in the region.

As mainly receiving countries of skilled and semi-skilled labour through FTAs in Asia, Japan and South Korea have granted considerable concessions on mode 4, especially to other Asian trade partners, reflecting the increasing integration of developing economies in global markets and the growth in South–South trade and investment relations.⁴³ Japan, while traditionally known as a closed host country, has decided to include labour mobility provisions in FTAs for those sectors with labour shortages. This includes opening up sectors to semi-skilled labour and to categories de-linked from commercial presence, such as independent professionals or contractual service suppliers. The example of the Asian nurses and care-workers liberalised through trade is a case in point: the Japan–Philippines FTA (2008) was the first agreement to include labour mobility provisions, allowing the admission of Filipino nurses onto the Japanese market. Further FTAs concluded with other Asian countries such as Thailand, Indonesia or India also contain such provisions, with nurses being trained to develop language and additional professional skills in programmes sponsored by Japan.⁴⁴ Linking trade with labour mobility clearly reflects Japan's economic strategy to fill labour shortages by bypassing the highly restrictive domestic immigration law.

South Korea represents another destination economy for the Asia region. The Korean government has approached both low- and highly skilled immigration policies: for the former, it has designed the so-called Employment Permit System, allowing mobility for low-skilled workers currently from 16 countries, most in Southeast Asia, in sectors suffering from labour shortages such as construction, agriculture and manufacturing; for the latter, an important share of skilled professionals comes through the GATS commitments.⁴⁵ In its FTAs covering labour mobility, besides intra-corporate transferees and business visitors,

42 Sandra Lavenex and Flavia Jurje, 'EU/US migration policy towards emerging countries: regulatory power reversed?' *European Foreign Affairs Review* 22 (2017): 157–176.

43 International Organisation for Migration (IOM), *World Migration: Managing Labour Mobility in the Evolving Global Economy*, IOM World Migration Report Series (2008) https://publications.iom.int/system/files/pdf/wmr_1.pdf.

44 Interview Ministry of Trade, Indonesia.

45 Interview Ministry of Justice, South Korea.

Korea has further granted market access for contractual service suppliers (in about 70 per cent of all FTAs) and independent professionals (in about half of the agreements concluded). In particular, the agreements concluded with the ASEAN bloc, but also with individual members such as Vietnam, Singapore, India and China, all have commitments for contractual service suppliers and some for independent professionals. The FTA concluded with India (2010) is considered the most comprehensive agreement on mode 4 signed with a developing country and the first to grant access for independent professionals.⁴⁶ Not least, important mode 4 concessions have also been granted to countries outside Asia, such as Peru, Colombia and Chile, which cover mobility rights including for family members of main applicants.

In sum, mobility linked to trade represents an important channel facilitating the flow of labour among Asian countries. The analysis has revealed that in Asia the countries that have engaged in the most comprehensive FTAs for labour mobility liberalisation or GATS mode 4 provisions are, on the one hand, those benefiting more from outflows, in particular India and China for their IT professionals and contractual service suppliers respectively; and, on the other hand, those that have identified domestic labour shortages but have rather restrictive immigration systems, among which are Japan, South Korea and Singapore. The trade venue has thus become an alternative policy instrument—although still limited in scope, as overall the vast majority of provisions are associated with business and company-related mobility—in liberalising labour mobility, creating openings which following classical immigration laws and their sensitivity for the states' understanding of sovereignty, would probably have met much more resistance domestically.

Conclusion: Migration Governance through FTAs?

Like other regional economic communities in the Americas (e.g. the Caribbean Community Trade Agreement, the North American Free Trade Agreement NAFTA or the South American Mercosur), Africa (e.g. the West African Economic Community ECOWAS or the East African Community EAC) and Europe, ASEAN countries have engaged in a labour mobility agenda. Unlike these other regional communities, however, ASEAN states have strongly modelled their regional approach on the trade–mobility nexus as institutionalised in the 1995 GATS Agreement. Thus, the 1995 Framework Agreement on Services AFAS and

