

**MIGRATION PROVISIONS IN PREFERENTIAL TRADE
AGREEMENTS: EVOLUTIONS AND TRENDS**

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To: **The World Bank**

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY.....	5
II. THE MIGRATION DIMENSION IN PREFERENTIAL TRADE AGREEMENTS	6
III. EVALUATION OF IMPORTANT MIGRATION TRENDS IN PREFERENTIAL TRADE AGREEMENTS.....	8
1. PTAS FOLLOW THE POSITIVE LIST APPROACH FOR COMMITMENTS RELATING TO MOVEMENT OF NATURAL PERSONS	8
2. PTAS HAVE EXTENDED THE TYPES OF MOVEMENT BEYOND THE FRAMEWORK OF GATS	9
3. PARTIES IN PTAS HAVE MADE COMMITMENTS TO ADDRESS MIGRATION ISSUES IN TERMS OF FACILITATING WORKER FLOW.....	10
(i) <i>Facilitating workers flow through mutual recognition of foreign qualifications</i>	11
(ii) <i>Facilitating workers flow through eliminating administrative obstacles (i.e. visa requirements, application time and fees)</i>	11
(iii) <i>Regulating migration through establishing an oversight committee</i>	12
4. PTAS EXCLUDE WORKERS THAT SEEK A PERMANENT STAY	12
5. PTAS DO NOT REGULATE IRREGULAR MIGRANT FLOWS.....	13
6. PTAS RESTRICT THE USE OF COMPULSORY DISPUTE SETTLEMENT MECHANISMS FOR ISSUES RELATING TO MIGRATION	14
IV. THE EVOLUTION OF MIGRATION PROVISIONS IN PREFERENTIAL TRADE AGREEMENTS..	14
1. THE MIGRATIONS CONTENTS IN PTAS	16
2. THE MIGRATION CONTENTS IN DIFFERENT GROUPS.....	17
3. THE ENFORCEABILITY OF MIGRATION PROVISIONS IN PTAS.....	18
V. CONCLUSION	19

I. Executive Summary

This paper is part of the World Bank’s Deep Trade Agreement Project that aims at analysing different subsections and topics in preferential trade agreements (PTAs), namely: environmental provisions, intellectual property provisions, dispute settlement etc. The authors (Trung Nguyen, Wenni Zhang, Khalid R. Kamal) have been assigned to examine and interpret the migration related provisions of 293 PTAs that were registered at the World Trade Organization (WTO).

In doing so, the authors have developed a Questionnaire Template (Annex I) and the Migration Codebook (Annex II) to “code” the 90 PTAs that have been tagged as “Visa and Asylum” in the World Bank’s database. The objectives and desired results of this paper are to answer: How PTAs address some of the international migration concerns? What are some of the common migration-related provisions that have appeared across the spectrum? And to assess how PTAs have been evolving over times and differs among different geographic areas.¹

After analysing 22 PTAs using the Questionnaire Template and the Codebook developed by the authors, it comes to the following findings:

(1) Regarding the trends of PTAs:

(i) Most PTAs use the positive list approach (more stringent than the negative list approach) for migration issues.

(ii) In general, PTAs have addressed migrant workers seeking jobs in companies established in the destination countries and the dependents of migrant workers, which are not addressed under mode 4 of GATS.

(iii) Though differs in a geographic sense, PTAs have facilitated the movement of persons seeking jobs or working in the destination states through establishing the mutual recognition of qualification, limiting the time and fees for visa processing, and creating oversight committees to regulate migration.

¹ Due to time restraint, the authors have only managed to code 22 PTAs (the list is attached as Annex II) and the results of Part III (trend) and IV (evolution) in this paper only reflect these coded agreements.

(iv) PTAs tend to exclude workers that seek permanent stay and do not regulate irregular migrant flows (refugees, undocumented workers, victims of human trafficking).

(v) PTAs only allow the use of compulsory dispute settlement mechanism to settle migration issues in certain restricted conditions.

(2) Regarding the evolution of PTAs:

(i) PTAs cover more migration-related issues with increasingly legally binding effects over time.

(ii) In a general sense, PTAs signed between South – South countries appear to be the most progressive in terms of liberalizing the movement of natural persons while PTAs signed between North – South countries seem to be the most imbalanced. As *sui generis*, the community model such as the European Union and the East African Union provide the highest freedom of movement inside the Unions.

II. The Migration Dimensions in Preferential Trade Agreements

Of all the dimensions of international trade, perhaps the liberalization of human mobility is the most sensitive one.² International migration covers a broad spectrum ranging from business persons that merely enter a country for a temporary visit to workers who come to the host country in search of permanent stay with their family.³ Moreover, aside from the regular flow of migrant workers, migration regulators are also concerned about the irregular flows of refugees, trafficked victims and stateless persons that enter into their countries.⁴

However, not all aspects of international migration have been regulated in trade agreements. Although the General Agreement on Trade in Services (GATS) has attempted to

² Jean-Pierre Chauffour and Jean-Christophe Maur (eds.), *Preferential Trade Agreement Policies for Development: Handbook*, The World Bank (2011), 275

³ See Brian Opeskin *et. al.*, *Conceptualising International Migration Law, Foundations of International Migration Law* (CAMBRIDGE UNIVERSITY PRESS, 2012), 3 – 5.

⁴ See James C. Hathaway, *Refugees and Asylum, Foundations of International Migration Law* (CAMBRIDGE UNIVERSITY PRESS, 2012), 177 – 179.

regulate some migration issues by incorporating the “*presence of natural persons*” (Mode 4) in its definition of trade in services⁵, the GATS also allows WTO Members to set out specific terms, limitations, and conditions on market access of service suppliers in the Schedules of Specific Commitments.⁶ As a result, GATS still left great discretion for WTO Members to restrict the migration on their own.

The number of preferential trade agreements (PTAs) has skyrocketed since the World Trade Organization (WTO) was established in 1995. Besides liberalizing trade in the traditional fields such as goods, services, and intellectual property, there is a trend that PTAs also regulate migration.⁷ The corpus of international migration law has been developing in a “piecemeal” fashion⁸ and, currently, there has not been a convention that addresses all the spectrum of international migration.⁹ The questions of how PTAs would fill in the lacunae or how far would states be willing to address international migration concerns in trade agreements is, thus, an interesting one.

This Memorandum will analyse the evolution and trends of the migration dimensions in PTAs through identifying the common provisions that appear in most, if not all, PTAs that contain migration-related provisions. It will also look into the evolution of PTAs over time and in different geographical regions to see whether or not there has been a paradigm shift in addressing migration issues in PTAs.

⁵ Article I.2(d) of GATS

⁶ Article XX of GATS.

⁷ See Chaffour, *supra* note 2.

⁸ See Opeskin, *supra* note 3 at 2.

⁹ See *Id. at 8 – 10*. But scholars have made efforts in structuring a Model Migration Convention. See Joel P. Trachtman. *The International Law of Economic Migration. Toward the Fourth Freedom*, Kalamazoo: W.E. Upjohn Institute for Employment Research, 2009; Global Policy Initiative, *Model International Mobility Convention*, Columbia University (June 2017).

III. Evaluation of Important Migration Trends in Preferential Trade Agreements

According to the World Bank's database, there are around 90 PTAs that contain migration-related provisions.¹⁰ Through analysing these agreements, there are some notable trends as followed:

1. PTAs follow the positive list approach for commitments relating to movement of natural persons

In general, there are two basic approaches in which countries take liberalizing concessions. One is the positive list approach, which can be seen in GATS. When using a positive list approach, countries specifically list which services they agree to liberalize in a Schedule of Specific Commitments, and everything else not in the Schedule is presumed to be uncommitted.¹¹ On the other hand, the negative list approach can be found in the NAFTA¹², where all services are considered liberalized unless otherwise indicated through a list of non-conforming measures.

Scholars and practitioners have agreed that the negative list approach can provide greater transparency for service providers as well as legal and economic certainty regarding market access for service providers.¹³ However, according to our statistics, most PTAs use a positive list approach when it comes to regulating movement of natural persons. Interestingly, although some PTAs have adopted a negative list approach to trade in services, they retain a positive list approach for the movement of natural persons.¹⁴ Some PTAs also go into detail by defining the type of

¹⁰ The World Bank's Database on Preferential Trade Agreements: <https://wits.worldbank.org/gptad/library.aspx>

¹¹ World Trade Organization, Guide to reading the GATS schedules of specific commitments and the list of Article II (MFN) exemptions, Services: Schedules: https://www.wto.org/english/tratop_e/serv_e/guide1_e.htm

¹² World Trade Organization, Overview of Services in RTAs: Positive or Negative List, Workshop on Scheduling Services and Investment Commitments in FTAs (October 2014), 2: http://mddb.apec.org/Documents/2014/CTI/WKSP5/14_cti_wksp5_010.pdf

¹³ Sherry M. Stephenson and Francisco Javier Prieto, Evaluating Approaches to the Liberalization of Trade in Services: Insights from Regional Experience in the Americas, OAS Trade Unit Study (March 2001): http://www.oas.org/en/sedi/dedes/trade/pubs/steph02_Evaluat.pdf

¹⁴ For example, see Annex 2 (negative list) and Appendix 14.3(D)(6) (positive list) of the US – Chile FTA; Annex 8 and 9 (negative list) and Annex 7 (positive list) of the Japan – India FTA.

activities or specifying the occupations that qualify under each heading. Japan’s commitments under “qualified professionals” in CPTPP is an example of such:

