

**CANADIAN FOREIGN POLICY: A QUALITATIVE ANALYSIS OF LABOUR MOBILITY
IN CANADA'S MULTILATERAL, REGIONAL, AND BILATERAL TRADE
AGREEMENTS**

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To Nicholas and Jake

ABSTRACT

Economic globalization is increasing the cooperation of states in the international marketplace. Labour mobility is a key area that has proven difficult to liberalize due to its complex nature and sovereign border controls. As a proponent of free trade Canada has sought to establish the rules of trade in multilateral agreements though more recently has turned to bilateral agreements. However, the proliferation of bilateral agreements is seen by economic scholars to frustrate the more efficient multilateral agreements. Comparing the technical language within various agreements reveals that a consistent trend to deepen Canada's commitments in bilateral arrangements is not found. Rather, bilateral agreements have served to broaden trade globally. This finding suggests that bilateral trade agreements do not complicate the liberalization process to the extent proposed by multilateralists. In this light, bilateral agreements are considered to support Canada's multilateral objectives by acting as building blocks and creating new trade partners.

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TABLE OF CONTENTS

TABLES	vii
ABBREVIATIONS	viii
CHAPTER 1. INTRODUCTION	1
Canadian Foreign Trade Policy and Labour Mobility	2
Review of Literature	11
Tensions in Multilateralism, Regionalism, and Bilateralism	17
Methodology	20
CHAPTER 2. CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN THE NORTH AMERICAN FREE TRADE AGREEMENT	36
Conclusion	51
CHAPTER 3. CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN THE GENERAL AGREEMENT ON TRADE IN SERVICES	52
Conclusion	79
CHAPTER 4. CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN ITS BILATERAL TRADE AGREEMENTS	81
Canada-Chile Free Trade Agreement (CCFTA)	84
Canada-Costa Rica Free Trade Agreement (CCRFTA)	93
Canada-Peru Free Trade Agreement (CPFTA)	94
Canada-Colombia Free Trade Agreement (CCOFTA)	117
Conclusion	133
CHAPTER 5: CONCLUSION	135
BIBLIOGRAPHY	141
APPENDIX 1 CANADA'S FREE TRADE AGREEMENTS	149
APPENDIX 2 LIBERALIZATION OF LABOUR MOBILITY WITHIN CANADA'S FTAS	150

TABLES

2.1	Summary of NAFTA Annex I: Canada’s Schedule of Reservations for Existing Measures and Liberalization Commitments	39
2.2	Summary of NAFTA Annex II: Canada’s Schedule of Reservations for Future Measures	40
2.3	Summary of NAFTA Annex V: Quantitative Restrictions	41
3.1	Summary of Canada’s GATS Article II	55
3.2	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Business Services	63
3.3	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Communication Services	63
3.4	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Construction Services	64
3.5	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Distribution Services	64
3.6	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Environmental Services	65
3.7	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Financial Services	65
3.8	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Tourism and Travel Related Services	66
3.9	Summary of Canada’s Sector Specific Mode 4 Limitations on Market Access and National Treatment in Transport Services	66
4.1	Summary of CCFTA’s Annex I: Canada’s Schedule of Reservations for Existing Measures and Liberalization Commitments	86
4.2	Summary of CCFTA’s Annex II: Canada’s Schedule of Reservations for Future Measures	87
4.3	Summary of CCFTA’s Annex IV: Quantitative Restrictions	88
4.4	Summary of CPFTA’s Annex I: Canada’s Schedule of Entry into Force Reservations for Existing Measures and Liberalization Commitments	97
4.5	Summary of CPFTA’s Annex II: Canada’s Schedule of Reservations for Future Measures	98
4.6	Summary of COFTA’s Annex I: Canada’s Schedule of Reservations for Existing Measures and Liberalization Commitments	121
4.7	Summary of CCOFTA’s Annex II: Canada’s Schedule of Reservations for Future Measures	122

ABBREVIATIONS

CCFTA	Canada-Chile Free Trade Agreement
CCOFTA	Canada-Colombia Free Trade Agreement
CCRFTA	Canada-Costa Rica Free Trade Agreement
CETA	Comprehensive Economic and Trade Agreement
CPFTA	Canada-Peru Free Trade Agreement
CRS	Computer Reservation Services
CUSFTA	Canada-United States Free Trade Agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IBRD	International Bank for Reconstruction and Development
ILO	International Labour Organization
IMF	International Monetary Fund
IOs	International Organizations
IT	Information Technology
ITO	International Trade Organization
MFN	Most-Favoured Nation treatment
MNCs	Multi-National Corporations
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NTBs	Non-Tariff Barriers
QRs	Quantitative Restrictions
TPP	Trans-Pacific Partnership
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

In matters of international trade, Canada is a proponent of global governance through a variety of (neo)liberal arrangements. In fact, its history as a persistent champion of both international cooperation and free trade is a hallmark of its foreign policy. Trade expansion is seen as an engine for growth as Canada seeks both to nurture the domestic economy and to provide a secure outlet for Canadian goods and services. Traditionally, it has sought to carry out its agenda in multilateral forums, while at other times favouring regional and bilateral arrangements. The global environment of international trade has evolved from traditional goods to include areas such as intellectual property rights, public procurement, investment, and services. While much progress has been made toward the freer movement of goods, the liberalization of services has proved more challenging.

This study will examine efforts to liberalize one aspect of the services sector, labour mobility. Specifically, Canada has engaged in labour mobility negotiations in a wide range of multilateral, regional and bilateral forums including, but not limited to, the North American Free Trade Agreement (NAFTA), the multilateral General Agreement on Trade in Services (GATS), and four bilateral agreements—the Canada-Chile Free Trade Agreement (CCFTA), the Canada-Costa Rica Free Trade Agreement (CCRFTA), the Canada-Peru Free Trade Agreement (CPFTA), and the Canada-Colombia Free Trade Agreement (CCOFTA). In examining these agreements this thesis will focus on two specific questions in the context of Canada. First, do regional and bilateral agreements prevent progress on multilateral services negotiations with a focus on labour mobility?

Second, is it possible to measure liberalization by examining the technical language of these agreements? This study concludes that Canada has approached labour mobility negotiations consistently in bilateral, regional and multilateral agreements. It also introduces a system of measures related to technical language that suggests Canada has pursued a broadening of trade relations with several new trading partners in this sector but without an equivalent commitment to deeper liberalization, thereby suggesting an incremental approach to Canadian foreign trade policy, at least in this specific sector.

Canadian Foreign Trade Policy and Labour Mobility

The service industries are an important sector and major driver behind job creation of Canada's domestic economy, accounting for 70 per cent of GDP.¹ It is estimated that four out of every five working Canadians work in service industries in a broad range of occupations, including financial and insurance services, business and management services, and information technology (IT). In 2012, Canada's service exports totalled \$83.3 billion and represented 15.3 percent of total exports of goods and services.² While the majority of these exports are to the United States, other important partners include the European Union (EU), Bermuda, China, Hong Kong, Switzerland, Japan, and Korea. A key aspect of international trade in services is labour mobility and the temporary movement of professional workers. Numerous barriers exist in this issue area in the form of special visas, work permit requirements, recognition of credentials, and limitations on categories of business persons permitted to enter. For the most part,

¹ Canada, Statistics Canada, Service Industries, 2010. www41.statcan.gc.ca/2006/0163/ceb0163_000-eng.htm (accessed January 20, 2016).

² Canada, Global Affairs Canada, Canada and Trade in Services, 2013. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/canada.aspx?lang=eng> (accessed January 21, 2016).

Canada has pursued the liberalization of labour mobility in sectors where Canadian workers have a comparative advantage or where specific services of foreign origin are required in the domestic economy. As former Prime Minister Stephen Harper suggested, Canada has and continues to welcome the liberalization of services, even in the context of a renegotiated North American Free Trade Agreement (NAFTA).³

The conflicting goals of liberalization and the protection of domestic Canadian interests are not limited to trade in services. In fact, these realities are evident throughout the history of Canada's foreign trade policy, especially in the negotiation and implementation of bilateral, regional, and multilateral trade agreements. The management of economic anarchy in the international political economy began in earnest in 1944 when the Allies met in Bretton Woods, New Hampshire, to conclude the articles of agreement for both the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD). Discussions regarding a formal trade institution, the International Trade Organization (ITO), were also part of the negotiations, which ultimately ended in failure resulting in the less formal General Agreement on Tariffs and Trade (GATT) in 1947. The GATT was not intended to function as an organization but rather as a schedule to be shared among participating countries. Canada was an active participant in the first GATT round that focused on reducing tariffs, establishing most-favoured-nation (MFN) rule, and reductions and bindings in tariff schedules. Commitments also prohibited quantitative restrictions (QRs), though existing QRs remained.

Though Canada remained committed to the multilateral goals of the GATT it was also not opposed to pursuing bilateral agreements in the early post-war period. At this

³ Dene Moore, "NAFTA May Be on Table," *Lethbridge Herald*, March 13, 2014.

time, Canada shared close trade relations with the US and Great Britain but both had very different priorities. The Americans were opposed to the allowance of discrimination embedded in the system of imperial tariff preferences between Canada and the UK. At the same time, the US held on to a high tariff level that Congress would not relinquish. As a result, Canada explored separate free trade agreements with the US and the UK. Although neither materialized Canada would continue to pursue trade agreements in a range of forums over the next seven decades often guided by principles of self-interest.

As Michael Hart has noted:

The decade and a half after the Second World War was the golden age of Canadian postwar foreign policy. Canadian officials could be found everywhere trying, often successfully, to combine enlightened internationalism with the pursuit of Canada's own interest ... Indeed, Canada pressed its interest with such dogged determination that it gained a reputation for sanctimony; most other GATT members appeared more ready to accept the imperfections of the GATT and its members.⁴

Over the years this approach guided Canada through several rounds of GATT negotiations and resulted in other bilateral and regional policies and agreements such as the Canada-US Auto Pact and Third Option.

This duality continued in the 1980s with the negotiation of the Canada-US Free Trade Agreement (CUSFTA) and the conversion of the GATT into the World Trade Organization (WTO). The signing of the CUSFTA in 1988 marked an historic step in Canadian-US trade relations. Major achievements included the elimination of tariffs and the reduction of non-tariff barriers. It was also the first agreement to address trade in services. Diplomatic negotiations for a new regional agreement that included Mexico began in 1990 under the Mulroney government and culminated with the NAFTA signed

⁴ Michael Hart, *A Trading Nation: Canadian Trade Policy from Colonialism to Globalization* (Vancouver, BC: UBC Press, 2002), 165.

by the Jean Chrétien Liberal government in January 1994. The NAFTA is considered a third generation agreement and codifies a wide range of tariff and non-tariff barriers, including investment, telecommunications, technical barriers to trade and services, including labour mobility. Additionally, the new trade bloc ultimately served as a model for the free trade agreements (FTAs) that followed.

The World Trade Organization, on the other hand, was established in 1995. The Marrakesh Agreement officially incorporated the GATT under the WTO umbrella. Whereas the GATT primarily addressed trade in goods, coverage broadened under the WTO to include technical barriers, health and safety standards, and intellectual property.⁵ Initiatives to include services began in the Uruguay Round of trade negotiations, leading to the establishment of the GATS, which included several modes of services, including labour mobility. Service negotiations became part of a “single undertaking” in which all matters regarding services are to be concluded at the same time.

The GATS mandates that member governments progressively liberalize trade in services through successive rounds of negotiations, which are conducted on two tracks. The first is bilateral and/or plurilateral negotiations to improve market conditions for trade in services, such as market access, national treatment, and most-favoured-nation (MFN) treatment. The second track includes multilateral negotiations establishing the rules and disciplines for all members. The GATS shares the same objectives as its counterpart in merchandise trade, the GATT, creating a reliable system of trade rules that ensure the non-discrimination between members, the stimulation of economic activities through bindings, and the promotion of trade and development through progressive

⁵ World Trade Organization, “What is the World Trade Organization?,” https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (accessed January 22, 2016).

liberalization.⁶ The GATS applies in principle to all service sectors, with two exceptions: public services not supplied in competition with other suppliers and air transport services.

The pursuit of bilateral and regional agreements continued in the aftermath of the WTO and the GATS due primarily to the consensus requirements in the Doha Round negotiations. Opinions among its members remained divided over agriculture, industrial tariffs and non-tariff barriers, services, and trade remedies.⁷ These developments caused governments to consider regional and sectoral trade agreements as a way to move trade liberalization forward. Canada also became concerned about the intensified bilateral focus of dominant global traders such as the US and the possible loss of market share. As a response, the Canadian government eventually committed to an aggressive bilateral trade negotiation agenda.

One agreement and a subject of this study, the Canada-Chile FTA, came into force not long after the establishment of the WTO. The CCFTA was an initiative of the Chrétien government and was the first free trade agreement conducted by Canada with a major South American country. It solidified Canada and Chile as key diplomatic partners in the Western Hemisphere. Canada's motivations for pursuing the agreement came in direct response to US-Chile free trade talks that threatened to put Canadian companies at a disadvantage to their US competitors. As a result, Canadian companies

⁶ World Trade Organization, "The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines," https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (accessed January 22, 2016).

⁷ Charles E. Harrahan, "Agriculture in the WTO Doha Round: The Framework Agreement and Next Steps," Congressional Research Service Report for Congress, May 3, 2005.

have established major presences in the mining and financial services industries in Chile that has contributed to Canada's trade surplus in services.⁸

As with the CCFTA, the Canada-Costa Rica FTA was also negotiated in response to US-Costa Rica free trade talks. The CCRFTA came into force in November 2002. It is a first generation agreement dealing primarily with trade in goods and does not include substantive provisions in cross-border trade in services, financial services, investment, and government procurement.⁹ Efforts to modernize the agreement are underway. The CCRFTA has not created the close ties or diplomatic relations that the CCFTA enjoys.

