



POLICY NOTE 3

Labor Mobility Provisions in Regional Trade Agreements: Lessons

for China¹

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Main messages

- *While the world economy stands to gain massively from liberalization in the mobility of labor, adverse popular reaction to the economic and social impacts of immigrants has kept progress in enhancing global labor mobility well below progress in trade and capital liberalization.*
- *Addressing cross-border labor mobility in the context of regional trade agreements (RTAs) has recently emerged as a promising avenue.*
- *Given the limited commitments made under GATS, developing countries such as China, which want to expand openness to include semi-skilled workers and movement unrelated to a specific commercial presence, may find that broader RTA provisions are of interest.*
- *Win-win results can be achieved if China focuses on areas of employment shortage in the other countries.*

1. **Labor mobility issues are more contentious than either trade or capital liberalization.** Large wage differences between countries give rise to “pauper labor” fears – the apprehension that immigration from poor countries will sharply drive down wage levels and create unemployment in the destination country. During the previous

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era of globalization in the late 19th century, visas and work permits were not required for people to move between countries. At its historic peak, migration accounted for about 70% of the observed international convergence of the ratio between the real wage level and the rental value of capital. Today, adverse popular reaction to the economic and social impacts of immigrants has kept progress toward global labor mobility well below progress toward trade and capital liberalization. In 2000, only 3% of the world's population (175 million persons) lived outside their country of birth, but global exports of goods and services represent more than one third of world GDP, and the ratio of the stock of world foreign direct investment stock to world GDP is almost as large.

2. **Both developed and developing countries stand to gain from liberalization in the mobility of labor.** The OECD estimates that further liberalization, to the extent of 3% of the workforce of OECD countries, could result in significant global welfare gains of up to \$156 billion per year.² Other estimates indicate that a complete liberalization of Mode 4 would lead to gains ranging from nearly 10% to 67% of world GDP.³ Interestingly, 70% of the potential gains from further labor liberalization are attributed to the possibility of greater mobility for unskilled workers (worth an estimated \$110 billion annually).
3. **Despite the size of potential gains, as estimated by economists, most countries are wary of liberalizing labor mobility.** Unlike free movement of goods, services and capital, which have been promoted by trade agreements, meaningful provisions on labor mobility are hardly found in those same agreements, and very few such international accords exist. In most countries, the movement of labor remains the subject of national determination and falls within the jurisdiction of the immigration authority, whose main concern can be to regulate and restrict, not promote.
4. **Services liberalization has not made much progress at the multilateral level, but the members of some of the recent regional trade agreements (RTAs) have accepted greater labor mobility at the regional level.** While the WTO GATS does not define specific categories of labor, WTO members have accepted four widely used categories of skilled professionals for the purpose of inscribing commitments under Mode 4, both in the GATS and in regional trade agreements (RTAs).⁴ Given the

² See OECD (2004), and Strutt, Poot and Dubbeldam (2008). In this paper, the OECD assesses the gains from complete liberalization of merchandise trade at \$104 billion per year. However, this OECD estimate of gains from trade liberalization is far smaller than the estimate made by the Peterson Institute. According to Bradford, Grieco and Hufbauer, the US economy was approximately \$1 trillion richer in 2003 due to past globalization – the payoff both from technological innovation and from policy liberalization – and could gain another \$500 billion annually from future policy liberalization. See Bradford, Grieco and Hufbauer (2005).

³ See Hufbauer and Stephenson (2009).

⁴ All WTO members are signatories to GATS, which does not cover permanent migration. GATS defines trade in services as: Mode 1 relates to cross-border supply; Mode 2 focuses consumption of services abroad; Mode 3 covers the commercial presence of foreign firms; and Mode 4 deals with the movement of natural persons. The WTO approach is limited to the temporary movement of workers, as opposed to permanent emigration.

impasse in the Doha Round and the lack of any progress on services in the multilateral negotiations for the past several years, it is hard to expect great progress on the labor mobility through WTO negotiations. A large number of RTAs, however, have incorporated Mode 4 as part of the package, and interesting initiatives have been taken. Several free trade agreements have been entered into by developing countries in the Americas and in Asia containing provisions that facilitate procedures for temporary labor movement and open up market access opportunities. Some agreements include guaranteed numerical quotas for certain categories of skilled labor.

