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**MANAGING LABOR MIGRATION:
TEMPORARY WORKER PROGRAMMES
FOR THE 21ST CENTURY***

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

**Managing Labor Migration:
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Summary

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

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

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

- macroeconomic policies have less effect on employer demand for guest workers, as when there are farm labor “shortages” despite double-digit unemployment,
- each program tends to have its own rules, and they can be very detailed for the industry or occupation in question, which reduces public debate of the benefits and costs of guest workers
- government agencies have a harder time administering multiple programs, each with different rules, in a time of tight budgets and deregulated labor markets

One common trend in the industrial countries is to shift more authority to employers. In most countries, employers but not unions are involved in developing program rules, and some countries allow employers to open the border gate to guest workers with minimal government oversight.

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

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

- Renewed efforts to reduce illegal migration. ILO Conventions and Recommendations establish standards primarily for legal workers. The best way to protect unauthorized and quasi-authorized workers such as trainees is to make them legal workers. However, it is very hard to improve conditions for resident guest workers, or to admit additional foreigners as legal guest workers, unless illegal migration is perceived to be under control. This task falls primarily to host governments, which must treat unauthorized worker employment as a serious offense, develop the penalty and inspector infrastructure to enforce laws, and experiment with enforcement strategies such as joint liability as well as obtain active cooperation from sending countries.²
- Use economic mechanisms to reduce the distortions and dependence that inevitably accompany guest workers. One way to do this is to have employers pay usual payroll taxes for employing migrants plus a levy or extra tax for each migrant to encourage them to constantly consider alternatives to migrants, as well as to generate funds for enforcement and integration assistance for those guest workers who do settle. To reduce dependence and encourage returns, migrant social security taxes could be refunded when migrants returned home, encouraging voluntary returns and providing a convenient way to match a portion of returned migrants' savings to promote development.
- Earned adjustment would allow the 10 to 15 million unauthorized foreigners in industrial countries to become legal workers and residents after they found jobs, paid taxes and learned the host-country language. Earned adjustment programs are not likely to be implemented until illegal migration is reduced and new guest worker programs promise to reduce distortion and dependence.

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

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

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

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

Introduction

Guest or foreign worker programs aim to add workers to the labor force without adding permanent residents to the population. The terminology-- temporary or guest worker -- emphasizes the rotation principle at the heart of such programs: migrants should work one or more years abroad and then return to their countries of origin. If the demand for migrants persists, another migrant should have the opportunity to work for higher wages abroad, to send home remittances, and to return with new skills and aspirations.

All guest worker programs fail, in the sense that the need or demand for migrants persists longer than expected, and some of the migrants settle in destination countries, leading to the aphorism that there is nothing more permanent than temporary workers. Settlement does not necessarily make international migration for employment "wrong," since and their employers as well as sending and receiving countries can benefit from labor migration. The issue is how to design and administer guest worker programs to minimize "failures" due to two major issues:

- **distortion**, the fact that labor markets adjust to the presence of migrants, so that employers and their bankers assumed they will continue to be available when they make investment and other decisions, and
- **dependence**, the fact that migrants, their families and their communities can come to depend on foreign jobs.

Guest worker migration is normally initiated by employers who want to employ foreign workers. Their governments as well as unions and other social partners may agree that guest workers are needed if the overall unemployment is low, if there are more job vacancies than applicants in particular sectors, if the presence of migrants can reduce bottlenecks that could lead to inflation, and if labor migration is seen as aiding development in the migrants' countries of origin. Governments in labor-sending countries usually welcome the relief of unemployment and remittances afforded by emigration, so that programs that allow one country to "borrow" excess workers from another has a compelling logic, which is one reason why guest worker programs were often begun without extensive discussions of their longer-term impacts.

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

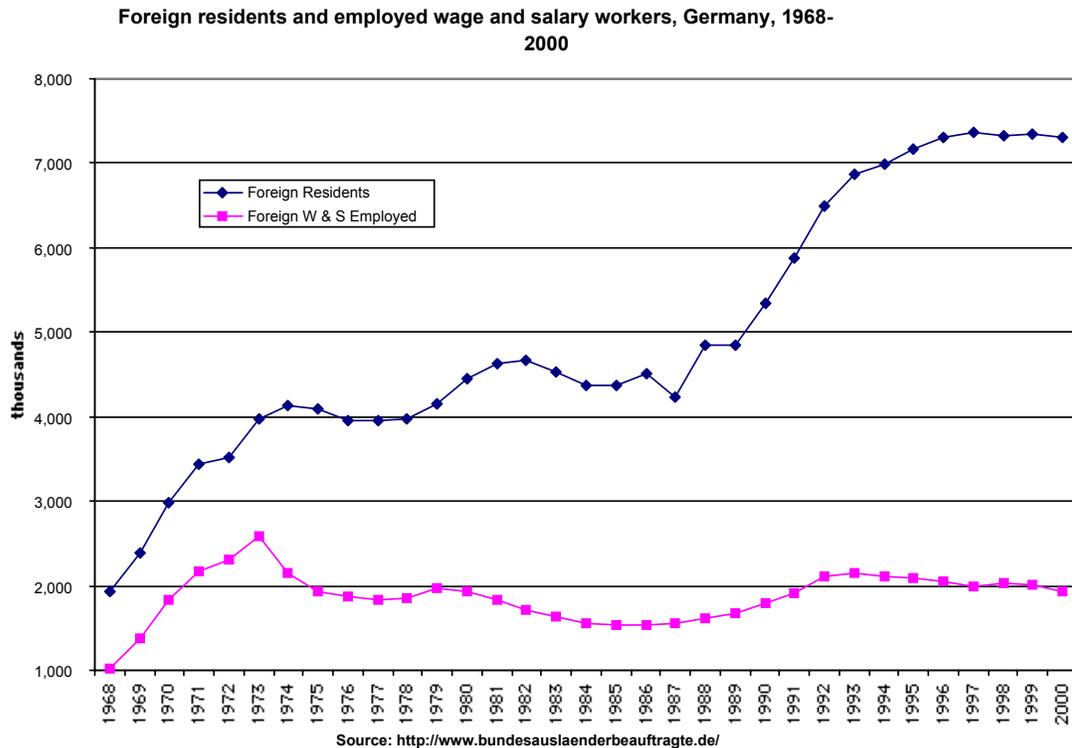
Dependence refers to the fact that migrants, as well as their families, communities and governments at home, may come to depend on earnings from foreign jobs. If labor-importing governments announce an end to or reduction in guest workers, migrants may attempt to migrate illegally, and their communities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

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

Recruitment under European macro guest worker programs was halted in 1973-74, when there was still a close relationship between foreign worker employment and foreign residents. For example, the number of foreigners employed as wage and salary workers was about two-thirds of the total number of foreign residents in Germany in 1972-73. However, the number of foreign residents rose as migrants unified their families abroad, and rose again in the 1980s and 1990s with family unification, asylum seekers, and the arrival of other foreigners. On the other hand, the number of foreigners employed as wage and salary workers fell, reaching a low of 1.5 million in the mid-1980s. The growing gap between employed foreign workers and foreign residents in Germany and other European countries became a powerful argument against more labor migration, with opponents arguing that more migrant workers does not necessarily mean more employment.³

³ One reason for less foreign worker wage and salary employment is self-employment, which has reached about 250,000 among foreigners in Germany.

