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LABOR MOBILITY

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Of all the liberalization dimensions of international trade, the opening of labor markets is probably the most sensitive. As a result, agreements to open (generally, only partially) labor markets are not as plentiful as other liberalization agreements, and they are typically more restrictive. They are also less well surveyed. This chapter presents an overview of provisions for opening labor markets that are found in preferential trade agreements (PTAs).

Movement of labor is one of the four fundamental economic freedoms, along with free movement of goods, services, and capital. Of the four, it has met with the least receptivity on the part of countries in the international economy, whether developed or developing. Even the most spirited free traders—Chile; Singapore; the United Kingdom; and Hong Kong SAR, China, for example—have been reticent about opening their borders more to admit labor from abroad. These economies and many others shy away from significant opening for natural persons from other countries, even in the face of labor shortages at home.

The contrast between the desire to promote capital mobility and investment flows and the reluctance to envisage corresponding labor mobility is stark. More than 2,800 bilateral investment treaties have been signed to date, but nothing equivalent exists in the area of labor (Vis-Dunbar and Nikiema 2009). The number of trade agreements covering services is growing rapidly, yet willingness to incorporate meaningful provisions on labor mobility into the services package is limited, and most agreements contain very modest market access opportunities for foreign workers. Several recent free trade agreements (FTAs) contain no provisions at all in this area. Leaving aside formal bilateral and regional trade agreements, it is extremely difficult to determine the number of bilateral agreements worldwide that incorporate arrangements for temporary worker programs. There appears, however, to be not more than a handful. Information is scarce, and no single institution has been designated as a repository of agreements and promoter of labor mobility. And whereas most governments sponsor investment promotion agencies to encourage inward flows of capital and foreign direct investment, there is no similar institution for workers. In nearly all countries, the agency that deals with the influx of foreign labor is the immigration authority, whose concern is to regulate and restrict, not to promote. To complicate matters further, immigration authorities are primarily focused on setting rules for permanent rather than temporary migration. Temporary migration, however, is the object of international trade policy and is the focus of this discussion.

The problems with the present situation are twofold. The first has to do with its unbalanced nature. Developed economies have a comparative advantage in the export of capital and thus benefit tremendously from the openness of capital markets and the welcoming character of most investment regimes. That kind of receptiveness does not exist for labor movements. Developing countries have a comparative advantage in the export of their people, but they are constrained from realizing the gains from trade that they might otherwise enjoy.

The second problem is that the entire world suffers from a loss of potential income that could be realized through greater mobility. Depending on what assumptions are made by researchers, the potential gains could be quite substantial and could easily surpass the combined gains anticipated from freer trade in agriculture and manufactured goods—as currently proposed in the Doha Development Round sponsored by the World Trade Organization (WTO). Nevertheless, proposals for greater market access for foreign workers are limited, and this has been a central obstacle to progress in the services component of Doha Round negotiations.

It has been argued by many, including, prominently, Lant Pritchett and L. Alan Winters, that greater mobility of

labor would be the first-best development promotion strategy (Pritchett 2006; Winters 2008). Pritchett writes that it is hard to imagine a policy more directly at odds with poverty reduction or pro-poor growth objectives than one limiting the demand for lower-skilled labor. This limitation can be viewed as the principal way that rich countries are currently inhibiting the development possibilities of poorer countries—much more than through restrictive agricultural policies or nontariff barriers.

In such a challenging and often hostile environment for labor mobility, what options might developing countries have for increasing the scope for the movement of their workers? Given the impasse in the Doha Round and the lack of any progress on services in multilateral negotiations for the past several years, preferential trade agreements might offer a more promising channel for greater labor mobility, even if among a limited number of partners. Other options that have been relatively unexplored to date may also be available, such as the promotion of circular migration through temporary worker agreements—time-bound instruments that allow greater flexibility for both labor-sending and labor-receiving countries.

In this chapter, we do not delve into the Doha quagmire but, rather, explore these other options. We first discuss the concept and magnitude of labor mobility and the potential benefits from greater liberalization. We then review the various ways in which members of PTAs have treated the issue of labor mobility to assess whether these preferential agreements have effectively promoted temporary entry. Only PTAs between developed and developing countries are examined.

The questions we attempt to answer are the following: Which developed countries are more amenable to greater openness for natural persons, and what are the possible reasons? Can recent PTAs be emulated? What have temporary worker programs in bilateral and plurilateral agreements with developing-country partners achieved, and could such agreements usefully supplement the PTA approach? After exploring these issues, we look at policy suggestions that might be implemented by the World Bank to promote labor mobility for its developing-country members.

We recognize that developed countries are currently experiencing very high levels of unemployment and that these conditions will probably continue through 2011 and possibly into 2012. Accordingly, political resistance to all forms of labor mobility is extremely high. This chapter, however, is written with a view to the longer term, when normal economic conditions will have been restored.

The Concept of Labor Mobility

In international services trade, labor mobility is conceptualized as the temporary movement of natural persons and is categorized as mode 4. Article I.2 (d) of the WTO General Agreement on Trade in Services (GATS) defines mode 4 as the supply of a service "by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member." (See box 13.1 for estimates of the size of this mode.) A natural person of another member is defined as

> a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
> (i) is a national of that other Member; or
> (ii) has the right of permanent residence in that other Member . . ." (Article XVIII[k])

Temporary versus Permanent Workers

For services trade, and for our purposes here, labor mobility is understood as the movement of workers to carry out employment in another country for a time-limited period. Although the term "temporary" is not defined under GATS, the notion of moving in order to work for a limited period, as opposed to moving with the intention of emigrating permanently, is what distinguishes mode 4. This is affirmed in the GATS "Annex on Movement of Natural Persons Supplying Services under the Agreement," which specifies that GATS shall not apply "to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis." All subsequent trade agreements, following the WTO approach, consider only the temporary movement of workers, but governments have been unwilling to define in precise terms what period of time is meant by "temporary." The official statistical definition of temporary migration is a stay of less than one year, but for trade policy purposes, a temporary stay can vary anywhere from a few weeks to a few years, depending on the commitments governments are prepared to undertake. This lack of precision has been both a strength and a weakness in defining mode 4 treatment within trade agreements.

The great political sensitivity surrounding international labor mobility is not helped by the very frequent confusion, in both statistical analysis and political debate, between temporary and permanent migration. Immigration authorities deal with both simultaneously, and at times the character of "temporary" labor movement is disregarded and all immigrants are treated as though

Box 13.1. Labor Mobility in Statistical Terms

Historically, one of the main ways that temporary labor migration has been captured in the data is through recorded "transfers and payments" in balance of payments statistics; this category is what we and others term "remittances." According to the International Monetary Fund (IMF) *Balance of Payments Manual,* "remittances" mainly comprise "compensation of employees" and "personal transfers" (IMF 2010). Transactions are recorded in the balance of payments when money is paid by residents to nonresidents, or vice versa. Determining the magnitude of mode 4 (temporary movement of services providers) by examining transactions is problematic, since remittances are made by both temporary and permanent migrants and by workers in the manufacturing and agricultural segments of the economy, as well as in services sectors. In addition, payments to undocumented foreign workers are not captured statistically when they are spent in the country in which the person works (see also Carzaniga 2008).

Looking at volume rather than value is hardly more satisfactory. The Organisation for Economic Co-operation and Development (OECD) collects information on the number of temporary foreign workers in surveys of firms, visas, border crossings, and so on. These data cover intracorporate transferees and other temporary workers. They are, however, far from a perfect match for mode 4. Furthermore, the scope may differ from one country to another, and in any event, figures are only available for a subgroup of OECD members.

Karsenty (2000) calculated services trade through mode 4 to be no more than 1 to 2 percent of total two-way trade in services. Applying this range to the most recent trade data available (2008) would put the value of services trade through mode 4 somewhere between US$70 billion and US$150 billion annually. Those figures may underestimate the actual value of this form of services trade, since remittances alone in 2007 amounted to more than US$200 billion. Remittances, however, likely overestimate mode 4 services trade.

Source: Karsenty 2000; OECD data.

they were seeking permanent status. Moreover, inside the host country, the line between permanently and temporarily resident migrants often becomes blurred.

Categories of Labor Included in Trade Agreements

Although the GATS text does not define specific categories of labor, WTO members have accepted four widely used categories for the purpose of inscribing commitments under mode 4. These categories are not comprehensive, as they cover only skilled professionals. In a few recent trade agreements, as we will see in the next section, countries have begun to move beyond this limited range of categories to broaden their consideration of labor categories for market access. The four traditional mode 4 categories are the following:

- *Business visitors and salespersons* (BVs). Foreign nationals who travel abroad to negotiate the sale of a service or to explore the possibility of making a foreign direct investment (of establishing a commercial presence, in GATS terminology) for their company in the destination country. Their main purpose is to facilitate future transactions rather than actually to carry out transactions.
- *Intracorporate transferees* (ICTs). Employees of a foreign services company that has set up a commercial presence abroad and that transfers these employees to its foreign location.
- *Independent professionals* (IPs). Self-employed persons who are supplying a service to a company or an individual in a host country. In most trade agreements, these have been limited to professional workers, but commitments can also be extended to lower-skilled categories of workers.
- *Contractual services suppliers* (CSSs). Employees of a foreign services company with no local presence or commercial presence in the host country who are engaged under contract to provide a service to a firm in the destination country.[1]

Developing countries' interest in promoting greater labor mobility most concerns the independent professional and contractual services supplier categories, rather than employees of multinational corporations (MNCs). This is because most developing countries, with notable exceptions such as Brazil, China, and India, have not yet become home bases for MNCs. Greater flexibility in the independent professional and contractual services supplier categories would allow most developing countries to send a larger number of professionals abroad for temporary employment. The business visitor and intracorporate transferee categories are of interest to successful emerging countries such as Brazil, China, and India.

Potential Economic Gains from Greater Labor Mobility

The fact that we cannot accurately know the real statistical importance of temporary workers in the world economy is secondary to the fact that impediments to labor

mobility suppress trade to the disadvantage of everyone, but particularly developing countries. Goods move freely in response to price differentials, and capital flows effortlessly around the globe in response to profit and interest rate differentials, but workers are not allowed to move readily in response to wage differentials. Consequently, very large wage differentials exist in the world today, as shown in figure 13.1. The benefit to be derived from the exploitation of comparative advantage is directly proportional to the size of wage, price, or profit differences prior to trade or investment liberalization; thus, considerable gains could be realized if workers were permitted to exploit wage differentials among countries. (See box 13.2 for estimates of these gains.)

Theoretical Model of the Distributional Effects of Mode 4 Liberalization

Like trade in goods, labor mobility can create losers as well as winners. In the overall balance, gains usually exceed losses by a wide margin, but political sensitivities focus on those who lose. In simple theoretical terms, migration can be modeled as an increase of supply in the labor markets of developed countries and a decrease of supply in developing countries. Here, we use that framework to examine the effects of those supply changes on the incomes of capitalists and workers, in both the sending and the host countries, and on the incomes of the migrants themselves.

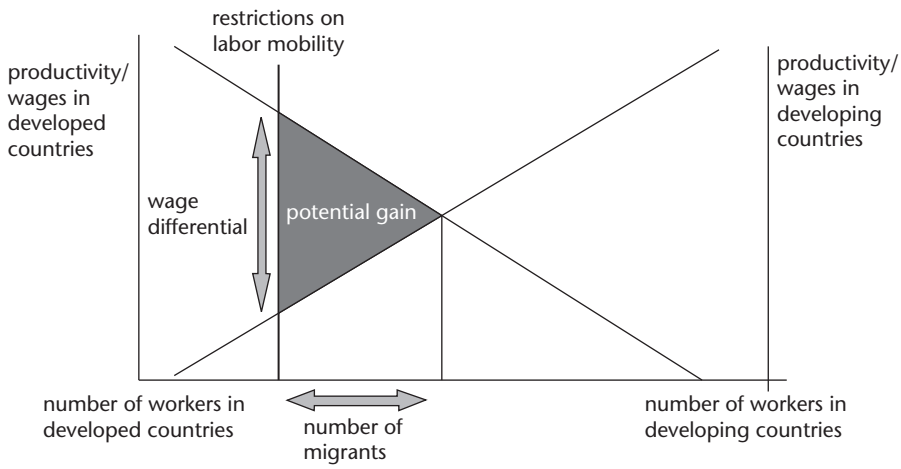
Effect in developed countries. Given the restrictions on labor mobility, the equilibrium in the labor market is at point *A* in figure 13.2. After liberalization, the equilibrium moves to point *B,* reflecting an increase in the number of hours worked and a decrease in the wage per hour. The loss for native workers is shown by area *ACDE.* The gain for capitalists is shown by area *EABD,* with most of this gain coming from the loss for native workers. Since the gain for capitalists is larger than the loss for native workers, the liberalization of mode 4 leads to an overall gain, shown by area *ABC.*

Effect on developing countries. The effect of the liberalization of mode 4 on developing countries is the exact opposite to that for developed countries. With restrictions on mode 4, the equilibrium in the labor market is at point *B* in figure 13.3. After liberalization, the equilibrium point moves to point *A,* reflecting an increase in the wage per hour and a decrease in the number of hours worked.

As will be apparent later, the gains for migrants in developed countries are much larger than the loss that their departure inflicts on developing countries. Nonmigrant workers also experience gains, shown by area *ACDE* in figure 13.3, since the wage rate has increased in developing countries. But nonmigrant capitalists experience a very large loss, shown by area *ABDE* (most of the loss corresponds to the wage gain for nonmigrant workers). Because the loss for nonmigrant capitalists is larger than the gain for nonmigrant workers, the group of nonmigrants as a whole experiences an overall loss of income, shown by area *ABC.* In other words, the effect on total welfare of liberalizing mode 4 is negative for nonmigrants in developing countries. Income per capita, however, is likely (although not guaranteed) to rise as marginal productivity increases.

Overall outcome. Migrants lose their erstwhile wages in developing countries but enjoy larger wages in developed countries. They therefore experience a gain, measured by the wage difference between the destination and source countries.

