Chapter 5.

Business mobility as a privileged form of temporary labour migration: Insights from the MITA database and Switzerland

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Introduction[1]

Research on international labour migration observes the assertion of a "market model" in countries' migration policy mix that privileges temporary labour migration as flexible human capital while sidelining social and economic rights traditionally associated with migrants' integration into liberal democratic welfare States (Boucher and Gest 2018, see also Dauvergne and Marsden 2014a and b; Vosko 2022). The trend towards temporary mobility regimes while "preventing migration" finds confirmation in a recent empirical analysis of liberal democracies' immigration policies between 1980 and 2010, which concluded that "liberal democracies tend to be more permissive on the entry of immigrants than on their subsequent stay" (Lutz 2023, 20). Similarly, a recent analysis of States' integration policies covering 36 European Union (EU) and Organisation for Economic Co-operation and Development (OECD) countries found that "while migrants' rights have been extended, long-term settlement has been limited" (Solano, Schmid and Helbling 2023, 3). These observations resonate with the prominent hypothesis of a trade-off between the admission of migrants (numbers) and their integration (rights). Accordingly, States that have more open admission policies also tend to grant these immigrants less social, economic or political rights (Ruhs and Martin 2008; Ruhs 2013).

So far, the rights versus numbers hypothesis and the observation of the "market model" of temporary migration have been postulated only for low-skilled migration: "in high-income countries the demand for low-skilled migrant labor is downward sloping with respect to rights that have costs" (Ruhs and Martin

1 This chapter is based on a research project conducted in the framework of the Swiss National Center of Competency in Research for migration and mobility studies (NCCR on the move) – for more information see: https://nccr-onthemove.ch/projects/migration-governance-through-trade-mobilities/. Funding by the Swiss National Science foundation (grant number: 51NF40-182897) is gratefully acknowledged.

2008, 252). Similarly, Dauvergne and Mardsen (2014a, 526) state, "High-skilled workers simply do not generate the same practical or theoretical tensions: states do not seek to ensure their departure and pathways to membership are generally available." The positive discrimination of highly skilled migrants finds support in analyses of global inequalities in the freedom to move, where migrant rights are reserved primarily for citizens of rich countries (Avato, Koettl and Sabates-Wheeler 2010; Mau et al. 2015).

These literature and migration policy debates more broadly underestimate the fact that States' approach to highly skilled migration too often privileges temporary schemes that clearly circumscribe migrant rights. A particularly salient case are what we call "business migrants": workers who are sent abroad by multinational companies or who are hired for specific service contracts, rather than being employed directly. This form of business migration constitutes up to 40–50 per cent of non-EU/EFTA[2] labour immigration flows in a number of industrialized economies, including the United Kingdom and Switzerland (Alvarado et al., unpublished; ILO 2022; Salt and Brewster 2023). The regulatory framework for business migration represents a heighted version of the market model, as migrants retain their employment contract with their home company and hence are considered as not entering the labour market of the host country. This deprives them of many of the rights granted to national employees or regular labour migrants.

In this chapter, we first discuss some overarching structural factors marginalizing the "rights" versus the "work" dimension in business migration, including the commodification aspect, the empowerment of employers and the discrimination of the business migrants – three factors commonly associated with the "market model" of migration policy. We then offer an empirical assessment of States' promotion of business migration as reflected in Preferential Trade Agreements (PTAs) using the Migration Provisions in Trade Agreements (MITA) database (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023a; 2023b). Largely neglected by the migration policy literature, trade agreements have become an important venue for the liberalization of labour migration over the last few decades. Mobility provisions figure in PTAs roughly as often other non-trade issues that have received more scholarly attention, such as environmental clauses or labour rights (see Lechner 2019). Typically, these provisions facilitate the temporary admission of business migrants linked to trade in services, such as intra-corporate transferees (ICTs), contractual service suppliers or business visitors, who retain their work contract in their home country but are deployed for periods ranging from below one year to several years to work in the PTA partner country. In order to account for the

2 EFTA refers to the European Free Trade Association.

“numbers” versus “rights” tension in PTAs, we also look at the development of the migrant rights content in PTAs, and at the relationship between mobility and rights provisions in PTAs. To illustrate the importance of business migration in domestic migration policies, the last section zooms in on the implementation of business migration regulations in Switzerland. Drawing on population register data, our analysis corroborates the quantitative significance of this venue of labour recruitment. The national regulatory framework reproduces the features associated with the “market model” of migration, while a representative survey shows that business migrants are not per se in favour of temporary stays.

The rights dimension in business migration

Introduced in international and bilateral trade agreements as a mode of supply in trading services, business migration is not “self-initiated” and tied to regular employment patterns, but instead happens outside of regular markets and follows the needs of multinational companies and global service markets. The 1995 General Agreement on Trade in Services (GATS) introduced the mobility of natural persons as so-called “mode 4” mobility next to electronic commerce, the mobility of the customer or foreign direct investment as one out of four modes of cross-border supply of services (Lavenex and Jurje 2015; Mattoo and Carzaniga 2003; Dawson 2013).