46 Interview Ministry of Justice, South Korea.

the 2012 Agreement on the Movement of Natural Persons AMNP limit intra-regional mobility to temporary moves linked to trade in services, business and investment. While the GATS framework would theoretically allow for wider liberalisation in terms of categories of workers, sectors covered and entitlements, our analysis has shown that current intra-regional commitments under AFAS/AMNP hardly exceed what ASEAN countries have agreed to multilaterally under the GATS. Taken alone, this finding indicates that notwithstanding ASEAN's rhetoric of pursuing the 'free movement of goods, services, investment, skilled labour, and freer flow of capital',⁴⁷ member states have hitherto been reluctant to deepen this agenda at the regional level. This does not mean, however, that ASEAN countries have been generally unwilling to engage in stronger liberalisation, as shown by our analysis of FTAs concluded with non-ASEAN countries. Accordingly, FTAs signed both by ASEAN as a group and by individual member states bilaterally with third countries tend to exceed the scope of commitments agreed at the intra-regional level. This is particularly interesting given that, in contrast to ASEAN's 'soft law' framework (there is no sanctioning mechanism in case of non-compliance with the obligations agreed at the ASEAN level), these FTAs, like the GATS commitments, provide for legal enforcement mechanisms through dispute settlement schemes. How can we explain this greater propensity to liberalise labour mobility in FTAs rather than in the regional framework?

On the one hand, the deeper commitments in FTAs may result from the demands made by the non-ASEAN partner country. While this may be true for China and India, which have been demanders on exporting labour through mode 4,⁴⁸ as well Japan and South Korea on the labour importing side, this does not seem to apply to Australia or New Zealand. A second explanation would compare the level of economic development and the labour markets of the contracting parties and suggest that states have been more willing to engage in deeper concessions with economies enjoying a similar if not higher level of development and disposing of specific labour skills. This explanation would concur with the overall agreement on liberalising mobility for highly skilled professionals in the context also of business and investment, and the more targeted health professions addressed, for example, in Japanese FTAs. And indeed, the agreements tend to confirm established patterns of mobility. Countries such as Malaysia, Thailand and Singapore, but also the Philippines

47 ASEAN Economic Community Blueprint 2008: 5.

48 Lavenex and Jurje, 'EU/US migration policy towards emerging countries: regulatory power reversed?.'

and Indonesia, have long seen Japanese professionals and managers accompanying foreign direct investment projects, while Malaysia has welcomed Indian IT workers from 2000 onwards and the Philippines South Korean professionals.⁴⁹

Beyond these economic rationales, our interviews with decision-makers in national capitals also hint at a more ideational component which has to do with ASEAN countries' deep concern with state sovereignty and reluctance towards a widening of the regional agenda in immigration matters. On the one hand, governments have been careful not to associate the wider question of large and increasing economic and, in most cases, irregular migration flows in South-east Asia with the ASEAN mobility agenda. This is why low-skilled workers have been systematically excluded from AFAS/AMNP. On the other hand, the preference for FTAs substantiates the attractiveness of these allegedly technical, functionally delimited instruments for addressing politically highly sensitive issues such as (temporary) migration.⁵⁰ Framing mobility in the context of international trade, FTAs dissociate the flows of narrowly determined categories of workers from the wider debates on economic migration, and thus allow agreement on international concessions despite often restrictive domestic migration discourses and regulatory environments. It comes as no surprise, therefore, that in Asia those countries that have made the widest use of FTAs for mode 4 liberalisation are either those which can benefit from labour export, such as India (for IT professionals) and China (for CSSs mainly in construction), or those whose need for labour import is impeded by particularly restrictive domestic immigration systems, such as Japan, South Korea, Malaysia or Singapore.

This preference for mobility regulation through FTAs of course bears no good promise for overcoming the level of fragmentation and incoherence in migration governance. Both from a regional and a global perspective, the proliferation of diverse mobility norms in bilateral and plurilateral FTAs leads to an increasingly complex regulatory landscape which also complicates deliberations on the right level of future liberalisation within the region. Apart from the risk of legal fragmentation, the very nature of FTAs for governing migration should be put in question. While some extra-ASEAN FTAs have included the right to work for spouses, trade agreements normally do not address the

49 Manning and Bhatnagar, *Liberalizing and Facilitating the Movement of Individual Service Providers under AFAS*, 10.

50 Sandra Lavenex and Flavia Jurje, 'The migration-trade nexus: migration provisions in trade agreements', in *The Handbook of International Political Economy of Migration*, eds Leila Talani and Simon McMahon (London: Edward Elgar, 2015).

socio-economic rights of migrants and their social protection. This contrasts with the broader context of economic integration within regional frameworks where the development of mobility norms has usually gone along with the adoption of social protection schemes such as, for ASEAN, the (allegedly legally weak) 2007 ASEAN Declaration on Protection and Promotion of the Rights of Migrant Workers.⁵¹ In conclusion, the fact that Asian countries have preferred to address migration needs through FTAs seems to corroborate their tendency to avoid commitments that would compromise their sovereignty, as the trade venue offers these states the opportunity to liberalise only those categories of 'wanted migrants', while especially within ASEAN low-skilled migrants are not covered in any regional agreement. From the perspective of the migrants, however, this tendency to govern migration through trade venues might not be the most welcome, for reasons of both legal transparency and individual rights.

