

**INTERNATIONAL MIGRATION
PAPERS**

89

**Towards Effective Temporary
Worker Programs:
Issues and Challenges in Industrial
Countries**

Philip Martin



INTERNATIONAL MIGRATION PROGRAMME

INTERNATIONAL LABOUR OFFICE GENEVA

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First published 2007

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ILO Cataloguing in Publication Data

Martin, Philip

Towards effective temporary worker programmes: issues and challenges in industrial countries / Philip Martin ; International Labour Office. - Geneva: ILO, 2005
59 p.

ISBN: 9789221208457

International Labour Office

temporary employment / temporary worker / seasonal worker / migrant worker / labour demand / developed countries

13.01.3

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Preface

The restrictions placed on the global mobility of labour run against the grain of developments in a world characterised by liberalization and increasing integration of economies, with more open capital and goods and service markets. They are even more an anomaly in the face of trends which show that despite the barriers the movements, essentially nurtured by huge income differentials, have not abated but have continued to grow over the years, and in controversial ways. One also sees a policy deadlock in the countries of destination, where a welcome mat is rolled out for the more skilled, fences are erected to keep the ones lesser blessed –who perhaps could benefit the most from migration- out on the grounds that they are “politically” undesirable. An upshot of this has been an increase in irregular forms of migration which have exposed many migrant workers, particularly the low-skilled, to exploitation and with very little institutional protection.

The question which then comes up is: how could countries of destination design and implement policies which work in the best interests of all? Certainly lesser skilled migrants can contribute in positive ways to these countries, while at the same time the incomes earned allow the migrants and their families in the countries of origin to not only improve on their standards of living, but also hold a potential for development. Philip Martin argues in this paper that temporary migration based on bilateral agreements, is an idea whose time may have come. He argues that such arrangements can inject more order in the process and may be the best way forward. Moreover, because temporary workers migration adds workers to the workforce on a temporary basis rather than settlers to the population, such movements would also be more politically acceptable. The gist of the argumentation is very much in the vein of expanding regular channels of labour migration; a central issue in the ILO’s Plan of Action, adopted by the International Labour Conference in 2004.

In the paper, Martin also undertakes an overview of the modern-day temporary workers schemes that have already been implemented in countries of destination in recent years and emphasises their pros and cons, with the intention of providing guidelines for policy towards designing effective programmes. Of course, the concern is not only with providing employment but also with the protection of rights of migrant workers. Another major preoccupation in respect of temporary migration is the integration of migrant workers in workplaces and societies where they live and work

The paper is published as part of the ILO working paper series *International Migration Papers* with the purpose of disseminating the results of research on topics which have acquired priority. As with previous studies, we hope that presentation of this research will contribute significantly to efforts by the government and social partners to effectively formulate, and implement, policies which benefit all.

The objective of the *International Migration Papers* is to convey current and innovative studies on global labour migration issues and trends to decision makers, migration policy

implementers, and researchers. In doing so, the ILO hopes to stimulate dialogue and policy development on regulating labour migration to contribute to economic growth and employment in both origin and destination countries, while ensuring respect for the rights of migrant workers and the economic and social integration.

Ibrahim Awad
Director
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Executive Summary

This paper examines temporary worker programs in industrial countries that aim to add workers temporarily to the labor force but not settlers to the population. Such programs have the potential to satisfy multiple goals, including admitting needed foreign workers, protecting the rights of migrant workers, and speeding economic development in the migrants' countries of origin. If temporary worker (also known as temporary or migrant worker) programs can achieve these goals, labor migration can be “self-stopping” as states converge in wages and opportunities.

The number of migrant workers and the number of programs to admit them have been increasing, with the fastest growth at the extremes of the job ladder, admitting highly skilled workers such as nurses and IT specialists and low-skilled workers to fill jobs in agriculture, construction, and services. The goals of programs aimed at workers who fill the top and bottom rungs of the job ladder are often quite different, sometimes summarized as “welcome the skilled and rotate the unskilled,” that is, allow professionals to enter with their families and settle, but rotate less-skilled workers in and out of the country in a manner that avoids settlement, sometimes at the cost of restricting migrant rights.

The ILO has cautioned that “the proliferation of temporary migration schemes should not lead to the curtailment of the rights of migrant workers.” (ILO, 2006, paragraph 20)¹ This paper examines selected programs to examine how those admitting low-skilled workers achieve their rotation goals, such as admitting only married men without their families to fill seasonal jobs in agriculture. The paper has five major sections that, inter alia,

- Analyze the demand for labor in sectors and occupations in which migrants are filling jobs in industrial countries, distinguishing flows of high- and low-skilled workers and evaluating the capacity of temporary worker programs to relieve labor shortages in particular industries and occupations
- Examine selected temporary worker programs in industrial countries in terms of the 3 R's of recruitment (provisions that employers must satisfy to obtain permission to employ migrants as well as mechanisms for selecting and moving migrant workers over borders), remuneration (wages, benefits, and working conditions in the host country, including migrant worker rights to change jobs), and remittances and returns (including provisions for remittance transfers and circulation versus settlement)
- Explore methods of dealing with irregular migration by enforcing immigration laws, comparing the incentives for migrants, employers, and others to report violations of immigration and labor laws
- Assess particular programs that admit temporary foreign workers to fill temporary jobs in five industrial countries: the US, Canada, the UK, Germany, and Spain.
- Compare the rights of migrants and national workers and adherence to ILO Conventions and Recommendations and the ILO Multilateral Framework on Labour

¹ The ILO noted that more temporary workers can also impede the integration of settled immigrants, especially the second- and third-generations who may be less willing to accept jobs eagerly taken by newcomers.

Migration, drawing particular attention to gaps between theory and practice that could be narrowed with improved labor inspection systems

The analysis is used to develop policy advice and guidelines for the design and implementation of effective temporary worker programs, defined as those that add workers temporarily to the host country labor force and are consistent with ILO mandates to protect workers. There are three major findings:

1. The potential economic benefits of moving more workers from developing to industrial countries are enormous. World Bank estimates suggest that increasing the number of migrants from developing countries in industrial countries from 28 million² in 2005 to 42 million over the next two decades would increase global income by over \$350 billion, more than the \$300 billion gain projected from completing the Doha round of trade negotiations. Some academic studies suggest even greater gains, helping to explain the quest for ways to move more workers (legally) over national borders.
2. The international migrant work force is increasing much faster than the world's labor force, with the fastest growth among migrant professionals and low-skilled workers.
3. Many developing country nationals working in industrial countries cross borders with the help of private intermediaries. The fees charged by these intermediaries are inversely related to migrant skills, meaning that most professionals do not pay them, while most domestic helpers do. Recruiters are rarely regulated effectively to protect migrants in their country of origin, while traveling, and while abroad.

The ILO adopted a Multilateral Framework on Labor Migration that aims to establish guidelines and best practices to give migrant workers a fair deal in a globalizing economy. The Framework stresses the importance of creating decent work for all, the need for international cooperation to manage labor migration and to protect migrant rights, and the urgency of ensuring that migration contributes to development in migrant countries of origin.

Developing effective 21st century temporary worker programs sensitive to the ILO Framework for protecting migrant workers leads to three major recommendations:

1. Acknowledge that labor migration is a process to be managed, not a problem to be solved. Labor migration involves primarily migrants, employers, and intermediaries, each of whom reacts to laws and regulations. Effective management requires ongoing data collection, monitoring employers, migrants, and intermediaries, and adjusting laws and enforcement regimes to narrow gaps between policy goals and outcomes. While stepped up enforcement can play a role in closing the goal-outcome gap and increase migrant protections, the key element missing from most enforcement mechanisms are economic incentives for employers, migrants, and intermediaries to obey laws. If the incentives of these actors contradict laws and regulations, there are

² UN data suggest there were about 31 million migrant workers from developing in industrial countries in 2005.

- generally too few inspectors to make the primary incentive for compliance avoiding fines or other punishment.
2. Recognize the trade off between migrant numbers and migrant rights that cost employers money. Empirically, countries with higher shares of migrants in their labor forces tend to grant migrants fewer rights. Most worker rights are self enforcing, in the sense that the best way to ensure that all workers receive the minimum wage is to have enough decent work available so that employers who do not pay at least the minimum wage cannot find workers. Protecting migrants when the supply of labor exceeds demand, as when more migrants seek jobs in places that do not fully respect migrant worker rights than there are jobs, requires the development of policies that empower migrants to get their employers to comply by ensuring that economic incentives reinforce compliance with labor laws.
 3. Evaluate the longer-term effects on migrants, employers, and sending and receiving countries of the major thrust of industrial countries' policies to manage labor migration, consider how to protect foreigners admitted for a non-work purpose who in fact work, such as students and exchange visitors, and tackle what may be the most difficult issue—dealing with irregular or unauthorized migrants. These issues are difficult, since it is (1) not clear how to redesign temporary worker programs to give priority to economic development in sending countries when their major purpose is to fill vacant jobs in receiving countries, (2) hard to draw sharp distinctions between workers and non-workers without narrowing the side doors to industrial countries through which migrants can now pass legally, and (3) very hard to protect the rights of irregular or unauthorized migrants.

In a world of 200 nation states, almost all labor force growth is in the 170 countries with 5/6 of the world's workers and about 1/6 of the world's economic output. The result is enormous pressure for especially young workers to cross national borders to earn higher wages in industrial countries with vacant jobs in agriculture, construction, some manufacturing, and many services. Networks that link workers in developing countries to jobs in industrial countries have been strengthened by revolutions in communications, transportation, and rights that make it easier for migrants to cross borders and work abroad. Industrial country policy makers have attempted to manage the rising number of migrant workers by adjusting their rights, a blunt policy instrument.

There is no easy or off-the-shelf solution to managing labor migration between developing and industrial countries effectively. Remembering that migration is a process to be managed on an ongoing basis, that migrants are workers with rights enshrined in international and national laws, and that labor migration reflects economic decisions made by migrants, employers, and intermediaries can improve the design of economic mechanisms that make temporary worker programs truer to their goals and better able to protect migrants.

Introduction: From Old to New Programs

The purpose of temporary worker programs is to add temporary workers to the labor force without adding permanent settlers to the population. The US had such programs with Mexico from the 1940s to the 1960s, and most northern European countries had temporary worker programs to admit workers from southern Europe in the 1960s and early 1970s. The ILO

developed migrant-specific conventions and recommendations at the beginning and apparent end of this first major temporary worker era to protect migrant workers, Conventions 97 (1949) and 143 (1975).

During first-era temporary worker programs, there was normally one temporary worker program per country. It admitted migrants to all eligible employers, often under the terms of bilateral agreements that established recruitment procedures, laid out guidelines for moving workers over borders, and set standards for wages, housing, and other conditions in the host country.³ On both sides of the Atlantic, temporary workers rather than immigrants were recruited because it was assumed that the “need” for foreign workers would be short-lived, during wartime in the US and during the economic boom epitomized by the 1960s *Wirtschaftswunder* (economic miracle) in Europe.

In fact, temporary worker programs got larger and lasted longer than anticipated, leading to the aphorism that there is nothing more permanent than temporary workers. As temporary workers who had been expected to rotate through permanent jobs settled, the credibility of governments to manage temporary labor migration was eroded. For example, the US Mexican labor or Bracero program was to admit temporary workers only if their presence had no adverse impacts on US farm workers. The US government failed to prevent adverse impacts. In signing a two-year extension of PL 78 in 1961, President Kennedy said: “The adverse effects of the Mexican farm labor program as it has operated in recent years on the wages and employment conditions of domestic workers is clear and cumulative in its impact....Therefore, I sign this bill with the assurance that the Secretary of Labor will, by every means at his disposal, use the authority vested in him under the law to prescribe the standards and to make the determinations essential for the protection of the wages and working conditions of domestic agricultural workers.” (Quoted in CRS, 1980, 52-53).

Developing effective temporary worker programs for the 21st century means overcoming the legacies of past failures. It also requires recognition that many workers want to cross national borders for higher wages and better opportunities in a globalizing world, that employers in destination areas want to hire them to fill jobs, and that intermediaries make money helping workers to cross borders. Sending country governments, NGOs and international institutions are interested in protecting migrants and using remittances to speed economic development, while receiving country governments try to protect low-wage workers and ensure that migration remains “under control.”

Employers are normally the moving force in temporary worker programs, asking governments for permission to recruit migrants, as in the early 1940s in the US and in Europe in the early 1960s. Employers always have choices in how to get work done. Economic theory suggests that, if border gates were to remain closed to foreign workers, wages would

³Host countries typically acted unilaterally in determining whether temporary workers could bring their families and settle. For example, the US made it very easy for US farm employers to obtain immigrant visas for ex-Braceros in the late 1960s, and most European countries allowed temporary workers whose work permits were renewed several times effective immigrant status after five years.

rise and simultaneously reduce the demand for and increase the supply of (local) workers. However, there could be negative side effects of labor autarky, including wage-led inflation in receiving countries and slower economic growth in sending countries.

Opening border gates to migrant workers, on the other hand, provides jobs for workers in labor-sending countries and minimizes the need to make labor market adjustments in labor-receiving countries.⁴ One reason why governments agree to open the border gates to migrant workers is the assumption that the demand or need for migrants will be short-lived. The duration of temporary worker programs is rarely spelled out in authorizing legislation, but the usual expectation is that temporary worker programs will persist, at least on a significant scale, for less than a decade.

Both the US Bracero program and Western European programs lasted longer than a decade, the first step down the road of eroding government credibility to manage temporary worker programs effectively. However, there is a significant contrast between first-era temporary worker programs in the US and Western Europe: the Bracero program was shrinking when it was ended unilaterally by the US in the early 1960s, while many European temporary worker programs were near peak levels of admissions in 1973-74 when recruitment was halted.

The Bracero program began as a “wartime emergency” in 1942, after a decade of farm labor surpluses that produced enduring American literature, such as *The Grapes of Wrath* (Craig, 1971). The program continued after WWII ended, and expanded as US employers made investments that assumed migrants would continue to be available and many areas of rural Mexico became dependent on US earnings. Farm wages stagnated in a rapidly growing US economy because migrants were available, and US farm workers sought nonfarm jobs to avoid competing with Bracero farm workers. In the mid-1950s, Bracero admissions peaked at over 450,000 a year, and then began to shrink as stepped up enforcement of wage, housing, and related regulations combined with labor-saving technological changes to reduce the demand for all farm workers, including Mexican migrants. By the time the program ended in 1964, it was admitting fewer than 200,000 Mexican temporary workers a year.⁵

In Western Europe, by contrast, temporary worker programs were peaking in admissions when they were ended unilaterally in 1973-74 (Miller and Martin, 1982). European temporary worker programs differed from the Mexico-US program in several important respects, including the locus of employment, which was nonfarm manufacturing, construction, and mining instead of agriculture, as well as policies toward settlement. Unlike Mexicans who filled seasonal US jobs and were expected to return to Mexico every year, migrants in Europe filled year-round jobs and earned rights to unify their families and settle with renewals of work and residence permits.

⁴ Adjustments in labor-receiving countries may contradict other national policies, as when higher minimum wages encourage some young people to go to work rather than stay in school.

⁵ The Bracero program and its effects on Mexico and the US are more fully summarized in Martin, 1993, Chapter 2.

The US largely stopped temporary worker recruitment in the mid-1960s, and Europe stopped the recruitment of low-skilled non-EU nationals in the early 1970s. During the 1970s, a combination of events led to persisting high unemployment. Higher energy prices led to the restructuring of manufacturing industries, and labor forces grew rapidly due to the entry of postwar baby-boom workers and the increase in married women's labor force participation. There was relatively little irregular migration and few temporary workers.