Figure 13.1. Theoretical Gains from Liberalization of Mode 4



Box 13.2. Quantitative Estimates of Overall Gains from Greater Labor Mobility

Complete liberalization of mode 4 would result in very large gains.
Hamilton and Whalley (1984) use a partial equilibrium (PE) model and 1977 data to estimate the benefits from the complete elimination of all immigration restrictions, for skilled and unskilled labor alike. The potential gains are enormous, ranging from 60 to almost 205 percent of world gross domestic product (GDP). Millions of workers would move from low-productivity to high-productivity jobs in countries with high salaries, until wages in labor-sending and labor-receiving countries equalized. Iregui (1999) revisits the question using a computable general equilibrium (CGE) model and more precise measures of elasticities and population characteristics. Here again, the gains are large, ranging from 15 to 67 percent of world GDP. Moses and Letnes (2004), using more precise values for productivities, confirm large gains, ranging from 4.3 to about 112 percent of world GDP in 1977. According to these authors, the ''most reasonable'' gain would be 7.5 percent of world GDP.

The large differences between these estimates, both within and between studies, can be explained by the differences in modeling frameworks (partial versus general equilibrium) and assumed parameters. Some estimates assume that migrants can achieve the average productivity of workers in the destination country; others assume that additional education and training will be needed.

Gains from less than complete liberalization of mode 4 are still large.
Because full liberalization is politically unacceptable, some economists have estimated the potential outcome of more modest liberalization of mode 4. Moses and Letnes (2004) estimate the gains from eliminating 10 percent of the wage inequality between countries and find that potential gains would still be large, corresponding to around 2.2 percent of world GDP. Walmsley and Winters (2002) estimate the potential gain from a 3 percent increase in the workforce in developed countries, a movement of 14.2 million workers, and a 50 percent increase in the current number of immigrants in developed countries at US$156 billion in 2002, representing 0.6 percent of world GDP. World Bank (2006) reaches a very similar result.

Most of the gains come from the movement of unskilled labor.
According to Iregui (1999), the potential gains from the migration of skilled labor only are much smaller: 3 to 11 percent of world GDP, in comparison with 13 to 59 percent for all skills. Walmsley and Winters (2002) show that the potential gain from the movement of unskilled workers would account for US$110 billion, or 70 percent of the total. This reflects the fact that inequality in wages worldwide is larger for unskilled than for skilled workers.

Source: Annex table 13A.1.

Figure 13.2. Theoretical Effect on Developed Countries of Liberalization of Mode 4

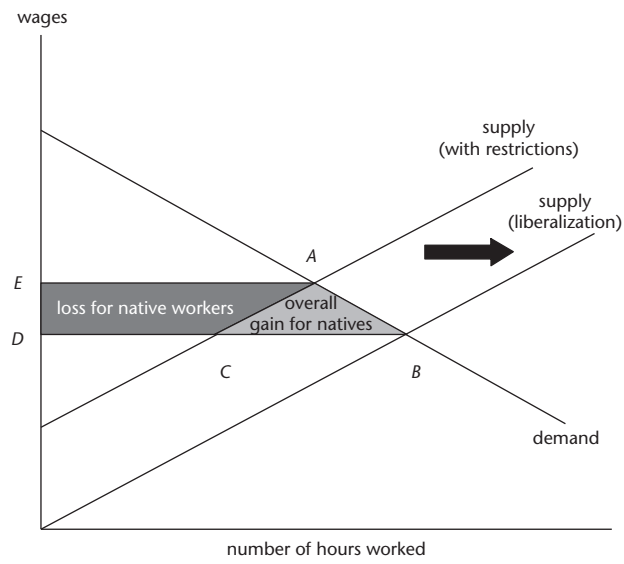
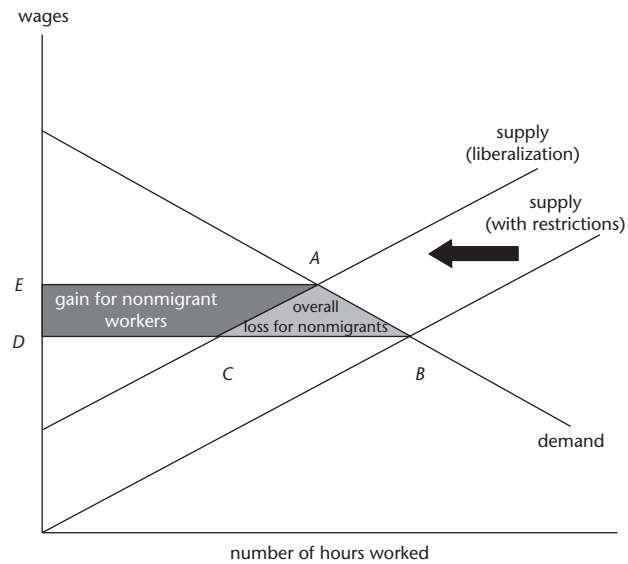


Figure 13.3. Theoretical Effect on Developing Countries of Liberalization of Mode 4



According to the theoretical model, the liberalization of mode 4 has the following distributional consequences:

- In developed countries, most of the gains for capitalists are balanced by losses to native workers.
- In developing countries, most of the losses to capitalists are mirrored by gains to nonmigrant workers.
- In developed countries, the gains for capitalists are larger than the losses for native workers. Therefore, total income in developed countries rises.

- In developing countries, the losses for capitalists are larger than the gains for nonmigrant workers. Therefore, total income in developing countries falls.

Distributional Effects of Mode 4 Liberalization

The theoretical and empirical prediction of large gains from full or partial liberalization of mode 4 outlined in box 13.2 do not hide the fact that labor mobility will have distributional consequences. Migrants are the main winners; the results for natives in both the sending and the host countries are mixed.

Gains for migrants. Walmsley and Winters (2002) calculate that benefits to migrants (US$171 billion) actually account for more than the total gain from increased labor mobility (US$156 billion). Total gains are smaller than the gains to migrants because of the losses to the sending countries, discussed below.

Losses for developing countries, before remittances. The departure of migrants reduces the number of workers in the sending countries, which increases hourly wages of nonmigrant workers but diminishes total output. Walmsley and Winters (2002) calculate that Brazil would see its welfare reduced by US$7 billion if the workforce going to developed countries increased by 3 percent, and China would experience a decline of US$2 billion, notwithstanding the compensation received from remittances. The authors' calculations suggest that unskilled workers in India would see a wage increase of 0.7 percent and that skilled workers in Mexico would enjoy an increase of 4.5 percent. Returns to capital would, however, decrease by, for example, 0.4 percent in Mexico. Exploring a more extreme scenario, Moses and Letnes (2004) arrive at similar results. In their calculations, a 10 percent elimination of wage inequality leads to an 11.4 percent increase in the wages of nonmigrant workers in the poorest countries in 1998, while the return to capital in those countries falls like a stone, by 21 percent.

The importance of remittances for developing countries. If the gains to migrants themselves are included in the overall balance sheet for developing countries, the picture changes completely. (Pritchett 2006 makes this point.) When the gains to migrants are combined with the national income losses to the sending countries, the developing countries experience a significant gain in plausible scenarios—the equivalent of 1.8 percent of their gross domestic product (GDP), according to the World Bank's *Global Economic Prospects 2006,* which explores the "3 percent scenario."

World Bank estimates of global remittances show that globally, compensation and remittances increased sixfold between 1990 and 2008, rising from US$69 billion to US$397 billion (adjusted for inflation). In 2007, migrant compensation and remittances accounted for around 0.7 percent of world GDP, but for developing countries, the relative importance of remittances in GDP in 2007 was much higher. Remittances were 2.1 percent of the GDP of developing countries as a whole, but 1.9 percent of the GDP of middle-income countries and 5.8 percent of the GDP of the least-developed countries (a UN category).

An increasing share of remittances goes to developing countries, which accounted for 46 percent of this flow in 1990 but for 76 percent by 2007. It is estimated that remittances touch 1 in 10 people worldwide. Dependence on remittances is especially high in certain countries. The main receiving countries in absolute terms are India (US$27 billion), China (US$26 billion), Mexico (US$25 billion), and the Philippines (US$17 billion). For many smaller countries, remittances represent a very large fraction of GDP, accounting for more than 36 percent of the GDPs of Moldova and Tajikistan and about 25 percent of the GDPs of Guyana, Honduras, and Lesotho.

Mixed picture in developed countries. Outcomes of migration for the developed countries are mixed, although slightly positive. Workers, especially unskilled ones, face increased competition from migrants and see their wages decline. For example, Hatton and Williamson (1998) estimate that in 1910, American wages would have been 11 to 14 percent higher in the absence of the immigration wave that set in after 1870. Borjas (1999) calculates that immigration to the United States between 1980 and 1998 resulted in a decrease in native wages amounting to 1.9 percent of GDP and that the losses were concentrated among low-skilled U.S. workers, whereas skilled workers actually benefited from immigration. Immigration reduced the wages of native high-school dropouts in the United States by 8.9 percent between 1980 and 2000 but increased the return to capital by 2 percent of GDP. The net gain from the 1980–98 migration wave for all U.S. natives is the difference between the decrease in wages and the increase in returns to capital, or 0.1 percent of U.S. GDP per year over the period. This net gain represents about US$10 billion a year, accounting for about 5 percent of U.S. economic growth over a 20-year period.

Moses and Letnes (2004) find the same pattern in the case of a 10 percent elimination of wage inequality. They calculate that liberalization of this magnitude would reduce wages in developed countries by 3.1 percent, while increasing the return to capital by 7.2 percent. Walmsley and Winters (2002) reach similar results in the case of a 3 percent increase in the workforce of developed countries: that scenario leads to a 0.8 percent

decrease in U.S. and European wages and a 0.8 percent increase in return to capital in the United States. The World Bank's *Global Economic Prospects 2006* study shows that in the 3 percent scenario, the incomes of all natives combined in developed countries would rise by 0.4 percent (World Bank 2006).

Labor Mobility in Preferential Trade Agreements

A stalemate on services liberalization at the multilateral level has clouded the Doha Round for the past several years, with no moves to put new services offers on the table or to improve existing ones made since the end of 2005.[2] In contrast, an increasing amount of activity has taken place at the regional level, with the negotiation of numerous PTAs, a large number of which have incorporated mode 4 as part of the package.[3]

The members of some recent PTAs have accepted greater labor mobility at the regional level. Although progress is still relatively modest, interesting initiatives have been taken. Developing countries in the Americas and in Asia have entered into several free trade agreements that contain provisions to facilitate procedures for temporary labor movement and open up market access opportunities. Some agreements include guaranteed numerical quotas for certain categories of skilled labor. In this section, we compare approaches to labor mobility in PTAs. Only PTAs between developed and developing economies, and only those negotiated since the entry into force in January 1994 of the North American Free Trade Agreement (NAFTA), which signaled an era of deeper and more comprehensive preferential trade agreements, are considered.

Our discussion is divided along geographic lines, distinguishing between PTAs negotiated by the United States, Canada, the European Union (EU), Japan, and Australia and New Zealand. Annex tables 13A.2–13A.6 summarize the salient provisions of the PTAs that are examined.

Before delving into the details, a broad overview may be useful. NAFTA and other first-generation U.S. PTAs allowed limited mobility for professional workers, but second-generation U.S. PTAs are quite restrictive, as a result of congressional opposition. Canadian PTAs are much more liberal for skilled workers, as well as professionals, and contain some innovative provisions. Early EU agreements with developing countries did not have provisions allowing labor mobility because the subject was reserved to the competence of member states, but more recent EU agreements with Chile and the countries of the Caribbean Forum of African, Caribbean, and Pacific (ACP) States (CARIFORUM) do permit limited access. Japanese PTAs allow the usual professional categories and contain innovative provisions for semiskilled workers. Australia and New Zealand have negotiated highly innovative agreements with China and Chile. By contrast, the Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand, and Singapore is quite restrictive. This feature may ease future accession by Australia, Japan, the United States, and Vietnam, but it does nothing for labor mobility among the Pacific members.

PTAs Negotiated by the United States and Canada

NAFTA was the pioneer agreement and template for many subsequent PTAs. It contains a chapter entitled "Temporary Movement of Business Persons," designed to facilitate temporary entry to member countries for business people involved in goods or services trade or in investment activities. The categories defined under NAFTA are traders and investors, business visitors, intracorporate transferees, and professionals. There is no limit on the number of visas for business visitors, and a work permit is not required. According to Martin and Lowell (2008), the novel migration component of NAFTA is the Trade NAFTA, or TN, visa (see Stephenson 2007 for a summary). This visa was uncapped in 1994 for Canadians and has been uncapped for Mexicans since 2004. When proof of a job offer is demonstrated, the TN visa permits employment for one year, with unlimited renewal.

In addition to the chapter on temporary entry, NAFTA, like subsequent agreements with a similar structure, contains an annex on professionals that is specifically targeted at professional services suppliers. These annexes are intended to promote the development of mutually acceptable standards and criteria for licensing and certification of professional services suppliers, on the basis of factors such as educational background, qualifying examinations, and experience. In addition, the NAFTA annex encourages members to submit recommendations for furthering the process of mutual recognition. A qualifying list of 62 professions is set out in an appendix to the agreement; applicants must fulfill the necessary qualification requirements. The United States originally placed a quota of 5,500 per year on the number of professionals who could be admitted from Mexico, but that quota has been eliminated.

Besides NAFTA, the United States has negotiated several other bilateral free trade agreements with developing countries. The agreements selected for examination are those with Chile, the five-country Dominican Republic–Central America Free Trade Agreement (CAFTA–DR), Morocco,

Peru, and Singapore (annex table 13A.2). Bilateral agreements with Colombia, the Republic of Korea, and Panama have been finalized but are awaiting ratification by the U.S. Congress.

Under the agreements with Chile and Singapore, both of which were concluded in 2002 and entered into force in 2004, labor mobility was expanded slightly for professional workers, and a path to a special visa for professionals (the H-1B1 visa) was created. The visa provided for an initial stay of 18 months, but with unlimited extensions. In addition, an annual quota of 1,400 visas for professionals from Chile was granted, as was an annual quota of 5,400 visas for professionals from Singapore, on top of the fixed total of H-1B visas from all countries. The new visa category created under these agreements is meant for temporary migrants, for stays of up to 18 months initially, but with the possibility of unlimited extensions.

In brief, the current provisions governing labor movement to the United States under NAFTA and the agreements with Chile and Singapore are as follows:

- NAFTA: TN visa; uncapped for both Canadians and Mexicans
- Chile FTA: H-1B1 visa; capped at 1,400 professionals
- Singapore FTA: H-1B1 visa; capped at 5,400 professionals.

As mentioned, these visa numbers are additional to whatever entries occur under other visa categories, most importantly, the H-1B visa for skilled workers and professionals.

