

Testing the boundaries of employer-driven agricultural
migration: privatization and the Temporary Foreign Worker
Program, 2002-2011

by

Christopher Miller

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Carleton University
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Abstract

The recent growth of Canada's Temporary Foreign Worker Program (TFWP) parallels the international trend toward the revival of guestworker programs. This growth, however, is simply the most visible sign of a fundamental restructuring of the institutional framework that governs the program. This shift is rooted in a broader transformation of the political economy of the Canadian state that has resulted in a new form of migration control, one which embodies the logic and practices of neoliberalism – a paradigm revolving around the privatization and retrenchment of certain state functions, the globalization of markets, and the construction of economically-competitive individuals. In the context of the TFWP, this has resulted in an “offloading” of administrative functions from the federal government to third party actors, as well as the creation of a more employer-driven TFWP that is sensitive to businesses' demands for a flexible and reliable labour pool. This thesis employs a case study of the TFWP's agricultural components during the period of 2002 until 2011, drawing in large part on federal ministerial documentation obtained through the Access to Information Act. It questions why this era of increasing privatization reversed course and culminated in the creation of a new government program, the Agricultural Stream. The analysis pursued in this study indicates that while there are certain roles and functions concerning the recruitment of migrant labour that the Canadian state has undoubtedly vacated, it has nevertheless adopted a new, active role that involves mitigating the unintended consequences of privatized migration control as a means of supporting the continued viability of the TFWP. This effort drove the creation of Agricultural Stream, which

replaced a legally-embattled “privatized” guestworker program developed by the International Organization for Migration on behalf of the Quebec growers’ association FERME and the government of Guatemala. This countertrend should caution against conflating neoliberalism and privatization or accepting the two as necessarily harmonious, suggesting that movements towards privatization become vulnerable and subject to reversal should they pose complications for employers. This in turn stresses a reading of both the “ideal” and “practice” of neoliberalism as it concerns privatized migration control.

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List of Abbreviations

ATIP - Access to Information and Privacy
AVRR - Assisted Voluntary Return and Reintegration
BCAC - British Columbia Agriculture Council
CBSA - Canadian Border Services Agency
CDPDJ - Commission des droits de la personne et des droits de la jeunesse
CEC - Canadian Experience Class
CHC - Canadian Horticultural Council
CIC - Citizenship and Immigration Canada
CNESST - le Commission des normes, de l'équité, de la santé et de la sécurité du travail
COMIGUA - Guatemalan Migrants Commission
CPC - Central Product Classification
ESDC - Employment and Social Development Canada
FARMS - Foreign Agricultural Resource Management Service
FERME - la Fondation des Entreprises en Recrutement de Main-d'œuvre agricole Étrangère
FOI - Freedom of Information
FSWP - Federal Skilled Worker Program
FTA - Free Trade Agreement
FVH - Fruit, Vegetable, and Horticultural
GATS - General Agreement on Trade in Services
GATT - General Agreement on Tariffs and Trade
GCIM - Global Commission on International Migration
HRSDC - Human Resources and Social Development Canada
HUMA - The Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
ICEM - Intergovernmental Committee for European Migration
IOM - International Organisation for Migration
IRPA - Immigration and Refugee Protection Act
ISIC - International Standard Industrial Classification of All Economic Activities
LCP - Live-in Caregiver Program
LME - Liberal Market Economies
LMIA - Labour Market Impact Assessments
LMO - Labour Market Opinions
LSPP - Low-Skill Pilot Project
MOU - Memorandum of Understanding
MFN - Most Favoured Nation
MTPS - Ministerio del Trabajo y Previsión Social
NAFTA - North American Free Trade Agreement
NDP - New Democratic Party of Canada
NGO - Non-Governmental Organisation
NIEAP - Non-Immigrant Employment Authorization Program
NLI - New Labour Internationalism
NOC - National Occupations Classification

OECS - Organization of Eastern Caribbean States
PACUR - Program of Urban and Rural Community Support
PICMME - Provisional Intergovernmental Committee for the Movement of Migrants
from Europe
PNP - Provincial Nominee Programs
PTAT-C - Programa de Trabajo Agrícolas Temporal en Canadá
SAWP - Seasonal Agricultural Worker Program
SWOFCA - South-Western Ontario Friend Crops Association
TAWC - Temporary Agricultural Workers to Canada Program
TFWP - Temporary Foreign Worker Program
UFCW - United Food and Commercial Workers Union
UNHCR - United Nations High Commissioner for Refugees
WTO - World Trade Organization

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1 Chapter: Introduction

For decades, Canada's agricultural regions have been the sites of a recognizable pattern: the annual passage of migrant workers from the Caribbean and Latin America to farmlands such as Leamington, ON, the St. Lawrence Lowlands, and Southern BC. Although each worker's presence in Canada is rendered temporary by the terms of their work visa, many of them will choose to return for subsequent growing seasons (Harrison 2016), producing a system which has evoked descriptors such as "permanent impermanence" (Justicia for Migrant Workers 2011). As a result of this legal status, these temporary foreign workers are not simply another "low-skilled" or "low-wage" segment of the labour force, but in fact constitute a unique component:

Foreign workers are an addition to the labour force of the destination country - but more specifically they are an addition not of generic workers but of workers with an inferior labour market position, impaired by restricted economic, political or social rights/assets. Non-citizen status is a marker that indicates a potential for disadvantage of this sort ... (Bartram 2012: 58-59)

Few Canadians give thought to the policy mechanisms which constitute the governance of agricultural migration – the "how", the "why", and most importantly the "who" of decision-making. Yet the manner in which agricultural migration is governed has profound implications for migrant workers themselves – who is accountable to their concerns? What are the provisions for the protection of their rights? How are the conditions of their employment guaranteed in a fair manner? Although the answers to these questions become less and less clear as temporary foreign worker schemes multiply and complexify, Canada's agricultural migrant labour programs have entered their sixth decade of operation, with a greater number of workers arriving from a greater number of

countries of origin to work in a wider array of agricultural sectors (Preibisch 2012: 65-70).

This study is about the privatization of migration control in Canada's Temporary Foreign Worker Program (TFWP), the manner in which it unfolds, and the actors that become newly enmeshed in the governance of the TFWP. Its primary objective is to explain why, in light of a general trend toward the privatization of migration control in Canada, agricultural migration has seen a partial reversal of this trend with the recent creation in 2011 of a new federal program, the Agricultural Stream. In pursuing this question, this study seeks to give a historical account of how privatization unfolds within a neoliberal political economy, but also to develop some logical reflections that address gaps in our current understanding of the phenomenon.

The primary case study under examination is the agricultural component of the TFWP, although comparisons where possible are drawn with broader features of the program to highlight the unique experience of low-skilled migrant work in Canada. The timeframe under examination is the period beginning in 2002 and ending in 2011, the years which bookend a phase marked by a heightened form of "employer-driven" migration control. Forming the case study for this period are three of Canada's temporary foreign worker streams which have regulated agricultural migration at the federal level either exclusively or in part – 1) the Seasonal Agricultural Worker Program (SAWP), created in 1966, 2) the stream for occupations requiring lower levels of formal training (formerly the Low-Skill Pilot Project or LSPP), created in 2003, and 3) the Agriculture Stream, created in 2011. These three streams give an illustration of the process through which certain administrative features of the program are "offloaded"

from federal departments onto non-state actors, which the Agricultural Stream being an unusual reversal of the trend involving a reabsorption of duties by the federal government. The agricultural component has been a focal point of analysis for the study of Canada's temporary foreign worker schemes not only because it comprises a significant portion of the TFWP's intake, but also because historically it has often presaged developments in other parts of the program (and, in fact, predates the rest of the TFWP).

The recent growth of Canada's TFWP parallels the international trend toward the revival of guestworker programs (Castles 2006). Nationwide, the total number of entry approvals increased from 118,835 in 2006 to 162,710 in 2013 while the number of work permit holders in low-skilled occupations increased even more sharply from 30,781 to 80,368 (Citizenship and Immigration Canada 2014). Among agricultural workers, who have always formed a substantial component of this group, there was a 50% increase during the same period. The fact that the TFWP is not only expanding but also becoming decidedly more oriented toward low-skilled work should attract our attention for reasons outlined in the Supreme Court's judgment in *Dunmore v. Ontario*¹:

Distinguishing features of agricultural workers are their political impotence, their lack of resources to associate without state protection and their vulnerability to reprisal by their employers; as noted by Sharpe J., agricultural workers are "poorly paid, face difficult working conditions, have low levels of skill and education, low status and limited employment mobility" (*Dunmore v. Ontario* 2001, Section 41).

¹ This case concerned the exclusion of agricultural workers from Ontario's *Labour Relations Act*, with the majority finding that the Ontario government had a positive duty to protect the freedom of agricultural workers to organize, resulting in the *Agricultural Employees Protection Act* in 2002, an act which provided for employee associations but without a guarantee of collective bargaining rights.

Although the challenges outlined above rarely entered into the public discourse on the TFWP (Bauder 2008), the dramatic increase of the program and the disproportionate growth of its low-skilled streams have not escaped media attention, public interest, and intense debate over the past five years. Spurred by the fact that the use of temporary foreign workers is an issue “that touches on both immigration and employment (Curry 2014)”, the program has drawn attention for a number of alleged and acknowledged abuses, particularly regarding concerns over the displacement of Canadian workers in the fast-food sector (Carletti and Davison 2012; Canadian Press 2014) and the occurrence of numerous fatal crashes involving agricultural migrant workers (Stastna 2012). In turn, such concerns have produced pressure for the federal government to address the regulatory shortcomings of the system (Canadian Press 2013), with elected officials wading into a program that had traditionally operated as a relatively non-politicized component of Canada’s labour policies. Underlying these aspects of the public debate is the unusual discrepancy that a program that has existed in one form or another since the 1960s should suddenly evoke a response of this magnitude.

National media’s relative silence on the TFWP prior to the preceding decade can be contrasted with academic work on the subject, which has been produced with some regularity over the past thirty years. The subject has attracted attention from a number of disciplines, dominated by sociologists who have sought to explain Canada’s reliance on foreign labour by exploring the foundations of this practice in the contexts of race, class, and legal status. Relying often on a framework of critical political economy inherited from Western European scholars (Satzewich 1991; Basok 2002) or institutional ethnography (Sharma 2001; 2006), this body of research has examined the economic and

political origins of the TFWP, its implications for the regions and economic sectors that rely on it, and the impacts of the program on migrant workers in terms of their relationships with both their host societies and their home communities.

This of course raises an important question: if the issues surrounding the TFWP are not new, but merely more publicized, is there anything that should capture our attention beyond the growth in numbers? The answer is unequivocally affirmative, for the rapid growth of the TFWP is simply the most visible sign of a fundamental restructuring of the institutional framework that governs the program. This shift is rooted in a broader transformation of the political economy of the Canadian state that has resulted in a new form of migration control², one which embodies the logic and practices of neoliberalism. The concepts associated with the neoliberal paradigm – privatization and retrenchment of state functions, globalization of markets, and the construction of globally competitive national economies (Abu-Laban and Gabriel 2002) – have manifested themselves across a wide array of Canada’s economic and social policies since the 1980s (McBride 2005), with migration being no exception. In the specific context of the TFWP, this has resulted in the “offloading” of administrative functions from the federal government to third party actors (both non-governmental and intergovernmental), as well as the creation of a more “employer-driven” TFWP that is sensitive to the requirements of business in obtaining a flexible³ supply of labour. As a

² This study uses the term “migration control” to refer to the actions and decision-making which surround the politics of migration in Canada, not limited to those directly undertaken by the Canadian state. Comparisons can be drawn with the themes inherent in Ghosh’s concept of “migration management”, such as a focus on turning migration into a “more orderly, predictable and manageable process (Geiger and Pécoud 2010: 2) and the utilization of non-state actors. Migration control can also be thought of more broadly as “migration politics”, as it is not always in the strictest sense about control.

³ Flexibility in the context of the TFWP is also linked with the notion of precarious labour, or “work that departs from the normative model of the standard employment relationship (which is a full-time and year-

result of this conscious strategy, the federal government operates as one of a growing constellation of actors responsible for carrying out the governance of migration in Canada.

Although it is tempting to identify this transformation as one solely of state retrenchment, the reality is more complex. While the Canadian state has undoubtedly vacated certain roles and functions concerning migration under the TFWP, the analysis pursued in this study indicates that the Canadian state has adopted a renewed position towards the TFWP that involves actively mitigating the unintended consequences of privatized migration control, the purpose of which is to preserve the viability of the program. In this respect, the shedding of traditional roles has in turn created new roles for the federal government. This dynamic cautions us against treating privatization impulses as an inexorable trend and sheds light on the practical limits associated with this form of migration control. In short, while privatization of the state is often identified as a critical component of neoliberal policy reforms (and frequently the most important component), it is necessary to stress the historical reading of these reforms as part of a particular political-economic story that is rooted in social crises and which has been unfolding since the 1970s (Harvey 2005). Read this way, the privatization of migration control is not simply an avenue for achieving economic efficiencies (as exemplified in ideological narratives), but a historically specific phenomenon that emerged out of post-Fordist production and the decline of Keynesian economic policy (Menz 2012: 112). In this respect, instances of privatization occur selectively and are employed in the service of broader objectives which stress the retrenchment of the welfare state and the creation

round employment relationship for an indefinite duration with a single employer) and is poorly paid (Judy Fuge and Rosemary Owens 2006: 3).”

of flexible sources of labour. This has produced a “just-in-time” form of labour importation (Tomic and Trumper 2010) that mimics earlier industrial production strategies.⁴

To briefly summarize the context surrounding this case study, the privatization of migration control in Canada has occurred in three important respects. First, the federal government has integrated growers, through federally-incorporated employer organizations, into the administrative machinery of the TFWP. This has had two important effects: first, it built institutional governance capabilities in the private sector, which allowed the federal government to shift management functions outside of the state at later points; and secondly, it developed the organizational basis for employer organizations to operate not only as administrative actors, but also as political actors who take part in official negotiating rounds for the SAWP agreements (Verma 2003).

In the second respect, the Canadian government has increasingly authorized private actors, particularly employers and postsecondary educational institutions, to act as “gatekeepers” of the immigration system, forming the “systems of exception” (McLaughlin 2010) which differentiate “desirable” workers (those with high skills who may be selected for permanent resident status) from “undesirable” workers (those with low skills who remain trapped in a temporary, rotational system). Because Canada’s immigration system is a stratified one, “temporariness” operates in different ways – for migrants in low-skilled occupations, this has meant exclusion and disposability, while for those in high-skilled occupations this has resulted in an “audition model” where

⁴ Elaborating on this comparison, Tomic and Trumper write: “Like any other input in the productive process, workers arrive just when they are needed for exactly the time they are needed and are shipped back just when the job is done (2010: 80).”

temporariness represents a transitional phase leading to permanent residency (Ho and Natt 2002).

In the third respect, the federal government relies on external sources of technical expertise to carry out its migration-related activities, one of the most important being the intergovernmental International Organization for Migration (IOM), of which Canada is a member. Canada relies on this resource both directly and indirectly. Directly, Canada increasingly uses the IOM to achieve its economic and labour market objectives and has utilized the IOM's services to manage elements of the TFWP as well (Dupeyron 2016). Indirectly, it relies on the IOM via the work that the IOM carries out in conjunction with countries sourced by Canadian employers for migrant labour, the most important being the IOM's agricultural program with Guatemala which operated for a time as a private scheme through the LSPP visa stream.

The net effect of these trends has resulted in a system in which non-state actors increasingly carry out responsibilities once assumed by the federal government, allowing for a form of "remote control" governance that has had an especially transformative effect on the intake of agricultural migrants to Canada.

One of the central objectives in pursuing this case study is to return the debates on privatization to a discussion of class power. In doing so, it contributes to the rich literature that surrounds the contested concept of neoliberalism while also pointing it in a more productive direction. The instance of the federal government producing a new program that partially takes over from a private recruitment appears on its face so out of step with common understandings of privatization that it demands a different analytical lens. There are many accounts out there of why states privatize migration control, but

little explanation of why the opposite might occur. Fortunately, there are existing accounts which read neoliberalism not only as a strategy undertaken by states under global pressures, but also as a complex story of class power and the revitalization of profitability through, among other strategies, the flexibilization of labour (Harvey 2005). Some of these more nuanced accounts allow for some much-needed ambiguity regarding privatization, seeing it not as a one-way process but as strategy that is constantly renegotiated in the service of broader objectives (Menz 2011). This study chooses to give these accounts greater prominence.

In taking this approach, the second contribution of this research project is to “bring the state back in” and to develop a more general understanding of how the Canadian operates the TFWP. Many sociological analyses of the TFWP exists; however, “the state” is not always present as an analytical subject, taking a back seat to examinations of workplace regimes (Preibisch 2010) or discursive spaces (Sharma 2005). When the state is present, it is often engaged with in disparate or eclectic ways. In returning to a front and centre analysis of the federal government, it is hoped that this study will provide a more robust anchor for understanding the TFWP and the Canadian state, one which can be utilized by researchers in other disciplines, such as ethnographic sociology and legal studies.

Thirdly, the offloading of migration control in the Canadian agricultural sector is a phenomenon which has garnered attention in the literature, but this is largely centred around the sociological question of how this form of migration control produces a heightened form of vulnerability for migrants in Canada (Satzewich 1990; Basok 2002). The question of how and why this shift has occurred has been left largely untouched, and

this is the first study which contextualizes federal TFWP policymaking within the broader realm of international regulatory regimes. On a similar note, little work has connected the TFWP to the provincial level. This study's examination of Quebec's quasi-judicial human rights bodies, although a smaller segment of the study overall, gives attention to the ways in which this federal program is constrained or at least complicated by developments at the provincial level.

Finally, this is the first study which examines the Agricultural Stream and its origins. Accounts of the creation of governmental guestworker programs in Canada are few and far between. There is often nothing written on the origins of such programs – only their later impacts. Only the Seasonal Agricultural Worker Program has received an in-depth look into its origins as Canadian policy through the work of Vic Satzewich (1990). In looking at the genesis of one of these programs, we get a concrete sense of how the interests of different stakeholders are transformed into actual policy. This is a rare insight in terms of Canada's migrant worker programs and provides insight into the rationale underpinning these programs, and how that rationale may differ from official discourses.

1.1 Governing agricultural migration in Canada

Canada's agricultural industries have relied on migrant labour since before the Second World War (Satzewich 1991; Preibisch and Hennebry 2010: 51). This dependence has been met through a number of different sources, from undocumented labour (Satzewich 1991; Satzewich 2007) to government recruitment programs. In the post-war period, the latter has proved to be the most pervasive and important mechanism through which

growers access migrant labour. Its origin can be found in the creation of the Seasonal Agricultural Worker Program (SAWP) in 1966.

The SAWP is a rotational guestworker program which specifically addresses demand for manual labour in the agricultural sector. It was negotiated by the governments of Canada and Jamaica through a non-binding memorandum of understanding (MOU), with Canada producing further agreements with Trinidad and Tobago and the Barbados in 1967, Mexico in 1974 and the Organization of Eastern Caribbean States in 1976. At their core, these MOUs outline the responsibilities of each party in supporting the program: sending countries recruit and prepare workers, organize air travel to Canada, and operate government agents in Canada to remedy employer-worker disputes, while the Canadian federal government provides temporary work visas for participants and authorizes employers meeting program requirements to hire migrant workers (Preibisch and Henneby 2012: 52). Workers entering Canada through the SAWP are contractually tied to a specific worksite for a period of up to eight months; the terms of employment (as relates to issues such as accommodation, travel expenses and remuneration) are spelled out in a standardized employment contract (ESDC 2016b). Its growth from 264 workers in 1966 to 41702 in 2015 (ESDC 2016a) along with its relatively unchanged framework have made it an enduring fixture of the TFWP.

For nearly four decades, the SAWP was Canada's primary instrument for the recruitment of agricultural migrant labour. Its expansion to every province along with its reputation as a "win-win-win" scenario for employers, sender states and migrants (Gabriel, 2014: 115) suggested that the legal framework concerning agricultural migration would remain largely stable. However, despite high levels of satisfaction with

the SAWP (Binford 2002: 1) in 2002 the government of Canada unveiled a new pilot program, initially called the Low Skill Pilot Project (LSPP), which was designed to address labour shortages across all occupations designated as “low-skilled”. This naturally included occupations in the agricultural sector that were being filled through the SAWP.

In terms of underlying objectives, the influence of the SAWP can be seen in the LSPP. Both programs are designed to secure a reliable source of migrant labour for sectors experiencing difficulty attracting Canadian citizens. The similarities between the two programs are particularly evident in the fact that some worksites employed workers from both programs simultaneously (ESDC 2009g).

In other respects, the LSPP demonstrated some marked philosophical shifts. Although initially quite small in size in comparison to the SAWP, the LSPP enlarged the legal scope of Canada’s low-skilled migration stream in two important ways. The first, as mentioned, is that the LSPP provides work visas to all low-skilled occupations, not just agricultural ones. This resulted from pressure the government was facing from construction and resource extraction sectors (Fudge & MacPhail 2009). Secondly, the LSPP further globalized Canada’s supply of migrant labour by abandoning the system of bilateral negotiations that underline the SAWP in favour of unilaterally opening the provision of work visas for low-skilled occupations to all foreign nationals.

This second aspect had an important consequence for the system of migrant labour employed by the agricultural industry. The SAWP’s role as a recruitment scheme, rather than simply as a visa program, was predicated on the participation of sender state governments, which managed their own recruitment pools on behalf of Canadian

growers. The LSPP, which was not intergovernmental in nature and lacked any form of coordination or cooperation with sender state governments, omitted this important feature. Therefore, the LSPP should not be understood as a recruitment program along the lines of the SAWP, but as a broad framework for authorizing visas through which employers are required to make their own hiring arrangements.

Despite the fact that growers were now able to hire from countries not participating in the SAWP, the LSPP had a somewhat paradoxical nature: it presented growers with a globalized labour pool with no direct means of accessing it. Since the federal government had historically acted to guarantee recruitment mechanisms on behalf of Canadian growers, this left a vacuum within the LSPP. To address the lack of a recruitment mechanism, the Quebec growers' association, la Fondation des Entreprises en Recrutement de Main-d'œuvre agricole Étrangère (FERME), directly pursued the Guatemalan government with a proposal to develop a program that would operate under terms similar to that of the SAWP and which would provide Guatemalan workers to the Quebec farm sector. The result of this was the creation of the Guatemalan Temporary Agricultural Worker to Canada (TAWC) program in 2003. Workers participating in the TAWC would obtain visas through the LSPP, thereby making it part of the LSPP's overall framework, yet the substitution of federal agencies with non-state actors in terms of recruitment and oversight functions led to a program that was distinct in character from the SAWP.

To provide the technical expertise necessary, the two parties enlisted the aid of an intergovernmental body, the IOM, which would assist in designing the program and which would substitute for the Guatemalan federal government in administering the

recruitment program. The IOM, which bills itself as “the leading inter-governmental organization in the field of migration ... dedicated to providing humane and orderly migration for the benefit of all (IOM 2017)”, ultimately created a hybridized model that used the SAWP as a foundation but also tailored the TAWC to meet the requirements of its negotiating parties (Hughes 2014).

The first two “pilot project” years of the program involved 215 workers coming to Canada to work for ten participating employers and the program rapidly expanded to 14,000 by 2010 (Dupeyron 2016: 16). Not only had the TAWC challenged the labour market share of the SAWP, it also challenged the predominance of the SAWP’s model of migrant labour recruitment by demonstrating the possibilities inherent in non-state actors negotiating directly with sender states, along with the possibility of using an intergovernmental organization to substitute for state departments.

Migration research has often paid careful attention to the role played by non-state actors in governing global migration. Even within the study of agricultural migration in Canada, the presence of non-state actors is not a novelty – their crucial role in mobilizing the state to act of behalf of employers has been well-documented (Satzewich 1991). Nevertheless, such a direct role in the creation of a guestworker program was an unprecedented development in the history of Canada’s agricultural sector.

Research then turned to examining the consequences of this governance approach and it was noted by scholars that the ability of employers to pursue different sources of migrant labour engendered competition among sender governments to provide “ideal” migrant workers, a process referred to as “country-surfing” (Preibisch & Binford 2007). Others observed that the LSPP had further fragmented the labour market by expanded

sources of unfree workers (McLaughlin 2010). Still others concluded that the LSPP effectively “introduced a measure of deregulation (Preibisch 2010)” into a labour group already facing fewer rights than others by removing the oversight functions stipulated in the state-to-state SAWP MOUs.

These are all crucial questions, but much remains to be explored. What has yet to be pursued is a more comprehensive examination of the Canadian state in this process. It is tempting to situate the LSPP and the TAWC in a conventional narrative about the retreat of the state, wherein “the impersonal forces of world markets ... are now more powerful than the states to whom ultimate political authority over society and economy is supposed to belong (Strange, 1996: 4).” If told in such a way, the shift or “downloading” of recruitment functions to employer groups and intergovernmental organizations represents the ongoing drive to transform the Canadian state and economy along more globally competitive lines. This is no doubt some truth to this image, but there are indications of more complexity to this picture.

The decision to use the TAWC as a case study of privatized migration control comes not only from the speed of its creation, but the relative speed of its demise: by 2009, Employment and Social Development Canada (ESDC)⁵ began the process of partially re-absorbing the Guatemalan agricultural migrant stream into the TFWP. This process, referred to as “harmonization”, involved standardizing regulations across different streams of agricultural migration. This process, although still leaving recruitment to outside actors, importantly consisted of the federal government re-exerting control over many aspects of the employment contract, including wages and work

⁵ Until 2014, this federal department was known as Human Resources and Social Development Canada (HRSDC).

standards. This series of events concluded in 2011 with the creation of a new program, the Agricultural Stream, which now covers all migrant farm labour from countries outside of the SAWP agreements. The Stream operates separately from the SAWP and the non-agricultural components of the LSPP and Guatemalan workers who participated in the TAWC now enter as part of the Agricultural Stream alongside other non-SAWP nationals.

This case study presents an interesting picture for researchers: there has clearly been a great deal of transformation in agricultural migrant labour, but it is not evident from the case study to be explored that privatization is a smooth or linear process, nor has privatization of elements of the TFWP unfolded without placing new demands on the federal government. We have witnessed a clear departure from previous iterations of the TFWP, yet the Canadian state has not been pushed out of the picture. Rather, it has adopted a new and more reactive role pertaining to the management of agricultural migration which sees it stepping in to ensure that its agricultural components continue to address the needs of growers. What has thus resulted is a much more complex picture of agricultural migration in Canada. Part of this project is to take stock of where we are at and to make some observations about the contradictions produced by the processes of neoliberalism and how this impacts privatized migration control.

Therefore, we are challenged to understand not only the pervasiveness of privatized migration control but also its limitations. Specifically, when such limits are reached what spaces does this open up for the Canadian state? How does the Canadian state respond?

The two-fold nature of the LSPP/TAWC case – a movement towards privatized recruitment followed by a partial reversal – mirrors the inquiry of this thesis, which consists of two broad questions. The first seeks an understanding of the genesis of these developments: why did this partial privatization or “downloading” occur in the context of agricultural migration to Canada, and what factors prompted it to occur when it did?

Because it is acknowledged here that states have not been rendered powerless (Weiss 1997) and that this trend has been far from a complete shift, the second question of this study emerges from it: what constraints operate on the expansion of privatization in migration policy, particularly as it relates to low-skilled and agricultural migration? In other words, what prevented the LSPP and TAWC from ushering in more intensified forms of privatized and employer-driven migration, instead leading to a renewal of state involvement in agricultural migration?

The rise and fall of the TAWC links to and draws on a rich interdisciplinary web of theoretical debates. This includes a historical political economy of neoliberalism and the neoliberal state, the growth of the migration industry and the migration management discourse, along with the peculiar status of the IOM within this framework, and the political and economic contexts specific to Canada’s agricultural sectors which help to explain their reliance on migrant labour and the strategies undertaken by the federal government to facilitate this. Although the case study under examination lasts from the creation of the LSPP in 2002 until the creation of the Agricultural Stream in 2011, Canada’s long-standing history with the use of temporary foreign workers provides some key signposts that contextualize more recent trends. Further, although this project is most immediately a study of Canadian policy toward agricultural migration over the last

decade and a half, the transnational scope of migrant labour movements combined with an international trend toward the use of temporary foreign workers calls our attention not only to the societies of the Global South who produce many of the workers inhabiting low-skilled occupations in Canada, but to similar developments in occurring across the post-industrial world.

A more detailed theoretical framework is assembled in subsequent chapters, but it is worthwhile following up this discussion of the case study with an outline of the methodological orientation of the project, as the choice of case study and the tools used to investigate it form a coherent discussion with speaks to the broader question of researching migration and the state in Canada.

1.2 Methodological approaches and challenges

This research project sets out to uncover how and why the Canadian state has reversed aspects of privatized migration control. In doing so, it needed a method of data collection that would provide insight not only into what had occurred during the harmonization of the TFWP's agricultural streams, but also what had driven or shaped the objectives of policymakers within ESDC, the federal department tasked with designing the architecture of the program.

The study of migration, being at heart an interdisciplinary exercise, offers a wide range of data collection strategies, ranging from more quantitative sources such as statistical datasets and surveys to more qualitative sources such as ethnographic research, case studies and content analysis. Because the answers this project seeks are to be found

in a relatively small population of elite-level actors, a data collection strategy which targets these individuals and their specific knowledge is valuable.

Canadian migration research has traditionally fallen into two methodological categories. The first involves ethnographic studies and is frequently employed by sociological approaches, which often take as their geographical spaces the on-site work locations or home communities associated with migrant workers. The second involves archival research and elite interviews and is geared towards understanding the policymaking process, typically as part of a historical/process-tracing strategy. Although it is often more closely associated with political science methodologies, sociologists have also been interested in exploring decision-making at the ministerial level.

The two approaches can and have been used in tandem, often to great advantage, as they are able to form connections between macro-level concepts related to the “temporalization” of labour and micro-level concepts such as the flexibilization of labour, in order to illustrate how the latter functions in support of the former. However, this study forgoes an ethnographic approach in favour of a methodological strategy that emphasizes decision-making at the elite level. This decision emerges from a focus on the motivations and strategies of top-level actors within ESDC, FERME, and the IOM.

In addition, the importance of opening up the black box of Canada’s federal ministries to understand the motivations and decision-making process leading up to the enactment of the Agricultural Stream makes this approach well suited to this study’s lines of inquiry. Kelley and Trebilcock (2010: 442) argue that an “accurate characterization of the Canadian immigration policy since Confederation, and indeed before, is that its basic elements were almost never articulated in legislation and were rarely subject to extensive

parliamentary debate or approval.” Although the legal framework for Canada’s migration policies is formalized through the *Immigration and Refugee Protection Act* and its attendant *Regulations*, the preceding observation speaks to the high degree of independence enjoyed by ministerial actors. This can be contrasted with a more public and clientelistic approach to migration politics as found in the United States, where Congressional negotiations are a prominent feature (Freeman 1995).

Accessing these less visible sites of decision-making has therefore been a useful endeavor for Canadian migration researchers, and it is no surprise that one of the first major comprehensive studies of Canadian immigration policy, Freda Hawkins’ 1972 study *Canada and Immigration: Public Policy and Public Concern*, did just that.

Canada and Immigration provided an in-depth look at the administration of Canada’s immigration programs and was predicated on substantial interviews of immigration officials in Canada and overseas, tours of immigration facilities, and access to departmental files. Although this demonstrated a remarkable openness on the part of the departments responsible for such policy, much as changed since then – elite interviews have become a more difficult prospect and access to department files is now done largely through a formal access to information (ATI) process.

As immigration and temporary foreign labour gather saliency as highly-charged political issues, this formalized process becomes a dominant feature in how ESDC deals with external research, as well as its relationship with media and academic communities.

Many commentators noted the Stephen Harper government’s penchant for secrecy, which produced difficulties for the disclosure of information (The Toronto Star 2015; Solomon 2015). In addition to this, the culture within federal departments also

underwent a noticeable shift during the period of the Harper government, when this data-collection was undertaken. The tense relationship between political actors and federal public servants may be an additional factor complicating relationships with external researchers.

The factors outlined above were instrumental in precipitating a shift in the research methodologies of this project. Initially, the intent of this project was to rely on elite interviews with key actors within the Temporary Foreign Worker Program – specifically senior policy analysts responsible for program design. Due to the small size of the program’s personnel, this set was bolstered with several former employees who were also invited to participate where it was possible to locate such individuals. These are outlined in Appendix B, although no interviews were successfully secured, possibly as a result of the environmental circumstances mentioned and possibly as a result of the inability to guarantee anonymity for employees working in such a small program.⁶ In lieu of elite interviews, this study uses a broader selection of sources that relies on Canada’s Access to Information and Privacy (ATIP) system for the core of its data-gathering. The decision to pursue ATIP requests was based on the anticipation that such requests could mimic, if only roughly, the kind of internal knowledge that could be provided by those employed within ESDC. In addition, there existed the possibility that ATIP data could provide information that might be left unstated in a formal interview setting, such as criticism of program elements. Regardless, the ATIP system became a

⁶ During the course of my research, the Temporary Foreign Worker Program underwent a near-continuous process of reform designed to contain the fallout associated with ongoing abuses. Not only would this have been a significant workload addition, it would also make it challenging for any employee to give a clear or static account of the regulatory framework that they were consistently in the process of redesigning. Speculating on what specifically resulted in low feedback rates is difficult, however.

necessary route for this project as few other windows into government decision-making existed outside of publicly-available reports.

The ATIP system, which receives its force through the *Access to Information Act*, is a federal initiative designed “to provide a right of access to information in records under the control of a government institution (Access to Information Act 1985)”. Additionally, it allows users to request federal government information that is available to the general public (Treasury Board of Canada Secretariat 2016).

Many government institutions operate their own ATIP unit headed by a coordinator. Those seeking information on the TFWP, which is technically defined as a “horizontal unit” which operates as part of the ESDC in cooperation with the CIC, may apply to the ESDC ATIP unit.

Though the ESDC ATIP unit was a frequent target of media requests during the research period and ultimately took over six months to produce the data, the ESDC’s status as the department primarily responsible for generating new policy for the TFWP singled it out as an important site of inquiry. In addition, it was the department responsible for harmonizing the agricultural components of the TFWP and ultimately producing the Agricultural Stream.

