Migrant Labour and the FTAA:
How should the FTAA address the issue of unskilled migrant labour?

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A.) Introduction:

Over the past several decades, the international migration of unskilled workers seeking work has reached an all time high. The United Nations estimated in 2002 that some 175 million persons were working legally outside of their country of primary residency (United Nations 2002). As such, many labour unions and NGOs have fought for stipulations to be added to the proposed Free Trade Area of the Americas (FTAA) that would assure basic rights and privileges for workers living outside of their country of origin. These stipulations have been contested by more developed nations who fear an onslaught of immigration from the developing world, taking jobs away from native workers. The incorporation of migrant worker rights into the FTAA is therefore a hotly contested issue, pitting less developed countries (who rely on migrant labour remittances as a proportion of their GDP) against more developed countries (who seek to protect the jobs of their citizens from immigrants). This paper will address how the FTAA can be used to protect migrant workers whilst simultaneously preventing an onslaught of migration that could create structural unemployment (ie-lack of jobs) in more developed countries. After outlining several options, it becomes evident that an FTAA Side Agreement on Migration has the most potential to address the needs of all parties.

There have generally been two means of dealing with the issue of international migration within economic trade agreements. The first system, exemplified by the North American Free Trade Agreement (NAFTA), refrains from dealing with the issue of migration whatsoever. The second, as found in the European Union (EU), grants the free movement of workers and the ability of a national of any EU state to work in any other EU state on the same conditions as the other member state's citizens as a fundamental

right of all citizens. I contend in this paper that neither option will be effective in the FTAA, and therefore broaden the scope of the analysis to address how social issues in general have been addressed through NAFTA (as it is found that the EU no longer applies) to discern whether a new approach to addressing migration in international trade agreements can be created. This discussion leads to the logical conclusion that a side agreement on migration—similar in structure to the NAFTA side agreements on Labour and the Environment—possesses all of the qualities necessary for FTAA Migration provisions to effectively address the problems created by the international migration of unskilled workers without creating undue complications.

B.) Methodology:

It is impossible to foreshadow how migration stipulations within the FTAA could affect international migration flows within the area. Therefore, this paper reaches its conclusion by examining stipulations regarding migrant labour in the North American Free Trade Agreement and the European Union. NAFTA was chosen because it is the international trade agreement upon which much of the FTAA is based. Furthermore, most other international trade agreements (including MERCOSUR and CAFTA) follow the example of NAFTA and refrain from dealing with the issue of migration. The EU was chosen because it is novel amongst trade agreements in that it promotes an open-border policy with regards to labour migration. By dealing with migration in such an open manner, the EU shows that migration stipulations can indeed be included within international trade agreements. When examining these 2 trade agreements, several questions will be asked. First, I will examine how the trade agreement deals with the

issue of migrant labour. I will then discuss how this model could be applied within the FTAA, and proceed into a cost-benefit analysis of this application.

After completing this aspect of the research, it becomes obvious that neither of the two prevalent models of handling migration within trade agreements would work in the context of the FTAA. The scope is therefore broadened to address the two ways that social issues (in general) have been dealt with within the text of NAFTA (as the method of dealing with social issues as per the EU does not apply), followed by a cost-benefit analysis of using either of these approaches to create stipulations regarding migrant labour within the FTAA.

C.) International Migration of Unskilled Labour

An Introduction:

The UN estimated in 2002 that some 175 million persons were working legally outside of their country of primary residency. The remittances of these individuals to families in their native states total well over US$100billion annually (ILO 2004). This amount is far greater than the sum total of all overseas development assistance and is second only to the value of all oil products in the global commodity trade (ILO 2004). Indeed, in many cases (particularly in less developed nations), remittances from migrant labour accounts for a significant portion of the state's GDP (United Nations 2002).

As shown in Table 3.1, it is evident that such is the case in the proposed Free Trade Area of the Americas. Many of the less developed states rely on remittances from migrant labour for over 10% of their GDP, whilst more developed nations (such as the United States) do not rely on remittances for any portion of their gross domestic product.

