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Opening-up labor mobility? Rising powers' rulemaking in trade agreements

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Abstract

This article analyzes China's and India's role as emerging rulemakers in one of the most contested fields of international cooperation: labor mobility. It shows how both countries have seized the trade venue to negotiate labor mobility clauses that go well beyond the original preferences of established powers. Whereas India's more vocal claims have faced resistance, China's success in concluding far-reaching bilateral deals with Western countries is explained with stronger domestic regulatory capability and capacity. Maintaining a technocratic approach in trade negotiations, supported by the centralization of relevant competences in the trade ministry and consistently synchronizing external commitments with domestic reforms, China has been able to convey its market power into regulatory influence. As a result, the global standard for negotiating mobility in trade agreements has risen – notwithstanding the enduring stalemate at the multilateral level.

Keywords: China, India, labor mobility, power transition, trade regulation.

1. Introduction

Labor mobility is one of the policy areas where developing and emerging countries have consistently claimed more liberalization than the protectionist “North.” Traditionally detached from the sphere of trade agreements, the mobility agenda was opened with the liberalization of trade in services in the 1980s. The movement of natural persons was included as one out of four modes of how services can be traded internationally in the 1995 General Agreement on Trade in Services (GATS). While current multilateral commitments privilege the positions of Western countries, emerging economies have kept the labor mobility agenda high both at the multilateral level and, more successfully, in bilateral trade negotiations.¹

This study shows that recent Preferential Trade Agreements (PTAs) concluded by China and India espouse a significantly expanded set of rules on labor mobility or “mode 4” compared to both commitments in GATS and EU/US PTAs, thereby raising the standard for future trade talks. Whereas India has been most vocal in its demands, China stands out for having successfully concluded far-reaching deals with Western countries such as Australia, New Zealand, and Switzerland.

This evolution from rule-takers to rulemakers is particularly intriguing given that it takes place in a field – economic migration – that is excessively sensitive in established economies and for which the latter have consistently opposed (binding) international commitments (GCIM 2005; Trachtman 2009; Lahav & Lavenex 2012).

What explains emerging countries' achievements in trade negotiations regarding labor mobility in spite of Western countries' overwhelming protectionism on immigration? What are the scope conditions that sustain China's success, especially compared with India's more vocal but disputed efforts? This study addresses the Special Issue's wider interest in how emerging countries position themselves vis-à-vis existing international

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regulatory regimes and how their gain in market power impacts the global economic order. Drawing on the power transition theory of global economic governance proposed in the introduction (Lavenex *et al.* 2019), we explain emerging markets' transition toward rulemakers in labor mobility via the interplay of international opportunity structures, domestic preference formation, and the development of regulatory capability and capacity necessary to convey growing economic weight into international influence. In a nutshell, we argue that the limited inclusion of "mode 4" in the GATS opened a window of opportunity for addressing labor mobility in a trade context. Sustained by an active epistemic community and by the interests of powerful domestic industries, emerging countries came to recognize their comparative advantages from labor export in service trade. This motivated their engagement in services trade negotiations in the World Trade Organization (WTO), yet with substantive interests that diverged from those of the leading countries, the EU and the US. In pursuing these divergent interests beyond the stalled multilateral arena, China and, to a lesser degree, India successfully seized bilateral trade negotiation venues. Notwithstanding broadly comparable economic power and stakes in liberalization, China's stronger transition toward a regime-transforming regulatory power is explained by two factors. First, greater "regulatory capability" (Cafaggi & Pistor 2015) to articulate regulations that advanced its economic interests and, second, greater "regulatory capacity" (Bach & Newman 2007, 2010) including "legal capacity" (Shaffer & Gao 2018) to implement and enforce such regulations.

The article first introduces the theoretical argument and methodological background of the study. Given that the inclusion of labor mobility in the trade agenda has hitherto received limited scholarly attention, we then briefly retrace the opening up of the window of opportunity for "mode 4" liberalization before analyzing the factors that have contributed to China's and India's respective success in rule-expansion from the Uruguay Round negotiations until today. We retrace how these countries came to develop offensive interests in trade-related labor mobility, which contrasted with the Organisation for Economic Co-operation and Development (OECD) countries' protectionist stance, and then investigate the interplay between international decision-making processes and domestic regulatory structures accounting for successful transition toward international rulemaking. In conclusion, this analysis corroborates the connection between emerging countries' transition toward regulatory states and their international influence in global economic governance. Whereas growing market power enables China and India to exert leverage in trade negotiations, successful transformation from rule-takers to rulemakers takes more than economic power alone. It also hinges on the development of domestic regulatory capability and capacity necessary to formulate, advance, implement, and enforce innovative rules.

2. From market power to regulatory influence

The case of trade-related mobility provisions is a salient example of the transformative impact of power transitions on global economic governance in a field hitherto largely protected from liberalization. The comparative analysis of China's and India's role in expanding these commitments zooms into the conditions under which growing market power translates into international influence. Classic and newer versions of power transition theory, which infer international power from shifts in material capabilities (Organski 1958; Drezner 2007; Xuetong 2011), and much of the contemporary literature on emerging countries (for a recent overview see Newman & Zala 2018) tend to associate power transitions with conflict and contestation over the international order. In contrast, we are interested in the factors that translate material capabilities into the capacity to set new *cooperative* rules, thereby transforming rather than disrupting international regimes – even if these transformations contrast with established powers' original preferences. We define transition from rule-takers to rulemakers "when emerging economies develop preferences that significantly diverge from the status quo defined by the preferences of the established powers yet succeed in getting other members of the global regulatory regime to accept and accommodate those differences" (Lavenex *et al.* 2019; see also Kahler 2013). Our definition of rulemaking is thus limited to the successful transformation of a specific regulatory regime.

Our theoretical approach draws on studies of regulatory power in transatlantic relations that underline the interplay between domestic regulatory structures and influence in international venues (Farrell & Newman 2014). Accordingly, a country's regulatory strength hinges on two factors (Lavenex *et al.* 2019). The first is the country's regulatory capability as the "ability to choose among different regimes and to develop alternatives" (Cafaggi & Pistor 2015, p. 102). This describes the ability to recognize one's interests and to articulate regulations that

advance those interests in respect of existing international constraints. The second factor is regulatory capacity, defined as “regulatory expertise, coherence, and ... statutory sanctioning authority” to implement and enforce (i.e. ensure compliance with) any given set of regulatory rules (Bach & Newman 2007, p. 831). The development of regulatory capability and capacity is facilitated by both external influences such as epistemic communities and by domestic demand such as powerful economic interests (Büthe & Mattli 2011). Epistemic communities and industrial interest groups play a key role in the development, in particular, of regulatory capability, that is in providing the ideas, the expertise, the knowledge, and the economic considerations feeding into the definition of negotiation positions in a way that exploits the scope of choices offered by a given institutional venue. At the same time, both actors also sustain a country’s regulatory capacity by assisting public regulators in the implementation and enforcement of agreed rules. In line with the “New Interdependence Approach” (Farrell & Newman 2014) we thus emphasize the deep interconnection between domestic and international regulatory structures in the global economy. In particular, we highlight the importance of the regulatory state (Levi-Faur 2011) in international rulemaking: a form of decentralized, specialized, and diversified policymaking designed to meet the demands of ever more transnational economic relationships. This perspective echoes liberal theory’s understanding of the international order as a complex “multilayered” structure with inclusionary, socializing dynamics (Ikenberry 2018, p. 20ff.) – yet, as we will argue in the conclusion, without necessarily carrying liberal theory’s wider normative connotations.

Our study is mainly based on original data from multilateral and bilateral PTAs, negotiation proceedings and domestic policy documents and regulations, and 63 semi-structured interviews with public officials from relevant international organizations, the EU, and the governments of the Australia, China, India, Switzerland, the US, as well as members of think tanks, law firms, and other experts. In addition, we use data from the OECD Services Trade Restrictiveness Index as one indicator among others for the consistency between countries’ negotiation positions and domestic policy on “mode 4” liberalization.² Our analysis spans from the inception of mode 4 negotiations in the 1980s until December 2018. The choice to focus on China and India derives from the fact that they are the two largest emerging economies in terms of gross domestic product based on purchasing power parity (World Bank 2018), and that both countries have come to recognize considerable benefits from liberalizing labor mobility in service trade, which allows holding economic power and preferences constant. This selection thus follows a “most likely case” scenario, in which all variables but the key explanatory factor – regulatory strength – are held constant. This approach is particularly suited to investigate the plausibility of a new theoretical framework in a small-N design (Eckstein 1975, pp. 108–113; George & Bennett 2005, p. 75); it is, however, less suited for generalizable claims. Taking a longitudinal perspective on the evolution of the trade-related mobility agenda and its interplay with international and domestic structures, the analysis engages in process-tracing combining exploratory and confirmatory analysis (Rohlfing 2012, p. 222).

