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# MANAGING LABOR MIGRATION: TEMPORARY WORKER PROGRAMMES FOR THE 21<sup>ST</sup> CENTURY\*

Philip Martin

<sup>\*</sup>The views expressed in the paper do not imply the expression of any opinion on the part of the United Nations Secretariat.

# Managing Labor Migration: Temporary Worker Programs for the 21st Century<sup>1</sup> Philip Martin June 20, 2006

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#### Summary

Foreign worker programs aim to add temporary workers to the labor force without adding permanent residents to the population. The terminology--temporary or guest worker—emphasizes the rotation principle at the heart of such programs: migrants are expected to work one or more years abroad and then return to their countries of origin. If the demand for migrants persists, there may be replacement migrants, but the employment-migrant ratio in the host country should remain near 100 percent, meaning that all foreigners related to the program are employed.

All guest worker programs fail, in the sense that some of the migrants settle in destination countries and the migrant-employment ratio falls over time, leading to the aphorism that there is nothing more permanent than temporary workers. However, settlement and a growing gap between migrant workers and migrant residents does not necessarily mean that guest worker programs are "wrong:" such programs can benefit migrants and their employers as well as sending and receiving countries. The issue is how to design and administer guest worker programs to minimize "failures" due to distortion, the fact that employers make investment decisions on the assumption that migrants will continue to be available, and dependence, as occurs when migrants and their families rely on foreign jobs and wages. Distortion and dependence mean that employer and migrant incentives may be the opposite of program rules and expectations.

The gap between program rules and outcomes is likely to widen in the 21st century, as most industrial countries shift to multiple micro programs, each aiming to provide foreign workers for a particular labor market in rifle fashion. This shift to niche programs has several effects:

macroeconomic policies have less effect on employer demand for guest workers, as when there are farm labor "shortages" despite double-digit unemployment, each program tends to have its own rules, and they can be very detailed for the industry or occupation in question, which reduces public debate of the benefits and costs of guest workers

government agencies have a harder time administering multiple programs, each with different rules, in a time of tight budgets and deregulated labor markets. One common trend in the industrial countries is to shift more authority to employers. In most countries, employers but not unions are involved in developing program rules, and some countries allow employers to open the border gate to guest workers with minimal government oversight.

The overall result is not satisfactory for a simple reason: in almost all the industrial democracies, there are more migrants are employed outside official programs than inside them. These unauthorized migrants often lack worker status and labor protections, their presence can prompt employers to cut wages in a race to the bottom, and they can add to the sense that migration is "out of control," fueling

xenophobia and discrimination. To improve conditions for migrants, this paper recommends:

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Renewed efforts to reduce illegal migration. ILO Conventions and Recommendations establish standards primarily for legal workers. The best way to protect unauthorized and quasi-authorized workers such as trainees is to make them legal workers. However, it is very hard to improve conditions for resident guest workers, or to admit additional foreigners as legal guest workers, unless illegal migration is perceived to be under control. This task falls primarily to host governments, which must treat unauthorized worker employment as a serious offense, develop the penalty and inspector infrastructure to enforce laws, and experiment with enforcement strategies such as joint liability as well as obtain active cooperation from sending countries.<sup>2</sup>

<u>Use economic mechanisms</u> to reduce the distortions and dependence that inevitably accompany guest workers. One way to do this is to have employers pay usual payroll taxes for employing migrants plus a levy or extra tax for each migrant to encourage them to constantly consider alternatives to migrants, as well as to generate funds for enforcement and integration assistance for those guest workers who do settle. To reduce dependence and encourage returns, migrant social security taxes could be refunded when migrants returned home, encouraging voluntary returns and providing a convenient way to match a portion of returned migrants' savings to promote development.

<u>Earned adjustment</u> would allow the 10 to 15 million unauthorized foreigners in industrial countries to become legal workers and residents after they found jobs, paid taxes and learned the host-country language. Earned adjustment programs are not likely to be implemented until illegal migration is reduced and new guest worker programs promise to reduce distortion and dependence.

The first two recommendations aim to change the status quo, to open a new era with minimal unauthorized migration. The third recommendation deals with the legacy of the past several decades; it is intended as more of a one-time than ongoing event.

Migrants are people whose aspirations and goals change with experience, which makes managing migration for employment far more complex than managing trade in goods or capital. Most 20<sup>th</sup> century guest worker programs had unexpected effects that were more important and long-lasting than their expected effects. Successful 21<sup>st</sup> century guest worker programs are likely to be associated with minimal illegal migration, economic mechanisms that align migrant and employer incentives with program rules, and a path to legal status for migrants who have developed roots.

 $<sup>^2</sup>$  Joint liability is the concept that the beneficiaries of work done are jointly liable for labor law, tax, and other violations. The intent of joint liability laws is to have e.g. farmers and construction firms police the contractors who bring workers to their farms and work sites.

This paper has 6 parts. The introduction explains the shift from macro to micro guest worker programs, in part a response to the distortion and dependence in past guest worker programs. The next sections summarize the macro and micro programs in Germany and the US to set the stage for a comparative analysis of seasonal worker programs. It then turns to the dilemma of settlement and numbers versus rights, and the concluding section is a reminder that properly managed guest worker programs can contribute to economic growth and development in sending and receiving countries.

#### Introduction

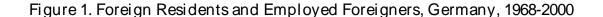
Guest or foreign worker programs aim to add workers to the labor force without adding permanent residents to the popu

Most guest worker programs last longer and become larger than originally planned because of the presence of additional workers can distort labor markets. There are always alternative ways to combine labor and capital to produce goods and services, and if employers assume that the labor supply will (continue to) be augmented by migrants, they can make investment decisions based on this assumption. If governments consider changes in policy that would reduce the availability of migrants, these employers may resist, since without migrants their investments may prove unprofitable.

