

**Bilateral Agreements to Manage Low-skilled Labor Migration:  
Complementarity or Overlap to Trade Agreements?**

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**Summary**

There were about 214 million international migrants in 2010, including 60 percent in the developed or industrial countries. The 30+ industrial countries that have a sixth of the world’s residents and account for 70 percent of global economic output include an average 10 percent international migrants. Most industrial countries have migration policies that aim to welcome skilled foreigners to settle and rotate low-skilled foreign workers in and out of their labor forces. These policies are hard to execute consistently, explaining why most

industrial countries have fewer foreign professionals than they want and more settled low-skilled foreigners than they anticipated.

This paper examines several types of programs to manage low-skilled labor migration. Most are unilateral, meaning that migrant-receiving governments establish rules that employers must follow in order to receive permission to have legal foreign workers admitted. After receiving government approval to hire foreign workers, some countries allow employers to recruit migrants anywhere, subject only to sending-country rules, while others require employers to follow recruitment and employment rules that are set out in bilateral agreements. Many bilateral programs have goals beyond filling vacant jobs, including promoting development in areas of migrant origin, training migrants, and facilitating the return of unauthorized foreigners.

Programs with the limited goal of filling vacant jobs are generally much larger than programs that have multiple migration and development goals. For example, the German-Polish seasonal worker program involves 300,000 admissions a year to fill farm jobs, while the Spain-Senegal program that aims to fill vacant jobs in Spain and promote development in Senegal is much smaller. The unilateral H-2A program allows foreigner workers to fill 100,000 farm jobs a year in the United States, while the bilateral Mexico-Canada SAWP involves fewer than 15,000 workers a year.

Trade agreements rarely deal with low-skilled migrant workers. The EU is built on freedom-of-movement for all types of workers, but NAFTA and most other free-trade agreements, including CARICOM and ASEAN, limit easy labor migration to skilled or professional workers. Multinational staffing or temp agencies such as Adecco and Manpower are enlarging their share of job placements in many countries, especially among low-skilled workers, but these firms play a limited role in moving low-skilled workers from one country to another, suggesting the absence of significant economies of scale in recruitment, a sharp contrast to the importance of multinational banks and transfer firms in moving remittances over borders. With limited progress easing the movement of service providers in the GATS Mode 4 negotiations, multinational staffing firms are likely to limit their activities among low-skilled migrants to free-movement areas such as the EU.

Low-skilled migrants are likely to remain outside trade agreements for the foreseeable future because of ambiguities about their economic effects. Some employers consider low-skilled migrants critical to their competitiveness, but many residents of migrant-receiving countries are skeptical of their long-run economic benefits. Most low-skilled migrant workers and their employers benefit from migration, and there may be spillover benefits in the form of slightly lower

food and service prices, but these benefits are relatively small for most residents and can turn into costs if low-skilled migrants settle and form or unite families.

The fact that the benefits of low-skilled migrants tend to be immediate, concentrated, and measurable in economic terms, while the costs tend to be deferred, diffused, and hard to measure, as with changes in language, religion, and interventions in public institutions such as schools to help the children of low-skilled migrants, means that it is very difficult to formulate and implement consistent policies on low-skilled migration. Political economy factors tend to favor an ambiguous status quo that allows low-skilled unauthorized migrants and guest workers to be employed amidst debates about immigration and competitiveness programs. Most low-skilled migrants are likely to remain outside the parameters of free-trade agreements, which can be controversial even without much debated migration provisions.

### **Temporary Foreign Worker Programs**

Temporary foreign worker programs aim to add temporary workers to the labor force without adding permanent residents to the population. The terminology, temporary or guest worker, emphasizes the rotation principle at the heart of such programs: migrants are expected to work one or more years abroad and then return to their countries of origin. If the demand for migrants persists, there may be replacement migrants, but the ratio of number of migrants employed to the number of migrants in a country should remain near one, meaning that all foreigners related to the program are employed.

All guest worker programs fail, in the sense that some migrants settle in destination countries and the migrant employment to migrant population ratio falls over time. There are many reasons for settlement, ranging from employer distortion (some employers make investment decisions that assume migrants will continue to be available) to migrant dependence (some foreigners, their families, and their regions and countries of origin become accustomed to higher foreign wages and remittances). Distortion and dependence combine with the desire of migrants to form or unite families where they work to justify the aphorism that there is nothing more permanent than temporary workers.

Settlement and a falling ratio of migrant workers to migrant residents does not necessarily mean that guest worker programs are “wrong” or “bad.” TFWPs can benefit migrants and their employers and have secondary positive effects on migrant-sending and -receiving countries. The issue is how to design and administer guest worker programs to minimize the “failures” often associated with them, and the keys lie in ensuring that employer and migrant incentives align with rather than contradict program rules and expectations.

If guest worker programs expand without dealing with distortion and dependence, the gaps between their goal of adding workers temporarily to the labor force but not

residents to the population is likely to widen in the 21st century. One reason governments are having a harder time managing guest worker programs is because many countries have shifted from one macro program to multiple micro programs, each aiming to provide foreign workers for a particular labor market in rifle fashion. For example, during the 1960s guest worker era, most countries had one or at most two guest worker programs, and the single most important determinant of guest worker admissions was the unemployment rate in migrant-receiving countries. Today, there are often multiple guest worker programs, and admissions to fill farm or IT jobs may have little relationship to the unemployment rate. Indeed, there have been more admissions of seasonal farm workers in the US between 2008 and 2010 despite a doubling of the unemployment rate.

A second reason why multiple guest worker programs can seemingly allow migration to get out-of-control is that employers have gained more power over the administration of programs. During the 1960s, government employment service agencies made a higher share of job matches, giving them credibility when they rebuffed employer requests for more migrant workers. Today, government employment service agencies usually make fewer than five percent of job matches, and many governments give employers easy access to migrants, in some cases allowing them to attest or assert that they need migrants, as with the US H-1B program, and not requiring labor market tests to ensure that local workers are unavailable, as with intra-company transfers.