Mobility provisions in PTAs have since facilitated the admission of temporary migrants beyond what the GATS provides, *inter alia* via admission commitments, the abolition of economic needs tests (ENTs), the easing of quotas, the facilitation of qualification requirements or expeditious visa procedures. These facilitations apply for specified categories of persons, most frequently intra-corporate transferees (ICTs), but also more generally executives, managers, investors, contractual service suppliers, business visitors and, less frequently, independent professionals (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023a).

Typically, trade and immigration officials like to refer to this kind of migration not as migration but as “mobility” and part of a commercial transaction. We refer to it as “business migration” to reflect the link to a business transaction, but also to the fact that this temporary mobility needs to be regulated in domestic immigration systems, including visa, work and residence permit rules, even if the work contract remains in the home country and the person is formally excluded from the domestic labour market (see also GATS annex on the mobility of persons). In this way, business migrants resemble the case of posted workers in the EU internal market who are most often non-highly skilled and “return to their country of origin after the completion of their work without at any time gaining access to the labour market of the host Member

State".[3] Hayes and Novitz (2013) observe here the legal construction of "workers without footprints".

The combination of temporary work contract and exemption from the labour market (and hence of an employee–employer relationship in the host country) bears at least three types of structural risks:

1. the commodification of the migrant;
2. the empowerment of the employer over the employee; and
3. discrimination in comparison to locally hired employees regarding fundamental economic and social rights such as change of employer, wage parity, freedom of association, or shift towards permanent residence.

First, the impetus for the liberalization of high-skilled business migration through trade policy stems from companies that need to move their labour force flexibly across borders and therefore are most clearly interested in liberalizing admission rather than expanding rights. As put by Costello and Freedland (2016), mobility provisions in trade agreements "do not significantly advance the agenda for more liberalised labour mobility, but rather reflect a strongly pro-trade and investor stance, which leaves workers out of the equation. To put it crudely, TTIP [the Transatlantic Trade and Investment Partnership] and similar instruments aim to protect the capacity for profit, and provide mechanisms where capital can challenge domestic laws that impact on future profits." Indeed, ICTs move as a corollary of foreign direct investment liberalization via the establishment of foreign branches in a multinational company. Similarly, contractual service suppliers move within the framework of their employers' trade in services with another country.

Liberalization thus leads to the commodification of highly-skilled migrants as part of a wider economic liberalization agenda, where migrants are seen as "mobile assets" of firms rather than bearers of rights.

Second, these categories of workers clearly strengthen the rights of the employers vis-à-vis those of the employee in the migration process. This is because the migrant's work and residency permit are tied to their employer and the firm's right to do business in the host country. The migrant's entitlements are limited to the duration of that business. According to Costello and Freedland (2016), this implies that "their labour rights may be determined according to corporate policy, not real connection to or participation in any particular workplace or country". Business migrants' exclusion from the host countries' broader set of labour or migration provisions is also explicitly provided for in the

3 C-113/89 *Rush Portuguesa v Office national d'immigration* [1990] ECR I-1417; [1991] 2 CMLR 818 [1990] ECR 1417, para. 15.

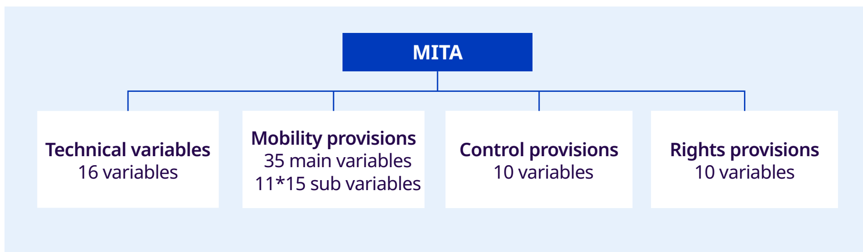
GATS Annex on movement of persons article 2, which reads: “The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.” GATS and PTA commitments only allow for temporary stay – often 90 days for business visitors or contractual service suppliers – but for ICTs, they often provide for longer length of stay of several years (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023). The specificities of these immigration flows are also reflected in immigration legislation. By way of example, the EU Directive on ICTs adopted in 2014 creates an EU-wide immigration scheme for ICTs and facilitates their intra-EU mobility, but does not grant ICTs full equal treatment with their locally employed colleagues (Friðriksdóttir 2017). National legislation often grants exemptions from usual admission requirements for ICTs and contractual service suppliers, thus making this migration channel more attractive for those companies that can transfer personnel internationally (Alvarado et al., unpublished). Immigrating as an ICT or foreign service provider, however, also often entails being exposed to conflicts at the national level between trade and immigration law (Schlegel and Sieber-Gasser 2014), and not being treated as an employee (Jacobsson 2015), leading to lower levels of social and labour market protection.

