

Facilitating Free Movement of People in an Australia-US FTA

by

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A set of provisions relating to the movement of people between Australia and the US could be added to the standard provisions relating to the freedom of movement of goods and services. A number of recent free trade area agreements have contained such provisions. Are such provisions a useful addition to an Australia-US Free Trade Agreement and, if so, what sort of provisions should be included?

In examining these questions, one needs to distinguish between permanent immigration and temporary labour movements. The US and Australia are two of the major countries receiving substantial net immigration flows each year and both countries receive substantial temporary labour inflows on a multilateral basis. This feature of the two economies probably makes both countries more receptive to the inclusion of such provisions in a bilateral free trade area. However, the effect of greater flows of people between the two countries would interact with the effects of greater freedom of movement of goods and services and of capital. Therefore, this provision needs to be reviewed in the context of other features of the proposed agreement.

Moreover, one needs to note at the outset that the US has not hitherto signed any agreement with another country or countries that contains such a provision, apart from a limited provision in NAFTA relating to the temporary entry of business people and even more limited provision in the US-Jordan Free Trade Area. Indeed, many of those in the US who were opposed to NAFTA were won over by the argument that free trade in goods and services between the US and Mexico would reduce the flow of (legal and illegal) immigrants from Mexico: that is, “export of goods rather than people”. (On this aspect of NAFTA, see Martin, 1996 and Gaytán-Fregoso and Lahiri, 2001.) Greater freedom of movement of people raises basic issues of national sovereignty.

1. The basic argument for freedom of movement of people

The fundamental argument for the inclusion of a provision relating to the movement of labour in a free trade area is the same as for a provision relating to the movement of

capital, namely, that it increases the aggregate output of the member countries and thereby the aggregate welfare of their populations.

Economic theory provides a strong and surprisingly general result concerning the aggregate production when the production sectors of two (or more) countries are integrated by the removal of restrictions on intra-area factor mobility and factor tax differences. This relates to the establishment of a single regional market for factors: it requires the removal of border restrictions on the movements of factors plus national treatment through mutual recognition or equivalent measures to ensure that foreign factors are treated equally within the borders. The proposition is that the aggregate production using the sum of the resources is greater (or no less) than the sum of the production of the member countries separately.¹ This proposition is in addition to gains from freeing commodity trade as it is based on a given set of prices. Thus there is a gain from freeing trade in primary factors over and above the gain from freeing commodity trade, assuming the latter does not equalise factor prices. This result derives from differences in the countries in terms of the marginal productivity of factors, with labour and capital moving from low marginal productivity locations to high marginal productivity locations. This is the essential argument in favour of a common market, that is, a free trade plus provisions for free movement of factors. Note that the proposition does not cover the movement of people who are not in the labour force.

One can find exceptions to this proposition on second-best grounds that show that regional liberalisations of factor movements may be welfare-harming to the liberalising countries. Wooton (1988) and Michael (1991) examined the movement from a customs union to a common market by the addition of free movement of factors after trade has already been freed. Their results have shown that capital or labour flows within a common market may be harmful if there is a non-zero common external tariff or if factor tax rates are not harmonised. In the former case, the loss comes about because of the reduction in trade tax revenue, which indicates a loss of gains from trade. In the latter case, factors move to the location where the return net of taxes is greatest but this is not necessarily the location in which the marginal product is greatest in the presence of differences in factor tax rates. The same result may apply if commodity taxes or income taxes are not harmonised.

Like the application of second-best trade-diversion effects to the analysis of commodity trade, these second-best results are excessively negative. The countries necessarily gain if the tax rates are harmonised, as Michael (1991) showed for factor taxes. Consequently, there is a strong presumption that regional liberalisation of trade in capital and labour will increase the aggregate output of the member countries.

However, it is not true that the aggregate output of each member country separately will increase (nor that the real incomes of all factor-owners in the region will increase). The GNP of one member country will decrease if the net flow of factors is from this country to the other member or members. Kemp (1993) showed that, in a customs union, no country is worse off after the formation of a common market if there is system of lump-sum compensation among the members.² In general, one expects all countries can be made strictly better off. Such compensation is not, however, a feature of real world RTAs. Consequently, we need to explore the likely effects on Australia and the US separately.

This efficiency argument for labour movement is strengthened if there are complementarities between mobile factors. In particular, capital movements in the form of foreign direct investment often require the movement of key company executive and skilled personnel to the new affiliate in the host country. Most service trade is in the mode of commercial presence, using GATS terminology. The inclusion of provisions in RTAs dealing with FDI-related movement of people is seen as a complement to measures to liberalise trade in services.

2. The Options

In practice there are a number of options for the freeing of *labour* and/or *people* movements between members of a regional trading agreement (RTA). They range from measures that achieve a limited freeing of movements of labour and/or people to complete freedom of movement of both labour and people.

