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LABOUR MOBILITY AND
TRADE IN THE AMERICAS:
CURRENT FRAMEWORKS AND
SOCIO-ECONOMIC IMPLICATIONS

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EXECUTIVE SUMMARY

Cross-border labour mobility provisions in trade agreements—particularly for the “highly skilled” worker—have slowly found their way into trade negotiations around the globe. The Americas region, with which Canada has recently launched a new re-engagement strategy, is no exception. Yet the socio-economic and gender implications of liberalizing such temporary migration are as yet uncertain. Using a case study approach, this paper examines whether or not such implications of temporary mobility are being addressed in trade agreements, and if so, to what extent. As this is an under-researched field, the author hopes to contribute to further discussion and debate on the merits of proactively addressing social issues in trade regimes.

SOMMAIRE EXÉCUTIF

Les clauses de mobilité internationale de la main-d’œuvre – en ce qui concerne particulièrement les travailleurs hautement qualifiés – se retrouvent de plus en plus dans les pourparlers d’accords commerciaux. La région des Amériques, envers laquelle le Canada a récemment lancé une stratégie de réengagement, ne fait pas exception à la règle. Cependant, les conséquences socio-économiques et de genre qu’implique la libéralisation de la migration temporaire demeurent incertaines. Par l’entremise d’études de cas, l’exposé suivant examine si ces conséquences de la mobilité temporaire sont abordées, et si oui à quel point, dans les accords commerciaux. Puisque ceci est un domaine peu étudié, l’auteure espère contribuer à de plus amples discussions et débats sur les mérites de l’inclusion de thèmes sociaux dans les régimes commerciaux.

RESUMEN EJECUTIVO

Las cláusulas de movilidad laboral internacional – sobre todo para trabajadores con altos niveles de formación – se están convirtiendo poco a poco en parte integral de las negociaciones de tratados comerciales. Las Américas, región con la que Canadá acaba de lanzar una iniciativa de “reintegración,” no son una excepción a esta regla. Sin embargo, las consecuencias socioeconómicas y de género no están todavía claras. Prestando atención a varios casos de estudio, este ensayo examina si estas posibles consecuencias se están teniendo en cuenta al firmar acuerdos comerciales y, si se da el caso, hasta qué punto se están tomando en cuenta. Puesto que éste es un campo de estudio al que no se ha prestado demasiada atención, la autora espera que el ensayo sirva para fomentar más debate sobre las posibilidades de incluir asuntos sociales en regímenes comerciales.

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Introduction

Labour mobility between high- and lower-income countries, it is being suggested, might just be the solution to a myriad of development problems.¹ Would relatively poorer countries not be better off if global regimes were more open to the well-managed movement of workers?² Many economists seem to think so. A recent World Bank study predicts that, if the higher-income countries of the world increased their workforce by only three per cent, earnings of up to USD \$300 million could be sent back to developing countries each year.³ More labour mobility would also benefit high-income countries because it helps employers meet perceived labour shortages created by aging populations and lower labour supplies in certain sectors.

Policymakers in Canada, Europe and the United States seem to be listening. A 2006 report by the Canadian Department of Finance announced a new policy commitment to making “improvements to the Temporary Foreign Worker Program to respond to employer needs”⁴ and, more recently, Canada and Mexico announced that their Labour Mobility Working Group is working on increasing bilateral labour mobility in three new occupational areas.⁵ This came as no surprise; due to employer-driven demand and relatively open domestic regulations, Canada has already been accepting increasing numbers of foreign workers for a number of years. In 2006, Canada attracted 112,000 temporary foreign employees in occupations of all skill levels—a 58 per cent increase over the past ten years.⁶

¹ Lant Pritchett, *Let Their People Come: Breaking the Gridlock on Global Labor Mobility* (Washington, D.C.: Centre for Global Development, 2006); Oded Stark, *The Economics of the Brain Drain Turned on its Head* (Austria: University of Vienna, 2002); Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action*, (Geneva: GCIM, 2005), 15-17.

² It is important to note that international migration flows are not limited to South-North flows. Indeed, intraregional flows are very significant in many regions around the world, such as Europe and Asia. Nevertheless, flows within the Americas (North America, the Caribbean and Latin America) emphasize a South-North pattern: nearly 80 per cent of migrants from that region, both irregular and legal, choose to migrate to the United States and Canada [Robert Holzmann, *Portability Regimes of Pension and Health Care Benefits for International Migrants* (Washington, D.C.: World Bank, 2005), 6].

³ World Bank, *Global Economic Prospects: Economic Implications of Remittances and Migration* (Washington D.C.: World Bank, 2005), cited in Pritchett, *Let Their People Come*, 3. By comparison, migrants sent home about USD 220 billion in total, USD 57 billion of which was sent to Latin America and the Caribbean, in 2006 [Dilip Ratha et al., *Migration and Development Brief 3* (Washington, D.C: World Bank, 2007), 1].

⁴ Department of Finance Canada, *Advantage Canada - Building a Strong Economy for Canadians*, (Ottawa: Finance Canada, 2006), 50.

⁵ The occupational areas being discussed by Canada and Mexico are construction, tourism and financial services. (Notimex, “Acuerdo Calderón y Harper lanzamiento piloto de movilidad laboral,” *El Porvenir*, April 22 2008, http://www.elporvenir.com.mx/notas.asp?nota_id=210921).

⁶ Citizenship and Immigration Canada. “Facts and Figures 2006 – Immigration Overview: Temporary Residents,” CIC Statistics, 2007, <http://www.cic.gc.ca/english/resources/statistics/facts2006/temporary/01.asp>.

In addition to bilateral labour agreements and sector-specific guest worker programs, temporary entry provisions in trade agreements provide an increasingly popular avenue for labour mobility.⁷ The issue of labour mobility was first introduced into multilateral trade negotiations at the outset of the Uruguay Round of the World Trade Organization (WTO) in 1986, eventually resulting in the General Agreement on Trade in Services (GATS), which came into effect on Jan. 1, 1995. This was significant in that it gave moral currency to the importance of allowing (some) freedom in the cross-border movement of people, alongside the movement of goods and capital.⁸

Whether at the international, regional, or bilateral level, labour mobility provisions in trade agreements—particularly for the “highly skilled”—have slowly found their way into trade negotiations around the globe, usually under sections liberalizing trade in services. International discussions have highlighted views that the increased movement of persons under trade agreements can make an “important contribution to the economies (...) and the employment opportunities” of migrant-sending countries.⁹ This phenomenon, it is suggested, might also contribute to Goal 8 of the Millennium Development Goals (“Develop a global partnership for development”).¹⁰

Yet how much merit do these claims really have? The implications of increasing levels of temporary labour flows through trade are still unclear because of insufficient research and analysis. Labour groups, such as the Canadian Labour Congress, argue that increasing international worker mobility is risky business, creating a band-aid solution when employers would otherwise be forced to increase wages and decent work opportunities for the existing labour force.¹¹ In the context of NAFTA, the threat of losing skilled professionals from

⁷ A key factor in driving this increase is the declining costs of international transportation. [Organization for Economic Cooperation and Development, *Service Providers on the Move* (Paris: OECD, 2003), 19].

⁸ The GATS introduced four categories (or modes) of services: Mode 1 deals with the cross-border provision of a service in the absence of physical proximity (that can be facilitated through communications technology and postal infrastructure); Mode 2 involves trade where a consumer moves across the border to receive a service (i.e. tourism); Mode 3 facilitates the delivery of services of foreign-owned companies abroad (i.e. commercial presence); and Mode 4—the type of movement that most closely resembles the kind of “labour mobility” discussed in this paper—addresses the movement of service providers across borders to deliver services (i.e. cross-border movement of natural persons). For more information on the GATS, see: http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm.

⁹ International Organization for Migration, “Migration and the Millenium Development Goals (MDGs)” (workshop, Mainstreaming Migration into Development Policy Agendas, Geneva, Switzerland, Feb 2-3, 2005).

¹⁰ Ibid.

¹¹ Salima Valiani. “Labour and Migration Update,” Canadian Labour Congress, 2007, <http://canadianlabour.ca/updir/MigrantLUpdateDec2007.pdf>.

Canada to the United States represents an ongoing domestic concern.¹² Indeed, a growing literature reveals numerous socio-economic concerns—particularly regarding the feminization of migration and, in some cases, an exodus of highly skilled professionals from developing countries.

In light of ongoing negotiations between Canada and numerous Latin American countries and trading blocs, such as the recently concluded Canada-Colombia free trade agreement, it is timely to ask whether or not the socio-economic implications of temporary labour mobility are being addressed through trade regimes and if so, to what extent.

This policy paper aims to deepen the discussion in Canada surrounding these issues by examining the following four questions:

1. What kind of socio-economic implications does trade-related labour mobility have for migrant-sending countries with relatively low incomes?
2. What are some of the existing models for the temporary movement of labour in the context of free trade agreements in the Americas, and how do these models differ in scope?
3. Do trade agreements that use more liberalized mobility frameworks include more provisions addressing the socio-economic implications of these frameworks (such as economic development and gender equity)?
4. Finally, what more can be done to address some of these implications, within or outside the trade context?