3. The road to “mode 4”

The inclusion of labor mobility in the GATS treaty was not self-evident. When the industrial nations, above all the US, decided to address services in the Uruguay Round in the mid-1980s, they faced opposition from the developing countries. Most developing countries are service traders at the margin and not necessary competitive in those sectors which interest the North. India, supported also by Brazil and other developing nations, was at the forefront of the so-called Group of 10 that declined support for the inclusion of services in the new General Agreement on Tariffs and Trade (GATT) round launched in 1985 (Drake & Nicolaidis 1992, p. 64).³ This was one of the first times these countries used their veto-power under the GATT/WTO consensual decision-making principle. It was only under the mediation of the EU that India and its partners eventually agreed to start services negotiations, but separate from the GATT framework (Drake & Nicolaidis 1992, p. 70). It is in this phase that the turn-around occurred: from the moment services negotiations started, India became actively involved, voicing the most ambitious claims on what became “mode 4.” Initially not on the services agenda, export of labor was introduced especially on the insistence of developing countries that called for “symmetrical” commitments in the treatment of comparative advantages (Ghosh 1997, p. 57ff).

The second round of negotiations (1989–1990) was dominated by the clash of interest between developed and developing countries on how to address labor mobility. Western lobby, particularly the European Services Forum

and the US Coalition of Service Industries, had persuaded their trade officials that certain provisions in domestic immigration laws constituted barriers to trade, inhibiting the mobility within multinationals as part of service-trade via foreign establishment (so-called “mode 3”) (Lavenex 2006; Panizzon 2010). This led developed countries to favor limited liberalization of temporary labor, primarily within multinational companies. Developing countries, in contrast, argued for broader openings. A group of eight⁴ presented a proposal which foresaw the (temporary) “cross-border movement of personnel covering unskilled, semi-skilled and skilled labour” (Art. 1(3)1) “without arbitrary distinction relating to skills or position in corporate hierarchies” (Art. 2(3)) and without infringing on national immigration, residence, or citizenship laws (Art. 1(4)).⁵ This proposal not only extended the range of workers falling under the Agreement, but also suggested to “permit firms providing services for which access has been granted under the Framework to recruit personnel from the source, among countries signatory, which is economically most advantageous” (Art. 3(1)).

The result of the GATS was an open compromise reached 1 year after the conclusion of the Uruguay Round in July 1995. Accordingly, “Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services [...]”⁶ This includes both service suppliers employed by a foreign or national firm and independent workers. While the Treaty thus adopted the open formulation favored by the developing countries (irrespective of skills and hierarchical position), the actual scope of liberalization was left to the Members’ specific commitments as laid down in the GATS schedules.

Table 1 gives an overview of categories of service providers differentiating between highly skilled and other persons as well as between “mode 3”-related categories that go along with the establishment of a commercial presence and categories unlinked from mode 3. The bold entries reflect those categories for which the traditional trade hegemony, the EU and US, have entered most commitments under the GATS.

In the Doha round, labor mobility continued to be high on developing countries’ agenda, and for some emerging markets, particularly India, it constitutes “one of the most offensive interest” in trade negotiations overall (Interview 1). In 2008, developing countries, now including a new WTO member, China, formed again a coalition submitting a “Plurilateral request on services”⁷ calling for wider commitments for Contractual Service Suppliers (CSSs) and independent professionals (IPs) – categories de-linked from commercial presence, as well as for the removal of economic needs tests (ENTs).⁸ Statement papers, submitted by India further requested broader sectoral coverage and market diversification, longer periods of stay, elimination of quota restrictions, removal of the wage parity clause, introduction of GATS visas, or a Business Travel Card facilitating mobility (Interview 2). As no progress has been achieved in the Doha negotiations, multilateral commitments on mode 4 are still governed by the 1995 GATS Agreement. Nevertheless, the GATS opened a window of opportunity, which was subsequently seized in bilateral negotiations. Table 2 below summarizes the GATS mode 4 commitments undertaken by the cases analyzed.

4. Rulemaking on labor mobility

While multilateral negotiations have stalled and plurilateral talks within the Trade in Services Agreement do hitherto not include emerging countries, more dynamics are observable in bilateral PTAs (Hufbauer & Stephenson 2007).

Table 1 Categories of service suppliers under General Agreement on Trade in Services (GATS) mode 4

	Highly skilled [†]	Nonhighly skilled
Related to commercial presence	Intra-corporate transferees Business visitors	Trainees
Independent from commercial presence	Traders/Investors	Self-employed/independent professionals
	Contractual Service Suppliers [‡]	

[†]The bold entries reflect those categories for which the traditional trade hegemony, the EU and US, have entered most commitments under the GATS. [‡]These categories cover highly skilled service suppliers (like professionals), but also lower-skilled persons such as technicians, installers, care-workers, and others. *Source:* Compiled by the authors based on the General Agreement on Trade in Services treaty.

Table 2 General Agreement on Trade in Services Mode 4 schedule of specific commitments

Categories	US	EU	India	China
Business visitors	Services salespersons, up to 90 days/personnel engaged in establishment	Services salespersons/personnel engaged in establishment Temporary stay defined by EU MSs	Up to 90 days	Services salespersons up to 90 days
Intra-corporate transferees	3 up to 5 years	Temporary stay defined by EU MSs	Up to 5 years	Up to 3 years
Contractual Service Suppliers			In physical sciences, engineering or other natural sciences Initial 1 year (ext. 3 months)	
Others	Fashion models and specialty occupations, up to 3 years			
Qualifications	Qualifications and/or professional experience required in various sectors	Qualifications and/or professional experience required in various sectors	Necessary academic credentials and professional qualifications; various years of experience required	Domestic licenses/academic credentials/experience for various professions
Social rights	No mention	No mention	No mention	No mention
Visa/immigration	Domestic regulations	Domestic regulations	Domestic regulations	Domestic regulations
Numerical quotas/economic needs tests (ENTs)	Quota of 65,000 for fashion models/specialty occupations	ENTs in sectoral commitments for certain professions	No mention	No mention

MSs, Member States. *Source:* Compiled by the authors based on General Agreement on Trade in Services Schedule of Commitments of the respective countries.

Figure 1 and Table 3 compare the commitments undergone by the US, the EU, China, and India in bilateral PTAs, which include chapters on services. The columns indicate what percentage of a country's total number of PTAs covering services includes commitments on the different categories of service providers.

Figure 1 shows at a first glance that the emerging economies include systematically provisions on "mode 4" in their PTAs, whereas the EU and US have inserted commitments only selectively. Second, agreements concluded by China and India are broader in scope when it comes to the categories of service-providers and in particular categories de-linked from commercial presence ("mode 3," see above). The analysis of scope of commitments for the different categories of persons under these agreements corroborates the prevalence of GATS "mode 4+" commitments in emerging countries' PTAs (see Table 3).

Summing up, Table 3 shows that emerging countries' PTAs cover broader categories of service providers, especially regarding the two categories delinked from "mode 3," and allow for longer periods of stay. Subcategories such as nurses, care workers, language, yoga or arts instructors (in India-Japan PTA) chefs, martial arts, or Mandarin teachers (in China-New Zealand and China-Australia PTAs) represent a great achievement for mobility of CSSs and IPs at all skills levels. Japan has even created a special status of residence for Indian service suppliers involved in teaching Yoga, Indian cuisine, Indian classical music and dance, and English language under the "Instructor" category, with a duration of stay for up to 3 years. Furthermore, social and employment rights for spouses and dependents have been introduced in the India-Japan PTA and the China-Australia PTA (China-Australia Free Trade Agreement [ChAFTA]). This represents another major deepening of "mode 4" commitments that clearly crosses over to immigration policy.