The great majority of RTAs contain no provisions relating to the movement of people or labour. In RTAs formed in the 1990s and the current decade, there is a trend for more of them to contain labour movement provisions. Nielson (2002) surveys labour mobility provisions in regional trading agreements. There are three agreements that

provide precedents in this area that an FTA might follow: these are NAFTA, the EU and the CER Agreements.

NAFTA provisions

The provisions of Chapter 16 of NAFTA are important because they have been a precedent followed by other RTAs signed by Canada and Mexico since NAFTA came into force and they set a precedent that could be followed in an Australia-US FTA. These provisions concern *labour* movements. NAFTA does not, however, create a common market for labour in the NAFTA area. Each country retains its rights to regulate the entry of people for permanent residence without any change. What Chapter 16 does do is facilitate the temporary entry of persons for business-related purposes on a reciprocal basis among the three countries.

These provisions apply to four categories of business persons; business visitors, traders and investors, intra-company transferees and professionals. Thus, the definition of business persons is quite broad; it includes many groups of skilled workers such as scientists, teachers, and medical and allied professionals. A copy of the list of professions recognised under NAFTA is attached; for example, these include, under the category of professionals, economists (defined for this purpose as those possessing a baccalaurate or licenciatura degree). Labour certification or labour market tests are not required. Business visitors, but not the other three categories, are exempt from work permits. Professionals must have a pre-arranged employment. Mexico and the US agreed to set a quota of 5,500 on the number of Mexican professionals who may enter the US on an annual basis until 2003 but there are no quotas on the movements of business persons between the US and Canada or from the US to Mexico.

A number of other features are noteworthy. Chapter 16 sets out the definitions and rules in a transparent fashion. Temporary entry is defined as entry by a business person of another party to the Agreement without the intent of establishing permanent residence, rather than in terms of a time limit. The provisions apply to *citizens* of other countries seeking to enter for business purposes. There is provision for dispute settlement. Chapter 16 declares that these provisions do not restrict the immigration measures of the member countries.

These provisions have been well received in all three countries. The main flow is Canadians entering the US. For the Professional category, preliminary statistics show that 92,700 Canadian professionals entered the US in 2001 with 19,300 spouses and children whereas there were 2,600 Mexicans with 750 spouses and children (Kramer, 2002, p. 41). There is an issue between Canada and the US in that Canada allows spouses of persons admitted under this provision to work whereas the US does not.

Since the signing of the NAFTA Agreement, all of the new RTAs in the Americas have contained provisions relating to the temporary movement of business-related persons. These include agreements to which NAFTA-member Mexico is a party (the Mexico-Nicaragua, Mexico-Northern Triangle, Mexico-Bolivia and Mexico-Chile agreements) and those to which NAFTA-member Canada is a party (Canada-Chile and Canada-Costa Rica) (Salazar-Xirinachs, 2002, Table 2 and OAS website www.sice.oas.org). These later agreements mostly follow the NAFTA precedent. Some cover all four categories of temporary labour in NAFTA Chapter 16 (for example, the Canada-Chile Agreement) and others cover only a subset of the categories (for example, the Canada-Costa Rica Agreement relates to business visitors and intra-FDI transferees only).

Outside the Americas, a number of recent RTA agreements include provisions relating to the movement of business persons. For example, Chapter 9 of the Japan-Singapore Economic Partnership Agreement concerns the Movement of Natural Persons. This covers short term business visitors and intra-firm transferees.

European Union provisions

The EU has comprehensive provisions relating to the movement of labour and people. The labour provisions are part of the Common Market created by the 1957 Treaty of Rome. The term “common market” means free trade/movement among members of the EU in goods, services, capital and labour. These are called the “four freedoms”.

The Common Market guarantees the movement across national borders of all labour, technically “workers” and service providers, who are citizens of EU countries. It does not apply to temporary workers who are not EU citizens. Temporary workers are subject to national entry and work controls. The Treaty also guarantees national

treatment: for example, a Spaniard working in France is to be treated like a French worker.

However, it was quickly realised that the existence of national labour market regulations prevented national treatment in many cases. The diversity and complexity of national labour market regulations discourages cross-border movements of labour. Some initial attempts were made to establish common labour market standards relating to qualifications and other labour market regulations but these are not the measures the EU has relied upon (apart from two sets of common standards in the areas of health and safety and of equal opportunity). The chief measure to overcome this problem has been mutual recognition of the qualifications of workers and professionals. The European Parliament and the European Council have issued a series of directives since 1977 on the mutual recognition of qualifications for the professions generally and for particular professions in the areas of medicine, veterinary science and architecture. This system has evolved towards mutual recognition of diplomas based on trust among the member States and common minimum training conditions. In the case of the law profession, the mutual recognition relates to the right to practice. This system retains some supplementary measures in the form of aptitude tests or an adaptation stage.

Despite these measures, it is generally agreed there is not a common market for labour in the EU (see, for example, Pelkmans, 1997, chapter 9.2). A number of impediments to the movement of labour remain. Some of these are labour market regulations; for example, the EU has not provided for an EU-wide system of social security that creates impediment to the area-wide mobility of workers. Other impediments arise because of language and cultural differences.