Dependence refers to the fact that migrants, as well as their families, communities and governments at home, may come to depend on earnings from foreign jobs. If labor-importing governments announce an end to or reduction in guest workers, migrants may attempt to migrate illegally, and their communities and governments may do little to discourage them.

During the heyday of guest worker programs in the 1950s and 1960s, millions of migrant workers were recruited to work in many sectors of the economies of developed countries, including construction, mining, agriculture, and manufacturing. Most labor-importing countries had one major guest worker program, and that program admitted migrants in a shotgun-fashion, sending migrant to industries and occupations throughout economy. The hallmarks of these macro guest worker programs included the dominance of men who were abroad without their families, and the almost 100 percent migrant worker-migrant population ratio—almost all migrants were employed workers. The number of arriving migrants depended on macroeconomic variables, including interest and exchange rates, so that e.g. changes in the unemployment rate were the factor most likely to explain changes in migrant inflows.

Recruitment under European macro guest worker programs was halted in 1973-74, when there was still a close relationship between foreign worker employment and foreign residents. For example, the number of foreigners employed as wage and salary workers was otg20011 vernmen4.45 TD0 TTw (w0.000ks of thesef5 0 TD0.0001 6(1itr)Tj12o4e



The German experience of first associating foreigners with employment, and later associating foreigners with unemployment and welfare, is typical in Europe. Non-EU foreigners continue to have low employment rates in their EU countries of residence. A mong young men 25 to 39 years old, adding 100 non-EU males increased employment by 73 in 2000, while adding 100 nationals of EU countries increased employment by 86 or 20 percent more, The employment gap was even larger for women, and the unemployment rate for young non-EU men and non-EU women was twice as high as for young EU nationals.

Table 1. Non-EU Foreigners: Employment and Unemployment, 2000 Non-EU Foreigners: Employment and Unemployment, 2000 Unemployment, 2000 Employed, 25-39 (%)Men Women

Non-EU Foreigners 15 19
Nationals 6.5 10
Ratio--Non-EU/ Nat 2.3 1.9
Source: Thorogood and Winqvist, 2002, 6

Lagging employment-population ratios among foreigners helped to set the stage for the new guest worker programs of the 1990s, each of which aimed to fill jobs in particular industries or occupations in rifle fashion, e.g. in construction, agriculture, IT, or nursing. The level of bureaucracy in these micro guest worker programs varies, as does the role of sending countries, from no role in some programs to extensive involvement in recruitment and returns in others. Finally, the right of migrants to adjust their status to longer-t

Economic differences are widening, increasing the motivation for migration. The ratio between the average per capita GDP in low and high income countries widened from 1 to 41 in 1975 to 1 to 66 by 2000, and the gap between average middle-income and high-income per capita GDPs widened from 1 to 8 to 1 to 14 during this period, with few changes in the list of countries in each group. Within low- and middle-income countries, 30 to 60 percent of workers are farmers and farm workers—the world's 1.3 billion farmers and farm workers are 43 percent of the global 3 billion-strong work force. Many farmers and farm workers will be displaced from agriculture in the next several decades, and the question is whether they will migrate internally, or spill over borders as international migrants.

Table 3. Global Migrants and Incomes, 1975-2000

	Countries grouped								
	Migrants World PoMigrants Yr change by per capita GDP (\$) Ratios								
	millions	billions	World P	omillions	Low	Middle	High	High-l	dHigh-
							-		middle
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

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

Migrants are defined as persons outside their country of birth or citizenship for 12 months or more.

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

Many of these additional migrants did not move; they were e.g. Russians considered foreigners in Estonia

Demographic and economic differences encourage individuals to migrate, but it takes networks or links between emigration and immigration areas to enable people to cross borders. Migration networks include communication factors that enable people to learn about opportunities abroad as well as the transportation infrastructure that enables migrants to cross national borders and remain abroad. Once abroad, government-granted individual rights make it easier to stay abroad. In the face of rising differences that encourage and enable migration, governments often revert to the instrument over which they have the most control, individual

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rights, and seek to manage migration by adjusting especially the rights of new comers.

Migration for employment pressures are rising, and a major response of migrant-receiving governments is to manage migration by adjusting rights. This strategy runs counter to ILO conventions and recommendations that aim for equality of treatment—migration is motivated by differences, but once abroad, migrants are to be treated like other workers. Reconciling these difference and equality logics in a manner that ensures that labor migration contributes to equality and prosperity in a globalizing world is a major challenge.

#### Macro Guest Worker Programs

The US and Western European nations began guest worker programs during and after World War II in response to employer requests. (Congressional Research Service, 1980, Böhning, 1972, Miller and Martin, 1982, Mehrländer, 1994). The timing of their start was important; it helps to explain why policies that were to have profound socio-economic effects on labor-receiving countries were not debated extensively.

Economics teaches that there are always alternative ways to combine labor and capital to produce goods and services, but the guest worker option seemed to make the most sense in the 1950s and 1960s because of macroeconomic conditions and the assumption that employers and migrants would behave according to program rules. Instead of importing migrants, wages could have been encouraged to rise by minimum wage increases or simply allowed to rise as a result of market forces, which should have reduced the demand for labor and increased the supply, closing the gap that led to requests for migrants. Employers successfully argued again09 tarerarkby 0.00007kaassuminfl labormadju iso treffgs str20.16nsing

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programs began in 1942, suggesting that legal and unauthorized migration can rise together, and legal Mexican immigration increased as some Braceros found ways to adjust their status. Over the 22 years of

opened immigration doors to a declared "non-immigrant" country. By 2000, 60 percent of the 7.3 million resident foreigners had arrived after 1985, 12 years after guest worker recruitment stopped.