5. **Given the limited commitments made under GATS, developing countries such as China, which want to expand openness to include semi-skilled workers and movement unrelated to a specific commercial presence, may find that broader FTA provisions are of interest.**

International experience

6. **In international services trade, labor mobility is conceptualized as the temporary movement of natural persons or Mode 4.** The WTO GATS defines it as the supply of a service “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.” The four traditional Mode 4 categories are (1) Business visitors and salespersons (BVs); (2) Intra-corporate transferees (ICTs); (3) Independent professionals (IPs) and (4) Contractual services suppliers (CSSs).⁵
7. **WTO agreements have no general provisions for labor mobility.** Movement associated with Mode 4 covers a very small share of annual cross-border movements of people and accounts for less than 2% of the total value of services trade. In particular, Mode 4 narrowly targets highly skilled workers that are often subject to an economic needs test on the part of the employer, intra-corporate transferees and business visitors, and specialized labor for which it is hard to find substitutes (e.g., medical and construction services). Other concerns with Mode 4 liberalization include: general reluctance by governments to make international commitments that limit their sovereign right to control immigration and determine labor market conditions; commitments that require openness to all countries on a most-favored-nation (MFN) basis that would undermine preferential migration schemes negotiated at the bilateral and regional levels; and the exclusion from Mode 4 of labor provisions related to permanent employment, citizenship or residency.
8. **In contrast to the restricted scope of Mode 4 in GATS, countries have adopted more liberal approach in their bilateral and regional RTAs.** A collateral benefit is

⁵ Mode 4 of GATS is defined as the “supply of a service... by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member”. This includes independent service suppliers and the self-employed, as well as foreign employees of foreign companies established in the territory of a Member. See World Bank Global Economic Prospects (2004).

that the RTA may also include labor mobility provisions beyond what is covered by GATS, such as the right of establishment and national treatment (non-discrimination) for service suppliers based in the partner country; commitments on visas; and chapters that spell out the rights of investors.

9. **A comparison of labor provisions reveals other common characteristics:** (1) labor mobility does not typically replace general migration legislation; (2) a right of labor mobility does not automatically entail the right to practice a certain profession as national regulations for licensing and qualifications usually apply; (3) some agreements are limited to specific sectors (e.g. manufacturing); and (4) some agreements move beyond the WTO General Agreement on Trade in Services (GATS) to cover intra-corporate transferees and investors in a separate chapter on general movement of natural persons.
10. **While most RTAs focus almost exclusively on professional service providers, distinct progress has been made with respect to professional services.** Many go beyond the WTO GATS in providing access for a greater number of categories of professional services, either with expanded numbers of covered categories or in providing unlimited access. For example, in some RTAs, the coverage of labor categories is expanded to include technicians, trainees, nurses, caregivers, installers, spouses and dependents. Differences between developed countries' approach to Mode 4 liberalization are striking: time limits, numerical limits, range of professionals, and their imagination in creating innovative categories. They also often offer the possibility of long-term visa renewals once professionals are settled in the country.
11. **Very recent development shows a few developed countries have been willing to go beyond the expansion of access for professional service providers.** This includes notably Canada, in the two recent FTAs negotiated with Colombia and Peru: the FTAs extend access to the Canadian market to 50 categories of technicians. The innovative category also includes the EPA of the EU with CARIFORUM that has extended market access to contractual service suppliers and independent professionals (for 6 months) and to graduate trainees (for 1 year). Japan has moved to liberalize access to its labor market for the categories of nurses and care workers in its recent EPAs with Indonesia and the Philippines. Finally, both Australia and New Zealand have expanded the categories of labor in their RTAs to include both contractual service suppliers and "installers" (for New Zealand) in their recent agreement with ASEAN members and in the New Zealand RTA with China. The New Zealand RTA with China also has novel provisions for artisans that are proficient in Chinese cultural occupations, such as theater, language, and medicine. Australia has innovated in its very recent RTA with Chile to cover the spouses and dependents for ICTs and CSSs residing in the country longer than one year. Thus Trade agreements have moved over the past two years beyond the purely professional categories of labor to include CSSs, semi-professionals and technicians, nurses, care workers – and even spouses and dependents – within their scope.