Many of the migrant workers within this region rely particularly on the United States in order to find secure employment. An analysis of the makeup of migrants living in the United States shows that five of the ten leading countries of origin of migrants living in the USA lie in the proposed Free Trade Area of the Americas (see Table 3.2 & Figure 3.1, Below). In 2003, the migrant population in the United States coming from these five countries alone account for approximately 37% of all migrants living in the USA (migrationinformation.org, 2005). In 2000, the total number of migrants from South America living in the United States totalled more than 16.1 million (Grieco 2002). As such, it can be easily identified that gaining access to the American labour market is of the utmost importance to less developed Central and South American states looking to further develop economically.

Table 1: Migrant Populations by region and remittances as a percentage of GDP

State or Region	Pop (thous)	Migrant Pop (thous)	Migrants as % of pop	Remittances (US $ thous)	% GDP
LAS/ Caribbean	518809	5944	1.1	17131	0.8
Cuba	11199	82	0.7	unknown	unknown
Dominican Republic	8373	136	1.6	1689	6.8
Jamaica	2576	13	0.5	789	10.9
El Salvador	6278	24	0.4	1751	13.3
Nicaragua	5071	27	0.5	320	13.2
Northern America	314113	40844	13	Negligent	Negligent
USA	283230	34988	12.4	Negligent	Negligent
World	6 056 715	174781	2.9	62239	0.2
More developed regions	1 191 429	104119	8.7	12535	0.1
Less developed regions	4 865 286	70662	1.5	49704	0.7
Least developed countries	667613	10458	1.6	unknown	unknown

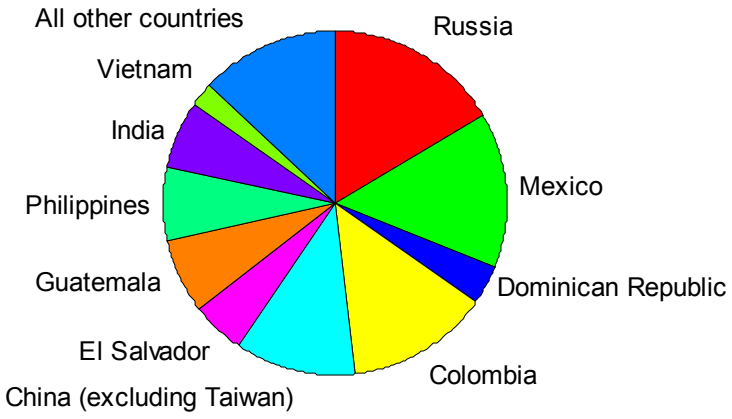
(Source: United Nations (2002).)

Table 2: Emigrants residing in the USA by country of origin, 2003

Country of Origin	Number immigrants (thousands)
Russia	951
Mexico	864
Colombia	777
China (excluding Taiwan)	659
Guatemala	415
Philippines	397
India	372
El Salvador	296
Dominican Republic	205
Vietnam	133
All other countries	758

(source: Migration Information.org Global Data Centre)

Figure 1: Emigrants residing in the USA by country of origin, 2003



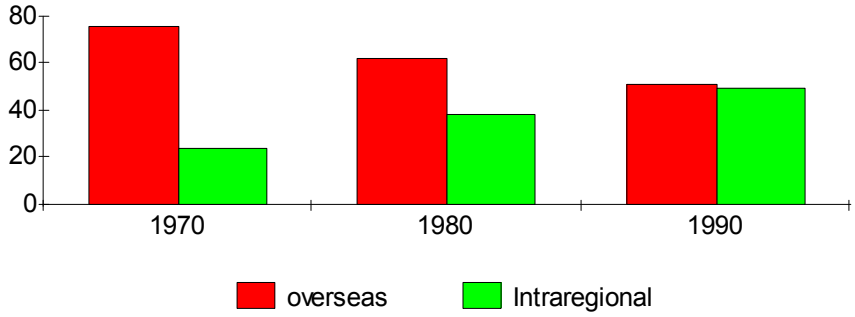
(source: Migration Information.org Global Data Centre)

Furthermore, migrant workers are often subject to inhumane and unfair treatment whilst abroad. The ILO (2004) has found that more than one in three qualified migrant applicants were unfairly excluded in employment selection procedures in several Western countries—a discrimination rate of 35%. It is evident that something must be done to protect these workers.