In the 1990s, there was a new wave of guest worker programs, and they differed from earlier programs justifying migrant admissions on the basis of labor shortages as well as globalization, foreign policy, and other reasons. The globalization argument was heard frequently in US debates over expansion of programs that admit foreign professionals, and it runs like this: the US has five percent of the world's population, but a far higher percentage of the world's cutting-edge industries, and thus US employers need easy access to the best and brightest from around the world to stay competitive globally (Zachary, 2000).

Foreign policy considerations loomed large in many of the micro European programs, such as German programs with Eastern European nations after 1989 (Hönekopp, 1997). Italy and Spain developed programs to admit legal migrant workers in part to encourage cooperation to accept the return of unauthorized foreigners, and to elicit cooperation to reduce illegal migration, from countries such as Albania and Morocco. In some cases, national borders divide "natural" labor markets, and commuter programs allow workers to live in one country and work in another. Finally, guest worker programs can be justified as a way to promote cultural exchange or development, as typically young people are invited to cross national borders to work while learning the language and experiencing another culture as trainees or working holiday makers.

These rationales for guest worker programs are summarized in Table 5. There are other arguments, including the assertion that workers should be freer to cross borders to increase trade in services; that multinational firms should be allowed to assemble diverse work forces in any country in which they operate to remain competitive; and that allowing migrants to circulate between developing and developed countries gives the migrant the best of both worlds while benefiting both societies, as the migrant acts as an economic bridge cull9mwb

2. Foreign policy concerns Facilitate returns of unauthorized

importing foreign workers after they secured a promise that foreigners would be treated equally, and thus would not undercut German workers.

Third, in a unifying Europe based on freedom of movement, <sup>7</sup> Germany could believe that it was channeling labor flows that would soon not be as subject to governmental guidance after January 1, 1968. Fourth, the need for additional workers was believed to be temporary. Germ

Sikhs, and Mexicans—were available for seasonal work at low wages, and these low wages were soon capitalized into higher land prices, giving landowners an incentive to keep new comers arriving.

The 1930s were the only time in 150 years in which a majority of the new comer

commuters" shuttled between homes in Mexico and US farm jobs and, as they aged in the 1970s, many sent their sons and relatives to replace them, legally or illegally. Some green card commuters became farm labor contractors, and their experience in Mexico and the US made them efficient recruiters, smugglers and employers of migrants.

#### US Micro Guest Worker Programs

The 1990s saw the launching of new micro guest worker programs, each with its own admissions criteria and length of stay and adjustment of status option. Micro guest worker programs can be compared along several dimensions. Two of the most important are:

the requirements employers must satisfy to have guest workers admitted, and the rights of migrants abroad.

Table 6 outlines these criteria in US programs, and distinguishes between preadmission certification, as when the employer requesting migrants must satisfy an economic needs test that may include advertising for local workers at a governmentset wage before employing migrants, and post-admission attestation, a system that permits employers to have migrants admitted without government checks of need. The second dimension concerns worker righ entry as an H-1B very easy, but the lengthy process involved in obtaining an immigrant visa can make H-1B migrants very dependent on their employers.

There are two major programs for admitting unskilled foreign workers, and both require employers to obtain certification that local workers are not available at government-set wages. Employers do not have to provide housing or pay transportation to H-2B migrants, but their number is capped at 66,000 a year. There is no limit on the number of H-2A visas that can be issued, but farm employers must meet more requirements to receive permission to recruit them, including offering the higher of three wages and providing free housing to migrants.<sup>11</sup>

Other programs give employers more freedom. For example, employers do not have to satisfy any labor market tests to transfer managers and specialists from their foreign operations to US subsidiaries, provided the migrants have been employed at least one year abroad. Once in the US, these L-1 visa holders are restricted to the employer who petitioned for them, and there is no requirement that they be paid at least a specific wage. Similarly, there are no pre-admissions tests on employers who want to hire J-1 exchange visitors, and no housing or specific wage requirements.

The core rationale for guest worker programs is to admit foreign workers to fill vacant jobs, so few programs allow guest workers to be free agents in the labor market. The US allows immigrants to be free agents in the labor market, but the UK Highly Skilled Migrant Program (HSMP) is among the few guest worker programs that allow foreigners who score sufficient points on a test of personal characteristics such as education, experience and past earnings to be free agents in the UK labor market. Similarly, the US program allowing foreign students to find jobs as an adjunct to their studies does not restrict them to any particular employer. Professionals from Canada and Mexico may, under Nafta, enter the US with proof of their qualifications and a US job offer, and later change employers in the US.

The proliferation of guest worker programs makes it hard to generalize about employer requirements, worker rights, and distortion and dependence effects. Employers seeking foreign workers face tws whadao

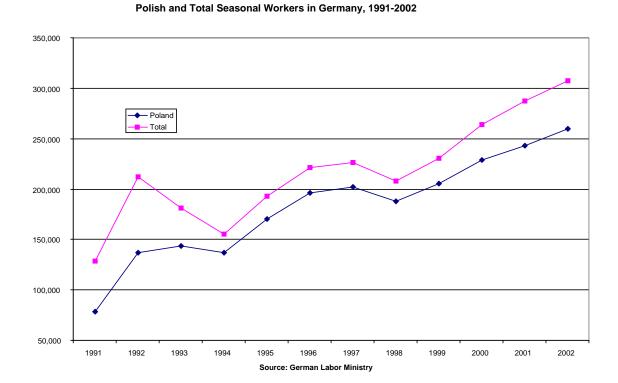
recruit migrants and then finding, transporting, and training the migrants. Experience shows that the major hurdle is government certification: once an employer is certified, there appear to be few problems finding, transporting, and training migrants.

