12

Mode 4 'On the Move'

Towards a Migrantification of the Temporary Movement of Persons in Preferential Trade Agreements?

Marion Panizzon and Amanda Bisong

12.1 INTRODUCTION

In 2021 there were an estimated 281 million international migrants, including 169 million migrant workers. This number has risen from 164 million in 2017 (IOM World Migration Report 2022). Sixty-two per cent of those were concentrated in the service sector (ILO 2021). Seasonal labour, including agricultural work, construction, and agri-food, remained stable during the pandemic alongisde care work and rose again in 2021 (OECD 2022a). Other forms of temporary labour, including those falling under the General Agreement on Trade in Services (GATS) and preferential trade agreements (PTAs) categories, such as intra-corporate transfers, dipped in relation to the COVID-19 pandemic between 2020 and 2021, by 52% and 47%, respectively, while for graduate trainees, numbers decreased by 69% and for working holidaymakers numbers fell sharply in 2020 by 59% and in 2021 by 47% (OECD 2022). Preferential trade agreements have diversified the subsectors and categories of GATS mode 4, and have thus contributed to increasing commercial opportunities for servicing consumers by natural persons (UNCTAD 2016). At the same time, migrant host states are increasingly keen on concluding bilateral labour migration agreements (BLMAs) to serve the double purpose of stilling labour shortage while containing migration considered unauthorized according to their national laws. Whereas the two sets of agreements, the PTAs and BLMAs differ from one another in ambition and ambit, their overlap is widening, either because the trade venue features fewer restrictions, or because other trading rights in the production or sale of goods, e.g. the lowering of customs duties, tariffication of border barriers, regulatory cooperation over sanitary or technical barriers diversifies and widens the field for negotiating the mutual understanding, which paves the way for sending and hosting states to cooperate on human mobility. As has been researched by trade and migration study scholars

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

alike, the temporary movement of natural persons is an essentiality for the trade regime, as persons' movement abroad is an essential ingredient – to production, construction, maintenance, instruction – and a key accessory for uninterrupted global value chains (Panizzon 2010). Hence, this chapter starts an inquiry into what appears to be a migrantification of PTAs, by discussing the different add-ons, which have been uploaded onto mode 4 services delivery in trade agreements. In so doing, this chapter draws on the different data sets developed to understand the uptake of mobility provisions in PTAs, including the MITA (Lavenex et al. 2024) and the Bilateral Labour Agreement (BLA) data set (Chilton and Woda 2022). Conversely to directly comparing the BLAs with PTAs, this chapter takes the perspective of mode 4 GATS as a starting point. It sets out with the state-of-play on what the Uruguay Round trade negotiators had in mind when conceiving of the temporary movement of natural persons (TMNP) conceived as 'GATS mode 4'.

After surveying the the two-tiered definition which GATS offers for the personal scope of mode 4, the approaches to scheduling mode 4 commitments (horizontal, sectoral, full, partial), the immigration law caveat in the GATS Annex on the Temporary Movement of Natural Persons (TMNP) and some specifics in the market access, national treatment, and additional commitments, a cross-comparison to mode 4 in different PTAs and select mega regionals is undertaken. Whereas we do not systematically map PTAs, as Pauwelyn et al. (2020), Gootiiz et al. (2020), and Lavenex et al. (2024), have done for their data sets, we draw on some of their findings to highlight a few legal challenges surrounding the mode 4 design features, which are usually quite constraining and thus often prove inadequate for adjusting to global challenges, as in the COVID-19 pandemic, interrupted production chains, and drying out of the pool of skilled workers in ageing societies.

From our sample of the European Union (EU), African, American, and Asian PTAs, we extract those provisions, which improve over the multilateral GATS Mode 4 commitments in terms of regulatory design (e.g. standardising timelines and procedures for visa/work permit applications, improved access to and portability of social security, skill transfer) or which, increase the movement of persons (e.g. by adding categories (instructors, trainees, installers, and maintainers), by creating subsectors and finally, by removing admission quotas, work permit requirements or economic needs tests – ENTs). In this context, our chapter discusses how PTAs have altered the architecture for incentivising liberalised TMNP (GATS-extra). Here, we highlight the relationship of GATS to visa and border management (screening, biometric data collection) and to wider immigration law, including return clauses. Finally, we discuss how the global health pandemic impacted mode 4 workers as 'essential workers' and what responsibilities accrue to states under GATS and PTAs for service provision in key sectors, which is a topic moving GATS and PTAs into the spotlight of the

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Global Compacts for Migration and for Refugees, as well to BLMAs, which we also discuss.

12.2 WHAT IS MODE 4? DEFINITIONS AND CONCEPTS

Mode 4 refers to the fourth mode of supply of services trade, which is the supply of services through the 'presence of natural persons'. Whereas Article 1:2(d) GATS defines mode 4, as the 'service supplied … by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member', the Annex MNP paragraph 1 uses a narrower definition which implies that employees must be of a foreign firm, as opposed to a national firm, in a host country. On the one hand, the International Labour Organization (ILO)'s Conventions 97 and 143 relate to 'migration for employment', and Article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) covers those who migrate for a 'remunerated activity', and thus excludes freelance or independent professionals; these categories, are on the other hand covered by the GATS, as it extends to those who supply a service on their own account. What remains unclear, from the GATS viewpoint, minuscule persons working irregularly as independent professionals or service suppliers are, like in the ICRMW, included or not in the scope of GATS (Ryan 2013).

Nonetheless, mode 4 cannot be entirely separated from issues around direct labour market competition between foreign service providers and local workers (Jacobsson 2015). Best practice from GATS/PTA commitments informs that the temporary nature ranges from ninety days/three months (typically applied to maintainers, installers, and service people) to five years and, in the case of the New Zealand–Malaysia Free Trade Agreement (FTA), even ten years (Schott et al. 2012). It is usually higher for workers in the information and communications technology (ICT) sector than for the rest of the categories and is both shorter and longer than the ILO's 1932 definition of 'temporary worker', which was for stays up to one year.

Another separator is that mode 4 uses highly technical language and liberalising the movement of different categories of persons, where 'political debates about the potentially negative effects of labour migration on wages, labour conditions or welfare states are excluded …' (Lavenex et al. 2024). Finally, mode 4, incidentally the only type of service delivery which requires an additional annex, formulates some key red lines, applicable to all of mode 4 trade. Excluded are persons seeking employment, residence, citizenship, and naturalisation. Annex MNP further narrows the scope to natural persons employed by foreign (as opposed to local) firms in another Member, to carefully prevent mode 4 trade from intervening in or becoming a labour migration issue (Bast 2008). Yet, certain PTAs operate a dual definition of TMNP, a narrow one limited to the mode 4 definition of the GATS, which can

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

be complemented by a broader definition including investors and persons moving internationally to produce or manufacture goods, as discussed below.

12.2.1 *Measuring Mode 4 Trade in GATS and PTAs*

Mode 4 trade is more challenging 'to capture' than for the other three modes of service supply (South Centre 2007), because, as the United Nations (UN) Technical Sub-Group on the Movement of Persons – Mode 4 (TSG) highlights, one needs to consider two interrelated variables. First, the value of services supplied and, second, the number of persons present and crossing borders. According to the United Nations Conference on Trade and Development (UNCTAD 2006), it is the least 'liberal' of the modes of supply, because most offers are in horizontal commitments. The exact share of services supplied across modes is not well known (Khachaturian and Oliver 2021).

This is made more complicated because sector-specific characteristics or regulations may affect how services are delivered. Also, modal compositions of services trade vary across sectors, countries, and types of trade flow (Khachaturian and Oliver 2021), making it difficult to have realistic and comparable data on mode 4 trade flows. For example, some states count seasonal labour in the subsectors of care, construction, or agri-food business as seasonal labour, as for seasonal agricultural labour, so that service supply in those categories is not counted towards services trade and does not enter those statistics.

Services exports, including through mode 4, remain an important export for several countries. United Nations Conference on Trade and Development notes that in 2020, global services exports were valued at USD 5 trillion, representing 5.9 per cent of the world GDP (UNCTAD 2021). Although trade in services declined due to the COVID-19 pandemic, in some countries services exports accounted for more than 10 per cent of their GDP. But, mode 4 still remains the least utilised mode of service delivery, having some of the highest trade costs and being the most restricted form of services trade across several sectors (OECD 2020; Shingal 2022) at and beyond the border.

In 2020, the Organisation for Economic Co-operation and Development (OECD)'s Service Trade Restrictiveness Index (STRI) noted a 30 per cent increase in trade-restrictive measures across most service sectors among OECD countries between 2018 and 2019 (OECD 2020). Many of these restrictive measures were adopted in mode 4 trade, affecting the TMNP. Some policies applied horizontally across all or several service sectors and included the introduction of quotas for all or some categories of service suppliers (OECD 2020). In 2021, more liberalisations in mode 4 commitments and changes in national policies reduced the restrictions in mode 4 trade (OECD 2022). These included new visa categories introduced by the United Kingdom (UK) and a reduction in the number of forms required for service suppliers in Australia (OECD 2022).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

12.3 IMPLICATIONS OF FRAMING MOBILITY AS 'SERVICES TRADE' OR AS TEMPORARY MOVEMENT OF PERSONS?

The drafters of GATS mode 4 faced several challenges, one of which was to maintain the appearance and ensure in the law that the TMNP to be liberalised by World Trade Organization (WTO) Members' individual commitments in services did not amount to labour migration, since neither industrialised countries nor trade unions wanted to see that happening. Current negotiators still face this challenge, so the need to try to distinguish mode 4 commitments from labour migration has contributed to its unique architecture and framing.

12.3.1 *Categories of Persons and Skill Levels*

In theory, GATS covers the entire skill range, but in practice, Members' commitments remain clustered around the highly skilled and formally trained (executive, manager, and specialist (EMS) category as well as graduate trainees). These are commonly called 'professionals', a fact that transpires from the credential requirements in Members' additional commitments as well as from spousal working rights. In WTO/GATS, 80 per cent of mode 4 commitments have been made for skilled work (which includes doctors and nurses and higher managerial and executive staff) as opposed to 20 per cent for low-skilled work (Chaudhuri et al. 2004). Developing countries have opened up to foreign workers in around 50–60 services, while least developed countries (LDCs) have done so in just around 25 sectors on average (Adlung and Roy 2005).

