

CAN SERVICES BE EXPORTED THROUGH BILATERAL LABOR AGREEMENTS? AN ASSESSMENT OF SPAIN-COLOMBIA AND SPAIN-ECUADOR AGREEMENTS.¹

DRAFT FOR COMMENTS ONLY

Antonio Bonet²
Sebastian Saez³

Empirical researchers have found that gains from liberalizing the movement of natural persons may exceed those from complete liberalization of trade in goods and services.⁴ Despite these results, current commitments on temporary movement of persons at the multilateral level are more than seventeen years old and are of limited importance. Unlike the goods negotiations, where a set of parameters have allowed World Trade Organization (WTO) members to assess the possible gains of the current proposals tabled in the Doha Round, services negotiations have produced very limited tangible result that could allow members to assess a possible outcome. Moreover, it is possible that the high level of political sensitivity on this topic will constrain the level of liberalization that can be achieved.

Regional agreements are another option that many countries have explored to liberalize services but that have not proved to be more effective than the WTO for liberalizing temporary movement of services providers, except for the European Union which has effectively liberalized mode-4 within the EU. The analysis of trade in services agreements at the regional level shows that some progress has taken place on the liberalization of temporary movement of service providers. Indeed, a wider range of categories in some recent trade agreements such as independent services providers, trainees, and technicians, have been included. These limited improvements prove that it is the nature of the topic more than the negotiating forum that determines the possible outcome.

Increasingly, experts are proposing an old avenue as a means to seek new opportunities and complement efforts to liberalize the temporary movement of labor at the multilateral and regional levels. Bilateral labor agreements (BLAs), *which in general are not part of trade agreements*, have been proposed as a more realistic means to address temporary labor mobility than trade agreements.⁵ There are at least two advantages of BLAs. First, BLAs can provide considerable flexibility with respect to the management of

¹ This paper is part of an ongoing project that analyses the role that bilateral labor agreements may play in promoting services exports from developing countries. The finding, interpretations, and conclusions expressed in this paper are entirely those of the authors. They do not necessarily represent the views of the International Bank for Reconstruction and Development/World Bank and its affiliated organizations, or those of the Executive Directors of the World Bank or the government they represent. The authors would like to thank Bernard Hoekman, Sonia Plaza, and Marion Panizzon for comments and suggestions provided to an early draft.

² President of ACE International Consultants S.L.

³ Senior Trade Economist, International Trade Department, World Bank Group.

⁴ *Winters et al. (2003); World Bank, Global Economic Prospects (2006)*: If temporary workers admitted for work in developed economies were increased by 3%, gains forecasted by Winters et al., in 2003 were put at \$156 billion of world income, while the World Bank in 2006 estimated gains in the height of \$356 billion.

⁵ *Mattoo (2007), Stephenson and Hufbauer (2009)*.

labor markets in the countries involved. Such agreements can be negotiated in response to the market economic cycle; they can be targeted to specific sectors and even be firm-based if necessary. Second, they can also be more flexible from the point of view of legal considerations (less binding). In fact, it could be argued that trade negotiations, because of their limited scope, are better equipped to address negotiation of skilled labor, while BLAs are more appropriate for other categories such as technicians and non-skilled labor because of their flexibility and the potential larger number of persons involved. This paper examines Spain's experience with BLAs focusing on the agreements with Colombia and Ecuador, respectively.

As part of its immigration policy, Spain has concluded bilateral agreements with developing countries to manage foreign-worker flows. But these agreements are neither considered nor designed to be an instrument to foster the export/import of services. Rather, they serve as an instrument for managing permanent and temporary labor immigration—that is, for filling the yearly quota of occupations (mainly agricultural) approved for foreign workers. These bilateral agreements guarantee neither a concrete number of job offers (stable or seasonal) nor the proportion of foreign workers in Spain's total labor force for any given year. Moreover, citizens of the countries with which Spain has concluded the agreements receive no preference in the issuance of work and residence permits while citizens of other countries are not denied these permits.

This paper describes general migratory trends and mechanisms for accessing the Spanish labor market. Also, the paper assesses the importance of the access of services providers to the Spanish market through Spain's commitments as a member of the European Union under the GATS/WTO agreements. The main conclusion is that the number of natural persons acceding under the GATS is small, especially if compared with other existing mechanisms, including BLAs. The following section analyzes the substantive provisions of the labor agreements with Colombia and Ecuador, their institutional and regulatory arrangements, workers benefited by the agreements, and safeguards for ensuring that migration is temporary. The paper concludes with an assessment on whether the BLAs with Colombia and Ecuador could be a complement to promote services exports from these countries for unskilled and semi-skilled workers.

IMMIGRATION POLICY FRAMEWORK: WELCOME TO SPAIN

Spain's transition from being a supplier of, to becoming a host country for, foreign workers occurred in three major stages: Until 1985 (phase 1), immigration flows to Spain were small, and most immigrants (65 percent) were European; only 18 percent were from Latin America, and just 10 percent came from Africa or Asia. Most of these non-European immigrants came to Spain for political reasons. From 1975 to 1985, the increase in foreign residents in Spain averaged 2.2 percent annually.

From 1986 to 1999 (phase 2), Spain increasingly became a country of destination. Social changes in Spain and the country's entry into the European Union gave rise to an influx of economically-motivated migrants. Labor market restructuring in Spain during the latter half of 1980s, along with a remarkable change in the labor preferences of local workers, resulted in a significant mismatch between labor supply and demand. From 1992 to 2000, the number of foreigners from developing countries increased 214 percent annually, compared with the 60 percent gain in the number of foreigners from industrialized nations.

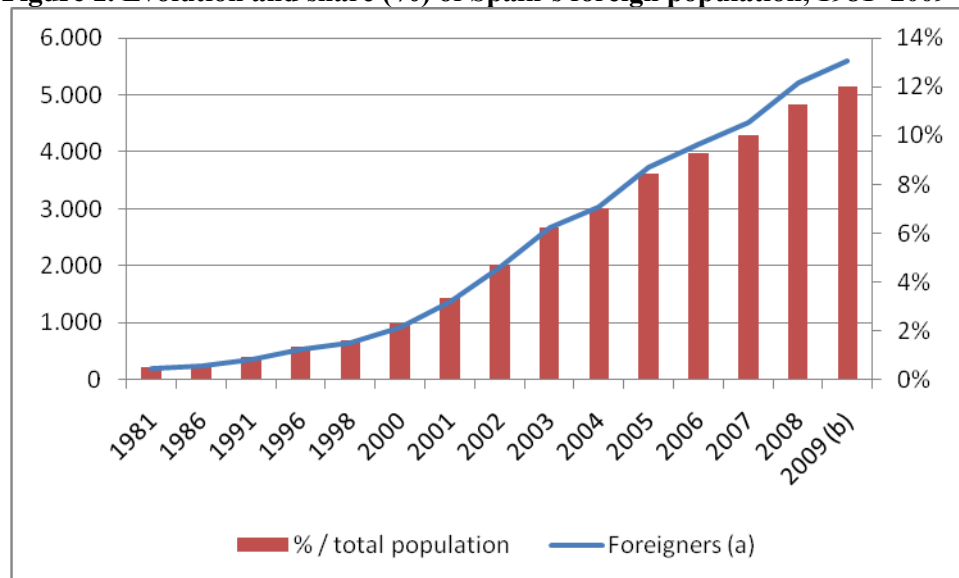
Since 1999 (phase 3), even greater increases in immigration flows have led to problems of social inclusion. The challenges of multiculturalism have become a matter of public debate, and the

“institutionalization” of immigration in Spain has been viewed by some as a “social problem”⁴ In 2000, 0.92 million immigrants were on the municipal rolls, suggesting that immigrants made up 2.3 percent of Spain’s total population. As figure 1 shows, this number increased to 5.6 million (12 percent of total population) in 2009.⁵

This surge is partly explained by Spain’s accession to the euro-zone, together with economic crises in several Latin American countries and long-standing decline in Africa. Additionally, the large fall in real interest rates following the adoption of the euro favoured sectors with long maturity and large investments like construction,⁶ which requires much unskilled labor. Furthermore, the progressive incorporation of women into the labor market increased demand for household services, which the migrants were happy to provide at wages low by Spanish standards (yet high in purchasing power in the migrants’ countries of origin). In general, these initial effects, together with network effects, attracted a burgeoning number of migrants.

