



Liberalization of Professional Services: Challenges & Opportunities, Risks and Safeguards

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Skills Mismatch in the Economy

- Skills mismatch has been prevalent in the Sri Lankan economy since the mid-1960s
- Dudley Seers report of 1971 published by the ILO shed light on the issue
- Supply oriented education system inherited from the British colonial rule had run out of steam as demand for new skills started emerging in the economy
- Secondary and tertiary education reforms were required to cope up with new skills demand
- While the secondary education system underwent changes, the tertiary education, which has been dominated by the state, showed only minor changes



Impediment to Investments

- Skill gaps worsened with liberalization of the economy in 1977 with the private sector venturing into new business activities
- Rapid changes in technology also contributed to widening the skills gap
- Many Sri Lankan skilled-labour migrate overseas for jobs to seek higher wages/better living conditions/etc. This also has contributed to skill shortages
- The skill shortages have been reported in various industries/services
- The Sri Lankan education system is not producing the required skills rapidly to meet the growing demand
- Thus FDI shying away, certain local investments will not take place

Sri Lanka's Contemporary Skill Gaps (Examples)

- ICT Sector: ICT graduate shortage is 468 (National ICT Workforce Survey, ICTA, 2014)
- Health Sector:
 - 12,000 nurses, 600 radiographers, pharmacists, medical laboratory technicians, etc. (WB, 2014)
 - Acute Shortage of around 7,000 doctors (Minister of Health, 2011)
- Tourism: train personal requirement is 30,000 per annum but training placement is 4,500 (WB, 2014)
- Construction: annual requirements of craft workers 15,000 but current capacity 11,000 (National Planning Department, 2014)

Trading of Labour Services: Exporting and Importing Skilled & Un-skilled Labour

- Sri Lanka today is an exporter of not only skilled-labour but also of un-skilled labour and many countries in the Middle East, East Asia, and North East Asia have become top destinations
- Immigration and Emigration rules and regulations are adequate to handle skilled and un-skilled labour exports although room exists for un-skilled labour exploitation by unscrupulous recruiting agencies
- Sri Lanka was an importer of un-skilled labour during the British Colonial period -- when the Kandyan peasantry refused to work in the plantations, the rulers decided to import labour from South India
- Sri Lanka also imported skilled labour from Britain to construct roads, railway lines, develop the administration, judiciary, etc., during the British colonial times
- However importation of both skilled and unskilled labour ended with Sri Lanka gaining independence and immigration rules tightening
- Importing of foreign skilled labour needs reconsideration at present in the context of the widening skills gap

Importing Foreign Skilled-Labour

- How can Sri Lanka import skilled labour now ?
- Under the existing immigration rules and regulations we can import skilled labour as and when we need – English teachers, Medical doctors, Cooks (Thai, Chinese, etc), Construction Engineers, Cricket Coaches, etc.
- Basically employer issues a letter, a Council approves it, it goes to the Immigration Department for approval and issuance of job permit visa, and the contract is issued



Filling the Skills gap via Mode 4

- Filling the skill gaps one-by-one is a cumbersome process
- Professional labour should be readily available when starting or expanding an industry
- With globalization, companies increasingly need to deploy personal on a short-term basis to meet specific project and contract requirements in different countries often within short deadlines
- Companies are frustrated with visa procedures that can delay entry of foreign skilled workers by months resulting in loss of business
- Improve GATS Mode 4 commitments to expedite the movement of professional labour



GATS Framework

- Under GATS Temporary Movement of Labour these gaps could be quickly filled
- GATS defines global rules and regulations governing trade in services
- Among the flows of services is labour (skilled) and it is categorized as Mode 4
- Under services liberalization in the WTO, which takes place under the GATS framework, Mode 4 liberalization should take place on a multilateral level

The Basics

- Mode 1 : Cross border services – e.g. Energy, international telephony, BPO
- Mode 2 : Consumption abroad – e.g., Tourism, education.
- Mode 3 : Commercial presence – e.g., Foreign banks operating
- Mode 4 : Temporary Movement of natural persons – e.g., Foreign doctors working
- Like trade in goods – involves removal of barriers that prevent exchange of goods between suppliers and consumers in different countries, liberalization of services involves the reduction of restrictions on market access (MA) and reducing discrimination against foreign suppliers (NT)