The research methods used include a literature review of labour mobility and trade research, semi-structured interviews with academics in migration studies and Canadian policy makers, and an electronic survey targeting academics, diplomats and policymakers, mainly from Canada but also from Mexico, the United States, and other countries in the region.

¹² Chantal Blouin, “NAFTA and the Mobility of Highly Skilled Workers: The Case of Canadian Nurses,” *Estey Centre Journal of International Law and Trade Policy* 6, no. 1 (2005); Laura Macdonald and Cristina Gabriel, “The hypermobile, the mobile, and the rest,” *Canadian Journal of Latin American and Caribbean Studies* 29, nos. 57/58, 2004, 86; OECD, *Service Providers – Policy Brief*, 5.

I. Socio-economic implications of trade-related labour mobility for low-income migrant-sending countries

In general, the impact of temporary entry provisions in free trade agreements (FTAs) on increasing cross-border flows has been small or even negligible in the Americas region. This is due, in part, to the fact that states have been hesitant to open the door to migration—even of the temporary sort—in the realm of trade.¹³ Governments usually want to keep certain policy arenas carefully behind the closed doors of national sovereignty,¹⁴ and policies that affect immigration regimes are usually at the top of the list.¹⁵

Even where trade agreements facilitate labour mobility, the movement of workers is constrained by national immigration and security frameworks. In Canada, this means that everyone who enters the country must abide by the requirements of the 2002 Immigration and Refugee Protection Act and other relevant immigration and security screening rules. Chilean engineers wishing to work in Ontario temporarily under the Canada-Chile FTA, for example, must still apply for a visa and a work permit¹⁶. Professionals in other occupations may require licensing by the relevant provincial regulatory body in addition to meeting these criteria.¹⁷

Furthermore, one notable study points out that the cross-border movement of workers is much more likely to be facilitated by increasing investment flows, which bolster domestic economic growth over the long term, than it is by mechanisms facilitating mobility in bilateral trade agreements.¹⁸

¹³ “The treatment of labor migration in trade agreements is modest in theory and effect due to the focus on the migration of professional workers, which is often accommodated in pre-existing national migration legislation”. [Kevin O’Neil, Kimberly Hamilton, and Demetrios Papademetriou, *Migration in the Americas* (Geneva: GCIM, 2005), 30].

¹⁴ Charles Keely, “Globalization Transforms Trade-Migration Equation,” Migration Policy Institute, 2002, <http://www.migrationinformation.org/feature/display.cfm?ID=73>.

¹⁵ This lack of political will to liberalize labour mobility even marginally is what Lant Pritchett refers to as “Everything but Labor Globalization.” (Pritchett, *Let Their People Come*, 30).

¹⁶ Often referred to as “behind the border” immigration regulations.

¹⁷ Notably, however, Chapter H and its annex of the Canada-Chile FTA includes provisions with an aim to facilitate licensing and accreditation procedures between Chile and Canada, including developing mutually acceptable standards and criteria for licensing and certification of professional service providers (Government of Canada, “Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile,” 5 July 1997, *Canada Treaty Series*, 1997/50).

¹⁸ See Nicolas Duval-Mace, “Canada-US Labour Market Liberalization and Bilateral Trade Agreements” (Master’s research essay, Norman Paterson School of International Affairs, Carleton University, 2006).

Nevertheless, small flows do not necessarily imply small implications for the countries involved, especially when temporary flows become permanent. This may be particularly so for Latin America and the Caribbean.¹⁹ And while the net impacts of labour outflows will of course depend on each specific country context, it is possible to briefly identify a few important implications and/or potential risks by drawing on the literature on trade and labour migration.

Economic Implications

The economic implications of trade-related mobility for migrant-sending countries are both positive and negative. First, the literature on GATS Mode 4 is useful in understanding some of the positive economic implications that can result from trade-related labour mobility. The OECD points to four likely economic impacts, given the right country conditions:²⁰ 1) reduced pressure on labour markets and wages (such as where the number of people trained for certain occupation exceeds the absorptive capacity or local labour market needs; 2) increased domestic financial inflow (such as compensation for employees and remittances); 3) increased human capital (such as through new language abilities or skill sets acquired abroad); and 4) gains for domestic businesses (such as facilitating the entry into new markets).²¹

Second, owing to the fact that workers eligible for most work opportunities abroad via trade agreements are considered “highly skilled” workers, there is a real risk that the economic development of migrant-sending countries may be adversely affected if their nationals take advantage of this mobility. Without rehashing a discussion of the vast “brain drain” literature, suffice it to say that low-income countries often face productivity losses, low returns from

¹⁹ As one WHO report puts it, labour migration—temporary or not—is still “tantamount to a loss of human capital” for the sending economy [Rudolf Adlung and Antonia Carzaniga, “Health Services under the GATS,” *Bulletin of the World Health Organization*, 79, no. 4 (2001), 362]. See also: Adela Pellegrino, *Migration from Latin America to Europe: Trends and Policy Challenges* (Geneva: International Office for Migration, 2004), 40; Caglar Ozden, “Brain Drain in Latin America,” *UN Expert Group Meeting on International Migration and Development in Latin America and the Caribbean*, paper 10 (New York: UN Population Division, 2006), 11.

²⁰ Although the OECD report does not explicitly state these items in a list, a careful reading of the narrative allows the reader to conclude that, at minimum: a reasonable level of economic development that facilitates competition in the global marketplace, a reasonable level of specialization of the labour market in service sectors, a reasonable abundance of labour in these service sectors, and a regulatory environment that would not require much adjustment, would make a country more likely to reap these benefits of liberalizing Mode 4 (OECD, *Service Providers*, 15-17).

²¹ OECD, *Service Providers*, 20-25.

public investments in public education, and losses in fiscal tax revenue due to out-migration.²² Recent research by Lindsay Lowell et al. (2005) concludes that the high rates of migration of college graduates have had adverse effects on GDP growth for 21 developing countries, including Latin American ones.²³ Losing highly skilled workers may also have a negative effect on the quantity and quality of public services such as health and education.²⁴ When we consider that between 15 and 20 per cent of degree holders from Mexico and Central America—and more than 80 per cent of their counterparts born in Haiti, Jamaica, Grenada, or Guyana now live abroad—it becomes obvious that this is a problem of considerable scale in the Americas²⁵.

Third, because trade agreement labour mobility provisions address cross-border movement of a *temporary nature*, there is reason to expect that these negative implications can be mitigated to some degree.²⁶ Under Mode 4, for example, most service providers move for a time period between just three to six months. According to a growing literature, this type of “brain gain/circulation”²⁷ can lead to diverse benefits, including:

- Human capital investments through work and/or work-related experience (i.e. educational upgrading)
- Transfer of skills upon return to domestic labour market
- Enhanced trade and business linkages between country of origin and destination, such as through foreign direct investment
- Transnational professional network formation, such as Colombia’s Red CALDAS in the science and technology field
- Spill-over effects from outsourcing (e.g. India’s boom in information technology and communications)

²² “Out-migration” refers to both temporary and permanent flows. For more discussion of the effects of brain drain, see Dhananjayan Sriskandarajah, *Migration and Development* (Geneva: Global Commission on International Migration, 2005).

²³ Lindsay Lowell and S. Martin, “Research on Migration and Development,” *Fourth Coordination Meeting on International Migration*, paper 15 (New York: UN Population Division, 2005), 3-4.

²⁴ Organization for Economic Cooperation and Development, *Trade and Migration: Building Bridges for Global Labour Mobility* (Paris: OECD, 2004), 89; see also Kim Van Eyck, *Women and International Migration in the Health Sector* (Ferney-Voltaire: Public Services International, 2003), 15.

²⁵ Pablo Fajnzylber and J. Humberto López, *Close to Home: The Development Impact of Remittances in Latin America* (Washington D.C.: World Bank, 2007), 10.

²⁶ OECD, *Trade and Migration*, 3-4

²⁷ Ozden, “Brain Drain,” 10.

Like permanent migration, temporary migration usually contributes to remittance²⁸ flows that may bolster the migrant-sending country's economy. While studies suggest that household remittances of permanent migrants diminishes over time,²⁹ it would seem logical that if migration is temporary (or circular), remittances might be maintained and more stable over the long term.³⁰

On the other hand, the net effects that remittances have on economic development outcomes in Latin America (especially in Mexico and El Salvador) are mixed.³¹ As remittances are essentially private monetary flows, it would also be unwise to consider remittances as a substitute for investment and/or economic development efforts. Moreover, studies comparing Latin American migration to the United States to flows from other migrant-sending regions conclude that brain circulation is in fact *not* the predominant model for Latin America.³² A slippery slope from temporary to permanent status is another real concern. In the United States, about half of all workers who enter the country under a temporary highly skilled worker category ultimately remain in the country as permanent residents.³³ Many also argue that “a transnational global workforce”³⁴ seems to be emerging in certain sectors such as information and communications technologies, suggesting that workers may also exercise their prerogative to move on to a third country rather than return home. In sum, there is no guarantee that the supportive economic implications of FTA-facilitated “temporary” migration will outweigh the negative economic implications,³⁵ which means that there is

²⁸ Remittances, as defined by the OECD (in *Trade and Migration*, 90) is “the portion of an international migrant’s earnings that is sent back from a host country to his/her country of origin.”