Third, this employer dependence is likely to facilitate exploitation in a similar way as has been discussed in the context of low-skilled immigration. Research on the situation of ICTs in Canada and Australia corroborates the discriminatory effects that this precarious status can have on migrants’ rights. Referred to as “closed” or “employer-tied”, the respective work permits create a segmentation in the local workforce of the host country, thereby creating imbalances among workers. In practice, migrants are in a vulnerable position that facilitates exploitation, including via the payment of lower wages, because they lack the possibility to change employers and have no access to collective bargaining – or because effective labour inspections are lacking (Vosko 2022; Howe 2016; Verschueren 2018). A recent analysis of ICT immigration in the United Kingdom corroborates the preponderance of employer interests in this kind of immigration when it observes the “symbiotic relationship between government and major companies to the mutual benefit of both” as the driving force (Salt and Brewster 2022, 376). These concerns have also been uttered by trade unions. For instance, the European Trade Union Confederation has lobbied for the equal treatment of ICTs and regular labour migrants (ETUC 2010), while the biggest trade union in the United States has criticized mobility provisions in PTAs generally for “trading away migrant rights” (Fanning 2016). As pointed out by Babar, Ewers and Khattab (2019) and Isaakyan (2022) migrants from less wealthy countries are particularly vulnerable to these dynamics, as they often work as temporary business migrants not out of choice but out of a lack of prospects for permanent residence or employment.

Business mobility in PTAs

Much in contrast to their overall reluctance vis-à-vis binding international norms on migration, more and more States have committed to the facilitation of business mobility in PTAs. The Migration Provisions in Trade Agreements (MITA) dataset[4] documents this trend by coding the migration-related content of 797 preferential trade agreements signed worldwide between 1960 and 2020.[5] The MITA dataset distinguishes between mobility, migrant rights and migration control provisions covered in a total of 236 variables, which permits us to measure the scope and depth of countries' commitments (**figure 1**).

▶ **Figure 1. Structure of the MITA dataset**

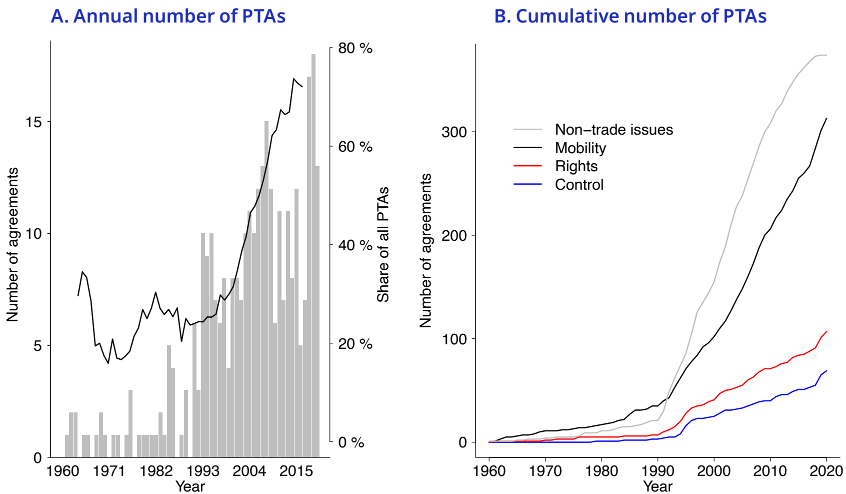


4 The complete dataset is deposited on Zenodo, DOI 10.5281/zenodo.7699054 (Lavenex, Lutz and Hoffmeyer- Zlotnik 2023b). The endeavor to establish this dataset fits into the broader trend of quantifying policies in the fields of migration (De Haas et al. 2014; Helbling et al. 2017) and trade, including non-trade issues such as environmental and labour standards or security provisions (Ariel and Haftel 2021; Dür, Baccini and Elsig 2014; Lechner 2018; Milewicz et al. 2018; Morin, Dür and Lechner 2018; Raess and Sari 2018).

5 The most detailed existing measurement of migration provisions (Pauwelyn, Nguyen and Kamal 2020) is part of the World Bank Deep Trade Agreements dataset, which includes provisions falling in the "Visa and asylum" category developed by the World Trade Organization (WTO). This is based on the international categorization scheme, the list of WTO-X policy areas that includes "illegal immigration", "visa and asylum" and "social matters" as migration-related regulations (Horn, Mavroidis and Sapir 2010). The policy area of "visa and asylum" includes the exchange of information, drafting legislation and training (including the international movement of persons).The area of "illegal immigration" comprises re-admission agreements and the prevention and control of illegal immigration. The area of "social matters" is migration-related, as it includes the coordination of social security systems and non-discrimination in working conditions. Covering 100 trade agreements and coding a selection of 30 variables that capture commitments "beyond what is covered under GATS mode 4" (Pauwelyn, Nguyen and Kamal 2020, 228) this dataset is less comprehensive than ours both in terms of variables and agreements coded.

The longitudinal analysis shows the proliferation of migration provisions in PTAs, with the number of PTAs facilitating business mobility growing at a similar pace to non-trade issues such as environmental or human rights provisions (**figure 2**). This trend has accelerated after the 1995 GATS agreement and is unabated. The number of PTAs including migrant rights and control provisions has also increased (**figure 2b**), yet at a slower pace.