Figure 1. Foreign Residents and Employed Foreigners, Germany, 1968-2000



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

Table 1. Non-EU Foreigners: Employment and Unemployment, 2000

Non-EU Foreigners: Employment and Unemployment, 2000

Employed, 25-39 (%)	Men	Women
Non-EU Foreigners	73	44
Nationals	86	68
Ratio--Non-EU/Nat	0.8	0.6
Unemployment, 25-39 (%)		

Non-EU Foreigners	15	19
Nationals	6.5	10
Ratio--Non-EU/Nat	2.3	1.9

Source: Thorogood and Winqvist, 2002, 6

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

Despite the proliferation of guest worker programs, most migrants working in developed countries are employed outside official programs as unauthorized and quasi-authorized workers. Other migrants are legal workers, but not considered “regular workers” because their primary reason for being in the host country is to be students, trainees, or working holiday makers. The rising tide of unauthorized, quasi-authorized, and non-regular workers has led to protection gaps, and a basic understanding of economically motivated migration can set the stage for understanding past and current guest worker programs.

Migration is a response to differences, and rising differences in demographics and economics, plus revolutions in communications, transportation and rights that facilitate movement over borders, promise ever-more international migration for employment. Virtually all population growth is in developing countries, where the average woman has 3.5 children (excluding China), versus 1.5 children per woman in developed countries. The demographic weight of world regions has and will shift sharply because of fertility differences. One of the most dramatic examples is Europe and Africa: Europe had 20 percent of the world’s residents in 1800, and Africa is projected to have 20 percent in 2050. Demographic heavyweight Europe was the major source of migrants in the 19th century, which raises the question--will Africa be a major source of migrants in the 21st century?

Table 2. Europe and Africa Demography: 1800-2050

	Share of World Population-		
	1800	2000	2050
Africa	8	13	20
Europe	20	12	7
World Pop (bil)		6	9

Economic differences are widening, increasing the motivation for migration. The ratio between the average per capita GDP in low and high income countries widened from 1 to 41 in 1975 to 1 to 66 by 2000, and the gap between average middle-income and high-income per capita GDPs widened from 1 to 8 to 1 to 14 during this period, with few changes in the list of countries in each group.⁴ Within low- and middle-income countries, 30 to 60 percent of workers are farmers and farm workers--the world's 1.3 billion farmers and farm workers are 43 percent of the global 3 billion-strong work force. Many farmers and farm workers will be displaced from agriculture in the next several decades, and the question is whether they will migrate internally, or spill over borders as international migrants.

Table 3. Global Migrants and Incomes, 1975-2000

	Migrants millions	World P billions	Migrants World P %	Yr change millions	Countries grouped by per capita GDP (\$)			Ratios	
					Low	Middle	High	High-lc	High- middle
1975	85	4.1	2.1%	1	150	750	6,200	41	8
1985	105	4.8	2.2%	2	270	1,290	11,810	44	9
1990	154	5.3	2.9%	10	350	2,220	19,590	56	9
1995	164	5.7	2.9%	2	430	2,390	24,930	58	10
2000	175	6.1	2.9%	2	420	1,970	27,510	66	14

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

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

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

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

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

⁴ Portugal and South Korea moved from middle- to high-income between 1985 and 1995, while Zimbabwe and Mauritania moved from middle- to low-income.

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

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

Macro Guest Worker Programs

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

Economics teaches that there are always alternative ways to combine labor and capital to produce goods and services, but the guest worker option seemed to make the most sense in the 1950s and 1960s because of macroeconomic conditions and the assumption that employers and migrants would behave according to program rules. Instead of importing migrants, wages could have been encouraged to rise by minimum wage increases or simply allowed to rise as a result of market forces, which should have reduced the demand for labor and increased the supply, closing the gap that led to requests for migrants. Employers successfully argued against such market solutions, in the US citing the risk of more expensive food supplies during wartime and in postwar Europe citing the risk that inflation might choke off economic recovery. There were also foreign policy reasons for importing migrants: the US offer of jobs helped to win Mexican support in WWII, and the European Economic Community was based on the free movement of goods, workers, services and capital, so that moving workers from surplus to shortage areas was expected to reduce economic differences within the EEC.

However, the most important assumption of guest worker programs was that employers and migrants would obey program rules, and it is important to emphasize that most migrants did rotate in and out of labor-receiving countries as expected. For example, during the 22-years of Mexico-US guest worker or Bracero programs, most Braceros returned at the end of their seasonal jobs as required, and a combination of tougher enforcement and easier access to Braceros in the mid-1950s explains the drop in apprehensions and rise in Bracero admissions evident in Table 4. However, apprehensions remained higher in the late 1950s than before Bracero

programs began in 1942, suggesting that legal and unauthorized migration can rise together, and legal Mexican immigration increased as some Braceros found ways to adjust their status. Over the 22 years of Mexico-US Bracero programs, there were more apprehensions of unauthorized Mexicans, 4.9 million, than of legal Bracero worker admissions, 4.6 million--both apprehensions and admissions double count individuals.

Table 4. Bracero Admissions, Apprehensions, and Immigrants: 1942-64

Mexican Bracero admissions, Apprehensions, and Immigrant
1942-64

Year	Mexican Braceros	Mexicans Apprehended	Mexican Immigrants
1942	4,203		2,378
1943	52,098	8,189	4,172
1944	62,170	26,689	6,598
1945	49,454	63,602	6,702
1946	32,043	91,456	7,146
1947	19,632	182,986	7,558
1948	35,345	179,385	8,384
1949	107,000	278,538	8,803
1950	67,500	458,215	6,744
1951	192,000	500,000	6,153
1952	197,100	543,538	9,079
1953	201,380	865,318	17,183
1954	309,033	1,075,168	30,645
1955	398,650	242,608	43,702
1956	445,197	72,442	61,320
1957	436,049	44,451	49,321
1958	432,857	37,242	26,721
1959	437,643	30,196	22,909
1960	315,846	29,651	32,708
1961	291,420	29,817	41,476
1962	194,978	30,272	55,805
1963	186,865	39,124	55,986
1964	177,736	43,844	34,448
Total	4,646,199	4,872,731	545,941

Source: INS Statistical yearbook, various years

Most European guest workers rotated in and out of jobs as anticipated. Between 1960 and 1973, 75 percent of the 18.5 million foreigners who arrived in Germany left as expected (Honekopp, 1997, 1). However, Germans who assumed that the Rotationsprinzip would be a 100 percent rule were not prepared for the settlement of the remaining 25 percent, and their settlement plus family unification, asylum seeking, and unauthorized migration led to a sense that guest worker programs

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

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

Foreign policy considerations loomed large in many of the micro European programs, such as German programs with Eastern European nations after 1989 (Hönekopp, 1997). Italy and Spain developed programs to admit legal migrant workers in part to encourage cooperation to accept the return of unauthorized foreigners, and to elicit cooperation to reduce illegal migration, from countries such as Albania and Morocco.⁵ In some cases, national borders divide “natural” labor markets, and commuter programs allow workers to live in one country and work in another. Finally, guest worker programs can be justified as a way to promote cultural exchange or development, as typically young people are invited to cross national borders to work while learning the language and experiencing another culture as trainees or working holiday makers.

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

Table 5. Rationales for Guest Worker Programs

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

⁵ The Italian Interior Minister in August 2003 asserted that a bilateral deal between Italy and Sri Lanka, allowing 1,000 young Sri Lankans to enter for work and training, had stopped the flow of illegal Sri Lankan migrants.