Most services PTAs replicate the specific wording and scope of the GATS mode 4 definitions. Still, some have improved the clarity or enhanced the scope to cover services supplied in relation to goods production or investment, for example, Chapter 9 of the Australia–India Economic Cooperation and Trade Agreement (ECTA).[1] These former TMNP provisions are labelled by Lavenex et al. (2024) as 'mobility provisions', as they encompass the movement of persons in sectors in a broader way than mode 4. As Carzaniga and Sharma (2022: 4) find, many PTAs operate a mode 4 schedule of commitments in the services chapter complemented by an additional TMNP annex, section, or chapter, liberalising the cross-border movement of business persons 'irrespective of the sector of activity'. Through the inclusion of such a, mobility' annex, the thus mode 4 definition includes internationally mobile professionals supplying services, but is not limited to that. Hence, mode 4 and TMNP should not be used interchangeably, but, in practice, are often deemed co-equal and substitutes (Bhatnagar 2014: 3).

[1] See: 'this Chapter shall apply, as set out in each Party's Schedule in Annex 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons), to measures by that Party affecting the movement of natural persons of a Party into the territory of the other Party, where such *persons are engaged in trade in goods, the supply of services, or the conduct of investment*' (italics added).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

In PTAs, mode 4 trade generally draws on the GATS mode 4. But there are examples of treaties expanding this narrow category to include other commercial activities of persons moving across borders to produce goods and services. They include subcontracting (service sellers), consultants and employees of international organisations, foreign students and graduate/occupational trainees, persons in exchange programmes, investors, and pensioners (UN Stats).[2] For example, several Australian PTAs include categories that do not exist in GATS, like, instructors and working holidaymakers. Moreover, PTAs have broadened a sector by adding a subsector, 'storage and warehouse services', which has a broader scope than in the original GATS schedule, and even include more services than in the W-120 classification (UNCTAD 2016). Therefore, PTAs contribute to 'expanding and diversifying' regular pathways, which is a goalpost to which the 153 states committed under Objective 16 of the Global Compact for Safe, Orderly and Regular Migration (GCM).

12.3.2 *Multimodal Service Delivery versus Clustering*

Besides the categories of persons, what distinguishes cross-border movement of persons from how states liberalise and facilitate mobility of services in the other three modes, is that mode 4 is 'bundled' with or 'supports' another mode of supply (Chanda 2018). For example, it often supports Mode 3, which involves establishing a commercial presence abroad and requiring the mobility of high-level personnel to the site, or Mode 1, the execution of a service contract, which requires the mobility of high-level professionals to the client's site abroad. (Chanda 2018). In PTAs, foreign tour guides may be restricted to serving only tourists from the same country as the tour guide (Indian tour operators catering to Indians, at the exclusion of Swiss or other foreign tourist groups in Switzerland).

Multimodal supply is inherently produced by the temporary, part-time nature of mode 4, which permits a person to engage simultaneously in care work while pursuing an education or training. In mode 4, multimodality means to enhance the efficacy of acquiring new skills. When mode 4 is linked to mode 3, the latter is financial collateral against the risk of foreign professionals relying on the host country's social services or entering the labour market and accessing essential services (Panizzon 2010). Thus, a mode 3 reservation on national treatment, for example, limiting the number of foreign nationals allowed to be on a company's governing board, may also affect mode 4 (Adlung and Roy 2005). Graduate or occupational trainees, a category introduced by the EU–Caribbean Forum (CARIFORUM) 2006 Economic Partnership Agreements (EPAs), is narrowly seen as a non-commercial category and thus technically outside mode 4. But at the same

[2] The EU–Japan EPA TMNP is extended to spouses and dependents; see Annex III B Article 11 to Annex 8B.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

time, they may consume educational services through mode 2 (Sauvé and Ward 2009). Beyond education services (Sauvé 2004), the mode 4–mode 2 nexus prevails in service sectors such as heritage, sports, music/concert and film festival tourism, health, sports, and leisure.

Multimodal supply must not always be working against developing countries and LDCs; 'clustering' can be more beneficial to them than if market access is limited to a single mode of delivery. For many small and medium enterprises, administrative, logistical, and technical communications are often tied tightly together in a single business transaction abroad. Hence, it is advisable for states to open up market access in all modes (UNCTAD 2016: 20).

Since the pandemic, a new type of mode 4-specific multimodal supply emerged when states recognised remittances as 'essential services', to the effect that a mode 4 worker would not only deliver a cross-border service, but in addition transfer the payment received via a mode 1 financial transaction, or remittances flow.[3]

12.3.3 Embedding Service Provision into the Production of Goods and The Shift to Permanent Status of Essential Workers

A variation of multimodal delivery is the practice of embedding services into the production of goods (Chanda 2018) or transportation of goods. For example, it is often unclear if a truck driver bringing farmed goods across a border is covered by trade in services or not (Bisong 2022). Likewise, repair work is increasingly part of mode 4 schedules in PTAs.

In food processing and other labour-intensive work areas with agricultural goods, such as meat, dairy, oils, rice, and sugar, separating between providing a service and working for the industrial production of a good is not always clear. To Cheong et al. (2013), a benchmark could be the proximity to the consumer.[4] But, there are food security and rural development policy considerations that work against considering harvest workers as service providers. One health pandemic outcome is that essential services in key sectors qualify in Europe and the United States as 'services' workers falling under the category liberalised in a trade agreement. At the same time, they obtain a regularisation of status, an extension or renewal of permits of stay or visa, and fast-tracked access to permanent status. France treated them as 'non-confinable'

[3] At the initiative of Great Britain, Northern Ireland, and Switzerland, thirty-three countries joined a 'remittance in crisis' group, which conceptualized remittances as an essential service; Kenya and others had already unilaterally called for such a move for cash-based and digital remittance-related services.

[4] For instance, should a fruit picker be seen as a person supplying services incidental to agriculture (fruit picking services) or as an agricultural worker? This, of course, depends on how Members define the GNS/W/120 category 'Services incidental to agriculture, hunting and forestry'. The same applies to other categories of the breakdown of item 'Other business services' of the GNS/W/120 such as services incidental to mining, manufacturing, etc.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

(Odasso and Fornalè 2022). Portugal[5] granted status to any undocumented foreign national, regardless of occupation or employment, as long as the person had applied for status by 18 March 2020 (state of emergency declaration),[6] and the Italian Relaunch Decree of 13 May 2020 applying to employees in agriculture, fishery, caretaking, or domestic work who entered before 8 March 2020 and can show proof of sponsorship by an employer.[7]

These examples showcase a trend towards de-temporalization of mode 4 service supply during the health crisis. Conversely, certain areas of service delivery are exempted from the professional activity of the foreign service supplier. For example, traditional Chinese medicine and therapy or Ayurvedic medicine and therapy might be accounted towards the subsector of 'beauty and physical well-being services' under section 972 of the Classic Product Classification (CPC) list, version 2.1,[8] instead of subsumed under the CPC entry 973 for 'human health and social services', which features (Western) medical services, including for restoring health, and for medical or rehabilitation purposes. In addition, there is a protectionist intention to relegate a health-related service to the CPC category of physical well-being services, as it prevents the patient/consumer from redeeming the cost of the service through their health insurance which produces the intended effect of excluding the foreign service supplier from generating an income guaranteed by the consumer's mandatory health insurance and thus keeps the foreign service provider effectively out (Jansen and Piermartini 2004). This is how the Sino-Swiss FTA of 1 July 2014 is treating traditional Chinese medicine, namely, not as an entry in the Swiss Schedule of Services commitments, which would allow TCM health professionals from China to supply their services in Switzerland, but rather, as the side letter suggests as an area of 'further cooperation', implying that for China, the starting point of the discussion must be that TCM professionals from China can issue the same billing towards their Swiss/other patients which is to get reimbursed by the patients' compulsory health insurance.[9]

[5] Despacho n.° 3863-B/2020 de 27 de março [Order no. 3863-B/2020], https://dre.pt/dre/detalhe/despacho/3863-b-2020-130835082 (Portugal).

[6] In Portugal, third-country nationals 'only need to prove that they have a pending case at SEF as of 18 March 2020'. This proof works to safeguard their stay in Portugal as one of being legal during the period of 27 March until 30 June 2020, 'and can be presented in the various public services to access the relevant rights'.

[7] Decreto legge 19 maggio 2020, n.34, G.U. 19 May 2020, n.128 (Italy)

[8] Central Product Classification List, UN DESA (2015) UN Document ST/ESA/STAT/SER.M/77/Ver.2.1, available at: https://unstats.un.org/unsd/classifications/Econ/Download/In%20Text/CPCv2.1_complete(PDF)_English.pdf, accessed 13 May 2024.

[9] Sino-Swiss Free Trade Agreement of 1 July 2014, Annex XI Reimbursement of TCM under the Health System, available at: https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/handel_mit_dienstleistungen/freihandelsabkommen/china.html ; for more information: Switzerland Global Enterprise, https://www.swisscham.org/shanghai/wp-content/uploads/2018/08/SBH%20The%20Sino-Swiss%20FTA_EN.pdf, accessed 13 May 2024.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

A feature of mode 4 is the potential for substitution with other modes of supply (cross-modality), especially when entry regulations make it difficult for a service provider to access the domestic market, hence a switch to remote modes of service delivery (mode 1 and mode 3) (Khachaturian and Oliver 2021). But this substitution is not possible in all sectors.

12.4 GATS-PLUS IN PTAS: ADDING CATEGORIES OF PERSONS THROUGH CREATIVE LAW-MAKING?

Services trade distinguishes three types of schedulings of commitments: the positive list (GATS-type), the negative list (NAFTA-type,[10] used in CPTPP 2018[11]), and the hybrid approach (RCEP 2022[12], and the EU–UK TCA 2020[13]). In 2021, a study found that out of 183 PTAs notified to the WTO, 100 of those had a chapter or annex on TMNP (Carzaniga and Sharma 2022:3). Out of 119 PTAs in 2019 with mode 4 chapters, 80 per cent used positive listing[14] and 76 per cent used negative listing.[15] Hence, it comes as no big surprise that the propensity for more ambitious liberalisation steps in mode 4 is higher in the negative listing, which features more advanced acceleration of visa and work permit procedures as well as deeper transparency obligations (Carzaniga et al. 2019).

Many PTAs have diverged from the GATS mode 4 negative scheduling to either positive scheduling or a hybrid approach. The more diverse the membership of a PTA, the more likely it is that the political sensitivities over mode 4 and labour mobility will diverge, where mode 4 scheduling of entry and stay of professionals will is hybrid and the levels of liberalisation, and the harvest over GATS-plus/GATS-extra are very limited (e.g. RCEP).[16] In mode 4 the EU–UK TCA adopts a mix of positive and negative listings: contractual service suppliers (CSS), independent professionals, and short-term business visitors must fall into one of the sectors listed in the annexes. In contrast, business visitors for establishment purposes and intra-corporate transferees are not subject to sectoral limitations.