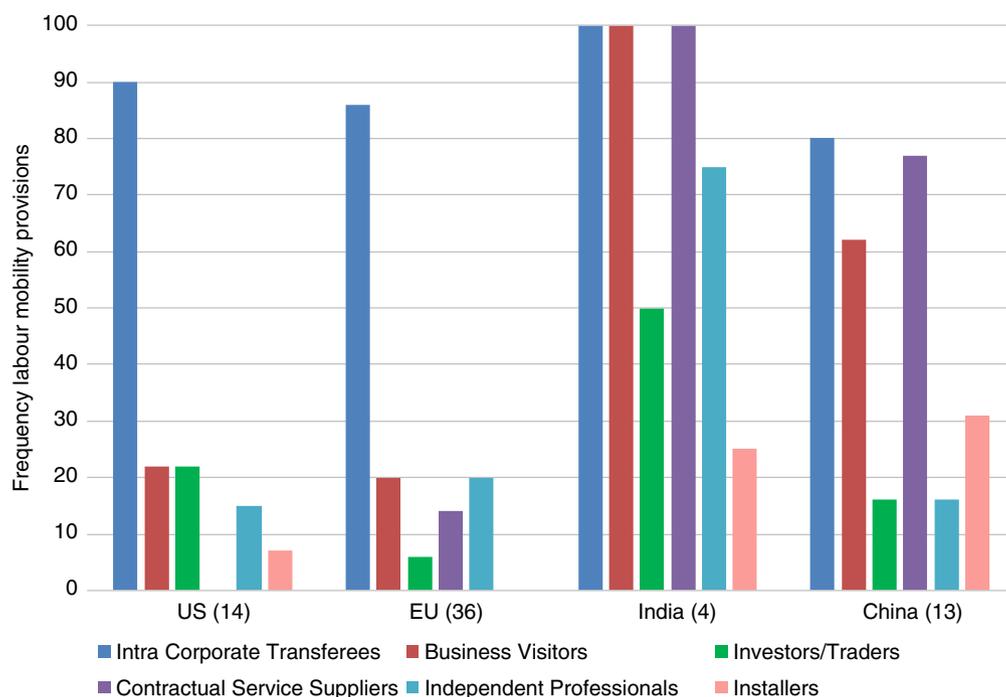


Figure 1 Frequency of Labor Mobility Provisions in Preferential Trade Agreements. *Source:* Compiled by the authors based on coded data from the Preferential Trade Agreements (PTAs) concluded by these countries. Numbers in brackets indicate a country's total number of PTAs covering trade in services.

The PTAs concluded by China, however, stand out because they codify far-reaching commitments by Western countries which were hitherto opposed to such openings, Australia, New Zealand and Switzerland, while India has hitherto succeeded only with other developing and Asian nations.⁹ ChAFTA is the most encompassing agreement. Thereunder Australia has – on top of the points above – agreed on “guaranteed access” for a quota of up to 1800 CSS annually in certain occupations along with up to 5,000 visas granted annually under a separate but connected Work and Holiday Arrangement. In addition, the two countries commit on regulatory cooperation to ensure smooth implementation of the provisions, including expeditious and transparent visa and immigration procedures and cooperation on mutual skill recognition. At the fringes of ChAFTA, moreover, a Memorandum of Understanding allowing for Investment Facilitation Arrangements (IFAs) gives Chinese-owned companies registered in Australia undertaking large infrastructure development projects the possibility to negotiate increased labor flexibilities. In practice, Chinese companies registered in Australia are allowed to import Chinese workers (all skill levels) for the duration of the projects, as long as the capital expenditure exceeds \$150 million. These provisions on labor mobility are all the more interesting since they are generally discussed as the main concessions granted to China under ChAFTA which otherwise privileges Australian exports (Australian Government 2014, Interviews 59 and 60) – even if the volume of visas guaranteed remains limited. It is also worth noting that Chinese commitments under ChAFTA toward Australian workers are much more limited than Australia's concessions to Chinese workers.

Summing up, both China and India have shifted the standard for negotiations on “mode 4” through commitments in PTAs that go beyond the level of liberalization agreed to in the GATS. The main innovations are broader categories of service providers, especially regarding categories delinked from investment or commercial presence (“mode 3”); the renouncement to the use of ENTs or quotas; longer periods of stay; the inclusion of new, not highly skilled subcategories; as well as social and employment rights for spouses and dependents. According to our definition, however, only China qualifies for an effective transition toward an international “rulemaker” because, contrary to India, it has succeeded in negotiating these rules with Western countries against the latter's original preferences (Lavenex *et al.* 2019). These agreements, and in particular those with Australia and New Zealand, also include additional regulatory innovations that sustain the enforcement of these

Table 3 Scope of labor mobility commitments in preferential trade agreements

Categories	US	EU	India	China
Intra-corporate transferees	3 up to 5 years; no economic needs tests (ENTs)	Managers, specialists: up to 3/5 years; graduate trainees: 1 year ENT/num. quotas abolished, unless otherwise specified	1 up to 5 years (10 years in the Free Trade Agreement [FTA] with Malaysia)	Up to 3 years
Business visitors	Up to 90 days	Up to 90 days in any 12-month period	Up to 90 days (may be extended/multiple entry visa)	Up to 6 months
Traders/Investors	Temporary entry	Up to 90 days in any 12 months	90 days (may be extended/ multiple entry visa)	90 days
Contractual Service Suppliers		Up to 6 months, in any 12-month period (up to 3 years with professional experience in the CARIFORUM-EPA) Numerical ceiling and ENTs apply	Up to 1 year (3 years in the FTA with Japan)	Up to 1 year (4 years in China-Australia Free Trade Agreement)
Independent professionals Installer	Temporary entry	Up to 6 months, in any 12 months; ENTs apply	Up to 1 year (3 years in the FTA with Japan) 3 months (may be extended)	3 months (subject to the duration of the contract)
Recognition of qualifications	“Develop mutually acceptable standards and criteria” for recognition	Qualifications/professional experience may be required	“Appropriate educational and professional qualifications”; sometimes work experience required	Education/experience may be recognized
Social rights	No	No (in other trade-related agreements yes, but not in the Preferential Trade Agreements)	Entry and stay for spouses/dependents	Entry and stay for spouses/dependents
Numerical quotas	Yes for certain categories	Yes for certain categories	No	No

CARIFORUM-EPA, Caribbean Community- Economic Partnership Agreement. *Source:* Compiled by the authors based on Trade in Services' Schedule of Commitments of the respective countries.

commitments such as “guaranteed access” for a given number of CSS and working holiday makers; commitment to expeditious and transparent immigration procedures; cooperation on mutual skill recognition; relatively open mobility commitments for investments under the IFAs; and the possibility to negotiate labor flexibilities. Herewith, China has significantly expanded the rules of the emerging trade-mobilities regime.

From a skeptical point of view, one may invoke that these “mode4+” rules are of limited importance given that they affect only a very small fraction of overall labor migration flows. Their regulatory implications, however, are significant. First, access to state territory and the right to work are key prerogatives of the state, and apart from regional free movement regimes and the GATS, no international treaty concedes such rights to migrants (Trachtman 2009; Lahav & Lavenex 2012; Lavenex 2018). Second, the traditional instruments for labor mobility cooperation – bilateral Memoranda of Understanding – are legally nonbinding. Mobility rights in PTAs in contrast are binding and enforceable obligations, which cannot be reversed unilaterally by domestic legislation. Even if they do not necessitate domestic legislative changes at the time of adoption, these commitments “lock in”

provisions that cannot be unilaterally reversed *ex post* (Ekman & Engblom 2019, p. 198; see also Tans 2015). In addition, wider provisions conceded to one partner raise the standard for future PTAs, which is sustained by the Most Favoured Nation principle enshrined in trade law. Finally, these perhaps limited advancements in trade agreements have implications for international cooperation on migration, and have been acknowledged in the Global Compact in Safe, Regular and Orderly Migration adopted by the UN member states in December 2018.¹⁰

Which are the conditions that have allowed China to negotiate these remarkable provisions, and which factors have constrained India's initiatives? Comparing the two cases, the next section highlights that, while sharing large market power as well as exposure to epistemic communities and domestic interest groups, it is in particular China's stronger regulatory capability and capacity that explain its more successful transition toward international rulemaking in labor mobility.

5. Power transitions and regulatory strength

The analysis of "mode 4" negotiations from the Uruguay Round to bilateral PTAs highlights the interplay of international and domestic factors in developing the regulatory capability and capacity to formulate, advance, and codify expansive rules. While international epistemic communities, together with domestic industries, were instrumental in inspiring offensive preferences on "mode 4," successful codification of corresponding norms requested skillful technical negotiations and bundled expertise by national regulators.