One result of the switch from macro to micro guest worker programs is that there are as many or more migrants employed outside official guest worker programs than inside them in some countries. These unauthorized migrants often lack worker status and labor protections, and their presence can add to the sense that migration is “out of control,” fueling xenophobia and discrimination.

### **Macro Guest Worker Programs**

The United States and many Western European nations began guest worker programs during and after World War II in response to employer requests for foreign workers to fill vacant jobs (Congressional Research Service, 1980, Böhning, 1972, Miller and Martin, 1982, Mehrländer, 1994). This timing is important to explain why policies that had profound socio-economic effects on labor-receiving countries were not debated extensively.

Economics teaches that there are always alternative ways to combine labor and capital to produce goods and services. The guest worker option seemed the most appropriate way to obtain more workers in the 1950s and 1960s because of low unemployment and the assumption that employers and migrants would behave according to program rules. For example, instead of importing migrant workers, governments could have raised minimum wages to encourage capital-labor substitution, allowing market forces to push up wages when the demand for labor exceeded supply. Higher wages should have reduced the demand for labor and increased the supply, closing the labor demand-supply gap that led to requests for

migrants. Alternatively, governments could have adopted freer-trade policies to reduce the demand for migrants in tradable sectors that competed with imports, as in agriculture, or allowed the exchange-rate to appreciate to reduce the demand for migrants in export sectors.

Employers successfully argued against such market solutions. In the United States, farmers cited the risk of more expensive food supplies during wartime to justify the admission of Mexican Bracero guest workers. In postwar Europe, business leaders emphasized that wage-inflation might choke off what were perceived to be fragile economic recoveries from wartime devastation. There were also foreign policy reasons for importing migrants. Mexico considered its workers in the US during World War II its contribution to the Allied war effort. The European Economic Community was built on the four freedoms, the free movement of goods, workers, services and capital. Moving workers from surplus to shortage areas, as from Italy to France and Germany, was expected to generate mutual economic benefits while reducing economic differences within the EEC.

The most important assumption of guest worker programs was that employers and migrants would obey program rules. In fact, most migrants did rotate in and out of labor-receiving countries as expected. For example, during the 22-years of Mexico-US guest worker or Bracero programs, most Braceros returned at the end of their seasonal jobs as required. A combination of tougher enforcement and easier access to Braceros in the mid-1950s explains the visible drop in apprehensions and the increase in Bracero admissions. However, apprehensions of unauthorized Mexicans remained higher in the late 1950s than before Bracero programs began in 1942, suggesting that legal and unauthorized migration can rise together. Over the 22 years of Mexico-US Bracero programs, there were more apprehensions of unauthorized Mexicans, 4.9 million, than legal Bracero worker admissions, 4.6 million.<sup>1</sup>

Most European guest workers rotated in and out of jobs as anticipated. Between 1960 and 1973, over three-fourths of the 18.5 million foreigners who arrived in Germany left as expected (Honekopp, 1997, 1). However, Germans who assumed that the Rotationsprinzip would result in 100 percent returns were not prepared for the settlement of the remaining 25 percent. Their settlement, plus family unification, asylum seeking, and unauthorized migration, led to a backlash when guest worker programs opened immigration doors to a declared “non-immigrant” country. By 2000, 60 percent of the 7.3 million foreigners in Germany had arrived after 1985, 12 years after guest worker recruitment stopped.

The 1990s saw a new wave of guest worker programs that differed from earlier programs by justifying migrant admissions on the basis of labor shortages as well as foreign policy and other reasons. One argument was that a globalizing world

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<sup>1</sup> Both apprehensions and admissions double count individuals.

economy required easier access to foreign workers at all rungs of the job ladder. One version of this argument is that, with labor the only factor of production not allowed to flow freely over borders, easing the passage of workers over national borders could double or triple world economic output.<sup>2</sup>

However, foreign policy rather than economic considerations were most important in justifying most of the micro guest worker programs, such as German programs with Eastern European nations after 1989 (Hönekopp, 1997). Italy and Spain developed “mobility partnerships” that admitted legal migrant workers if migrant-sending governments accepted the return of unauthorized foreigners and cooperated with efforts to reduce illegal migration.<sup>3</sup> In some cases, national borders divide “natural” labor markets, and commuter programs such as those on the Czech-German border allowed workers to live in one country and work in another. Finally, guest worker programs are sometimes justified as a way to promote cultural exchange or development, as when young people are invited to cross national borders to work while learning the language and experiencing another culture as trainees or working holiday makers.

These rationales for guest worker programs are summarized below. There are other arguments for more labor migrants, including the assertion that workers should be freer to cross borders to increase trade in services; that multinational firms should be allowed to assemble diverse work forces in any country in which they operate to remain competitive; and that allowing migrants to circulate between developing and developed countries allows transnational migrants to build economic bridges that can stimulate both personal and economic development.

**Table 1. Rationales for Guest Worker Programs**

<u>Rationale</u>	<u>Typical Origin/Goal</u>	<u>Examples</u>
1. Labor shortages or best and brightest	Migrants fill vacant jobs without wage increases; allow employers to recruit in global labor market	European guest worker and US Bracero programs One argument for expansion of US H-1B program in 1990s

<sup>2</sup> The World Bank's Global Economic Prospects 2006 report estimated the impacts of increasing the number of developing country migrants by 14 million by 2025, bringing the total to 42 million, including 35 million unskilled and 7.4 million skilled migrants. The global net gain in economic output from this additional migration from developing to high-income countries is \$356 billion, or 0.6 percent of global GDP, or more than the estimated gains from reducing trade restrictions (World Bank, 2005)

<sup>3</sup> The Italian Interior Minister in August 2003 asserted that a bilateral agreement between Italy and Sri Lanka that allowed 1,000 Sri Lankans to enter Italy for work and training had stopped irregular Sri Lankan migration to Italy.