▶ Figure 2. Evolution of PTAs with migration provisions

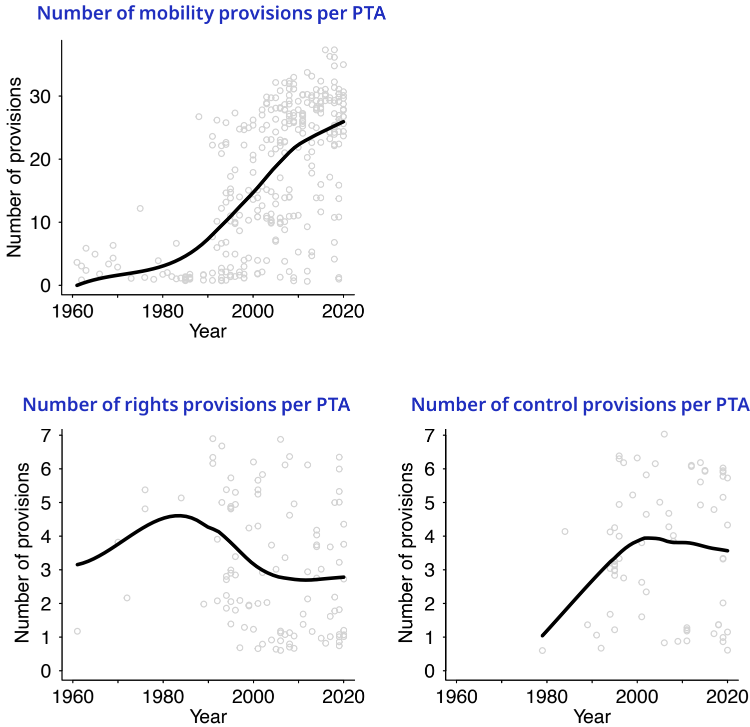


Note: Descriptive statistics based on the MITA dataset. The figures display the frequency of PTAs with at least one migration provision. Panel A shows the annual number of new signed PTAs that include migration provisions (bars) and their share of the total number of signed PTAs as a moving average over a decade (line). Panel B displays the cumulative number PTAs with the three types of migration provisions over time, as well as PTAs with non-trade-issues (corruption, environment, labour issues). Based on N=797 agreements.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

What is more, while the number of mobility provisions per PTA has seen a constant rise, thus indicating a deepening of liberalization commitments (**figure 3**), the average number of migrant rights provision per PTA has seen a decline starting in the mid-1980s before stabilizing at 1960 levels.

▶ Figure 3. Average depth of PTAs with migration provisions

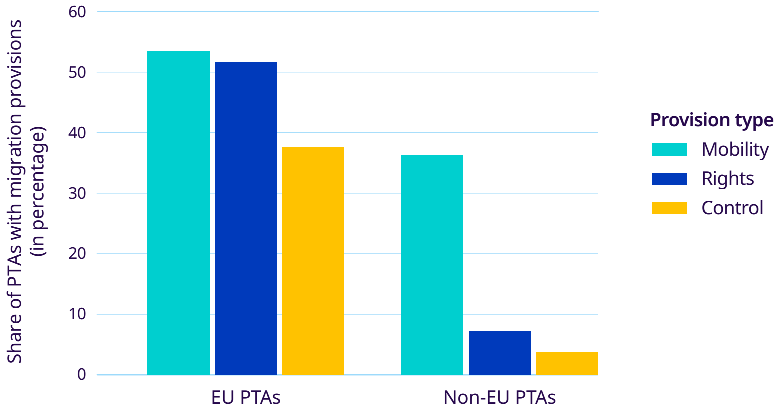


Note: The figures display the depth of migration provisions in PTAs with at least one such provision. The smoothed lines display the average number of mobility, rights and control provisions per PTA over time. Data points jittered to reduce overplotting.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

Finally, the comparison of EU and non-EU PTAs shows that the inclusion of migrant rights and even more migration control provisions is particularly pronounced in EU PTAs, which cover the three types of migration provisions to comparable extents (**figure 4**). In the rest of the world, the migration policy content of PTAs concentrates on facilitating mobility.

Figure 4. Migration content of EU and non-EU PTAs



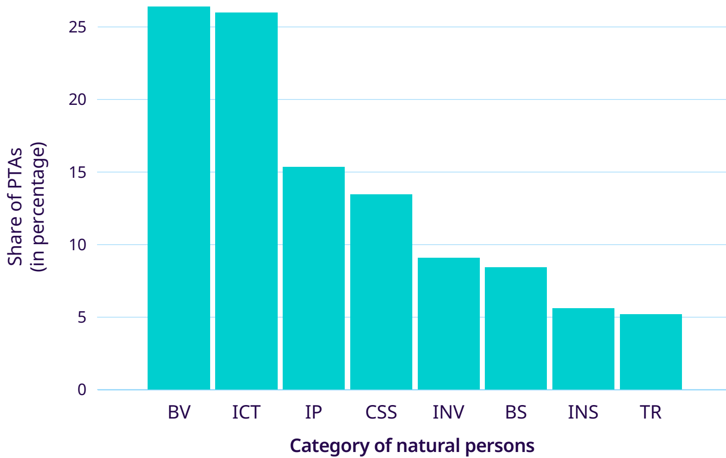
Note: Grouped bar plot displaying the share of EU and non-EU PTAs with migration provisions (N = 109 EU PTAs and N = 682 non-EU PTAs between 1960 and 2020).

Source: MITA database (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023b), Figure reproduced from Hoffmeyer-Zlotnik, Lavenex and Lutz (2023).