The Conservative governments of Stephen Harper also continued this bilateral trend. Two major events affecting Harper's approach to trade were the 2001 terrorist attack on the World Trade Center and the relative U.S. economic decline compared with major emerging economies. John Ibbitson calls this period the "Harper Doctrine," and describes it as a "big break" economic dependence on the U.S.¹⁰ A key part of this was a rejection of multilateralism and an emphasis on bilateral approaches to foreign trade policy. David Emerson, the Minister of International Trade in 2006, embraced this approach and pushed for bilateral agreements with Jordan, European countries outside the EU, and several South American countries.

⁸ Canada, Library of Parliament, "Trade and Investment: Canada-Chile," Publication No. 2014-49-E, Ottawa: June 13, 2014, <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2014-49-e.pdf> (accessed January 23, 2106).

⁹ Canada, Global Affairs Canada. *Canada-Costa Rica Free Trade Agreement*, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/costarica/index.aspx?lang=en> (accessed January 23, 216).

¹⁰ John Ibbitson, "The Harper Doctrine: A Conservative Foreign Policy Revolution," Centre for International Governance Innovation, Speakers Series, January 2014, <https://www.cigionline.org/videos/harper-doctrine-conservative-foreign-policy-revolution> (accessed January 21, 2016).

In the Andean Community Canada targeted Peru and Colombia. It identified several goals in the services sector: greater transparency, certainty, predictability and enhanced market access for Canadian service providers in areas of financial, high-tech, mining, and professional services. It was hoped that greater facilitation of labour mobility would provide a significant advantage to Canadian service providers compared to countries that did not have FTAs with the Andean countries.¹¹ The Canada-Peru FTA came into force in August 2009. Upon adoption of the CPFTA, Stockwell Day, the new Minister of International Trade, announced:

Ensuring free and open trade is vital to international efforts against the global recession. Canadians can count on our government to oppose protectionism and defend free and open trade on the world stage. It will open new doors in key sectors such as extractive industries, manufacturing, agriculture and financial services—all areas in which Canadians have extensive expertise.¹²

As in previous cases, the agreement followed on the heels of US discussions. Some of Canada's economic goals have been successful as investment increased particularly in the mining and financial sectors. Bilateral trade in goods has grown and diplomatic ties have strengthened. However, Peru is not a large trading partner in services for Canada.¹³

¹¹ Canada, Global Affairs Canada. Regional and Bilateral Initiatives, "Canada-Andean Countries-Free Trade Discussions," <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/FTA-ALE-and.aspx?lang=eng> (accessed January 23, 2016).

¹² Canada, Foreign Affairs and International Trade Canada, "Trade Agreement with Peru Opens Doors to Latin America," News Release no. 167 (June 18, 2009), http://www.sice.oas.org/TPD/AND_CAN/Negotiations/Parliament_approv_e.pdf (accessed February 22, 2106).

¹³ Canada, Library of Parliament, "Canadian Trade and Investment Activity: Canada-Peru", Publication No. 2010-48E, Ottawa: July 22, 2110. <http://www.lop.parl.gc.ca/content/lop/researchpublications/2010-48-e.htm> (accessed February 22, 2016).

The Canada-Colombia FTA, came into force in August 2011. Canada's trade goals remained consistent in seeking an advantage for Canadian companies and protecting its market share against its American competitors. It also pursued a secondary objective—to shore up liberal democratic values in the region. Negotiations with Peru took 17 months, and parliamentary approval took several years due to concerns over Colombia's human rights record, resulting from a prolonged civil insurgency. The effort to liberalize trade succeeded and Colombia has seen a substantial increase in Canadian investment, especially in the oil, gas, mining and financial services sector. Although trade in services has remained relatively modest compared to merchandise trade, diplomatic ties between the countries have been strengthened. Canada's key services sector interests in Colombia include oil and gas, mining, engineering, architectural, environmental, and information and technology services.¹⁴

Due to cultural, linguistic, and historical links over the years with Europe, the European Union (EU) is a natural trading partner for Canada. Canada has agreed on a number of previous bilateral agreements with the EU focusing on a range of issues, such as veterinary, wine and spirits or customs administration. The Harper government launched negotiations for the Comprehensive Economic and Trade Agreement (CETA) in October of 2009. Though the Harper government made CETA a top trade priority, negotiations—which had a target finish date of 2012—were not concluded until September 2014. It has yet to be ratified. Several issue areas—including agriculture, Intellectual property, and procurement—delayed the talks. Canadian visa requirements

¹⁴ Canada, Parliament of Canada, "Human Rights, The Environment and Free Trade with Colombia," Report of the Standing Committee on International Trade (June 2008), 39th Parliament, 2nd Session.

for workers also delayed progress. It does, however, address a number of issues related to labour mobility. Most notably, to support trade in services and investment, CETA will make it easier for firms to move staff temporarily between the EU and Canada in several categories of professionals.¹⁵ An ambitious trade initiative, it is hailed as broader and deeper in scope than the NAFTA.

In October 2012 Canada decided to join ongoing negotiations for the Trans-Pacific Partnership (TPP). The TPP is a plurilateral association whose members undertake bilateral commitments. Twelve countries are signatories: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. Negotiations were recently concluded in October 2015, but the agreement has yet to be ratified. Canada's participation is expected to deepen its ties in the growing Asia-Pacific region as well as strengthen relations with its NAFTA partners. The TPP, along with trade agreements with the EU and South Korea, would make Canada the only G-7 nation with free trade access to the Americas, Europe, and the Asia-Pacific region. Coverage of labour mobility in the TPP includes temporary entry commitments for certain highly-skilled professionals and technicians, intra-corporate transferees, investors, and business visitors, including improved access to priority markets.

From this discussion it is clear that both Liberal and Conservative governments have pursued bilateral and regional negotiations, in addition to ongoing multilateral talks, in Canadian foreign trade policy during the past two decades. Beyond the agreements noted earlier, Canada is also exploring opportunities with the countries of India,

¹⁵ European Commission, "Facts and figures of the EU-Canada Free Trade deal," News Archive, Brussels, October 18, 2013. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=974> (accessed January 21, 2016).

Thailand, Japan, and China. Canada's latest agreement was the bilateral Canada-Korea FTA which took effect in January 2015. This foreign policy stance is likely to continue. In the Conservative's *Global Markets Action Plan*, economic diplomacy was clearly established as the driving force behind prosperity.¹⁶ The newly rebranded Global Affairs Canada has identified several trade priorities, including the expansion of commercial relationships into new markets and the promotion of recently concluded agreements.

Review of Literature

This study focuses on labour mobility within the service sector, as dealt with in Canada's international trade agreements. Labour mobility serves as an excellent case study related to governance in the global political economy as migration patterns expose a central inconsistency in globalization. While capital, information, and knowledge flow relatively freely across the globe, people have not. The key to this study is to determine if Canada has played a key role in the liberalized technical language of this field across a number of trade agreements. In order to do so, it is first important to review international relations theory for insight on Canada's foreign trade policy in general, and more specifically as it applies to labour mobility. Because the authority to manage international trade and commerce—and consequently to negotiate trade agreements—functions at the federal level, Canadian trade policy must be viewed through an international relations lens.

At the core of this analysis are questions related to anarchy, power, cooperation, and absolute versus relative gains. Classical realism focuses on the acquisition,

¹⁶ Canada, Global Affairs Canada, *Global Markets Action Plan*, <http://www.international.gc.ca/global-markets-marches-mondiaux/index.aspx?lang=eng> (accessed January 24, 2016).

maintenance, and exercise of power by the state and is reflected in the early works of Thucydides (460-410 BC), Niccolo Machiavelli (1469-1527), Thomas Hobbes (1588-1679), and Carl von Clausewitz (1780-1831). The nation-state is its unit of analysis in international issues, with a particular focus on security due to the conflictual nature of mankind. In the absence of an authority higher than the state, anarchy reigns. Kenneth Waltz, a structural realist writing in *Man, the State, and War* (1959), popularly describes the international system as one of “self-help.”¹⁷

In the sub-field of international political economy, which examines the relationship between markets and states, the realist perspective is referred to as mercantilism. Alexander Hamilton (1755-1804) addressed the economic implications of realism, arguing for the primacy of politics over economics in his *Report on Manufacturers*. His views are considered a precursor to economic nationalism or neo-mercantilism, which attempts to apply rational choice theory to economic decision-making. While they see participation in a highly interdependent world economy as necessary they also stress that these relationships are rarely symmetrical. It is the state’s role, then, to intervene in the domestic and international economy to protect industries that contribute to a country’s wealth and power. Realists and mercantilists both stress relative gains and self-interest in international institutions and regimes. In sum, cooperation exists when it is in the self-interest of the state. Great powers (hegemons) typically drive this process, often seeking a balance of power to maintain stability.

By contrast, liberal theory presents a more optimistic view of international relations. It is based on four main assumptions. First, both state and non-state actors

¹⁷ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* (New York: Columbia University Press, 1959).

are important. Thus the liberal perspective recognizes the role of international organizations. Second, the state is not necessarily a unitary and rational actor. Rather, it is considered a fluid entity comprised of competing interests that have varying influences on the government. Third, the nature of international relations is seen as a combination of conflict and cooperation that generates complex interdependence. It accepts that sovereignty may be relinquished in exchange for a greater purpose. In the setting of international political economy, the establishment of rules and norms offers security from anarchy and a predictable trade environment. Fourth, in addition to the realist emphasis on security and the military, it is possible for a variety of issues to dominate the international agenda.¹⁸ Economic issues, then, hold more significance in the liberal tradition than in the realist perspective.

The economic liberal tradition draws on the economic theory of Adam Smith (1723-1790) and the political theory of John Locke (1632-1704). These theorists believed in the possibility of cooperative relations between societies. Since trade relies on the peaceful exchange of goods, such cooperation generates wealth and prosperity through absolute gains, although all states may not benefit equally. David Ricardo (1772-1823) described this concept in terms of comparative advantage where countries trade in goods in which they have a surplus. To early economic liberals, anarchy is managed through market forces of a laissez-faire economy. It is the free movement of goods that results in absolute gains where all parties benefit. The international economy, then, provides avenues for growth and expansion. Liberals also posit that non-state actors, such as multinational corporations (MNCs), influence international relations and are important actors in the international political economy. Here, scholars

¹⁸ Kelly-Kate S. Pease, *International Organizations*, 5th ed. (New York: Pearson Educations, 2012), 64.

also look below the level of the state to domestic factors in order to evaluate state behaviour.

In the liberal view, international organizations and regimes provide a peaceful means in which states can cooperate, share information, and potentially enforce rules and norms.¹⁹ Some liberals have also argued that these cooperative arrangements are transitory and precursors to world government or even a cosmopolitan utopian society. Immanuel Kant (1742-1804), for example, believed the formation of a world republic is part of the natural evolution of international relations. Another early theorist, Jeremy Bentham (1748-1832), held a more utilitarian view of institutions which are seen to provide the greatest good for the greatest number of people.

In the aftermath of the Second World War liberal IR theory focused on functional and neo-functional views on integration and cooperation, largely in Europe. From this perspective functionalists recognize state sovereignty as a dominant principle but also believe that cooperation lends itself to economic and security benefits, especially in areas such as defence and monetary policy.²⁰ More recently, neoliberal institutionalists, such as Robert Keohane, built on these observations emphasizing how institutions and regimes can assist state actors in overcoming collective action problems and encourage cooperation under conditions of anarchy.²¹ Liberal institutionalists argue that hegemons are helpful in establishing order but are not required for its maintenance. These cooperative arrangements also provide tangible benefits by not only reducing transaction

¹⁹ Paul F. Diehl and Brian Frederking, *The Politics of Global Governance* (Boulder, CO: Lynne Rienner Publishers, Inc., 2010), 5.

²⁰ David Mitrany, "The Functional Approach to World Organization," *International Affairs* 24, no.3 (July 1948): 350; and A. LeRoy Bennet, *International Organizations: Principles and Issues*, 5th ed. (Upper Saddle River, NJ: Prentice Hall, 1991), 15.

²¹ Pease, 66.

and information costs but also by promoting transparency. In doing so, states only cede a degree of sovereignty in exchange for certain benefits, including the protection of their sovereign prerogatives.²² Neo-liberals value the role that rules, norms, and institutions play in managing economic anarchy. From the stability that these mechanisms provide, absolute gains are achieved.

In the area of trade, liberalism is optimistic about the negotiation and implementation of rules and norms in agreements which are often enforced to some degree by regimes and institutions.²³ First they help states overcome collective action problems, including “free riders” where an actor benefits from the provision of a public good beyond what it contributed. In this case, rules and enforcement mechanisms help counter this problem by identifying unacceptable trade barriers and by providing a neutral forum for settling trade disputes. Second, these rules and norms also help to promote economic prosperity and global welfare by allowing the world’s goods, services, and resources to be distributed by the global market. As a byproduct, increased economic interdependence may also reduce the chances of conflict due to an emphasis on the peaceful settlement of disputes, compromise, reciprocity, and the rule of law.²⁴ Finally, these provisions also have the potential to provide normative benefits to international trade, especially when rules and norms provide preferential schedules for developing economies or include labour and environmental considerations.²⁵

²² Robert O. Keohane, “International Institutions: Two Approaches,” *International Studies Quarterly* 32, no.4 (December 1988): 381.

²³ Pease, 69.

²⁴ Thomas Zweifel, *International Organizations and Democracy: Accountability, Politics and Power* (Boulder, CO: Lynne Ripener, 2006).

²⁵ Joshua Goldstein, *International Relations*, 2nd ed. (New York: Harper Collins, 2006), 376.