Description of Category	Conditions and Limitations (including length of stay)
<p>D. Qualified Professionals</p> <p>1. Temporary entry shall be granted to a spouse and children accompanying a business person who has been granted temporary entry under this category provided that such spouse and children are recognised as such in accordance with the laws and regulations of Japan, obtain maintenance from the business person and engage in daily activities recognised under the status of residence of “Dependent” provided for in <i>the Immigration Control and Refugee Recognition Act</i>.</p> <p>2. A spouse who has been granted temporary entry in accordance with paragraph 1 may, upon application while residing in Japan, have his or her status of residence changed to that under which he or she is allowed to work, subject to the approval of the Government of Japan in accordance with <i>the Immigration Control and Refugee Recognition Act</i>.</p>	
<p><u>Definition:</u></p> <p>A business person who is a legal, accounting or taxation service supplier qualified under the laws and regulations of Japan (as specified in the subparagraphs below) and who will engage in the corresponding activity specified therein during his or her temporary stay in Japan:</p> <p>(a) legal services supplied by a lawyer qualified as “Bengoshi” under the laws and regulations of Japan;</p> <p>(b) legal advisory services on law of jurisdiction where the service supplier is a qualified lawyer on condition that the service supplier is qualified as “Gaikoku-Ho-Jimu-Bengoshi” under the laws and regulations of Japan;</p>	<p>Temporary entry for a period not exceeding five years, which may be extended, shall be granted.</p> <p>Temporary entry shall be granted to a spouse and children accompanying a business person who has been granted temporary entry under this category, in principle for the same period as the period of temporary entry granted to the business person.</p>

Japan’s Schedule of Commitments for Temporary Entry for Business Persons (Annex 12-A CPTPP) – Figure 1

Consequently, the Parties of PTAs tend to undertake a more restricted and meticulous approach in regulating movement of natural person comparing to other categories of trade in services.

2. PTAs have extended the types of movement beyond the framework of GATS

Although Article I.2 of GATS covers human mobility (see Mode 4 – Movement of natural persons), it only includes workers as service suppliers entering a country temporarily and not for

the purpose of entering the labour market of the country of destination.¹⁵ In other words, GATS does not regulate workers that travel to work or seek work in a company established in the host state, nor does it address in any way or form the dependents of workers.

PTAs have managed to go beyond the GATS framework by providing more access for migrant workers and their dependents to the employment market of the state of destination. Specifically, recent PTAs include categories such as “*professionals*” or “*technicians*,” describing persons who are engaged in a specialty occupation requiring theoretical and practical application of a body of specialized knowledge (*i.e.* engineers, lawyers, doctors) and give these groups special admission to seek work in companies established in the destination country. Some PTAs also regulate the entry of dependents (*i.e.* spouses, children) of the natural persons who have been granted the right of temporary entry and allow the dependents to work in the host state.¹⁶ Such inclusion can arguably encourage the migrant workers to commit to a longer stay in the host country.

3. Parties in PTAs have made commitments to address migration issues in terms of facilitating worker flow

There have been concerns that, due to the great freedom that countries have in regulating their immigration measures, countries can bar the entry of migrant workers through not recognizing the foreign qualifications they hold, imposing high entry fees, and delaying the application process for visas. PTAs address these problems through including provisions that aim at directly tackling the state action mentioned above.

¹⁵ See also: WTO Council for Trade in Services, Presence of Natural Persons (Mode 4), WTO Doc S/C/W/301 (September 15, 2009) (Background Note by the Secretariat), 6 – 7.

¹⁶ For example, see Australia’s commitment in the CPTPP for Business Persons: “...*Australia shall, upon application, grant the right of temporary entry, movement and work to the accompanying spouse or dependants of a business person that is granted temporary entry or an extension of temporary stay under these commitments.*”

(i) Facilitating workers flow through the mutual recognition of foreign qualifications

The movement of natural persons may be constrained by differences in qualifications, work experience and certification between the host country and the sending country. PTAs often include provisions aimed at harmonizing such differences through a cooperative framework that promotes the mutual recognition of foreign qualifications. By way of example, Article 12.11 of the Trans-Pacific Strategic Economic Partnership Agreement (Brunei, Chile, New Zealand and Singapore) stipulates “.... *the Party recognizes the education or experience obtained, requirements met, or licenses or certifications granted in a particular Party or non-Party*”. Paragraph 6 of Article 12.11 also sets out initial priority areas for mutual recognition, namely: engineering, architecture, geology, geophysics, and accounting and, as per Article 12.9, are subjected to review every three years after the Agreement entered into force. As set out in Annex 12.B of the Agreement, the task of developing mutually acceptable standards and criteria for licensing and certification rests upon the domestic agencies/ministries through dialogue and consultation. The results of which are then transmitted to a higher Joint Commission created by the Agreement.

(ii) Facilitating workers flow through eliminating administrative obstacles (i.e. visa requirements, application time and fees)

An expensive and obscure visa application process or a sudden change in visa requirements can hinder the movement of natural persons. Parties in PTAs deal with these problems through ensuring that the information and procedures regarding their visa application shall be promptly made public and available to each other when there are changes in the existing requirements.¹⁷ Moreover, PTAs also limit the time frame required to process the visa application to not cause “*undue delay*” and limit the fees for visa applications to “*administrative costs involved*”.¹⁸ Though

¹⁷ See Article 77 of the Japan – Viet Nam FTA.

¹⁸ See Article 65(2) Japan-Switzerland FTA and Article 128 (4) of New Zealand- China FTA.

specific time and fees are not usually stipulated in the PTA, it can be understood that the time frame cannot be unreasonably long or the fees cannot be absurdly high as a means to prevent visa applications.

(iii) Regulating migration through establishing an oversight committee

Most PTAs establish a subsidiary organ under the Agreement with functions such as: (i) reviewing and monitoring the implementation of the movement of natural persons; (ii) acting as a forum for agencies to further negotiate the inclusion of other group of natural persons; (iii) reporting the findings to State Parties.¹⁹ Some PTAs went a step further in establishing a cooperative mechanism for the Parties to share experiences with regulations and the implementation of programs and technology to streamline the domestic framework and hasten the visa admission procedure (*i.e.* electronic visas).²⁰ Though these mechanisms are not designed to produce binding reports, they can act as focal points for the domestic agencies in charge of migration to exchange and discuss issues arising out of human mobility across borders.

4. PTAs exclude workers that seek a permanent stay

The term “permanent” does not mean that the migrant workers intend to reside at the destination country, rather, it implies that they are on an entry pathway that could lead to the right to reside in that country.²¹ There is no doubt that permanent migrant workers can play a key role in the globalization process that would address aging populations and declining workforces in many destination countries, especially developed ones.²² However, such migrant flows (*i.e.*

¹⁹ Article 78 of Japan – Viet Nam FTA; Article 133 New Zealand – China FTA; Article 12.7 of the CPTPP.

²⁰ Article 12.8 of the CPTPP.

²¹ Organization for Economic Co-operation and Development, *International Migration Outlook: SOPEMI* (2010), 44.

²² Ryszard Cholewinski, *International Labour Migration, Foundations of International Migration Law* (CAMBRIDGE UNIVERSITY PRESS, 2012), 285.

migrant workers, dependents, family reunion) may cause unemployment and affect the public and welfare system in the destination country.²³ Consequently, many PTAs replicate GATS provisions in excluding workers “*seeking access to the employment market of a Party, or citizenship, or residence or employment on a permanent basis.*”²⁴

This trend can be understood as the Parties in PTAs wishing to retain discretion in regulating their domestic work force or not seeing PTAs as an appropriate instrument to address migration issues.

5. PTAs do not regulate irregular migrant flows

In general, PTAs exclude irregular migrants, such as refugees, undocumented workers, and victims of human trafficking and smuggling, from its scope.²⁵ While liberalizing migrant workers in many aspects, PTAs do not express commitments to address irregular migrant flows. Further, there are no references to any of the terms “refugees”, “undocumented workers” or “victims of human trafficking and smuggling”. Moreover, there are also no references to some of the universal international legal instruments that address such flow, namely the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol, the Protocol against the Smuggling of Migrants by Land, Sea and Air 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000.

This pattern shows that countries are more eager to liberalize and regulate migrant workers through trade agreements, rather than to address the more complex types of migration that would directly affect the public welfare of the destination country.

²³ Sophie Nonnenmacher, *International Trade Law and Labour Mobility, Foundations of International Migration Law* (CAMBRIDGE UNIVERSITY PRESS, 2012), 321.

²⁴ For example, See Article 57(2)(c) of the India – Japan FTA (emphasis added).

²⁵ With the exception of agreements establishing custom unions like the EU or the EAC, all other PTAs analysed by the authors have made no references to these groups.

6. PTAs restrict the use of compulsory dispute settlement mechanisms for issues relating to migration

Most of the PTAs analysed include a detailed third-party dispute settlement mechanism that produces either a non-binding recommendation (conciliation, good office, mediation) or a binding report accompanied by retaliation in case of non-compliance (binding arbitration with sanctions). However, countries are hesitant to subjecting migration issues to a dispute settlement mechanism. As a general rule, the third-party dispute settlement mechanism is not applicable to settle disputes that arise under the Chapter on Movement of Natural Persons unless the matter involves “*a pattern of practice*” and the natural persons affected have “*exhausted all available domestic remedies*”.²⁶ The definition of “*a pattern of practice*” or “*exhausted all available domestic remedies*” are absent in most PTAs. However, the Nicaragua – Chinese Taipei FTA attempts to define these two terms as when there exists a repeated practice of the immigration authorities in barring the entry of foreign citizens in a specific period of time and the authorities failed to determine the issue within six months.²⁷ The overall vagueness of the requirements infers the trend that Parties in PTAs still wish to retain their sovereign rights in deciding who can enter their territory and do not want to subject such decision to an award of an arbitration tribunal.

