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HARMONIZING TRADE LIBERALIZATION  
AND MIGRATION POLICY THROUGH  
SHARED RESPONSIBILITY: A  
COMPARISON OF THE IMPACT OF  
BILATERAL TRADE AGREEMENTS AND  
THE GATS IN GERMANY AND CANADA

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## **I. INTRODUCTION**

In the world of globalization, the relationship between international trade and migration between the developing and developed world has become pronounced with increasing cross-border migration. Labour workers from developing nations are relocating to developed nations to pursue employment and business opportunities, and contributing to the economic growth of developed nations by filling labour shortages. Trade and migration are driven by different pressures, and policymakers in developed nations are considering how to manage the flow of migration. Interestingly, while developed nations promote bilateral and multilateral trade relations with the developing world involving migration of persons, restrictive migration policies prevent these persons from pursuing permanent settlement in developed nations.

Developed nations such as Germany and Canada recruit foreign workers to fill labour shortages in various industries, while attracting business investors to stimulate the domestic markets. But while these nations pursue the exchange of goods and services multilaterally, labour migration policies have lagged behind trade policy in that no long-term plans are considered for migrants. This situation has led to a new migration principle known as shared responsibility, whereby sending and receiving countries manage the flow of labour workers and business visitors as a means to expand the scope of migration under more specific bilateral agreements. This trend reflects where migration law fits into international trade.

In this paper, the research question is whether trade liberalization, by way of bilateral and multilateral trade agreements, leads to more favourable labour migration policies for migrants in the receiving developed countries of Germany and Canada. Favourable migration policy means three things: (1) creating smooth migration flows for persons between trading nations; (2) efficient management of cross-border migration; and (3) the prospects for non-resident migrants to permanently settle in developed countries.

The research question is important because: (1) it addresses the absence of a global migration regime that leaves a gap between migration and trade policy in developed nations; (2) a shortage of workers in developed nations is hampering their ability to compete globally; (3) within some international trade agreements there is little emphasis on migration; (4) there is no long-term planning for the permanent settlement of migrants in developed nations. This paper concludes that trade liberalization through bilateral labour agreements leads to more favourable migration policies in Canada and Germany due to the shared responsibility principle, while multilateral agreements embodied in the GATS achieves the opposite result. Shared responsibility essentially reflects a multidisciplinary migration management regime between countries that track the movement of workers and business investors.

To answer the research question, Part I will describe migration principles and challenges that lay the foundation for the discussion on various trade agreements involving foreign workers and business investors. Part II will then discuss trade in services under a multilateral trade agreement known as mode 4 of the GATS, while Part III briefly explores bilateral labour agreements. Part IV compares migration policies in Germany and Canada through various bilateral trade agreements in effect with developing nations. Most of the analysis will be devoted to Canadian migration approaches, although Canada draws much of its policy from Germany. These nations are chosen to compare the different approaches used by developed nations in dealing with migration and trade with developing nations, and will cover only temporary workers and business investors, and not other migration classes.

## **II. MIGRATION AND TRADE**

### **Background**

Migration and trade occupy a special relationship when trading nations seek bilateral or multilateral trade. For receiving developed countries, labour migration refers to labour

migrants (high or low-skilled workers) and economic migrants (business visitors). Trade liberalization is pursued to reduce quotas, tariff duties, and other barriers to the free movement of goods and capital across national borders.<sup>1</sup> As part of this process, migration policy is shaped between nations for goods and services to be traded, as well as the movement of persons who represent the workers and businesses that promote these goods and services. Labour migration is defined as the movement of persons from a sending country to a receiving country, and either for temporary or permanent work.<sup>2</sup>

Domestic economies require workers who can fill labour shortages in key industries.

However, developed nations treat trade policy differently from migration policy with respect to labour and business investment. Migration policy creates admission criteria to regulate the movement of migrants under temporary programs, where it is expected that migrants remain while jobs are available, and then return home when those jobs are no longer required.

Migration is vital to a country's growth and prosperity because it provides the necessary workforce to fill labour shortages, while creating foreign investment opportunities to stimulate domestic growth.<sup>3</sup> Moreover, labour flows between countries help integrate labour markets to enhance bilateral or multilateral trade. Thus, during times of economic growth local businesses that are dependent upon foreign workers can hire them to keep up with supply and demand, while the federal government attracts labour and investors to generate tax revenue.

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<sup>1</sup> Simon Lester & Bryan Mercurio, *World Trade Law* (Oxford: Hart Publishing, 2008) at 40.

<sup>2</sup> Theodora Xenogiani, *Policy Coherence for Development: A Background Paper on Migration Policy and its Interactions with Policies on Aid, Trade and FDI*, (OECD, 2006), online: OECD Development Centre <<http://www.gmfus.org/doc/Policy%20Coherence%20Migration.pdf>>. On a global scale, four major migration policies emerged, including guest-workers, national origin, humanitarianism, and skilled workers. See generally Timothy J. Hatton & Jeffrey G. Williamson, *Global Migration and the World Economy* (MIT Press, 2005).

<sup>3</sup> From a purely economic perspective, however, labour is a necessary component in the production of goods and services. See generally Asif H. Qureshi and Andreas R. Ziegler, *International Economic Law* (Sweet & Maxwell Ltd., 2007) at 437 [hereinafter Int'l Econ. L.]. When there is a shortage of labour, capital will be used inefficiently. Early economic models created by economist Robert Alexander Mundell in the 1950s suggested that migration (capital flow) and trade are substitutes. See generally Timothy J. Hatton, *Trade Policy and Migration Policy: Why the Difference?* (MIT Press, 2005), online: University of Essex and Australian National University <<http://www.tcd.ie/iis/documents/seminar%20papers/HattonTradeMigVersion2.pdf>> (last visited 13 April 2009).

## Migration Principles

In addressing migration and trade, key migration principles explain how the movement of persons is managed between developing and developed nations, including: (1) free movement of persons; (2) skilled worker evaluations through a points-based or labour market assessment; and (3) shared responsibility.<sup>4</sup> First, the principle of free movement of persons derives from the European Economic Community (EEC) in 1964, where a regional program was adopted to allow citizens to freely move between member states for employment purposes. The principle of the free movement of persons is laid down in Article 39 of the European Commission Treaty, which provides the following rights:

- (1) the right to look for a job in another member state;
- (2) the right to work in another member state;
- (3) the right to reside and remain in another member state;
- (4) the right to equal treatment with respect to access to employment; and
- (5) the right to fair and reasonable working conditions<sup>5</sup>

Although these rights are found in a customs union, they serve as the guiding principles of current migration policies in the developed world. Second, the points-based skilled worker evaluations or labour market assessment that regulates the entry of skilled migrants are considered by the federal government to determine whether the worker meets the minimum criteria for employment (e.g. education, age, skills, etc.). Third, the principle of shared responsibility refers to the reciprocal obligations on the part of both sending and receiving countries in facilitating the temporary migration of migrant workers through a multidisciplinary process.<sup>6</sup>

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<sup>4</sup> For an overview of migration principles, see Appendix 1.

<sup>5</sup> Int'l Econ. L. *supra* note 3 at 439. Under Title III of the European Commission Treaty – Free Movement of Persons, Services and Capital, Chapter 1, Article 39 (Workers) states: (1) Freedom of movement for workers shall be secured within the Community; (2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. It is interesting to note that prior to their dealings with developing nations, several developed nations had entered into bilateral treaties designed to promote equal treatment of their own citizens.

<sup>6</sup> Marion Panizzon, “Bilateral Migration Agreements and the GATS: Sharing Responsibility Versus MFN Reciprocity, (Paper presented to the Society of International Economic Law, 15 July 2008), online:

Shared responsibility requires migrant source countries to verify the qualifications of their citizens who apply for jobs in the receiving developed nation. Meanwhile, the developed nation issues the work permit or business visa for the migrant. This process prevents applications from unqualified applicants, and places the burden on the migrant applicant to prove their qualifications for employment purposes. The advantages of shared responsibility are that it provides a transparent hiring process involving the migrant's employer in the developed country, immigration agencies in both nations, and the migrant, while also guarding against illegal migration through this highly-coordinated process.

### **Migration Challenges Facing the Developed World**

In the context of migration policy, developed nations face four main challenges when trading with each other. The first challenge is that an aging and declining population has created severe labour shortages in almost every industry.<sup>7</sup> As the population grows older, fewer qualified workers are available to replace retired persons, which forces employers to recruit labour from the developing world. At present, shortages in highly-skilled occupations such as health care, education, and information technology, are placing tremendous pressure on these professions to find replaceable personnel.

The second challenge involves domestic interest groups putting pressure on local governments to restrict the number of work permits issued to foreign workers. This trend becomes particularly pronounced during times of economic recession, when citizens lose their jobs while foreign workers continue to enter the job market. The third challenge is the xenophobic attitude towards migrants, which leads to fears about unemployed locals, crime, and socio-cultural change. The fourth challenge is that migration policy in developed nations is a knee-

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<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1156842](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156842)> (last visited 13 April 2009). [hereinafter Marion Panizzon].