Clearly, rules and norms are crucial to understanding contemporary international trade. As Keohane has suggested, institutions and regimes are often defined in terms of their rules.²⁶ Essentially, trade agreements, and associated regimes and institutions, are defined by the negotiated commitments of its members. Keohane adds, “it is in the combination of the potential value of agreements and the difficulty of making them that renders international regimes significant.”²⁷ It is this observation that legitimizes the analysis of the technical language of trade agreements used in this study.

As a relatively small economy, Canada is forced to look outside its borders in order to expand its markets and secure its economic well-being. International trade is an issue-area that is prioritized in Canada’s global agenda. A review of Canada’s foreign policy history demonstrates the value of the neoliberal institutionalist perspective in understanding its involvement in the institutions of the global trade regime. Whether they are multilateral, regional, or bilateral, Canada looks to these institutions in order to liberalize trade, establish the rules of trade, and provide a means of dispute resolution. In the case of labour mobility, neoliberal institutionalism justifies Canada’s attempt to manage the contradictory goals of temporary entry of business persons and maintain sovereign state control over its borders. Decidedly, it seeks to cooperate through international agreements and the establishment of rules and norms rejecting economic theory of free markets that limits government involvement. But what happens when tensions emerge in the pursuit of rules and norms in competing forums? It is to this question the introduction now shifts.

²⁶ Keohane, 384.

²⁷ *Ibid.*, 386.

Tensions in Multilateralism, Regionalism, and Bilateralism

Do multilateral, regional or bilateral agreements work together to facilitate liberal trade or does the pursuit of rules and norms in different frameworks contribute to multiple layers of governance making larger comprehensive arrangements less likely? Historically, Canada largely pursued multilateral negotiations until the 1980s. This was due to the belief that bilateral and regional arrangements were often thought of as a second best approach or a ‘default’ level of international relations.²⁸ More recently, however, these forums have received more favourable reviews as options to pursue when multilateralism no longer works. As Fredrik Söderbaum has noted, these options have “become the best-risk management and coping strategy” when expanded access is no longer possible through multilateral negotiations.²⁹

For the purpose of this study bilateralism refers to the economic relations between two sovereign states. Regionalism—often considered an extension of bilateralism—exists when three or more states from a specific geographic area come to an agreement on certain rules and norms. Multilateralism, in contrast, is inclusive, rather than exclusive, of multiple states often involving specific institutions and regimes.³⁰

²⁸ Thomas Renard, “Partnerships for Effective Multilateralism? Assessing the Compatibility Between EU Bilateralism, (Inter-)Regionalism and Multilateralism,” *Cambridge Review of International Affairs* (July 10, 2015): 14.

²⁹ Fredrik Söderbaum, “Unlocking the Relationship between the WTO and Regional Integration Arrangements (RIAs),” *Review of African Political Economy* 35, no. 118 (December 2008): 630.

³⁰ G.R. Winham, “Canadian Trade Multilateralism: the GATT, the WTO, and Beyond,” *Canadian Foreign Policy* 16, no. 2 (Spring 2010): 125; and Patricia Goff, “A Comment on the Effective Possibilities of Multilateralism,” in *Can the World Be Governed? Possibilities for Effective Multilateralism*, ed. Alan S. Alexandroff (Waterloo, ON: Wilfred Laurier University Press, 2008), 389.

Moreover, Keohane has defined multilateralism as the “effort to coordinate the national policies of groups or states” on the basis of “certain principles” and “ordering relations.”³¹

There is much debate among economists and international relations theorists over which mode should be pursued. Söderbaum, for example has pointed out that even “if multilateralism is seen as first-best strategy for enhancing the gains from trade from the point of view of economic theory, regionalism is the first-best policy option in practice.”³² One obvious example of bilateral and regional options is the smaller number of participants, which makes it easier to reach a consensus, enforce commitments, and decrease the likelihood of free riders or defectors.³³ Regional agreements are also seen as beneficial in terms of providing flexibility for a range of participants at different stages of economic development and as way stations for broader multilateral agreements.³⁴ In this manner they are considered “stepping stones” rather than “stumbling blocks” to greater liberalization.³⁵

Bilateral and regional options, however, can also cause a delay, or an end, to more comprehensive multilateral agreements. Smaller countries, for example, may be more vulnerable to the domination of more powerful economies in these settings. From

³¹ Robert O. Keohane, “Multilateralism: An Agenda for Research,” *International Journal* 45, no. 4 (Autumn 1990): 731.

³² Söderbaum, 630.

³³ HeeMin Kim and Dale L. Smith, “Blocs or Rounds? An Analysis of Two Approaches to Trade Liberalization,” *Canadian Journal of Political Science* 30 no. 3 (September 1997): 446.

³⁴ World Trade Organization, “Regionalism: Friends or Rivals?” https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey1_e.htm (accessed January 21, 2016); and Roberta Benini and Michael G. Plummer, “Regionalism and Multilateralism: Crucial Issues in the Debate on RTAs,” *Economic Change and Restructuring* 41, no. 4 (December 2008): 270.

³⁵ Jagdish Bhagwati, *The World Trading System at Risk* (Princeton, NJ: Princeton University Press, 1991).

an economic standpoint, it is also argued that transaction costs are higher with regional agreements as commitments must be repeated with each new agreement. Preferential bilateral and regional trade agreements can also directly compete with already existing multilateral rules and norms creating several layers of governance that reduce efficiencies in liberalization. This is known as “competitive liberalization” and may be seen as contributing to the progressive fragmentation of the international trading system.³⁶

Multilateralism, in contrast, offers several advantages. Perhaps the greatest, is that it maximizes cooperation among all nations and leads to a “one world, one law” union under which members abide by the same rules, often coordinated through a central institution. Transaction costs are also reduced as nations pool their resources and agree to follow rules and norms applicable to all participating states. It is also argued that only multilateral forums can truly solve “global problems demanding global solutions” with the opening of expansive new markets.³⁷ The disadvantages of multilateralism are well understood. Generally, as the number of actors increases, the ability to enforce the provisions of such an agreement decreases. In a trade setting, because of the growing number of issues that must be addressed—such as services, intellectual property rights, and non-tariff barriers—consensus is also more difficult to reach.

³⁶ Geoffrey E. Hale, “In Pursuit of Leverage: The Evolution of Canadian Trade and Investment Policies in an Increasingly Multipolar World,” *Canadian Foreign Policy Journal* 18, no. 1, (2012): 117.

³⁷ World Trade Organization. “Concerted effort by members needed to address WTO’s impasse,” WTO News, Speech by DG Roberto Acevedo. (October 9, 2014) https://www.wto.org/english/news_e/spra_e/spra36_e.htm (accessed January 26, 2016).

Numerous studies have been conducted using empirical data to determine the success or failure of bilateralism and multilateralism. The general consensus among economists is that multilateralism is more effective in the long run. This, however, is in sharp contrast to the failure of the WTO negotiations, which have not moved passed the Doha Round that began in 2001. Economists argue that while bilateralism and regionalism increase trade, it harms the welfare of the world trade system. The trading environment is further complicated through the creation of multiple rules, in what is well-known as Jagdish Bhagwati's "spaghetti bowl" effect.³⁸ Bhagwati, an economist and prominent trade policy scholar, warns that preferential trade agreements are not a step towards global free trade but a step away because of its discriminatory rules. This thesis examines Canadian commitments in a series of multilateral, regional, and bilateral trade agreements in an attempt to prove or disprove Bhagwati's thesis, albeit limited to the labour mobility provisions within broader services commitments.

Methodology

This study applied a qualitative approach to assess the extent of liberalization in labour mobility within a sampling of Canada's in-force multilateral, regional, and bilateral trade agreements. As the NAFTA was the first agreement still in force today, it will be used as a basis on which to evaluate liberalization in subsequent agreements. In such a manner, the thesis evaluates Canada's open market principles as identified in its foreign trade policy statements. This section provides a framework for how this research was accomplished by first introducing the subjects of the study, Canada's various trade agreements. Second, a discussion of the instrumentation and the measures that were

³⁸ Jagdish Bhagwati, David Greenaway, and Arvind Panagariya, "Trading Preferentially: Theory and Policy," *The Economic Journal* 108, no. 449 (July 1998): 1139.

applied are explained. Third, the procedures that were followed are presented. Fourth, a data analysis section explains how the data was reduced, interpreted, and synthesized. In a final section, the limitations of the study are presented.

Research Design

In adopting a qualitative approach this study considers the effect of the neoliberal anarchic economic order on the liberalization of labour mobility in Canada's various trade arrangements. The independent variable of the study is the neoliberal anarchic economic order. In its attempts to manage global economic anarchy, Canada seeks various trade arrangements in order to reduce barriers to trade and to provide stability and predictability in its trade relationships. It is important to understand the role of governments in managing economic anarchy. While trade is essentially a private sector activity, it is governments who either facilitate or frustrate trade. These negotiated trade arrangements take different forms that are dependent on the goals of participants. They also reflect domestic considerations. Consequently, the dependent variable of the study is Canadian trade policy. It is through Canadian trade policy that we see how economic anarchy is managed and are able to evaluate Canada's goals of trade liberalization.

Because the international system is comprised of independent states that lack a central authority, disorder and conflict occur. The anarchy resulting from a lack of a central authority to which states cede their power in international affairs is particularly problematic in economic relations. The globalization that has occurred since the 1980s raised the profile of economic needs on Canada's foreign policy agenda. It was in this era that multi-national corporations (MNCs) and foreign direct investment (FDI) played a greater role in international affairs. The expansion of multinational firms internationalized

both manufacturing and services and integrated national economies. Along with these developments, international competition increased due to a decrease in trade barriers resulting from trade negotiations. Other factors driving economic globalization include financial deregulation, the creation of new financial instruments, increased capital flows, and technological developments.

Robert O. Keohane and Joseph S. Nye explain importance of foreign trade policy in their theory of “complex interdependence.” Complex interdependence, a central component of the neoliberal perspective, recognizes the rise of international regimes and institutions. It is this perspective that emphasizes the growing importance of transnational actors such as international organizations (IOs) and multinational corporations (MNCs) along with state actors in the era of interdependence. International organizations and transnational movements transcend national borders further complicating traditional state to state relations. Anarchy further results when the line between domestic and foreign policy become blurred complicating policy formation. In the absence of hierarchy among issues, foreign affairs agendas have become more diverse. Complex interdependence also explains the decline of military force as a policy tool for resolving disputes in the globalized world. As a result, economic policy is increasingly used as a tool of power to leverage foreign policy goals.

In the neoliberal perspective states willingly enter cooperative alliances under conditions of anarchy. While both cooperation and competition among states still exists, states seek to manage their economic relations in order to achieve prosperity and stability in the international system. States seek to manage economic anarchy through various trade arrangements. Complex interdependence accepts that states are not necessarily evenly balanced and asymmetries in dependence among participants are

recognized. Though economic and technological forces shape policies, it is the states that set the rules that domestic participants, such as entrepreneurs and MNCs, must follow. Robert Gilpin argues that national policies and domestic economies remain the principal determinants of economic affairs.

Because of its role in managing economic anarchy, Canadian trade policy is the dependent variable of the study. Canada has focused its policies on expanding markets for its businesses primarily through the negotiation of reciprocal free trade agreements, albeit in different forums. These have been multilateral, regional, and bilateral and have enabled Canada to compete on a more even playing field with local firms. Since its economy relies heavily on trade, Canada is dependent trade agreements that establish the rules of trade in order to protect its interests against economic hegemony like the US and the EU. Canada prioritizes FTAs in its foreign policy agenda. Canada has a comparative advantage in the U.S. market in the automotive, wood and paper, and energy sectors. Outside the U.S. market its advantage is in the agri-good, metals and minerals, and aerospace sectors. It is disadvantaged in the energy and automotive sectors. The service industry is of growing importance to the Canadian economy as Canadians look for greater opportunities abroad. Important service export industries include tourism, environmental (including consulting services), transportation, banking, and communications.

Canada's 2007 Global Commerce Strategy was a successful attempt to further expand the economy through open trade policy initiatives. Building upon its success Canada launched its Global Markets Action Plan (GMAP) in 2013 as a strategic plan to further trade liberalization into established as well as emerging markets. This strategy includes diversification away from US economic dependence, our largest trading partner.

Consequently, Canada sought to strengthen its trade relationships with countries in Europe, Asia, and South America. Its trade relationship with these partners are significant because some of Canada's production is exported there indirectly via supply chains. In fact, supply chain management arising from rapidly changing global productions patterns is a dominant issue for Canadian companies where their involvement is still limited. It is the recent growth in trade dominated by intermediate inputs (goods and services used in production) that has prioritized this issue. Second generation FTAs that focus on reducing barriers to trade such as customs procedures, standards and certification requirements, and obstacles to temporary entry have created a new focus for Canadian trade policy. Because of these developments, Canada's competitiveness depends on collaborating with international partners to open markets and establish rule-based trade liberalization.

Another consideration in Canada's pursuit of bilateral arrangements is competitive liberalization. This concept suggests that bilateral trade agreements are the result of competition in order to gain market share and establish the rules of trade ahead of another state. In the case of Canada, it pursued its the bilateral agreements in competition with the U.S. The negotiation of agreements with smaller regional markets allowed Canada an advantage in that it established the rules of trade ahead of the U.S. and gained a foothold in those markets. In this manner Canada positioned itself as "policy maker" rather than assuming its traditional role in trade policy as a "policy taker." It is anticipated that the pursuit of bilateral agreements will also fulfil Canada's multilateral goals. This is achieved as bilateral agreements contribute to global trade growth and lead to the successful conclusion of to the WTO by reducing barriers at the bilateral level. The findings of this study support this conclusion.