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51 Lavenex et al., 'Regional migration governance'.

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Annex: List of Interviews

- 1 Interview ASEAN Secretariat, AEC Department, Jakarta, Indonesia, June 2014.
- 2 Interview Ministry of Manpower and Transmigration, Jakarta, Indonesia, June 2014.
- 3 Interview Ministry of Trade, Services Division, Jakarta, Indonesia, October 2014.
- 4 Interview Ministry of Trade and Industry, Singapore, September 2015.
- 5 Interview Delegation of the European Union to Indonesia, June 2014.
- 6 Interview Delegation of the European Union to Indonesia, October 2014.
- 7 Interview ASEAN Secretariat, ASEAN–Australia Development Cooperation Program Phase II, Jakarta, Indonesia, June 2014.
- 8 Interview Indonesia Services Dialogue/APIINDO (National Employers' Association of Indonesia), October 2014.
- 9 Interview EU Delegation to Singapore, September 2015.
- 10 Interview APEC Secretariat, Singapore, September 2015.
- 11 Interview Korea Immigration Service, Ministry of Justice, Seoul, June 2015.

Annex: List of Trade Agreements Coded

ASEAN

- ASEAN–Australia–New Zealand (2009)
- ASEAN–China (Chapter on services added in 2007)
- ASEAN–India (Chapter on services added in 2014)
- ASEAN–Japan (2008)
- ASEAN–Republic of Korea (Chapter on services added in 2007)

Malaysia

- Malaysia–Pakistan (2008)
- Malaysia–Japan (2006)
- Malaysia–New Zealand (2009)
- Malaysia–Australia (2012)
- Malaysia–India (2011)

Singapore

- Singapore–Gulf Cooperation Council (2013)
- Singapore–Costa Rica (2013)
- Singapore–Peru (2009)
- Singapore–Panama (2006)
- Singapore–Jordan (2013)
- Singapore–US (2005)
- Singapore–Australia (2003)
- Singapore–New Zealand (2000)
- Singapore–South Korea (2006)
- Singapore–Japan (2007)
- Singapore–India (2005)
- Singapore–China (2008)

Thailand

- Thailand–Chile (2015)
- Thailand–Australia (2005)
- Thailand–Japan (2009)

Vietnam

- Vietnam–Japan (2008)
- Vietnam–South Korea (2015)

India

- India–Singapore (2005)
- India–Malaysia (2011)
- India–Japan (2011)
- India–South Korea (2010)

China

- China–Singapore (2008)
- China–Peru (2010)
- China–New Zealand (2008)
- China–Pakistan (2009)
- China–Chile (2006)
- China–Hong Kong (2004)
- China–Macau (2004)
- China–Costa Rica (2011)
- China–Switzerland (2013)
- China–Australia (2015)
- China–South Korea (2014)
- China–Iceland (2013)
- China–ASEAN (2007)

Japan

- Japan–Australia (2015)
- Japan–Brunei (2008)
- Japan–Chile (2007)
- Japan–India (2011)
- Japan–Indonesia (2007)
- Japan–Malaysia (2006)
- Japan–Mexico (2005)
- Japan–Mongolia (2016)
- Japan–Peru (2012)
- Japan–Philippines (2008)
- Japan–Singapore (2001)
- Japan–Switzerland (2008)
- Japan–Thailand (2007)
- Japan–Vietnam (2009)

South Korea

- South Korea–Australia (2014)
- South Korea–India (2010)

- South Korea–New Zealand (2012)
- South Korea–China (2015)
- South Korea–Canada (2015)
- South Korea–Chile (2004)
- South Korea–Colombia (2016)
- South Korea–EU (2010)
- South Korea–EFTA (2006)
- South Korea–Peru (2011)
- South Korea–Singapore (2006)
- South Korea–Turkey (2013)
- South Korea–US (2007)
- South Korea–Vietnam (2015)

Tables

TABLE 1 Categories of service suppliers GATS mode 4

	Highly skilled	Non-highly skilled
Related to commercial presence	Intra-corporate transferees (ICTs) Business visitors (BVs) Traders/investors	Trainees
Independent from commercial presence	Self-employed/independent professional (IPs) Contractual service suppliers (CSSS)*	

* CSSS can encompass skilled, but also lower-skilled persons such as technicians, installers, care-workers.