IV. The Evolution of Migration Provisions in Preferential Trade Agreements

PTAs cover a broad group of states in every sense. Chronologically, they range from the early 60s (the European Free Trade Association) to the present (Comprehensive and Progressive Trans-Pacific Partnership - CPTPP). From the geographic perspective, they include North – North countries (*i.e.* the EU Treaty, EU – Ukraine, Japan – Switzerland, Japan – Australia), North – South countries (*i.e.* US – Jordan, Japan – Viet Nam, Canada – Chile) and South – South countries

²⁶ For example, See Article 9.9(1) of the India – Malaysia FTA.

²⁷ See Article 15.06 and 15.05(d) of the Nicaragua – Chinese Taipei FTA.

(*i.e.* ASEAN, Chile – Colombia, India – Malaysia, China – Costa Rica). From the multilateral perspective, agreements are signed bilaterally, trilaterally (*i.e.* the NAFTA, ASEAN – Australia – New Zealand), or in trade-blocs, such as the Trans-Pacific Strategic Economic Partnership and the CPTPP. This section assesses the evolutions of migration provisions in PTAs over time in three main aspects: (i) How have migration provisions been incorporated into PTAs? (ii) What are the differences among regional groups, multilateral agreements and custom unions? and (iii) What is the enforceability level of migration provisions in PTAs over time?

In doing so, the authors assessed the PTAs using the following methodology:

(1) To assess evolution over time in terms of content: the authors calculated the average percentages of migration norms²⁸ as they appeared in the Template (code 1 in Column B – Annex I) and categorized them in different year periods (before 1995, 1995 – 2004, 2005 – 2009 and 2010 – present).²⁹ The authors excluded three questions that aim at excluding migration norms in the template, namely: (i) Does the agreement explicitly exclude measures regarding nationality? (ii) Does the agreement explicitly exclude measures regarding employment on a permanent basis? and (iii) Does the agreement explicitly exclude measures regarding residence?

(2) For bilateral agreements, the authors arranged the PTAs in the chronological order (the time of signing the agreements) and in their respective regional groups (North – North, South – North, South – South) to find their distinct features over time and among different regions.

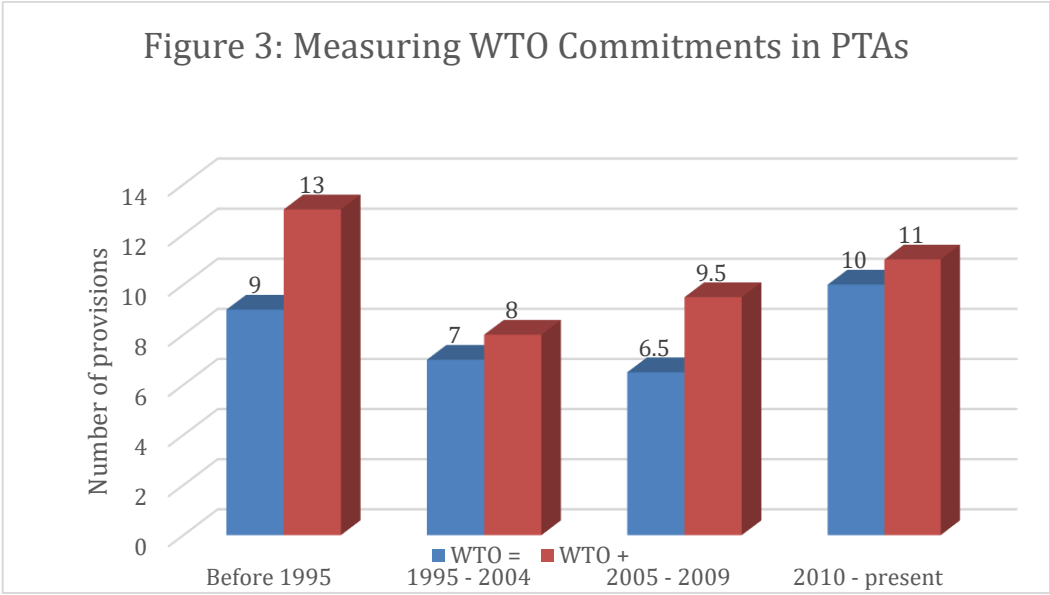
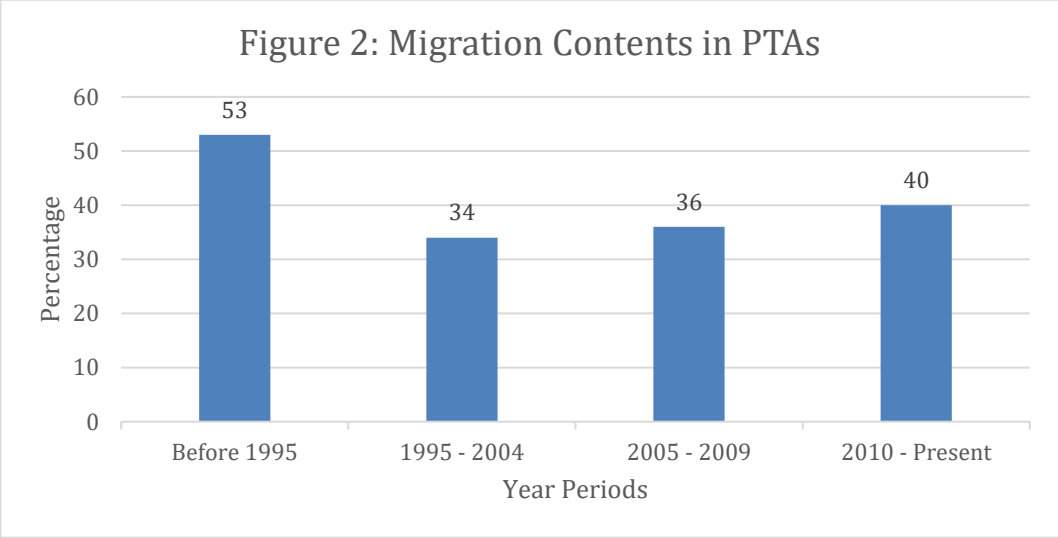
(3) Regarding enforceability, Annex I includes Column G on enforceability and the agreements have been grouped into three broad categories based on the levels of enforceability provided in the migration mapping: non-enforceable, including all non-binding and best efforts agreements (code 0 - 1 in Column G – Annex I), weakly enforceable, including binding provisions

²⁸ The definition of “migration norm” is in the Annex II (Migration Codebook).

²⁹ The year periods were chosen based on the number of coded agreements in each respective period.

without Dispute settlement (code 2 in Column G – Annex I) and binding with dispute settlement (code 3-5 in Column G – Annex I). Then, the authors calculated the average percentages of PTAs.

1. The Migrations Contents in PTAs

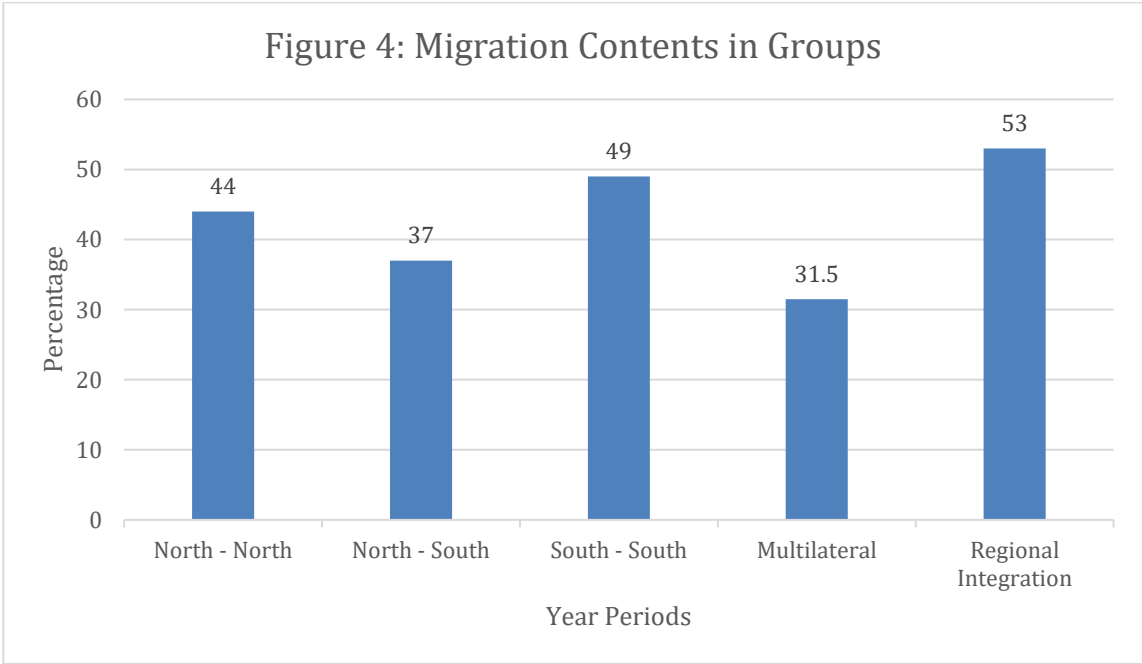


As indicated in Figure 2, there is a gradual increase of migration provisions in PTAs over time. The high percentage before the establishment of the WTO in 1995 (53%) is *sui generis* due to the establishment of the EUFTA in 1960 and the NAFTA in 1994, which incorporated many migration norms. From 1995 to 2004, the number falls back to reflect the overall limited contents

of migration in PTAs. Since then, the figure only made small increases in the next two decades to the present.