²⁹ Piyasiri Wickramasekara, *Policy Responses to Skilled Migration: Retention, Return and Circulation*, (Geneva: International Labour Organization, 2003), 8.

³⁰ The author could not find any studies that compared the remittance patterns of temporary contract workers or guest workers with those of permanent immigrants. However, discussions with experts were inconclusive. Some suggest that there are no significant differences between remittance flows between “temporary” and “permanent” migrants—keeping secondary factors static, both would continue to send money to relative households or home communities in the long run (7 to 10 years).

³¹ For example, global studies have found that highly skilled migrants remit less of their incomes than do migrant workers in lower-skilled occupations. (Lowell and Martin, “Research on Migration and Development,” 3).

³² Adela Pellegrino, “Trends in Latin American Skilled Migration.” *International Migration* 39, no. 5, Geneva, 2001, 119.

³³ Adela Pellegrino and Jorge Martínez Pizarro, *Una aproximación al diseño de políticas sobre la migración internacional calificada en América Latina* (Santiago: Comisión Económica para América Latina y el Caribe, 2001), 14. For a high income country like Canada, the proportion is lower but still important. For instance, between 1989 and 1996, 5 to 13 per cent of temporary Canadian residents changed their status to become permanent Canadian residents (Duval-Mace, *Canada-US Labour*, 36.)

³⁴ OECD, *Trade and Migration*, 93.

³⁵ For a Canadian case study arguing this point of view, see Blouin, “NAFTA and the Mobility,” 11-22.

support for the argument that trade agreement negotiators should proactively address the risks of mobility provisions within the trade framework.

Social Implications

Whether or not migrant workers and their families are entitled to social welfare benefits, and whether or not family reunification is allowed, are important issues pointed to in the literature³⁶ as well as in discussions between the author and migration experts (mainly in relation to guest worker programs). An additional concern is that social security contributions in destination countries and the non-portability of pension and other social contributions in sending countries create a double taxation burden on foreign workers. This burden may reduce both the potential amount of remittances that can be sent home and saved, and the probability that the worker will return home at all.³⁷

Workers who leave home temporarily using FTA temporary entry provisions are usually not entitled to social security benefits—at least not within a trade framework. However, higher-skilled workers often have *de facto* advantages over lower-skilled workers (they may pay into a private company pension, where contributions are possible regardless of country of employment) as well as legal advantages (they are entitled to bring their family and spouses with them during the duration of a temporary contract abroad).

Gender Equity

More frequently than ever, women are on the move seeking economic opportunities across borders. In Latin America and the Caribbean, the number of female migrants rose from 46.8 per cent of migrants in 1970 to 50.2 per cent in 2000.³⁸ Contrary to popular misconception, international migration of women is *not* restricted to low-skilled occupations. In fact, Canadian studies find that, in comparison to men, schooling is more strongly associated with

³⁶ There are many other important social implications of temporary labour migration, such as the effects on domestic labour unions, and the impact on domestic wages and other structural considerations (i.e. the changes in the number of contract positions in domestic labour markets). As this has been covered in-depth elsewhere, we do not attempt to examine these implications here. Heather Gibb, “Temporary Foreign Worker Programs: Opportunities and Challenges” (Workshop paper, Barbados and Jamaica, May 7-8 and 10, 2007); Van Eyck, *Women and International Migration*, 15.

³⁷ Holzmann, *Portability Regimes*, 3-4.

³⁸ Irena Omelaniuk, *Gender, Poverty Reduction and Migration* (Washington, D.C.:World Bank, 2002), 2.

the international migration of women.³⁹ As migration is a highly gendered process where men and women often experience migration differently, there are implications that come along with this growing trend.

Amid the many important questions in this research field, we want to draw attention to links between FTA labour mobility clauses and gender equity, “the process of being fair to women and men,” as defined by Status of Women Canada.⁴⁰

The first point to note is that women may have less access than men to the temporary entry options found in FTAs, because gendered specializations continue to exist in many labour markets, particularly in health and nutrition, library science, social services,⁴¹ and domestic work.⁴² According to the Secretariat of the International Labour Cooperation Agreement, the occupations most frequently held by women in North America (Canada, the United States, and Mexico) fall into the services sector, particularly in health, education and retail.⁴³ While research/education and health fields are commonly covered in FTAs, a broader cross-sector of lower-skilled services is not, suggesting that if FTAs provided a broader scope of temporary entry they would be more equitable for both men and women. Cristina Gabriel and Laura Macdonald support these observations in a separate report, arguing that the selection of NAFTA professional categories “virtually guarantees that only nationals of a particular class within each member country will potentially be able to avail themselves of these provisions.”⁴⁴

Nevertheless, as there are large discrepancies in terms of where women are working within the region, it is impossible to generalize. For instance, there is indeed a significant discrepancy in the percentage of women working in professional occupations between Canada (51 per cent) and Mexico (38 per cent). At the same time, however, in many Latin

³⁹ Andrew R. Morrison, Maurice Schiff, and Mirja Sjöblom, *The International Migration of Women*. (Washington, D.C.: World Bank, 2007), 5.

⁴⁰ Equity, which also involves a sense of a level playing field, can ultimately lead to equality—linking the two concepts of equality and equity [Status of Women Canada, *Gender-Based Analysis: A guide for policy-making* (Ottawa: Status of Women Canada, 1998), 3].

⁴¹ Chantal Blouin et al. *Engendering Canadian Trade Policy: A Case Study of Labour Mobility in Trade Agreements* (Ottawa: Status of Women Canada, 2004), ch.2.

⁴² North-South Institute. *The World Trade Organization, Gender Equality and Trade*, North-South Institute, 2003, <http://www.nsi-ins.ca/english/publications/wto.asp>.

⁴³ In Canada and the United States, almost 8 in every 10 women who participate in the labour force work in services. For a definition of these sectors, see María Elena Vicario, *The Employment of Women in North America* (Washington D.C.: Secretariat of the Commission for Labour Cooperation, 1996).

⁴⁴ Macdonald and Gabriel, “The Hypermobile,” 85.

American countries women are at par with men (or even surpass men) in terms of representation in highly skilled occupations.⁴⁵

It should also be noted that a gender analysis of NAFTA by Chantal Blouin et al. argues that women may be marginalized in certain trade-related mobility categories, such as traders and investors, not because they do not work in these fields, but because they are over-represented in self-employed and/or small- and medium-size business.⁴⁶

A probably more significant issue than equal opportunity to access trade-related mobility clauses in the Americas is the disadvantages facing the spouses or partners of foreign workers in gaining employment in the host country. With regard to legal migration flows, Latin American women remain disproportionately represented as the spouses of principal migrants as compared to men (although this is becoming less usual).⁴⁷ Women in such a predicament often have no recourse to apply for work despite the length of their stay abroad. Also of concern are devalued foreign credentials, gender (and/or ethnic) discrimination in countries of destination, and situations of dependence of spouses on foreign workers (i.e. for legal residence).⁴⁸

On the positive side, migrant women can play an important role in eradicating poverty in their country of origin.⁴⁹ Preliminary research indicates that women are more likely than men to use remittances in ways that increase family well-being, such as investing in better

⁴⁵To give another example, in 2002 Costa Rican women occupied 45 per cent of professional and technical positions and 30 per cent of legislative, senior official and managerial positions, in part because 20.5 per cent of women in the workforce had some university instruction, compared to 11.4 per cent of men. (United States Trade Representative, *CAFTA Labor Rights Report* [Washington, D.C.: USTR, 2005], 28).

⁴⁶ While there is nothing in the NAFTA that excludes the self-employed from being covered under any of the categories of professionals, the author tends to agree with Blouin that these professionals likely encounter additional difficulties in accessing the mobility mechanisms offered under the NAFTA. See Blouin et al., *Engendering Canadian*, ch.2.

⁴⁷ With some notable exceptions. In the Caribbean, for example, government census figures indicate that women leaving home as principal migrants have outnumbered men since the 1990s. See Jorge Martínez Pizarro, *El mapa migratorio de América Latina y el Caribe, las mujeres y el género* (Santiago: Comisión Económica para América Latina y el Caribe, 2003), 26. Also see Monica Boyd, "International Labor Migration of Women: Past, Present and Future Challenges in North America and Europe," *Migration and Mobility and how this movement affects Women*, paper 2 (New York: United Nations Division for the Advancement of Women, 2003), 2.

⁴⁸ Van Eyck, *Women and International Migration*, 15; also see Boyd, "International Labor Migration."