5.1. Seizing the trade venue: Epistemic communities and domestic interests

Developing countries, including emerging ones, have long had expansive interests on migration (Lavenex & Jurje 2017). The recognition of the potential benefits of the trade venue and the formulation of suitable proposals, however, were not straightforward. They benefited from an active epistemic community and from the demand of domestic interest groups (Büthe & Mattli 2011) that helped build up the necessary regulatory capability.

Nothing in the early stages of trade in services negotiations suggested that this agenda would be expanded to cover migration issues. As highlighted earlier, developing countries were first opposed to service trade negotiations. Their perspective changed when an influential epistemic community started to propagate the gains for developing countries from including labor liberalization under the new services trade agreement. This epistemic community was composed of academics from both North and South, as well as international experts, in particular from the United Nations Conference on Trade and Development (UNCTAD).

A central figure was Jagdish Bhagwati, an Indian-born Columbia University Professor who later also became advisor to the GATT Secretary General. As early as 1984, he published several articles including one in the *Financial Times* in which he propagated developing countries' comparative advantages linked to labor mobility in service trade (Bhagwati 1984a, 1984b, Bhagwati 1985). These arguments were supported by a large community of economists who calculated the eventual benefits of liberalizing labor under service trade, especially for the non-highly skilled professions (Martin 2006; Sapir 1985; Winters *et al.* 2002). These arguments were quickly taken up by UNCTAD which, in its Seventh Session (1987), published a report arguing that "An obvious strategy for expanding the foreign service earnings of many developing countries is to build upon their traditional advantage of low labor costs" through "the direct export of manpower" or "through the export of a services package which incorporates labor" (UNCTAD 1987, p. 136).

Apart from highlighting the potential benefits of "mode 4" liberalization, these publications also promoted a powerful framing that resonated with overarching norms in the trade arena. First, "mode 4" liberalization was put forward as the legitimate comparative advantage of the South compared to the North's advantages in "mode 3," which constituted in fact the focus of the negotiations. Second, these actors skillfully mobilized references to development concerns in the trade context. Thus, for instance, the UNCTAD report made reference to the 1986 Uruguay Declaration according to which trade negotiations should be conducted "as a means of promoting economic growth of all trading partners and the development of the developing countries" (UNCTAD 1987, p. 133). This epistemic community continued publishing throughout the 1990s and during the Doha round.

The argument of comparative advantages from labor mobility was immediately picked up by negotiators from the developing world, in particular India, who hence became the most fervent promoter of “mode 4” in international negotiations. Even China, although joining WTO only in 2001, co-sponsored the 1990 Communication which, under a section entitled “Increasing Participation of Developing Countries” called for the parties to “recognize that the export potential of developing countries parties depends largely on the liberalization of cross-border movement of personnel covering the entire spectrum of skills from unskilled or semi-skilled to high-skilled professionals. To this end, the developed countries parties shall liberalize their national regimes so as not only to enable developing country firms supplying services abroad to recruit personnel from their own domestic sources, but also to permit service firms to recruit personnel from the source which is economically most advantageous” (Group of Negotiations in Services 1990, p. 8). In the Doha Round, the “Plurilateral request on services” filed in 2008 by 15 developing Members, including China and India,¹¹ followed up on this agenda calling for further commitments for CSS and IPs and for the removal, reduction, or clarification of ENT. Additional statement papers further demanded broader sectoral coverage and market diversification, longer periods of stay, elimination of quota restrictions on visas, elimination of the wage parity clause, transparency of the process and procedures, introduction of GATS visas, and/or a Business Travel Card equivalent to the Asia-Pacific Economic Cooperation version. While the Doha stalemate held up these efforts, a preliminary multilateral success was the adoption of a waiver for least developed countries on Services in 2011 (WTO 2011). In our interviews, negotiators from China and India have consistently supported this developmentalist discourse and highlighted the importance of “mode 4” as a counterbalance to overriding “Northern” interests in other matters dominating trade liberalization talks (Interviews 7, 22, and 23).

Finally, and crucially, the seizing of the trade arena provided a powerful venue for isolating the mobility agenda from the protectionist bias of most countries’ domestic migration policies. Trade talks took negotiations out of the usual migration politics constituency, in particular control-focused home ministries, and gave the lead to trade ministries who in general were not very well coordinated with the home affairs counterparts (Lavenex 2006). This allowed talking about mobility rights in a context relatively shielded from domestic politicized debates. The trade venue further enhanced this de-politicization through its highly technical language with expressions such as “mode 4,” “intra-corporate transferees,” “contractual service suppliers,” etc., terms hardly accessible to the general public and still not very familiar among immigration officials (Interviews 2, 10, 20, 38, and 61). A related element is the assertion that GATS applies to trade in services, not labor migration, and that the two should be kept strictly separate. One of the Indian trade officials interviewed in Delhi underlined this point, arguing that there is a difference between migration and temporary mobility, and it is very important to “keep it [migration] outside the trade negotiations” (Interview 33). Indeed, the GATS Annex specifies that the treaty does not apply to “measures affecting natural persons seeking access to the employment market” of another country [or] measures regarding citizenship, residence, or employment on a permanent basis” in another country. However, the categories of persons falling under the GATS can usually be considered as migrant workers under International Labour Organization Conventions and require work and residency permits from the receiving country. As the OECD/World Bank/International Organization for Migration report on Trade and Migration (2004, p. 12) notes “while GATS is not an agreement on migration, the wider and more ambitious the scope of GATS mode 4, the more it enters the migration debate.”

Whereas epistemic communities helped framing the migration agenda in trade relevant language, thus enhancing emerging countries’ regulatory capability, domestic export-oriented industries sustained the formulation of corresponding preferences and explain India’s and China’s slightly different priorities regarding the different categories of service suppliers. The Indian position has been strongly influenced by the information technology (IT) business and in particular its interest association, the National Association of Software and Services Companies, India’s most influential services lobby group. This explains India’s emphasis on liberalizing IPs, the category fitting IT professionals (Interviews 24, 25, and 33). In China, the opening up of new markets by large infrastructure projects (construction) and in the extraction industry (mining and natural resources) across Africa, Latin America, Southeast Asia, and Australia by state-owned enterprises (SOEs) and, increasingly, private companies has led to the constitution of important economic interest groups. These have been actively supporting the Ministry of Commerce’s (MOFCOM) agenda in achieving greater mobility in particular for CSS (Cooke *et al.* 2018; Interview 54). In addition, some specific professions falling under the IP category,

such as chefs and martial arts teachers, have become an export sector in itself (Interviews 7 and 23; see also Tse 2013).

In sum, multilateral trade negotiations opened up a window of opportunity for advancing labor mobility goals. The seizing of this opportunity was spurred by an active epistemic community and domestic interests lobbying for “mode 4” liberalization. Whereas, for various reasons, progress within the WTO/GATS has been stalled, China and India have pursued this agenda in bilateral and plurilateral PTAs.

5.2. Going bilateral: Regulatory capability and capacity

Growing market power has empowered both China and India to pursue their preferences in bilateral trade negotiations. Yet the review of PTAs above highlights that China has been particularly successful in expanding the standard on “mode 4” commitments. In examining the factors that have contributed to this success it should be emphasized that labor mobility poses particular challenges to regulatory capability and capacity. It is a complex “behind the border” issue raising the competence of different state departments (labor, commerce, social, home, justice, and foreign affairs) – that frequently articulate different and contrasting priorities for regulation. In addition, migration has become highly politicized across OECD countries and a very sensitive issue in electoral politics (Van der Brug *et al.* 2015). In this context, governments have shown great reluctance to tie their hands to international rules (Lahav & Lavenex 2012) and cooperation has only progressed when the issues have been kept limited in scope and at a technical level, focusing on operational aspects rather than on questions of norms and values (Newland 2010).