However, political and socio-economic changes in the 1980s and 1990s led to a "second era" of temporary worker programs that differ from earlier programs in several key respects:

- Changed justifications. The first-era programs were demand oriented. The goal was to fill vacant jobs during temporary economic booms, that is, their motivation was primarily a widely shared agreement that filling vacant jobs via alternatives to migrant workers, such as wage and other adjustments, would be "too costly." Today, the justification for temporary workers often includes supply reasons, such as reducing illegal migration and speeding development in migrant-sending countries.
- Shotgun versus rifle. There was typically one program per country during the 1950s and 1960s, and the labor department in the receiving country had considerable discretion in deciding whether temporary workers were needed. Today, there are many temporary worker programs, each with unique rules governing recruitment, employment, and returns. The analysis of temporary worker programs has changed from a general concern of social scientists to a far more specialist interest of immigration lawyers and consultants who understood the peculiar circumstances of the particular industry seeking migrants, such as agriculture, nursing, construction, or IT. Meanwhile, the data and expertise of labor departments has waned as the public employment service makes fewer job matches.
- Employers' gain power. During the first era programs, labor departments generally controlled border gates by requiring employers to obtain certification that they needed foreign workers to fill vacant jobs. Today, labor departments play far smaller roles in worker-job matching, and some governments allow employers to open border gates directly if the employer attests that migrants are needed and are being paid the prevailing wage.⁶ Labor departments with fewer staff generally have less labor market information and fewer resources to check employers and migrants today than they had in the past.

This paper assesses selected new temporary worker programs in industrial countries, devoting particular attention to changing patterns of demand for migrants, the operation of temporary worker programs, and the rights of migrants. The goal is to suggest guidelines for the design and implementation of temporary worker programs that are consistent with the ILO's Multilateral Framework on Labour Migration.

⁶ The US H-1B program is an example of such an attestation program. Most US employers are allowed to attest or assert that the requirements for employing foreigners with H-1B visas are satisfied, and this opens border gates to foreign workers. Enforcement, if any, occurs after the H-1B worker is employed and complaints are filed (GAO, 2003).

Labor Migration in Perspective

The number of international migrants, 191 million in 2005 (UN, 2006), doubled during the past two decades. There are four distinct flows. Some 62 million migrants have moved from south to north (from a developing to a developed country), 61 million moved from south to south, 53 million from north to north, and 14 million from north to south.⁷

Table 1. Migrants in 2005 (mils)

Origin/Destination	Industrial	Developing
Industrial	53	14
Developing	62	61

Source: UN, 2006

About half of these migrants are in the labor force of the destination area, making the 60 million migrant workers in high-income countries an average 12 percent of their labor force (ILO, 2004). The share of foreign-born workers is highest in traditional immigration countries such as Australia, Canada, and New Zealand and temporary worker countries such as Switzerland. The United States, with about 15 percent foreign-born workers in a 150 million strong labor force, has over a third of the 60 million migrant workers in high-income countries.

The 31 million migrant workers from developing countries in industrial countries, the major focus of this paper, are different from the workers they join abroad and those left behind at home. Globally, 40 percent of the world's 3.2 billion workers are employed in agriculture, 20 percent in industry and construction, and 40 percent in services (World Bank, 2006). Developing country migrants are drawn from societies that have this 40-20-40 distribution of workers. The industrial countries to which migrants move have about three percent of their workers employed in agriculture, 25 percent in industry, and 72 percent in services (OECD, 2005).

Table 2. Migrant and Local Workers by Sector, Percent Distribution

	Agriculture	Industry	Services
Industrial	3	25	72
Developing	40	20	40
Migrant Workers	10	40	50

Source: See text

Industry includes construction

Migrant workers from developing countries in industrial countries have a labor force distribution unlike that in sending or receiving countries. About 10 percent are employed in agriculture, 40 percent in industry and construction, and 50 percent in services (OECD, 2006), reflecting a tendency of three types of industrial-country employers to request migrant workers: those in sunset industries such as agriculture and light manufacturing such as

⁷ These are stock estimates, meaning that those considered migrants may have arrived recently or decades ago.

producing garments, those in industries that are difficult to trade, such as construction, and those in services at the extreme rungs of the skill ladder, from IT and health care services to domestic helpers and janitorial services.

Migrant workers from developing countries who move to industrial countries also have personal characteristics that make them different from native-born adults. The best single determinant of individual earnings in industrial countries is years of education. In most developing countries, the distribution of adults by years of education has a pyramid shape, with a few well-educated persons on top and most workers grouped near the bottom, with less than a secondary-school certificate or high-school diploma.

Native-born adults in high-income countries have a diamond shape when arrayed by years of education. About 25 percent have a college degree, 60 percent have a secondary school certificate, and 15 percent have less than a secondary certificate or high-school diploma. Migrants from developing countries in industrial countries form more of an hourglass or barbell shape when arrayed by years of education. Some 35 to 40 percent have a college degree, 25 percent have a secondary school certificate, and 35 percent have less than a high-school diploma. International migration from developing to industrial countries thus takes persons from the top and bottom of a pyramid distribution and adds them to the top and bottom of a diamond-shaped distribution.

The migrants drawn from the top of the education pyramid of developing countries are often professionals and students, and most are legal residents of industrial countries. Over the past two decades, almost all industrial countries have made it easier for foreign professionals to enter as students, temporary workers, and settlers. However, most of the world's workers and most of the world's migrant workers are low skilled, and the major labor migration issue today is whether and how to move more low skilled workers from developing to industrial nations in ways that respect ILO and other international conventions aimed at protecting migrants and speeding development in their countries of origin.

Globalization, Differences, and Migration

Globalization has increased linkages between countries, as evidenced by sharply rising flows of goods and capital over national borders and the growth of international and regional bodies to set rules for such movements. However, controlling the entry and stay of people is a core attribute of national sovereignty, and flows of people are not governed by a comprehensive migration regime. Most nation states do not welcome newcomers as immigrants, but almost all of the industrial or high-income countries have temporary worker programs that allow local employers to recruit and employ foreign workers. These countries also have significant numbers of unauthorized or irregular migrant workers.

International migration is motivated by differences between countries, but ILO conventions and recommendations call for migrants to be treated equally in countries of destination. With demographic and economic differences between countries persisting at a time of ever cheaper communications and transportation, policy makers often turn to the one instrument they control directly, the rights of migrants, in an effort to manage international labor migration. As a result, the rights of migrants may be abridged by governments in order to keep

migration “under control,” which runs counter to ILO and other conventions calling for equality.

Most of the world’s people and population growth are in developing countries. The world’s population, which reached 6 billion in October 1999, is growing by 1.3 percent or 80 million a year, with 97 percent of global population growth in developing countries.⁸ Population density varies greatly, but is higher in developing than in developed countries—51 persons per square kilometer in low and middle income countries, versus 29 in the high income countries. If history repeats itself, people may move from more densely populated developing to less densely industrial countries in the 21st century, much as the 19th century was marked by migration from more densely populated Europe to the Americas and Oceania.⁹

A comparison of the demographic evolution of Europe and Africa over the past two centuries is instructive. In 1800, Europe had about 20 percent of world’s one billion people and Africa 8 percent. By 2000, the populations of these two continents were almost equal—Europe had 728 million residents and Africa 800 million, giving each continent 12 to 13 percent of the world’s six billion residents. If current trends continue, the populations of Europe and Africa will diverge. Europe is projected to shrink to 660 million by 2050, giving it 7 percent of the world’s 9 billion residents, while Africa is projected to expand to two billion, giving it 22 percent of the world’s residents. If history repeats itself, there could be large-scale emigration from demographically expanding Africa, perhaps to demographically shrinking Europe.

Economic differences between countries are widening, encouraging migration for higher incomes and jobs. The world’s 200 nation states had per capita incomes in 2004 that ranged from less than \$250 per person per year to more than \$50,000 (World Bank Indicators 2006, 20-22), a difference that provides a significant incentive for especially young people to migrate from one country to another for higher wages and more opportunities.¹⁰

The 30 high-income countries had one billion residents in 2005, a sixth of the world's population, and their gross national income was \$36 trillion, 80 percent of the global \$45 trillion.¹¹ The resulting average per capita income of \$35,000 in high-income countries was

⁸ The average woman in developing countries has 3.5 children (excluding China), versus 1.5 children per woman in developed countries. According to the Population Reference Bureau (www.prb.org), the world’s fastest growing population is in Gaza, where the population growth rate is 4.5 percent a year, and the fastest shrinking population is in Russia, where the population is declining by 0.5 percent a year.

⁹ Population density varies within countries, so that Bangladesh and Brazil, both developing countries, have very different population densities. Both countries are net emigration areas.

¹⁰ Young people are most likely to move over borders because they have the least invested in jobs and careers at home and the most time to recoup their “investment in migration” abroad.

¹¹ The average per capita was \$7,000. At purchasing power parity, which takes into account national differences in the cost of living, the world's gross national income was

21 times the average \$1,750 in low and middle-income countries. Despite rapid economic growth in some developing countries, including East Asian “Tigers” in the 1990s and China and India more recently, the 20-1 ratio in per capita incomes between high-income and other countries has been stable over the past quarter century.

Table 3. Global Migrants and Per Capita Income Gaps, 1975-2005

	Migrants World Pop millions	World Pop billions	Migrants World Pop %	Annual mig millions	Countries grouped by per capita GDP Ratio				
					Low (\$)	Middle	High	High- low Ratio	High- Mid Ratio
1975	85	4.1	2.1%	1	150	750	6,200	41	8
1985	105	4.8	2.2%	2	270	1,290	11,810	44	9
1990	154	5.3	2.9%	10	350	2,220	19,590	56	9
1995	164	5.7	2.9%	2	430	2,390	24,930	58	10
2000	175	6.1	2.9%	2	420	1,970	27,510	66	14
2005	191	6.4	3.0%	3	580	2,640	35,131	61	13

Sources: UN Population Division and World Bank Development Indicators; 1975 income data are 1976

The 1990 migrant stock was raised from 120 million to 154 million, largely to reflect the break-up of the USSR

2005 data are gross national income

A second dimension to economic inequality between nation states adds to international migration pressures. The world’s labor force of 3.1 billion in 2005 included 600 million workers in the high-income countries and 2.5 billion in the lower income countries. Almost all labor force growth is projected to be in lower income countries: their labor force is projected to increase by about 425 million between 2005 and 2015, while the labor force in high-income countries is projected to remain stable at just over 600 million.

Table 4. World, DC, LDC Economically Active Pop (EAP) 1980-2020 (000)

	1980	1985	1990	1995	2000
World EAP	1,929,556	2,160,150	2,405,619	2,604,941	2,818,456
More Dev EAP	522,683	544,271	568,832	573,626	589,151
Less Dev EAP	1,406,873	1,615,879	1,836,787	2,031,315	2,229,305
	2005	2010	2015	2020	
World EAP	3,050,420	3,279,373	3,481,270	3,651,283	
More Dev EAP	604,521	613,388	611,392	602,977	
Less Dev EAP	2,445,899	2,665,986	2,869,878	3,048,307	

\$56 trillion or \$9,400 per capita--\$32,500 per capita in the high-income countries and \$5,200 in low and middle-income countries.

Change	1980-90	1990-00	2000-10	2010-20
World EAP	25%	21%	17%	17%
More Dev EAP	9%	5%	4%	5%
Less Dev EAP	31%	26%	21%	20%

Source: ILO Laborsta, <http://laborsta.ilo.org/>

In lower income countries, 40 percent of workers are employed in agriculture, a sector that is often taxed despite the fact that farmers and farm workers usually have lower than average incomes.¹² With taxes helping to keep farm incomes less than nonfarm incomes, there is often rural-urban migration, helping to explain why the urban share of the population in low and middle income countries rose from 32 to 42 percent between 1980 and 2000.

Many industrial countries had a “Great Migration” off the land in the 1950s and 1960s, and similar “Great Migrations” are underway in many major emigration countries, including China, Mexico, and Turkey. The Great Migration off the land has three implications for international labor migration. First, ex-farmers and farm workers everywhere are most likely to accept so-called 3-D (dirty, dangerous, difficult) jobs in urban areas, either inside their countries or abroad.¹³ Second, farmers leaving agriculture often make physical as well as cultural transitions in moving to cities, and many are willing to go overseas for jobs if there is recruitment or a migration infrastructure in place. For example, Turks leaving agriculture in eastern Turkey or Mexicans leaving the farms of southern Mexico may find adaptation in Berlin or Fresno as easy as integration in larger cities within their countries. Third, as rural-urban migrants move to cities within their countries, they may be one step closer to the country’s exits, since it is usually easiest to obtain visas and documents for legal migration in the cities of developing countries, or to make arrangements for illegal migration.

Demographic and economic differences between countries, combined with rural-urban migration within countries, promise more economically motivated migration over national borders. Security and human rights differences between countries add to international migration pressures. After the global conflict between capitalism and communism ended in the early 1990s, local conflicts erupted in many areas, leading to separatist movements, new nations, and more migrants, as in ex-Yugoslavia and the ex-USSR. Creating new nations is almost always accompanied by migration, as populations are reshuffled so that the “right” people are inside the “right” borders.¹⁴

¹² Taxes are extracted from agriculture via monopoly input suppliers who sell seeds or fertilizers at high prices or via monopoly purchasers of farm commodities who buy from farmers at less-than-world prices and pocket the difference when the coffee or cocoa is exported. In the high-income countries, farmers’ incomes are generally higher than those of non-farmers, in part because high-income countries transfer funds to producers of food and fiber.

¹³ This is evident in Chinese coastal cities, where internal rural-urban migrants fill 3-D jobs, and abroad, where Chinese migrants are employed in industries that range from services to sweatshops.

¹⁴ Governments sometimes sent migrants to areas to quell separatist movements. If the area later breaks away and forms a new nation, these migrants and their descendants

There is also a more mechanical reason for more international migration: more nation states and thus more international borders to cross. There were 191 generally recognized nation-states in 2000,¹⁵ up from 43 in 1900, which means that some Africans who continue traditional seasonal migrations have become international migrants without changing their behavior because of the creation of new nation states. The number of new nation states has increased much faster than the number of regional agreements, such as in the EU, that permit freedom of movement.

Differences encourage migration, but it takes networks or links between areas to encourage people to move. Migration networks are a broad concept, and include communication factors that enable people to learn about opportunities abroad as well as the migration infrastructure that actually transports migrants over national borders and the rights regime that allows them to remain abroad (Massey, et al, 1998). Migration networks have been shaped and strengthened by three revolutions of the past half century, in communications, transportation, and rights.

The communications revolution helps potential migrants to learn about opportunities abroad. The best information comes from migrants established abroad, as they can provide family and friends with information in an understandable context. Cheaper communications enable migrants established abroad to quickly transmit job information as well as advice on how to cross national borders to friends and relatives at home. For example, information about vacant California farm jobs may be received in rural Mexico, thousands of miles away, before it spreads to the sections of nearby cities that have unemployment rates of over 25 percent.¹⁶ Meanwhile, the spread of films and television shows depicting life in high-income countries may encourage especially young people to assume that migration will lead to economic betterment.¹⁷

The transportation revolution highlights the declining cost of travel. British migrants unable to pay one-way passage to North American colonies in the 18th century often indentured themselves, signing contracts that obliged them to work for three to six years for whoever met the ship and paid the captain. Transportation costs today are far less, typically less than \$2,500 to travel anywhere in the world legally, and \$1,000 to \$20,000 for unauthorized migration. Most studies suggest faster payback times for migrants today, so that even

can become international migrants without moving again, as with Russians who were sent to the Baltics or Indonesians sent to East Timor.

¹⁵ The CIA factbook lists 191 “independent states”, plus 1 “other” (Taiwan), and 6 miscellaneous entities, including Gaza Strip, West Bank, and Western Sahara. (www.cia.gov/cia/publications/factbook/index.html).

¹⁶ These farm worker recruitment networks are examined in Rural Migration News. <http://migration.ucdavis.edu/rmn/index.php>

¹⁷ Even if migrants know that movies and TV shows portray exaggerated lifestyles, migrants who find themselves in slave-like conditions abroad sometimes say that they did not believe that things in rich countries could be “that bad.”

migrants who paid high smuggling fees can usually repay them within two or three years (Kwong, 1998; Kyle and Koslowski, 2001).