⁴⁹ For an interesting case study of the complex (positive and negative) gendered impacts of migration, including on gender equity, see Denise Paiewonsky, "Gender Remittances and Development in the Dominican Republic," in *Female Migrants: Bridging the Gaps Throughout the Life Cycle*, eds. United Nations Population Fund and International Organization for Migration (New York/Geneva: UNFPA/IOM, 2006), 67-72; see also Omelaniuk, *Gender*, 15.

housing, education and health care,⁵⁰ and even that they remit more than men, relative to their earnings.⁵¹ These studies highlight the opportunities, such as equalizing gender power relations among family members, which ultimately emphasize the need for women to have equal access to labour mobility avenues—including those made available in trade regimes.

In sum, we see that a growing body of literature reveals that both gender and socio-economic implications arise from including temporary entry provision in trade agreements.

II. Overview of labour mobility in regional trade agreements in the Americas

This section gives a brief overview of three trade-related labour mobility models in Latin America and the Caribbean. Cooperative agreements facilitating temporary mobility range from very restrictive to very liberal models. Globally, liberal agreements like the European Union offer complete market access and freedom of movement, not only for workers, but for all citizens - with some restrictions such as access to employment in the public service.⁵² On the conservative side, there are agreements like U.S.-Jordan that offer limited measures for mobility while reinforcing existing national policy frameworks on migration. In the Americas, we selected three case studies of FTAs that illustrate the extent of this liberal-to-conservative scale: the CARICOM Single Market Economy, NAFTA and DR-CAFTA.

The Caribbean Community (CARICOM): Access to groups beyond service suppliers, including a framework for further liberalization

CARICOM's Single Market Economy (CSME), comprised of 12 states,⁵³ came into effect in January of 2006, and represents the latest of a series of agreements between Caribbean Commonwealth countries. Still a work in progress, states are working toward implementation of the basic framework by 2015.

⁵⁰ S.K. Guha, "UNIFEM: A Brief on Empowering Women Migrant Workers," in *Female Migrants: Bridging the Gaps Throughout the Life Cycle*, eds. United Nations Population Fund and International Organization for Migration (New York/Geneva: UNFPA/IOM, 2006), 130.

⁵¹ Inter-American Dialogue, "Conference Report," 13.

⁵² Yet the EU example is clearly a model of regional integration that goes beyond a simple trade agreement.

⁵³ CARICOM member states are: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, and Trinidad and Tobago. Jamaica and Barbados founded CSME in 1997, and all other member states joined between 1997 and 2006.

Chapter 3 of the Treaty of Chaguaramas, first created in 1973 and recently incorporated into the CSME Revised Treaty in 2006, is the critical document guiding rules on the movement of workers. Chapter 3, which “all member states have enacted into domestic law,”⁵⁴ enshrines freedom of labour movement for two broad categories of workers in the CARICOM community:

1. wage-earners, including university graduates or holders of associate degrees (such as nurses), media workers, athletes, musicians, artists and artisans, as well as the self-employed who move to another member state for the purpose of remunerated employment; and
2. non-wage earners or temporary service suppliers who engage in services in another member states but who are not seeking permanent employment.⁵⁵

Other occupations, such as domestic workers and hospitality workers, are currently being considered for inclusion in the CSME.

For workers who fall into these categories, national treatment is guaranteed and they are exempt from having to apply for work permits.⁵⁶ Before leaving their country of origin, however, wage earners must apply for a “Skills Certificate” from their Ministry of Foreign Affairs or other corresponding ministry. Service providers moving on a temporary basis must apply for a “Certificate of Registration” as a CARICOM service provider with the Ministry of Trade or other officially designated body.⁵⁷ Once this paperwork is accomplished, (which, in the case of service providers, must take no longer than 10 working days), workers have the right to enter another CARICOM state, either to provide the service for an undetermined—but temporary—amount of time, or to reside and work indefinitely. Whereas in the past CARICOM nationals had to secure work before they could apply for a work permit, now workers can spontaneously move to other member states to look for jobs with a certificate alone.

⁵⁴ Steven MacAndrew, Specialist on the Movement of Skills with the CSME Labour Unit, personal communication, May 5, 2008.

⁵⁵ CARICOM, “Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy” 5 July 2001, Chapter 3, Arts. 33, 37 and 46. The freedom of establishment for artisans, associate-degree holders, non-graduate teachers and nurses was added in 2007.

⁵⁶ MacAndrew, personal communication, May 5, 2008.

⁵⁷ Ibid.

Approximately 4,000 CARICOM nationals have availed themselves of Skills Certificates since 2006, indicating significant interest in this avenue for mobility.⁵⁸ Applications have purportedly been made in all fields covered under the agreement. (Important occupations highlighted in conversation with CARICOM staff include medical professionals, as well as research and analysis positions.) The most significant migrant-sending states are Guyana and the smaller island states, while the most popular migrant-receiving countries tend to be Jamaica, Barbados and Trinidad and Tobago. Despite recent reports suggesting that CARICOM nationals may not be able to access mobility provisions due to uneven, or an overall lack of, implementation,⁵⁹ others emphasize that there has been remarkable progress in so little time, referring to current implementation issues only as “teething problems.”⁶⁰

Removing all obstacles to intra-regional labour migration,⁶¹ harmonising social services, establishing common professional accreditation standards, and ensuring the transferability of social security benefits for workers, are all long-term objectives of the CARICOM community and are addressed in the agreement itself.⁶² While respecting each country’s sovereignty, this model is a comparatively liberal one in terms of human mobility and extends beyond a simple trade relationship. While it might be a stretch to argue that this model could be applied to North America under the Security and Prosperity Partnership, as some scholars argue,⁶³ it is nevertheless an interesting model that arguably exceeds any other regional integration effort in the Western Hemisphere.

NAFTA: Access to certain groups beyond service suppliers, but with unequal rules facing different member states

In the Americas, one of the first trade agreements⁶⁴ to facilitate labour mobility between

⁵⁸ Although the number of issued certificates was around 6,000, 4,000 is closer to the actual number of workers, due to duplicates and unused certificates (MacAndrew, personal communication, May 5, 2008). The CSME website also has publicly available estimates.

⁵⁹ O’Neil, Hamilton and Papademetriou, *Migration in the Americas*, 31

⁶⁰ MacAndrew, personal communication, May 5, 2008.

⁶¹ Following a decision made by CARICOM heads of state in St. Vincent and the Grenadines in 2007- instigated by proposals from both unions and industry—states committed to allow all CARICOM nationals to reside freely in any member state by the end of 2009. It should also be noted that this goes beyond labour migration to freedom of movement in general. For instance, there are discussions regarding a potential CARICOM passport and an electronic identification card for intra-regional travel, among other initiatives (MacAndrew, personal communication, May 5 2008).

⁶² CARICOM, “Revised Treaty of Chaguaramas,” Chap. 3, Arts. 35, 45, and 46.2.

⁶³ Duval-Mace, *Canada-US Labour Market*, 13.

⁶⁴ NAFTA’s labour mobility framework, however, is thought to be modelled after the 1988 Canada-U.S. Free Trade Agreement (Macdonald and Gabriel, “The Hypermobile,” 74).

more than two countries was the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994.

NAFTA's Chapter 16 facilitates the movement of four broad categories of workers: "business visitors," "traders and investors," "intra-company transferees," and "professionals" engaging in business activities.⁶⁵ The chapter also includes a list of 63 professional occupations (Appendix 1603.D.1) that cover a wide range of occupations, from architects to zoologists.⁶⁶ The highest degree of mobility applies to business visitors, who are exempt from both labour certification and work permit requirements,⁶⁷ provided that they do not intend to establish permanent residency and are not paid for their work in the host country. (Categories other than business visitors still require work permits.)

The U.S. provides a specific visa (TN) for Canadian and Mexican workers in highly skilled occupations who apply to enter the United States using NAFTA categories. To date, however, net numbers of TN visa holders appear to be low. According to the latest available numbers (2006), only 64,633 Canadians and a much lower number of Mexicans (9,247) entered the United States under this mechanism.⁶⁸

Flows to Canada are even smaller: in 2003, only 10,758 Americans and 235 Mexicans arrived in Canada using NAFTA entry provisions in 2003.⁶⁹ Nevertheless, there is reason to believe that the trade agreement has facilitated higher levels of cross-border movement in North America. In 1988, the year before the Canada-U.S. Free Trade Agreement came into effect, only 298 U.S. citizens entered Canada temporarily under managerial and professional categories.⁷⁰ While the genesis of NAFTA's labour mobility provisions lie in the fairly close

⁶⁵ See Government of Canada, "North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America," 1 January 1994, *Canada Treaty Series* 1994/2, Chaps. 12 and 16.

⁶⁶ Chapter 16 defines temporary entry as "entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence" (Canada, "NAFTA," Chap. 16, Art. 1608).

⁶⁷ Canada, "NAFTA," Chap. 16, Arts. 1603.1 and 1603.4.

⁶⁸ Statistics provided to the author by the Office of Immigration Statistics of the U.S. Department of Homeland Security. Additionally, TN visas are only issued to nationals from Canada or Mexico applying to enter the U.S. – not for the other NAFTA member states. However, movement is facilitated into Canada under NAFTA by waiving the need for a labour market opinion for foreign temporary workers

⁶⁹ More recent figures were not forthcoming from Citizenship and Immigration Canada despite repeated requests.