[10] North American Free Trade Agreement.
[11] Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
[12] Regional Comprehensive Economic Partnership.
[13] EU–UK Trade and Cooperation Agreement (TCA).
[14] Positive listing: 'All sectors and subsectors where market access and national treatment commitments are made must be listed. All exceptions or conditions to the listed commitments must be clearly stated.'
[15] Negative listing: 'Unless otherwise indicated in the lists of reservations, all services are deemed liberalized. All measures and sectors are considered to be liberalized unless there is a reservation indicated that these may include existing and future non-conforming measures. All sectors not listed are considered open to foreign service suppliers.'
[16] The GATS-*plus* concept corresponds with provisions that come under the current mandate of the WTO/GATS, while the GATS-*extra* category implies measures and regulatory features that fall outside the current WTO/GATS mandate.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

However, all categories of mode 4 service suppliers in the EU–UK TCA are subject to country-specific reservations. What this means in practice for service providers is highly variegated, by type of mobility, destination, member state, and service sector. Family members' rights (for families that may travel with a service provider) can go as far as including working rights' for spouses, for example in the EFTA-India TEPA. However, such working rights apply to partners, children, and family members of ICTs only.

Hybrid scheduling is used for implementing variable speeds of liberalisation across modes (and sectors). Hybridity means, first, that members are free to choose positive scheduling at first and to waive after a three-year transition period into negative scheduling (twelve years for LDCs) (Zhang and Sasanabanchakul 2022). It also means that market access is scheduled differently (positive listing) than national treatment obligations (negative listing) (Sauvé 2014). In mode 4 even the 'traditional' GATS-style services chapters invert that architecture by oftentimes limiting any openings made in mode 4 to horizontal commitments without specifying any additional opening in the specific commitments (Stephenson 2015).

In PTAs using positive scheduling, mode 4 is treated like the other modes, meaning there might be a list for exempting future, non-conforming measures. In the positive scheduling scenario, the horizontal section must be read with the sector-specific schedule and, in addition, most-favoured-nation (MFN) exemptions, the former of which might inform that a country is liberalising the movement of professionals through bilateral labour migration agreements (e.g. France in GATS and Bulgaria, Jordan, and the Dominican Republic for health workers; see Carzaniga et al. 2019). In the negatively scheduled mode 4 commitments, mode 4 is presumed fully liberalised, unless otherwise specified. The limitations, conditions, and reservations appear in annexes, one being a standstill, for example, preventing governments from making the sector more restrictive, or introducing new non-confirming measures, and another providing full regulatory freedom to governments to exclude entire sectors or introducing new measures.

Whereas mode 4 features in services chapters in many PTAs, mainly those operating positive scheduling like the CPTPP, mode 4 is liberalised outside the trade in services chapter. The CPTPP has a Chapter 10 Cross-Border Trade in Services and a Chapter 12 on the Temporary Entry for Business Persons. The former refers to a separate labour chapter, Chapter 19 and the non-conforming measures in Annexes I and II. Oftentimes, a combination of both is used with a 'pure' mode 4 in a services chapter (Carzaniga and Sharma 2022) and an annex or separate chapter on the international movement of professionals.

In regional integration agreements such as the Association of Southeast Asian Nations (ASEAN) or the African Continental Free Trade Area (AfCFTA), there is a self-standing agreement on the movement of natural persons (MNP). These agreements use a dual strategy to liberalise the MNP, one on mode 4 and another protocol on the broader, free movement of persons (Zanker and Bisong 2022). Perhaps the oldest example is how the ASEAN Agreement on the Movement of

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Natural Persons (AAMNP) 2012 and mode 4 in the ASEAN Trade in Services Agreement (ATiSA) (2020) came out of the ASEAN Framework Agreement on Services (AFAS) of 1995 (Natanael and Verico 2019). Another example is Article 27(3) of the Protocol on Trade in Services (TiS) in AfCFTA and the concomitant track of liberalising the movement of persons through a Protocol Relating to Free Movement of Persons, Right of Residence and Right of Establishment also concluded under the umbrella of the AfCFTA, albeit possibly, endorsed at a later stage by the African Union (AU) Member States (Apiko et al. 2021: 17).

At the same time, a comparison between mode 4 in Chapter 12 of the CPTPP (2018) and Chapter 9 of the RCEP (2022) reveals that the RCEP pledges to engage in cooperation on facilitating more TMNP (ADP Economics Working Paper Series No. 639, 2021: 4).[17] Otherwise, RCEP mode 4 is similar to the ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA) (Chapter 9) and the AFAS (Kimura et al. 2022).

The Indonesia–Australia Comprehensive Economic Cooperation Agreement (IA-CEPA, in force since 5 July 2020) reaffirms in Article 12.5 the commitment to the Asia-Pacific Economic Cooperation (APEC) Business Travel Card programme, but, otherwise, is a step further than the AANZFTA in the sense of adding a skill transfer obligation to benefit Indonesian lawyers[18] and adding an IA-CEPA Skills Development Exchange Pilot Project. Yet, the IA-CEPA has not as far-reaching cooperation over border security, biometrics, and travel data provision as the Peru–Australia FTA (PAFTA) in force since 11 February 2020. The PAFTA also has mutual recognition of professions, and, to some extent, even harmonises the educational and professional pathway and accreditation for engineers and architects, lawyers, and other business persons (Annex 9-A) and therefore has installed a standing professional services working group. Even if the projected Australia–India Comprehensive Economic Cooperation Agreement (ECTA, in force since 29 December 2022) uses positive scheduling, it is advanced in the sense that Australia grants two types of visas to India, the work holiday visa and post-study work visa, both of which are not typical mode 4-type service deliveries, but rather cover broader labour migration and training-type mobility (see below).

Beyond the above-mentioned progress on facilitating mode 4 mobility, there are also emerging impediments to mode 4 trade, which seem motivated by political economic constraints of the host country labour actors, including trade unions, employer associations, and professional boards (medicine, architects, law), which

[17] See www.adb.org/sites/default/files/publication/740991/ewp-639-regional-comprehensive-economic-partnership.pdf

[18] See Annex 12-A: Indonesia's Schedule of Movement of Natural Persons Commitments: 'Foreign lawyers (advocates) are: 1) Subject to recommendation from the Advocate Association; 2) Obliged to transfer legal knowledge and professional capabilities to Indonesian lawyers; and 3) Obliged to transfer knowledge to education, legal research or government institutions for at least 10 hours each month free of charge.'

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

use their power to oppose the accreditation necessary for an independent service supply, including recognition of the credentials for opening a private practice. The first such inflexibility seems to be the non-recognition by the host country's compulsory health insurance of the traditional medicine and acupuncture services, brought by 'health specialists', notably from Asian countries, for example, traditional complementary medicine (TCM) practitioners, who are not always accredited in the host country as medical doctors. For that reason, China, in its PTAs (ChAFTA[19] side letter on TCM (2015), China–Switzerland FTA (2015), Annex XI on TCM (2014), is insisting on a side letter where the partner country seeks to engage in best efforts to include TCM in its public health insurance plan. In this way, TCM doctors and practitioners are not discriminated against by medical staff and doctors trained in Western medicine, and patients are not led by financial considerations when choosing their treatment plan.[20] This would include supervised or co-supervised activity for TCM practitioners in a practice owned by a domestic medical doctor.

In the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, there is no automatic mutual recognition of professional qualifications, but a call for separate agreements by professional bodies. The CETA leaves it to the relevant authorities or professional bodies in both the EU and Canada to negotiate a proposal on so-called mutual recognition that can then be integrated into the CETA. Also, there are sectoral carve-outs, for example the financial sector, with a separate chapter in the agreement, including implications for mode 4.[21]

12.5 GATS-EXTRA: VISA, BORDER MANAGEMENT, RETURN, AND COOPERATION ON LABOUR

Comparing mode 4 trade in GATS to the movement of persons in PTAs, there are 'improvements on mode 4 . . . and downsides to services PTAs' (Marchetti and Lim 2007). Pauwelyn et al. 2020 find that due to the rise of regional economic communities (RECs), PTAs no longer see the necessity to regulate visa, border control, immigration, and asylum issues. Similarly, Lavenex et al. (2024) and Carzaniga and Sharma (2022) report that most GATS-*extra* advances in PTAs have occurred over transparency and information duties within certain timelines, including a duty to report about relevant changes in immigration laws, (ninety days in Article 8 AANZFTA), as well as expedited visa, travel documentation, and work permit application procedures within certain timelines (e.g. 160 days for CETA, Chapter 10). Most far-reaching is the duty to establish a contact point, which is a feature that merges visa application with information duties in a single administrative entity

[19] China–Australia Free Trade Agreement.

[20] China–Switzerland FTA (2014), Annex XI, Reimbursement of Traditional Chinese Medicine under the Health System.

[21] See CETA, Annex 10-A–F.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

(Switzerland–China FTA Articles 13.5 and 13.8; and CETA Annex 10-A and Article 10.5 – list of contact points of the EU Member States and Canada, respectively).

Yet, as Pauwelyn et al. (2020) noted, the 'need for the harmonisation of border procedures and travel documentation to facilitate the entry of travellers and address irregular migration and cross-border mobility' is reserved for RECs. Conversely, PTAs like COMESA, which are concluded exclusively and essentially for cross-border business and trade, will never want to reach these levels of harmonisation. The same applies to the treatment of vulnerable traders and other mode 4 service suppliers, the screening and inspecting against human trafficking and smuggling, and the detection of cross-border movement, which is determined by humanitarian motives. This is also because member states within certain RECs, like the Economic Community of West African States (ECOWAS) or Common Market for Eastern and Southern Africa (COMESA), are bound by a common human rights charter. This is the African Charter on Human and People's Rights and Duties (Banjul Chapter) of 1981, also binding for the AfCFTA. Conversely, neither Pacific and East Asian countries united under the Asia-Pacific Trade Agreement (APTA) nor the RCEP or the CPTPP has a similar common human rights treaty in place, against which screening or related border measures intruding on fundamental rights, including the right to leave one's country, the right to (private) life, and the right to health could be reviewed.

However, for border screening motivated by public health grounds in a post-COVID-19 environment, some PTAs might likely include provisions similar to those in REC settings, by having measures such as screening at the border (hitherto reserved for goods through sanitary and phytosanitary (SPS) measures), designating border crossings, surveillance, detection and outbreak capacities, and public health emergency contingency plans (IOM and COMESA 2020: 29).

