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**Migration governance through trade agreements –
 a two-level analysis**

1. Introduction

Deepening trade relations and increasing human mobility are two of the most visible consequences of heightened globalization. The international mobility of persons is both a consequence of and a prerequisite for the global trade of goods and services (Poot/Strutt 2010), but migration policies – broadly understood as policies that regulate the mobility and stay of non-nationals – continue to be seen as a bastion of national sovereignty (Dauvergne 2014, 92). Although the two UN compacts concluded in 2018 on migration and refugees emphasize the need for closer international cooperation, states have opposed the adoption of international commitments when it comes to admitting labor migrants in particular. The only exception are free movement regimes adopted at the regional level and a limited set of commitments building on the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) from 1995 that facilitates the mobility of "natural persons" moving for commercial purposes (Dawson 2013; Mattoo/Carzaniga 2003; Trachtman 2009). This chapter asks: how do such commitments facilitate the crossing of borders, and how do they (re)draw boundaries between different types of migrants?

These so-called GATS Mode 4 commitments, while being 'revolutionary' in their nature as legally binding commitments on the sensitive issue on migration (Bast 2008, 575), were widely regarded as 'shallow' (Carzaniga 2009, 481) or 'fairly low' (Bast 2008, 576) when it comes to the actual level of commitment undergone by states. As a result, many countries sought to expand mobility commitments through preferential trade agreements (PTAs; Carzaniga 2009, 497; Lavenex/Jurje 2015, 272). Today, the vast majority of PTAs includes provisions facilitating the cross-border mobility of workers and business people. The fact that states adhere to legally binding international provisions facilitating labor mobility is nevertheless surprising given how sensitive migration

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policies are in national politics. Indeed, little is known about these provisions nor on how they apply in national immigration systems.

A long-standing argument in migration research is that governments navigate labor migration policies in a context of economic needs for more foreign labor on the one hand and citizens' anti-immigration concerns on the other hand (Hollifield 1992). Such tensions are particularly strong in states that combine open, internationalized economies competing for 'talent' and democratic institutions with constituencies opposing the opening of more immigration channels. The trade context of the GATS and PTAs offers several advantages over other ways to attract labor immigration, such as bilateral labor agreements or unilateral reforms of national immigration laws. Negotiating labor mobility as part of PTAs emphasizes the commercial and growth-enhancing aspect over the migration aspect (Hoffmeyer-Zlotnik 2024; Lavenex/Jurje 2015). Thus, labor immigration is put in the context of the turn to service- and knowledge-based economies, the proliferation of multinational companies and the intensification of transnational investment and business practices in advanced economies (Weinar/Klekowski von Koppenfels 2020). Furthermore, the categories of workers included in trade agreements are mostly highly skilled managers, specialists and other business people, and thus persons who are not at the center of contentious debates about the impact of immigration on wages, labor conditions or welfare. As a result, mobility provisions in trade agreements have a de-politicizing effect, singling these labor flows out from domestic immigration politics.

This contribution sheds light on the phenomenon of migration governance via PTAs at two levels: in the trade agreements themselves and in the national legislation. While several analyses have addressed the facilitation of international mobility in PTAs (Dawson 2013; Ekman/Engblom 2019; Jurje/Lavenex 2019; Lavenex/Jurje 2015), we present results from the novel Migration Provisions in Preferential Trade Agreements (MITA) dataset (Lavenex/Lutz/Hoffmeyer-Zlotnik 2023b) of migration-related content in PTAs. The dataset, which covers PTAs signed worldwide between 1960 and 2020, allows us to measure the scope of liberalization across countries and across different migration provisions. However, states' international commitments say little on the way in which these commitments translate in domestic policies. Therefore, we complement the quantitative analysis of migration commitments at the level of PTAs with two case studies analyzing the interaction between migration provisions in PTAs and national migration policies in Singapore and Switzerland, focusing on immigration rules for intra-corporate transferees.