⁷⁰ Duval-Mace, *Canada-U.S. Labour Market*, 69.

historical ties between the three countries of North America, until recently the framework has been unequally structured in terms of who gets to access U.S. labour markets.⁷¹

Nevertheless, Chapter 16 of NAFTA is a conservative or “middle-of-the road” model in terms of the scope of its temporary entry provisions. It also appears to have become a much replicated labour mobility framework in the Latin American region,⁷² so there is a significant need to monitor the implications associated with this model.

DR-CAFTA: Limited temporary access provisions for service providers

The recently (re)created DR-CAFTA agreement⁷³ involves trade between the United States, five Central American countries (Nicaragua, El Salvador, Costa Rica, Guatemala and Honduras) and the Dominican Republic. According to a recent World Bank report,⁷⁴ the agreement covers “services and some disciplines that most Central American countries had not included in previous trade negotiations, including intellectual property rights, government procurement, e-commerce, labor and environment.”⁷⁵ Chapter 11 of the agreement deals with cross-border trade in service suppliers and professional services, the scope and coverage of which is found in Article 1.⁷⁶ Due to staunch opposition from the U.S. Congress, this chapter does not include temporary movement of natural persons along the lines of GATS Mode 4.⁷⁷ Notably, no list of professional occupations similar to those of NAFTA or CSME

⁷¹ While no restrictions exist for Canadians entering the U.S. using TN visas, for instance, the number of Mexican applicants who could work temporarily in the U.S. was limited by a quota of 5,500 per year until 2005.

⁷² Sebastián Sáez, *Trade in services negotiations: a review of the experience of the United States and the European Union in Latin America* (Santiago: Comisión Económica para América Latina y el Caribe, 2005), 19.

⁷³ The Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA), had been precursor trading blocs between the U.S. and the five Central American countries prior to 2004, when the CAFTA was signed. The Dominican Republic joined the trading group in 2004, (making it the DR-CAFTA). As of May 2008, the U.S. Congress approved the trade agreement with all participating countries except Costa Rica, the only country for which the agreement has yet to come into effect.

⁷⁴ World Bank, *DR-CAFTA: Challenges and Opportunities for Central America* (Washington, D.C.: World Bank, 2005), 31.

⁷⁵ O’Neil, Hamilton, and Papademetriou, *Migration in the Americas*, 30.

⁷⁶ The DR-CAFTA agreement defines “Professional services” as a service provided by a person with “postsecondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party”, excluding services provided by trades-persons or vessel and aircraft crew members.” Service supplier is simply defined as “a person of a Party that seeks to supply or supplies a service” (United States Trade Representative, “The Dominican Republic-Central America-United States Free Trade Agreement,” 5 August 2004, TIAS unassigned, *United States Treaties and Other International Agreements*: Chapter 11, Article 11.14).

⁷⁷ In fact, DR-CAFTA negotiations originally included movement of natural persons, but moved backwards compared with the agreements established by the United States with Singapore and Chile, where the issue was

is provided; in fact, a separate “understanding regarding immigration measures” was signed with the United States, stipulating that domestic immigration rules would not be subject to the trade agreement.⁷⁸ This is interesting because the DR-CAFTA sections dealing with labour mobility do not extend beyond the framework found in existing national legislation on temporary entry of highly skilled workers in each of the member countries.

The provisions on mobility in the DR-CAFTA are also generally hortatory, limiting the extent to which State parties are legally required to implement parts of the framework. Notably, in Annex 11.9 (1), each state is encouraged—but not obliged—to develop mutually acceptable standards for licensing and certification of professional service suppliers, and also encouraged to enable temporary licensing of professional service suppliers (Annex 11.9 (4)). Local presence of a firm is not a requirement, economic needs tests are waived, and quotas or other numeric limitations of service providers allowed entry are forbidden (Articles 11.4, 11.5). This notwithstanding, there are significant restrictions with regard to each country’s non-conformity with these obligations (Article 11.6, and Annexes I and II) weakening the overall labour mobility framework (should such a framework exist, which is itself a point of contention). In sum, the DR-CAFTA is a good example of a regional trade agreement that is very restrictive in terms of the scope and nature of mobility.⁷⁹

The author is still awaiting official U.S. statistics on the number of workers (if any) who have applied to enter the United States as service suppliers or professionals under the agreement, and in fact, discussions with U.S. authorities have led the author to believe that this is not being tracked at all. Therefore, no conclusion can be drawn regarding the degree to which the DR-CAFTA facilitates cross-border movement. Nevertheless, it is probable that the number is small owing to the limited measures facilitating mobility, as well as the fact that any de facto liberalizing of skilled mobility is contingent on multilateral processes that have yet to take place (i.e. agreeing on mutually acceptable standards for licensing of professionals). In any event, when the mobility-related clauses of the FTA are implemented at some point in the future, there will likely be more U.S. nationals entering the Central American countries party to the agreement to provide services than the other way around.

considered [Salomon Cohen, *The Effects of the Free Trade Agreement between Central America, the United States and the Dominican Republic in Central American Migratory Processes*, (Guatemala: International Organization for Migration, 2005), 8].

⁷⁸ USTR, “DR-CAFTA,” Understanding Regarding Immigration Measures.”

⁷⁹ See USTR, “DR-CAFTA,” Chap. 11.

Following this brief overview of three regional trade agreements, it must be said that a few conditions make it likelier that the scope of the cross-border provisions will be far-reaching: first, that the countries party to the agreements share geographic proximity; second, that they share relatively similar levels of economic development;⁸⁰ and finally, that shared cultural and historical experiences might become a factor. (The first two hypotheses are also supported by OECD studies.)⁸¹ Trade in services also only seems to have recently become an agenda item in the trading regime, following the maturation of a prior trading relationship of reasonable length.

III. Analysis of the labour mobility content of FTAs

We turn now to the paper's third research question: whether or not trade agreements that employ more liberalized mobility frameworks also include more provisions addressing the potential socio-economic implications. This question was addressed by examining the content of the three trade agreements (NAFTA, CARICOM's CSME and DR-CAFTA) for any provisions that might address some of the diverse concerns identified in the first section of this paper.⁸² *Annex 1* of this paper provides a list of the development, social and gender issues taken into consideration. *Annex 2* lists the provisions of the different agreements that address these considerations. While this is evidently not a comprehensive study, it is a useful first step which should be followed by more in-depth work.

Our examination shows that all three FTAs included some kind of provisions for the facilitation of the cross-border movement of workers, as well as diverse measures for the ongoing liberalisation of such movement.⁸³ Some of the common measures included in the agreements are: negotiating or preparing to negotiate standardized accreditation and licensing procedures in specific sectors; prohibitions on any new restrictions on the provision of services or other sectors; and creating new legislation or bilateral agreements reducing double

⁸⁰ Note that even within the NAFTA, Mexican service providers face additional barriers in entering the U.S. as compared to Canadians, and it is safe to say that this due in no small part to the U.S. government's concern over the differing level of development and incomes between the two states.

⁸¹ Organization for Economic Cooperation and Development, *Labour Mobility in Regional Trade Agreements* (Paris: OECD, 2002), 4.

⁸² The chapters covering trade in services, freedom of establishment (or relevant activities allowing for cross-border movement of workers) of the three trade agreements were analysed. Relevant side agreements relating to labour standards and social security were also analysed.

⁸³ Although, as previously mentioned, the provisions in the DR_CAFTA are largely non-obligatory.

taxation of firms and workers working in more than one country. Furthermore, many agreements contain exceptions for critical national industries.

On the other hand, as noted in *Annex 2* of this paper, specific provisions protecting the national provision of public goods and services (e.g. public health) were not included in any FTA. Likewise, mechanisms to monitor the impact of the FTA's temporary entry provisions on these types of public goods and services were not included.

However, there is some reason to believe that the signatory governments were nevertheless concerned about potential impacts on critical sectors. The CARICOM agreement includes provisions for member states to opt out of or restrict the implementation of many aspects of the agreement if some types of adverse economic effects emerge (see *Annex 2*); these aspects include the movement of workers or service providers.⁸⁴ Furthermore, in one instance (DR-CAFTA), a member country issued a reservation to limit the liberalization of cross-border services among medical professionals—yet in this case it was not to prevent professionals from leaving the country, but rather to limit the number of those coming in.⁸⁵ Finally, governments may have addressed some of these concerns through scope (i.e. which occupations were covered under the temporary entry sections and which weren't). The Canadian government, for example, refused to include medical doctors in the Canada-U.S. Free Trade Agreement (as well as in its successor, NAFTA) following consultations with the Canadian Medical Association and other groups representing doctors who expressed the view that to protect public health care at home, it would be better to avoid the risks of a wider scope in the agreement.⁸⁶ It should be noted, however, that these tactics for addressing FTA implications on public goods do not negate the utility of including separate provisions in an agreement; these would point out an unequivocal commitment on the part of member states to protect these goods.

In terms of general economic development concerns, there are numerous provisions in the CARICOM agreement urging states to give due consideration to less developed countries.

⁸⁴ CARICOM, "Revised Treaty of Chaguaramas," Chap 3. Art. 47.

