

Annex 5

Mode 4 Commitments by Developed Countries in North–South Regional Trade Agreements

Regional trade agreements negotiated by the USA and Canada

The North American Free Trade Agreement (1994) was the pioneer agreement and template for many subsequent RTAs. With respect to labour mobility, it contains a chapter entitled ‘Temporary Movement of Business Persons’, whose purpose is to facilitate temporary entry for business people, working in the area of both goods and services. NAFTA also contains an ‘Annex on Professionals’. The Annex is intended to promote the development of mutually acceptable standards for licensing and certification of professionals, based on factors such as educational background, qualifying examinations and experience. A qualifying list of 62 professions is set out in an Appendix to the agreement. The USA originally placed a quota on the number of professionals that could be admitted from Mexico at 5,500 per year, but that category is now uncapped, as it is by Canada, for professionals from Mexico.

Under the agreements between the USA and Chile and Singapore, both concluded in 2002, labour mobility was expanded slightly for professional workers and a specific path to an H-1B1 visa was created. An annual quota of 1,800 visas for professionals from Chile was granted and 5,400 for professionals from Singapore, in addition to the fixed total of H-1B visas from all countries.

Unfortunately, the opposition of the US Congress to these arrangements was loud and clear. Key congressmen objected that the trade agreements had stepped into the realm of immigration matters. As a consequence of this outcry, no free trade agreement negotiated by the USA since 2002 has contained a chapter to facilitate labour mobility. New agreements explicitly state that ‘No provision shall impose any obligation on a party regarding its immigration measures’.

In the case of Canada the situation has evolved in the opposite manner. Perhaps due to pressures from the private sector and apparent labour shortages in the Canadian market prior to the current financial crisis, the government has negotiated recent RTAs that go quite far toward providing increased access not only for professionals, but also for semi-skilled foreign workers. While the agreement that Canada negotiated with Chile in 1997 looks very much like the NAFTA, it is already notable in that no numerical limits were placed on 72 of these categories of professional labour.

Strikingly, the two recent RTAs negotiated by Canada with Colombia (2008) and Peru (2009) go much further. They cover all professional categories with no numerical limits and no specified length of stay, meaning that visas could in theory be renewed indefinitely. For the first time they also expand coverage of worker categories beyond

highly trained professionals to include ‘technicians’. In both the Colombia and Peru RTAs, Canada has listed 50 categories of technicians to be admitted into the Canadian market, again with no specified length of stay. Technician categories include, among others, mechanics, construction inspectors, food and beverage supervisors, chefs, plumbers, and oil and gas well drillers. This recent development constitutes a major step forward for the expansion of Mode 4 temporary entry in trade agreements.

Regional trade agreements negotiated by the European Union

The EU has negotiated relatively few RTAs with developing countries that cover services. Although it has numerous association agreements in place with neighbouring Mediterranean countries (Morocco, Tunisia, Egypt, Jordan, Turkey, Syria and others), these agreements focus on goods and have not yet incorporated service provisions. However, the EU has negotiated association agreements with Mexico and Chile, and has finalised an economic partnership agreement with the countries of CARICOM and the Dominican Republic (CARIFORUM grouping), and more recently with Peru, Colombia, Ecuador and the countries of Central America.

While there are no in-depth services provisions in the earlier agreement with Mexico, which was concluded in March 2000 when the GATS negotiations were just beginning, the RTA with Chile and the EPA with the CARIFORUM countries are substantial. The EU specifies 33 categories of professional service providers that it will accept from Chile, and 29 from the CARIFORUM countries, without numerical limit but subject to the ‘necessary academic qualification and experience’. In addition, the EU expanded coverage of workers of the categories considered to be of great importance by Caribbean countries, namely: contractual service suppliers, independent professionals and graduate trainees, none of which have been assigned numerical limits. Interestingly, the agreements are very asymmetrical, as neither Chile nor the CARIFORUM countries commit reciprocally to accepting any professionals from the EU.

Regional trade agreements negotiated by Japan

Japan has negotiated four RTAs that are of interest for labour mobility. Those with Mexico and Chile are very similar in form and content to the NAFTA-type approach and agreements. The two more recent agreements negotiated by Japan with countries in south-east Asia – Indonesia and the Philippines – go much further. Like the EU, Japan has expanded the categories of workers in the chapter on Mode 4 to include ‘professionals with personal contracts’ (essentially the same as independent professionals). Japan has also increased the number of professional categories covered in the Annex on Professionals in these two preferential trade agreements (to 14 in the case of Indonesia and 10 in the case of the Philippines), with no assigned numerical limits. But the main innovation in these agreements is to include for the first time the categories of nurses and care workers, under an annual quota, and subject to specific education, language and training requirements which can be provided partially in Japan.

Regional trade agreements negotiated by Australia and New Zealand

Four RTAs have been negotiated by Australia and New Zealand that cover Mode 4, including one of them jointly with the ten ASEAN members. The P4, also known as the Trans-Pacific Strategic Economic Partnership Agreement (between New Zealand, Chile, Singapore and Brunei Darussalam), follows a NAFTA-type structure but with lighter content. The only category of workers specified in the labour mobility chapter is that of business persons, and no professional categories of service providers are covered. In the New Zealand–China RTA (2008) the ‘professionals’ category includes artisans with Chinese cultural characteristics such as theatre actors, Mandarin teachers, and Chinese medical specialists. This agreement also creates a new category of ‘installers’. Interestingly, the agreement is very asymmetrical, as China did not take on any commitment with regard to professional service providers. The Australia–Chile RTA (2009) follows a NAFTA-type structure with a lighter content (no commitment in the professional services category). The ASEAN–Australia–New Zealand RTA, signed in August 2008, goes further in terms of labour mobility. The additional category of ‘installers’ has been created (by New Zealand), and 58 categories of professionals are included in the agreement. It is of note that again, in an asymmetrical manner, the ten ASEAN members included fewer labour categories and committed to much less generous stays in terms of time than did their developed partners. In both agreements Australia innovates considerably in a positive manner regarding the treatment of spouses and accompanying family members, who are granted the right to join the worker after he/she has been in Australia for over one year.