However, progress towards greater trade liberalization is negotiated on an incremental basis. While the goal of trade agreements is to remove barriers to trade, liberalization occurs on a sector by sector basis over time. Trade agreements are also intended to build on themselves in what is referred to as a “ratchet effect”. Once negotiated commitments are established they are not to be wound back but used as a basis from which to further liberalization. Stability and predictability in the trading environment is also established. Incremental liberalization is also part of a strategic foreign policy. It is carefully and purposefully achieved as negotiators understand that liberalization is a commodity in itself that must be managed. The rules of reciprocity require that states open their markets and in this manner Canada carefully administers what it is willing to relinquish. Under these circumstances it would be unwise for it to make drastic concessions. This pattern of incremental liberalization was indeed found among the various case studies included in the study.

Labour mobility is one issue area that is confronted with regulations that act as barriers to trade. Labour is an important aspect of trade because it is one of the major factors of production. Labour mobility affects the ability of workers to work abroad. Geographic mobility is important to MNCs who seek liberalization for their workers in order to facilitate the trade in services and goods. Countries seek to regulate entry for several domestic considerations. A country may restrict trade in order to protect the domestic labour force and wage rates. Labour migration policies may also be used to manage skilled labour that that may either increase productivity or compete with less productive domestic workers. Labour policies are also the result of other state issues such as sovereignty and security. At the domestic level, the free movement of labour negotiated in trade agreements allows Canadian business to expand into new markets

as competitive advantages are exploited. At the aggregate level the liberalization of labour provides absolute gains for the economy as a whole providing a higher standard of living for Canadians.

Subjects

A documentary analysis technique was applied in order to obtain data about the various modes of engagement or ‘lateralisms’. These records were freely accessible online through the Government of Canada and the World Trade Organization Websites.³⁹ A representative sampling technique was used to identify multilateral, regional and bilateral case studies. These include the GATS, the NAFTA and four bilateral agreements with Central and South American countries, the Canada-Chile FTA, the Canada-Costa Rica FTA, the Canada-Peru FTA, and the Canada-Colombia FTA.

The case study sampling was limited to a small number of participants for each type of negotiated forum. Canada is a participant in only one multilateral agreement, the WTO which encompasses the GATS. The inclusion of this multilateral forum is beneficial because of its strength in rule-making on a broad basis. It also highlights Canada’s trade relationship with many countries of the world. Canada is also party to only one regional agreement, the NAFTA, and represents a limited sampling of this type of forum. However, the NAFTA includes Canada’s largest trading partner, the U.S. Mexico is also an important trade partner. The NAFTA was a watershed agreement from which subsequent agreements were modelled. The results of the study support the hypothesis that FTAs feed off one another. An evaluation of the CETA and the “mega-

³⁹ Canada, Global Affairs, Canada’s Free Trade Agreements, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fta-ale.aspx?lang=eng>; World Trade Organization, *General Agreement on Trade in Services*, https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm (accessed January 30, 2016).

regional” TPP were not included because at the time of research the texts of the agreement were not available. Further, both agreements have yet to be ratified and the likelihood of entry-into-force questionable given the ambitious nature of the agreements along with the turn towards protectionism by the global powers of the U.S. and the U.K.

The four bilateral agreements included in the study were chosen for hemispheric considerations in order to control for wide discrepancies in culture, income levels, and geopolitical policies Canada has with these countries. Further, Canada has a strong emphasis on a north-south proliferation of bilateral trade agreements. The FTAs with Chile, Costa Rica, Peru and Colombia are also a representative sampling over the period of time after the NAFTA to the present when bilateral agreements were pursued in earnest. Admittedly, the inclusion of additional countries would be beneficial in supporting the conclusions.

In turn, the extent to which labour mobility was liberalized from a Canadian perspective was evaluated in each agreement. Though the NAFTA served as a template for subsequent negotiations, it is important to note that in each economic partnership that differences in industry sectors and provisions are evident depending on the goals of the negotiating countries. While some go beyond the traditional trade barriers to include labour mobility, others are considered ‘first generation’ agreements that do not contain broad coverage. First generation agreements primarily contain provisions addressing the movement of goods and seek the removal of trade barriers including customs duties and quotas. The focus of these agreements is to increase merchandise trade and as such do not contain substantive provisions in trade in services, investment, or intellectual property. Second generation agreements are more comprehensive than first generation agreements in emphasizing non-tariff barriers such as standards, procedures, and

regulations. The goal of these pacts is to reduce or eliminate indirect barriers that have become the main source of trade impediments as opposed to traditional barriers of tariffs on goods. In doing so, second generation agreements address behind the border issues that affect matters of provincial jurisdiction. Some examples of important sectors for second generation include services, telecommunications, financial services, investment, and government procurement. Most significantly, these agreements aim to encourage workforce mobility between countries through reducing cumbersome border entry procedures as well as facilitating the recognition of professional skills obtained abroad. Third generation agreements embrace additional objectives beyond trade liberalization. These agreements introduce into negotiations normative provisions such as environmental issues, sustainable development, and labour standards insofar as they relate to trade and investment. The markets of countries participating in a third generation agreements are even more thoroughly integrated as domestic policies are harmonized.

Those agreements that are inclusive of labour mobility only address a modest selective segment of labour mobility, temporary entry. In its selection of labour mobility among the six trade agreements, this study seeks to provide a “thick description” in order to generalize findings.⁴⁰ Such an approach includes a thorough description of how labour mobility is liberalized in the context—multilateral, regional, or bilateral—in which provisions are negotiated.

⁴⁰ Kjell Erik Rudestam and Rae R. Newton, *Surviving Your Dissertation: A Comprehensive Guide to Content and Process*, 3rd ed. (Los Angeles, CA: Sage Publications, 2007), 132.

Instrumentation and Measures

Most studies measuring trade liberalization adopt quantitative reasoning and are from an economic perspective. These studies empirically measure trade flows or the net welfare gains at the macro level. Other approaches, however, typically focus on critical normative evaluations of trade agreements related to social, labour, or environmental considerations. Ultimately, both branches of the literature suffer from a lack of complete data on international trade in services. As a result, this study takes a qualitative approach, focusing instead on one measure that is transparent and available, namely the technical language of international trade agreements. Due to a dearth of comparable studies, it was necessary to develop novel measures to perform an evaluation of technical language and liberalization. These measures were derived from studies conducted by Christopher Kukucha in his analysis on internal and foreign trade agreements.⁴¹ Two sets of measures were used: those that identified liberalization and those that were either restrictive or not clearly liberalizing.

A number of significant liberalizing measures were identified. The most significant was clear language committing signatories to open access to previously closed or limited markets. Almost equally important were commitments to principles of non-discrimination such as national treatment and most-favoured-nation (MFN) status as well as other market access issues, such as the exclusion of quotas, economic needs tests, and local presence commitments for service providers. The inclusion of negative lists is also considered especially liberalizing because it opens access to all areas of a specific

⁴¹ Christopher Kukucha, "Internal Trade Agreements in Canada: Progress, Complexity, and Challenges," *Canadian Journal of Political Science* 48, no. 1 (March 2015): 196; Christopher Kukucha, "Canada's Incremental Foreign Trade Policy," in *Canadian International Policy 2006-2015: Continuity and Change Under Conservative Minority and Majority Governments*, eds. Adam Chapnick and Christopher J. Kukucha (Vancouver: UBC Press, 2016).

sector unless specifically excluded in an appendix or annex. This language also includes unforeseen future trade issues until they are also added as a specific exclusion. Other measures considered slightly less liberalizing, but still improving access include: revisions to existing positive lists (which only include commitments specifically noted in included technical language); exchanging positive lists with negative lists; and commitments to improve transparency, which clarifies barriers such as limits to workers seeking entry.

The other objective of this study is to identify protectionist language, applicable to all sectors, including trade in services. Obvious barriers, for example, include specific exclusions or reservations such as prohibited professions or length of stay in terms of labour mobility. Also regulating trade, as already noted, is the continued adoption of positive lists also limits coverage to a narrow range of considerations explicitly included in agreements. Subsequently, an onus on workers or governments to meet specific “cumbersome, costly, and administratively complex.”⁴² Foreign standards, in the form of visas, work permits, and certification, can act as a further barrier to trade. A final less liberalizing measure identifies provisions that send issues to committees or professional associations for further work and clarification. These provisions, though they may appear to be market-opening, offer no promise of liberalization.

Procedures, Data Collection, and Analysis

Each agreement was examined in chronological order from the date it entered into force. Several chapters addressing trade in services were reviewed to determine their applicability to labour mobility, including cross border trade in services,

⁴² World Trade Organization, “Background Note by Secretariat: Presence of Natural Persons (Mode 4),” Council for Trade in Services (15 September 2009), 19.

telecommunications, financial services, temporary entry for business persons, and exceptions. Although technical language was often scattered throughout diverse subjects in each chapter there were also specific sections focusing solely on the temporary entry of business persons. When the relevant chapters were identified, a survey of technical language, using both liberalizing and restrictive measures, was performed, starting with the NAFTA. Other agreements were then assessed in comparison to NAFTA using the applicable measures. The purpose of this exercise was to evaluate the level of liberalization that occurred over a range of multilateral, regional, or bilateral agreements over an extended period of time. If the technical language had evolved to expand the “liberal” measures as found in the NAFTA it would indicate a “deepening” of liberalization. If not, and new agreements simply transferred already existing technical language to new partners or added new sectors to their coverage, it would represent a “broadening” of trade relations.

Used as an instrument of measurement in the study, incremental liberalization is found where only specific issue area or sector is liberalized while leaving other sectors either untouched or even scaling back commitments. A comparison of the schedules often resulted in few if any differences in the number of reservations. Incremental liberalization was also found when liberalization occurred in the less significant measures of more concise language, increased transparency, or expansion of a positive list (for example, temporary entry between the NAFTA to the CPFTA).

The liberalization of labour mobility was evaluated on two axis: the level of commitments and participation and coverage. The NAFTA was used as the basis of comparison for subsequent agreements. Each agreement was evaluated on a north-south continuum that considered whether the level of commitment was more shallow or

deeper than that of the NAFTA. A deepening occurred when existing commitments were further liberalized in a specific issue area. These were expected to occur overtime as the agreements built on one another. An east-west continuum evaluated how narrow or broad an agreement was compared to the NAFTA. A broadening occurred when agreements were expanded to new countries and regions and additional issue areas were included in the agreements coverage.

These observations were then applied to Bhagwati's assertion that regional commitments threaten broader multilateral objectives. An examination of the technical language revealed that marginal liberalization has occurred and that no true "deepening" exists. Despite some deepening, no clear trend was found. Rather, a major finding was that bilateral agreements primarily served to transfer and broaden the rules of trade based on already existing norms and practices. Such a finding implies that while regional and bilateral arrangements have not offered significant liberalization, they have extended the rules of trade in an attempt to control anarchy in the international political economy. Consequently, because this study finds that FTA's do not differ greatly in their commitments, they may not complicate the rules of trade to the extent suggested by multilateralists such as Bhagwati. A summary of these findings are presented in Appendix 2, "The Liberalization of Labour Mobility within Canada's FTAs."

Limitations

In order to define the boundaries of the study, several delimitations were applied. This study was limited to one area of the services sector, labour mobility, although it is an area that has great meaning to those whom the provisions govern. In doing so it makes an original contribution to the scholarly understanding of the international political

economy. This thesis provides a unique qualitative perspective in evaluating the liberalization of labour mobility and its effect on the relationship between bilateral, regional, and multilateral agreements. Though limited in its application, it raises relevant questions that are applicable to other countries and their agreements in other areas around the world. An exploration of the free movement of labour with the countries in Europe, Asia, and Africa would provide further valuable insight. The inclusion of additional sectors beyond that of labour mobility would also be a useful endeavour and create new lines of research.

It does not address labour mobility on the whole, but the temporary entry of business persons under the technical language of the agreement. It is a “meatball” in Bhagwati’s spaghetti bowl of labour mobility governance. Further, this thesis examines only one of four modes of supply, in reference to how a supply is offered. These four modes consist of cross-border trade, consumption abroad, commercial presence, and presence of natural persons. The subject of this study, labour mobility, falls under mode four of the WTO/GATS, the presence of natural persons of one country entering the territory of another country to supply a service.

While the study considers only one aspect of one sector, the temporary entry of labour mobility, it is an important sector that has far reaching effects in underpinning other economic sectors. As one of the factors of production, labour mobility affects the ability of companies in a variety of sectors to conduct its business. The liberalization of which allows Canadian exporters of services (including telecommunications and financial services), goods, and investment to expand abroad. Naturally, the trade in services is highly dependent on the movement of labour. In the last decade the Canadian economy has seen a significant shift towards services and have accounted for some of Canada’s

strongest trade growth. This is in part due to technological advances and an increase in digital communications away from paper and other tangible products. Services have increased from around 65% of Canada's GDP in 2000 to 70% in 2012.⁴³ The percentage of workers employed in services is also on the rise. Cross-border exports of services represent 15.3% of Canada's total exports of goods and services.⁴⁴ Many of Canada's services exports are in the highly skilled jobs of financial services, computer services and management services. It is in next generation trade agreements where Canada's comparative advantage of a highly educated work force is able to grow.

Due to its complex nature, the provisions governing labour mobility are not tidily found under one chapter in trade agreements. It therefore is necessary to consider commitments made not only under temporary entry but also those of trade in services along with services treated separately from the general provisions such as financial services and telecommunications. Due to its complex nature, labour mobility is difficult to negotiate. In light of these factors, this study, though limited, presents a modest yet valuable contribution.

The subject of the thesis is limited to only one specific motive of Canada's foreign trade policy, the liberalization of trade. In doing so, it does not attempt to measure stated or unstated policy goals Canada may have such as first mover advantage in

⁴³ Global Affairs Canada, Canada and Services, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/canada.aspx?lang=eng> (accessed August 1, 2016).