The Migration Provisions in Preferential Trade Agreements (MITA) dataset introduced in Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a) is the first comprehensive data source on migration-related content in preferential trade agreements.² MITA provides

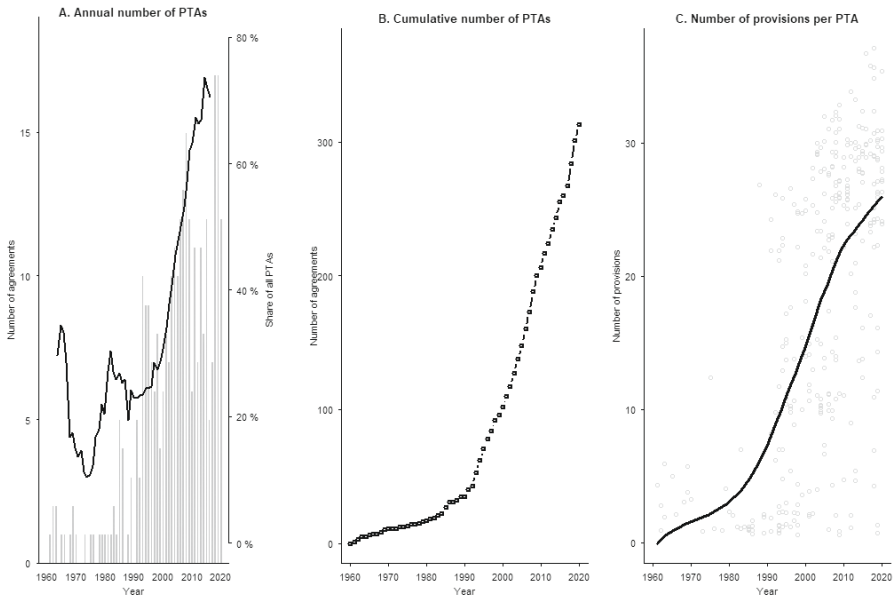
² The complete dataset is deposited on Zenodo (<https://zenodo.org/records/7837954>).

key insights into the evolution of the trade-migration nexus over time through its 60-year coverage and allows for a detailed analysis of the migration content in PTAs with a total of 236 variables. The dataset covers not only bilateral trade agreements, but also plurilateral and regional ones, making it one of the most inclusive datasets on trade agreements. We apply a broad understanding of migration provisions as rules and regulations that aim to govern the movement of natural persons across international borders, irrespective of any specific duration of stay in the destination country. The MITA dataset covers three categories of migration provisions: mobility provisions, provisions on the rights of labor migrants and refugees, and provisions on migration control.

In this chapter, we focus on the most frequent type of migration provisions included in PTAs, provisions facilitating the international mobility of business migrants. These provisions relate directly to countries' immigration rules as they target relevant regulations such as Economic Needs Tests (ENT), national admission quotas or qualification requirements. The four main categories of natural persons covered by these provisions are business visitors (BV) who travel abroad to prepare investments and business contracts, contractual service suppliers (CSS), who are employed by a company that is tasked to deliver a service abroad, independent professionals (IP) who move to a different country to deliver a service, and intra-corporate transferees (ICT) who move from one branch of a multinational company to another branch in a different state while keeping their work contract in the country of origin (Carzaniga 2003). The remainder of the chapter is structured as follows: we first provide an overview of the evolution and geographical patterns when it comes to mobility provisions in PTAs and discuss what types of labor migration are facilitated in PTAs. We then address the implications of such trade commitments on national immigration systems, focusing on Switzerland and Singapore as two highly globalized economies with a strong need of foreign labor and considerable levels of politicization of migration.

2. Mobility provisions in PTAs

The MITA dataset reveals a remarkable proliferation of mobility provisions in PTAs over the last few decades (Figure 1A). Between 1960 and 2020, the share of new trade agreements with migration provisions has continuously increased from around 20 percent between the 1960s and the 1980s to around 75 percent of all PTAs signed between 2010 to 2020. A particularly steep rise can be seen since the mid-1990s, following the adoption of the GATS (Figure 1B). At the same time that the number of PTAs with mobility provisions increased, the regulation of mobility also became deeper as the number of such provisions per PTA also increased (Figure 1C).

