

MODE 4 AT WORK

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Mode IV in Services Trade and WTO

Trade in Services
\$4.68Tn
(2015)

General Agreement
on Trade in
Services (GATS)
(1995)

Very little done for
facilitating Mode IV
movement

Current rules are just
placeholder and do not
instil confidence or invoke
fear of non-compliance

Estimates: current flows of tech professionals from India

#	Countries	Min	Max	Working age popln (Mn)	% of working popln
1	USA	75000	120000	206.5	0.05%
2	UK	15000	30000	36.3	0.06%
3	Canada	8000	12000	24.2	0.04%
4	Australia	5000	12000	16.2	0.47%
5	Singapore	5000	12000	3.6	0.22%
6	Middle East	5000	12000		
7	Malaysia	2000	3000	14.5	0.01%
8	South Africa	3000	6000	18.5	0.02%
9	China	3000	6000	998	0.00%
10	Japan	2000	4500	75.5	0.00%
	Total	138000	215500		



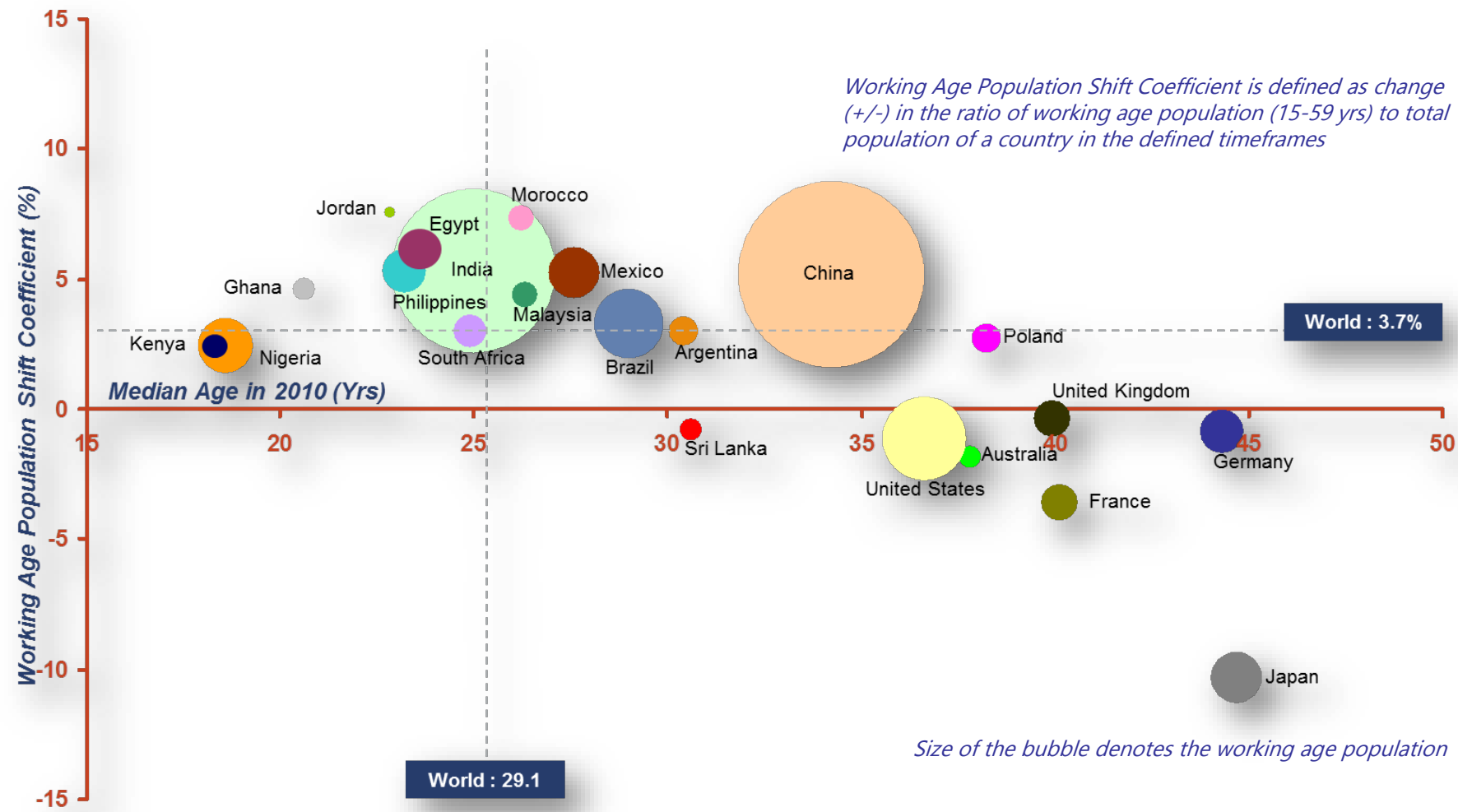
No.	Countries	Range	Estimates
1	Thailand	>2000	2000
2	Sweden	> 1500	1500
3	Ireland	> 1000	
4	Philippines	> 1000	
5	Finland	> 1000	6000
6	Norway	> 1000	
7	Brazil	> 1000	
8	Mexico	> 1000	
9	Italy	> 500	
10	Chile	> 500	
11	Argentina	> 500	
12	Spain	> 500	5000
13	Poland	> 500	
14	Peru	> 500	
15	Israel	> 500	
16	Uruguay	> 500	
17	Portugal	> 500	
18	Czech Republic	> 500	
	Total		14500