⁴⁴ Ibid.

securing access to particular markets or political goals that include domestic reforms, for example.⁴⁵

It was also beyond the scope of the study to attempt to determine the value of each sector and sub-sector that was liberalized under Canada's specific schedules. Rather, each sector and sub-sector was weighted equally with no financial evaluation attached. Excluded from the study was a discussion of labour standards, which address how workers are treated once they are permitted entry. Though parallel agreements, such as the North American Agreement on Labour (NAALC) and the International Labour Organization (ILO), are included with each agreement, they do not expressly liberalize the entry of workers. Finally, neither the impact nor the effectiveness of liberalization is evaluated as the study's purpose is to assess Canada's willingness to open its markets to foreign workers. An impediment that challenged the interpretation of the provisions was the legal language in which the agreements were written. It was, at times, exacting to understand how labour mobility was affected by the provisions of temporary entry as opposed to the service sector in general.

⁴⁵ Sayantan Gupta, "Changing Faces of International Trade: Multilateralism to Regionalism," *Journal of International Commercial Law and Technology* 3 no. 4 (2008): 261.

CHAPTER 2

CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN THE NORTH AMERICAN FREE TRADE AGREEMENT

Canada's commitments to the freer movement of labour mobility were codified under a regional agreement, the NAFTA. The NAFTA entered into force on January 1, 1994 following discussions that began in 1991. It was preceded by the 1989 CUSFTA which placed Canada and the US at the forefront of trade liberalization. The CUSFTA not only eliminated tariff barriers, it also reduced non-tariff barriers. Most notably, it was one of the first agreements to include coverage of trade in services. Under the NAFTA, the rules for trade in goods and services are extended to Mexico, albeit with sectoral variations. These regulations include the temporary entry of workers who are permitted entry in a number of sectors and in certain capacities.

In summarizing labour mobility provisions, this chapter provides a ground for which subsequent agreements are compared. An evaluation of the NAFTA's trade rules governing labour mobility relies on several liberalizing measures which examine scope and coverage, inclusion of non-discriminatory principles, negative lists in schedules of commitments, and application of transparency. Restrictive measures examine specific exclusions and reservations, reliance on a positive list, placing the burden of qualification on foreign service providers and foreign governments, and deferral to committees or professional associations for further liberalization or clarification. Of these, the two most revealing measures are those that clearly open trade and conversely those that exclude specific activities.

There are a number of sections in the NAFTA that apply to labour mobility. These include Chapter 12 (Cross-Border Trade in Services), Chapter 13 (Telecommunications), Chapter 14 (Financial Services), Chapter 16 (Temporary Entry for Business Persons), Chapter 21 (Exceptions), and Canada's schedules of specific commitments located in the annexes.⁴⁶ In Chapter 12, Cross-Border Trade in Services, are a number of commitments that seek to both enhance and limit labour mobility. The first is Article 1201, Scope and Coverage, which outlines the basic obligations of each signatory. In Article 1201.1, for example, it clarifies that coverage will be extended to the production, distribution, and marketing of a service; the purchase use or payment of a service; the access to and use of distribution and transportation systems connected to the provision of a service; the presence in its territory of a foreign service provider; and the provision of a financial security as a condition for the provision of a service. In establishing these rules, Canada commits to open access for and provides transparency to foreign service providers. Article 1201.2, however, also makes it very clear what is not covered under this section, namely financial services, air services, procurement by a state party or enterprise, and subsidies. Article 1201.3 further clarifies that signatories retain the right to regulate service providers seeking access to its employment market and ensures that governments will continue to provide a series of basic social services, such as corrections, income security or insurance, public education, training, health and childcare.

⁴⁶ A parallel accord, the North American Agreement on Labour Cooperation (NAALC), signed alongside the NAFTA is not addressed in this study due to its supporting role in ensuring labour standards and laws. In this manner, it serves to promote what has been liberalized within the NAFTA and does not itself liberalize or restrict trade. Subsequent agreements in the study also contain labour cooperation agreements and are not included for the same reasoning.

Articles 1202 to 1205, however, attempt to liberalize labour mobility by extending basic trade principles to services, an issue-area historically omitted from trade agreements. Most notably, Articles 1202 and 1203 extend national treatment and MFN to cross-border trade in services. Article 1204 commits signatories to extend the better of national treatment or MFN to a specific service issue, and in this manner maximizes liberalization. Article 1205 also restricts signatories from obligating service providers to establish or maintain a local representative office, or requiring other forms of residency, as a condition of providing a service. Articles related to national treatment and MFN, as well as language restricting service providers from specific requirements, is generally considered to be liberalizing. Articles 1202 and 1205 serve this purpose in relation to cross-border trade in services.

The following articles in Chapter 12, however, shift to protectionist language related to national, sub-federal, and local governments. Article 1206 extends a number of existing reservations in such areas as import/export permits, custom broker licensing, and port privileges for fishing vessels. A detailed summary of these reservations is found in Table 2.1. This Annex sets out, in a negative list format, the reservations taken by Canada with respect to existing measures that do not conform to obligations imposed by national treatment, MFN treatment, and local presence. Each reservation identifies the sector, sub-sector, industry classification, the type of reservation, level of government, and the measures or laws for which the reservation is taken. In all, Canada lists sixteen reservations, ranging from business service industries, to energy, fisheries, and transportation. Only three of the reservations contain a phase-out period of the restriction. These are in the areas of patent agents and agencies, trade-mark agents, and operating certificates for air transportation.

Table 2.1. Summary of NAFTA Annex I: Canada's Schedule of Reservations for Existing Measures and Liberalization Commitments (National Treatment, Local Presence, and MFN)

Sector	Number of Sub-Sectors/Industries/Activities
All sectors	transit authorization certificates
Business Service Industries	5 sub-sectors: customs brokerages and brokers; duty free shops; examinations services of cultural property; patents and agencies; trade-mark agents
Energy	supply of oil and gas services
Fisheries	fishing related services
Transportation	8 sub-sectors: air transportation: operating certificates and aircraft repair; land transportation; water transportation: vessel registration, certification of officers, license of pilotage services, shipping conferences, prohibitions under the Coasting Trade Act with the U.S.

The parties may also maintain or adopt reservations for future measures that do not conform to the principles of national treatment, MFN, and local presence under Article 1206.3 as summarized in Table 2.2. Again, these are presented as negative list. There are nine such service reservations and include such activities as aboriginal affairs, communications, minority affairs, social services, and water transportation. This is a shorter list than Annex I, which arguably represents progress towards greater liberalization.

Table 2.2. Summary of NAFTA Annex II: Canada's Schedule of Reservations for Future Measures (National Treatment, Local Presence, and MFN)

Sector	Number of Sub-Sectors/Industries/Activities
Aboriginal Affairs	Preferences provided to aboriginal peoples
Communications	telecommunications transport networks and services, radiocommunications, and submarine cables
Minority Affairs	Rights of disadvantaged minorities
Social Services	Public law enforcement and social services
Transportation	3 sub-sectors/activities of water-transportation: maritime cabotage services, denial of U.S. service providers, agreements in waters of mutual interest

Additional limitations are maintained in Article 1207 which allows for quantitative restrictions at the federal and provincial levels of government as set out by Canada in its schedule to Annex V and summarized below in Table 2.3. There are six restrictions identified by sector and sub-sector and are presented as a negative list. Quantitative restrictions are maintained in the areas of communications; energy; food, beverage, and drug industries; and transportation. Quantitative restrictions are identified here as an area of future study and negotiation suggesting the possibility of their eventual elimination and liberalization. In fact, Article 1208 calls for the liberalization of quantitative restrictions, licensing and performance requirements, and other non-discriminatory measures. Most revealing is the corresponding Annex VI: Miscellaneous Commitments in which Canada tables only one commitment which liberalizes non-discriminatory measures pertaining to lawyers. Here, lawyers from the U.S. and Mexico

are permitted to provide foreign legal consultancy services and to establish in BC, Ontario, and Saskatchewan as well as any other province that so permits.

Table 2.3. Summary of NAFTA Annex V: Quantitative Restrictions

Sector	Sub-Sectors
Communications	2 sub-sectors: postal services; private radio communications
Energy	2 sub-sectors: electricity transmission; oil and gas transportation
Food, Beverage, and Drug Industries	Liquor, Wine, and Beer Stores
Transportation	Land Transportation: extra-provincial bus services

Article 1210 continues in this limiting vein as it grants governments the right to define education levels, licensing and certification, as well as to deny benefits for service providers. Article 1210.1 does state that restrictive measures must be based on objective and transparent criteria that are not more burdensome than necessary but Article 1210.2.b places the difficult and expensive onus on a service provider, not governments, to demonstrate that education and training in a host country is the equivalent of qualifications required in the market on another signatory. Articles 1206 to 1210, however, call on signatories to work toward greater transparency on existing reservations and restrictions, as well as harmonizing licensing and certification requirements. These transparency measures can be liberalizing in the long-term as restrictions are clarified to workers, who will not waste time and resources in attempting to enter a market, but more importantly governments can then seek to liberalize and remove these barriers in future negotiations. In sum, trade restrictive practices cannot be addressed unless they are first identified.

Within Chapter 12, Cross-Border Trade in Services, are two detailed annexes. The first encourages signatories to harmonize practices, clarify procedures, and deepen liberalization for professional services. For example, in Section A of Annex 1210.5, each Party is requested to inform a foreign national on the status of an application within reasonable time. All members are also encouraged to develop mutually acceptable standards and criteria for licensing and certification of professional service providers in eight areas: education, examinations, experience, conduct of ethics, professional development and recertification, scope of practice, local knowledge, and consumer protection. Further, each party is asked to develop procedures for the temporary licensing of professional service providers of another member. Sections B and C of the same Annex specifically target foreign legal consultations and the temporary licensing of engineers respectively.

The second Annex, 1212, attempts to increase transparency and information sharing for land transportation. Here, the parties were asked to create contact points to discuss issue areas, such as safety requirements, taxation, and data. A second clause requires the parties to report on the progress of bus and truck transportation liberalization. Though the language is encouraging, no real improvements are promised in this area as the work is deferred to a committee.

In summary, when the measures of the study are applied to the cross-border trade of services within the NAFTA, both liberalizing and restrictive elements are identifiable:

- Most liberalizing is the clear language that extends coverage to a wide variety of service activities including the coverage, production, and marketing of a service as detailed in its scope and coverage (Article 1201). Other commitments limit the discriminatory measures for lawyers providing foreign legal consultations (Annex VI).
- Also significantly liberalizing is the adoption of national treatment and MFN principles which are extended to services (Articles 1202 and 1203). A third principle, standard of

treatment, provides for the greatest access possible (Article 1204). Furthermore, local presence, as a condition of market access, is not required (Article 1205).

- A negative list format is adopted in Annexes I, II, and V and is a liberalizing signal.
- Several specific exclusions are found which restrict labour mobility. Financial and air services are not liberalized under this chapter. Financial services are addressed under its own chapter which offers limited liberalization (Article 1201.1). Government procurement is also not covered here. The Canadian government retains the right to regulate permanent employment and social services (Article 1201.3).
- Extensive Reservations are permitted at the federal, provincial, and local levels of government as outlined in Annex I (Table 2.1) for which there are 16 reservations, and Annex II (Table 2.2) for which there are 9 reservations. Quantitative restrictions are permitted, for which Canada includes six such reservations (Table 2.3). The restricted sectors cover a wide range within the economy and must be considered significantly limiting.
- Other restrictions place an onus on workers to meet specific foreign standards as found in Article 1210. Here, a worker must demonstrate that their qualifications should be recognized by Canada.
- The parties are requested to cooperate in order to increase liberalization though this is not guaranteed. For example, parties are to work towards greater liberalization in reservations (Articles 1206); negotiate the liberalization of quantitative restrictions (Article 1207.4); develop mutually acceptable standards and criteria for licensing and certification (Article 1210.5).

Provisions within Chapter 13 address labour mobility in the telecommunications sector and define the measures adopted by a party regarding the provision of enhanced or value-added services by foreign workers (Article 1301.1.b). Specifically excluded from coverage is the requirement to authorize the establishment, construction, acquisition, leasing, operation, and provision of telecommunication transport networks or telecommunication transport services (Article 1301.3.a). Parties may restrict the provision of transport networks and related services that are not offered to the public generally (Article 1301.3.b). A party must allow private networks access to public networks who transport to third persons (Article 1301.3.c). Finally, a party may not compel any radio or television broadcast distributor to make publicly available its facilities (Article 1301.d). Article 1303 sets forth the conditions for the provision of enhanced or value-added services. Here, each party is to ensure that any licensing and

registration procedures that it maintains is transparent and non-discriminatory. Applications must also be filed and processed expeditiously. The information required for applications is to be limited and must only demonstrate that the applicant has the financial solvency to begin providing services. Parties may not require that providers offer their services publicly, cost-justify its rates, file a tariff, interconnect with other customers or networks, or conform with any particular standard or technical regulation for interconnection. Standards related measures addressed in Article 1304 require that any measures adopted are to ensure the integrity and safety of equipment used in telecommunication transport networks.

This brief chapter addressing telecommunications liberalizes some aspects of telecommunications transport networks and provides transparency to foreign service suppliers though clear restrictions do not require the authorization of foreign telecommunication services:

- The scope and coverage of this chapter is limited to the provision of enhanced or value-added services in relation to labour mobility.
- Foreign providers operating private networks are not to be denied access to public telecommunications networks or services. In this manner, providers are guaranteed they will be able to operate. The provisions also offer predictability and stability in their operations.
- Similarly, foreign service providers are not required to make public its cable or broadcast facilities as a transport network.
- Transparency and non-discrimination are liberalizing principles upheld in ensuring that licensing and registration procedures are fair.
- Measures relating to the use of equipment in transport networks must only be applied to ensure the integrity of the system.
- The parties are not required to authorize foreign service providers to establish or construct, among other activities, transport networks or services. This limits ability of foreign workers seeking access to the telecommunications market.