Unfortunately, the opposition of the U.S. Congress to these arrangements, and in particular to the agreements with Chile and Singapore, was loud and clear. Key members of Congress objected that the trade agreements had encroached on the realm of immigration matters. As a consequence of this outcry, no free trade agreement negotiated by the United States since 2002 has contained a chapter to facilitate the temporary movement of skilled workers.[4] Thus, the FTAs with Morocco, with the CAFTA–DR members, and with Peru, like those negotiated with Colombia, Korea, and Panama, contain no chapter on temporary entry. Each does contain an annex on professionals, with objectives similar to those set out in NAFTA, but these annexes explicitly state that "no provision shall impose any obligation on a party regarding its immigration measures," and they contain no market access commitments. Thus, public and official attitudes in the United States with respect to labor mobility have regressed since 2002. Until political opinion changes, it will be close to impossible for developing countries to negotiate greater labor mobility in trade agreements with the United States.

In Canada, the situation has evolved in the opposite direction (see annex table 13A.3). Interestingly, and perhaps because of pressures from the private sector and apparent labor shortages in the Canadian market prior to the current economic crisis, the government has negotiated recent FTAs that go quite far toward providing increased access not only for professionals but also for semiskilled foreign workers. Although the FTA that Canada negotiated with Chile in 1997 looks very much like NAFTA, with the only categories of workers covered being investors, traders, business visitors, intracorporate transferees, and professionals, it is notable in that no numerical limits were placed on 72 of these categories of professional labor.

Strikingly, the two very recent FTAs negotiated by Canada with Colombia (2008) and Peru (2009) go much farther. They cover all professional categories, with no numerical limits and no specified length of stay, meaning that visas could in theory be renewed indefinitely. For the first time, they also expand coverage of worker categories beyond highly trained professionals to include "technicians." In both the Colombia and Peru FTAs, Canada has listed 50 categories of technicians to be admitted into the Canadian market with no specified length of stay. These workers must have a high school degree, with two years of technical training. Technician categories include, among others, mechanics, construction inspectors, food and beverage supervisors, chefs, plumbers, and oil and gas well drillers. This recent development constitutes a major step forward for the expansion of temporary entry in trade agreements.

PTAs Negotiated by the European Union

In this section, we examine PTAs between the EU and third countries (see annex table 13A.4) Total labor mobility is guaranteed within the EU itself, although only after 10 years for some of the newest members.

The form of PTAs negotiated by the EU differs from that pioneered by the United States. Provisions for services and investment liberalization are set out in a title (or section) of the EU agreements entitled "Trade in Services and Establishment." The European Commission does not as yet have negotiating authority from the EU member states in all service areas.[5] The European Commission consequently always follows a positive-list approach in its trade agreements, with lists of commitments attached to the main text of the agreements. Thus, in terms of market access, mode 4 is brought within the scope of EU PTAs in a way similar to that followed under GATS. Categories of workers included

in mode 4 commitments by the EU include the four that are traditional for PTAs: traders and investors, business visitors, intracorporate transferees, and independent professionals. The EU has negotiated relatively few PTAs with developing countries that cover services. Although it has numerous association agreements in place with neighboring Mediterranean countries (the Arab Republic of Egypt, Jordan, Morocco, the Syrian Arab Republic, Tunisia, Turkey, and others), these agreements focus on goods and have not yet incorporated services provisions.

The EU has negotiated association agreements with Mexico and Chile and has more recently finalized an economic partnership agreement (EPA) with CARIFORUM. There are no in-depth services provisions in the EU agreement with Mexico, which was concluded in March 2000 when the GATS negotiations were just beginning, but the PTA with Chile is substantial. In addition to the coverage of mode 4 in the text of the agreement, there is a specific article entitled "Movement of Natural Persons" in the EU–Chile association agreement, as well as an annex on professionals.[6] In the annex, the EU specifies 33 categories of professional services providers that it will accept from Chile without numerical limit, for a time period of three months, subject to the "necessary academic qualification and experience." Interestingly, Chile did not commit reciprocally to accepting any professionals from the EU.

The more recent EU–CARIFORUM economic partnership agreement follows a similar structure, but, in addition to the usual categories of workers defined under mode 4, the EU has expanded coverage of workers to three additional categories important for CARIFORUM members: contractual services suppliers, independent professionals, and graduate trainees. The following applies to these three categories:[7]

- *Contractual services suppliers.* This category applies to a specific list of activities and permits temporary entry for a cumulative period of six months. A contractual services supplier must fulfill certain requirements; the terms and conditions are set out in EU schedules for its member states.
- *Independent professionals.* The provisions for the CSS category also apply to independent professionals, again, subject to EU schedules.
- *Graduate trainees.* Graduate trainees, a new category, are workers from CARIFORUM states who have a university degree and are temporarily transferred to the parent company or to a commercial establishment for career development or to obtain training in business methods. They may enter for a period of up to one year.

In the annex on professionals attached to the CARIFORUM agreement, the European Union committed to accept 29 categories of professional services providers without numerical limit, provided that they have a university degree and three years' experience. The CARIFORUM members did not commit reciprocally to accept any EU professionals.

PTAs Negotiated by Japan

Japan has negotiated four PTAs that are of interest for the question of labor mobility. These are summarized in annex table 13A.5. The PTAs with Mexico and Chile are very similar in form and content to the NAFTA-type approach and agreements, with a negative list of nonconforming measures and with mode 4 treated in a chapter on temporary movement of business persons. That chapter defines movement for the same four categories usually seen in trade agreements: traders and investors, business visitors, intracorporate transferees, and independent professionals. Japan has set a time limit of three years for three of these categories (all except business visitors), which is a fairly generous interpretation of length of stay.

The two more recent PTAs negotiated by Japan with countries in Southeast Asia—those with Indonesia and the Philippines—are notable for their innovations in covering, for the first time, specific categories of nurses and health care workers. These PTAs have also expanded the categories of workers in the chapter on mode 4 to include "professionals with personal contracts" (essentially, the same as independent professionals). All these categories (except for business visitors) are allowed a stay of up to three years. Japan has also increased the number of professional categories covered in the annex on professionals in these two PTAs, to 14 in the case of Indonesia and 10 for the Philippines. No numerical limits are placed on these professional categories, except for nurses and health care workers, for whom an annual quota is in effect. For those professions, specific educational and training requirements are included in the agreements: a health degree plus two years of prior work experience and six months of language training in Japanese. The specification of particular categories of work with annual quotas and training requirements is an innovative approach that has not yet been seen in other PTAs.

PTAs Negotiated by Australia and New Zealand

Four PTAs negotiated by Australia and New Zealand are relevant for this study (annex table 13A.6). One PTA was negotiated jointly by the two countries with the 10-member

Association of Southeast Asian Nations (ASEAN). Three of the four are very recent, having been signed or having entered into force since the end of August 2008. The oldest of the four, and the one with the least ambitious provisions for labor mobility, is the Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand, and Singapore. This agreement, which entered into force in 2006, follows a NAFTA-type structure, but with lighter content. The only category of workers specified in the temporary entry (or labor mobility) chapter is that of professionals, and no length of stay is specified. The annex on professional services primarily sets out a best-endeavors clause for the development of "mutually acceptable standards and criteria for licensing and certification of professional service providers." No professional categories of services providers are listed, and so the annex has no market access component.

In the New Zealand–China PTA that entered into force in October 2008, the chapter on labor mobility specifies five categories of labor: business visitors, investors, intracorporate transferees, contractual services supplies, and a new category of "installers." The CSS category includes artisans with Chinese cultural expertise such as theater artists, Mandarin language teachers, and Chinese medical specialists. China made no commitment with regard to professional service providers; New Zealand allows entry of designated professionals from China for up to three years. Intracorporate transferees from China are also permitted a three-year stay. The new category of installers is allowed a three-month stay.

The Australia–Chile PTA that entered into force in March 2009 follows a NAFTA-type structure, and the chapter on temporary entry specifies the four usual categories of labor. An annex on professional services does not include a market access component, and no numbers are attached to any category of worker. Australia allows intracorporate transferees a stay of up to four years and contractual services suppliers, a stay of one year, with the possibility of renewal. This recent PTA is quite original in its treatment of spouses and accompanying family members; they are granted the right to join the worker after he or she has been in Australia for more than one year. Dependents and spouses of corporate executives, intracorporate transferees, and contractual services suppliers from the other party to the agreement are allowed to enter and reside in Australia or Chile. Moreover, the spouse is given the right to enter, stay, and work, for a period of time equal to that of the national.

The ASEAN–Australia–New Zealand PTA, signed in August 2008, contains a chapter on temporary entry, which includes the four usual categories of labor plus the additional category of "installers" added by New Zealand. The length of stay offered by the partners to the PTA is variable, with Australia and New Zealand allowing the longest stay, of three or four years, respectively, for intracorporate transferees and one year for independent professionals and contractual services suppliers. It is notable that the ASEAN members committed to much less generous durations of stay for all labor categories than did their developed partners. In another innovative decision, Australia also included "spouses" in its categories of temporary labor permitted entry.

Comparison and Assessment of PTAs

An overall comparison of the PTAs negotiated with developing countries by the United States, Canada, the EU, Japan, and Australia and New Zealand is shown in the bar graphs set out in annex figures 13A.1–13A.6. The bars indicate the relative magnitude of the developed economies' commitments on labor mobility. The higher the bar for a particular agreement, the more access it provides for workers from its developing-country partner. The number of categories of workers encompassed within the chapter on temporary entry or movement of natural persons is indicated, as well as the number of professionals allowed, under specified quotas or without numerical limitation, through the annex on professionals.

In general, it can be said that trade agreements concluded by developed countries with developing countries focus almost exclusively on professional services providers. Many, however, go well beyond GATS in providing access for a greater number of categories of professional services, through expanded numbers of covered categories or through the provision of unlimited access. They also often offer the possibility of long-term visa renewals once professionals are settled in the country. Thus, distinct progress has been made with respect to professional services.

A few developed countries have been willing very recently to go beyond the expansion of access for professional services providers. These include, notably, Canada, in two recent FTAs negotiated with Colombia and Peru that extend access to the Canadian market to 50 categories of technicians. The innovative group also includes the EU's EPA with CARIFORUM, which extends market access to contractual services suppliers and independent professionals (for stays of six months) and to graduate trainees (for stays of one year). Japan has moved to liberalize access to its labor market for nurses and health care workers in its recent EPAs with Indonesia and the Philippines. Finally, both Australia and New Zealand have expanded

the categories of labor in their PTAs to include contractual service suppliers and "installers" (for New Zealand) in their recent agreement with ASEAN members and in the New Zealand PTA with China. The latter also contains novel provisions for artisans who are proficient in Chinese cultural occupations, such as theater, language, and medicine. Australia's PTA with Chile covers the spouses and dependents of intracorporate transferees and contractual services suppliers residing in the country longer than one year. Thus trade agreements have moved over the past two years beyond the purely professional categories of labor to include within their scope contractual services suppliers, semiprofessionals and technicians, nurses and health care workers, and even spouses and dependents.

The trading partners that have been the most willing to open their markets wider for foreign workers from developing PTA partners have been countries that face considerable labor shortages. Canada has shown itself the most generous in this respect, with Japan being selective and sector-specific in responding to its labor market needs. Australia has been willing to consider family dependents as part of the labor categories defined under its most recent PTA. The United States and the EU have faced heavy inward migration flows, both documented and undocumented, from Latin America (in the U.S. case) and from North Africa and Eastern Europe (for the EU), and they are less willing to contractually bind greater market openness for foreign workers in their PTAs.[8] Nonetheless, the EU did expand its coverage of labor categories in the recent EPA with CARIFORUM members. In the United States, official and public attitudes have turned sour, and no agreements have been negotiated containing mode 4 coverage since 2002.

The story of labor mobility within trade agreements is still being written; the situation continues to evolve. Currently, several PTAs between developed and developing economies are under negotiation. The EU is negotiating with ASEAN, Colombia, Ecuador, India, Korea, Peru, five countries in Central America, and the four members of the Southern Cone Common Market (Mercosur, Mercado Común del Sur). Canada is negotiating with the Caribbean Community (CARICOM), four countries in Central America, the Dominican Republic, Jordan, Korea, Panama, and Singapore. Japan is negotiating with India and Peru, and Australia is negotiating with China, the Gulf Cooperation Council (GCC), Korea, and Malaysia. Only the United States is currently abstaining from further involvement in regional trade negotiations. Thus, the sample for evaluating the treatment of labor mobility in PTAs will continue to expand in the coming years. Developing countries that are able to proactively define and push their interests with developed-country trading partners should find opportunities that did not exist in the past.[9]

PTAs Negotiated among Developing Countries

Labor mobility is not confined to PTAs involving developed countries; it is also an important feature of several South-South PTAs. This section presents a brief overview of labor mobility provisions in several agreements.

The Caribbean Community (CARICOM) has had one of the most successful experiences with liberalizing the movement of service providers at the regional level, dating from the signing in 1998 of Protocol II, on "Establishment, Services and Capital." The objective of the protocol is to bring the CARICOM Single Market Economy into effect. (For further discussion, see Stephenson 2007.) CARICOM provisions rest on two pillars: (a) facilitation of travel, common travel documents, and national treatment at the port of entry (Article 46 of the CARICOM Single Market Economy treaty) and, since 2005, a common passport; and (b) the free movement of skilled persons within the community (Articles 32, 34d, 35d, 36, 36a, and 37 of the treaty). Five categories of skilled workers were initially identified:

- Graduates of the Universities of the West Indies, Guyana, and Suriname
- Graduates of approved universities outside the region
- Media workers
- Musicians
- Artists
- Sports persons
- Workers in the tourism and entertainment industries
- Any other skilled person eligible under Articles 35d and 36a of Protocol II.

Effective January 1, 2010, domestic helpers were added to the list.[10] Since 2007, discussions have been under way on adding teachers and nurses.

A certificate of recognition must be obtained from the respective national labor ministries by those wishing to move abroad. A six-month temporary residency permit is issued while the certificate is reviewed by the receiving country, after which an indefinite work and residence permit is granted. CARICOM has recognized the importance of transferability of social security benefits, but progress on this matter has been slower than expected.