The sensitivity of migration issues implies that international rulemaking in this area requires strong regulatory capability, that is the capability to articulate proposals that advance domestic interests in a way that is consistent with the scope of action given in the respective institutional setting. The multilateral trade arena provided a context in which emerging countries, aided by epistemic communities and domestic lobby groups, learned to frame labor export goals in a language and institutional context different from the traditional migration discourse. Beyond this commonality, however, the analysis of bilateral negotiations and concurrent domestic developments highlights differences in terms of both regulatory capability and capacity that have limited India’s influence compared to China. Two aspects stand out. On the one hand, the Indian government has remained attached to a politicized and confrontational developmentalist immigration discourse, which has constrained negotiators’ capability to define positions consistent with the technocratic approach of service negotiations. On the other hand, the lack of coordination between domestic authorities and trade negotiators, the strong reliance on external think-tanks focused on economic rather than legal expertise, and the lack of coherence between external demands and domestic regulations have limited India’s regulatory capacity and credibility as a trade partner. In contrast, China’s more limited trade-related claims, its centralized negotiation structure, the reliance on well-trained trade law specialists, together with the synchronization of external negotiation positions with internal reforms have boosted its regulatory capability and capacity, thereby explaining its greater success as “rulemaker.”

India has a long reputation of advocating the concerns of developing countries in multilateral institutions (Narlikar 2010) and of emphasizing the development potential of more liberal migration laws – quite independently from the trade context (Mashayekhi 2000; Sharma & Bhogal 2017, p. 13, Interviews 15 and 18). This position has been sustained by Indian economists (e.g. Baghwati 1984a, 1984b, 1985; Chanda 2002) who, maintaining close ties with influential think tanks, have kept underlining the economic gains from wage disparities in labor mobility. Herewith, India has taken a very clear offensive political stance on international migration which contrast starkly with the technocratic, limited and focused nature of liberalization talks in the context of trade in services. This political stance is part of a wider foreign policy orientation centered on developmentalist positions within the Ministry of Foreign Affairs (Narlikar 2010). And thus, although trade officials from the MOFCOM have emphasized how important it is to “keep it [migration] outside the trade negotiations” (Interview 33, *op cit.*) – the developmentalist migration discourse has tended to dominate in practice.

Inconsistencies in Indian negotiation positions can be traced back to the early years of the Uruguay Round where it called for a “right of residence” under “mode 4,” although it was made clear from the outset that negotiations should not tackle immigration issues and only cover temporary mobility (Drake & Nicolaïdis 1992, p. 73). Similarly, in its negotiations with the EU, India has repeatedly revoked its positions and has tabled unrealistic

requests (see also Sharma & Bhogal 2017). Negotiation documents and our interview suggest that the EU went quite far in trying to satisfy Indian demands, it even offered national quotas per EU Member State on the admission of CSSs and IPs – a deal that would by far have exceeded what the EU has hitherto been willing to offer in any trade or migration agreement. However, to the EU negotiator's surprise, this offer was not received with enthusiasm (Interviews 24 and 27). The reason given was that the quotas offered did not match India's country preferences (as we were told: 60,000 service providers sent to the Czech Republic, for instance, would not weight up for a limited quota for the UK; Interviews 27, 28, and 29). After rejecting the EU offer, Indian negotiators advanced the even more ambitious demand for an EU-wide work permit or visa, extending free movement rights within the EU to Indian workers – a request that clearly exceeds the current division of competence over migration in the EU and therefore had no chances of getting admitted. In addition, Indian negotiators also addressed politically sensitive points such as flexibility regarding the wage parity condition and labor standards (Interviews 24, 25, and 33), thus clearly overstepping the limited technocratic scope of GATS “mode 4” commitments. The neglect of legal constraints corroborates the observation that in India trade policy has hitherto been dominated by economists – both in the government and government-sponsored think tanks, and that the build-up of legal expertise and capacity has been pursued with less emphasis (Shaffer *et al.* 2015).

A second and related element which constrains India's advancement toward international rulemaking is the incongruence between its external demands and domestic policies, which undermines both its regulatory capacity and credibility in negotiations. While asking for greater openings, India considers migration a foreign policy only; its domestic policy focuses on emigration and the links with the diaspora (Rajan 2017) and lacks a policy on immigration. Similarly, Indian negotiators have been asking for mutual recognition of qualifications to facilitate cross-border service delivery. Yet, several interviewees have emphasized that even within India itself it would be probably impossible to get its professional associations such as the architects or accountants embark on a Mutual Recognition Agreement (Interviews 18 and 25).

The inconsistency between external demands and internal policies is also reflected in the institutional structures dealing with the matter. In 2004 a “Ministry of Overseas India Affairs” was established, charged with the promotion of Indian labor abroad, supplemented in 2009 with a “Center on Migration,” an internal think tank. While the lead trade negotiator is, like in other countries, the trade ministry, its positions have been challenged by this and other Ministries and think tanks, resulting in the ambiguous, sometimes incoherent negotiation positions highlighted above. In line with India's broader developmentalist stance, the Ministry of Overseas Indian Affairs has been arguing for a “comprehensive labor migration framework” in PTAs, promoting the liberalization of labor flows well beyond the limited scope of trade in services and related categories of workers (Interviews 23 and 35). The trade ministry, in contrast, has understood early on that the biggest challenge is “to make them [the Western negotiators] understand that this is just to deliver efficient services and not about migration” (Interview 35).

Faced with these ambiguities, trade partners have evoked lack of trust in India's regulatory capacity as a reason to be hesitant on “mode 4” concessions (Interviews 3, 24, and 39). This concern is corroborated by the OECD index on Countries' Services Trade Restrictiveness with regard to Movement of People. The index ranges from 0 (completely open) to 1 (completely closed) and was compiled based on domestic legislation (related to labor and immigration laws for this case) in the respective countries across 22 services sectors. As indicated in Figure 2, India consistently falls well behind the EU, US, and China in terms of domestic liberalization throughout the period of observation (2014–2017). While India's closeness score toward movement of people is in line with other developing countries, China stands out for its domestic openness, overtaking both the EU and the US in the most recent ranking (with a score of 0.48 compared to 0.51 each for the EU/US, see Fig. 2).

This data underscores our interpretation that China's greater success in rulemaking has benefited from stronger regulatory capacity defined as the “ability to implement and enforce” (international) commitments (Lavenex *et al.* 2019). Regulatory capacity over migration in China has a long tradition, starting with the highly regulated system of internal migration (Interviews 53 and 54). Since the Mao era, the hukou system of residence registration has been used as a means to steer and restrict internal migration and mobility within China (Chan 2013). In the context of the country's economic reforms in the early 1980, policies on the admission of foreign workers were introduced at a remarkable speed – especially if one considers that between 1949 and 1977, China's borders were practically closed. The Law of Nationality (1980) and the Law on the Control of Exit and Entry of Aliens

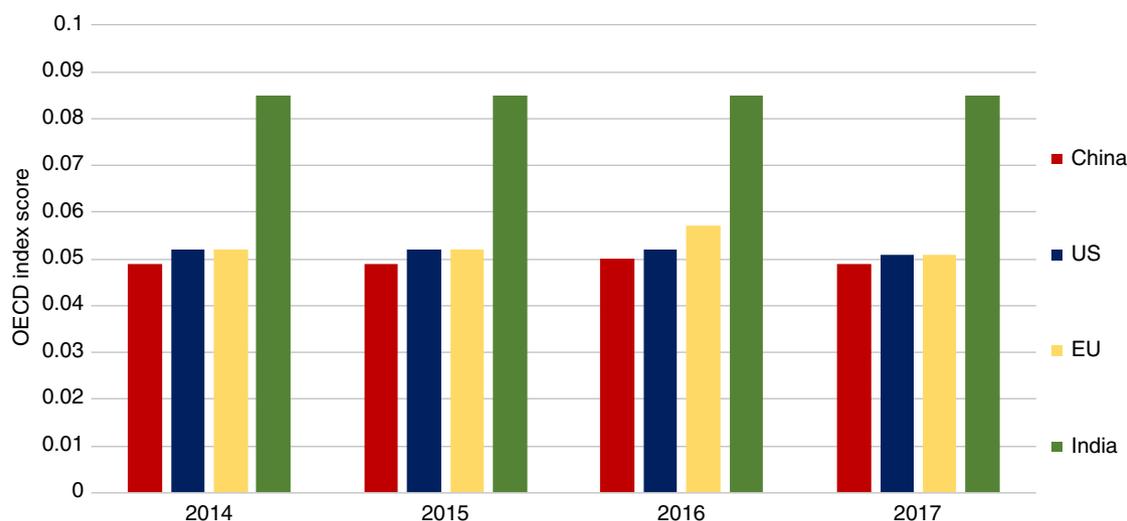


Figure 2 OECD Services Trade Restrictiveness Index: Restrictions to Movement of People (2014–2017). *Source:* Compiled by the authors based on the Organisation for Economic Co-operation and Development Services Trade Restrictiveness Index (data available at: <http://stats.oecd.org/Index.aspx?DataSetCode=STRI#>)