12. **The trading partners that have been the most willing to open their markets wider for foreign workers from developing RTA partners have been countries that face considerable labor shortages.** Canada has shown itself the most generous in this respect, with Japan being selective and sector-specific in responding to its labor market needs. Australia has been willing to consider family dependents as part of the labor categories defined under its most recent RTA. The United States and the European Union who have both faced heavy inward migration flows – both documented and undocumented – from Latin America (in the United States) case and from North Africa and Eastern Europe (in the EU case), are less willing to contractually bind greater market openness for foreign workers in their RTAs.⁴ Nonetheless, the European Union did expand its coverage of labor categories in the recent EPA with CARIFORUM members. However, in the United States official and public attitudes have turned sour, and no agreements have been negotiated with Mode 4 coverage since 2002.
13. **Against this background, there is scope for further expanding opportunities in RTAs.** The story of labor mobility within trade agreements continues to evolve. Developing countries who are able to pro-actively define and push their interests with developed-country trading partners should find opportunities that did not exist in the past. To this end, developing countries need a well-designed strategy. It would be advisable to develop local training programs for the specific skills required in the target market.
14. **Bilateral labor agreements (BLAs) are alternative instruments to the more legalistic and rigid RTAs, in particular in promoting mobility of semi-skilled and unskilled labors.** The first and foremost advantage of BLAs or Temporary Worker Programs is that they provide considerably more flexibility with respect to the management of the labor market by the countries involved. Such agreements can be negotiated in response to the economic cycles of the market. Importantly, monitoring of such agreements can be carried out on both sides as a joint responsibility, rather than putting the burden entirely on the destination country to determine the legality of the worker. Guarantees can be designed and written into the agreements in the form of bonds or fines for non-compliance, to encourage the respect for the provisions by private parties. Of course the disadvantage of bilateral labor agreements is that they are single-issue instruments, unlike RTAs. This limitation means that developing country partners do not have the scope, within a BLA, to trade off their “offensive” interests in labor mobility for the “offensive” interests of their developed country trading partners.

⁴ Indeed, a very recent RTA between the EFTA members and Colombia, signed on November 25, 2008, does not even include an Annex on Professional Service Suppliers and contains no mention of the movement of natural persons other than their definition as Mode 4 in the body of the agreement. The EFTA members – Iceland, Liechtenstein, Norway and Switzerland – are not facing labor shortages, and in the current hostile economic climate did not feel any pressure to include liberalization of labor mobility as part of their agreement with Colombia. See www.sice.oas.org.