Germany: Micro Programs and Green Cards

The year 1989 was a major turning point in world history, especially for (West) Germany, which received a net one million new comers, half from Poland, increasing the population by 1.7 percent. To deal with migrants from the east in the 1990s, Germany and other European countries developed new bilateral guest worker programs, each of which was designed to provide workers for a particular industry or occupation. One purpose was to channel inevitable migration into legal channels, but Honekopp noted that there were still "perhaps as many illegal workers as legal workers." (1997, 11).<sup>14</sup>

The project-tied or posted workers program allows German firms to sub-contract part of a construction project to foreign firms that provide primarily labor. Migrants can stay up to two years, but after abuses in the early 1990s, the admissions ceiling was lowered from 95,000 to 56,000 a year. The German firm is to ensure that its foreign subcontractor is paying the prevailing (German) wage to migrants in ie Ganme.001 02 Tc4(o)1.1labor. Migre an

Figure 2. Polish and Total Seasonal Workers in Germany, 1991-2002



The trainee (Gastarbeiter) program allows up to 11,050 young (18 to 40 year old) Europeans to work and learn in Germany for up to 18 months, and allows young Germans to work and learn in these European nations on a reciprocal basis. German employers submit work-and-learn offers to local ES offices which, without testing the German labor market, transmit them to a foreign ES office so that young people there can apply. There is a ceiling on the number of trainees from each participating country, e.g. 2,000 each for Russia and Hungary, but only 44 percent of the available slots were filled in 2002. Poland, which has a ceiling of 1,000 trainee slots, fills 60 to 80 percent; which Honekopp (1997, 10) attributed to the fact that many Poles seem to prefer to earn higher wages harvesting apples under the seasonal program to lower trainee wages.

The border commuter program allows Czech and Polish workers living within 50km of the German border to commute from their homes to German jobs if the local ES certifies that local workers are not available. The emphasis is on daily commuting, but border commuters, some 6,000 Czechs and 1,500 Poles in 1996, are allowed to stay in Germany up to two days a week. This program will disappear with EU expansion and freedom of movement.

Evaluations of German micro guest worker programs suggest that they succeeded in turning some otherwise unauthorized migrants into legal guest workers and they hastened the conversion of seasonal farm jobs into "foreigners' jobs." The major problems were in the project-tied construction program, which expanded rapidly with the construction boom following German unification in 1990; many of the

Others	4,248	3,109	3,514	29%
India	3,771	3,574	2,771	26%
Ex-USSR	1,851	1,680	1,697	13%
Romania	1,033	971	954	7%
Czech / Slovakia	974	935	809	7%
Ex-Yugoslavia	746	632	647	5%
Hungary	503	467	425	3%
North Africa	430	150	404	3%
Bulgaria	419	351	378	3%
SAmerica	384	314	298	3%
Pakistan	207	169	185	1%
Total	14,566	12,352	12,082	100%

Source: German Labor Ministry

The green card program arose from the failed effort of the SPD-Green government elected in September 1998 to change German naturalization policy from one of the most restrictive in Europe to one of the most liberal. Under the government's original plan, foreigners who became naturalized Germans could have routinely retained their original nationality. The CDU-CSU parties won state elections in Hesse in February 1999 by opposing routine dual nationality, arguing that it would give dual or double benefits to foreigners, and the resulting compromise allowed children born to legal foreign residents of Germany to be considered dual nationals until age 23, when they normally lose German citizenship unless they give up their old citizenship.

The IT industry request for non-EU foreign professionals provided a way to refocus the immigration debate on the benefits of immigration. However, it had t overcome opposition within the government<sup>20</sup> and the opposition, which based its failed campaign in state elections in North Rhine-Westphalia May 2000 on "Kinder statt Inder" (children instead of Indians) to argue that Germans should have more children and train them instead of importing high-tech workers from India.

Micro guest workers and green cards have not yet evolved into an overall immigration policy. In July 2001, a commission made recommendations that became the basis for the proposed immigration law approved by the German Parliament in March 2002 and again in May 2003.<sup>21</sup> It recommended that Germany admit 50,000 more foreigners a year than currently arrive, including 20,000 foreign professionals selected on the basis of a point system, another 20,000 admitted temporarily with

<sup>&</sup>lt;sup>20</sup> Labor Minister Walter Riester (SPD) objected saying: "We cannot allow a general international opening of the job market. We have over four million unemployed people, among them very qualified people in the information technology field. There were 31,000 unemployed IT workers in December 1999.

<sup>&</sup>lt;sup>21</sup> The commission's report, Organizing Immigration - Fostering Integration, is at: (http://www.bmi.bund.de/dokumente/Artikel/ix\_46876.htm),

five-year permits, and 10,000 trainees and foreign graduates of German universities, who would receive two-year work visas but be allowed to adjust from temporary to permanent status. There would be six doors for labor market immigrants, including three for foreigners seeking entry on the basis of their personal qualifications<sup>22</sup> and three for foreigners sought by German employers.<sup>23</sup>

Germany loosened some requirements on non-EU foreign student employment administratively. Chancellor Gerhard Schroeder in September 2000 said that " if students whom we train here in Germany...want to stay and work among us after the end of their studies, then we should make it possible for them to do so." Non-EU foreign students may work for 90 days (or 180 half-days) a year without a work permit while studying, and local foreigners' offices may authorize an additional 10 hours of work a week with the approval of the local employment office. Many employers prefer to hire foreign students because, if they work less than 20 hours a week, the employer avoids many payroll taxes (www.campus-germany.de/) About 10 percent of the 1.8 million students in Germany's higher education system are foreigners.