Moreover, as Figure 3 indicates, there has also been an increase in the number of provisions in PTAs that create commitments beyond the WTO framework (WTO +) over time (from 8 provisions in 1995 to 11 provisions). In general, these provisions relate to addressing the movement of persons that work or seek work in a domestically owned company in the host state; mutual recognition schemes; limits fees and time for processing visa, etc. The data shows an increase in both migration contents and WTO plus commitments in PTAs over time.

2. The Migration Contents in Different Groups

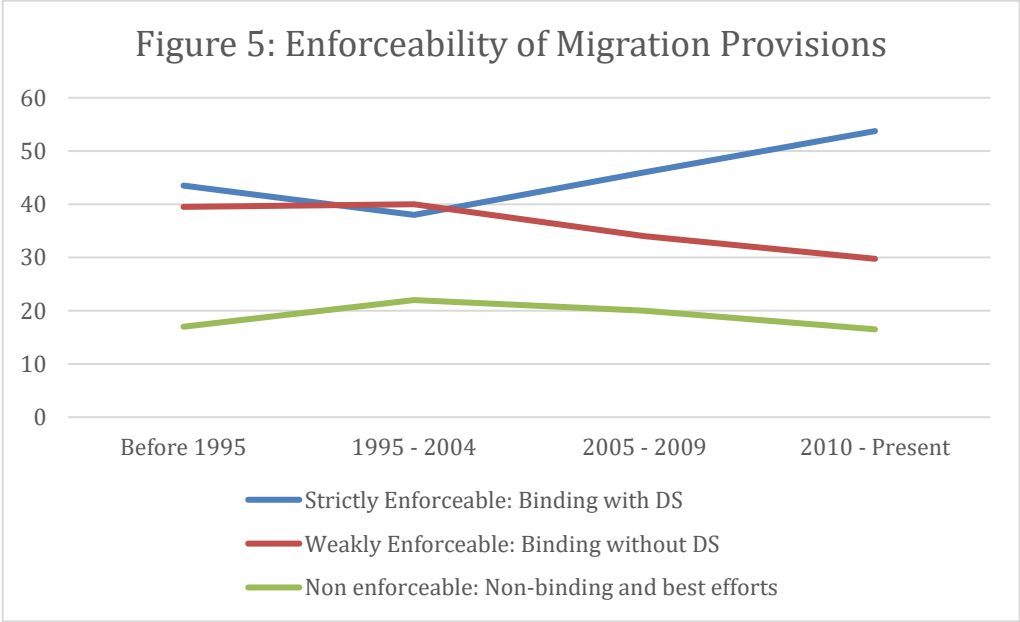


As indicated in Figure 4, among the geographic groups, South – South PTAs appear to be the most progressive in liberalizing the movement of natural persons. The authors believe that this finding can be explained by factors that make it easier for South – South migration than other geographic migration, such as the close geographical proximity among these nations (like the Africa and Asia regions) as well as the high level of homogeneity in these countries with regards

to economic development,³⁰ labour standards and workers demand. The North – South PTAs and other multilateral agreements (more than 2 Parties) contain the least migration contents due to the differences in level of country developments (often between the richer Northern countries and poorer Southern countries) as well as the migration focus of these PTAs are on how to regulate the flows of workers from developing countries to developed ones and not vice versa.

As *sui generis*, regional integration mechanisms such as the European Union and the East African Community provide the highest freedom of movement for their citizens inside these territories. Accordingly, once a worker is recognized as a citizen of one of the Member Countries, he can move to work in any other country inside the Community. This can be traced to the high level of political, economic and social integration of the Member Countries of the Community, creating more room for permanent stay once a worker enters one of the Member Countries’ employment markets.

3. The Enforceability of Migration Provisions in PTAs



³⁰ All countries with the exception of Singapore are developing countries.

As indicated in Figure 5, there is an increasing number of migration provisions with legally binding language in PTAs over time. Though the non-enforceable sector remains relatively stable, there has been an overall increase of legally binding provisions with dispute settlement capability (from around 40% to over 50%). However, as stated above in Section III.6, most PTAs only allow a Party to bring a migration-related dispute to the dispute settlement mechanism established under the agreement in very strict circumstances.³¹

V. Conclusion

In the general sense, international trade and migration follow two different paths since they are based on different rationales.³² While trade agreements aim at providing predictability, liberalizing access and setting an equal footing for all players; economic migration policies seek to regulate the entry of labour according to the employment situation and political issues relating to the inflows of migrants.³³

Nevertheless, there are some junctions between these two paths. A modern trade agreement that seeks to level the playing field between the parties usually also incorporates provisions that create certain flexibilities to promote the entry of migrant workers of its Members State. Based on the result of our analysis the commitments made by the states are often beyond the scope of GATS. On the other hand, given that states tend to retain their discretion in regulating their domestic workforce and immigration policy, PTAs largely keep excluding the types of workers looking for a more permanent stay in the destination territory and do not address irregular worker flows.

There have been indications that PTAs tend to cover more migration issues, especially the South – South agreements, with increasing WTO plus commitments and enforceable legally

³¹ When there is a pattern of practice and the individual has exhausted local remedies.

³² See Nonnenmacher, *supra* note 23 at 320.

³³ *Id.*

binding provisions. Despite the increasing commitments and enforceability, the use of dispute settlement is still limited by the strict conditions imposed by the Parties.

	Yes or no
Name of the Agreement	1 or 0 (1 is yes; 0 is no)
I. Migration Goals/Objectives	
Does the agreement specify an objective of facilitating the movement of natural persons?	
Does the agreement call for regulatory cooperation or harmonization in migration regulation?	
II. Coverage and Types of Movement of Natural Persons	
Does the agreement address the movement of business visitors?	
Does the agreement address the movement of intra-corporate transferees?	
Does the agreement address the movement of professionals or technicians?	
Does the agreement specify which occupations are categorized as "professionals or technicians"?	
Does the agreement address the movement of investors?	
Does the agreement address the movement of migrant workers employed by domestically owned company in the country?	
Does the agreement address the movement of documented migrant workers seeking residency?	
Does the agreement address the movement of undocumented migrant workers?	
Does the agreement address the movement of non-commercial visitors?	
Does the agreement address the movement of refugees?	
Does the agreement address the movement of the dependents of natural persons?	
III. Facilitation on the Movement of Natural Persons	
Does the agreement encourage states to expedite the application procedures for immigration formalities for natural persons of another state?	
Does the agreement limit the time for processing applications requesting temporary entry of natural persons?	
Does the agreement limit the fees for processing applications for temporary entry of natural persons?	
Does the agreement encourage the states to provide facilities for online lodgment and processing (electronic visa)?	
Does the agreement provide a denial explanation mechanism?	
Does the agreement require the state to publish online if possible or otherwise make publicly available information regarding the current requirements for temporary entry?	
Does the agreement provide mutual recognition of qualifications among the states?	
Does the agreement provide mutual recognition of work experience among the states?	
Does the agreement provide mutual recognition of training among the states?	
Does the agreement provide a visa extension or renewal mechanism?	

IV. Exceptions and Limitations	
Does the agreement explicitly exclude measures regarding nationality?	
Does the agreement explicitly exclude measures regarding employment on a permanent basis?	
Does the agreement explicitly exclude measures regarding residence?	
Does the agreement allow parties to bar entry of natural persons based on public security/order reasons?	
Does the agreement allow parties to undertake temporary safeguard measures to bar entry of natural persons?	
Does the agreement provide a quota on number of visas issued to natural persons from signatory states?	
V. Harmonization with Other International Instruments	
Does the agreement refer to the General Agreement on Trade in Services (GATS)?	
Does the agreement refer to the New York Declaration for Refugees and Migrants 2017	
Does the agreement refer to the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol?	
Does the agreement refer to the Convention on the Rights of Migrant Workers and Their Families 1990?	
Does the agreement refer to the Convention concerning Migration for Employment 1949?	
Does the agreement refer to the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975	
Does the agreement refer to the APEC Business Travel Card Operating Framework?	
Does the agreement refer to the Convention concerning Decent Work for Domestic Workers 2011	
Does the agreement refer to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000	
Does the agreement refer to the Protocol against the Smuggling of Migrants by Land, Sea and Air 2000	
Does the agreement refer to bilateral agreements concluded by the Parties?	
VI. Institutional arrangements and dispute settlement	
Does the agreement set up a dedicated organ or sub-committee to oversee the migration issues?	
Does the agreement require the states to undertake mutually agreed cooperation activities?	
Does the agreement set up a negotiation/consultation mechanism for the states to settle dispute?	
Does the agreement allow a state to bring a dispute relating to the refusal to grant temporary entry if the matter involves a pattern of practice on the part of the granting state and the natural persons affected have exhausted all available domestic remedies regarding the particular matters?	
Does the agreement allow for retaliation to ensure compliance with the dispute settlement system's outcomes?	