This internal documentation received from ESDC, obtained through access to information, covers the period of 2009-2011. This body of documentation includes directives, briefings, e-mails, presentation decks, and other materials related to the creation of the Agricultural Stream. The bulk of the approximately 400 pages of documentation was comprised of design documents and supplemental information (for instance, related to accommodation deductions, national minimum standards for

accommodation, relevant commodity lists for the Agricultural Stream, etc.). Other documents included employer directives and guidelines, regional feedback, and e-mail correspondence amongst ESDC employees and between ESDC employees and stakeholders.

When planning how to structure the ATIP data request (see Appendix C), the decision was made to cast as wide a net as possible. This was a result of the large degree of uncertainty regarding the specifics of desired information – dates of meetings and harmonization milestones were unknown, the identities of correspondents with ESDC were unknown, the nature of program design (e.g., face-to-face presentations or e-mail coordination?) were unknown, etc. This ultimately entailed listing as many forms of document types as possible and expanding the request to the entirety of the known harmonization timespan. Rather than a series of targeted requests, this resulted in a single, wide-scale request which, although individually taking half a year for completion, likely addressed time constraints better than a strategy which involved a “narrowing in” of focus.⁷ The downside to this strategy was a cost of approximately \$1000CAN, half of which was met by the Department of Political Science at Carleton University.

One of the crucial questions this project asks is: how does the federal government structure its stakeholder process, and how does this structure impact policy by amplifying certain actors and marginalizing others? The internal documentation provides a picture of how ESDC operated the stakeholder process in its undertaking of harmonization. Which actors were privileged? What concerns did they lodge with policymakers? How and when were these concerns reflected in policy output?

⁷ This is a result of processing times unrelated to the actual gathering of information, e.g. the processing of applications or the referral of documentation to the Ministry of Justice for the purpose of redaction.

ATI requests can be invaluable sources of information for researchers, bringing to light information that would otherwise be hidden from public view. This applies not just to material produced by governments but also to individuals and organizations who are in contact with government agencies and whose correspondence with such agencies may become a matter of public record through the ATI process. This can provide an avenue to explore private organizations who are under no obligation to engage with researchers. Such is the case with the growers' organization FERME, which operates as a private entity but which engaged in communication with ESDC during the harmonization process.

As textual sources, they can also present challenges for qualitative research. Walby & Larsen write that "other qualitative researchers often regard ATI/FOI research as a straightforward and noninteractive method (2011: 32)", but note that the process can better be understood as one of "data production" rather than data-gathering, wherein the researcher and coordinator actively shape the outcome of the request. This requires the researcher, in a reflexive nature, to consider how the parameters of the request structure the outcome of the data.

Other problems exist when governments attempt to mask relevant information from requests. In 2005, the Canadian Newspaper Association complained to the Office of the Information Commissioner of "the existence of secret rules, systematic discrimination and unfair and unjustifiable delays in the processing of requests for information (Treasury Board of Canada Secretariat 2010)." While a subsequent investigation by the OIC was unable to corroborate these claims, it nevertheless

discovered cases of unwarranted categorization of information under “sensitive” labels which had proved detrimental to the process.

Internal documentation can be a valuable source of information, but it may also present challenges for the researcher. The material can be in-depth and voluminous and can also raise interpretive issues regarding context or meaning. Additionally, there is the concern that not all communication is recorded in a manner that can be captured by Access to Information requests. Verbal communication and phone conversations are necessarily excluded from documentation of this sort. Care must also be taken when encountering contradictory perspectives or opinions from different actors. The policy development cycle incorporates input from many different individuals and may speak with multiple “voices” when viewed by the researcher. This was the case when contradictory ideas arose within documents or a series of documents, where single ideas received multiple interpretations from separate (and largely unnamed) individuals. For instance, the employer practice of replacing one group of nationals with another group (“country-surfing”) to obtain workers on the most advantageous terms was variously described as “employer abuse” and “employer misunderstanding”, indicating that the process of consolidating ideas (the final language used in that instance was that of a “misunderstanding”) is complicated and not always evident “on paper”, although successive versions of documents may illustrate how ideas evolve.

In spite of these challenges, ATIP remains an underused resource for Canadian researchers. On balance, although recent commentary has noted the declining efficacy of Canada’s ATIP system, it remains a powerful tool for researchers, especially new researchers who are lacking in established contacts. Although the process is infrequently

used in political science, its importance is obvious when traditional avenues of inquiry become unavailable. This could be the result of political scientists investigating politically-charged topics, pursuing research subjects from small-sized pools, or dealing with governments agencies possessing closed cultures pertaining to academic and journalistic inquiry.

ATIP requests should not simply be seen as a substitute when other methods become available, however. The inclusion of e-mails, often the most candid window into the thought-processes of policymakers, proved to be one of the most critical contributions to this research, as bureaucratic inboxes can bring in other actors and institutions in correspondence with the government – those who may never anticipate that their words will become publicly available. Although not completely eliminating the observer effect inherent in social science, this nevertheless provides an interesting window of inquiry which has no obvious analog with formal interviews, participant observation, or other methods.

A secondary source of data comes from publicly available government documentation, which fits broadly into two categories. The first includes quantitative data from Statistics Canada, which allows for an analysis of participation rates and the composition of TFWP streams. It also includes publicly released reports by governments, including ESDC's *Overhauling the Temporary Foreign Worker Program* as well as CIC reports on the IOM, which have been produced on average every five years since 2005. The second category of documentation comes from the House of Commons, which irregularly produces reports on the TFWP through its standing committees, notably the Standing Committee on Citizenship and Immigration, which

produced a report on temporary and non-status workers in 2009, and the Standing Committee on Human Resources, Skills and Social Development, which produced a review of the TFWP in 2016. Although the conclusions of these reports do not necessarily echo the intentions or considerations of policymakers, they are useful in that they publicly and officially problematize various aspects of migrant labour programs. Since these reports also incorporate a fact-finding component which allows for public testimonies and briefs, and because they include dissenting opinions from opposition parties, they also make visible marginal discourses that may not be reflected in ministerial reports. Finally, discussion papers and summary reports of stakeholder consultations are a valuable source when it comes to analyzing how the federal government decides which actors to incorporate into the stakeholder process and which actors to exclude. Although information on stakeholder negotiations is not publicly disclosed, the government has from time to time carried out consultations related to broader issues surrounding the TFWP.

Lastly, organized labour movements routinely investigate workplace practices and evaluate government policy. Additionally, they from time to time engage in stakeholder consultations with relevant departments. Such is the case with the United Food and Commercial Workers Union, which represents agricultural migrant workers in certain provinces. The UFCW released annual status on the TFWP. These reports they have presented to ministers at both federal and provincial levels. Additionally, labour representatives have had some experience engaging in consultative roles with both the federal and provincial governments. These experiences are also documented and provide

a glimpse at federal policy from a different perspective. These documents, along with a number of interviews with UFCW officials, form the last body of data.

1.3 Outline of thesis

The thesis proceeds as follows in five parts. Chapter 2 details the conceptual underpinnings of this research project, looking in closer detail at the literature on the privatization of migration control and the migration industry. It is engaged in a more general discussion regarding the growth of non-state actors in migration policy, the proliferation of temporary migrant recruitment schemes at a global level, the development of migration management, and the links of all three to neoliberal economic restructuring. To this end, it examines the state sovereignty debate, offloading, and the neoliberalization of migration policy.

Chapter 3 continues to build the theoretical framework by examining the sociological literature on migrant labour in Canada, which explains how a flexible migrant workforce is created and maintained. It ends by bridging the gap between the literature on the TFWP and the literature on privatization of migration, suggesting that the pursuit of privatization in the case of the TFWP is highly contingent on the needs of employers and not always a natural corollary to neoliberal reform.

Chapter 4 examines Canada's engagement with temporary foreign worker programs. It explores the historical underpinnings of the Canadian Temporary Foreign Worker Program, beginning in the 1960s with the creation of the SAWP. It looks extensively at the evolution of the TFWP, which began 1973 as the Non-Immigrant Employment Authorization Program. It then examines the creation of the LSPP in 2002,

which inaugurated the most recent phase of the Canadian TFWP. Two major themes run through this chapter. The first focuses on the reconfiguration of the agricultural migration into a more decentralized, neoliberal model. It operates as the first half of a two-part part section which examines the evolution and transformation of the TFWP's agricultural component. The second theme concerns the legal and social category of the "temporary foreign worker" – how it is constituted, how it is constructed, and how temporariness has changed in meaning as a result of recent reforms to Canada's immigration system.

Chapter 5 is the first of two chapters which detail the case study of Canadian agricultural migration between 2002 to 2011. This first chapter examines how the TAWC was constructed under the aegis of the LSPP, covering the time period of 2002 to 2009. Here, the rising influence of third party actors in the privatization of migration control is given treatment. It examines the IOM and its rapid expansion in the past several decades, and uses a framework for understanding its growth by focusing on its role as less of an intergovernmental body and more as a "for-hire" non-profit organization that seeks its self-preservation through "projectization", a strategy of pursuing funding through contract work as opposed to membership dues. This chapter also touches briefly on the Guatemalan context, in particular by looking at the IOM's service-provision in the country beginning in 2002.

Chapter 6 continues the case study by shifting attention to the Canadian state and to the response of the federal government to developments within the neoliberal model of migration control that it had constructed. The principle focus is on ESDC's harmonization process which occurred between 2009 and 2011 and which brought the

Guatemalan migrant workforce under greater government oversight through the creation of the Agricultural Stream. The social forces and motivations behind harmonization are explored, and the chapter details the creation of long-term problems that planted the seeds of the TAWC's termination. Outlining how this occurred occupies the first part of this chapter, while ESDC's process of harmonizing the multiple programs in order to produce the Agricultural Stream is a significant part of the overall case study. This period marked a renewal of the federal government's role in agricultural migration; the goal of this chapter is to place these changes in the context of a neoliberal migration management framework that still retains a role for the state to protect the continued viability of the program for its most crucial stakeholders, employers.

The final chapter concludes with a summary of this study's findings, followed by some thoughts about how the TFWP has fallen short of its obligations to protect the rights of the migrants who rely on it for their survival. It also suggests some avenues of inquiry for future research.

2 Chapter: Neoliberalism and the Privatization of Migration Control

This chapter is the first of two which detail the theoretical approaches relevant to this study. The first section examines the key theoretical and empirical questions relating to migration that emerged out of political science over the last quarter century. It identifies limitations to these approaches as they relate to the re-emergence of temporary foreign worker programs in Canada and abroad, and suggests areas of new exploration that account for strategies undertaken by the Canadian state which have led to the privatization of migration control.

Attention is given to a number of key debates that link migration to reconfigurations of the state across the Western world. The first such debate concerns the existence of a so-called migration “control gap”, which can be understood as a discrepancy between the “real” and “ideal” intakes of newcomers to a society, and has been taken as evidence that liberal states have become more constrained in their options when it comes to regulating migration (Hollifield 2008). A critical lens is taken to this literature by examining: 1) the extent to which temporariness has outpaced (and displaced) permanent settlement both in Canada and abroad and 2) the extent to which states are able to achieve their economic objectives through cooperation with non-state actors such as intergovernmental bodies or employer organizations.

The increasing prevalence of temporary foreign workers is a critical migration issue, as it complicates the argument that immigrants are converging with native-born citizens in terms of rights (see Joppke 1999), given the declining relative share of permanent residency in Canada and abroad. It also complicates the fact that, although more people worldwide are now rights-bearing citizens that at any previous point in time,

gains in “real” social and political rights may be undone through hierarchies of citizenship created through temporary global migration (Castles 2011: 317). Overall, international migration expanded over the course of two decades to 191 million migrants in 2005, with substantial 62 million of these moving from the Global South to the Global North (Martin 2007: 290). Guestworker programs have proliferated across the world which have facilitated some of this growth, many geared toward low-wage work in the agricultural sector. Castles ties the recent (re-)emergence of guestworker programs to a combination of the surge in migration unleashed by the fall of the Cold War in conjunction with restrictive measures undertaken by policymakers to increase border control (2006: 744). In the United States, the H2A visa program brought in 140,000 agricultural workers on a temporary basis, echoing its earlier experience with the Bracero Program from 1942-1964. In the United Kingdom, the Seasonal Agricultural Workers Scheme brought in 15,000 workers in 2005. Germany makes substantial use of guestworker programs, the largest being the seasonal worker program, which was created in 1991 through bilateral agreements with Eastern and Central European countries. In 2001, there were 278,000 workers, 85% originating from Poland (Castles 2006: 750). In light of these international trends, Canada’s engagement with agricultural migrant labour seems commonplace.

The second half of this chapter is dedicated to the question of why privatization and the growth of non-state actors has occurred in the sphere of migration, particularly as this pertains to the growth of “migration industries” across national and global spaces. These intermediary institutions, which can range from recruiters to lawyers to human traffickers and anything in between (Castles and Miller 2003: 38), are increasingly

embedded in a global framework of migration management, in some cases facilitating migration or providing migration-related services, in other cases aiding in the regulation of migration through the “offloading” of migration control by states. Various explanations have arisen to account for this trend of offloading, including arguments that state actors employ private actors to strategically enhance their power and reach within regulatory regimes, thereby allowing states to wield power remotely (Guiraudon & Lahav 2000). The most important body of literature, provided by historical institutionalists working in the tradition of political economy, has linked the trend of offloading and the growth of migration industries to neoliberal reforms both in Canada and globally. These reforms, aimed at re-establishing profitability and generated as a response to the decline of Keynesian macroeconomics, emphasize deregulation, privatization, and the retrenchment of social welfare. Not only has this reshaped Canadian society and economy, it has also had a transformative effect on the governance of migration, resulting in a complex system of migration management where non-state and intergovernmental actors play an increasingly important role in determining who enters Canada and how.

The most important piece of “scene-setting” this chapter lays out is the idea that there exists a contradictory unfurling of neoliberal privatization, a result of what David Harvey calls the “creative tension between the power of neoliberal ideas and the actual practices of neoliberalization (2005: 19)”. Although privatization is frequently cited by social scientists as one of the central policy elements of neoliberal adjustment (Boas and Ganz-Morse 2009), it is important to note that, historically, these reforms have operated in the service of more fundamental objectives that included the resuscitation of capital accumulation in the wake of economic crises of the 1970s, and in meeting the growing

appetite of low-wage industries for migrant labour since the end of the Cold War. They are, in this respect, historically-situated and reflect the competition of power and ideas at certain places and times. As such, privatization often acts as an element of broader strategies and not always and not necessarily as an end in itself (as exemplified, for instance, in ideological claims of “the efficiency of the invisible hand (Przeworski 1992: 46)”). Framed in such a way, it becomes less paradoxical to see the ebb and flow of privatization at smaller levels of analyses. It also becomes easier to contextualize attempts by state to mitigate the contradictions that result from neoliberal restructuring – contradictions which may threaten the ongoing project of constructing flexible migrant workers and flexible labour markets. In other words, “when neoliberal principles clash with the need to restore sustain elite power, then the principles are either abandoned or become so twisted as to become unrecognizable (Harvey 2005: 19)”. It is this insight which will act as a guidepost to later understand the re-emergence of the Canadian state into the governance of agricultural migration after a decade of retrenchment.

What follows is the development of a framework which provides an understanding of the privatization of migration control which occurred during the economic and political restructuring that occurred in Canada beginning in the 1980s and stretching into the 2000s. This framework identifies privatization as an element of the neoliberal “competition state”, but stresses that privatization is not always useful in the service of this goal when it limits the ability of the state to construct a flexible workforce, particularly when problems arise from the contradictions of privatization which act against the interests of employers. The framework also builds on the literature on neoliberal migration control by examining the importance of global trade regimes in

regulating migration. It also examines the part played by the IOM, using a framework that highlights its role as a “for-hire” non-profit that aids in the reterritorialization of state borders across transnational spaces, allowing for the control impulses of states to be extended beyond traditional borders.

2.1 The privatization of migration control

The discourse surrounding the privatization of migration management, as with discourses surrounding privatization more generally, invariably ties into broader, longer-standing debates regarding the status of the Westphalian state in an era of globalization. For this reason, it was perhaps unsurprising to see the emergence in the early 1990s of a narrative whose central premise questioned the ability of states to effectively regulate immigration, a prerogative frequently identified as a core feature of state sovereignty. Describing the post-Cold War context that framed migration politics, Geiger and Pécoud write:

The collapse of Communist states, along with the penetration of capitalism and the intensification of market deregulation, created an environment in which sovereignty was perceived as under threat—hence the search for solutions to the ‘crisis of the nation state’ and for new modes of ‘global governance’ ... (2014: 868)

This narrative suggested the presence within Western democracies of a discrepancy between ideal intakes of migrants and actual intakes of migrants (Freeman 1995), a so-called “control gap” resulting from an increasing ineffectiveness of measures designed to regulate migration (Cornelius et al 1994). In light of this apparent trend, political scientists were urged to “reconsider classical, realist notions of the state as a sovereign and autonomous actor in the international system (Cornelius et al, 1994: 27-28).”

Numerous approaches were developed to provide an explanatory basis for the argument. Pluralist models put forward the idea that the politics of immigration is typified by clientelism, in which the benefits of immigration are accrued by a political coalition of employers and ethnic communities, while costs are diffused broadly throughout the rest of society (Freeman 1995). A second set of explanations, spearheaded by a number of globalization theorists, argued that national migration policies have become increasingly bounded by supranational and post-national regimes. These took the form of transnational trade and production (Sassen 1996) or newer and unconventional forms of social membership (Soysal 1994). The third and most influential set of perspectives emerged under the umbrella of a “liberal state hypothesis” which, broadly stated, linked expansionary immigration policy to liberal rights regimes, judicial norms and legal systems, and civil society activity (Joppke 1998; Cornelius et al 1994). This latter collection of theories followed the arguments of Ruggie (1982) in concluding that the liberal norms embedded within the international system have been at least partially institutionalized into national legal systems, resulting in policies that “help immigrants not only to get in (e.g., as asylum claimants) but to *stay* in labour-importing countries (Cornelius et al 1994: 9; emphasis original).” It was this bold claim that stirred much of the subsequent commentary on the issue.

While the broader validity of these accounts is not given treatment here, it is worth sketching the relevant domains of the liberal state hypothesis in order to give a sense of where its assumptions hold and where they begin to break down. The case of the TFWP complicates the discourse in a number of ways. To begin with, Canada was always believed to be something of an edge case, only marginally affected by the “gap”

between “ideal” and actual migrant intake as a result of a unique set of geographical and political factors (Garcia y Griego 1994). Canada’s “low-conflict incrementalism” resulted in a “consensual” and “relatively open approach to immigration” which resulted in policy outcomes that were not substantially at odds with policy goals (Cornelius et al, 1994: 15).

But more importantly, it is important to highlight how these debates regarding the state vis-à-vis immigration have been sidestepped by a major trend across the industrial world – the rise of “temporariness”. While there is some evidence to suggest that liberal rights regimes have mitigated restrictions on asylum-seeking in Canada (Anderson 2010), Cornelius et al’s two-fold dictum of “getting in” and “staying in” is very questionable when applied to the case of temporary foreign workers, who in low-skill occupations are mostly excluded from the opportunity to gain permanent residency. The literature often struggled to theorize categories of temporary migration, and as a result guestworker schemes were sometimes given outdated or inaccurate depictions that seemed to reflect the remoter European experiences with guestworker systems rather than the present realities. This is exemplified by Martin’s (2006: 2) “iron law of labour immigration”, which stated that “there is nothing more permanent than temporary workers...once migrants are in an industrial country, it is very difficult to force out those who wish to stay,” a claim difficult to square with the high rotation rates evident in the TFWP. It is somewhat unfortunate that the phenomenon of temporary labour migration transitioning into permanent settlement was given such a key role in many of these analyses. Though this is unsurprising, it crowds out other metrics by which it is possible to evaluate whether temporary foreign worker schemes are “working” on behalf of those

they purport to help. Even in Canadian political science, early analyses of the TFWP displayed a tendency to benchmark the Canadian case against the European experience of post-war guestworker programs (Wong 1984; Boyd et al 1986), which resulted in permanent settlement by initially temporary workers. Here and especially in government policy, the principal question surrounding temporary migration schemes has tended to revolve around the prevention of permanent settlement and ability to limit overstay and irregular migration, and whether such schemes replicate (“failure”) or avoid (“success”) the trajectories of European guestworker programs. An alternative perspective originating from sociology and political economy is suggested in the following chapter. In this perspective, the central concerns stemming from guestworker programs are not related to unwanted permanent settlement, but to their tendency to generate conditions of unfreedom among migrant workers.

2.2 The growth of the migration industry

A similar, interconnected series of debates focused on the diffusion of authority over migration control and the growth of the “migration industry”. Here, attention turned not only to policy *outcomes* but policy *actors*. Scholars identified a proliferation of different sites of power, noting that migration policy not only appeared to be shifting “upwards” to supranational organizations (such as the European Union) and “downwards” to local governments, but also appeared to be shifting *outwards* to non-state actors who were now engaged in mechanisms of migration control (Guiraudon & Lahav 2000). This latter category encompassed a wide range of actors, from employer organizations to unions, and non-government organizations to corporate service providers and is variously

labelled as the “migration industry” or “markets for migration”, which comprise “the range of actors who, primarily motivated by profit, engage in activities relating to human mobility (Betts 2012: 45).” As with the literature on the control gap, it reconceptualized state-centred governance models, in this case by expanding the actors on the playing field as well as the levels of action available to policymakers (Lahav 2014).

Migration industries emerge as a result of distinct stages of the “migration hump” (see Hernandez-Leon 2013), with initial stages favouring employers, recruiters and smugglers, and later stages favouring “migration entrepreneurs” who facilitate services relevant to migrants such as banking, remittances, travel, and telecommunications. Hernandez-Leon characterizes the migration industry as producing “strange bedfellows”, where employers and migrant-service providers demonstrate a convergence of economic interests in brokering international migration (2013: 35). This is an important observation, as the migration industry may serve migrant interests in a narrow sense while reifying, at a wider level, a pattern of migration which limits freedom. Other scholars, however, point to the potential of migration industries to have more radical consequences in the forms of labour transnationalism. Like employers, labour groups are capable of extending their reach across borders as a means of engaging with an increasingly transnationalized workforce, and to a limited extent are beginning to do so. Through this activity, they may “[exploit] the points of vulnerability in neoliberalism (Lambert 2014)” that are inherent in a “just-in-time” form of labour recruitment by providing representation outside of the temporal bounds of work visas. This presents a potential counterforce wherein non-state actors are capable of challenging which is briefly explored in Chapter 5.

In both the cases of the control gap literature and the more recent migration industry literature, it is crucial to note that Western states remain highly engaged in migration policy and that migration control by non-state actors does not necessarily occur in lieu of actions that would otherwise have been taken by states (Menz 2011). This reality has led to more grounded appraisals of the control question. Menz observes that “it is simply erroneous to assert that states have lost their control capacity. Instead, they have sought new channels and mechanisms of control, including greater involvement of private-sector actors (2013, 110).” For Menz, the migration industry is not simply a result of the economic lifecycle of migration patterns or a response to restrictive immigration policies, but is brought about through collaboration with state apparatuses for the purpose of involving the private sector in assisting in migration regulation.

Others have pointed out to a reversal of the liberal state hypothesis, noting that “the post-WWII context of liberal judicial norms and public scrutiny that states have overcome in order to pursue these national interests is unprecedented (Lahav 2014).” These positions form a critical starting point for understanding the phenomenon of the privatization of migration control. Their value lies in correctly acknowledging that the complexity of actors involved in the field of migration does not necessarily indicate that authority has not migrated from states to outside actors, but is instead vested in the interplay between these actors. In other words, it avoids the temptation to present privatization as a zero-sum game between state and non-state actors. A number of approaches exist that attempt to frame or explain the emergence of these new actors. While they all capture at least some facets of this phenomenon, this study relies on an approach emphasizing neoliberal transformation. The strength of this approach lies in its

ability to contextualize the emergence of migration management and the migration industry, along with its ability to give a comprehensive account of the appearance of these trends at an international level.

Understanding the wide emergence of non-state actors in the field of migration is a topic of interest to migration scholars and political economists alike, and several perspectives have emerged to explain this trend. The first major perspective conceptualizes the privatization of migration control and the emergence of migration industries as a strategy through which policy actors within the state are able to evade the constraints imposed upon them by judicial authorities (Guiraudon & Lahav 2000). This strategy, termed “venue-shopping”, allows such actors to “[delegate] authority to agents (ie., mayors, private companies, other states) more likely to meet policy goals (177)” and to choose arenas where their own power is represented and the power of opposition is minimized. Forums lacking in transparency or which are not subject to public debate or oversight, such as ministerial meetings or coordinated efforts like EUROPOL, are instances where we would expect to see evidence of venue-shopping (178). Venue-shopping is also linked to the concept of the “de-politicization” of migration politics, wherein “policy implementation relies on technocratic diffusion of regulation and consensus-building (Lahav 2014).” This perspective emerged out of neo-corporatist theories and emphasizes the state as the director of a “remote control” form of migration politics.

This perspective captures important aspects of the privatization phenomenon, particularly the ability of states to “shift out” the liabilities associated with migration policy and thereby download risks onto external actors. This brings us closer to

identifying why states and policymakers may pursue outsourcing as an intentional strategy. However, venue-shopping alone is not a complete account of privatization; specifically, it lacks a historical tracing of why privatization occurs and fails to identify the driving dynamics outside of gestures towards “the divide between law and politics (Guiraudon & Lahav 2000, 189).” Accepting that such a divide exists does not put us closer to contextualizing the historical emergence of privatization activity that occurred in the 1980s and 1990s. In short, we need an approach that has as its basis a dynamic understanding of the political economic forces shaping the state, and one that can broadly account for the international scope of the trend.

2.3 Neoliberalism and migration politics

To provide a more comprehensive understanding of how and when privatization affects elements of migration control, it is critical to put these processes in the context of the paradigmatic shifts that have occurred across and within Western states over the past several decades, and to understand how these ideological developments have manifested themselves in a new political economy of migration management, particularly in liberal market economies (LMEs) such as Canada. Thus, a second and important perspective focuses on how privatized migration control has come about as a result of the broader emergence of the neoliberal state. Here, privatization is understood as a result of “the emergence of Post-Fordist production patterns, the abandonment of Keynesianism and the embrace of neoliberalism as a dominant paradigm in macroeconomic policy design (Menz 2011, 112).” Neoliberalism is a contested concept and undoubtedly has many

dimensions, however scholars have tended to elaborate a similar historical “story” regarding its emergence which can be briefly summarized:

The crisis of Fordism and of the Keynesian state in the 1970s was the catalyst for a process of internationalisation of financial and productive capital. This process was further enhanced by the increased speed derived from the rise of new information, transit and communication technologies. Moreover, successive waves of state-led liberalisation and deregulation further abetted the process of internationalisation, aiming to subordinate the global economy, and various national economies, to the discipline of ‘the markets’ (Leon and Overbeek 2015: 39).

Although having its origins in the economic decline of the 1970s, which was marked by high inflation, high unemployment, and low growth, neoliberalism is also often characterized by its most recent phrase, which is characterized by globalization and in particular the construction of a North-South corridor and the dissolution of “pre-industrial” labour forms outside the Western world through the enforcement of structural adjustment associated with the Washington Consensus. As a result,

...neoliberal globalization accelerated after the end of the Cold War. In a third phase starting in the 1990s, demand for labour in northern economies grew due to a combination of demographic, economic, and social factors. Europe experienced new and more diverse inflows of refugees, asylum-seekers, highly skilled personnel, manual workers, and family members (Castles 2011: 313).

The above captures the economic and technological aspects of its genesis; others, however, have elaborated on this account by stressing neoliberalism’s ideological dimension and identifying it as both theory and practice:

Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices (Harvey 2005: 2).”

The link between the neoliberalized state and migration can be located in the way in which it “prioritizes preoccupations about establishing business-friendly investment conditions ... [which entails using migration policy as] ... an additional mechanism for human resources procurement, especially if it complements existing production strategies (Menz 2011: 117).” This relationship between the neoliberal state and migration is similarly captured by Cerny’s concept of the “competition state”, where “the main function of the contemporary state is the promotion of economic activities, whether at home or abroad, which make firms and sectors located within the territory of the state competitive in international markets (Cerny 1999: 199).” A neoliberalized state, as a consequence, “neither abandons migration control, nor does it necessarily become much leaner. Migrants are desirable in principle so long as they are perceived as useful human resources, while barriers are erected against the unsolicited entry of ‘undesirables’ (Menz 2011: 117).”

The school of neoliberal study has a strong inheritance from capitalist typologies, and so importantly, neoliberalism “has not assumed the same phenotype everywhere; different varieties ... exist across different countries (ibid, 116),” with the liberal market economies of the Anglo-American sphere displaying more intensified examples of this trend as expressed through more flexible and less regulated labour markets (see Schierup and Castles 2015). In addition to LMEs displaying more intensified forms of neoliberalism, they also demonstrate an earlier adoption of such reforms, a fact which is given some confirmation by the case of the SAWP, which demonstrated that elements of privatization as far back as the mid-1980s (see Chapter 4).

Despite a tendency for research to focus on national typologies, it should be noted that the intensification of neoliberalism in Canada or any country is not limited to that jurisdiction and has implications for other areas of the globe. New forms of labour commodification occur when world markets enter new geographic regions, often as a result of capital seeking to overcome instability through “the incorporation of previously non-capitalist areas and spheres into the system (Leon and Overbeek 2015: 43).” This frequently occurs in areas where labour costs are lower and where labour has not been fully drawn into the capital-labour relationship (for instance, due to the presence of subsistence farming). As a result, transformations within Canada generate transformations of labour across the Global South, as in the case of the sudden mobilization of Guatemalan migrant labour to Canada.

Neoliberalism, when it transitions from ideology to concrete instances of public policy, often entails the reorganization of state practices, and connections have been drawn between neoliberal transformation and the paradigm of new public management, which incorporates the maxim that successful private sector principles should be absorbed by state management systems. Sorensen and Gammeltoft-Hansen write that the “privatization of migration management is intimately related ... to the governmental paradigm of new public management (2013, 12)” and highlight its role in the creation of migration industries external to the state. Abu-Laban and Gabriel (2002) note the penetration of these ideas into Canadian immigration policy, wherein “policy-makers have invoked a particular reading of globalization in the last decade, one which emphasizes such neo-liberal ideas as global competitiveness, individual self-sufficiency, economic performance, and fiscal restraint (96).” Both neoliberalism and new public

management, despite gesturing toward non-discrimination, entail the stratification of migrants into either desirable worker who may facilitate state objectives through their value as human resources, or as problematic undesirables. This view is rooted in the Poulantzian approach which identifies “a dichotomy between a liberalized economy and an increasing control and surveillance regime aimed at those considered deviant or somehow ill fit to contribute to the accumulation process (Menz, 117).” Castles (2011) describes the “incompleteness” of this liberalization in similarly dualistic terms, describing the “neoliberal epoch” as one of hierarchy and hypocrisy, where some enjoy unlimited mobility while others are “differentiated, controlled, and included or excluded in a variety of ways (312).”

How migrant labour is constructed as a result of these economic transformations is an important question. One important line of research has detailed the shift toward the recommodification of labour through temporary migrant labour programs. Schierup and Castles (2011) point to “racialized ethnicity” as a means of generating the hierarchies which shape global capitalism. This can take the form of weakened welfare states and deregulated labour markets which fall particularly heavily on migrant (and ethnic minority) workers (Schierup and Castles 2011: 19). On top of these changes to labour and welfare policies, temporalization itself can be understood as a transformation of citizenship, resulting in exclusion from the social welfare state. Differences in status also act to segment migrant groups, which become further divided along lines of providing legal or informal/irregular labour. Temporalization is a multi-dimensional concept (see Latham et al, 2014), encompassing different levels of geographic scale (the global, the national, and the sub-national) and existing across different domains (for instance,

through the limitations brought about by the seasonality of agricultural work, the restrictions placed on migrants through their work visas, or through the precarious inherent on relying on employer satisfaction for return in subsequent years). Geographic scales can interact with each other, for instance in the case of global discourses which promote temporary migrant labour and national programs such as the SAWP which draw on these understandings to mobilize labour in the Global South (Gabriel 2014). This “migrant-development nexus” which promotes remittances and human capital gains as a development model is intimately tied with temporalization (see Preibisch, Dodd and Su 2016), for instance in the call of the Global Commission on International Migration for “carefully designed temporary migration programmes (TMPs) as a means of addressing the economic needs of both countries of origin and destination (GCIM 2005).”

Most importantly, temporalization has important consequences for the ability of migrants to access rights as a result of the way in which it undoes the “de-commodification” of labour brought about by the modern welfare state (see Castles 2011: 316). It does so both because there are limits to the ability of migrants to qualify for social services and assistance and because the limited nature of migrants’ time abroad makes it difficult to pursue those rights that they may be qualified to receive.

In addition to race/ethnicity and status, segmentation occurs in other respects: Bauder (2010) points to the importance of managerial and professional skills and links it to the importance of citizenship as a key mechanism in generating a hierarchical system of migration, writing that:

The economic elite and the vulnerable and exploitable migrant labour force are thus two sides of the same neoliberal coin. According to such a conceptualization, vulnerable, de-skilled, and sometimes criminalized migrant labour performs the labour-intensive functions at the bottom of the labour market

(Bauder 2010: 42).

This form of “skill” segmentation is closely tied to the emphasis placed on entry categories that marks the trend of temporalization, with immigration policies that “distinguish increasingly between the economically desirable who are often considered to be “high skill” and the economically necessary who are often considered to be “low skill (Latham et al 2014: 13).”

Such skill segmentation adversely affects women, older, and younger workers who find themselves increasingly outside of the scope of permanent, full-time employment. Nicola Piper picks up on this theme by relating to the segmentation of the labour market (which entails a growing portion of informalized and precarious migrant work) to the feminization of migrant labour. She points to the fact that even within particular migration regimes, men and women can occupy different spaces, with women often working in less-valued and lower-paid occupations (Piper 2010: 64).