12.5.1 *Return Obligations in PTAs: Trade as a Venue to Control Immigration?*

Furthermore, several PTAs contribute to combatting irregular migration by including voluntary and forced return obligations or provisions on cooperating or sharing experience over integrated border management. For example, Chapter 9 of the Malaysia–India Comprehensive Economic Cooperation Agreement (MICECA) of 1 July 2011 'recognizes the need to ensure border security' (Article 9.1),[22] while the

[22] Article 9.1 MICECA reads: 'The objectives of this Chapter are: (a) to provide for rights and obligations additional to those set out in Chapters 8 (Trade in Services) and 10 (Investment) in relation to the movement of natural persons between the Parties while *recognizing the need to ensure border security*; (b) to enhance and facilitate the movement of natural persons engaged in the conduct of trade in services, goods and investment between the Parties; and (c) to *establish simplified streamlined and transparent procedures for immigration formalities* for the temporary entry of natural persons to whom this Chapter applies' (italics added).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

PAFTA of 11 February 2020 goes much further in the suggestion that 'cooperation' Article 11.6 leads to a 'sharing of experiences':

> (C) *consider mutually agreed cooperation* activities, subject to available resources, including by *sharing experiences* with regulations and the implementation of programs and technology related to . . . the use of biometric technology, advanced passenger information systems, frequent passenger programs and security in travel documents. (italics added).

As has been extensively reported in policy circles and scholarship (Panizzon 2010; Naiki 2015), the Japan–Philippines EPA Annex 8 requires nurses and caregivers who fail the national board examination (NBE) in Japan to return to the Philippines. Indonesia and Viet Nam have similar EPAs with Japan. Even the EU–Japan EPA in Annex 17 provides:

> The Parties acknowledge that the enhanced movement of natural persons following from paragraphs 1 to 6 *requires full cooperation on return and readmission* of natural persons staying in the territory of a Party in contravention of its rules for entry and temporary stay (*italics added*).

Among twenty-three nurse candidates and twenty-two caregivers returning to the Philippines in 2011 due to the dissolution of their contracts because of 'dissatisfaction' with the workplace (Ohno 2012), only half continued working as caregivers in the Philippines (Takahashi 2018). The Japanese model of recruiting lower-skilled TMNP through trade agreements is considered a 'failure' by the public, the press, and some academics (Naiki 2015). The costs for the employers, for example hospitals and medical institutions, of hiring foreign nurses and caregivers without having Japanese-language training taking place at home were too high and the risk of de-skilling and brain drain for these 'EPA nurses' too costly (Takahashi 2018; Hirano et al. 2020).[23] Others evaluate the success–failure of Japan's EPA nurses in a more nuanced way. They suggest that if the trading partner puts efforts into language training (Indonesians learn 32 per cent more Japanese than Filipinos) and a positive attitude among the younger population about working in Japan, the success rate is higher (Ohno 2012).

Again, this result shows that in GATS-extra categories, there is little leverage from the GATS/WTO to tie a trading partner to cooperate on border management, return, and combatting irregular migration. As a result, the efforts must come from both trading partners' close cooperation and sharing of experience, as the PAFTA suggests. Without legal guarantees in a PTA over GATS-extra or soft recommendations, a PTA might choose to limit the extent of GATS-extra regulation, thus restricting the categories of persons within a sector or subsector, so as

[23] Hirano et al. 2020: 'As of January 2019, only 136 foreign registered nurses remained in Japan, which is merely 10.5% of the 1300 EPA nurse candidates who had entered Japan since 2008.'

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

not to liberalise in categories of persons, where irregular migration might become an issue.

Many PTAs, including those by the European Free Trade Association (EFTA), limit the independent professional category to those holding 'occupations with cultural, ethnic, national characteristics'. For example, the ChAFTA opens to 'occupations with Chinese characteristics', like traditional Chinese medicine practitioners, Mandarin language teachers, Chinese chefs, and Wushu martial arts coaches.[24] But by embedding these occupations into the independent professionals (IP) category, as opposed to CSS, Australia could recoup the potential costs of the training or the risk of unemployment to the self-employed person themself.

12.5.2 *Knowledge Transfer Obligation: Token for Political Acceptance?*

In the Asian context, governments have pushed for more sectoral openings in leisure, sports, and cultural service supply (Lavenex and Jurje 2021). These include adding the new category of 'instructors' of yoga, cuisine, boxing, martial arts (ChAFTA), traditional music, medicine, and healing (India–Australia ECTA, 2022).[25]

These are sectors without much domestic competition, culturally or ethnically defined, also referred to in the literature as an 'ethnic enclave economy' (Portes and Shafer 2007), and fall into the 'others' sector under the CPC classification. They can be used to explore the niches where domestic labour is not a competition, increasing the political acceptance of mode 4 workers.

The labour-services trade issues are often not clear-cut and increasingly blur or become permeable, as in the ChAFTA and IA-ECTA. Australia has granted China (ChAFTA) and India (IA-ECTA) quotas in its Work-Holiday Maker Visa Scheme, thus preferring Indians and Chinese over other foreign nationals by reserving a share of its global quota for nationals from these two countries. Even though the WTO Secretariat discourages using quotas in mode 4, visa practices are excluded from GATS through a footnote in Annex MNP. Thus, such practices might be considered as visas rather than quotas, regardless of whether the holiday work falls under the scope of service supply or not.

12.5.3 *Labour Standards and Foreign Credential Recognition (FCR)*

Another key feature of labour provisions in PTAs is the so-called cooperation provisions, including sustainabale agriculture, industrial cooperation in particular

[24] See China, MOFCOM, Interpretation for the ChAFTA, http://english.mofcom.gov.cn/article/policyrelease/Cocoon/201510/20151001144954.shtml.

[25] See Australia–India ECTA (2022): 'Temporary entry and temporary stay shall be granted for up to a combined total of 1,800 per year of qualified, professional Indian traditional chefs and yoga instructors entering as Contractual Service Suppliers of India.'

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

for small and medium-size enterprises, product safety, and in relation to mode 4/TMNP flows, the one with the closest link, labour standards. These provisions call on both parties to regularly monitor labour issues (working conditions, remuneration, labour inspection, forced labour, youth/child, gender, occupational health, and corporate social responsibility – CSR). To what extent do such cooperation clauses incorporate and replicate the ILO standards, expressly refer to the relevant ILO norm or defer to monitoring by the ILO and other stakeholders, and what themes they cover, is where the diversification among trade agreements lies, for example Article 18.7 PAFTA or Article 19.10 CPTPP:

> ... Subject to the agreement of the Parties involved, cooperative activities may occur through bilateral or plurilateral engagement and may involve relevant regional or international organisations, such as the ILO, and non-Parties.

According to ILO LP Hub, 68 per cent of all PTAs from 1994 to 2021 used labour-restrictive provisions, which prevent the trading partner from using labour laws to create unfair trade advantage or protectionist trade. However, this feature is missing from most PTAs initiated by African and Arab countries (ILO 2022: 11).

Whereas the ILO and the Economic and Social Council (ECOSOC) are specialised UN agencies, the WTO is not, but is an observer in ILO. Conversely, the ILO and ECOSOC (the latter in charge through the Committee on Economic, Social and Cultural Rights (CESCR) of monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)) lack standing in the WTO. Hence, aligning trade law to adherence to international labour standards without those becoming a protectionist barrier to trade, has been an ongoing issue of debate since the Singapore 1996 Ministerial, which extends to PTAs.[26]

The ICESCR guarantees a right to work for non-resident populations (Article 6 and Article 2.2). Yet, so far, no international obligation compels states to admit migrant workers into the labour market, except for the ICRMW.[27] Coming closest to multilaterally opening up a work-related pathway is the GATS and its mode 4 of service delivery (Howse and Teitel 2009).[28]

Unlike GATS, the ICRMW posits that states have a positive obligation to ensure that residents and workers may 'achieve the full realization of this right', which 'shall include technical and vocational guidance and training programs, policies and techniques to achieve steady ... development and full and productive employment'. The ILO and WTO have worked jointly on skills development, but have failed to recommend a specific design for scheduling mode 4 commitments. General

[26] See WTO, www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm.

[27] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 UNTS 3, 18 December 1990

[28] General Agreement on Trade in Services (GATS), 1869 UNTS 183, 15 April 1994 (entry into force: 1 January 1995).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Comment 18 to ICESCR, deepens in paragraph 27, by restating that the 'right to work requires States parties, to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment'. Article 52 of the ICRMW enshrines a sovereign prerogative of states to:

> 'restrict free choice of remunerated activity ... concerning recognition of occupational qualifications acquired outside its territory', states 'shall endeavour to provide for ... the assessment, certification and recognition of foreign (professional) formal and informal qualifications'.

One key embodiment of this best-efforts clause is embodied in Article VII GATS, which calls on states to remove obstacles to the recognition of foreign credentials. These are similar to product conformity assessments and embody a behind-the-border barrier to services trade and mobility of persons. Whereas Article VII GATS encourages the conclusion of mutual recognition agreements for an across-the-board, horizontal recognition of qualifications, that can even break away from the MFN obligation under Article II GATS, but not from non-discriminatory treatment among WTO Members, more recent PTAs, including the CPTPP, go for a sectoral recognition broken down by trades or professions, including engineers and architects. The RCEP even has a temporary mutual recognition possibility for states to temporarily agree to recognise each other's qualifications limited to the duration of a specific joint project. In the CETA, there is no automatic, horizontal mutual recognition. Instead, professional bodies are encouraged to conclude sectoral agreements to be later integrated into the CETA.

12.6 FLEXIBILITIES: DEVELOPMENT-FRIENDLY, GENDER-SENSITIVE MODE 4

In the Doha Development Agenda (DDA), which is the negotiations package that was launched by the WTO's fourth Ministerial meeting in Doha, Qatar, in November 2001, developing countries requested more openings in mode 4: adding new categories, lifting sectoral limitations, and de-coupling mode 4 from being held hostage to mode 3 (75 per cent of mode 4 commitments remain coupled to mode 3, UNCTAD 2006). In 2005, the Hong Kong Ministerial Declaration, the Plurilateral Request, and the LDCs' request expressly called for the de-coupling and added new categories. In 2011, trade negotiators adopted the so-called LDC waiver, which is an LDC-specific 'Enabling Clause for services' (UNCTAD 2016). It allows industrialised Members to deviate from their MFN obligation to grant preferential treatment on services to all WTO Members when they wish to benefit from service provision from an LDC. At the Bali 2013 Ministerial, efforts were made to 'operationalise' this LDC waiver through the LDC collective request, and in 2015 at the Nairobi Ministerial, the LDC waiver was extended until 2030.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Another issue is the gendered impact of mode 4. Here, the concern is that temporary mobility poses a high risk for women, who experience 'prolonged family separation' and uncertain social security (Hennebry et al. 2022). At the same time, trade has been shown to deliver advantages for women's empowerment and produce gains in terms of equalising opportunities. The WTO provides a database on gender provisions in regional trade agreements (RTAs), which could be the basis for designing more gender-responsive PTAs.[29] At the same time, the category of instructors, healers, and health workers in mode 4 should be liberalised as this is where the feminisation of migrant labour takes place most often. However, in these sectors, female labour is usually at higher risk of being exposed to trade disruption, for example social distancing measures and travel bans during COVID-19. Thus, even if access to information technology (IT) skills should be available to all, the transferability to online or hybrid service provision is often more challenging for women with less access to adequate IT supply (WTO and World Bank 2020: 118–119).