Since the Treaty of Rome the provisions relating to the movement of people have gradually developed to allow any citizen of the Union to move and stay freely within the area of the member states. The Council has issued Directives that guarantee the right of residence to categories of persons other than workers. The 1997 Amsterdam Treaty harmonised policies relating to immigration and asylum in the EU countries (apart from the UK, Ireland and Denmark which expressed reservations) by setting common standards. However, members retain the right to maintain or introduce national provisions that are compatible with the Treaty and international agreements.

The EU has faced problems stemming from the entry of people from third countries who then seek to cross the border of a second member country. After the formation of the community, frontier controls on all people entering were retained in an attempt to prevent persons who had entered one country illegally or who posed a security risk from moving to a second member country. This issue was partially resolved by the 1985 Schengen Agreement and the 1990 Schengen Convention. Thirteen states have signed the Convention removing border controls between the Schengen states after common standards of control on the entry of persons from third countries were established. The UK and Ireland have not signed. However, the Schengen Convention allows the free movement of persons for travel purposes, it does not entitle non-EU citizens to transfer work permits or residence from one EU country to another.

The European Economic Area extends workers rights to move to nationals of the EFTA countries (Iceland, Liechtenstein, and Norway) and to within the EU and the EFTA States.

CER provisions

Like the EU, the CER has provisions relating to *people* and to *labour*.

Free movement of people between Australia and New Zealand is guaranteed under a series of Ministerial agreements known as the Trans-Tasman Travel Arrangements (TTTA) which date back to the 1920s and therefore pre-date the CER Agreement. These arrangements apply to all movements, those for labour market and for non-labour market reasons such as retirement or study. They hold for all citizens of the two countries and for citizens of other Commonwealth countries who have been granted permanent residence in either Australia or New Zealand. For these residents, no prior permission is required to enter the other country but, since 1981, a passport has been required. There are no quotas or other restrictions on these movements.

In support of the free movement of workers and people, other arrangements have been put in place covering mutual recognition of labour market qualifications and arrangements for the payment of social security benefits. In 1997 the Trans-Tasman Mutual Recognition Arrangements (TTMRA) came into force. These cover both goods and skilled labour. The labour provisions were designed to grant national

treatment to occupational workers moving from the other country without the need for a harmonisation of labour market qualifications.

The basic principle of the Arrangement is that a person registered to practise an “occupation” in any Australian State or Territory is entitled to practise an equivalent occupation in New Zealand, and *vice versa*. The occupations are those for which registration is required under national or State laws. These cover a wide range of professional and skilled labour markets. In addition, there is at the level of the professions themselves a substantial degree of harmonisation of professional standards and skilled labour entry qualifications that date back decades. Together with the TTTA, these arrangements have effectively created a common market in labour between the two countries with unrestricted movement and national treatment.

The bilateral social security agreements have been designed to share the burden of social security payments to residents of one country who have moved to the other country. They pre-date the 1983 CER Agreement, in fact they date back to 1949 (see Burnett, 1980, para 802). The benefits concerned are old age pensions, superannuation and payment for people with severe disabilities. Under these arrangements residents of one country moving to the other are entitled to receive the social security benefits of the country in which they take up residence. Under the shared responsibility principle, Australia and New Zealand each contribute to benefit payments in proportion to the working life the recipient has spent in each country. These arrangements have had to be updated as the people flows have varied. Most of the concern has been in Australia as the net migration in recent decades has been heavily from New Zealand to Australia. The latest arrangements took effect on July 1 2002. Other national restrictions apply in both countries for access to benefits not covered by the Arrangements; for example, unemployment benefits. Australia tightened the eligibility conditions for some of these benefits payable to former residents of New Zealand at the same time as the last joint review of the social security arrangements. There is a separate bilateral agreement prescribing national treatment for immediate medical attention required by Australia and New Zealand residents temporarily resident in the territory of the other country.

With an agreement ensuring the free movement of people between the two countries but each country retaining separate national laws relating to the entry of persons from third countries, there is a potential problem concerning the movement of people who enter the area from a third country to one of the CER countries and then migrate to the other CER country. Recently, the Australian Minister for Immigration, Mr Philip Ruddock, has stated that Australia would like to see a common policy towards migrants from third countries:

"I'm anxious to have...common border arrangements...so that if someone is eligible to come to Australia they're going to meet the same criteria if they go to New Zealand." (Ruddock, 2000).