Structure of the Agreement

- GATS-Plus, Positive List, Request–Offer, Progressive Liberalization
- Flexibility - can keep restrictions on Market Access (e.g. Number of suppliers, volume/value of supply, equity limits) and National Treatment (subsidies for local suppliers, licensing, exams, etc.)
- Less than full reciprocity can be given if there is asymmetry between the two sides
- Commitments can be altered after 3 years subject to compensation

GATS-Plus under RTAs and FTAs

- But due to the standstill of the Doha Development Agenda, not much is happening in services liberalization at the multilateral level, let alone Mode 4, in the WTO
- Thus most nations are engaging in services liberalization under regional trade arrangements (RTAs)/bilateral free trade agreements (FTAs) under GATS V – which is a GATS-Plus format
- As indicated earlier, GATS framework work on “offers” and “request” method with conditions on market access and national treatment



E.G., Offers/Request Matrix

	Mode 1	Mode 2	Mode 3	Mode 4
Market Access	yes	no	yes	yes
National Treatment	yes	no	no	yes
Other Requirements	nil	nil	Should be above US\$ 1 billion	Restrict 10 per annum

GATS-Plus under an FTA

- For example, in a bilateral FTA, identifying areas with skill gaps in the country and offering them with national treatment to the trading partner and where there are surplus skills in the country – requesting them for market access in the trading partner is the way how it works
- Offers could be subject to a quota of intake
- Most services liberalization agreements have a separate chapter for Mode 4 liberalization or for the Temporary Movement of Natural Labour (TMNL) given the complicated nature of liberalization

TMNL Agreements

- It will define a “Juridical Person”, Business Visitors (BV), Intra-Corporate Transferees (ICT), Contractual Service Suppliers (CSS), Independent Professionals (IP)
- Let us look how it was designed under proposed India-Sri Lanka Comprehensive Economic Partnership Agreement (CEPA) in the context of “offers” made by India to Sri Lanka



Indian Offers to Sri Lanka – Horizontal Commitments

- Horizontal Commitments – applies to all sectors scheduled
- Certain market access restrictions in Mode 4 but access for:
 - Business Visitors (BV) - for sale or to secure agreements for trade in services or for employees of a Juridical Person (JP) to set up commercial presence – 180 days and the BV will not receive remuneration in India
 - Intra-Corporate Transferee (ICT) - employee of a JP in SL who is transferred to a JP in India owned or controlled by the JP in SL, for temporary provision of services – limited to managers, executives and specialists. Maximum 5 years.



Indian Offers to Sri Lanka – Horizontal Commitments

- Contractual Service Supplier (CSS)- employee of a JP owned or controlled by SL who travels to India to perform a service pursuant to a contract between the JP in SL and the client in India. CSS for periods up to 1 year. Engineering, Travel Agency, hotels and restaurants, Computer and Related Services (CRS)
- Independent Professionals (IP) – natural persons traveling to India or short periods up to 1 year to perform a service pursuant to a contract between him and the client in India. Same sectors as above.
- These conditions apply to all the relevant mode 4 commitments in the specific schedules



Indian Offers – Specific Commitments

- Generally liberal in modes 1, 2 and 3 with restrictions in mode 4.
- Almost all mode 3 commitments with requirement of “FIPB approval in case of prior collaboration in that sector in India”
- Major sectors and sub-sectors offered:
 - Accounting – mode 1 and 2
 - Architecture – 1,2, 3 (JV), 4(BV, ICT)
 - Urban Planning – ibid.
 - Engineering – 1,2,3,4 (BV, ICT, CSS, IP)
 - Medical and dental – 1 (provider to provider and 2nd opinion), 2, 3 (max 74% equity and latest tech), 4 (BV, ICT)
 - Veterinary services – 1,2,3,4 (BV, ICT)

Indian Offers – Specific Commitments

- Computer and Related – 1,2,3,4 (BV, ICT, CSS, IP)
- R&D (natural sciences) – 3, 4 (BV, ICT)
- R&D (agricultural sciences) - 1
- R&D social sciences – 1,2,3,4 (BV,ICT)
- Real estate services – 1,2,3,4 (BV,ICT)
- Rental and leasing services – 3,4 (BV,ICT)
- Management consultancy 1,2,3,4 (BV, ICT)
- Technical testing and analysis 1,2,3,4 (BV, ICT)
- Services incidental to energy distribution
1,2,3,4 (BV,ICT)
- Maintenance and repair of equipment 1,2,3,4
(BV, ICT)
- Building cleaning services 1,2,3,4 (BV, ICT)
- Packaging services 1,2,3,4 (BV, ICT)
- Convention services 1,2,3,4 (BV, ICT)