2. Foreign policy concerns	Facilitate returns of unauthorized, channel inevitable migrants, promote cooperation	German-East European programs in 1990s, Italy-Albania and Spain-Morocco programs
3. Cross-border commuting	Acknowledge that political boundaries can divide natural labor markets	Border commuter programs that enable “trusted travelers” to cross easily
4. Cultural exchange, development assistance	Exchange visitors, working holiday makers, and trainees	Trainees in Korea and Japan; US J-1 visa, Commonwealth WHMs

### Micro Guest Worker Programs

Most TFWPs are micro in the sense that they admit foreign workers to fill jobs in particular industries, occupations and areas. These TFWPs generally have unique admissions criteria, and length of stay rules, and can be compared along several dimensions, including the requirements employers must satisfy to have guest workers admitted, and the rights of migrants abroad.

These criteria for US programs are outlined below. Most low-skilled migrants are admitted only after employers undergo certification or economic needs tests, the process of trying to recruit local workers under the supervision of government agencies that can deny employers permission to recruit and employ migrants if they fail to properly advertise and interview local workers. The alternative is attestation, a system that permits employers to effectively open the border gates to the migrants they want to hire on the basis of employer assertions rather than government checks.

The second dimension concerns worker rights, and asks whether migrants have contracts that tie them to a particular employer or are free agents in the host country labor market. Most programs tie migrants to particular employers and jobs with contracts, and restrict or prohibit migrants from changing employers.

**Table 2. Employer Requirements and Worker Rights: US Programs**

<b>Employer Requirements</b>	<b>Worker Rights</b>	
	<i>Contractual Worker</i>	<i>Free Agent Worker</i>
Pre-admission certification	H-2A/B unskilled	
Post-admission attestation	H-1B professionals	F-1 Students
No employer tests	L-1 intra-company transfers; J-1 exchange visitors	NAFTA professionals

Source: see text

The H-1B program that allows US employers to request foreign professionals to fill US jobs that normally require a university education is the largest US TFWP. Foreigners with H-1B visas may remain in the US six or more years and adjust from guest worker to immigrant if a US employer sponsors them for an immigrant visa. Until they are immigrants, H-1B migrants are tied by contracts to their employer, leading some critics to call H-1B migrants indentured servants beholden to employers until they obtain immigrant visas. There has been much commentary and criticism of the H-1B program because it makes entry easy via attestation but requires employers to undergo a lengthy certification process to obtain an immigrant visa for H-1B foreigners.

The US has two major programs for admitting low-skilled foreign workers. Both require employers to obtain certification that local workers are not available at government-set wages. Employers do not have to provide housing or pay transportation to H-2B migrants, but their number is capped at 66,000 a year. There is no limit on the number of H-2A visas that can be issued, but farm employers must meet more requirements to receive permission to recruit and employ them, including offering the higher of three wages and providing free housing to migrants.<sup>4</sup>

Other TFWPs give US employers more freedom. For example, employers do not have to satisfy any US labor market or wage tests to transfer managers and specialists from their foreign operations to US subsidiaries if these L-1 visa holders were employed in the firm's operations abroad at least a year; the wages paid to foreign specialists and managers in the US are subject only to minimum wage laws. Similarly, employers are not required to search for US workers before hiring J-1 exchange visitors, and they face no housing or specific wage requirements.

The core rationale for TFWPs is to admit foreign workers to fill vacant jobs, so few programs allow guest workers to be free agents in the labor market. The US allows immigrant settlers to be free agents in the labor market, but not temporary workers. NAFTA allows professionals from Canada and Mexico to enter the US with proof of their qualifications and a US job offer and to change employers while in the US.

The proliferation of TFWPs makes it hard to generalize about employer requirements, worker rights, and distortion and dependence effects. Employers seeking foreign workers face two hurdles: getting permission from their governments to recruit migrants, and then finding, transporting, and employing the migrants. Experience shows that the major hurdle is government certification. Once

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<sup>4</sup> The job offers that US employers make in their search for US workers become the migrants' contracts that spell out wages and benefits.

an employer is given permission to hire migrants, there appear to be few problems finding, transporting, and employing migrants.

### **Guest Worker Program Lessons**

No country has found the ideal system for adding workers temporarily to its labor force. Germany and the US in the 1950s and 1960s had large-scale guest worker programs that had distortion and dependence effects. Employers made decisions that assumed migrants would continue to be available, and migrants, their families, and countries of origin became dependent on overseas jobs. However, with millions of migrants arriving under one program, the parameters and implementation of macro TFWPs were easily understood and widely discussed.

The challenge is to reduce goal-outcome gaps in guest worker programs by minimizing distortion and dependence. Economic models usually assume that a country's labor supply varies with unemployment, the population of working force age, the participation rate, hours of work, and the human capital that workers bring to the job. Policy discussions aimed at increasing a country's labor supply focus on reducing unemployment, delaying retirement, increasing the labor force participation of married women, increasing hours of work, and equipping workers with more human capital.

Guest worker programs allow employers to reach beyond a country's borders for workers, but typically only a minority of employers hires foreign workers. There are two major ways to level the playing field for employers. Most current programs rely primarily on administrative rules that in effect say to employers--try to find local workers and, if you fail, you will receive permission to employ migrants. This encourages employers and a raft of intermediaries to learn the rules and ensure that local workers will not be found, and then develop the infrastructure to recruit workers abroad. A better system would involve levies or taxes paid by employers and fewer admission rules, which would help to ensure that employers continuously consider alternatives to migrants because, if they find alternatives to migrants, they save the levy. Employer-paid levies would level the playing field and generate funds for enforcement, integration assistance, and other purposes.