Migration Stipulations within the FTAA? The Primary Arguments

The push to include this protection within the FTAA stems from the increase in migration amongst Latin American countries themselves. As Miguel Villa and Jorge Martinez Pizarro (2004) have noted, by the year 1990, "almost two thirds of Latin Americans residing in the region lived in countries other than their country of origin" (17). Intraregional migration has begun to displace immigration from overseas as the predominant source of emigrants, as shown in figure 4.1. With intraregional migration of workers within Latin American becoming such a regular occurrence, the FTAA would be an ideal place in which to begin the daunting task of legislating enforceable protection for migrant workers, as it will likely be one of the only agreements to include all the Latin American states.

Figure 2: Makeup of immigrant population in Latin America by sending area- overseas (Europe/Asia) or Intraregional (Other LA states).



(Source: Villa, M. & Pizarro, J. M. (2004).)

Numerous civil society groups have taken a definite stance on whether or not migrant labour should be protected within the FTAA. A wealth of groups opposed to the FTAA promote stronger protection of workers than those originally proposed. Some of these groups, particularly Stop the FTAA (2004), uses the NAFTA example to outline

how weak workers rights stipulations in the FTAA could hurt the rights of migrant workers. They contend that in order to conform with NAFTA, the Mexican government had to change Article XVII of the Constitution to allow privatization of collectively owned farms or ejidos (Stop the FTAA 2004). This resulted in widespread unemployment of farm workers, and encouraged the migration of unskilled farm workers to the United States and Canada (Stop the FTAA 2004). Since NAFTA included no provisions protecting the rights of migrant workers, these workers had no enforceable means of protection after emigration (Stop the FTAA 2004). The group cautions against omitting protection for migrant workers from the FTAA for this reason.

To the same end, there are many civil society groups and labour unions (particularly those based in the USA) that contend that a social clause protecting migrants will open their borders to an unwanted onslaught of immigration. Jasper (2004) contends that the inclusion of any migration stipulations within the FTAA would essentially eliminate sovereign borders between the countries of the Western Hemisphere, posing serious security threats and stealing jobs away from American workers. A report by the International Labour Rights Fund (1999) (which advocates migration stipulations within the FTAA) notes that even those states that push for the rights of their workers to work legally in Canada and the U.S.A simultaneously fear an onslaught of immigration from their even less-developed neighbours should their own borders be opened. It is obvious that many states—including less developed states in Latin America, fear the free flow of migration at the same time as they desire it.

While it can thus be established that stipulations concerning migrant workers are necessary in the proposed Free Trade Area of the Americas. However, it has yet to be

established *how* these provisions should be included. Any stipulations must be considered carefully so as to protect migrant workers and those who rely on their remittances whilst simultaneously protecting the native labour force in countries accepting migrants. As no data could foretell the effects of including migrant rights in the FTAA, we must turn to other international agreements to determine what form provisions regarding migration within the FTAA should take.

Migration Stipulations within the North American Free Trade Agreement:

The text of the North American Free Trade Agreement refrains completely from dealing with the issue of migration, whether it be skilled or unskilled. As Alexandra Délano (2004) has noted:

> "During the NAFTA negotiations, begun in 1991, Presidents George Bush (1988-1992) and Carlos Salinas de Gortari (1988-1994) agreed to restrict the discussions to commercial and financial matters. Both believed that the political costs of including migration in the agenda would be too great and could be an insurmountable obstacle for the conclusion of NAFTA" (2).

However, as can be garnered from the major economic role that migrant remittances play in the economies of less developed Latin American nations, the issue of migration has become both a financial and commercial matter. Therefore, even if the FTAA is to follow NAFTA's lead and focus only on "commercial and financial matters," migration stipulations must be included within the FTAA. Furthermore, Délano (2004) goes on to note that by avoiding the issue of migration altogether, NAFTA served to do nothing to prevent illegal flows of migration, nor did it do anything to protect Mexican migrants to the United States of Canada from the human rights abuses that they so often face upon

arriving in the foreign state. In the proposed FTAA, where both illegal migration and human rights abuses of migrants are major issues, failing to include protections for migrants would be a major problem. Following the NAFTA prototype and failing to address the issue of migration would be unacceptable in the context of the FTAA.