The strength of these approaches, particularly as they relate to the Canadian case, lies in their ability to give a historical account of the privatization of migration management that explains its inception in the 1980s and onward, by contextualizing it within broader political and economic shifts toward the maintenance of profitability. These approaches explain not only the emergence of privatized migration control across the Western world, but also why it manifests in greater or lesser degrees of intensity based on the forms of capitalism present in national economies, with liberal market economies indicating more intensified levels of privatization. It succeeds in explaining the disproportionate leverage given to employers’ organizations and security firms as opposed to other categories of non-state actors, such as unions or humanitarian NGOs.

Not all non-state actors are created equal, after all. It should be noted, however, that this study is not interested in exploring the origins of neoliberal politics or ideology. Instead, what this study is interested in are the dynamics and contradictions that are produced within Canada's neoliberalized migration regime and how state actors react to such contradictions and reposition themselves.

As subsequent chapters will reveal, the re-establishment of ministerial authority during the end of the last decade over elements of the TFWP that had undergone privatization earlier in the decade is not a reversal of the neoliberal model, nor a hiccup on the road to some extreme form of privatization; rather it is entirely understandable though the logic employed within the government and by business stakeholders. In the case study explored in the following chapters, the partial privatization of migration recruitment in the post-2002 period created a number of ongoing problems for growers, particularly related to the TAWC's struggles to conform to provincial legal standards. What resulted was an overlapping consensus between ESDC and growers' associations that ESDC should step in to correct these issues in order to safeguard the long-term vitality of the TFWP, which consisted in large part of regulating the contracts used in the cases of these workers. In this respect, the flexibilization, temporalization, and globalization of the TFWP's agricultural streams could be maintained while the unintended consequences arising from the shift of managerial functions to actors outside the state could be addressed or at least mitigated through a renewed activism on the part of the federal government.

The case study summarized above builds on the neoliberalization literature in an important way. Its conclusions help to address a fundamental weakness in the

neoliberalism literature, namely its tendency to emphasize lock-in effects and the permanence of reforms. It is often understood that once migration control has been privatized, it is difficult to undo this process (Menz 2012: 115). The case of migrant detention centres is often cited in this regard. However, because the involvement of private-sector actors operates as a means to an end (in short, the economic objectives associated with the use of temporary foreign workers), it is also possible for this strategy to be discarded in favour of renewed state action should the need arise. To conclude in other terms,

The neoliberal mode of global governance seems to have survived. Yet [...] this particular historical process is by no means smooth. Rather, the process is riddled with breaks and transformations; social development occurs precisely through the unfolding contradictions inherent to the social structures within the current system (Leon and Overbeek 2015: 37).

2.4 Global trade regimes and international organizations

Building on the neoliberalization literature, this study also seeks to draw a clearer historical account of the privatization process by examining two important aspects that have gone underreported in the literature: the impact of global trade regimes on the phenomenon of temporary migrant worker programs and the importance of international organizations in facilitating a move towards privatization of migration control through the discourse and practice of migration management.

As Leon and Overbeek note, the mobility of labour continues to lag behind the mobility of goods, services and capital, producing “growing contradiction at the heart of neoliberal project (2015: 38).” While global governance regimes have worked to globalize or internationalize trade, finance, and security, international migration has been noticeably absent from their purview (Lavenex and Jurji 2015: 259). Such regimes exist

for asylum and labour rights, but economic migration is governed, to the minor extent that it is, by “‘soft’ law, such as the Global Commission on International Migration, the UN High Level Dialogue on International Migration and Development and the Global Forum on Migration and Development (Lavenex and Jurji *ibid*).”

Despite this discrepancy, Kunz et al note an “increasing trend towards linking the various aspects of immigration policy in comprehensive packages comprising trade, labour, security and development aspects (2011: 2).” This activity addresses migration through a number of different dimensions, and has entailed the creation of migration governance mechanisms through regional integration frameworks in the European Union, the creation of transnational networks of migration officials known as regional consultative processes, and cooperation of development through the G-8’s Recommendations on Remittances. Most importantly however, global governance regimes are increasingly tied to international migration through the existence of trade-in-service agreements which cover trade-related mobility. This linkage has emerged as a result of the expansion of service sectors not only in northern economies but also globally. Whereas in previous decades, trade liberalization was often related to the relocation of production sites internationally and hence focused on the mobility of capital and goods, liberalization efforts today are now increasingly focused on dismantling barriers to the provision of services, including the provision of services which are entailed through the cross-border mobility of people. The most relevant trade agreement in this regard (and the most important concerning the governance of the TFWP) is the General Agreement on Trade in Services (GATS), which is the only multilateral

agreement governing economic mobility,⁸ and which is designed to reduce discrimination of service-provision by member states in four important categories: cross-border supply, consumption abroad, commercial presence abroad, and the temporary movement of natural persons. This last mode, Mode 4, contributes to 1-2% of the service trade globally and is most relevant to information technology and professional services (Global Affairs Canada 2013). Although in numerical terms Mode 4 plays a limited role in the Canadian immigration system (1145 businesspeople entered in 2002) and although Global Affairs finds it difficult to quantify its economic benefits (ibid), its importance to the TFWP lies in the fact that it has led ESDC to discard its bilateral approach to negotiating agricultural migrant recruitment, which ESDC maintains is in contravention to the agreement. This is addressed in further detail in Chapter 6, where it is shown that the ratification and implementation of the GATS had profound consequences for the post-1995 operation of the TFWP.

In short, impact of global trade regimes has resulted in two levels to migration policymaking in Canada, where policymakers attempt to address domestic objectives while simultaneously maneuvering in a global regulatory space. The case of the SAWP indicates that trade regimes not only impact high-skilled migration, as is often noted – they can also have important consequences for low-skilled migration as well.

The second issue this study seeks to explore is the growing importance of international organizations in the governance of migration. IOs cover various aspects relating to migration, such as migrant rights (the International Labour Organization),

⁸ Others exist at regional levels, the most notable being the European Union and the North American Free Trade Agreement. The EU association agreements with neighbouring countries have paralleled the trade-in-service commitments of the GATS (see Kunz et al 2014).

asylum-seeking (the UN High Commission for Refugees), and immigration control (Frontex). Particular focus is given here to the importance of the IOM as a non-profit “business” that provides the technical expertise necessary to offload migration management to non-state actors. Without the IOM’s emphasis on “projectization” and service delivery, development of the TAWC would have been impossible given the absence of the Canadian state’s institutional capacity for program design and administration and the limited resources of the Guatemalan Ministry of Labour. This issue is fully addressed in Chapter 5 in order to understand the future prospects of this form of migration control. What is important theoretically is the transformation of the IOM into a “contractual” outfit and the impact that this has had on the practice of temporary foreign labour. This requires a particular theoretical lens that takes into account the IOM’s genesis and its later transformations following the refugee crises of the 1970s. Numerous authors have traced this historical trajectory and have presented a framework for understanding the IOM as distinct from other migration-related intergovernmental bodies.

Until only very recently, little research has focused on the evolution of the IOM’s organizational structure and the expansion of its activities; much of what exists focuses on the IOM’s management of international refugees and internally displaced persons. Factors behind this knowledge gap include the IOM’s comparative lack of transparency, its technocratic nature, and its relatively recent high rates of growth. What research exists has stressed the organization’s transformation into a component of neoliberal governance in which “federal governments contractually employ the IOM to carry out a range of migration-related services that governments find themselves unable or unwilling

to carry out for legal and political purposes (Ashutosh & Mountz 2011).” More critical voices have questioned if this “privatization” of migration control has produced “an agency that will do anything as long as there's money with which to do it (ICVA 2004),” and whether the IOM truly serves the interests of migrants or simply its member states (Georgi 2010, Amnesty 2003). Underpinning this shift are two structural features of the IOM: 1) its limited mechanisms for stable funding, and 2) its lack of a constitutional mandate for the protection of the rights of migrants (Betts 2008). While these features have certainly been exacerbated in recent years, they nonetheless have their origin in decisions made during the foundation of the organization. Geiger and Pécoud caution against viewing international organizations such as the IOM as static sets of rules or mandates, however, arguing that they “should be seen as ‘bureaucratic entrepreneurs’ capable of seizing external opportunities and responding innovatively to them (2014: 870).”, further arguing that adaptability, reinvention, and a need for survival may characterize the IOM as much as do constitutional principles.

Analysis of these transformations has produced two major frameworks by Georgi (2008) and Ashutosh & Mountz (2011), the first employing neo-Gramscian international political economy, which emphasizes the material dependence of the IOM on its donor states and on its project benefactors, placing it at odds with its obligations toward migrants. The latter, relying on a Foucauldian framework, emphasizes the IOM as an element of “global governmentality”, working to enforce exclusions through its governance practices, standards-setting, and discourse of international human rights. This view contrasts with the direct coercive power assumed by the former, as here the IOM “would determine the ‘right’ policies to be implemented by governments and

develop the instruments through which to assess their compliance with these principles. Governments would not perceive the norms of IOs as imposed on them from more powerful external actors (Geiger and Pécoud 2014: 874)”. While these two approaches differ in some key implications (for instance, on the importance of the IOM’s mobilization of migration management discourses to frame its activities), both frameworks cast doubt on an image of the IOM that could be characterized as “impersonal, value-neutral, not self-interested and hence technocratic ... (Lavenex 2007: 253)” Instead, they urge an examination of the IOM’s complex and sometimes contradictory ideas and practices in order to understand why objectives may not always align with their rhetorical ambitions. Geiger and Pécoud (2013) have looked to move beyond the distinction between control and mobility, by proposing the concept of “disciplining” wherein global governance entities attempt to influence rather than halt mobility through a combination of restrictive measures and the “self-disciplining” of migrants themselves. Both prongs of this strategy serve to reassert statehood.

One of the key avenues through which the IOM wields influence is through its mobilization of the “migration management” discourse. The concept of migration management originated from Bimal Ghosh in 1993 following the creation of the New International Regime for Orderly Movements of People (NIROMP). Migration management, writes Pécoud,

...reflects the growing recognition that the risks linked to uncontrollable and destabilizing migration flows can be addressed by a deep reorganization of the patterns that govern human mobility; it also embodies the aspiration to both strictly control human mobility and organize it in a way that makes it compatible with a number of objectives pursued by both state and non-state actors (2013: 1).

Alvarez Tinajero (2014) links the emergence of this recognition to a context of concerns in the West regarding the ability of migration to generate political and economic crises. This discourse had as its initial goal a commitment to the “regulated openness” of all forms of mobility, from asylum-seekers to economic migrants – an ideal now less associated with the practice of migration management (Geiger and Pécoud 2010: 2-3). In addition to this, Ghosh’s conception of migration management also stressed the cooperation of states in harmonizing migration policies, and the potential for non-state actors to play a positive role in migration policy-making, a dimension which now features much more prominently. In addition to these practices, the mobilization of discourses is a powerful legitimating tool for organizations engaged in migration management. This discourse downplays the traditional elements of control associated with migration regulation and emphasizes a cooperative and positive-sum image of migration, although these political rationalities are not homogenous and can exist alongside a neoliberal governance rationality which defines the limits to freedoms even as it promotes forms of (bounded) mobility (Kalm 2010: 21-31).

One of the critical contributions this study seeks to make is to flesh out the contradictory nature of the migration management discourse as it unfolds in the particular case study of Canada-Guatemala migration. The TAWC, despite being branded as a “win-win-win” situation for growers, migrants, and development, was in key respects a step back from the bilateral model of the SAWP as a result of its reduced oversight features for acknowledging and rectifying the concerns of migrant workers. Following Kalm’s critique that “liberal freedoms are conditional on the development and deployment of advanced systems for overseeing the exercise of these freedoms (Kalm 2010: 31),” a feature not always evident in neoliberal governmentality, this study examines how the failure to ensure the development of these “advanced systems” has

compromised the promise of migration management, through a comparison of the TFWP's different models of agricultural migration.

2.5 Conclusion

As previously stated, this study is about the privatization of migration control in Canada's temporary foreign worker regime, the manners in which it unfolds, and the actors that are selected to undertake these governance functions. It seeks to give a concrete historical account of how the privatization of migration management unfolds within a neoliberal political economy, but also to develop some logical generalizations that address gaps in the current theoretical literature by explaining the unevenness of the growth of the migration industry.

Before turning to the specific literature on Canada's temporary foreign worker program, it is useful to summarize the three arguments expressed so far. First, while states do face challenges related to migration control and now operate as part of a broader constellation of policy actors that now includes a variety non-state entities, the state remains an important actor at the centre of migration control. This is particularly relevant to the case of the TFWP, where the privatization of migration control operates in tandem with state policy objectives geared towards providing flexible, low-skilled labour to industries under pressure.

Second, the emergence of the migration industry through the privatization of migration control takes place within the context of global neoliberal restructuring which has seen states orient around a strategy of developing competitive investment environments, a reliance on global market mechanisms, and an offloading of regulatory responsibilities onto private actors.

Thirdly, when looking at how neoliberalism is expressed through migration politics, two important features have been under-researched: the impact of global trade regimes and the increasing presence of international organizations as vehicles for migration management. Together they have facilitated a shift in the operation of agricultural migration in Canada, a topic the subsequent chapter explores.

The importance of these arguments is critical to the case study which follows. Although the global trends associated with neoliberalism have often been analyzed in straightforward terms about the decline of statehood, this is not the whole picture, particularly as it pertains the TFWP. Neoliberalism as a strategy of migration control in Canada demands that the federal government take an active role in addressing the contradictions produced by this form of governance. This argument unfolds in greater detail later on with an examination of ESDC's latest involvement in temporary agricultural migration through the creation of the Agricultural Stream.

3 Chapter: The Political Economy of the Temporary Foreign Worker Program

The chapter focuses on literature specific to the Canadian TFWP. It outlines a framework derived from Canadian political economy and sociology that emphasizes the continuing legacy of migrant labour in modern agricultural industries, the centrality of “unfreedom” to this process, and the construction of temporary foreign workers through legal status and images of race and gender.

This chapter also collates the body of research on Canada’s TFWP in order to draw out some more specific understandings as to how and why temporary migrant labour persists in Canada – particularly in agriculture. Explaining trends in the Canadian economy toward temporariness and low-skill migrant labour requires an approach capable of analyzing the structural basis for the demand for such labour forms, but also one that can demonstrate concretely how actors within the Canadian state transform this broader structural demand into policy in order to produce the institutional framework of Canada’s TFW regime. Nowhere has this been more apparent than in the agricultural sector, where various functions related to Canada’s role as a recruiter of migrant labour have been downloaded to growers’ associations as well as to the IOM. Costs initially borne by the Canadian government for the design and maintenance of TFW programs are now increasingly shifted onto sending countries and onto migrant workers themselves. This has been a necessary development for the rapid expansion of TFWs across Canada, a process that is increasingly “employer-driven” and less reliant on state support. Both the historical basis for the Canadian TFWP and the current ESDC stakeholder process have been instrumental in orienting federal policy around the needs of the labour market

and around employer demands for a flexible workforce. This results in a program that, by design, operates through the dual processes of 1) engendering a heightened level of sender state competition (and by extension workplace competition) and 2) removing government agent safeguards, however imperfect, that govern a form of labour characterized by “relative status, low levels of skill and education, and limited employment and mobility” (Dunmore v. Ontario (Attorney General), 2001 SCC 94).

3.1 The Seasonal Agricultural Worker Program and “unfree” labour

The previous chapter provided a general orientation for analyzing migration and the state, but it is also necessary to draw on literature specific to the Canadian TFWP. This body of work originates from a number of disciplines – most notably sociology, political economy, and legal studies – and has tended to focus on the “low-skilled” streams such as the SAWP and the LCP. Despite the age of these programs, the bulk of this literature did not begin to emerge until the 1990s and 2000s, indicating that the TFWP was not something that was immediately problematized in Canadian research. The major expansion of the TFWP in quantitative terms has since driven a wider and more comprehensive body of research. More recent material on the LSPP has built on these initial foundations and reflects many of the core ideas established in the earlier work. What little work that existed prior to the 1990s questioned whether the TFWP’s predecessor, the Non-Immigrant Employment Authorization Program (NIEAP), even conformed to the definition of a guestworker program, given the extent to which

employment authorizations were used for “multiobjective” ends.⁹ Little attempt was made to pursue the sociological implications of such a system, although there was some basic categorical work which differentiated the NIEAP from other forms of migrant labour, as in Wong’s use of the term “bonded forced-rotational system (1984: 87)”.

The TFWP is an object of study and not a theoretical tradition; as such, researchers have brought different assumptions and questions to bear on the subject. As a result of the interdisciplinary nature of this body of work, developing a shared theoretical orientation can be challenging. However, two important lines of inquiry emerge which give some unity and structure to much of the work. The first is an attempt to understand *why* “unfree” forms of labour have manifested in an ostensibly free society via the TFWP, particularly by focusing on marginal sectors of the labour market such as agricultural work. Here, explanations often derive from Marxist political economy and link post-war economic growth to the departure of Canadian workers from unattractive occupations, thereby prompting their replacement with migrant workers. The second asks *how* unfree labour emerges, and does so by examining the category of “temporary foreign worker” and its construction through legal differentiation and images of race and gender. Here, sociological and ethnographic approaches are prevalent and often focus on how the TFWP as a regime is maintained. The two objectives are ultimately complementary and in tandem they serve to provide a comprehensive explanation for how demand for temporary foreign workers is generated and how workers’ compliance with the conditions of the program is sustained. The following summarizes these

⁹ Boyd et al (1986) note that applicants for landing, refugee claimants and graduate assistants made up a substantial portion

theoretical approaches, their shared connections and their links to the broader field of political economy.

Canadian sociologist Vic Satzewich provided the first major study of the SAWP in 1991 with *Racism and the Incorporation of Foreign Labour*, a comprehensive historical investigation into the program's foundations. Concerned largely with a sociology of state practices, Satzewich found the "core" statement on the political economy of migration as expressed by Castles and Kosack (1973) to be lacking in various respects, and instead opted to modify it in order to give it applicability to the case of temporary migration to Canada. Castles and Kosack identified Western Europe's burgeoning post-war immigrant population as embodying Marx's concept of the reserve army of labour. In this framework, migrant labour is mobilized as a mechanism for class power in two ways: the first in an "objective" or "concrete" sense of fuelling economic growth in the capitalist core and exerting downward pressure on wages, the second in a "subjective" sense of engendering divisions in working class movements (Castles and Kosack 1972/3: 3-4). The reserve army, composed of those displaced from subsistence livelihoods by the penetration of capital into agricultural production, as well as those expelled from the labour force by the ongoing cycle of industrial production, could no longer be adequately filled by the existing European population given sustained rates of high employment in Europe at the time, and was therefore replenished through international migration.

This was a debateable and contentious account of Western Europe's immigrant populations, sparking observations that

immigrant workers are a fraction at the *core* of the productive working class and [...] are involved directly in producing surplus value rather than in regulating the

over-all level of wages or in carrying the fluctuations and uncertainties of the system. (Lever-Tracy, 1983)

Satzewich himself is less interested in resolving the theoretical debates that exist among Marxist approaches and instead seeks to identify a core argument that has general applicability to the laws of capital accumulation. The crucial point developed by the political economy perspective is that “[c]apital accumulation initially propels or forces certain groups of people to migrate because of the associated economic dislocations which accompany it. Capital accumulation is also the stimulus to migration to the extent that it constitutes the conditions which give rise to labour shortages and points of attraction for wage labour (Satzewich 1991, 8).”

In applying the above thesis to the Canadian case, Satzewich makes two critical adjustments. First, he argues that the historical record of Western European mass migration demonstrates that “different migrant groups were incorporated into qualitatively different sites in production relations (20)” and that the state played a crucial role in this process from the outset, rather than acting functionally at the behest of capital or operating only later in the process. Second, he challenges the idea that the transition from labour migration to permanent settlement represents an inherent feature of mass migration. Instead, he argues, the permanent settlement that followed mass migration in Western Europe is specific to that particular historical case and not a general feature of guestworker programs.

The importance of these two critiques for an analysis of the Canadian case becomes evident with even a cursory glance at the historical development of the SAWP and the TFWP. The Canadian state cannot be said to have played a strictly functional or passive role leading up to the SAWP. Among the important mechanisms performed by

the Canadian state were the construction and mobilization of racial representations as an important factor in the development of the category of “temporary foreign worker”, as distinct from other migrant categories. The Canadian state’s role as provisor of the conditions necessary for capital accumulation is therefore embedded within a network of political and ideological relations that are shaped in part by the social formation of an imagined community. Historical evidence illustrates the Canadian state’s attempts to mobilize such diverse populations as prisoners of war, youths, and the urban unemployed as alternatives to Caribbean migrant labour on rural farms – a strategy underlined by an openly discriminatory immigration policy informed by an exclusionary interpretation of Canadian society (Sharma 2006). In short, the decision on the part of the federal government to employ “temporariness” as a strategy for procuring agricultural labour was made possible by the social and political contexts operating in Canada at the time.

This critique raises a question that is very germane to the case study which follows – how does federal policy come to reflect the broader imbalances of social relations in Canadian society? This debate has appeared and reappeared in Canadian political economy for decades, for instance in the work of Mahon (1977), who sought to account for the capitalist nature of the Canadian state through the existence of “unequal structure of representation” within the various structures of the federal government, arguing that these structures serve to represent various capital fractions in order to organize hegemony more effectively. Satzewich offers some ideas pertaining to the creation of the SAWP, often highlighting the role played by organized business in securing the support of Members of Parliament from rural constituencies. By contrast, the federal bureaucracy, in his account, is frequently portrayed as a reluctant ally at best

when compared to political representatives – a situation which is markedly different since the creation of the SAWP. He additionally points out the Ministry of Labour’s contradictory objectives which also include mollifying Canadian labour. This study suggests instead, however, that a focus on how different groups participate (or are excluded from participating, in the case of under- or unrepresented groups) in the policy-formation process at the federal level is the most useful lens for understanding the policy motivations of those tasked with overseeing the TFWP. Nevertheless, Satzewich’s historical analysis bears out in a broad sense the justification for examining the stakeholder processes employed at the federal level, and finds that the SAWP has operated consistently as a program that reflects the input of employers. This project similarly applies an examination of the ESDC and CIC stakeholder processes to more recent developments, in order to identify how the developments of the Agricultural Stream reflected an uneven preoccupation with the concerns of organized employers.

Tanya Basok (2002) builds on the ideas developed by Satzewich and Castles and Kosack, but incorporates two additional approaches from the field of political economy: the segmented labour market theories developed by Piore (1979) and Cohen (1987), and the global restructuring perspective characteristic of the work of Sassen (1988). Segmented labour markets approaches argue that the homogenization of labour characteristic of 19th century capitalism was replaced in the era of monopoly capitalism with a bifurcated labour structure comprised of well-paying, often unionized jobs in the primary sector (the segment of the economy shielded from the risks of the market) and low-paying, low-status, unsafe work in the secondary sector (the vulnerable segment of the economy subject to high variability, seasonality and risk). The secondary sector is

not comprised solely of migrant labour, nor is migrant labour solely directed to the secondary sector. However, migrant labour is to be disproportionately found in Canada's secondary sector due to global inequalities. Global restructuring approaches "redefine" the boundaries of these labour markets by pointing out the presence of insecure work not only in the secondary sector but also in dynamic, primary sectors. This is frequently associated with the presence of "global cities" (Sassen 1991) which provide management and control functions to the world economy and require low-wage, low-status work.

Basok draws variously from each of these perspectives but her chief contribution, and the one that characteristically shapes much of the sociological literature that followed, is the observation that to understand how temporary migrant labour generates profitability, it is necessary to distinguish between "convenient" migrant labour which is simply cheap and "necessary" migrant labour which must be, in some respect, "unfree". The concept of unfree labour is borrowed from Miles (1987), who uses it to identify "workers whose ability to circulate in the labour market is restrained through political and legal compulsion (32-33)". These constraints operate at a macro-level through work visa conditions which prevent migrant workers from easily switching employers or circulating in the labour market, but it is also expressed through the difficulty of workers to refuse the demands of employers (Basok 2002: 4-5). McLaughlin (2010) expands on this point, noting that

In Canada, as elsewhere, employing migrant labor is not just convenient to capitalism, but has become a central component of the political economy [...] To facilitate this process, the neoliberal state, following the welfare state, has generated a society of multi-unit competition in which performance or adaptation of a neoliberal subjectivity is a defining element (80).

Further, she notes:

Workers are unable to refuse employers' demands and requests for labor, even if conditions are difficult, dangerous, or otherwise undesirable. Even though migrant workers are legally free to leave their job and return home, their often dire economic circumstances and other considerations create a situation in which they feel that they cannot afford to risk losing their employment (McLaughlin 2010: 83).

Thomas (2016) explicitly ties these conditions to a lack of legal status, noting that “conditions of ‘unfreedom’ are often established through the denial of citizenship and residence rights, thereby maintaining connections between labour migrants and their home country.”

Although the distinction between “cheap” and “necessary” labour represents abstraction more than practice, the concept is useful for understanding how worker compliance is generated (and in turn, how dependency on unfree migrant labour is sustained). Sociological levels of analysis which focus on the migrant, the worksite, and home communities are critical in this regard because they provide an exploration of the personal situations of migrant workers themselves in order to explain how precarious livelihoods are transformed into a sustained stream of useable migrant labour. This focus on the migrant also brings with it a much-needed focus on the transnational, and does so by linking developments and contexts outside of Canada with the agency of individual migrants. Binford (2002, 2009), for instance, builds on Basok’s analysis by sketching an image of a workforce “made particularly vulnerable as a function of cultural and linguistic differences (Binford 2002: 1)” and mobilized by sending community environments marked by economic restructuring, unemployment, and high levels of household risk (Binford 2009: 505-506) which produces an ideal labour pool for Canadian employers. In a similar vein to Basok and Binford, a number of Caribbeanists (André 1990; Watson 1983) also challenge the implicit idea that there exists a naturally

occurring source of migrant labour that is simply “there”, produced solely by wage differentials between sending and receiving countries. For André, parallels can be drawn between historical plantation economies and the “transplanted plantation” of the SAWP due to the prevalence of foreign ownership in each case, a comparison also drawn by Cecil and Ebanks (1992), who describe the SAWP as a more “rationalized” evolution of the plantation system. Although the work of these Caribbeanists is more broadly historical-structural than sociological and is more focused on the roles played by the legacies of Caribbean plantation economies, Commonwealth relations, and modern structural adjustment programs to explain how displaced labour is transformed into migration, it complements the sociological literature by illustrating the contexts within sender states which generate the conditions that make migrant labour available. Binford expands on the Mexican context, explaining that the de la Madrid-backed “neoliberal opening” of the 1980s prompted the privatization of many state industries, the proliferation of *maquiladora* industries in the north of the country, and a prolonged economic crisis in which “the gradual exhaustion of the ‘resources of poverty’ has given way to a ‘poverty of resources’ for many rural and urban households (Binford 2002: 1) – in short, a powerful incentive for northward migration, either through undocumented migration across the US-Mexico border, use of the American H2A system, or reliance on the SAWP.

The concept of unfree labour is connected to intrinsic features of the TFWP. It remains the case in both the SAWP and the Agricultural Stream that workers are tied to specific employers for the duration of their stay in Canada (with various impediments to worksite relocation and the constant danger of job loss and subsequent deportation),

resulting in an uneven employer-employee relationship in which control over the numerous facets of workplace activity is dominated by the grower. The vulnerabilities that labour immobility produces are not an unfortunate side effect of such programs, but a principal factor in their genesis, growth, and profitability. Tomic and Trumper (2012) contrast the labour immobility inherent in the SAWP with the hypermobility of “kinetic elites”, noting that

workers must be mobile, travelling long distances to work on Canadian farms, yet they are immobilized once in Canada and restrained from changing employers at will, from travelling freely in the country, and from dwelling outside the premises assigned to them by their employers (76).

Lenard (2012) notes some of the ways in which control of mobility is maintained, pointing in particular to the refusal to allow migrant workers to travel with their families, which is combined with the short duration of work contracts in agricultural labour (290).

3.2 Race, nationality, and gender: constructing temporary migrant labour

It is important to note that the “migrant worker” is not only constructed by the legal mechanisms of the TFWP and the environmental contexts of sender countries, but also in a much more general sense by the broader context of Canadian society. Here, an additional current of thought has examined how social representations of temporary foreign workers are developed and sustained. This was a central element of Satzewich’s analysis when he noted that racial considerations prevalent within the Canadian bureaucracy had animated the need to create a distinct category of temporary migrant worker. Since then, Nandita Sharma’s work (2001; 2006) is perhaps the most important and links representations of migrant workers to ideologies of nationalism and belonging, mediated by concepts of race, gender, and class to produce legal categories that exclude

some from Canada's system of rights. For Sharma, borders are "both physical and existential" and "define material as well as ideological ground (Sharma 2001: 417)." In this respect, temporary foreign workers are not excluded in the traditional "national security" sense but in terms of access to legal-political rights, meaning that analysis should focus more on "how" people cross borders rather than whether or not they do (417). For Stasiulis and Bakan (2005), citizenship operates as the focal point of exclusion and represents the broader legacies of colonialism and imperialism faced by the Global South.

These conceptions play important roles in determining who is admitted to the national community. Janet McLaughlin (2010) focuses on how the interaction of multiple actors (employers, sending and receiving states, and migrants themselves) produce the notion of a flexible, "ideal migrant worker", a discourse that operates through a narrative of competition. Harald Bauder (2008) describes the role of Canadian media in generating public consent for TFW programs through the portrayal of migrant farmworkers as a necessary component of both economic competitiveness in Canada and economic development in the global south. These dual moral discourses act as sources of legitimization for TFW programs. Both authors point out that these discourses function as systems of exclusion by articulating a distinction between "worthy migrants" and "worthy immigrants" and justifying conditions of unfreedom. In addition, a negative discourse surrounds the "exceptionality" of temporary migrant workers in Canada as ostensibly representing "only" a stopgap measure, where

Despite their long-term presence and centrality to the Canadian agricultural economy, discourse and policy frameworks combine to relegate migrant agricultural labourers to a position outside of the state (as exceptional), and being temporary and exceptional is about being outside of the system in which rights are

conferred and protected (i.e., permanent residency and citizenship) (Hennebry and McLaughlin 2012: 121).

Race, ethnicity, and nationality are not only important factors in explaining the genesis of temporary foreign worker programs, they also operate as part of a current set of strategies among employers. Binford noted the ongoing segmentation of the SAWP, where employers have substituted English-speaking Caribbean workers with Spanish-speaking workers from Mexico. This, he writes, “is being driven by employers who have learned how to exploit a Mexican labor force made particularly vulnerable as a function of cultural and linguistic differences from Canadian farmers (2002: 1).”

Scholars have additionally noted the gendered dimension of the TFWP. Preibisch and Encalada Grez (2010) note that women are becoming increasingly predominant in the SAWP, as well as in commercial agriculture globally. This is due to the tendency of women to appear in “casual” or “informal” employment along with their experience in subsistence agriculture. Choudry and Smith (2016) note that the gendered impacts of neoliberalization fall heavily on women migrants in the SAWP, who are simultaneously involved in the productive sphere both in terms of their labour and in care and social reproduction. Hughes (2012) describes the emotional and practical burdens that are placed on women who are “left behind” in households dependent on the migration of males.

3.3 The Canadian agriculture industry and temporary foreign workers

The “core” of the sociological approach outlined above stresses the relationship between the precariousness of migrant labour and its usefulness to employers; generally, it

gestures to extra-sectoral factors such as legal status, racialization, and the context of the Global South. There is, however, a somewhat disparate grouping of political economy approaches which analyze the distinct nature of Canadian agriculture in terms of its reliance on migrant labour. Satzewich in his earlier analysis noted that the concentration of farm technology manufacturing firms on the supply side and food processing and grocery chains on the demand side has accelerated the compression. Preibisch (2007) argues that programs such as the LSPP are in part a result of the geographic immobility of sectors such as construction, hospitality, and agriculture, which cannot relocate their production abroad. The seasonality of many of these sectors is itself a factor, as the “‘inflexibility’ of UIC and welfare payments, which do not offer incentives to work for short periods in seasonal work, further discourages the local labourer from seeking employment (André 1990: 256).” Migrant labour thus internalizes the requirements of an inflexible industry to become flexible, leading to a situation in which “the industry’s comparative advantage rests, in part, on limiting the rights of foreign workers who cannot move out of the sector (Preibisch 2007: 419).” Hennebry’s (2008) work explores the development of services and intermediaries which make up the migration industry surrounding the SAWP and which facilitate the smooth functioning of agricultural migration to Canada. Firms specializing in financial, communication, and transportation services directed toward migrants have evolved to collect profits from the lucrative process of agricultural migration, facilitating and entrenching the process as a whole. In this respect, Canada’s agricultural industry can be given a “wider” reading to incorporate the specialized services which support the international migration on which it relies.

Taken together, these authors present a compelling case for understanding how migrant labour has become structurally embedded as a part of Canadian agriculture. It should be noted, however, that the constellation of actors that surrounds agricultural migration is a complex one. Contrary to Betts' definition of the migration industry as primarily profit-driven, it is also necessary to look beyond for-profit activity to examine potential challenges toward the system. For a useful corrective, Gabriel and Macdonald's (2011) work highlight the variety of civil society organizations that have come to play a role in migrant rights advocacy, from actors such as the United Food and Commercial Workers to church groups such as KAIROS. Crucial legal challenges have arisen in particular from the UFCW, which has advocated for the collective bargaining rights of (both migrant and non-migrant) farmworkers. In addition, the UFCW has transnationalized its advocacy activities by opening a Central American branch in Mexico City (Galvez 2015). Thomas (2016) notes the efforts of advocacy groups such as Justicia for Migrant Workers in Toronto and Vancouver, the Immigrant Workers Centre in Montreal, and the Migrant Workers Alliance for Change. These groups, through their educational and lobbying initiatives, represent a contestation not only of "unfreedom", but also of nationalist discourses that could stymie cooperation on labour issues through the creation of insider/outsider distinctions.