Achieving the free movement of workers is also stated as a goal of the East African Economic Community in its protocol on establishing a common market, expected to enter into force on July 1, 2010. Many hurdles remain,

however, on the path to full free movement. Work permits are not harmonized across countries; they are relatively restrictive and remain difficult to obtain; they are subject to delays and administrative requirements; and rejections are numerous. Portability of social benefits is very limited. Progress has been made on harmonization of standards and mutual recognition for graduates, but much less so for technical and vocational training.

The treaty of the Economic Community of West African States (ECOWAS) requires the community to ensure the removal of obstacles to the free movement of persons, goods, services, and capital and to guarantee the right of residence and establishment. To date, ECOWAS has signed three supplementary protocols on this subject. The first provides for the free entry of community citizens for a period of 90 days without a visa, provided that they possess travel documents, and also grants them the rights of entry, residence, and establishment.[11] The second protocol allows community residents to reside, seek employment, and engage in income-earning employment in any member state.[12] The protocol specifically refers to migrant workers, defined as nationals of community member states who seek or propose to hold employment, are already holding employment, or have in the past held employment in a member country. Special provisions are made for four protocol categories: migrant workers, itinerant workers, seasonal workers, and border workers (Mattoo and Sauvé 2010).

Despite early provisions on the free movement of persons, implementation within ECOWAS has been slow—hampered, in particular, by the efforts of young member states to affirm their sovereignty. At times, slow progress in other areas of economic integration and adverse reactions to the influx of foreign labor in periods of recession have hindered implementation (OECD 2008). In recent years, several measures have been undertaken—in particular, since 2000, in the harmonization of passports, as well as joint border operations by customs and migration offices.[13]

An interesting development took place in January 2008 when ECOWAS adopted a common approach to migration, clearly influenced by the European model (OECD 2008). The approach consists of two parts, the first devoted to the legal framework and key principles, and the second to a regional migration and development action plan.

For countries that are also members of the West African Economic and Monetary Union/Union Économique et Monétaire Ouest-Africaine (WAEMU/UEMOA), the treaty confers the right of free movement of people, the right to provide services, the right of establishment of persons carrying out an independent or salaried activity, and the right of residence.[14] It further provides for nondiscrimination with respect to the right to seek and engage in employment. In 2005 the conference of WAEMU/UEMOA heads of state and government approved a progressive approach toward the implementation of freedom of movement for persons, the right of residence, the provision of services, and the right of establishment. This suggests the adoption of regional codes of freedoms and rights of movement, as well as harmonization measures. The codes concern four areas (OECD 2008):

- Right of establishment for the freedom to carry out self-employed professions
- Under equal conditions, access to higher-education establishments
- Establishment of a community visa for nationals of countries outside the WAEMU/UEMOA or ECOWAS zones
- Building of control posts juxtaposed on both sides of the border of member countries.

In 2006 regulations were adopted on free movement and right of establishment for workers in specific professions (for example, accountants and pharmacists). Today, the commission is working on a draft common policy in the areas of movement and stay by third-country nationals.

In Latin America, as in Southeast Asia, progress in liberalizing labor mobility has been slow within regional arrangements. Mercosur members have included freedom of movement among their integration goals. In theory, Mercosur nationals may currently move among member states, although the right to work is regulated by host governments. Progress in liberalizing labor mobility has been sluggish. A Mercosur social security agreement was signed in 1997, but many of the steps aimed at facilitating migration within the community are taking far longer to be implemented than planned. Much of the migration that occurs in the Mercosur region is outside formal channels. In December 2002, Mercosur leaders signed an Agreement on Residency for Mercosur Nationals aimed at giving migrants "equal civil, social, cultural, and economic rights and freedoms" with the citizens of the Mercosur country in which they are living, "particularly the right to work and to carry out any legal activity." The related Agreement on Regulating the Migration of Mercosur Citizens encouraged Mercosur governments to legalize unauthorized nationals of Mercosur members (World Bank 2010).

In October 2003, ASEAN members raised their ambitions from the formation of a free trade area to the creation of an ASEAN Economic Community (AEC), in the

Declaration of the ASEAN (Bali) Concord II, which was subsequently endorsed by summits of ASEAN leaders (Soesastro 2005). Nevertheless, the liberalization of labor movement still has a very long way to go before achievement of this objective. Currently, ASEAN members have made only very modest commitments on mode 4 in their respective schedules of services commitments, which have now undergone five rounds of negotiations under the ASEAN Framework Agreement on Services since that pact went into effect in January 1996. Many of the mode 4 commitments go no farther than what is set out in members' WTO schedules. ASEAN has, however, made more progress with the realization of mutual recognition agreements (MRAs) than any other regional grouping, having signed six MRAs to facilitate the movement of professional services suppliers through the recognition of their professional accreditations. These agreements cover engineering services, nursing services, architectural services, medical practitioners, dental practitioners, and accountancy services.

Bilateral Labor Agreements

Efforts to manage labor mobility among developing countries at the regional level have been consequential, although progress has not matched aspirations. The most notable efforts have taken place in agreements aiming for a common market; these generally go beyond simply managing labor mobility to encompass migration dimensions. The examples reviewed above all concern countries that are regional neighbors with a significant history of population migration. It is worth highlighting some interesting initiatives, which include coverage of recent graduates, common migration policies, and common passports to facilitate border crossings.

As was noted above, the treatment of labor mobility in formal PTAs has focused overwhelmingly on skilled labor categories, with only a few recent agreements moving to cover certain types of semiskilled workers. Against this background, can other vehicles be used to promote labor mobility? Bilateral labor agreements (BLAs) are alternatives to the more legalistic and rigid PTAs and can serve both to promote and to regulate the flow of unskilled or semiskilled workers.

Short History

Bilateral labor agreements have provided a means for employing seasonal and low-skilled foreign labor on a temporary basis. They allow industrial countries that need foreign labor to design labor exchange programs that steer inward flows to specific areas of labor demand. For destination countries, the primary aim is to address skill gaps in the local labor market, whether for seasonal workers (often in the agricultural sector) or low-skilled labor. Occasionally, BLAs also deal with higher-skilled workers in areas of labor shortages such as health or information technology.[15]

Bilateral labor agreements have had an interesting history. They were popular in the United States and Europe in the 1960s but fell into disfavor in the 1970s and 1980s, affected by the adverse combination of inflation and high unemployment that came to be known as "stagflation." For 22 years, beginning in 1942, the United States had a *bracero* program to admit temporary agricultural workers from Mexico. Admissions under this program peaked at more than 450,000 a year but began to shrink because of the enforcement of labor market regulations, combined with technological changes. Nonetheless, the program continued to admit more than 200,000 Mexican temporary workers a year until it ended in 1964. In Western Europe, temporary worker programs were peaking when they were ended unilaterally in 1973–74. European temporary worker programs differed from the Mexico–U.S. program in several important respects, including the locus of employment (nonfarm manufacturing, construction, and mining, rather than agriculture), as well as in their policies toward settlement. Unlike Mexicans who filled seasonal U.S. 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 work and residence permits.[16]

Several developed countries have entered into second-generation bilateral labor agreements (as of the turn of the millennium), although many of these were in the form of memoranda of understanding, rather than more formal contractual arrangements. BLAs do not take any one set form; in fact, there is such a variety of agreements that international organizations have developed a "Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements" as a follow-up activity to the first Global Forum on Migration and Development (GFMD), held in 2007.

BLAs have been increasing in number over recent years, but no single institution is responsible for collecting and maintaining information on them. Neither the ILO nor the IOM (International Organization for Migration) has information on BLAs at the country level.[17] It is therefore extremely challenging to collect these data, and what is presented in this section will certainly be incomplete. Although many countries have entered into bilateral labor agreements, others prefer to channel their temporary

labor needs through their more formal immigration channels. In the United States, most temporary admission programs are open to citizens of all countries. The range of temporary visa programs includes both skilled professionals (e.g., H-1B visas) and other kinds of temporary labor (e.g., H-2A temporary agricultural workers).

In examining the panorama of bilateral labor agreements that we have been able to identify for this study and that are set out in table 13.1, it is interesting to note that such agreements have now been signed by countries in all regions of the world. In the Americas, Canada has been very active in developing bilateral temporary worker programs and has concluded agreements with Barbados, Colombia, Guatemala, Jamaica, Mexico, Trinidad and Tobago, and the countries of the Eastern Caribbean. In Europe, the governments of Germany, Italy, Spain, and the United Kingdom have actively negotiated bilateral labor agreements with developing countries around the world. In Africa, South Africa has pursued such arrangements, mainly with neighboring countries. In Asia, China has concluded BLAs with several developed- and developing-country partners.[18]

Terms of Coverage

The coverage of the bilateral labor agreements varies. Canada's agreements cover exclusively the agricultural sector. The Seasonal Agricultural Workers Program (SAWP) is based on bilateral memoranda of understanding and is managed by Human Resources and Skills Development Canada (HRSDC). Canadian employers submit requests, which have to be approved by the HRSDC, for foreign agricultural workers. The approved requests are then communicated via Canadian network contacts in Mexico to private recruitment agencies in the participating Caribbean countries. Finding the workers to fill the required demand is then the responsibility of the countries of origin. In 2000 about 7,300 Mexicans were among the 16,900 foreign farmworkers admitted to Canada; the other workers were from Barbados, Colombia, Jamaica, Trinidad and Tobago, and six other Eastern Caribbean islands.[19] The BLA with Colombia is the result of demands by Canadian companies in Alberta and Manitoba for Colombian workers in the food-packing industry.

The BLAs concluded by Spain provide for a selection committee that is made up of representatives of the participating governments and is responsible for selecting the best-qualified workers for existing job offers and for conducting training courses that may be needed. In these agreements for regulating labor migration flows, the Spanish authorities, through Spanish embassies in origin countries, notify authorities in the origin country of the number and types of workers needed. There is no set quota. Origin countries in turn notify the Spanish authorities of the possibility of meeting this demand with their nationals willing to go to Spain.

Spain's bilateral agreement with Colombia covers agricultural workers who are selected to work temporarily in fruit harvesting in the Catalonia region. Within the framework of the temporary and circular labor migration mode that implements this agreement, the National Training Institute in Colombia designs training programs for the labor migrants so that, on their return to their communities of origin, they can transfer the skills and know-how

Table 13.1. Bilateral Labor Agreements with Developing-Country Partners: Government Programs for Temporary Workers

Region and country	Developing-country partners
Americas and the Caribbean	
Canada	Barbados, Colombia, Guatemala, Jamaica, Mexico, Organization of Eastern Caribbean States, Trinidad and Tobago
Europe	
France	Mauritius
Germany	Bulgaria, Croatia, Czech Republic, Poland, Romania, Slovak Republic, Slovenia, Ukraine
Greece	Albania, Bulgaria
Italy	Albania, Moldova, Sri Lanka, Tunisia
Spain	Bulgaria, Colombia, Dominican Republic, Ecuador, Mauritania, Morocco, Philippines, Romania, Senegal
United Kingdom	India, Philippines, Spain
Asia	
China	Australia; Japan; Jordan; Korea, Rep.; Mauritius; South Africa; Spain; United Arab Emirates
Africa	
South Africa	Botswana; Cuba; Iran, Islamic Rep.; Lesotho; Malawi; Mozambique; Swaziland; Tunisia

Source: ILO, IOM, and OSCE, "Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements," revised version, December 2, 2008.
Note: ILO, International Labour Organization; IOM, International Organization for Migration; OSCE, Organization for Security and Co-operation in Europe.

acquired in Catalonia. Under this BLA, less than 10 percent of selected Colombian workers have failed to return home. In Ecuador a Migration and Control Unit was created in 2002 within the Ministry of Foreign Affairs to receive job vacancy notices from Spanish enterprises and match the job offers with the most appropriate candidates through a large database. Spain has similar BLA programs with Bulgaria, the Dominican Republic, Mauritania, Morocco, Romania, and Senegal. Under the Spain–Philippines BLA, nurses and other Filipino workers are allowed into Spain and are afforded the same protections as Spanish workers.

The bilateral labor agreements signed by the United Kingdom with India, the Philippines, and Spain enable the United Kingdom to recruit registered nurses and other health care professionals (physiotherapists, radiographers, occupational therapists, biomedical scientists, and other workers regulated by appropriate professional bodies in both countries) for work on a temporary basis. The U.K.–Spain agreement provides for recognition of Spanish nursing skills in the United Kingdom.

Greece has signed BLAs in the agriculture and fisheries sectors. Under the agreements with Albania and Bulgaria, Greek authorities assess the annual need for seasonal agricultural workers and grant residence and permits to workers from these countries according to demand from Greek employers. Under the BLA with Egypt, which covers the fisheries sector, temporary labor migrants are subject to specific regulations regarding the possibility of changing employers and the extension of their stay in the country, and they are eligible for the transfer of social security rights and pensions on a mutual basis.

South Africa has negotiated several bilateral agreements with neighboring countries in response to its growing labor crisis. The Joint Initiative for Priority Skills Acquisition (JIPSA) Act of 2004 acknowledged that particular sectors require skills from outside the country. South African mining companies fought hard to keep their right to hire foreign contract workers, and the 2002 Immigration Act was modified to accommodate this pressure. Bilateral agreements are focused on recruiting workers from Botswana, Lesotho, Malawi, Mozambique, and Swaziland to work in the mines and farms of South Africa. The share of foreigners in the mines' workforce rose from 47 percent in 1990 to 60 percent in 2000, but this share has declined recently in response to efforts to hire locally.