The main concern of the Australian authorities is that of "back door entry" into Australia. If the New Zealand immigration selection standards differ from those of Australia, it will be possible for some would-be migrants to Australia who have not or might not meet the Australian standards to meet the New Zealand entry standards and migrate to New Zealand and, after the period required to acquire New Zealand citizenship, migrate without restriction to Australia. The standards are similar but not identical. Both countries operate points systems to select skilled migrants (aside from humanitarian and refugee migrants and family reunion migrants). However, the Australian system gives preference to younger migrants with specific occupational skills, whereas the New Zealand system relies more on a "general skills" principle (Bushnell and Choy, 2001). Given the much lower level of immigration in New Zealand in terms of absolute numbers and the period required to qualify for citizenship, this is not a major problem. But, as with trade in goods and in assets, different standards set up incentives that can really only be eliminated by the adoption of common standards.

The current CER set of provisions is remarkably similar to that of the EU. In the area of mutual recognition of labour market qualifications, this is due to the CER mutual recognition measures being based on those of the EU. In the area of people movements, it represents a parallel response to a shared desire to have free movement of people in the respective area. However, the historical motivations are rather different; in the case of the EU, these provisions stem from the desire for a common

market whereas in the CER area they stem from an earlier tradition of free movement of people among the former Seven Colonies in Australia and New Zealand.

3. Economic Relations between Australia and the US

The desirability of these provisions relating to the movement of both labour and people in the EU and in CER raises many issues. The freedom of movement of labour needs to be related to the effects of freeing trade in goods and services and capital, and the freedom of movement of people raises other issues of people who move for non-labour reasons and national sovereignty.

A starting point for a preliminary analysis of these issues is a profile of economic relations between the US and Australia. Economic relations between Australia and the US comprise trade in goods, services and capital and the movement of people for temporary employment or permanent migration. Table 1 lists the dependence of Australia on US markets in the simple sense of the share of imports and exports of goods and services and factor flows with the US in the aggregate. To make these flows comparable, each flow between Australia and the US is expressed as a proportion of the total corresponding flow between Australia and the Rest of the World. As the US is a member of NAFTA and NAFTA is a free trade area with few restrictions on the movement of capital, the second column registers the Australian dependence on the three NAFTA countries together.

For goods trade, the US is our second major export market (after Japan) and our most important source of imports. For services, the US is our largest export market and the most important source of imports. When the exports and imports of both goods and services are added, the US is our single most important trading partner. Another feature of these trade flows, is that, for both goods trade and trade in services, Australia imports more than it exports to the US with a large bilateral deficit in trade in goods and services combined. Indeed, from the US point of view, Australia is one of the few countries with which the US has a bilateral surplus in the balance of trade.

For trade in capital assets, the US is our most important trading partner by a larger margin. The US accounts for 30 per cent of foreign investment in Australia and for 41.7 per cent of Australian investment abroad. These investments are measured in

terms of the stocks of the assets and cover FDI, portfolio investments and other private investments.

For the movement of people, the US is unimportant as a source of immigrants but it is one of the principal destinations of Australians departing permanently, ranking only slightly below the UK (22.7 per cent) and New Zealand (19.0 per cent). From the Australian point of view, the US is the only country with whom we have a substantial annual net migration loss.

If we express these same movements as a percentage of the US rather than the Australian movements with the rest of the world, the results are, not surprisingly, very different. Australia is a very low ranking partner of the US for all movements. For example, the exports from Australia to the US constitute only 0.6 per cent of US total imports, and our imports from the US constitute only 1.6 percent of their total exports. The flows of people are so small from the US point of view that Australia does not enter as a country in the US statistics of immigrants by country. It is a part of Oceania!

When we view the corresponding flows between Australia and the NAFTA region in the second column, the general pattern is not changed and the percentages too are changed only slightly as Australian relations with Canada and Mexico are small relative to those with the US.

4. Feasibility of including NAFTA-type provisions for labour movements

An FTA between Australia and the US should, in my view, at a minimum include provisions relating to the movement of FDI-related persons as in the NAFTA. And it should do so for much the same reasons as these provisions were included in NAFTA. NAFTA is an RTA which covers trade in services as well as goods and seeks to promote FDI within the area. These labour market provisions complement the provisions freeing trade in goods and services and in capital.

Perhaps the best way of viewing these complementarities is to use the approach of the modern theory of foreign investment. This emphasises that producers of one country may supply the markets of another country by either of two modes; one is the traditional mode of producing in the home country and the other is the model of

establishing an affiliate company in the foreign country (or possibly in a third country). Economic policies should be neutral between the two modes, not favouring one over the other. Assuming that an Australia-US FTA would, after a transition period, free trade in almost all commodities, competition by the mode of foreign production then requires that there be no restrictions on domestic companies in Australia and the US establishing and operating in the other country. Access to key executive and skilled personnel from the parent country is one condition of neutrality between modes. Furthermore, in the case of many services, the second mode is the only real choice; this holds, for example, in financial services.³ Thus relaxing restrictions on FDI, including the movement of persons, is essential if there is to be neutrality between trade liberalisation in services and in goods.