The communications and transportation revolutions help migrants to learn about opportunities and to cross national borders, while the rights revolution affects the ability of migrants to stay abroad. After World War II, most industrial countries strengthened the constitutional and political rights of people within their borders to prevent a recurrence of fascism, and most also granted social or economic rights to residents as they developed welfare states. During the low migration era of the 1950s and 1960s, there were few efforts to distinguish citizens and migrants in expanding welfare states.

Managing Migration by Adjusting Rights

As migration increased in the 1990s, policy makers began to roll back especially social or economic rights for migrants in an effort to manage migration. Two examples highlight these efforts.

Many European governments such as Germany put liberal asylum provisions into their postwar constitutions to avoid another situation in which refugees perished because other countries returned them to Nazi Germany. In the early 1990s, over 1,000 foreigners a day were applying for asylum in Germany, and then distributed throughout the country and provided with housing and food at local government expense while their applications and appeals were pending. With over 90 percent of the applicants found to be not in need of protection, there was a backlash that included attacks on foreigners.

The German government eventually made it more difficult for some foreigners to apply for asylum, such as those who came from “safe” countries or transited through safe countries in which they could have sought refuge en route to Germany. In a hard-fought compromise, the constitutional protection of asylum was maintained, but policy makers were able to reduce the number of asylum applicants without explicitly withdrawing the offer of protection to refugees by making it harder to apply.

The United States in the mid-1990s debated the cost of providing welfare or social assistance to legal and unauthorized migrants. In the early 1990s, there was an expectation that mid-1980s immigration reforms aimed at reducing irregular migration and NAFTA to speed up economic and job growth in Canada, Mexico, and the US would reduce Mexico-US migration. This did not happen, and high levels of legal and unauthorized migration during the worst recession in California in a half century prompted voters to approve Proposition 187 over the objections of almost all political and opinion leaders.

Proposition 187 led to a national debate over immigrant numbers versus rights, especially the right of newcomers to social assistance.¹⁸ One side argued that the number of needy migrants

¹⁸Proposition 187, approved by a 59-41 percent margin in November 2004, would have created a state-funded screening mechanism to ensure that unauthorized foreigners did not obtain state-funded services, including public school education. Its implementation

should be reduced in order to preserve the almost equal access of migrants (with US citizens) to social assistance, but the winning side argued that the number of migrants should not be reduced, even if the price of keeping the number of migrants high would be reduced migrant access to social assistance. The government resolved the debate , by restricting their access to social assistance.¹⁹

Managing migration by adjusting rights, such as accepting asylum applications only from some foreigners or giving migrants fewer rights to social assistance, is a blunt policy instrument that often violates human rights. In a world of persisting inequalities that encourage international labor migration, but with opinion polls showing that a majority of residents of most industrial countries want legal migration reduced and more done to prevent unauthorized migration, temporary worker programs are enjoying a renaissance as an in-between solution that satisfies both the “no borders” and the “no migrants” extremes. It is in this spirit that we turn, in the following sections, to the demand for migrants in industrial countries, the effects of migrants on sending countries, and the ILO Multilateral Framework on Labour Migration.

Demand for Labor and Migrants

The world’s labor force is aging as a result of declining fertility and increasing life expectancy. During the past half century, the major factors affecting labor forces in industrial countries include the declining labor force participation of men and the rising labor force participation of women. Men delayed labor force entry to go to school longer, and most stopped working sooner because of improved pension benefits that allowed earlier retirements. More women, on the other hand, remained in or returned to the labor force after marrying and having children. During the 1970s, industrial countries experienced very rapid labor force growth as a result of the entry into the labor force of baby boom born during the 1950s and 1960s and the rising labor force participation of married women.

Today, there are distinct differences in labor force growth in industrial and developing countries. Most industrial countries have labor forces that are growing slowly (Australia, Canada, and US), are stable (most EU countries), or are on the verge of shrinking (Germany, Japan). Labor forces in many developing countries are growing rapidly for the same reasons that industrial country labor forces expanded in the 1970s, a combination of large numbers of youth coming of working age and fertility declines that allow and encourage married women to seek jobs outside the home.

The result can be a so-called demographic bonus or demographic dividend in developing countries, which was a key ingredient in the East Asian economic miracle. In many Asian

was stopped by a federal judge, but some of its provisions were included in 1996 federal immigration reforms. See http://migration.ucdavis.edu/mn/more.php?id=492_0_2_0

¹⁹ Details of the three US laws enacted in 1996 are at Migration News. 1996.

<http://migration.ucdavis.edu/> One provision that was eventually dropped from the final bill would have made legal immigrants deportable if they received more than 12 months of welfare benefits. In the late 1990s, the access of especially legal immigrants and children to some welfare benefits was restored.

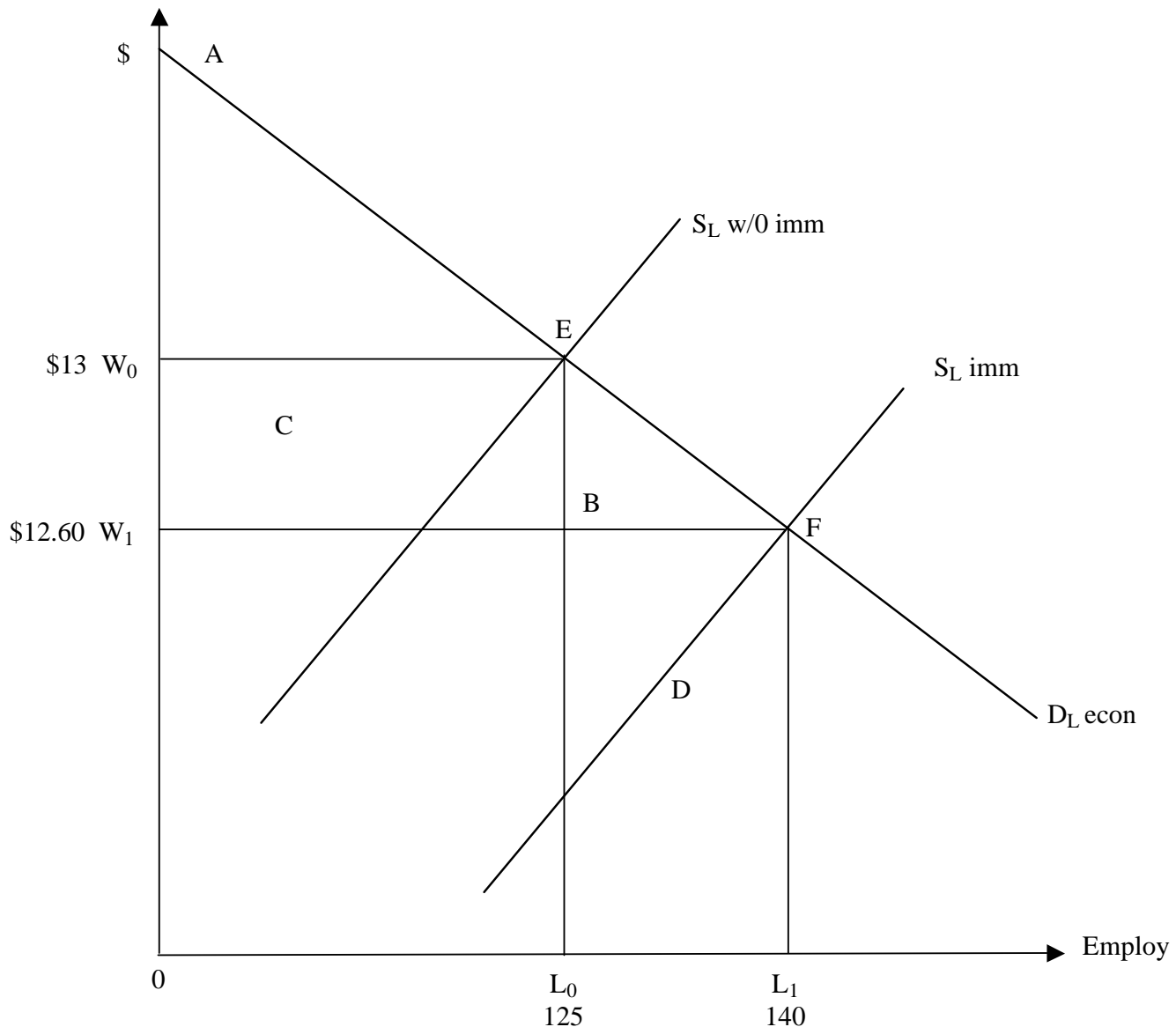
tiger economies, foreign investment created jobs in assembly operations especially for women who assembled imported components into finished products that were exported (Bloom et al, 2001). However, most developing countries have been unable to use the demographic bonus to attract foreign investment and create jobs, so that informal employment expanded and emigration pressures increased with fast-growing labor forces.

How should industrial countries respond to what is likely to be at least several decades of high and perhaps rising south-north labor migration pressures? Most economists favor more immigration. Migration adds workers to the economy, which increases employment and output by depressing wages slightly. Even though migrants are concentrated by industry, occupation and area, their impacts can be diffused throughout the economy as the products they produce move from one area to another and as local workers interact with migrants, as when they move away from migrant-heavy areas and sectors or do not move to them.

Modeling Migrant Economic Effects

The usual way in which the economic contributions of migrants are illustrated uses a macro model of the labor market. The figure for the US labor market begins with a negatively sloped aggregate demand for labor and a positively sloped aggregate supply of workers. The initial equilibrium, when there are no migrants, is at **E**, so that 125 million native workers are employed at an average wage of \$13 per hour.

Figure 1. Estimating the Net Economic Benefits of Migrants



Migrants increase the supply of labor, which in standard economic models reduces wages and raises national income (migration is a flow, but is often analyzed as a 0-1 change in stock to calculate its net economic benefits). There were 15 million foreign-born workers in the US in the mid-1990s, and their presence reduced US earnings by an estimated 3 percent or \$0.39 to \$12.60 an hour (Borjas, 2005, 338-9). The presence of these migrant workers shifted the labor supply curve to the right, for a new equilibrium at **F**.

As a result of labor migration, two rectangles and one triangle are created. Rectangle **C** represents money transferred from native workers' wages to owners of capital and land, a redistribution from labor to capital among natives. With migration, the economy expands by rectangle **D** and triangle **B**, with migrants getting most of the benefits of this expansion in

their wages, represented by rectangle **D**. Owners of capital gain triangle **B**, the net economic benefit of migrant workers, in increased returns to capital and land.²⁰

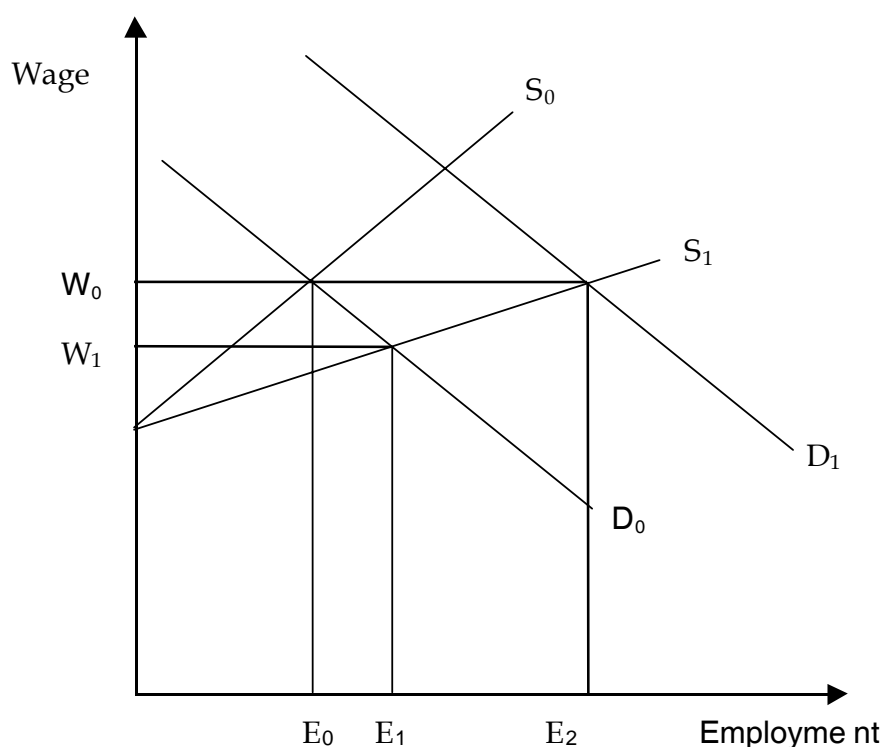
The size of triangle **B**, the net increase in national income due to the presence of migrant workers, can be estimated in percentage terms as: $1/2$ (3 percent decrease in wages \times 11 percent immigrant worker share of the labor force \times 70 percent share of labor in national income, or $1/2 \times (0.03 \times 0.11 \times 0.7 = 0.002) = 0.001$. This means that US national income was increased in the mid-1990s by $1/10$ of 1 percent because of the presence of 15 million immigrant workers. US GDP in the mid-1990s was \$8 trillion, making each one percent \$80 billion and $1/10$ of one percent of GDP. To put this net economic benefit in perspective, an \$8 trillion economy growing 3 percent a year expands by \$240 billion a year or about \$1 billion per working day.

The three key parameters needed to estimate the net increase in national income due to migrant workers are the wage decrease due to migrants, the migrant worker share of the labor force, and labor's share of national income. These calculations can be made for the entire economy or for particular sectors in which migrants are concentrated. In migrant-dependent sectors, wage depression may be larger, the migrant share of the labor force higher, but labor's share of industry revenue may be lower. For example, in US agriculture, wage depression due to migrants may be 50 percent, and foreign-born workers are 75 percent of US farm workers. Labor's share of revenue in migrant-dependent farm commodities is about 30 percent, and $1/2 (0.5 \times 0.75 \times 0.3) = 0.06$ or 6 percent, making \$2 billion of the \$30 billion in revenue in this sector due to the presence of migrant workers.

The model in which immigrants shift the supply of labor curve to the right, lower wages, and increase the size of the economy by creating triangle **B** is static in the sense that it does not allow for the immigrants to spend their earnings and create jobs that raise the demand for labor and thus push wages back up to previous levels or even higher. A dynamic model of immigration's economic impacts begins in the same way, with immigration shifting the supply of labor curve to the right, increasing employment at lower wages along the D_0 curve. However, if migrants spend their earnings in the labor-receiving country and there is investment in response to the presence of migrant workers, demand may shift outward to D_1 , which puts upward pressure on wages. Thus, in a dynamic model, wages can return to their original pre-immigration level, or to a higher level, as a result of the in-migration of workers.

Figure 2. The Net Economic Effects of Migration: Dynamic Case

²⁰ Note that there is no triangle **B**, no net benefit from migrant workers to the economy, if wages do not fall. If the aggregate demand curve were horizontal, meaning that wages did not fall as employment expanded, migrants would receive all the gain from expanded employment in their wages.



Both aggregate labor market models show that the major beneficiaries of international migration are the migrant workers whose incomes rise, and both also show that immigration expands the economy of receiving countries. The most contentious impacts of immigrants are distributional. In both models, residents with capital or complementary skills gain from the presence of migrants, while those who compete with migrants in the labor market lose in lower wages or higher unemployment. The consensus among economists is that immigration at current levels, and with concentrations of newcomers at the top and bottom of the education ladder, is one of several factors spurring US economic growth, but immigration also increases inequality (Borjas, 2003). However, immigration likely plays a less important role in fostering inequality than changes in technology, trade patterns, and tax policies.

Projecting Future Employment

Most industrial countries project the future size of the economy, employment, and labor force. This section reviews US projections, which are typical of those made by industrial countries. The US Bureau of Labor Statistics (<http://bls.gov>) expects that the number of US jobs will increase from 144 million in 2002 to 165 million in 2012. Meanwhile, the labor force (employed and unemployed workers) is projected to rise from 145 million to 162 million. Jobs and workers are not directly comparable because some workers hold two jobs while others are jobless.