China has negotiated several BLAs with willing partners experiencing labor shortages, including Australia, Japan, Jordan, Korea, Mauritius, South Africa, Spain, and the United Arab Emirates. These agreements are very diverse, cover a wide range of topics on labor cooperation, and list specific numbers of recruited workers. The number of Chinese citizens working as temporary laborers abroad has increased substantially, from 63,200 in 1987 to more than half a million in 2004.[20]

The BLAs in which China is a partner cover diverse labor sectors. Chinese labor cooperation with the United Arab Emirates takes place in the areas of construction, factories, medical care centers, and maritime activities. With Australia, the BLA centers on nursing and a few other sectors, and an attempt is made to curb the excessive fees charged by the recruitment agencies by offering the alternative of government employment offices. Under the BLA with Mauritius, Chinese workers may be recruited only from companies that are on an established, government-approved list. The BLA with Jordan concerns the textile and construction sectors. An agreement with South Africa was concluded in 2002 and was extended in 2006 to focus on human resources development and job creation strategies, in addition to worker recruitment. A successful pattern for the bilateral labor agreement has been the agreement between China and Japan, under which more than 30,000 Chinese trainees are sent to Japan every year in temporary labor (trainee) cooperation programs.[21]

The advantages of BLAs or temporary worker programs, particularly for lower-skilled categories of workers, are numerous. First, and most important, is the flexibility they offer with respect to the management of the labor market by the countries involved. Such agreements can be negotiated in response to the economic cycles of the market.[22] As is seen in the examples cited, they can be targeted to specific sectors and can even be firm based, if necessary. Monitoring of such agreements can be carried out on both sides as a joint responsibility, rather than putting the burden entirely on the destination country to determine the legality of the worker. Guarantees can be designed and written into the agreements in the form of bonds or fines for noncompliance, to encourage respect for the provisions by private parties. Incentives can be built in on both sides of the agreement. Workers are more willing to respect the contract and return home if there are prospects of an opportunity (based on performance and need) to go back to the host country for future employment. Most participants in the BLAs that have functioned to date have found that the agreements have fulfilled the expectations of both sides.[23]

The disadvantage of bilateral labor agreements is that, unlike PTAs, they are single-issue instruments. This limitation means that developing-country partners do not have scope within a BLA to trade their "offensive" interests in labor mobility for the "offensive" interests of their developed-country trading partners.

Multilateral and MFN Considerations

It must be recognized that bilateral labor agreements represent an important derogation from the most favored nation (MFN) principle that is the core of the world trading system. The same is true of bilateral investment treaties (BITs) and double-taxation treaties (DTTs), of which there are many thousands in the world today. None of these pretend to treat all countries on equal terms; partners are favored over nonpartners. Of course PTAs also discriminate between partners and outsiders, and those inside the PTA receive more favorable treatment than those outside. From the perspective of true multilateralism ("no discrimination is the first-best policy"), these various forms of bilateral and regional agreements clearly occupy a second-best world. The tension that characterizes negotiations over trade liberalization, as well as over investment and labor mobility, is between a first-best multilateral approach, which may be stalled because of lack of agreement among countries worldwide, and a second-best regional or bilateral approach that achieves liberalization between the partners but creates discrimination against the rest of the world. A large and robust literature has developed around the debate as to which approach will engender the most liberalization and the greatest gains over the horizon of a decade or longer. We will not rehearse the arguments here, since they are familiar to most readers; we simply observe that the issue is certainly not settled. For the past decade, however, most governments have been "voting with their feet" by placing more emphasis on bilateral and regional agreements. This trend seems very likely to continue.

What about the consistency of BLAs with GATS? This question has not been litigated in the WTO and is not likely to be litigated any time soon, so a definitive answer cannot be given. Three considerations, however, would probably have weight in the WTO Appellate Body's reasoning, if a nonparty to a BLA did claim that its GATS rights to labor mobility (mode 4) were violated by the bilateral agreement.

First, GATS Article II(1) establishes the MFN principle for services, including mode 4. Under Article II(2), MFN can be waived for a BLA, as for any other GATT or GATS obligation, but this requires a favorable vote by three-fourths of WTO members. In any event, there are no extant waivers for BLAs or BITs.[24]

Second, under GATS Article V(1), two or more countries can enter into an economic integration agreement to liberalize trade in services and thereby avoid the MFN requirement. The agreement should have "substantial sectoral coverage" and should eliminate "substantially all discrimination" between the parties. These conditions are to be applied with "flexibility" when a developing country is a party to the economic integration agreement, under the provisions of Article V(2). In our judgment, the Appellate Body would give great weight to Article V(2) in evaluating a BLA. In fact, we think the "flexibility" provision would be decisive.

Third, there is the matter of negotiating history. As our discussion shows, BLAs, like BITs, have been around for a very long time, predating the original GATT (signed in 1947) by decades. A strong argument can be made that if the Uruguay Round negotiators had meant to impose an MFN requirement on these agreements, they would have said so in very explicit terms. After all, important economic arrangements would have been upset by an MFN requirement. Silence seems to indicate assent to the status quo ante.

One of the main reasons that countries enter into BLAs is that these agreements are flexible and short term and appear to escape the long-term contractual constraints of GATS. The large majority of bilateral labor agreements cover a different category of worker than do the formal services agreements (PTAs or GATS); they focus on unskilled (agricultural) or lower-skilled workers, whose movements governments have not been willing to liberalize in the context of either GATS or regional services agreements. We conclude, from this brief and sketchy review, that the Appellate Body would very likely respect the special status of BLAs if a claim were ever brought. As a practical matter, no WTO member has much interest in bringing a claim, and the possibility of litigation seems remote.

Conclusions

This chapter has examined how recent preferential trade agreements (those concluded since 1994 between developed and developing trading partners, as well as some South-South PTAs and labor agreements) have dealt with labor mobility. It has shown that some of the most recent PTAs have innovated in interesting ways to promote labor mobility, either by expanding the number of services suppliers accepted under particular categories (for example, without numerical quotas) or by creating new space for specifically defined categories of labor, such as technicians, nurses and health care workers, and sporting and cultural occupations. To date, however, all but a very few PTAs that cover services focus on professional services suppliers. A new generation of less formal temporary worker programs is paying more attention to the needs of lower-skilled and semiskilled temporary workers. Some of the regional integration groupings among developing countries in Africa, Asia, and Latin America and the Caribbean are making progress toward the opening of

labor markets at the regional level to all categories of workers, both for temporary movement and for permanent settlement. Members of these groupings appear willing to go farther in their ultimate objectives than is the case under the North-South PTAs, where the norm is to cover prescribed and limited, although often expanded, categories of workers.

Thus, while the latest steps are positive and encouraging for developing countries, they leave much work for future negotiators. In our view, patience should be the watchword of negotiators based in developing countries. They should take heart and guidance from the long experience of developed and developing countries in crafting the liberalization of trade in textiles and clothing. This was a supersensitive industry as early as the late 1950s, when the Eisenhower administration in the United States negotiated the first restraint agreement with Japan, and it remained sensitive for the next 50 years. Eisenhower's accord with Japan was followed by the Short-Term Cotton Agreement and the Long-Term Cotton Agreement in the Kennedy and Johnson administrations, and then three generations of the Multifibre Arrangement (MFA) under GATT auspices.

The complexity of bilateral textiles and clothing quotas under these agreements was truly bewildering and, from an economist's viewpoint, highly distortive. But within this complex framework, over the span of five decades, trade in the sector was greatly liberalized and grew enormously. The secret, if there was a secret, was that negotiators of good will, representing both developed and developing countries, discovered niches of textiles and clothing trade where the political costs of further liberalization, combined with suitable safeguard mechanisms, were not insurmountable. At every stage of this long process, the economic gains from liberalization were enormous; the "magic," if there was any magic, was to focus attention on products and mechanisms that did not encounter overwhelming resistance in the developed countries. We think the same approach commends itself to labor mobility negotiations—a long, persistent, and patient search for niches in the labor markets of developed countries where greater entry of migrants is not only tolerated but welcomed.

On the basis of this overview, we offer four sets of recommendations.

1. *Concerning professional workers*

When developing countries are able to define their interests well and are willing and able to pursue bilateral trade agreements with the major developed trading partners reviewed in this study (other than the United States, at present), they should be able to obtain expanded market access. Labor markets worth exploring are opportunities for firms and individuals that offer unique cultural talents or specialized skills, as well as for some independent professionals, and geographic or occupational niches of the industrial developed economies that suffer from labor shortages. If developing countries wish to promote exports of services providers in the health services, this is certainly an area that offers a large potential for expansion. For this market, it might be advisable to develop local training programs for the specific skills required in the target market, in the way that the Philippines has done and Indonesia is currently doing.

2. *Concerning semiskilled and lower-skilled workers*

In the case of workers with lower skill levels and less formal educational training, the best vehicle for promoting greater labor mobility is not formal PTAs but the more flexible instrument of temporary worker programs (TWPs). These programs can be designed to promote circular migration in a way that benefits the labor-sending and labor-receiving countries, as well as the workers themselves. TWPs are extremely flexible in both design and execution and allow the parties involved to design the clauses covering length of stay, nature and place of employment, and appropriate guarantees. They also offer governments the possibility of adjusting in a responsive manner to the cycles of their domestic labor markets. Such agreements must elicit the positive involvement of parties on both sides, making this a framework with buy-in, where all parties to the agreement have an interest in seeing it succeed. Although these agreements have been successfully promoted so far by only a handful of countries, primarily China and the Philippines, there is tremendous scope for their further application in the world economy.

3. *For developing-country governments and negotiators*

Developing country governments and negotiators should bear six precepts in mind:

- Developing-country negotiators should approach the discussions of labor mobility with a positive attitude and should emphasize the gains to the destination country. The economic gains are invariably large, and the political costs are often exaggerated, so it is useful for negotiators from developing countries to research particular labor markets and lay the facts on the table.
- To better serve their negotiators, developing-country governments should conduct in-depth research on the labor markets of potential destination countries with the aim of discovering promising niches. This will require the services of specialized officers or contractors working in the destination countries.

- Developing-country specialists should work with educational and credentialing authorities in the developed countries to lay the groundwork for mutual recognition agreements for the benefit of their independent professionals and other highly skilled workers.
- When multinational corporations seek to expand their operations abroad, whether in a developed or a developing country, government negotiators should team up with the corporations to ensure agreement on the requisite number of visas for intracorporate transferees and contractual services suppliers to support the new operation. This needs to be done whether or not a PTA is in place.
- Developing-country negotiators should seek agreement on the status of mode 4 workers, meaning their rights as to visas, working conditions, social security contributions, unemployment compensation, and ability to remit funds. To some extent, these matters are covered in TWPs, but important elements are often not addressed.
- Above all, senior officials in the developing country must attend to the "image" of their migrants abroad—doing whatever is possible to ensure that their migrants convey an impression of hard-working, law-abiding, respectful people. When adverse incidents happen, as they will, the government of the developing country should cooperate as appropriate, through revocation of visas and other measures.

4. *For developed-country governments and negotiators*

Like developing countries, developed countries should proactively search for labor market niches where additional temporary workers will become valued members of the workforce and the community. Developed-country officials must not surrender to arguments that the labor market is an undifferentiated mass, or succumb to the anti-immigrant voices of a vocal minority. They should hammer home the distinction between permanent immigration, which remains under sovereign control, and temporary workers who are subject to negotiated agreements. They should seek to build flexible responses not only into TWPs but also into the quota and time clauses of PTAs. Most important, they should put some effort into seeking out and conveying positive messages about the contributions and accomplishments of temporary workers.

Annex

Annex Table 13A.1. Quantitative Estimates of Gains from Increased Labor Mobility

Authors	Region covered	Assumption or situation	Gains	
Borjas (1999)	United States	U.S. 1980–2000 immigration wave, with immigrants representing roughly 10 percent of the U.S. workforce	*Large redistributive effect:* return to capital, +2 percent of GDP; labor wages, –1.9 percent of GDP[a]	*Small net gains for natives:* US$10 billion a year (0.1 percent of U.S. GDP), or roughly 5 percent of average economic growth over past 20 years
Hamilton and Whalley (1984)	World	Elimination of all restrictions on labor mobility (1977 data)	60.1–204.6 percent of 1977 world GDP in 1977[b]	
Iregui (1999)	World	Elimination of all restrictions on labor mobility (between 37 and 53 percent of the labor endowment of developing regions migrates)	*Nonsegmented labor market:* 15–67 percent of world GDP *Segmented labor market (skilled versus unskilled):* 13–59 percent of world GDP	*If only skilled labor migrates*: 3–11 percent of world GDP
Moses and Letnes (2004)	World	Elimination of all restrictions on labor mobility (1977 and 1998 data)	*For 1977, with 100 percent elimination of wage differential:* US$0.34 trillion–US 11.27 trillion (1977 dollars) (more probably, US$0.58 trillion); 4.3–111.6 percent of 1977 world GDP (more probably, 7.5 percent of 1977 world GDP) *For 1977, with 10 percent elimination of wage differential:* 22 percent of total potential gain; wages, +4.1 percent in poorest countries; +3.3 percent in middle-income countries; –2.5 percent in richest countries; return to capital, –8.3 percent in poorest countries; –6.9 percent in middle-income countries; +5.7 percent in richest countries	*For 1998, with 100 percent elimination of wage differential:* US$1.97 trillion–US$55.04 trillion (1998 dollars) (more probably, US$3.4 trillion); 5.6–155 percent of 1998 world GDP (more probably, 9.6 percent of 1998 world GDP) *For 1998, with 10 percent elimination of wage differential:* 23 percent of total potential gain; wages, +11.4 percent in poorest countries; +2.1 percent in middle-income countries; –3.1 percent in richest countries; return to capital, –21.0 percent in poorest countries; –4.4 percent in middle-income countries; +7.2 percent in richest countries

(*continued next page*)

Annex Table 13A.1. (*continued*)

Authors	Region covered	Assumption or situation	Gains	
Walmsley and Winters (2002)	World	Increase in migration from developing countries to high-income countries sufficient to increase labor force in the host countries by 3 percent in 2002	*Total:* +0.6 percent of world GDP (US$156 billion in 2002, or 1.5 times the expected gains from liberalization of all remaining goods) *Movement of unskilled workers (accounting for most of the gains):* +US$110 billion versus +US$46 billion for the movement of skilled workers *Migrants' welfare:* +US$171 billion (+US$73 billion in the United States, +US$25 billion in Japan, +US$68 billion in the EU) *Resident welfare:* net, –US$15 billion; developing countries, in some cases, gain if remittances are high (+US$16 billion in India), but most lose (–US$7 billion in Brazil); developed countries, small gains (+US$3.9 billion in EU)	*Change in real wages of unskilled workers:* increase in developing countries (+0.7 percent in India); decrease in developed countries (–0.6 percent in the United States) *Change in real wages of skilled workers:* dramatic increase in developing countries (+4.5 percent in Mexico); decrease in developed countries (–0.8 percent in the United States) *Change in rental price of capital:* decrease in developing countries (–0.4 percent in Mexico); increase in developed countries (+0.8 percent in the United States)
World Bank (2006), 31	World	Increase in migration from developing countries to high-income countries sufficient to increase the labor force in the host countries by 3 percent by 2025 (revision of Walmsley and Winters 2002)	+0.6 percent of world GDP, (US$356 billion in 2025); +0.4 percent of developed-country GDP; +1.8 percent of developing-country GDP (including migrants' income)	

Source: Studies listed under "Authors"; see the bibliography for details.
Note: EU, European Union; GDP, gross domestic product.
a. Hatton and Williamson (1998) find similar results on wages when studying the 1870–1910 migration wage in the United States; they estimate that U.S. wages in 1910 would have been 11 to 14 percent higher in the absence of immigration after 1870.
b. The large differences in estimates, both within and between studies, can be explained by differences in modeling frameworks (partial versus general equilibrium), production elasticities, productivity, cost of movement, or workforce size.