Over the years, the immigrant population has consolidated, in part through family reunification programs, and the second generation of immigrants is attracting yet further immigration. In addition, the deep restructuring of labor markets, which is linked to the significant presence of immigrants in certain branches of activity and regions⁷, has attracted labor from other countries.

Figure 1. Evolution and share (%) of Spain’s foreign population, 1981–2009^(a).



^a Residents recorded by the Municipal Register. All persons who live in Spain must be inscribed in the Register of the municipality in which they usually reside. In Spain, immigrants and natives alike may register in their municipality of residence to gain access to health care and social protection, regardless of their legal status. However, a number of immigrants are not registered because they are unaware of the process, they fear enforcement authorities’ access to the database, or their municipal government rejects their registration.

⁴ Furor over immigration culminated in 2000–2001 with discussion of two laws on foreigners (Law 4/2000 and Law 8/2000), the extraordinary regularization process, racist incidents in El Ejido, and an accident in Lorca (Murcia) in which 12 Ecuadorians died.

⁵ According to the Fundación BBVA research institute, Spain now has the second-largest number of immigrants as a proportion of national population in the developed world, after the United States.

⁶ The main driver of the economic expansion was the housing industry. At its peak in 2006, Spain built upward of 750,000 new homes, more than the other European countries combined.

⁷ In Spain, geographical regions are called “Autonomous Communities”; they have a large degree of self-government

^b As of January 1, 2009.

Source: Instituto Nacional de Estadística (INE).

Spain's immigration policy rests on four pillars: (1) orderly management of legal migration flows, which are directly linked to labor market needs; (2) cooperation with other countries (to contribute to the economic and social development of origin and transit countries); (3) social integration of legal immigrants; and (4) the fight against illegal immigration. This study focuses on the orderly management of labor migration, which is based on the link between immigration policy and employment. The aim of this policy is to ensure that available jobs are offered to Spanish or foreign legal resident workers before they are offered to foreign workers.

Spanish immigration legislation makes a distinction between foreigners subject to the European Community regime and foreigners subject to general immigration rules (general regime or scheme). The former are citizens of EU member states or countries that are a party to the Agreement on the European Economic Area (Iceland, Liechtenstein, Switzerland, and Norway) and the citizens of the Swiss Confederation and their families. These citizens are free to enter, leave, travel, and live in Spain and may also engage in any economic activity either as paid employees or self-employed workers, service providers, or students, under the same conditions as Spanish citizens.

Foreigners not qualifying for the European Community regime require authorization to live and work in Spain as well as a special work visa. Employers wishing to hire non-EU nationals must obtain prior administrative authorization. However, lack of a work authorization does not invalidate an employment contract with regard to the foreign worker's rights, nor does it prevent the foreign worker from obtaining any benefits to which he or she may be entitled.

Spanish legislation on migration specifically addresses the need to recruit temporary workers. In addition to temporary residence and work authorizations granted through the so-called General Regime, the government may annually approve a "*contingente*" (quota) of foreign workers from non-EU countries. In theory, the quota covers general employment offers; all BLAs signed by Spain state that the signatory country may benefit in a preferential way from the "*contingente*". However, the Spanish system does not allow for the establishment of per-country quotas. Thus, in practice, countries with whom Spain has signed said BLAs have not enjoyed any type of preference.

In 2009, the number of foreigners with registration certificates or valid residence cards was 4.79 million, of which 2.56 million were non-EU citizens (47% from Latin America and 37% from Africa, as shown in table 1).

Under the Spanish system, immigration has to be arranged from the country of origin to fill the needs of the labor market as stated in the "National Employment Situation." The two basic instruments for defining the "national employment situation" are the yearly foreign-worker quota system and the "Catalogue of Hard-to-Fill Occupations"⁸ (CHFO), the list of occupations (by province, autonomous community and/or city, and island) that are difficult to supply with national workers or foreigners legally residing in Spain. These occupations are mainly in the labor-intensive and seasonal-work sectors—especially agriculture, hotels, and services—and are typically filled by low- or medium-skilled workers. Therefore, immigration fills Spain's labor market needs for low- and medium-skilled workers.

⁸ The reference to the CHFO is included in the Constitutional Law 4/2000 of 11 January on Rights and Freedoms of Aliens in Spain and on their Social Integration (also known as Ley Orgánica de Extranjería – LOE), as well as by the Implementing Regulation of that Law, approved by Royal Decree 2393/2004, of 30 December.

Table 1. Foreigners holding a valid residence card according to residence scheme and region of origin.

	December 31, 2009			Numerical Variation December 31, 2009/December 31, 2008		
	Total	General scheme	EU scheme	Total	General scheme	EU scheme
Total	4.791.232	2.562.032	2.229.200	317.733	220.980	96.753
European Union	1.872.505	-	1.872.505	78.276	-	78.276
Rest of Europe	135.128	116.378	18.750 (a)	12.288	11.314	974
Africa	994.696	943.929	50.767 (a)	72.061	67.357	4.704
Latin America	1.458.442	1.200.306	258.136 (a)	124.556	113.099	11.457
Colombia	287.205	240.669	46.536 (a)	12.373	12.876	-503
Ecuador	440.304	413.915	26.389 (a)	18.777	15.786	2.991
Peru	144.620	128.758	15.862 (a)	13.720	12.291	1.429
North America	20.572	10.509	10.063 (a)	300	-15	315
Asia	299.743	283.895	15.848 (a)	29.533	28.598	935
Oceania	1.903	811	1.092 (a)	64	25	39
Stateless and unknown	8.243	6.204	2.039 (a)	655	602	53

- (a) These figures correspond to third-country nationals who are relatives of Spaniards and EU/EEA nationals. Nationals from third countries who have access to the EU regime are spouses or partners with whom the EU citizen has contracted a registered partnership, direct descendants of the EU national and those of the spouse or partner who are under the age of 21 or who are dependants of the EU citizen, and the dependent direct relatives in the ascending line of the EU national and those of the spouse or partner. They have all the rights to move and work granted to EU nationals, with the exception of descendants under or over 21 and dependent ascendants, who are not allowed to work. The difference between the number of immigrants living in Spain (recorded at the municipal registers) and the number of documented immigrants (holders of resident permits, whether temporary or permanent) suggests that the number of “irregular” foreigners in the country in 2009–2010 could not be more than 800,000.

Source: Ministerio de Trabajo e Inmigración.

Updated quarterly, the CHFO is the main tool for proving that no workers in Spain can fill a job position, which can then be offered to a third-country national through the General Regime. Spanish enterprises use it to request posting of positions for which they wish to apply for residency and work authorizations for foreign workers residing outside Spain. Once a job appears on the CFHO, the employer can apply for that authorization. If the job is not included in the CFHO, the employer has to submit the job offer to the public employment services. If the public employment services certify that no Spanish national can fill the job, the employer can apply for a residency and work authorization for a foreign worker.

Non-EU Foreign-Worker Quota System

The yearly quota⁹ of non-EU foreign workers establishes the number of jobs to be offered to third-country nationals. The “national employment situation” is a basic criterion for determination of the quota, which is approved annually by the Council of Ministers. Since 2003, “Visas to search for employment” may be granted through the quota system.¹⁰ The Spanish system establishes that the employment offers are mainly addressed to those countries with which Spain has signed bilateral agreements for regulating and planning migration flows (Law 4/2000, in accordance with Law 14/2003, Article 39 and table 2).¹¹ However, in practice foreign workers that have been granted permits under the BLAs procedures are a very minor part of the total permits granted.

The quota establishes a framework for stable job offers (whether generic or specific) and lays down conditions for the employment of temporary workers. The offers may be limited to quotas per territory in Spain or profession. They reflect the input of autonomous communities, business organizations, and trade unions as well as the report on the employment situation and the social integration of immigrants drafted by the Higher Council for Immigration Policy (Consejo Superior de Política de Inmigración).¹²

Table 2: Agreements on migration signed by Spain

Migratory Agreement	Operational Cooperation Agreements	Cooperation Agreements on Immigration	Readmission Agreements
Colombia (2001) Ecuador (2001) Morocco (2001) Dominican Rep (2001) Poland (2002) Rumania (2002) Bulgaria (2003) Guinea Bissau (2003) Mauritania (2007) Cape Verde (2007)	Peru (2004) Guinea Bissau (2008) Niger (2008)	Guinea Bissau (2008) Gambia (2006) Guinea (2006) Mali (2008)	Algeria, Bulgaria, Slovakia, Estonia, France, Guinea Bissau, Italia, Lithuania, Letonia, FYROM, Morocco, Mauritania, Poland, Portugal, Rumania, Switzerland

Source: Ministerio de Trabajo e Inmigración.

