



Asia-Pacific
Economic Cooperation

2006/SOM1/CTI/FTA-RTA/012

Labour Movement and International Trade Migration and the WTO

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**APEC Workshop on Best Practices in Trade
Policy for RTAs/FTAs: Practical Lessons and
Experiences for Developing Economies
Ha Noi, Viet Nam
27 February-1 March 2006**

Labour Movement and International Trade

WTO, FTAs and Bilateral Labour Market Access Agreements

Why does this matter?

- A New Bilateralism is emerging that is outside of WTO context.
 - Bilateral Access Agreements
 - FTAs covering visas
 - Broader bilateral approaches to commodities
- Temporary Movement and migration are very important sources of forex earning for many APEC economies
- Aging OECD populations mean that labour movement issues will become more important over the next 25 years

Is Migration Covered by WTO ?

- Scholars agree that permanent movement is clearly outside the WTO. Temporary movement arrangements can be seen as either inside or outside.
- WTO Secretariat has issued papers that interpret labour movement as not being a mode 4 issue.
- If it is time bound and sector specific it is more likely to be subject to WTO. Are temporary workers in the tourism sector covered by GATS but those in agriculture, not covered?
- Many WTO members including USA, EU and Canada have listed various bilateral labour market schemes in their MFN exemption schedule

The WTO MFN Exemption Schedule

- At the end of the Uruguay Round WTO members agreed to exempt their WTO violations- it was not intended to be indefinite
- 'In principle' these should continue for 10 years i.e. 2005 and in any case there should be negotiations i.e. built-in agenda
- As we know from MFA 10 years always comes too quickly.
- Has been reviewed twice and members disagree about the future of MFN exemptions

Bilateral Labour Market Access Agreements

- OECD countries maintain 180 such agreements and the number is rising.
- Many advanced 'developing' countries e.g. Korea, Malaysia, South Africa and the Gulf states import labour and have such agreements with source countries
- These are often negotiated by immigration and foreign affairs officials with no trade officials participating
- These are temporary, sector specific and often quota based.

Examples of BLMAA

- Canada Seasonal Agricultural Worker Scheme
 - Extends to 13 countries – Mexico and 12 Caribbean countries for 17,000 workers per season
 - Scheduled as an 'indefinite' MFN exemption in Canada's schedule
 - Considered as 'state of the art' labour agreement'
 - Mexican provisions could be brought under NAFTA, Caribbean market access needs new arrangement

Examples of BLMAA

- US Seasonal Agricultural Scheme (H-2A) Visa (Bilateral or Multilateral?)
 - USA issued 28,000 H-2A visas in 2001, 79% were for Mexicans and 13% for Jamaicans
 - US scheme is not based on quotas and is open to all WTO members, in theory. As a result, unlike the Canadian scheme it requires no MFN exemption
 - In practice the US requires the employer to cover the cost repatriation of the employee and therefore only proximate sources of supply are commercial
 - Unless challenged the US scheme is WTO compatible
 - Bush administration wants to create a 'humane guest worker scheme'

EU BLMAA Schemes

- The EU situation is quite different from that of US and Canada because of the supply from EU acceding countries to the east
- GATS Article V and Vbis often apply for BLMAA with East European and Euro-Med agreements
- Some are of questionable WTO compatibility e.g. Italy-Nigeria, Italy -Sri Lanka etc
- The extent of the MFN violation has often increased following 1995 without notification or seeking waivers

Are BLMAA's WTO Compatible?

If they are listed as an MFN exemption and a panel considers 10 years to be the length of time they were expected to exist then 'no' They require waivers if they are to be expanded.

If no agreement in the current round Panel may have to rule on MFN exemptions of 'indefinite' duration

FTA's and Labour Movement Issues

- US and EU FTAs have labour market access provisions.
- US has attempted to extend visa and labour market issues until the US-Chile and US-Singapore FTAs.
- US congress carved out 6,400 visas allocated in these FTAs from MFN quota of up to 65,000 H-1B visas provided under GATS. This is of questionable WTO compatibility.
- Who could challenge- most H-1B visas are allocated to Indian and Chinese nationals
- Since Singapore -US and Chile -US there have been no bold migration measures in US FTAs

FTAs and Labour Market Access

- The most recent FTA between Japan and Philippines (not yet implemented) has important provisions for nurse mobility.
- It is understood that there are differences over whether there should be numerical quotas
- Japan-Philippines is potentially a new generation of agreements
- Some WTO issues over whether it is possible to impose numerical quotas on service suppliers.

How do we make FTAs and BLMAAs WTO compatible

- Economic Integration Agreements (GATS Article V)
- Labour Market Integration (Article Vbis)
- Negotiated solution on MFN exemptions (unlikely)
- Waivers for on-going MFN violations

The Future

- Labour market access issues will become more important as OECD and Chinese population ages.
- Will need to address this either bilaterally through FTAs or multilaterally.
- Multilateralism will yield largest returns for developing countries eg nurses in bilateral approaches
- A dispute on migration at the WTO should be avoided at all cost.