The methodology for making job and worker projections begins with forecasts of the economy.²¹ BLS assumed that the real or inflation-adjusted Gross Domestic Product (GDP) would grow by 3 percent a year and that there would be 2.1 percent annual productivity growth between 2002 and 2012. The projected \$12.6 trillion economy in 2012 (in 1996 dollars) represents an increase of \$3.2 trillion over 2002 levels. Several key assumptions were used to project the GDP a decade ahead, including (1) the interest rate on 10-year treasury notes will be 6.25 percent in 2012, (2) the federal deficit will be \$164 billion, and (3) the US population will be 315 million, including 242 million age 16 and older, the group from which the labor force is drawn., BLS assumes that there will be one person 16 and older out of the labor force for every two persons employed or looking for work.²²

The BLS then estimated the number of jobs necessary to produce this projected economic output.²³ Unemployment fell from 7.5 percent to 4 percent between 1992 and 2000, and BLS assumed an unemployment rate of 5.2 percent in 2012 (Su, 2004, 27). About 98 percent of projected US employment growth between 2002 and 2012 is expected in services, and 80 percent of the expected employment growth is in five service sectors: education and health services, professional and business services, state and local governments, leisure and hospitality services, and retail trade.

Within these fast-growing service sectors, job increases are concentrated in particular subsectors. For example, growth in education and health services employment accounts for a quarter of the projected total 2002-2012 employment growth, and 40 percent of the employment growth in education and health services is expected to be in NAICS 621, ambulatory health care services, persons who provide health and other care to the elderly in their homes.²⁴

Table 5. Employment by Industry, 1992, 2002, 2012

Employment by Industry, 1992-2012	Changes				
	1992	2002	2012	1992-02	2002-12
Total (000)	123,325	144,014	165,319	20,689	21,305
Nonfarm	109,526	131,063	152,690	21,537	21,627

²¹ The model has 609 variables, including 169 that are exogenous, meaning that their values must be supplied in order to estimate future GDP and employment.

²²BLS assumes that there will be one person 16 and older out of the labor force for every two persons employed or looking for work.

²³ The GDP has four major components: personal consumption (projected to be \$8.7 trillion or two-thirds of the 2012 GDP), investment (\$2.7 trillion), government (\$2 trillion), and foreign trade (-\$0.7 trillion, meaning that BLS is assuming a trade deficit).

²⁴ The American Health Care Association, a member of the EWIC, on February 12, 2004 issued a press release supporting immigration reform because of "a shortage of the key caregivers necessary to help serve a rapidly aging population." It called for a temporary worker program to "allow willing workers to enter our country and fill jobs for which U.S. citizens cannot be found," including frontline care givers such as certified nurses aides. www.ahca.org/news/nr040212.htm

wage/salary					
Construction	4,608	6,732	7,745	2,124	1,013
Manufacturing	16,799	15,307	15,149	-1,492	-158
Services	87,510	108,513	129,344	21,003	20,831
Ed/health	11,891	16,184	21,329	4,293	5,145
services					
Pro/Bus services	10,969	16,010	20,876	5,041	4,866
State/local govt	15,675	18,722	21,240	3,047	2,518
	9,437	11,969	14,104	2,532	2,135
Leisure/hospitality					
Retail trade	12,828	15,047	17,129	2,219	2,082

Source: Berman, 2004, 59

Similarly, almost 60 percent of the projected professional and business services employment growth is in administrative support services, and another 35 percent is in employment services, the firms that recruit workers and deploy them from firm to firm as needed. The number of manufacturing jobs is projected to shrink slightly, while the number of construction jobs is projected to rise by over a million to 7.7 million, making construction employment in 2012 comparable to employment in financial services today.

The projected number of jobs in particular industries was derived from the GDP estimated for 2012 “coupled with expert assessment of likely trends to produce employment projections for 725 detailed occupations” in 2012 (Horrigan, 2004, 4).²⁵ In other words, BLS projects net output for a sector such as hospitals and uses this projection to determine the number of jobs in hospitals. For example, half of US registered nurses are employed in hospitals, so BLS projected the 2012 output of hospitals and other industries that employ RNs to estimate that the number of RN jobs would rise from 2.3 million in 2002 to 2.9 million in 2012, an increase of 623,000.

Many of the 58 mostly service industries projected to have faster than average employment growth employ migrant workers, and these fast-employment growth industries collectively account for 84 percent of the total projected employment growth (Horrigan, 2004, 9). Employment services, doctors’ offices, food services, and construction are projected to account for 5.3 million additional jobs, or a quarter of the total expected to be added by 2012.²⁶ Food services and drinking places, for example, are projected to have output growth slightly above average, 2.4 percent a year versus the 2 percent average, and employment growth of 16 percent, boosting the number of jobs in this sector from 8.4 in 2002 to 9.7 million in 2012.

Table 6. BLS Projections, Selected Industries, 2002-2012

²⁵ BLS takes potential technological changes into account when making its projections of employment in particular industries.

²⁶ The other industry expected to add over a million workers by 2012 is state and local government education, expected to rise by 1.7 million from 9.9 million to 11.6 million.

Industry	Output growth annual-%	Employment 2002 (000)	Employment 2012(000)	Employment growth 2002-12-%
Employment services	5	3,249	5,012	54
Doctors offices 4		3,190	4,419	39
Food services 2 and drinking places		8,412	9,749	16
Construction 2		6,732	7,745	15
Subtotal		21,583	26,925	

Source: Horrigan, 2004, Table 4, 11-12

Doctors' offices are offices of health practitioners

It is hazardous to project the demand for migrant workers separate from the demand for all workers. For example, one could observe that many newly hired construction workers are foreign-born, and assume that the 15 percent growth projected for migrant employment would be mostly filled by migrant workers. However, such a straight-line projection ignores the fact that industries can change the composition of their work forces over time. For example, workers who used to pick up garbage cans and dump them into trucks were often low-skilled and migrants, but the workers who today drive trucks with hydraulic lifts that pick up standardized cans and dump them in trucks are primarily US-born. Thus, projecting migrant worker employment by sector compounds errors in projecting employment with errors in projecting how work may be accomplished in the future.

Similarly, some analysts point to aging populations, look at current elder-care arrangements, and assume that there will be a large and growing demand for care givers that will be met in part by migrants. However, simply projecting current arrangements into the future may be misleading. There could be the development of retirement villages in lower-wage countries, so that the elderly would migrate to migrant countries of origin rather than vice versa. Second, there could be a far faster growth of nursing other group homes than is currently foreseen, which is likely to be associated with fewer and more skilled care givers. Just as it would have been difficult to anticipate the growth of out-of-home child care centers, and the subsequent raising of standards so that few migrant workers are involved, so it may be hard to anticipate how quickly alternatives to in-home elder care may evolve.

Finally, if in-home care giving becomes more expensive, there is likely to be market segmentation. For example, the in-home care market could segment, with some elderly preferring in-home care givers who may be migrants and others opting for technological aids, such as cameras in their homes that are monitored to summon help when needed. These examples suggest that it is difficult to predict the future demand for labor, and almost impossible to predict the future demand for migrant labor.

Other industrial countries make similar employment projections, with widely varying levels of detail. Global and regional projections tend to focus on labor supply, implicitly assuming that most of the additional workers will be hired because governments will have macro policies that assure full employment. However, focusing on labor supply does not identify the types of jobs that may be available for migrant workers in the future.

Types of Temporary Worker Programs

Economies have three major sectors, agriculture, industry, and services. The fact that especially young people leaving the agricultural sector in developing countries are willing to fill jobs in all sectors of industrial country labor markets suggests that labor migration can provide a perfect match between “excess” developing country workers and vacant industrial country jobs.

The major issue is not the fact that migrants **can** fill vacant jobs in industrial country agriculture, industry, and services sectors. Instead, the major issue is whether and how to regulate movements of labor over national borders. A century ago the preferred formula was immigration, which generally meant that a person left one country to begin anew in another, even though as many as a third of those immigrating from Italy to the US in the early 1900s eventually returned to Italy.

In the 21st century, there are three broad types of temporary worker programs:

- Seasonal Programs, Seasonal Jobs. These programs usually have temporary foreign workers filling temporary or seasonal jobs abroad. Migrants tend to be temporary in such programs because the jobs they fill are seasonal, which gives them fewer reasons to remain abroad when their jobs and contracts end. Under some programs, such as those involving Poland and Germany and Mexico and Canada, workers who abide by the terms of their seasonal work visas (return when their jobs end) get priority to re-enter next season.
- Temporary Workers, Permanent Jobs. These are the most common temporary worker programs, and their aim is to rotate temporary foreign workers through year-round or permanent jobs. In most cases, temporary workers receive one- or multiple-year work permits, but there is wide variation in employer and migrant rights to extend stays and to adjust status. For example, legal H-2A temporary workers in the US in the mid-1980s were not eligible for the amnesty that led to immigrant status, while unauthorized workers were. In Italy, temporary workers can slip in and out of legal status as their employers register them for a year but do not re-register them.
- Probationary Immigrant Programs. These migrant worker programs extend more rights to foreign workers as their duration of stay lengthens. During the 1960s, most European temporary worker programs initially issued one year work and residence permits. If employers requested that a migrant’s permits be renewed, the renewal was normally for two years and usually enabled a migrant to unify his/her family in the country of employment (assuming that the migrant could show suitable accommodations). After another two-year renewal (five years), the migrant generally had immigrant or settlement rights, meaning that he/she could work in almost all jobs

not requiring citizenship. After a total of five to 10 years of lawful residence and employment, the migrant could naturalize.

Workers of all skill levels are found in each type of program, but the general rule is that ease of entry and duration of stay rise with years of education. This means that most seasonal workers are low skilled, the temporary workers who rotate through permanent jobs are primarily are low skilled and semi-skilled, and the migrants in probationary programs are most likely to be professionals with college degrees, such as nurses and computer programmers.

Certification versus Attestation

Programs that admit foreign workers vary from country to country, but they can be compared along two important dimensions, viz, what employers must do to satisfy governments that foreign workers are needed (sometimes called economic needs tests), and the wages and work-related rights of migrants in host-country labor markets. Under most temporary worker programs, employers must satisfy the government that foreign workers are needed to fill vacant jobs before they arrive, a process called certification in the US and many other countries.

Certification means that the government controls the border gate, which is not opened until the employer convinces the Department of Labor (DOL) that local workers are not available. In countries with low unemployment rates and strong employment services, the certification process tends to be quick and straightforward, as in Ireland in the late 1990s, where most employers obtained quick approval of requests for migrants. However, when employers request migrants despite high unemployment rates, certification can be contentious, as in US agriculture, where some farm employers request certification to hire migrants despite unemployment rates above 10 percent.

The US uses certification to protect low-skilled US workers. The H-2A (farm--www.foreignlaborcert.doleta.gov/h-2a.cfm) and H-2B (nonfarm--www.foreignlaborcert.doleta.gov/h-2b.cfm) programs allow employers to request seasonal foreign workers to fill temporary or seasonal US jobs, generally those lasting less than 12 months. The H-2A program, which has no ceiling on admissions, usually certifies about 45,000 farm jobs a year as needing to be filled by migrants, while the H-2B program, which admits a maximum 66,000 temporary workers a year, generally runs out of visas soon after they become available (another 20,000 H-2B visas are available for foreigners who held H-2B visas in previous years).

One practical difficulty with certification is that, when employers ask the labor department to certify their need for migrant workers, they have generally identified the foreign workers they want to fill the jobs. Thus, the employer does not want its ads or labor department recruitment efforts to identify local workers, since the migrants abroad are already in the process of obtaining passports, health checks, and making other preparations to fill the jobs. Certification can become contentious when local workers who respond to ads are not hired, when local workers promise to appear when needed to fill seasonal jobs but do not, or when employers are required to continue hiring local workers until the job is at least 50 percent

completed, even if hiring a local worker means that a migrant worker must be sent home early.²⁷

The alternative attestation process gives employers practical control migrant worker entries and employment. Under the US H-1B program, employers can complete a Labor Condition Applications that “attests” that the rate of pay offered to the foreigner worker is the higher of the actual wage paid to similar US workers or the prevailing wage for the job in question, that the employment of H-1Bs will not adversely affect the working conditions of similar US workers, and that there is no strike or lock out at the work place (www.foreignlaborcert.doleta.gov/h-1b.cfm). DOL does not verify the data submitted by employers and there are no checks on the employer promises unless there are complaints. The US L-1 intra-company transfer program is even more employer friendly, since it does not have prevailing wage and no-strike requirements and requires only that the employee transferred to the US have been employed by the foreign affiliate at least one year. These employer requirements are summarized below.

Table 7. Employer Requirements and Migrant Rights

Employer Requirements	Worker Rights	
	Contractual Worker	Free Agent Worker
Certification	H-2A/B	
Attestation	H-1Bs	Foreign students
No employer tests	Au pairs; exchange visitors	Intra-EU migrants, Worki Holiday Makers

Source: see text

Contracts versus Free Agents

Foreign workers normally receive work and residence visas that tie them to a particular employer. If the migrant is laid off or fired, she/he usually loses the right to remain in the country after a grace period that ranges from a week to a month. This “indentured servitude” aspect of temporary worker programs, the tie to one employer, makes them unpopular with most unions; they argue that temporary workers who are dependent on employers to remain in the country are unable to effectively assert their rights.

Migrant workers could more effectively protect their rights if they had freedom of movement in the host-country labor market, meaning they could move from one employer to another within a sector or area or throughout the labor market. Regional free labor markets such as the EU allow such freedom of movement, so that EU nationals can move and seek jobs on an equal basis with local workers (except for those requiring national citizenship).²⁸ Unauthorized migrants also have freedom of movement, and some migrant advocates say that this freedom of movement gives them more protections than legal status if the alternative is being tied to a particular employer.

²⁷ Examples of such disputes, and the litigation they spawn in US agriculture, are documented in Commission on Agricultural Workers (1992).

²⁸ Migrants moving within the EU can have pre-arranged jobs, as with Portuguese workers who move to the UK, or move as free agents and change jobs.

Foreign students, working holiday makers, and other migrants who are primarily in the host country for another purpose, but who also work, are generally free agents in the labor market. The employers who hire them satisfy no or minimal requirements, in the sense that there is often no supervised recruitment required and employers must satisfy only minimum wage laws.

Logic and experience suggest that freedom to change jobs in the host country labor market can be a powerful protection for migrants, allowing them to escape abusive employers. However, most temporary worker programs aim to fill particular job vacancies, so most temporary workers are required to work for the employer whose “need” for migrants has been certified by a government agency. The cases in which governments do not officially determine that migrants are “needed,” such as intra-EU migration, generally involve relatively small numbers of migrants or involve migrants whose major purpose is something other than work, as with foreign students and working holiday makers.

Dealing with Distortion and Dependence

Temporary worker programs tend to get larger and to last longer than anticipated because of distortion and dependence. Most employers in host countries do not hire temporary workers. Distortion means that the minority who do have access to a different labor supply than employers who hire only local workers. The employers who hire migrants generally face limited supplies of especially low skilled workers at home and almost unlimited supplies abroad.

Hiring workers to fill low-skill jobs is not easy (Waldinger and Lichter). Employers who would face high turnover among local workers hired to fill seasonal jobs in agriculture or year-round jobs in low-wage manufacturing and services can find migrants to be a godsend. If current migrant workers are tapped to recruit their friends and relatives, they bring to the work place only those who can learn the job and often take responsibility for training the new hire. As a result, the hiring and training that often takes a large share of management time in high-turnover workplaces becomes a function of the migrant network, freeing managers for other tasks (Marshall, 2007).

Some of the employers hiring temporary workers assume that migrants will continue to be available and make investment decisions that reflect this assumption. In this way, farmers who depend on migrants may plant fruit trees in areas with few workers, assert that they will go out of business without migrants to pick their crops, and resist efforts to reduce the availability of temporary workers because doing so would reduce the value of their orchard investment, as when paying higher wages or buying machinery would raise costs and reduce profits. Having some but not all employers hire migrant workers leads to economic distortion in the sense that some employers face different labor supplies than others. The employers who rely on migrants may not have to raise wages as local workers move up in the labor market because of the availability of foreign workers, while other employers adjust to changing local labor conditions.