The quota includes hard-to-fill jobs that remain unfilled by the Spanish resident population and are consequently offered to foreign workers residing outside Spain. The quota has three sections. The first section is a list of offers of stable (of duration greater than one year) or permanent positions. The second section is a list of job search visas. The third is a description of employment mechanisms for seasonal workers.

The quota procedure establishes the rules to be followed in contracting seasonal workers but does not specify an annual number of jobs that can be offered to these workers, as it does for workers filling permanent positions. In accordance with current legislation, work and residence permits for seasonal

⁹ In December 2009, this quota system was given a new name: “*gestión colectiva de contrataciones en origen*.”

¹⁰ The “job search visa” can be addressed, according to LOE 14/2003, to children or grandchildren of Spanish origin. This visa grants the beneficiary authorization for a stay not exceeding three months for the purpose of looking for work. However, it may also be granted to foreign workers outside Spain who wish to work in sectors where on-site contact between the employer and the worker is important, as is the case with domestic and hotel workers.

¹¹ The Ley Orgánica de Extranjería (LOE) states that the “job offer made will preferably be addressed to those countries who signed with Spain agreements focused on the regulation of migration flows.” This provision has a rather declarative character due to the fact that employers can request that a worker of a specific nationality fill the job. Again, the Spanish system does not allow for the establishment of per-country quotas.

¹² The Higher Council for Immigration Policy is made up of representatives of the state, autonomous communities, and municipalities. It coordinates the actions of public bodies in integrating immigrants into Spanish society.

workers may not exceed nine months. For temporary workers, it may not exceed 12 months (Law 4/2000, Article 55).

The selection of foreign workers for permanent positions is made in the country of origin of the worker by the Spanish authorities. Business persons intending to hire through the quota system may participate directly or indirectly in the selection. The Spanish Administration is responsible for managing the system both in Spain and in the country of origin, and for compiling the job offers from employers through the applicant selection process, in collaboration with local authorities in that country.

Companies wishing to hire seasonal workers must prove that they have adequate lodging for these workers, organise the return trip of the worker, and obtain from her/him the commitment of returning to his country of origin upon the termination of the employment relationship —through the completion of a form.

There is a dual mechanism provided to reward the fulfilment of the commitment to return made by these workers when the season ends: on the one hand, the worker can be hired in successive seasons without going through the selection process, and, on the other hand, the fact of being hired for four seasons makes it easier for the migrant to obtain the authorization to reside in a stable way. Foreign workers who do not return to their country of origin upon the finalization of a contract may not access any other employment offers in Spain for three years.

Figure 2 Permanent Jobs Offers and Temporary posts: 2002-2009 (Thousand)



Source: Ministerio de Trabajo e Inmigración

Notes:

Permanent jobs:

- (a) In 2002 takes place the first contingent since the approval of the Law 4/2000.
- (b) In 2000 and 2001 there were in Spain several regularization processes for irregular immigrants.
- (c) Includes only stable or permanent job offers (duration > 1 year)
- (d) In 2005 there was not offer of permanent job positions; the contingent of 2004 was prorogued.
- (e) The list of job offers for this year is available at this site:

<http://www.tt.mtas.es/periodico/inmigracion/200912/INM20091229.htm>

Figure 2 depicts the evolution of the permanent job offers of this system: in 2008 the contingent consisted of 15,731 hard-to-fill stable jobs offered, which declined to 901 in 2009 and finally in 2010 this decreased to only 168 permanent jobs offers (not included), 81 per cent fall from previous year. Seasonal workers were also negatively affected by the economic crisis. This mechanism operates as expected, access is restricted when the economic situation deteriorates and expands when economic prospects improve.

The Spanish Economic and Social Council (ESC)¹³ in its report “La inmigración y el mercado de trabajo en España”¹⁴ of April 2004 made a diagnostic analysis of quota administration. The ESC pointed to several problems in the system: First, determining labor needs in advance is a complex task and therefore the standards applied by the provincial executive committees of the INEM¹⁵, for assessing labor needs, leads to discrepancies between the approved and the requested quotas for some provinces.

Second, in the management phase, the unfamiliarity and complexity of the procedure¹⁶, its rigidity, the difficulty for enterprises to travel abroad, the mistrust to sign contracts without having had a previous direct contact with workers, the lack of adequate information to businesses and direct contact with the national selection or decision making bodies outside the business have led many companies to step back their needs for hiring foreign workers. The report suggests that the quota system should be improved through the simplification and streamlining of procedures, the creation or strengthening of ‘job-offers management units’ in countries of origin, the reinforcing of direct and personal contact with business as well as a wider margin of autonomy for enterprises in the selection process.

Table 3: Evolution of the contingent of foreign workers, 2002-2009 (a).

	JOBS OFFER (Posts Foreseen in the labor Quota System) - A			Posts Actually Filled - B			B - A	
	TOTAL	Permanent	Temporary	TOTAL	Permanent	Temporary	Absolute	%
2002	31.979	10.884	21.095	13.914	3.394	10.520	-18.065	-56.5
2003	34.157	10.575	23.582	17.878	2.940	14.938	-16.279	-47.7
2004	30.978	10.908	20.070	38.796	3.864	34.932	7.818	25.2
2005 (b)	n.a.	n.a.	n.a.	36.495	3.198	33.297	n.a.	n.a.
2006	16.878	16.878	-	45.995	6.248	39.747	29.117	172.5
2007 *	27.034	27.034	-	70.444	5.728	64.716	43.410	160.6
2008 *	15.731	15.731	-	48.693	1.513	47.180	32.962	209.5
2009 *	901	901	-	4.471	27	4.444	3.570	396.2
TOTAL	157.658	92.911	64.747	276.686	26.912	249.774	119.028	75.5

* Provisional data

(a) Not includes a reduced annual number of job-search visas.

(b) In 2005 no offer of jobs was made through the labor quota system. The procedure of 2004 was forbearanced.

Source: Ministerio de Trabajo e Inmigración and L. Cachón “La España inmigrante: marco discriminatorio, mercado de trabajo y políticas de integración” (Editorial Anthropos, 2009).

(c) n.a. = not available.

Table 3 shows that problems regarding management of job offers by both Spain and the countries of origin have often caused a failure to fill all the posts offered annually through the quota system. There is an important gap between the offers and the final number of hired workers each year. Via quota, more than 276.000 persons have entered to Spain regularly between 2002 and 2009. But as the table also reveals, it is not an adequate instrument for the management of stable or permanent posts (either because it does not succeed in making forecasts of the labor force needs or because it does not achieve to manage them): of the 92,911 jobs offered along the period, only 26,912 have been filled (29%).

¹³ A government advisory body whose voice is heard in decision-making affecting the various sectors of Spanish society.

¹⁴ <http://www.carm.es/ctra/cendoc/doc-pdf/pub/pub-0012.pdf>

¹⁵ Instituto Nacional de Empleo (INEM): National Employment Institute.

¹⁶ In this regard, the number of forms to fill in and data to be provided may act as an impediment for its use. For example, the annexes of the “Orden TIN/3498/2009, by which the contingent of 2010 is regulated illustrates this issue: <http://extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/RegimenGeneral/documentos/Contra-tacionesOrigen2010.pdf>

Table 4: Foreign workers incorporated by the contingent according to sector of activity and type of authorization, 2006-2009.

	2006		2007		2008		2009	
	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary
Agriculture	150	39.024	42	62.938	67	45.681	2	4.050
Commerce	965	91	1.236	90	495	5	-	-
Construction	757	75	369	86	9	14	-	-
Hotel and Catering								
Industry (a)	2388	149	1.581	607	430	443	-	4
Food industry	200	4	67	3	2	208	3	2
Wood industry	53	-	121	2	-	2	-	-
Metal industry	429	5	672	3	72	31	2	4
Textile industry	1	-	6	-	-	-	-	-
Other industries	2	-	2	110	-	26	-	11
Services	785	-	1.165	504	273	642	20	369
Fisheries	-	-	147	2	23	-	-	-
Transport	518	399	320	371	142	128	-	4
TOTAL	6.248	39.747	5.728	64.716	1.513	47.180	27	4.444

Source: Ministerio de Trabajo e Inmigración.