It is likely that an RTA between the US and Australia would include NAFTA-style provisions for greater mobility of capital, especially FDI, as the US is likely to insist upon these measures. Table 1 showed that the movements of capital between Australia and the US are the most important, relative to the national totals, of the relations between these two countries. Provisions relating to the movement of business-related persons in the FTA would be part of arrangements to open up the markets for foreign investors and to ensure neutrality of access across all commodities. These provisions could be extended to professional workers, as in NAFTA chapter 16.

The arguments in support of the movement of professionals are another form of the gains from integrating factor markets. To a greater extent than the provisions relating to permanent migration, temporary labour movement provisions in both the US and Australia are based on the desire to increase the supply of workers in professions or occupations where there is excess national demand for labour. When there is excess demand for some labour market in one country and excess supply in another, there are unambiguous gains to both countries, however, when there is excess demand in both countries (as in the IT markets until recently), the emigration country may lose. Moreover, as many temporary worker emigrants return to their home country, there are gains from labour training and experience in these movements. Because the movements are temporary (at least for the purposes of approval), they do not pose questions of migration policy. I support a broad interpretation of these temporary

movements, covering at least the combined list of all the professions in NAFTA chapter 16 (or the similar list for the selection of the professional category of immigrants in the US) and the registered occupations in Australia.

These provisions are likely to be acceptable to both Australia and the US as both countries have similar provisions for temporary entry for employment purposes on a non-preferential basis, and both have bilateral agreements with some other countries for specialised categories of workers. The programmes in both countries target mostly executive, professional and skilled workers.

Australia has two temporary entry programs similar to those of Chapter 16 of NAFTA. One is for business visitors. Business visitors who come for a short business-related trip enter on a Business Visitor (short stay) visa. Business visitors who wish to establish a business in Australia and those who are recruited by Australian companies as skilled key personnel enter on a Business Visitor (long stay) visa for a period up to 4 years.

The category of business visitors corresponds roughly to three of the four NAFTA categories of business-related visitors - business visitors, traders and investors and intra-company transferees. There is an extra category of young working holiday makers. In 2000-01 a total of 260,957 Business Visitor visas and 76,576 WHM visas were granted (Department of Immigration, Multicultural and Indigenous Affairs, 2001). The US is the single most important source of Business Visitors (57,302 in 20001). There is no general provision for temporary professional workers but some professionals can enter under other visa categories; there are categories of temporary visas for Entertainers, Sportspeople, Media and Film Staff, Religious Leaders and Visiting Academics.

The second type of temporary work-related visitors are Working Holiday Makers from countries with which Australia has a reciprocal agreement. Australia has reciprocal WHM arrangements with 12 countries. The countries do not include the US (but Canada is included). This programme provides entry for young visitors on a working holiday. (There are also bilateral agreements relating to exchange visors who are mainly skilled workers.)

These combined number of Business Visitor and WHM visas granted is three times the number of immigrant visas granted. It is estimated that at any time temporary workers comprise 2-3 per cent of the Australian labour force (Hugo, 2002).

The US similarly has a number of visa categories for temporary workers. The main category is H-1B that is designed to facilitate access by US corporations to foreign skilled workers in specialty occupations. Under this category, US employers must file a petition with the Attorney-General on behalf of an alien worker and offer the worker a position in one of the specialty occupations. Temporary workers in this category may stay up to six years and, in some circumstances, longer. This category is subject to an annual cap. The American Competitiveness and Workforce Improvement Act 1998 increased the cap for the fiscal year 2001 to 107, 500. This category is the principal category used by US IT corporations to import skilled IT workers on a temporary basis. It is also used extensively by higher education institutions.

Category H-1C covers nurses going to work for up to three years in health professional shortage areas. H-2A covers Temporary Agricultural Workers. H-2B covers Temporary workers, skilled and unskilled. H-3 covers Trainees. Workers under these categories must have a US employer. Numerical caps apply to those admitted under H-1C and H-2B categories.

There is a category for intra-company transferees to enter on a temporary basis (L) covering executive, managerial and specialized knowledge workers. There is a category for Athletes and Entertainers (P) and a category (O) for temporary workers with “extraordinary abilities” in Sciences, Arts, Education, Business or Athletics to enter on a temporary basis.

There is a special category for NAFTA business-related temporary workers (TN). Many of the workers covered by this category would be eligible for entry under other categories but there is no annual cap on NAFTA Chapter 16 workers and for some professionals in particular the eligibility conditions are less restrictive. There is also a category of visas (E) for nationals of countries with which the US has signed a treaty of commerce and navigation who wish to enter the US as non-immigrant workers to perform task in accordance with the provisions of a bilateral treaty of commerce and

navigation. This covers executive and skilled workers of companies owned by the nationals of the country of nationality of the worker.

The number of temporary workers admitted to the US in 200 was almost 1.1 million, not including families (Kramer, 2002, Table 10). This number is greater than the number of visas granted to immigrants.

Another possibility is to extend the NAFTA Chapter 16 categories to include skilled workers who are not professionals and to working holiday visitors who are currently allowed temporary entry for work purposes in at least one of the two countries.