In 2016 the European Parliament found that there is little data on the gender effects of liberalising trade in services, except for some studies in tourism and communication. However, what is evident is that more mode 4 openings in healthcare could offer female healthcare professionals from low-income countries the opportunity to gain experience and earn higher wages working for healthcare facilities in higher-income countries. Hence, PTAs like the Japan–Philippines EPA, liberalising mode 4 for nurses and caregivers, have charted a new pathway in mode 4 liberalisation, despite restrictive language and training pre-employment requirements (European Parliament 2016: 26).[30]

Another way gender equality concerns can be mainstreamed into trade agreements is to open up the graduate trainee pathway within the ICT category and broadly define the former. A WTO and OECD study shows that internationally active companies trading cross-border employ more women than companies doing commerce domestically (WTO and OECD, 2017). European Union PTAs have recently included graduate trainees (CARIFORUM), installers, and maintainers. By liberalising graduate trainees, the host country might defer the cost of opening its mode 4 in a development-friendly way to the international company, a feature that the Swiss migration partnership with Nigeria opted for when Nestlé Nigeria agreed to train Nigerian workers (Losada 2023). By upskilling the workers, a know-how transfer occurs, which Article 6(2) ICESCR encourages. However, for such a transfer to benefit the sending country and the worker or trainee, a solid private

[29] WTO, www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm

[30] Speech by WTO DDG Ellard on 17 December 2021: 'DDG Ellard: WTO is taking action to make trade work for women: women account for 33% of the workforce of exporting businesses, compared with 24% of non-exporting firms. Moreover, women constitute 36% of the workforce of firms involved in global value chains and 38% of the workforce of foreign-owned firms', available at: www.wto.org/english/news_e/news21_e/ddgae_17dec21_e.htm.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

partnership is required, as paragraph d of Objective 18 GCM suggests, without providing for indicators on how to measure such partnerships and by which standards. It seems that similarily, EU (pilot) talent or skills partnerships defer to the private sector for identifying the demand for the skills on which they are prepared to offer training offered. These include Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa (THAMM) and the Project Addressing Labour Shortages Through Innovative Labour Migration Models (PALIM) initiated under the EU Talent Partnership. They also include India's Skills and Mobility Partnerships with the UK, which might be read as complementing mode 4 commitments in PTAs.

12.7 BILATERAL LABOUR AGREEMENTS AND MODE 4: SYNERGY OR SUBSTITUTES?

Mobility as part of global value chains (GVCs) has also been observed in countries where mobility commitments are undertaken to ensure the supply of labour, combined with mode 3 commitments granted to investors in specific sectors, especially in manufacturing. In this case, the mobility of low-skilled workers is liberalised under another visa scheme or covered by bilateral labour agreements (BLA) and not covered by mode 4 although their presence stems from the existence of the PTAs. A central feature of all these forms of temporary mobility is the failure to address the welfare and protection of workers' rights, resulting in a less-than-favourable working environment and de facto slavery employment conditions for these workers (Gordon 2022).

Bilateral labour agreements have been used over the years to regulate the temporary migration of people (Chilton and Woda 2022). Dawson (2013) argued that BLAs are in a 'synergetic' relationship with GATS mode 4 since states can experiment in smaller, flexible units that could later be multilateralised. Such a view, reminiscent of the 2017 Sutherland Report 'making migration work for all', and the idea of a mini-multilateralism among like-minded groups of states, is not shared by sending countries. They fear that conditionalities between trade and irregular migration will be costly for them, and, inversely, host countries are opposed to lock-in liberalisation of labour market demand for foreign workers in GATS.

Nonetheless, PTAs are being used to replace BLAs – or certain parts of them – either to restrict the entry of specific categories of persons or to facilitate the mobility of workers and other persons. The India–Malaysia CEPA, the NZ–China FTA, and the ChAFTA foresee a holidaymaker visa and the India–Malaysia CEPA a post-study work visa, which are categories BLAs traditionally covered or opened unilaterally through national immigration legislation. This trend of PTAs absorbing categories of work, is evidence by the increased permeability between the silos of cross-border mobility.

Another area of convergence between BLAs and PTAs offer skills training or transfer opportunities, such as occurs when the former the Indonesia–Australia Skills

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Development Exchange Pilot Project, which relies on private companies. Another example is the New Zealand–China PTA that offers a New Zealand–China Doctoral Research Scholarships programme, a type of cooperation traditionally found in bilateral stagiaire or internship agreements, which China is now bringing into trade agreements. Similarly, India and China are pursuing a strategy to have their trading partners include their work holiday visas in PTAs instead of having them be unilaterally offered.

In contrast to trade agreements, some BLAs codify the protection of the human rights and labour rights of migrant workers sent abroad. In particular, if both countries are signatories of the ICRMW.[31] In contrast, others minimally relate to the ILO Convention 189 on domestic workers, which enshrines the right to collective bargaining and freedom of association for domestic workers. Bilateral labour migration agreements concluded between the Gulf and Asian countries tie the migrant worker to the employer, for example the Kafala system. In the GATS context, we question whether this element of contract law, which de jure prohibits job switching and prevents upskilling or undoing of an exploitative labour situation, constitutes an implicit barrier to services trade because workers supply inefficiently if their rights are not protected (ITU 2017).[32]

Safe routes for regular migration and orderly return, screening, and identification, as well as standard operating procedures against smuggling and trafficking, are additional reasons why sending countries, including Pakistan, Myanmar, Vanuatu, Mongolia, Nepal, Sri Lanka, but also Gambia or Guinea, sign and implement bilateral plans, policies, and agreements. If trade agreements could deliver that safety and anti-smuggling/trafficking effort, countries would no longer need that doubled-up effort. For example, Nepal has nine Memorandum of Understanding (MoUs) with Jordan, and Vanuatu, and labour (in particular seasonal) mobility schemes with Australia, New Zealand, the Republic of Korea, and Japan (Chilton and Woda 2022).

Bilateral labour migration agreements regulate irregular migration through a panoply of measures, including return obligations, border management, and joint capacity building, which are all more developed than in PTAs. The Uzbekistan–Bahrain and Philippines–Bahrain bilateral schemes offer free return air tickets, alongside border management tools, like pre-arrival screening.[33] Unlike trade agreements, an advantage

[31] UN OHCHR (Office of the High Commissioner of Human Rights). 1990. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990. New York. Available at: www.ohchr.org/en/professionalinterest/pages/cmw.aspx.

[32] Bilateral labour migration agreements were reported to have been concluded by the following destination and sending countries in Asia: Indonesia, Kazakhstan, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, the Republic of Korea, the Russian Federation, Tonga, Turkmenistan, Uzbekistan, Vanuatu, and Viet Nam.

[33] ESCAP, Implementing the Global Compact for Safe, Orderly and Regular Migration: a synthesis of voluntary Global Compact reviews in Asia and the Pacific, 20 February 2021, UN Document ESCAP/GCM/2021/CRP.1.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

TABLE 12.1 *Advanced GATS-plus and GATS-extra mode 4 categories in PTAs*

Trade Agreement	Sector	Category	Impact on Skills
Japan EPA • Philippines • Indonesia • Viet Nam	1. Nurses 2. Caregivers	1. CSS 2. employees	De-skilling due to failed linguistic and societal integration & unsuccessfully planned return
1. China–Switzerland[34] 2. ChAFTA 3. IA-ECTA	1. TCM & acupuncture[35] 2. music, cuisine, sport, Mandarin language instructors 3. yoga instructors and chefs	1. Specialists/IP (medical doctors with a qualification in TCM/ acupuncture) China–Switzerland FTA 2. Instructors (ChAFTA) 3. Specialist within CSS (IA-ECTA)	De-skilling and underemployment if state bodies do not recognise the profession; professional boards or services cannot be reimbursed by a compulsory health insurance plan
EU EPA	Horizontal commitment	1. Graduate trainee 2. Graduate trainee within ICT	Upskilling
IA-ECTA, ChAFTA	Side letter	1. Post-study work visa 2. Work holiday visa	Upskilling

Source: Created by the authors.

over them is that certain provisions in BLAs tend to be sufficiently precise enough to grant individual rights, which the worker can invoke before judicial or administrative bodies. For example, under France's agreements with West and North African countries, workers can get their removal orders or denial of work permits judicially reviewed before France's administrative courts of appeal (Panizzon 2022) (Table 12.1).

12.8 FUTURE TRENDS: DIGITAL NOMADS, ESSENTIAL WORKERS, AND THE GLOBAL COMPACTS

Since the COVID-19 pandemic challenged lawmakers and policymakers to regulate the evolving transformation of the world of work, with remote models figuring as

[34] Annex VI, Section IV Article 14 Traditional Chinese Medicine Services.
[35] Sometimes also included under services provided by midwives, nurses, physiotherapists, and paramedical personnel (CPC 93191).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

the key pandemic response of workers and employers to halt contagion, today, these at-a-distance service deliveries are seemingly an asset here to stay. At the same time, the adoption of the two Global Compacts in 2019 for refugees and migrants has also changed some policy paradigms about refugee employment and strengthened the call for regular and complementary pathways. The three features for future issues are dealt with below.

12.8.1 *Moving COVID-19 Essential Workers into Mode 4 Trade: A Win–Win Scenario?*

The COVID-19 pandemic contributed to drastic labour shortages across sectors and supply chain disruptions. These labour supply shortages are being felt mainly in the manufacturing sector and other sectors which require close contact with people, such as food and beverages, hospitality, accommodation, and tourism (Causa et al. 2022; Odasso and Fornalè 2022).

In response to the shortages in key sectors, states introduced short-term visas for categories of workers, especially in transportation and healthcare. Mode 4 commitments could offer a more sustainable way of ensuring labour supply in these sectors, mostly lower-skilled. But most low-skilled categories are not liberalised in GATS or PTAs.

Measures to liberalise mode 4 services, even if limited to only PTA Member States, would have far-reaching effects on the economy (OECD 2020). Liberalisation measures can be restricted to specific sectors with the most acute shortages. More so, using mode 4 commitments to address these shortages will include lower-skilled categories in trade agreements, especially those essential workers on the front line during the pandemic.