(a) Includes hotels, restaurants, bars and related businesses

On the contrary, the contingent appears to be quite successful for seasonal or temporary jobs. Since 2002, the instrument has served to manage access for more than 249,000 temporary foreign workers (mainly in agriculture; see table 4) in Spain. In this period, more than 91% of the total workers that entered via contingent were seasonal workers. The contingent is especially useful for large companies, which can displace coaches and trainers to countries of origin. But it is much less convenient for small enterprises because of the requirement that submitted offers contain a minimum of ten jobs. In this case, business associations can play a very active role for introducing greater flexibility or representing small firms together as a consortium.

Exporting Services to Spain through GATS Mode 4

Migration policy intersects with services trade policy in terms of the temporary movement of persons to provide services abroad, referred to as “mode 4” under the GATS. International trade in goods and services falls within the competence of the European Union, thus Spain as a member of the European Union, has to adapt its domestic regulations to the Agreements signed by the European Union. Similar to what other EU members have committed under the obligations adopted through the GATT agreements for skilled workers according to Spanish legislation (Article 63 of RD 2393/2004), a service provider is an employee of a company established outside the European Union or the European Economic Area. Spain’s commitments under the GATS as a European Union Member State cover three categories of service provider: The Authorization for Transnational Provision of Services¹⁷ are for workers not belonging to the EU nor to the European Economic Space, who will be in a situation of temporary residence and work within the framework of trans-national provision of services. It can be granted in the following cases:

¹⁷ Article 63 of RD 2393/2004

- When the temporary movement occurs at the risk, and under the direction, of the foreign company in application of a contract drawn up between the latter and the addressee of the rendering of services that is established, or performs his activity in Spain within the framework of a trans-national provision of services (ie: Contractual service suppliers).
- When it is about a temporary movement of workers from working centres of companies, established outside Spain, to working centres in Spain of the same company or the other company of the group that it belongs to (ie: Intra-corporate transferees).
- When it is about the temporary movement of highly qualified workers in order to provide supervision or advice concerning works of services that companies established in Spain realize outside Spain (Essential personnel).

Table 5. Work authorizations granted to foreign workers according to labor dependence and type of authorization, 2004–2008.

	2004	2005	2006	2007 ^b	2008 ^b
Total within “contingente”	38.796	36.495	45.995	70.744	48.693
Total outside “contingente”^a	498.280	995.607	822.682	499.408	733.892
Salaried-work authorizations	484.394	984.076	812.979	448.320	635.735
First work authorizations	165.361	661.946	108.410	239.714	119.084
First authorizations	152.514	644.305	101.079	222.561	68.818
Transnational provision of services	1.404	1.091	965	1.396	1.343
Cross-border workers ^c	1.435	2.472	1.920	na ^c	na ^c
Seasonal work	9.602	13.642	4.032	15.650	46.223
Other fixed-term authorizations	406	436	414	107	2.700
Renewed	319.033	322.130	704.569	208.606	516.651
1st renewal	110.394	129.082	624.617	108.325	117.215
2nd renewal	208.639	193.048	79.952	100.281	399.436
Self-employed work authorizations	13.886	11.531	9.703	8.109	10.141
First work authorizations	2.507	1.134	609	509	444
Renewed	11.353	10.292	9.082	7.600	9.697
1st renewal	3.898	3.046	4.760	4.214	2.354
2nd renewal	7.455	7.246	4.322	3.386	7.343
Cross-border workers ^c	26 ^d	105 ^d	12 ^d	na	na
“Arraigo” and international protection authorizations^{d,e}	n.a.	n.a.	n.a.	29.798	65.055
Authorizations to work^{d,f}	n.a.	n.a.	n.a.	13.181	22.961

Explanatory Note:

^a Work authorizations granted under the contingent procedure are not included.

^b Provisional data, not been available the total number of authorizations, although no important variations are expected. See <http://www.mtin.es/estadisticas/ANUARIO2008/PTE/index.htm> sources and explanatory notes.

^c Workers resident in France, Portugal and Morocco who cross into Spain for work on a daily basis

^d Since 2007, the number of work authorizations for cross-border workers is not available independently and is included within the line “authorizations to work.” These work authorizations are separately accounted and public since 2007.

^e (Art. 45.1,2,3 and 7 of R.D. 2393/2004).

^f “Authorizations to work” include the permits granted to foreigners who have residence permit and may be authorised to work for the following reasons: spouse or son regrouped, cross-border workers, student visa holder, exceptional circumstances of public interest or national security or for collaborating with the administrative and judicial authorities, certificate of enrolling in Spanish ships (provisional validity) and convicts in prisons or in open prison or on parole. (Articles 41, 84, 90, 98, and first additional provision of R.D. 2393/2004).

n.a. = not available.

Source: Statistical yearbooks, Ministerio de Trabajo e Inmigración.

Before these service providers can be granted work authorizations, three conditions must be fulfilled. First, the residence of foreign workers in the company's country of origin must be stable and regular. Second, foreign workers in that country must have worked at least a year in the professional activity they are to undertake, and have worked for the company for at least nine months. Third, the company temporarily moving its foreign workers to Spain must fulfil the applicable requirements and working conditions in accordance with the provisions of Law 45/November 29, 1999, on the posting of workers in the framework of transnational services provision. (This law transposes Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 into the Spanish legal framework.)

The employer must submit an application for residence and a work authorization in the framework of "transnational" services to the government delegation or sub-delegation of the place where services will be provided or to the diplomatic mission or consular post of its place of residence. This application must include the employment contract of the foreign worker with the company that transfers him or her. The permits for residence and work are for one year and can be renewed for one year if conditions are met. Both permits are limited to a specific geographical area, and the work permit is limited to a specific activity¹⁸.

The number of services providers entering the Spanish market in the framework of Spain's GATS commitments, as measured by total authorizations granted, is very low (table 5). The implication is that the temporary movement of people under GATS mode 4 is a small contributor to the value of services trade. The relatively low level of mode 4 services trade is due to cumbersome and complex migratory legal procedures for obtaining the authorisations. Additionally, these procedures may be less well known to labor lawyers and companies because they are not familiar with EU (and Spanish) GATS commitments due to its very limited use to obtain temporary work permits.

In 2006, the latest year for which the government separates figures for foreigners working in the service sector and with cross-border work authorizations, the number of permits totalled 2,897 (of which 66 percent were issued to cross-border workers), or just 0.35 percent of the total authorizations. In 2008, the Spanish government granted 1,343 permits to service providers, a figure representing 0.18 percent of the government's total cross-border work authorizations.

Table 6. Work authorizations granted according to activity sector, 1999–2008.

	Total ^a	Agriculture	Non-agricultural sectors				N.C. ^b
			Sub-total	Industry	Construction	Services	
1999	118.538	28.094	86.846	8.639	11.045	67.162	3.598
2000	292.120	38.164	197.198	17.827	36.846	142.525	56.758
2001	298.676	47.140	220.392	30.276	46.071	144.045	31.144
2002	318.143	53.221	248.941	32.260	58.759	157.922	15.981
2003	284.463	28.541	236.435	26.482	57.103	152.850	19.487
2004	545.208	75.268	345.283	41.088	88.254	215.941	124.657
2005	1.030.944	129.518	752.128	57.774	188.758	505.596	149.298
2006	857.052	103.751	680.911	49.544	177.238	454.129	72.390
2007	499.211	58.677	394.786	32.535	101.719	260.532	45.748
2008	790.205	117.758	605.385	46.662	141.777	416.946	67.062

^a Totals of granted authorizations differ from those in table 2, because the statistical procedure is different.

^b Non-classifiable.

Source: Ministerio de Trabajo e Inmigración.

¹⁸ A different work authorization is available to cross-border workers (Article 84 RD 2393/2004). These workers reside in countries bordering Spain—countries to which they return every day after carrying out gainful activities, of a professional nature, as self-employed or salaried workers, in Spain. The cross-border work authorization is valid only for a specific geographical area. It is issued for five years at most and is renewable on expiration.

Analysis of other statistical information suggests that the number of service providers did not actually decline. In 2008, 416,946 permits (52.8 percent of total work authorizations) were granted to foreign workers employed in services sectors. At the end of 2008, more than 7,800 Colombian, Ecuadorian, and Peruvian nationals were registered as foreign workers in Spain's Social Security system as engineers, university graduates, and technical experts. Many other foreign nationals were linked with the service sector. In fact, in 2008, the number of foreign service providers was larger than the number of permits granted under Spain's GATS commitments (table 6).