Chapter 14 addresses the liberalization of financial services. Article 1403 states that a foreign investor, meaning a foreign investor engaged in the business of providing financial services abroad, may establish a financial institution in that territory. Investors

may provide a range of financial services, expand geographically in a party's territory, and own financial institutions without being subject to ownership requirements specific to foreign financial institutions. Though a party is required to allow investors to establish financial institutions in its territory, it may require that investors incorporate under the law or impose terms and conditions on establishment. National treatment is upheld as a principle of the financial services in Article 1405. Here, parties are to accord foreign investors treatment no less favourable than it accords its own investors with respect to the establishment, acquisition, expansion, and other activities of financial institutions in its territory. Parties are also to accord foreign investors and financial institutions treatment no less favourable than it accords other foreign operators. Thus, MFN is also found to be a principle of Chapter 14.

Article 1409 addresses reservations and specific commitments, limiting the liberalizing principles previously identified. Parties may maintain existing non-conforming measures at the federal, provincial, and local levels of government. Restrictive measures may also be renewed though the extent of the restriction must not be increased. Exceptions are also permitted for prudential reasons as identified in Article 1410. Parties may restrict the provision of financial services in order to protect investors and other financial participants, maintain the safety of financial institutions or cross-border financial service providers, or ensure the integrity and stability of the financial system.

Article 1411 establishes transparency as a principle of financial services in the publication of requirements for completing applications and the status of an application. An administrative decision of an application is to be provided within 120 days. Despite a commitment to transparency, a party is not required to make available information

related to the financial affairs of individual customers and financial institutions, or cross-border financial service providers. Neither is a party required to provide confidential information that would impede law enforcement or be contrary to the public interest. In its schedule of commitments found in Section A of Annex VII, Canada tables one reservation on insurance restricting the purchase of reinsurance services by Canadian insurers.

The financial services chapter addresses the provision of services and embraces liberalizing principles. However, exceptions are also found:

- Clearly liberalized is the ability of a foreign service to establish a financial institution in the territory of a party (Article 1403.1). Also liberalized are the activities in which an investor may participate (Article 1403.2).
- National treatment and MFN are liberalizing principles upheld in financial services though exceptions exist.
- Transparency in the publication of measures and processing of applications provides predictability to foreign service providers.
- Exceptions to national treatment and MFN are permitted and limit liberalization at the federal, provincial, and local levels though an increase in existing restrictions is not permitted.
- Exceptions are also permitted for prudential reasons for the protection and preservation of the financial system (1410).
- Restrictions on transparency exist though they are intended to be applied in limited circumstances (1411.5).
- A reservation on the purchase of insurance is included in Canada's schedule found in Annex VII, Section A.

Chapter 16 specifically addresses temporary entry for business persons and is particularly informative in its treatment of labour mobility. Contained in this chapter are eight regulating articles and one annex, which includes a positive list of professions that are eligible under temporary entry provisions. Four appendices then list the various qualifications for temporary entry. Article 1601 calls for temporary entry on a reciprocal basis, and establishes transparent criteria and procedures. It also, however, grants signatories the right to border security and the protection of domestic labour, including

permanent employment. Article 1602 obligates each member to “expeditiously” apply any measures to avoid impairing or delaying trade in services. Furthermore, it calls on the parties to adopt common criteria, definitions, and interpretations relating to this coverage. These obligations are similar to those found in Chapter 12 and signal the parties desire to ease labour mobility restrictions.

Article 1603 identifies the general conditions of temporary entry for business persons who are qualified under applicable measures relating to public health, safety, and national security. However, a party may refuse to issue an immigration document authorizing employment where their temporary entry might adversely affect the settlement of a labour dispute or the employment of a person involved in a dispute. A person denied entry for this reason is to be promptly notified in writing. Further, fees for processing applications are to be limited. Though temporary entry is still restricted under certain conditions, the article is designed to provide transparency and limit abuses in denying entry.

Article 1604 seeks further transparency by setting a limit of one year for parties to publish materials and make data available to workers pertaining to requirements of entry. In Article 1605, the parties are asked to form a working group to design measures to facilitate reciprocal entry and to consider the waiving of labour certification tests for spouses. As already noted, however, sending these issues to a committee does not guarantee liberalization. Article 1606 provides for dispute settlement procedures but in doing so places an onus on the worker to prove they are qualified under the agreement, which again is expensive and burdensome. Article 1607 ensures the preservation of the parties’ laws in stating that no provision is to impose any obligation regarding their

immigration measures. This statement reinforces a nation's autonomy and resistance to a truly open market.

Chapter 16 also contains Annex 1603, which outlines conditions of temporary entry for specific categories of business persons. Section A, for example, stipulates that business visitors engaged in approved activities are required to present documentation proving citizenship and describing their purpose of entry. They may also be asked to present evidence that the proposed business activity is international in scope and not designed to enter the local labour market. Further, business visitors might be asked to prove their primary source of remuneration and principal place of business is outside the territory (though this may be in the form of an oral declaration). Despite these potential barriers the annex does not require approval procedures, petitions, and labour tests. In the same manner, the annex forbids numerical restrictions for temporary entry but a party may require a business person to obtain a visa prior to entry. A positive list of approved areas and activities of business visitors is provided in Appendix 1603.A.1 and include: research and design; growth, manufacture, and design; marketing; sales; distribution; after-sales-service; and general service. The corresponding Appendix, 1603.D.1, lists the minimum education requirements and alternate credentials for professionals under four general categories. These are general, medical and allied professional, scientist, and teacher. In identifying education requirements and alternate credentials, barriers are created. However, clarity is provided to workers seeking access to the Canadian market.

Section B of Annex 1603 addresses traders and investors. These activities must be in a capacity that is supervisory, at the executive level, or involves essential skills. Again, labour certification tests and numerical restrictions are not permitted, although a

visa may be required. Section C applies similar rules and grants temporary entry to intra-company transferees who are employed by an enterprise, subsidiary, or affiliate in a capacity that is managerial, executive, or involves specialized knowledge. Similar conditions found in previous sections apply here as well. A final section, D, addresses professionals. Though this designation is treated in a similar manner as in other classifications, though here numerical limits are permitted, unless accreditation requirements are mutually recognized. Measures are included to lift this barrier but provisions do not provide a guarantee that this will occur.

A summary of this chapter covering the temporary entry for business persons again reveals both liberalizing and restrictive elements in light of the proposed measures:

- As a general principle, Canada liberalizes temporary entry to business persons on a reciprocal basis to qualified workers and embraces transparency. Those that qualify are identified in a positive list format in the appendices to Annex 1603. Provisions such as the limiting of application fees and the availability of information to workers facilitate this access.
- Some government regulations are not required, including the need for employment authorizations, prior approval procedures, and certification tests. Generally, numerical restrictions are to be avoided but may be applied to some professionals (Annex 1603.d).
- Commitments to transparency are found throughout the chapter. For example, in Article 1602.1 the parties are to 'expeditiously' apply measures as not to impede trade. In Article 1603.3, workers who are denied entry as the result of a labour dispute are to be promptly notified in writing. Additionally, Article 1605 calls for the establishment of a working group whose purpose is to identify further measures of liberalization. Appendix 1603.D.1 establishes the minimum education requirements and alternative credentials for professionals which clearly identifies to workers the standards of entry for working in Canada.
- Canada's tables one miscellaneous commitment in Annex VI liberalizing foreign legal consultancy services.
- Several specific exclusions are found in the articles which limit temporary entry and include restrictions for reasons of border security and protection of the domestic labour force (Article 1601) and labour dispute considerations (Article 1603.2). Additionally, the chapter clearly states that apart from the general articles, no provision is to require a change to immigration measures thereby respecting the sovereignty of the parties (Article 1607). Restrictions on intra-company transferees limit who qualifies for entry and requires those eligible for entry to be employed by the

company for a year previously. Also clearly restrictive, is the potential of annual numerical limits for professionals as set out in Appendices 1603.D.4. though Canada does not table any restrictions here. In allowing for annual numerical limits on temporary entry, the free flow of labour mobility may be limited.

- A positive list format is adopted in identifying the occupations permitted temporary entry under Appendix 1603.A.1.
- Other restrictive measures place an onus on workers to meet specific standards. In identifying minimum education requirements for professionals, Appendix 1603.D.1 establishes a barrier to entry. Workers who are denied entry and seek to appeal are also required to prove their eligibility for dispute resolution procedures (Article 1606). Business visitors are also required to present documentation for entry, which may include obtaining a visa prior to entry (Annex 1603).
- The practice of sending issues to committees for further work such as requested in Annex 1603.D.7 must also be considered a restriction as does not offer a guarantee of liberalization. Here the parties are to consult to determine a date to which the numerical limits for professionals will end though this is reliant on future negotiations.

A final chapter addressing labour mobility is Chapter 21, which outlines general exceptions restricting cross-border trade in services. These clearly stated exceptions cover a wide range of areas that fall under Canada's federal jurisdiction. For example, Article 2101.2.c asserts that signatories may adopt or enforce any measure necessary to secure compliance with the laws or regulations of a country pertaining to health, safety, and consumer protection. Articles 2103 and 2104 also excludes, with few exceptions, measures that apply to taxation and balance of payments issues. Finally, Article 2105 states that a party is not required to provide information that would impede law enforcement or violate laws protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions. Though potentially significant, the restrictions listed here are not exceptional and are commonly found in free trade agreements.

Chapter 21 is inherently limiting, though boundaries are placed on applying restrictive measures:

- Several clear limitations are identifiable such as the public health and environmental protections identified in Articles 1201.1 and 1201.2.c respectively. Other Restrictive

measures protect any action that may imperil domestic and international security interests in the provision of information as found in Article 1202. Trade may also be impeded as restrictive measures in taxation (Article 2103), payment transfers (Article 2104), and the provision of financial information (Article 2105) frustrate the labour mobility process.

Conclusion

The coverage of labour mobility within the NAFTA is comprehensive and complex as found in the various provisions that govern the service sector. Not only are border regulations assessed but also the ability to provide services upon entry into Canada's market. In establishing these rules, several liberalizing commitments are made on a reciprocal basis that facilitate temporary entry. In the NAFTA's adoption of negative lists, essentially all service sectors are included except those specifically identified in Canada's schedule of commitments. The agreement's provisions, however, do not cover financial, air services, procurement, and subsidies which remain under Canada's discretion. Generally, the non-discriminatory principles of national treatment, MFN, and local presence are embraced. In the financial service sector, supply by foreign providers is limited to enhanced or value-added services. Temporary entry, as governed by financial services, is more restrictive than that of other sectors due to non-conforming measures adopted by all levels of government. Though services may be provided in a wide number of sectors, the capacities in which they may enter are limited to four general professional categories: business visitors, traders and investors, intra-corporate transferees, and professionals. Several provisions ease labour mobility restrictions and burdensome requirements to entry are limited. Quantitative restrictions at the federal levels, however, limit service providers in some sectors. General exceptions protect the laws and safety of Canadians though other provisions may potentially impede labour mobility.

CHAPTER 3

CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN THE GENERAL AGREEMENT ON TRADE IN SERVICES

The 'tradability' of services expanded globally under the World Trade Organization (WTO) with the creation of the General Agreement on Trade in Services (GATS). As developed countries were the major service suppliers, they sought reforms to the regulatory environment in this sector. Developing countries too realized the benefits of liberalization in facilitating their integration into an increasingly interdependent global economy. With the extension of trade rules to cover service providers, the GATS was established in the Uruguay Round, in January 1995, and was in addition to the General Agreement on Tariffs and Trade (GATT). The most recent efforts to advance liberalization began in 2000 during the Doha Round of negotiations. The GATS—as noted in Part IV Article XIX: Negotiation of Specific Commitments—was to develop through a process of progressive liberalization. Though the North American Free Trade Agreement (NAFTA) informed the content of the GATS, it is a distinct multilateral agreement. A comparative analysis, based on the liberalizing and restrictive measures of the agreement, reveals that labour mobility is liberalized to a greater extent under the NAFTA compared to the GATS. While the general language of the agreements is largely similar, Canada's NAFTA schedules provides evidence of deeper commitments. This finding confirms a liberal trade theory hypothesis asserting that liberalization is more easily achieved in FTA's than in multilateral forums.

Part I: Scope and Definition (Article I)

The GATS is structured in two main sections, a general framework of obligations that apply to all services and country schedules containing specific negotiated commitments. In Part I, Article I, which defines the scope and definition of the GATS, four modes of supply are defined, with labour mobility forming only one aspect of a much broader trade picture. The mechanism bridging the gap between trade and migration falls under the fourth mode, where a service is supplied by “a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member” (2.d). All levels of government are included (3.a.i). Included is any service, in any sector, except those supplied in the exercise of government authority, meaning any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers. The exclusion of the government procurement sector from the GATS’ scope and coverage is trade restrictive, although partly addressed through the plurilateral Agreement on Government Procurement (GPA) negotiated in 1994 under WTO auspices, and revised in 2012. In 2016, 46 of 162 WTO members are GPA signatories.

The Annex on Movement of Natural Persons Supplying Services Under the Agreement further clarifies that the GATS does not offer access to permanent employment and does not address citizenship or residence of service suppliers. The Annex also states that members are free to apply measures to regulate the entry of natural persons into its territory as necessary in order to protect its borders. The purpose of this article is to define services and provide transparency and clarity to the signatories.