- Estimates suggest Global corporations use 150K-225K Indian tech professionals across geo's each year
- 99% of the transfers in tech world happen in Intra-company transfer (ICT) mode

Source: Fred Economic research ; other numbers are just markers and not even estimates

Demographic trends show severe shortages in the long run in most of the developed countries

India on the other hand is blessed with abundant talent and enjoys a sweet spot

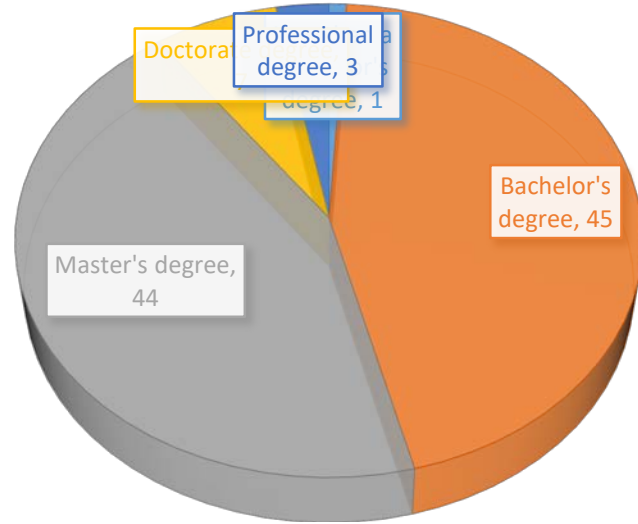


By 2030, India will have additional workforce of 200 million

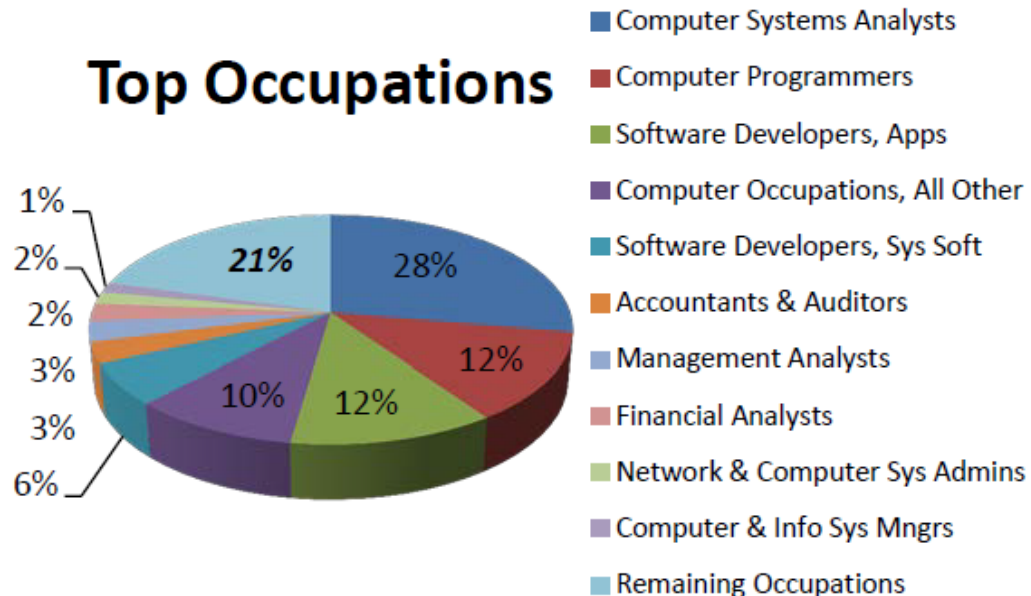
Source: NASSCOM –Tholons Services outsourcing Atlas - Tholons Analysis and data from the World Bank Population Prospects 2012 edition

Skill set in demand undergoing change

LEVEL OF EDUCATION (H-1B, 2017)



Top Occupations



Skill sets in demand are changing fast, speciality occupations such as:

- Data Scientist, Analytics, modelling
- Robotics Process Automation, Drones..
- Block chain
- Artificial Intelligence
- Sensor technologies
- Cloud Architects

Are now in great demand

Problems faced by the Service Providers for Mode IV transfers under the current regime

Facts related with Mode IV transfers

1. Current commitments that are open ended, inadequate, ambiguous, amorphous and hardly enforceable - do very little to promote trade in services
2. Most member-states chose the definition / interpretation that suits their purpose rather than following the commitments in spirit
3. Many countries have chosen a convenient interpretation of the existing commitments to suit local compulsions thereby undermining GATS commitment
4. There have been deliberate attempts to equate 'movement for Trade in services' to 'Migration' issue
5. Countries have used various other levers to deny entry or benefits to family and dependants to discourage / or curb movement of skilled resources
6. There have been some instances in the past where intimidation tactics have been used to instigate fear and thereby discourage people from taking these jobs or transfers to some member-states

Amorphous or inadequate definitions and absence of any guidelines

- Only one country, partially mentions the visa category to be accorded under its GATS commitment; but puts many conditions such as high fees to dilute the commitments
- Another member, carves out separate category in their domestic regime [Tier V, Temp workers, International agreements] but dissuade use of this category altogether
- Some members have taken commitments under ICT category but don't have any ICT visas and instead use visas that are governed by domestic policy regime
- For other member-states, there is no clarity on the visa and numerical quotas thereof that will be accorded under their respective commitments

Questions

- How do we enforce such rules when there is little clarity? Or How do we raise dispute?
- Why can't the rules-making body ask member-states to lend more clarity on the existing commitment?

Subjective, discretionary elements of definitions create huge problems

Some members-states use restrictive definitions to curb movement under Mode IV – examples