This large discrepancy between the number of foreign workers in the services sector (see table 6) and the number of work authorizations granted (see table 5) suggests that mode 4 of the GATS which include mainly skilled workers is not the most important mechanism for accessing the Spanish market for foreign service providers such as engineers, accountants, or lawyers. Rather, it suggests that authorizations to provide services in Spain, are managed through the general immigration scheme.

THE BILATERAL AGREEMENTS BETWEEN SPAIN AND COLOMBIA AND ECUADOR¹⁹

During the last few years, another important aspect of Spanish immigration policy has been cooperation with the countries of origin and transit of immigrants to Spain. The Spanish Government's perspective is that, in order to control migration flows and fight illegal immigration, it is essential to attack their root causes. This requires encouraging a progressive cooperation and moving forward in formalising bilateral instruments for enabling this cooperation with countries of origin and transit. One of the instruments designed for this purpose is the adoption of framework agreements on cooperation on immigration.

Main provisions of the Agreements

The Framework Agreements on cooperation on immigration, from a wider perspective, includes aspects related to preventing illegal immigration and promoting readmission as well as measures of cooperation for the employment of workers, integration of immigrants and contribution to social and economic development in the country of origin. The objectives of these agreements are to tackle migration issues concerning the signatory sending countries in a comprehensive, pragmatic and cooperative way. The Standards fields of cooperation included in Spanish BLAs are:

- Migratory Flows: facilitating the legal flow of workers exploring the labor market needs
- Voluntary return: assistance in promoting the voluntary return, including support in order to facilitate the integration of returnees in their country of origin
- Integration: mutual assistance on integration of nationals of one part residing in the territory of the other part
- Migration and economic and social development focusing on the creation of employment
- Cooperation in fighting against illegal immigration and the trafficking of human beings

The main objective of these BLAs is to order and to regulate the migratory flows, in a coherent way, between the signatory countries. In addition to managing irregular migration, the BLAs seek to match the job offers with the profile of candidates looking for emigration, after taking into account the situation in regards to national labor market conditions. BLAs state that priority is given to the country of origin in the framework of the "*Contingente*" job offers.

¹⁹ Bilateral labor agreements must be approved by the Congress and the Senate.

BLAs also provide a framework for regulating information about job offers, assessment of professional requirements, social and labor rights and conditions, specific arrangements for temporary workers (corresponding visa applications and voluntary return), communication about job offers, pre-selection of workers in origin, contract hiring, and visas for immigrants workers. Overall, they provide for measures to facilitate flows.

Box 1: Provision of Bilateral Labor Agreements

	COLOMBIA	ECUADOR
Title of the Agreement	Agreement between Spain and Colombia on the regulation and management of labor migratory flows (Acuerdo entre España y Colombia relativo a la regulación y ordenación de los flujos migratorios laborales)	Agreement between the Kingdom of Spain and the Republic of Ecuador on the regulation and management of labor migratory flows (Acuerdo entre el Reino de España y la República del Ecuador relativo a la regulación y ordenación de los flujos migratorios laborales)
Date of signature	21 May 2001	29 May 2001
In force since	21 May 2001	28 June 2001
Number of provisions	18	22
Principles	<ul style="list-style-type: none"> - Reaffirm special historical and cultural ties - Development of the General Treaty of Cooperation and Friendship, 1992 - Desire to regulate migratory flows in an orderly manner - Protect Colombian workers in Spain - Migration enriching social phenomenon - Respect for national laws and international conventions - Respect for human rights and prevention illegal migration and labor exploitation 	<ul style="list-style-type: none"> - Reaffirm special historical and cultural ties - Dual nationality agreement of 1994 and Social Security Agreement, 1963 - Desire to regulate migratory flows in an orderly manner - Protect Colombian workers in Spain - Migration enriching social phenomenon - Respect for national laws and international conventions - Respect for human rights and prevention illegal migration and labor exploitation
Aims and scope	Plan and regulate labor migratory flows	Plan and regulate labor migratory flows
Competent authorities	<ul style="list-style-type: none"> - Spain: Ministry of Foreign Affairs and Cooperation, Ministry of Interior, Ministry of Labor and Immigration - Colombia: Ministry of External Relations, Ministry of Labor and Social Security, and the Administrative Department of Security (DAS) 	<ul style="list-style-type: none"> - Spain: Ministry of Foreign Affairs and Cooperation, Ministry of Interior, Ministry of Labor and Immigration - Ecuador: Ministry of External Relations
Definition of “migrant worker”	“Migrant workers” are Colombian citizens authorized to exercise a gainful activity as employee in Spain	“Migrant workers” are Colombian citizens authorized to exercise a gainful activity as employee in Spain
Units responsible of collecting the demands of work in Spain	Servicio Nacional de Aprendizaje (SENA)	Unidad Técnica de Selección de Trabajadores Migratorios (UTSTM)
Number of migrant workers involved since they are into force	14.626	6.630
Number of returned immigrants	n.a.	n.a.

Source: authors' on the basis the agreements.

BLAs between Spain and Colombia and Ecuador

The migration agreements²⁰ between Spain, Colombia and Ecuador are the two first general agreements Spain has signed with the intention to manage immigration flows. Before that, Spain had only signed an

20 Spain has extensive experience in bilateral agreements to regulate migration of Spanish outwards. Spain has benefited of agreements to facilitate “the migration, recruitment and placement of Spanish workers” with different European countries like

“administrative agreement” with Morocco on seasonal workers (signed by Moroccan Minister of Social Development and Spanish Minister of Labor and Social Affairs in Madrid on 30 September 1999).

Operation of the Colombia and Ecuador Migration Agreements

Once agreements are signed, the Servicio Nacional de Aprendizaje (SENA)²¹ in Colombia and Unidad Técnica de Selección de Trabajadores Migratorios (UTSTM)²² in Ecuador create specialized units to gather the demands of their nationals wishing to work in Spain. These units launch campaigns to disseminate information in their respective countries on the possibility of registering in a database for pre-selection of workers willing to work in Spain.

Job-offers²³ for the hiring of foreign workers are submitted by Spanish companies once the yearly contingent is approved. They can be generic (only include the characteristics of the workers they wish to contract) or nominative job-offers (which already include the name and address of the person they want to hire)²⁴. Job offers are presented in Provincial Delegations of the Ministry of Labor and Immigration and, if approved, they are submitted within 15 days to the Directorate General for Migration (DGM) of the Ministry of Labor and Immigration of Spain, to be forwarded, through the Spanish Embassies, to the units responsible of the pre-selection according to the agreement.

In the next stage, the Ecuadorian authorities (UTSTM) or Colombian signatories (SENA) report to the Spanish government if there are workers in their listings that meet the required specifications amongst the employment offers received. The pre-selection of candidates is carried out in Ecuador by a commission composed of representatives of the authorities of both countries and in which the employers can also participate. In Colombia, the Spanish authorities make the initial selection from the lists provided by the SENA.

The Ecuadorian authorities (UTSTM) or Colombian signatories (SENA), carry out the selection process and interviews are conducted by Spanish authorities and entrepreneurs with the assistance of the authorities of Ecuador or Colombia. At the end of the process, the final list of selected workers is sent to the Spanish Embassies as well as to the Ministry of Labor and Immigration. These lists are forwarded to the hiring companies to prepare the employment contracts. Through the Embassies of Spain, the UTSTM in Ecuador and SENA in Colombia receive the contracts and they contact the workers for their visa application. The UTSTM and the SENA help migrant workers manage flights and other travel-related issues that may arise and also provide them with information on living in Spain. At the other end, Spanish authorities coordinate the reception of migrant workers in Spain and provide them with residence and work permits.

In both agreements, signatory countries created specialized units (called “Comisión Mixta”)²⁵, responsible for the evaluation and follow up of BLA. In the agreement with Ecuador it is said the evaluating body must meet once a year; in the case of Colombia, it meets upon request of one of the parties.

France (in 1932 and 1961), West Germany (1960), Belgium (1958), Netherlands (1961), Austria (1965), Switzerland (1961). Spain has also signed between 1948 and 1981 several agreements to facilitate the movement of Spanish into the Latin-American countries like Argentina (in 1948 and 1960), Dominican Republic (1956), Brazil (1960), Chile (1961), Paraguay (1965) and Venezuela (1979).