⁸⁵ Honduras issued a reservation in 2004 under the DR-CAFTA framework that no more than 5 per cent of its nurses "employed at a given medical facility" should be foreign workers. [USTR](#), "DR-CAFTA," Letter on nurses.

⁸⁶ In fact, some experts suggested to the author that it is Canadian practice to keep public health services and many social services off the negotiating table during free trade talks for these reasons.

These provisions could conceivably be invoked by a member state if it is concerned with high levels of cross-border migration following the ratification of a FTA. However, no clear indication as to what sort of due considerations should be provided by other member states is given, limiting the utility of these provisions.⁸⁷

Indeed, the overall content of the three FTAs in question is lacklustre when it comes to proactively mitigating negative economic development impacts resulting from worker migration (see *Annex 2*). No provisions were found introducing mechanisms to monitor the *effect over time* of the trade agreement's labour mobility provisions on economic development prospects for migrant sending countries. While all three FTAs contain provisions that create permanent monitoring bodies, (such as the NAFTA Temporary Entry Working Group),⁸⁸ these official bodies are primarily concerned with the effective implementation of the liberalization process and improving the administration of the agreement's obligations, not with identifying its adverse impacts. The lack of an appropriate body to deal with this type of monitoring within a trading regime is a concern. It also points to the need for greater inter-departmental and civil society communication and consultation in the preparatory stages of free trade negotiations (for example with domestic international development agencies and relevant agencies concerned with economic growth and stability).

In contrast to development concerns, social concerns are addressed more concretely in these agreements, and especially in their side agreements. Again, CARICOM is the most progressive FTA of the three in this respect. Under the CSME, eligible workers (i.e. service providers and highly skilled migrant wage-earners) have the right to move with their family members and dependants, who are, in turn, eligible for short-term social security benefits

⁸⁷ In fact, the Treaty of Chaguaramas includes an entire chapter (Chap. 7) on "poor country" considerations, which might open avenues for monitoring and addressing complaints from a member state about possible problems created by high levels of emigration. Of particular interest are Arts. 148 and 149, which justify delaying the implementation of the right of establishment and liberalization of services because of "peculiar economic vulnerability of disadvantaged countries in the Community" (CARICOM, "Revised Treaty of Chaguaramas." Chap. 3).

⁸⁸ Art.1605 of the NAFTA establishes a trilateral Temporary Entry Working Group, consisting of immigration and other relevant officials that meet on a yearly basis to monitor this aspect of the FTA Canada, "NAFTA"). DR-CAFTA has consultation and monitoring mechanisms for labour standards and financial services, but not for temporary entry in particular (USTR, "DR-CAFTA," Chap. 12, Arts. 16 and 17; and Chap. 16: Arts. 4,5 and 6). The Council for Trade and Economic Development (COTED) of the CSME is the designated body charged with "facilitating" the liberalisation of cross-border labour mobility in the CARICOM region; its mandate does not include monitoring the potential impacts of such mobility (CARICOM, "Revised Treaty of Chaguaramas," Art. 15).

according to each domestic legal framework.⁸⁹ Significantly, there is also a CARICOM Agreement on Social Security. Article 17 of this treaty calls on member states to take into account the "totalisation of contribution periods" made to individual social security schemes, the objective being to ensure that all migrant workers (or their beneficiaries) receive at least one long-term pension. The agreement is relatively broad in scope, covering pensions for invalidity, disablement, retirement and survivors, as well as death benefits (Article 2), but it excludes unemployment insurance. To date, 11 out of the 12 CARICOM member states have enacted legislation that brings domestic legal frameworks in line with this side agreement.⁹⁰

The NAFTA side agreement on labour rights, the North American Agreement on Labour Cooperation (NAALC), also addresses some social security issues facing temporary migrant workers, albeit much less comprehensively. Article 11, for instance, identifies "migrant workers," "work benefits," and "social security of workers and their families" as activities that require "cooperation," but it is unclear as to whether or not the last two areas apply to migrant workers. Again, social security entitlements for temporary workers remain firmly at the discretion of each member country. It would seem, therefore, that the pressure to address gaps in domestic social security falls onto the shoulders of the Commission for Labour Cooperation and its constituent parts, charged with monitoring each country's domestic implementation of NAALC. While the commission has created guide books informing lower-skilled Mexican workers of their labour rights abroad in the U.S. or Canada, little discussion has taken place regarding the impacts of labour mobility provisions for higher-skilled workers in NAFTA.⁹¹

The DR-CAFTA's sections on cross-border services and labour do not include any reference to social security entitlements for temporary foreign workers. Indeed, judging from the text, member states seemed more concerned with protecting their national pension systems (which

⁸⁹ CARICOM, "CARICOM Agreement on Social Security," 1 March 1996. See also CARICOM, "Revised Treaty of Chaguaramas," Chap 3, Art. 46.2 (iv).

⁹⁰ As an aside, it should be noted that the larger problem for CARICOM countries is the impacts that are being felt from extra-regional migration, not intra-regional migration – particularly the high levels of individuals, usually women, who leave to pursue better economic opportunities in the U.S. Therefore, this analysis should be put squarely into perspective and the need for agreements involving the transferability of pensions with larger migrant destinations is crucial.

⁹¹ Blouin at al., *Engendering Canadian Trade*, 20.

are covered in the agreement as a financial service) from privatization than with social security coverage for their nationals abroad.⁹²

In terms of gender provisions, the results were also disappointing: none of the three FTAs examined put forward measures to facilitate the legal employment of spouses (or partners) of principal temporary entrants (see *Annex 2*). Domestic immigration rules, in Canada and elsewhere, usually allow for the spouses and partners of the principal temporary worker to accompany them to the host country. Fortunately, however, NAFTA stipulates that the Temporary Entry Working Group must discuss the possibility of waiving labour certification tests for spouses on of migrants, and there has been some progress on this issue since then from the U.S. The CARICOM agreement already allows for the authorization of work permits for spouses and partners.⁹³

CARICOM social security coverage is generous⁹⁴ and extends to the self-employed, making it considerably more gender-friendly. Chapter 4 (Articles 53 and 54) of the Revised Treaty of Chaguaramas also include numerous provisions to help support micro- and small-service enterprises, which might also significantly benefit migrant workers, particularly women. Annex 16.5 of the DR-CAFTA stipulates that the Labor Cooperation and Capacity Building Mechanism must meet regularly to discuss, where appropriate, problems relating to gender discrimination and migrant workers. Nothing in the text of any of the three agreements creates institutionalized mechanisms to monitor the gendered impacts of facilitating cross-border labour migration. This is in line with recent research that finds palpable reluctance on the part of trade negotiators, particularly within “hybridized international organizations that adopt soft law models” like the GATS, to incorporate gender as an issue in trade talks.⁹⁵

In sum, while social security coverage is partially addressed in two of the three agreements, development and gender considerations are largely ignored, and when they are mentioned it

⁹² The Dominican Republic stipulates that foreign investors will face special rules regarding investments in their national social security system (see USTR, “DR-CAFTA,” Chap. 7 and Annex 12.9.3 (B)).

⁹³ Article 16.5.2 (c) stipulates that “the Working Group shall meet at least once each year to consider waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year” (USTR, “DR-CAFTA”).

⁹⁴ The CARICOM Agreement on Social Security covers all workers (“insured persons”) who are contributing or have contributed to social security in more than one CARICOM member state. (CARICOM, “Agreement on Social Security,” Art. 3).

⁹⁵ Judit Fabian, “The Legitimacy of Mulier Economicus,” (presentation, North-South Institute, Ottawa, ON, Feb. 7, 2008).

is either (a) as an item for future multilateral dialogue, or (b) in weak or ambiguous language limiting the provision's authoritativeness and ease of implementation. Due to this conclusion, it is difficult to answer the question of whether or not more "liberal" FTAs go to more lengths to address potential implications than do "conservative" models.

This overall lack of specific measures to address the potential development, social and gendered impacts of worker mobility, however, indicates that the agreements fail to integrate these concerns into free trade negotiations. Negotiators could address these concerns in a number of ways, including *scope* (i.e. whether or not temporary entry provisions are included at all, and if so, which occupational sectors as well as which related safeguards to be included should carefully be considered), *effect over time* (i.e. provisions creating institutionalized mechanisms to monitor the agreement's diverse impacts), and as the last resort, introducing mechanisms that allow for *flexibility of implementation* of the agreement when adverse impacts arise.

Why have these impacts not been addressed in the texts of FTAs?

At a time when trade agreements have become so broad in scope, why do these gaps still exist? The author received a blunt answer from one senior World Bank official regarding the GATS Mode 4: when there has been next to no progress in the Mode 4 category in general, why would member states relegate any attention whatsoever to the social implications of such measures? While this argument may indeed be valid with respect to the GATS, where negotiation has been very slow, the question is much more relevant at the regional and bilateral level, where temporary entry provisions are indeed facilitating the cross-border movement of significant levels of workers. The real answer, therefore, likely lies in the normative trade/social dichotomy: to put it simply, trade negotiators often do not recognize that gender inequalities and the gendered division of labour affect the social and economic outcomes of trade policy measures.⁹⁶ The same might be said of not addressing social security and development concerns. At the end of the day, governments sign trade agreements with the objective of facilitating trade in goods, services and foreign

⁹⁶ Americas Policy Group/ Canadian Council for International Co-operation. "Statement on the Proposed Canada-Central America Free Trade Agreement," Canadian Council for International Co-operation, 2003, http://www.ccic.ca/e/docs/003_apg_cafta_pettigrew_statement.pdf.

investment—and net gains are deemed to overcome the potential negative impacts of these agreements.