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

Germany's Guest Workers

Germany was primarily a country of emigration until the 1950s, and remains the major source of US immigrants after 182 years of recorded immigration. Of the 67 million immigrants whose arrival was recorded between 1820 and 2001, some 7.2 million or 11 percent were from Germany, followed by 6.3 million from Mexico, 5.4 million from Italy and 5.3 million from the UK (INS Statistical Yearbook, 2001, 19). In the 1980 Census of Population, some 60 million Americans, 1 in 4, reported German roots. Within Germany, migrants moved from east to west, and Italians were recruited to work in Ruhr-area mines and factories. These migrants were expected to return, but many settled. During World War II, millions of foreign workers were employed in Germany's wartime economy, so that in August 1944 the two million war prisoners and 5.7 million non-German civilian workers were a third of the labor force (Herbert, 1997).

Germany's postwar guest worker programs began in 1955, when Germany signed a labor recruitment agreement with Italy permitting German farmers to hire Italian workers. It soon became apparent that the major demand for migrants was in German factories, mines, and construction sites, and bilateral agreements were signed with 7 "recruitment countries": Greece, Morocco, Portugal, Spain, Tunisia, Turkey, and Yugoslavia.⁶

In early 1960s Germany, the number of job vacancies exceeded the number of registered unemployed, and Hermann (1992, 7) concluded that there was "no noteworthy discussion" of alternatives to guest workers for four major reasons. First, the German labor force was shrinking for demographic and related reasons, including a delayed baby boom that discouraged efforts to raise female labor force participation, more educational opportunities that kept youth in school longer, and better pensions that prompted earlier retirements. Second was the reluctance to risk what was perceived to be a fragile economic recovery on risky mechanization and rationalization alternatives (Lutz, 1963, Kindleberger, 1967). Unions did not oppose

⁶ Greece became a member of the EC in 1981, and Spain and Portugal became members in 1986. Greeks had to wait seven years, until 1988, for full freedom of movement rights. Spain and Portugal, scheduled to have freedom of movement rights after seven years, in 1993, got mobility rights one year early in 1992.

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

Third, in a unifying Europe based on freedom of movement,⁷ Germany could believe that it was channeling labor flows that would soon not be as subject to governmental guidance after January 1, 1968. Fourth, the need for additional workers was believed to be temporary. Germany and other European nations in the 1960s had undervalued currencies in a world of fixed exchange rates, which made Europe a “global factory,” attracting foreign and local investment and producing goods for export in a manner analogous to China today, symbolized by the Volkswagen Beetle. The incentive to invest and create jobs in Germany was significant: if the exchange rate was \$1 = 5DM when it “should” have been \$1 = 4DM, making a \$100 investment in Germany was worth 500DM to the investor rather than its “true” 400DM value. American multinationals poured so many dollars into Europe that a French writer warned of *The American Challenge* to Europe and, in part because of the Vietnam war, this unique exchange rate regime persisted into the early 1970s.

Guest worker employment expanded rapidly, from 329,000 in 1960 to in 1 million in 1964 and, after a dip in 1966/67 due to recession, a peak 2.6 million in 1973, when migrants were 12 percent of employed wage and salary workers. Most guest workers were ex-farmers between 18 and 35, although a significant share were semi-skilled construction workers, miners, and school teachers.⁸ Most guest workers were admitted only after the Employment Service (ES) certified that an employer’s request for migrants was valid, and then the employer or a joint German-Turkish or German-Yugoslav ES office recruited workers. However, employers could request migrants by name, which gave Turks and Yugoslavs an incentive to go to Germany as tourists, find an employer to request them, and thus avoid long queues of migrants waiting to go abroad (Miller and Martin, 1982).

Rotation and return “myths” discouraged planning for settlement and integration. Employers, unions, and governments had agreed on this scenario: migrants would stay abroad at most two or three years and then depart with their savings and new-found skills. If unemployment was still low, and employers wanted to replace the migrants who returned, newcomers could arrive for their turn to earn high wages. However, distortion and dependence discouraged rotation. Employers often encouraged migrants to stay longer, saving them the cost of recruiting and training a replacement. Many migrants had learned that they could not earn German wages

⁷ Freedom of movement means that a worker from an EU member state may enter another, remain for up to 3 months in search of a job and, if the migrant finds employment, the host country must grant any necessary work and residence permits.

⁸ Some 30 to 40 percent of Turkish guest workers were considered to be skilled workers in Turkey, but most worked as manual laborers in Germany.

and live at Turkish costs, so they needed more time to achieve their savings goals. However, social scientists interviewing migrants reported that most wanted to return, helping to sustain belief in the rotation principle.

The belief that migrants were guests helped to prevent the development of policies that might have slowed growth in migrant employment. For example, migrant employment growth could have been slowed by employer-paid levies or fees. Instead, noneconomic arguments were largely responsible for stopping additional recruitment, as fringe politicians who made "Foreigners out! Germany is for the Germans" their rallying cry made mainstream politicians realize there was a problem and wildcat strikes involving migrants in summer 1973 reinforced the sense that migration was "out of control." On November 23, 1973, in the face of sharply higher oil prices, the recruitment of non-EC workers coming for more than 90 days was halted, a recruitment ban that most employers and migrants expected to soon be lifted.⁹

The German experience shows that distortion and dependence can allow guest worker programs to grow larger and last longer than anticipated, as both employers and migrants request and obtain exemptions from rules that aim for worker rotation (Schiller, 1976; Bach, 1987). Second, the assumption that migrants without families would not settle meant that there were no plans, nor employer-generated funds, to help cover their integration costs, highlighting the maxim that guest worker programs deliver benefits that are immediate, concentrated, and measurable, while their costs are deferred, dispersed, and difficult to quantify. Third, the 3 Rs of recruitment, remittances, and returns did not guarantee that guest worker migration would turn emigration areas into stay-at-home areas. In the southern European countries that joined the EU, labor emigration pressure fell as expected, but not in other recruitment countries.

Mexican Braceros in the US

In the US, agriculture has long been associated with the recruitment of unskilled temporary foreign workers (CRS, 1980; Martin, et.al., 1995). The reasons are rooted in history. Agriculture in the western US required large farms for extensive cattle grazing and grain farming and, when lower transportation costs and interest rates linked this remote part of the country to the rest of the US, there was a shift to labor-intensive fruits and vegetables. In order to get the additional labor required, it was expected that large farms would have to be broken into family-sized units, so that family members would supply seasonal labor when it was needed. However, immigrants with no other US job options--Chinese, Japanese, Filipinos, Punjabi

⁹ Foreigners Commissioner Liselotte Funke reported that employers and the labor ministry agreed that tighter restrictions on family unification to avoid schooling and other integration issues would have to be included in any renewed guest worker program. *Die Zeit*, February 17, 1989, p19.

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

The 1930s were the only time in 150 years in which a majority of the newcomer seasonal farm workers were Americans, and the experiences of the Dust Bowl migrants, small farmers from the midwest who lost their land because of an extended drought, were memorialized by John Steinbeck in the 1940 novel, *The Grapes of Wrath*, which gave an emotional impetus to proposed federal policy changes. Farm labor reformers were divided into opposing camps: one group wanted to break large farms into family-sized units and substitute family workers for hired seasonal workers, while others argued that factories in the fields were inevitable, and that the workers they employed should be protected under factory labor laws (Martin, 2003).