<sup>7</sup> See Appendix 2.

jerk response to changing market conditions, with federal and local governments modifying entry regulations to reflect either a favourable or unfavourable policy towards migrants seeking access to this market.

Together, these challenges fail to provide a long-term strategy to help migrants pursue a more permanent life in developed nations. Indeed, sending the foreign workers home is a difficult task due to their level of establishment. As one commentator notes, “the European experience suggests that it is very difficult to send these people home if they have been temporary workers for a number of years and they and their families have established roots in the community.”<sup>8</sup> These challenges have also led policymakers to plan migration and trade policies in a disparate fashion, particularly between developed and developing nations. The International Organization for Migration (IOM) reiterates this by stating the following:

The domains of trade and migration are becoming increasingly connected. Trade in goods, capital, investment, and services have expanded with reduced costs of transport, globalization, and information availability. This has produced a realistic range of mobility options based on increasing opportunities to travel, live, study, or work abroad. However, migration regimes across borders that facilitate the movement of persons have not kept up with increasing mobility.<sup>9</sup>

### **III. MULTILATERAL TRADE IN SERVICES - MODE 4 OF THE GATS**

Drawing upon the migration and trade relationship, trade in services plays a substantial role in the global economy, particularly for industrialized nations like Germany and Canada. For many years, traditional GATT instruments paid less attention to migration, which led to an absence of a global migration model that prevented nations from controlling migration flows, and thereby being prevented from keeping up with the enormous growth in the global services economy. However, the 1994 Uruguay Round created the General Agreement for Trade in

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<sup>8</sup> Michael J. Trebilcock and Robert Howse, *The Regulation of International Trade*, (Routledge, 2005), at 498.

<sup>9</sup> International Organization for Migration (IOM), Migration and Trade, online: IOM <<http://www.iom.int/jahia/Jahia/about-migration/developing-migration-policy/migration-trade>> (last visited 13 April 2009).

Services (GATS) on a multilateral basis for the trading of goods and services between member states.<sup>10</sup> Here, and for the first time, trade-related migration involving qualified service suppliers (including business visitors and intra-company transferees), was incorporated into a multilateral framework.<sup>11</sup>

The GATS contains service obligations for WTO members to exchange information for temporary trade in services. There are four modes of services under the GATS which can be traded between WTO members: Mode 1 (Cross-Border Supply); Mode 2 (Consumption Abroad); Mode 3 (Commercial Presence); and Mode 4 (Movement of Natural Persons).<sup>12</sup> The most relevant mode for migration is Mode 4, which allows businesses to move skilled workers, and for multinational corporations to relocate their employees as intra-company transfers between nations.

This means that companies may transfer qualified employees to work in other member states to enhance specific sectors, such as in construction, manufacturing, information technology, health care, education, and transportation.<sup>13</sup> But Mode 4 of the GATS covers only the temporary movement of natural persons in connection with the supply of an international service in any sector (except for government services and air transport), and not for migration

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<sup>10</sup> The Uruguay Round in 1994 essentially created the World Trade Organization (WTO). Here, Canada and other nations recognized that a comprehensive set of rules governing trade in services should be established, which later became known as the GATS.

<sup>11</sup> Agreements under this provision of the GATS have been dominated by highly-skilled and professional service providers. See generally Robert E.B. Lucas, *International Labor Migration in a Globalizing Economy*, online: Carnegie Papers <[http://www.carnegieendowment.org/files/international\\_migration\\_globalizing\\_economy.pdf](http://www.carnegieendowment.org/files/international_migration_globalizing_economy.pdf)>. At the end of the Uruguay Round, a Negotiation Group on the Movement of Natural Persons was established. On July 28, 1995, Canada, Australia, the EU, India, and Switzerland improved their commitments to the movement of natural persons by creating market access for additional service suppliers (e.g. foreign professionals).

<sup>12</sup> GATS Mode 4: How Trade In Services Can Help Developing Countries, *Globalization & Poverty* (Nov. 2005), online: Development Research Centre on Migration <[http://www.migrationdrc.org/publications/briefing\\_papers/BP4.pdf](http://www.migrationdrc.org/publications/briefing_papers/BP4.pdf)> (last visited 13 April 2009).

<sup>13</sup> Under Article I.2(d) of the GATS, Mode 4 defines a service 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.” See generally United Nations Statistics Division, *Background Note on GATS Mode 4 and its Information Needs*, UN online: United Nations, Dept. of Econ. and Soc. Affairs <<http://mdgs.un.org/unsd/tradeserv/TSGdocuments/tsg0502-8.pdf>> (last visited 13 April 2009).

on a permanent basis.<sup>14</sup> Depending on the receiving nation, the temporary stay for the migrant worker varies from a few months to a few years. After this, domestic migration policy is triggered to deal with the future plans for the migrant.

Although Mode 4 provides an opportunity for temporary migration by WTO members, compliance remains poor for three reasons. First, receiving developed nations exercise their sovereign powers to regulate the flow of migration in dealing with illegal migration or national security. For employment purposes, this heavily scrutinizes migrants with respect to their qualifications, leading to greater obstacles to cross the border. Second, member states prefer highly-skilled workers over low-skilled workers, a situation which invites highly-skilled workers over the more numerous low-skilled workers.

Third, some migration scholars have found that fewer migrants are moving under Mode 4 of the GATS because too many restrictions are placed on them to seek permanent status, when compared to arrangements under bilateral labour agreements.<sup>15</sup> The *GATS Annex on Movement of Natural Persons Supplying Services* states: “the GATS shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding *citizenship, residence or employment* on a permanent basis.”<sup>16</sup> With poor compliance under Mode 4, the free movement of natural persons is hindered, and which forces Canada and Germany to enter into bilateral trade agreements. Such agreements are better tailored to regulate the flow of temporary foreign workers and business visitors.

This provision clearly limits a migrant’s ability to seek permanent residence in other countries, and only for temporary jobs. This is because the signatory states under the GATS recognize

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<sup>14</sup> *Ibid.*

<sup>15</sup> Marion Panizzon, *supra* note 6.

<sup>16</sup> *Ibid.* at 5.

that nations may continue exercising their sovereign power to regulate migration as a matter of national interest, despite their commitment to promoting freer trade.<sup>17</sup> Despite this argument, however, many businesses in Germany and Canada still require enough migrants (who must return home) to fill labour shortages. Rather, the trade in services under GATS favours business investors because they have sufficient capital investment. In the end, Mode 4 of the GATS creates a conceptual gap between promoting business (through temporary provision of services) and offering migration for such a purpose.

In Germany, the GATS clause is clearly specified in work permits, and favours migrants in some ways. For example, Germany grants entry to temporary foreign workers as intra-corporate transferees, and contractual service providers. Intra-corporate transferees (comprised of senior and specialized personnel) are not required to undergo a labour market assessment, which expedites their processing times to receive work permits. On the other hand, top management executives may enter and work in Germany without a work permit for up to five years.<sup>18</sup> Contractual service providers can work for up to three months, but only for legal and accounting services, managerial activities, and travel agencies. Hence, although the GATS provide some temporary migration opportunities for trade in services, its greatest weakness is its express prohibition against migrants seeking citizenship, residence, or employment under Mode 4.

In Canada, the GATS commitments are met by harmonizing portions of Mode 4 into its domestic economy through provincial nominee programs, rather than from the GATS

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<sup>17</sup> Jan Niessen, *Negotiating the Liberalization of Migration – Is GATS a Vehicle or a Model for Global Migration Governance?*, online: The European Policy Centre <[http://www.epc.eu/TEWN/pdf/368134960\\_Jan%20Niessen%20GATS%20and%20Migration.pdf](http://www.epc.eu/TEWN/pdf/368134960_Jan%20Niessen%20GATS%20and%20Migration.pdf)>.

<sup>18</sup> German Work Permit Ordinance, Subsection 9, No. 2, Germany Migrant Workers, online: ILO <[http://www.oit.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=DEU&p\\_classification=17&p\\_origin=SUBJECT](http://www.oit.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=DEU&p_classification=17&p_origin=SUBJECT)> (last visited 13 April 2009).

provisions directly.<sup>19</sup> Hence, various provinces use the federal skilled worker NOC list to categorize and evaluate migrants among trade in services, and only after six months of work experience. In this sense, the GATS provides for great flexibility for migrants in the corporate-commercial categories. But, as some commentators note, multilateral agreements among the developed nations are changing migration policy from liberalized access of foreign workers to more controlled forms of managing migration through goods and services.<sup>20</sup> That is, countries are restricting the entry of foreign workers by placing greater emphasis on such workers to engage in trade in services only.