SOURCE: COMPILED BY THE AUTHORS

TABLE 2 ASEAN states' WTO/GATS commitments on mode 4

Countries	Brunei	Cambodia	Indonesia	Lao	Malaysia
Categories					
BVs		Entry visa shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended		Max. 90 days	90 days
ICTs (managers, executives, specialists)	Three up to a max. five years	Not subject to a maximum duration of stay	Initial two years, with possibility of extension for one more year	One to three years	Two specialists per organisation up to five years
CSSS					
IPS					
Others					Professionals recognised by professional bodies in Malaysia, up to five years
Qualifications requirements					

Philippines Based on non-availability of national labour, mode 4 commitments to be revised in two years after entry into force	Singapore	Thailand	Vietnam	Myanmar Unbound/none
		90 days		
	Three to a max. five years	One to three years	Initial three years, with possibility of extension	
			90 days	
			Service sales persons up to 90 days	
			CSSs: university degree, professional qualifications where this is required; at least five years of professional experience in the respective sector: computer and related services and engineering services	

TABLE 2 ASEAN states' WTO/GATS commitments on mode 4 (*cont.*)

Countries	Brunei	Cambodia	Indonesia	Lao	Malaysia
Categories					
Social rights					
Immigra- tion require- ments/other regulations			Subject to Indone- sian labour and immigration laws and regulations		
Numerical quotas/ENTS		Yes	Yes	Yes: not more than 20 per cent of total staff	Other specialists subject to labour tests and training of Malaysians and/or employment of Malaysians as coun- terparts

SOURCE: AUTHORS' CALCULATIONS BASED ON CODED PRIMARY DATA.

Philippines Based on non-availability of national labour, mode 4 commitments to be revised in two years after entry into force	Singapore	Thailand	Vietnam	Myanmar Unbound/none
		Subject to special management needs stipulated by the Department of Employment	20 per cent of the total number of ICTs shall be Vietnamese nationals. A minimum of three non-Vietnamese ICTs shall be permitted per enterprise	

TABLE 3 ASEAN MNP commitments

Countries	Brunei	Cambodia	Indonesia	Lao
Categories				
BVs		Entry visa shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended	60 days, extendable to a max. 120-day period	Max. 30 days, renewable twice, each time no more than 30 days (max. 120)
ICTs (managers, executives, specialists)	Three up to a max. five years		Initial two years, with possibility of extension for two times two more years (max. six years)	Visa, stay and work permit for one month, three months, six months and one year
CSSS		Temporary residency and work permit issued for two years, may be renewed annually up to five years		
IPS				
Others			Technical expert(s)/ adviser(s) for no longer than three months per person for any given year	
Qualifications requirements	For architects			

Malaysia	Philippines	Singapore	Thailand	Vietnam	Myanmar
90 days	59 days up to one year		90 days up to one year cumulative period	90 days	70 days business visa, extensions subject to fees
Executives and three specialists per organisation, up to ten years	Initial one year, extendable	Two up to a max. eight years	One to four years	Initial three years, with possibility of extension	
	One year, which may be extended (sectors liberalised in AANZFTA)			For computer and engineering services up to 90 days	
Specialists, professionals recognised by professional bodies in Malaysia, up to ten years	Investor; technology services professionals, higher education professionals one year (sectors liberalised in AANZFTA)			Service sales persons up to 90 days	
				CSSS: university degree, professional qualifications where this is required; at least five years of professional experience in the respective sector: computer and related services and engineering services	

TABLE 3 ASEAN MNP commitments (*cont.*)

Countries	Brunei	Cambodia	Indonesia	Lao
Categories				
Social rights				
Immigration requirements/other regulations		Temporary residency and work permit are issued for two years and may be renewed annually up to maximum of five years	Subject to Indonesian labour and immigration laws and regulations; also knowledge transfer requirements	
Numerical quotas/ENTS			Yes, both, across sectors e.g. communication services; also gov. levied charges	Yes, both: Not more than 15 per cent of total staff for physical labour; 25 per cent for intellectual labour

SOURCE: AUTHORS' CALCULATIONS BASED ON CODED PRIMARY DATA.

Malaysia	Philippines	Singapore	Thailand	Vietnam	Myanmar
	Knowledge transfer requirements		Subject to special management needs stipulated by the Department of Employment		Subject to domestic law Labour and other ministry concerned, Myanmar Foreign Investment Law
Other specialists subject to numerical quotas and labour tests and training of Malaysians and/or employment of Malaysians as counterparts	Based on non-availability of national labour—to be revised in two years after entry into force for Philippines			20 per cent of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of three non-Vietnamese managers, executives and specialists shall be permitted per enterprise	