Nevertheless, there is hope that this situation is slowly changing. There are examples of trading blocs in the Americas that have gone far beyond the three FTAs examined here. For example, the Andean Community of Nations⁹⁷ includes provisions for family reunification for all temporary foreign workers covered by the agreement (which includes agricultural workers), social security for families of all workers, and even measures introducing programs to get returnees to train national workers, in order to facilitate skills transfer.⁹⁸ Closer to home, Canadian officials working on the recently-approved trade agreement with Peru have been championing gender-sensitive measures with their negotiating partners. Indeed, according to officials involved in the negotiation, measures granting work permits to spouses and partners of temporary foreign workers will be included in the text of the agreement.

IV. What countries can do to address these issues

While addressing the development, social and gender concerns directly within the trade agreement framework is a good first step, this is certainly not the only—or even the best—method for mitigating the potential implications of trade-related mobility. In other words, the right to migrate for work through trade-related labour mobility provisions must be accompanied by other non-trade measures in countries that admit significant levels of temporary workers.

There are four main areas in which policymakers in Canada (and elsewhere) can intervene to improve the development, social and gender outcomes of trade-related cross-border movement.⁹⁹

⁹⁷ This trading bloc includes Bolivia, Colombia, Ecuador and Peru (Formerly known as the Andean Community until 1996).

⁹⁸ This last program would be mandatory upon request by their employers or national authorities. Provisions granting migrant workers equal social security benefits to those of national workers were agreed upon as far back as 1977 (O’Neil, Hamilton and Papdemetriou, *Migration in the Americas*, 31).

⁹⁹ The following suggestions were informed not only by the literature but also from survey responses from academics, former public servants, U.N. and development officials, and migration experts – primarily from Canada but also from Mexico, Colombia, Dominican Republic and the United States. This is not a comprehensive or exclusive list of interventions, but rather indicates the most salient conclusions reached during the research of this paper.

1) Improve the domestic immigration framework that applies to temporary foreign workers.

Canada has already taken a few strides in this direction. Citizenship and Immigration Canada's 2001 decision to give the spouses and partners of all temporary foreign workers an "open" employment authorization that legalizes their job search anywhere in the country is a clear example.¹⁰⁰ Canada's gender mainstreaming policy (whereby the Treasury Board screens all new policies using gender-based analysis), is, despite its weaknesses, a step beyond the gender monitoring mechanisms implemented by most other governments, and can be used as a model. National legal frameworks regulating social security are another important area to consider; laws should ensure that temporary workers contributing to domestic pension programs can transfer their benefits, and bilateral social security agreements are a good idea to avoid the double taxation of migrants.¹⁰¹

Licensing and accreditation is another area which governments can not adequately address in FTAs. They can, however, indicate willingness to cooperate with countries party to the agreement to increase standardization, or at least, make the domestic framework transparent, affordable and accessible to newcomers. Ideally, a migrant-friendly domestic legal framework would also be evaluated on an ongoing basis by inter-departmental bodies in order to eliminate incoherent policies and programs affecting migrants and their countries of origin.

*2) Renew efforts to improve responsible recruitment from foreign countries.*¹⁰²

There is a great need for further research and analysis of other policy alternatives, specifically to help prevent potential negative impacts of unscrupulous labour brokers. Suggestions in this area include: designating a government department in migrant-sending countries to be responsible for the recruitment, selection, screening and return of their workers who go abroad temporarily; increasing transparency in recruitment rules and regulations; creating legitimate independent bodies to monitor recruitment practices, developing sector-specific voluntary recruitment codes; and restricting or prohibiting recruitment from certain

¹⁰⁰ This approach has also been championed by Canada in bilateral trade relations with other countries, such as Korea, with which negotiations are still pending.

¹⁰¹ For an interesting study of the range and scope of pension and health care systems available to migrants, see Holzmann, *Portability Regimes*.

¹⁰² These avenues should be country-specific (or bilateral), and, where possible, sector-specific, because migration-related impacts (whether negative or positive) are defined by conditions in individual countries.

occupational sectors altogether. While the United Kingdom’s International Recruitment of Health Workers initiative is often cited as an example of a step in the right direction, prohibiting recruitment in all but a limited number of countries need not be the answer.¹⁰³

3) *Increase monitoring and evaluation of gender, social and development considerations, through, among other mechanisms, multilateral and domestic consultations with stakeholder groups.*

Institutionalized decision-making bodies that collect and analyse information regarding the social and gendered impacts of migration—whether tied to a trade agreement or not—are useful tools that should be mobilized. In the Caribbean, for example, the CARICOM Council on Human and Social Development is tasked with monitoring the region’s social and human development, including issues like access to health services and the employability of youth and women.¹⁰⁴ Although membership in this council is limited to ministers of member states, it is nevertheless an example of a decision-making body that accepts comments and proposals from civil society groups, such as the Caribbean Congress of Labour.¹⁰⁵

Other types of interventions suggested by this research may include an increase in publicly commissioned research of the gendered impacts of trade policy, evaluating the impacts on both men and women,¹⁰⁶ and more government engagement with women’s organizations and gender experts in discussions about trade policy options. Engaging a broad spectrum of citizens’, non-profit, labour, and academic organizations in trade consultations at all stages of migration (e.g. after finalizing and/or ratifying trade agreements, and also in the longer term) is also crucial. These approaches also hold for non-trade labour migration schemes.

4) *Help consolidate stable and prosperous economic conditions in the migrant-sending country, through fair trade rules and aid, but also by capitalizing on diaspora contributions and circular migration.*

¹⁰³ OECD, *Trade and Migration*, 91. For information on England’s Department of Health’s Initiative and how it has been received, see: James Buchanan, *International Recruitment of Health Workers to the UK: A Report to DFID* (London: DFID Health Systems Resource Centre, 2004).

¹⁰⁴ CARICOM, “Revised Treaty of Chaguaramas,” Chap. 2, Art. 17.

¹⁰⁵ It should be remarked, however that these mechanisms are far from perfect. At the time of printing this report, council meeting notes were not publicly accessible, and non-government bodies are rarely proactively invited to participate in or submit comments to the convenors of national consultations.

¹⁰⁶ Survey responses that inform this analysis also indicated a need for further study of the positive implications of well-managed labour migration.

While too many and too broad to cover here, addressing the root causes of migration would go a long way to avoid the need for interventions that mitigate the negative socioeconomic impacts of migration – which, after all, are reactive instead of proactive. Governments are key actors in achieving these goals—through the creation of development- and gender-friendly trade frameworks for mobility and incentives for private sector actors to take corporate social responsibility seriously. While development aid has an important role to play in this respect (for example, helping to provide public goods and services in countries facing high levels of outmigration), it is not a long-term solution. Other concrete proposals for improving trade-related mobility in this area are: expanding financial services available to temporary migrants; lowering the cost of remittance transfers; making work contracts abroad contingent on education or training-related activities (upon return or otherwise); and designing complementary, voluntary arrangements such as worker savings schemes and social fund contributions.¹⁰⁷

Conclusion: The debate on labour mobility and trade continues...

Despite the numerous areas for action that would improve the outcomes of cross-border mobility, the debate on addressing labour mobility in trade regimes will inevitably continue. Demetrios Papademetriou, co-founder of the U.S. Migration Policy Institute, succinctly asks the reader in a 2004 publication: “On NAFTA’s tenth anniversary, one (...) question is still relevant. Are free-trade negotiations and agreements a valid forum for addressing migration *per se*? The NAFTA negotiators’ answer was a very timid ‘maybe’.”

Canadian politicians and senior bureaucrats tend to be of the same mind – that is, undecided. On the one hand, the Hon. Jean-Pierre Blackburn, Canada’s Minister of Labour, was open to increasing avenues for labour mobility when questioned about the inclusion of the issue in Canada’s trade negotiations with Peru last fall.¹⁰⁸ On the other hand, James Sutherland, Director of the Temporary Foreign Worker Program of the Canadian Department of Human

¹⁰⁷ The Canadian Immigration and Refugee Act (IRPA), Canadian legislation introduced in 2001, addresses some of these proposals (*Immigration and Refugee Protection Act*, SC 2001, c.27). See also Pritchett, *Let Their People Come*, 130-131.

¹⁰⁸ Jean-Pierre Blackburn, “Canadian Council for the Americas Breakfast Speech” (speech, The Albany Club, Toronto, ON, Jan. 9, 2008).