#### **IV. BILATERAL LABOUR AGREEMENTS AND MIGRATION**

In contrast to Mode 4 of the GATS, bilateral labour agreements (BLAs) focus on migration issues under trade obligations between contracting states, unlike other trade agreements which emphasize goods and services. BLAs provide direct economic incentives to receiving developed nations through seasonal worker programs. Some of the major issues covered under a typical BLA are: (1) recruitment; (2) labor assessment; (3) certification; (4) employment contracts; (5) dispute settlement; (6) quotas and length of stay; and (7) return provisions.

In Germany and Canada, the number of bilateral labour agreements is growing in response to the failings of Mode 4 of the GATS, which limits migrants in pursuing permanent residence, and the absence of a global migration regime, which does not provide an orderly system for managing migration between trading nations.

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<sup>19</sup> Canada also has several commitments to the GATS in various sectors such as transportation, research and development, financial services, oil and gas, environmental, real estate, and tourism. These services are covered under Canada's Schedule of Specific Commitments. See generally Trade in Services, Canada's Commitments to the GATS, online: Foreign Affairs and Int'l Trade Canada <[http://www.international.gc.ca/trade-agreements-accords-commerciaux/services/gats\\_agcs/gats-commitment.aspx?lang=en&menu\\_id=18&menu=R](http://www.international.gc.ca/trade-agreements-accords-commerciaux/services/gats_agcs/gats-commitment.aspx?lang=en&menu_id=18&menu=R)> (last visited 13 April 2009).

<sup>20</sup> Marion Panizzon *supra* note 6. See generally Marion Panizzon, Nicole Pohl & Pierre Sauvé, *GATS and the Regulation of International Trade in Services* (Cambridge Univ. Press, 2008).

The advantages of BLAs are two-fold: (1) they offer predictable management of the migration process for workers relocating to developed nations, and primarily through pre-selection recruitment in a multidisciplinary fashion, and (2) they help developed nations meeting their labour shortages. The multidisciplinary network of agencies that deal with the evaluation of migrant workers reflects the shared responsibility principle. This shared responsibility concept is missing from multilateral instruments such as GATS. As Germany and Canada attempt to fill labour shortages, BLAs can serve as an efficient vehicle in promoting more comprehensive bilateral trade that fosters long-term migration options for migrant workers. Indeed, some commentators have found that developing countries support BLAs because they allow them to negotiate with developed nations to include more low-skilled workers in the hiring process (and who are generally given lower preference than highly-skilled workers).<sup>21</sup>

In other respects, BLAs are more politically acceptable than a multilateral agreement (such as Mode 4 of the GATS) because it manages migration flows more easily between two countries rather than through several countries.<sup>22</sup> Perhaps this is why the shared responsibility principle has gained popularity among trade policymakers. This orderly migration scheme under the BLAs also serves as favourable migration policy to migrants because it helps reduce the economic and social problems associated with irregular migration, such as the backlash against foreign workers who are perceived to adversely affect the domestic economy by draining local jobs, or fears over national security due to illegal migration from developing nations.

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<sup>21</sup> Marion Panizzon, "Bilateral Migration Agreements and the GATS: Sharing Responsibility Versus MFN Reciprocity", (Paper presented to the Society of International Economic Law, 15 July 2008), online: Soc'y of Int'l Econ. L. <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1156842](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156842)>. There are some disadvantages of BLA's: (1) they can create unauthorized migration or irregular migration between contracting states; (2) they can be time-consuming, and (3) receiving states may ignore these arrangements in favour of their own national migration policy. But, unlike other free trade agreements, BLAs have specific enforcement provisions to address irregular migration issues by strictly monitoring temporary labour migratory flows between contracting states. By creating a clear policy framework in processing temporary labour migration applications in various industries, the BLAs can help reduce the economic and social problems associated with irregular migration and the perceived threat by some domestic groups that foreign workers will destroy the local economy.

<sup>22</sup> Lant Pritchett, "Bilateral Guest Worker Agreements: A Win-Win Solution for Rich Countries and Poor People in the Developing World", online: Center for Global Development <<http://www.cgdev.org/content/publications/detail/13577>> (last visited 13 April 2009).

## **V. COMPARING LABOUR MIGRATION POLICIES IN GERMANY AND CANADA**

Although Germany and Canada are signatories to the multilateral GATS, more migration occurs among foreign workers and business investors under bilateral trade agreements.<sup>23</sup>

German migration policy tends to favour highly-skilled workers by utilizing a labour market assessment in specialized industries, while Canada also uses a labour market opinion (LMO), but also uses a points-based system to evaluate skilled workers.<sup>24</sup> Thus, a review of existing bilateral agreements in Germany and Canada with various developing nations would help illustrate whether migration policy favours migrants from these nations.

### **Germany's Labour Migration Policy**

Germany's labour migration system derives from the European Community's (EC) migration policy, which represents a comprehensive system due its long history of committing to deep regional economic and political integration across Europe. During the 1950s and 1960s, the EC established the four freedoms of the common market (capital, goods, services, and people) to develop a fully integrated market among member states.<sup>25</sup> The modern application of these freedoms occurs under bilateral agreements. When the European Economic Community (EEC) was formed by the Treaty of Rome in 1957, provisions for the free movement of persons were drafted as labour mobility guarantees.<sup>26</sup> However, over time Germany signed more bilateral trade agreements with developing nations.

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<sup>23</sup> For a general comparison of Canadian and Germany approaches to migration and trade, see Appendix 7.

<sup>24</sup> For the Skilled Workers Points-Based System in Canada, see Appendix 5.

<sup>25</sup> Germany signed bilateral recruitment agreements with Italy (1955), Spain (1960), Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965), and the former Yugoslavia (1968). Historically, Germany has received migrants from various nations, including Spain, Portugal, Greece, Italy, and Turkey. See generally Jana Bruder, "Are Trade and Migration Substitutes or Complements? – The Case of Germany" 1970-1998 (2004), online: Univ. of Rostock <<http://www.etsg.org/ETSG2004/Papers/Bruder.pdf>> (last visited 13 April 2009). See also Richard Plender, *International Migration Law* (Netherlands: Martinus Nijhoff Publishers, 1988) at 314. [hereinafter Richard Plender].

<sup>26</sup> Andrew Geddes, *Immigration and European Integration* (Manchester Univ. Press, 2000) at 44.

This free movement of persons applied only to workers (known as third-country nationals) for three economic purposes: (1) work; (2) self-employment; and (3) services. In 1973, German migration policy began restricting the number of foreign migrants, and later in the early 1990s the German reunification effort restricted migration policy even further for non-resident work permit holders by limiting their residency periods. In essence, the restrictions allowed skilled workers such as IT specialists, intra-company specialists, and scientists to apply for temporary work permits, rather than low-skilled workers.

The German practice was to sign recruitment agreements, where state authorities would gather applications from German companies who hired foreign workers.<sup>27</sup> These recruitment agreements would require the verification of a migrants' background with the sending country through various agencies. Thus began a rudimentary form of the shared responsibility principle between German authorities and agencies from developing nations. In September 2001, the Independent Commission on Migration to Germany was created by the German government to propose an integrated migration framework which could deal with illegal migration and labour shortages.<sup>28</sup> The result was the Immigration Act in 2005, which continued its preference for highly-skilled migrants, but now permitted low-skilled migrants to apply for permanent residence after gaining some temporary work experience.<sup>29</sup>

The Immigration Act reforms Germany's migration policy in several ways. First, the new Federal Office for Migration and Refugees coordinates information on labour migration between foreign authorities, German embassies, and labour authorities.<sup>30</sup> This enables a

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<sup>27</sup> Richard Plender, *supra* note 25 at 315.

<sup>28</sup> OECD, *Migration for Employment – Bilateral Agreements at a Crossroads* (OECD, 2004) at 160.

<sup>29</sup> This is different from the five-year work permits that were issued on a temporary basis under the Green Card Initiative. See generally Susanne Dieper, American Institute for Contemporary German Studies, online: Johns Hopkins Univ. <<http://www.aicgs.org/analysis/at-issue/ai-greencard.aspx>> (last visited 13 April 2009).

<sup>30</sup> Republic of Germany, The Immigration Act, Institutional Reform, online: Auswartiges Amt <<http://www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/Zuwanderungsrecht.html>> (last visited 13 April 2009).

migrant to process the paperwork with German authorities within their country of origin.

Second, a migrant's spouse may join them in Germany as long as they are 18 years of age, and can speak German. This family reunification policy allows a migrant's spouse to apply for a work permit, which would provide further financial stability for the migrant's family. Third, in the area of research and development, an "admission agreement" can be signed between a highly-skilled migrant worker and a German research facility. This could place the migrant in a permanent position with the Germany research employer if they demonstrate success on the job.