However, we must acknowledge the difficulty of completing international trade agreements when contentious issues such as migration are included. In the quote above, Délano (2004) mentions that both Bush and Salinas acknowledged that including migration in the text of an international trade agreement could be a major impediment to the completion of the agreement. In the context of the FTAA, we can imagine the issue of migration to be far more contentious that in the smaller area encompassed by NAFTA, thus posing a major threat to the completion of the treaty.

Migration Stipulations Within the European Union:

Juxtaposed to the refusal of NAFTA to address the issue of international migrations is the stance of the European union. Novel in its approach, the text of the European Union Agreement declares that: “In the Member Countries of the European Economic Area (EEA) (1) the free movement of workers is a fundamental right which permits nationals of one EEA country to work in another EEA country on the same conditions as that member state’s own citizens.” (European Job Mobility Portal, 2005). This open border system does not create the problems presented by the NAFTA model. In the context of the FTAA, such clear, simple, precise stipulations would allow for the protection of the rights of migrant workers whilst allowing them to send home their remittances, contributing to the economic development of their sending country.

However, this model presents problems of its own vis à vis the FTAA. First and foremost, it fails to address the concerns of many states (such as the fears of North Americans) that their nation could become swamped by migrant workers from other states, creating structural unemployment. It is common knowledge that a majority of the member-states of the EU are considered more developed. The fact that all states are relatively developed compared to one another allows for open migrations flows without concern that migrants will flood labour markets, impeding the ability of those to develop. This is simply not the case in the proposed FTAA.

Second, we must consider the argument made by Matloob Piracha and Roger Vickerman of the Department of Economics at the University of Kent. The authors argue that labour mobility within the EU is much better in theory than in practice (Piracha & Vickerman 2004). Issues such as poverty, refugees, and civil war come into play, and impede the distribution of the advantage of international mobility to all citizens (Piracha & Vickerman 2004). While open borders work well for skilled workers, they do little to benefit unskilled workers, as unskilled workers seldom have the capital or opportunity to migrate. While the costs of the migration of skilled workers (including work Visas and travel expenses) are often sponsored by recruiting agencies, unskilled workers must absorb the costs of migration themselves. We can deduce that the situation would be similar within the proposed FTAA, and that unskilled workers would benefit only minimally from an open border policy.

Finally, we can note that this system is flawed for logistical reasons. It is unlikely that all member states would agree with the inclusion of these stipulations within the FTAA. As such, advocating this system could create a major barrier to the completion of

the FTAA. While the European Union may be the only other international agreement to encompass such a wide number of states as would the proposed FTAA, it also has its own parliamentary system. This international governing body deals with all issues of governance over the member states, including social issues and those of migration. It is obvious that when applied to the FTAA, this model would provide excellent protection for both migrants and states. However, the FTAA would never be completed should this system be suggested. It is unlikely that any country in the area would be willing to submit itself to an international governing body such as a parliament over the western hemisphere. This is especially true of the United States, whose involvement is instrumental to the completion of the FTAA. Indeed, the creation of such a parliamentary system is impractical, illogical, and contrary to the desires of member states.

We thus reach an interesting dilemma. While it is evident that the FTAA must address the issue of migrant labour, the only two methods used so far to address the issue within international trade agreements are flawed. However, this analysis gives us interesting insight into what qualities FTAA stipulations on migrant labour should have. First, they must protect migrants from human rights abuses. Second, they must allow for remittances to be sent back to sending nations, as these funds are vital to the economies of developing nations. Third, they must protect states from an onslaught of migration from less developed states, as this could create high unemployment levels of native workers. Fourth, they must apply equally to all people, regardless of economic status or class. And, finally, they must be easily accepted by all states so as not to impede the completion of the FTAA.

This is not to say that there is no way to effectively address the issue of migration within the FTAA. It simply means that we must broaden our scope and look elsewhere in international trade agreements to find an effective way of including these stipulations. I turn now to a discussion of how NAFTA has addressed issues of social concern.