Resources and Social Development, made it clear that, if Canada does pursue this policy route, it should not encourage opportunities for workers in lower skilled occupations.¹⁰⁹

If decision makers are still arguing over the merits of addressing international mobility in trade agreements, is it not more relevant to be monitoring other, larger, implications of trade-related migration, such as irregular migration trends? Likewise, when thinking about the impacts of trade on women relative to men, does it not seem more urgent to consider the impact that NAFTA has had on the thousands of Mexican women who work in export-oriented manufacturing along the U.S. border, rather than the very few who have taken advantage of the agreement's professional labour mobility opportunities? The answer is both yes and no: yes, these are also important issues that are and should continue to be monitored through research and analysis, but no, that does not mean that temporary entry provisions in trade agreements are not worthy of attention.

To the contrary, managed temporary labour mobility avenues will continue to grow despite political squabbles. The International Migration and Development Initiative (IMDI) is but one example of a mega-project in the making.¹¹⁰ In the meantime, if the Millennium Development Goals are to truly be advanced, let us hope that participatory research and analysis of the gender and socioeconomic impacts of these processes continues.

¹⁰⁹ James Sutherland, "Should I Stay or Should I Go? Policy-Research Seminar on Temporary Migration" (seminar, Citizenship and Immigration Canada Metropolis Project, Ottawa, ON, Mar.12, 2008).

¹¹⁰ A global initiative involving governments, private sector actors, and intergovernmental organizations, the IMDI was recently created to work towards a practicable and politically acceptable framework supporting the integration of labour markets around the world.

Annexes

ANNEX 1

Development, Social and Gender Issues Taken into Consideration in Trade Agreements

The author looked for the following measures:

- 1) In terms of mitigating potentially negative economic development implications:
 - a) Concern for the *effect over time* of the trade agreement's labour mobility provisions on economic development prospects for migrant sending countries due to mobility provisions (i.e. institutionalized mechanisms to monitor economic development impacts, such as GDP growth, labour shortages and unemployment rates) and,
 - b) Provisions identifying *flexibility of implementation of the agreement* concerning labour mobility provisions when adverse economic development impacts arise (i.e. an opt-out of mobility provisions for member states that face high levels of migration following ratification, or permission to adopt restrictions on implementation of the agreement due to adverse economic impacts).

In terms of mitigating potentially negative social implications:

- a) Provisions that allow state parties to regulate and protect basic services/ public goods, such as health or education.
- b) Mention of social security or other benefits for migrant workers and family members of migrant workers,
- c) Transferability of pensions or other social security entitlements.

In terms of mitigating potentially negative gender implications:

- a) Concern *over time* for different effects of the trade agreement on women and men, (i.e. institutionalized mechanisms to monitor gendered impacts)
- b) Whether or not mechanisms to facilitate employment of the spouses of migrant workers in host countries were created (such as automatic spousal/partner work permits).
- c) Whether or not provisions prohibit discrimination (towards women or in general; during trade-related activities or in the workplace).

NB: Due to the differing occupational specializations of women across countries and the large number of countries covered by the three FTAs, no analysis of gendered access to the labour mobility provisions based on scope of the occupational sectors covered in each agreement was undertaken. However, if FTAs include occupations where the literature indicates that, typically, women predominate over men (such as self-employed workers), it is mentioned in passing.

Likewise, while omission of certain services or occupational sectors from the agreement is noted, no judgment is passed on whether or not this decision would result in a net positive or negative impact (which in turn depends on a number of additional factors).

ANNEX 2

Content Analysis of Free Trade Agreements and Side Agreements

Item	CARICOM (Treaty Chaguaramas Chapter 3)	CARICOM Side Agreement (Agreement on Social Security)	NAFTA	Side. (NAALC)	DR-CAFTA (Chapter 11)	DR-CAFTA (Chapter 16)
‘Development Friendly’ Provisions						
a) Concern for the <i>effect over time/monitoring</i>	Chap. 3 Art. 43 *					
b) Flexibility in implementation	Chap. 7 (Art. 148, 149)					
Social provisions						
a) Protection of basic services/ public goods	-	-	-	-	-	-
b) Social security benefits	Chap 3. 46. 2 (b.4)	Part III, Art. 16		Article 11****		Annex 16.5 (3) ****
c) transferability of social security benefits		Part III, Art. 17, 18				

Gender provisions						
a) monitoring mechanisms on gendered impacts	-	-	-	-	-	-
b) facilitation of spouse's/partner's employability	Art. 34 d) ii), Art. 37, 3), c)		16.05 (2.c) **			
c) non-discrimination	Chapter 3: Art. 34 d) ii); 37 e).			Annex 1 (7,8, 11)		Annex. 16.5 (3)

Notes

* Refers to adverse economic conditions (balance of payment problems, not to mobility-induced economic impacts).

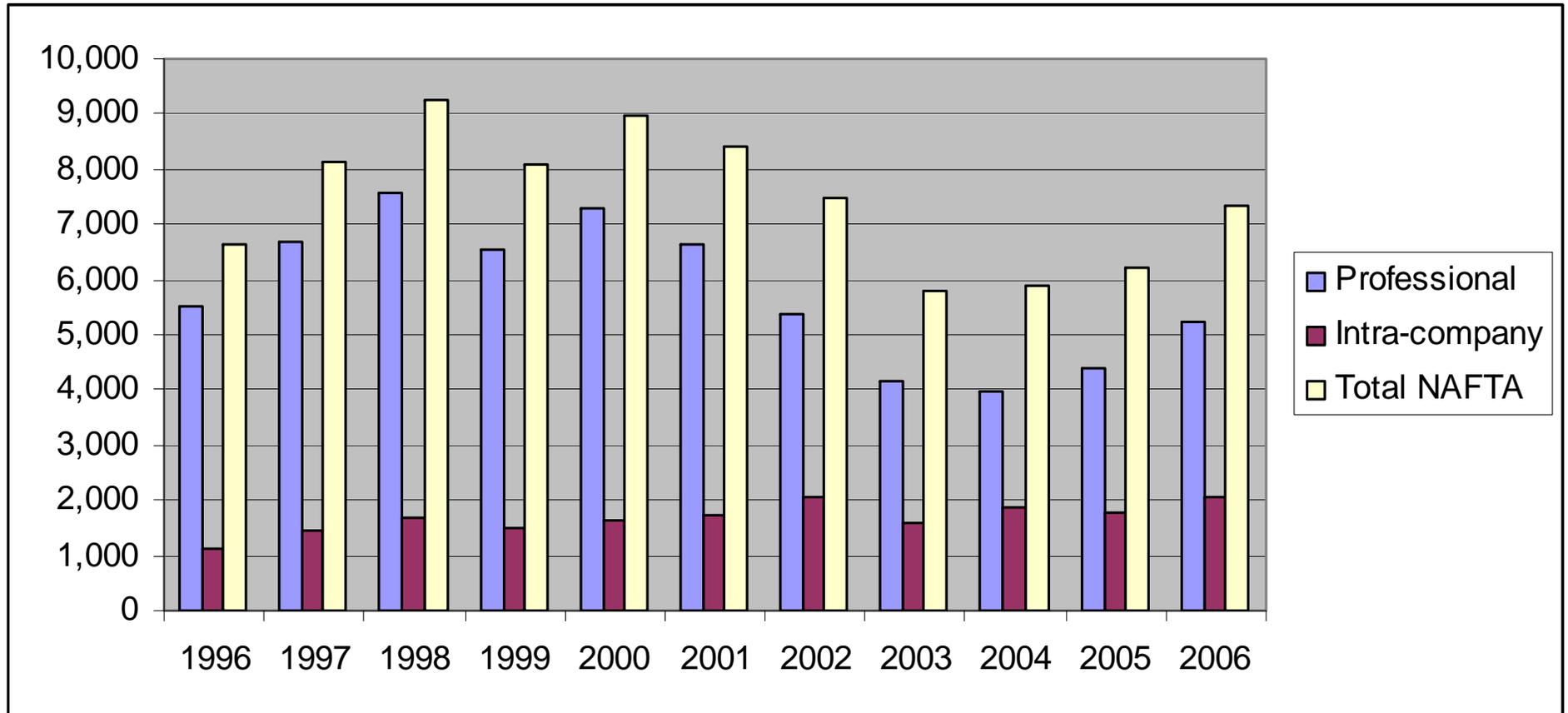
** Article only urges the Temporary Working Group *to discuss* possibilities for waiving some restrictions on employment for spouses and partners, as opposed to making this mandatory.

*** Refers to social security and work benefits as “cooperative activities” in need of discussion, rather than setting out clear obligations.

**** This provision lists a number of issues that “may” be discussed by monitoring bodies, including “gender issues, including the elimination of discrimination in respect of employment and occupation,” “social assistance programs” and “the dissemination of information regarding labor rights of migrant workers in each Party’s territory,” however it does not impose obligations on states party to the treaty.

ANNEX 3

Professionals and Intra-Company Transferees entering Canada under NAFTA, 1996-2006¹¹¹



¹¹¹ Please note that the amount of workers migrating under the remaining two NAFTA categories (trader and investor) are negligible (but greater than zero) in relation to the professional and intra-company transferee categories.

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