#### US: 1990s Guest Worker Programs

The US has over 20 nonimmigrant programs that permit foreigners to work from several weeks to several years to indefinitely. These programs are often referred to by the type of visa issued to the foreigner, such as E for treaty traders and investors, H for workers, and L for intra-company transferees. The three major worker visa categories are H-1B for specialty workers, H-2A for agricultural workers, and H-2B for nonfarm workers.

Perhaps the best-known US guest worker program is the H-1B program, which allows US employers to have foreign professionals admitted to fill specialized jobs, that is, the foreigner must normally have a university degree or equivalent experience, and the US job must require such a degree or experience. The H-1B visa replaced an earlier visa that had similar requirements, and the H-1B program was included in the Immigration Act of 1990 to deal with anticipated shortages of scientists and engineers. To speed entries, the H-1B program included an employer-friendly admission process, but the trade off was that the number of visas was capped at 65,000 a year.

<sup>&</sup>lt;sup>22</sup> These three doors are for entrepreneurs who want to establish businesses in Germany, young foreigners selected through a point system, and foreign students studying in Germany.

<sup>23</sup> These doors included one for corporate managers and scientists;-0n0eTon0t(xr)eigib(xr)s6.44(a)-3.63(dtsjTnavoe)0v7(brst (xsho)6.7(i

There are a number of other guest worker programs, including those admitting foreign nurses, workers with extraordinary ability or achievement, and Nafta professionals. There were a peak 7,200 admissions of registered nurses with H-1A visas in 1992. After this program was phased out in 1995, another program for registered nurses, Nursing Relief For Disadvantaged Areas, was launched, and there were 111 admissions with H-1C visas in 2002. Admissions of foreign workers with extraordinary ability or achievement (O-1 visas) tripled between 1992 and 2002 to 25,000, while admissions of foreign workers who are internationally recognized athletes or entertainers (P-1 visas) doubled to 41,000. Workers in religious occupations receive R-1 visas, and their admissions tripled between 1995 and 2002 to 19,000.

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Nafta permits professionals with a university degree to accept job offers in Canada, Mexico, or the US and to receive indefinitely renewable TN visas. The number of US admissions of Canadians and Mexicans with Nafta-TN visas tripled between 1995 and 2002 to 74,000 and, beginning in 2004, the 10-year anniversary of Nafta, the current annual limit of 5,500 TN-visas a year for Mexican professionals will be eliminated. Nafta-professions are listed in Chapter 16, and range from accountant to zoologist. The entry procedure has applicants appearing at ports of entry with proof of citizenship, a signed job offer from a US employer specifying the job and salary (which does not have to be the prevailing wage for that job), and proof of professional qualifications, such as a university degree.

During the 1990s, the US added micro guest worker programs aimed at filling job vacancies in particular labor markets, from computer programming to nursing in particular areas. Most of these programs place no caps on admissions, most permit spouses and children to accompany the visa holder, and most allow employers to have foreign workers admitted under fairly simple procedures.

The impacts of these growing micro programs are hard to assess, in part because data are often unavailable for the particular labor markets with concentrations of foreign workers, such as tobacco harvesters in North Carolina. However, the impacts of foreign workers may be larger than suggested by annual admissions data because many workers stay longer than one year, e.g. H-1B workers may stay up to six years (some stay for less than one year). Second, foreign workers follow network paths, so that the activities of particularly successful recruiters may lead to foreign workers admitted under a particular guest worker program being a majority of workers harvesting tobacco, planting trees, or writing software code in a particular area, even though foreign workers may be a small fraction of the national labor force. It is clear that a migration infrastructure has developed that makes it easier to match employers and migrants.

<sup>27</sup> In 2000 and 2001, there were about 2,000 admissions a year of Mexicans with TN visas.

## Seasonal Worker Programs

Most countries have temporary worker programs for high- and low-skilled workers, and some have separate programs for IT-professionals, health care workers, and managers and executives as well as programs for farm workers, construction and similar workers, and maids and caregivers. Admission is usually easiest for the more skilled workers, and major issues for migrants in the high-skill programs include credentials recognition and adjustment to permanent status.

In most countries, unskilled workers are the major focus of unions and worker advocates because there are more of them and both native and foreign workers are believed to be less able to protect themselves because they are often in the country only a short time, dispersed in rural areas or in private homes, and thus among the hardest workers to inform about their rights and to ensure effective protection. Furthermore, the right to stay in the country is often linked to employment, so if migrants file valid complaints against their employers, they may nonetheless lose their jobs and be removed from the country. Since national labor laws do not apply abroad, complaining migrants may be blacklisted and unable to return.

It is very hard to protect foreign workers employed in seasonal worker programs, which make them a litmus test for assessing the effectiveness of worker protection measures. The usual goal of farm employers, major employers of seasonal foreign workers, is to minimize their fixed costs, which means they want to hire and pay seasonal workers only when they are needed. Seasonal employment is generally not attractive to workers who can obtain year-round work, which also tends to offer higher wages, more fringe benefits, and more opportunities for upward mobility, and so workers with other job options tend to leave seasonal farm work for other jobs. In this manner, the seasonal farm work force in most industrial countries has included a rising share of foreign workers.