The COVID-19 pandemic also revealed the fate of service providers, particularly independent professionals, who fell outside the scope of social welfare measures and were left to navigate the pandemic and resultant economic difficulties without any state support. During the pandemic, most foreign nationals fell through the cracks and were not addressed by any government policies or safety nets, not from their home countries or host countries. More so, issues relating to social welfare and workers' rights and protection are not covered by trade agreements, thus creating a lacuna, which is difficult for workers who operate solely within the purview (scope) of PTAs or similar trade agreements.

Temporary workers/ service providers faced several difficulties during the pandemic, including difficulty in transferring remittances, wage theft, and abandonment by their employers. As mentioned, due to the pandemic, remittances have been labelled as 'essential services' by a group of thirty-three countries led by the UK, Northern Ireland, and Switzerland. According to the UN Secretary-General Report on the Global Compact for Migration (2021), the format of 'essential services' seems not to have yet benefitted from a similar distinction and WTO/GATS. More

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

so, PTAs are not prepared to single out 'essential service providers' from other services and the potential risk of discrimination. Additionally, the issue of responsibility in trade agreements has not been researched fully (Bisong et al. 2020).

12.8.2 *Digital Nomads – Depicting the Future of Work in Mode 4*

Globalisation, digital transformation, the evolution of work, and, most recently, the COVID-19 pandemic have also impacted trade in services and modes of delivery, blurring the lines between modes of service delivery.

The International Labour Organization estimates that the number of workers working from home rose from about 260 million before the pandemic to 558 million by the second quarter of 2020 (Soares et al. 2021). The COVID-19 pandemic fast-tracked the emerging evolving work patterns towards remote work and teleworking.

In response to the evolving world of work and also to aid struggling economies by reducing tourist revenues, among other factors (OECD 2022), many countries introduced digital nomad visas (DNVs). These visas allow digital nomads (DNs) to live and work in countries under several conditions. As of September 2022, over forty-six countries have introduced some type of DNVs for categories of professionals with varying degrees of requirements. These visas allow remote workers to legally work from a specific country for a period of time (ranging from ninety days to 3/5 years, with a possibility of extending in some countries). Digital nomads are excluded from taxes or provided with generous rebates (as high as 50 per cent in Greece) or tax holidays for several years. In addition, they require valid health insurance for the duration of their stay. Remote work generally raises questions regarding tax requirements, entitlement to social welfare, and other HR requirements for employers. For employees, DNVs have raised issues around workers' protection, double taxation, competition, and which employment laws are applicable (Hooper and Brenton 2022; OECD 2022).

More and more employees, freelancers, and self-employed entrepreneurs choose remote work to combine global travel and online careers and business. Although digital-intensive sectors, such as marketing, design, IT, writing, media, tutoring, and consulting, are the most represented, a wide range of activities and occupations are compatible with digital nomadism.

While DNVs may have implications for labour migration, the holders are strictly precluded from being involved in the domestic labour market by ensuring that they are working for foreign employers or foreign clients, if they are self-employed.

The implication of DNs for trade in services is ambivalent, as specific commitments may not apply to DNs. Whereas DNs previously travelled under tourist or business categories, and these would fall under mode 1 trade/supply, the new visas are similar to mode 4 means of supply. The similarities are the temporary nature of mode 4 and the DNVs, and they may be restricted in some countries to specific

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

regulations or sectors. Also, these categories of visas are highly regulated. The DNs need to show an intent to depart, thus ensuring that this is a temporary visa and not leading to permanence. However, Latvia offers a possibility for permanent residency after two years on a DNV.

Digital nomads are a hybrid between labour migration and mode 4. The complementarity of these schemes with mode 4 commitments is yet to be tested. For example, what will happen when service providers can move under DNVs in sectors restricted under mode 4 commitments and provide services within the territory of a member state? Does this amount to a unilateral liberalisation of a state? Will states be liable for breaching their commitments under mode 4 or MFN, especially if other member states are excluded from DNVs? (Some states specify the countries of origin for potential DNV applicants.)

Digital nomads may fit into the categories defined by GATS and most PTAs, for example the CSS and the self-employed persons. Persons employed by foreign companies may be intra-corporate transferees choosing to work remotely from another location (this may be a third location which is neither the office nor their country of origin).

Digital nomad visas raise further questions for mode 4 trade because of the temporary presence of the individuals in the territory of another member state. A motivation for further study of the implication of DNVs on services trade may be whether DNVs can serve as a precursor for GATS visas.

Also, due to the COVID-19 pandemic, it was clear that workers were not within the scope of welfare protection. For example, independent workers moving within the confines of mode 4 were excluded from welfare packages offered by states to workers living in these states. This situation exposed the gap between commitments in trade agreements and the welfare of workers who move under these agreements. The question, therefore, remains where these gaps can be addressed to protect the rights of service suppliers who may be self-employed or employed by companies. The challenge exists less where the service suppliers are employed and more when they are independent. Several workers fall within this category, across low- and highly skilled jobs.

12.8.3 *More Responsibilities for Mode 4 under the Global Compacts for Migration and Refugees*

The Global Compact for Safe, Orderly and Regular Migration, endorsed by a large majority of UN Member States (152) on 19 December 2018,[36] has been advertised as a collective fact-finding effort to map the law and fill gaps in international migration law and policymaking (Panizzon and van Riemsdijk 2019).

[36] See Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Yet, trade agreements go unmentioned in the twenty-three intergovernmental objectives and intergovernmental commitments to create more pathways. Objective 5, which calls on states to develop 'regional and multilateral labour mobility agreements',[37] fails to mention trade agreements when listing the types of possible such agreements. One reason for this might be the fear of developing, migrant-sending countries becoming caught in a conditionality scheme that would request cooperation over irregular migration in exchange for obtaining trade preferences or commitments facilitating the movement of professionals (Bisong 2023).

As Lavenex et al. (2024) argue, trade agreements would carry a significant representational gain over bilateral labour migration and other non-trade cooperation formats on labour migration. In trade, the bargaining space is usually wider than in BLAs, where trade-offs occur over remittance transfer costs and tax exemptions, traineeships, and upskilling labour rights (Bauböck and Ruhs 2022).

12.9 CONCLUSION

When negotiators, policymakers, and academics address mode 4, the many limitations, caveats, carve-outs, and preferences surrounding this mode of service delivery seem so daunting that it drives away any desire to use mode 4 as a commercial tool or labour market measure. Unsurprisingly then, boundary work is necessary for a field like mode 4, which stands and falls with national and regional borders and their temporary crossings. Logically, any legal treatment of the temporarily moved natural persons touches upon those disciplines applicable at the border and governing the national sovereignty over admissions, work permits, and credential recognition. Any employee or self-employed foreign service provider, which GATS labels as a cross-border worker, will be subject to more rules and regulations than just WTO/GATS. These range from international labour standards, regional border management, biometric and other data collection and screening, visa and travel documentation, permit processing fees, timelines, administrative procedures, portability of social security, and wage parity. Usually, these regulatory issues pose no conflict with WTO/GATS or PTA law, because the points of convergence and divergence have been made clear. General Agreement on Trade in Services Annex MNP exempts Members from applying for a visa or travel documentation requirements. It possibly includes nowadays biometric screening and other artificial intelligence (AI) tools, from the scope of the MFN obligation (Article II GATS), such that visa relaxation or elimination applied to some, but not all, WTO or PTA membership is not deemed per se a violation of the MFN principle.

[37] See Objective 5 GCM lists: '(f)acilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple-country visas, and labour mobility cooperation frameworks, to review and revise existing pathways, to develop temporary, seasonal circulation and fast-track programs in the areas of labor shortage'.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

The more delicate issues come in from a different angle. On the one hand, mode 4 keeps being bundled into mode 3, thus impeding LDCs and developing countries from deploying meaningful service-providing units into more developed states, because mode 3 would, in each case, require a foreign investment in that country of mode 4 residents. Several production processes require a close alignment to mode 4 service provision, including truck drivers, repair work, and food and beverage logistical services. Such multimodal or delivery involving trade in goods remains within the ambit of WTO/trade law and poses a legal challenge confined to the right to regulate within the WTO.

Another issue is when PTAs make GATS-extra advances by including return obligations for mode 4 and therefore mingle trade with immigration legislations, in particular efforts at curbing irregular migration. It is clear that the drafters of the GATS did not intend Mode 4 to become a catalyst for better management of irregular and risky migration, as would be the case if trade openings were made conditional on the partner country's cooperation in taking back its citizens who are in an irregular situation. Neither did GATS negotiators intend for the temporary movement of service providers to become interchangeable with temporary migrant labour, as the convoluted definitional quandaries between Article I:2(d) GATS and the Annex MNP show. Hence, labour standards and issues related to permanent stay, citizenship, and employment, as per Annex MNP replicated by many PTAs, in theory, are outside the scope of trade law.

Yet, the COVID-19 pandemic and the need for essential workers in key sectors, many of which were face-to-face and online service providers, falling under the GATS definition, showed that separating the world of trade and labour is an artificial undertaking. The reality check in the form of the pandemic shows that GATS and PTAs need to take workers' rights more seriously. World Trade Organization Members should commit mandatorily to open market access and to provide national treatment for essential services (water, health, sanitation, education) for mode 4 beneficiaries. Such a responsibility could be derived from Objectives 15 and 16 of the Global Compact for Migration, as well as from Article 43 of the UN Migrant Workers' Convention (MWC).

We would even go so far as to argue that signatories to the MWC need to ensure better coherence between their national treatment obligations on mode 4 in PTAs and in GATS and Article 43 of that Convention. It would require a national treatment in mode 4 that deviates from the one in modes 1–3, because it would limit the discretionary space these countries have concerning national treatment in mode 4, since the former would necessarily have to be identical to Article 43 MWC.

Beyond the institutional and conflict-of-laws issues, we observe quite a few takeaways in terms of liberalisation and regulatory add-ons: categories of service suppliers have diversified, in particular in Asia, visa restrictions have fallen or special pathways created, and the indivisibility of services trade and labour migration has increased.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

In PTAs, the commitments/rules regarding the temporary movement of persons have changed from a one-way, linear, and temporary 'moving' of service suppliers across borders to an additional 'transfer' of skills. For example, in the Indonesia–Australia Comprehensive Economic Partnership (IA-CEPA), mode 4 is reciprocal and part of a skills development package, whereby Australian providers of technical and vocational education and training (TVET) are given the opportunity to establish training facilities (up to 68 per cent ownership by Australia) for providing, on a face-to-face basis, Indonesians with new skills – the self-proclaimed first TVET scheme in a PTA – while at the same time, the skills package offers a work holiday scheme to young Indonesians to work in Australia, a workplace skills training programme for Indonesians in certain sectors in Australia, and a reciprocal skills exchange programme.[38] Such regulated upskilling efforts amount to more circular mobility, which aligns more with Agenda 2030's 'build back better'. Inversely, the medium-skilled category of nurses and caregivers introduced by Japan's EPAs with Indonesia, the Philippines, and Viet Nam has failed to bring the expected returns.