In whole, the multiple levels of analysis have provided a rich background with which to draw from. What makes this body of literature useful is its implications for the discussion of privatized migration control. Although the TFWP literature discusses various aspects of non-state activity, such as the migration industry, it does not give a general account of why privatization has occurred, particularly within agricultural

migration. While it is unfortunate that we are not provided with such an explanation, there are a number of implicit takeaways from the TFWP literature that help us contextualize the privatization of migration control. For sociologists and political economists studying the TFWP, neoliberalism has been at its core a project of creating flexible labour. As such, privatization can be understood as a process that is contingent on broader environmental factors. As expressed in the introduction, we should not only ask, “how does privatization advance the purposes of the TFWP?”, but “*when* does it advance such purposes?” Such an insight likely impacted Preibisch’s decision to describe the new framework of the LSPP as one of “neo-regulation” as opposed to deregulation, in order to emphasize the reconfiguration of the Canadian state’s presence rather than its absence (2011, 64-65).

However, this study hopes to address a major omission in the literature on the LSPP by incorporating an analysis of the unprecedented direct interaction between a growers’ organization and a sender state. In particular, it seeks to highlight that the Canadian state no longer operates as the sole actor concerned with recruiting migrant labour that it once did with the creation of the SAWP. Numerous authors have commented on the shifting role of the Canadian state in the management of migration. Yet little commentary has focused on what exactly has filled this void. Growers’ associations have now demonstrated both the autonomy and the capacity to engage in direct negotiations with sender states, while the IOM has provided technical knowledge.

3.4 Conclusion

In addition to tracing a historical-institutional development of Canada's current era of neoliberal migration policies, this study additionally utilizes the political economy framework described above which emphasizes the factors leading to structural dependency on low-skilled migrant labour, by focusing on the relative immobility of migrant labour in Canada and the difficulties that many migrants have in exercising their rights. In following the work of Satzewich, Preibisch, and Basok, it underscores the dialectic between the economic factors driving temporary labour migration and the institutional framework for migration that is continually negotiated and renegotiated between a multiplicity of actors within sending states, receiving states, and employer organizations. These approaches have taken pains to avoid an overly deterministic relationship between the Canadian state and employers. The Canadian state is not purely subject to capture by growers, as attested to by the lengthy inception of the SAWP and the temporary closure of low-skilled migration in 2001. It is neither free of ideological assumptions, nor is it isolated from democratic processes. Furthermore, the Canadian state itself is composed of fragmentary and contradictory agencies and actors.

It is useful at this point, before delving into the case study, to summarize the overarching theoretical framework of this study. Thus far the theoretical discussions have been split across two chapters – the first developing ideas about the neoliberalism-migration nexus and the second covering the Temporary Foreign Worker Program in Canada and its connections to the concept of temporariness.

This study relies on Harvey's understanding of neoliberalism as an elongated historical process designed to resuscitate capital accumulation through the level of state

policy. It connects this conception of neoliberalism to the increasing prevalence of guestworker regimes worldwide through the work of authors who have documented the ways in which a lack of permanent status creates a “just-in-time” labour force (McLaughlin 2010) for industries under pressure. Sociological literature is presented to justify the claim that the profitability inherent in guestworker programs arises from the vulnerable statuses of migrant workers, thus making the vulnerability of labour an inseparable part of the neoliberal project. In bridging the connection between neoliberalism and temporary migrant labour, the theoretical insights of Menz are used to emphasize the proactive role played the states in consciously establishing more decentralized forms of migration control.

In further chapters, this broader understanding is brought to bear on the Canadian case. One major objective, which builds on the literature of Satzewich and Preibisch among others, is to present the case that federal departments are sensitive to the needs of employers, and that this sensitivity has been prevalent through successive iterations of the TFWP. This situates itself against pluralist models of migration such as Freeman’s which present policy agendas as being broadly open to access by different groups. This access, however, is heavily mediated by departments and ministers who have historically favoured the input of organized employer groups. The result is a state which employs privatization selectively and largely in the service of employer interests.

This study, which examines the re-entry of the Canadian federal government into the realm of agricultural migrant labour, situates itself against a lacuna in the literature concerning the connection between neoliberal migration control and instances of privatization reversal. It has not been entirely clear how researchers should understand

cases such as the Agricultural Stream, in part because they remain understudied, in part because it is usually unacknowledged that such instances exist, and in part because the conceptual terrain surrounding the question is currently vague. When states pull back from privatization, does it signify a reversal of the neoliberal model of migration control? In pursuing the argument that interventions into migration control by the federal government are designed to maintain the functionality of such programs and hence to ensure the continued flexibility of vulnerable labour groups, this project allows us to build on current understandings by presenting privatization as a process that is routinely negotiated and renegotiated. Rather than understanding privatization as the sine qua non of neoliberalism, it is rendered as a potential tool in the toolbox of policymakers that can be deployed and retracted (though not without difficulty) as situations change. This is an essential contribution to the emerging discussion of migration governance in Canada, since trends pointing towards non-state actors may lead researchers to underestimate the continued importance of the Canadian state in supporting these migration regimes. It also prompts sensitivity towards the fact that privatized forms of migration control can be unstable and potentially self-destructive. Finally, it points researchers towards the importance of contextualizing developments in terms of how they are situated within the historical objectives of the TFWP and not simply to their conformity to the discursive narratives that operate as part of neoliberal restructuring.

The following chapter looks at the case of Canada's TFWP more closely, tracing its development and evolution over the course of five decades. What becomes clear is that there are two histories at work – the development of “temporariness” and the construction of the category of temporary foreign worker which began in the 1960s, and a

more recent trend towards the privatization of migration that began to unfold in the 1980s. In bridging these two histories, the work of political scientists studying migration and the transformation of the state is brought together with the work of Canadian sociologists studying the TFWP in order to give a comprehensive account of the persistence of the program.

4 Chapter: Temporary Foreign Workers in Canada: Inclusions, Exclusions, and the Privatization of Migration Control

The theoretical framework outlined in the previous chapter suggested that the Canadian state has increasingly undergone processes of neoliberalization, elements of which include privatization, retrenchment of social services, and the orientation of policy objectives toward economic growth. These elements have found manifestation in a wide range of state sectors as well as exhibiting themselves in more general features of government policymaking, such as reductions in federal expenditures and public-sector employment (McBride 2005: 95-122). In this respect, it is not only possible to speak of the “neoliberalized” state, but also of a neoliberalized immigration policy which possesses its own unique logics and characteristics. In the Canadian context, this has entailed strategies designed to attract highly-skilled immigrants, expand low-wage TFW programs, and reduce costs associated with admissions, settlement, and migration (Dobrowolsky 2016). In terms of low-skilled migrants, profitability is maintained through the deployment of “temporariness” and the use of practices that entail “unfreedom” in labour, such as restrictive visas.

This chapter examines the historical development and current operation of Canada’s Temporary Foreign Worker Program (TFWP) and its various components, and situates these as elements of a neoliberal model of migration control. It examines the multiple rationales which underline the program – first and foremost a drive for flexible labour – and then links this logic to broader trends in the Canadian immigration regime which emphasize labour market needs through an increasingly employer-driven model.

The TFWP forms the exclusionary half of a system which utilizes temporary status as part of two distinct strategies, one which represents social and political exclusion, and another which increasingly focus on a “two-step” immigration model which employs temporariness as a means of gauging the desirability of potential immigrants. These reforms have only been accomplished through the offloading of migration control functions onto non-state actors, through the integration of employer groups into the official administrative apparatus of the TFWP, and through the increasing propensity of the federal government to offload “gatekeeping” functions to employers and postsecondary educational institutions. As a result, this chapter paints a picture of the changing set of actors responsible for decision-making in the TFWP and Canada’s immigration regime more broadly. One of the key elements of this analysis is tracing the nature of state involvement during the shift from a traditional “state-centric” model of migration control to the more decentralized form of neoliberal migration control. While noting that there are prevalent characteristics that the program has exhibited since its inception, the argument is also made here that there are different models or “shades” of migration control that inform the practices of the TFWP at different times. This chapter presses the argument that a shift has occurred towards a more neoliberal model, although subsequent chapters will act as a point of comparison in contrasting the renewed state response of the Agricultural Stream to the decentralization characteristics of the TFWP’s general trajectory outlined here.

The chapter is broken into several sections. First, it gives a historical overview of Canada’s TFWP, beginning in 1966 with creation of the Seasonal Agricultural Worker Program (SAWP) and ending with the rapid expansion of the Low Skill Pilot Project

(LSPP) in the previous decade. It draws out three elements from Canada's historical engagement with the use of TFW programs: 1) the prevalence and growth of TFWs in precarious, "dirty, dangerous, and demanding" jobs, often in economic sectors under pressure, 2) patterns of exclusion often based on race and other restrictive or nationalistic conceptions of belonging, and 3) the formal and informal roles played by employers within the TFWP and immigration system.

The second section examines the current operation and composition of the TFWP and highlights the heterogeneous and hierarchical nature of the program: depending on where a migrant is situated in the system, the migrant's experience in Canada and their future prospects can be radically different. What has thus emerged is a bifurcated program that privileges high-wage, high-skilled workers as a means of situating Canada competitively on the global stage, while subjecting low-wage, low-skilled workers to elements of "unfreedom" and disposability. In both cases temporality is used strategically to, as Sharma (2001) describes, "cheapen the labour power of a growing number of people once they are inside the country and leave them increasingly vulnerable to all forms of market relations (417)." However, temporary status is also being used in a novel way as an "audition model" (Ho & Natt 2012) for evaluating temporary foreign workers as potential immigrants.

The third section takes up this point by exploring how the TFWP operates as part of a much larger system that categorizes migrants as "desirable" or "undesirable" candidates for permanent residency, and focuses on the centrality of privatization and devolution to this process. Here it is stressed that the concept of "import[ing] labour but not people (Castles 2006)" is now only a partial characterization of the TFWP.

Employers and other non-state actors such as post-secondary institutions have emerged as “gatekeepers” who now shape the influx of candidates for the Federal Skilled Worker Program (FSWP) and Canadian Experience Class (CEC). This gatekeeping role operates as part of a “two-step” immigration strategy, which in turn has spurred debates regarding the ability of permanent residency to ameliorate the problems posed by temporary status in low-skilled occupations. Several competing discourses have emerged, one of which identifies a path to citizenship as a solution to safeguarding the rights of low-skilled workers, the other of which problematizes the transition period associated with two-step immigration as a source of exploitation. This chapter critically engages with this discourse and also examines its emergence at the governmental level through debates in the House of Commons as well as its treatment in ESDC evaluations. Finally, it concludes with some thoughts regarding the consequences of an employer-driven model, a topic that is taken up in fuller detail in the subsequent case studies in chapters four and five.

4.1 Historical overview of the Temporary Foreign Worker Program

Guestworker programs have been a feature of the capitalist world for centuries and have played an even more remarkable role in the postwar period (Castles 1986: 761). Their prevalence extended across much of Western Europe and North America, from the British European Voluntary Worker scheme to the German Gastarbeiter system to the Bracero program in the United States. Each featured either a forced rotational system or an assumption that such flows were of a temporary nature.

Canada, a traditional country of immigration, has its own extensive history with the use of guestworker systems, and though distinctions may be drawn between the Canadian and European experiences,¹⁰ all share common elements and can be linked to the expansion of the capitalist core in the postwar period.

The presence of foreign workers in Canada who do not enjoy the same political and social rights as Canadian citizens or permanent residents is not a feature introduced by neoliberal governance techniques, which are usually identified as materializing in Canada during the late 1970s and solidifying in the 1980s with the election of Brian Mulroney's Conservative government and the presentation of the Macdonald Commission's report in 1984.¹¹ The genesis of neoliberal immigration policies can be located around the same time period, and changes to Canada's TFW regime can be dated to the mid-1980s, when the Mulroney government removed caps on foreign agricultural workers in favour of a demand-driven system and privatized certain elements of the program's administration. In this respect, it is important not to conflate temporary foreign workers with neoliberalized migration, as the use of temporary foreign workers long predates neoliberal forms of migration control.

In fact, while the Temporary Foreign Worker Program only officially began as the Non-Immigrant Employment Authorization Program (NIEAP) in 1973, the basic category of the temporary foreign worker, that of a "foreign national engaged in a paid activity who is authorized to enter to Canada for a limited period of time (Nakache &

¹⁰ Both Wong (1984) and Boyd et al (1986) note that Canada's temporary foreign worker programs have been used in ways that are not characteristic of other guestworker program, such as for providing work authorizations for refugees.

¹¹ This report broadly laid out a path of economic restructuring that emphasized free trade, reform of the welfare state, and reliance on market mechanisms.

Kinoshita 2010: 46),” has much deeper roots in Canadian history. In the 1880s, Chinese labourers were brought to work on the Canadian Pacific Railway and were later disenfranchised through the Electoral Franchise Act of 1885 (Kelley and Trebilcock 1998). Many Chinese workers intending to return to China were prevented from doing so due to the unfavourable terms of their work contracts, which limited their savings. Later, the first Caribbean Domestic Scheme originated in 1910-11 to import women from Guadalupe to Canada to work as domestics (Calliste, 1989). This movement was marked by a high degree of disposability and some were later deported. A second domestic worker scheme emerged between 1955 and 1966 to bring in Caribbean workers on one-year contracts with the potential expansion of an additional year. Agriculture has been a frequent focal point for labour importation, and as Preibisch (2010) notes, “the agricultural industry’s success in lobbying the government to supply them with non-citizen labor dates back to at least 1868, when the government assisted the settlement of thousands of British orphans to work on Canadian farms (405).”

Keeping in mind this historical prevalence, this section starts its history of Canada’s temporary foreign worker regime beginning with the creation of the Seasonal Agricultural Worker Program (SAWP) in 1966, following with the NIEAP in 1973, and leading up to the recent incarnation of the TFWP and the creation of a rapidly expanding stream for low-skilled workers. The SAWP is given particular attention due to its connection with agricultural migration, which has been a bellwether for the privatization of migration control – it featured the earliest elements of privatized recruitment when the federal government offloaded administrative responsibilities to grower organizations during the 1980s. This history demonstrates three important themes. First, the TFWP

plays an intrinsic role in capital accumulation, often in vulnerable economic sectors which feature precarious jobs with low pay and low standards of work (Basok 2002; Basok & Binford 2004; Preibisch 2010). This is achieved through initiatives by the Canadian state to, in the words of Stephen Castles, “import labour but not people (2006).” The second is that the TFWP reflects patterns of exclusion – those deemed inappropriate for membership to the national community are restricted to unfree terms of unemployment, which is often informed by nationalist discourses and racialized conceptions of belonging (Sharma 2001; Sharma 2006; Satzewich 1991). Third, and related to the core element of this thesis, we see that the privatization of migration management in Canadian agriculture has roots going back several decades, both in the formalized institutionalization of external actors into administrative roles and to the organization of employers as politically mobilized actors. This chapter stresses that these earlier developments were foundational for the later offloading of migration control through the development of the Temporary Agricultural Worker to Canada (TAWC) project in 2003, as one of the private actors responsible for this recruitment scheme was in fact created in conjunction with the federal government.

4.2 The Seasonal Agricultural Workers Program

The basic template that Canada utilizes to administer low-skilled temporary foreign workers was originally laid out by the Seasonal Agricultural Worker Program in 1966. The SAWP is rotational guestworker program meant to address labour shortages in the agricultural sector. It is the result of bilateral agreements with sender states in Jamaica, Trinidad and Tobago, the Barbados, Mexico, and the Organization of Eastern Caribbean

States. The program is administered by Employment and Social Development Canada in conjunction with Citizenship and Immigration Canada and provides work visas of up to 8 months to participants willing to work in specific commodity sectors related to primary agriculture, largely manual labour in the fruit, vegetable and horticultural (FVH) industries.

All of the core elements that are recognized as the *sine qua non* of low-skilled migrant labour in Canada – the use of fixed visa periods, the assignment of workers to specific employers as part of their conditions of stay, and the return of workers to their countries of origin following the completion or termination of their work contracts – are evident in the SAWP’s essential structure and have since been expressed in subsequent schemes. Additional tendencies that have characterized the program, such as the presence of a racialized workforce and the heightened persistence of workplace vulnerability, which arise from the core components outlined above, are likewise observable in Canada’s other low-skilled migrant programs. Workers in the SAWP are at a structural disadvantage due to their exemption from certain legislated employment standards relating to hours of work, overtime pay, and public holidays (Hennebry & McLaughlin 2012) and difficulties accessing the health care system (Thomas 2016). Although they technically have access to appeal mechanisms, these can be difficult to pursue due to the limited time migrant workers spend in Canada.

Other features of the SAWP, however, have been discarded in recent decades. The SAWP’s use of government agents – liaison officers and consular officials who are engaged with program administration and dispute resolution on behalf of sender state governments – lacks analogs in the remainder of the TFWP. Nevertheless, the Canadian

government has expressed satisfaction with the continued use of the SAWP model; even other external actors such as the IOM have expressed the opinion that the program represents an example of “best practices” (Hennebry 2008; Preibisch 2010).

Due to this importance, an analysis of the historical development of the SAWP is therefore useful for outlining the underlying social forces that have shaped Canada’s TFWP in a more general sense: that is, the departure of indigenous labour from “dirty, dangerous, and demeaning” jobs (see Massey et al, 1993), which are typified by agricultural work as a result of a lack of collective bargaining for many workers, the physically demanding nature of the work itself, and the “live-in” requirement which places workers under terms of living conditions stipulated by their employers; an increasing reliance on flexible accumulation in agricultural production, the presence of state authorities amenable to the demands of employers, and the presence of employers themselves within the administrative framework of the program.

As Canada’s first major post-war TFW program, the SAWP was the culmination of a decades-long series of interactions between the federal government and Ontario’s farm growers. The central issue raised by growers involved worker shortages in the agricultural sector which were in evidence as far back as the 1940s. Specifically, the question was whether the shortages were absolute in nature or simply relative (to other sectors of the economy); a relative shortage would indicate that the general Canadian labour pool contained enough available workers provided the conditions of employment were acceptable (Satzewich 1991). Growers maintained that this was not the case and that exceptional circumstances were required to alleviate pressures on the sector. Not only did this pressure emerge from labour inputs, but from growers’ positions within the

agribusiness sector. The concentration of farm input and technology firms has been a feature of postwar agriculture that has continued to define the farm business in Canada (Preibisch 2007: 427).

The political pressure to import labour from the Caribbean came primary from two sources (Satchewich 1991): the first was growers who were organized through a succession of lobbyist groups, the most notable being the South-Western Ontario Field Crops Association (SWOFCA), which received funding from large-scale food processors such as Heinz. The second involved the governments of Barbados and Jamaica, who frequently petitioned the Canadian government for access to the Canadian labour market and maintained that Canada's immigration system was broadly discriminatory.

The federal government was not insensitive to the concerns of growers, and numerous attempts had been made to channel marginal labour onto farms. Student workers, convicts, prisoners of war, the urban unemployed, and later on flows of Polish veterans had all been directed to farms with varying degrees of state compulsion, generally with minimal or short-lived success. Because retention in the agricultural sector is typically guaranteed through sustained political and legal compulsion (Basok 2002), it is understandable that these strategies were unable to provide a long-term solution that growers found acceptable. As a result, and prior to any official initiative, growers turned to other international migrants, many of whom lacked legal status (Wong 1988).

Despite the failure of the strategies outlined above, both of the federal departments with relevant jurisdiction over the issue – the Department of Labour and the Immigration Branch – resisted calls among growers to locate a solution in the importation

of Caribbean labour. This resistance often reflected a concern for the racial composition of Canada, as expressed in a position paper by the Immigration Branch which discussed the rationale for refusing to open immigration offices in the Caribbean:

“It should also be mentioned here that one of the policy factors was a concern over the long range wisdom of substantial increase in negro immigration to Canada. The racial problems of Britain and the United States undoubtedly influenced this concern which of course still exists today (Satzewich 1991).”

These “ideas of nation” (Sharma 2006) which are so central to the “systems of exclusion” which normalize differentiation between groups (McLaughlin 2010) sometimes amounted to nothing more than stereotypical assessments of particular ethnic or cultural categories, as evidenced by this Director of the Immigration Branch evaluation: “West Indian mores are quite different from ours. Illegitimacy is pretty well accepted as a fact of life. It is not uncommon for a single girl to have children by 2, 3, or 4 different men (Satzewich 1991).”

The federal government’s reversal on the use of Caribbean labour reflected a gradual accrual of complications and challenges to its position. Initially, the Department of Labour’s unwillingness to accept the importation of foreign labour was linked to its role in managing industrial relations disputes, as well as its mandates over employment insurance (Satzewich 1991). Mahon (1979) describes how different regulatory agencies are imbued with a “special character” that leads them to represent specific interests, but only in a way that combines with the long-term interests of the hegemonic faction – in this case, the Department of Labour’s objective of mitigating dysfunction in Fordist labour relations.

Hence, it necessitated a reorganization of the Department of Labour to end its ongoing opposition to Caribbean labour recruitment; the branch of the department

concerned with industrial relations was separated from the branch overseeing manpower, thus bringing about a consensus with the Citizenship branch which had already aligned itself to the position of growers. Additional motivation was provided by the prospect of the upcoming Canada-West Indies Conference and thus a memorandum of understanding was signed with the government of Jamaica, with the terms of the work contracts initially negotiated by both the federal and provincial governments, in the form of the Ontario Federal-Provincial Agricultural Manpower Committee, and representatives of Ontario growers (Satzewich 1991).

The next phase of the development of the SAWP was the expansion of the program to include Mexico and the nations of the OECS, which ushered in a new dimension to the program, variously described as “racialized labour replacement” (Preibisch & Binford 2007) or “country surfing”, which entails the “threat and practice of labour substitution to discipline both workers and migrant-sending governments (Preibisch 2011, 73).” Although Canada was facing an economic downturn at the time, it undertook the decision to sign an additional MOU with Mexico. Satzewich (2007) ties this to a legitimacy crisis faced by the federal government, prompted by abject working conditions faced by Mexican Mennonite and Portuguese workers. Here, the Department of Manpower and Immigration faced the problem of farmers ignoring their program in favour of illegal migration streams. Additionally, the ability to allow employers to “country-surf” is cited as an additional motivating factor, as demonstrated by a memo from the Acting Director of the Manpower and Employment Services Branch, who argued that the presence (or threat) of Mexican workers could provide leverage to the Department in future negotiations:

“The signing of the Mexican arrangement not only gives us an alternative source of supply of agricultural workers but it also acts as a balancing force to the Caribbean supply. The latter is especially important, for we have noted in the last two years, at least, a “take-it- or leave-it” attitude with the Caribbean liaison officers almost in direct proportion to the increased use of the Caribbean program. But taken together the present Caribbean and Mexican arrangements assure us of a virtually unlimited supply of workers (ibid 2007: 272-3).”

Following the inclusion of Mexico and the OECS, the SAWP remained largely static in terms of its size and administration until 1987, with the removal of the quota system and the formal integration of Ontario growers into the administrative apparatus of the program. Growers in Canada have long been both organized and politically mobilized. SWOFCA, formed in 1954 and financed by food processing firms, had previously lobbied the Ontario government, unsuccessfully, during the 1950s. However, up until this point, they remained distinct from the actual management of the program, operating only in advocative or consultative roles.

This situation changed with the creation of the Ontario-based organization FARMS (and later its Quebec counterpart *La Fondation en recrutement de main-d'oeuvre étrangère* or FERME). which represents growers in matters pertaining to the administration of the SAWP, and is funded solely through user fees from participating employers (Verma 2003: 22). FARMS describes itself as a “non-profit, federally incorporated in 1987 to facilitate and coordinate the processing of requests for foreign seasonal agricultural workers. Authorized by Human Resources Skills Development Canada (FARMS 2017).” Their official mandate within the program is to process requests for temporary foreign workers for submission to ESDC, which employers necessarily had to do when the federal government withdrew from this responsibility (André 1990: 261). In addition to processing requests, FARMS also arranges for travel

for workers and maintains a database of departures and arrivals (Verma 2003: 35). As a means of guiding farmers through the program and helping them avoid running afoul of ESDC, FARMS also provides informational services through notifications regarding wage rates, proof of advertising, and Canada Revenue Agency requirements (FARMS 2017). Lastly, FARMS operates a media centre which advocates for the benefits of the program for both migrants and employers.

FARMS is also linked to other “mesostructures” of the migration industry that facilitate the program as a whole (Hennebry 2008). The most prominent is CanAg Travel Services¹², which like FARMS is officially recognized and provides authorized travel agent services for the program. These roles, and FARMS itself, originated as a result of two critical decisions that overhauled the program’s operation. Prior to 1987, the SAWP relied on a quota system which kept admissions at an average of 4117 per year from 1968 to 1986 (ibid 11). This was a contentious policy for growers, who insisted that the program should reflect a demand-driven model of labour recruitment. That year, the federal government concurred for the first time and removed the quota system, a move which tripled the intake of workers within two years and allowed for a long-term expansion of program (Verma 2003: 67). Prior to that, there was a 20% limitation on the use of foreign workers by an individual farm (André 1990: 260). In conjunction with this decision, the federal government also decided that part of the program’s administrative burden be shifted to growers if they were now to benefit from the lifting of the quota. In addition to shifting burdens outward to growers, the Mulroney government also withdrew

¹² CanAg was created in 1992 as a result of a FARMS resolution to provide “uniformity of airfares, commissions and payment schedules, negotiations with the airlines and ground companies (Verma 2003: 43)

its financial support of liaison officers as part of an attempt to reduce annual deficits (ibid 263), thereby shifting a further burden outward to sender state governments.

Although FARMS was intended to play a functional rather than political role in the administration of the program, organizations can undergo “mission creep” as a result of both internal dynamics and powerful environmental forces (Babb & Buirra 2004). In this instance, the expansion of its scope resulted from MOU provisions which allow for the presence of employer groups at annual bilateral negotiations, combined with a willingness on the part of the Canadian government to utilize these provisions by inviting FARMS to sit in on annual review meetings (Verma 2003: 11). It is reported that FARMS has leveraged this into position to attempt to influence policy:

“FARMS was described as very vocal and playing a dominant role in these meetings as it related to wages and working conditions, whereas HRDC representatives played a minimal role. The Government Agents perceived FARMS as having undue influence over the direction of the program ... The impression is that the Canadian government is losing control of the program to FARMS (ibid 60).”

The privileged position that FARMS inhabits within the framework of the TFWP is explored in greater detail in the next chapter with an examination of the case study of the Agricultural Stream and the ESDC stakeholder process. What is fundamental to note here is that the federal government produced an entity with the institutional capacity to not only engage in administrative functions related to the oversight of TFW programs, but also to garner experience in the negotiation of contract terms with sender states. The federal government’s decision to offload functions relating to migration control in the 1980s built the foundation for further waves of offloading. In this respect, we see a clear illustration of Menz’s observation that the development of migration industries is often produced in collaboration with state actors as a means of achieving migration regulation

objectives (in this case, minimizing the costs associated with migrant recruitment by pushing burdens outward to employers and to sender states). It should also be noted that although FARMS does in fact bear some of the SAWP's administrative costs, this is offset by the lifting of the SAWP's quotas, which has allowed migrant workers to be used more prevalently on farms.

What this earliest phase also demonstrates is the importance of the connection between organized employer interests and the federal government. This connection took the form of communication both with sympathetic Members of Parliament and with federal departments.

4.3 Mainstreaming Canada's Sectoral TFW Programs through the NIEAP

As evidenced by the SAWP, the first phase of Canada's TFWP was highly sector-specific. In addition to building a legal framework for the presence of guestworkers in agriculture, the government also informally provided for visas designed to recruit caregivers abroad, a scheme that would later solidify into the Foreign Domestic Movement in 1982 and later the Live-In Caregiver Program in 1992. Like the SAWP, this recruitment scheme was limited, tentative, and marked by a high degree of executive discretion. Nevertheless, Canada's experiences with these smaller programs allowed the federal government to utilize the basic framework of these rotational systems to implement Canada's first generalized temporary foreign worker program – Non-Immigrant Employment Authorization Program (NIEAP). The NIEAP became operational in 1973 and was “initially designed for specific groups such as highly skilled academics, business executives, and engineers, to provide an efficient channel for

professionals coming to Canada to work (Nakache 2010: 47).” However, despite the stated emphasis on professional class migration, there is evidence that the elements of “unfree contract labour” which marked the SAWP and the Caribbean Domestic Scheme were also immediately present in the NIEAP, suggesting that it also operated as a mechanism for low-wage work (Sharma 2001). This is inferred through analysis of the NIEAP’s top occupational groupings – services (at 17.2% of the volume), farming (13.3%), and fabrication and assembly (11.14%) – which typically. Although it is unclear to what degree individual-level trends can be inferred from these occupational groupings, they nonetheless made up 42% of jobs filled in 1973, and rose further to 52% in 1983 (Sharma 2001: 423, citing CIC (1995)).

The presence of low-skilled workers in an otherwise professional-class migration program is not surprising, given the conflicting trends of the 1960s and 1970s which undergirded the creation of the NIEAP. On the one hand, the post-war phase of Canadian immigration policy was guided by a strategy of rationalization and official de-racialization which led to the introduction of a points system which privileged skills and education over national origin (see Kelley and Trebilcock 1998), and a focus on family reunion policies which resulted in an unusually large proportion of non-economic immigrants. This produced a dilemma wherein a focus on “desirable” immigrants created difficulties for delivering low-skilled workers to the Canadian labour market. In this regard, the NIEAP can be seen as a means of extending the Canadian state’s ability to carry out restrictive or exclusive immigration policies in the face of an outwardly “non-discriminatory” immigration system (Sharma 2006). Sharma states this succinctly when she notes that the NIEAP “results not in the physical exclusion of those constructed

as ‘foreigners’ but in their ideological and material differentiation from Canadians, once such people are living and working in Canadian society (Sharma, 2001: 415).”

4.4 Globalizing and expanding the TFWP: the Low Skill Pilot Project

The NIEAP, which had always contained elements of both high- and low-skilled labour, became the TFWP in 2002 and underwent an important development – the creation of the Low Skill Pilot Project (LSPP), which provided a new stream for which employers could hire low-skilled workers. The LSPP allows employers to apply for applications for occupations in NOC C&D categories – which typically require a high school diploma or on-the-job training. Employers pay airfare, ensure suitable accommodation, and register employees in workplace insurance plans. Spouses and children are permitted to accompany applicants, but they are not eligible for work permits themselves.

The creation of the LSPP contrasted with the creation of the skilled worker stream, which allowed for the entry of various professional class migrants and formed the other half of the program. The skilled worker stream mirrors the original stated intent of the NIEAP noted above – as a resource for employers to obtain highly-skilled workers that were immediately unavailable to Canadian employers, whereas the LSPP operates according to the government as “a labour-market-driven risk-management strategy aimed at filling [a labor market] void by permitting the hiring of low-skilled workers from overseas (CIC 2015).”

The creation of the LSPP has been linked to pressure from resource extraction industries as well construction industries in urban centres such as Toronto and Vancouver (Fudge and MacPhail 2009), yet its use became popular among food service and

agribusiness as well. Its terms are much broader than that of the SAWP: not only can migrant workers be sourced from any country, as it does not have its basis in bilateral agreements, but any economic sector featuring low-skilled work may avail itself to its use, a fact that provided the agricultural industry with an additional avenue for securing farm labour. Its work terms are also more generous than that of the SAWP: LSPP visas began as twelve-month terms until their extension to 24 months in 2007. Previously, it was a requirement that workers remain out of the country for four months, although this since been rescinded (CIC 2015).

The LSPP proved to be a very broad and flexible framework for recruitment. Migrants from countries such as El Salvador, Thailand, and the Philippines also began participating in agricultural work through the LSPP, although Guatemalan workers comprised the largest segment. This was due to the fact that within a year of the LSPP's implementation, the Fondation des Entreprises en Recrutement de Main-d'oeuvre agricole Étrangère (FERME), the growers' association that has overseen administration of the SAWP in the province of Quebec, cooperated with the government of Guatemala in order to establish an initiative to bring Guatemalan workers to Canada under the LSPP. In turn, Guatemala looked for logistical help to the International Organization for Migration (IOM), which has facilitated other such temporary labour schemes around the world as part of its development initiatives (Hennebry 2011: 8). The negotiations between FERME, the IOM, and the government of Guatemala resulted in the creation of the Temporary Agricultural Workers to Canada Program (TAWC), in 2003. Unlike the bilateral nature of the SAWP, which relied on Memoranda of Understanding between Canada and sender states to establish and manage the program, the TAWC represents an

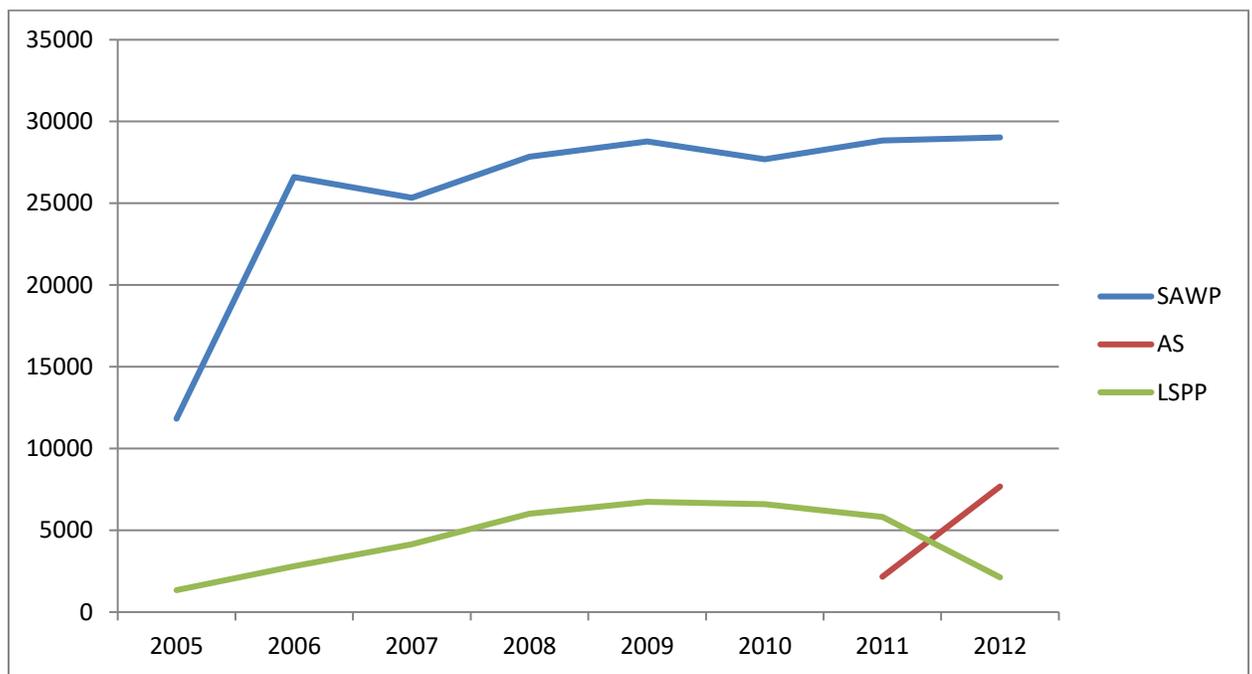
undertaking between a number of employer groups, an intergovernmental organization, and a sender state, and provides no official liaison role for government agents. The TAWC used as its basis the “best-practice” model of the SAWP, and entailed a comprehensive setup that included the implementation of recruitment centres, advertising campaigns, and even a medical service plan for Guatemalan farmworkers in Canada, but as Chapter 5 explores, the institutional basis of the TAWC presents challenges to this so-called “best-practice” moniker.