Table 9 compares seasonal foreign worker programs in major industrial countries. All require employers to have their need for foreign workers certified, but not all require employers to provide free housing to foreign workers or to cover the cost of the workers' transportation to the place of work. The programs also differ in their wage and benefit requirements, and in the roles played by sending country governments in migrant worker selection and in enforcing labor laws where

Canada	15,000	no	yes	yes	no
UK	25,000	yes	yes	yes	no
France	15,000	no	yes	yes	
Switzerland	1,000	yes	yes	yes	

Source: see text

In Germany, seasonal workers have contracts that may or may not provide housing etc

The trend in expanding seasonal worker programs is to "trust the employer," to give employers or employer organizations more voice in admissions, transportation, and employment decisions. This has perhaps gone furthest in Canada, where the userfee funded Foreign Agricultural Resource Management Services or FARMS organization handles many of the tasks dealt with by government agencies in other countries, such as worker transportation. Worker representatives are rarely involved in seasonal worker program design or administration, which leads to extensive litigation in the US, and growing criticism of seasonal worker programs in Canada and the UK.

Agriculture in industrial countries should be ripe for pressure to improve foreign worker programs. According to the OECD, direct and indirect transfers to farmers in OECD member countries (producer subsidy equivalent or PSE) totaled \$230 billion in 2001, equivalent to a third of farm sales; most of this aid reaches farmers via price supports and input subsidies. Most of

they receive for commodities by branding them, offering them directly to consumers, or farming organically, and such value-added steps could, with consumer pressure, extend to require better conditions for hired workers to achieve these premium prices.

### Canadian Programs

The Commonwealth Caribbean and Mexican Agricultural Seasonal Workers Program (ASWP) has allowed Canadian farmers to import foreign workers for up to eight months a year from the Caribbean since 1966, and from Mexico since 1974. About 80 percent of the ASWP migrants are employed on fruit, vegetable and tobacco farms in Ontario, and their average stay in Canada is four months (Canada, HRDC/ CIC).

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 and negotiating their wages with Human Resources Development Canada (HRDC). The admissions process begins with farm employers applying to local Human Resources Centers for certification to employ foreign workers at least eight weeks before they are needed; there is a preference for Canadian workers under the Canadians First Policy. Farmers must t offer a minimum of 240 hours of work in a period of six weeks, free approved housing and meals or cooking facilities, and the higher of the minimum wage (C\$6.85 an hour in Ontario in 2002), prevailing wage, or piece-rate wage paid to Canadians doing the same job. HRCs transmit the approval to hire foreign workers to a grower organization funded by user fees, Foreign Agricultural Resource Management Services (FARMS), which sends the approvals to Mexico or the Caribbean.

Migrants are given entry papers in their countries of origin, and a FARMS affiliate arranges to transport them to Canada and to the employer. 28 Farmers advance the cos0.000202 fr4 279cente7.98 0 xFarmers adtw1stay iangerkeuct n Agfr4 27 A Sal 1974soerkeuct pay

for hiring unauthorized workers or lending their guest workers to other farmers, but such fines are very rare.

The Southern Ontario greenhouse industry is expanding and employing more migrants. It is close to major US population centers and uses hydroponics and natural gas heat to produce tomatoes and cucumbers, many of which are many exported to the US. Growers had negative experiences with local workers sent by employment and welfare offices, recounting stories of workers threatening to break equipment in order to get fired, or workers who "broke faith" with the employer by walking away during busy times even after being "helped" by the grower with make-work employment during slow seasons. Although the number of foreign workers is rising, most seasonal workers are local: in one study, only 40 percent of the jobs in 40 vegetable greenhouses were filled by foreign migrants (Basok, 2002).

Most of the Mexican guest workers are married men who leave their families in Mexico. They travel to Mexico City at their own expense and pay for medical exams, so most live near Mexico City and most go into debt before they are selected. Mexican consular officials meet arriving migrants at Canadian airports, inform them of their rights, and under the agreement can inspect housing and solicit worker grievances. Despite suggestions that Mexican consular officials are sometimes ineffective advocates for migrants (Basok, 2002, 149-151), most migrants report that they prefer the security of contracts in Canada to the insecurity of unauthorized status in the US. The migrants tend to be isolated on farms, so they do not spend much money, and can save an average C\$1,000 a month from their C\$345 (\$240) weekly pay for 50-hour weeks.

The Canadian ASWP is growing, providing 30

we are exploring (ways) to extend that to other sectors.<sup>32</sup> 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, agrees, saying it: "is a real model for how migration can work in an ordered and legal way."

Table 10. Canadian Guest Worker Employment in Agriculture

Canadian Guest Workers Admitted for 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

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

There have been protests by migrants, including an April 29, 2001 strike, that led to complaints on behalf of the migrants by the United Food and Commercial Workers Union and the United Farmworkers Union. The UFCW, which operates Migrant Worker Centers in Leamington and Bradford, Ontario, calls the ASWP "Canada's shameful dirty secret," noting that farm workers in Ontario do not have the right to strike. Ontario farm workers can form associations and make representations to their employers, but employers do not have to recognize these associations as bargaining agents for workers; the Ontario Agriculture Minister says these restrictions on workers are necessary to protect family farmers.<sup>33</sup> The UFCW has filed suit against provincial authorities in Ontario for excluding farm workers from

<sup>\*</sup>From Barbados, Jamaica, and Trinidad and Tobago

<sup>&</sup>lt;sup>32</sup> Pilot projects are underway with Mexican workers at hotels in Alberta and a meat-packing plant in Winnipeg.

<sup>&</sup>lt;sup>33</sup> Diane Lindquist, "Abuses cited in model Canada guest-worker program," Copley News Service, July 16, 2001.

the Occupational Health and Safety Act and for charging migrants C\$11 million a year in employment insurance premiums but not allowing them to obtain UI benefits. On the other hand, under a special exception, migrants are eligible for health insurance coverage upon arrival in Canada—the usual three-month wait for coverage under provincial health care programs is waived.