Provision	Annex or other agreement	Comments	WTO coverage
			WTO =, WTO+, WTO- (“WTO =”: restates WTO commitment); “WTO +”: goes beyond WTO commitment); “WTO –“: commitment is more limited than WTO requirement)

Enforceability	Benefits to non-members
Non binding (0), best efforts (1), binding with no D/S (2), binding with state-to-state D/S(3), Binding, private DS(4), Binding, both state to state and	Excludible 0, non-excludible 1, not applicable 2

MIGRATIONS PROVISIONS IN PREFERENTIAL TRADE AGREEMENTS

Codebook (Annex II)

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April 2018

TABLE OF CONTENTS

A – INTRODUCTION	5
B – GENERAL RULES ON MIGRATION NORMS	6
1. What count as “norms”?	6
2. What count as “migration”?	6
C - SUBSTANCES	8
I. Migration Goals/Objectives	8
1. Does the agreement specify an objective of facilitating the movement of natural persons?	8
2. Does the agreement call for regulatory cooperation or harmonization in migration regulation?.....	8
II. Coverage and Types of Movement of Natural Persons	9
1. Does the agreement facilitate the movement of business visitors?.....	9
2. Does the agreement facilitate the movement of intra-corporate transferees?.....	9
3. Does the agreement facilitate the movement of professionals or technicians?	10
4. Does the agreement specify which occupations are categorized as professionals or technicians?.....	11
5. Does the agreement facilitate the movement of investors?	12
6. Does the agreement facilitate the movement of migrant workers employed by domestically owned company in the host country?	12
7. Does the agreement facilitate the movement of documented migrant workers seeking residency?	13
8. Does the agreement facilitate the movement of undocumented migrant workers?	13
9. Does the agreement facilitate the movement of non-commercial visitors?	14
10. Does the agreement facilitate the movement of refugees?	15
11. Does the agreement facilitate the movement of the dependents of natural persons?	15
III. Facilitation on the Movement of Natural Persons	16
1. Does the agreement encourage states to expedite the application procedures for immigration formalities for natural persons of another state?	16
2. Does the agreement limit the time for processing applications requesting temporary entry of natural persons?	17
3. Does the agreement limit the fees for processing applications for temporary entry of natural persons?	17
4. Does the agreement encourage states to provide facilities for online lodgment and processing (electronic visa)?.....	18
5. Does the agreement provide a denial explanation mechanism?	18

6. Does the agreement require the state to publish online if possible or otherwise make publicly available information regarding the current requirements for temporary entry?....	19
7. Does the agreement provide mutual recognition of qualifications among the states?.....	19
8. Does the agreement provide mutual recognition of work experience among the states?.	20
9. Does the agreement provide mutual recognition of training among the states?	20
10. Does the agreement provide a visa extension or renewal mechanism?	21
IV. Exceptions and Limitations	21
1. Does the agreement explicitly exclude measures regarding nationality?	21
2. Does the agreement explicitly exclude measures regarding employment on a permanent basis?.....	21
3. Does the agreement explicitly exclude measures regarding residence?	22
4. Does the agreement allow parties to bar entry of natural persons based on public security/order reasons?.....	22
5. Does the agreement allow parties to undertake temporary safeguard measures to bar entry of natural persons?	23
6. Does the agreement provide a quota on number of visas issued to natural persons from signatory states?	23
V. Harmonization with Other International Instruments	24
1. Does the agreement require compliance with the General Agreement on Trade in Services (GATS)?.....	24
2. Does the agreement require compliance with The New York Declaration for Refugees and Migrants 2017?.....	25
3. Does the agreement require compliance with the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol?.....	25
4. Does the agreement require compliance with the Convention on the Rights of Migrant Workers and Their Families 1990?.....	26
5. Does the agreement require compliance with the Convention concerning Migration for Employment 1949?	26
6. Does the agreement require compliance with the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975?	27
7. Does the agreement require compliance with the APEC Business Travel Card Operating Framework?	28
8. Does the agreement require compliance with Convention concerning Decent Work for Domestic Workers 2011?.....	29
9. Does the agreement require compliance with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000?	29

10. Does the agreement require compliance with Protocol against the Smuggling of Migrants by Land, Sea and Air 2000?	30
11. Does the agreement require compliance with bilateral agreements concluded by the Parties?	31
VI. Institutional arrangements and dispute settlement.....	31
1. Does the agreement set up a dedicated organ or sub-committee to oversee the migration issues?	31
2. Does the agreement require the state, subject to available resources, undertaking mutually agreed cooperation activities?.....	32
3. Does the agreement set up a negotiation/consultation mechanism for the states to settle dispute?	32
4. Does the agreement allow a state to bring a dispute relating to the refusal to grant temporary entry if the matter involves a pattern of practice on the part of the granting state and the natural persons affected have exhausted all available domestic remedies regarding the particular matters?.....	33
5. Does the agreement allow for retaliation to ensure compliance with the dispute settlement's outcomes?	34

A – INTRODUCTION

From the beginning, the coders (Trung Nguyen, Khalid Kamal, Wenni Zhang) acknowledged that the languages in some PTAs are not homogenous and would cause misinterpretation or create inconsistency in the coding process. The coders also realized that international migration is a broad subject that would cover a wide range of issues in public international law. This Codebook have two purposes. First, it would provide rules and standards for the coders to analyze the Preferential Trade Agreements (PTAs) using the Questionnaire Template (Annex I). Second, it would limit the scope of international migration to norms relating to the movement of natural persons, as required by the Project.

For each question in the Template, the coders would look at the scope and methodology as stipulated in the Codebook to extract the migration norms in PTAs. If there are new issues arise that is are not addressed in the Codebook, the coders would note them in the Comment Column in the Template (Column E).

B – GENERAL RULES ON MIGRATION NORMS

1. What count as “norms”?

- Except when otherwise expressly indicated in this codebook, a norm does not need to have a high degree of commitment (“must”, “shall”, “will”, etc.). Norms with low degree of commitment (“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.) are included.
- A norm can be either applicable to all Parties or explicitly limited to a single Party. Except when otherwise indicated, a norm can be found in any part of the agreements, including the preamble, annexes, footnotes, exchanges of letters, protocols, side agreements, reservations, etc.
- Norms include schedule for service liberalization attached as Annex to the Agreement (*i.e.* Party’s Specific Schedule on Services, Party’s Specific Schedule on Movement of Business Persons)
- Norms are not mutually exclusive. A single provision, or even a single sentence, can qualify for several different norms. (Some questions can be referenced to the same provision)
- Merely citing the name of regulation, other treaties or judicial decision cannot be qualified as norms.

2. What count as “migration”?

- Except when otherwise indicated in this codebook, general norms that refer to other area of public international law that can affect migration (human rights, worker rights *etc.*) but do not relate to the movement of persons are not considered as migration norms.
- Migration norms can apply in general to any migration issues or be specific to a migration issue, including *inter alia* facilitation of movement, application and process of immigration formalities, visa quotas, mutual recognition of qualifications, dispute settlement among others.
- Migration norms also include norms on “nationality”, “residency”, “permanent employment”, “online lodgment facilities”, “dependents of natural persons”.
- Except when otherwise indicated in this codebook, norms on “public interest”, “safeguard measures”, “refugees”, “migrant workers”, “dispute settlement”, “service

suppliers”, alone, without a reference to the movement of natural persons, are not considered as migration norms.

C - SUBSTANCES

I. Migration Goals/Objectives

1. Does the agreement specify an objective of facilitating the movement of natural persons?

- Scope: Limited to the preamble of the trade agreement or the provision labeled “Objectives” of the Chapter on “Movement of Natural Persons” or “Trade in Services”
- Methodology:
 - Not necessary these exact words.
 - May include subjects that refer to “natural persons” such as “service suppliers”, “migrant workers”, “temporary workers”.
 - Does not need to have a high degree of commitment (“must”, “shall”, “will”, etc.). Norms with low degree of commitment (“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.) are included.
- Example: Article 9.1(b) of the India – Malaysia FTA: *to enhance and facilitate the movement of natural persons engaged in the conduct of trade in services, goods and investment between the Parties*

2. Does the agreement call for regulatory cooperation or harmonization in migration regulation?

- Scope: Limited to the preamble of the trade agreement or the provision labeled “Objectives” of the Chapter on “Movement of Natural Persons” or “Trade in Services”
- Methodology:
 - Not necessary these exact words.
 - May include words that signal cooperative actions by means of streamlining process or creating transparent procedures for immigration formalities (*i.e.* visa, working permits).
 - Does not need to have a high degree of commitment (“must”, “shall”, “will”, etc.). Norms with low degree of commitment (“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.) are included.
- Example: Article 9.1(c) of the India – Malaysia FTA: *“The Parties shall endeavor to establish simplified streamlined and transparent procedures for immigration formalities for the temporary entry of natural persons to whom this Chapter applies”*; Article 12.03

(2) of El Salvador - Honduras - Chinese Taipei Free Trade Agreement: *“The Parties shall endeavor to develop and adopt common criteria, definitions, and interpretations for the implementation of this Chapter.”*