Figure 1: Evolution of PTAs with mobility provisions

Note: Descriptive statistics based on the MITA dataset. Plot A shows the annual number of new PTAs signed that include mobility provisions (bars) and their share on the total number of PTAs signed as a moving average over a decade (line). Plot B displays the cumulative number of PTAs with mobility provisions over time. Plot C displays a smoothed line indicating the average number of mobility provisions per PTA over time. Based on N=797 agreements.

Source: Lavenex/Lutz/Hoffmeyer-Zlotnik 2023b.

The analysis of the patterns of mobility provision across signatory countries demonstrates that the facilitation of mobility takes place primarily between developed countries (Lavenex/Lutz/Hoffmeyer-Zlotnik 2023a). Nevertheless, we identify a substantial number of provisions in mixed agreements involving less affluent countries. The countries with the highest number of PTAs including mobility provisions are the EU with more than 60 such agreements, followed by Singapore, Korea, the United Kingdom and the United States with around a quarter of the EU's number. In comparison, however, these countries often have a higher share of PTAs containing mobility provisions than the EU (87 percent in the case of Singapore). Switzerland has undergone mobility commitments in 20 out of 53 PTAs it has signed bilaterally or as part of the European Free Trade Association (EFTA), which corresponds to a share of 60 percent, similar to that of the European Union. We also identify a relatively high absolute and relative number of PTAs with mobility provisions in large economies in Latin America and China. Emerging economies have similar interests as developing countries when it comes to mobility

provisions: they equally have an interest in both inward and outward investment and in the facilitated mobility of business-people employed by multinational companies (Ekman/Engblom 2019, 170). Emerging economies have actively participated in promoting these provisions during the stalled Doha Round of multilateral trade negotiations in the WTO and have pursued extensive commitments in bilateral trade negotiations (Lavenex/Jurje 2019).

While sharing an interest in facilitating mobility, developed and developing or emerging countries have often pursued diverging interests when it comes to the skill level required of labor immigrants, and to the link between investment and the facilitation of mobility: developing countries favor mobility particularly for low-skilled workers in order to export the surplus of labor and reap remittances (Peters 2019). India is a prominent example: already in the GATS negotiations and again in bilateral talks with the EU and now the UK, India has sought to include more commitments for potentially non-highly skilled migrants (Lavenex/Jurje 2019). However, developed countries can satisfy their needs for this type of labor migration unilaterally through domestic policies or bilateral labor agreements since there is an abundant supply (Peters 2019; Ruhs 2013). In contrast, developed countries are interested in promoting highly skilled business migration that contributes to export-oriented service economies or promotes outward foreign investment through multinational companies. Our PTA data corroborates the fact that this priority assigned to skilled and investment-related categories of persons such as ICTs or BVs is not only reflected in the GATS commitments (Dawson 2013) but also in PTAs, where we observe a clearly more limited level of liberalization for CSS or IPs compared to ICTs and BVs. Apart from these four main categories, countries have also included a number of other categories of lesser frequency in PTAs – mostly linked to investment and highly skilled (investors, business sellers), and, less frequently, non-highly skilled persons (installers, trainees; for further details and analyses see Lavenex/Lutz/Hoffmeyer-Zlotnik 2023a).

3. Trade agreements and national migration policies

Amid the spread of multilateral and bilateral mobility commitments discussed in the previous section, it is surprising that thus far we know very little about how such commitments interact with national immigration policies. The role that such trade commitments can play in migration governance depends to a large degree on the impact they have on national immigration rules and practice. Trade agreements hold the potential to shape immigration rules as they allow states to open up possibilities for labor immigration while evading both public discourse on immigration and restrictionist immigration policymakers in interior ministries (Panizzon 2010, 25; Sassen 1996). They can thus serve as an instrument for state and business actors who want to circumvent restrictive immigration policies and discourses at the national level (Ford/Kawashima 2016) by undergoing commitments at the international level,

where national veto players have less influence on the decision-making process (Putnam 1988).