The potential best practice aspects of the Canadian seasonal farm worker program include the active involvement of farm employers in program design and administration, Mexican government involvement in recruiting and monitoring migrants in Canada, and exceptions that allow the provision of health insurance in

The UK government has asserted that, by expanding guest worker admissions, illegal migration and employment can be reduced. Newspaper reports that 50,000 illegal workers—unauthorized foreigners and British workers drawing unemployment and welfare benefits while working for cash wages—are employed on British farms and in packinghouses were seemingly confirmed by a May 2002 review of SAWS program that "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). A government commission on agriculture recommended that the ceiling on SAWS workers be raised again, from 25,000 to 50,000 a year; the ceiling was 10,000 in 2000.

The UK government believes that the SAWS program is a model for importing unskilled labor for other economic sectors. In May 2003, so-called Sector Based Schemes based on SAWS were introduced to admit up to 20,000 non-EU foreigners under 30 years old for up to one year to work in restaurants and hotels and food (fish and meat) processing. The Trade Unions Congress reported that many EU foreigners, often from Portugal, wind up signing contracts that, after arrival, turn out to include unexpectedly high charges for transportation, housing, and other services, so that earnings are often far less than expected (Clark, 2003).

#### Swiss Programs

Switzerland was the first European country to recruit guest workers after 1945, largely because its economy escaped destruction during World War II. Most of the postwar guest workers were from Italy. Italians, first recruited privately by employers under a 1948 agreement, were 60 percent of the foreigners in Switzerland in 1960. In 1964, the Italian-Swiss agreement was revised to give more rights to Italian workers, including the right to have their families join them in Switzerland (Liebig, 2003). The Swiss government introduced employer-specific quotas on foreign workers in 1963, and a countrywide quota in 1970. When the oil-price induced recession came in 1973, Switzerland did not require all employers to offer unemployment insurance benefits, many laid-off guest workers left, and the Swiss unemployment rate stayed low.<sup>37</sup>

In 1991, the Swiss government adopted the three-circle model of foreign labor recruitment, allowing easy entry to first-circle nationals of the European Economic Area (about 56 percent of the foreigners in Switzerland are EEA nationals), giving

gangmasters who abide by laws with seals of approval.

http://www.ethicaltrade.org/pub/publications/2003/04-gangmstr/index.shtml  $^{36}$  White Paper. 2002. Secure Borders, Safe Haven. http://www.officialdocuments.co.uk/document/cm53/5387/cm5387.htm

<sup>&</sup>lt;sup>37</sup> Liebig notes that the Swiss labor force fell 8 percent after 1973, but the unemployment rate stayed below 1 percent.

second-circle or second-priority to nati

Non-EU foreigners may enter France to fill seasonal farm jobs for up to eight months under bilateral agreements, provided their French employer has demonstrated that local workers could not be recruited at government-set wages to fill the jobs in question. Employers must offer housing to solo workers in France without families and ensure that the seasonal workers leave France at the end of their contracts; they risk fines and disqualification from the program if seasonal workers do not depart. Employers and seasonal workers have payroll taxes deducted from their wages.

The number of seasonal foreign workers admitted for employment in agriculture first rose and then fell. In 1972, a peak 138,000 seasonal foreign workers were admitted, two-thirds from Spain, and two-thirds were employed to harvest grapes (Miller, 1991b). The admissions process began with French farmers having their need for foreign workers certified by local labor offices. Most of the Spanish workers were requested by name by French employers, and many arrived by train in work crews that could shift from employer to employer. French employers paid for worker transportation and provided housing. Miller (1991b, 863) noted that the recruitment of seasonal foreign workers for agriculture was not halted with the recruitment of other foreign workers in July 1974.

Table 12. Admissions of Seasonal Foreign Farm Workers, France, 1960-2001

Number				
1960	109,800			
1970	135,000			
1980	120,400			
1990	47,000			
1997	8,210			
1998	7,523			
1999	7,612			
2000	7,929			
2001	10,794			

Sources: Tapinos, 1984, 54, Miller, ,929

As the seasonal worker program shrank in the 1990s, some French officials expressed the opinion that it should be expanded to reduce illegal migration, pointing to the French-Polish bilateral agreement that has no ceilings on numbers. After slipping below 8,000 admissions a year in the late 1990s, almost 11,000 seasonal foreign workers were admitted in 2001, half Moroccans and 43 percent Poles. Migrant settlement, they note, can be minimized if workers come without families and contracts are limited to six months.<sup>38</sup>

## 21st Century Guest Worker Programs

During the 1990s, most industrial countries developed multiple guest worker programs, each aimed at filling job vacancies in particular labor markets. The number of such micro programs is likely to grow, and this section deals with three issues:

Best practices to keep guest worker programs true to their purpose, viz, adding workers temporarily to the labor force in a manner that minimizes distortion and

human capital that workers bring to the job. Policy discussions aimed at increasing a country's labor supply focus on reducing unemployment, delaying retirement, increasing the participation of married women, increasing hours of work, and equipping workers with more human capital.

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

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

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

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

enforcement strategies such as joint liability, so that beneficiaries of unauthorized migrants help to police the activities of intermediaries.