Instead of reforms, the outbreak of World War II gave farm employers the upper hand, and they persuaded the US government to sign a bilateral agreement with Mexico allowing the admission of Bracero (strong arms) guest workers. The result was a clear example of distortion and dependence. As the US population rose in the 1950s, farmers assumed Braceros would continue to be available and planted crops in remote areas. These plantings would not have been profitable if workers were not available at low wages when needed, so farmers used political pressure to continue the Bracero program and to relax rules that required employers to pay transportation, provide housing, and pay the higher of prevailing or minimum wages.

Many rural Mexicans became dependent on US farm jobs and, to increase their chances of being selected, many moved their families to the Mexico-US border, which reduced the transportation costs US employers had to pay meant that hundreds of thousands of Mexicans had no local job alternatives when the program was eventually ended in 1964 (the maquiladora program was begun to provide jobs for these ex-Braceros). The presence of Braceros in the fields encouraged the urbanization of Mexican Americans, fueling the growth of cities such as San Jose and Los Angeles, by holding down farm wages: average farm worker earnings in California rose 41 percent, from \$0.85 an hour in 1950 to \$1.20 in 1960, while average factory worker earnings rose 63 percent, from \$1.60 in 1950 to \$2.60 in 1960.

US immigration quotas imposed in the 1920s did not apply to the Western Hemisphere, and during the 1960s, all that was required for a Mexican to obtain an immigrant visa was a written offer of employment, including seasonal farm employment. US farmers made such offers to many Braceros in the late 1960s, and perhaps 100,000 became immigrants, receiving immigration visas that were printed on green paper. A smaller Bracero program thus continued as "green card

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

US Micro Guest Worker Programs

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

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

Table 6 outlines these criteria in US programs, and distinguishes between pre-admission certification, as when the employer requesting migrants must satisfy an economic needs test that may include advertising for local workers at a government-set wage before employing migrants, and post-admission attestation, a system that permits employers to have migrants admitted without government checks of need. The second dimension concerns worker rights, and the major distinction is whether migrants have contracts that tie them to a particular employer or whether migrants are free agents in the host country labor market. Most programs tie migrants to particular employers and jobs with contracts, and restrict or prohibit migrants from changing employers, but the UK highly skilled worker program (as well as most immigrants) are free agents in the labor market.

Table 6. Employer Requirements and Worker Rights: US Programs

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

Source: see text

The H-1B is largest US program, allowing employers to request foreign professionals to fill US jobs that require at least a university education. H-1B foreign professionals can remain in the US up to six years, and can adjust to immigrant status if they find a US employer to sponsor them for an immigrant visa.¹⁰ Until they are immigrants, H-1B migrants are tied by contracts to their employer, and there has been much commentary and criticism of the program because it makes

¹⁰ To adjust to immigrant status an H-1B visa holder must find a US employer to sponsor him through the certification process usually required to obtain an employment immigration visa.

entry as an H-1B very easy, but the lengthy process involved in obtaining an immigrant visa can make H-1B migrants very dependent on their employers.

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

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

The core rationale for guest worker programs is to admit foreign workers to fill vacant jobs, so few programs allow guest workers to be free agents in the labor market. The US allows immigrants to be free agents in the labor market, but the UK Highly Skilled Migrant Program (HSMP) is among the few guest worker programs that allow foreigners who score sufficient points on a test of personal characteristics such as education, experience and past earnings to be free agents in the UK labor market. Similarly, the US program allowing foreign students to find jobs as an adjunct to their studies does not restrict them to any particular employer.¹² Professionals from Canada and Mexico may, under Nafta, enter the US with proof of their qualifications and a US job offer, and later change employers in the US.¹³

The proliferation of guest worker programs makes it hard to generalize about employer requirements, worker rights, and distortion and dependence effects. Employers seeking foreign workers face two hurdles: how to get permission to

¹¹ The job offers that US employers make in their search for US workers become the migrants' contracts that spell out wages and benefits.

¹² Between 1992 and 1995, foreign students with F-1 visas could work off campus for US employers who attested that they recruited US workers for at least 60 days at the prevailing wage and failed to find any, and the F-1 students could work for any such US employers for up to 20 hours a week, or full time when school was not in session. The US Senate-approved Agricultural Job Opportunity Benefits and Security Act of 1998 or AgJOBS program, which was not enacted into law, would have allowed legal guest workers to seek jobs with US farm employers who filed attestations that tried and failed to recruit US workers.

¹³ Under newly signed free trade agreements with Chile and Singapore, the number of visas is restricted to 1,400 and 5,400 a year, respectively.

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

Germany: Micro Programs and Green Cards

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

The **project-tied or posted** workers program allows German firms to sub-contract part of a construction project to foreign firms that provide primarily labor. Migrants can stay up to two years, but after abuses in the early 1990s, the admissions ceiling was lowered from 95,000 to 56,000 a year. The German firm is to ensure that its foreign subcontractor is paying the prevailing (German) wage to migrants in Germany, and that they are covered by workers compensation insurance. Project-tied migrants are considered employees of e.g. a Polish rather than a German firm while in Germany, so payroll taxes on their wages are lower.

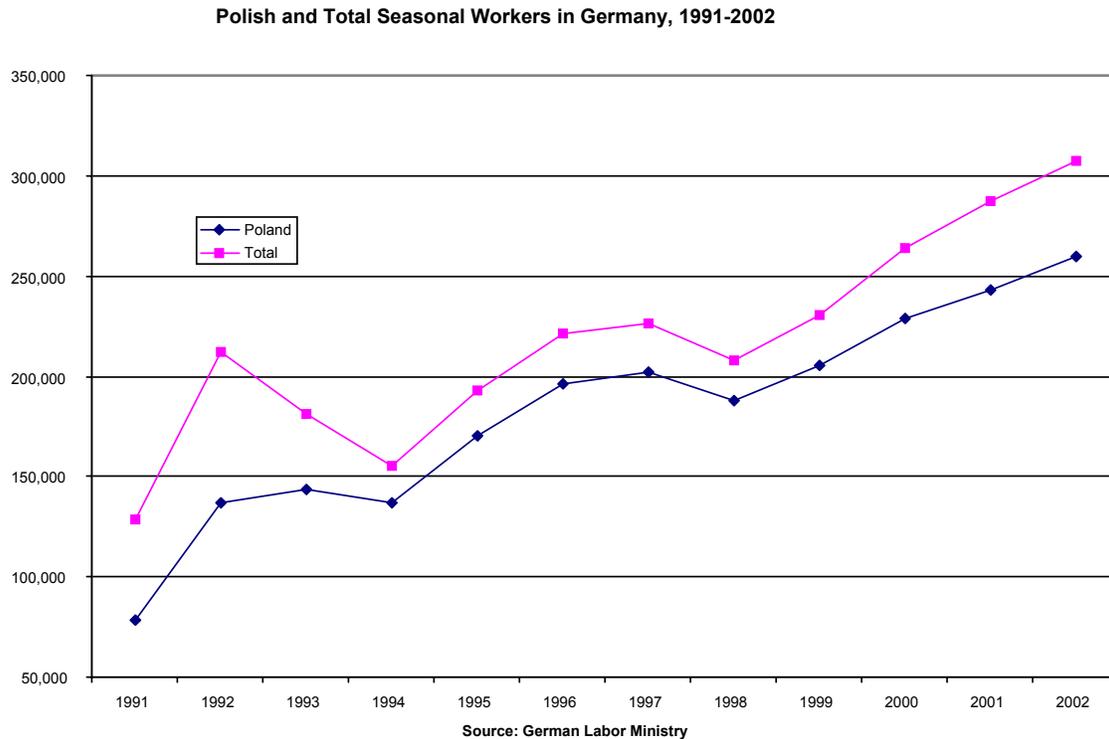
The **seasonal** worker program, which operates under MOUs signed by the German Labor Ministry and Labor Ministries of source countries, admits migrants for up to 90 days if local workers are not available to fill vacant jobs in agriculture, forestry, and seasonal hotels.¹⁵ About 90 percent the 293,000 seasonal migrants admitted in 2002 were Poles, and 90 percent worked in agriculture. Employers request seasonal foreign workers and submit proposed contracts that spell out wages and working conditions as well as provisions for employer-provided housing, meals, and travel arrangements to local labor offices, which approve the recruitment of foreigners after testing the local labor market and reviewing the contracts; employers and migrants must make payroll tax contributions that are about 35 percent wages.¹⁶ German employers may request migrants by name, and they do for about 90 percent of the time.