²¹ <http://www.sena.edu.co/portal>

²² This unit is the result of an agreement of the Government of Ecuador and the International Organization for Migration (IOM). Today is called “Unidad de Trabajadores Migratorios” http://www.mmrree.gov.ec/servicios/trab_migra.asp

²³ Forms to present job-offers are available at the Website of the Ministry of Labor and Immigration at: <http://extranjeros.mtin.es/es/ModelosSolicitudes/> “Contrataciones en origen”

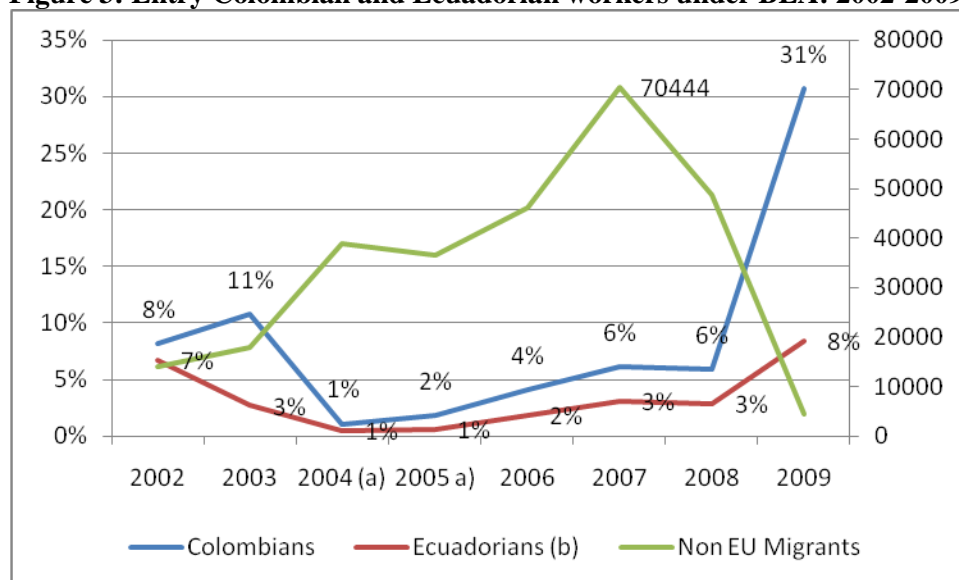
²⁴ Since 2003.

²⁵ Their composition is determined by the authorities of each country.

Quantitative results of the agreements²⁶

In 2002, the first year after the signing of the bilateral agreements with Colombia and Ecuador, the number of nationals from those countries entering in Spain to work reached 2,070 persons out of which 1,132 Colombians and 938 Ecuadorians. That year, the number of granted authorizations -through the contingent- was 13,914 (3,394 permanent and 10,520 seasonal permits), which implies that only 15% of the immigrants were arriving under ad-hoc arrangements signed among preferential partners.

Figure 3: Entry Colombian and Ecuadorian workers under BLA: 2002-2009.



- These figures include only permanent job-offers.

- The statistical information on nationals immigrated to Spain of the Ecuadorian Ministry of External Affairs is available at: http://www.mmrree.gov.ec/servicios/estadis_uvc.asp
Source: Ministerio de Trabajo e Inmigración and L. Cachón.

As the figure 3 shows, the absolute number of foreign workers arriving from Colombia and Ecuador has increased along the analysed period, until the year before the global crisis, after which migration declined, even globally. In 2007, the number of foreign workers arriving from these countries reached its maximum absolute value, with 6,487 persons (4,336 Colombians and 2,151 Ecuadorians), although a reduced 9.2% of the total permits granted via the labor quota procedure. In total, since the signing of the agreements we can conclude that about 14,626 Colombians and 6,630 Ecuadorians have entered Spain via contingent, under the umbrella of the bilateral migratory agreements, which represent a small part of the total of nationals from these two countries legally residing and working in Spain.

Despite what article 39 of Law 14/2003 states, that “the proposal of job offers for the contingent will be addressed mainly to countries with which Spain has signed agreements for the Regulation and Management of Migratory Flows” it is important to remember, at this stage, that the main objective of these bilateral agreements is to regulate migratory flows to Spain and does not guarantee a specific number of job-offers (either stable or seasonal) nor a proportion of the annual contingent of migrant workers. Moreover, the annual contingent procedure provides no real preferences for countries with which Spain has signed agreements and neither excludes those who do not.

²⁶ Before commenting on other aspects of the agreements, and dealing with the availability of statistics in this field²⁶, it is worth noting that (i) there are no public reports to disclose the results of the agreements and yearly contingents permitting their monitoring and evaluation, (ii) there are not statistics on the outflows and the nature or motivations of migrant workers.

In fact, the model works with a pattern of “competition between States” where the final decision of the fate of the job offers depends on the enterprises, responsible for their presentation. However, it is widely accepted that the countries that benefit most (of the regulating migratory flows instruments, such as the BLAs and the contingent) are not necessarily those that have signed bilateral agreements, and it entirely depends on where job offers of companies are finally made. In 2002 for example, Colombia and Ecuador were countries that received offers, and although they were the first countries to conclude migratory agreements with Spain, other countries such as Romania and Poland (who signed their respective agreements later, in 2002) have received many more job-offers, especially seasonal. Thus, in 2002 the number of Polish workers that entered into Spain through the contingent was 5,359 workers, 1,164 Romanian²⁷, while the number of Colombians and Ecuadorians was 1,132 and 938 respectively²⁸.

This point is confirmed by the evolution of the number of migrant workers ‘countries of origin: while in the contingent of 2004 (2 years after the signing of the agreements with Colombia and Ecuador) there were foreign workers proceeding from 8 different countries; in 2007 (before the crisis) there were foreign nationals from 29 countries, and most of them were not signatories of any migratory agreement with Spain. Something similar occurs with the final volume of job-offers: although the government sets the annual quota magnitudes (for permanent jobs), the actual volume depends on the final offers of employment presented by enterprises; since 2003 there is an approved system that allows job offers over the contingent initially planned.

Safeguards to Ensure Temporariness in Migration

There are specific safeguards in both the agreements that Spain signed with Colombia and Ecuador that deals with temporariness in migration. Temporary migrant workers from Colombia and Ecuador must sign a commitment to return to their countries of origin when their permits have expired, being also obliged to present themselves in the Spanish Consulate that issued the visa within one month after the return. The agreements with Ecuador provides that breach of this commitment will disqualify the migrant worker from all future recruitment in Spain and will be taken into account in the resolution of any requests for work and residence permits submitted to the Spanish authorities. In the agreement with Colombia, the obligation is less rigorous, and only contemplates that “breach of this commitment will be taken into account in the resolution of any requests for work and residence permits submitted to the Spanish authorities”. However, taking into account the fact that there are no public statistics recording the number of Colombian and Ecuadorian temporary migrants returnees, not much can be said about the success of safeguards undertaken in the agreement.

Both agreements also include specific provisions dealing with “voluntary return”. In this regard, they state that the contracting parties adopt coordinated measures to develop programs to help migrant workers return voluntarily to their country of origin. The Organic Law 14/2003 (2 years after the signing of the agreements) introduced a new provision (additional eighth) in the Ley Organica de Extranjeria (LOE), to provide for “Aid for voluntary return”. This new provision allows the Spanish Government to provide annual funding of the programs for voluntary return for people who request it and present projects for their resettlement in their countries of origin, provided that they would bring beneficial experience to their communities.

²⁷ See <http://www.ugt.es/inmigracion/contradice.htm>

²⁸ At this regard, employers may prefer foreign temporary workers from these countries because of the difference in air tickets’ prices, but there may also be other reasons.

In September 2008, legislation governing the “Plan for Voluntary Return”²⁹ was approved by Royal Decree-Law 4/2008 of 19th of September, permitted the cumulative contributory unemployment benefits be paid in advance to non-EU foreign workers who voluntarily return to their countries of origin³⁰.

Considering that economic situation in 2008 was translated into major employment restrictions, Spanish Government offered unemployed foreign workers³¹ the opportunity to return to their countries of origin, making resources available for their labor and professional integration or personal development in the way that best suits their expectations. Given the urgency of the situation and of the response to the measures to be adopted, these measures were approved by Royal Decree-Law.