The other half of the equation that helps temporary worker programs get larger and last longer than expected is dependence, the fact that some migrants and their families as well as regions of labor-sending countries may develop economic structures that assume foreign jobs, earnings, and remittances will continue. If the opportunity to work abroad legally is curbed, and the 3 R's of recruitment, remittances, and returns have not set in motion economic development that makes migration self stopping, migrants may continue to seek jobs abroad outside legal channels in order to avoid reductions in their incomes.

Most researchers conclude that Bracero programs between 1942 and 1964 sowed the seeds of subsequent unauthorized Mexico-US migration, via distortion in rural America (the expansion of labor-intensive agriculture) and dependence in rural Mexico (population and labor force growth without economic development) (Martin, 2003, Chapter 2). There is growing evidence that migrant-dependent regions are evolving in labor-sending countries around the world, from Albania to Zimbabwe. Residents live better because of remittances (poverty is reduced), but the spending of remittances may not lead to the investment that sets in motion the kind of development that makes migration self stopping.

The realities of distortion and dependence should encourage governments considering new temporary worker programs to proceed cautiously. The key is to find economic mechanisms that minimize distortion and dependence, including taxes to encourage employers to look for alternatives to migrants and subsidies to encourage temporary workers to return to their countries of origin as their contracts require and provide funds for economic development.

Thinking about distortion requires a recognition that employers always have choices when deciding how to get work done. Migrant workers are in many cases the “easy” path, since they substitute foreign for local workers who have found better jobs. Once migrant networks take over responsibility for recruiting and training new workers, employers have an incentive to maintain migration. In an analogy with irrigation, farmers flood fields with water if water is cheap, ensuring that all plants receive water, but may install plastic pipes and drip water to each plant if water is expensive. Similarly, employers can work collectively to maximize the pool of low-skilled workers available to all, or individually invest to develop and retain what is likely to be a smaller and more skilled work force. In many countries, the incentives are for employers to maximize the pool of low skilled migrants available rather than invest individually, which tends to limit the ability of migrants to protect their rights.

One way to minimize distortion and protect migrants is to realize that payroll taxes for social security and unemployment and other insurance add 20 to 40 percent to wages. These taxes, generally paid mostly by employers, should be collected on wages paid to migrants to level the playing field between migrant and local workers—if employers did not have to pay these taxes on the wages of migrants, migrants would be cheaper than local workers. However, migrants are generally not eligible for the benefits financed by employer-paid payroll taxes. They could be used to combat distortion by supporting the restructuring of migrant jobs, such as promoting labor-saving mechanization. For example, in an industry such as agriculture, it is often hard for one farmer to finance or implement mechanization, since packers and processors want hand or mechanically picked crops, but not both (Martin, 2003, Chapter 8). Thus, the employer's share of payroll taxes on migrant wages could reduce distortion, with

the amount of money available for such a program contingent on how many migrants are employed and the taxes paid on their wages.²⁹

It should be emphasized that mechanization is not the only alternative to migrants. In some cases, local workers may be attracted to “migrant jobs” after they are restructured, as with garbage collection in the US, whose labor force was “re-nationalized” by switching to large containers lifted by a truck operator. In other cases, payroll taxes may accelerate market segmentation in capital-intensive and labor-intensive directions, as when some elderly have in-home caregivers and others have technology such as cameras linked to computers that enable them to live alone with video monitoring that can summon help quickly in emergencies. The universal truism is that wages held down by more migrants will lead to more labor-intensive ways to get work done, and wages bid up by fewer migrants will encourage the development of labor-saving alternatives.

The other half of the equation involves giving migrants an incentive to abide by the terms of their contracts and depart after a year or two abroad. One way to encourage departures is to refund the migrant’s share of payroll taxes when the migrant surrenders his/her work visa in the country of origin. This is not withholding wages, it is refunding worker contributions to programs from which short-term migrant workers are unlikely to benefit. If the migrant share of payroll taxes were refunded in countries of origin, governments and development institutions could match the refunds to support projects that create jobs in the migrants’ home area.

Irregular Migration and Enforcement

Minimizing distortion and dependence with taxes and subsidies will not have the desired effects on employers and migrants if unauthorized workers are readily available and labor laws are not enforced. Some employers hire unauthorized workers to save payroll taxes, and some migrants established abroad will resist departing when their work visas expire despite refund offers if they believe they can continue to work abroad in an irregular status and they have few options to earn income at home. Thus, enforcement of immigration and labor laws is a prerequisite to the development of temporary worker programs that promote legal labor migration and minimize distortion and dependence.

Enforcing immigration, labor, and tax laws in the workplace is not easy. Most countries devote relatively more enforcement resources to collecting taxes. Years of studying tax systems have led to a variety of “automatic” mechanisms such as VAT systems to collect taxes, and checks and balances, so that wages deducted as a cost of business show up as income reported to workers. Countries also reserve some of their stiffest punishments for economic crimes for violations of tax obligations.

²⁹ To recognize that each sector is different, boards or committees representing employers, workers, and government could decide how to spend the accumulated payroll tax funds to reduce dependence on temporary workers over time, that is, there would not have to be a one-size fits all formula. Involving worker advocates in tri-partite boards could promote the development of decent work in particular migrant-dependent sectors.

The enforcement of labor laws, on the other hand, has traditionally depended on both social and economic factors. Child labor was reduced by prohibitions that were bolstered by free schooling, school lunches, and other means of making schooling a low-cost alternative to work. Most labor laws are self-enforcing, in the sense that the best way to ensure that employers pay at least the minimum wage is to have a labor market in which workers will not work for less. Workers have an incentive to report violations of minimum wage laws, since they will get more money.

Enforcing immigration laws is different. Border enforcement aims to prevent illegal entries, and interior enforcement to prevent the employment of unauthorized workers. The GCIM in 2005 echoed a widely held view: “The main obstacle to the protection of migrant rights is not the absence of law, but the failure of states to respect those conventions, agreements, and declarations that they have freely accepted.” (2005, 54).

However, it is not easy to enforce immigration laws, in part because employer and migrant incentives may not align with the requirements of laws and conventions. For example, unlike the incentive for workers to report violations of labor laws, there is rarely an economic interest for employers and migrants to report violations of immigration laws, since the employer may lose a worker and the worker a job. The enforcement of all laws depends in part on complaints, and competitors who observe violations of tax, labor, and immigration laws have an incentive to complain in order to level the playing field.

However, workplace institutions such as unions tend to be far more willing to complain about labor law than immigration law violations. Most unions aim to organize workers, including migrants, and most are reluctant to report unauthorized migrants to immigration authorities. Both employers and unions are reluctant to endorse bounty programs, such as the that in Taiwan that provides payments to those who report employers who hire unauthorized foreign workers and “runaway” migrants. Countries such as Malaysia that establish “volunteer” enforcement agencies, the People's Volunteer Corps (RELA), to help enforce laws, raise the ire of employers, unions, and NGOs, who accuse them of human rights violations.

There are several ways to strengthen migrant worker rights, and they are summarized below in terms of their ease of use. However, the policies most likely to be effective in ensuring migrant rights are also most difficult to implement:

- Information and education. Migrants may not know the minimum wage or that that they are entitled to it, and may not know how minimum wages and other work-related benefits are calculated. Providing migrants with information in their own language can help to ensure that they know their entitlements while protecting local workers, so that employers underpaying migrants do not gain a competitive advantage.
- Targeted enforcement. Most labor law enforcement responds to complaints, and there are often more complaints of violations than can be dealt with by available inspection staff. Thus, workers such as migrants who tend not to complain may be employed in workplaces that violate labor laws but are not inspected. Targeting such workplaces for enforcement efforts can ensure that labor laws are followed and protect migrants

as well as non-migrant workers employed by firms that compete with those hiring migrants.

- Giving Migrants Incentives to aid Enforcement. Educated migrants who know their rights are in the best position to report violations. They may not do so fear of losing their jobs, but there are several options for encouraging migrants to report violations of labor laws, including allowing them to change jobs if they file valid complaints and allowing them to stay in the country if they help to convict abusive traffickers and employers.

Information and education are the easiest ways to help migrants to protect themselves. Examples of information and education include the Philippines programs that provide orientation to migrants going abroad legally, including leaflets outlining basic rights and living conditions and ensuring that labor attaches visit migrants while they are employed abroad. Similar orientation and labor attaché visits are part of other temporary worker programs as well, as with Mexican seasonal workers in Canada.

Targeted enforcement efforts can be part of an ongoing program mounted by labor law enforcement agencies or special efforts that respond to particular concerns. Many targeted enforcement efforts operate at a sub-national level or involve cooperation between national and local authorities, including California's Economic and Employment Enforcement Coalition, a federal-state effort established in 2005 to combat the underground economy and protect vulnerable workers (www.edd.ca.gov/eddeec.htm). About 8,000 small businesses a year are inspected, including those that hire legal and unauthorized migrants in agriculture, construction, restaurants and garments.

During the first quarter of 2006, some 260 farming operations were inspected, and 85 percent were in violation of some labor or tax law. Some had more than one violations, and the 222 farms with violations had a total of 761, with projected penalties of \$1.3 million. Violation rates were even higher in construction and garments, where 96-97 percent of inspections found violations of labor laws. Note that this state-led effort explicitly excludes immigration inspectors, since the goal is to protect workers, not remove unauthorized foreigners from the US.

When enforcement efforts such as the EEEEC find such high levels of violation, there is pressure to target not just the violating employer, perhaps a small business that will be bankrupted by the fines and sanctions, but the beneficiary of the work done in violation of labor laws, either upstream or downstream in the production process. So-called joint liability laws were used to get retailers to pay wages owed workers who were found to have sewed garments in sweatshops, but their routine application is controversial because they require the beneficiary of work done by one employer to police working conditions at another employer. When one employer is in a superior economic position to another, as when a farmer hires a labor contractor to provide harvest crews, or a fashion house hires a sewing shop to sew garments, most industrial countries require the contractors and shops to be licensed and registered. If the farmer or fashion house fails to verify that the contractor or shop was registered, it becomes jointly liable for violations of labor or tax laws. Such joint liability can

increase the number of contractors registered and licensed, but not necessarily eliminate violations, especially if workers do not complain.

A third policy option is to give workers an incentive to report violations, perhaps by granting workers filing valid complaints longer work permits or immigration visas. Most employers oppose such bounty-programs, fearing they will generate false charges. Reward programs are most common for victims of traffickers, who in many countries can receive immigrant visas if they agree to testify against the trafficker.

General legalization programs can have unintended consequences. The goal of most governments is legal migrants and workers. Most countries receiving migrants have laws against working without proper permits and hiring workers without proper documents. As countries with growing numbers of unauthorized workers debate how to make the enforcement of immigration laws more effective, there is typically pressure for a “grand bargain” between those who put top priority on reducing illegal migration and those who want to legalize the status of migrants who have developed “roots.”

Grand bargain enforcement and legalization campaigns never completely stop illegal migration, nor do they legalize all foreigners. As a result, one grand bargain is typically followed by another, as enforcement mechanisms are fine-tuned and another group of migrants is brought out of the shadows. Countries such as Spain and Italy have made this process routine, periodically allowing foreigners who have found employers who will pay taxes on their wages to be regularized and, after five years of legal work and residence, earn permanent residence rights. The signal sent by successive legalizations is that the best way to gain eventual immigrant status (for those who cannot migrate legally via front or side doors) is to be inside the country and employed.

Comparing Seasonal Worker Programs

Seasonal worker programs admit temporary foreign workers to fill temporary jobs abroad. This section compares seasonal worker programs in several industrial countries.

US H-2A Program

The H-2A program allows US employers of farm workers to request certification from the US Department of Labor to have foreign workers admitted “temporarily to the United States to perform agricultural labor...of a temporary or seasonal nature.” DOL’s certification involves, inter alia, ensuring that two conditions are satisfied:

1. there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the employer petition and
2. the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The Department of Homeland Security (previously the Immigration and Naturalization Service) makes the final decision on the employer's petition for H-2A workers. DHS normally rejects employer petitions unless they are accompanied by a US Department of Labor (DOL) certification.

All US employers seeking certification to employ foreign workers must complete ETA Form 750, Application for Alien Employment Certification, Part A, which spells out the job offer for which foreign workers are sought, including the start and end dates, the details of the job, wages, and working conditions. In addition, employers seeking H-2A workers must complete ETA Form 790, Agricultural and Food Processing Clearance Order, which provides more detailed information on the jobs for which the employer is seeking H-2A workers, including piece rates and transportation and housing arrangements etc.

Forms 750 and 790 must be filed at least 45 days before the anticipated need for H-2A farm workers, with (1) the DOL National Processing Center (NPC) in Atlanta or Chicago and (2) the State Workforce Agency (SWA) in the requesting employer's state. The NPC reviews employer applications, normally notifying the employer and SWA within 7 days whether the application is accepted or rejected. The NPC acceptance includes a recruitment plan the employer must follow, and can require the employer to engage in intrastate and interstate searches if the NPC determines there is a supply of workers to be recruited. For example, the NPC may require a Washington farmer requesting certification to employ H-2A workers to pick apples file a 790 Clearance Order that is sent to California and Texas, since workers from these states often migrate to Washington for the apple harvest.

If the NPC rejects the employer's application, it spells out the changes needed to correct deficiencies or appeal the rejection. The rejection can be based on an employer not meeting the requirements of the program (time frames, wages etc) or on the NPC determining that there are sufficient local workers or that H-2As would adversely affect US workers. In some cases, the NPC certifies the employer's need for some but not all of the workers requested.

Employers must engage in recruitment efforts independent of local SWAs, report the results to the NPC, and continue recruitment efforts until the H-2A workers have departed for the US. Employers must offer to reimburse transportation and subsistence costs to H-2A and US workers who live beyond reasonable commuting distance, but do not have to advance travel and subsistence costs unless it is the prevailing practice in the area to do so. Workers who report must have their travel and subsistence costs reimbursed if they complete 50 percent of the contract period. The SWA continues to recruit and refer US workers until 50 percent of the employer-specified period of employment of the H-2A workers is completed.

The NPC normally certifies the employer's need for H-2A workers 30 days before the employer-specified need date. The employer sends the DOL certification to USCIS with the required petition and fees; GAO concluded that this INS/ USCIS processing simply involves checking that the employer has a DOL certification and has paid the appropriate fees. After USCIS approves the employer's petition, its approval is sent to DOS and the employer; if it rejects the employer's petition, the employer can appeal.

The employer notifies the H-2A workers (more typically the agent in the worker’s country of origin) to report to the US consulate to be interviewed for H-2A visas. The workers are interviewed, issued visas, and normally provided with vouchers for transportation and subsistence to the US work place if the employer is advancing the cost of transportation. At the border, CBP inspects the workers and normally admits them. The workers travel to a reporting station or the work site and wait for work to begin. If workers abscond or leave the work site, they are to be reported to the SWA within two business days.

Figure 3. Flow Chart for H-2A Certification and Worker Admissions

Flow Chart for H-2A Certification and Worker Admission

Day	Employer/Worker	NPC	SWA	Other
45	45 days before need	Reviews application		
44	Files ETA 750/790	within 7 days		
43	with NPC and SWA	1. Accept and		
42		set recruitment requirements		
41	If rejected	2. Reject and return to		
40	Modify within 5 days	employer		
39	Modify again/appeal			
38	<i>Accepted Applications</i>	<i>Accepted Applications</i>	<i>Accepted Applications</i>	
37	Recruit US workers		Distribute ETA 790	
36	until H-2As depart		for inter/intrastate recruitment	
35	for US		Recruit and	
34	If requesting more than 50		refer US workers	
33	Submit recruitment report		until 50% of	
32	every Friday		H-2A work contract	
31	Notify NPC of recruitment		completed	
30	results	NPC certifies and bills	SWA submits housing inspection report	
29		employer or denies	SWA sends CO to other states	
28				
27				
26				
25				
24				
23		NPC gets employer		
22		and SWA recruitment		
21		reports		
20		NPC grants (full or part) or denies cert	SWA stops active recruitment	
19	Employer sends NPC			USCIS approves
18	certification to USCIS			sends approval to
17	with fees			DOS & employer
16				
15	Employer notifies			
14	workers to get visas			Consular interviews
13	Workers go to consulate			visa issued

12		and pays fee
11		
10		
9		
8		
7		
6	Worker travels to US	CBP inspects/admits
5		
4		
3		
2		
1		
0	Work begins	

Source: 20 CFR 655.100 -199 and interviews

Many of the items in the H-2A flow chart raise issues for which there are no easy answers. For example, DOL regulations require employers to apply for certification at least 45 days before their need date, the date they anticipate employing H-2A workers (reduced from 60 days in 1998-2000). DOL encourages employers to contact the NPC and SWA well before the minimum 45 days-before-need date.