As in the GATS, the majority of mobility commitments concern highly skilled business migrants linked to commercial presence and investment, that is business visitors and ICTs (**figure 5**). The main provisions facilitating mobility are exceptions from economic needs tests, provisions on the recognition of professional qualifications, expansions of sectors opened up for this mobility, spouses' rights, exemptions from or limitation of quotas, fee limitations, facilitated application and entry procedures, visa renewal mechanisms, information provision concerning immigration procedures, or regulatory cooperation to tackle mobility impediments. A few PTAs also provide for the right to domestic employment, however, this is very much the exception and concerns only a few mainly EU association agreements with Poland, Hungary (both 1991), the Republic of Moldova, Slovakia and Romania (all 1994) – that is, countries that have all obtained candidate status to EU membership or eventually joined the EU (for the full list of variables see appendix).[6]

6 The only non-EU PTAs giving the right to domestic employment are the 2014 Australia–Japan EPA – interestingly, for independent professionals only – and the 1988 United States–Canada PTA for contractual service suppliers. The 2019 United Kingdom–Georgia PTA finally grants domestic employment to ICTs.

▶ Figure 5. Frequency of mobility categories in PTAs



Note: The bar plot displays the share of PTAs that facilitate the mobility of different categories of natural persons. These are: business visitors (BVs), intra-corporate transferees (ICTs), independent professionals (IPs), contractual service suppliers (CSSs), investors (INVs), business sellers (BSs), installers (INSs) and trainees (TRs). Based on N=797 agreements.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

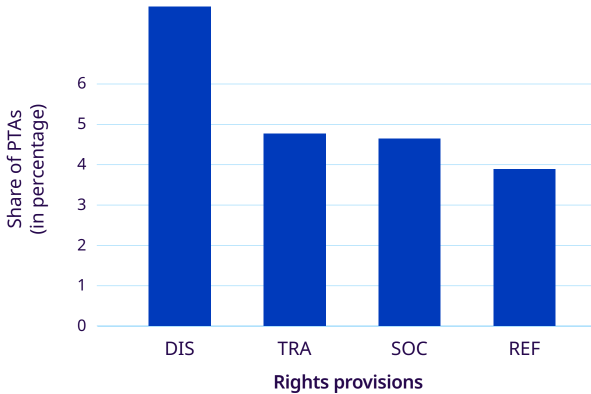
Provisions for migrant rights are much rarer than overall mobility provisions, with about 10 per cent of all PTAs in our dataset containing at least one such provision. With a total of ten variables coded, these provisions are also much more general than mobility provisions. The most frequent provision is a general non-discrimination clause, followed by commitments to the transfer of social insurance and access to social benefits. Less than 4 per cent of all PTAs include provisions for refugee protection (see **figure 6**).

The lack of dynamic evolution of migrant rights in PTAs may have different causes. In contrast to mobility commitments – which are considered as being part and parcel of economic integration – migrant and refugee rights are not a corollary of commercial interests. Furthermore, they are subject to stronger multilateral codification in dedicated forums (ILO Conventions, the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) and the 1951 Geneva Convention on Refugees). The low ratification patterns of the two migration-related ILO Conventions[7] and

7 Namely the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

the CRMW, however, corroborate rich liberal democracies' limited interest in signing up to international migrant rights (Lönnroth 1991; Pécoud 2021).

Figure 6. Frequency of rights provisions in PTAs



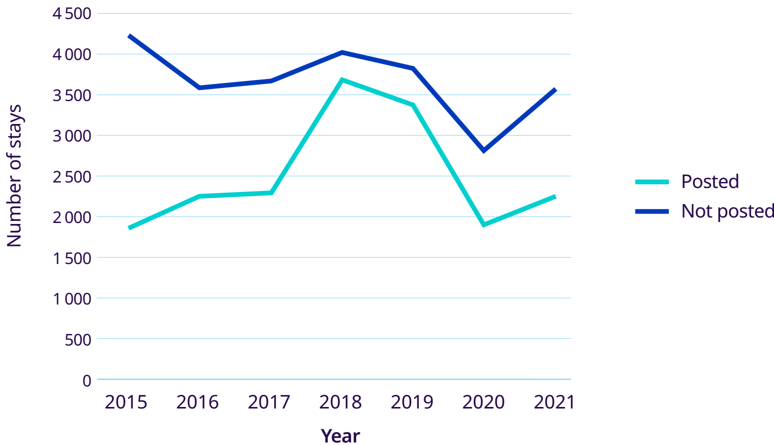
Note: The bar plot displays the share of PTAs that include substantive provisions for migrant rights. DIS = non-discrimination of migrant workers; TRA = social insurance transfer; SOC = access to social security; and REF = commitment to protect refugees. Based on N=797 agreements. Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

Business migration in Switzerland

The relevance of business migration is sometimes downplayed with the argument that it concerns only a fraction of international migrants. First attempts to quantify this form of international migration dispute this assumption. Data differentiating between "posted" business migration (that is, migrants retaining their work contract in the home country) and non-posted migration is notoriously hard to receive, and does not exist in most countries. Based on UK statistics, however, Salt and Brewster (2022) find that in the United Kingdom between one third and two thirds of all managed migration (that is, from non-EU/EFTA countries) in the last three decades has consisted of ICTs.

Swiss statistics have allowed one to identify posted migrants since 2015. For our research project we have been able to assess rich microlevel population register data (STATPOP) and come to a similar result as seen in the United Kingdom. Within the limits set by the annual quota for non-EU/EFTA immigration, posted business migrants make up for between a third and nearly half of all third-country labour migrants (**figure 7**).