¹⁴ Half of the Eastern Europeans in the mid-1990s employed in Germany were admitted under the programs (Hönekopp, 1997, 15)

¹⁵ Proposals to allow seasonal workers to be employed for six or seven months continuously with one German employer are pending in 2003.

¹⁶ If seasonal foreign workers are employed less than 2 months in Germany, the workers and their employers do not have to pay social security taxes on their wages.

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



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

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

Evaluations of German micro guest worker programs suggest that they succeeded in turning some otherwise unauthorized migrants into legal guest workers and they hastened the conversion of seasonal farm jobs into “foreigners’ jobs.” The major problems were in the project-tied construction program, which expanded rapidly with the construction boom following German unification in 1990; many of the construction labor problems arose from self-employed EU nationals exercising their freedom to provide services.¹⁷ Honekopp noted that there was little debate about the benefits and costs of importing Polish workers to keep German agriculture viable when unemployment in Polish agriculture was high (1997, 19). The opportunity for Eastern Europeans to work in Germany and other countries generated significant remittances, with remittances to Poland about equal to FDI in 1995 (Honekopp, 1997, 20).¹⁸

The **green card** program, launched in August 2000, made up to 20,000 five-year work permits available to non-EU nationals coming to Germany to work as computer specialists in response to assertions by German information technology employers that there were at least 75,000 unfilled IT jobs.¹⁹ Foreigners can register their interest in working in Germany and their qualifications on the internet, and German employers can search for workers there or elsewhere after local Employment Service offices give them permission to hire non-EU foreigners.

Originally scheduled to end in July 2003, the program has been extended. However, fewer than 15,000 green cards were issued in the first three years of the program, and 85 percent went to non-EU foreigners who were abroad (rather than foreign students graduating from German institutions) and 83 percent of the green card holders were admitted on the basis of having university degree in computer science (lacking an IT degree, non-EU foreigners could be admitted if their German employers pay them at least E51,000 a year). About a fourth of those admitted were from India, another quarter from Eastern Europe, and an eighth from the ex-USSR.

Table 7. German Green Cards Issued: August 2000-June 2003

German Green Cards Issued: August 2000 June 2003

	Total	From Abroad	Uni Degree	Per Dist
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¹⁷ As self-employed carpenters or bricklayers, workers are exempt from high German payroll taxes, but critics noted that these self-employed EU nationals often took instructions from on-site supervisors, and argued that they should have been considered employees.

¹⁸ Surveys suggest that remittances were used primarily for consumer goods and housing, with 20 percent devoted to investments that could create self-employment in the migrants’ area of origin. (Honekopp, 1997, 20).

¹⁹ Many have observed that the German green card program is unlike the US immigrant visa, which is also known colloquially as a green card; in US terminology, the German green card is a nonimmigrant visa entitling a foreigner to remain in Germany for a specific time and purpose.

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

Source: German Labor Ministry

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

The IT industry request for non-EU foreign professionals provided a way to refocus the immigration debate on the benefits of immigration. However, it had to overcome opposition within the government²⁰ and the opposition, which based its failed campaign in state elections in North Rhine-Westphalia May 2000 on "Kinder statt Inder" (children instead of Indians) to argue that Germans should have more children and train them instead of importing high-tech workers from India.

Micro guest workers and green cards have not yet evolved into an overall immigration policy. In July 2001, a commission made recommendations that became the basis for the proposed immigration law approved by the German Parliament in March 2002 and again in May 2003.²¹ It recommended that Germany admit 50,000 more foreigners a year than currently arrive, including 20,000 foreign professionals selected on the basis of a point system, another 20,000 admitted temporarily with

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

²¹ The commission's report, Organizing Immigration - Fostering Integration, is at: (http://www.bmi.bund.de/dokumente/Artikel/ix_46876.htm),

five-year permits, and 10,000 trainees and foreign graduates of German universities, who would receive two-year work visas but be allowed to adjust from temporary to permanent status. There would be six doors for labor market immigrants, including three for foreigners seeking entry on the basis of their personal qualifications²² and three for foreigners sought by German employers.²³

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

US: 1990s Guest Worker Programs

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

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

²² These three doors are for entrepreneurs who want to establish businesses in Germany, young foreigners selected through a point system, and foreign students studying in Germany.

²³ These doors included one for corporate managers and scientists, one for foreigners who were being sought to fill vacant jobs (shortage workers), and one for trainees to fill vacant apprenticeship slots--the shortage workers and trainees could apply for permanent residence through the point system while in Germany.

Admissions, which double-count individuals who enter and leave the US within one year, doubled between 1995 and 1998 and continued rising, which forced employers to wait until the next fiscal year, which began October 1, for the H-1B workers they wanted. Employers twice succeeded in raising the annual ceiling, to 115,000 in 1998 and to 195,000 in 2000; it is scheduled to revert to 65,000 on October 1, 2003.

The H-1B program expanded and changed in the 1990s. Since 1999, most employers have to pay a \$1,000 per H-1B visa application to generate funds to encourage US students to study science and engineering, reflecting the fact that most H-1B workers are employed in computer-related fields. Second, in response to complaints,²⁴ US employers with 15 percent or more H-1B workers (body shops) have had to certify since 1998 that they did not lay off US workers to open jobs for the H-1B workers-- most US employers may lawfully lay off US workers to open jobs for H-1Bs.²⁵ Third, universities and nonprofit research institutions are exempt from the annual ceiling, so the H-1B visas they request are not subject to or included in the annual caps.

Table 8. Admissions under H-Worker visas, 1992-2002

**Admissions under H-Worker visas,
1992-2002**

1992-94 = 100	1992-94 Average	1995	1996	1997	1998	1999	2000	2001	2002
H-1B Specialty occupations	105,828	100	111	137	228	286	336	363	350
H-2A Ag Workers	16,486	80	69	58	166	196	202	168	95
H-2B Nonfarm Unskilled	18,114	87	78	79	137	198	284	400	480

Source: Yearbook of Immigration Statistics,
www.immigration.gov

There are also two US programs that admit unskilled foreign workers: H-2A visas are offered to farm workers, and H-2B visas to nonfarm workers. Unlike the H-1B visa, employers must have their need for unskilled foreign workers certified by the US Department of Labor before visas can be issued to the workers, which means that DOL verifies that the employer tried to find US workers by offering at least a minimum wage and benefit package. If employer recruitment fails to find US

²⁴ Labor Secretary Robert B. Reich in 1995 testified that: "We have seen numerous instances in which American businesses have brought in foreign skilled workers after having laid off skilled American workers, simply because they can get the foreign workers more cheaply. [The H-1B program] has become a major means of circumventing the costs of paying skilled American workers or the costs of training them." (Nonimmigrants: High-Tech. 1998. Migration News, February).