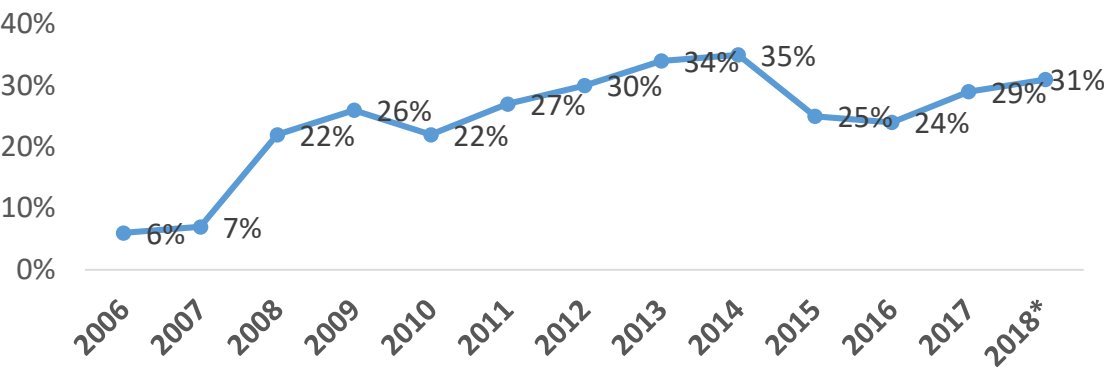
Category	Member #1	Member #2
Managers	Only Senior Managers who run the company, attend Board meetings, etc. i.e. CEO	Only Senior Managers who run the company, attend Board meetings, etc. i.e. CEO
Specialists or Specialised knowledge	<p>Someone with Proprietary Knowledge and Advanced knowledge E.g. as quoted from interactions with the Embassy Officials in Delhi</p> <ul style="list-style-type: none">- Distinct or uncommon- More than ordinary but not extraordinary- “Not all doctors are specialists only those who serve in ICU can be termed as specialists”- “How can there be more than 10,000 specialists in the company?”- “Is there are 10,000 specialists than what is uncommon knowledge in their possession”	Demonstrate specialized knowledge and advanced level of expertise [both]

Subjective determination is often exercised arbitrarily, instead of relying on the representation made by an employer defeating the purpose of any real market access

Use of subjective & discretionary elements leads to high denial rates of visas - examples

L-1B Denial Rates

(Source: USCIS data ;DHS data – NA)



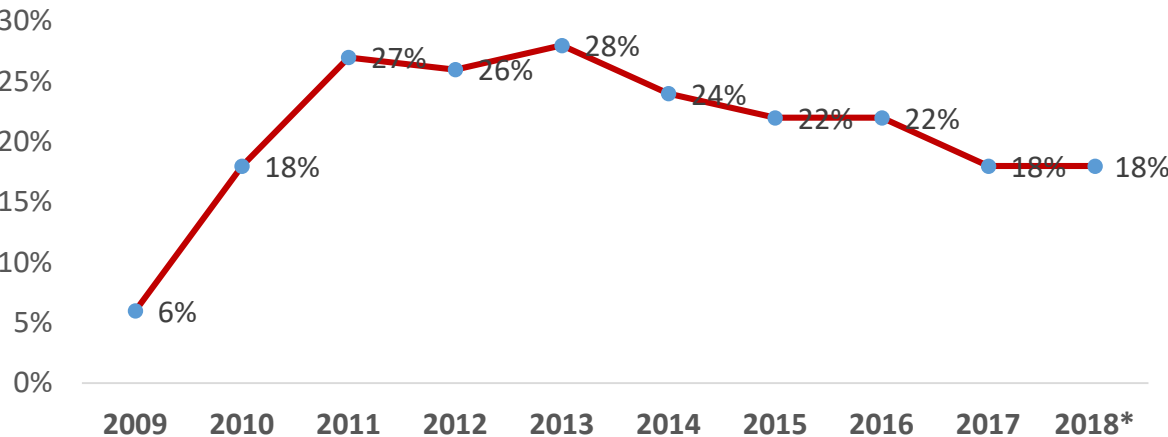
L-1B Denial Rates India Vs Rest

	India	ROW
FY 2017	46.00%	15.50%
FY2016	41.80%	13.60%
FY 2015	-	-
FY 2012-2014	55.70%	13.20%