D.) Social Stipulations Within NAFTA

Provisions Within the Document:

The North American Free Trade agreement was meant only to deal with financial and commercial matters. However, it has dealt with issues of social concern in two ways. First, the text is littered with exceptions to NAFTA provisions in the name of social issues. For example, within the scope of Chapter 11 of the agreement, it is noted that "Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter" (NAFTA, 1101:4). As such, NAFTA makes brief nods to issues of social concern and protects the ability of each state to create its own social policies. How would this method of addressing issues of social concern apply vis à vis migration and the FTAA?

When applied to migration and the FTAA, it is evident that this method does not possess several of the qualities listed above. First, it is evident that such brief statements of general intention could have very little power to actually protect migrants living outside of their country of origin. A system needs to be put in place to deal with abuses to migrant rights, and this system could not possibly outline the necessary mechanisms to

ensure these protections. Second, using such brief, vague language could result in little protection of states from a saturation of the job market by migrants. And, finally, battles over terminology within the document could go on for years, creating a serious impediment to completing the FTAA.

The Side Agreements:

After NAFTA was signed in 1992, it became evident that the document had not done enough to protect labour or environmental rights. For this reason, in 1993, all three member-states signed onto side agreements on labour and the environment. These side agreements outline general regulations to which all member states must comply, along with procedures for handling complaints or indiscretions on the part of any member state. These side agreements are widely criticized for their relative ineffectiveness, as they do not have enough political clout or strong enough stipulations to effect any real change. However, the model of a side agreement seems to apply effectively to the issue of migration and the FTAA, as it addresses all of the components necessary for FTAA provisions on Migration to be successful.

First, it has the ability to actually protect the rights of migrants from human rights infringements and the ability to send home remittances whilst simultaneously providing space for the protection of states from labour markets flooded by migrants. This is because the side agreement mechanism allows for the creation of international governing bodies to ensure compliance with stipulations listed within. While the NAFTA side agreements are criticized for being ineffective, these criticisms rest heavily on the lenient nature of provisions regarding the environment and labour, rather than the fact that the provisions were included in a side agreement rather than within the text of the actual

agreement. Furthermore, the topics of Labour and the Environment tend to be much more broad and all encompassing that the issue of Migration, which creates broader and more all encompassing provisions. The issue of migration is far more specific than the overarching categories of labour and the environment, which creates room for the content of an FTAA side agreement on migration to be far more specific and effectual.

Second, the provisions could be outlined in such a way that it could ensure protection of rights to free mobility, thus ensuring that all individuals, regardless of economic status, would benefit from the migration stipulations within the FTAA. This is primarily a question of what content should be included in FTAA provisions on migration, which is beyond the scope of this paper. However, we must note that including stipulations on migration in the form of a side agreement would in no way impede migrations provisions from benefiting all migrant workers regardless of socio-economic status.

Finally, completing the FTAA will not be contingent on completing this side agreement. All member states would only need to agree that a side agreement on migration would be written at a later date. As such, the side agreement would cause no impediment to the completion of the agreement.

It is thus evident that an FTAA Side Agreement on Migration seems to meet all of the quality requirements for migration stipulations within the FTAA.

E) Recommendations And Conclusions

It can thus be established that an FTAA side agreement on migration is the best possible option for addressing the issue of migration within the international trade agreement. This option is the only system that provides adequate, enforceable protection for migrants, their communities, and their families, while protecting states from the threats to the labour market caused by high levels of immigration. Furthermore, because it is a side agreement, it should in no way impede the completion of the FTAA.

However, the fear remains that after the FTAA is completed, the side agreement may be left on the back burner and never completed. I therefore recommend that within the text of the FTAA, a provision be made that all member states will eventually sign on to a side agreement on migration. I also recommend that a time limit be given for this side agreement to be completed. By including these provisions within the FTAA, it can be assured that the issue of migration will not be left on the backburner and forgotten. This issue is of primary concern to all members of the proposed FTAA, both less developed countries (who rely on the remittances of migrants to bolster the economy) and more developed countries (who require this side agreement in order to prevent the flooding of their labour markets by foreigners). While the content must still be negotiated by the member states, the agreement to construct a side agreement on labour is an option that should give confidence to all member states of the proposed FTAA.

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