Quality of Skilled-Labour

- Quality of the skilled labour is also an issue
- Old fashion method was foreign skilled workers had to sit for local examinations before starting practice
- Under GATS, this step is avoided by signing Mutual Recognition Agreements (MRA) – where degrees from a list of Training Institutes /Universities will be mutually recognized by the respective Professional Associations in the two countries for permitting practice



Sri Lanka Scenario at Present for Skilled Foreign Labour

- At present, professional foreign labour come with foreign investment; in other words, Mode 4 is linked to Mode 3
- The approval for such labour (quantity wise) is done by the appropriate/concerned regulatory body
- BOI may approve the quantity of foreign labour under an investment project coming under it; the Central Bank may approve the quantity of foreign labour for a foreign bank coming to invest in Sri Lanka (e.g., Apollo Hospital, ICIC Bank)



Sri Lankan Offers on Mode 4 to India under the Proposed CEPA

- All Mode 4 labour movements will be linked to Mode 3
- Mode 4 will be de-linked from Mode 3 only if the SL industry or service sector makes a request for additional skilled-labour
- Two sectors where such requests were made were IT and Maritime Naval sectors
- Computer and Related Services – Modes 1,2,3 and 4 (only for expert trainers and technical staff at 10% of total staff for each US\$ 100,000)
- Maritime maintenance and repair – Modes 1,2,3,4 (naval architects, skilled welders and fitters, project/ship managers, repair engineers, automation engineers and technicians)



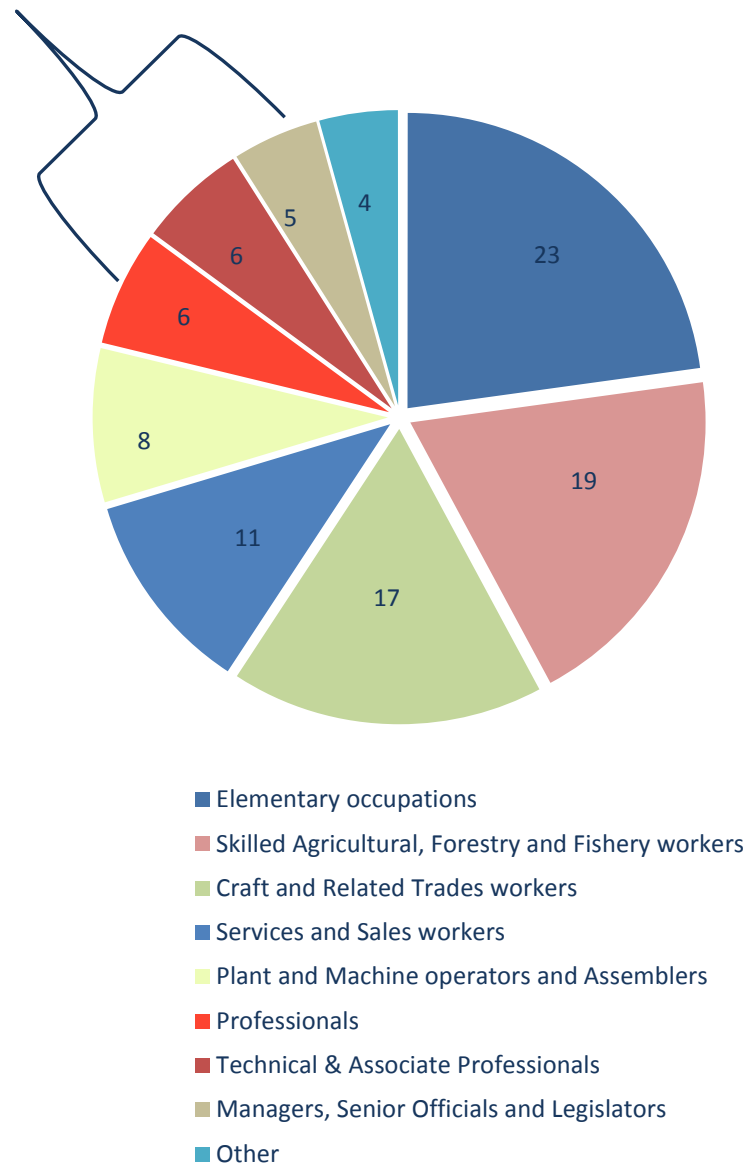
Advantages of the GATS-Plus Framework in FTAs