Possible lessons for China

- 15. Given that low-skilled workers account for the majority of Chinese seeking employment abroad (estimated about 75% of total labor exports in 2004), the prospects for liberalizing labor mobility along the outlines of GATS Mode 4 may not resonate strongly with Chinese RTA interests.** Liberalization under Mode 4 is oriented to highly skilled service suppliers, as well as executives, managers, and other intra-corporate transferees. Like most developing countries, such as Thailand and Philippines, China has expressed its interest in better opportunities abroad for middle-skill groups, including semi-skilled and even unskilled workers.⁵
- 16. So far, China has only reached agreement on limited labor mobility and some facilitation.** Until recently, China addressed labor mobility through stand-alone bilateral cooperation agreements or MOUs rather than in PTAs.⁶ In 2008, one of the more ambitious and comprehensive labor agreements was reached with New Zealand. Annexes 10 to 12 of the China-New Zealand PTA permit temporary labor mobility, including unique bilateral commitments to allow up to 800 skilled workers from China in specific “cultural” sectors (e.g., Chinese medicine, martial arts) and a maximum of 1,000 skilled workers for up to three years in specified occupations where New Zealand faces a shortage of skills. Facilitation clauses call for improved processing and transparency of visa requirements, and extended work permits for senior and intra-corporate transferees. Following the framework used with New Zealand, labor mobility for business visitors and intra-corporate transferees were also included in recent Chinese trade agreements with Singapore and Peru.⁷
- 17. When China is interested in pursuing bilateral trade agreements with the major developed trading partners (other than the United States at the present), there is a chance to obtain an expanded market access.** Labor markets worth exploring are opportunities for firms and individuals that bring unique cultural talents or specialized skills, some independent professionals, and niches of the industrialized developed economies with labor shortages – geographic locations or particular occupations. If developing countries such as China wish to promote exports of service providers in the health services, this is certainly an area that offers a large potential for expansion. For this market, it might be advisable to develop local training programs for the specific skills required in the target market, in the way that the Philippines has done and

⁵ China is also interested in labor mobility under Mode 4, including under the categories of intra-corporate transferees and business visitors because China has become a platform for many multinational companies. Relative to its population size, Chinese labor migration is small, contributing about 540,000 compared with 9 million from the Philippines. See Shin-yi Peng, (2006), Hufbauer and Stephenson (2009), and Gao (2009),

⁶ China has signed 10 bilateral labor cooperation agreements with 10 countries, including the UK, Russia, Jordan, Malaysia, Korea, Mauritius, Saipan, Bahrain, Australia and UAE. See Gao (2009)

⁷ The China-Singapore PTA also included labor mobility for contractual service suppliers. While the China-Chile PTA includes an annex on temporary movement of business persons, it does not contain substantive commitments. See Gao (2009).

Indonesia is currently doing. In the case of workers with lower skill levels and less formal educational training, the best vehicle for promoting greater labor mobility is not that of formal RTAs, but rather the more flexible instrument of temporary worker programs (TWPs).

18. Nevertheless, given the super political sensitivity of labor mobility, labor mobility negotiations will be a long, persistent, and patient search for niches in the labor markets of development countries where greater entry of migrants is not only tolerated but welcomed. To better serve the negotiations, policy makers and negotiators may bear the following six precepts in mind:

- Negotiators should approach the discussions of labor mobility with a positive attitude and emphasize gains to the destination country. The economic gains are invariably large, and the political costs are often exaggerated, but it is helpful when negotiators from developing countries can research particular labor markets and lay the facts on the table.
- To better serve their negotiators, government should conduct in-depth research on the labor markets of potential destination countries. The goal is to discover promising niches. This will require specialized officers or contractors working in the destination countries.
- Likewise, country specialists should work with educational and credentialing authorities in the developed countries to lay the groundwork for mutual recognition agreements for the benefit of their independent professionals and other highly skilled workers. Also, China could push for the formulation of international standards based on its own domestic standards in sectors in which China has special advantage, such as TCM, Chinese chef, Mandarin language teacher, martial arts instructors, etc.
- When Chinese firms are seeking to expand their operations abroad, whether in a developed or developing country, government negotiators should team up with the firm to ensure agreement on the requisite number of visas for ICTs and CSSs to support the new operation. This needs to be done whether or not an RTA is in place.
- Negotiators should seek agreement on the status of Mode 4 workers, meaning their rights as to visas, working conditions, social security contributions, unemployment compensation, and ability to remit funds. For example, quota designations for certain “cultural” occupations, and artisans and workers in short supply, may be feasible, especially if there is some provision for flexibly adjusting the quotas on an annual or biennial basis to reflect labor market conditions.
- Above all, senior officials must mind the “image” of their migrants abroad – doing whatever is possible to ensure that their migrants are seen as hard-

working, law-abiding, respectful people. When adverse incidents happen, as they will, the government should cooperate as appropriate, including revocation of visas and other measures.