II. Coverage and Types of Movement of Natural Persons

1. Does the agreement facilitate the movement of business visitors?

- Scope: Limited to the Chapter on *“Movement of Natural Persons”* or *“Trade in Services”* and the Annex relating to such Chapters.
- Methodology:
 - “Business visitors” refers to persons whom: (a) the primary source of remuneration for the proposed business activity is outside the state of destination and the principal place of business and the predominant place of accrual of profits remain outside the state of destination and (b) do not seeking employment or residence in the state of destination.
 - Require the exact word *“business visitors”*.
 - Must express a high degree of commitment (*“must”, “shall”, “will”, etc.*). Norms with a low degree of commitment (*“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.*) is not included
 - The word *“facilitate”* might not be used.
- Example: *Annex 12.04 Section A of El Salvador - Honduras - Chinese Taipei Free Trade Agreement: 1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 12.04 (A) (1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of: (a) proof of nationality of a Party; and (b) documentation demonstrating the international character of the business activity the business person intends to realize and that the business person is not seeking to enter the local labor market.*

2. Does the agreement facilitate the movement of intra-corporate transferees?

- Scope: Limited to the Chapter on *“Movement of Natural Persons”* or *“Trade in Services”* and the Annex relating to such Chapters.
- Methodology:

- “*Intra-corporate transferees*” refers to persons who have been employed by an enterprise that outside the state of destination and who are being transferred to the branch office or the representative office in the state of destination, or an enterprise constituted or organized in the state of destination owned or controlled by or affiliated with the aforementioned enterprise.
- Require the exact word “*Intra-corporate transferees*”.
- Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
- The word “*facilitate*” might not be used.
- Example: *Annex 12.04 Section C of El Salvador - Honduras - Chinese Taipei Free Trade Agreement*: Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with immigration measures applicable to temporary entry that are in force. A Party may require the person to have been employed continuously by the enterprise for one (1) year immediately preceding the date of the application for admission.

3. Does the agreement facilitate the movement of professionals or technicians?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Professionals or technicians*” refers to persons who are engaged in a specialty occupation requiring theoretical and practical application of a body of specialized knowledge.
 - Not necessary the exact words “*professionals or technicians*”. Can also be referred as “*Independent Professionals*”, “*Professionals and Technician-Professionals*”, “*Qualified Professionals*”, “*Skilled Workers*”, “*Specialist*” and any other word that describe a specific occupation (*i.e.* nurses)

- Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included
- The word "*facilitate*" might not be used.
- Example: Article 9.3(h) India – Malaysia FTA: "*independent professional*" means a self-employed natural person of one Party who seeks to travel to the other Party temporarily, in order to perform a service pursuant to a contract with a person of the other Party, for which that natural person possesses appropriate educational and other qualifications relevant to the service to be provided, and has obtained wherever required, registration or license from the relevant professional body or regulator.

4. Does the agreement specify which occupations are categorized as professionals or technicians?

- Scope: Limited to the Chapter on "*Movement of Natural Persons*" or "*Trade in Services*" and the Annex relating to such Chapters.
- Methodology:
 - Cite the specific occupation in the "*Comment*" Column. Maybe different for each Party.
 - Not necessary to include the definition of each occupation.
 - Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included
- Example: Section 3, Annex 7 Japan – Viet Nam FTA: Professionals from Viet Nam are defined as:

“(a) legal services supplied by a lawyer qualified as “Bengoshi” under the laws and regulations of

Japan;

(b) legal advisory services on law of jurisdiction where the service supplier is a qualified lawyer; on condition that the service supplier is qualified as “Gaikoku-Ho-Jimu-Bengoshi” under the laws and regulations of Japan;

(c) legal services supplied by a patent attorney qualified as “Benrishi” under the laws and regulations of Japan;

(d) legal services supplied by a maritime procedure agent qualified as “Kaijidairishi” under the laws and regulations of Japan;

(e) accounting, auditing, and bookkeeping services supplied by an accountant qualified as “Koninkaikeishi” under the laws and regulations of Japan; or

(f) taxation services supplied by a tax accountant qualified as “Zeirishi” under the laws and regulations of Japan.”

5. Does the agreement facilitate the movement of investors?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Investors*” refers to persons who are seeking to establish, develop or administer an investment to which the business persons or the business persons’ enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills.
 - Require the exact word “*Investor*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
 - The word “*facilitate*” might not be used.
- Example: Article 8.1, US – Jordan FTA: “*Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party solely to carry on substantial trade, including trade in services or trade in technology, principally between the Parties.*”

6. Does the agreement facilitate the movement of migrant workers employed by domestically owned company in the host country?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Migrant workers employed by domestically owned company in the host country*” refers to persons who are employed by an enterprise that is established or has a commercial presence in the state of destination and earn the remuneration for the proposed business inside the host country.

- Not necessary the exact words “*migrant workers employed by domestically owned company in the host country*”.
- Can also look at other groups to see whether the definition fits (*i.e.* the requirement on “*commercial presence*”, either in the host country or the home country). If there is no requirement, then categorized as “1” and cite the name of that group in the “*Comment*” Column.
- Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
- The word “*facilitate*” might not be used.
- Example: Article 130 (1) of China - New Zealand FTA: “*The Parties may make commitments in respect of the temporary employment entry of natural persons.*”

7. Does the agreement facilitate the movement of documented migrant workers seeking residency?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Documented migrant workers seeking residency*” refers to persons who entered a state legally and remain in that state in accordance with their admission criteria and with the view to become nationals or obtain the rights of permanent residence of the state of destination pursuant to the domestic legislations of the host state.
 - Not necessary the exact word “*documented migrant workers seeking residency*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
 - The word “*facilitate*” might not be used.
- Example: Article 14.1 of the Protocol on the Establishment of the East African Common Market: “*The Partner States hereby guarantee the right of residence to the citizens of the other Partner States who have been admitted in their territories in accordance with Articles 10 and 13 of this Protocol*”

8. Does the agreement facilitate the movement of undocumented migrant workers?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Undocumented migrant workers*” refers to persons are not authorized to enter, to stay or to engage in employment in a state of destination under the applicable legislations of the states concerned.
 - Not necessary the exact words “*undocumented migrant workers*”. Can also be referred as: “*Illegal migrant workers*”, “*Voluntary undocumented workers*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
 - The word “*facilitate*” might not be used.
- Example: N/A

9. Does the agreement facilitate the movement of non-commercial visitors?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Non-commercial visitors*” refers to persons who are temporarily present or in transit in a territory of which they are not nationals or do not have the rights of permanent residence in that territory, and not for asylum and commercial purposes.
 - Not necessary the exact words “*non-commercial visitors*”. Can also be referred as: “*Tourists*”, “*Students*”, “*Medical Patients*”, “*Members of Aid Agencies*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
 - The word “*facilitate*” might not be used.
- Example: Regulation 4 Annex I of the Establishment of the East African Common Market Regulations: “*These Regulations shall apply to the following categories of citizens of a Partner State who move to, stay in and exit another Partner State:*

. (a) *visitors;*

- . (b) persons who seek to enter a Partner State for the purpose of medical treatment;
- . (c) persons in transit through the territory of a Partner State;
- . (d) persons who are admitted as students in training establishments in a Partner State; and
- . (e) persons entering a Partner State for any other lawful purpose other than as a worker or as a self-employed person.”

10. Does the agreement facilitate the movement of refugees?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Refugees*” refers to persons who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the state of their origin and are unable or, owing to fear, are unwilling to return to that state; or who, not having a nationality and being outside the state of their former habitual residence, and are unable or, owing to such fear, are unwilling to return to it.
 - Require the exact word “*Refugees*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
 - The word “*facilitate*” might not be used.
- Example: N/A

11. Does the agreement facilitate the movement of the dependents of natural persons?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and the Annex relating to such Chapters.
- Methodology:
 - “*Dependents*” refers to spouses, minor children (by blood or adopted), parents (by blood or fostered) and any other dependents of the natural persons as recognized

by applicable legislation or applicable bilateral or multilateral agreements between the states concerned.

- Not necessary the exact word “*dependents*”. Can also be referred as “*Spouses*”, “*Children*”, “*Parents*”. If this is the case, then, categorized as “1” and specify in the “Comment” Column.
- Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
- The word “*facilitate*” might not be used.
- Example: Article 9.5 of the India – Malaysia FTA: “*For natural persons of a Party who have been granted the right to long term temporary entry and have been allowed to bring in their spouses and dependents, a Party shall, upon application and in accordance with that Party’s domestic laws and regulation, and relevant licensing, administrative and registration requirements grant the accompanying spouses and dependents of such natural persons of the other Party, the right to work. The Parties agree that a natural person shall not be barred from working solely on the ground that he or she is a spouse or dependent of a natural person already employed in the other Party.*”

III. Facilitation on the Movement of Natural Persons

1. Does the agreement encourage states to expedite the application procedures for immigration formalities for natural persons of another state?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*”
- Methodology:
 - “*Immigration formalities*” means visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party.
 - Not necessary these exact words.
 - Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is included.

- Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included
- The word "*expedite*" might not be used.
- Example: Article 10.3(1) China – Australia FTA: "*Each Party shall expeditiously process complete applications for immigration formalities received from natural persons of the other Party covered by this Chapter, including further immigration formality requests or extensions thereof.*"

2. Does the agreement limit the time for processing applications requesting temporary entry of natural persons?

- Scope: Limited to the Chapter on "*Movement of Natural Persons*" or "*Trade in Services*"
- Methodology:
 - A specific time frame is not necessary.
 - Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included
 - The word "*limit*" might not be used.
- Example: Article 128 (1) of New Zealand- China FTA: "*Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof...*"

3. Does the agreement limit the fees for processing applications for temporary entry of natural persons?

- Scope: Limited to the Chapter on "*Movement of Natural Persons*" or "*Trade in Services*"
- Methodology:
 - A specific amount of fees is not necessary.
 - Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included
 - The word "*limit*" might not be used.