L-1B Denial Rates by Country: FY 2012-2014

Country of origin	Total	Denials	Denial Rate
India	25296	14104	56%
Canada	10692	424	4%
UK	2577	410	16%
China	1570	347	22%
Japanese	1145	171	15%
German	1100	161	15%
France	753	140	19%
Mexico	740	157	21%

Canada ICT visa rejections in India



Source: US data – NFAP ; Canada data: NASSCOM member survey

Must be noted that visa fee are not refunded in case of a rejection ; US visa could invariably cost \$8k-\$10K

H-1B usage by Indian companies ; Myth Vs Reality

Petitions approved (FY2017)	365,682	Country by birth	%	Country by birth	%
Initial Employment	108,101	India	74.2	Computer-related occupations	69.1
Continuing Employment	257,581	China	9.3	Occupations in Architecture, Engineering	8.1
		Canada	1	Occupations in Administrative Specializations	5.6

New approved H-1B Initial petitions for top 7 India-based Companies : FY 2015-2017

Company	FY 2015	FY 2016	FY 2017	FY 2017(Change from FY 2016)	FY 2017 Change from FY 2015)
TCS	4674	2040	2312	+272 (+13%)	-2362(-51%)
Infosys	2830	2376	1218	-1158(-49%)	-1612(-57%)
Wipro	3079	1474	1210	-264(-18%)	-1869(-61%)
HCL America	1339	1041	866	-175(-17%)	-473(-35%)
Larsen & Toubro	830	870	479	-391(-45%)	-351(-42%)
TechM	1576	1228	2233	+1005(+82%)	+657(+42%)
Mindtree	464	327	150	-177(-54)	-314(-68%)
Total	14792	9356	8468	-888(-9.5%)	-6324(-43%)

Visa interviews turn into questioning sessions leading to predetermined conclusion

Excerpts of comments made by Visa Officers during interview

- *“You are lying, you are going there to live and work & not training”*
- *“Tell us the truth or we will spoil your career. Don’t be loyal to your employer; you should save your career & not employer”*
- *“Your colleague has accepted that you all are going to work there so you should also accept otherwise face dire consequences”*
- *“We will ban you for 99 years”*
- *“We have mails from your senior officials that you will be working there”*
- *“Your company is running a scam”*
- *“You Indians are here to steal jobs of our kids”*
- *“Your employer is to be black listed. Save your career and accept that you are going there to work”*

Indian tech workers being treated badly at POE

- March, 2011, Indian national employee of a technology consulting firm visiting a Member for three weeks, questioned, searched, handcuffed and escorted by Marshalls to his seat in the plane for a return flight.
- August, 2010, at an International Airport, an Indian national employee of a technology consulting firm was travelling on a valid B-1 Visitor status to engage in requirements analysis. The CBP officer **refused admission**, stating that the *B-1 Visa was not an appropriate visa category to engage in requirements analysis*
- There were many such instances in the recent past where handcuffing in front of spouses, tiresome questioning, deportation and mistreatment meted out tech professionals to instigate fear

Question: How and where does the rules-making body comes into the picture in such an instance?

Measures being used to curb Mode IV transfers by increasing costs or hurdles

Salary levels

- **UK:** Raises salary levels for short term ICT workers by 69%
- **US:** Uses salary as a key benchmark in L1 visa adjudication
- **Canada:** Uses salary as a key benchmark in ICT (LMIA-exempt) visa adjudication

Increasing visa costs

- **US:** Applies 50:50 rule to raise the visa costs depending on local worker ratio (\$4k+)
- **UK:** Charges Immigration Skills surcharge + Health Surcharge (£1,200) p.a.
- **Australia:** Contribution for training locals increased & upfront with visa cost