Annex Table 13A.2. Agreements between the United States and Developing Countries

Provision	U.S.–Singapore	U.S.–Chile	U.S.–Morocco	CAFTA–DR	U.S.–Peru
Entry into force	January 1, 2004	January 1, 2004	January 1, 2006	March 1, 2006	February 1, 2009
Chapter on trade in services	Ch. VIII	Ch. 11	Ch. 11	Ch. 11	Ch. 11
Treatment of foreign services					
National treatment	Yes (Art. 8.3)	Yes (Art. 11.2)	Yes (Art. 11.2)	Yes (Art. 11.2)	Yes (Art. 11.2)
Most favored nation	Yes (Art. 8.4)	Yes (Art. 11.3)	Yes (Art. 11.3)	Yes (Art. 11.3)	Yes (Art. 11.3)
Local presence required	No (Art. 8.6)	No (Art. 11.4)	No (Art. 11.5)	No (Art. 11.4)	No (Art. 11.4)
Provisions on mode 4					
Chapter	Ch. 11	Ch. 14	None	None	None
Committee	Yes (Art. 11.7)	Yes (Art. 14.5)	Joint committee to review the implementation of the annex on professionals	Commission to review the implementation of the annex on professionals	—
Dispute settlement	Yes (Art. 11.8)	Yes (Art. 14.6)	—	—	—
Transparency of regulation	Yes (Art. 11.5)	Yes (Art. 14.4)	—	—	—

(*continued next page*)

Annex Table 13A.2. (*continued*)

Provision	U.S.–Singapore	U.S.–Chile	U.S.–Morocco	CAFTA–DR	U.S.–Peru
Side letters	Yes (professionals must comply with certain labor and immigration laws and have an employer in the United States)	Yes (professionals will obtain visa through the U.S. H-1B program)	None	Yes ("No provision shall impose any obligation on a party regarding its immigration measures")	—
Worker categories covered	Investors, traders, intracorporate transferees, professionals	Investors, traders, intracorporate transferees, professionals	—	—	—
Specification of length of stay	None	None	—	—	—
Provisions on professionals					
Annex on professionals	App. 11.A.2	Annex 14.3.D	Annex 11.B	Annex 11.9	Annex 11.B
Number of professional categories covered	2 (disaster relief claims adjuster, management consultant)	4 (disaster relief claims adjuster, management consultant, agricultural manager, physical therapist)	0 (pledge to work on)	0 (pledge to work on)	0 (pledge to work on)
Specified quotas	*Singapore:* no numerical limit	*Chile:* no numerical limit	—	—	—
	United States: 5,400	*United States:* 1,400			
Postsecondary degree required	Yes: 4 years or more	Yes: 4 years or more	—	—	—
Specification of length of stay	None	None	—	—	—

Source: Authors' compilation.
Note: — = no provisions; CAFTA–DR, Dominican Republic–Central America Free Trade Agreement.

Annex Table 13A.3. Agreements between Canada and Developing Countries

Provision	NAFTA	Canada–Chile	Canada–Colombia	Canada–Peru
Entry into force	January 1, 1994	July 5, 1997	Signed November 21, 2008	January 1, 2009
Chapter on trade in services	Ch. 12	Ch. H	Ch. 9	Ch. 9
Treatment of foreign services				
National treatment	Yes (Art. 1202)	Yes (Art. H-02)	Yes (Art. 902)	Yes (Art. 903)
Most favored nation	Yes (Art. 1203)	Yes (Art. H-03)	Yes (Art. 903)	Yes (Art. 904)
Local presence required	No (Art. 1205)	No (Art. H-04)	No (Art. 905)	No (Art. 907)
Provisions on mode 4				
Chapter	Art. 16	Ch. K	Ch. 12	Ch. 12
Side letters	None	None	None	None
Committee	Yes (Art. 1605)	Yes (Annex K-05)		
Dispute settlement	Yes (Art. 1606)	Yes (Art. K-06)	Yes (Art. 1206)	Yes (Art. 1206)
Transparency of regulation	Yes (Art. 1604)	Yes (Art. K-04)	Yes (Art. 1204)	Yes (Art. 1204)
Worker categories covered	Investors, traders, intracorporate transferees, professionals	Investors, traders, intracorporate transferees, professionals	Investors, traders, intracorporate transferees, professionals, technicians, spouses	Investors, traders, intracorporate transferees, professionals, technicians

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Annex Table 13A.3. (*continued*)

Provision	NAFTA	Canada–Chile	Canada–Colombia	Canada–Peru
Specification of length of stay	None	None	None	*Peru:* investors, 1 year; traders, 90 days; intracorporate transferees, 1 year; professionals, 1 year; technicians, 1 year *Canada:* investors, 1 year; traders, 1 year; intracorporate transferees, 3 years; professionals, 1 year; technicians, 1 year
Provisions on professionals				
Annex on professionals	App. 1603.D.1	App. K-03.IV.1	App. 1203.D	App. 1203.D
Number of professional categories covered	63 (accountant, architect, medical professional, scientist, teacher, others)	72 (accountant, architect, medical professional, scientist, teacher, others)	All categories of professionals except health, sports, art, education, legal, and management services; 50 categories of technicians (mechanical and avionics technician, construction inspector, food and beverage supervisor, textiles specialist, electrician, plumber, oil and gas well driller, chef, others)	All categories except health, sports, art, education, legal, and management services; 50 technicians (mechanical and avionics technician, construction inspector, food and beverage supervisor, textiles processing, electrician, plumber, oil and gas well driller, chef, others)
Specified quotas	No numerical limit except for the United States: 5,500	No numerical limit	No numerical limit	No numerical limit
Postsecondary degree required	Yes: 4 years or more	Yes: 4 years or more	Yes: professionals, 4 years; technicians, 2 years	Yes: professionals, 4 years; technicians, 1 year
Specification of length of stay	None	None	None	1 year

Source: Authors' compilation.
Note: NAFTA, North American Free Trade Agreement.

Annex Table 13A.4. Agreements between the European Union and Developing Countries

Provision	EU–Chile	EU–CARIFORUM	EU–Turkey	EU–Morocco
Entry into force	February 1, 2003	December 29, 2008	December 31, 1995	March 18, 2000
Chapter on trade in services	Title III, Ch. I	Pt. II, Title II, Ch. 3	None	Title III (pledge to work on)
Treatment of foreign services				
National treatment	Yes (Art. 98)	Yes (Art. 77)	—	—
Most favored nation	No	Yes (Art. 79)	—	—
Local presence required	No (Art. 97)	—	—	—
Provisions on mode 4				
Chapter	Art. 101	Pt. II, Title II, Ch. 4	None	None
Side letters	None	None	—	—
Committee	Yes (Art. 100)	Yes (Art. 85)	—	—

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Annex Table 13A.4. (*continued*)

Provision	EU–Chile	EU–CARIFORUM	EU–Turkey	EU–Morocco
Dispute settlement	None	Pledge to create one (Art. 87)	—	—
Transparency of regulation	Yes (Art. 105)	Yes (Art. 86)	—	—
Worker categories covered	Investors, intracorporate transferees, business sellers, professionals	Investors, intracorporate transferees, business sellers, professionals, graduate trainees	—	—
Specification of length of stay	*EU:* professionals, 3 months	Investors, 90 days; intracorporate transferees, 3 years; business sellers, 90 days; independent professionals, contractual services suppliers, 6 months; graduate trainees, 1 year	—	—
Provisions on professionals				
Annex on professionals	Annex VII	Annex IV	None	None
Number of professional categories covered	*EU:* 33 (engineer, accounting, construction, mining, computer, legal services, others) *Chile:* 0	*EU:* 29 (architectural, legal, accounting, engineering, computer, management services) *CARIFORUM:* 0	—	—
Specified quotas	No numerical limit	No numerical limit	—	—
Postsecondary degree required	"Necessary academic qualification and experience"	University degree + 3 years experience	—	—
Specification of length of stay	*EU:* 3 months	*EU:* 6 months	—	—

Source: Authors' compilation.
Note: — = no provisions; CARIFORUM, Caribbean Forum of African, Caribbean, and Pacific (ACP) States; EU, European Union.

Annex Table 13A.5. Agreements between Japan and Developing Countries

Provision	Japan–Mexico	Japan–Chile	Japan–Indonesia	Japan–Philippines
Entry into force	April 1, 2005	Signed March 27, 2007	July 7, 2008	December 11, 2008
Chapter on trade in services	Ch. 8	Ch. 9	Ch. 6	Ch. 7
Treatment of foreign services				
National treatment	Yes (Art. 98)	Yes (Art. 107)	Yes (Art. 79)	Yes (Art. 73)
Most favored nation	Yes (Art. 99)	Yes (Art. 108)	Yes (Art. 82)	Yes (Art. 76)
Local presence required	No (Art. 100)	No (Art. 109)	No (Art. 78)	No (Art. 72)
Provisions on mode 4				
Chapter	Ch. 10	Ch. 11	Ch. 7	Ch. 9
Side letters	None	None	None	None
Committee	Yes (Art. 117)	None	Yes (Art. 96)	Yes (Art. 113)
Dispute settlement	Yes (Art. 118)	Yes (Art. 133)	Yes (Ch. 14)	Yes (Ch. 15)
Transparency of regulation 4	Yes (Art. 116)	Yes (Art. 132)	Yes (Art. 95)	Yes (Art. 111)
Worker categories covered	Investors, business visitors, intracorporate transferees, professionals	Investors, business visitors, intracorporate transferees, professionals	Investors, business visitors, Intracorporate transferees, professionals, professionals with "personal contracts," nurses and care workers	Investors, business visitors, intracorporate transferees, professionals, professionals with "personal contracts," nurses and care workers

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Annex Table 13A.5. (*continued*)

Provision	Japan–Mexico	Japan–Chile	Japan–Indonesia	Japan–Philippines
Specification of length of stay	*Japan:* business visitors, 90 days; other categories, 3 years *Mexico:* business visitors, 30 days; other categories, 1 year	*Japan:* business visitors, 90 days; other categories, 3 years *Chile:* business visitors, 30 days; other categories, 1 year	*Japan:* business visitors, 90 days; other categories, 3 years *Indonesia:* business visitors, 60 days; other categories, 1 year	*Japan:* business visitors, 90 days; other categories, 3 years *Philippines:* business visitors, 59 days; other categories, 1 year
Provisions on professionals				
Annex on professionals	Annex 10	Annex 13	Annex 10	Annex 8
Number of professional categories covered	*Japan:* 2 (engineer, specialist in humanities or international services) *Mexico:* 42 (accountant, engineer, lawyer, scientist, nurse, others)	*Japan:* 2 (engineer, specialist in humanities or international services) *Chile:* 41 (accountant, engineer, lawyer, scientist, nurse, others)	*Japan:* 14 (legal and accounting services, engineer, specialist in humanities or international services, nurse, health care worker) *Indonesia:* 4 (mechanical and electrical engineer, nurse, health care worker)	*Japan:* 10 (legal and accounting services, engineer, specialist in humanities or international services' Japanese university graduate nurse, health care worker) *Philippines:* 4 (mechanical and electrical engineer, nurse, health care worker)
Specified quotas	No numerical limit	No numerical limit	No numerical limit except for nurses and health care workers	—
Postsecondary degree required	4 years or more	4 years or more	Professionals, 4 years; nurses and health care workers, public health degree + 2 years work experience + 6 months language training	Professionals, 4 years; nurses and health care workers, national health degree + 3 years work experience + 6 months of training in the host country to pass the host-country certification exam
Specification of length of stay	*Japan:* 3 years *Mexico:* 1 year	*Japan:* 3 years *Chile:* 1 year	*Japan:* 3 years *Indonesia:* 1 year	*Japan:* 3 years *Philippines:* 1 year

Source: Authors' compilation.
Note: — = no provisions.