²⁵ H-1B workers with a masters degree or more or earning \$60,000 or more are not included in calculating dependency.

workers, the employer can recruit foreign workers anywhere and in any manner – US anti-discrimination rules do not apply to foreign recruitment. The H-2A program erects more hurdles in front of farm employers, including the requirement that they offer out-of-area workers free and approved housing and pay the workers' inbound transportation.

H-2A admissions rose to a peak in 2000, and then fell sharply, reflecting workers remaining in the US longer and switching from one farm employer to another. Some 42,000 jobs were certified to be filled with H-2A workers in 2002, most of whom were Mexicans employed to harvest tobacco in the southeastern states. The H-2A program continues to be the subject of litigation, with worker groups often suing the US Department of Labor for “wrongly” certifying an employer’s need for H-2A workers, and suing US employers with H-2A workers for not abiding by the terms of their recruitment offers. A typical case involved SAMCO, a custom harvester/FLC in Ventura county, California that brought 38 H-2A workers from Mexico to California to harvest lemons in March-April 2002. SAMCO was sued by worker advocates for failing to pay overtime wages to the H-2A workers, not providing rest periods and lunch breaks, and not reimbursing them fully for expenses incurred traveling to and from Mexico.

The H-2B program admits foreign workers to fill seasonal jobs for which US workers cannot be recruited at the prevailing wage. Employers of H-2B workers do not have to pay the workers' transportation to the US or provide them with free housing. In 2002, DOL certified 121,665 US jobs as needing to be filled by H-2B workers, and immigration statistics reported that 72,387 workers with H-2B visas were admitted; one worker could fill more than one H-2B job, and a worker who left the US and returned within one year would count as two admissions. A fourth of the H-2B certifications were for landscape laborers, 10 percent for forestry workers, seven percent for housekeepers in hotels and motels, and four percent each were for stable attendants and tree planters.

H-2B admissions rose almost five-fold in the 1990s, and so has controversy. In Maine in September 2002, 14 Honduran and Guatemalan workers with H-2B visas died when the van driven by their crew foreman went off a bridge on a private road. Their workplace was 2.5 hours each way from their housing, and they paid \$84 a week to ride in the van. Their employer was fined the maximum amount for not registering the van driver as required, but he continued to bring H-2B workers into the US for reforestry work, much of which is done on public land at government expense. US firms have begun to advertise the availability of H-2B workers.²⁶

²⁶ For example, Amigos Labor Solutions (www.amigos-inc.com/) in Dallas says it provided 2,000 H-2B workers to employers in 34 states in 2002.

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

Nafta permits professionals with a university degree to accept job offers in Canada, Mexico, or the US and to receive indefinitely renewable TN visas. The number of US admissions of Canadians and Mexicans with Nafta-TN visas tripled between 1995 and 2002 to 74,000 and, beginning in 2004, the 10-year anniversary of Nafta, the current annual limit of 5,500 TN-visas a year for Mexican professionals will be eliminated.²⁷ Nafta-professions are listed in Chapter 16, and range from accountant to zoologist. The entry procedure has applicants appearing at ports of entry with proof of citizenship, a signed job offer from a US employer specifying the job and salary (which does not have to be the prevailing wage for that job), and proof of professional qualifications, such as a university degree.

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

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

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

Seasonal Worker Programs

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

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

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

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

Table 9. Seasonal Worker Programs for Agriculture

	Admissions	Ceiling	Employer requirements		
			Lab Mkt test?	Free Housing?	Free Trans?
US	45,000	no	yes	yes	yes
Germany	293,000	no	yes	maybe	maybe

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

Source: see text

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

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

Agriculture in industrial countries should be ripe for pressure to improve foreign worker programs. According to the OECD, direct and indirect transfers to farmers in OECD member countries (producer subsidy equivalent or PSE) totaled \$230 billion in 2001, equivalent to a third of farm sales; most of this aid reaches farmers via price supports and input subsidies. Most of these farm subsidy costs are paid by consumers in OECD countries, but some are paid by farmers in developing countries because the subsidies increase the world's supply of farm commodities, thus depressing prices for the commodities produced in developing countries; rich countries often keep out imports to protect their farmers. Farm subsidies are four times the annual Official Development Assistance provided by OECD countries. The OECD calculates that the PSE per full-time equivalent farmer was \$35,000 in Norway between 1999 and 2001; \$29,000 in Iceland and Switzerland; \$25,000 in Japan; \$21,000 in the US; and \$16,000 in the EU. The IMF estimates that, if all farm subsidies were eliminated in all countries, the world's \$32 trillion GDP would rise by \$128 billion or 0.4 percent.

Most seasonal foreign workers are employed on farms producing labor-intensive fruit, vegetable, and horticultural specialty (FVH) commodities. Most FVH farmers do not receive direct government payments, but they benefit from farm subsidies because e.g., the subsidy programs keep more land in grains, which reduces FVH production and bolsters fruit and vegetable prices. The current round of world trade negotiations aims to delink or decouple farm subsidies from farm production, and instead justify them on the basis of agriculture's social amenities, such as providing open space. In a revised farm subsidy system, improving conditions for hired workers could be made a requirement for receiving subsidies. Even if FVH farmers remain outside the farm subsidy system, many aim to increase the price

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

Canadian Programs

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

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

Migrants are given entry papers in their countries of origin, and a FARMS affiliate arranges to transport them to Canada and to the employer.²⁸ Farmers advance the cost of transportation from Mexico to Canada, and deduct four percent of workers wages to cover transport costs, up to \$C575; farmers also deduct payroll taxes and insurance costs from workers' pay. Workers have a 14-day probation period after arrival, and farmers prepare a written evaluation of each worker, place it in a sealed envelope, and returning migrants give it to Mexican authorities. Farmers may specify the names of workers they want, which they do over 70 percent of the time, so that the average worker interviewed in one study had seven years experience in Canada (Basok, 2002). Farmers face fines of up to C\$5,000 and two years in prison

²⁸ FARMS began to play this role in 1987, when the program was changed and the private sector played a greater role in program administration. Transportation is arranged by CAN-AG Travel Services.

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

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

Most of the Mexican guest workers are married men who leave their families in Mexico. They travel to Mexico City at their own expense and pay for medical exams, so most live near Mexico City and most go into debt before they are selected.²⁹ Mexican consular officials meet arriving migrants at Canadian airports, inform them of their rights, and under the agreement can inspect housing and solicit worker grievances. Despite suggestions that Mexican consular officials are sometimes ineffective advocates for migrants (Basok, 2002, 149-151),³⁰ most migrants report that they prefer the security of contracts in Canada to the insecurity of unauthorized status in the US. The migrants tend to be isolated on farms, so they do not spend much money, and can save an average C\$1,000 a month from their C\$345 (\$240) weekly pay for 50-hour weeks.³¹

The Canadian ASWP is growing, providing guest workers to fill seasonal farm jobs in eight provinces, including up to 20 percent of the seasonal farm jobs in Ontario. Many Canadian and Mexican government officials think the seasonal worker program is a best-practice model because farm employers are heavily involved in Canada, and the Mexican government is involved in both Mexico and Canada. Prime Minister Jean Chretien, in Mexico in March 2003, said " This program, where your farmers can come and work in Canada, has worked extremely well and now

²⁹ About 75 percent of the Mexican migrants are from four Mexican states: Tlaxcala, Guanajuato, Mexico and Hidalgo.