There may be far more room for labor-sending and labor-receiving country cooperation to reduce unauthorized migration. Most development economists agree that the maximum benefits to labor-sending countries arise from temporary migration, since it maximizes remittances—the optimal time abroad has been put at one or two years.<sup>39</sup> The desire to return can be encouraged by developing country governments that keep in regular touch with migrants abroad, help to reduce the cost of remitting savings, and match some remittances to help returning migrants create jobs; as Ellerman (2003, 26) notes, developing country governments must try to avoid having emigration be seen as a way to escape from local underdevelopment. Labor-sending and labor-receiving country cooperation on guest workers could, Ellerman argues, help developing countries break out of an underdevelopment trap via remittances, the skills embodied in returned migrants, and the trade and business linkages fostered by migration with host countries.<sup>40</sup>

Finally, there is the question of what to do about the 10 to 15 million unauthorized foreigners currently in industrial countries. Once guest worker programs are in place that utilize economic mechanisms to minimize distortion and dependence, and new unauthorized migration is sharply reduced via more enforcement and cooperation, resident unauthorized foreigners must be dealt with. The most common policy prescription is for earned adjustment, a system in which unauthorized and quasi-authorized foreigners who satisfy residence, work, and/ or integration tests are allowed to become legal long-term residents and workers.

earned legalization would have to be delayed until after unauthorized migration is reduced and new guest worker programs are in place, and would have to be

treatment" goals, including freedom of movement within the host country, freedom to form unions and participate in the political life of the host country, and equal access to employment services, public housing, and educational institutions.<sup>42</sup> The UN launched a global campaign to promote migrant rights in 1998, and on July 1, 2003, the Migrant Convention entered into force, albeit with ratifications from only 22 countries, mostly from emigration countries such as Mexico and the Philippines.

If all migrants are legal, and they receive the same benefits as local workers, employers are likely to request fewer, posing a numbers versus rights dilemma—do we want more migrants employed abroad, or better conditions for migrants? The logic motivating migration is differences, while the logic of protection seeks equality. There is no easy way to resolve this numbers-rights dilemma. Writing in the US in the early 1950s, when migrant farm workers were excluded from the protections of labor laws and their were largely unsuccessful efforts to extend rights to them and improve their conditions, a famous book concluded that: "The brightest hope for the welfare of seasonal agricultural workers [in the US] lies with the elimination of the jobs upon which they now depend," (Fisher, 1953, 148), that is, the only way to improve conditions for migrants was to eliminate them from the work force.

Migrants are not likely to disappear and, in a world of growing inequalities, there are two extreme responses to the numbers versus rights dilemma: no borders and no migrants. Open borders should set in motion equalizing forces that should eventually lead to less migration while efforts to close borders would require more costly enforcement. Most countries are between these extremes, allowing some migration but seeking to regulate entries and employment in a manner that satisfies other goals, including minimizing migrant-related distortion and dependence. In this real world, economic mechanisms can encourage employers and workers to make desired decisions "voluntarily," reducing the costs of enforcement and the human rights violations that may be associated with enforcement of rules.

Adding economic mechanisms to guest worker programs can make them adhere more closely to their goals, but leaves open the numbers-rights dilemma. There is no easy answer to the question and answer often heard in emigration areas: "What is worse than being "exploited" abroad? Not being "exploited" abroad.

<sup>&</sup>lt;sup>42</sup> Part IV, Article 44 was one of the most contentious parts of the Migrant Convention. It says that "recognizing that the family is the natural and fundamental group unit of society," obligates states to "take appropriate measures to ensure the protection of the unity of the families of

#### Conclusions

Guest worker programs have become more numerous and more detailed in the industrial countries that include most of the world's migrant workers. They aim to fill vacant jobs, to channel otherwise unauthorized foreigners into legal status, and to allow work as an adjunct to education and training, giving them far more goals than in the past. Despite program proliferation aimed in part at reducing unauthorized migration, there are more unauthorized than legal guest workers in the industrial democracies, including vulnerable women who may have been the victims of smugglers or traffickers.

In the industrial countries, legal migrants are often associated with unemployment and welfare, and unauthorized foreigners with law-breaking the underground economy, setting the stage xenophobia and discrimination. The ILO, a standards-setting body that aims to protect migrants by encouraging employers, unions, and governments to enact and enforce laws that make migration legal and orderly, faces the challenge of how to deal with the rising number of migrants moving between more countries, at more points on the job ladder, and under an ever-growing number of arrangements, from bilateral agreements to worker-job matches made by private agents outside the purview of governments.

In considering how to make the current system better, three widely shared principles need to be kept in mind, First, government policies, even if they do not work perfectly, do make a difference in the how and how many migrants arrive, how they are treated within the country, and whether they return or stay. Second, the overall economic benefits of moving workers over borders are positive, as individual migrants and their employers are better off, and world GDP rises as more workers have higher wage jobs. Third, in a world of laws and rights, and it is best for everyone if labor migration is legal and orderly.

The question is how to develop policies that meet the interests of the parties directly concerned: migrants and employers, while satisfying the needs of labor-sending and labor-receiving countries. From the perspective of the industrial countries that include about 12 percent of the world's workers and 55 percent of the world's migrants, the starting point must include more effective policies to reduce unauthorized migration and guest worker programs that minimize distortion and dependence. Once such policies are in place, industrial countries are more likely to be ready to offer earned adjustment of status to resident foreigners. A world of less illegal migration, legal guest workers, and currently unauthorized foreigners earning legal status will be difficult to achieve, but it may be preferable to the alternative of an international migration system increasingly controlled by smugglers and traffickers and an ever-wider gap between national and international norms and workplace realities.

The international migration system is at a crossroads. Numbers are rising, but largely outside established channels designed to admit and protect foreign workers. The ILO has tackled international migration for employment about every quarter century, and the dawn of the 21st century is an appropriate time to once again have employers, unions, and governments review the optimal ways to move workers over borders.

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