Assessment of the Agreements

For the Spanish Government, a primary objective of the bilateral agreements with Colombia and Ecuador was the orderly management of the migration flows. The signing and implementation of bilateral agreements to regulate migration since 2001 tried to become a turning point for Spain in terms of the entry procedures for accessing its territory as well as in the volume of migratory flows. The agreements, together with the contingent, intended to break down the inertia against irregular migration from Colombia and Ecuador as well as other countries, regardless of whether they were signatories of bilateral migratory agreements or not.

Both agreements with Colombia and Ecuador have been implemented and have been the gateway for regular entry through established channels for nationals from these countries to work in Spain, even though figures show that migration using the BLAs has been much less than work permits granted through other procedures. This defines the success and the limits of these agreements: they open a legal channel that facilitates temporary migration, but nevertheless, only a very small proportion of Colombians and Ecuadorians circulate within the agreements. The establishment of visas for both countries (for Colombia since January 2001 and Ecuador since August 2003) has considerably reduced the flow of workers of both countries entering Spain as tourists and motivated them to stay illegally beyond the allowed three month period.

Other points of the agreements that are not directly linked to the recruitment of migrant workers such as promoting the reintegration of returnee migrants, the development of training projects and the recognition of their experience in Spain, enabling the creation of enterprises, and encouraging the transfer of technology, have not been implemented as effectively. Thus, the agreements can be regarded as appropriate and necessary for an overview of migration, establishing channels for the temporary movement of workers in an orderly, lawful and fair manner. Thus, they introduce a certain “culture of legal immigration law”. Moreover, the procedures to manage the offers through bilateral agreements provide for elements of guarantee for the migrant workers, such as signing a written contract, applying for the work and respecting the payment conditions in force in Spain. Mainly, the BLAs involve cooperation between States and an active position of both parties to manage migration flows on a regular basis. Its management also involves frequent contact between administrations.

Their effectiveness in quantitative terms is limited and this can be the result of a series of issues: the lack of job-offers from Spanish employers (which can respond to the existence of a very important labor market of undocumented immigrants in Spain), the administrative complexities of the system and the time

²⁹ A complementary initiative of a former similar program by which since 2003 until august 2007, only 2.054 people benefited from voluntary return in Spain, according to figures from the International Organization for Migration (IOM).

³⁰ Developed by Royal Decree 1800/2008 of 3rd November

³¹ Foreign workers from third countries with bilateral Social Security Agreements signed with Spain, including Colombia and Ecuador.

in advance needed to present the offers, the bureaucratic delays of proceedings; or the preferences of closer countries in the case of seasonal migrants (for which employers should pay for travel). Last but not least the role of intermediaries that participate in the selection process of workers is also relevant.

In this regard, one of the biggest problems encountered by the agreements is an external element that produces an extraordinarily complex context when trying to increase their effectiveness: the large bag of irregular immigration to Spain, which serves as a cheap resource for companies and which also places these workers in a situation of vulnerability that prevents them from demanding decent working conditions. Spanish employers, specially micro and small firms, have extensively used undocumented immigrant workers risking severe penalties by the Spanish authorities. We believe that among the possible explanations, which we were not able to confirm, for illegally hiring foreign workers are: (i) to reduce costs because the employer would not pay social security (which would add 31% of the salary to the cost); (ii) to escape from rigidities in the Spanish labor legislation; and (iii) to overcome the unwillingness of native Spanish workers to perform many menial jobs (eg. domestic service, agriculture, construction elderly care, ...). Unless the situation of this very large volume of undocumented migrants is not resolved, it is not expected that bilateral agreements have a greater impact than they have today, mainly because the entrepreneurs will not present many more job-offers when they could be benefiting from the abundant, weak and undocumented workers in a parallel and informal market.

The agreements have given no effective preference to these two signatory countries. On the contrary, there appears to be a relative decline in jobs that employers address to Colombia and Ecuador in favour of other countries. And this situation may result in frustration when it is expected that the signing of the agreements could serve to produce a greater number of offers or to channel to a signatory country a greater proportion of the offers that have been approved under the yearly contingent.

For the Ecuadorian authorities the agreement does not resolve the problem of migratory flows between Ecuador and Spain. Under this agreement, less than 6.7000 Ecuadorians have come to Spain via the agreement over the last 7-8 years. For some years, this migratory flow³² was not so visible as the arrival of African boats because the media reflect these arrivals when they are systematically intercepted but ignore the significant volume of Latin Americans entering from the International Airport Madrid-Barajas

Spanish NGOs dealing with immigration issues complain about the lack of transparency of the processes of screening and selection of migrant workers, the changes between the original job-offer submitted and the work contract finally passed for migrant workers, the lack of guidance on important aspects of their life in Spain such as housing and the non-compliance of some issues addressed in the collective agreements or employment contracts. They also claim that BLAs should put more emphasis in promoting economic and social development in sending countries, not only in the admittance of foreign workers into Spain.

For the Spanish Confederation of Business Organizations (CEOE), the agreements and quota are useful instruments that contribute to legally hiring foreign workers, especially when Spanish workers are not available in the market. It recognizes, however, that there is a duality in the market because of the different situation of small and large enterprises, for which applying for foreign workers is easier for the latter, while smaller firms do not have any real opportunity to use the quota system because they are not able to travel to select foreign workers nor can they anticipate their labor needs in advance.

³² From August 2003 the arrival of Ecuadorians has greatly diminished because from that date they need visa to enter Spanish territory. The Embassy of Ecuador in Spain estimated that arrival of Ecuadorians has since fallen by 80%.

GATS MODE 4 AND BILATERAL LABOR AGREEMENTS

Can services be exported through labor mobility agreements? The analysis carried out in this study provides some light into this question, although it does not show a clear straightforward answer.

In the absence of a coherent architecture of multilateral norms and disciplines, a “spaghetti bowl” of overlapping provisions on migration has arisen in the international arena during the last years, mainly with the signing of bilateral labor agreements³³ but also with the conclusion of several regional trade agreements. BLAs are not normally part of trade agreements.

In trade agreements the objective is to open markets to the temporary movement of the highly skilled workers, while on the contrary, bilateral migration agreements seek to contain and prevent irregular migration. Spanish bilateral migration agreements are an example of such interests.

Spanish BLAs with developing partner countries mainly offers to control the number of migrant workers, (including both their permanent as well as temporary flows) secure their labor rights, housing and workplace safety and promote their voluntary return, rather than liberalizing access to the Spanish labor markets. Because bilateral migration agreements recruit mainly low-skilled migrants, for which few private sector-based, transnational recruitment mechanisms exist, the agreements themselves need to facilitate the process of selection, training and hiring. In contrast to trade agreements, BLAs offer comprehensive package deals, organized around three pillars: development, security and labor migration.

Moreover, bilateral labor agreements have somehow revolutionized the way the temporary movement of natural persons can be managed institutionally, in terms of monitoring migratory flows through joint labor market observatories and oversight commissions, but also because these formalize the process of matching the offer for migrant labor to the demand in the destination country by setting up dedicated employment agencies; as has been the case with Colombia and Ecuador’s agreements with Spain.

Available data from the Spanish case shows that BLAs with Colombia and Ecuador are more efficient than GATS but total figures remain mostly irrelevant

A first drawback that we have found for identifying clear answers to the question of whether BLAs can be an alternative or a complement to GATS mode 4 is that definition of who could be considered a mode 4 service provider does not coincide with the Spanish legal definition of subjects for BLAs. For instance, while mode 4 includes “self-employed” services providers, the Spanish BLAs do not consider the “self-employed” as part of the BLAs. Thus, any proposal to promote services exports through BLAs would require including special categories relevant to services.

Data is not totally comparable, but should we compare the total number of service providers (included under mode 4 of the GATS) that Spain has adopted as GATS commitments with the number of workers that both Colombia and Ecuador managed to send to Spain under their BLAs the conclusion is that these two countries have gained significantly. Colombian nationals that entered the Spanish labor market through the BLA are more than double relative to the total number of third-country nationals that have obtained permission to provide services in Spain (ie., in 2008 only 1.343 non-EU nationals were granted access to provide services under Spain’s GATS commitments, while 2.875 Colombians were given work

³³ A study of 2006 published by the UN (*Document UN/ POP/MIG/SYMP/2006/03*) found out that of 92 countries surveyed, 68 had some sort of bilateral migration agreement in place.

permit under the BLA, but not as service providers). In the case of Ecuador, the figures are approximately the same.