In January 2011, in response to the growing popularity of the TAWC, HRSDC introduced the Agricultural Stream of the LSPP. The Stream represents a combination of various aspects of the SAWP and LSPP, possessing similarities and differences to each (ESDC 2013). The purpose of the Stream was to draw the TAWC closer to the regulatory framework established by the SAWP, while still retaining some of the features of the LSPP that attracted employers (such as the global sourcing of workers) (Preibisch 2011).

A summary comparison of the TFWP’s three agricultural components is displayed in Table 1 below. In its first two years of operation, the Agricultural Stream has reversed the sharp growth of agricultural migration under the LSPP. The number of agricultural migrant workers entering Canada under the LSPP dropped precipitously from its high of 6740 in 2009 to 2125 in 2012 (ESDC 2013). The overwhelming cause of this drop originates in Quebec. This reflects the fact that the LSPP was disproportionately popular among Quebec growers (accounting for 63% of the LSPP’s use among Canadian growers), but also reflects the fact that many growers in Quebec using the SAWP have switched to the Stream as well. The Stream now represents the dominant source of

migrant farm workers in Quebec, contrary to the preferred use of the SAWP in Ontario, Alberta, and British Columbia.

Table 1: Number of TFW positions on positive LMOs under the Agricultural Occupations



Source: http://www.esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/annual-agriculture.shtml

4.5 Institutional framework of the TFWP

The institutional framework of the TFWP operates at a number of levels. First, it exists bureaucratically in the form of the Temporary Foreign Worker Program itself, a small

“horizontal initiative” that operates under ESDC and in partnership with CIC and the CBSA (Treasury Board 2016). Second, it operates under the broader mandates of the Immigration Refugee and Protection Act (2002) and its Regulations, which provide the legal framework under which the program operates. In addition to this federal legislation, relevant provincial statutes which oversee employment, health, and safety are also an important component of the governance of TFWs. This also includes quasi-judicial bodies that are connected to such legislation. The third level covers the constitutional provisions of the Canadian Charter of Rights and Freedoms, as well as provincial-level charters. The Charter has been shown to apply not only to Canadian citizens but also to non-citizens present in Canada. In addition, because it applies not only to statute but also government action under statute, the MOUs of the SAWP fall under its purview (Verma 2003: 15). Again, this constitutional level importantly includes quasi-judicial bodies that are connected to these documents, an important feature that the following chapter explores in further detail. Lastly, the TFWP is also operated in part by a collection of non-state actors, the aforementioned FARMS and FERME, who are officially recognized by ESDC.

At a ministerial level, the TFWP is run jointly by ESDC, CIC, and the CBSA. ESDC administers employment authorizations, while CIC deals directly with workers on “immigration matters pertaining to medical examinations, fees, and, if necessary, temporary residents’ visas (Fudge and MacPhail 2009: 10).” Thus, while ESDC deals with specific labour market positions, CIC deals with specific workers. The CBSA handles matters related to the admission of workers at national entry-points. Of the three, ESDC is the crucial component and forms the direct link between the TFWP

and the labour market, making decisions on when demand for TFWs are genuine in the form of its labour market impact assessments (LMIAs), which are evaluations produced by ESDC which determine whether an employer is eligible to hire a temporary foreign worker – in short, whether the demand for the worker is genuine. A positive assessment or confirmation letter signifies both that the foreign worker is needed and that no Canadian worker can do the job (CIC 2012c).

. The LMIAs are evaluated through a list of interrelated factors which are directly set out in the text of the IRPA Regulations, the four most important of which are:

- 1) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
- 2) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- 3) whether the employment of the foreign national is likely to fill a labour shortage;
- 4) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards; (s. 203(2) of IRPA Regulations)

Despite the fact that the LMIA is the core mechanism that ties the program to its stated objectives, historically it was the case that many positions were exempt from this requirement, often falling into categories of:

- 1) international or Canada-provincial trade agreements;

- 2) those workers defined as fulfilling “Canadian interests” such as specific highly-skilled occupations, entrepreneurs, and intra-company transfers;
- 3) refugee claimants receiving temporary work permits;
- 4) applicants in Canada, most often related to the live-in caregiver class and the spouse or common-law partner class.

Since the 1980s, this sizeable portion has made up an increasingly percentage of temporary foreign worker flows. Agricultural workers with the SAWP had previously been a part of this group, prior to regulation reforms in 1984 which ended the practice and required that growers obtain opinions (1986 Boyd et al).

A positive LMIA is dependent on, among other things, evidence that the employer has attempted to recruit Canadian workers for the positions. This duty to advertise is hence the primary mechanism by which LMIA's are used to ensure a “Canadians first” employment strategy (Verma 2003: 18). As part of their responsibilities for obtaining workers through the SAWP, employers are required to conduct recruitment efforts, with a particular emphasis on contacting groups that face barriers to employment (ESDC 2016). The advertising component of this recruitment obligation is for the most part flexible and non-standardized in its specifics – jobs are advertised on a variety of mediums, such as newspapers or job posting sites. However, minimum requirements maintain that employers advertise on the national Job Bank for at least 14 days during the three-month period prior to the LMIA application. Here again, local and ethnic newspapers are suggested as a means of targeting underemployed social groups (ESDC 2016), which ESDC stresses as a means of maintaining an emphasis on employing Canadians first.

The LMIA and recruitment processes have been subject to a variety of criticisms, however. There is no mechanism in place to ensure honesty on LMIA applications (Nakache & Kinoshita 2010: 48). They have been noted as having high processing times in comparison to their high approval rate for applications (Canadian Bar Association 2006: 8). In addition, ESDC has a “great deal of discretion to determine the rigor of the advertising requirements (Fudge and MacPhail 10-11).” The fact that many positions lacked a requirement for an LMIA anyway led the federal government to reorganize the program in 2014. All LMIA-exempt applications are now filed under the newly created International Mobility Program (IMP), while the TFWP is solely tasked with those that require labour market evaluations. ESDC, under the leadership of then-minister Jason Kenney, felt that this would bring the TFWP closer to its stated mandate (ESDC 2014).

A number of other reforms were brought about in 2013 to bring the TFWP closer into line with its objectives. This included an elimination of the provision that allowed employers to pay TFWs 15% less than other employees, the need for employers to submit a transition plan, and the temporary suspension of expedited LMOs.

4.6 The policy rationalities of the TFWP

These streams and programs which comprise the TFWP are operated federally through a partnership between Citizenship and Immigration Canada (CIC) and Employment and Social Development Canada (ESDC). The purpose of the TFWP is to “[allow] Canadian employers to hire foreign nationals to fill temporary labour and skill shortages when qualified Canadian citizens or permanent residents are not available (CIC 2012c).” Its strategic importance as labour market policy has been emphasized by the Government of

Canada in prior budget plans which describe the program as the “principal tool to help employers meet immediate skill requirements when qualified Canadian workers cannot be found (Fudge and MacPhail 2009; 5).” During their period of employment in Canada, workers are tied to the employer for the duration of their stay. Termination of employment leads to a termination of the work permit.

Although the TFWP is generally united by two themes – the “economic necessity” of temporary foreign worker recruitment for employers on the one hand and a “Canadians first” (Verma 2003) labour market policy on the other – the actual structure of the program is very heterogeneous in nature and reflects a wider set of objectives that relate to the temporary admission of persons. Until 2014, the TFWP covered not only foreign workers who required positive labour market opinions (LMOs – the precursor to LMIA) and work permits, but also those who did not require either or both of these documents. Several categories of admission are not subject to work permit requirements, such as business visitors and foreign officials (Fudge and MacPhail 2009). Additionally, a wide set of categories which required a work permit were exempted from the requirement for an LMIA. Non-LMIA agreements, such as NAFTA, the FTA, and GATS, made up 35,197 admissions in 2013. Spouses of skilled workers and students were another substantial component, amounting to 26,436 work permits in that same year.

Further, while the TFWP is often associated with low-skilled and low-waged labour, its high-skilled category, the Stream for High-wage Positions, comprises a substantial portion of admissions. This component of the TFWP, however, has declined

in proportion over the past decade, dropping from 44.1% of TFWP work permit holders in 2004 to 37.9% in 2013 (CIC 2013).

While the high- and low-skilled components of the TFWP share some similarities, workers in each are subject to very different requirements which has served to create a major bifurcation of the program with respect to rights and protections. Most importantly, skilled workers are eligible for permanent residency through Express Entry through either the Federal Skilled Worker Program (FSWP) or the Canadian Experience Class (CEC). This pathway to citizenship and the role it plays in “two-step” citizenship is explored in the latter half of this chapter. Secondly, the spouses of skilled workers are eligible for open work permits (CIC 2016). Although low-skilled workers are not officially barred from bringing spouses or children to Canada during the duration of their work terms, it is required that they demonstrate an ability to cover the associated expenses – a “significant financial barrier” for those with low wages (Fudge and MacPhail 22-3).

Alongside the Stream for High-wage Positions and the Stream for Low-wage Positions (formerly the LSPP) are a number of smaller, sector-specific programs – the aforementioned SAWP and the Agricultural Stream, both of which cover all low-skilled agricultural positions in sectors listed on the National Commodity List, and the Live-in Caregiver Program (LCP), which covers in-home caregivers. Though the LCP emerged during the same era as the SAWP and for much the same reasons, the LCP contains a path to permanent residency after two years of work, a feature lacking in both the SAWP and the Agricultural Stream.

It is difficult to overemphasize the importance of the LSPP in transforming how migration occurs in Canada. In numerical terms – relating both to the number of migrants and the number of source countries – the LSPP was impactful, yet its most significant impact came in the form of delinking low-wage migrant labour from the state-to-state agreement structure that had characterized agricultural migration for decades. In dispensing with this form of interstate coordination, recruitment was allowed to greatly expand while being subject to fewer impediments, such as the liaison system employed by the SAWP. Oversight was shifted elsewhere (or nowhere), as the LSPP was simply a skeleton visa system that was not designed to encompass or address the myriad social dimensions arising from transnational migration. Contract negotiations occurred through employees and employers and whatever third-party intermediaries they happened to utilize. The LSPP was hence the most important development toward the neoliberal model of migration control, and one which demonstrated some of the hallmarks of privatization outlined in the second chapter – most centrally, a conscious approach on the part of government actors to offload migration control as a means of strategically pursuing policy objectives relating to the “economic necessities” of industry.

4.7 Accessing Rights: Temporary Status and “Two-Step” Immigration

As Canada’s TFWP comes under heightened scrutiny, a number of debates have emerged within media, government, and academia. These have included the impact of migrant workers on the Canadian labour market as well as the existence of abuses associated with the precarious nature of this form of employment and legal status. In addition, it has also spurred debate regarding the growing participation of employers with respect to both

temporary migration and permanent settlement. This particular discussion has focused on an important dimension – the absorption of “gatekeeper” functions by Canadian employers. Gatekeeping refers to practices that impact the size, composition, and geography of migration (Pratt 2012) and when pushed outward to non-state actors represents a privatization of migration control wherein the state delegates the authority to select immigrants. In the Canadian context, this now refers to the role of non-state actors in determining the selection of candidates for permanent residency via the Federal Skilled Worker Program and other various avenues that are linked with Canada’s TFWP. Taken as a whole, they have come to encompass what is termed as “two-step” immigration, in which workers obtain temporary status before transitioning to permanent residency.

Naomi Alboim writes:

Increasingly, federal economic immigration policies give preference to people who come to Canada on a temporary basis before they can apply for permanent residence. While two-step immigration previously existed on a limited basis (e.g., through the Live-In-Caregiver Program), it is now much more common due to the growth of provincial nominees and the establishment of the Canadian Experience Class, coupled with increased efforts to recruit temporary foreign workers (2009, 6).

The Ontario Ministry of Citizenship and Immigration lays out a straightforward definition of the term, as well as its understanding of the logic underpinning it:

In the past, economic immigrants often received permanent residency status before arriving in Canada. Now, economic immigrants usually receive temporary visas, through temporary foreign worker programs or international student visas. These temporary visas are the first step of the two-step immigration process. [...] [I]mmigrants who have proven their labour market success on a temporary visa are then invited to apply for permanent residency (Citizenship and Immigration Ontario, 2017).

The Ministry’s stress on the perceived ability of this approach to “prove” the worth of the migrant as a potential citizen highlights an important factor in its adoption. Audrey

Macklin (Ho & Natt 2012) outlines another rationale behind this strategy, noting that the federal government is “delegating the implementation of many settlement and integration functions to civil society for reasons of efficiency and effectiveness.” Here, the impact of the neoliberal model of migration control is evident, both in the preference for markets over state policy and in the downloading of costs from the state to other actors.

Although two-step immigration departs from the traditional understanding of temporariness through its use of a transitory form of exclusion, it retains the duality that has constituted Canada’s immigration and temporary migrant programs – the hierarchical categorization of migrants into the “wanted” and the “unwanted”. To this extent, the model as implemented has overwhelmingly privileged migrants designated as “skilled” while ignoring the majority of migrants working in occupations within the lower-skilled tiers of the National Occupations Classification (NOC). This has left agricultural migrants at a distinct disadvantage compared with other migrants, as the lack of an avenue for permanent residency ensures that the unfreedom which arises due to their temporary status is an enduring fixture of their experience in Canada. SAWP workers are excluded from any form of two-step immigration, while low-skilled workers in general face exceptional and limited routes to permanent residency, receiving eligibility only through Provincial Nominee Programs (PNPs), most notably the one maintained by Manitoba, which has its roots as a “targeted labour migration scheme in lower-skilled sectors (Baxter 2010: 19).” Over the period of 2005 to 2009, 79.1% of all provincial nominees were classified under managerial or post-secondary skill levels, while the remaining 20.9% fall under secondary school or occupational training skill levels (CIC 2012c).

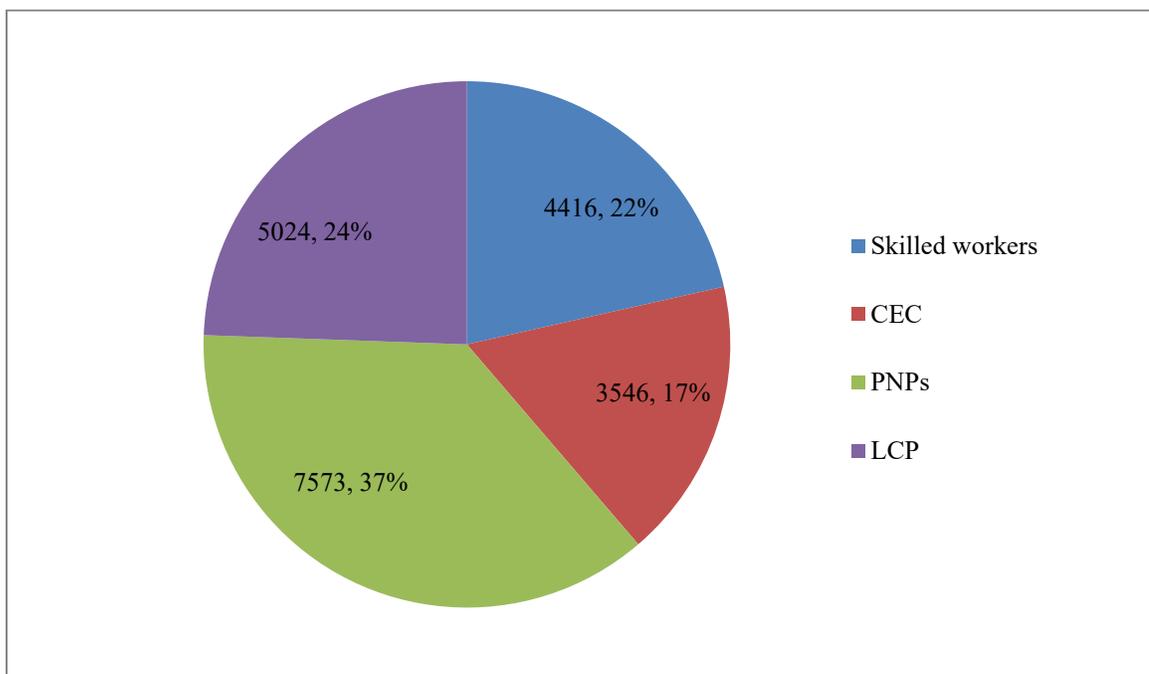
This section critically evaluates the competing discourses that surround gatekeeping and two-step immigration, examining the emergence of this debate at governmental and political levels and contrasting the assumptions made about the strategic value of permanent residency as a solution for the problem of temporalization. The former includes key Parliamentary and ministerial sources, including the 2009 Temporary Foreign Workers and Non-Status Workers Report of the Standing Committee on Citizenship and Immigration and the partisan responses to its findings, as well as the 2013 Evaluation of the Labour Market Opinion Streams of the Temporary Foreign Worker Program. It concludes that 1) there is a growing if wary support for two-step immigration among policymakers; and 2) the discourse surrounding two-step immigration reflect three distinct positions: one which sees a stratified two-step immigration process as valuable to Canada's strategic and economic interests, one which sees the extension of two-step immigration to low-skilled workers as a solution to the precariousness of temporary foreign labour, and a third more critical approach that warns of the exploitative dangers of the two-step strategy.

4.8 The rationality of the “audition model”

Canada's permanent settlement and temporary migration systems traditionally operated under distinct sets of objectives. Whereas permanent residence incorporates a pathway to citizenship and has operated as a key component of “nation-building” in Canada (Li 2003), the stated purpose of the TFWP is to fill temporary labour shortages. Although this conceptual distinction continues to inform Canada's migration policies, its connections to the reality of Canada's TFWP is growing ever more tenuous. Although

permanent residency remains out of reach for many temporary foreign workers, we have witnessed a proliferation of mechanism designed to transition workers from temporary to permanent status. The Live-in Caregiver Program (LCP), the Federal Skilled Worker Program (FSWP), Canadian Experience Class (CEC), and certain provincial nominee programs (PNPs) all contain pathways to citizenship, although they differ in their requirements.

Table 2: Transition from foreign workers to permanent resident status by category, 2012



Source: <http://www.cic.gc.ca/English/resources/statistics/facts2012/temporary/33.asp>

Two-step immigration remains a highly stratified process. In the case of the CEC, this approach to citizenship applies only to employment designated as high-skilled under the NOC, thus precluding most agricultural work. Lower skilled workers may be eligible in any of the ten provincial and one territorial PNPs, but as with the LCP, which originated

two-step immigration in Canada, these options do come attached with a number of practical barriers that can prove onerous to migrant workers. PNPs emerged from Section 87 of the IRPR, which created a provincial class of economic immigrants, and which vary in size and eligibility criteria depending (Standing Committee 2009). These programs were designed to address unique local and sectoral needs in lieu of the FSWP.

In addition to this stratification, two-step immigration is also a highly-devolved process through which the federal government has downloaded the selection of potential immigrants to employers, postsecondary institutions, and provinces (Alboim 2009: 50). This presents problems as these particular institutions do not necessarily select individuals based on criteria relating to their long-term success in Canada.

Despite these issues, permanent residency has become an important topic of debate concerning the TFWP. The connections between legal status and the ability to access rights has been stressed repeatedly in studies of migrant labour (see Basok 2002; Sharma 2006). The lack of avenues for citizenship contains a number of implications especially for low-skilled migrants, as they generally face a number of vulnerabilities while in Canada as a result of difficulties accessing protections and rights. While this is certainly a product of their non-citizen status, it is also due to a *specific* form of non-citizen status that sees the worker's legal presence in Canada dependent upon continued attachment to a specific employer. Prior commentary has noted that these vulnerabilities cannot be seen simply as a side effect of these programs, but as a structural feature and a source of their profitability to employers (Preibisch 2010; Preibisch & Binford; Basok 2002). For those seeking reforms of the TFWP, this suggests a difficulty in disentangling

the core elements of these programs from their reliance on elements of temporariness and worker vulnerability.

In pressing two-step immigration as a strategy for potential immigrants, the federal government has created a parallel to the privatized migration control of the LSPP, one which ties temporary and permanent migration together as a unit. As with the LSPP, the hallmarks of privatized migration control noted by Menz and Guiraudon and Lahav are here: rather than representing a loss of power by the state, the rise of gatekeepers has resulted from a conscious government strategy to align a decentralized network to employers and educational institutions with the objectives of Canada's immigration system and labour market. Again, paralleled with the LSPP, the costs are increasingly born by migrants themselves, who now face a greater period of non-permanent status before being able to access pathways to citizenship. As with temporary migration, temporariness is not a tangential aspect of neoliberal migration control, but one of its key elements.

4.9 Migration in Transition: Employers and the TFWP

The underlying idea animating two-step immigration is that civil society actors such as employers and educational institutions are in a unique position to evaluate those prospective workers and students who are best-suited to transition to citizenship. This ties back to the logic of neoliberal migration control which emphasizes decentralization and offloading as a tool for producing "efficient" labour market outcomes. In announcing the CEC in 2011, then Citizenship, Immigration and Multiculturalism Minister Jason Kenney spelled out its rationale: "The CEC and the PhD initiative

represent what we hope is the future of immigration to Canada: bright young people who have a Canadian education or work experience that will be recognized by Canadian employers, and who have strong English or French language skills. Such newcomers are set for success (CIC 2011b).” This “audition model” approach represents a departure from previous iterations of immigrant selection. First, at an institutional level, it is more decentralized, incorporating workplaces and post-secondary educational institutions as the new loci of decision-making. Second, it represents a logic that places emphasis and immediacy on employment arrangements as an indicator of long-term success, rather than a human capital model which stresses long-term integration indicators. This strategy stands in contrast with the points-based system that was first introduced in 1967 and which incorporates a combination of linguistic skills, education, work experience, and longer-term “adaptability” traits which focus on familial ties to Canada.

Two-step immigration has proven popular, with rates rising sharply across all programs over a ten-year period (CIC 2013). Simultaneously, it has attracted a number of criticisms from academia and government. The Maytree Foundation suggests a number of potential pitfalls with this method, particularly the danger that Canada will become less attractive to prospective immigrants, who may shun the idea of a transition period without full rights and protections (Alboim 2009). In addition, it warns that two-step immigration could provoke higher rates of irregular migration and negatively affect employment conditions by producing a more distorted employer-employee relationship, one in which power resides increasingly with the former.

The rise of two-step immigration also attracted the attention of the House of Commons Standing Committee on Citizenship and Immigration, which in 2009 released

a report on temporary and non-status foreign workers with a focus on transition issues.

The report identifies a number of concerns with two-step immigration, noting that workers may accept poor working conditions in order to meet the employment requirements of permanent residency. Witness testimony highlighted this problem in the case of LCP caregivers:

“... many of them are forced to work overtime without pay or are forced to work without pay at all. Since enforcing their rights could potentially mean getting fired and being unable to complete the two-year employment requirement for permanent residence, caregivers are almost always willing to tolerate abuse from the employer (Abigail Martinez, cited in Standing Committee on Citizenship and Immigration 2009).”

The House Committee also noted that requirements for permanent residency can be onerous for a variety of other reasons:

“Witnesses also suggested that live-in caregivers sometimes failed to complete the period of employment due to circumstances beyond their control, such as illness, relocation with the employer overseas, pregnancy, or the death of an employer. When a live-in caregiver loses her job, witnesses attested to waiting periods of several months for a new work permit to be authorized, further affecting the worker’s prospects of completing sufficient months of employment to apply for permanent residency (Standing Committee on Citizenship and Immigration 2009).”

Contrary to criticisms which call for a reduction in two-step immigration, the report ultimately concluded that, problems aside, the approach is still a preferable alternative to a lack of transition. Resultantly, it calls for a broadening of the scope of the CEC in order to provide all temporary foreign workers with pathways to citizenship. A number of reforms are suggested which would make the process of transition more manageable for migrants, such as timeline extensions for employment requirements. Overall, the LCP is highlighted as a best-practices model for these reforms.

Party opinions are divided on these conclusions, with the Conservative Party members rejecting the general thrust of the report, feeling that it would “undermine the nature of the temporary foreign worker program [and] create roles for the government which we do not believe that it would fulfill effectively (Standing Committee 2009: 75)”. The New Democratic Party took an opposite stand, more in line with previous critiques, feeling that the TFWP should not compete with permanent immigration via two-step immigration and that efforts should be made to curtail its use.

ESDC, in its evaluation of the TFWP in 2012, makes conclusions similar to that of the House Committee, albeit along different rationale. They note benefits associated with the two-step process in terms of long-term integration, noting that “there is evidence that the experience gained as a TFW improved the economic outcomes of those who transitioned to permanent resident status, during the first 6 years after landing (ESDC 2012).” In addition, they acknowledge that the distinct objectives of economic immigration and temporary migration have bled together. In essence, employers are hiring temporary workers for otherwise permanent positions due to shorter processing times and lack of other options. To this end, ESDC recommends that reforms to the TFWP come from the economic immigration side – by improving efficiency and application processing times for permanent residency.

Three possible responses to two-step immigration can thus be discerned. The first identifies two-step immigration as a means of ensuring adaptability to the Canadian labour market. The second identifies a path to citizenship as a solution for mitigating problems associated with the temporalization of migrant labour. The third sees two-step immigration as fundamentally problematic, placing too much power in the hands of

employers and competing with economic immigration programs, as well as engendering heightened levels of exploitation by linking transition options to continued employment, fuelling the “performances of subordination” (McLaughlin 2010) that are required of workers in these situations. This approach calls for permanent status on arrival; as one representative of the Caregivers Action Centre put it, “Any two-step process or path to permanent residency is really a path to exploitation. It’s a minefield: we need permanent status on arrival (Thompson 2016).”

The first perspective has been dominant, a reflection of the Conservative government’s immigration strategies during the period of 2006 to 2015. This position finds expression within ESDC, which concurs with the linkage between employment and long-term adaptability. As a result, future prospects for pathways to citizenship for low-skilled migrants presently appear limited outside of those afforded by PNPs.

4.10 Conclusion

This chapter explored the historical development of the TFWP and the social forces which brought about its genesis and expansion. It highlights that Canada’s engagement with the use of temporary foreign workers is long-standing and has analogues extending back to the 19th century, but that the recent era of the program has been marked by a shift to a neoliberal governance model which has emphasized a hierarchical immigration system that privileges high-skilled workers while limiting the political and social rights of low-skilled workers, emphasizes the decentralization and offloading of decision-making and administrative functions on the grounds of competitive efficiency.

This shift in the parameters of power to employers and other non-state actors raises critical questions about what such a system means for migrants themselves and for the future of the TFWP. As various functions related to the selection and recruitment of migrant workers become offloaded to employers, their impact grows in terms of shaping the contours of permanent settlement as well in taking a hand in the development of recruitment schemes. The “gatekeeping” function partially describes this new reality, but it must be recognized that transition options are disproportionately geared toward high-skilled migrant workers, a result of Canada’s highly stratified immigration and TFW systems which utilize temporality as part of different strategies.

For low-skilled migrants, pathways to citizenship remain limited, and the currently dominant discourse in government argues that the provision of permanent residency to low-skilled workers would bleed together two disparate programs. In addition, the importance placed on employers in this new immigration model skews power disproportionately to the employers themselves within workplace regimes, as pathways to citizenship become tied to employment stipulations.

The following chapters take this trend and focus in on two particular case studies – the creation of the Canada-Guatemala Temporary Agricultural Worker to Canada program and its replacement with the Agricultural Stream. The implications of an employer-driven neoliberal governance model will become clearer, highlighting that many of the concerns raised regarding oversight and accountability have manifested themselves in the workings of this program. One key departure occurs with the subsequent analysis, however. Although these two programs follow the general trajectory outlined in this chapter of the TFWP generating vulnerable forms of labour, the

upcoming case studies demonstrate a different example of the Canadian state's engagement with privatization, one which sees a renewed emphasis on centralization as opposed to the offloading of administrative control. Crucially, this represents a tactical shift as opposed to an underlying shift in the objectives of the TFWP.

5 Chapter: The IOM in Guatemala – the Temporary Agricultural Worker to Canada Program, 2003-2011

The previous chapter applied a theoretical framework which characterized recent reforms to the Temporary Foreign Worker Program as elements of neoliberal restructuring. The features of this restructuring were found to include a focus on elements of “desirability” versus “undesirability” in migrant workers, the pursuit of economic and bureaucratic efficiencies, and the deployment of “temporariness” as a means of creating a flexible labour pool centred around low-wage work in precarious occupations. Linked to many of these developments has been the way in which the Canadian state has interacted with other non-state actors in the context of migration governance, at times working in cooperation with such actors, at times downloading functions and responsibilities, and at other times directly creating such actors (as in the case of employer groups FARMS and FERME) as part of an exercise in delegated power. Though different aspects of this trend are informed by different logics, taken as a whole they imply a sea change in the “who” of migration governance, echoing Guiraudon and Lahav’s (2000)’s observations about lateral and horizontal shifts in migration control – the “upward”, “downward” and “outward” movements from central state authorities to external sites of power.

This chapter builds on the broader history of Canada’s TFWP outlined in the previous chapter by examining the subsequent and most recent phase of the agricultural component of the program, in which the federal government’s role in the negotiation of bilateral migration streams has been supplanted by one in which private firms and

intergovernmental organizations have increasingly occupied the technocratic and managerial spaces required for the recruitment of large-scale labour migrations.

The case study under investigation here is the Temporary Agricultural Worker to Canada (TAWC) Program, a joint initiative between the Guatemalan Government, the IOM, and the Quebec grower's association, FERME, which was designed to enable Guatemalan nationals to work in the Quebec agricultural industry using visas procured through the LSPP. The program began operating in 2003 as a small pilot project before rapidly ballooning in size and eventually expanding to provinces outside Quebec.

This chapter develops several arguments related to the IOM's involvement with the TAWC as well as its involvement in the privatization of migration control in Canada more generally. The basis for this discussion is a narrative recently established by academics and activists which frames the IOM as a "for-hire" non-profit organization whose financial and organizational structures complicate its abilities to address the interests of migrants while at the same time maintaining its greatly expanded architecture. In this narrative, the IOM's activities operate as elements of neoliberal migration governance and act as expressions and extensions of state control, transnationalized through the IOM's use of service-delivery on migration-related projects.

This is reflected in the complex role that the IOM has played in Canada's privatization of migration control. It has been involved both directly, through partnerships with federal departments relating to integration and assisted voluntary return (AVR) programs, and indirectly through initiatives with countries which are sourced by Canadian employers for temporary foreign workers. For Guatemalan migrants working in Canada on a temporary basis under the TAWC, this model of devolved migration

control has had an important impact on their worklives when compared with those entering Canada through other streams of the TFWP. This is due to two features of the TAWC which differentiate it from the SAWP: first, the TAWC was created through a bilateral MOU between two non-state actors (FERME and the IOM) as opposed to two governments; secondly, the TAWC relies extensively on privately-sourced technical expertise, initially provided by the IOM and later from a collection of independent contractors originating out of IOM personnel.

This chapter arrives at two conclusions. First, the reluctance of ESDC to negotiate a bilateral agreement with Guatemala combined with resource limitations within the Guatemalan labour ministry necessitated the use of the IOM to provide the technical that would otherwise have been provided by these two department. As there is “currently no other single organization or agency that has the same breadth of knowledge in global migration and delivery network as the IOM (CIC 2015),” it becomes impossible to explain the TAWC’s genesis independent of this specific intergovernmental organization. Second and more importantly, while the IOM can be said to have “substituted” for both ESDC and the Guatemalan Ministry of Labour and Social Welfare in manners related to program-design and oversight, this in no way suggests that technical expertise operates as a fungible good regarding the protection of workers’ rights. The ability of the IOM to operate with the same mandates towards workers as government ministries is complicated by its inherent features, most notably its reliance on “projectization” as a funding strategy and its decentralized organizational structure, which devolves significant powers and responsibilities to field locations and project leaders. This raises concerns surrounding the creation of new policy dynamics following

from the principal-agent dilemma (Menz 2011) and “deficient accountability” (Lahav 2014).

This chapter continues in three parts. The first part explores the IOM’s history as a temporary refugee settlement body designed to support the objectives of an anti-Communist political bloc. It is in the mid-stages of its lifespan, following the conclusion of post-war resettlement, that the IOM began to adopt survival strategies that led to a rapid expansion of its size and scope, which intersected with the later interests of its Western member states following the collapse of the Eastern Bloc. The second part explores the current structure of the IOM, including its political, administrative and funding arrangements. Its core features emerge as very distinctive from that of other international organizations with migration-related mandates. The IOM’s relationship with Canada is outlined here as well. Evidence shows that the IOM’s activities in Canada express the highly stratified, “desirable vs. undesirable” nature of the Canadian immigration system, and in addition are increasingly geared towards addressing growth-related issues such as temporary foreign workers and labour force integration. The final section explores the IOM’s mission in Guatemala, which involved both the creation and administration of the TAWC, until internal and external factors prompted a restructuring of the IOM’s Guatemalan office’s priorities. This has led to a complex reality on the ground which has three observable dimensions: the substitution of the IOM by independent contractors such as Amigo Laboral, attempts by the Guatemalan state to exert control over the situation (with limited success), and the transnationalization of union activities along the Canada-Mexico-Guatemala corridor. This phenomenon, known as the “new labour transnationalism” (Evans 2014) or the “new labour

internationalism” (Lambert 2014) reflects a countertrend to neoliberal trade, but is still in an incipient form in this case study.