5. Should the Agreement include a preferential agreement on people movement?

The possibility of extending these provisions further to cover the movement of people for permanent employment and/or for non-labour migration raises other issues of immigration policy. First, we need some background on the immigration policies of the two countries.

The US and Australia have been large net immigration countries throughout the last century and more. Clarke and Smith (1994) trace the rates of net immigration into these countries (and Canada) since 1870 to 1990. The US and Australia have received positive net immigration flows from 1870 for all but a few depression years at the end of the Nineteenth Century and in the Great Depression. Their Figure 7 reproduces their time series. Since 1950 the rate of immigration, expressed as a percentage of the current total population⁴, has been consistently higher in Australia than in the US but the Australian rate has been trending downwards.⁵ As these figures are net immigration, they are affected by emigration as well by (planned) immigration.

Australia has a “non-discriminatory” policy of taking immigrants from any country. This is the official term used to describe Australian immigration policy. The one exception is citizens of New Zealand who may enter freely under the reciprocal TTTA and are, therefore, outside the Migration Program. The Migration Program specifies in advance annual migration planning levels. The planning level for 2002-03 and the next four years is 100,000-110,000 in the non-Humanitarian categories (not including the parent contingency category) plus 12,000 in the Humanitarian

category, a total of 112,00-122,000. Traditionally selection has been done so that the outcome corresponds closely to the planning level for each year.

There are two major streams of non-Humanitarian immigrants - Skill and Family. Skill migrants must satisfy a points test, have particular work skills, be nominated by an Australian employer or have other links to Australia, or have successful business skills and/or significant capital to bring to Australia to establish a benefit to this country. For Skill migrants, bonus points are awarded for a range of criteria including skilled work experience, occupations in demand, Australian qualifications and Australian work experience, skilled spouse and foreign language skills. The Family Stream allows for the migration of immediate family members of Australian citizens such as spouses or fiancés and dependent children.

DIMIA (2002) shows the actual immigrant arrivals by visa eligibility category from 1990-91 to 1999-2000. The main change in policy over this period has been that the percentage of visas going to the Family Stream has fallen sharply from 68.7 per cent in 1995-96 to 41.6 per cent in 2000-01. In the past three years the overall pattern has been stable although the individual eligibility categories and their selection criteria have been changed during the period. The most important flows in terms of arrival numbers are the Skill categories followed closely by non-program arrivals from New Zealand. Each of these comprises about one third of the total.

US immigration categories and caps are specified in detail in the Immigration and Nationality Act (INA). There are two main categories of aliens who may be admitted as immigrants to the US. The first category are those whose annual numbers are subject to a world-wide numerical cap. This category is split into three sub-categories: “family-sponsored”, “employment-based” and “diversity” immigrants. Employment-based migrants are selected mainly on the basis of skills. For the professional sub-category, a US employer is required. The diversity category of visas was introduced in 1995 to make special provision for applicants from “low-admission regions”. There is an annual lottery to select these immigrants. The second category are those whose numbers are not subject to a cap, principally “immediate relatives” of US citizens. There is separate provision for the admission of refugees and for those seeking asylum.

Admissions of some immigrants, notably immediate relatives of US citizens and also asylees, are not subject to global numerical limits. However, most categories are subject to numerical limits. The categories and sub-categories of immigrants subject to an annual global cap in the Act are listed in Table 2 below. For the categories of family-sponsored and employment-based immigrants, there is provision for unused numbers at the end of the previous fiscal year to be carried over to the other category for the following fiscal year. As a result, the actual limits change from year to year. Within these global totals, there are country caps for family-sponsored and employment-based immigration applicants from countries which are designated “high-admission regions”. These caps may be varied by Act of Congress.

The numbers for various categories of immigrants admitted to the US are listed in Bureau of Immigration and Naturalization Service (2001, Table 4). Compared to Australia, the US admits a much higher proportion of immigrants on the basis of family connections. The sum of the categories “family-sponsored immigrants” and “immediate relatives of U.S. citizens” made up 81.2 per cent of total immigrants admitted in 2,000. Only one eighth of the immigrants are admitted on the basis of employment. The proportion of immigrants admitted in the US who are refugees and asylum seekers (7.8 per cent in 2,000) is almost the same as in Australia (7.9 per cent in 1999-00).

We can now consider the possible benefits of a provision relating to people movement in an Australia-US FTA. This depends on the numbers of new migrants and on the effects of these migration flows.