A convergence over categories of service workers between PTAs and BLAs is a further phenomenon. Australia's ECTAs with India and China introduced a post-study and a work holiday visa category based on numerical quotas, which in the past had been a preferential pathway to Australia's labour market, which had been reserved for BLAMs. This is the case even if such visas, including some e-business visas, are increasingly populating different PTAs (Pauwelyn et al. 2020), and even if applying to natural persons, who are less than directly or not at all involved in the supply of a service as per the Article 1:2(d) GATS mode 4 definition, like the working holiday makers or the interns and trainees. Through the import of visa provisions into PTAs, the plain meaning of the Article 1:2(d) GATS definition of TMNP is diversifying and acquiring a new object and purpose, which is to expand the scope of TMNP to persons who are being admitted on a country's services cum labour market, even if showcasing little, none or a hybrid affiliation with services trade (trainees or interns, who consume education services while working for a foreign or domestic service provider or in production). In the sense that PTAs ingest visa provisions and procedures to obtain visas are harmonized in terms of timelines, fees, availability of inquiry points and judicial review, and transparency obligations, there is a certain migrantification of mode 4, which used to be shielded off from border and visa issues as per the Annex TMNP caveat. Yet, an even more striking migrantification is taking place when PTAs harmonize visa categories, which is a development changing the clientele of mode 4 workers by diversifying the categories of persons whose movement abroad is to be facilitated, to categories blending the goods and services distinction (maintainers, installers) and those oscillating between different modes of services supply, e.g. trainees, post-study workers, interns, and instructors.

[38] www.dfat.gov.au/trade/agreements/in-force/iacepa/outcomes-documents/outcomes-skills-development.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Among the challenges preventing PTAs from venturing beyond current levels of GATS mode 4 commitments, is regulatory fragmentation and the low level of compliance and cooperation among the involved authorities: if immigration, trade, and labour ministries were to operate under a 'whole of government approach', as also the GCM mandates in paragraph 15, it would mean a step forward for migrants and employers and one for which trade facilitation under the WTO is already available (Gillson et al. 2020).

Finally, the COVID-19 pandemic has revealed further weaknesses in facilitating TMNP within the pathway of trade agreements. First, the trade format lacks the different regulatory components to ensure that essential workers in key service sectors are not discriminated against in terms of their access to health, housing, and education rights and services. Second, the health crisis also revealed the expanding dimension of digital nomads, a category which would have traditionally been considered a mode 1 delivery of services. However, due to several governments' attempts to create a DNV, it could also be qualified as mode 4, an ambivalence which requires more research and policy work.

In terms of convergence, greater agility among the categories of workers appears to be linking temporary labour being liberalised in BLAs and the TMNP being facilitated in PTAs, thus suggesting the label of a 'migrantification' of PTAs. Incidentally, it is at the regional levels where most advances in GATS-extra are being made in terms of new categories of persons. Conversely, conglomerate PTAs, or mega-regionals, like the RCEP or the CPTPP, feature weaker mode 4 advances, mostly limited to the right to work for spouses and dependents, which implies that the spouse or dependant acquire the right to actually enter the foreign labour market, which turns out to carve out an even deeper entry than that of the service supplying, first permit holder. Furthermore, in terms of information, inquiry points, expedited visa and authorisation procedures and transparency obligations, the mega-regionals mirror the lowest common denominator. In a situation of tighter public resources, skill transfer, upskilling through occupational internships, and other forms of skill circulation where the costs are carried by the multinational enterprise or the self-employed individual will continue to use the trade venue, as it caters directly to private sector business and enterprises, and often protects their investments.

Inversely, attempts to attract lower-skilled workers to move within government-sponsored schemes in a trade setting, like the Japanese EPA nurses and caregiver systems, will likely fall out of use, precisely because trade agreements, as seen during the pandemic with essential workers, shy away from taking on immigration policy responsibilities, including for welfare in the host country and return home, for the persons moving across borders.

As PTAs are driven by commercial interests, much of what migrantification entails will not materialize for mode 4 worker mobility. Rather, only select immigration and labour market integration features, such as visa harmonization, occupational

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

upskilling and on-the-job training schemes could become transplanted into PTAs. Instead, BLMAs, which are much quicker to set up to stopgap the human resource consequences of a health, humanitarian, climate crisis, will continue to embody the larger part of the policy response which the ongoing migrantification of the world of work requires.

REFERENCES

Adlung, R. and M. Roy 2005. 'Turning Hills into Mountains? Current Commitments under the GATS', Staff Working Paper no. ERSD-2005-01, WTO.

Apiko, Ph., A. Bisong and B. Byiers 2021. 'Connecting African Markets and People: Streamlining Regional Trade and Free Movement Protocols', ECDPM Discussion Paper 311, Maastricht.

Bast, J. 2008. 'Max Planck Commentaries on Word Trade Law Vol. 6) 2008, Annex on Movement of Natural Persons', in *WTO – Trade in Services, Leiden*, R. Wolfrum, P.-T. Stoll, C. Feinäugle (eds.), Den Haag: Martinus Nijhoff Publishers.

Bauböck, R. and M. Ruhs 2022. 'The Elusive Triple Win: Addressing Temporary Labour Migration Dilemmas through Fair Representation', *Migration Studies*, pp. 1–25, https://doi.org/10.1093/migration/mnac021.

Bhatnagar, P. 2014. 'GATS Mode 4: Movement of Natural Persons and Protection of Migrant Workers' Rights', Geneva: ILO.

Bisong, A. 2022. Labour mobility as a key element of the AfCFTA: What role for the AU's free movement protocol? ECDPM Brief 16 December 2022, https://ecdpm.org/work/labour-mobility-key-element-afcfta-role-au-free-movement-protocol

2023. 'Trade Conditionalities in Migration Cooperation with African Countries', LinkedIn post. 13 February 2023.

Bisong, A., P. E. Ahairwe and E. Njoroge 2020. 'The Impact of COVID-19 on Remittances for Development in Africa', European Center for Development Policy Management Discussion Paper No. 269, Maastricht.

Carzaniga, A. and S. Sharma 2022. 'Regulatory Disciplines on the Mobility of Service Professionals – Lessons from Regional Trade Agreements', WTO Staff Working Paper ERSD-2022-12 17.

Carzaniga, A., I. S. Dhillon, J. Magdeleine and L. Xu 2019. 'International Health Worker Mobility and Trade in Services', WTO Staff Working Paper, No. ERSD-2019-13, World Trade Organization (WTO), Geneva, https://doi.org/10.30875/9ba2dfed-en.

Causa, O., et al. 2022. 'The Post-COVID-19 Rise in Labour Shortages', OECD Economics Department Working Papers, No. 1721, OECD Publishing, Paris, https://doi.org/10.1787/e60c2d1c-en.

Chanda, R. 2018. 'The Case for Mode 4: Recognizing the Gains and Addressing the Challenges', RBI Chair Professor of Economics Indian Institute of Management Bangalore WTO, Geneva.

Chaudhuri, S., A. Mattoo and R. Self 2004. 'Moving People to Deliver Services: How Can the WTO Help?' Policy Research Working Paper; No. 3238. Washington, DC: The World Bank. Available at: https://openknowledge.worldbank.org/handle/10986/15618.

Cheong, D., M. Jansen and R. Peters 2013. '*Shared Harvests: Agriculture, Trade, and Employment*', Geneva: ILO and UNCTAD.

Chilton, A. and B. Woda 2022. 'The Expanding Universe of Bilateral Labor Agreements', *Theoretical Inquiries in Law* 23(2): 1–64, https://doi.org/10.1515/til-2022-0010

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Ciuriak, D., A. Dadkhah and D. Lysenko 2019. 'The Effect of Binding Commitments on Services Trade', *World Trade Review* 19(3): 365–378.

Dawson, L.R. 2013. 'Labour Mobility and the WTO: The Limits of GATS Mode 4', *International Migration* 51: 1–23.

European Commission 2021. 'European Business Statistics Compilers Guide for European Statistics on International Supply of Services by Mode of Supply', Luxembourg: Publications Office of the European Union. Available at: https://ec.europa.eu/eurostat/documents/3859598/13985649/KS-GQ-21-025-EN-N.pdf/d99b42c1–2dfa-2660-d200–50a4887a41e4t = 1639751283517

European Parliament 2016. Gender Equality in Trade Agreements. Study for the FEMM Committee, Directorate General For Internal Policies, Policy Department C: Citizens' Rights And Constitutional Affairs, Women's Rights and Gender Equality, www.europarl.europa.eu/RegData/etudes/STUD/2016/571388/IPOL_STU(2016)571388_EN.pdf

Gillson, I., M. Molinuevo and S. Saez 2020. 'Trade Facilitation in Services: A Conceptual and Empirical Analysis', World Bank Policy Research Working Paper No. 9233. Available at SSRN: https://ssrn.com/abstract = 3595766.

Gordon, J. 2022. 'In the Zone – Work at the Intersection of Trade and Migration', *Theoretical Inquiries in Law* 23(2), 111–142.

Gootiiz, B., G. Jonetzko, J. Magdeleine and J. Marchetti 2020. 'Services', in A. Mattoo, N. Rocha and M. Ruta (eds.), *Handbook of Deep Trade Agreements*. Washington, DC: The World Bank.

Hennebry, J., N. Piper, K. C. Hari and K. Williams 2022. 'Bilateral Labor Agreements as Migration Governance Tools: An Analysis from a Gender Lens', *Theoretical Inquiries in Law* 23(2): 184–205.

Hirano, Y. O., K. Tsubota and S. Ohno 2020. 'Factors Associated with the Recruitment of Foreign Nurses in Japan: A Nationwide Study of Hospitals', *Human Resource Health* 18: 88, https://doi.org/10.1186/s12960–020-00532-5.

Hooper, K. and M. Benton 2022. 'The Future of Remote Work: Digital Nomads and the Implications for Immigration Systems', Migration Policy Institute, June 2022. Available at www.migrationpolicy.org/sites/default/files/publications/mpi-remote-work-2022_final.pdf.

Howse, R. and R. Teitel 2009. 'Beyond the Divide: The International Covenant on Economic, Social and Political Rights and the World Trade Organization', in S. Joseph, D. Kinley, J. Waincymer (eds.), *The World Trade Organization and Human Rights*. Cheltenham: Edward Elgar Publishing.