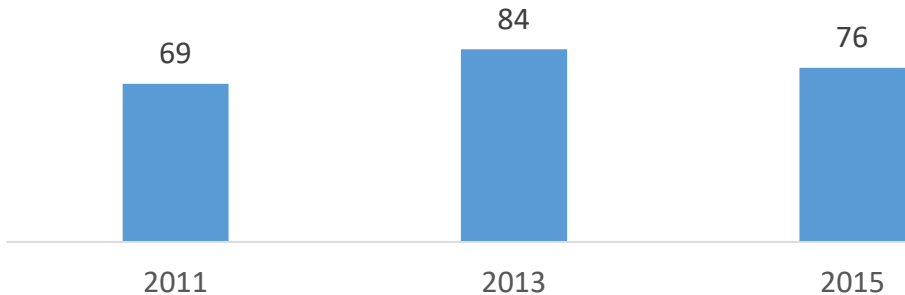
Increasing processing times & Centralisation

- **US:** Centralisation of L1 visa adjudication @ Chennai within India since 2011
- **Canada:** LMIA takes 4-5 months process
- **UK:** Premium processing fee

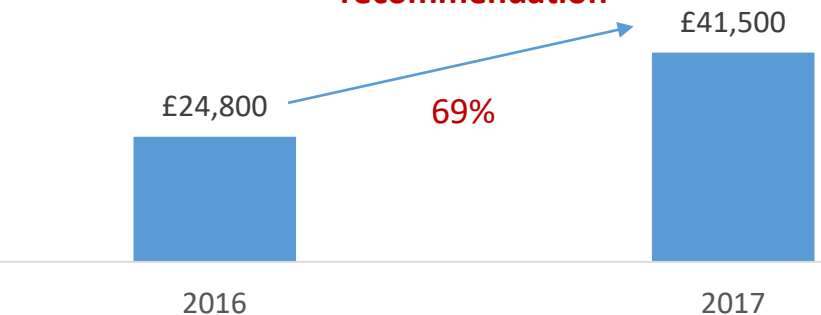
Legalisation of documents

- **Many countries:** Ask for Police verification certificate from each country where person has stayed for last 10 years

Indian tech co's paid \$375Mn for its border security under 50:50 rule (FY2011-2015) in Mn



UK raises salary by 69% in a year of ICT workers under MAC recommendation



Source: NASSCOM Contributions report 2015 ; UK MAC report

Using end-customer certification on secondary-displacement to take the process out of bounds – example

Sounds like
“Mandatory”

Schedule B : Impact on the Canadian Labour Market

Completion is voluntary; however, failure to complete this form will result in your LMO application not being processed.

COMPANY RECEIVING SERVICES UNDER CONTRACT

Outsourcing - is the contracting out of a Canadian business process to a foreign or Canadian third-party organization resulting in the entry of Temporary Foreign Workers into Canada.