The numbers of migrants that might result are very difficult to predict. In the first place, it is especially difficult to predict the flows as there are no historical observations to any destination that might be used. At present New Zealand is the only destination that is unrestricted for potential emigrants from Australia and the growing disparity in wages and salaries and levels of consumption has been increasingly in favour of Australia. Second, immigration flows are two-way; some Australians would go to the US and some US residents would come to Australia. One has to look at the gross and net flows. Third, statistics of arrivals/departures are derived from information provided by passengers as they arrive in/leave Australia. They are based on their declared intentions at this time. Many temporary and

permanent arrivals in a country change their minds; temporary residents stay longer than intended and arrivals intending to stay permanently sometimes leave again. The statistics distinguish between “permanent” arrivals and departures, i.e. people intending to stay permanently and “long-term” arrivals and departures, i.e. people who indicate an intention to stay temporarily but for a period of 12 months or more. Most analyses of migration use “permanent” movement statistics but many “long-term” migrants change their visa status after arrival in the country of destination and become permanent movements.

It is likely, in my view, that a provision that allowed completely free movement of people between Australia and the US would increase the current net migration of Australian-born citizens to the US. There also many recent immigrants to Australia who have relatives who migrated to the US and some of these may seek to join relatives in the US.

Much of this new emigration would be concentrated in the professions and skilled labour categories. US income levels are very much higher than those in Australia and this differential generally increases with the skill level. Current Australian emigration to the US is concentrated in the professions. For example, over the period 1994-200, 41.0 per cent of permanent and long-term departures of Australian-born to the US were classified as “professionals” (Hugo *et al*, 2001, Table 2.17) and another 10.2 per cent were classified as “Manager-administrator”. The importance of the professions is no doubt largely due to the many US visa types for the professions, in both the temporary and the immigration categories, as noted above. That is, the Australian labour movements to the US are highly concentrated in the high-skill high-income groups. One might expect this pattern to continue under a people movement provision in the FTA.

Standard analysis of emigration, using Neoclassical general equilibrium models, predicts that, in the country of emigration, an emigration of labour must raise the incomes (or at the worst leave them unchanged) of the labour group from which the emigrants are drawn and must lower the income of some other group of factor owners. These effects are due to the increase in the capital stock per head of population which causes the marginal product of capital to decrease and that of other factors generally to increase. Emigration lowers the incomes of all remaining income

groups in the aggregate and the average per capita income of the country falls further if the departing emigrants are from above-average income groups. These conclusions are quite robust, they hold for a variety of models with many factors and many goods (see Ruffin, 1984 and Clarke, 1997).⁷

If this increase in net emigration were large enough, it could even convert Australia from a country of net immigration to a country of net emigration. Permanent departures have increased substantially relative to permanent arrivals substantially in the last three years. In 1999-00 permanent departures were 44.5 per cent of permanent arrivals (DIMIA, 2001, "Permanent and Long-Term Movement"). The cessation of substantial net immigration would be a profound change in Australian population movements and in Australian society. Australia could conceivably follow the pattern of net immigration in New Zealand where, after more than a century of large scale net immigration, the immigration and emigration are roughly balanced. Immigration, in this situation, is part of an exchange of population. With regard to labour movements, the question is whether New Zealand is exchanging high quality (with high human capital) labour for low quality labour (see Bushnell and Choy, 2001 and Glass and Choi, 2001).

Further analysis of possible migration flows requires a disaggregation of the flows by type of immigrant. Immigration flows are very heterogeneous, partly because preferences over work and choice of residence vary greatly among people and partly because there are great differences in relative incomes and prices between Australia and the US. Consider potential immigrants other than those who move for work. These include such diverse groups as students, retirees, and those who are motivated by access to health and social security benefits. Generally speaking, prices in Australia of tertiary education and medical services for the aged are low relative to the general price level in Australia when compared to those in Australia. This raises the possibility that some Americans might migrate to Australia in the event of free movement in order to take advantage of the cheap education and medical services, though it is difficult to foresee large movement on this basis. If the cost of these services were unsubsidised, there is no economic problem but subsidies mean that part of the cost of these services when supplied to immigrants is borne by the Australian taxpaying population. The costs to Australia of any such net movement

could be offset by a supplementary cost-sharing agreement between the governments of the two countries such as those which currently applies between Australia and New Zealand in relation to social security and medical payments.

There is an added problem associated with third country immigration. The experience of both the EU and the CER is that some migrants who cannot gain admission to one country will seek admission to a second country which has an agreement with the first country and then, after the period required for citizenship, migrate to the first country without restriction. In the case of Australia and the US, it is likely that the US would be concerned about back-door entry. This arises because, for some emigrants, the US is the country of first preference. There is some evidence that migrants to countries such as Canada and Australia would have preferred to go to the US if that path had been open (see Clarke and Smith, 1994).

All of the immigration questions raised above require more examination. In answering these questions there are two fundamental problems. We know little about who would move in the event of Australia and the US signing an agreement which provided for the unrestricted movement of people and we know little of the effects of these movements on the economies and societies concerned.

In regard to the effects of any people movement, there are a number of analytical problems. Labour movements have general equilibrium effects on the incomes of other workers and asset owners that are little understood. With any immigrant labour flow, some others who are already resident in the country of destination will gain and some will lose in terms of annual incomes, as noted above. The same applies to working emigrants.