The second economic instrument concerns migrants who are expected to return. Most migrants do return, but a small percentage of stayers among a large number of migrants may still be "too many." To encourage returns, migrant social security taxes could be refunded, which would both promote voluntary returns as the migrant claimed monies equal to 10 to 20 percent of earnings and provide a convenient way to match a portion of returned migrants' savings to promote development. Advocates of liberalizing unskilled worker migration under trade in services argue that more must be done to ensure that workers are only temporarily abroad, and that deferring some of workers' wages would help to increase industrial country acceptance of more migrants. (Winters et al, 2002, 53).

No country uses both employer levies and migrant refunds. Asian labor-receiving countries such as Singapore have employer levies, but not migrant refunds. Seasonal programs that admit migrants for farm jobs may be the best place to test employer levies and migrant refunds. Some levies might be used to fund labor-saving research that is hard for individual farmers to fund, and refunds can reinforce the return intentions of migrants employed only seasonally.

Economic mechanisms cannot minimize distortion and dependence in a world of large-scale illegal migration. In order to create the conditions in which economic mechanisms can have their desired effects, it is necessary to reduce illegal migration—employers will not pay levies if they can avoid them by hiring unauthorized workers. This task falls primarily to labor-receiving governments, which must treat unauthorized worker employment as a serious offense, develop the penalty and inspector infrastructure to enforce laws, and experiment with enforcement strategies such as joint liability, so that beneficiaries of unauthorized migrants help to police the activities of intermediaries.

### **Trade Agreements and Migration**

The World Trade Organization is committed to liberalizing the movement of goods, capital, and services over borders. The so-called Doha development round began in 2001, but has not reached an agreement to reduce trade barriers further because of differences between industrial and developing countries over farm subsidies and other issues. There are also tensions between developing countries wanting to send more service providers to industrial countries and the desire of industrial countries to enforce minimum wage and other laws for all workers, including migrants.

### **GATS**

Rules for trade in services, which totaled \$3.3 trillion in 2009, are negotiated under the General Agreement on Trade in Services (GATS), potentially bringing the movement of service providers or workers under the purview of the WTO. Services are often produced and consumed simultaneously, as with haircuts, and sometimes change the consumer, as with medical services.

There are four major modes or ways to provide services across national borders: cross-border supply, consumption abroad, foreign direct investment (FDI) or commercial presence, and Mode 4 migration, which the GATS refers to as the temporary movement of “natural persons.” Mode 4 movements of service providers can be substitutes or complements to the other types of trade in services. For example, accountancy services can be provided on-line (Mode 1) rather than by sending an accountant abroad to audit financial statements (Mode 4), or the client could travel to the country where the service provider is located to receive services (Mode 2). Similarly, an IT service provider could visit a client abroad (Mode 4) or provide services to foreign clients via the internet (Mode 1).

Mode 4 accounts for \$100 billion to \$200 billion of global trade in services, less than five percent of trade in services. Developing countries led by India want to liberalize Mode 4 movements of service providers by persuading WTO member countries to make commitments to reduce barriers to service providers from other WTO member countries by providing them with equal treatment to nationals of the host country or opening all sectors to foreign service providers (horizontal commitments, the norm in WTO Mode 4 commitments so that countries do not have to determine which sectors should be open to Mode 4 migrants). The fact that migration commitments offered to some WTO members should be offered to all means that countries in freedom-of-movement zones such as the EU may be reluctant to extend free-movement agreements to non-EU members. Furthermore, many Mode 4 commitments are unbound, meaning no opening, or provide partial opening (unbound, except for) mostly for intra-corporate transfers and business visitors (Panizzon, 2010, p16).

Developing countries aiming to liberalize Mode 4 movements seek concessions or commitments from the industrial countries in four major areas governing the admission of service providers. First, developing countries want industrial countries to eliminate the economic needs tests receiving countries often use to determine if foreign workers are needed. Second, developing countries want industrial countries to expedite the issuance of visas and work permits, preferably via one-stop shops that include appeals procedures in the event of denials. Third, developing countries want industrial countries to facilitate credentials recognition so that service providers can obtain needed licenses and certificates to work in countries of destination. Fourth, developing countries want industrial countries to exempt their nationals who provide services from participating in work-related benefit programs and the payroll taxes that finance them (Martin, 2006).

Each of these issues has a numbers versus rights component, as illustrated by the debate over whether migrant service providers should be required to receive at least the minimum wage in the destination country (Ruhs and Martin, 2008). A bedrock principle of ILO Conventions 97 and 143, as well as the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, is wage parity between migrant and local workers – all workers should be treated equally in the labor market. However, Chaudhuri et al (2004) recognize that requiring migrant service providers to be paid minimum or equal wages may reduce the number of service providers who obtain employment in higher-wage countries: “Wage-parity... is intended to provide a nondiscriminatory environment, [but] tends to erode the cost advantage of hiring foreigners and works like a de facto quota.” Another Indian economist says that equal wages for foreign and local service providers “negates the very basis of cross-country labor flows which stems from endowment-based cost differentials between countries.” (Chanda, 2001, 635).

Resolving such migrant numbers and migrants rights trade offs is not easy. However, with many developing countries hoping to send more migrant service providers abroad, and some preferring more migrants to equal wages for migrants in foreign labor markets, the numbers-rights trade offs that were controversial in dealing with asylum in Europe and welfare benefits in the US are likely to recur at the WTO and in other international forums, including those dealing with migration and development at the Global Forum for Migration and Development (Martin and Abella, 2008).

### **APEC and ASEAN**

The Asia-Pacific Economic Cooperation ([www.apec.org](http://www.apec.org)) is a 21-member forum established in 1989 to promote economic growth among member nations.<sup>5</sup> APEC bills itself as the only international intergovernmental forum that aims to reduce barriers to trade and investment by consensus, that is, without requiring its members to enter into legally binding obligations. APEC's three pillars are trade and investment liberalization, business facilitation, and economic and technical cooperation.