▶ **Figure 7. Annual number of third-country labour migrant stays by type (posted/not posted), Switzerland (2015–2021)**



Note: Swiss register data STATPOP. Figure reproduced from Alvarado et al., unpublished.

From a trade perspective the relevance of business mobility can also be measured in terms of the wealth generated by this type of cross-border transaction. The WTO has engaged in an effort to measure the trade generated by the four different modes of cross-border supply of services (see the TISMOS database) underscoring the commodification aspect of business mobility.

The analysis of the regulatory framework addressing business mobility in Switzerland also shows the privileges enjoyed by this form of labour migration. These privileges, however, benefit the firms moving the migrants – not the migrants themselves. We briefly discuss this aspect for the case of ICTs, which is the category of persons benefiting from the longest periods of stay among business migrants and therefore approximate most to "ordinary" labour migrants.[8]

Under the Swiss GATS schedule, ICTs employed by firms in another WTO Member State and falling within one of 93 listed sectors can be admitted for a duration of up to three years, which can be extended to four years (Schlegel and Sieber-Gasser 2014, 8; WTO 2003). They have to be managers, executives

8 The following section draws on Hoffmeyer-Zlotnik, Lavenex and Lutz (forthcoming) and Alvarado et al. (unpublished).

or specialists[9] and need to have been employed by the sending company for at least a year preceding the stay in Switzerland. Beyond the GATS, Switzerland has undergone mobility commitments for ICTs in 18 out of its 53 total PTAs concluded as part of the EFTA or bilaterally up to 2020.[10] These commitments feature exclusively in newer PTAs signed since 2000 with non-European countries. PTA commitments often provide for longer stays for ICTs of up to five years and expand commitments to more sectors

Switzerland's GATS commitments provide for important exceptions to what is commonly described as a restrictive immigration system (Hercog and Sandoz 2018; Nguyen 2010). Three features mainly account for this description. First, the admission of non-EU/EFTA nationals is limited to managers, specialists and other qualified workers (art. 23 of the Foreign Nationals and Integration Act (FNIA)) who have secured a work contract before applying for a permit, and is subject to the discretion of authorities (FNIA, art. 18). In principle, labour migrants have to prove good prospects for a "sustainable integration into the Swiss labour market" in order to be admitted (FNIA, art. 23). Second, a priority test is applied before admission: employees are in principle only admitted when no Swiss or EU citizen could be found to take up the respective employment (FNIA arts 18 and 21). And third, a quota system limits the number of annual residence permits for work purposes. In this system, a maximum number is defined each year for labour migrants coming from outside the EU/EFTA for a period longer than four months (FNIA, art. 20, and Ordinance on Admission, Residence and Employment (OARE), art. 19). The overall maximum number of permits is divided into quotas for the 26 cantons and a federal reserve. If cantons have used up their maximum number of permits, they can apply to make use of the additional federal quota, which can be allocated based on their needs and the interests of the economy as a whole (OARE, arts 19–20).[11]

9 Definitions in the schedule:

Executives and senior managers: Persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise. Executives and senior managers would not directly perform tasks related to the actual provision of services of the enterprise.

Specialists: Highly qualified persons who, within an enterprise, are essential for the provision of a specific service by reason of their knowledge at an advanced level of expertise in the field of services, research equipment, techniques or management of the enterprise (WTO 2003, 5).

10 Commitments for ICT are coded in MITA for the following PTAs (year = year of signature): EFTA–Mexico (2000), EFTA–Singapore 2002, EFTA–Chile 2003, EFTA–Republic of Korea 2005, EFTA–Canada, 2008, EFTA–Colombia 2008, EFTA–Gulf Cooperation Council 2009, Switzerland–Japan 2009, EFTA–Peru 2010, EFTA–Ukraine 2010, EFTA–Hong Kong (China) 2011, Switzerland–China 2013, EFTA–Central America 2013, EFTA–Philippines 2016, EFTA–Georgia 2016, EFTA–Turkey 2018, EFTA–Indonesia 2018, EFTA–Ecuador 2018.

11 For the year 2020, the quotas are set to a maximum of 4,000 L permits (of which 2,000 are allocated to the cantons) and 4,500 B permits, which are valid for one year (of which 1,250 are allocated to the cantons; Annexes I and II to the OARE).

While ICTs enter Switzerland via the regular immigration route for employees (FNIA, art. 18) or service providers (FNIA, art. 26), the firms recruiting the ICTs are privileged compared to other employers recruiting third-country nationals in all three of the above dimensions: the limitation of labour migration to "managers and specialists" is itself reflective of the GATS commitments for ICTs (Switzerland SEM 2020, para. 4.8.1.1) and of the ICT provision introduced in 1990 while the GATS negotiations were ongoing. Intra-company transfers are also specifically mentioned as a ground for an exception from certain requirements of admission, such as a proven prospect for integration into Switzerland's society and labour market (FNIA, art. 23; Switzerland SEM 2020, para. 4.8.1.1). If ICTs fulfil the admission conditions, they are entitled to be granted an entry and stay permit, with no discretion for authorities (FNIA, art. 18; Switzerland SEM 2020, para. 4.8.1.7). This is a direct result of Switzerland's commitment to admit ICTs in its GATS schedule. ICTs and cross-border service providers are also exempted from the labour market priority test, as required by the Swiss GATS commitments. Regarding the quota system, even though the quota also apply to ICTs, intra-corporate transfers and the related GATS obligations are specifically mentioned in the Government's immigration law guidance as one of the reasons to allocate federal quota to a canton (Switzerland SEM 2020, para. 4.2.1).