We study the influence of GATS and PTA commitments in two highly globalized and developed economies, Singapore and Switzerland. These two countries provide an ideal context to study how far trade commitments circumvent the dilemma posed by the competing economic and political pressures in migration policy-making: both are among the most globalized countries worldwide, especially in terms of economic globalization (KOF Swiss Economic Institute 2023). Within the WTO, both Switzerland and Singapore were proponents of liberalizing service trade and investment in the GATS to the benefit of their important financial sectors (Marchetti/Mavroidis 2011). At the same time, both countries have a significant immigration population and witness considerable levels of politicization over immigration. In Switzerland, politicization of immigration has been significant since the late 1980s and early 1990s, with the anti-immigrant Swiss People's Party having advanced to becoming the largest party with nearly a third of the seats in parliament, repeatedly launching popular initiatives under the Swiss direct democratic system (Lavenex 2023). In Singapore, concerns about immigration are a more recent phenomenon: historically, Singapore has encouraged inward labor migration, especially of highly skilled professionals, for its development in the context of a focus on economic liberalization. It has developed a dual "welcome-the-skilled and rotate-the-unskilled" immigration system (Kuptsch/Martin 2011) since the late 1980s (Swee-Hock 2012a, 258). However, in recent years restrictions have been imposed, testifying to a growing politicization of skilled immigration in Singapore (Cheng 2017; Fenn 2014; Wong 2022).

In the following, we will briefly review the GATS and PTA commitments of both Switzerland and Singapore, and then discuss their interactions with the national immigration system. In doing so, we focus on ICTs, the category of persons for which we find the most and the most far-reaching commitments both in the GATS and in PTAs worldwide (Carzaniga 2003; Lavenex/Lutz/Hoffmeyer-Zlotnik 2023a; Lavenex/Jurje 2015). ICTs come closest to classical labor immigrants as their stay in another branch of a multinational company abroad often lasts several years, during which they however retain their work contract in the country of origin. In most individual GATS commitments, ICTs are defined as executives, managers and/or specialists, meaning employees who either hold high positions within a company or possess specific skills needed for the activity in the other country (Carzaniga 2003). ICT migration is usually framed as a very specific and temporary type of immigration which concerns only few people, but actually represents a substantial share of labor immigration especially in industrialized countries with highly globalized economies (ILO 2022, 18; Salt/Brewster 2022; Tollenaere 2014, 241). While in most countries, including Switzerland and Singapore, the exact scope of ICT immigration is difficult to establish, in the UK they account for around 50 percent of all labor immigration permits issued since the mid-2000s (Salt/Brewster 2022, 8), and

around 30 percent of temporary visas for skilled workers in the United States (Wang 2021). In Switzerland, posted workers, including intra-corporate transferees, made up between 30 percent and 47 percent of all non-EU labor immigration in the years 2015 to 2021.³ It is important to note that these figures likely under-represent ICTs though, since multinational companies often employ their staff on local contracts, resulting in the fact that they no longer count as employed workers. In Singapore, as of December 2022 around 13 percent of the foreign workforce hold an “Employment Pass”, the residence permit geared towards “foreign professionals, managers and executives”, including ICTs (Ministry of Manpower Singapore n.d./2023a).

3.1. Switzerland

Under the Swiss GATS schedule, ICTs employed by firms in another WTO Member State and falling within one of the 93 listed sectors can be admitted for a duration of up to three years, which can be extended to four years (Schlegel/Sieber-Gasser 2014, 8; WTO 2003). They have to be managers, executives or specialists⁴ 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 total 53 PTAs concluded as part of the EFTA or bilaterally.⁵ These commitments feature exclusively in newer PTAs signed since 2000 with non-European countries. PTA commitments often provide for longer stays for ICTs up to five years and expand commitments to more sectors. The PTAs with China, Hong Kong and Japan also go beyond the GATS commitments by abolishing quantitative restrictions or quota, i.e. they grant access for ICTs without quantitative limits (Schlegel/Sieber-Gasser 2014, 8;10).