A major accomplishment of the business facilitation pillar is the APEC Business Travel Card (ABTC) program, which has eased the cross-border movement of business visitors since 1997; 17 countries were participating in 2009 ([www.businessmobility.org](http://www.businessmobility.org)). Nationals of participating APEC member states apply to their home governments for ABTC cards, which transmit information on approved business visitors to other APEC member countries to obtain their approval before the ABTC is issued.<sup>6</sup> ABTC-holders receive expedited admission via special lanes at participating-country airports, and can generally stay in another member country for 60 to 90 days. ABTC cards do not allow employment for wages abroad.

The APEC members participating in the ABTC have varying visa and immigration requirements. Having an ABTC, for example, does not exempt an Indonesian from the need to obtain a visa to enter Canada or the US, but ABTC holders do get expedited visa-application interviews.<sup>7</sup>

The Association of Southeast Asian Nations (ASEAN) FTA, established in 1992, aims to create a free-trade area encompassing over 550 million people in 10

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<sup>5</sup>The 21 member nations are: Australia; Brunei Darussalam; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; US; and Viet Nam.

<sup>6</sup>This means that one country's refusal to approve an individual blocks him or her from receiving an ABTC.

<sup>7</sup>In March 2008, there were 34,000 active ABTC cards; 40 percent were held by Australians ([www.apec.org/apec/business\\_resources/apec\\_business\\_travel0.html](http://www.apec.org/apec/business_resources/apec_business_travel0.html), accessed 6-2-09)

Southeast Asian nations, including almost half in Indonesia ([www.aseansec.org](http://www.aseansec.org)).<sup>8</sup> The goal is to eliminate all tariffs between the original six member states by 2010, and tariff barriers for states joining later by 2015.<sup>9</sup> ASEAN has signed free-trade agreements with Australia and New Zealand, China, Japan, Korea and India.

The ASEAN FTA, established in 1992, aims to create a free-trade area encompassing in 10 southeast Asian nations. The original ASEAN Vision 2020, endorsed by heads of government in 1997, did not mention migration, although it emphasized a “free flow of goods, services and investment and capital.” ([www.aseansec.org/16572.htm](http://www.aseansec.org/16572.htm)). However, in 1998, the Hanoi Plan of Action revised Vision 2020 to call for a “freer flow of skilled labor and professionals in the region” and ASEAN Lanes at ports of entry to facilitate the intra-regional travel of ASEAN nationals. Focal points were designated in each ASEAN member state to facilitate cooperation in the fight against illegal migration and trafficking in persons. In 2006, ASEAN leaders agreed to allow nationals of ASEAN member nations to enter other ASEAN states without visas for up to 14 days. ([www.aseansec.org/18570.htm](http://www.aseansec.org/18570.htm)).

ASEAN Secretary General Surin Pitsuwan in a July 2011 interview said that the 10-member nations aimed for more economic integration by 2015, but not a free flow of workers from one country to another or a single currency. Freedom of movement is expected to begin with skilled workers such as accountants, but Pitsuwan said: “We can't allow the free movement of people like in Europe because there would lead to a lot of problems with economic migrants.”

There is significant intra-ASEAN migration, including from Myanmar, Lao PDR and Cambodia into Thailand, from Indonesia and Vietnam into Malaysia, and from Malaysia, the Philippines and other ASEAN nations into Singapore; Brunei Darussalam also attracts migrant workers. Manning and Bhatnagar (2004) examined patterns of labor migration within ASEAN and recommended that liberalizing freedom of movement begin with the occupations that already have the highest share of most migrants, including seafarers, business executives, construction workers and domestic helpers. They argued that ASEAN could aim to achieve freedom of movement for professional, business and skilled workers by 2020 (2004, pv).

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<sup>8</sup>ASEAN was created August 9, 1967, and the ASEAN Charter of December 15, 2008 calls for an ASEAN community by 2015 (ISEASa, 2009).

<sup>9</sup>Average tariffs were reported to be about two percent in 2008, down from 4.4 percent in 2000. Surin Pitsuwan, Secretary-General of ASEAN, Progress in ASEAN Economic Integration since the Adoption of the ASEAN Charter, June 29, 2009 ([www.aseansec.org/93.htm](http://www.aseansec.org/93.htm)).

ASEAN leaders signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers on January 13, 2007 that committed migrant-receiving states to draw up charters that ensure decent working conditions, protection from all forms of abuse, and a minimum wage for ASEAN nationals employed in other ASEAN countries. The Declaration calls for tougher penalties on smugglers and traffickers, but is not legally binding and does not require governments to change their labor laws. However, advocates who hoped that that the 2007 Declaration would be followed by a legally binding convention expressed disappointment in 2011 that little had been done to implement the Declaration.<sup>10</sup>

## CARICOM

The Caribbean Community ([www.caricom.org](http://www.caricom.org)) is an organization of 15 Caribbean nations and dependencies created by the 1973 Treaty of Chaguaramas that aims to promote economic integration, including freedom of movement, between member states.<sup>11</sup> The population of CARICOM was about 6.5 million in 2000. Three countries included almost three-fourths of CARICOM's residents, with 40 percent in Jamaica,<sup>12</sup> 20 percent in Trinidad & Tobago and 12 percent in Guyana.

There are two components to freedom of movement: (1) facilitation of travel with common travel documents and national treatment at ports of entry (Article 46 of the CSME) and (2) the free movement of skills (Articles 32, 34d, 36, and 37 of the CSME). CARICOM members began issuing a common passport in 2005, and between January and May 2007 ten CARICOM members became a single domestic space during the 2007 Cricket World Cup.