This chapter utilizes a number of resources, including public materials published by the IOM, reports on the IOM generated by CIC and non-profits organizations, interviews with United Food and Commercial Workers Union (UFCW) labour representatives in Ontario and in its regional headquarters in Mexico City, correspondence with IOM Guatemala, and secondary data by researchers examining private labour recruitment in Guatemala. Although the opaque nature of the IOM combined with the private status of independent contractors has proven challenging for researchers, the IOM’s pride in its service delivery, even when the outcomes are questionable, provides us with occasional glimpses into its internal rhetoric and practices.

5.1 Understanding the IOM: current research agendas

The IOM is one of the largest intergovernmental bodies concerned with migration, comparable with the United Nations High Commissioner for Refugees (UNHCR) in terms of membership, staffing, and expenditures. The IOM brands its mission statement as pursuing “humane and orderly migration for the benefit of all” and operates as a forum for international cooperation on migration issues, a logistics agency for migration-related problems, and a provider of humanitarian assistance to those such as refugees and the internally displaced.

Prior to the last decade, the IOM had not been subject to a strong research agenda by academics. Earlier work focused on the internal restructuring of its constitution (Perruchoud 1989), the scope of its constitutional mandates (Perruchoud 1992), and its

role in exporting European models of migration control around the world (Düvell 2003). Others noted its complicated relationship with the UN system – the IOM is technically distinct from the UN but is also funded and utilized by UN agencies in emergency situations and possesses observer status in the General Assembly (Stoett 1996). The recentness of the IOM’s spectacular growth and its comparative lack of transparency are likely factors behind the relatively late engagement among academics interested in the organization’s activities.

Nevertheless, researchers focusing on migration and international governance have begun to close this knowledge gap and in recent years have developed a number of compelling theoretical and empirical agendas with which to address the nature of the IOM and its practices. They have variously stressed the IOM as an element of the reterritorialization of borders across transnational spaces (Andrijasevic & Walters 2010), as part of the reconfiguration of state sovereignty through the extension of state activities beyond their traditional boundaries (Ashutosh & Mountz 2011), as a participant in the diffusion of migration management discourses (Geiger and Pécoud 2010: 8) and as a novel form of neoliberal governance in which “federal governments contractually employ the IOM to carry out a range of migration-related services that governments find themselves unable or unwilling to carry out for legal and political purposes (Ashutosh & Mountz 2011: 22).” These all capture important facets of the IOM’s relationship with the state system, although they frame the dynamics in different ways, with international political economists stressing the IOM’s material dependence on voluntary contributor states and the creation of “humanitarian market places” (Georgi 2010) and governmentality theorists emphasizing the IOM as an extension or renewal of the nation-

state project which works to enforce exclusions through its governance practices and language of international human rights. While they differ in some key implications, both frameworks similarly stress that the IOM, through its practices and policies, currently reproduces the hegemonic system of interests in which it participates.

5.2 The IOM: Successive Rebirths from 1951-Onwards

The IOM was founded in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) through a resolution at the Migration Conference in Brussels. PICMME was an operational organization designed to relocate European displaced persons in the aftermath of the Second World War; however, it understood displacement as being part of a broader economic problem of “surplus” population – those in Europe who were “in excess of the number the European economies could support (Elie 2010).” PICMME emerged during the same period as the UNHCR, an organization with a similar focus but with a mandate to promote basic human rights as framed by the 1951 Geneva Convention (UNHCR 1950). This partial duplication of competencies regarding the international management of refugee crises has its origin in the conservative congressional majority that existed in the US at the time, a political bloc which viewed the UNHCR and the International Labour Organization (ILO) as potential vehicles for communist influence (Georgi 2010: 50). The IOM’s constitutional stipulation limiting membership to “other states with a demonstrated interest in the principle of the free movement of people (IOM 2017a: 8)” excluded the Eastern Bloc and other states with restrictive emigration policies.

PICCME's constitution was completed in 1953 and the organization was rebranded as the Intergovernmental Committee for European Migration (ICEM). By the 1960s, ICEM's existence was threatened by the culmination of relief efforts in Europe, in particular the end of the stream of refugees triggered by the Hungarian uprising of 1956, which brought into focus the fact that the organization had always been intended as a temporary response (Georgi 2010: 51). To counter these trends, it repositioned itself by expanding into new geographical areas.

The IOM's expansions came in waves: the first as a result of political upheavals from 1968 into the 1970s, which resulted in the IOM expanding its presence into Asia and Latin America. The second, dubbed its "opportunistic phase" (Dupeyron 2014: 3) occurred following the political and economic transformations brought about by the end of the Cold War, where the IOM factored into "an attempt on behalf of states to keep under control and harness the international movements with which millions of people, families and communities reacted to the accumulation strategies of intensified capitalist globalization and 'accumulation by dispossession' (Georgi 2010: 62)." This was bolstered by global economic restructuring and the dissolution of the Eastern Bloc.

These external factors have played a critical role in shaping the trajectory of the IOM, but the ability of the IOM to harness geopolitical trends speaks to its flexibility as an organization and the importance of internal structural factors in creating a body that is capable of identifying and responding to new opportunities.

5.3 The Structure of the IOM

The IOM is structured along several dimensions – its spatial and geographic orientation, its administrative and political makeup, and its funding model. These design features have been critical in shaping the IOM’s prerogatives, discourses and practices. All show indications of a decentralized organizational strategy, a fact that the IOM itself touts as being central to its success (IOM 2017c).

Geographically speaking the IOM is headquartered in Geneva, but it maintains major administrative centres in Panama and the Philippines. The locations of these latter centres have been selected in order to manage growth by transferring a portion of the organization’s functions to low-cost areas of the world (ibid). In this respect, the “offshoring” logic employed by transnational corporations is mimicked here and demonstrates that such logic is not limited to conventional market actors. In addition to these three central hubs, the IOM also has offices in over 150 countries, which include over 480 field locations.¹³ These field offices form a crucial component of its service delivery and this is where the IOM’s staff is most heavily concentrated. What results is a dispersed and highly decentralized structure, which the IOM attributes to the need to “acquire the capacity to deliver an ever-increasing number and diversity of projects (IOM 2016b).” Its operational staff has undergone significant growth over the past two decades, increasing from approximately 1100 in 1998 to 8400 in 2016 (ibid).

Whereas the IOM’s geographic structure emphasizes localism and proximity to those communities and societies where service delivery is rendered, the reverse is

¹³ These do not necessarily refer to the presence of physical offices, but rather to the presence of IOM personnel.

demonstrated by its political structure, which by contrast reflects the importance of its intergovernmental nature and emphasizes its obligations to a closed set of member states. At its head is the Council, which provides each of its member states with one representative and one vote. This is the highest authority within the organization and determines the IOM's policies and priorities. Efforts to reduce redundancy led to the elimination of its Executive Council in 2013, leaving the Council as the sole political body. The IOM's administrative organs, which are headed by the Director General, act in accordance with the IOM's constitution and the decisions of the Council. The position of Director General has been almost exclusively occupied by US officials from the diplomatic service of the US State Department (Georgi 2010: 48).

The disparity between the geographic and political dimensions of the IOM is explained by a financial structure that is heavily based around the concept of "projectization". Funding for project implementation is obtained from "voluntary contributions" which are attached to specific projects through activity-based costing (IOM 2015). This strategy has led to a revenue structure in which 97% of the IOM's funds originate from the voluntary contributions obtained through its projects (IOM 2017c). Non-project administrative costs are borne by the membership, who fund the remainder of the IOM's budget. This part of the budget is overwhelmingly financed by the IOM's wealthier member states (Georgi 2010: 49). As with its staff, its expenditures have similarly growth over the past two decades, from \$242.2 million US in 1998 to \$1.3 billion in 2013.

These two core features of the IOM – the subordination of its activities to the decisions of its membership and its reliance on a decentralized projectization model –

have profoundly shaped the organization and how it operates. Its independence from the UN system have led to charges that it lacks a “protection mandate” for migrants (Amnesty International 2003) and as such is “structurally responsible only to its member states’ governments and is acting in their interests (Georgi 2010: 47).” Others have adjusted this critique by pointing not only the effects of the IOM’s obligations to its memberships, but also to its obligations towards its clientele. In this respect, Dupeyron (2016: 7) argues that “the IOM undoubtedly serves states that implement workfare and prisonfare policies by using similar policy repertoires” and that as a result “the gap that exists between IOM’s actions and rhetoric can be found in IOM’s funding sources that tend to impose a migration control agenda (13).”

The IOM has been sensitive to these claims and to the critical turn that certain civil society actors have taken towards the organization. It has issued challenges to these criticisms, stating:

“Although IOM has no legal protection mandate, the fact remains that its activities contribute to protecting human rights, having the effect, or consequence, of protecting persons involved in migration (IOM 2009).”

However, its practices have complicated its attempts to parry these concerns. Its involvement in Australia’s “Pacific Solution” entailed the operation of detainment camps on the island nation of Nauru, which stoked accusations that it was facilitating breaches of the Refugee Convention and have led some activists to view it as compromised and untrustworthy (No Border 2002).

5.4 Canada's engagement with the IOM

Canada's engagement with the IOM is a reflection not only of the nature of the IOM's dependence on a global service marketplace, but also of trends within the Canadian immigration system that emphasize the labour market needs of employers and the downloading of service-delivery from government agencies to outside actors as a means of reconfiguring its migration governance.

Initially supportive of the IOM, Canada withdrew its membership in the organization in 1962, citing its belief that the organization's mandate to address the World War II refugee crisis had been fulfilled (CIC 2011a). Despite its lack of membership, Canada remained a major recipient of the IOM's services, which contributed to settling nearly half a million people in Canada between 1952 and 1989. Acknowledging this fact, Canada took on observer status in 1972 and expanded its involvement with the IOM until Canada became its second largest client, leading to a full renewal of its membership in 1991.

Canada remains a full member of the IOM, participating in its governing bodies (the Council and the Standing Committee on Programs and Finance) and contributing around \$2 million CAN annually in membership fees, with a head office in Ottawa to liaise with the Director General and a now-defunct secondary office in Toronto that handled local operations. CIC is principally responsible for managing Canada's relations with the IOM, which the department sees as important for pursuing its own strategic interests, as well as for pursuing IOM policies "which align with Canadian and partner country strategic interests (CIC 2015)". As with many countries, Canada has a dual

relationship with the IOM, both through its role as a Member State with voting rights and through its use of the IOM as a delivery agent for many of its migration-related programs. However, this latter component easily dominates the Canada-IOM relationship. A range of federal departments have relied on the IOM's services, including the Department of Foreign Affairs, Trade, and Development, ESDC, and the CBSA, and Canada is the 6th largest contributor of project fees overall (ibid). As part of its engagement with the IOM, CIC makes efforts to represent the interests of other federal departments. In addition to articulating a sort of "general interest" on behalf of the Canadian government, it has also made efforts to incorporate the involvement of non-government actors that it has identified as stakeholders relevant to the IOM's activities. The latest phase of the CIC's strategy is to improve its management of this wide matrix of interests. As a result, it is presently seeking to establish high-level bilateral meetings with the IOM to better coordinate activities between the IOM, Canada, and Canadian stakeholders (ibid).

The IOM's role in Canada reflects the Poulantzian patterns of inclusion versus exclusion and desirability versus undesirability that create the stratification apparent in Canada's migration regimes. In other words, the IOM does not operate as outwardly extended barrier, but as a permeable membrane that aids in classifying and sorting which migrants are able to enter or stay in Canada and in what capacity. This is evident in the wide diversity of the IOM's Canadian projects, some of which are designed to facilitate the mobility of migrants in Canada and some of which are designed to restrict or expel. On one side, the IOM assists with Canadian Orientation Abroad, a recent program designed to provide "pre-departure information and orientation to Refugees, Immigrants and Caregivers to help them adapt to life in Canada (IOM 2016)." The program is

designed with an eye to improving the integration of migrants into the Canadian labour market and is notably aimed not only at traditional refugee categories but is also now increasingly targeting temporary foreign workers who are transitioning from a temporary to permanent status. This reflects the dimension of Canadian immigration policy that uses “openness” driven by competitive pressures to achieve its broader economic goals – those mechanisms directed at Canada’s competitive repositioning in a global labour market.

On the other side of the coin, from 2012 to 2015 the IOM managed the Assisted Voluntary Return and Reintegration (AVRR) pilot program in conjunction with the CBSA. The AVRR, which operated in the Greater Toronto Area, was intended to identify “low-risk failed refugee claimants” and remove them from Canada in a faster timeframe through counselling and reintegration assistance, a strategy which was centred around providing monetary incentives (CIC 2012a). Operating as part of the Conservative government’s strategy for reducing resource burdens on federal agencies by shifting CBSA resources to high-risk removals, this aspect of the Canada-IOM engagement marks the “closed”, control-focused elements of Canadian immigration policy. The AVRR’s incentive structure was geared not only to removing those refugees whose appeals had failed, but also those who had not yet received a review of their case. This latter group was offered even greater compensation, but throws doubt on the program’s claims of targeting “failed refugee claimants” (Fitzpatrick 2012).

The AVRR proved a failure for technical reasons, leading to the accidental release of nearly \$250 million CAN to ineligible participants (Levitz 2015). However, it nevertheless demonstrated the contradictory nature of the IOM’s activities in a single-

country context, evidence that supports the theoretical assessments that the IOM's commitments to humanitarian rhetoric are often schizophrenic.

5.5 IOM in Guatemala: The Temporary Agricultural Worker to Canada Program

Canada's reliance on the IOM now also operates indirectly through the IOM's efforts in countries that have partnered with Canadian firms for the purpose of labour migration. Evidence explored in further detail in the following chapter suggests that ESDC is comfortable with this aspect of the Canada-IOM relationship, having indicated its desire to coordinate further with the IOM even on an initiative Canada took no initial role in.

In recent years, the IOM has increasingly entered into the management of temporary foreign worker programs, with an emphasis on low-skilled migration from Central and South America. In 2006, for instance, it organized low-skilled labour migration from Colombia to Spain with the support of the European Commission (Sana 2012: 46). Known as the Temporary and Circular Labour Migration program, it was designed to supply workers for Spanish farms and was the result of bilateral agreements between the governments of the two countries. Additionally, the IOM has undertaken responsibilities for the recruitment and departure of workers in El Salvador and Honduras, although this has been of a comparatively limited scope (ibid).

The case of the Temporary Agriculture Worker to Canada Program (Programa de Trabajo Agrícolas Temporal en Canadá or PTAT-C in Spanish) is distinguishable from the Colombian program and from Canada's SAWP by the fact that its initial MOU signatories were two non-states, FERME and the IOM, rather than a sender and receiver state. The curious bilateral nature of the TAWC and the substantial administrative role

played by non-state actors resulted in a program with a distinctive managerial style, one which is characterized by weakened oversight and a proliferation of private contractor activity – the TAWC provided no official government liaison through which workers are able to lodge complaints against employers or the program. This result of this is an intensified form of the unfreedom evident in other agricultural migrant streams, due to the fact that the TAWC “offload[s] protection of migrants’ social welfare, granting the IOM and FERME with regulatory authority (Valarezo 2015: 661).” In effect, the program represents a neoliberalized form of recruitment which legitimates non-state actors and which pushes out costs into the private sector and especially onto migrants themselves. The migrant experience is exacerbated by the fact that it is difficult for Guatemalan workers, the majority of whom are Spanish-speaking, to cope with contract violations in the absence in Canada of official representation from their Ministry of Labour.

It is unsurprising that Guatemala emerged as a candidate for a privatized agricultural migration program. As with other countries engaged in migrant agricultural worker schemes, Guatemala is characterized by high levels of economic and political inequality and a general failure of the developmental project (Hughes 2014). It is also still agrarian to a substantial degree, with its agricultural sector making up 13% of its GDP. In addition, it has a history of labour migration that predates the TAWC, with many Guatemalans seeking employment in Mexico, often in dangerous conditions. This early transmigration originated in the civil war between the government and guerillas in the 1960s (Valarezo 2007: 35). Echoing the narrative told by political economists studying the SAWP, scholars note that the penetration of modern production into

Guatemalan agriculture further displaced its rural population (Smith 2006), which forms part of the cycle through which the internationalization of production creates new patterns of migration (Sassen 1988). As part of this exporting of labour, remittances are a substantial source of wealth for the Guatemala, amounting to 10 per cent of the GDP in 2013 (Dupeyron 2016: 19). The motivations of Guatemalan workers in the program is primarily economic, as they can earn multiple times more in Canada than they can in Guatemala's agricultural sector. A lack of employment opportunities as well as the seasonality of Guatemala's own agriculture are additional factors that provide the impetus to migrate (Sana 2012: 63).

The TAWC's roots stretch back to 2000, when the Guatemalan Embassy in Ottawa contacted the Guatemalan Ministerio del Trabajo y Previsión Social (MTPS) and the IOM to discuss the creation of a bilateral agreement to send Guatemalan workers to Quebec farms, although whether it acted independently or at the request of Quebec growers remains unclear (Dupeyron 2016: 16). Negotiations were stymied by Canada's insistence that 1) international trade law precluded bilateral agreements of that nature and 2) Canada's protections for workers did not necessitate any special agreements with Guatemala (Hughes 2014: 20). Canada's adherence to this position is explained further in the following chapter, but stems from a result of ESDC's fears of opening up Canadian migration policy to potential trade disputes.

Two years later, the creation of the LSPP provided a suitable entry-point for the Guatemalan government to pursue a migration program independent of a bilateral agreement with Canada. The TAWC was originally guided by two documents which covered, respectively, the negotiated terms of employment and the administration of the

program. The first, an “MOU between FERME and the IOM in the Guatemalan Office of the IOM, for the implementation of the project of migrant workers to Canada” was signed on July 10, 2003 (Dupeyron 2016: 18). An addition MOU for “technical cooperation” was signed by MTPS and the IOM.

The IOM’s administrative roles were large and comprehensive, involving recruitment and pre-selection, the obtainment of health and criminal background checks, the filing of applications for work permits and visas with CIC, and the signing of employment contracts (Hughes 2014: 22). One of the most crucial roles, however, was the ability to finance the program by covering the first airfare tickets in 2003, which were then later reimbursed by FERME, a reflection of the insufficient resources possessed by MTPS (Dupeyron 2016: 17-18).

Table 1: Guatemalan temporary agricultural workers in Québec from 2003 to 2010

Year	Guatemalan workers
2003	215
2004	324
2005	668
2006	1208
2007	2015
2008	2934
2009	N/A
2010	4200

Source: Valarezo 2015: 665

However, numerous problems arose in the program. Valarezo and Hughes (2012) note that “former IOM officials have been accused of mistreating workers that come into the IOM office with grievances, subjecting them to verbal abuse and humiliation, discrimination based on ethnicity and class, and harassment for bribes (101).” Guatemalan workers are not served by officially recognized government agents while in Canada as are other SAWP sender states. They note that migrant workers “claimed that calls to consular officials all but fell on deaf ears, or that conversations between employers and those officials did not result in improving workers’ situations or rescuing workers from situations in which their employment was at risk (ibid: 102).”

Valarezo (2015) writes that “lack of support and assistance leaves migrants with minimal knowledge regarding access to certain rights” and that “economic dependency on the TAWC project has forced migrants into silence, fearful of denouncing mistreatment and violation of their rights (668).” Migrants themselves link these problems to the governance model of the TAWC, noting the distant nature of the Guatemalan consulate, with reports of labour law and contract violations being a common occurrence for participants of the program (Hughes 2014: 23). Although migrant work in Canada is sufficient to provide a living for workers, they stress their dependency on the program.

5.6 Transition to independent contractors

The dismissal of the IOM from its administrative role led to a transformation of the Canada-Guatemala migration corridor that it had been so integral in creating. The situation has been variously described as “chaotic” and “disorderly” (Gabriel and

Macdonald 2016) and although it remains to be seen how the situation solidifies, three tendencies are now apparent: the proliferation of independent recruitment agencies with varying degrees of legality, the transnationalization of labour representation as a strategy for reterritorializing the boundaries of their activities, and limited movement on the part of the Guatemalan state to stabilize the system and provide a framework for the protection of workers' rights, with little success thus far.

Initially, the government of Guatemala intended that the IOM's management of the TAWC should be a temporary phase of the program (Hughes 2014: 20). This never materialized and the IOM's departure from the program resulted in a regulatory vacuum. The IOM's involvement began to unravel beginning in 2006, when the Guatemalan Auditor General announced a criminal investigation against the IOM over issues of fraud and corruption relating to its management of funds for the Program of Urban and Rural Community Support (PACUR) (Gabriel and Macdonald 2016: 10-11). Commentators noted that the IOM's involvement in PACUR was unusual given the program's lack of connection to migration, but pointed out that the IOM was a logical choice given its ability to skirt procurement laws:

“It's no secret that the IOM has been chosen to manage public resources by evading control, and therefore it is not surprising that the agreement it made with the authorities may have some personal compensation to IOM officials, because if its function is to hide mismanagement, obviously the first people that can create and benefit from it are the international civil servants who handle the resources of the Guatemalan state with wide sleeves (Marroquin 2006, translated by author).”

The IOM Director in Guatemala, Günther Müssig, left his position, with his successor displaying little interest in maintaining the program. When FERME dismissed the IOM, Müssig offered to handle the administrative tasks through a private contracting firm,

Amigo Laboral, that he soon developed. Describing his motivations and the sequence of events, Müssig stated:

“Ferme decided they no longer wanted to work with IOM, also due to the fact that my successor had not contacted them in 8 months. They just said “no more”. Instead of letting the project die, I was in charge of it. They said they were not going to receive Guatemalans anymore through IOM. I was asked to send 2000 Hondurans and they said they would bring the other 2000 from Mexico, and that was it. I thought that was not fair, almost 4000 Guatemalans would be out of work, I also thought about the people those workers support. Besides, I did not work on a project since 2003 to let it die like that (Gabriel and Macdonald 2016: 11), citing interview with Günther Müssig, 2014.”

5.7 The TAWC and the transnationalization of labour

The situation on the ground in Guatemala coincides with ongoing trends in the labour movement, the new labour internationalism (NLI). NLI typically stresses “radical interventions in a search for an alternative to neoliberal capitalism,” interventions that “[exploit] the points of vulnerability in neoliberalism [...] the high degree of integration of the global economy through free trade and just-in-time production (Lambert 2014).” Although this is often understood of in terms of global alliance-building, it can also be seen in the reterritorialization of individual workers’ movements.

Elements of transnationalization are evident in the case of the UFCW, which now operates a regional office in Mexico City designed to manage its representation of workers when they are outside of Canada. This office, which mainly covers the Mexican component of the SAWP, also operates as the UFCW’s Guatemala branch, although this is constrained by resource limitations (interview, Galvez 2015). The strategic purpose of this development is threefold. First, they have reported that abuses suffered by workers have become “transnational” in scope – instances involving growers travelling to

Guatemala to threaten workers were reported by the UFCW (interview, Raper 2015). In this respect, UFCW feels that externalizing its activities beyond the geographical spaces of work sites and beyond Canada's federal and provincial legal jurisdictions is a necessary evolution of its mandate.

Secondly, the UFCW recognizes the Guatemalan state as an important and necessary actor in the promotion and protection of workers' rights (interview, Galvez 2015), even if Canada remains "inactive" in its relationship with Guatemala over the program (Gabriel and Macdonald 2016: 14-15). This has led to discussions between the UFCW, the Guatemalan Ministry of Labour and the recently created Guatemalan Migrants Commission, COMIGUA (UFCW 2014). COMIGUA began operating in 2007, designed to coordinate the migration-related activities of multiple state agencies, although its efforts have been variously described as non-functional or limited (Gabriel and Macdonald 2016: 14). UFCW reports that the Ministry of Labour is very receptive to its ideas regarding information and training for workers, but that this is once again limited by a lack of resource allocation on the part of the Guatemalan state (interview, Galvez, 2015).

Thirdly, UFCW's extension represents part of an ongoing strategy to engage more deeply with other civil society actors. This networking strategy has led to a regional integration of Canadian, Mexican, and Guatemalan activists in the form of such initiatives as the Global Workers Defenders Network Forum, held in Tapachula, Mexico in 2011 and hosted by the Global Workers Justice Alliance in conjunction with the UFCW (UFCW 2011b).

The efforts of organized labour have been modest, however. They have been typified by attempts to expand outreach capacity, and much of the work done involves the use of training and informational sessions. In short, representatives see the work of the Latin American regional branch as a logical extension of their current activities, rather than a shift in gears. Thus far, little headway has been made to challenge the core structure of the Agricultural Stream, but rather to enable workers to better manoeuvre within the confines of the program. Lambert (2014) identifies such strategies as part of a “political culture of human agency”, which is central to movement politics but must be necessarily paired with visions of structural change. Evans (2014) suggests that the economies of the Global South should be seen in their own rights as “arenas of socio-political contestation in which national labor struggles are intertwined with transnational strategies (266).”

As a response to the trend of privatized migration control and the increasing transnational reach of employer groups, the developments of labour transnationalism are interesting. In one respect, we see a mirroring of the strategies of employers in the activities of civil society. The implications of this for workers is important, as it presents the opportunity to provide migrants with a cross-border “reach” that is often denied to them. It is worth recalling Tomic and Trumper on the subject of the immobilization of migrants:

They must be capable of the hypermobility required for participation in a globalized labour force but must accept being immobilized by the terms of bilateral agreements that grant employers the power to use a postmodern form of indentured labour to run their farms, orchards, and nurseries in Canada. (Tomic and Trumper 2010: 94)

In this respect, the transnationalization of labour activism allows workers, albeit in a limited manner, to sidestep some of this “immobilization” through the advocacy of labour movements like the UFCW. In doing so, it operates as an element of the migration industry that acts as a counterweight to a neoliberalized form of migration control, contrary to other elements of the migration industry surrounding agricultural migration to Canada such as FARMS, FERME, and the IOM, which tend to entrench aspects of this model.

5.8 Conclusion

The emphasis of this chapter is that the IOM is not an “equivalent” purveyor of technical knowledge and expertise, one that substitutes for the resources and of its clients and operates with the objectives and motivations of the state departments it supplants. Much has been written about the privatization of migration management that links it to the strategic activities of states, who opt to use non-state service providers to elude authorities which constrain their power (Guiraudon & Lahav 2000) or to extend the reach of state control mechanisms to the transnational level (Andrijasevic & Walters 2010). This is difficult to overlay onto the TAWC, as it reflected first and foremost the Guatemalan state’s lack of institutional capacity. For the Guatemalan Ministry of Labour, pursuing third party services was necessity rather than instrumentality, as its other options were limited and the political will to challenge this situation was not in evidence. This is not to say to say that the TAWC failed to achieve objectives identified by the Guatemalan state, for instance accessing remittances and exporting population surplus in a context of underdevelopment and unemployment. Rather, the point is that

the IOM's "client" in the case of the TAWC is better thought of as the growers represented by FERME, as they are the ones who generate demand for the program; they are also the ones capable of terminating the program at any point (as they threatened to do) as part of a "country-surfing" strategy that emphasizes flexible labour. In this respect, the TAWC operated more closely as an element of Canada's policy choices regarding the decentralization of its migration system, even despite Canada's non-involvement in the creation of the TAWC. As Valarezo writes,

the neoliberalized regulation of the migration program does not signify a divestment of the state, but rather, a reconfiguring of power relations to rationalize the Guatemalan and Canadian governments' tactic of privatizing the TAWC project (2015: 663)."

In the case of the TAWC, the IOM's ability to craft a program that would contribute to Guatemalan rural development was compromised by a number of factors. First, its use of projectization required it to structure the TAWC in such a way that it could generate revenue streams in a variety of ways. This, in conjunction with Guatemala's ongoing problems with corruption, led to accusations of graft and illegal practices which treated workers as additional sources of revenue. Secondly, its internal ideology which treats migration problems as "a technical problem, a challenge – not as a political topic associated with power struggles (Georgi 2010: 63-64)" blinded it to the vulnerability through which low-skilled migration operates. Here we see the contradictions inherent in the migration management discourse which were alluded to at the beginning of this study, which divide the rhetoric of migrant-protection from the practice of privately-constituted migrant worker schemes.

Lastly, it appears that the "migration industry" is a more competitive market than initially suspected. The IOM's status as "the migration agency" has not insulated it from

challenges to its supremacy in the field of migration-related service delivery. It may now be fair to say that Canada's temporary foreign worker system is served by a "marketplace" for the management and recruitment of foreign labour, even at the macro-scale of program delivery. While the actors shift, the basic framework of an offloaded migration management system has remained present thus far, although a number of forces are now pushing at the contours of the program: Canada's attempts to mitigate the legal fallout of the TAWC as demonstrated in the subsequent chapter, Guatemala's muted attempts to generate to establish a better framework for the rights of workers, and the transnationalization of organized labour across the Canada-Mexico-Guatemala migration corridor.

6 Chapter: The creation of the agricultural stream, 2009-2011

The trend toward privatized migration control described in the preceding chapters – a trend that has included the creation and expansion of growers’ organizations who partake in the administration of the TFWP, the implementation of a “private” recruitment scheme through the work of the IOM, and the emergence of “two-step immigration” and non-state gatekeeping actors – suggests that a new policy paradigm characterizes the management of the TFWP. This chapter examines the piece of the puzzle that appears not to fit: the creation of the Agricultural Stream, a result of the decision by Employment and Social Development Canada (ESDC) to harmonize the multiple agricultural components of the TFWP during the period of 2009 to 2011. This process, designed to standardize recruitment and employment policies across the various labour migration schemes available to the fruit, vegetable, and horticultural (FVH) sector, marked an important transition point for Canada’s system of agricultural migration. With this move, ESDC began a renewed focus on regulating the contracting and employment standards related to the stream of Guatemalan workers who had been entering the Canadian agricultural sector at increasing rates under the private TAWC program since 2003. The offloading of program design and administration onto external actors – the growers’ association FERME and the IOM – appeared to be in reversal.

This chapter reiterates the earlier guidepost suggested by Menz (2012) on the privatization of migration control: that privatization is not necessarily an indication that states have lost the capacity to influence migration; instead, engagement with private and non-state actors can represent new avenues of control. The analysis that unfolds here

reveals that the establishment of the Agricultural Stream does not represent a reversal of the neoliberal migration model, which is first and foremost about entrenching elements (including, importantly, the flexibilization of labour) of a “competitive” or “investment-friendly” state and which only minimizes or privatizes the state in limited and strategic ways. This is expressed in the Agricultural Stream, which at its core involved the re-absorption of various responsibilities related to program design and administration due to ongoing problems that resulted from the initial offloading in 2003, most notably the difficulty of the TAWC program to conform to provincial employment and rights statutes. What resulted was an overlapping consensus shared by both ESDC and growers’ associations that ESDC’s institutional capacity to mitigate these flaws was required in order to safeguard the long-term vitality of this flexible, employer-driven labour supply, as well as to minimize dissent among workers who were increasingly being subject to different sets of contractual stipulations and employment standards.

The first section of this chapter elaborates on the context in which the Agricultural Stream emerged. It identifies how Canada’s agricultural migration programs are situated within a global regulatory regime that constrains options available for federal policy – this section also highlights the importance of trade regimes as an overlooked element of neoliberal migration governance. The second section explains how employer groups successfully leveraged their privileged status with ESDC during the creation of the Agricultural Stream, by examining the consultation strategies employed by ESDC to gather feedback and formulate policy, as well as the specific stakeholder process employed during harmonization. One of the fundamental arguments here is that the configuration of ESDC’s stakeholder process involved a generally deliberate practice of

inclusion and exclusion which gave prominence to the concerns of employers while limiting input from labour representatives. The chapter then examines the specific changes brought about by the harmonization process, followed by an analysis of the set of underlying rationales guiding ESDC's decisions.

This chapter relies on internal documentation from ESDC, obtained through access to information and covering the period of 2009-2011. This body of documentation includes directives, briefings, e-mails, presentation decks, and other materials related to the creation of the Agricultural Stream, and gives us insight into the following two questions:

- 1) How did ESDC develop its objectives relating to the need to harmonize its two agricultural streams? More specifically, how did the institutional structure of the stakeholder process impact the framing of the "problem" that the Agricultural Stream was meant to solve?
- 2) How did ESDC generate and identify its choice of solutions in respect to those objectives?

In answering these questions, it is possible to give a more concrete account of how broader relations of class power are converted into policies which support an employer-driven form of migration control. It also allows us to draw some conclusions, provided at the end of the chapter, about what the "return of the state" means for agricultural migration in Canada. The findings identified here suggest that ESDC's involvement is geared more towards the benefit of employers and that existing issues related to the difficulties workers have in accessing rights remain a structural problem within the program.

6.1 Harmonization in an international context

As noted, from 1966 until 2003, the agricultural component of the TFWP was administered almost exclusively through the SAWP, which utilized as its governing mechanism a series of bilateral memoranda of understanding (MOUs) between Canada and a collection of sender states comprised of Mexico, Jamaica, Barbados, Trinidad & Tobago, and the membership of the Organization of Eastern Caribbean States (OECS). In 2003, regulatory overlap began to occur with the introduction of the Low-Skilled Pilot Project, a new component of the TFWP that provided work visas for positions categorized as NOC C (occupations usually requiring secondary school and/or job-specific training) and NOC D (occupations requiring on-the-job training). Unlike the SAWP, which limited Canadian growers to recruiting from its twelve partner countries, the LSPP placed no such restrictions on geographical origin, resulting in a virtually global scope for recruitment – limited only by the ability of employers to successfully recruit their sources of labour.

In ESDC's estimation, the existence of two programs regulating separate groups of agricultural migrant workers¹⁴ presented a number of concerns, as the programs operated under different sets of standards and practices. As a result, the ministry sought to excise the agricultural component of the LSPP and establish a new program, the Agricultural Stream, which would administer all agricultural migration not covered by the SAWP. The Agricultural Stream would more closely mimic the SAWP's regulatory

¹⁴ At certain farms sites, SAWP and LSPP workers lived and worked together, meaning they were "separate" only in terms of being attached to separate visa streams.

framework, albeit with some key distinctions – the most important of which is that the Stream retains the global selection of source countries made available by the LSPP.