However, as table 7 shows, both service providers and work permits under BLAs are irrelevant in comparison with the total number of work permits granted by Spain. In 2006, for instance, Spain granted more than 900.000 work permits to non-EU citizens, of which less than 2.000 were for service providers, and a similar amount of work permits were given to Colombians and Ecuadorians under the BLA.

Table 7: Work Permits Granted In Spain to Non-EU Nationals

	2008	2007	2006	2005
Total (includes general scheme + contingent)	838.898	569.665	903.047	1.067.439
Of which through transnational provision of services	1.343	1.396	1.920	1.091
Of which Colombians under BLA / Contingent	2.875	4.336	1.884	670
Of which Ecuadorians under BLA / Contingent	1.398	2.151	852	227

Source: Ministerio de Trabajo e Inmigración

Having a BLAs has not been a significant advantage to Colombia, Ecuador and Peru in relation to other countries

A second difficulty in answering our question is that BLAs build on top of the general immigration regulations; that is, through a BLA Spain grants additional rights to nationals of signatory countries. As explained above its use by citizens of both countries has been very small in relation to total immigration from them, thus leaving the BLA as a rather irrelevant instrument. An explanation could be that the general immigration scheme in Spain is rather liberal (i.e. residence permits, and later on work permits, are very easy to obtain by illegal foreigners; relatively few undocumented immigrants are forced to return; illegal immigrants easily enjoy free health care and education and other social benefits) Table 8 below illustrates this point: a large number of nationals of these 2 countries have managed to provide labor services in Spain outside the specific provisions included in the BLAs.

Table 8: INMIGRATION DATA (as of 31-Dec-09)

	COLOMBIA	ECUADOR	TOTAL SPAIN
Total no. of legal immigrants	287.205	440.304	4.791.232
Total temporal work permit (employees)	103.550	168.214	875.009 ^(b)
Total temporal work permit (self-employed)	1.452	1.444	14.527 ^(b)
Total permanent work permit	79.558	150.638	1.112.064 ^(b)
Total number under BLAs / Contingent (2002-09)	14.626	6.630	244.894 ^(c)
Remittances 2005-2008 (Euro million)	5.286	4.423	28.342

(a) 2006 data not available

(b) non-EU figures

(c) From all non-EU countries for the period 2004-2009; includes temporal and permanent positions.

Source: Ministerio de Trabajo e Inmigración

Despite the stated claim of Spanish regulations that countries which have signed a BLA will be given priority when allocating work permits, be it temporary or permanent, in practice no priority has been granted. Table 8 above shows that less than 15.000 Colombians got a work permit through the annual contingent, despite having a BLA in place, out of almost 250.000 work permits granted by Spain through the annual contingent.

The conclusion of a BLA has not guaranteed a concrete number of job-offers or a proportion of the annual contingent for migrant workers. This lack of real priority could be attributed to characteristics of the Spanish system: while the government makes the decision of how many foreign workers will be admitted

and the skills required, it is the private sector that makes the final selection of specific workers to whom a work permit will be granted within the annual contingent. Private companies may choose workers from countries which have not signed BLAs. However, countries that have signed BLAs have the advantage that certain provisions of the BLAs aim to facilitate the identification and selection of potential candidates to benefit from the immigration mechanism.

In the absence of GATS mode 4, BLAs can be a second best option

Broadly speaking, there is value in exploring potential complementarities of bilateral labor agreements with GATS which in practice has focused on skilled workers. In the absence of successful multilateral liberalization of temporary movement of people under the GATS, BLAs could be a second best option for increasing the inflow of positive development instruments such as remittances and know-how transfers. However, because the objectives for concluding bilateral migration agreements are wider than those of GATS, mainly management of migration flows, liberalisation through BLAs should be carefully assessed. In this regard, a recent publication from the International Organization for Migration also finds that bilateral migration agreements are only a second-best solution in the absence of a global regime for governing migration.³⁴ *“While some disadvantages have been identified with bilateral migration agreements, in the absence of a global regime for international labor migration they remain an important mechanism for inter-state cooperation in protecting migrant workers, matching labor demand and supply, managing irregular migration, and regulating recruitment.”*

An OECD report of 2007 nonetheless recommends policymakers to “establish bilateral agreements for recruiting low-skilled migrants and multiannual fixed contracts for migrant professionals” for the reason that, unlike Mode 4, “these arrangements would promote circular migration, build skills and enable remittances without crippling social services in sending countries.”

Could BLAs be used to promote services exports from Colombia and Ecuador? The bilateral memorandum of understanding (MoU) signed by the Philippines with the United Kingdom and Spain seem to provide a positive answer to this question. Both MOUs are primarily intended to facilitate the movement of Filipino health professionals. By focusing on a specific professional sector which includes nurses, physiotherapists, radiographers, occupational therapists, biomedical scientists, and other related health professionals regulated by appropriate professional bodies in both countries, the Philippine’s government has been successful in promoting both the movement of healthcare professionals as well as the upgrade of their skills.

The BLAs signed by Colombia and Ecuador could also be directed towards improving access for services provider by focusing as semi-skilled workers on specific sectors such as health or ITC experts. The existing institutional arrangements are a basis for promoting the temporary labor mobility of certain sectors, but may also require certain changes. For instance, improve implementation regarding the development of training projects and the recognition of their experience in Spain, enabling the creation of enterprises, and encouraging the transfer of technology. Finally, how much can be done depends on factors that are beyond the control of the parties involved. Spain BLAs objectives are limited by EU laws and regulations, specifically, the EU Schengen visa and border security regulation and EU readmission rules as well as by other commitments that may be relevant such as WTO/GATS and bilateral agreements negotiated by the EU, including with Colombia. Colombia and Ecuador may explore in other markets the BLAs as possible means to increase the services exports

³⁴ OSCE, IOM and ILO Handbook on Establishing Effective Labor Migration Policies in Countries of Origin and Destination, Vienna and Geneva (2006) p. 8:

building on the experience and institutions they have created in the context of their agreements in force with Spain.

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AUTHORS

Antonio Bonet

President and founder of ACE International Consultants S.L., where he has worked for the past 22 years. He has been project director and senior consultants in numerous international technical assistance and consultancy projects dealing with private sector development, trade policy, foreign investment, export promotion. He has implemented many assignments in Europe, Latin America, Mediterranean, Africa, Middle East and Asia in projects funded by multilateral institutions (eg. European Union, World Bank, Inter American Development Bank, ...), central and local governments (eg. Spain, Venezuela, Czech Republic, ...), business support organizations (eg. Chambers of Commerce, Export Promotion Agencies, Regional Development Agencies, ...), and private companies (eg. Repsol, Alcatel, Arcelor, ...). He has published papers in various countries about these topics.

He has held senior positions in the Spanish Ministry of Economy, such as Head of Foreign Direct Investment, Head of the Foreign Trade Office, and Economic and Commercial Counselor in the Spanish Embassy in China.

MS in Applied Economics and Finance by the Massachusetts Institute of Technology MS degree in Business Economics from the University of Seville, and State Economist and Trade Expert of the Spanish Government.

Currently he is elected Vicepresident of the “Investors and Exporters Enterprise Club of Spain”. He speaks Spanish, English and French.

Sebastian Saez

Sebastian Saez is a Senior Trade Economist working at the International Trade Department, PREM, World Bank. He studied economics at the University of Chile. He earned his Master in Public Sector Economics at the Catholic University of Rio de Janeiro, Brazil, and studied at the Programme de Specialisation en Diplomatie Multilateral at the Institute Universitaire de Hautes Etudes Internationales in Geneva. He has published several articles on international economic relations, and the book *Estrategia y Negociación en el Sistema Multilateral de Comercio*, Dolmen Ediciones, (1999).

He is coeditor with O. Cattaneo, M. Engman, and R. Stern of the book: “*International Trade in Services: New Trends and Opportunities for Developing Countries*” World Bank, June 2010; and Osvaldo Rosales, *Temas controversiales en negociaciones comerciales Norte-Sur*, CEPAL, Santiago de Chile, 2010. He also edited “*Trade in Services Negotiations: A Guide for Developing Countries*”, World Bank, June 2010. More recently, he co-edited with Arti Grover Goswami and Aaditya Mattoo, *Exporting Services: A Developing Country Perspective*, forthcoming.