(1985) laid the basis for the regulation of immigration (Liu 2013). The 2013 Exit and Entry Administration Law and the 2017 amendment of the Administrative Rules on the Employment of Foreigners in China overhauled this legislation. In line with developments in major migrant destination countries, new regulations put the emphasis on enhancing the country's capacity to attract foreign talent and to expedite immigration procedures, including greater coordination between local and central authorities (Watters *et al.* 2018). This law also raised penalties for overstays, thus sustaining the authorities' capacity to enforce regulations. The 2017 reform moreover introduced a points-based system favoring applicants with high skills and Chinese language proficiency. One year later, China announced the creation of an immigration bureau further centralizing and streamlining the issuing of work permits (Ekman & Engblom 2019, p. 183f.). As a result, China counts today among the most attractive destinations for skilled migrants (Barslund & Busse 2018, p. 80). This regulatory capacity is mirrored in China's policy toward outward movement and the system it has put in place to facilitate and control overseas travel by Chinese citizens and workers. One central instrument is the system of Approved Destination Status Agreements (ADS) signed between the Chinese Government and (approved) destination countries. Originally introduced in the 1980s with the legalization of outward travel as a means to conserve scarce foreign exchange for development-oriented expenditures, the ADS, while facilitating access to foreign visas – at the same time serves to control both Chinese travellers and the choice of countries which may benefit from the increasingly lucrative Chinese tourist market (Tse 2013). Apart from tourists, also work abroad has been actively steered by the Chinese state. The first labor export scheme was launched in 1993 under Japan's "technical intern training program," a scheme designed to promote industrial and vocational skills in the fields of manufacturing and various service sectors. One year after WTO accession, China launched its "go overseas" policy which, next to outward foreign direct investment and the undertaking of foreign construction and engineering projects, also covered the export of Chinese employment or labor services. In the following, the number of workers leaving China under the categories of "overseas labor services" and, in particular, "overseas contracted projects" increased considerably. While the first category existed prior to WTO accession and is based on agreements between domestic and overseas corporations, intermediary agencies, and private employers, "overseas contracted projects" refer to domestic corporations – mostly SOEs – providing labor abroad that accompanies a contract for construction projects in foreign countries (Zhang 2018, p. 740f).

In sum, developments in migration and labor export policy corroborate the more general observation that China has by and large implemented its trade commitments, including in the field of trade in services (Shaffer & Gao 2018; Interviews 15, 23, and 64). Put differently, the Chinese government has undoubtedly developed strong regulatory capacity over labor mobility. China not only has a strong capacity to uphold, implement, and enforce

regulations. Compared with India, it has also developed stronger regulatory capability to articulate regulations that advance its economic interests while respecting the limits imposed by the negotiation arena. As with other areas of trade policy, negotiation competence on “mode 4” has been centralized in the trade ministry MOFCOM which is at the same time responsible for defending China’s trade interests abroad and for overseeing domestic compliance with trade obligations (Interviews 23 and 55; see also Shaffer & Gao 2018). This centralization avoids institutional competition and the formulation of incoherent position as was observed for India above. MOFCOM has operated in coordination with major stakeholders, such as the China International Contractors Association, which also provides training to Chinese workers preparing for delivering services abroad, and the All-China Federation of Trade Unions. Thereby, the main industries benefiting from liberalization have been united behind the negotiating position and were able to voice their preferences (Interviews 45, 53, 55, and 56).

China’s negotiation positions have not only greater coherence with domestic policies, and hence higher credibility; they are also much more consistent with the narrow confines of trade-related mobility clauses. In contrast to India’s open and politicized engagement with migration more generally, Chinese government officials have tended to give a relatively sober and humble statement of their ambitions. When asked about the motivations behind China’s offensive demands on “mode 4” the negotiators we interviewed justified their positions mainly strategically “as means to obtain balance in negotiations” with their OECD counterparts (Interview 7). They also argued that despite the abundance of competitive labor especially in low- to middle-skill segments “considering that 20 million Chinese are joining labor market every year, ‘GATS mode 4’ is not a realistic solution” to domestic employment problems (Interview 7). This rather cautious position has helped to uphold a purely trade-related justification for mobility openings and thereby to gain partner countries’ concessions – in spite of significant contestation, such as in Australia (Interviews 57, 58, 59, and 60).¹²

6. Conclusion

The case of trade-related labor mobility clauses is illustrative of emerging countries’ shift from rule-takers in trade policy more generally and rule-contesters in the area of service trade liberalization toward regime-transforming rulemakers in the sub-area of “mode 4” labor mobility. The trade arena thereby provided a venue within which China and, to a lesser degree, India were able to address their comparative advantage over labor relatively shielded from politicized immigration debates in the West. Even though the scope of persons benefiting from these mobility norms remains limited – the codification of legally binding commitments facilitating the intake of foreign workers in the context of trade in services constitutes a significant evolution both for the international trade regime and the rules governing international migration. The expansion of mobility norms in PTAs locks in domestic commitments and alters the status quo for future trade negotiations. It thus amounts to a transformative step in the evolution of the trade-mobility regime.

As our analysis of “mode 4” negotiations from their inception in the WTO/GATS to their expansion in PTAs shows, the seizing of the trade venue was far from self-evident, so was the eventual success of ensuing negotiations. It was the intellectual work of epistemic communities, aided by UNCTAD, which formulated the crucial ideational link between labor mobility and trade in services. These external actors, together with domestic export interest, contributed to the regulatory capability necessary to formulate national preferences on “mode 4.” Based on “Western” concepts of reciprocity, symmetry of negotiation and exploitation of comparative advantages, this framing allowed the inclusion of labor mobility in a relatively open and flexible formulation in the 1995 GATS agreement. While scheduled commitments under the GATS have remained more limited than what the general “mode 4” provisions would have allowed for, they opened a window of opportunity for further trade talks. Growing market power has enabled emerging countries to seize this window of opportunity and “shop” for mobility clauses in bilateral PTAs. Both China and India have promoted GATS “mode 4+” rules in their PTAs; but only China has succeeded in codifying such rules with Western countries which initially opposed such commitments. While it may be argued that China’s market power is stronger than India’s, our analysis has shown that this was not the main factor accounting for the differential success. Nor did differences in domestic economic pressure play a role, as both countries benefited from sizable and well organized industry lobbying for “mode 4,” with close connections to the government. Instead, the decisive factors accounting for China’s greater success were its stronger regulatory capability and capacity. This expressed itself at several levels. In contrast to India’s highly

political emphasis on the general developmentalist stakes in labor migration, China has pursued a narrow and technocratic approach to “mode 4” respecting the confines of the trade perspective, thus circumventing heated migration debates. China’s demands in trade negotiations were also more coherent with internal legislative and administrative structures, thereby guaranteeing greater capacity to implement and enforce commitments. To this contributed the experience with the highly regulated internal and external migration regimes, the synchronization of domestic regulatory reforms and with trade negotiations, the systematic development of legal expertise including the bundling of authority to negotiate and oversee international commitments and their implementation within the trade ministry MOFCOM.

Although any strong theoretical claim would necessitate a greater number of case studies, our findings imply that the consequences of power transitions on global (economic) governance cannot be understood without taking into account the complex interplay between domestic regulatory structures and international influence. Many rules of the global economy, including recent ones in sensitive fields like labor mobility, have been framed in highly technical terms. The domestic development of regulatory capability and capacity consistent with these overarching rules is therefore a necessary step in emerging countries’ evolution from rule-takers to rulemakers in global governance. Whereas economic power shifts change countries’ relative weight in international negotiations, regulatory power shifts go along with broader domestic transformative processes. In these processes, adaptation to the regulatory structures characteristic of established regimes and the development of capabilities and capacities to transform these structures go hand in hand.