In Germany, highly-skilled workers must have a permanent job offer, and later be evaluated on a labour market assessment to receive work permits (or *Arbeitsurlaubnis*).<sup>31</sup> For skilled workers, no points-based system is used, but rather a labour market assessment of the migrant applicant is conducted by various industries in cooperation with the German government.<sup>32</sup>

Under the Immigration Act, business investors who are willing to start a business in Germany must hire at least five Germans, present a detailed business plan, and show a minimum capital investment of 1 million Euro.<sup>33</sup> Related migration ordinances such as the Residence Act allow

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<sup>31</sup> Hugo Brady, *EU Migration Policy: An A-Z*, online: Centre for European Reform <[http://www.cer.org.uk/pdf/briefing\\_813.pdf](http://www.cer.org.uk/pdf/briefing_813.pdf)> (last visited 13 April 2009).

<sup>32</sup> Initially, all political parties in Germany acknowledged the need to introduce a point system, but some parties (such as the Social Democratic Party) thought that this model excluded a large number of low-skilled workers. Later, the point system disappeared from the draft legislation. Today, Germany participates in a European Neighbourhood Policy (ENP), which involves the movement of foreign workers from various developing and semi-developed nations to Germany. The ENP involves twelve nations, including Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Tunisia, and Ukraine). The ENP budget pays for projects that strengthen border security, and prevent illegal immigration between partner countries. The ENP is an example of the shared responsibility principle, whereby EU member states apply economic and political reforms under bilateral action plans to deal with migration issues. See generally Oliver Schmittke & Saime Ozcurmez, *Of States, Rights, and Social Closure – Governing Migration and Citizenship* (Palgrave Macmillan, 2008) at 163.

<sup>33</sup> *Ibid.* at 160. For a background on German-Indian trade relations, see generally Republic of Germany, India: online: Auswartiges Amt <<http://www.auswaertiges-amt.de/diplo/en/Laenderinformationen/01-Laender/Indien.html#t2>> (last visited 13 April 2009). Germany is India's principal trading partner in the EU. The 16th Session of the Indo-German Joint Commission on Industrial and Economic Cooperation, co-chaired by Federal Economics Minister Glos and India's Finance Minister Chidambaram, was held in Berlin in September 2007. Accompanied by more than 30 Indian business leaders and heads of business associations, India's Finance Minister called on German companies to step up their engagement in India. The main items on the agenda were trade facilitations, export controls, specific investment projects, further market deregulation, German companies'

self-employed business investors to invest in Germany based on the economic needs of Germany, and whether their planned business will create a positive economic effect.<sup>34</sup> This measure not only creates employment in Germany, but establishes a long-term plan for the business visitor, while serving as an adequate flow of revenue for the German government. After three years, the successful self-employed business investor can apply for a settlement permit.

## **EXAMPLES OF GERMAN BILATERAL TRADE AGREEMENTS**

### **(A) Germany-India Bilateral Labour Agreement**

Traditional German migration policy required skilled migrants to work for five years, but no permanent residence was offered to them upon completion of their work permit. Under the new German Immigration Act, however, highly-skilled workers can seek permanent residence after remaining in Germany for three years (including their dependants), while business persons may also seek permanent residence after three years. These favourable migration policy changes evolved only after Germany negotiated a series of bilateral labour agreements with developing nations. For instance, in 2000 Germany initiated bilateral negotiations with India to hire 20,000 information technology (IT) workers from India's vast IT sector under its Green Card Initiative.<sup>35</sup>

The Green Card Initiative offered these workers five years of uninterrupted employment to help address a shortage of skilled workers in the German technology sector. While Germany

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technical and vocational training measures as well as intensifying cooperation in the energy, infrastructure, tourism and environmental sectors.

<sup>34</sup> Republic of Germany, Ministry of the Interior, online: The Immigration Act <[http://www.zuwanderung.de/nn\\_1120026/EN/ImmigrationToday/TheImmigrationAct/theImmigrationAct\\_\\_node.html?\\_\\_nnn=true](http://www.zuwanderung.de/nn_1120026/EN/ImmigrationToday/TheImmigrationAct/theImmigrationAct__node.html?__nnn=true)> (last visited 13 April 2009). To review the benefits of business investors in the developed world, see Appendix 3.

<sup>35</sup> In the end, approximately 5,300 IT workers were hired from India. See generally Pierre Gottschlich, "The Indian Diaspora in Germany" (Paper presented to Maulana Abul Kalam Azad Institute of Asian Studies, Ministry of Culture, Govt. of India, 11 January 2007), online: India <[http://www.wiwi.uni-rostock.de/fileadmin/Institute/IPV/Lehrstuehle/Internationale\\_Politik/Pierre\\_Gottschlich/Gottschlich\\_-\\_The\\_Indian\\_Diaspora\\_in\\_Germany.pdf](http://www.wiwi.uni-rostock.de/fileadmin/Institute/IPV/Lehrstuehle/Internationale_Politik/Pierre_Gottschlich/Gottschlich_-_The_Indian_Diaspora_in_Germany.pdf)> (last visited 13 April 2009).

recognized that Mode 4 of the GATS prevented the Indian IT workers from seeking permanent status in Germany due to its express prohibition on establishing permanent residence, the German parliament (*Bundestag*) went ahead with their liberalization efforts to create more favourable migration policy for workers providing trade in services by adding a permanent residence option after gaining valuable work experience in Germany. The policy objective is that temporary workers would learn the German language, interact with other German employers and businesses, and become socially integrated with German society.

This integration process would maintain enough workers to help German businesses avoid labour shortages, while dampening the anti-immigrant sentiments. Although the Green Card program allowed Indian workers to secure temporary employment in Germany, the German government decided to scrap the Green Card program under the existing Immigration Act in favour of a choice to pursue permanent residence after demonstrating sufficient work experience. This policy change reflects how the legislative intent of the German government favours migration policy towards highly-skilled workers by offering a long-term migration option.

## **(B) Germany-Turkey Bilateral Relations**

Germany and Turkey have a long-standing trade relationship, ever since Germany allowed Turkish workers in 1961, where Turkey signed its first bilateral agreement with the European Community (EC) known as the Ankara Agreement.<sup>36</sup> This resulted in recruitment agreements where Turkish workers were permitted to work in Germany temporarily to address post-war labour shortages, while also laying the foundation for the movement of natural persons. Today, approximately 2.5 million citizens of Turkish-descent live in Germany, and given the prospect of Turkey joining the EU in the near future, bilateral trade relations with respect to migration

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<sup>36</sup> European Union, Trade Issues, Turkey, online: European Commission <[http://ec.europa.eu/trade/issues/bilateral/countries/turkey/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/turkey/index_en.htm)> (last visited 13 April 2009).

of labour has enormous potential.<sup>37</sup> Rather than having individual bilateral agreements with each other, bilateral trade between Germany and Turkey operates under the multilateral EU-Turkey Customs Union (in force since January 2006), where German companies invest heavily in Turkey, while Turkey offers its largely young and skilled workforce to Germany.<sup>38</sup>

This is important because it allows German companies to transfer Turkish employees back to Germany for training and certification within a particular field. It also allows Turkish workers to access the German market (and other EU member states) in seeking temporary jobs under the principle of freedom of movement of natural persons. Here, both guest workers and project-based workers from Turkey are allowed to work temporarily in Germany on work permits issued by German labour offices that coordinate with German employers. This shared responsibility process also allows for German work permit exemptions for professionals and those working for national or international projects.<sup>39</sup> The shared responsibility principle is highlighted by the EU's forthcoming plan to coordinate the Turkish Employment Agency to recruit workers in the areas of IT and infrastructure, while enhancing electronic job-matching services through the European Employment Services (EURES).<sup>40</sup>

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<sup>37</sup> Turkey, Economic Relations with Germany, online: Auswartiges Amt <<http://www.auswaertiges-amt.de/diplo/en/Laenderinformationen/01-Laender/Tuerkei.html#t3>> (last visited 13 April 2009).

<sup>38</sup> *Ibid.* Turkey boasts a population of over 75 million people, which allows German companies to actively recruit workers in many sectors that experience labour shortages. See generally UK Trade and Investment, online: Turkey <[https://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/countries?\\_nfls=false&\\_nfpb=true&\\_pageLabel=CountryType1&navigationPageId=turkey](https://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/countries?_nfls=false&_nfpb=true&_pageLabel=CountryType1&navigationPageId=turkey)> (last visited 13 April 2009).

<sup>39</sup> Commission of the European Communities, Commission Staff Working Document, online: Turkey 2007 Progress Report <[http://www.mfa.gov.tr/data/AB/2007IlerlemeRaporu\\_ing.pdf](http://www.mfa.gov.tr/data/AB/2007IlerlemeRaporu_ing.pdf)> (last visited 13 April 2009). In April 2007, technology trade fairs were held in Hanover, Germany with Turkish Prime Minister Erdogan and German Chancellor Angela Merkel being in attendance. The fairs allowed German and Turkish businesses to network and learn about hiring workers from each country. For migration, bilateral negotiations have been conducted in the areas of industry, investment, tourism, and scientific research.