The free movement of skills initiative originated in the 1989 Grand Anse Declaration. Article 45 of the revised Treaty of Chaguaramas says: "Member States commit themselves to the goal of the free movement of their nationals within the Community." CARICOM began the freedom-of-movement process

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<sup>10</sup>The Declaration extends protections to families formed by migrants after legal entry and employment.

<sup>11</sup>The treaty establishing the Caribbean Community and Common Market (signed at Chaguaramas, Trinidad and Tobago, July 4, 1973). CARICOM members are Antigua & Barbuda, Barbados, Bermuda, Bahamas, Belize, Dominica, St. Lucia, St. Vincent & the Grenadines, Grenada, Trinidad & Tobago, Jamaica, and Guyana.

<sup>12</sup>Jamaica has a very high emigration rate – about 20,000 people a year, almost one percent of the 2.6 million residents, are accepted as immigrants each year; 80 percent by the US. Short-term, seasonal movements to the US are even more common. Lucas and Chappell (2009).

with five types of workers: graduates of approved universities,<sup>13</sup> media workers, musicians, artists and sports persons certified by national professional bodies.

Freedom of movement rights for these occupations within CARICOM went into effect in January 1996; extending free mobility to three more occupations-- teachers, nurses, domestic helpers – has been discussed since 2007 (Girvan, 2007, 39). During the 30<sup>th</sup> meeting of CARICOM leaders in July 2009, domestic helpers were added to the list of occupations that enjoy freedom of movement rights, effective January 1, 2010. However, Antigua, Barbuda and Belize were allowed to study the socio-economic impacts of free mobility for domestic helpers for up to five years before adding them to the freedom of movement list.

Those wishing to move between CARICOM member states first obtain a Certificate of Recognition of CARICOM Skills Qualification, usually from their home country Ministry of Labor, and present it to immigration authorities upon arrival to receive six-month work-and-residence permits while the certificate is reviewed. After the credentials are verified, the CARICOM national is to receive an indefinite work-and-residence permit. CARICOM recognized the importance of skills certification and social security transferability for wage earners, and created a register of the self-employed, although progress in achieving full transferability has been slower than expected

CARICOM governments made commitments to establish mechanisms for certifying and establishing the equivalency of degrees and credentials earned in member states and to harmonize and make transferable the social security benefits earned in various CARICOM members. Skills certificates issued in one CARICOM member are to be automatically recognized in others, and dependents of migrants with skills certificates have the right to move with the certificate holder and work without having to obtain a work permit. However, as of July 2009, only Barbados and Trinidad had national accreditation bodies to establish the equivalency of degrees and diplomas earned in other CARICOM countries.

The CARICOM Single Market and Economy (CSME) treaty went into effect January 1, 2006, with Barbados, Belize, Jamaica, Guyana, Suriname and Trinidad and Tobago as the first full members; they were joined by Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines July 3, 2006. The Single Market component includes freedom of

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<sup>13</sup>The University of West Indies began as an external college of the University of London in 1948, and became fully independent in 1962. Today it has about 39,000 students on three campuses: Cave Hill, Barbados; Mona, Jamaica; and St. Augustine, Trinidad. There is also an open campus, and the University graduates about 5,800 students a year.

movement of goods, services, capital, business enterprise<sup>14</sup> and skilled labor within a customs union.<sup>15</sup> A protocol on the Contingent Rights of Skilled CARICOM nationals was signed January 1, 2006, but it has not yet been implemented in national legislation. Family members of skilled migrants are to have access to education on the same basis as nationals and access to emergency health care, but it is not clear how easy such access is in practice.

A CARICOM register listing self-employed service providers is to be developed so that they can move between CARICOM member states to provide services that are in demand. Migrant service providers have the right to have their family members accompany them.

Barbados, with about 300,000 residents and a per capita gross national income (GNI) of \$16,000 (at PPP), is much richer than Guyana, which has about 750,000 residents and a per capita GNI of \$2,900. About 120,000 Guyanese arrived in Barbados in 2008, and some overstayed and worked illegally. Barbados in June 2009 began a six-month legalization program for CARICOM nationals who arrived before December 31, 2005, have been in Barbados at least eight years, and who undergo a criminal background check.<sup>16</sup>

The Barbados government also stepped up enforcement efforts to detect and deport unauthorized foreigners. The enforcement crackdown drew complaints from human rights groups. Leaders of Guyana and Jamaica complain that their nationals are often targeted by immigration authorities in richer CARICOM member states such as Barbados, which responded with plans for expanded guest worker programs with Guyana and other poorer CARICOM members. Many supporters of faster CARICOM integration decried the legalization and enforcement campaign in Barbados. Norman Girvan, former secretary general of the Association of Caribbean States (ACS), has called for more temporary work permits to facilitate the migration of low-skilled workers between poorer and richer CARICOM members. There are calls to ensure that migrant dependents have equal access to local education, health care and housing services.

## **NAFTA**

The North American Free Trade Agreement (NAFTA), which went into effect January 1, 1994, aims to free up trade and investment between Canada, Mexico,

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<sup>14</sup>CARICOM nationals have had since January 1, 2006 the right to establish a business in any member state and be treated as a national of that state; their families are allowed to join them.

<sup>15</sup> The Bahamas will not join the single market because of its free-movement provisions, although many CARICOM nationals are employed in the Bahamas.

<sup>16</sup>Heppilena Ferguson, "Barbados open to 'structured' readmission of overstays," Stabroek News, July 2, 2009.

and the US. A Canada-US FTA went into effect January 1, 1989, and Mexican President Salinas requested an FTA with the US in 1990, which eventually led to NAFTA (Villarreal and Cid, 2008).

NAFTA has 22 chapters, and Chapter 16, Temporary Entry for Business Purposes, covers four types of business travelers: business visitors, traders and investors, intra-company transferees, and specified professionals.<sup>17</sup> A working party was established to resolve disputes.