ILO 2021. *ILO Global Estimates on International Migrant Workers – Results and Methodology*, Third edition. Geneva: International Labour Office.

2022. *A Multi-Faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends*. Geneva: ILO.

India–Australia Economic Cooperation and Trade Agreement (ECTA). 2022, www.dfat.gov.au/trade/agreements/in-force/australia-india-ecta/australia-india-ecta-official-text

IOM World Migration Report 2022. International Organization for Migration (IOM), Geneva.

IOM and COMESA 2020. Making the Case to Integrate Human Mobility into Cross-Border Trade and Trade Facilitation, Geneva: IOM. https://publications.iom.int/system/files/pdf/making-the-case-to-integrate-human-mobility.pdf

ITU. 2017. Measuring the Information Society Report 2017 Volume 1, ITU, Genève.

Jacobsson, J. 2015. 'GATS Mode 4 and Labour Mobility: The Significance of Employment Market Access', in M. Panizzon, G. Zürcher, E. Fornalé (eds.), *The Palgrave Handbook of International Labour Migration*. London: Palgrave Macmillan.

Jansen, M. and R. Piermartini 2004. 'The Impact of Mode 4 on Trade in Goods and Services', WTO Staff Working Paper 7/2004, World Trade Organization: Geneva.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Khachaturian, F. and S. Oliver 2021. The Role of 'Mode Switching' in Services Trade Tamar Khachaturian and Sarah Oliver Office of Industries U.S. International Trade Commission (USITC) February 2021, USITC Working Paper, ID-071.

Kimura, F., Sh. Thangavelu and D. Narioko 2022. 'Regional Comprehensive Economic Partnership (RCEP): Implications, Challenges, and Future Growth of East Asia and ASEAN'. (Economic Research Institute for ASEAN and East Asia (ERIA) and Ministry of Commerce of Cambodia), www.eria.org/uploads/media/Books/2022-RCEP-Book1/RCEP-Implications-Challenges-Future-Growth.pdf

Lavenex, S. and F. Jurje 2021. 'Opening-up Labor Mobility? Rising Powers' Rulemaking in Trade Agreements', *Regulation and Governance* 15: 598–615.

Lavenex, S., P. Lutz and P. Hoffmeyer-Zlotnik 2024. 'Migration Governance through Trade Agreements: Insights from the MITA Dataset', *Review in International Organisation* 19: 147–173, https://doi.org/10.1007/s11558-023-09493-5

Losada, R. 2023. *Die Internationale Zusammenarbeit im Migrationsrecht der Schweiz*. Bern: Stämpfli Verlag, 308.

Marchetti J. A. and H. Lim 2007. Services liberalization in the new generation of preferential trade agreements (PTAs): How much further than the GATS? *World Trade Review* 6(2): 155–192.

Marchetti, J. A. and M. Roy 2014. 'The TISA Initiative: An Overview of Market Access Issues', *Journal of World Trade* 48(4): 683–728.

Naiki, Y. 2015. 'Labour Migration under the Japan–Philippines and Japan–Indonesia Economic Partnership Agreements', in M. Panizzon, G. Zürcher, E. Fornalé (eds.), *The Palgrave Handbook of International Labour Migration*. London: Palgrave Macmillan.

Natanael, Y. and K. Verico 2019. 'The Impact Analysis of ASEAN Movement of Natural Persons in ASEAN-5 Countries Skilled Workers Mobility to Indonesia', *International Journal of Economic Policy in Emerging Economies* 12(6): 523–541.

Odasso, L. and E. Fornalè 2022. 'The "inconfinables" or the Creation of Superfluous Life in Time of Crisis', *Migration Letters* 19(6): 739–749.

OECD 2019. 'International Migration Outlook'. Available at www.oecd-ilibrary.org/sites/c13aecc1-en/index.html?itemId = /content/component/c13aecc1-en.

2020. 'The OECD Services Trade Restrictiveness Index: Policy Trends up to 2020', www.oecd.org/trade/topics/services-trade/documents/oecd-stri-policy-trends-up-to-2020.pdf.

2022a. 'International Migration Outlook'. Available at www.oecd-ilibrary.org/sites/30fe16d2-en/1/2/2/index.html?itemId = /content/publication/30fe16d2-en&_csp_ = 97175d429ae5e4e04cd3cccbbfc84945&itemIGO = oecd&itemContentType = book.

2022b. 'Should OECD Countries Develop New Digital Nomad Visas?' *Migration Policy Debates* No. 27.

Ohno, S. 2012. 'Southeast Asian Nurses and Caregiving Workers Transcending the National Boundaries: An Overview of Indonesian and Filipino Workers in Japan and Abroad', *Southeast Asian Studies* 49(4): 541–569.

Panizzon, M. 2010. 'Trade and Labor Migration GATS Mode 4 and Migration Agreements', Friedrich-Ebert-Stiftung, Occasional Dialogue on Globalization N° 47/January 2010.

2022. 'Adjudicating Labor Mobility under France's Agreements on the Joint Management of Migration Flows: How Courts Politicize Bilateral Migration Diplomacy', *Theoretical Inquiries in Law* 23(2): 326–373.

Panizzon, M. and M. van Riemsdijk 2019. 'Introduction to Special Issue: "Migration Governance in an Era of Large Movements: A Multi-Level Approach', *Journal of Ethnic and Migration Studies* 45(8): 1225–1241. Available at https://doi.org/10.1080/1369183X.2018.1441600

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

Pauwelyn, J., T. Nguyen and K. Kamal 2020. 'Visa and Asylum', in M. Ruta, N. Rocha, A. Mattoo (eds.), *Handbook of Deep Trade Agreements*. Washington, DC: The World Bank.

Portes, A. and S. Shafer 2007. 'Revisiting the Enclave Hypothesis: Miami Twenty-Five Years later. The Sociology of Entrepreneurship', *Research in the Sociology of Organizations* 25: 175–190.

Raess, D. and D. Sari 2020. 'Labour Market Regulations', in A. Mattoo et al. (eds.), *Handbook of Deep Trade Agreements*. The World Bank. Available at https://elibrary.worldbank.org/doi/pdf/10.1596/978-1-4648-1539-3_ch19.

Riccardi, L. and G. Riccardi 2020. 'ASEAN Agreement on the Movement of Natural Persons', in: Invest in ASEAN. Springer, Singapore, https://doi.org/10.1007/978-981-15-5378-3_13

Roy, M., J. Marchetti and H. Lim 2007. 'Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further Than the GATS?' *World Trade Review* 6(2): 155–192.

Ryan, B. 2013. 'In Defence of the Migrant Workers Convention: Standard-Setting for Contemporary Migration', in S. S. Juss (ed.), *The Ashgate Research Companion to Migration Law, Theory and Policy*. London: Routledge, pp. 491–515

Sauvé, P. 2004. 'Trade, Education and the GATS: What's In, What's Out, What's All The Fuss About?' *Higher Education Management and Policy* 14(3): 47–76.

2014. 'Towards a Plurilateral Trade in Services Agreement (TISA): Challenges and Prospects', *Journal of International Commerce, Economics and Policy* 15(1): 1440006-1 to 1440006-16 (it's an electronic journal), www.wti.org/media/filer_public/ec/20/ec20a4d2-1a02-4461-b7e1-1224798dfe10/s1793993314400067.pdf.

Sauvé, P. and N. Ward 2009. 'The EC-Cariforum Economic Partnership Agreement: Assessing the Outcome on Services and Investment', European Centre for International Political Economy, Brussels.

Schmieg, E. 2019. 'Connections between Trade Policy and Migration, a Sphere of Action for the EU', SWP Research Paper 2019/RP 15.

Schott, J., M. Lee and J. Muir 2012. 'Prospects for Services Trade Negotiations, Peterson Institute for International Economics', Working Paper No. 12–17.

Shingal, A. 2022. 'Mode 4 Restrictiveness and Services Trade', *Review of World Economics* 159: 757–786.

Soares, S., F. Bonnet, J. Berg and R. Labouriau 2021. 'From Potential to Practice: Preliminary Findings on the Numbers of Workers Working from Home during the COVID-19 Pandemic', ILO policy brief, Geneva: ILO.

South Centre 2007. Why Inclusion of Services in the EPAS is Problematic: Legal and Development Implications. South Center, Policy Brief no. 10, 2007, www.southcentre.int/policy-brief-10-august-2007/

Stephenson, S. 2015. 'Overview of the TISA Negotiations Training Workshop on Trade in Services Negotiations for AU-CFTA Negotiators', 24–28 August 2015, Nairobi, Kenya. Available at https://unctad.org/system/files/non-official-document/ditc-ted-Nairobi-24082015-USAID-stephenson-2.pdf.

Takahashi, Kazu 2018. 'Japan's Immigration Policy and the EPA between the Philippines and Japan, Yamagata University Faculty of Humanities and Social', *Sciences Annual Research Report* 15: 161–170.

UN, Report of the UN Secretary-General 2021. 'The Global Compact for Safe, Regular and Orderly Migration', 21 February 2021, UN Document A/76/642.

UNCTAD 2007. Challenging Conventional Wisdom: Development Implications of Trade in Services Liberalization', Luis Abugattas Majluf and Simonetta Zarrilli UNCTAD/DITC/TAB/POV/2006/1.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013

2016. 'The LDC Services Waiver – Operationalized? A First Look at Preferences Granted, Constraints Persisting, and Early Conclusions to be Drawn'. Available at https://unctad.org/system/files/official-document/ditc-05072016-LDCWaiver-AssessmentPaper.pdf.

WTO, Presence of Natural Persons (Mode 4) 2009. 'Background Note by the Secretariat', WTO Document S/C/W/301, 15 September 2009.

WTO and OECD 2017. 'Aid for Trade at a Glance 2017: Promoting Trade, Inclusiveness and Connectivity for Sustainable Development', WTO. Available at www.wto.org/english/res_e/booksp_e/aid4trade17_fore_e.pdf

WTO and World Bank 2020. 'Women and Trade: The Role of Trade in Promoting Gender Equality', W.TO Report.

Zanker, F. and A. Bisong 2022. 'Free Movement in West Africa: the Culture of Mobility still Matters despite Challenges', in The Conversation (24 August 2022), https://theconversation.com/free-movement-in-west-africa-the-culture-of-mobility-still-matters-despite-challenges-188607

Zhang, R. and C. Sasanabanchakul 2022. 'Means of Liberalization and beyond: Understanding Scheduling Approaches in Services Trade Agreements', WTO Staff Working Paper ERSD-2022-13.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 19:59:04, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009484640.013