<sup>40</sup> Commission of the European Communities, Commission Staff Working Document, online: Turkey 2008 Progress Report <[http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf)> (last visited 13 April 2009).

## Canada's Labour Migration Policy

Much of Canada's current migration policy derives from German initiatives aimed at recruiting foreign workers. Historically, Canada admitted most of its immigrants from Europe between 1890 and the late 1920s.<sup>41</sup> Since the 1960s, however, the character of migration policy changed such that migrants from developing nations were admitted in large numbers under a regime that evaluated persons based on education, occupation, and family ties.<sup>42</sup> Over time, policymakers considered labour market conditions to meet the growing demand by industry for more workers. In 1967, Canada formally adopted a points-based system for the evaluation of skilled workers on the basis of age, education, adaptability, arranged employment, language, and family ties to Canada. By the mid-1990s, the points-based system was responsible for one-half of migration into Canada.<sup>43</sup>

Under Canada's chief immigration legislation, the Immigration and Refugee Protection Act (IRPA), Canadian migration policy categorizes foreign nationals into several classes, including: (1) temporary foreign workers; (2) family class sponsorships; (3) business investors; (4) federal skilled workers; (5) provincial nominees; (6) students; and (7) refugees.<sup>44</sup> For labour migration, temporary foreign workers must fulfill a two-step process, including a written confirmation known as a labour market opinion (LMO), and a work permit.<sup>45</sup> The need for temporary foreign workers is based on the assumption that Canadian businesses cannot hire

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<sup>41</sup> Michael J. Trebilcock & Robert Howse, *The Regulation of International Trade* (Routledge, 1999) at 486.

<sup>42</sup> In 2005, the top four source countries that sent migrants to Canada included: (1) China (42,291 migrants); (2) India (33,146 migrants); (3) Philippines (17,525 migrants); and (4) Pakistan (13,576). See generally Genevieve Bouchard, *Workshop on German and European Migration and Immigration Policy from a Transatlantic Perspective*, The Canadian Immigration System: An Overview, online: Institute for Research on Public Policy <[http://www.irpp.org/miscpubs/archive/bouchard\\_immig.pdf](http://www.irpp.org/miscpubs/archive/bouchard_immig.pdf)> (last visited 13 April 2009).

<sup>43</sup> Timothy J. Hatton & Jeffrey G. Williamson, *Global Migration and the World Economy* (MIT Press, 2005).

<sup>44</sup> Govt. of Canada, *Immigrating to Canada*, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/immigrate/index.asp>> (last visited 13 April 2009).

<sup>45</sup> Immigration and Refugee Protection Act (2001), c.27. Govt. of Canada, *Information for Canadian Employers: Labour Market Opinion Basics*, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/ENGLISH/work/employers/lmo-basics.asp>> (last visited 13 April 2009).

any Canadian citizen or permanent resident.<sup>46</sup> The general rule is that Citizenship and Immigration Canada (CIC) requires Service Canada to issue the LMO prior to issuing a work permit to a migrant worker.

For business investors, Canada allows them to visit Canada for six months or less, and for the purpose of establishing a business or networking with existing Canadian businesses that could use their services.<sup>47</sup> Business investors who possess substantial assets, an adequate business plan, and who can demonstrate a willingness to establish a permanent business in Canada, are permitted to apply for permanent residence.<sup>48</sup> For federal skilled workers, professionals and highly-skilled workers may apply for permanent resident, but they are evaluated under six selection factors on a points-based system, whereby the applicant must achieve 67 points to be granted permanent residence.<sup>49</sup>

For low-skilled workers, Canada allows migrants to work in specified fields such as in the agricultural sector (and under a multilateral NAFTA agreement) with Mexico, such as in the Seasonal Agricultural Worker Program.<sup>50</sup> For other low-skilled workers, Canada delegates power to the provinces under their provincial nominee programs to determine whether an applicant can work in that province.<sup>51</sup> Provincial nominee programs is two-step process that

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<sup>46</sup> Here, Canadian employers must advertise in newspapers or the Internet to prove their efforts to hire locals first. If unsuccessful, the employer must show that there is a need to hire qualified applicants from abroad. See Hiring Foreign Workers: Facts for Canadian Employers, online: Service Canada < <http://www.cme-mec.ca/ab/Buyer-SellerForum/Service%20Canada/Service%20Canada%20-%20Zeliger.pdf> > (last visited 13 April 2009).

<sup>47</sup> Citizenship and Immigration Canada, online: CIC website <<http://www.cic.gc.ca/english/immigrate/business/index.asp>> (last visited 13 April 2009).

<sup>48</sup> *Ibid.* In 2005, the economic class made up 56.1% of the total number of migrants entering Canada. See generally Genevieve Bouchard, Workshop on German and European Migration and Immigration Policy from a Transatlantic Perspective, Institute for Research on Public Policy: online <[http://www.irpp.org/miscpubs/archive/bouchard\\_immig.pdf](http://www.irpp.org/miscpubs/archive/bouchard_immig.pdf)> (last visited 13 April 2009). In Canada, the economic class is divided into: (1) Entrepreneurs; and (2) Business Investors. Typically, entrepreneurs are required to show a minimum of \$300,000, while business investors are required to show a minimum of \$800,000.

<sup>49</sup> See Appendix 5.

<sup>50</sup> Govt. of Canada, Seasonal Agricultural Worker Program, online: Human Resources and Skills Development Canada < [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/ei\\_tfw/sawp\\_tfw.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sawp_tfw.shtml)>.

<sup>51</sup> Canada's International Market Access Report – 2008, Foreign Affairs and International Trade Canada, online: Foreign Affairs and International Trade Canada <[http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ITC\\_MarketAccess\\_Report\\_2008-en.pdf](http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ITC_MarketAccess_Report_2008-en.pdf)>. In 2007, capital flows into the Canadian

first involves a provincial nomination and then approval from the federal government to allow temporary migrant workers to pursue permanent residence if they have enough work experience in Canada (usually six months to one year). Here, licensing and certification is conducted for the prospective migrant worker to place them directly in sectors facing labour shortages. Although the provincial nominee programs represent a uniquely Canadian approach in offering permanent residence, the Canadian government continues to pursue bilateral trade, which also fosters migration for migrant workers.

## **EXAMPLES OF CANADIAN BILATERAL TRADE AGREEMENTS**

### **(A) Canada-Chile Free Trade Agreement**

Both Canada and Chile signed a bilateral trade agreement known as the Canada-Chile Free Trade Agreement (CCFTA) on December 5, 1996.<sup>52</sup> Although the CCFTA primarily covers trade in goods and services, there are migration provisions that allow Chilean businesses to invest in Canada as intra-company transferees, agriculture, and manufacturing sectors. The Preamble to the CCFTA lists several goals in the trade relationship, including: (1) securing markets for goods and services; (2) ensuring a predictable commercial framework for businesses; (3) creating new employment opportunities; and (4) promoting sustainable development.<sup>53</sup>

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economy from foreign direct investors reached \$115.4 billion. Exports of goods and services reached \$532.7 billion in 2007, while imports of goods and services reached \$502.5 billion. See generally Canada-Chile Free Trade Agreement, online: Foreign Affairs and International Trade Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/index.aspx>> (last visited 13 April 2009). At present, Canada applies its Global Commerce Strategy as a means to promote international trade with bilateral and multilateral partners. Under this federally-supported strategy, Canadian businesses and investors are encouraged to conduct trade negotiations that will give them market access and a competitive position. As part of this program, Canadian businesses are allowed to hire and exchange talented foreign workers to help them fill labour shortages, while helping Canadian businesses connect with global business partners, who may eventually invest in Canada as business visitors.

<sup>52</sup> The CCFTA came into effect in 1997. See generally Canada-Chile Free Trade Agreement (CCFTA), online: Govt. of Canada <[http://www.canadabusiness.ca/servlet/ContentServer?cid=1081944209781&lang=en&pagename=CBSC\\_FE%2Fdisplay&c=Regs](http://www.canadabusiness.ca/servlet/ContentServer?cid=1081944209781&lang=en&pagename=CBSC_FE%2Fdisplay&c=Regs)> (last visited 13 April 2009).

<sup>53</sup> *Ibid.*

The CCFTA contains migration provisions relating to the temporary migration of business visitors, which is covered under Chapter K (as Temporary Entry for Business Persons).<sup>54</sup> This provision facilitates the temporary entry of business visitors on a reciprocal basis, and creates transparent procedures for this entry.<sup>55</sup> Under Annex K-03, business persons may be granted temporary entry into Canada without an employment authorization, as long as they demonstrate engaging in a business activity that is “international in scope.”<sup>56</sup> Meanwhile, Article H-10 of the CCFTA allows for licensing and certification of nationals of each state as a means to reduce trade barriers and avoid disguised restrictions between Canada and Chile.<sup>57</sup>

This provision favours Chilean business investors by promoting communication between regulatory agencies in evaluating a service provider’s background (and thereby preventing misinformation that creates illegal migration). More specifically, Article H-10(4) states: “The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.”<sup>58</sup> This licensing and certification procedures allows Canada to verify the qualifications of any Chilean service supplier, while providing an opportunity for them to work in Canada with any employer on a temporary basis. This information can be used

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<sup>54</sup> Chapter H Cross-Border Trade in Services, Chapter K (Temporary Entry for Business Persons) online: Foreign Affairs and International Trade Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/chap-k26.aspx?lang=en>> (last visited 13 April 2009) [hereinafter Chapter H].