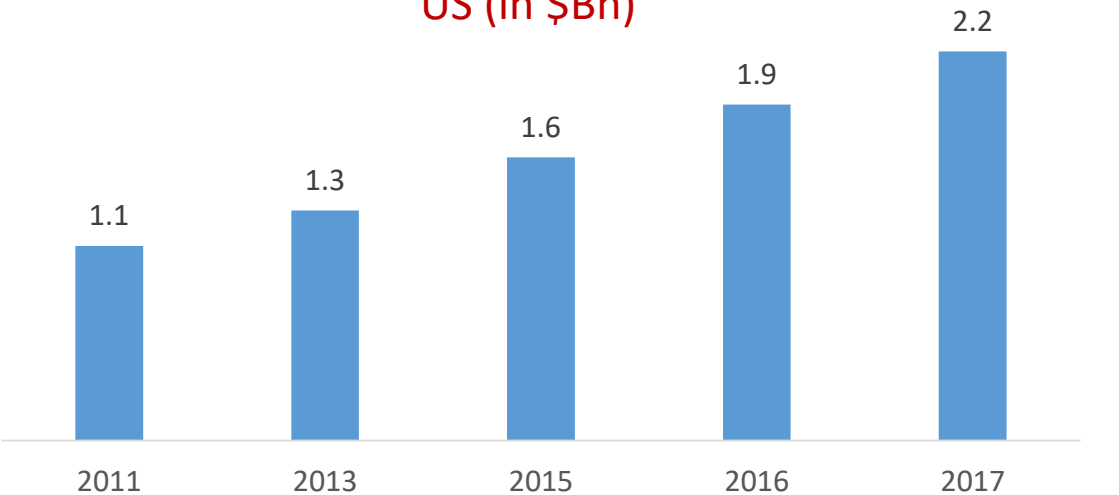
1. Will the entry of these temporary foreign workers lead to job losses, now or in the foreseeable future, for Canadians and/or permanent residents as a result of lay-offs, outsourcing, offshoring or other factors related to utilizing temporary foreign workers?
2. Does this contract or a subcontract facilitate outsourcing or offshoring?
 - a) Provide details on how Canadians or permanent residents will be positively and/or negatively affected by this arrangement? (e.g. lay-offs, relocation, displacement, promotions, restructuring, transfer of skills and/or knowledge etc.)
 - b) As part of this contractual arrangement, have you hired any foreign nationals through any work permit-exempt or Labour Market Opinion exempt processing stream?
 - i. Provide details on efforts in the past two years to hire and/or train Canadians or permanent residents for positions where a foreign national has entered under a work permit-exemption or Labour Market Opinion-exemption?
 - ii. Provide a summary of the impact of hiring these foreign nationals on Canadians or permanent resident workers within the company receiving services under this contractual arrangement (e.g. lay-offs, relocation, etc.).

Some countries use social security contributions to increase costs of the transfers under Mode IV – example

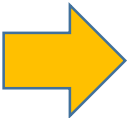
10 years of contribution required to be made to be able to qualify to derive benefits from the US Social Security system whereas the max validity of the US visa could be a max of 7 years

No.	Countries with whom India as signed SSA	SSA Partner for the USA
1	Belgium	Yes
2	Germany	Yes
3	Switzerland	Yes
4	Denmark	Yes
5	Luxembourg	Yes
6	France	Yes
7	Korea	Yes
8	Netherlands	Yes
9	Sweden	Yes
10	Finland	Yes
11	Czech Republic	Yes
12	Hungary	Yes
13	Japan	Yes
14	Canada	Yes
15	Portugal	Yes
16	Norway	Yes
17	Austria	Yes
18	Quebec	Yes
19	Australia	Yes

Social security contributions by Indian professionals in the US (in \$Bn)