Switzerland’s GATS commitments provide for important exceptions to what is commonly described as a restrictive immigration system (Hercog/Sandoz 2018; Nguyen

³ These figures are calculations by the authors based on the Swiss population and household statistics (STATPOP).

⁴ 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).

⁵ Commitments for ICTs are coded in MITA for the following PTAs (year = year of signature): EFTA-Mexico (2000), EFTA-Singapore 2002, EFTA-Chile 2003, EFTA-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 2011, Switzerland-China 2013, EFTA-Central America 2013, EFTA-Philippines 2016, EFTA-Georgia 2016, EFTA-Turkey 2018, EFTA-Indonesia 2018, EFTA-Ecuador 2018.

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 (Art. 18 FNIA). In principle, labor immigrants have to prove good prospects for a “sustainable integration into the Swiss labor market” in order to be admitted (Art. 23 FNIA). 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 (Art. 18 and 21 FNIA). 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 labor immigrants coming from outside the EU for a period longer than four months (Art. 20 FNIA, Art. 19 of the Ordinance on Admission, Residence and Employment (OARE)). 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 (Art. 19 and 20 OARE).⁶

While ICTs enter Switzerland via the regular immigration route for employees (Art. 18 FNIA) or service providers (Art. 26 FNIA), they are privileged compared to other labor immigrants from third countries in all three of these dimensions: the limitation of labor immigration to “managers and specialists” is itself reflective of the GATS commitments for ICTs (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 the Swiss society and labor market (Art. 23 FNIA, SEM 2020, para. 4.8.1.1). If ICTs fulfill the admission conditions, they are entitled to be granted an entry and stay permit, with no discretion for authorities (Art. 18 FNIA, 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 labor 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 (SEM 2020, para. 4.2.1).

Next to 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,

⁶ For the year 2020, the quotas are set to a maximum of 4000 L permits (of which 2000 are allocated to the cantons) and 4500 B permits which are valid for one year (of which 1250 are allocated to the cantons; Annexes I and II to the OARE).

meaning ICTs from China, Hong Kong and Japan are entitled to a residence permit even when the maximum number of permits to be issued has been reached (Schlegel/Sieber-Gasser 2014, 15).

Taken together, these exceptions give ICTs and their employers privileged access to the scarce resource of residence and work permits, to the potential disadvantage of other labor immigrants and domestic firms in need of foreign labor (Schlegel/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.

3.2. Singapore⁷

Singapore has undergone similar commitments to admit ICTs as Switzerland in its GATS Schedule. The ICT commitments apply to Executives, Managers, and Specialists entering Singapore for an initial period of three years, further extendable by 2 years (WTO 1994). As in the Swiss schedule, ICTs have to be previously employed in their companies for at least one year. Singapore has undergone commitments for ICTs in 17 out of a total of 24 PTAs, all of them signed since 2000.⁸ Some PTAs provide for a longer length of stay of a maximum of 8 years, or even 15 years in the Singapore-Australia PTA. Neither the GATS schedule nor Singapore's PTA commitments provide for labor market priority tests or quotas for ICTs.

Similar to Switzerland, Singapore's regime for foreign workers is demand-driven (Athukorala 2006). While in Switzerland low-skilled immigration happens mostly in the context of EU free movement, Singapore's immigration policy addresses shortages at both ends of the skills spectrum to fill gaps in the labor market (Ruppert 1999) but with very different regimes for high- and low-skilled work. The country manages foreign workers using a combination of three different instruments: price (levies to be paid by employers hiring foreign workers), quantity (quota on work passes for low-skilled jobs), and education, skill and salary requirements (Yue 2011, 15). Singapore issues Employment Passes for high-skilled labor immigrants, S Passes for middle-skilled work, and Work Passes for low-skilled labor. There are several restrictions on the entry of low-skilled foreign temporary workers (for instance workers in construction, or domestic workers) including restrictions on marrying a Singaporean citizen and applying for permanent residency (Swee-Hock 2012b, 75). Highly-skilled Employment Pass holders

⁷ Data gathered by Harjodh Singh in autumn 2020 unless otherwise indicated.