<sup>55</sup> *Ibid.* Under Chapter K-08 of the Canada-Chile Free Trade Agreement (CCFTA), a “business person” is defined as a citizen of a Party who is engaged in trade in goods the provision of services or the conduct of investment activities. Business visitors include a broad range of disciplines, including technical, scientific, statistical, market analysts, sales representatives, customs brokers, general professional and managerial services.

<sup>56</sup> Chapter H *supra* note 54.

<sup>57</sup> Chapter H Cross-Border Trade in Services, online: Foreign Affairs and International Trade Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/chap-h26.aspx?lang=en>> (last visited 13 April 2009). Article H-10(1) states: “With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure: (a) is based on objective and transparent criteria, such as competence and the ability to provide a service; (b) is not more burdensome than necessary to ensure the quality of a service; and (c) does not constitute a disguised restriction on the cross-border provision of a service.”

<sup>58</sup> *Ibid.*

in future permanent residence applications by cutting down on the processing times for evaluating the supplier's background.

The idea is that if a business visitor is allowed to remain in Canada, they might consider investing in a Canadian business, or establish their own business in Canada. Once the business visitor expresses their intention to invest in Canada, they can simply show an adequate business plan and assets to apply for permanent residence as a business investor. In this way, a business visitor can seek permanent status in Canada. The CCFTA thus facilitates favourable migration policy for the business visitor through Canada's business investor program that leads to permanent status. The benefits for Canada will be the importation of Peruvian products into the Canadian marketplace, while competition can be stimulated among local businesses dealing with similar products.

As part of this process, Article K-05 of the CCFTA establishes a Temporary Entry Working Group that facilitates the cross-border movement of business persons. This body reflects shared responsibility where immigration officials participate in managing the cross-border movement of business persons, thereby illustrating the shared responsibility principle. Here, Citizenship and Immigration Canada (CIC) works closely with Canadian businesses (and Chilean governmental authorities) to evaluate the qualifications and entry of a business person from Chile. In the past, no such multidisciplinary arrangement existed to manage the cross-border migration of business persons to Canada from Chile.

## **(B) Canada-Peru Free Trade Agreement**

On May 29, 2008, the Canada-Peru Free Trade Agreement (CPFTA) was signed as a means to promote bilateral trade between both countries.<sup>59</sup> There are several provisions within the

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<sup>59</sup> Canada-Peru Free Trade Agreement, online: Foreign Affairs and Int'l Trade Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/can-peru->

CPFTA that promote favourable migration policy for Peruvian service suppliers in Canada.

First, Article 906 of the CPFTA promotes market access through cross-border trade in services, where there are no restrictions placed on the number of service suppliers, while no economic needs test (labour market opinion) is required. This means that several Peruvian service suppliers may enter into the Canadian market to provide essential services, and without worrying about established quotas that restrict the number of potential service suppliers from their country.

It also means that the Peruvian businesses can bypass the Canadian labour market opinion requirement is bypassed for Peruvian businesses in favour of expedited processing times which leads to direct service to the Canadian market. Second, Article 910 (known as Recognition) allows either party to request a service supplier to fulfill a licensing or certification requirements, or for the party to recognize their education or experience to meet industry standards.<sup>60</sup> The significance of this provision is that a Peruvian skilled worker can complement their application towards permanent residence by legitimizing their educational background, while strengthening their English or French language skills as they gain valuable work experience in Canada. This is important because the Canadian points-based system includes both education and language as key selection factors under the skilled worker category. Thus, the Peruvian applicant gains valuable work experience in Canada as a service

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perou.aspx?lang=en> (last visited 13 April 2009). More specifically, Article 906 of Chapter 9 states: “Neither Party may adopt or maintain measures that (a) impose limitations on: (i) the number of service suppliers, whether in the form of quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test . . . (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;”. See generally Chapter 9, Cross-Border Trade in Services, online: Foreign Affairs and Int’l Trade Canada <[http://www.fta.gov.sg/ksfta/korea-singapore%20free%20trade%20agreement%20\(ksfta\)\\_chap9.pdf](http://www.fta.gov.sg/ksfta/korea-singapore%20free%20trade%20agreement%20(ksfta)_chap9.pdf)> (last visited 13 April 2009). The Preamble to Canada-Peru FTA is virtually similar to the Canada-Chile FTA.

<sup>60</sup> Article 910 (Recognition). The recognition provision virtually duplicates the licensing and certification process under the Canada-Chile Free Trade Agreement, with a view to reduce trade barriers and avoid disguised restrictions in this trade relationship.

supplier, which then enables them to apply for permanent residence after one year of continuous employment.

Third, the “local presence” provision under Article 907 prohibits both parties from imposing any residency obligation on a service supplier who sets up a representative office in that jurisdiction as a condition for providing a cross-border service.<sup>61</sup> That is, a service supplier’s employee may represent their business by living and working in Canada for enough time to establish networks with Canadian businesses and consumers. Here, the advantage is that a successful Peruvian service supplier may acquire enough assets to apply for permanent residence under the Canadian business investor category. In essence, the temporary status under the trade in services arrangement for the Peruvian supplier could be changed to permanent status.

Fourth, Article 914 of the CPFTA establishes a Working Group which meets annually with various administrative agencies in both countries to review matters affecting all cross-border trading issues, including licensing and certification. The Working Group serves as an example of a bilateral, shared responsibility arrangement designed to enhance trade in services.

Although such working groups can be created under the multilateral GATS, the CPFTA creates more favourable migration policies for Peruvian migrants because it provides more migration options for Peruvian service suppliers who are conducting business in Canada on a temporary basis. Finally, Article 1205 of the CPFTA creates a “contact points” provision, where both Canada and Peru designate specific administrative agencies to coordinate cross-border activity for service suppliers.

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<sup>61</sup> This reflects Mode 3 of the GATS for Commercial Presence. See generally Development Research Centre on Migration, Globalization, and Poverty (2005), online: GATS Mode 4 <[http://www.migrationdrc.org/publications/briefing\\_papers/BP4.pdf](http://www.migrationdrc.org/publications/briefing_papers/BP4.pdf)> (last visited 13 April 2009).

Here, Canada's Citizenship and Immigration Canada (CIC) and Peru's Ministry of Interior and General Directorate of Immigration and Naturalization exchange information in a transparent manner for the temporary entry of business persons in either country. Moreover, the government representative must establish a "common criteria", which facilitates the temporary entry of business persons on a reciprocal basis. Once again, this arrangement illustrates the shared responsibility principle, where migration measures (in the form of information exchange and licensing and certification) are carefully managed by agencies to ensure that the Peruvian service supplier gains entry into Canada without delay.

### **(C) Canada's Seasonal Agricultural Worker Program**

While Canada prefers highly-skilled workers, low-skilled workers are also allowed to work, but under special circumstances. To meet skill shortages in the agriculture sector, Canada, Mexico, and the Caribbean states have signed bilateral agreements known as the Seasonal Agricultural Worker Program (SAWP).<sup>62</sup> Here, the Canadian agricultural employer and the migrant employee sign an employment contract, which allows them to work on farms in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Québec, and Ontario. SAWP is a seasonal program which allows Canadian agricultural producers to hire qualified migrants during peak harvesting and planting periods, but only after initial attempts by the Canadian employer to recruit Canadians through proof of advertising. If successful, the seasonal worker may work for a maximum of eight months.

In Ontario, the SAWP program is managed by Canadian employers, the federal employment ministry, Citizenship and Immigration Canada (CIC), a liaison or consular officer from the

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<sup>62</sup> Human Resources and Skills Development Canada: online: Seasonal Agricultural Worker Program <[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/ei\\_tfw/sawp\\_tfw.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sawp_tfw.shtml)> (last visited 13 April 2009). The Seasonal Agricultural Worker Program (SAWP) started in 1966, when Canada entered into negotiations with Jamaica, Trinidad-Tobago, and Barbados. In 1980, approximately 6,000 seasonal workers entered Canada, while in 2003 about 18,700 workers participated in the program. See generally Elizabeth Ruddick, "Canada's Seasonal Agricultural Worker Program" (Paper present to Citizenship and Immigration Canada, 4 October 2004). For an overview of Canada's Seasonal Agricultural Worker Program, see Appendix 4.

sending country, and the Foreign Agricultural Resource Management Services (FARMS).<sup>63</sup>

The FARMS is a non-profit, federally incorporated group of Canadian industry representatives who request seasonal agricultural workers from either Mexico or the Caribbean countries, and who communicate with these governments. The process includes a local employment office approving a contract, transmitting the order to FARMS, while the regional office contacts the Mexican or Caribbean government official. The Ministry of Labour (from the sending country) recruits workers, then contacts the Canadian embassy, which prepares the necessary work permits to travel to Canada. The travel agency advises the liaison or consular officials of their departure and forwards the same information to Citizenship and Immigration Canada.<sup>64</sup>

The advantages of the SAWP program are that: (1) it is seasonal; (2) it provides an organized entry of foreign workers into Canada that prevents illegal migration due to the coordinated efforts of the Canadian federal agencies and the sending developing countries in Mexico and the Caribbean states; and (3) it benefits Canada in filling labour shortages in the agricultural sector. The SAWP program illustrates the multidisciplinary framework that favours low-skilled workers by providing work experience in Canada, which enables them to pursue permanent residence.