Part II: General Obligations and Disciplines (Articles II-XV)

Part II of the GATS addresses its general obligations and disciplines. The first and guiding principle is that of MFN treatment (Article II). It states that members are to “accord [MFN] immediately and unconditionally to services and service suppliers.” A second clause, however, states that members may maintain a measure inconsistent with MFN provided it is listed in the schedule and meets the conditions of the annex on Article II exemptions. These conditions specify that any exemption granted for a period of more than five years is to be reviewed by the Council for Trade in Services. In principle, exemptions are not to exceed a period of ten years and are subject to negotiation in subsequent trade liberalization rounds. Though the annex attempts to place limits on restrictive measures, it relies on the discretion of a committee and consequently offers no guarantee of future liberalization.

Under Article II, members of the GATS are permitted to grant advantages to adjacent states in order to facilitate exchanges under certain limits. A negative list of Canada’s MFN exemptions is found in Annex II and presented in Table 3.1. Here, Annex II identifies the sector, measure, the country or countries to which the measure applies, the duration of the exemption and the conditions creating the need for the exemption. Where commitments are entered, the effect of an MFN exemption can only be to permit more favourable treatment to the identified country. In doing so, however, limitations to negotiated obligations are highlighted. A total of 11 entries are listed in a wide range of sectors. Only one exemption covers all sectors and states that Canada accepts compulsory arbitration only by those to which it has agreements providing for such procedures.

Table 3.1. Summary of Canada's GATS Article II (MFN)

Sector or Sub-Sector	Number of sub-sectors or activities
Film, Video and Television Programming Co-production	2
Fishing-Related Services	1
Banking, Trust and Insurance Services	1
Insurance Intermediation: Agency Services	1
Financial Services	1
Air and Maritime Transport	1
Air Transport	2
Services incidental to Agriculture	1
All Sectors	1

A third, and particularly liberalizing article, establishes transparency as a principle of the GATS. Here member states commit to publish all relevant measures which affect the operation of the agreement. Member countries are to annually inform the Council for Trade in Services on the introduction of any new or changes to existing laws affecting trade in services. Furthermore, WTO members are to respond promptly to requests by other members for specific information. Also, a member may notify the Council for Trade in Services on any measure taken by another member, which it considers to affect the operation of the GATS. However, a final clause limits transparency by protecting the disclosure of confidential information. It states that nothing in the Agreement is to require a member to provide confidential information that would impede law enforcement, be

contrary to the public interest, or which would prejudice the commercial interests of particular public or private enterprises (Article III bis). The transparency requirements outlined in this article provide clarity to workers seeking to enter a foreign market and are generally considered liberalizing.

Article VI addressing domestic regulation supports the liberalization of labour mobility by ensuring that members administer their obligations in a reasonable, objective, and impartial manner. The article also addresses measures relating to qualification requirements and procedures, technical standards, and licensing requirements in order to ensure that they do not constitute unnecessary barriers to trade in services. Disciplines are to be developed that ensure that requirements are based on objective and transparent criteria, are not more burdensome than necessary, and that licensing procedures are not implemented for purposes of restricting a supply of a service. Finally, regarding specific commitments undertaken by members, adequate procedures are to be provided in order to verify the competence of professionals of another member.

A subsequent article, VII, addresses a member's standards or criteria for the authorization of providing a service. Here a member is encouraged to recognize the education or certification granted by another country which may be granted through the cooperation with that country or awarded autonomously. These negotiated standards are to be provided to all members of the agreement. It also states that granting recognition is not to be used to in order to discriminate or restrict the trade in services. In these matters, each member is responsible to the Council for Trade in Services for its recognition of qualifications.

Article VIII ensures that where monopolies are allowed to compete with foreign service providers, that they do so in a manner consistent with its commitments and according to the MFN principle. A member may be allowed to modify its schedule, however, and grant monopoly rights in the supply of a service under the condition that it notifies the Council for Trade in Services three months in advance. In these articles, GATS members are held accountable to their commitments which must be applied in a transparent manner.

Other articles are inherently restrictive to labour mobility. Article X allows for the application of emergency safeguard measures. These are “emergency” actions taken on imports to correct or prevent serious injury to the importing member’s domestic industry. They may include suspension of obligations through the imposition of quantitative import restricts or duty increases. When these measures are applied, however, it must be on a non-discriminatory basis. Though restrictions on international transfers and payments are not to be applied on a general basis (Article XI), they are permitted in order to safeguard the balance of payments (Article XII). Here, restrictions on capital transactions may only be applied in the event of serious financial difficulties where the maintenance of financial reserves is necessary for the economic development of the country. This provision allows for the suspension of the agreement on a non-discriminatory, temporary, and limited basis. Article XIV provides conditions for the general exceptions to the GATS. Though exceptions must not be applied in a discriminatory manner or represent a disguised restriction on trade in services, several conditions for the suspension of the Agreement are given. Members may adopt any measure in order to protect public morals and maintain order; protect human, animal or plant life or health; secure compliance with laws and regulations including the protection

of individual privacy and safety; or collect equitable taxes from service suppliers. Article XIV *bis* continues in this restrictive vein by protecting the security interests of members. Specifically, a member is not required to provide information or take any action which may threaten its peace and security. Members are also free to pursue their obligations under the United Nations Charter. A final article in Part II permits the use of subsidies. Article XV recognizes the distortive effects on trade in services of subsidies, however, and calls for transparency in the application of subsidies. Further, members are asked to accord “sympathetic consideration” to any consultation requests by those adversely affected by a subsidy.

Part III: Specific Commitments (Articles XVI-XVIII)

In Part III of the GATS, additional liberalizing principles are embraced. Article XVI members commit to increase market access in specific sectors. In doing so, they agree not to limit the number of service suppliers, the total value of service transactions, the total number of service operators, or the total number of natural persons that are employed in a particular service sector. They also agree not to require service suppliers to form specific legal entities or joint ventures to provide a service. Finally, limits are not to be placed on foreign capital in the form of maximum percentages on foreign shareholding or total value of foreign investment (Article XVI.2). However, these restrictions have only been lifted in those sectors to which a member makes commitments as identified in the schedules.

Article XVII establishes national treatment, defined as treating foreigners and domestic suppliers equally, as a principle of the GATS. This may result in treatment that is either formally identical or formally different, though it must not alter the conditions of competition in favour of domestic service suppliers. Article XVIII, which follows, requests

that members negotiate commitments to market access and national treatment and include them in their schedules. Negotiating topics are to be in the areas of qualifications, standards, and licensing matters. However, this article relies on committees to negotiate such matters and, in doing so, does not offer a consistent or compelling directive.

Canada's specific commitments with regard to market access and national treatment are tabled in its services schedule. In scheduling a commitment, Canada binds itself to a specified level of market access and national treatment and is obliged not to introduce any new measures that would restrict entry into the market. In this manner, it offers a guarantee to foreign service providers that the conditions of entry and operation in the market will not change. For each entry in its schedule the sector, limitations on market access, limitations on national treatment, and any additional commitments are identified. Canada's obligations are divided into two sections: horizontal commitments which identify limitations that apply across all sectors and sector specific commitments.

A look at Canada's horizontal mode 4 commitments in its schedule includes one entry for the movement of natural persons providing services (summarized in Table 3.2 below). Here, limitations on both market access and national treatment are unbound—meaning a member is free to introduce or maintain measures that are inconsistent with liberalizing principles—except for the temporary stay of natural persons who fall under one of the following categories: business visitors, intra-corporate transferees, and professionals. Business visitors must not receive remuneration from within Canada nor engage in direct sales to the public. They are restricted to a stay of no more than 90 days. Intra-corporate transferees, who are comprised of executives, managers, and

specialists, must have been employed for a period of one year previously with the company of which they seek entry. The company must also be engaged in substantive business operations in Canada. Entry and stay for intra-corporate transferees is not to exceed a period of three years. A positive list of eligible professionals is provided and in order to be granted entry, these professionals must possess the necessary academic credentials and professional qualifications as recognized by associations within Canada. Eligible professional occupations include engineers, agrologists, architects, forestry professionals, geomatics professionals, and land surveyors. Temporary stay for professionals is limited to a period of up to 90 days, these professionals must not engage in secondary employment while in Canada. No additional commitments are found. In its 1995 Supplement 2 Revision, Canada modifies its commitments for professionals by granting entry to three additional professional categories: foreign legal consultants, urban planners, and senior computer specialists. Despite the addition of professional categories, temporary stay is somewhat more restrictive than previously established as entrants are limited to only one period of 90 days within a 12 month period and a limit of ten entrants per project in the case of senior computer specialists is permitted. Other conditions address limitations on national treatment and measures relating to the supply of services. Some services offered to the public in general may result in differential treatment in terms of benefits including income security or insurance, social security, and social welfare; or price, including public education, training, health, and child care.

Beyond these horizontal disciplines, Canada negotiates commitments on market access and national treatment in specific sectors as identified in its schedule of Specific Commitments. These are presented in a positive list and entered with respect to each of

the four modes of supply, though this study examines Mode 4 commitments exclusively. Tables 3.2 thru 3.9 summarize Canada's limitations on market access and national treatment with regard to labour mobility. The limitations are listed for individual sub-sectors or activity and are generally unbound except as indicated in the horizontal section. A wide scope of eight sectors are liberalized within Canada's schedule and include: distribution, computer related, environmental, financial, management consulting, mining, oils and gas, professional, real estate, research and development, telecommunications, tourism and travel, and transportation. Closer analysis reveals, however, that labour mobility, unlike the other modes of supply, within these sectors, remains unbound or restricted though the depth of restricted sub-sectors and activities ranges within each general category.

An examination of each sector reveals the greatest number of limitations in the business services sector with 42 unbound limitations in six categories ranging from professional services such as foreign legal consultancy services to rental and leasing services (Table 3.2). Several reservations were found in transport services with 19 limitations in five categories (Table 3.9). These range from maritime transport services to auxiliary services in support of all modes of transport. A final sector with significant reservations is financial services with 16 reservations in two categories including insurance and banking services (Table 3.7). A most recent update of the financial services schedule occurred in 2000 (Supplement 4 Revision 1), though only minor amendments are identified. For example, insurance services no longer require adjusters seeking market access to be sponsored by a resident company in Newfoundland. Further evidence of market access liberalization is found in the banking sector which removed an Alberta requirement that required a service provider to be a resident in the

province for three months. A final modification restricts market access for Quebec banking and other financial service providers in requiring members of the Montreal Exchange to be Canadian residents. In a similar manner, individuals seeking national treatment in the banking sector in Quebec and New Brunswick are required to have been a resident of Canada for at least one year prior and a resident of the province in which they wish to operate.

Though to a lesser extent, reservations are found in other sectors. There are 9 reservations in five categories of distribution services (Table 3.5). These range from commission agents' services to franchising. A look at the communications sector reveals 16 reservations in two categories, courier services and telecommunications (Table 3.3). This sector was revised in 1997 (Supplement 3) to include additional telecommunications activities (going from 8 to 16), such as mobile services, though for labour mobility they continue to be unbound. A look at construction services reveals 7 reservations in five categories, ranging from general construction for buildings to building completion and finishing work (Table 3.4). Similarly, there are 7 reservations found in four categories of environmental services (Table 3.6). Activities here range from sewage to sanitation services. The tourism and travel related services sector contains the fewest reservations with only three limitations in two categories (Table 3.8). Restrictions on hotel and restaurant services as well as travel agencies and tour operators are identified.

Table 3.2. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Business Services (Positive List)

Sector	Number of Sub-Sectors/Activities Included
Professional services	7 sub-sectors: foreign legal consultants, accounting, taxation, architectural, engineering, integrated engineering, and urban planning
Computer and related services	5 sub-sectors: consultancy of computer hardware, software implementation, data processing, data base, and maintenance of office machinery
Research and development	1 sub-sector: research and experimental development services on social sciences
Real estate services	2 sub-sectors: services involving own or leased property and services on a fee or contract basis
Rental/leasing services without operators	5 sub-sectors: leasing or rental of machinery without operator and of household goods
Other business services	22 sub-sectors: from market research and public opinion polling to patent agents

Table 3.3. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Communication Services

Sector	Number of Sub-Sectors/Activities Included
Courier services	1 sub-sector: commercial courier services
Telecommunications*	16 sub-sectors: including electronic mail, voice mail, on-line information, electronic data interchange, enhanced/value-added facsimile, code and protocol conversion, online information, and data processing.

*Supplement 3 (1997) activities are included

Table 3.4. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Construction Services

Sector	Number of Sub-Sectors/Activities Included
General construction for buildings	1
General construction work for civil engineering	1
Installation and assembly work	2 sub-sectors: prefabricated constructions and installation work
Building completion and finishing work	1
Other	2 sub-sectors: pre-erection work at construction sites and special trade construction work

Table 3.5. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Distribution Services

Sector	Number of Sub-Sectors/Activities Included
Commission Agents' services	1
Wholesale Trade services	1
Retailing services	5 sub-sectors: food retailing, non-food retailing, sale of motor vehicles, sale of parts of motor vehicles, and sales of motorcycles/snowmobiles
Franchising	1 sub-sector: non-financial intangible assets
Other	1 sub-sector: retail sales of motor fuel

Table 3.6. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Environmental Services

Sector	Number of Sub-Sectors/Activities Included
Sewage services	1
Refuse Disposal services	1
Sanitation services	1
Other	4 sub-sectors: cleaning services of exhaust gases, noise abatement, nature and landscape protection, and other environmental

Table 3.7 Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Financial Services

Sector	Number of Sub-Sectors/Activities Included
Insurance and related services	4 sub-sectors: life, accident, and health insurance; non-life insurance; reinsurance; and services auxiliary to insurance
Banking and other financial services*	12 sub-sectors: acceptance of deposits, lending, financial leasing, payment transmission, guarantees, trading, issues of securities, money broking, asset management, settlement, advisory, and provision and transfer of financial information

*Financial services under mode 4 restrictions did not change in Supplement 1 (1995).