The US is the major destination for NAFTA-related migrants (Martin, 2005). Under US immigration law, the first three groups of NAFTA migrants, business visitors, traders and investors, intra-company transferees, enter with visas that existed before NAFTA went into effect, e.g. business visitors use B-1 visas to enter the US, treaty traders and investors use E-1 and E-2 visas, and intra-company transferees use L-1 visas. NAFTA created a new TN visa for the fourth group (TD visas for their dependents), allowing US employers to offer jobs that require college degrees to Canadians and Mexicans who have college degrees.

These written job offers, plus proof of the requisite education and \$50, suffice for Canadians and Mexicans to have indefinitely renewable employment and residence visas issued at US ports of entry.<sup>18</sup> There are no limits on the number of TN visas that can be issued, US employers do not have to try to recruit US workers before hiring Canadians or Mexicans, and there is no requirement that TN-visa holders receive prevailing wages while working in the US.

The number of Canadian professionals entering the US with NAFTA-TN visas almost quadrupled between 1995 and 2000, but fell after the IT-bubble burst in 2000 to less than 60,000 in 2003 and 2005. Canadian admissions have since risen to almost 70,000 a year, but are still well below the almost 90,000 of 2000. The number of Mexican entries rose even faster, but from a very low base, doubling between 2006 and 2008 to almost 20,000.

The NAFTA experience shows that a liberal free-mobility provision can be included in an FTA with safeguards, viz, limiting entries to those with at least college degrees in specified fields and for 10 years, requiring US employers to show that US workers were not available before extending job offers to Mexicans, where wages were significantly lower. Mexican admissions, and the Mexican share of total admissions, have risen significantly in recent years.

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<sup>17</sup>[www.worldtradelaw.net/nafta/index.htm](http://www.worldtradelaw.net/nafta/index.htm)

<sup>18</sup>[http://travel.state.gov/visa/temp/types/types\\_1274.html](http://travel.state.gov/visa/temp/types/types_1274.html);

## EU

Freedom of movement of goods, capital, workers and services was a founding principle of the then European Communities in 1957: "Free movement of workers entitles EU citizens to look for a job in another country, to work there without needing a work permit, to live there for that purpose, to stay there even after the employment has finished and to enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages that may help integrate in the host country....Certain rights are extended to family members of the worker. They have, in particular, the right to live with the worker in the host Member State and the right to equal treatment as regards for example education and social advantages. Some members of the family have also the right to work there."<sup>19</sup> EU nationals employed at least five years continuously in another state automatically acquire the right to permanent residence in the host state.

There are several important limitations on freedom of movement in the EU. First, EU member states may restrict, to their own nationals, those jobs in the public sector that involve the exercise of national sovereignty, though privatization and court decisions have whittled away the share of jobs not open to foreigners. Second, existing EU member states may choose to restrict freedom of movement for the nationals of new entrants. For example, Italians had to wait 10 years before they got freedom of movement rights (until 1967), and Greeks, Portuguese and Spaniards had to wait seven years, but there were no restrictions on freedom of movement for Britons, Austrians, Swedes and other late EU entrants.

For the ten Eastern European countries that joined in 2004 and 2007, there were special transition rules to freedom of movement. The original EU-15 member states were allowed to restrict the freedom of movement rights of Eastern European nationals for up to seven years, although they had to justify to the European Commission their reasons for restricting mobility, initially, after two years, and after three years. Only Britain, Ireland and Sweden allowed immediate freedom of movement of so-called EU-8 nationals in 2004, and far more Poles and other Eastern Europeans moved to Britain and Ireland than projected. One result was that none of the EU-15 member states allowed Bulgarians and Romanians freedom of movement when these countries joined the EU in 2007. Yet several observers in the UK have indicated that the UK gained economically from this influx, that it had relatively little impact on employment or wages of prior UK residents while contributing positively to both output and to the UK's fiscal balance.

Under the EU's freedom to provide services, employers based in one EU state may win a contract in another and send employees over borders to "service the contract," which often means constructing or refurbishing a building or working

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<sup>19</sup> European Commission, Employment, Social Affairs and Equal Opportunities at <http://ec.europa.eu/social/main.jsp?catId=458&langId=en>

in a factory or service business. The European Commission in 2008 estimated a million workers were "posted" from one EU member state to another.<sup>20</sup> To avoid "social dumping," EU governments can require that these posted workers are paid at least the local minimum wage, if there is one. Since Austria enacted a national minimum wage effective January 2009, 21 of the EU's 27 members have national minimum wages. Most of the others, including Germany, extend negotiated minimum wages to an entire sector.

In several cases, the European Court of Justice has interpreted freedom to provide services in ways that encourage more migration within the EU, which is the aim of the European Commission. Wages vary within the EU, and especially in construction there is widespread use of subcontractors from lower-wage countries in higher-wage countries.

Germany has no national minimum wage, but the 1949 Collective Bargaining Act allows the federal government to "extend" the wages negotiated between unions and employers that cover at least 50 percent of workers in a sector to all employers and workers in a sector. After workers from Ireland, Portugal and other lower-wage EU member states flooded into Germany during the reunification boom of the mid-1990s, the 1996 Employee Posting Act (Arbeitnehmer-Entsendegesetz) was enacted to allow the German government to require employers of EU nationals "posted" to Germany to pay at least the minimum wage that was negotiated in the German construction sector. Germany's state of Lower Saxony, and most other German government entities, required employers bidding on public projects to pay all workers employed on the project at least this negotiated wage. However, a contractor building a prison in Goettingen used a Polish subcontractor and 53 "posted" Polish workers who were paid less than half of the local union wage. In April 2008, the ECJ ruled that EU member state governments could require posted workers to receive minimum wages, but only if they were universal, not just for public projects.<sup>21</sup>