## **VII. FUTURE POLICY CONSIDERATIONS FOR MIGRATION AND TRADE**

After reviewing some of the migration policies in Canada and Germany, the shared responsibility concept should be endorsed to resolve key migration and trade issues. A major criticism against the Canadian and German approaches to migration and trade is that both

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<sup>63</sup> Human Resources and Skills Development Canada, Temporary Foreign Worker Program, online: Hiring Foreign Agricultural Workers in Canada  
<[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/sawp.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp.shtml)> (last visited 13 April 2009).

<sup>64</sup> A similar program between the Province of Quebec and Guatemala includes federal ministries in both countries approving of seasonal agricultural workers. Here, the International Organization for Migration (IOM) provides technical assistance for developing a list of qualified Guatemalan workers, and the transportation of these workers to Canada in conjunction with the Foundation des Entreprises de Recrutement de Main-d'Oeuvre Agricole Etrangere (FERME), the local equivalent to Ontario's FARMS. See generally Elizabeth Ruddick, "Canada's Seasonal Agricultural Worker Program" (Paper present to Citizenship and Immigration Canada, 4 October 2004).

governments do not react quickly enough to labour market changes. Here, a multidisciplinary approach involving federal, provincial, and private agencies can deal with these sudden market changes on a continuum that links all agencies involved in the migration process. This approach can be pursued through the regional consultative process, which forms much of modern trade negotiations.<sup>65</sup> In terms of promoting more favourable migration perhaps the GATS can draw from the shared responsibility principle under Canada's Seasonal Agricultural Worker Program, and which should be applied in other sectors of the economy that fail to apply the same multidisciplinary approach. Here, representatives from industry and government can tailor long-term plans for both high and low skilled workers.<sup>66</sup>

## **VII. CONCLUSION**

The growth and prosperity of developed nations depends on liberalized trade that involves goods and services, along with the migration of workers and business investors. Historically, trading nations emphasized goods and services over migration within trade agreements, which placed migration outside the realm of negotiated trade agreements. This resulted in unfavourable migration policy for migrants seeking to relocate to developed nations. In response, the multilateral GATS included temporary migration issues as trade in services, but the global application of such measures met with little success. Both Canada and Germany have commitments to the GATS, but it appears that the GATS serve as a weak instrument in

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<sup>65</sup> The regional consultative process is an informal medium that allows states to discuss migration issues as part of the regional trade agreements. This increasingly popular process is characterized by fostering an informal consensus between states who are disputing migration management issues (including the movement of labour), but which is non-binding in nature. The regional consultative process allows nations to openly engage in active dialogue on controversial migration issues such as quotas, migrant classifications for skilled workers, and which can highlight the causes and effects in the latest migration trends and issues. The drawback of the regional consultative process is that although it may potentially favour migration policy, it lacks specific enforcement tools to bind states to bona fide commitments on migration issues. See generally International Organization for Migration, online: Regional Consultative Processes website <<http://www.iom.int/jahia/Jahia/pid/386>> (last visited 13 April 2009).

<sup>66</sup> For an overview of the relationship between trade liberalization and migration in Germany and Canada, see Appendix 6.

creating favourable migration policy by helping migrants to achieve permanent status in developed nations.

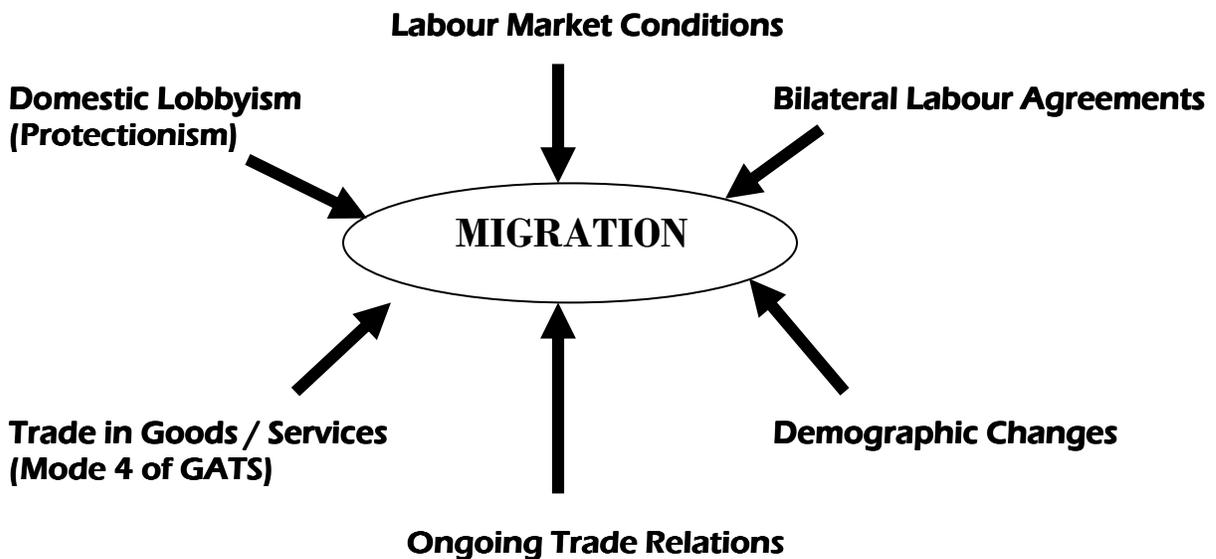
On the other hand, the new generation of bilateral agreements signed by Canada and Germany with developing nations, favours migration policy through the shared responsibility principle. Here, both sending developing and receiving developed countries work in a multidisciplinary fashion to better track the movement of migrants. Although Canada and Germany have similar migration approaches, it appears that Canada is more flexible for both highly-skilled and low-skilled workers due to deep levels of labour integration between international markets and domestic markets, as evidenced in specialized programs such as the Seasonal Agricultural Worker program and the provincial nominee programs.

This paper has shown that developed nations like Canada and Germany shape migration and trade policy, both on the domestic and international level. In the context of international trade, migration occupies a curious place because of the tension between trade liberalization and the exercise of sovereignty that regulates migration. But the proliferation of bilateral agreements demonstrates that migration is not a one-way street, but represents a complex process that requires a multidisciplinary effort to manage migrants to create favourable migration policy.