In conclusion, our analysis of the expansion of labor mobility within the international trade regime underscores the expectation that “[r]ising powers will aim to place their imprint on reconstructed global institutions, and that stamp will differ markedly from a status quo supported by the incumbent powers” (Kahler 2013, p. 711). Rather than defying liberal trade rules, as much of the literature portends (Newman & Zala 2018), the transformation we observe reinforces market liberalization over protection. Whether this extension of markets also strengthens the “post-World War II liberal order” and the human rights values associated with it, however, is a different question. Free trade agreements have embraced labor mobility as one commodity among others, and not from the perspective of the migrant workers. As our analysis shows, both China and India share this economic perspective focused on comparative advantages. What is traded under the acronym “mode 4,” however, are people, and greater opportunities for temporary market access do not necessarily mean more protection for these peoples’ social and economic rights.

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Endnotes

- 1 We would like to thank the four reviewers as well as Tim Bütke, Ivo Krizic, Omar Serrano, and Lei Wang for constructive comments on previous versions of this article.
- 2 See <http://sim.oecd.org/default.aspx> (last accessed 1 July 2019).
- 3 The other members of the Group of 10 were Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania, and Yugoslavia.
- 4 The eight participants were: Argentina, Columbia, Cuba, Egypt, India, Mexico, Pakistan, and Peru.
- 5 Communication from Argentina, Columbia, Cuba, Egypt, India, Mexico, Pakistan, and Peru: Annex on Temporary Movement of Services Personnel, GATT Document MTN.GNS/W/106 of 18.6.1990.
- 6 Para. 3 of the Annex on Movement of Natural Persons Supplying Services under the GATS.

- 7 The requesting members were: Argentina, Brazil, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Morocco, Pakistan, Peru, Thailand, and Uruguay; Target Members: Australia, Canada, EC, Iceland, Japan, New Zealand, Norway, Switzerland, and the US.
- 8 An economic needs test means that those entering the country must provide evidence that there is “economic need” for their service, which is not being met from domestic suppliers.
- 9 The case of Japan is particular because inserting these clauses in the PTA with India has been interpreted as a means to satisfy a demand for foreign labor, in particular for health care by circumventing restrictive immigration laws (see Ford & Kawashima 2016).
- 10 See Objectives 2d and 18c of the Global Compact, online at https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf.
- 11 The requesting Members were: Argentina, Brazil, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Morocco, Pakistan, Peru, Thailand, and Uruguay. The target Members were: Australia, Canada, EC, Iceland, Japan, New Zealand, Norway, Switzerland, and the US.
- 12 See documentation, for example on <http://aftinet.org.au>.

References

- Australian Government (2014) *China-Australia Free Trade Agreement*. Factsheet: Movement of Natural Persons. [Last accessed 1 July 2019.] Available from URL: www.dfat.gov.au/fta/chafta.
- Bach D, Newman A (2007) The European Regulatory State and Global Public Policy: Micro-Institutions, Macro-Influence. *Journal of European Public Policy* 14(6), 827–846.
- Bach D, Newman A (2010) Transgovernmental Networks and Domestic Policy Convergence: Evidence from Insider Trading Regulation. *International Organization* 64(3), 505–528.
- Barslund M, Busse M (2018) Labour Migration to Europe: What Role for EU Regulation? In: Carrera S *et al.* (eds) *Legal Pathways to Europe*, pp. 74–86. CEPS, Brussels.
- Bhagwati J (1984a) Splintering and Disembodiment of Services and Developing Countries. *The World Economy* 7(June), 133–144.
- Bhagwati J (1984b) Why Are Services Cheaper in the Poor Countries? *Economic Journal* 94(June), 279–286.
- Bhagwati, J. (1985) GATT and Trade in Services: How We Can Resolve the North-South Debate, *Financial Times*, 27 November 1985.
- Büthe T, Mattli W (2011) *The New Global Rules. The Privatization of Regulation in the World Economy*. Princeton University Press, Princeton.
- Cafaggi F, Pistor K (2015) Regulatory Capabilities: A Normative Framework for Assessing the Distributional Effects of Regulation. *Regulation and Governance* 9(2), 95–107.
- Chan KW (2013) China, Internal Migration. In: Ness I (ed) *The Encyclopedia of Global Human Migration*. Blackwell Publishing, Basingstoke.
- Chanda R (2002) *Globalization of Services: India's Opportunities and Constraints*. OUP, Oxford.
- Cooke FL, Wang D, Wang J (2018) State Capitalism in Construction: Staffing Practices and Labour Relations of Chinese Construction Firms in Africa. *Journal of Industrial Relations* 60(1), 77–100.
- Drake WJ, Nicolaidis K (1992) Ideas, Interests and Institutionalization: Trade in Services and the Uruguay Round. *International Organization* 46(1), 37–100.
- Drezner D (2007) *All Politics Is Global: Explaining International Regulatory Regimes*. Princeton University Press, Princeton, N.J.
- Eckstein H (1975) Case Studies and Theory in Political Science. In: Greenstein F, Polsby N (eds) *Handbook of Political Science*, Vol. 7, pp. 79–138. Addison-Wesley, Reading, MA.
- Ekman AO, Engblom S (2019) Expanding the Movement of Natural Persons through Free Trade Agreements? A Review of CETA, TPP and ChAFTA. *International Journal of Comparative Labour Law and Industrial Relations* 35(2), 163–200.
- Farrell H, Newman A (2014) Domestic Institutions beyond the Nation State. Charting the New Interdependence Approach. *World Politics* 66(2), 331–363.
- Ford M, Kawashima K (2016) Regulatory Approaches to Managing Skilled Migration: Indonesian Nurses in Japan. *The Economic and Labour Relations Review* 27(2), 231–247.
- George A, Bennett A (2005) *Case Studies and Theory Development in the Social Sciences*. MIT Press, Cambridge, MA.
- Ghosh B (1997) *Gains from Global Linkages. Trade in Services and Movements of Persons*. Macmillan and IOM, London.
- Global Commission on International Migration (GCIM) (2005) *Migration in an Interconnected World: New Directions for Action*. Final Report, GCIM, Geneva. [Last accessed 19 July 2019.] Available from URL: https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/GCIM_Report_Complete.pdf.
- Group of Negotiations on Services (1990) Communication from Cameroon, China, Egypt, India, Kenya, Nigeria and Tanzania on a Multilateral Framework of Principles and Rules for Trade in Services, Document MTN.GNS/W/101 of 4 May 1990.
- Hufbauer G, Stephenson S (2007) Services Trade: Past Liberalization and Future Challenges. *Journal of International Economic Law* 10(3), 605–630.
- Ikenberry JG (2018) Why the Liberal World Order Will Survive. *Ethics & International Affairs* 32(1), 17–29.