³⁰ Many Mexican workers leave Canada before they get their last paychecks, or have tax refund checks sent to addresses in Canada. Since 1982, small checks owed to Mexican migrants were sent to Mexico's Foreign Ministry, which reportedly has not contacted the workers to whom the money was owed.

³¹ The Caribbean migrants have 25 percent of their pay deducted in a forced savings program required by Caribbean governments.

we are exploring (ways) to extend that to other sectors.³² The bilateral seasonal agricultural workers program has been a model for balancing the flow of temporary foreign workers with the needs of Canadian employers." Carlos Obrador, Mexican vice-consul in Toronto, agrees, saying it: "is a real model for how migration can work in an ordered and legal way."

Table 10. Canadian Guest Worker Employment in Agriculture

Canadian Guest Workers Admitted for Agriculture, 1987-2002

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

Source: Citizenship and Immigration Canada

*From Barbados, Jamaica, and Trinidad and Tobago

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

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

³² Pilot projects are underway with Mexican workers at hotels in Alberta and a meat-packing plant in Winnipeg.

³³ Diane Lindquist, "Abuses cited in model Canada guest-worker program," Copley News Service, July 16, 2001.

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

The potential best practice aspects of the Canadian seasonal farm worker program include the active involvement of farm employers in program design and administration, Mexican government involvement in recruiting and monitoring migrants in Canada, and exceptions that allow the provision of health insurance in Canada. Worker organizations do not seem to play any role in program design or administration, and their complaints focus on legal restrictions that apply to all farm workers, including guest workers, and on the fact that a guest worker who loses his job also loses the right to be in Canada. Researchers emphasize the significant costs incurred by migrants to get into the program; most begin their foreign job assignments in debt.

UK Programs

Most non-EU foreigners require a work permit arranged by an employer before arriving in the UK to work. The exceptions include working-holiday makers (WHMs), who are youth 17 to 27 from Commonwealth countries who can work in non-professional jobs for one of the maximum two years they can stay in the UK; the work is to be “incidental to a holiday.” WHMs, some 39,000 of whom were admitted in 2002, must show that they have an onward ticket and that they can support themselves without public assistance in the UK-- a minority were employed in agriculture.

Instead, a specialized program admits most foreign migrants for seasonal farm jobs. The Seasonal Agricultural Workers Scheme or SAWS has since 1945 allowed foreigners, originally displaced persons and now full-time non-EU agricultural students from Eastern Europe and the ex-USSR who are 18 to 25, to enter the UK to fill seasonal farm jobs for up to three months (six months beginning in 2003). Almost half are from Poland and the Ukraine, and most are in the UK between April 1 and November 30 for work and an “educational-cultural experience.” Some SAWS workers are covered by Agricultural Wages Orders, which require after October 1, 2003 a minimum wage of £5.15 (\$8.24) an hour for an adult standard worker and £4.50 (\$7.20) for a manual harvest worker; other farm work is covered by the national minimum wage.

Table 11. UK Seasonal Agricultural Workers Scheme

UK Seasonal Agricultural Workers Scheme					
	Ceiling	Admissions:	SAWS Nationalities, 2002		1996
1992	4,450	5,019	Poland	4,867	2,338
1993	4,450	5,011	Ukraine	4,003	554

1994	5,500		Bulgaria	2,252	562
1995	5,500	5,052	Lithuania	2,161	767
1996	5,500	6,152	Russia	1,089	341
1997	10,000	10,255	Latvia	1,029	98
1998	10,000	10,394	Subtotal	15,401	4,660
1999	10,000	10,464	Per of total	80%	76%
2000	10,000	10,846	Total	19,372	6,152
2001	15,200	15,258			
2002	18,700	19,372			
2003	25,000				

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

Admissions are cards issued; about 95 percent of those issued cards report to work in the UK, e.g. 18,771 reported in 2002

No data for 1994

Seven Scheme Operators handle recruitment, and they recruit and deploy SAWS workers to their own farms or other farms.³⁴ The farm employer must provide housing, and SAWS workers are to be employed only on the farm to which they have been assigned. SAWS workers must have visas before arrival, come without their families, and may not adjust status in the UK; an estimated four to 10 percent of SAWS workers overstay. Beginning in 2003, SAWS workers may return to the UK after a break of at least three months outside the country.

The ceiling on SAWS workers' admissions has risen, and they are increasing their share of the seasonal farm work force – in most years, the number of SAWS visas issued exceeded the ceiling because some of the students do not report to work in the UK. The June 2001 census reported that 64,000 seasonal and casual workers were employed in UK agriculture, representing a third of the 188,000 strong work force, including farmers and unpaid family workers. In the seasonal farm labor market, most workers are organized into crews by labor contractors or gangmasters, who receive payments from farmers that reflect wages paid to workers plus a 25 to 30 percent commission. These crews are diverse, and include EU foreigners, non-EU foreigners, and British citizens, some of whom are working for cash wages while drawing UI benefits as they move from south to north harvesting and packing crops.³⁵

³⁴ Operators charge farmers and/or SAWS workers for their services, and fees vary. Harvesting Opportunity Permit Scheme, **HOPS, the largest operator with 8,000 SAWS workers in 2002, uses 75 recruiting agents in agricultural colleges to find students (www.nfyfc.org.uk/HOPS.htm).** and **Concordia** are non-profit operators. Beginning in 2004, others will be able to apply to become Scheme Operators.

³⁵ There are calls to prevent illegal and exploitative employment by better regulating gangmasters. There are two approaches: penalizing violators by e.g. requiring them to register and withholding licenses from those who violate laws (and perhaps penalizing employers on the farms where gangmaster violations are discovered) and rewarding

The UK government has asserted that, by expanding guest worker admissions, illegal migration and employment can be reduced.³⁶ Newspaper reports that 50,000 illegal workers – unauthorized foreigners and British workers drawing unemployment and welfare benefits while working for cash wages – are employed on British farms and in packinghouses were seemingly confirmed by a May 2002 review of SAWS program that “suggests that shortages in the supply of labor are increasingly being met by non-EU citizens working in the UK illegally and by UK nationals working illegally whilst in receipt of benefit.”(p5). A government commission on agriculture recommended that the ceiling on SAWS workers be raised again, from 25,000 to 50,000 a year; the ceiling was 10,000 in 2000.

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

Swiss Programs

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

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

gangmasters who abide by laws with seals of approval.

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

³⁶ White Paper. 2002. Secure Borders, Safe Haven. <http://www.official-documents.co.uk/document/cm53/5387/cm5387.htm>

³⁷ Liebig notes that the Swiss labor force fell 8 percent after 1973, but the unemployment rate stayed below 1 percent.

second-circle or second-priority to nationals from Australia, Canada, New Zealand and the US, and putting nationals of all other countries are in the third circle; third circle nationals cannot be recruited for Swiss jobs unless there are no first- or second-circle workers available. The effect of the three-circle policy was to limit the entry of additional Yugoslavs, who were 15 percent of foreigners in the early 1990s. In 1998, three circles model was replaced by a dual system – EEA nationals and all others.