Besides these exceptions integrated into Swiss law in the context of the GATS negotiations, some PTAs provide for further privileges for ICTs, such as a longer maximum length of stay and, in some cases, ICT admission without quantitative restrictions, meaning ICTs from China, Hong Kong (China) and Japan are entitled to a residence permit even when the maximum number of permits to be issued has been reached (Schlegel and Sieber-Gasser 2014, 15).

Taken together, these exceptions give employers privileged access to the scarce resource of residence and work permits, to the potential disadvantage of other labour migrants and domestic firms in need of foreign labour (Schlegel and Sieber-Gasser 2014, 15). The system thus incentivizes multinational firms to use intra-company migration as a preferred channel, as opposed to more cumbersome local hiring.

Regarding the third aspect of the "market model" of immigration policy highlighted above, the discrimination of the migrant, we can rely on the Migration Mobility Survey, a representative survey conducted within the "on the move" framework of the National Center for Competence in Research (NCCR) on migration[12]. This survey is conducted every two years, starting in 2016, on the foreign population in Switzerland. To enhance comparability with the register data presented above, we focus on the subset of respondents coming from

12 See https://nccr-onthemove.ch/research/migration-mobility-survey/ for more information on the survey.

non-EU/EFTA countries in the 2016, 2018 and 2020 waves.[13] One of the questions in the survey allows us to identify ICTs by asking respondents whether they came to Switzerland as a transfer within their same company.[14] In what follows, we will compare ICTs to other third-country foreigners coming to Switzerland with a job offer. This leaves us with a total sample of 2,229 respondents, 41 per cent of which are ICTs, a figure similar to the overall number of posted workers in the register data.[15]

In accordance with what we know about immigration regulations regarding business migrants, the vast majority of ICTs (89 per cent) report having a tertiary education. Furthermore, relative to other non- Europeans moving to Switzerland with a job, ICTs are shown to be a privileged type of labour migrants: they have a better financial situation; they are more likely to have received support from their employer when moving to Switzerland; they are more likely to report that their job uses their skills and knowledge to a high extent; and they are also more likely to have been in full-time employment prior to moving to Switzerland. On the other hand, while ICTs are more likely to report high levels of satisfaction with their life in Switzerland, they appear to be less integrated (they are less likely to be fluent in the local language and less likely to be interested in Swiss politics). A clear plurality of them also say they would like to stay permanently. As ICTs, however, they are excluded from this perspective and are tied to the work contract they have with their employer abroad.

Conclusion

The proliferation of temporary labour migration schemes and the advent of a "market model" of migration governance is usually associated with low-skilled migration. This common association neglects the fact that a sophisticated, hardly transparent and excessively technical array of regulations have developed at the national and international level to facilitate market-led temporary labour migration for highly skilled persons. This is the case of business migration, a form of labour migration for temporary stays of posted migrants who retain their work contract at home and are "delivered" for a predetermined period of

13 The Migration Mobility Survey has a panel component complemented with refresh samples added in each wave. The analyses presented below pool all third-country respondents from the three waves mentioned in the text (2016, 2018, 2020).

14 Unfortunately this question does not allow us to differentiate between those ICTs maintaining their contract in their home country – and thus counted as posted workers in the register data – and those coming with a new, Swiss contract. While there is a question about contract type in the survey, it is only asked in 2020 and responses indicate that information levels are low, making it unreliable.

15 The distribution of countries of origin also confirms what we found in the register data: more than 50 per cent of ICTs come from India and the United States alone.

stay to work in another country either within the same company (ICTs, business visitors), on a contract basis (contractual service suppliers), or, less often, as independent professionals, trainees and others. As part of the international agenda for the liberalization of international trade, business mobility (or "mode 4" in the GATS jargon) effectively commodifies business migrants as part of commercial relations. Our analysis of migration provisions in PTAs worldwide signed between 1960 and 2020 shows that States have fostered this kind of international mobility quite a bit. The codification of migrant rights, by contrast, has been much less dynamic and has rather stalled at a very general, shallow level – at least in the context of trade agreements. In order to further investigate the "market model" aspects of business migration, we have delved into the case of Switzerland. Population register data allows to identify the share of business migrants among the immigrant population since 2015, and shows that they make up to 45 per cent of all third–country labour migrants in Switzerland (comparable to what is seen in the United Kingdom). The domestic regulatory framework corroborates the "exceptional" status of this kind of temporary migration as well as the exclusion of business migrants not only from domestic employment, but also associated expectations such as local integration. In sum, this type of migration clearly benefits international businesses who compete with local employers for limited immigration quotas. As the Migration Mobility Survey shows, however, this also benefits international businesses more than the business migrants themselves, who, while mostly enjoying good working conditions in Switzerland (probably also when compared to their home country), report missing the perspective of acquiring residence.

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Appendix. MITA Dataset: list of variables

MOBOBJ: Does the agreement mention the objective of facilitating migration?

