

TOWARDS GREATER MOBILITY: MOVEMENT OF SERVICE SUPPLIERS IN EAST ASIA

Shin-yi Peng^{*}

ABSTRACT

Mode 4 is by far the smallest mode of service delivery in terms of both trade flows and the volume of scheduled concessions inscribed under the GATS. Most entries concern executives, managers and specialists, and almost all these focus explicitly on intra-corporate transferees. The issue here is the ability of developed countries to send their specialists to developing countries, while developing countries are unable to send their less skilled labor to developed countries. East Asia provides an interesting case study on the issues of mode 4. The different levels of per capita income and labor force deployment suggest that East Asian countries are in a position to take advantage of their comparative advantages and maximize any resulting benefits through mode 4 trade. Therefore, it is important to explore the technical issues of the GATS, with a particular attention on East Asian WTO Members. With regard to whether or not the GATS covers the employment of non-nationals by domestic firms to supply services domestically, this paper concludes that the GATS rules should not come into play in the absence of an international transaction. With regard to whether the GATS architecture on which mode 4 is based sets limits on the level of skill, this paper concludes that the Annex constitutes a de facto discrimination against blue collar workers, by substantially confining market access to natural persons with no professional skills, although nothing in the GATS explicitly limits the scope of natural persons

^{*} Shin-yi Peng, Associate Professor, Institute of Law for Science & Technology, National Tsing Hua University (Hsinchu, Taiwan).

to a particular skill level. With regard to the "de-linking" issue, this paper suggests that sector-specific commitments should be pursued to complement the horizontal commitments, so that mode 4 liberalization can be separated from the problems related to the liberalization issue of mode 3. Based on these conclusions, this paper further argues that although mode 4 liberalization can be justified economically, the measures affecting mode 4, which are at the center of trade, migration, and labor, prove to be sensitive. The question that goes to the root of the controversy is whether it is politically desirable for countries in the region to further deregulate these already sensitive measures. Some suggestions on both substantive and procedural aspects are presented at the end of this paper.

KEYWORDS: *GATS; Mode 4; movement of natural persons; service suppliers; East Asia*

I. INTRODUCTION

The temporary movement of natural persons to supply services, otherwise referred to as "Mode 4,"¹ is one of the four forms of supplying a service under the General Agreement on Trade in Services (GATS). As laid out in Article I:2 of the GATS,² the GATS divides trade in services into four modes of supply for the purposes of making commitments. Among them, mode 4 is defined as the supply of a service by a supplier of one Member of the World Trade Organization (WTO), through the presence of natural persons in the territory of another Member on a temporary basis. While it is still not entirely clear as to exactly what this means, the commitments of WTO Members under this mode of supply via presence of

¹ The GATS divides services trade into four modes of supply: Cross-border supply (Mode 1), consumption abroad (Mode 2), supply via commercial presence (Mode 3) and supply via presence of natural persons (Mode 4).

² General Agreement on Trade in Services, art. I:2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1167 (1994) [hereinafter GATS]. For the purposes of this Agreement, trade in services is defined as the supply of a service: (a) from the territory of one Member into the territory of any other Member; (b) in the territory of one Member to the service consumer of any other Member; (c) by a service supplier of one Member, through commercial presence in the territory of any other Member; (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.