References

Gary Hufbauer and Sherry Stephenson (2009) Increasing Labour Mobility: Options for Developing Countries, background paper

Gary Hufbauer and Yee Wong (2009) China's Trade Agreements: Lessons from Other Countries, background paper

Henry Gao (2009) Supporting China's Regional Trade Agenda: China's Strategies on Negotiating Competition, Environment, and Mode 4 Provisions in its RTAs, background paper

Comparison between WTO and RTA Provisions

This annex will provide a brief overview of the nature and type of provisions for labor mobility in developed countries' RTAs as they are compared with WTO GATS Mode 4.

United States

NAFTA predated and informed the development of GATS by providing the language for temporary labor mobility, defined as the temporary movement of business persons “without the intent to establish permanent residence.” Under NAFTA, a separate side agreement for labor, the North American Agreement on Labor Cooperation (NAALC) emphasized that each Party had a commitment to enforce its domestic labor laws but also addressed questions beyond the standards articulated in conventions of the International Labor Organization (ILO).¹⁰ The inclusion of “internationally recognized labor rights,” especially minimum wage provisions that potentially have the greatest impact on trade, goes beyond core ILO standards; this has become standard fare in nearly all US RTAs.¹¹ Specifically, the NAALC adopted clauses to prevent occupational injuries and illnesses; to provide compensation in cases of occupational injuries and illnesses; to protect migrant workers; and to ensure labor rights related to minimum wages.

In NAFTA, labor mobility provisions were limited to higher skilled workers in four business categories: business visitors, professionals, intra-company transferees; and traders or investors (including those in the agriculture and manufacturing sectors). To facilitate temporary labor mobility, Chapter 16 of NAFTA also allowed renewable Trade NAFTA (TN) visas for professionals that lasted up to one year and are now uncapped for both Canadians and Mexicans.

Besides NAFTA, agreements with Chile and Singapore expanded labor mobility for professional workers, and created a path for H-1B1 visa that included the possibility of unlimited extensions. Unfortunately, these provisions sparked a strong backlash from the US Congress, which objected to trade agreements that seemed to infringe on immigration policy. Since 2002, no trade agreements have included a chapter on temporary entry. Instead, RTAs with Morocco, DR-CAFTA and Peru, include an Annex on Professionals with similar objectives as the NAFTA Annex.

¹⁰ It is important to emphasize, however, that NAFTA does not embrace ILO conventions, since few of them have been accepted by the United States.

¹¹ These international labor standards reflect domestic US concerns about trade policy and they include: the right of association; the right to organize and bargain collectively; prohibition of forced or compulsory labor; minimum age for employment of children; and acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. See Grynberg and Qalo (2007).

While NAFTA provides the most comprehensive example of US legal provisions for labor in a RTA context, all US RTAs include at least one reference to labor standards in the preamble. Examples of stronger labor clauses include the US-Jordan, US-Chile and US-Peru RTAs, which emphasize commitments to international labor standards and domestic labor laws, and encourage cooperation to improve basic worker's rights. In particular, the US-Jordan RTA goes a step further to ensure that parties meet obligations on labor standards, subjects not included under NAFTA. The US-Jordan RTA stipulates that each "Party shall not fail to effectively enforce its domestic labor laws in a manner affecting trade between the Parties." Labor standards were mentioned in RTAs with Australia and Singapore, but negotiations leading to the US-Peru RTA provided a new template, in accordance with a US Congressional mandate for language on "fundamental labor rights". This template has now been applied to recent RTAs with Colombia, Panama, Peru and South Korea. In particular, the Peru RTA forbids governments from waiving or otherwise derogating from "fundamental labor rights" (a term that was not further defined).¹² As a result, the United States is now an advocate for stronger set of international legal responsibilities, such as the obligation to "adopt and maintain" labor rights.