- If GATS binding is clearly defined, it becomes easier to attract FDI even without tax incentives
- For GATS to work effectively, the regulatory framework has to be put in place
- Safeguards are build in the Modes/market access/national treatment
- The matrix should be monitored effectively
- The floodgates will be opened for local professionals to lose jobs is not the case

Employed Population by Occupation in Sri Lanka (2013)

17% of the Employed Population belong to the Professional category according to the Department of Census and Statistics. 2014. *Sri Lanka Labour Force Survey Annual Report 2013.*

Colombo: Department of Census and Statistics



Advanced levels of Skilled-Labour Mobility

Advanced Methods of Professional Labour Movement

- EU
- US H1B Visa
- Australia – Temporary Business Residents
- These systems work as they have strong regulatory frameworks governing them



Agreements Providing Full Mobility of Labour

- EU provides for a broad right to labour mobility- treaty gives every EU citizen a fundamental, personal right to move and reside freely within the territory of the member states (subject to some limitations and conditions).
- In addition, treaty provisions apply to movement of workers, the self-employed, and service suppliers, including those posted temporarily to another member state
- No visas or work permits are required, although residence permits may be
- Even within the very liberal EU regime, there are exceptions to free movement on the grounds of public policy, public security, or public health
- Limits on the freedom to provide services also can be determined by the degree of liberalization in a given service sector. Special conditions apply for transport, banking, and insurance services, and some public service posts may be reserved for nationals.



US HB1 Visa

- Concerned with the Admission of workers with “specialty occupations” admitted on the basis of professional education, skills, or equivalent experience
- A U.S. employer must petition for the applicant to be granted such visa
- The US employer submitting a petition must offer the alien a position that is a skilled professional one related to the alien’s professional background
- The alien must be professionally qualified to fill the job duties (four-year university degree or equivalent experience)
- H1B visas are for an initial period not exceeding three years, with extensions of another three years possible for an overall total of six years
- Numerical limitations apply to H1B visas. The annual H1B cap was set at 195,000 for fiscal 2001–03. Since 2004 the cap has been lowered, the congressionally mandated cap stands at 65,000
- Eight out of the top 10 industries employing H1B beneficiaries are involved in trade in services:
 - computer-related services, education, management/scientific and technical consulting, architecture/engineering, telecommunications, scientific research, accounting, and securities and commodity contracts intermediation and brokerage



Australian: Temporary Business Residents

- The temporary residence business (long-stay) visa (457) allows employers to recruit key personnel from overseas to overcome temporary skilled labour shortages
- Included in this category are personnel (executives, managers, and specialists) for companies operating in Australia; personnel from offshore companies seeking to establish a branch in Australia, participate in joint ventures, or fulfill a contract awarded to an offshore company
- The temporary residence business (long-stay) visa covers stays of more than three months but not more than four years. Visa holders are required to pay Australian taxes, but they are not eligible for welfare or national public health coverage
- Most business (long-stay) visa holders are employed in professional or management positions, and they tend to have salary rates generally above the Australian average



Safeguards

- Limiting of the Visa Period
 - Under NAFTA, the United States provides “Trade NAFTA” (TN) visas for professionals, which are valid for one year and are renewable yearly
 - H1B Visas are initially restricted to 3 years and could be extended for a maximum of a further 3 years
 - Australian Temporary Business Residents can only stay for a maximum of 4 years
- Quota Limits
 - H1B Visa scheme has a cap of 65,000 professionals a Year
 - NAFTA TN Visas has a cap of 5,500 professionals a year from Mexico
- Limiting entry of Professionals to specified sectors identified of having acute skills shortages
- Requiring hiring companies of justify the hiring of foreign professionals on ground of significantly contributing to the national economy
 - Under the H1B Visa Scheme only accredited companies (mostly fortune 500 companies) are allowed to petition for H1B Visas



Concluding Remarks

- Professional Labour Liberalization is best done under the GATS framework in developing countries
- We see that out of the 360 odd RTAs/FTAs operating at present, 90 have been already converted to CEPAs, CECAs or EPAs – all of them have the Mode 4 liberalization component under GATS-Plus (www.wto.org)
- It may be time for Sri Lanka to look at this option seriously

Thank you



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