In July 2002, the Swiss government made changes to its labor migration policy that anticipated freedom of movement with the EEA by 2007. The current policy allows border commuters to more easily obtain one-year renewable work permits, introduces a short-term work and residence permit for non-EEA foreigners intending to be in the country less than 12 months (but who can stay up to 24 months), and includes an annual work and residence permit plan for persons who intend to be in Switzerland more than one year, with a ceiling on the number of new one-year permits. EEA nationals get five year permits when they find employment in Switzerland, and permanent residence status after five years. A new immigration law is expected to draw sharper distinctions between temporary and permanent permits, and to make it harder to adjust from temporary to permanent status, with the trade off being that foreigners in Switzerland have more rights, e.g. a right to permanent residence status after 5 or 10 years residence. Liebig noted that Swiss labor migration policy aims to strike “a balance between the interests of the employers on the one side and rising xenophobia on the other.”

Until June 2002, Switzerland had a seasonal worker program that allowed unskilled foreigners employed at least 36 months in four consecutive years under nine-month A-seasonal permits in construction, agriculture, and hotels to “earn” a B-annual and eventually a C-permanent residence permit. Under this program, about 35 percent of seasonal workers obtained an annual permit, and 60 percent of those who got annual permits eventually settled in Switzerland (Liebig). Some studies suggest that the ready availability of seasonal workers slowed labor-saving changes in the industries in which they were employed.

In December 2001, there were 739,000 foreigners in the Swiss work force, representing about 25 percent of Swiss workers. About 60 percent were settled with permanent status, 20 percent had renewable one-year work permits, and 18 percent were border commuters. According to Liebig, asylum seekers have become a larger share of seasonal foreign workers, there is wide variance in seasonal worker employment by canton, and most Swiss employers reportedly oppose new bilateral worker agreements, fearing they might impose new obstacles to recruitment and requirements on employers of foreign workers.

French Programs

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

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

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

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

Sources: Tapinos, 1984, 54, Miller, 1991b, 836, Patrick Weil, 2003

Berlan (1984) emphasized that southern French agriculture by the 1980s had become dependent on seasonal workers; they supplied up to 80 percent of the hours of hired work in segments of labor-intensive agriculture. Some French farmers used a series of short-term contracts to employ seasonal workers almost year-round, giving farmers certainty of labor supply with minimal fixed labor costs. Efforts to reform the seasonal foreign worker program in the mid-1980s by e.g. hiking employer-paid fees were judged to have mixed effects. Miller (1991b, 864) concluded that “seasonal foreign workers are addictive...through time, dependency develops,” and efforts to reduce legal admissions can lead to illegal entries and employment; seasonal foreign worker status is the “least enviable of all legal foreign worker statuses in Western Europe.” Miller (1991b, 865.)

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

21st Century Guest Worker Programs

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

- Best practices to keep guest worker programs true to their purpose, viz, adding workers temporarily to the labor force in a manner that minimizes distortion and dependence
- How to deal with the millions of unauthorized and quasi-authorized foreigners who are in industrial democracies
- Thinking about numbers versus rights in the emerging global migration system. If there is a trade off between the number of migrants and their rights abroad, should the goal be to maximize the number of migrants who can earn higher wages abroad, or to maximize the rights of those employed abroad?

Best Practices

No country has found the ideal system for adding workers temporarily to its labor force. Germany and the US in the 1950s and 1960s had large-scale guest worker programs that had distortion and dependence effects, as employers made decisions that assumed migrants would continue to be available, and migrants, their families, and countries became dependent on overseas jobs. The fact that millions of migrants were arriving under one program meant that its parameters and implementation were widely discussed. This changed in the 1990s-- the proliferation of micro guest worker programs allowed each to become more detailed and discouraged general discussions of labor migration in receiving countries.

Guest worker programs are here to stay, and best practices include instruments that reduce goal-outcome gaps, that is, minimize distortion and dependence by using economic mechanisms to reduce distortions and dependence. Economic models usually assume that a country's labor supply varies with unemployment, the population of working force age, the participation rate, hours of work, and the

³⁸ Seasonality also makes it easier to justify exempting employers and workers from social security taxes.

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

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

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

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

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

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

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

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

Earned adjustment policies, in combination with new guest worker programs, have been used in Italy and Spain to secure cooperation from sending countries to reduce unauthorized migration. Earned adjustment is the most common prescription to deal with unauthorized foreigners in the US, whose number doubled in the 1990s to about 9 million. Earned adjustment policies, like previous amnesties, run the risk of encouraging more unauthorized migration by signaling to potential migrants that the best way to obtain an immigrant status is to get into another country. Thus,

³⁹ “One potentially Pareto-efficient solution is to institute a system of temporary contract employment in the host countries, with various penalties on the migrant and/or his employer to ensure that there is repatriation after a set number of years. In principle, the return migrants would then be in an even better position to contribute to the development of their home economies.” [Rodrik 2001, 2].

⁴⁰ Ellerman proposed that private agents, labor brokers in developing countries, play a major role in keeping migrants temporary by not allowing them to send workers abroad if “their migrants” do not return; requiring migrants to post return bonds has the same effect. Systems to enforce or encourage returns raise trade offs between ensuring returns and protecting human rights.

earned legalization would have to be delayed until after unauthorized migration is reduced and new guest worker programs are in place, and would have to be considered a one-time rather than an ongoing program.

Numbers versus Rights

A major motivation for finding better systems to manage labor migration is that the system erected by the ILO to protect migrant workers in the 20th century deals with a minority of migrants. The ILO is a rights-based standard-setting organization with a special interest in protecting vulnerable workers such as migrants. Most ILO conventions cover all workers, but two Conventions specifically address migrants, 97 (1949) and 143 (1975). Convention 97, ratified by 42 countries, aims to regulate migration and protect migrants by spelling out procedures for private and public recruitment and assuring non-discrimination in wages and benefits, and allowing migrants to engage in union activities. Convention 143, ratified by 18 countries, goes further, calling for sanctions on employers who hire unauthorized migrants and traffickers who smuggle migrants, but also calling for “equality of treatment” in wages and other benefits for unauthorized migrants who are employed.

An International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, approved by the United Nations General Assembly on December 18, 1990, aimed to fill in some of the gaps in migrant protections.⁴¹ The 8-part, 93 article UN migrant convention aims to “contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families.” It calls on states to adhere to basic human rights standards in their dealings with authorized and unauthorized migrants, including guaranteeing migrants freedom of religion and freedom from arbitrary arrest or imprisonment. It calls for efforts to reduce illegal migration and trafficking and to ensure equal rights for migrants, including border commuters or frontier workers; seasonal workers; project-tied workers, and self-employed workers. A committee of 10 experts is to monitor adherence to the convention, which obliges countries to establish policies, provide information, and assist migrants and their families.

The major employment-related protections are in Part III, human rights, particularly Articles 25-27, which prescribe equality in wages and working conditions for authorized and unauthorized migrant and national workers, allow migrants to join unions, and call for migrant workers to receive benefits under social security systems to which they contribute, or to receive refunds of their contributions on departure. Authorized migrants are covered by additional rights in Part IV, which include the right to information about jobs abroad as well as a list of “equal

⁴¹ ILO Convention 97 is about 5,600 words, 143 is 3,000 words, and the UN Convention is over 14,000 words.

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

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

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

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

⁴² Part IV, Article 44 was one of the most contentious parts of the Migrant Convention. It says that “recognizing that the family is the natural and fundamental group unit of society,” obligates states to “take appropriate measures to ensure the protection of the unity of the families of migrant workers...to facilitate the reunification of migrant workers with their spouses... as well as with their minor dependent unmarried children.” Migrant family members are to have “equality of treatment with nationals” in access to education, social and health services, and “states of employment shall endeavor to facilitate for the children of migrant workers the teaching of their mother tongue and culture.”

Conclusions

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

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

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

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

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

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