European Union

Except for the founding European agreement, the Treaty of Rome (ratified in 1957) and non-reciprocal RTAs with African and Caribbean countries, the EU has shown less appetite for including labor standards in bilateral and regional association agreements. Under Article 18 of the Treaty of Rome, Europe took a very liberal approach to labor mobility that extended to all categories of citizens and includes immigration rights. However, this "single country" approach only applies to the core EU 15 members; free immigration from the newer 10 members, admitted in 2004 is supposed to be a reality by 2011.

European RTAs with non-member countries are more restrictive, partly because the European Commission does not yet have negotiating authority from EU member states in all of the service areas. Accordingly the RTAs reserve to each party the discretion to grant, refuse and administer residence permits or visas. The Euro-Mediterranean agreements explicitly state that labor mobility provisions cannot be used to challenge an immigration decision that refuses entry.

Unlike US RTAs, European labor provisions are not collected in a single chapter or article, but instead are referenced in other provisions. For example, the EC-Chile RTA addresses labor standards in Article 44, within the context of a general provision on social cooperation that mentions a commitment to relevant ILO conventions. Other trade

¹² See Article 17.1 of the US-Peru RTA, available at: http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Section_Index.html. The interpretations of other key provisions, such as "freedom of association" and "collective bargaining," are likewise undefined. The United States has not ratified the ILO convention on freedom of association, which dates to 1949. As a result, the US government has adopted labor provisions in its RTAs that go beyond its acceptance of ILO declarations, opening the possibility that US federal and state labor laws will need to be changed or be subject to trade sanctions. See Charnovitz (2008).

agreements, such as the Euro-Mediterranean RTAs with Morocco and Tunisia, stipulate non-discriminatory conditions for workers beyond service suppliers.

Japan and New Zealand

Japanese and New Zealand RTAs do not explicitly address labor provisions.¹³ Instead, in cases where RTAs do not contain labor-related provisions, Japan or New Zealand is expected to observe the fundamental principles stated in the ILO Declaration on Fundamental Principles and Rights at Work (1998). Key ILO labor rights enumerated in the Declaration and other conventions include: freedom of association, right to organize and bargain collectively, non-discrimination, freedom from forced labor, minimum age of employment for children, and elimination of the worst forms of child labor.

In some cases, Japanese RTAs outline a narrow application of labor standards. For example, Article 103 of the Japan-Philippines RTA emphasizes that both parties should not weaken domestic labor laws to attract investment: “Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws.”¹⁴

¹³ The same practice is followed in RTAs negotiated by EFTA.

¹⁴ Bourgeois, Dawar and Evenett (2007).

Scope of Labor Mobility in RTAs

Countries in geographic proximity to one another and with similar levels of economic development – such as within the European Union or the Australia-New Zealand Trans-Tasman Travel Arrangement (TTTA) – are likely to follow a more liberal approach to labor mobility.

United States

NAFTA is the only US RTA that offers full mobility of labor in designated categories, albeit temporary, and in the case of Mexico with numerical limits (since relaxed). All other trade agreements start with the GATS framework (constructed after NAFTA had been signed), and then add additional elements. The US-Jordan RTA, for example, extends GATS labor mobility by specifying visa commitments for both independent traders and persons linked to investment beyond service suppliers.

European Union

Under the Treaty of Rome, the original European Community guaranteed comprehensive rights of labor mobility, allowing every EC citizen the fundamental right to move freely between the territories of member states. This, of course, is the general practice within single nations. No visas or work permits were necessary to move from one EC member state to another, although sometimes residence permits were required.

Despite this liberal foundation, progress still remains to be made in relaxing restrictions on movement of labor within the enlarged European Union. Workers in the new Central and Eastern Europe (CEE) member states are not yet able to move freely. For example, CEE workers face sectoral exclusions and a horizontal transition period of ten years. When the European Union expanded from 15 to 25 member countries in 2004, only the United Kingdom, Ireland and Sweden waived the opportunity to impose immigration restrictions lasting up to seven years. But the United Kingdom allowed unskilled workers from Bulgaria and Romania in just two sectors: food processing and agriculture.