⁸ Commitments for ICTs are coded in MITA for the following PTAs (year = year of signature): Singapore-New Zealand 2000, Singapore-EFTA 2002, Singapore-Japan 2002, Singapore-United States 2003, Singapore-Australia 2003, Singapore-Jordan 2004, Singapore-India 2005, Singapore-Korea 2005, Singapore-Panama 2006, Singapore-China 2008, Singapore-GCC 2008, Singapore-Peru 2008, Singapore-Turkey 2015, Singapore-Australia 2016, Singapore-EU 2018, Singapore-Sri Lanka 2018, Singapore-United Kingdom 2020.

are provided with more favorable conditions, such as allowing family members to enter. Moreover, employers are not subject to any quota or levy for Employment Pass holders. Since 2014 some restrictions have been imposed to international hiring under the Fair Consideration Framework (FCF). Under the new framework all employers based in Singapore are required to advertise jobs on the government job portal for Singaporeans. The FCF prohibits employers from discriminating candidates on age, race, nationality, and gender; and companies that have a high share of foreign employees or several employees from the same nationality are considered as having adopted discriminatory practices. This makes it more difficult for foreign workers to enter Singapore according to practitioners.⁹

Similar to the Swiss immigration system, Singapore's high-skill immigration rules privilege ICTs: the Employment Pass is used for Professionals, Managers and Executives, analogous to the definition of ICTs in Singapore's GATS schedule. Furthermore, firms who transfer ICTs to a Singaporean branch are not subject to the advertising requirement introduced by the FCF (Ministry of Manpower Singapore 2023b), which gives an advantage to multinational companies disposing of an international workforce. Again, similar to Switzerland, these privileges for ICTs in national law are amplified by further commitments in some PTAs, mainly through a longer duration of stay granted in bilateral agreements.

In summary, both in Switzerland and Singapore, ICTs benefit from exemptions to regular immigration rules in a way that favors multinational companies and their managerial employees. The very wording of the rules in both countries reflects a focus on the types of employees that fall under the GATS/PTA commitments when posted as ICTs. PTAs provide for further privileges for certain nationalities in both countries. This suggests that the circumvention of domestic constraints on migration liberalization through the opening of labor immigration channels in the trade realm persists in national immigration systems.

4. Conclusion

The inclusion of migration in trade agreements has seen a strong proliferation in recent years, with about 75 percent of all PTAs signed between 2010 and 2020 containing at least one provision to facilitate migration. In this chapter, we have looked deeper into this phenomenon by summarizing insights from the novel MITA dataset on migration-content in PTAs around the world signed between 1960 and 2020. Our research shows that PTAs have become an established and expanding venue for international migration governance, however mostly for highly skilled business migrants moving as ICT, BV or CSS between wealthy countries. Looking at the interplay between trade commitments and immigration rules in two developed economies, we found that

⁹ Interview with a Partner in an international Immigration Law firm practicing in Singapore.

the implementation of the GATS commitments fosters such divides by amplifying skill-selectivity and through privileges for multinational companies that can hire via intra-company transfers. Further research should analyze these dynamics in more detail and look more closely at the determinants of the inclusion of migration commitments in PTAs. To better understand the impact of trade agreements on national immigration systems, more case studies and comparative analyses are needed. Furthermore, historical and legal analyses could help us understand how far existing rules reflect changes introduced as a result of the GATS or of individual PTAs.

Acknowledgements

The research presented here is part of a larger project entitled “Migration Governance through Trade Mobilities” based at the nccr – on the move and funded by the Swiss National Science Research Foundation (SNSF, Grant No. 51NF40-182897). We wish to thank Julia Gubler and Laura Mauricio for their excellent research assistance in the coding of migration provisions, and Monja Rinderle for editorial assistance.

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