- Example: Article 9.4(2) of India – Malaysia FTA: *“Any fees imposed in respect of the processing of such applications for temporary stay or extension of temporary entry shall be reasonable and in accordance with domestic laws and regulations.”*

4. Does the agreement encourage states to provide facilities for online lodgment and processing (electronic visa)?

- Scope: Limited to the Chapter on *“Movement of Natural Persons”* or *“Trade in Services”*
- Methodology:
 - Must be related to *“immigration formalities”* (i.e. visa, working permit, etc.)
 - Does not need to have a high degree of commitment (*“must”, “shall”, “will”, etc.*). Norms with low degree of commitment (*“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.*) are included.
 - The words *“expedite”* and *“electronic visa”* might not be used.
- Example: Article 10.2(5) of China – Australia FTA: *“Each Party shall endeavor, to the extent possible, to provide facilities for online lodgment and processing of immigration formalities.”*

5. Does the agreement provide a denial explanation mechanism?

- Scope: Limited to the Chapter on *“Movement of Natural Persons”* or *“Trade in Services”*
- Methodology:
 - The term *“denial explanation mechanism”* refer to the notification, either upon request or automatically, made by the competent authorities of the host state to the applicant of the information informalities of the result of their application whether being accepted or refused.
 - Must express a high degree of commitment (*“must”, “shall”, “will”, etc.*). Norms with a low degree of commitment (*“may”, “could”, “best efforts”, “encourage”, “recognize”, etc.*) is not included.
 - The term *“reason for refusal”* or similar term must be included.
- Example: Article 10.3(2)(c) of China – Australia FTA: *“Each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting temporary entry is lodged, notify the applicant, either directly or through their authorized representative, of:*

....

- (c) where a decision has been made, the decision concerning the application, including:
- (i) if approved, the period of stay and other conditions; or
- (ii) if refused, the reasons for refusal.”

6. Does the agreement require the state to publish online if possible or otherwise make publicly available information regarding the current requirements for temporary entry?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*”
- Methodology:
 - The specific requirements are not necessary.
 - Not limited to any category of temporary entry.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included
- Example: Article 9.6(1) of India – Malaysia FTA: “*Each Party shall publish or otherwise make publicly available explanatory material on all relevant visa formalities which pertain to or affect the operation of this Chapter.*”

7. Does the agreement provide mutual recognition of qualifications among the states?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Require the exact word “*qualifications*”.
 - Does not necessary need to specify which qualifications are recognized. However, if the agreement specifies then list in the “*Comment*” Column.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Article 8.9(5) India – Malaysia FTA: “*With a view to ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to Article VI.4 of GATS, with a view to their incorporation into this Chapter.*”

8. Does the agreement provide mutual recognition of work experience among the states?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Require the exact word “*work experience*” or “*experience*”.
 - Does not necessary need to specify which type of work experience is recognized. However, if the agreement specifies then list in the “*Comment*” Column.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Article 67(1) China – Singapore FTA: “*The Parties shall ensure that their relevant competent authorities commence negotiations on areas for mutual recognition of the equivalence of each Party's:*
(a) accounting work experience and qualifications; ,
(b) auditing work experience and qualifications; and ,
(c) accounting and auditing standards, as soon as possible.”

9. Does the agreement provide mutual recognition of training among the states?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Require the exact word “*training*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Regulation 11, Annex I of the Establishment of the East African Common Market Regulations: “*For the purpose of ensuring the free movement of labor, the Partner States undertake to:*

.....

(b) *harmonize their curricula, examinations, standards, certification and accreditation of educational and training institutions.*”

10. Does the agreement provide a visa extension or renewal mechanism?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - The word “*extension*” or “*renewal*” may not be necessary. Any word signals the possibility of extending the duration of stay of natural persons is sufficient.
 - Does not necessary need to specify which type of work experience is recognized. However, if the agreement specifies then list in the “*Comment*” Column.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Annex 12 – A, Canada’s Specific Commitment on “*Business Visitors*” (Box A): “*Length of stay is up to six months. Extensions are possible.*”

IV. Exceptions and Limitations

1. Does the agreement explicitly exclude measures regarding nationality?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - The word “*nationality*” may not be necessary. Can also be substituted by other words with same meaning (*i.e.* citizenship, naturalization)
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Article 9.2(2) India – Malaysia FTA: “*This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.*”

2. Does the agreement explicitly exclude measures regarding employment on a permanent basis?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Article 9.2(2) India – Malaysia FTA: “*This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.*”

3. Does the agreement explicitly exclude measures regarding residence?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Require the exact word “*residence*” or “*residency*”.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.
- Example: Article 9.2(2) India – Malaysia FTA: “*This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.*”

4. Does the agreement allow parties to bar entry of natural persons based on public security/order reasons?

- Scope: The entire agreement
- Methodology:
 - Take the form of a separate provision on general exception.
 - Either apply to the entire Agreement or to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” or both.
 - Not necessary require the exact words “*public order*” or “*public security*”. Can also include phrases that refer to protection of the security or order of the community as the whole or the state itself.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.

- Example: Article 12.2(1) India – Malaysia FTA: “*Nothing in this Agreement shall be construed:*

....

to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests”

5. Does the agreement allow parties to undertake temporary safeguard measures to bar entry of natural persons?

- Scope: The entire agreement
- Methodology:
 - Take the form of a separate provision on safeguard measures
 - Must make reference to the Chapter on “*Movement of Natural Persons*”. Exclude safeguard measure that only apply to trade in goods or trade in services in general.
 - Require the specific word “*safeguard*”. Not necessary require the word “*temporary*” but, must signal that the Party imposing safeguard measure will not maintain it indefinitely.
 - Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is applicable to the requesting Party. Norms with a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*) is applicable to the Party being requested.
- Example: N/A

6. Does the agreement provide a quota on number of visas issued to natural persons from signatory states?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” and their Annex.
- Methodology:
 - Require the exact word “*visa*” or “*entry*”. Not necessary require the word “*quota*”
 - Must indicate a specific number of visa given to natural persons.
 - Can be committed unilateral by a Party.
 - Must express a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*). Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is not included.

- Example: Appendix 14.3(D)(6) US – Chile FTA: *“Beginning on the date of entry into force of this Agreement, the United States shall annually approve as many as 1,400 initial applications of business persons of Chile seeking temporary entry under Section D of Annex 14.3 to engage in a business activity at a professional level.”*

V. Harmonization with Other International Instruments

1. Does the agreement require compliance with the General Agreement on Trade in Services (GATS)?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *“reaffirm their commitment to implement X”, “reconfirm their obligations under X”, “reiterate their commitments as established by X”, “ensure that their laws and practices are in harmony with X”, “should be guided by the obligations of X”, “should adopt laws in line with X”, “have the intention to fulfill its obligation under X”, “shall adopt laws to fulfill its obligations under X”, “reaffirms their rights and obligations under X”, “pursuant to X”, “in conformity with X”, “as required by X”, “with respect to X”, “for the purpose of implementing X”, “to the extent covered by X”, “developed under X”.*
 - Must express a high degree of commitment (*“must”, “shall”, “will”, etc.*)
 - *“Recalling”, “recognizing” or “considering” the obligations of agreement, “affirming the importance of an agreement” or “acknowledging the adoption of an agreement”* is not sufficient to be considered as a commitment to implement.
- Example: Article 64.5 of the India – Japan FTA: *“The Parties shall jointly discuss disciplines on domestic regulation including measures relating to qualification requirements and procedures, technical standards and licensing requirements developed pursuant to paragraph 4 of Article VI of the GATS”*

2. Does the agreement require compliance with The New York Declaration for Refugees and Migrants 2017?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, *"pursuant to X"*, *"in conformity with X"*, *"as required by X"*, *"with respect to X"*, *"for the purpose of implementing X"*, *"to the extent covered by X"*, *"developed under X"*.
 - Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, etc.)
 - *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.
- Example: N/A

3. Does the agreement require compliance with the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*.

X", "shall adopt laws to fulfill its obligations under *X*", "reaffirms their rights and obligations under *X*", "pursuant to *X*", "in conformity with *X*", "as required by *X*", "with respect to *X*", "for the purpose of implementing *X*", "to the extent covered by *X*", "developed under *X*".

- Must express a high degree of commitment ("must", "shall", "will", etc.)
- "Recalling", "recognizing" or "considering" the obligations of agreement, "affirming the importance of an agreement" or "acknowledging the adoption of an agreement" is not sufficient to be considered as a commitment to implement.

- Example: N/A

4. Does the agreement require compliance with the Convention on the Rights of Migrant Workers and Their Families 1990?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on "Movement of Natural Person" or "Trade in Services" or both.
 - The word "compliance" might not be used. Includes wordings such as "reaffirm their commitment to implement *X*", "reconfirm their obligations under *X*", "reiterate their commitments as established by *X*", "ensure that their laws and practices are in harmony with *X*", "should be guided by the obligations of *X*", "should adopt laws in line with *X*", "have the intention to fulfill its obligation under *X*", "shall adopt laws to fulfill its obligations under *X*", "reaffirms their rights and obligations under *X*", "pursuant to *X*", "in conformity with *X*", "as required by *X*", "with respect to *X*", "for the purpose of implementing *X*", "to the extent covered by *X*", "developed under *X*".
 - Must express a high degree of commitment ("must", "shall", "will", etc.)
 - "Recalling", "recognizing" or "considering" the obligations of agreement, "affirming the importance of an agreement" or "acknowledging the adoption of an agreement" is not sufficient to be considered as a commitment to implement.