- Kahler M (2013) Rising Powers and Global Governance: Negotiating Change in a Resilient Status Quo. *International Affairs* 89(3), 711–729.
- Lahav G, Lavenex S (2012) International Migration. In: Carlsnaes W, Risse T, Simmons B (eds) *Handbook of International Relations*. Sage, London.
- Lavenex S (2006) The Competition State and the Multilateral Liberalization of Skilled Migration. In: Favell A (ed) *The Human Face of Global Mobility, International Highly Skilled Migration in Europe, North America and the Asia-Pacific*. Transaction Publishers, New Brunswick, NJ.
- Lavenex S (2018) Regional Migration Governance - Building Block of Global Initiatives?. *Journal of Ethnic and Migration Studies* 45(8), 1275–1293.
- Lavenex S, Jurje F (2017) EU/US Migration Policy Towards Emerging Countries: Regulatory Power Reversed? *European Foreign Affairs Review* 22(Special Issue), 157–176.
- Lavenex, S., Serrano, O., and Büthe, T. (2019) Power Transitions and the Rise of the Regulatory State: Global Market Governance in Flux, Introduction to this Special Issue, Regulation & Governance, forthcoming.
- Levi-Faur D (2011) Regulation and Regulatory Governance. *Handbook on the Politics of Regulation* 1(1), 1–25.
- Liu L (2013) China: Immigrant Legislation and Laws. In: Ness I, Bellwood P (eds) *The Encyclopedia of Global Human Migration*. Wiley, London.
- Martin, L. (2006) GATS, Migration, and Labour Standards, International Institute for Labour Studies, Discussion Paper 165, International Labour Organization, Geneva.
- Mashayekhi, M. (2000) GATS 2000 Negotiations, Options for Developing Countries, T.R.A.D.E. Working Papers, 9, South Centre.
- Narlikar A (2010) New Powers in the Club: The Challenges of Global Trade Governance. *International Affairs* 86, 717–728.
- Newland K (2010) The Governance of International Migration: Mechanisms, Processes, and Institutions. *Global Governance* 16(3), 331–343.
- Newman E, Zala B (2018) Rising Powers and Order Contestation: Disaggregating the Normative from the Representational. *Third World Quarterly* 39(5), 871–888.
- OECD (Organisation for Economic Co-operation and Development)/The World Bank/International Organization for Migration (2004) *Trade and Migration: Building Bridges for Global Labour Mobility*. OECD Publishing, Paris.
- Organski AFK (1958) *World Politics*. Alfred A. Knopf, New York.
- Panizzon, M. (2010) Trade and Labour Migration, GATS Mode 4 and Migration Agreements, Friedrich-Ebert-Stiftung, Dialogue on Globalization Occasional Paper, N° 47, Geneva.
- Rajan, A. I. (ed.) (2017) *India Migrations Reader*, London: Routledge.
- Rohlfing I (2012) *Methodologies of Case Studies*. Palgrave Macmillan, Basingstoke.
- Sapir A (1985) North-South Issues in Trade in Services. *The World Economy* 8(March), 27–42.
- Shaffer, G. and Gao, H. (2018) China's Rise: How it Took on the U.S. at the WTO, *University of Illinois Law Review*, 115–184.
- Shaffer G, Nedumpara J, Sinha A (2015) State Transformation and the Role of Lawyers: The WTO, India, and Transnational Legal Ordering. *Law & Society Review* 49(3), 595–629.
- Sharma, M. S. and Bhogal, P. (2017) India and Global Trade Governance: Redefining its “National” Interest, ORF Occasional Paper no. 134.
- Tans, S (2015) *Service Provision and Migration, EU and WTO Service Trade Liberalization and Their Impact on Dutch and UK Immigration Rules*, dissertation, Enschede: Ipskamp Drukkers.
- Trachtman JP (2009) *The International Law of Economic Migration: Toward the Fourth Freedom*. W.E. Upjohn Institute for Employment Research, Kalamazoo, MI.
- Tse TSM (2013) Chinese Outbound Tourism as a Form of Diplomacy. *Tourism Planning & Development* 10(2), 149–158.
- UNCTAD (1987) Proceedings of the Seventh Session; Geneva 9 July – 3 August 1987. Volume III: Basic Documents, TD/352 (Vol. III).
- Van der Brug W, D'Amato G, Ruedin D, Berkhout J (eds) (2015) *The Politicization of Migration*. Routledge, London.
- Watters G, Feng X, Tang Z (2018) China Overhauls Work Permit System for Foreigners. *Industrial Law Journal* 47(2), 263–277.
- Winters, L.A., T.L. Walmsley, and Z.K. Wang (2002) Negotiating the Liberalization of the Temporary Movement of Natural Persons, Discussion Papers in *Economics* No. 87, University of Sussex, Brighton.
- World Bank (2018) The World Bank, World Development Indicators. [Last accessed 18 Oct 2018.] Available from URL: <https://data.worldbank.org>.
- WTO (World Trade Organization) (2011) WTO ministers adopt waiver to permit preferential treatment of LDC service suppliers, News release 17 December, 2011.
- Xuetong Y (2011) International Leadership and Norm Evolution. *The Chinese Journal of International Politics* 4(3), 233–264.
- Zhang H (2018) Understanding the International Mobility of Chinese Temporary Workers. *The World Economy* 42, 738–758.

7. APPENDIX

List of interviews

Interview 1: European Commission, DG Justice, Freedom and Security, Brussels, 6 October 2009.

Interview 2: European Commission, DG Justice, Freedom and Security, Brussels, 9 October 2009.

- Interview 3: European Commission, DG Trade, 7 October 2009.
- Interview 4: European Commission, DG RELEX, 6 October 2009.
- Interview 5: Mexican Delegation to the WTO, Geneva, October 2012.
- Interview 6: Indian Delegation to the WTO, Geneva, October 2012.
- Interview 7: Chinese Delegation to the WTO, Geneva, October 2012.
- Interview 8: Brazilian Delegation to the WTO, Geneva, October 2012.
- Interview 9: European Commission, DG Home, International Affairs Section, 17 September 2012.
- Interview 10: European Commission, DG Home, International Affairs Section, 17 September 2012.
- Interview 11: European Commission, DG Home, Directorate B “Immigration and Asylum”, 17 September 2012.
- Interview 12: European Commission, DG Trade, Directorate B “Services and Investment, Intellectual Property and Public Procurement”, 18 September 2012.
- Interview 13: European External Action Service, 18 September 2012.
- Interview 14: European External Action Service, 18 September 2012.
- Interview 15: WTO, Trade in Services Division, Geneva, January 2013.
- Interview 16: UNCTAD, Geneva, February 2013.
- Interview 17: Mexican Delegation to the WTO, Geneva, February 2013.
- Interview 18: Indian Delegation to the WTO, Geneva, February 2013.
- Interview 19: European Commission, DG Trade, Directorate B “Services and Investment, Intellectual Property and Public Procurement”, 28 February 2013.
- Interview 20: European Commission, DG Home, International Affairs Section, 27 February 2013.
- Interview 21: Ministry of the Economy, Mexico, 19 March 2013.
- Interview 22: Ministry of Commerce, India, June 2013.
- Interview 23: Ministry of Commerce, China, September 2013.
- Interview 24: EU Indian Delegation, New Delhi, India, January 2014.
- Interview 25: Confederation of Indian Industry (CII), New Delhi, India, January 2014.
- Interview 26: The Indian Council for Research on International Economic Relations (ICRIER), New Delhi, India, January 2014.
- Interview 27: Ministry of Commerce, New Delhi, India, January 2014.
- Interview 28: WTO Studies Centre, New Delhi, India, January 2014.
- Interview 29: Indian lawyer expert, New Delhi, India, January 2014.
- Interview 30: Academic expert, Jawaharlal Nehru University, New Delhi, India, January 2014.
- Interview 31: Ministry of Overseas India Affairs, New Delhi, India, January 2014.
- Interview 31 and 32: Federation of Indian Chambers of Commerce and Industry (FICCI), New Delhi, India, January 2014.
- Interview 33: Department of Commerce, New Delhi, India, January 2014.
- Interview 34: Institute of Chartered Accounts, New Delhi, India, January 2014.
- Interview 35: Department of Commerce, New Delhi, India, January 2014.
- Interview 36: National Association of Software and Services Companies, New Delhi, India, January 2014.
- Interview 37: Indian Institute of Management Bangalore, February 2014.
- Interview 38: European Commission, DG Home, International Affairs Section, September 2013.
- Interview 39: European Commission, DG Trade, Services Division, September 2013.
- Interview 40: European Commission, DG Trade, EU-US Negotiations, September 2013.
- Interview 41: European Service Industries Association, September 2013.
- Interview 42: WTO Secretariat, March 2014.
- Interview 43: USTR, Washington DC, March 2014.
- Interview 44: Congressional Research Services CRS, Washington DC, March 2014.
- Interview 45: Coalition of Service Industries, Washington DC, March 2014.
- Interview 46: US Mission to the WTO/USTR Geneva, March 2014.
- Interview 47: Trade Ministry Switzerland, SECO, Bern, August 2015.
- Interview 48: Swiss Embassy Beijing, September 2015.
- Interview 49: Center for China and Globalization, Beijing, September 2015.

- Interview 50: World Bank China Office, Beijing, September 2015.
- Interview 51: Trade Section, EU Delegation China, Beijing, September 2015.
- Interview 52: International Labour Organization, Beijing Office, September 2015.
- Interview 53: International Organization for Migration, Beijing Office, September 2015.
- Interview 54: Beijing Institute of Technology, Professor of Migration Law, September 2015.
- Interview 55: China University of International Business and Economics (UIBE), Professor of Trade Law, September 2015.
- Interview 56: Private company, Regional Global Mobility Department, Beijing, September 2015.
- Interview 57: Australian Embassy in Beijing, October 2015.
- Interview 58: Swiss Embassy in Beijing, March 2018.
- Interview 59: Trade Ministry, Australia, Canberra, July 2018.
- Interview 60: Immigration Ministry, Australia, Canberra, July 2018.
- Interview 61: Trade Ministry Switzerland, SECO, Bern, September 2018.
- Interview 62: European Commission, DG Home, International Affairs Section, September 2018.
- Interview 63: European Commission, DG Trade, Services Division, September 2018.