Annex Table 13A.6. Agreements between Australia and New Zealand and Developing Countries

Provision	Trans-Pacific SEP (Brunei Darussalam, Chile, New Zealand, Singapore)	ASEAN–Australia–New Zealand	New Zealand–China	Australia–Chile
Entry into force	May 28, 2006	Signed August 28, 2008	October 1, 2008	March 6, 2009
Chapter on trade in services	Ch. 12	Ch. 8	Ch. 9	Ch. 9
Treatment of workers				
National treatment	Yes (Art. 12-4)	Yes (Ch. 8, Art. 5)	Yes (Art. 106)	Yes (Art. 9-3)
Most favored nation	Yes (Art. 12-3)	Yes (Ch. 8, Art. 7)	Yes (Art. 107)	Yes (Art. 9-4)
Local presence required	No (Art. 12-7)	No (Ch. 8, Art. 4)	No (Art. 108)	No (Art. 9-5)
Provisions on mode 4				
Chapter	Art. 12-11	Ch. 9	Ch. 10	Ch. 13
Side letters	None	None	None	None
Committee	None	None	Yes (Art. 133)	Yes (Art. 13-6)
Dispute settlement	None	Yes (Ch. 9, Art. 9)	Yes (Art. 134)	Yes (Art. 13-7)
Transparency of regulation	None	Yes (Ch. 9, Art. 8)	Yes (Art. 131)	Yes (Art. 13-5)

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Annex Table 13A.6. (*continued*)

Provision	Trans-Pacific SEP (Brunei Darussalam, Chile, New Zealand, Singapore)	ASEAN–Australia–New Zealand	New Zealand–China	Australia–Chile
Worker categories covered	Professionals	Business visitors, investors, intracorporate transferees, contractual services suppliers, installers (to install purchased machinery—New Zealand only), spouses	Business visitors, investors, intracorporate transferees, contractual services suppliers, installers	Business visitors, investors, intracorporate transferees, contractual services suppliers, relatives
Specification of length of stay	No	*Indonesia:* business visitors, 60 days; investors, 60 days; others, 2 years *Australia:* intracorporate transferees, 4 years; investors, 2 years; business visitors, 6 months; professionals, 12 months *New Zealand:* business visitors, 3 months; investors, 3 months; intracorporate transferees, 3 years; installers, 3 months; professionals, 12 months *Philippines:* business visitors, 59 days; others, 1 year *Vietnam:* intracorporate transferees, 3 years; others, 90 days	*China:* business visitors, 6 months; investors, 6 months; intracorporate transferees, 3 years; professionals, —; installers, 3 months *New Zealand:* business visitors, 3 months; investors, 3 months; intracorporate transferees, 3 years; professionals, 3 years; installers, 3 months	*Australia:* business visitor, 1 year; investors, 90 days; intracorporate transferees, 4 years; professionals, 1 year *Chile:* —
Provisions on professionals				
Annex on professionals	Art. 12-11	Annex 4	Annexes 10 and 11	Annex 13-A
Number of professional categories covered	Pledge to "work on" 6 categories (engineer, architect, geologist, geophysicist, planner, accountant)	*Australia:* 0 *New Zealand:* 33 (engineering, legal, taxation, veterinary, computer, translation services) *Indonesia:* 13 (legal, tourism, restaurant, engineering, computer, R&D, maintenance services) *Philippines:* all persons "who occupy a technical, advisory, or supervisory position" *Vietnam:* 2 (computer and engineering services) *Singapore:* 0	*China:* 5 (education, medical, translation, hotel, computer) *New Zealand:* 6 (traditional Chinese medicine, Chinese chef, Mandarin teaching aide, martial arts coach, tour guide, skilled worker "in category identified as being in shortage")	"Subject to national criteria"
Specified quotas	—	Entry subject to national rules	*China:* no numerical limit *New Zealand:* traditional Chinese medicine, 200; Chinese chefs, 200; Mandarin teaching aides, 150; martial arts coaches, 150; tour guides, 100; skilled workers "in category in shortage," 1,000	—

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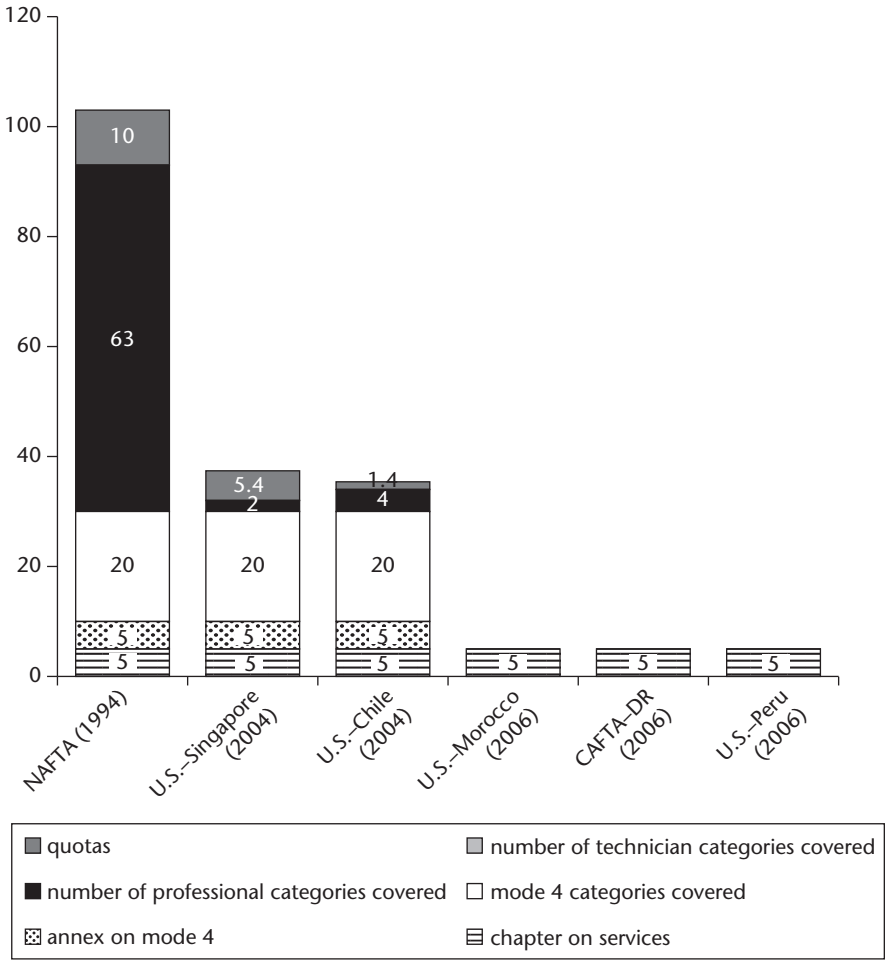
Annex Table 13A.6. (*continued*)

Provision	Trans-Pacific SEP (Brunei Darussalam, Chile, New Zealand, Singapore)	ASEAN–Australia–New Zealand	New Zealand–China	Australia–Chile
Postsecondary degree required		*New Zealand:* 3 years or more + 6 years experience *Indonesia:* "high qualification" *Philippines:* "knowledge at an advanced level" *Vietnam:* "university degree" + 5 years experience	*China:* "appropriate education level" + 2 years experience *New Zealand:* "appropriate education level" + experience	—
Specification of length of stay	—	*Vietnam:* 90 days *New Zealand:* 1 year *Philippines:* 1 year *Indonesia:* 2 years	*China:* — *New Zealand:* 3 years	*Chile:* — *Australia:* 1 year

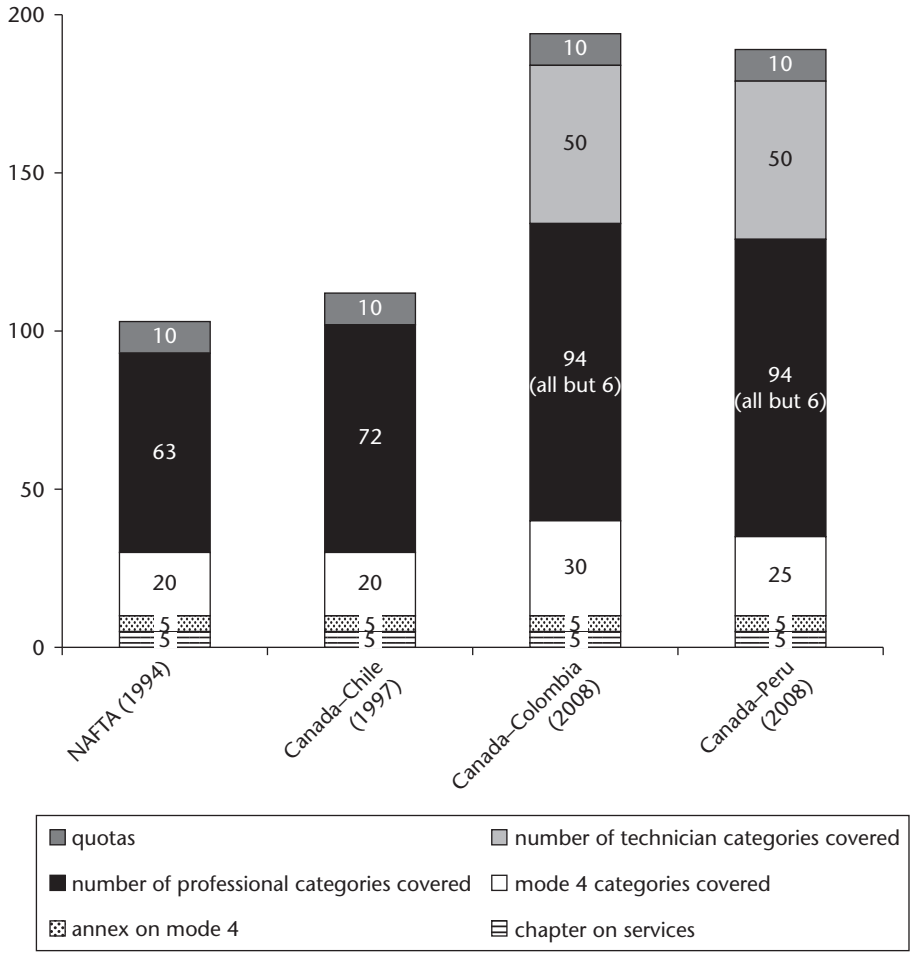
Source: Authors' compilation.
Note: — = no provisions; ASEAN, Association of Southeast Asian Nations; R&D, research and development; SEP, Strategic Economic Partnership.

Annex Figure 13A.1. Provisions on Mode 4 in PTAs between the United States and Developing Countries



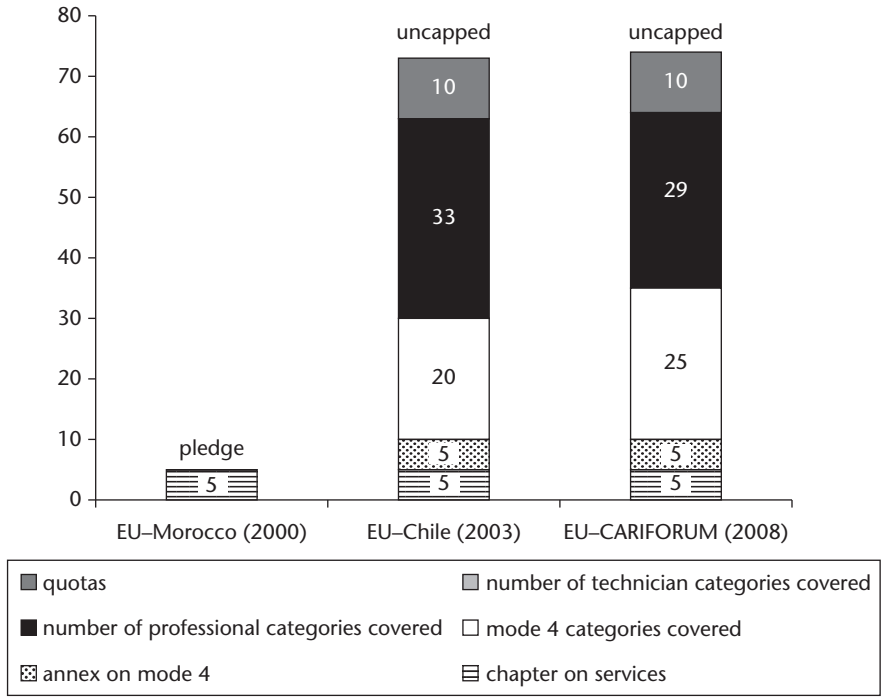
Source: Authors.
Note: CAFTA–DR, Dominican Republic–Central America Free Trade Agreement; NAFTA, North American Free Trade Agreement; PTA, preferential trade agreement. Mode 4 refers to the movement of natural persons to supply services. The height of the bars indicates the degree of access that PTA provides for workers from developing-country partners. Values are assigned to each component of access as follows (not all components may be applicable to a particular agreement):
Chapter on services in the PTA? If yes, 5 points.
Annex on mode 4 service supply? If yes, 5 points.
Mode 4 categories covered. Number of categories (shown on the bars) is multiplied by 5 to yield total points.
Number of professional categories covered. Shown on the bars.
Number of technician categories covered. Shown on the bars.
Quotas. If uncapped, 10 points. Otherwise, shown as the total number of workers allowed under the quota, in thousands.

Annex Figure 13A.2. Provisions on Mode 4 in PTAs between Canada and Developing Countries



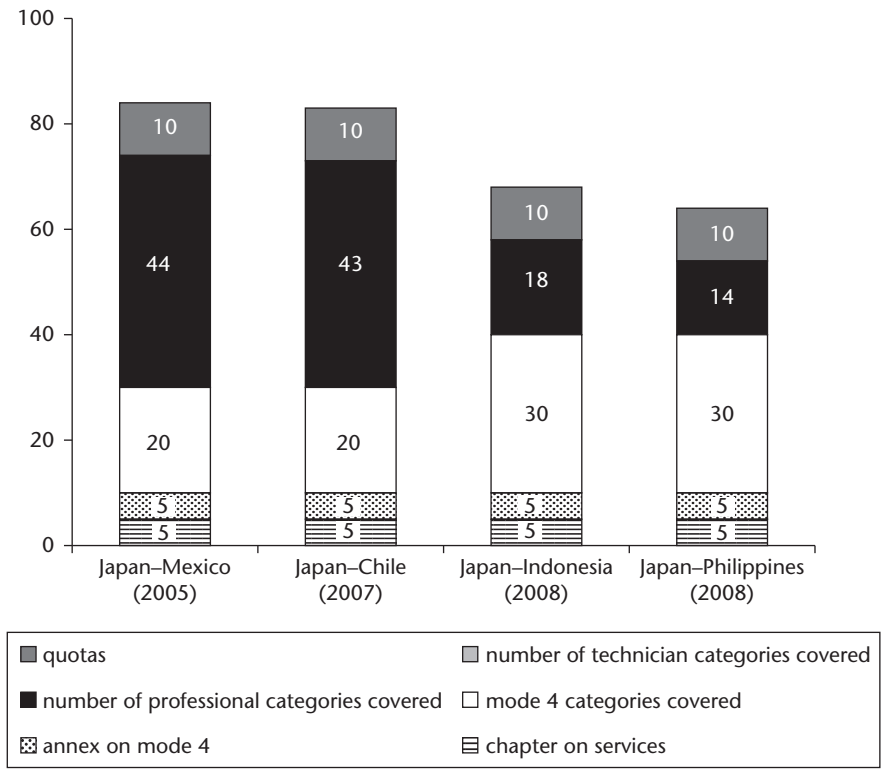
Source: Authors.
Note: NAFTA, North American Free Trade Agreement; PTA, preferential trade agreement. For the method of deriving the values for the bars, see the note to annex figure 13A.1.