These income effects give rise to a deeper problem. Whose welfare are we concerned about? In the case of immigrants, is it the welfare of the people already-resident in the country or is the welfare of this group plus the new immigrants? In the case of emigrants, is it the welfare of the people who remain residents in the country of source or is it the welfare of this group plus the emigrants? Economic analyses have shown this choice may make a difference, one population may gain and the other may lose from a given migration flow. Standard analysis of immigration, using Neoclassical general equilibrium models, predicts that, in the country of immigration,

the wage rates of the labour markets in which immigrants are employed must decrease (or at best remain unchanged) and the income of some other income group or groups must increase. In the aggregate, the already-existing population and the population of new immigrants gain (assuming they move for economic reasons and find employment) but average income of the nation falls (see, for example, Ruffin, 1994 and Clarke, 1997). In the US the gain which immigrants bestow on the existing population is known as the “immigration bonus”.

In a Neoclassical world with no (or constant) unemployment and differences between countries in the marginal productivity of migrating labour, the aggregate output and average incomes in the countries of immigration and emigration combined must increase, as noted earlier. The problems arise because income losers are not compensated.

5. Conclusions

The review of the possible numbers and economic consequences of people moving if provisions relating to the movement of labour or people were included in an FTA between Australia and the US has come to strong and straightforward conclusions. An agreement should contain provision for the temporary movement of business-related and professional labour but it is doubtful that it should contain a provision for the free and permanent movement of labour and people.

There are multiple grounds for questioning a provision providing for the free and permanent movement of labour and people between Australia and the US :

- An emigration of labour from Australia to the US would lower the average incomes of those remaining in Australia and lead to a net loss of professional and skilled labour
- There may be costs to Australia associated with increased demand by former US residents now living in Australia, such as retirees and students, for subsidised health and education services.

- There are likely to be problems with the back door entry into the US of Australian citizens who have been denied entry or would not have qualified for entry into the US from a third country
- The US has not previously agreed to preferential entry on a permanent basis of citizens from any country, and would be unlikely to agree to this precedent.

FOOTNOTES

1. For a simple proof using the national product function and discussion, see Lloyd (1996, footnote 6). The proof requires that the two countries have identical production technologies. If there are differences in technologies between the countries and the factors migrating to the country with the higher productivity due, say, to superior management methods, take on the productivity (for a given factor intensity) of the receiving country, the result holds *a fortiori*.
2. This is an extension of the famous Kemp-Wan proposition concerning gains from trade in a customs union (without free movement of factors in the union area), provided the common external tariff can be adjusted to ensure that the rest of the world is not affected. This proposition has recently been shown to apply to free trade areas as well as to customs unions by Panagariya and Krishna (1997) and Ohyama (1999), provided in this case each country separately adjusts its external tariffs.
3. The General Agreement on Trade in Services (GATS) calls this mode, when applied to service trade, “commercial presence”. GATS imposes binding market access obligations on members in relation to such movements but they are limited to those service suppliers inscribed on the members national schedule and to temporary labour movements only.
4. These statistics relate to total movements, that is, permanent movements plus long-term movements plus short-term movements . This definition is broader than that of settler arrivals and permanent departures used for the analysis of permanent intended migration.
5. The rates of immigration would be closer if illegal immigrants are included. The US Census Bureau has estimated that in April 2000 there were around 8.5 million residents of the US. This number does not include 22.7 million undocumented migrants who were legalized under the Immigration Reform and Control Act of 1986. I could find no comparable estimates for Australia. The Department of Immigration, Multicultural and Indigenous Affairs has found that there were

58,748 visitors who had overstayed their visa periods as of 30 June 2000 (DMIA, 2000, Chapter 7) but this does not include illegal arrivals. US data indicates that in 1996 41 per cent of the total undocumented population were overstayers.

6. Emigration is rising relative to immigration in the US too (Kramer, 2002, p. 48). The data for the 1990s indicate that the emigration flow was 22 per cent of the immigration flow .
7. This analysis assumes that all factors are owned by residents of the country in which they are employed, the supply of other factors and technology is unaffected by migration and it ignores dependents and tax complications.

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Table 1

Australian Dependence on the US and NAFTA Countries, 2000

	Percentage of Australian total from US (%)	Percentage of Australian total from NAFTA Countries (%)
Trade in Goods - Exports	9.8	11.6
- Imports	19.0	21.1
Trade in Services - Exports	16.3	17.4
- Imports	21.0	22.5
Foreign Investment in Australia	30.0	30.3
Australian Investment Abroad	41.7	42.6
Settler Arrivals	1.2	1.9
Permanent Departures	17.9	

Sources: ABS and DIMIA (various).

Table 2. Annual Caps on Immigration Categories in the US Immigration and Nationality Act, 2000

Family-sponsored immigrants	226,000+
Employment-based immigrants	140,000
Diversity immigrants	55,000
Refugees	50,000

Source: US Immigration and Nationality Act.