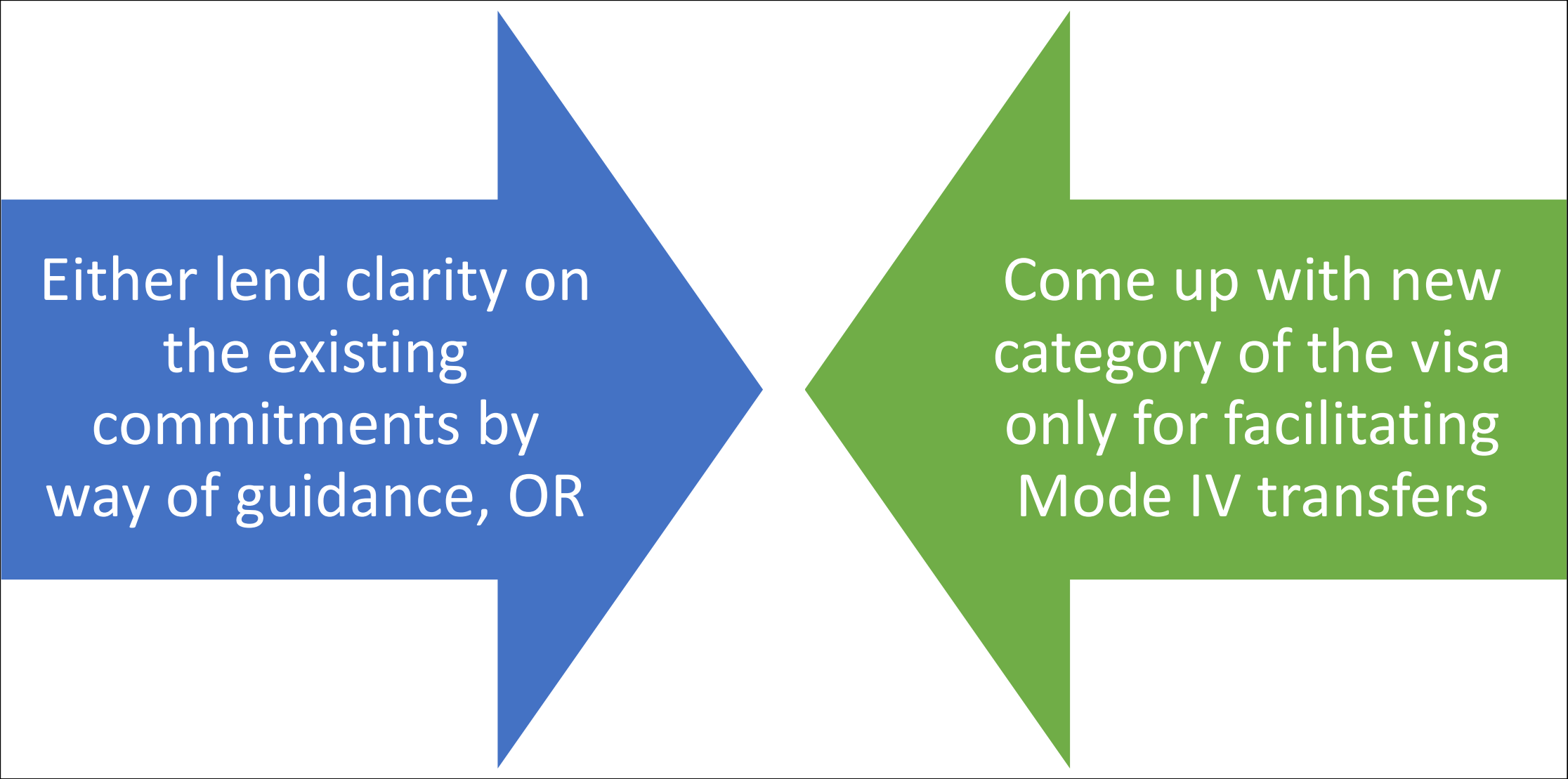


Source: NASSCOM Contributions report



- US and India have mostly same list of partner countries for SSA but can't have SSA amongst themselves seems strange
- If there is 'will and intention' on both sides than solution can be found

Possible solutions/suggestions under India's TFS proposal




Either lend clarity on
the existing
commitments by
way of guidance, OR

Come up with new
category of the visa
only for facilitating
Mode IV transfers

Practical Suggestions from Industry on broad contours of the GATS visa

- Visa or work permit is given to a professional for short duration e.g. upto 3-5 years
- Salary threshold can be defined by countries to safeguard against undercutting of local workers and counter local unions apprehension
- Time bound Fast-track immigration clearance and easier expat registration
- Conditions / or safeguards (if any, viz. caps, quotas, definitions, etc.), should be clearly defined and left as ambiguous
- No onerous measures such as certifications from end-consumer (secondary displacement, outplacement measures)
- No contribution required to the host social security regime if applicant shows proof of continuing association with home country regime

- 
- White list or black list: Companies that follow the rule of law should be encouraged to graduate to White list to ensure faster processing of applications
 - Hold companies responsible if their employees are found over staying on the work permits by way of fines
 - Audit: Companies with 3 successful audits are exempted from further audits as incentive of good conduct

Questions

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