## Appendix 1: Migration Principles

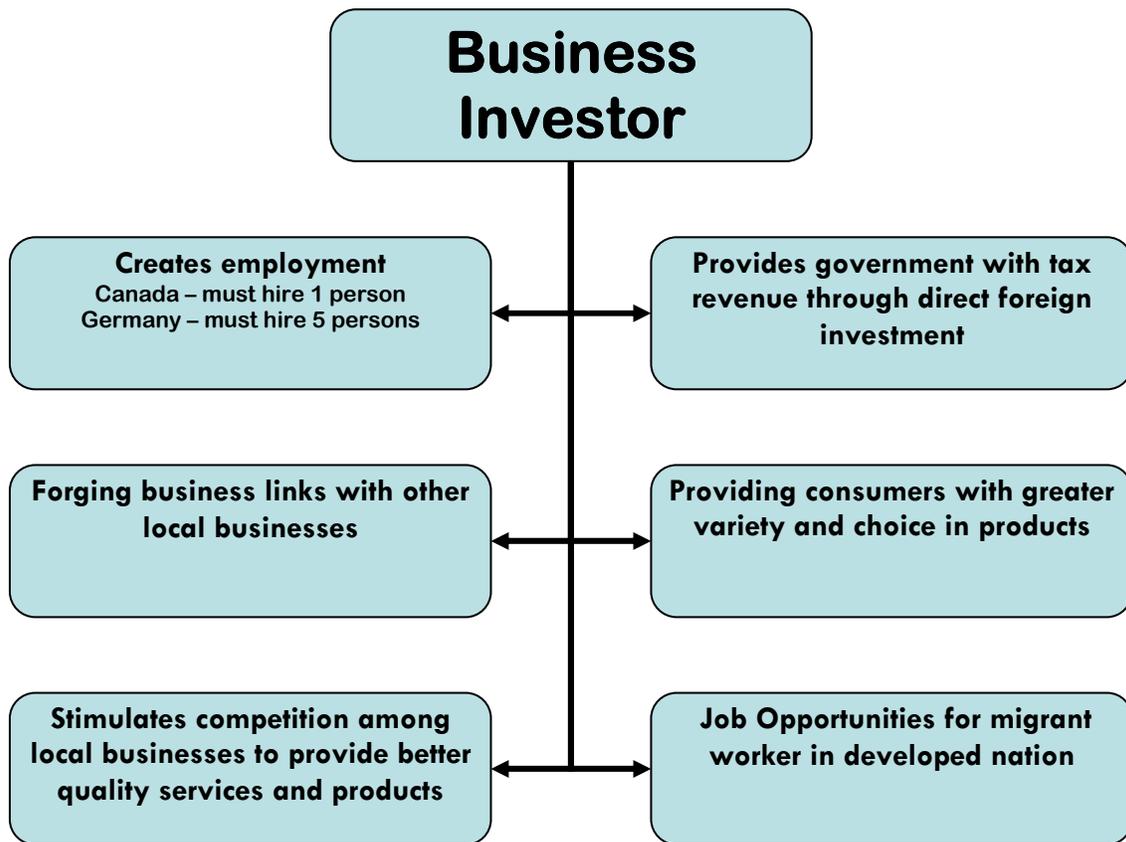
Migration Principle	Legal Instrument(s)	Notable Characteristics
Free Movement of Natural Persons (EU)	Treaty of Rome (1967) Treaty of Amsterdam (1999)	Integrated system with free movement of persons among member states in EU
Skilled Worker Evaluation (Points-Based or Labour Market Assessment)	Immigration and Refugee Protection Act 2001 (Canada) and Immigration Act 2005 (Germany)	Points-based system used to evaluate applicant's background
Shared Responsibility	Bilateral/Regional Labour Agreements (BLA's) Seasonal Agricultural Worker Programs	Multidisciplinary Cooperation to monitor movement of temporary workers

## Appendix 2: Factors Shaping Migration Policy in Developed Nations

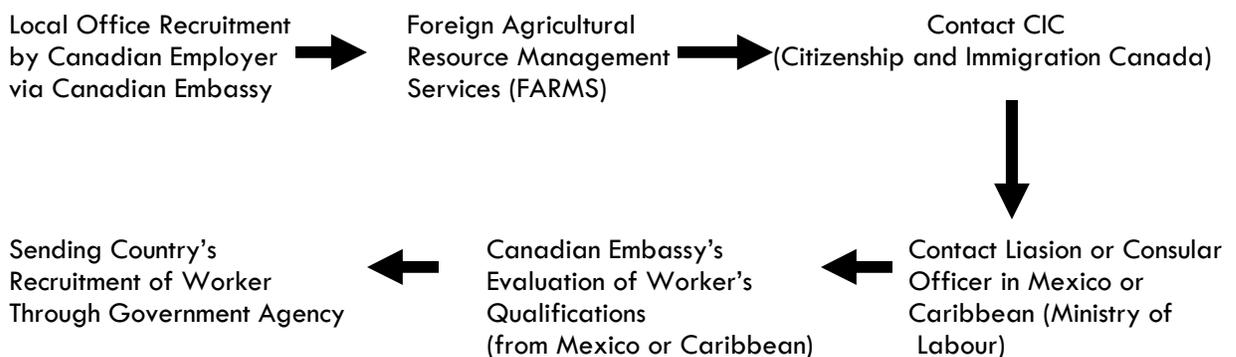


## Appendix 3: The Importance of Business

### Investors in Developed Economies



## Appendix 4: The Shared Responsibility Principle – Canada’s Seasonal Agricultural Worker Program (SAWP)

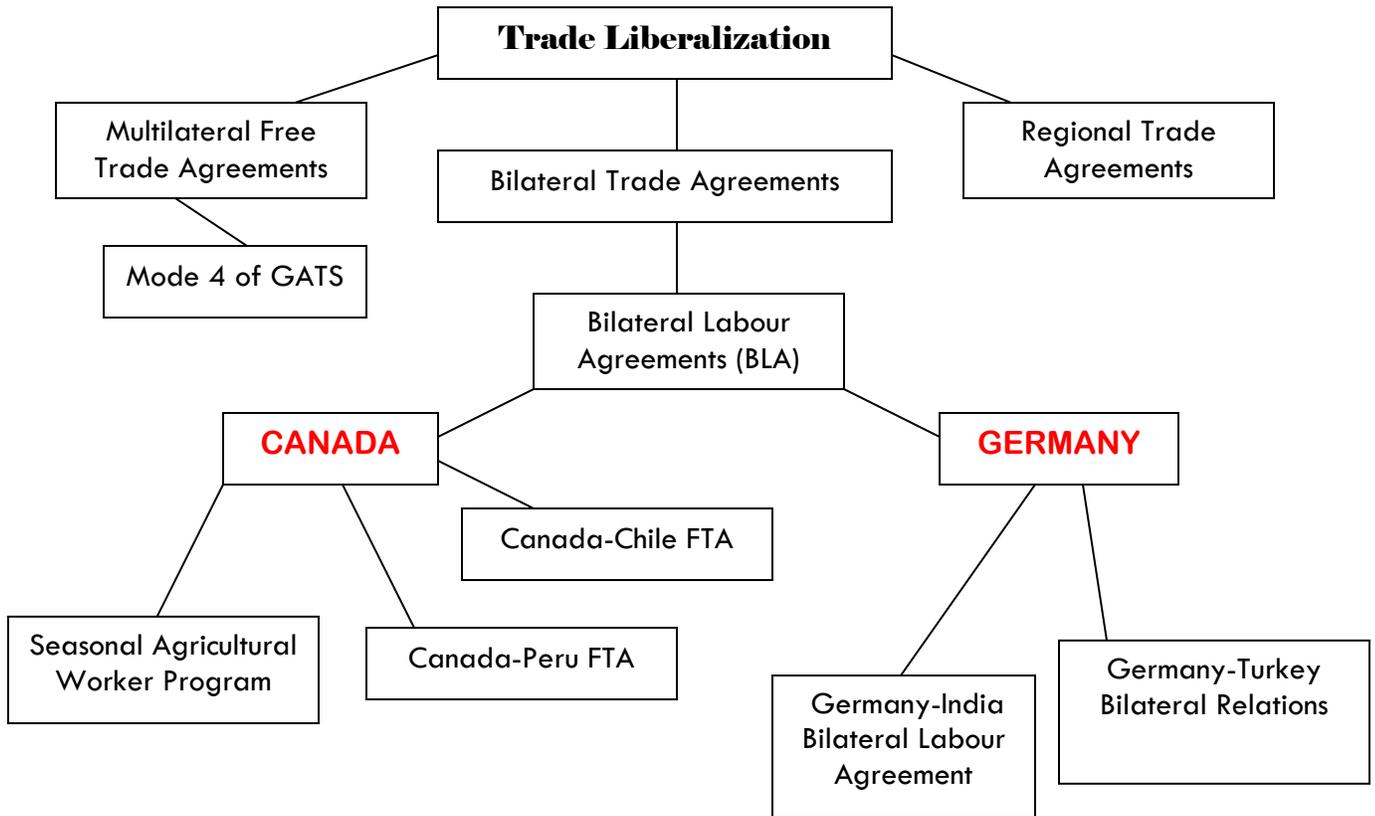


Appendix 5: Canada's Points-Based Skilled Worker System <sup>67</sup>

<b>SELECTION CRITERIA</b>	<b>REQUIREMENTS</b>	<b>POINTS</b>
<b>Age</b>	Age 16-20 = 0-8 points Age 20-49 = 8-10 points Age 50+ = 0-8 points	<b>10 (maximum)</b>
<b>Work Experience</b>	<b>Must have 1 year continuous work</b>	<b>21 (maximum)</b>
<b>Adaptability</b>	If spouse studies: 3-5 points If previous work in Canada = 5 points	<b>10 (maximum)</b>
<b>Education</b>	Master's or PhD = 25 points 2 or more bachelors = 22 points High School = 5 points	<b>25 (maximum)</b>
<b>Language Ability</b>	<b>Must prove English or French capability by language test or employment letter</b>	<b>24 (maximum)</b>
<b>Arranged Employment</b>	<b>Current work permit in Canada = 10 points</b>	<b>10 (maximum)</b>
<b>TOTAL</b>		<b>67 (pass mark)</b>

<sup>67</sup> Source: Citizenship and Immigration Canada website, online: <  
<http://www.cic.gc.ca/english/immigrate/skilled/apply-factors.asp>>.

## Appendix 6: The Relationship between Trade Liberalization and Migration in Canada and Germany



**Appendix 7: Standard Migration Process for Foreign Workers and Business Investors in Canada and Germany**