GAO (98-20, p9) noted the dilemma involved in setting application deadlines. An earlier date gives the employer and the SWA more time to recruit US workers, to check employer-provided wage and job information and to inspect worker housing. However, an earlier deadline may make it difficult for employers to estimate exactly when work will begin, which can mean that workers arrive too soon or too late.

Figure 4. Issues in H-2A Certification

Issues in H-2A Certification

Non-Wage Issues	Current	Past	Discussion
Need Date	45 days	60 days	Early deadline gives more time for recruitment, checking May result in workers too soon or too late
Recruitment	NPC sets rules		Employer may have identified preferred H-2A workers Some SWAs may not recruit for H-2A job orders Little effective oversight of rejected applicants
Housing & Board	Inspection before arrival		If repairs needed, conditional access to interstate recruitment
Transportation	Reimburse inbound with completion of 50%		Reimburse round-trip with completion of 100%
3/4 guarantee	Enforced at end of season		Workers may have already departed from the US, making it hard to interview them
Wage Issues			
AEWR	NASS field and livestock combined		

Prevailing Wage for state the
 Calculated by SWAs

Piece rates & Employer specifies piece rate & prody standards
productivity Standards

Recruitment may be the single most contentious issue in the H-2A certification process. The Wagner-Peyser Act requires that the United States Employment Service maintain a system for the orderly movement of workers within and between states. The Agricultural Recruitment System (www.doleta.gov/programs/ars.cfm) helps employers anticipating labor shortages to recruit qualified workers on a temporary or seasonal basis (CFR 653.500-503).

The ARS goes into action when an employer requests ES help to recruit workers, which normally occurs when employers seek certification to employ H-2A workers. Employers specify the number of workers needed, the job, and the wages and working conditions offered. SWAs can recruit workers locally against such job orders, and DOL Regional Offices review Interstate Clearance Orders to ensure they comply with standards and determine to which states they are sent before the SWA transmits them to these states.³⁰ Before workers can be “referred” to out-of-state farm jobs, employers must make written assurances to workers who would travel long distances, as specified by the Migrant and Seasonal Worker Protection Act (MSPA) and DOL regulations. Summaries of interstate job orders are posted on America's Job Bank (www.ajb.org), which ceased operations July 1, 2007.

Most employers use the ARS when required to do so by the DOL NPC office reviewing their request to be certified to employ H-2A workers. However, the ARS often fails to provide a useful test of the availability of US workers. Many workers do not learn about farm jobs in other states, in part because some SWAs do not send Clearance Orders filed by employers seeking certification for H-2A workers (many COs are transmitted by US mail, which can also slow distribution). These SWAs know that employers have already identified the H-2A workers they want to hire, and that workers referred may not be hired or may not stay employed. [It is not clear where interstate clearance orders will be posted after America's Job Bank ceases operations. Since few private sector job banks deal with farm workers, there may be a need for another government mechanism to match farm workers and farm jobs].³¹

³⁰ SWAs also have outreach programs conducted by Monitor Advocates to contact migrant and seasonal farm workers who may not be reached by normal SWA operations. These outreach programs make MSFWs aware of the full range of employment and training services available.

³¹ A dedicated DOL/SWA internet-based job exchange for farm workers has been suggested. AgJOBS (S 340 and HR 371), introduced in January 2007, would require farm employers to post their job offers on America's Job Bank at least 28 days before workers are needed. At least 14 days before the employer-specified starting date, the employer must advertise for workers.

Going-through-the-motions recruitment in order to be certified to employ H-2A workers was a concern cited by GAO in 1988 (PEMD 89-3). GAO noted that, in the case of workers referred for Virginia tobacco jobs, since DOL “had only growers accounts of the recruitment outcomes, it does not know whether its [SWAs’] referrals received fair consideration.” (PEMD 89-3, p4). GAO noted that growers preferred H-2A workers because they could “more selectively recruit productive and reliable workers” abroad (PEMD 89-3, p4).

Another issue concerns housing and board. Employers of H-2A workers must provide them, as well as US workers who live beyond commuting distance, free housing that is inspected and approved by DOL using Occupational Safety and Health Administration (OSHA) 1910.142 Temporary labor camp regulations and state and local authorities, if necessary.³² If the housing requires repairs to meet inspection standards, employers may be given “conditional access” to the interstate job clearance system while their housing is repaired to meet the standards at least 30 days before it is to be occupied. Employers can provide meals at no charge, charge workers up to about \$5 a day for meals, or provide cooking facilities for workers to prepare their own food.

Transportation also raises issues. If it is the prevailing practice, employers of US migrant workers and H-2A workers must advance the cost of transportation and subsistence to workers traveling to the job site. If workers do not have transportation and subsistence costs advanced to them, they are to be reimbursed for their inbound transportation and subsistence if they complete 50 percent of the work period specified by the employer, e.g. two months of a four month contract. Workers are to be reimbursed for their round-trip transportation if they complete the contract.

Round-trip transportation reimbursement is closely linked to the $\frac{3}{4}$ guarantee, which requires employers to guarantee work for at least $\frac{3}{4}$ of the work days the employer specifies in the original job order. For example, if the employer says that the contract period is for 10 weeks, and the work day is 8 hours, the employer is offering 40 hours of work a week or 400 hours, and must pay workers for at least $\frac{3}{4}$ of these hours, 300. The $\frac{3}{4}$ guarantee does not apply to holidays and on days when workers refuse available work.

The problem with the round-trip transportation reimbursement and $\frac{3}{4}$ guarantee is that they are enforced at the end of the work period. If employers specify a work period that is longer than when workers will be employed, as GAO noted some do, workers who have been away from their families and are now incurring living costs but not likely to have additional earnings may return home before the end of the contract period, freeing employers of the need to pay round-trip transportation reimbursement and to satisfy the $\frac{3}{4}$

³² DOL Occupational Safety and Health Administration standards for farm worker housing are at 29 CFR 1910.142; DOL ETA standards are at 654.404-654.417. Family housing must be provided to workers who request it if family housing is the “prevailing practice.”

guarantee. Furthermore, once the workers have left the US, it can be hard to determine if the $\frac{3}{4}$ guarantee was satisfied.

Canada SAWP

The Commonwealth Caribbean and Mexican Agricultural Seasonal Workers Program has allowed Canadian farmers to import foreign workers for up to eight months a year. The program began with Jamaica in 1966, followed by Trinidad & Tobago and Barbados, Mexico in 1974, the Organization of Eastern Caribbean States in 1976, and Guatemala in 2003.

About 80 percent of the 20,000 migrants a year who are admitted are employed on fruit, vegetable and tobacco farms in Ontario, where the average stay is four months. According to Basok, migrant workers fill about 20 percent of the seasonal farm jobs in Ontario.

Many Canadian and Mexican officials think the program is a model that exemplifies best practices. In March 2003, then Canadian Prime Minister Jean Chretien told Mexicans: "This program, where your farmers can come and work in Canada, has worked extremely well and now we are exploring (ways) to extend it to other sectors. The bilateral seasonal agricultural workers program has been a model for balancing the flow of temporary foreign workers with the needs of Canadian employers." Carlos Obrador, Mexican vice-consul in Toronto said the program: "is a real model for how migration can work in an ordered and legal way." Suggested industries for additional seasonal worker employment include hospitality, meat-packing and construction.

Mexicans are recruited and employed under the terms of a government-to-government memorandum of understanding (MOU) that makes the Mexican Ministry of Labor responsible for recruiting workers in Mexico and negotiating their Canadian wages with Human Resources Development Canada (HRDC). The admissions process begins with farm employers, who apply to local Human Resources Centers (HRCs) for certification that foreign workers are needed at least eight weeks before the start date of the farm work. Under the Canadians First Policy, farmers must hire qualified Canadian workers who respond to recruitment efforts. To hire Mexican temporary workers, farmers must offer at least 240 hours of work over six weeks, free approved housing and meals or cooking facilities, and the higher of the minimum wage (C\$7.15 an hour in Ontario in 2004, projected to rise to C\$8 by 2007), prevailing wage, or piece-rate wage paid to Canadians doing the same job.

Approval to hire foreign workers is sent to an organization funded by farmer-paid fees, Foreign Agricultural Resource Management Services (FARMS). Initially, only married men, experience working in agriculture, with at least three and no more than 12 years of schooling, between the ages of 22 and 45, and from the Mexico City area could participate. After 1989, women aged 23 to 40 with dependent children could participate, and today about five percent of the migrants are women. Unmarried men have been allowed to participate since 2003. The share of workers from provinces surrounding Mexico City began to drop when workers were recruited from throughout Mexico, but 70 percent in 2003 still came from the Mexico City area in 2003.

The Mexican government advertises the ability to work in Canada via its 139 State Employment Service offices. Workers must, on average, make six trips to Mexico City at their own expense to actually complete procedures. Since May 2002, the Mexican government has provided most first-time workers with 3,000 pesos (\$280) to travel to Mexico City, where they learn about the work they will do in Canada and their rights and obligations. Workers receive passports from the Ministry of Foreign Affairs (special three-year passports for 165 pesos), temporary departure forms from the Ministry of the Interior, and get medical exams at Canadian-approved health centers in Mexico City. A single window system attempts to coordinate these activities at the Program Office of the Ministry of Labor and Social Welfare, to which returning migrants must submit "return reports" by January 31 of the year following their work in Canada.

A FARMS affiliated travel agency arranges their transport to Canada and to the employer's farm.³³ Employers advance the cost of transportation to Canada, and then deduct four percent of worker wages (up to \$C575) to recoup transport costs; farmers also deduct payroll taxes and insurance costs from workers' pay.

Workers are on probation for their first two weeks in Canada, and their farm employers provide written evaluations of each worker at the end of the season. Farmers may specify the names of workers they want, which they do over 70 percent of the time, so that the average worker interviewed in one study had seven years experience in Canada (Basok, 2002). Farmers face fines of up to C\$5,000 and two years in prison for hiring unauthorized workers or lending their temporary workers to other farmers; such fines are rare.

The Southern Ontario greenhouse industry uses hydroponics and natural gas heat to produce tomatoes and cucumbers for export to the US and elsewhere. Leamington, Ontario, with 29,000 residents, the "Tomato Capital of Canada," has 80 percent of Ontario's 1,400 acres of vegetable greenhouses. About 40 percent of Leamington-area farm workers are Mexicans admitted under the SAWP. Canada produced 220,000 metric tons of greenhouse tomatoes in 2003, and exported 60 percent of them to the US.

The employment of Mexican migrants is rising as the industry expands. Farmers report negative experiences with local workers, recounting stories of workers threatening to break equipment in order to get fired and return to the welfare or unemployment rolls, or workers "breaking faith" by walking away during busy times even after being "helped" by growers who hired them during slow seasons. In one study, 40 percent of the jobs in 40 vegetable greenhouses were filled by migrants, up from 10 percent a decade ago (Basok, 2002).

Most of the Mexican migrants are married men who leave their families in rural Mexico and travel to Mexico City at their own expense and pay for required medical exams, so most arrive

³³ FARMS began to play this role in 1987, when the program was changed and the private sector played a greater role in program administration. Transportation is arranged by CAN-AG Travel Services, a FARMS affiliate.

in Canada in debt.³⁴ In Canada, the migrants live on the farms where they work. They report spending little money, enabling them to save an average C\$1,000 a month from their average C\$1,400 pay, earned for working what are typically 50-hour weeks. This high level of savings helps to explain why many migrants report they prefer the security of contracts in Canada to the insecurity of unauthorized status in the US.³⁵

Mexican consular officials can inspect worker housing and solicit worker grievances, but some migrants say that they are cheated rather than helped by Mexican consular officials. Many Mexicans leave Canada before they get their last paychecks, or have their tax refund checks sent to addresses in Canada. Since 1982, small checks owed to Mexican migrants have been sent to Mexico's Foreign Ministry, which reportedly has not contacted the workers to whom the money was owed.

Table 8. Canadian Temporary Workers in Agriculture

**Canadian Temporary Workers Admitted
Agriculture, 1987-2002**

	Mexicans	Caribbean*	Total	Mexican %
1987	1,547	4,655	6,202	25%
1988	2,721	5,682	8,403	32%
1989	4,468	7,674	12,142	37%
1990	5,149	7,302	12,451	41%
1991	5,111	6,914	12,025	43%
1992	4,732	6,198	10,930	43%
1993	4,710	5,691	10,401	45%
1994	4,848	6,054	10,902	44%
1995	4,884	6,376	11,260	43%
1996	5,194	6,379	11,573	45%
1997	5,670	6,705	12,375	46%
1998	6,480	6,901	13,381	48%
1999	7,528	7,532	15,060	50%
2000	9,222	7,471	16,693	55%
2001	10,446	8,055	18,501	56%
2002	10,778	7,826	18,604	58%

Source: Citizenship and Immigration Canada

*From Barbados, Jamaica, and Trinidad and Tobago

<http://www.cic.gc.ca/english/pub/facts2002-temp/index.html>

A survey of 360 workers who went to Canada from the states of Mexico, Tlaxcala, and Morelos in 2003 found that most workers are very satisfied with their work experience in

³⁴ About 75 percent of the Mexican migrants are from four Mexican states: Tlaxcala, Guanajuato, Mexico and Hidalgo.

³⁵ The Caribbean migrants have 25 percent of their pay deducted under a government-mandated savings program.

Canada, with almost 40 percent saying they liked "everything" about being a temporary worker, and 30 percent saying that they most liked having a job (Verduzco and Lozano, 2004). Most of the workers' complaints centered on Mexican administration of the program, with workers complaining of multiple trips to Mexico City and poor service from Mexican consular officials. The workers interviewed had an average 7.7 years of schooling (the Mexican average is 7.6 years), and most were farmers (over 60 percent) or day laborers in Mexican agriculture before going to Canada. They reported earning 544 pesos or \$55 a week in Mexico in 2003. Most were 25 to 45, and most went to Canada because they had a relative who had gone, often a brother, and 75 percent of those interviewed had been in Canada at least one season before.

Workers earned an average C\$9,100 in 2002 and, after deductions of 20 percent, had net earnings of \$7,300. If they stayed in Mexico, the workers said they would have earned C\$900 for the same seasonal work (the minimum wage in Mexico was 40 pesos a day). Most workers were paid hourly wages; the average was C\$7.25, and all reported working at least some overtime.

Migrants remitted an average \$4,800 in 2002, paying an average \$23 each time to make eight to nine transfers. Two-thirds of the migrants sent money via banks and 10 percent used Western Union, which charged an average \$47 per transfer. Since 2000, the Mexican consulate has encouraged Canadian employers to deposit workers' pay in a Canadian bank that provides two debit cards, one for the worker and one to send to the worker's family in Mexico, where relatives can withdraw funds for a \$3 cost. Some Mexican banks offer workers who visit the Program Office in Mexico City the chance to open accounts, but only 500 accounts were opened in 2002.

Workers say that the major benefit from going to Canada is higher incomes for their families and better schooling for their children; some workers in the program for over a decade had children who had become professionals. After working for several years to pay off the debts they incurred to get into the program, workers reported that their first priority was building or improving their house in Mexico. There are few investments made by the workers in their villages, reflecting the lack of investment opportunities as well as limited funds from seasonal work abroad.