Why did an attempt to reduce distinctions within the TFWP lead to a further proliferation of programs? Why did ESDC not opt to consolidate agricultural workers into a single program? The answer to this is located in the fact that Canada remains embedded within a number of global regulatory regimes, the most important of which is the trade system headed by the World Trade Organization (WTO). Its reliance on the Most Favoured Nation (MFN) principle (that “countries cannot normally discriminate between their trading partners (WTO 2016a)”), the extension of this principle to the sphere of services via the General Agreement on Trade in Services (GATS), and the system of MFN exemptions that were negotiated to make this agreement politically feasible all worked to create a situation in which ESDC policymakers strive to maintain consistency between the provisions of the TFWP and international trade principles.

Other global regulatory regimes also played a role in structuring the long-term evolution of the TFWP. The United Nations’ Central Product Classification and the UN International Standard Industrial Classification of All Economic Activities are examples of ESDC’s reliance on external sources of technical knowledge. These classification systems allow ESDC to define elements of the TFWP in a common “language” that corresponds across borders and jurisdictions and can be understood by other trade members – from terms as basic as “fishing” and “hunting” to specific categories of occupational activities. Taken together, these formed a global regulatory framework which limits some policy options while making others more viable. The following section outlines this new global context.

6.2 GATS, the WTO and the Temporary Foreign Worker Program

Describing the absence of a global migration regime, Betts writes that “Unlike many other trans-boundary issues such as trade, the environment, and finance, migration lacks an easily identifiable institutional framework at the global level. There is no UN migration organization (Betts 2010: 1).” He goes on to stress however that this has not negated global migration governance – multiple institutions exist at international, regional, and bilateral levels which facilitate cooperation on migration-related issues. This aspect of global governance is only just starting to be explored at the scholarly level. However, while this is an overdue undertaking, much of this literature has focused on the “classic” migration governance institutions (UNHCR, IOM, GCIM, etc) and on broader international structures which could be classified as “migration regimes” (such as refugee, travel, and labour regimes – see Koslowski 2011). What has been largely omitted from consideration is the much broader constellation of non-migration governance structures that contribute to the governance of migration at both international and national levels.

Greater emphasis must be placed on the fact that structures and regimes which do not explicitly deal with migration can have important consequences, both direct and indirect, for migration policy. This dimension of migration theory is quite new and has only recently emerged as part of a research agenda that has investigated the impact of trade regimes on migration. This phenomenon, which can variously be called the “trade-migration nexus” or the “trade-ification of migration flows”, indicates that global trade regimes, through their emphasis on regulating “natural persons” as transnational

production factors, have linked the management of trade and migration. This so-called nexus has its origin in two key trends: the proliferation of initiatives geared towards liberalizing trade at bi- and multilateral levels and the increasing importance of service sectors, particularly in developed countries (Lavenex & Jurje 2015).

The latter has an important global dimension that may not at first be apparent, but which is evident in the case of the TFWP and in particular the harmonization process: although de-industrialization and the growth of the service sector have been typically associated with developed countries, developing countries also participate in the service sectors of developed countries and rely on the remittances received from this work as part of their own competitive strategies, meaning that many different countries have a stake in discussions related to the liberalizing of trade in services at the multilateral level. The result of this has been the increasing use of trade agreements to manage the transnational movement of “natural persons”, with a focus on facilitating the movement of the most highly-skilled workers. Again, a divide exists in practice between high- and low-skilled workers, with the latter often excluded from such trade agreements, for reasons that will be explored below.

These new dynamics raise a very important and inadequately answered question: to what extent do global trade regimes impact or constrain Canada’s TFWP? This section gives a more in-depth treatment to the question by evaluating the impact of the General Agreement on Trade in Services (GATS) on the TFWP. It finds that the GATS has had important consequences for the TFWP, although the common understanding of GATS’ Mode 4 provisions, particularly the consensus held by policymakers within ESDC, is

erroneous and some of the more complex aspects of the GATS trade policy have been misinterpreted.

Canadian policymaking is not only a result of national-level factors, but is also embedded in a number of global regulatory regimes; this has been the case for decades. These top-down factors which influence or constrain Canadian policy exist across many policy sectors, but the most commonly cited example is the international architecture governing global trade. This architecture originated from the international cooperation of the postwar period, which spawned the Bretton Woods trade system and the General Agreement on Tariffs and Trade (GATT). The GATT, which was the first major project of the system, is concerned with “substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis”, was signed in 1947 by 23 countries during the United Nations Conference on Trade and Employment. Initially, it lacked the kind of robust institutional framework seen in today’s trade agreements and largely existed through its negotiating rounds, although GATT 1947 included a dispute settlement system which would expand and evolve over the following 50 years.¹⁵ Even without a large institutional structure, its impact was substantial and its successive rounds of negotiation resulted in tens of thousands of tariff concessions. By the 1960s and 1970s, GATT member states had begun to address non-tariff measures such as dumping and intellectual property, demonstrating the flexibility of the negotiating framework and its ability to move into other issue areas.

¹⁵ Disputes were initially decided by the Chairman of the GATT Council. This system was “progressively codified and also sometimes modified” in subsequent years, but began to deteriorate during the Uruguay Round, when decreasing confidence in the dispute resolution system in led to direct action by individual contracting parties against other parties. (WTO 2016b)

For Canada, which had for a long period used protective tariffs as a central feature of its industrial strategies (Macdonald 1981), the GATT was a consequential agreement. Through bilateral agreements and later through the GATT, Canada shed most of this protective barrier as part of the liberalization of its economy in the post-war period. The effect of this particular global regime on Canada's economic restructuring, both in its immediate effects and in its laying of the groundwork for future agreements such as NAFTA, cannot be understated.¹⁶

The second phase of this history – the phase which increasingly concerns migration policy – began in 1994 with the signing of the Marrakesh Agreement during the culmination of the Uruguay Round of the GATT, which had begun in 1986. This agreement set out the creation of the World Trade Organization (WTO), which incorporated the text of the GATT. Contrasted with the GATT, the WTO was given the power to enforce trade agreements. In addition to this important development, the Uruguay Round also produced the GATS, a multilateral agreement on trade in services that came into force in 1995.

As its initialism suggests, the GATS was designed to do for trade in services what the GATT had done for trade in goods (Nielsen and Taglioni 2003). Its genesis had two dimensions. The first related to the broader economic transformation of the developed world – the so-called “de-industrialization” that resulted in the expansion of service sectors as manufacture in goods became increasingly automated. Whereas in previous decades, trade liberalization was often related to the international relocation of production sites and hence focused on the mobility of capital and goods, liberalization efforts

¹⁶ It should be noted however that Canadian state is not a passive actor and pursued an active role in the GATT for a variety of reasons (Sharp 2010).

became increasingly focused on easing regulations for the mobility of people (Lavenex and Jurji 2015). The second dimension concerned the environment within the international trade regime, which was increasingly characterized by “pressures from lobbies in developed countries, unilateral retaliatory actions, and ideological struggle in the developing world (Marchetti and Mavroidis 2011: 689)” and opened the door for a restructuring of the system.

The purpose of the GATS is to achieve “progressively higher levels of liberalization of trade in services (GATS 1994a)”. Although the agreement applies to measures affecting trade in services, no definition of “service” is actually provided. This has led to such colloquial understandings of a service as “anything that cannot be dropped on your foot (BC 2001).” The applicability of the GATS is limited to actions undertaken by members, although “measures by members” not only includes national governments but also covers actions by local and regional authorities as well as non-governmental bodies in the exercise of delegated power (GATS 1994a: 286). This has obvious implications for the TFWP, which is now increasingly concerned with delegated authority.

The GATS is divided into four modes which each apply to a different facet of service delivery. These are summarized in Table 1 and include cross-border trade, consumption abroad, commercial presence, and the presence of natural persons. The breakdown of the GATS into these four modes reflects not only the various ways that service delivery can be conceptualized, but also reflects the political dynamics which shaped the negotiation of the agreement. In this respect, one of the primary prerequisites for securing consensus on the GATS was to mediate between the broader competing

interests of the North-South divide (Gent and Skeldon 2005). Representatives from developing states argued that Mode 3, which provided for “commercial presence” in foreign countries, was primarily of interest to the transnational firms of developed countries and offered little to the developing world. In response to these concerns, negotiators incorporated a new component labelled Mode 4 into the GATS, which would allow for the “movement of natural persons”, but only insofar as this related to trade in services (Betts 2012: 51). This was intended to yield benefits for developing countries on the basis that it could allow for greater levels of South-North migration. Mode 4 would prove to be the most relevant feature of the GATS concerning any temporary migration program operated by a WTO member state.

Table 1: GATS Modes of Supply

Mode 1	Cross-border supply	“from the territory of one Member into the territory of any other Member”
Mode 2	Consumption abroad	“in the territory of one Member to the service consumer of any other Member”
Mode 3	Commercial presence	“by a service supplier of one Member, through commercial presence in the territory of any other Member”
Mode 4	Presence of natural persons	“by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”

As part of the implementation of the GATS, all member states were provided a one-time opportunity to exempt specific policies from the scope of the agreement. A list of these policies, categorized for each member, is annexed to the agreement itself. Canada’s

choice of exemptions generally represents either a desire to protect existing bilateral agreements or a desire to encourage the granting of service access along reciprocal lines (as in the case of banking and insurance). Due to these uncertainties surrounding the status of the SAWP, and to the desire to maintain Canada's MOUs, the opportunity to exempt the program from the purview of the GATS became an especially attractive one. Unwilling to subject the SAWP to potential WTO rulings, Canada chose to exempt it under the heading of "services incidental to agriculture", listing as its rationale the mitigation of "seasonal shortages of experienced farm workers (GATS 1994b)". To protect other elements of the program, a "requirement for guaranteed return passage" was included as a secondary condition which acts as an additional safeguard for SAWP policies relating to travel and repatriation, which are carried out by the travel agency exclusively designed for SAWP workers, CanAg Travel.

To begin with the "conventional wisdom" on the migration-related dimensions of the GATS, prior research has given glimpses into policymakers' positions on the applicability of the agreement to Canada's TFWP:

The Government of Guatemala, wanting to send migrants to Canada, approached Canada in 2000 about a bilateral agreement, but Canada responded that it had laws in place that protected the rights of workers and therefore no special agreement was warranted, and furthermore, provisions of international trade law precluded such an agreement (Hughes 2014: 20).

"Provisions of international trade law" in this instance is a reference to the GATS and its MFN provisions. While this commentary is just one snapshot of ESDC's view, the notion that this in fact a popularly-held position held among Canadian policymakers is given credence by additional evidence uncovered among documentation from ESDC, which confirms that ESDC continued to hold this opinion at least up until the culmination

of the harmonization process. But how accurate are these appraisals of the GATS, and does it really pose constraints for Canada's TFW policies? The actual answer to this departs from the position held by ESDC above, which reflects ambiguities in the language of the trade text and likely indicates limitations on the expertise of ESDC officials in the area of trade policy. In truth, ESDC has very little to fear that a bilateral migration agreement between Canada and a third party could be found to contravene the provisions of GATS via a dispute settlement case. However, this fact acknowledges that the GATS utilizes some vague terminology, some of which has only recently been clarified. As a result, the GATS does impact the Canadian TFWP, but in a curious and oblique way – policymakers who are inclined to cautious behaviour and who possess limited resources for understanding and analyzing the provisions of international trade policies have opted to take unnecessarily guarded measures in order to avoid potential challenges to their policies. What this implies is that the impact of global trade regimes cannot be understood solely through a textual analysis, but must also be examined in terms of the resource burdens they place on policymakers in departments not equipped to fully understand trade issues, regardless of the actual content of the agreements themselves (and it will be seen that Canada's Mode 4 commitments are fairly slight indeed), and that these resource burdens themselves, when combined with the risk perceptions of cautious-minded policymakers, have consequences for migration policy.

The decision to exempt the SAWP had long-term ramifications for Canada's TFWP. ESDC has since maintained that SAWP-like agreements would contravene the terms of the GATS, which formed part of the rationale for both the LSPP and the Agricultural Stream. But to what extent is this position credible? The question of

whether the SAWP contravenes the GATS is a multifaceted one and is actually a set of four questions. The first is: is agricultural labour a provision of a service or labour in the production of goods? Philip Martin highlights the uncertainty surrounding this issue, writing that

“Foreign farm workers picking apples would seem to be excluded from the GATS because they are employed abroad to produce goods, but the WTO noted that temporary migrant workers brought to a farm to pick apples by a labor contractor may be covered by Mode 4 because they are providing “services incidental to agriculture (2006: 4).

The second is: does agricultural migrant labour fall under the purview of Mode 4?

According to Cho, “since GATS Mode 4 excludes manual labor such as manufacturing or farm workers, a minimum level of skills or professional requirements would be necessary to apply for a GATS visa (2009: 471).” The third is: is the SAWP eligible for protection under the “government authority” clause? This protection covers government programs that are undertaken on a non-commercial basis and do not operate in competition with other service suppliers (BC 2001); to date, there have been no WTO dispute settlement cases which address this component of the agreement (Global Affairs Canada 2017), making it difficult to gauge the SAWP’s standing. The fourth is: does the SAWP breach specific commitments Canada has made in the area of farm workers? As the GATS relies on a positive list system whereby members enumerate service areas to which the agreement will apply, and as Canada has to date excluded manual agricultural labour from its list, GATS would not be relevant to the occupational areas. Taken together, though ambiguity exists on certain questions, any potential challenge to the SAWP through the WTO should fail on at least one of these conditions.

Although the negotiation of the GATS was widely perceived as a success of multilateral cooperation, its insistence on liberalizing temporary labour movements while remaining silent on permanent settlement serves as an impetus to intensify temporary forms of labour movement. Mode 4, although having important benefits for migrant sender states, is therefore limited in nature and both reflects and reifies the temporalization of labour. In addition, the text of the agreement presented some ongoing issues related to the clarity of terms and concepts. First, although the agreement was intended to cover the temporary movement of persons concerning trade in services, what actually constituted a “temporary” service was unclear. This provided an amount of leeway for member states to define what amounted to a temporary or permanent provision of services, an important consideration given the sometimes extensive lengths of employment found among some temporary foreign workers. Secondly, the GATS was unable to provide a concise appraisal of when the contracting of independent service providers would fall under Mode 4 (Nielson & Taglioni 2003: 7). Thirdly, and most relevant to TFW programs like the SAWP, even the definition of “service” is under contention, meaning that “it [is] difficult to know, for example, if a temporary agricultural worker is providing an agricultural service (covered) or seeking temporary employment in agriculture (not covered) (Gent and Skeldon 2005: 2).”

While these exemptions ensured security for the MOU system undergirding the SAWP, it left a question mark over how Canada might expand its agricultural TFW system should the need arise, given ESDC’s belief that further MOUs would risk running afoul of the GATS’ MFN principle. Expansion of this particular labour force would have to be assessed along very different lines.

6.3 UN Classification Schemes: a common language for trade agreements

The GATS was not the only international regulatory regime that posed consequences for the TFWP. Finding that it needed an employment sector classification system to aid in defining services, the WTO produced the Services Sectoral Classification List (the “W/120”), which cross-referenced the United Nations Central Product Classification (Provisional CPC). Although this classification scheme was optional, it became a valuable resource for members wanting to establish specific commitments within the WTO framework (Nielson and Taglioni 2003: 6). The UN’s classification systems were also helpful in aiding ministries in defining their exemptions in a way that would be consistent and understood by other member states. ESDC opted to use the UN International Standard Industrial Classification of All Economic Activities (ISIC) to define the breadth of the SAWP as it pertains to the GATS. As explained by a senior policy analyst, this was “in order not to jeopardize the program’s standing in the WTO (ESDC 2009f: 2)”.

Use of these classification schemes carried two consequences for the SAWP. First, although the SAWP cannot be expanded to include additional sectors or additional MOUs, the decision to use the UN Classification does allow for an expansion into new *commodities* within the sectors covered by the SAWP exemption; namely, “agricultural and animal husbandry service activities”. ESDC keeps this as a consideration for future expansion of the SAWP, provided that at least one source country agrees to participation (ibid: 4). Secondly, given that the SAWP’s service class is defined by ISIC as work that is “mostly performed on the farm (UN Statistics Division 2015),” this distinction “also

assists ESDC/SC in securing both the location of work and the location of the employer-supplied accommodations (ESDC 2009f: 3).” This view is reflected in one of the core components of the Agricultural Stream examined later: the guarantee of employer-provided accommodations for workers.

The ratification of the GATS marked a major turning point for Canada’s TFWP. Establishing further MOUs of the sort that were central to the creation of the SAWP became difficult if not outright impossible. Although the GATS was marked by a number of clarity issues described above, Canada’s commitment to the MFN principle left doubt as to whether ESDC could develop further temporary migration schemes in a bilateral manner, a position that ESDC appears to maintain (ibid: 2).

Unable to expand the geographical scope of the SAWP, Canada left its agricultural migration regime in a relatively static position until the introduction of the LSPP. Under the aegis of the LSPP, the Canada-Guatemala Temporary Agricultural Worker to Canada Project (TAWC) marked the “downloading” of the source country recruitment function from the federal government to a number of non-state actors: the Quebec growers’ association FERME and the IOM. This reflected the fact that while WTO member states were subject to the MFN principle regarding matters of trade in services (minus exemptions), non-state actors obviously faced no such restriction. As a result of these two factors – the GATS and the subsequent introduction of the LSPP – FERME and the IOM successfully negotiated a plan to import Guatemalan workers for the FVH sector.

Although the context described above might suggest that the offloading of migration control to private actors is an irreversible development, the reality is more complex. The TAWC spawned a number of issues related to design flaws in the program, flaws which mobilized the Canadian state into re-exerting a regulatory hand over agricultural migration. This is explored in the following sections, where it becomes clear that ESDC has entered into a new regulatory dynamic in which it is neither passive or withdrawn but reactive. What this section emphasizes, however, is that Canada's TFWP is embedded in a global array of institutions that shape policymaking through a) limitations on what forms of migrant recruitment are available to ESDC, as in the case of the GATS, and b) ESDC's reliance on the technical expertise of external regulatory regimes, as in the cases of the UN classification systems.

6.4 Harmonization and the stakeholder process

What the preceding section makes clear is that the policymaking which surrounds the TFWP has been embedded in a global regulatory context which limits some policy options while making others more attractive – a situation that has made led ESDC to abandon any attempts to modify its GATS-exempted programs, and has instead prompted the it to create of a new program during the harmonization of the SAWP and TAWC. This result of this process, the Agricultural Stream, was ostensibly to standardize elements of the employment contract between SAWP workers and those participating outside the SAWP (through the LSPP/TAWC), including accommodations, wages, and workplace insurance (among other issues).

With that in mind, the next point of analysis is to evaluate the patterns of inclusion and exclusion that led to an unequal distribution of access to the policymaking process during the harmonization period. In revealing how certain actors are privileged by ESDC, we get a concrete sense of how broader relations of social power influence the creation of particular policy strategies. The most important mechanism through which this occurs is known as the stakeholder process, but which also includes interactions outside of formal stakeholder input such as correspondence. The first question then is: how did ESDC come to form its objectives relating to the harmonization of its agricultural streams? The second question is: how did ESDC evaluate the potential set of solutions available to policymakers?

This section examines the first question, and does so by looking at a number of factors. It examines the aforementioned stakeholder process used by ESDC to collect and process feedback and thereby guide policymaking. It also examines the roles played by a number of provincial-level government agencies that provide enforcement of rights and labour codes. Two of these agencies, the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ) and the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST), indirectly contributed to what ultimately became the replacement of the TAWC with the Agricultural Stream via harmonization. The CDPDJ is the Quebec provincial authority responsible for addressing claims of discrimination, harassment and exploitation in matters related to housing, employment and public services. It is an investigative body, but also reports issues of Charter non-compliance to the Quebec government and also offers advisory services to employers on issues of reasonable accommodation (CDPDJ 2017). CNESST is another provincial body, falling

under the responsibility of the Ministry of Labour, which ensures compliance with work and safety standards (CNESST 2017). Lastly, this section looks at the role played by the Minister of Human Resources and Social Development, an idiosyncratic causal factor that calls attention not only to the governing approach of the government in power, but also the particular Minister overseeing ESDC.

ESDC, as with any ministry, employs its own stakeholder process: a heterogeneous system that takes a number of forms, including both routine meetings (such as those mandated through the SAWP's MOUs) and ad hoc consultations. Which actors are included as stakeholders is dependent on the particular scenario in question, but it should be emphasized that some broader trends are visible not only in the context of harmonization but also throughout the broader structure of the TFWP. The MOUs underpinning the SAWP provide for one of the most prominent sources of stakeholder input, in the form of annual negotiations between the Canadian government, sources country governments, and employer associations. The presence since 1987 of employer groups at these annual meetings, which otherwise comprise only state actors, is an example of the historically important role this particular group has played within the TFWP. Exclusion is also at work here: although agricultural TFWs are officially represented by the UFCW in British Columbia, Quebec, and Manitoba, labour representation has yet to be included in these negotiations, despite the Caribbean MOUs allowing for other "interested parties" in discussions (Verma 2003). The UFCW has petitioned ESDC in this regard, but without success. ESDC has responded to the UFCW's efforts by arguing that the text of the MOUs does not require for the inclusion of other stakeholders beyond those explicitly outlined in the agreements and also

maintains that the presence of sender state government agents already provides an opportunity for workers' concerns to be heard (Raper 2015).

The role of labour representatives in the stakeholder process has thus been of a markedly different nature than that of employer organizations. Labour's role is less formal, less entrenched, and more focused on fact-finding and documentation efforts. In this respect, the UFCW has produced an annual report, the Status of Migrant Workers in Canada, since 2002. These reports cover not only agricultural migration but also the Live-in Caregiver Program and the non-agricultural components of the LSPP, and examine a range of issues from wages to working conditions to repatriation (UFCW 2011a). Since the UFCW began this documentation process, it has presented these reports to both provincial and federal governments on a regular basis. The UFCW described these discussions as very comprehensive in nature and found them to be a useful way to access the ministerial level in lieu of an official stakeholder capacity (Raper 2015).

However, the UFCW found reception to these meetings to be highly contingent on which province and which government they dealt with, pointing to the fact that the UFCW's representative status for farm workers varies from province to province.¹⁷ Furthermore, at the federal level, these meetings were reportedly halted by the Minister of Human Resources and Skills Development Diane Finley in 2008. Since that time, ESDC and its ministers have restructured its consultation processes to facilitate a more employer-centred agenda. In 2011, then Minister of Citizenship Jason Kenney, in collaboration with ESDC, hosted a set of cross-Canada consultations on immigration.

¹⁷ In provinces where the agricultural workers are excluded from labour relations codes, the UFCW operates support centres and works informally with farmworkers (UFCW 2010).

The first concerned more general issues concerning immigration levels and incorporated a wide range of civil society. The second consultation concerned the TFWP specifically, but restricted participation to employers. These consultations included employer representatives from various sectors, including agriculture, oil and gas, hospitality, health care, and economic development, with the stated purpose of “[soliciting] ideas on how the TFW Program could be more responsive to labour market needs and continue to support economic growth in Canada, but still protect employment opportunities for Canadians (CIC 2012b).” The exclusive nature of these consultations combined with the elimination of the Status of Migrant Workers meetings have shifted the balance of access to the ministerial level, reflecting the broader shift toward an employer-centric model of temporary migration.

Finley’s unique approach as minister may have played a role in this shift, particularly in comparison to her predecessor, Monte Solberg. This is the position held by UFCW officers, who point to Finley’s role as member for the riding of Simcoe, an area with a high concentration of large-scale FVH activity. Finley ended the annual status report meetings with the UFCW, which had continued under Solberg, a move that the UFCW attributed to the influence of growers from Finley’s constituency during her time as Minister (Raper 2015).

These broader trends which emphasized an increased focus on employer needs were also reflected in the specifics of the harmonization process. As with the annual SAWP negotiations and the 2011 TFWP consultations, consultative roles were once again restricted to growers’ organizations. Prior to this stakeholder process, ESDC began with a working group composed of regional program representatives from the majority of

provinces. These regional representatives gave input on policies relevant to their particular jurisdiction, for instance on local housing laws or occupational classifications, and to address problems associated with regional variation within the program. The output of this working group, combined with the work being done at National Headquarters, led to a tentative plan for harmonization. This proposal was then presented to a set of employer associations for review. This included not only the major players FARMS and FERME, but also the Canadian Horticultural Council (CHC) and the British Columbia Agriculture Council (BCAC). FERME, which had taken the lead on the TAWC initiative, again played the lead role among the employer associations, offering technical advice as requested by ESDC as well as submitting input on the provisions outlined by the proposal. This feedback included both face-to-face meetings early on in the policy development process as well as follow-up process later on to review the progression of harmonization (ESDC 2009l: 5).

During these interactions with ESDC, FERME highlighted that its main concerns involved a number of TAWC provisions that had run afoul of federal and provincial policy. In its initial meeting with ESDC, FERME expressed frustration that Service Canada and Immigration Canada had pressured the IOM to end the practice of requiring a \$500 security deposit for all incoming Guatemalan workers. This fee was collected from workers as collateral and reimbursed following completion of the contract. Its purpose, as described by FERME (see Appendices for letter), was to “defray part of the new ticket to the replacement worker requested by the employer (Mantha 2010, translated by author: see Appendix A).” This likely conflicted with the government’s long-standing desire to see repatriation costs fully guaranteed by growers, in order to prevent visa overstay.

FERME presented its concern not in terms of self-interest but in a rhetoric of non-discrimination. It argued that the “big losers” created by the loss of the deposit scheme were Guatemalan workers at the expense of Mexican workers, since employers would take on higher overhead when hiring Guatemalan workers, and as such “the creation of distinct programs resulted in discrimination between countries’ workers (ibid, translated by author).”

Additionally, FERME was concerned with three other issues that had arisen specifically in Quebec regarding components of the TAWC. The first related to the status of ground-travel deductions, which amounted to \$2 per working day, which were recently found to contravene employment law by CNESST. Secondly, differences in the employment contracts used for Mexican, Caribbean, and Guatemalan agricultural workers were found to be discriminatory by CDPDJ and FERME feared that some form of corrective action may be taken in the future. Third, TAWC employers were found to be recouping accommodation costs in excess of what was permitted in Quebec, prompting action from CNESST to crack down on this practice.

On top of outlining these concerns, FERME also sought to leverage its audience with HRSDC to advocate for an additional stakeholder meeting that would include both the CDPDJ and the CNESST. FERME hoped that this meeting would, in their words, “advise us in the harmonization of foreign agricultural worker programs and thus avoid violating Quebec laws (ibid, translated by author).” Clearly, despite the popularity of the TAWC, it appears that the program had produced a number of unforeseen consequences that were causing difficulties for Quebec’s growers. FERME was now hoping that the harmonization process would allow ESDC to re-absorb some of the policy roles that had

been carried out by growers and the IOM since 2003, which would rectify flaws in the program and ensure the long-term vitality of the Guatemalan worker stream.

FERME's concerns point towards the relevance, albeit indirectly, of quasi-judicial actors. In Quebec, decisions by both the CDPDJ and the CNESST factored into the objectives of the harmonization project, one of the most important of which was bringing the Guatemalan worker stream into line with provincial regulations to avoid further complications for employers. The CDPDJ, which was established in 1976 by the Quebec Charter of Rights and Freedoms, is an independent agency of the government and has the mandate to ensure the promotion and respect of the rights outlined in the Charter. As a quasi-constitutional bill of rights, it takes priority over other Quebec laws, but is subject to the Constitution of Canada. Prior to the harmonization process, FERME had a meeting with the CDPDJ, wherein the latter expressed that the practices used by Quebec growers relating to differing work contracts were, in a broad sense, a form of discrimination (Mantha 2010: see Appendix A). What action the Commission would have ultimately taken regarding work contracts had harmonization not been undertaken cannot be known now, but its opinion was sufficient to prompt FERME to present its concerns to ESDC during the consultation process.

The issues raised by CNESST were perhaps an even greater factor. It firstly declared that the employment contracts used by the TAWC were illegal, as they charged for housing in excess of the \$20 per week allowed by provincial law. Under the TAWC, employers had been charging \$45 per week levied against 4000 workers. This led to a reimbursement for workers of around \$100,000 (UFCW 2010).

Taken together, these developments created a number of complications for FERME and for growers in Quebec. While these decisions were certainly important in their own right, their importance was amplified by the fact that they were ultimately brought to ESDC's attention due to FERME's privileged access in the stakeholder process. FERME wanted a resolution to the string of legal issues faced by growers in Quebec, and hoped that this would be accomplished through ESDC's reform of the LSPP's agricultural component.

One final question remains regarding how ESDC will approach non-MOU foreign governments in the future. Although Canada's policies cannot discriminate between two different treaty members, this does not preclude other forms of intergovernmental activity from taking place. Evidence of this is that during the harmonization process, ESDC made it a point to "follow-up with foreign governments that establish agreements with employers [in this case Guatemala] to coordinate the processing of requests for agricultural workers under the harmonization model (ESDC 2009b: 3)." Hence, while the sender state government agent role is absent outside of the SAWP, the federal government still evidently still seeks a limited coordination of activities with sender states. However, it appears that this is largely limited to informing foreign governments of updates on federal policies, and does not nearly resemble the institutionalized stakeholder role exercised by the SAWP's sender state partners.

6.5 Harmonization and its outcomes

In 2009, harmonization was assigned high priority and background work began on converting the agricultural component of the LSPP into the new Agricultural Stream. It

was acknowledged by ESDC that “the two programs will always remain distinct due in part to the existence of the MOU governing SAWP,” and as such the goal of harmonization was to “reduce the variances between the SAWP and the LSPP and, to the extent possible, provide for a great degree of consistency in the administration of both programs (ESDC 2009b: 1).”

The desire to harmonize the administration of the two agricultural streams reflected a set of objectives and concerns that had arisen with the development of the LSPP. This section examines the specific changes implemented by ESDC, followed by an analysis of the broader rationale underlying these developments in the following section.

The core of the harmonization process featured five components (summarized in Table 2). The first was a partial standardization of wages, which involved replacing the LSPP’s use of a prevailing wage with the national commodity list used by the SAWP for all relevant agricultural occupations. The second component was the implementation of a standard ESDC-designed employment contract, meant to mimic that traditionally used by the SAWP (but with a few key differences). The third component involved alterations to the LSPP’s accommodation provisions, stipulating employer-provided housing and mandating regular inspections. The fourth component involved new requirements for the enrollment of LSPP employees in workers’ compensation programs. The fifth and final component involved a restriction on additional cost recovery mechanisms for employers. This aspect actually entrenched differences between the two streams, a fact owing to complexities in the SAWP’s top-level negotiations.

Table 2: Comparison of Program Criteria

	SAWP	NOC C&D (before)	NOC C&D (after)/Agricultural Stream
Bilateral Agreement	Canada to source country MOU	Source country/IOM to NGO, but not required	Source country/IOM to NGO, but not required
Contract	Employer-employee-government	Employer-employee	Employer-employee
Accommodations	Employer provided and free to employee.	Employer must ensure affordable housing is available. When employer provides, worker pays	Employer provided; set maximum that can be charged to employee with methodology for annual increases
Wages	Must pay higher of SAWP wage set by HRSDC based on StatsCan survey, provincial minimum wage or rate being paid to Canadian workers	Prevailing wage, no standard methodology – varies among regions	Adopt SAWP wage if commodity currently included in SAWP. If not, prevailing wage would apply (some regional variances)
Cost recovery	Caribbean – \$2/work day; Mexico – n/a	None specified	None allowed
Workers compensation	Mandatory enrolment; employer must provide proof where not mandatory by provincial legislation	No current policy	Mandatory enrolment; employer must provide proof where not mandatory by provincial legislation

(Source: ESDC 2009h)

The first component involved an attempt at smoothing over wage disparities, as this was considered by ESDC to be one of the “discrepancies with the greatest impact on foreign workers in the agricultural sector (ESDC 2009b: 1).” Under the SAWP, employers are required to set pay based on the highest of three possible wage rates: an occupational

wage set by ESDC and based on Statistics Canada data (the “commodity list”), the provincial minimum wage, or the wage being paid to Canadian workers. Prior to harmonization, all LSPP workers were paid according to the relevant “prevailing wage”, a non-standard wage assessment that varies by region and occupation. The prevailing wage is specifically defined as “the median hourly wage (or higher, at the discretion of the employer) as posted on the Working in Canada website for the occupation in the specific geographic area where the TFW will be employed (ESDC 2016)” and, as explained by former ESDC Director-General Andrew Kenyon of HRSDC, “is calculated as an average based on a variety of data sources, including EI databases, employer surveys, provincial wage surveys, and surveys of competitors (Standing Committee 2009).” The purpose of the prevailing wage is described by a Standing Committee on Citizenship and Immigration report (2009), which states that “it checks to ensure that the wage the employer proposes to pay to the temporary foreign worker is equal to or higher than the prevailing wage. The purpose is to ensure that employers are not using temporary foreign workers as cheap labour and thereby creating downward pressure on wages and working conditions in Canada.”

The harmonized Agricultural Stream adopted usage of the SAWP commodity list for all relevant wages (but did not incorporate the SAWP’s triple-rate scheme). Since the commodity list utilizes a wage structure that distinguishes by province, occupation, and commodity, it possesses some of the gradations of the prevailing wage system. But while the prevailing wage provides more localized rates, it had received criticism in the past, in part due to a lack of transparency surrounding how rates are obtained. The Standing Committee’s investigations into this matter led to recommendations for greater

transparency surrounding the prevailing wage rate methodology, as well as a strategy for stakeholder input, but in the case of the harmonized stream, ESDC declined to incorporate such a strategy. The decision to modify the LSPP's wage structure should generally be understood in light of ESDC's reluctance to subject the SAWP to additional bilateral renegotiations.