- Example: N/A

5. Does the agreement require compliance with the Convention concerning Migration for Employment 1949?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, “*pursuant to X*”, “*in conformity with X*”, “*as required by X*”, “*with respect to X*”, “*for the purpose of implementing X*”, “*to the extent covered by X*”, “*developed under X*”.
 - Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, etc.)
 - *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.
- Example: N/A

6. Does the agreement require compliance with the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, “*pursuant to X*”, “*in conformity with X*”, “*as required by X*”, “*with respect to X*”, “*for the purpose of implementing X*”, “*to the extent covered by X*”, “*developed under X*”.

obligations under X, “pursuant to X”, “in conformity with X”, “as required by X”, “with respect to X”, “for the purpose of implementing X”, “to the extent covered by X”, “developed under X”.

- Must express a high degree of commitment (“must”, “shall”, “will”, etc.)
- “Recalling”, “recognizing” or “considering” the obligations of agreement, “affirming the importance of an agreement” or “acknowledging the adoption of an agreement” is not sufficient to be considered as a commitment to implement.

- Example: N/A

7. Does the agreement require compliance with the APEC Business Travel Card Operating Framework?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “compliance” might not be used. Includes wordings such as “reaffirm their commitment to implement X”, “reconfirm their obligations under X”, “reiterate their commitments as established by X”, “ensure that their laws and practices are in harmony with X”, “should be guided by the obligations of X”, “should adopt laws in line with X”, “have the intention to fulfill its obligation under X”, “shall adopt laws to fulfill its obligations under X”, “reaffirms their rights and obligations under X”, “pursuant to X”, “in conformity with X”, “as required by X”, “with respect to X”, “for the purpose of implementing X”, “to the extent covered by X”, “developed under X”.
 - Require the exact word “APEC Business Travel Card”.
 - Must express a high degree of commitment (“must”, “shall”, “will”, etc.)
 - “Recalling”, “recognizing” or “considering” the obligations of agreement, “affirming the importance of an agreement” or “acknowledging the adoption of an agreement” is not sufficient to be considered as a commitment to implement.
- Example: Article 12.5 of the CPTPP: “The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through

exploration and voluntary development of trusted traveler programmes, and their support for efforts to enhance the APEC Business Travel Card programme.”

8. Does the agreement require compliance with Convention concerning Decent Work for Domestic Workers 2011?

- Scope: The entire Agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, “*pursuant to X*”, “*in conformity with X*”, “*as required by X*”, “*with respect to X*”, “*for the purpose of implementing X*”, “*to the extent covered by X*”, “*developed under X*”.
 - Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, etc.)
 - *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.
- Example: N/A

9. Does the agreement require compliance with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and*

practices are in harmony with X", *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, *"pursuant to X"*, *"in conformity with X"*, *"as required by X"*, *"with respect to X"*, *"for the purpose of implementing X"*, *"to the extent covered by X"*, *"developed under X"*.

- Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, etc.)
- *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.

- Example: N/A

10. Does the agreement require compliance with Protocol against the Smuggling of Migrants by Land, Sea and Air 2000?

- Scope: The entire agreement
- Methodology:
 - Must be applicable to either the Chapter on "Movement of Natural Person" or "Trade in Services" or both.
 - The word "*compliance*" might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, *"pursuant to X"*, *"in conformity with X"*, *"as required by X"*, *"with respect to X"*, *"for the purpose of implementing X"*, *"to the extent covered by X"*, *"developed under X"*.
 - Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, etc.)
 - *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.

- Example: N/A

11. Does the agreement require compliance with bilateral agreements concluded by the Parties?

- Scope: The entire agreement
- Methodology:
 - Limited to agreements concluded by the Parties of the PTA.
 - Must be applicable to either the Chapter on “Movement of Natural Person” or “Trade in Services” or both.
 - The word “*compliance*” might not be used. Includes wordings such as *"reaffirm their commitment to implement X"*, *"reconfirm their obligations under X"*, *"reiterate their commitments as established by X"*, *"ensure that their laws and practices are in harmony with X"*, *"should be guided by the obligations of X"*, *"should adopt laws in line with X"*, *"have the intention to fulfill its obligation under X"*, *"shall adopt laws to fulfill its obligations under X"*, *"reaffirms their rights and obligations under X"*, *"pursuant to X"*, *"in conformity with X"*, *"as required by X"*, *"with respect to X"*, *"for the purpose of implementing X"*, *"to the extent covered by X"*, *"developed under X"*.
 - Must express a high degree of commitment (*"must"*, *"shall"*, *"will"*, *etc.*)
 - *"Recalling"*, *"recognizing"* or *"considering"* the obligations of agreement, *"affirming the importance of an agreement"* or *"acknowledging the adoption of an agreement"* is not sufficient to be considered as a commitment to implement.
- Example: N/A

VI. Institutional arrangements and dispute settlement

1. Does the agreement set up a dedicated organ or sub-committee to oversee the migration issues?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*”
- Methodology:
 - Refer to an institutional mechanism for the Parties to regulate or discuss issues relating explicitly (but not exclusively) to the movement of natural persons.
 - Not necessary these exact words.

- The institution could be part of a broader institution, such as a Joint Committee or comprise of other sub-organs. This institution can have various names, including councils, sub-committees, working-groups, sub-committees, commissions, forums, organizations, etc. The name of the institutions does not reveal its structure and its function.
- Must express a high degree of commitment ("*must*", "*shall*", "*will*", etc.). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", etc.) is not included.
- Example: Article 9.11 India - Malaysia: "*The Sub-Committee on Trade in Services established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.*"

2. Does the agreement require the state, subject to available resources, undertaking mutually agreed cooperation activities?

- Scope: Limited to the Chapter on "*Movement of Natural Persons*" or "*Trade in Services*"
- Methodology:
 - Not necessary these exact words.
 - Must be accompanied by an illustrative list of cooperation activities. The activities must relate to the objective of further liberalization or harmonization of regulation of movement of natural persons.
 - Must express a high degree of commitment ("*must*", "*shall*", "*will*", etc.). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", etc.) is not included.
- Example: Article 134 of China-New Zealand agreement: *The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the movement of natural persons) that may arise from the implementation and administration of this Chapter.*

3. Does the agreement set up a negotiation/consultation mechanism for the states to settle dispute?

- Scope: Limited to the Chapter on "*Movement of Natural Persons*" or "*Trade in Services*" or "*Dispute Settlement*"

- Methodology:
 - Refer to a forum or institutional mechanism where states can enter into negotiation to discuss with a view to settle dispute relating to movement of natural persons.
 - Not necessary these exact words.
 - Specific procedures or format of the process are not required
 - Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is applicable to the requesting Party. Norms with a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*) is applicable to the Party being requested.
- Example: Article 9.8 India – Malaysia FTA: *“A Party may request a consultation with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request and shall endeavor to favorably resolve any specific or general problems which may arise from the implementation and administration of this Chapter.”*

4. Does the agreement allow a state to bring a dispute relating to the refusal to grant temporary entry if the matter involves a pattern of practice on the part of the granting state and the natural persons affected have exhausted all available domestic remedies regarding the particular matters?

- Scope: Limited to the Chapter on *“Movement of Natural Persons”* or *“Trade in Services”* or *“Dispute Settlement”*
- Methodology:
 - Limited to matters relating to the movement of natural persons.
 - The two requirements (*“pattern of practice”* and *“exhausted all available domestic remedies”*) are cumulative.
 - Must express a high degree of commitment ("*must*", "*shall*", "*will*", *etc.*). Norms with a low degree of commitment ("*may*", "*could*", "*best efforts*", "*encourage*", "*recognize*", *etc.*) is not included.
- Example: Article 80 India – Japan FTA: *“The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter unless:*
(a) the matter involves a pattern of practice; and

(b) the natural persons of a Party affected by that matter have exhausted the available domestic administrative remedies of the other Party.”

5. Does the agreement allow for retaliation to ensure compliance with the dispute settlement’s outcomes?

- Scope: Limited to the Chapter on “*Movement of Natural Persons*” or “*Trade in Services*” or “Dispute Settlement”
- Methodology:
 - Limited to matters relating to the movement of natural persons.
 - The word “*Outcomes*” refers to a legally binding report of a dispute settlement body either established under the agreement or any other bodies as deemed acceptable by the Parties
 - The word “*retaliation*” refers to any measure that seek to offset or redress the wrongful act of a Party (*i.e.* withdrawal of commitments, suspension of benefits)
 - Norms with a low degree of commitment (“*may*”, “*could*”, “*best efforts*”, “*encourage*”, “*recognize*”, *etc.*) is applicable to the requesting Party. Norms with a high degree of commitment (“*must*”, “*shall*”, “*will*”, *etc.*) is applicable to the Party being requested.

- Example: Chile – Korea Article 19.15: Non-Implementation - Suspension of Benefits

“1. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the panel resolves:

(a) that a measure is inconsistent with the obligations of this Agreement and the responding Party does not implement the final report within 30 days following the expiration of the time-frame established in such a report; or

(b) that a measure causes nullification or impairment in the sense of Annex 19.2 and the Parties do not reach a mutually satisfactory agreement on the dispute within 30 days following the expiration of the time-frame established in the final report.”