Two-thirds of the migrants interviewed in Mexico said they learned about a new crop in Canada, but only 10 percent tried to apply that new knowledge in Mexico, mostly because they lacked access to land. Profiles of typical sending areas suggest why there is little investment in agriculture by returned migrants. Miacatlan in Morelos had 24,000 residents in 2000, including 7,400 workers, 40 percent in agriculture, and sent 61 migrants to work on Canadian farms in 2001. There were five ejidos with 12,200 hectares of land, plus 2,900 communal hectares, but only 2,000 of the 4,500 planted hectares were irrigated. The major crop is corn, yields average two tons an hectare, and land costs about 100,000 pesos or \$9,000 a hectare

The United Food and Commercial Workers Union is a frequent critic of the SAWP. The UFCW, which operates five Migrant Agricultural Worker Support Centers in areas with

migrants, calls the SAWP "Canada's shameful dirty secret." It has filed suits against provincial authorities for excluding farm workers from the Occupational Health and Safety Act and for charging migrants C\$11 million a year in unemployment insurance premiums but not allowing them to obtain benefits—if migrants are unemployed, they must leave Canada.

There were protests over wage deductions and a strike on April 29, 2001 that led to deportations. Ontario's Agricultural Employees Protection Act, enacted in 2002, allows farm workers to form associations, but does not give them the right to form unions and bargain collectively with their employers.

On the other hand, migrants are eligible for health insurance coverage upon arrival in Canada—the usual three-month wait for coverage under the Ontario provincial health care program is waived.

In September 2006, two-thirds of the 59 Mexican temporary workers at Mayfair Farms in Manitoba signed cards to have the UFCW represent them (in October 2006, 43 workers signed a petition saying they were tricked into signing the UFCW cards). Mayfair opposed granting certification to the UFCW, arguing that the Mexican workers could not strike; if they did not work, they lost their right to be in Canada. In June 2007, the Manitoba Labour Board recognized the UFCW as bargaining representative for the SAWP workers.

A second program admits Guatemalan workers to Quebec, Alberta, and British Columbia. This program, launched in Guatemala with the help of the International Organization for Migration (IOM), operates much like the Mexico-Canada program. The Guatemalan Ministry of Labor recruits workers, and the Guatemalan consulate in Montreal provides liaison services to migrants while they are in Quebec. The costs to workers in Guatemala are low, about \$270 for a medical exam, passport and visa, and the exit tax, although there may be additional payments made to intermediaries to get into the coops and other organizations from which migrants are drawn.

Some 400 Quebec farm employers are organized into FERME, and they apply to HRDC for certification to employ workers from Guatemala, Mexico, and the Caribbean. The program is growing, and the seasonal worker return rate is almost 100 percent. Most of the migrants are married men whose families remain in Guatemala.

Table 9. Guatemala-Quebec Farm Worker Admissions

Guatemala-Quebec Farm Worker Admissions			
	Admissions	Men	Percent
2003	215	180	84%
2004	320	270	84%
2005	675	611	91%
2006	1,208	1,150	95%
2007	1,866	1,778	95%

Source: FERME

The program has been extended to Alberta and BC

The potential best practice aspects of the Canadian seasonal farm worker programs include the active involvement of farm employers in program design and administration, Mexican and Guatemalan government involvement in recruiting and monitoring migrants in Canada, and the health insurance coverage. Worker organizations do not play a role in program design or administration, and their complaints focus on legal restrictions that apply to all farm workers, including temporary workers. Researchers emphasize that most Mexican migrants arrive in debt, and thus have an incentive to be good employees and follow program rules so that they can return, repay debts, and accumulate savings, which often occurs in the second or third years of traveling north.

UK SAWS

Foreign workers have been admitted to fill jobs on British farms under the Seasonal Agricultural Workers Scheme since 1945. The SAWS was begun to provide jobs for displaced persons after World War II. In recent years it has permitted full-time agricultural students from non-EU Eastern European and ex-USSR countries to enter the UK for up to six months to work on farms.

British farmers must receive government approval to employ SAWS (www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/saws.html), which they receive by making assurances on wages and providing housing, which can be deducted from worker wages. Migrants admitted under SAWS must be full-time students 18 or older. They receive work cards from British farmers that they use to obtain a visa to enter the UK for periods ranging five weeks to six months

Until Poland entered the EU on May 1, 2004, it was the major provider of SAWS workers. Most SAWS migrants arrived in the UK in the spring (April 1) and remained until November 30 to do farm work and to have an “educational-cultural experience.” Some SAWS workers are covered by Agricultural Wages Orders, which require a minimum wage of £5.15 (\$8.24) an hour for an adult standard worker and £4.50 (\$7.20) an hour for a manual harvest worker in 2004, while other farm work is covered by the national minimum wage.

Table 10. UK Seasonal Agricultural Workers Scheme

UK Seasonal Scheme	Ceiling	Agricultural Workers	Wor	SAWS Nationalities, 201996	1996
1992	5,500	5,019	Poland	4,867	2,338
1993	5,500	5,011	Ukraine	4,003	554
1994	5,500		Bulgaria	2,252	562
1995	5,500	5,052	Lithuania	2,161	767
1996	5,500	6,152	Russia	1,089	341
1997	10,000	10,255	Latvia	1,029	98
1998	10,000	10,394	Subtotal	15,401	4,660
1999	10,000	10,464	Per of total	80%	76%
2000	10,000	10,846	Total	19,372	6,152

2001	15,200	14,870
2002	18,700	19,372
2003	25,000	

Source: Work Permits UK, www.workpermits.gov.uk

Admissions are cards issued; about 95 percent reported to work in the UK

No data for 1994

Nine Scheme Operators handle recruitment. Most have agents at universities to recruit migrants, and the operators deploy the migrants to their own farms or other British farms.³⁶ The farm employer must provide housing, and SAWS students are to be employed only on the farm to which they have been assigned. The students must have a work visa before arrival, come to the UK alone (without family members), and may not adjust status in the UK. An estimated four to 10 percent of SAWS workers overstay.

In 2003, SAWS workers were allowed to return to the UK after a break of at least three months outside the country. The ceiling on SAWS admissions has been raised several times as more farm employers participate.³⁷

The June 2001 census reported that 64,000 seasonal and casual workers were employed in UK agriculture, and they represented a third of the 188,000 total workers, including farmers and unpaid family workers. However, it is hard to obtain an accurate picture of supply and demand in the seasonal farm labor market because most farm workers are organized into crews by labor contractors or gangmasters who receive payments from farmers that reflect wages paid to workers plus a 25 to 30 percent commission. These gangmaster crews include EU foreigners (such as Portuguese workers), non-EU foreigners, and British citizens, some of whom are working for cash wages while drawing unemployment benefits. Gangmaster crews usually move from south to north harvesting and packing fruits and vegetables, and some reportedly fail to report (all of) their workers to authorities to avoid paying taxes.³⁸

The UK has been concerned about the rise of gangmasters in the farm labor market. Most gangmasters are not involved in the SAWS program, but the SAWS concept of obtaining crews of workers via intermediaries may have contributed to the rise of irregular migration and

³⁶ Operators charge farmers and/or SAWS workers for their services, and fees vary. Harvesting Opportunity Permit Scheme, HOPS, the largest operator with 8,000 SAWS workers in 2002, uses 75 recruiting agents in agricultural colleges to find students (www.nfyfc.org.uk/HOPS.htm).

³⁷ The number of permits issued exceeds the ceiling in most years because some of the students receiving permits do not report for work in the UK.

³⁸ There are calls to prevent illegal and exploitative employment by better regulating gangmasters. There are two approaches: (1) penalizing violators by e.g. requiring them to register and withholding licenses from those who violate laws (and perhaps penalizing employers on the farms where gangmaster violations are discovered) and (2) rewarding gangmasters who abide by laws with seals of approval.

<http://www.ethicaltrade.org/pub/publications/2003/04-gangmstr/index.shtml>

dangerous working conditions. After 23 Chinese cockle pickers drowned in February 2004 at Morecambe Bay, the UK created a Gangmasters Licensing Authority and required labor contractors to be registered beginning October 1, 2006; some 1,175 were registered by January 2007 (www.gla.gov.uk). Beginning December 1, 2006 farmers can be fined if they obtain workers from unlicensed gangmasters.

Investigative reports in spring 2007 found unregistered gangmasters.³⁹ The Association of Labour Providers (www.labourproviders.org.uk) said that many recruiters outside the UK claim to be working on behalf of licensed UK contractors or SAWS operators and charge fees for jobs in Britain. A8 foreigners who have the right to travel freely to the UK do so, report to the office of a legitimate contractor and learn that they have been swindled.

Legitimate contractors warned farmers (labor users) about firms that offer foreign workers at very low wages. They say that labor users should expect to pay at least L6.50 (\$13) an hour to cover the minimum wage and required fringe benefits, and L7.30 (\$14.60) to cover transportation and contractor overhead in 2007. One gangmaster supplying workers to ornamental horticulture reported that many farmers expect to pay workers the minimum wage plus commissions of 28 to 33 percent, even though costs for holiday pay and other required benefits add over 30 percent to payroll costs.

A 2001 UK government review of the program argued that expanding SAWS admissions could reduce illegal migration and employment, and a government commission on agriculture recommended that the SAWS ceiling be raised from 25,000 to 50,000 a year.⁴⁰ Newspapers report that at least 50,000 illegal workers— unauthorized foreigners and British workers drawing unemployment and welfare benefits while working for cash wages— were employed on British farms and in packinghouses in 2003.⁴¹

Instead of expanding SAWS, Ireland, the UK and Sweden allowed nationals of the so-called A8 countries, the Eastern European countries that joined the EU May 1, 2004, to enter and work immediately; the other 12 of the “old EU-15” imposed restrictions on the right of Poles and other A8 nationals to work in their countries. The UK required A8 nationals employed for wages in the UK to register, and over 600,000 did so between May 2004 and May 2007, including 400,000 Poles. Not all of those who register to work remain in the UK, and not all A8 nationals who work in the UK are registered.⁴²

³⁹Focus Staff of Hull, which provided labor to companies in the north of England, was raided and closed in May 2007. Focus was the subject of a BBC undercover investigation that found 14 people paying L50 a week to share a room, plus pay fees for jobs. Focus said the migrants agreed to pay these fees.

⁴⁰ White Paper. 2002. Secure Borders, Safe Haven. <http://www.official-documents.co.uk/document/cm53/5387/cm5387.htm>

⁴¹ A May 2002 review of SAWS program “suggests that shortages in the supply of labor are increasingly being met by non-EU citizens working in the UK illegally and by UK nationals working illegally whilst in receipt of benefit.”(p5).

⁴²The self-employed, such as the infamous Polish plumbers, do not have to register.

Some British unions charge that the migrants from so-called A8 countries such as Poland who now arrive outside the SAWS program are exploited. S & A Produce grows a third of the UK's strawberries, relying on up to 3,500 Eastern Europeans to harvest them. The Transport and General Workers' Union in July 2006 charged that the A8 migrants were "strawberry slaves" who worked up to 14 hours a day seven days a week and had to pay too much to live in S & A-owned housing.⁴³ The UK grows strawberries seven months a year, largely because of polytunnels that cover the plants and extend the season from the previous six weeks.

Because so many A8 nationals have moved to the UK, and because many of them are employed in agriculture, the British government announced that beginning January 1, 2008, only nationals of Bulgaria and Romania may enter the UK via SAWS. This has prompted protests from British farmers, some of whom prefer to hire Ukrainian and other non-EU agricultural students who are tied to their farms (the Poles and other A8 nationals are free to change jobs in the UK labor market). Philip Hudson, the NFU's chief horticultural adviser, predicted farm labor shortages in 2007 that could lead to higher strawberry prices because of the constraints on SAWS admissions. In 2008, a five-tier system for entering the UK comes into force, and SAWS may be phased out by 2010.

German-Polish Saisonarbeiter

The German seasonal workers program, which operates under memoranda of understanding signed by the German Labor Ministry and Labor Ministries in source countries, admits migrants for up to 90 days if local workers are not available to fill vacant jobs in agriculture, forestry, the hotel and catering sector, fruit and vegetable processing, and sawmills. Individual enterprises may not hire (rotating groups of) seasonal workers for more than 7 months a year unless they grow fruit, vegetable, wine, hops or tobacco.

About 90 percent of the 293,000 seasonal migrants admitted in 2002 were Poles, and 90 percent worked in agriculture. Employers request seasonal foreign workers and submit proposed contracts to local labor offices that spell out wages and working conditions as well as provisions for employer-provided housing, meals, and travel arrangements, if these are provided. The German Employment Service's instructions for employers require the provision of "adequate housing" for seasonal workers, and warn that "adequate" refers to the quality of the housing and any rent charged to workers, which employers are to indicate on the contracts they offer workers (arbeitsagentur.de, 2004). However, press reports during the asparagus harvest regularly find Polish seasonal workers sleeping in their cars, suggesting illegal workers, workers colluding with employers to circumvent housing requirements, or both.

Table 11. Seasonal Workers Admitted to Germany, 1991-2006

Seasonal Workers Admitted to Germany,
1991-2006

Total	Poland	Share
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⁴³ S&A in 2006 charged L35 a week for shared accommodation. It guaranteed that pickers would earn at least L5.05 (\$9.50) an hour, but does not guarantee hours of work.

1991	128,688	78,594	61%
1992	212,442	136,882	64%
1993	181,037	143,861	79%
1994	155,217	136,659	88%
1995	192,766	170,576	88%
1996	220,894	196,278	89%
1997	225,951	202,198	89%
1998	207,927	187,690	90%
1999	230,345	205,439	89%
2000	263,805	229,135	87%
2001	286,940	243,405	85%
2002	307,182	259,615	85%
2003	262,608	226,128	86%
2004	324,034	279,961	86%
2005	320,383	272,757	85%
2006	294,450	230,353	78%

Source: BA

When employers request foreign seasonal workers, the Employment Service tests the local labor market to ensure that local workers are not available at the prevailing wage. Employers must pay an administrative fee of Euro 60 per worker to the Employment Service, and not deduct this fee from migrant wages (arbeitsagentur.de, 2004). German employers may request foreign workers by name, and they did so for about 90 percent of those admitted in recent years. Migrants arrive with copies of the bilingual contracts that were checked by Employment Services in both Germany and their country of origin, and both German employers and migrants make payroll tax contributions that are about 35 percent of wages.⁴⁴

The number of Poles working as temporary workers on German farms fell by 15 percent to 270,000 in 2006, amid reports that many Poles are seeking higher wages in the UK. British farm jobs pay about Euro 8 an hour, compared to Euro 4 to 6 an hour in Germany. Polish and other A8 workers in the UK can change employers and stay longer than the 90 days they are allowed to remain in Germany.

The German government says that the employment of Polish seasonal workers is decreasing as farmers hire more unemployed workers in Germany. The German Labor Department in 2006 insisted that 10 percent of asparagus harvesters in 2006 were German, and subsidized their farm wages. Farmers say that Poles are much more efficient harvesters, averaging 400kg or 880 pounds a day, twice the German average. A German farm with 890 acres of asparagus reported hiring 1,350 workers, including 800 Poles, for the harvest.

⁴⁴ If seasonal foreign workers are employed less than 2 months in Germany, the workers and their employers do not have to pay social security taxes on their wages.

Spain-Morocco Migrants

Spain has temporary worker programs with Colombia, Morocco, Ecuador and Romania that include co-development elements, efforts to promote economic development in the migrants country of origin. If successful, such development would reinforce worker circularity or rotation, the goal of temporary worker programs.

Cartaya, a Spanish city of 18,000 in the strawberry-growing province of Huelva, received €1.2 million to develop a circular migration temporary worker program with Morocco. Initially, fewer than half of the Moroccan migrants returned at the end of the season as required. This prompted a change in the rules, and now only mothers under 40 with children may participate. About 5,500 of the 26,000 Moroccan mothers who applied were selected for the March-June 2007 strawberry picking season, and those who depart at the end of the season will be guaranteed the right to return to Spain in 2008. Employers provide the women with housing.

Cartaya's mayor, Juan Antonio Millán, calls the Moroccan temporary worker program "ethical migration," to distinguish it from the more widespread irregular migration in the area.⁴⁵ In 2000, there were tensions due to irregular migrants, prompting the experiments to employ legal migrants to fill seasonal jobs.