The second major change brought about by the harmonization process relates to employer provision of accommodations, and consists of three elements. Under LSPP regulations, employees bore responsibility for housing while in Canada. This stood in contrast to SAWP practices, which required employers to provide on-site housing to all employees. Recognizing that many growers already offered some form of accommodation to agricultural workers as a result of this, ESDC mandated employer-provided "reduced rate bunkhouse-style accommodations (ESDC 2009b: 4)" as the standard for the new Agricultural Stream. A key difference from the SAWP arises: Agricultural Stream workers are not bound to the employer's selection of housing and may seek their own accommodations at any time, if they so choose.

In matching this aspect of the LSPP agricultural work to the SAWP's regulations, it also introduced a second component which requires that all employers have accommodations meet municipal and provincial standards via annual inspections, either by municipal or provincial authorities or via private inspection services.

The third and perhaps most important feature is the introduction of a cost recovery mechanism which allows employers in the Agricultural Stream to recoup money for accommodations. At first glance this is a curious regulation, as no such provision exists in the SAWP, but it operates as part of ESDC's strategy to balance the expenses

associated with workers of different national origin. Although accommodation costs are not recoverable by SAWP employers, they are entitled to recoup a portion of transportation costs paid to employees for airfare. Under the Canada-Mexico agreement, this amounts to a maximum of \$550, with a \$492 cap for the Canada-Caribbean agreements. ESDC sought to eliminate this discrepancy between SAWP and LSPP contracts, but also feared that harmonizing this aspect of the program would be bureaucratically cumbersome, as it would require Service Canada to evaluate individual transportation costs for each worker (ESDC 2009b: 2). As a workaround, rather than allowing LSPP employers to recoup transportation costs, ESDC provided them with the ability to recoup a roughly equivalent amount from accommodations. In this way, a parity could be achieved in terms of the relative costs of hiring SAWP and LSPP workers.

The third component of harmonization was the implementation of a standard employment contract for all Agricultural Stream workers. Unlike the SAWP, the LSPP lacked the use of a mandatory contract, but more importantly, the SAWP and the LSPP differed on a more fundamental aspect: under the SAWP, employment contracts are signed not only by the employer and employee, but also by a government agent representing the worker's home country. Under the LSPP, there is no legal requirement for any kind of contractual participation by foreign states, although there is nothing preventing the use of employment contracts with additional parties as the Canada-Guatemala Foreign Worker Program demonstrated.

Harmonization could not and did not attempt to bridge this divide by incorporating a role for government agents into the Agricultural Stream, and this remains

one of the fundamental differences between the two programs. Rather, ESDC sought to streamline the LMO process by providing for greater standardization of work contracts, which could allow Service Canada to more quickly evaluate applications.

The fourth element of harmonization was the mandatory enrollment of Agricultural Stream employees in the appropriate provincial workers' compensation program. The SAWP requires that all workers be enrolled in such programs, regardless of whether or not the provincial authority mandates enrollment, and regardless of whether agricultural employers are specifically exempted in their jurisdiction from having to enroll their employees. In the latter cases, an additional onus is placed upon employers to provide proof of enrollment to ESDC. The harmonization process brought this standard to Agricultural Stream workers.

The final element of the harmonization process was unique in the sense that rather than standardizing regulations between the two programs, it sought to entrench existing distinctions. In 2009, agricultural employers convinced participating Caribbean governments to initiate a new cost recovery mechanism which would "take into consideration additional costs being incurred by employers relating to the accommodations and ground transportation being provided by the employers to the workers (ESDC 2009g: 4)." This took the form of a \$2 per day recovery fee to be applied starting in the 2010 season. The Mexican government did not agree to these terms during that meeting, resulting in an additional cost differential between workers of different origin countries. ESDC opted to match the new Agricultural Stream to the existing terms covering Mexican workers, rather than to the new fees covering Caribbean workers.

6.6 Understanding harmonization: ESDC, the stakeholder process, and conflicting rationales

The five outcomes of the harmonization process represent a sometimes messy and conflicting set of rationales, a result of ESDC attempting to balance concerns arising from both internal (regional worker groups) and external sources (growers' organizations and provincial regulatory bodies). This section examines how ESDC arrived at the particular solutions that it did, by examining the logic and rhetoric of bureaucratic actors as described in internal documentation, as well as how these actors interacted with the objectives of other key stakeholders.

It should first be noted that the harmonization process, though ostensibly attempting to minimize the differences between the agricultural streams, ultimately ended up entrenching some important distinctions between the SAWP and the Agricultural Stream. First and foremost is the issue of wage structure, in which SAWP workers are paid the higher of the commodity list wage and the wage being paid to Canadian workers. Under the Agricultural Stream, employers are required solely to match or exceed the wage identified by the SAWP commodity list. This discrepancy was not lost on the Ontario Working Group representative, who noted that the wage structure proposed by harmonization could very well lead to Agricultural Stream workers and other workers being remunerated at different wage rates for the same labour – a situation ESDC stated it preferred to avoid (ESDC 2009l: 1). The discrepancy also undermined one of the key goals of the process, which was to eliminate pay discrepancies between workers of different programs. The representative's recommendation to match SAWP rates to the

prevailing wage for Canadian workers were sent for consideration to Policy and Program Design, but currently, and as a result of harmonization, wage parity only exists in instances where commodity wages exceed prevailing wages.

Likewise, the new accommodation regulations created a divide between SAWP workers and Agricultural Stream workers, wherein Agricultural Stream workers are required to bear a portion of the cost of housing while SAWP workers are not. Conversely, SAWP workers are still required to bear a portion of their travel expenses, whereas Stream workers are not. Hence, harmonization was not, in the expected sense, an attempt to homogenize the specific details of each program, but to “harmonize”, at a broader, economic level, the opportunity costs of using different sources of migrant labour. In doing so, the recruitment of a national from one country would be roughly equivalent to the recruitment of one national from another country. This is a key point which must be stressed.

This rationale – to more tightly control cost differentials – was described by HRSDC in its 2009 National Coordination Meeting as a means of preventing “shopping”, wherein employers seek out inexpensive labour. This strategy is similarly described by Preisbisch and Binford (2007) as “country-surfing”, a process whereby “employers switch supply countries if they are dissatisfied with the performance of workers, a particular government agent, or sending country policies (23).” Although this strategy has been well documented, an important caveat to Preisbisch and Binford’s analysis is that in this scenario it should be noted that the wage differentials were also a product of Canadian government policy, and arose from two main sources: the wage structure and cost recovery mechanisms. The major impediment regarding cost recovery mechanisms

was the presence of a recoupment for travel that would be difficult to replicate in the Agricultural Stream for the reasons noted above. Here, it's interesting to observe that FERME had attempted to address these issues itself. It did this, however, by expensing labour more rather than less, and took the form of the \$45 per week accommodation provisions described above in the case of the TAWC, which were later found to be illegal. Additionally, there was the aforementioned security deposit for Guatemalan workers, which was voided in cases where workers failed to return upon completing their work visa, and was intended to defray costs related to hiring replacement workers. In each of these instances, however, the TAWC proved inadequate in conforming to the set of policies relating to migrant labour and employment that existed both federally and provincially. As was discussed, the security deposit practice was ended under pressure from Service Canada and Immigration Canada, while the TAWC's housing recoupment policies were found illegal. Hence, ESDC found themselves in the position of having to once again design a new program to address these flaws, a situation which was endorsed by FERME.

Despite having a clear label for the problem it had identified, the concept of "shopping" was applied in a somewhat confused manner by ESDC. Initially this practice was internally labelled by ESDC actors as "employer abuse", but it was later settled on the descriptor of "employer misunderstanding" (ESDC 2009k). This marks a rhetorical shift in which the same phenomenon is being described, but with different connotations. "Employer abuse" suggests employer fault, i.e., a situation where the strategy of shopping is consciously acknowledged and exploited. "Employer misunderstanding" suggests a failure on the part of policy actors in the design of the programs. That the

latter language was ultimately preferred, even in internal documentation not directed at employers, suggests an unwillingness on the part of ESDC to come to terms with the strategic, intentional nature of country-surfing within the FVH sector.

Rather, ESDC seemed concerned with the effects of country-surfing particularly as they related to the on-farm workplace environment, and mainly as they related to employer interests. ESDC analysts, in pointing out the existence of “inequities among workers in the two streams”, felt that such discrepancies “[leave] employers exposed to the possibility of conflict and dissent from workers (ESDC 2009b: 1).” This objection reflects an unequal stakeholder process that tends to privilege the issues and concerns of organized employers.

Although ESDC utilized a discourse of limiting workplace dissent, it did simultaneously employ a language of protection in its internal documentation, using concepts such as safety and non-discrimination to describe its proposed policies and invoking the Immigration and Refugee Protection Regulations in this regard (ESDC: 2009c). These concepts were closely linked to the proposals for mandatory worker compensation enrollment and mandatory health coverage, but they were also employed to describe the need for employer-provided accommodation and mandatory inspections. In cases where the protection motivation was evident, often multiple rationales would coincide within the same policy: requiring employer-provided accommodations would allow for inspections (hence ensuring “protections” for workers), but would simultaneously allow employers to prorate expenses for housing, which on top of addressing the concerns of employers would also fulfill into ESDC’s desire to balance out the financial incentives of hiring different workers. What is clear, then, is that the

solutions that ESDC found most appealing were ones that could adequately address multiple objectives and simultaneously address the concerns of both its selected stakeholders and ESDC itself. It was mainly in instances where additional safeguards could be reconciled with these prerogatives that harmonization produced outcomes where the protection discourse was most evident.

One final ESDC objective involved reducing the administrative burden faced by Service Canada (ESDC 2009b: 2). Service Canada forms part of ESDC and is designed as a single-point access for a variety of government services. Within the TFWP, Service Canada is tasked with 1) ensuring that work contracts comply with program regulations, and 2) ensuring that work contracts are factually accurate. To this end, ESDC instituted a new, mandatory employment contract template that would standardize the terms of employment for all stream workers and reduce backlog in the application process. ESDC also had Service Canada's workload in mind when it opted not to allow for reimbursement of travel expenses, which would require additional work on the part of evaluators.

6.7 Conclusion: harmonization and the new regulatory role

Harmonization was driven at three separate levels. First, there existed a global regulatory regime that consisted of both trade obligations and technical classification systems, which limited the expansion of the SAWP. Secondly, at a domestic level, there existed an array of actors, which included both employers' organization and labour representation. These operated within a very uneven stakeholder process which gave prominence to the concerns of employers as a result of conscious decisions at the ministerial level to

structure the stakeholder process in ways that limited the participation of labour representatives. Additionally, other dimensions of the Canadian state played indirect roles, with quasi-judicial rights and employment standards bodies determining the boundaries of TFWP policy.

In this setting, ESDC attempted to address a number of issues: flaws within the TAWC that had resulted in legal issues and conflicts with the province of Quebec, Service Canada's increasing application load, the potential for workplace dissent, employer "shopping" and issues regarding worker safety. It could not hope to address all of these competing issues while completely eliminating all of the distinctions between the SAWP and the LSPP's agricultural component, so it instead sought solutions that would address multiple problems at once, with emphasis being given to the concerns of its dominant stakeholders, in this case growers' organizations represented most notably by FERME. Issues pertaining to work standards and safety were addressed when such solutions could simultaneously address multiple problems. Otherwise, ESDC tended to focus on reducing the culpability of growers as a result of the TAWC's design issues.

Harmonization ultimately acted as the second phase of a trend in agricultural migration that began in 2003 with the formation of the LSPP. It featured a new regulatory role for ESDC, which saw the ministry attempt to fix deficiencies related to the offloading of recruitment functions to other actors, and saw it attempt to resolve some of the broader issues that had been accumulating since the ratification of the GATS. It nevertheless emerged within the broader framework of Canada's neoliberal migration model, which uses the privatization of migration control selectively and continues to

focus on a flexible workforce of temporary labourers who remain intrinsically linked to profitability in low-wage sectors of the Canadian economy.

Although the process may have succeeded in rectifying some of the inconsistencies that marked participation in the TFWP, it should be noted that the harmonization process failed to adequately address some of the most crucial ongoing deficiencies in the program. The lack of government agents to represent workers originating from outside of SAWP countries remains an important omission. Had the harmonization stakeholder process been cast in a more inclusive and wider manner, it is possible that these concerns over the lack of worker representation could have at the very least factored into the decision-making considerations that were outlined above. As it stands, although much-needed improvements have been made related to accommodations and worker compensation, the broader inequalities of the program remain. A discussion of the prospects for more far-reaching reform, in light of the structural aspects of the TFWP outlined in the preceding chapters, is taken up in the concluding chapter.

7 Chapter: Conclusion: Assessing the Future of the Temporary Foreign Worker Program

The need to migrate on a temporary basis to support a livelihood has become an increasing fixture of the global economy. Canada's agriculture sector has played in its own role in facilitating this form of survival for tens of thousands of migrant workers originating from the Caribbean and Latin America. By that same token, the use of temporary foreign worker schemes has become an increasing fixture of policy agendas not only in Canada but globally as well. As suggested at the beginning of this thesis, however, the growth we are witnessing within the Temporary Foreign Worker Program is not simply a matter of degree. Beneath the trend we see that that, qualitatively, the manner in which migration is governed has undergone a transformation, one in which state actors are repositioned and now interact with a broad range of various non-state actors.

This has broadly reflected the paradigm shift that began to occur in Canada in the 1980s, which emphasized deregulation, privatization, and the retrenchment of social provisions. This neoliberal logic has impacted many policy sectors of governance both federally and provincially, and was evident in the temporary foreign worker program at a very early stage, with the offloading of certain functions to organizations such as FARMS and FERME during the 1980s as well as the removal of quotas to produce a more demand-driven version of the SAWP. On top of bringing more organizations into the constellation of actors responsible for migration control, the federal government also pursued a model of migration control in which oversight was externally offloaded, with

migrants themselves absorbing the consequences of these increases in vulnerability. This vulnerability in part came through the expansion of temporariness to the Canadian immigration system. In subsequent decades, the adoption of this logic has resulted in the rejection of the bilateral agreement system by the federal government – a system that had undergirded Canada’s strategy for the recruitment of agricultural migrant workers – and the creation of the LSPP. It began as a top down process, and in fact these private organizations created to administrate the agricultural component of Canada’s temporary foreign worker program were, not coincidentally, created in partnership with the federal government. This lends credence to arguments that states find value in using private actors strategically as a means of achieving policy objectives, and it should point researchers in the direction of how states create spaces for other transnational actors to inhabit – as well as the ways in which states use these spaces as a means of remotely controlling migration policy.

One important corollary to any discussion of neoliberalism is that the mechanic of privatization can be a means to an end rather than an end in itself. If we take the ideological case for privatization as a given – i.e., that the deregulated, “hands off” approach that marked the agricultural component of the TFWP from 2003-2010 was a valuable avenue for generating labour market efficiencies, why, given such a stated benefit, did the system not persist in that particular configuration? As was uncovered, the consequences generated by this form of migration politics proved to be problematic for employers and were numerous: contract disputes, lawsuits over remuneration and accommodation, and actions by Service Canada were bogging down growers in Quebec. While allowing the growers who utilized the TAWC to remain tangled in such affairs

could have been an option for ESDC, this is not the approach we saw ESDC take. Instead, in keeping with their tendency to support the concerns of growers while minimizing the amount of input officially granted to workers and their labour representatives, ESDC set out on a plan to rescue the program by incorporating the TAWC stream into a new, official component of the TFWP. In doing so, the state assumed responsibility for addressing many of the shortcomings inherent in the TAWC. These shortcomings included successful lawsuits over remuneration to workers and warnings from Quebec's quasi-judicial bodies that the contracts used by the TAWC may be in violation of provincial standards. ESDC's strategy for a harmonized agricultural scheme resulted in greater standardization of work contracts and more regulation and oversight concerning wages and accommodations.

In re-establishing a regulatory hand over this component of the TFWP, the ESDC has guaranteed a more smoothly running program for employers. As internal documentation demonstrated in the previous chapter, ESDC was sensitive to employers' concerns throughout the harmonization process. This was linked to the structural organization of ESDC and its stakeholder process. ESDC maintains a high degree of autonomy over policymaking regarding the TFWP, while its stakeholder process is skewed to favour increased input from employers while diminishing input from labour representatives and advocacy groups. In turn, this was linked to an intensification of the "employer-driven" model of the TFWP under the Conservative government, and particularly under Diane Finley's tenure as Minister of Human Resources and Skills Development.

The recent turn back towards ESDC's involvement in the Canada-Guatemala migration corridor has not negated the presence of non-state actors. Although the IOM no longer participates in the administration of the program, Chapter 5 demonstrated how the IOM's functions were ultimately transposed onto private contractors who provide the technical expertise necessary to provide functionality to parts of the TFWP. Such contractors have guaranteed that the need for administrative expertise continues to be met in the absence of the IOM. Rather, this complex system should echo many of the observations covered earlier that stressed that the state has not disappeared, but has found a "neo-regulatory" (Preibisch 2011, 64-65) role that emphasizes a modified rather than diminished state and emphasizes the state's role in inducing migrant labour markets and coordinating the use of non-state actors.

This echoes the objectives laid out at the outset which emphasized a need to bring the state back into analyses of the TFWP. In doing so, it is observed that privatization operates as a potential strategy available to state policymakers, but not the only strategy. ESDC, in reversing certain elements of privatization, was not in any comprehensible sense reversing neoliberalism. This speaks to the importance of returning debates regarding neoliberalism and migration politics to a discussion of class power, through an emphasis on the historical trend of the TFWP to institutionally reflect the interests of employers.

Assessing the Future of the Temporary Foreign Worker Program

One important remaining question regards the future of temporary agricultural migration to Canada, the Agricultural Stream, and the TFWP more generally. Chapter 4 explored

several of the policy discourses that have emerged recently that have sought to address the prevalent trends of increasing temporariness, “two-step” immigration, and the rise of non-state “gatekeepers” within Canada’s immigration system. Earlier in the chapter, a review of the histories of the SAWP and the TFWP demonstrated an important facet of such programs – the broad consensus displayed by successive governments that such programs are valuable to the Canadian economy and justifiable as “win-win” scenarios in which both host and origin countries benefit, while downplaying the impact this may have on workers themselves. In this context, where the TFWP has persisted in its fundamental form through both Liberal and Conservative governments, and where, as Kelley and Trebilcock (2010) stress, immigration policymaking in Canada is insulated to a great degree within bureaucratic organizations, we see that change in government has so far brought changes of gradations to the program. These changes have not been insignificant, and throughout the Harper government (2006-2015) the TFWP became increasingly oriented towards the needs of employers and less sensitive to labour representation, as Chapter 6 further highlighted. Yet it still reinforces the point that the TFWP remains firmly ingrained in Canada’s labour market and immigration policymaking strategies.

The harmonization process itself has fallen short of addressing the ongoing structural deficiencies inherent in the agricultural component of the TFWP. As the literature on the SAWP and LSPP highlight, agricultural migrant workers frequently struggle to access rights while in Canada, in part due to the fundamental nature of their legal status which ties their work visa to specific employment, and in part due to the particular difficulties they have face due to linguistic and cultural barriers. The

mechanisms in place designed to give voices to workers – predominantly the government agents from participating sender states – are not applicable to all workers, nor are agricultural workers able to collectively bargain in every province at the current time. Numerous issues have however been addressed by the harmonization process, such as a lack of guaranteed accommodations for non-SAWP workers, the lack of automatic enrollment, and the clawing back of wages for certain employer-stipulated fees. These are positive outcomes; however, they are outcomes that were deemed acceptable by ESDC on account of the fact that they synchronized with other concerns raised by employers, chiefly that discrepancies in contract terms between workers from different streams had been producing dissatisfaction and dissent aimed at employers. Based on these observations, efforts at reform should begin with a more balanced reappraisal of the TFWP’s stakeholder process, by providing for a greater degree of input from workers and their labour representatives. Only then does it become possible for some of the greater inequities in the program can begin to be mitigated. As it stands, the contradictory nature of the migration management discourse is exposed through programs such as the TAWC. While ostensibly concerned with “liberalizing but managing” mobility, its embeddedness in the framework of neoliberal governance complicates both discourse and practice (Kalm 2010) and has produced an “ambivalence” (Geiger and Pécoud 2010: 13) regarding human rights that produces economically-driven migration programs based on humanitarian rhetoric without the necessary normative framework or institutional protection mandates that are necessary to support such language in a concrete sense.

In addition to addressing temporariness in the TFWP, this study also examined the TFWP’s connection to Canada’s broader immigration system at large, particularly

concerning the use of the TFWP employers as “gatekeepers” for the selection of permanent residents. This is a crucial discourse to take note of when discussing the “unfreedom” of temporary migrant workers. The discourse with the most potential to break with the employer-centric trends found in the TFWP involves the extension of “two-step” immigration to all wage- and skill-levels of temporary foreign workers. As Chapter 4 detailed, although two-step immigration has attracted criticism, particularly among advocacy groups who note that the temporary status phase of two-step immigration can produce heightened levels of dependency on continued employment and hence opens the possibility for greater abuse of workers, it has also been raised within the House of Commons as a pathway out of temporary status. In contrast to this strategy there is also the “permanent status on arrival” approach, which has gained currency in migrant advocacy circles but has yet to find broader support on a Parliamentary or Ministerial basis. The benefit of this approach is that it stresses the link between temporariness and the inability of migrant workers to access rights in a timely and effective manner. It represents, as a result, a much more radical departure from Canada’s engagement with temporary migrant workers, eliminating the very basis which defines the TFWP. Although it is still something of a marginal outlook, it is worth noting it, as it opens the door for imagining what agricultural migration could look like in Canada without the sixty-year institutional history of the TFWP. It is also worth pointing out the observation that “temporariness” does not necessarily end with the elimination of temporary status – even permanent residences experience its consequences (Latham et al 2014).

As it stands, Canada is presented with several questions going forward. As of writing, the House of Commons Standing Committee on Human Resources, Skills and Social Development has recently concluded its report on the TFWP. This report has called for open work permits as well as a review of pathways to citizenship “for migrant workers who have integrated into Canadian society and are filling a permanent labour market need (HUMA 2016)”. How and whether this will translate into policy, and how Immigration, Refugees and Citizenship Canada will approach this issue remains to be seen. A further question exists for those who seek concrete reforms of the TFWP – is the pathway approach sufficient to safeguard the rights of migrants in Canada? Is it truly a break with the employer-driven model of temporary migration, or does it mesh with this logic by incentivizing McLaughlin’s “performances of subordination (2010)”? Lastly, what is the impact of partisan factors on the TFWP, outside of Canada’s two major parties? The NDP has called for pathways to citizenship for temporary foreign workers, yet despite its brief ascent to Official Opposition status after the 2011 federal election, it remains the case that we have little knowledge of what an NDP model of temporary migration would look like in practice. Currently, the pathway question remains the dominant debate surrounding reform of the TFWP. The upcoming years will shed further light on what direction this dialogue will take.

Researching Migration Politics

This study concludes with some thoughts about the study of migration, and particularly of the TFWP, in the context of the changes that have been discussed. First, as Chapter 6 pointed out, dialogues concerning immigration are strongly mediated by federal

government agencies, and so the federal government's stakeholder process and the way in which it privileges or excludes certain actors will remain an important factor that structures this unfolding debate. Commentators and analysts would do well to focus on these internal mechanisms when evaluating the directions in which the TFWP is moving. The use of stakeholder processes, as demonstrated, can range from very formalized to fairly informalized contact between government agencies and non-state actors. As a result, while some elements of the stakeholder process may be publicized and accessible, others may take the form of personal contact between private and state actors. These less visible instances pose issues for observers, and additional efforts must be made to uncover them where applicable.

Chief among these efforts, Access to Information requests will be an increasingly critical resource for both academics and journalists alike, although various issues surround this methodological approach make their use problematic, particular the time and costs associated with the process and the lack of context which surrounds the raw documentation that the researcher receives. Improvements to this system would vastly improve research on migration in Canada; in addition, the possibility of improved access to ministerial actors in ESDC and CIC could present alternative openings for researchers studying the TFWP.

In a much broader sense, however, this study presses the point that Canada's migration control now occurs to an extent outside of Canada's borders. As a result, the choice of lens when examining the TFWP must be able to take into consideration the increasingly transnationalized elements of the system.

Further, more work needs to be done in examining the impact of the provincial level on temporary migrant labour. Ontario is perhaps the most muted jurisdiction when it comes to informing migration policy, due to its reliance on federal programs, but it is clear that provinces, and especially other provinces, do have an impact on federal temporary foreign worker programs. This study is somewhat limited on the conclusions it draws surrounding the political economy of Quebec and the importance of its quasi-judicial actors. However, the intersection between federal migration policy and provincial employment policy remains an important avenue for future research.

On a similar note, more work needs to be done in examining the impact of trade regimes. This proved to be a difficult element to study, because the effect of international policy regimes was not simply a function of the legal language structuring these agreements, but also of the interpretations of these agreements at ministerial levels.

To conclude, when we speak of temporariness, especially in the context of a program that has existed now for over fifty years, what is temporary is not necessarily the program itself, and not necessarily the broader movement of people who migrate, on a transnational basis, to gain employment in the Canadian economy. What is actually temporary are the individual conditions of the migratory experience that are stipulated to every temporary foreign worker by the terms of guestworker programs. Temporariness, therefore, is a quality of these programs that is experienced at the level of the individual migrant, rather than something experienced by the economic sectors that rely on migrant workers.

In the end, the government of Canada, as well as all Canadians, are placed in the position of considering the consequences of the TFWP as well as the trade-offs inherent in the use of temporariness as a means of securing labour for sectors of the Canadian economy like agriculture. In addition, we must consider the roles that are increasingly being played by non-state actors, such as employers and post-secondary educational institutions, in structuring the criteria for what constitutes the ideal immigrant or migrant. Because these actors operate with their own objectives and prerogatives, we must ensure that the broader considerations of how to build a better Canadian society through immigration, as well as how best protect the rights of vulnerable workers, are not lost in this trend.

Appendices

Appendix A : Letter from René Mantha to ESDC

From: René Mantha [rene.mantha@fermequebec.com]
Sent: 7 septembre, 2010 15:59
To: Kenyon, Andrew [NC]
Cc: West, Steven [NC]; Lauzon, Mario [QC]; Turbide, Valérie [NC]
Subject: **Harmonisation des programmes fédéraux avec les Lois du Québec**

Bonjour Andrew,

Dépôt de sécurité(Guatemala)

Lors de notre dernière rencontre à la fin du mois de mars dernier, nous avons discuté avec votre équipe de l'administration centrale de RHDCC, responsables de la gestion des programmes de main-d'œuvre étrangère, de la question du dépôt de sécurité de 500.00\$ américains que l'Organisation Internationale des Migrations au Guatemala (OIM) exigeait de la part des travailleurs guatémaltèques comme garantie, somme qui leur était remboursée à leur retour après avoir complété leur contrat de travail mais qu'ils perdaient si pout une raison non valable, et validée par le représentant du gouvernement du Guatemala (agent de liaison du Consulat à Montréal), s'ils demandaient d'être rapatriés avant la fin du contrat de travail. Le dépôt ainsi perdu, était utilisé à défrayer une partie du nouveau billet d'avion pour le travailleur de remplacement demandé par l'employeur. Cette mesure de l'OIM a été abandonnée le 1er août dernier et les employeurs vont devoir absorber tous les coûts de rapatriements d'un travailleur contrairement à ce qui est prévu dans les contrats des travailleurs agricoles du Mexique et des Antilles.

À moyen terme, cette décision risque d'affecter grandement le recrutement de nouveaux travailleurs en provenance du Guatemala à moins que le gouvernement du Guatemala ne prenne la relève avec une nouvelle formule. La formule du dépôt de sécurité fonctionnait bien mais les pressions exercées par Service Canada et Immigration Canada ont obligé IOM de mettre fin à cette pratique. Nous pensons que les grands perdants de cette opération seront les travailleurs guatémaltèques eux-mêmes alors que les mexicains devraient en sortir gagnants. À notre avis, la création de programmes distincts a entraîné de la discrimination entre les travailleurs de divers pays.

Normes du travail du Québec et le logement

Dernièrement, le directeur du Service du contentieux de la Commission des normes du travail du Québec (CNT), Me Robert Rivest, a rencontré votre personnel afin que le contrat de travail C&D soit modifié afin de refléter l'obligation pour l'employeur de ne déduire qu'un maximum de 20.00\$ par semaine (Article 6) pour la chambre qui lui est fournie même si dans les faits il partage un logement avec toutes les facilités requises la

préparation des repas, etc. Nous savons qu'il a également soulevé d'autres aspects qui ne seraient pas conformes aux Lois du travail en vigueur au Québec.

Nous sommes en désaccord avec l'interprétation que la CNT fait de l'article 6 de des Règlements et nous entendons défendre ce dossier devant les tribunaux civils du Québec. Entretemps, nous avons entamé des discussions avec le ministère du Travail afin que cet article des règlements soit révisé et mis à jour afin de refléter la réalité.

Nous savons tous que la déduction appliquée varie beaucoup d'une province à une autre et à l'intérieur d'une même province. Certains employeurs ont déduit dans certains cas jusqu'à 30% du salaire gagné par semaine. Ici au Québec, nous avons décidé d'un montant identique peu importe la région du Québec. Le déduction était de 30.00\$/sem. en 2003 et elle est de 45.00\$ depuis 2009. Pendant la même période, le taux de salaire est passé de 7.00\$/l'heure à 9.50\$/l'heure en 2010.

En 2007, nous avons mis en place un service d'inspection des logements dont votre personnel s'est inspiré en vue d'implanter un système semblable à toutes les provinces en 2011. Dans le cadre du projet d'harmonisation, votre personnel a présenté l'idée d'avoir une déduction uniforme de 30.00\$/sem. pour le logement, ce à quoi nous avons répondu que c'était une compétence provinciale et qu'il serait très difficile d'avoir une vraie harmonisation.

Droits de la personne

Dernièrement, nous avons eu une rencontre avec une enquêtrice de la Commission des Droits et Libertés de la Personne du Québec relativement aux différences contractuelles entre les contrats pour les travailleurs du Mexique, des Caraïbes et du Guatemala. Pour la Commission, ces différences entraînent de la discrimination à l'emploi et nous prévoyons que la Commission va prendre des actions pour corriger cette situation.

Harmonisation des programmes

Nous croyons qu'il y aurait lieu d'harmoniser véritablement tous ces contrats de travail en éliminant les distinctions qui créent des situations discriminatoires. Pour nous, la seule déduction qui devrait être autorisée est celle relativement au transport en déterminant que les travailleurs doivent assumer 50% du coût du billet d'avion aller-retour, peu importe le pays de provenance. On ne ferait plus référence à un montant maximal mais à un pourcentage. En outre, le logement serait gratuit pour tous les travailleurs peu importe le programme utilisé ou le pays de provenance. La déduction de \$2.00 pour frais divers dans le contrat des Antilles serait jugée illégale par la CNT au Québec.

Actuellement, les employeurs qui embauchent des travailleurs du Guatemala, du Honduras ou du Salvador en vertu du programme C&D, font une déduction de \$45.00 par semaine pour le logement, déduction qui devrait être, de \$20.00 par semaine selon la CNT, alors que les travailleurs mexicains et antillais qui font le même travail dans les mêmes fermes ne paient rien pour le logement. Toutefois, les mexicains et les antillais contribuent pour le transport, soit un maximum de \$550.00 pour le Mexique et \$492.00 pour les Caraïbes. En outre, ces derniers versent \$2.00 par jour pour les frais divers.

Nous avons donc établi une comparaison pour les mêmes travailleurs qui feraient le même travail sur une ferme et avons déterminé une durée d'emploi de 20 semaines, soit 120 jours de travail au même taux de salaire.

MEXIQUE: 550.00\$ (Transport)

GUATEMALA: 900.00\$ (Logement 45.\$X20sem.=900.\$) ou 400.00\$ si logement à 20.\$/sem. Donc, + de 350.\$ ou - de 150.\$ selon l'option.

CARAÏBES : 492.00\$ (Transport) + 240.00\$ (120jours X 2.00\$/jr.)= 732.00\$, soit 182.00\$ de plus que le travailleur mexicain moins de 168.\$ que le guatémaltèque selon le logement à 45.\$ ou + de 332.00\$ que le guatémaltèque si le logement est à 20.00\$/sem. Vous conviendrez que si le travailleur vient d'une île autre que la Jamaïque, il doit assumer le coût du transport aller-retour entre son île et le point de départ soit l'aéroport de Kingston en Jamaïque, soit une somme d'environ \$225.00. Si on fait venir un travailleur de îles, sa contribution totale est près de \$1000.00 pour la saison soit près du double qu'un travailleur mexicain. Est-ce équitable?

Avec une harmonisation des programmes, la déduction du transport à 50% serait équitable pour tous les travailleurs. Il est normal que plus la distance à parcourir en avion est importante, plus le billet d'avion est dispendieux, en général. Il y a bien sûr d'autres facteurs qui peuvent être pris en considération mais généralement la dépense en carburant est un facteur clé.

Nous vous proposons de tenir une réunion à laquelle des intervenants des Commissions des Normes du Travail et des Droits de la Personne seraient invités afin de nous conseiller dans l'harmonisation des programmes de main-d'œuvre étrangère et ainsi éviter d'enfreindre des lois du Québec. Au cours des dernières années, ces deux organismes ont fait de nombreuses interventions et adapter leurs publications à la réalité des travailleurs agricoles saisonniers du Québec.

J'espère que cette proposition retiendra votre attention.

René Mantha
Directeur général

Appendix B : Interview Requests

Requests granted:

- 1) UFCW official: August 2015
- 2) UFCW official: October 2015

Requests declined:

- 1) Former TFWP analyst
- 2) Migrant rights organization

No response:

- 1) Former TFWP analyst
- 2) TFWP analyst
- 3) TFWP analyst
- 4) TFWP analyst
- 5) TFWP analyst
- 6) TFWP analyst
- 7) TFWP analyst
- 8) TFWP analyst
- 9) Migrant rights organization
- 10) Migrant rights organization

Appendix C : Access to Information Request

Request Number: A-2014-00350

Organization: Employment and Social Development Canada

Year: 2015

Month: February

Number of Pages: 375

Request Summary: All documents (directives, briefings, e-mails, presentation decks, etc.) relating to the creation of the Agricultural Stream from January 1, 2009 to April 31, 2011.

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