Many European Commission leaders think there is too little intra-EU labor migration. The Commission made 25 recommendations in February 2002 to increase intra-EU labor migration, and Social Affairs Commissioner Anna Diamantopoulou highlighted four priorities to increase labor market flexibility and mobility: find the correct link between the education system and labor markets; overcome the problem of mutual recognition of qualifications and work experience; transfer pension rights and health rights more easily; and speed up the implementation of the common policy on immigration. The European

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<sup>20</sup>EU: Blue Cards, Minimum Wages. 2008. Migration News. Volume 14 Number 2. April. [http://migration.ucdavis.edu/mn/more.php?id=3347\\_0\\_4\\_0](http://migration.ucdavis.edu/mn/more.php?id=3347_0_4_0)

<sup>21</sup>. EU: Blue Cards, Minimum Wages. 2008. Migration News. Volume 14 Number 2. April. [http://migration.ucdavis.edu/mn/more.php?id=3347\\_0\\_4\\_0](http://migration.ucdavis.edu/mn/more.php?id=3347_0_4_0)

Commission (2007, 2) cites a number of reasons for the lack of greater realized mobility:

“Aside from an uncertainty over the advantages of being mobile, individuals face a number of hurdles to their movement. These can range from legal and administrative obstacles, housing costs and availability, employment of spouses and partners, portability of pensions, linguistic barriers, and issues on the acceptance of qualifications in other Member States.”

In 2000, about 225,000 EU residents, less than 0.1 percent of the total EU population, changed their official residence by moving between two EU countries. By contrast, about 2.5 percent of US residents move between states each year.<sup>22</sup>

### Lessons

There are at least 20 major multilateral FTAs, and an even longer list of bilateral FTAs.<sup>23</sup> The major purpose of FTAs is to free up trade in goods and flows of investment, but many FTAs also include provisions aimed at expediting the movement of business investors, service providers, and sometimes workers employed for wages in an FTA partner country. Most FTAs include contiguous or neighboring countries, and some aim to be more than simply free-trade areas, as with the EU.

The 50+ African states have signed several agreements aimed at facilitating freedom of movement under agreements that include ECOWAS, EAC, and SADC. However, the migration experience under these agreements reinforces the conclusion that “regional agreements among developing countries have made little progress in easing constraints on migration, compared with the major agreements among industrial countries (notably the European Union and the treaty between Australia and New Zealand).” (Ratha and Shaw, 2007. p16)

If trade and migration are substitutes, FTAs may reduce labor mobility over time by narrowing wage and income gaps between member countries. However, it should be emphasized that most FTAs are between countries at a similar level of development, reducing incentives for migration. Trade agreements are almost always struck first, with the implementation of clauses promising to liberalize or

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<sup>22</sup>EU: Mobility, Enlargement. 2002. Migration News. Volume 8 Number 4. March.  
[http://migration.ucdavis.edu/mn/more.php?id=2578\\_0\\_4\\_0](http://migration.ucdavis.edu/mn/more.php?id=2578_0_4_0)

<sup>23</sup>A listing of operating and proposed multilateral FTAs is at  
[http://en.wikipedia.org/wiki/List\\_of\\_free\\_trade\\_agreements](http://en.wikipedia.org/wiki/List_of_free_trade_agreements)  
and a listing of bilateral FTAs at:  
[http://en.wikipedia.org/wiki/List\\_of\\_bilateral\\_free\\_trade\\_agreements](http://en.wikipedia.org/wiki/List_of_bilateral_free_trade_agreements)

coordinate labor movement often delayed in the hope that, when freedom of movement arrives, there will be less migration pressure (Martin, 1993).

Trade agreements are complex and difficult to negotiate, particularly if they involve common external trade barriers. It is even more difficult to reach agreement on the free movement of labor because:

1. Migration, whether within a free trade area or otherwise, can have major distributional consequences, as some parties in the host country gain while others are hurt economically by new arrivals.
2. Although the motives of individuals are diverse, most migrants move from low to higher income countries. If FTAs encompass countries with different income levels, there is likely to be net migration to the higher-income member states.
3. It is easier to negotiate agreements to liberalize skilled labor migration because the numbers are relatively small, the economic and public finance gains to receiving countries may be greater, and skilled migrants may generate positive externalities where they live.
4. Most countries include both nationals and foreigners, so that liberalizing freedom-of-movement between two countries requires consideration of so-called "third-country nationals." Under most FTAs, only nationals of member states are granted freedom-of-movement rights.
5. A distinction is sometimes made between temporary workers and permanent or settler immigrants. It is well known that temporary workers may settle and that permanent immigrants can and do return to their countries of origin. Most FTAs, as well as GATS Mode 4 negotiations, emphasize the movement of temporary workers over borders rather than immigrant settlers, trying to avoid discussion of often controversial issues that range from access to the social safety net to voting rights.

### **Conclusions**

Economic policy making involves trade off between good or desirable goals, from low inflation versus low unemployment to low taxes versus sufficient funds to provide public services. Trade policy also involves trade offs, as governments weigh the interests of sectors helped by freer trade against those that may be hurt by more imports. Governments typically represent the economic interests of their countries at international organizations such as the WTO, where industrial countries push for freer trade in financial services while developing countries request freer trade in manufacturing products such as textiles and shoes and farm commodities.

Migration policy making involves different trade offs. Migration involves people who have human rights. The emerging international migration regime is devoted

primarily to protecting migrant rights, not maximizing flows of workers over national borders in the way that the WTO is committed to maximizing trade in goods and services. Neither the rights-oriented ILO and UN Conventions, nor the free-trade oriented WTO Mode 4 negotiations, are well suited to deal with migrant numbers versus rights trade offs. In the 21<sup>st</sup> century, many developing countries who want both more migrant numbers and more migrant rights seem to accept as a second-best situation the movement of migrant workers in a quasi-authorized or irregular status that is followed by efforts to improve their rights.

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