In July 2006, Spain and Morocco agreed on a four-year plan to tackle illegal immigration. The keystone is a repatriation agreement that allows apprehended foreigners to be returned to Morocco. Morocco has deployed 11,000 security personnel to monitor its coast lines, which has resulted in a 40 percent drop the number of illegal migrants reaching Spain in 2006. Frontex, the Polish-based EU border security force, is helping Spain, Italy and Malta to monitor their borders.

Spain, a country of 44.4 million, had 4.6 million foreign residents in January 2006, including 580,000 Moroccans, 396,000 Ecuadorians, 373,000 Romanians, and 260,000 Colombians; the number of foreigners registered rose by 414,000 in 2006. Spain removed 99,445 foreigners in 2006, most from Morocco, Senegal and Romania.

The influx of migrants, including 645,000 in 2004, has generally been welcomed, as rapid economic growth has created jobs for newcomers, especially in construction and agriculture. Marta Rodriguez-Tarduchy, the labor ministry's immigration director, said "The global migration phenomenon is unstoppable... We measure what the labor market needs and can sustain.... [and] We figured the best way so they [migrants] are not resented."

Spain does not require visas from nationals of many South American countries, prompting increasing numbers of Ecuadorians, Colombians, and Bolivians to fly to Spain as tourists and go to work. Many foreign women work as caregivers, registering with local authorities to qualify for health care. After two years as a caregiver and one year as a regular worker, Latin

⁴⁵ Quoted in Daniela Gerson, "Moroccan Immigrants, Spanish Strawberries and Europe's Future," Spiegel Online, May 11, 2007.

Americans can unify their families in Spain, and many do: applications for family reunification rose from 312 in 2000 to 75,000 in 2005.⁴⁶

Spain is investing E2.6 billion between 2007 and 2010 to help immigrants to feel they are "part of Spain." About 40 percent of the funds will go to education, 20 percent to welcome immigrants, and 11 percent for jobs programs. On January 19, 2007, there were clashes between Spanish and immigrant youth in Alcorcon, a Madrid suburb with 160,000 residents, including 21,000 from Latin America.

Immigrants are believed responsible for more than half of Spain's 3.1 percent average annual growth during the past five years. Gross domestic product was up 3.9 percent in 2006, second only to France; in Italy and Germany, by contrast, economies expanded by just over one percent a year in the past six years. Spain's recent economic growth has been based on four sectors: construction, housing, banking and tourism.

However, the minimum wage is low: E571 a month (\$750) and many professionals begin at E1,000 a month. About a third of Spanish workers, and almost all new hires, are employed under short-term contracts, often of three months, which may make it hard to advance within a firm, according to Marta Garcia Aller, author of "The Precarious Generation."

Migrants in Spain remit an estimated E5 billion a year, with 75 percent going to their countries of origin via "locutorios," shops that offer cheap calls and money transfers. The locutorios charge five to seven percent of the amount transferred, compared to 10 percent for banks, and have an 85 percent market share. In a bid to obtain more business from migrants, Banco Santander in 2007 began to offer remittance transfers at no charge. Some Spanish stores are allowing migrants to select merchandise and have it delivered in Ecuador or Peru.

Migrant Rights

Temporary worker programs by definition restrict the rights of migrants by limiting their entry and employment. ILO and UN conventions outline a comprehensive set of rights for migrants, including the right to equal protections under labor, anti-discrimination, and family laws, although "there is a large gap between the rights that international human rights law guarantee to non-citizens and the realities they must face." (Weissbrodt, 2003).

The ILO (2006, 22) considers international instruments the "building blocks for the protection of migrant workers at the international level," especially ILO Conventions 97 and 143 and the 1990 UN Convention. The ILO's goal is to have its member nations ratify and observe these conventions to protect migrant workers. The 2005 adoption of the ILO Multilateral Framework on Labor Migration draws on these international instruments as well as country- and region-specific best practices to offer guidelines for effective labor migration policies. The Multilateral

⁴⁶ Spain in July 2005 announced that families would receive E2,500 for each new baby, either as a tax credit or a payment for those not working. There were 481,000 births in Spain in 2006, including 16 percent to foreign-born mothers; the fertility rate of Spanish women is 1.4. Italy offered E1,000 for each baby born in 2005 and 2006, but ended the program in 2007.

Framework stresses cooperation and dialogue at several levels, between labor-sending and labor-receiving countries, between employers, governments and unions within countries, and between migrants abroad and their countries of origin.

International Conventions

ILO Convention 97 (1949), ratified by 46 mostly emigration countries as of 2007,⁴⁷ defines a “migrant for employment” as “a person who migrates from one country to another with a view to being employed otherwise than on his own account.” Convention 97 aims to protect migrant workers and ensure their equal treatment in migrant-receiving countries by encouraging workers to cross borders under the terms of bilateral agreements.⁴⁸

ILO Convention 143 (1975), ratified by 22 countries as of 2007, was enacted after oil-price hikes led to recessions in the European countries that had been importing large numbers of temporary workers. Convention 143 emphasizes steps governments can take to minimize illegal migration and to promote the integration of settled migrants. For example, it calls for sanctions on employers who hire unauthorized migrants and encourages international cooperation to reduce the smuggling of migrants, including prosecution of smugglers in both source and destination countries. Convention 143 also calls for “equality of treatment” in wages and other benefits for employed migrants, regardless of legal status.

Many other ILO conventions cover migrants along with other workers, including the Freedom of Association and Protection of the Right to Organize Convention 87 (1948), or highlight migrant workers as a group of special concern, as in Social Security Convention 118. The Employment Promotion and Protection against Unemployment Convention 168 (1988) calls for all workers to be treated equally, and for special measures to be taken to support certain workers, including regular migrant workers.⁴⁹ The Private Employment Agencies Convention 181 (1997) calls for penalties on private employment agencies that defraud or abuse migrant workers, and urges bilateral agreements to prevent such abuses.⁵⁰

The United Nations General Assembly approved the more comprehensive International Convention on the Protection of the Rights of all Migrant Workers and Members of their

⁴⁷ ILO ratifications are online at: www.ilo.org/ilolex/english/newratframeE.htm

⁴⁸ Recommendation No. 86 includes a model bilateral agreement that allows signatory governments to spell out procedures for private and public recruitment, exchange information on migration policies and regulations, and ensure that employers have accurate information on migrants and migrants have complete information on wages and working conditions abroad.

⁴⁹ Convention 168 calls attention to the difficulties of returning migrants to countries of origin where they would be unemployed.

⁵⁰ The June 1998 declaration on Fundamental Principles and Rights at Work calls for freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Migrants are covered by the declaration.

Families on December 18, 1990. The 8-part, 93 article 1990 UN convention,⁵¹ which went into force in July 2003, aims to “contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families.” As of June 2007, 37 mostly emigration countries had ratified it, and a Committee on Migrant Workers monitors its implementation (www.ohchr.org/english/countries/ratification/13.htm)

The UN Convention includes most of the protections of ILO Conventions and goes beyond them to cover all migrant workers, including seafarers and the self-employed, who are excluded from ILO conventions. It calls on states to adhere to basic human rights standards in their dealings with authorized and unauthorized migrants, including guaranteeing migrants freedom of religion and freedom from arbitrary arrest or imprisonment.

The major employment-related protections for migrants are in Part III, particularly Articles 25-27, which prescribe equality in wages and working conditions for both authorized and unauthorized migrant workers, assert that migrants should be allowed to join unions, and call for migrant workers to receive benefits under social security systems to which they contribute, or to receive refunds of their social security contributions on departure. Authorized migrants should have additional rights set out in Part IV, including the right to information about jobs abroad as well as a list of “equal treatments” including freedom of movement within the host country, freedom participate in the political life of the host country, and equal access to employment services, public housing, and educational institutions.

The United Nations Commission on Human Rights (www.ohchr.org) in 1999 appointed a Special Rapporteur to investigate violations of the human rights of migrants (www.ohchr.org/english/issues/migration/rapporteur/index.htm). The Special Rapporteur,⁵² whose reports are www.ohchr.org/english/issues/migration/rapporteur/annual.htm, noted in the December 30, 2005 report that the 1990 UN Convention was a “major instrument for the promotion and protection of the human rights of migrants.” The Special Rapporteur sent 34 communications to 24 countries in 2005 to obtain information and appeal for changes when migrant rights were violated—it was noted that many migrants were victims of private recruitment agencies.

Other international instruments and declarations also call for equal treatment for migrants. The Vienna Declaration and Programme of Action on Human Rights (1993) and the Cairo Programme of Action of the International Conference on Population and Development (1994) affirmed the importance of promoting and protecting the human rights of migrant workers and their families. The Beijing Platform of Action of the Fourth World Conference on Women (1995) paid special attention to the rights of women migrants and urged governments to take steps to protect migrants from violence and exploitation. The World

⁵¹ ILO Convention 97 has about 5,600 words, Convention 143 is 3,000 words, and the UN Convention is over 14,000 words.

⁵² Gabriela Rodríguez Pizarro of Costa Rica was the Special Rapporteur between 1999 and 2005, when Jorge Bustamante of Mexico assumed the post.

Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 issued the Durban Declaration and Programme of Action, including a call for countries to allow migrants to unify their families and asked governments to undertake active efforts to reduce discrimination against migrant workers. The UN General Assembly in 2000 adopted the Convention Against Transnational Organized Crime, which has two additional protocols: the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol Against the Smuggling of Migrants by Land, Sea and Air.

In 2004, the ILO took several steps to highlight migrant protections. The ILO-supported the World Commission on the Social Dimension of Globalization, which called “the absence of a multilateral framework for governing the cross-border movement of people” a “major gap in the current institutional structure for the global economy” (World Commission, 2004, 95). It pointed to the “considerable gains for all” from migration that is “more orderly and eliminates the exploitation of migrants” (2004, 96),⁵³ and called for “a multilateral framework for the cross-border movement of people” to “facilitate mutually beneficial ways of increasing migration opportunities...to make the [migration] process orderly, predictable and legal...to ensure full protections for the rights of migrant workers and facilitate their local integration; and to maximize the developmental benefits of international migration.” (World Commission, 2004, 97).⁵⁴

The ILO’s 92nd conference in June 2004 concluded that the best way to protect migrants is a rights-based approach sensitive to labor market needs and the sovereign rights of countries to determine who can enter and stay (ILO, 2004). Its five-chapter report, *Towards A Fair Deal For Migrant Workers in the Global Economy*, emphasized that labor migration is likely to increase, that migration can be a plus-plus relationship for sending and receiving countries, that some migrants work under abusive conditions. It urged an examination of why ILO migrant conventions and norms have not been ratified by many countries, and recognized that most migrant workers do not cross borders under the auspices of the bilateral agreements recommended in the conventions. The Plan of Action called on the ILO to develop a rights-based approach to migration management that is sensitive to labor market needs and the sovereign rights of countries to determine entries and stays.

The ILO in 2006 adopted a non-binding rights-based Multilateral Framework on Labour Migration that aims to ensure international labor migration generates benefits for migrants as well as labor-sending and -receiving countries. It seeks to improve migration management by

⁵³ The World Commission noted that many developing countries "maintain that freer migration to the industrialized world would be a swift and powerful means of increasing the benefits they receive from globalization," (p96) and that more south-north migration could help industrial countries deal with aging populations, stable or shrinking work forces, and pay-as-you-go social security systems.

⁵⁴ The Commission’s final report called for “a dialogue between countries of origin and destination on key policy issues of common interest,” including exchanging information on surpluses and shortages of labor, coordinating policies among migrant-sending countries, harmonizing migrant-receiving country policies, dealing with labor brokers or intermediaries, and dealing with trafficking and illegal migration.

identifying and recommending best practices and policies, urging action to gain adherence to international labor standards, and providing technical assistance to governments, employers, and unions that will better protect migrants. The framework also calls for social dialogue to improve migrant worker policies, efforts to strengthen the knowledge base on trends in labor migration and the conditions of migrant workers, and the development of more effective measures to protect migrant worker rights.

International Cooperation

Labor migration, legal and irregular, is rising around the world, as workers seek higher wage jobs. In some cases, people leaving one country for higher wages abroad, such as Thais who go to work on Taiwanese construction sites, are replaced by migrants from poorer countries at home, as when Burmese migrants are employed on Thai construction sites.

Since international labor migration involves movement from one nation state to another, there have been many efforts to promote cooperation between governments, as is already done to encourage free trade and investment. However, unlike theory- and experience-driven freer trade, which holds that comparative advantage provides net economic benefits to participating countries, achieving cooperation on international labor migration has proven to be more problematic, reflecting the fact that migrant workers are multidimensional, capable of adding workers and shaping and reshaping the societies in which they work.

There have been many ad hoc efforts to increase cooperation in migration management recently, but many were motivated by a desire on the part of migrant-receiving countries to get sending countries to help them to reduce irregular migration. These ad hoc efforts tend to result in only marginal changes because the goals of labor senders and receivers are often in conflict—labor senders may want to protect their citizens abroad, but they often want jobs and remittances as well, and thus they are only reluctant partners in schemes that oblige them to accept the return of apprehended irregular citizens in exchange for generally limited numbers of temporary workers. Italy and Spain have bilateral agreements that exchange cooperation for migrants, and the EU is considering such schemes.

Policy Options and Recommendations

This paper has explored the demand for labor in the sectors of industrial countries in which migrant workers are filling jobs. The fastest growth in migrant worker employment is at the extremes of the skill ladder, among professionals and low-skilled workers; the focus here has been on low-skilled workers. Most governments and researchers agree that moving low-skilled workers over national borders generates economic benefits for all parties concerned, the win-win-win outcome desired by international organizations and national governments. Questions about the usefulness of labor migration to speed development in migrant worker countries of origin arise as we move up the skill ladder, with professionals leading to both vicious and virtuous circles between migration and development.

Most industrial countries have a variety of temporary worker programs, and policies toward these temporary workers in effect welcome skilled workers to settle and aim to rotate low-skilled workers through permanent jobs. If the 3 R's of recruitment, remittances and returns lead to convergence between labor-sending and labor-receiving countries, both can be assured

that labor migration would have a “natural end,” making fears of migration getting out of control less credible. In some cases, migration has been a win-win-win proposition for migrants, employers, and sending and receiving governments, but there are enough counter examples to know that there is no automatic mechanism to assure win-win-win outcomes. Determining why some cases produce desirable outcomes for all parties, and others do not, could be accelerated by close examination of the extremes to determine which variables are most important.

There has been a proliferation of sector-specific programs aimed at rotating low-skilled migrants through seasonal jobs in industrial countries. Some of these, such as Canada’s farm worker programs with Mexico, Guatemala, and Caribbean countries, are considered best-practice models because they operate under the terms of government-to-government MOUs, use government agencies in the source countries to handle recruitment, and include features that encourage circulation.

The most important factor encouraging circulation in these low-skill programs is seasonality--the migrant has no economic reason to remain after the seasonal (farm) job ends. Circulation is often reinforced by selecting only parents with children, mostly men in the case of Mexicans and Guatemalans going to Canada to fill seasonal farm jobs, and women in the case of a Moroccan-Spanish experiment. Seasonal migrants may be guaranteed the right to return next year if they satisfy their employers and abide by program rules.

ILO conventions and recommendations establish a core set of rights for migrant workers and encourage the development and sharing of best practices worked out in social dialogue between unions, employers, and governments. Most best practices stress empowering migrants by providing them with information about their rights in the labor market abroad, giving them the identification and rights needed to access to banks and other institutions abroad, and developing incentives to get migrants to report the worst abuses of their rights.

Giving migrants accurate information about foreign jobs, access to institutions and protections abroad, and providing incentives for migrants and employers are an important first step to close often large gap between migrant rights and realities. As labor migration increases as a result of fast-growing labor forces in developing countries and slow-growing labor forces in industrial countries, mechanisms that align migrant, employer, and intermediary behavior with labor laws and conventions, and provide economic incentives to conform, offer the best hope for narrowing the gaps that prompt labor migration.

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