Bilateral European RTAs have very limited labor mobility provisions, based primarily on the GATS framework with specific carve-outs. For example, the EU-Mexico RTA only provides labor mobility through trade in services, and specifies a ten-year transition period. Under the Mexico trade agreement, certain sectors are excluded (e.g., audio-visual, air transport) and both parties can regulate the entry and stay of individuals. The EU-Chile RTA, however, is broader in scope and covers Mode 4 as well as 33 categories of professional service providers that it accepts from Chile without numerical limit. Similarly, the EU-CARIFORUM Economic Partnership Agreement expanded the coverage

of workers to include contractual service suppliers, independent professionals and graduate trainees.

Japan

Despite its tradition of a highly restrictive policy towards foreign labor, Japan is one of the few Asian countries that made large commitments under GATS. In particular, as part of its Mode 4 negotiations, Japan offered to increase market access for natural persons that are not related to establishing a commercial presence under Mode 3; moreover, Japan offered a generous time limit of three years for most categories. While none of the Japanese RTAs provide full labor mobility, some include provisions on the ability of companies to bring key personnel under the investment chapter. For example, Chapter 9 of the Japan-Singapore RTA includes specific commitments for movement of persons related to business purposes and investment that outlines short-term visitors and intra-corporate transfers. There are also provisions and a joint committee devoted to mutual recognition of professional qualifications.

Two recent RTAs moved beyond the Singapore RTA and indicate an innovative approach that has not yet been seen in other trade agreements. Agreements with Indonesia and the Philippines, for example, are unique in covering specific categories of nurses and care workers with annual quotas and training requirements.

New Zealand

The combination of the Australia-New Zealand CER and the Trans-Tasman Travel Arrangement (TTTA) allows for full market access, mobility and national treatment for all service suppliers. First established in 1923 and formally codified in 1973, the TTTA was developed through a series of immigration accords between the two countries. Although some sectors under the CER are excluded (e.g. air services, broadcasting, postal services), the TTTA provided complete labor mobility by allowing a person to register an occupation and practice that profession if he is so registered in his home country.¹⁵

After the CER, the second most comprehensive labor provisions are articulated in Chapter 11 of the New Zealand-Singapore RTA. Both parties agree to review commitments every two years and expand on initial commitments to meet the APEC objective of free and open trade in services by 2010. While the trade agreement largely mirrors the GATS framework, there are a few features that go beyond GATS: service exporters from New Zealand will have better access to the Singapore market in specific areas such as architecture, engineering, telecommunications, finance, education and environmental services. In addition, business and intra-corporate transferees can enter both countries more freely (up to one month with a possible extension for another two months).

Besides the CER and the Singapore RTA, other New Zealand trade agreements, such as the New Zealand-Trans Pacific Strategic Economic Partnership and the Thailand RTA,

¹⁵ In 2001, Australia modified the agreement by excluding social security eligibility from New Zealanders who are not permanent residents.

narrowly focus on steps that will facilitate labor mobility. Examples of labor facilitation include streamlined immigration clearance procedures, increased recognition of qualifications and registration systems for certain professions, and work permits and temporary entry for intra-corporate transferees or senior managers. By contrast, more substantive commitments under the ASEAN-Australia-New Zealand RTA include a chapter on temporary entry that allows New Zealand managers one of the longest time stays for intra-corporate transferees (3 or 4 years). Recent RTAs with both ASEAN members and China suggest that New Zealand is moving beyond the expansion of access for professional service providers to include both contractual service suppliers and “installers.”

Institutions and Enforcement of Labor Provisions in RTAs

Most RTAs do not establish a separate institution to enforce national labor laws and regulation commitments. European RTAs, for example, do not create institutions to manage implementation of labor standards. A few US trade agreements create institutions, but and they are usually subsumed within a general institutional structure spelled out in the RTA.