MOBCHP: Does the agreement contain a dedicated part on the mobility of natural persons?

MOBLAB: Does the agreement allow access to the labour market for natural persons?

MOBSER: Does the agreement allow access to the service market for natural persons?

MOBMRA: Does the agreement contain a commitment on the mutual recognition of qualifications?

MOBDSM: Does the agreement contain a dispute settlement mechanism for mobility provisions?

MOBPER: Does the agreement mention limitations of mobility commitments regarding permanent settlement and citizenship?

MOBREG: Does the agreement contain a commitment on regulatory cooperation regarding the mobility of natural persons?

MOBMFN: Does the agreement contain a most-favoured-nation (MFN) clause for the included mobility provisions?

MOBNTR: Does the agreement contain a national treatment clause for the included mobility provisions?

MOBFEE: Does the agreement contain a commitment on the limitation of application fees?

MOBINF: Does the agreement contain a commitment on the provision of publicly available information regarding the mobility of natural persons?

MOBSEC: Does the agreement contain a limitation of mobility commitments based on security interests?

MOBTEC: Does the agreement contain technology transfer requirements?

MOBRES: Does the agreement contain within-country mobility restrictions?

MOBVIS: Does the agreement contain a commitment on visa facilitation?

MOBPRC: Does the agreement contain a commitment on the facilitation of the application process?

MOBGTS: Does the agreement require compliance with the 'General Agreement on Trade in Services' (1995)?

MOBCOM: Does the agreement require compliance with an international agreement that facilitates the mobility of natural persons?

MOBIP: Does the agreement allow the movement of independent professionals?

MOBBV: Does the agreement allow the movement of business visitors?

MOBICT: Does the agreement allow the movement of intra-corporate transferees?

MOBCSS: Does the agreement allow the movement of contractual service suppliers?

MOBTR: Does the agreement allow the movement of (graduate) trainees?

MOBINS: Does the agreement allow the movement of installers?

MOBINV: Does the agreement allow the movement of investors?

MOBEXE: Does the agreement allow the movement of executives?

MOBMAN: Does the agreement allow the movement of managers?

MOBSPC: Does the agreement allow the movement of specialists?

MOBBS: Does the agreement allow the movement of business (service) sellers?

MOBCUL: Does the agreement allow the movement of artists, sportsmen or fashion models?

MOBOBP: Does the agreement allow the movement of other business people?

MOBTRS: Does the agreement allow the movement of tourists?

MOBEDU: Does the agreement allow the movement of students and/or researchers?

MOBENT1: Does the agreement contain an ENT reservation?

MOBENT2 Does the agreement contain an ENT exemption or limitation?

MOBQUO1: Does the agreement allow for the imposition of quotas?

MOBQUO2: Does the agreement prohibit the imposition of quotas?

MOBDRN: Does the agreement define maximum length of stay for the mobility of natural persons?

MOBEMP: Does the agreement contain employment restrictions for the mobility of natural persons?

MOBEXT: Does the agreement contain a mechanism for the extension of stay for the mobility of natural persons?

MOBEXP: Does the agreement contain a requirement of prior professional experience for the mobility of natural persons?

MOBSKL: Does the agreement contain a skill-level limitation for the mobility of natural persons?

MOBSCT1: Does the agreement contain a sector limitation for service mobility?

MOBSCT2: Does the agreement contain a sector expansion beyond services?

MOBSPS: Does the agreement contain a provision for the rights of spouses and dependents?

MOBPRE: Does the agreement contain a pre-employment requirement for the mobility of natural persons?

MOBDOM: Does the agreement contain a provision allowing for employment in the receiving country?

MOBDIR1: Is the mobility provision asymmetric?

RIGOBJ: Does the agreement mention the objective of protecting migrant rights?

RIGCHP: Does the agreement contain a dedicated chapter on migrant rights?

RIGDIA: Does the agreement contain a commitment on dialogue on migrant rights?

RIGTRA: Does the agreement include a commitment on social insurance transfers?

RIGDIS: Does the agreement include a commitment on non-discrimination of migrant worker?

RIGSOC: Does the agreement include a commitment on equal access to social security?

RIGDSM: Does the agreement contain a dispute settlement mechanism for migrant rights provisions?

RIGREG: Does the agreement include a commitment on regulatory cooperation on migrant rights?

RIGREF: Does the agreement include a commitment to the protection of refugees?

RIGCOM: Does the agreement require compliance with an international agreement regulating the right of migrants?

CONOBJ: Does the agreement mention the objective of migration control?

CONCHP: Does the agreement contain a dedicated chapter on migration control?

CONDIA: Does the agreement include a commitment on a dialogue on migration control?

CONREA: Does the agreement include a commitment to re-admit nationals?

CONRTN: Does the agreement include a commitment to support the reintegration / hosting of (returned) migrants and refugees?

CONIRR: Does the agreement include a commitment to prevent irregular migration?

CONDSM: Does the agreement contain a dispute settlement mechanism for migration control provisions?

CONREG: Does the agreement include a commitment on regulatory cooperation on migration control?

CONDEV: Does the agreement draw a link between migration control and the development of sending countries?

CONCOM: Does the agreement require compliance with an international agreement regulating migration control?