Annex Figure 13A.3. Provisions on Mode 4 in PTAs between the European Union (EU) and Developing Countries



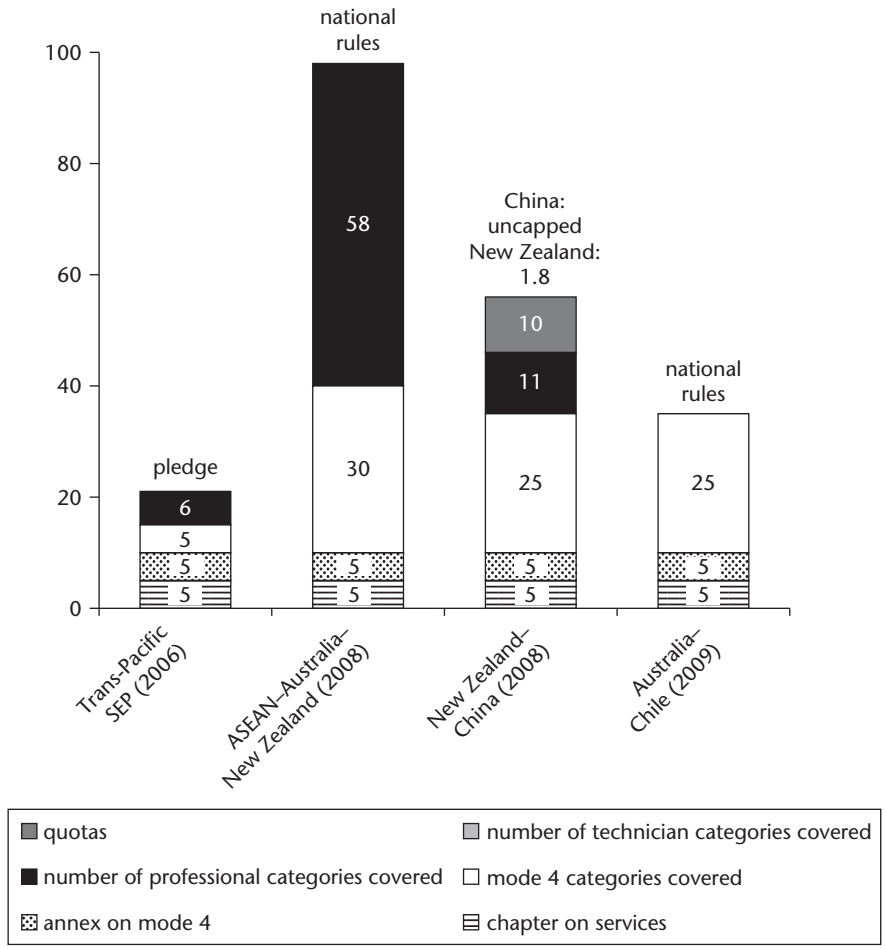
Source: Authors.
Note: CARIFORUM, Caribbean Forum of African, Caribbean, and Pacific (ACP) States; PTA, preferential trade agreement. For the method of deriving the values for the bars, see the note to annex figure 13A.1.

Annex Figure 13A.4. Provisions on Mode 4 in PTAs between Japan and Developing Countries



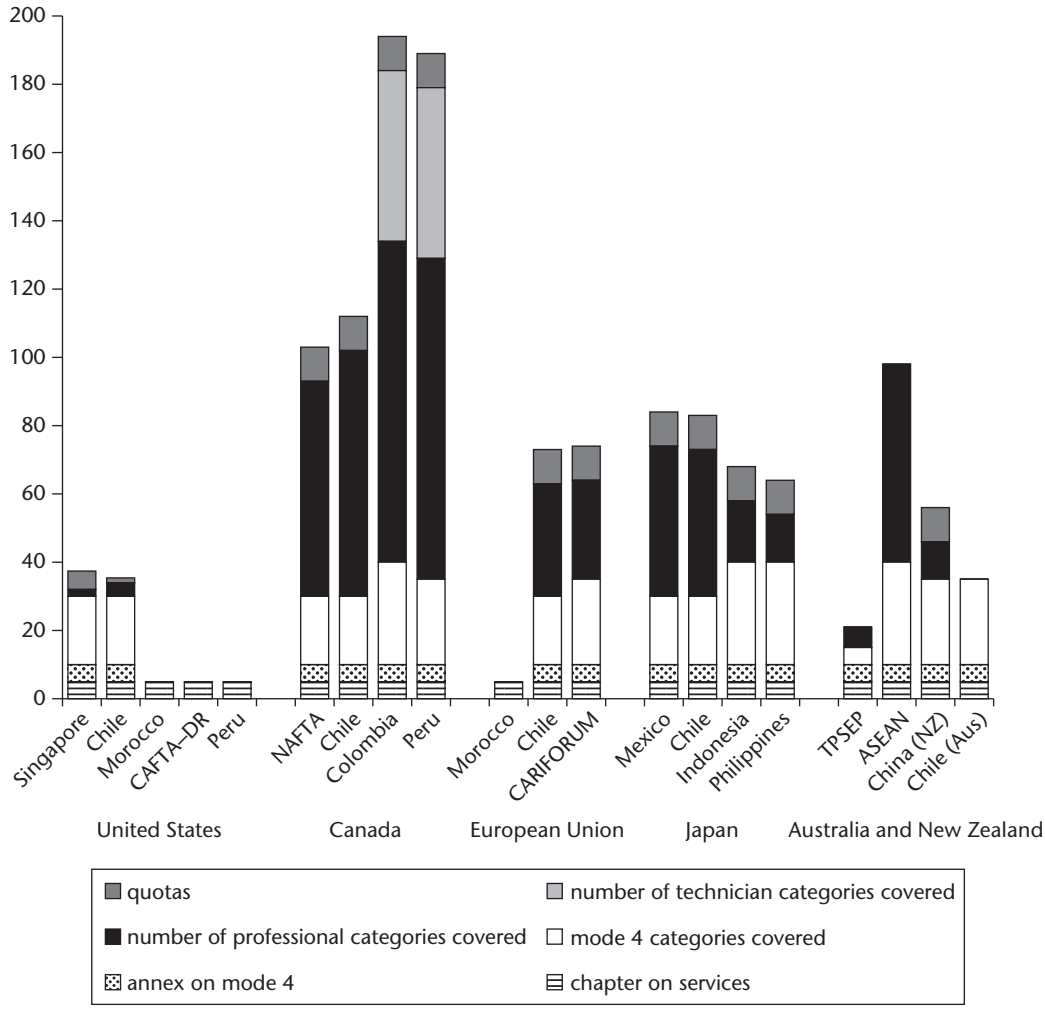
Source: Authors.
Note: PTA, preferential trade agreement. For the method of deriving the values for the bars, see the note to annex figure 13A.1.

Annex Figure 13A.5. Provisions on Mode 4 in PTAs between Australia and New Zealand and Developing Countries



Source: Authors.
Note: ASEAN, Association of Southeast Asian Nations; PTA, preferential trade agreement; SEP, Strategic Economic Partnership. For the method of deriving the values for the bars, see the note to annex figure 13A.1.

Annex Figure 13A.6. Provisions on Mode 4 in PTAs between Developed and Developing Countries



Source: Authors.
Note: ASEAN, Association of Southeast Asian Nations; CAFTA–DR, –Dominican Republic–Central America Free Trade Agreement; CARIFORUM, Caribbean Forum of African, Caribbean, and Pacific (ACP) States; NAFTA, North American Free Trade Agreement; PTA, preferential trade agreement; TPSEP, Trans-Pacific Strategic Economic Partnership.

Notes

This chapter is a modified version of a chapter in Cattaneo et al. (2010). Thibaud Delourme, a student at the Maxwell School of Syracuse University, assisted with the research.

1. Carzaniga (2008, 478) points out that foreigners working for a host-country company on a contractual basis as independent services suppliers (ISS) are covered by GATS (and, in general, by trade agreements that include mode 4), whereas they would not be covered if they were employees of the company. What distinguishes their situation is the type of payment received: the foreign employee receives a domestic currency wage from the company in the host country, whereas the ISS is paid a fee and the contractual services supplier is paid foreign wages.

2. By December 2005, the total number of services offers had reached 69, involving 93 WTO members. Of the 69, 31 were revised offers. There has been very little change since; the number of initial offers has increased only to 71. Thus, one-third of WTO members have not put any initial offer for services forward since the beginning of the negotiations. The Doha Round was suspended in July 2006, without any revised offers having been submitted. Services negotiations were not actively taken up when the round resumed in 2007. A "signaling conference" was held at the request of interested ministers in July 2008, but it did not elicit much enthusiasm.

3. For an earlier discussion examining treatment of mode 4 in PTAs, see Nielson (2003).

4. The only exception is the FTA with Australia. No market access provisions for labor mobility were included in the text itself, but a side letter was added after the conclusion of the negotiations that allowed an annual quota of 10,500 Australian professionals to enter the U.S. market. This was done in 2002, and it proved to be the final straw for members of the U.S. Congress.

5. Sáez (2009) explains that within the EU, issues concerning trade in services do not fall exclusively under the competence of the community because they go beyond Articles 113 and 238 of the treaty that accords supranational treaty-making powers to the community on behalf of all the member states. Thus, implementation of the services provisions and obligations of a trade agreement must be approved by each EU member state in accordance with domestic laws.

6. Article 101, on movement of natural persons, contains only a review requirement: "Two years after the entry into force of this

Agreement, the Parties shall review the rules and conditions applicable to movement of natural persons (mode 4) with a view to achieving further liberalisation."

7. It should be mentioned that several EU member states have attached economic needs tests (ENTs) to their commitments on mode 4 entry. Actual access provided, even under the expanded commitments, will depend on how these tests are interpreted and applied in practice. No definitions were supplied with the ENT entries, and some are applied quite restrictively.

8. Indeed, a very recent PTA between the members of the European Free Trade Association (EFTA)—Iceland, Liechtenstein, Norway, and Switzerland—and Colombia, signed on November 25, 2008, does not even include an annex on professional service suppliers, and the body of the agreement contains no mention of the movement of natural persons, other than their definition as mode 4. EFTA members are not facing labor shortages and, in the current hostile economic climate, did not feel any pressure to include liberalization of labor mobility in their agreement with Colombia. See http://www.sice.oas.org.

9. This approach is suggested by a paper by Henry Gao, "Report on China's Export Interests in Services in Australia," 2008, which was provided to the authors. The strategy calls for collecting information on the labor market and services export structure of the potential or current negotiating partner, carrying out surveys to identify those categories of labor with the greatest potential for expansion following the removal of trade-restrictive barriers, and building on achievements of previous PTAs in the area.

10. Two members, Antigua and Barbuda, and Belize, were allowed a five-year grace period to study the impact of free mobility for domestic helpers before adding them to their list.

11. Protocol A/P.1/5/79, relating to free movement of persons, residence, and establishment, in application of Article 27 of the treaty establishing ECOWAS. The successive texts complementing the free movement regime are Supplementary Protocol A/SP.1/7/85, on the code of conduct for the implementation of Protocol A/P.1/5/79; Supplementary Protocol A/SP.1/7/86, on the second phase (right of residence) of the aforementioned protocol; Supplementary Protocol A/SP.1/6/89, amending and complementing the provisions of Article 7 of the aforementioned protocol; and Supplementary Protocol A/SP.2/5/90, on the implementation of the third phase (right of establishment) of the aforementioned protocol.

12. Supplementary Protocol A/SP.1/7/86.

13. Eight countries use the regional passport: Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Guinea, Niger, Nigeria, and Sierra Leone.

14. Treaty Establishing the West African Economic and Monetary Union, 1996, Articles 4, 91–93.

15. Host countries typically act unilaterally in determining whether temporary workers may bring their families and settle. Most European countries allow temporary workers whose work permits have been renewed several times to obtain immigrant status after five years.

16. Between 1960 and 1973, the number of migrant workers in Western Europe jumped from 2 million to 7 million, and the total foreign population rose from 4 million to 12 million. Most of these workers came from geographically distant nations such as Turkey or Morocco, rather than neighboring countries. After the halt in temporary worker programs in the mid-1970s, the migrant workforce in Europe stabilized at around 5 million over the next decade. See Martin (2007); see also Council of Europe (1996).

17. The International Labour Organization (ILO) has developed a multilateral framework on labor migration that constitutes a comprehensive collection of principles, guidelines, and good practices on labor migration programs, including bilateral labor agreements; see ILO, http://www.ilo.org/public/english/protection/migrant/areas/multilateral.htm.

18. A few memoranda of understanding on migratory and labor cooperation have been signed recently by developing countries; they include those between Peru and Chile (2006), Peru and Ecuador (2006), and Peru and Mexico (2002). The aim of these memoranda is to provide for exchange of information and protection of the rights of migrant workers, in particular under the UN International Convention on the Protection of the Rights of Migrant Workers and Their Relatives. The memoranda do not include provisions for promoting labor mobility. The Philippines has signed bilateral memoranda with many destination countries to cover the flows, rights, and obligations of its temporary workers. A reciprocal temporary worker program agreed on by Argentina and Bolivia includes many of these protections.

19. As part of Canada's SAWP scheme with Caribbean countries and Mexico, the HRSDC cooperates closely with private agencies, including Foreign Agricultural Resource Management Services (FARMS) in Ontario and Nova Scotia and the Foundation of Enterprises for the Recruitment of Foreign Labor (FERME) in Quebec, New Brunswick, and Prince Edward Island. Guest workers in Canada are employed in four provinces: Ontario (two-thirds of the total), Quebec, Alberta, and Manitoba. Although the Mexican government tries to ensure that every worker returns to Mexico, independent researchers estimate that 15 percent of the Mexicans fail to return home every year. See http://migration.ucdavis.edu/RMN/more.

20. Gao, personal communication (see note 9). The data are from the *China Foreign Labor Cooperation Annual Report 2004,* issued by the China International Contractors Association, Beijing.

21. See http://www.jitco.or.jp for details on this program. Information on China's bilateral labor agreements was provided to the authors by Dr. Shu Bin, manager, Labor Department, China National Aero-Technology Import & Export Corporation, during a workshop held in Beijing under World Bank auspices, May 21–22, 2009.

22. A recent study by Persin (2008) compares the United Kingdom's responses concerning its labor market and immigration policies in the context of the eastern enlargement of the EU with its willingness to provide offers on mode 4 under the GATS. Persin finds that the government opted for managed migration through bilateral labor agreements and an employer-led system, rather than through more formal WTO commitments. The author concludes that the more flexible "bilateral or regional labor immigration schemes are preferred to a binding multilateral labor immigration scheme such as the GATS" because it is easier and less costly under the former to agree on rules and procedures, as well as to solve any problems jointly.

23. The Migration Policy Institute, based in Washington, DC, has done considerable work on the benefits and challenges of temporary worker programs and circular migration schemes. See Batalova (2006); Meyers (2006); Agunias (2007); Newland, Agunias, and Terrazas (2008).

24. Unlike BLAs and BITs, DTTs are specifically exempted from national treatment and MFN requirements by GATS Article XIV.

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