Labor provisions are also rarely enforced with a formal dispute settlement mechanism. Instead, most RTA partners agree to hortatory commitments with few enforcement mechanisms, beyond encouraging both parties to comply with their own domestic labor laws. In some trade agreements, such as the Euro-Mediterranean Association Agreements, dispute settlement procedures are simple and vague. The Euro-Med RTAs allow both parties to use Joint Committees to arbitrate any disputes and take any measures deemed “appropriate” if either signatory fails to fulfill its obligations. These decisions are made on a consultative basis, are non-binding and have no provisions for trade sanctions. Within NAFTA, the United States created a complex consultation mechanism, deliberately designed *not* to lead to binding arbitration. The Peru RTA establishes a Labor Affairs Council and formal dispute settlement procedures to ensure that both parties effectively enforce their own domestic labor laws; penalties are possible, but as a last resort. Japan established an arbitration panel covering labor issues in just one of its RTAs. Under the Japan-Philippines RTA, labor provisions are addressed in the investment section, and any disputes can be brought to a general dispute settlement mechanism. To forestall a race to the bottom in labor standards (which in any event is unlikely), if one party considers that another has weakened domestic labor laws to encourage investment, it can request consultations with the other party.

United States

NAFTA, US-Chile, US-Peru and US-CAFTA-DR RTAs are the few trade agreements that established labor-specific regulatory authority to monitor implementation of labor provisions. Under NAFTA, the NAALC cannot enforce labor laws in the territory of a party but it does provide the equivalent of a supranational labor affairs council. Under Article 4, any entity with a legally recognized interest can access NAALC tribunals for evaluating the enforcement of a party’s domestic labor laws. NAALC is unique in being the first regional labor side agreement containing economic sanctions for labor rights violations, following an arbitration process. In theory, fines can be levied to redress persistent non-enforcement, and if fines are not paid the other NAFTA parties can then impose trade sanctions. However, these measures have never been invoked.

The NAALC framework has several limitations. For example, although NAALC emphasizes signatories commit to enforce their own national labor laws, NAFTA parties are not committed to observe the ILO Declaration on Fundamental Principles and Rights at Work. The dispute settlement mechanism is cumbersome, and the lengthy process for issuing reports averages more than 30 months.

Since 2002, the United States has amplified the possibility of enforcing labor standards in its bilateral RTAs. Some recent RTAs, such as US-Australia and US-Morocco, explicitly include the option of WTO dispute resolution on labor standards issues. The US-Peru RTA strengthens labor provisions by mandating both parties to enforce domestic labor laws through a mechanism that includes monetary penalties, transparent domestic legal procedures and openness (e.g., a public hearing). The Peru RTA also creates a labor cooperation and capacity building mechanism to promote cooperation on labor-related issues such as fundamental rights to work, the worst forms of child labor, and occupational safety.¹⁶ Besides NAALC and the Labor Council under the Peru RTA, a few other US RTAs incorporated labor-related institutions under the umbrella of Joint Committees that oversee the general implementation of the trade agreement. For example, the US-Jordan RTA allows the possibility for an independent supranational dispute settlement mechanism and grants non-binding dispute panel proceedings for the violation of labor provisions.¹⁷ However, there is a high threshold to meet before initiating a review of labor rights issues. Unlike the NAFTA, the parties to the US- Jordan RTA agreed in an exchange of letters not to impose trade sanctions for labor disputes. By contrast, sanctions under RTA with Chile, Peru and Singapore are allowed, though the possibility is remote and a cap of \$15 million annually is imposed.

The weakest institutional mechanism to oversee labor provisions is the voluntary option, where both parties designate a domestic representative at the national level within the labor ministry to consult on labor affairs. For example, the US-Morocco RTA only encourages parties to commit to provisions and, if necessary, convene a national labor advisory committee or publish any relevant reports.

¹⁶ See Villarreal and Bolle (2006); and Everett Eissenstat, Assistant USTR, Testimony before House Committee on Ways and Means, July 12, 2006.

¹⁷ By contrast, NAFTA only allowed complaints to be submitted on three key labor provisions: child labor, minimum wage and technical labor standards, and occupational safety and health.