However, in Supplement 4 (2000), Banking and other financial services liberalized minimally in removing the Alberta market access restriction that Mortgage brokers must be a resident in the province for a minimum of three months to be registered. Although an additional market access restriction states that only Canadian residents may be individual members of the Montreal Exchange.

Table 3.8. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Tourism and Travel Related Services

Sectors	Number of Sub-Sectors/Activities Included
Hotels and Restaurants	2 sub-sectors: hotel and lodging, and food and beverage
Travel agencies and tour operators	1

Table 3.9. Summary of Canada's Sector Specific Mode 4 Limitations on Market Access and National Treatment in Transport Services

Sector	Number of Sub-Sectors/Activities Included
Maritime Transport Services	1
Air Transport Services	2 sub-sectors: maintenance and repair, and computer reservations systems
Rail Transport Services	3 sub-sectors: railway passenger, freight transport, and maintenance and repair of rail transport equipment
Road Transport Services	4 sub-sectors: passenger transportation, freight transportation, rental of commercial vehicle with operator, and maintenance of road transport equipment
Services auxiliary to all modes of transport other than Maritime	9 sub-sectors: container handling, storage and warehouse, freight transport agency, freight forwarding, storage and warehousing services, customs clearance services, container station, maritime agency, and maritime freight forwarding

Part VI: Final Provisions (Article XXVII)

Evidence of restrictive measures is found in the denial of benefits within Article XXVII. Under these terms, benefits can be denied to service providers for three reasons. Article XXVII.a, for example, does not extend benefits if the service is supplied in the territory of a non-member. Similar conditions apply for maritime transport if the

service is supplied by an operator or vessel registered under the laws of a non-signatory. The final and third reason benefits may be denied to a service supplier is to a juridical person (a person given rights under a country's laws) or a person that is not a service supplier of another member or that is a service supplier that does not apply the WTO agreement. These restrictions are akin to those of the NAFTA and serve to protect the integrity of the agreement.

The annexes found under Article XXIX address a variety of measures ancillary to the GATS. Two of the annexes directly affecting labour mobility were examined previously, Article II Exemptions and Movement of Natural Persons. Other services discussed in the annexes are sector specific and include air transport; financial; maritime transport; and telecommunications. The liberalization of labour mobility in these areas is addressed in the general provisions as well as Canada's schedule of specific commitments. The annex on air transport services states that the obligations of the GATS do not apply to measures affecting traffic rights and services directly related services. It does, however, apply to aircraft repair and maintenance services; the selling and marketing of air transport services; and computer reservation systems (CRS) services. Further, the Council for Trade in Services is to review, at least every five years, developments in this sector and consider further advancements in order to liberalize air transport services.

The first annex addressing financial services identifies several exclusions which fall under "the exercise of government" authority and include: activities by a central bank or monetary authority in establishing exchange rate policy; activities forming social security or public retirement plans; and other activities by public entities for using the financial resources of the government. The financial service sector is further restricted

through protections to domestic regulation. In paragraph two of the annex, it asserts that notwithstanding any provision of the GATS, members are not prevented from “taking measures for prudential reasons...for the protection of (individual policy holders)... or to ensure the integrity and stability of the financial system.”⁴⁷ The financial information of customers as well as other confidential information in the possession of public entities is also protected which results in limiting transparency. The members are to make public prudential measures and how they are to be applied. This may be achieved through harmonization in a formal agreement or accorded autonomously. The negotiation of such an agreement, however, is the responsibility of the members. In this manner, the transparency in the application of prudential measures is not guaranteed. A second annex on financial services also allows for restrictions by allowing a member to list MFN exemptions or to modify its schedule.

The short annex on negotiations on maritime transport services which follows is specific to international shipping, auxiliary services, and access to and use of port facilities. Here members are asked to negotiate exemptions in these areas and may not modify their specific commitments after implementation without offering compensation. Exceptions to MFN are permitted and are to be inscribed in a members’ schedule.

The growing importance of the telecommunications sector is demonstrated in its designated annex, which states that the members recognize “its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities.”⁴⁸ The liberalizing objective of the annex is to increase the access to and use

⁴⁷ WTO, Annex 1B: General Agreement on Trade in Services. Annex on Financial Services, https://www.wto.org/english/tratop_e/serv_e/10-anfin_e.htm (accessed Nov. 10, 2015).

⁴⁸ WTO, Annex on Telecommunications, https://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm (accessed Nov. 10, 2015).

of public telecommunications transport networks and services. Though the annex generally applies to all measures affecting access to and use of public telecommunications transport networks and services, it does not apply to measures affecting the cable or broadcast distribution of radio or television programming. Neither does it require a member to liberalize the sector beyond its obligations as declared in its schedule or to offer services beyond those offered to the public generally. In an effort to provide transparency, each member is to make available that all relevant information on conditions affecting access to and use of telecommunications networks. The annex ensures that members provide access to and use of telecommunications services to service suppliers on a reasonable and non-discriminatory manner. Several activities are identified to which members are obligated, including the purchase and attachment of equipment with interfaces with the network and the use of networks for the movement of information such as intra-corporate communications of service suppliers, for example. It also states, however, that members may take any measures that are necessary to ensure the security and confidentiality of messages, though they are not to be used as a disguised restriction on trade. Further, any condition imposed on members must be necessary in order to safeguard the public service responsibilities of suppliers, to protect the technical integrity of telecommunications networks, or to ensure that service suppliers of members supply only those commitments included in their schedule. Such conditions may include restrictions on resale or shared use of services, a requirement to use specified technical interfaces, requirements for the interoperability of services, type approval of interfacing equipment, restrictions on inter-connection of private circuits, or notification, registration and licensing requirements. The application of these conditions restricts the ability of foreign workers to provide services.

Comparative Analysis

There are several comparable elements within the NAFTA and the GATS that liberalize labour mobility. In principle, there is a wide scope of service sectors and service activities that are covered by both agreements. Government procurement is not included in either agreement and limitations within other highly restricted sectors are dealt with under their own chapters or annexes. These covered, but limited, activities within the NAFTA include value-added services in the telecommunications sector; foreign investors providing financial services; and speciality air services and aircraft repair and maintenance services within the air services industry. The GATS liberalizes these sectors along with additional air transport services: selling and marketing and CRS services. Full labour mobility in terms of permanent employment is not an element of either agreement, rather, it is the temporary entry that is liberalized. Both the NAFTA and the GATS permit the temporary entry of business persons on a reciprocal basis within the sectors covered by the agreement. Federal, provincial, and local levels of government are bound by both agreements. In the NAFTA, numerical restrictions for temporary entry are not permitted and are comparable to the market access commitments in the GATS. Both the NAFTA and the GATS prohibit restrictions on international transfers and payments except where balance of payments difficulties arise. Additional measures under the GATS prevent parties from modifying or withdrawing commitments under maritime transport services. A look at the general liberalizing principles of both agreements reveals that they are largely similar, though the GATS is somewhat more liberalizing in its inclusion of activities in the air transport services sector.

The language addressing liberalizing principles within the NAFTA is somewhat stronger than that of the GATS. Within the cross-border trade in services of the NAFTA, national treatment, MFN, standard of treatment, and local presence govern the provisions that expand labour mobility. A sectoral exception to this in the NAFTA is financial services which only embraces national treatment and MFN. The articles of the GATS embrace MFN, market access, and national treatment though exceptions are permitted as in the NAFTA. Consequently, in matters of general application, the NAFTA and the GATS embrace similar liberalizing principles though the inclusion of a NAFTA standard of treatment article is marginally more liberalizing. (The standard of treatment provision requires that service providers are offered the better of conditions under national treatment or MFN).

The application of negative lists in identifying a member's market opening commitments is considered particularly liberalizing as it indicates trade is generally unrestricted across all service activities. It also fosters transparency, generates a pro-liberalizing dynamic for governments, and subjects new services to conditions of the agreement.⁴⁹ The limitations in a country's negative list represent the carve-outs that apply from the general liberalizing principles of the agreement. The NAFTA embraces the negative list model as applied in Canada's schedule of reservations for existing measures, future measures, and quantitative restrictions. The GATS, on the other hand, adopts a mixed model of negative and positive lists. MFN exemptions are listed separately from other commitments and presented in a negative list format. Market access and national treatment commitments apply a positive list format in identifying

⁴⁹ Patrick Low and Aditya Mattoo, "Is There a Better Way? Alternative Approaches to Liberalization Under the GATS," <http://siteresources.worldbank.org/INTRANETTRADE/Resources/BPgats.pdf> (accessed Dec 10, 2015).

sectoral coverage and then a negative list to indicate limitations. In its horizontal commitments, Canada expands its positive list of eligible professional occupations for entry under the GATS from six to nine under the 1995 Supplement. The GATS Annex on Air Transport Services also applies both a negative and positive list, presenting a negative list of two activity areas that are expressly excluded. The NAFTA, however, identifies one miscellaneous commitment in Annex VI, allowing foreign lawyers to provide legal consultancy services and to establish in any province that so permits. The general adoption of a negative list format by the NAFTA positions it more favourably to liberalization than the GATS.

Liberalizing commitments to transparency are found in the agreements. Though this is a less significant factor in liberalizing labour mobility, it facilitates trade by making known to foreign service suppliers the conditions and qualifications for entry. The NAFTA has several provisions for greater transparency throughout the agreement. In its chapter on cross-border trade in services, the NAFTA commits its members to open access of information and transparency in its reservations and restrictions. The parties are also requested to increase transparency and information sharing specifically for land transportation. Further, the licensing and registration of telecommunication procedures are to be transparent and non-discriminatory. Provisions governing financial services require that measures of general application that are to be adopted by the parties be made available to service suppliers. Finally, in matters of temporary entry for business persons, the principle of transparency in criteria and procedures is to be applied. Similarly, the GATS requires transparency in the publication of all measures of general application, as identified in Article III. Several other sections reaffirm this commitment. Transparency is mentioned in Article VI, requiring that procedures of administrative

decisions, qualification requirements, technical standards, and licensing be made available. Education and certification requirements are also to be published. Particularly liberalizing is the requirement that negotiations on market access, national treatment, and specific commitments be included in the schedules. As in the NAFTA, provisions governing financial services and telecommunications are to apply transparency in the publication of conditions governing these sectors. Both agreements, then, embrace transparency as a general principle in identifying reservations and liberalizing commitments, in the publication of administrative decisions, and in the qualifications requirements for entry.

In the application of the study's restrictive measures several limiting provisions are identified. The greatest of these are specific exclusions and reservations that place boundaries on labour mobility. The general language used to restrict labour mobility in both the NAFTA and the GATS is analogous. In both agreements coverage does not extend to government procurement or subsidies. The financial services and air services sectors are shallowly liberalized and not covered under the general provisions. Labour mobility is restricted to temporary entry and members retain the right to regulate the entry of persons into its territory in order to protect its borders. Further, the agreements are not to impose any obligation on a members' immigration measures. General exceptions to Canada's commitments, which fall under federal jurisdiction, grant members the right to suspend their obligations. These are permitted for 'prudential' reasons which protect investors and financial participants. Though provisions allow for the temporary entry of business persons, entry may be restricted for the protection of border security and of the domestic labour force. Yet other restrictions allow the parties to adopt any measure necessary to ensure the health and safety of the public, provide

consumer protection, and protect national security. Measures that preserve taxation law and that restrict international transfers in order to protect the balance of payments are also upheld. Further, the provision of information is protected if it impedes law enforcement or violates the laws protecting personal privacy and the financial affairs of individuals and institutions.

A look at Canada's schedules of specific commitments within each agreement is more revealing. A summary of restrictions within the NAFTA reveals 16 reservations for existing measures in a variety of sectors, ranging from transit authorization certificates, business services, energy, fisheries, and transportation. Only 7 reservations for future measures are tabled representing progress towards greater liberalization. A total of 6 quantitative restrictions are permitted at the federal and provincial levels of government in 5 sectors: aboriginal affairs, communications, minority affairs, social services, and transportation. The telecommunications sector remains highly restricted within the NAFTA as it does not require its members to authorize the foreign establishment of or provide telecommunication transport networks or services not offered to the public in general, among other activities. As in the telecommunications sector, the financial services sector provides limited access as identified in the schedules. In the financial sector Canada may maintain non-conforming measures at all three levels of government. Restrictive measures may also be renewed.

The reservations within the GATS, as mentioned previously, are structured differently. MFN exemptions are listed separately from those of national treatment and market access. A total of 11 negative list MFN restrictions are identified. Canada's list of horizontal commitments for market access and national treatment is presented in a positive list and entry is restricted or 'unbound' for the movement of natural persons

providing services. Here entry is permitted on a limited basis to business visitors consisting of executives, managers, and specialists; intra corporate transferees; and professionals. For professionals, a list of nine occupations with their minimum educational requirements are eligible for entry.⁵⁰ The NAFTA expands entry allowing for a 63 professional categories as identified in Appendix 1603.D.1. The requirements for intracompany transferees under the GATS is virtually identical to those of the NAFTA. Other conditions place limitations on national treatment where foreign service suppliers may receive differential treatment on benefits such as income security or price including public education. An overall comparison to the NAFTA reveals the range of activities to which a business visitor is permitted to engage in under the GATS is more limited with access granted to those with a high-level of training and expertise. Restrictions include limits on the duration of stay, quotas, economic needs tests (ENTs), labour market tests (LMTs), pre-employment conditions, technology transfer requirements, residency and nationality requirements, training and education qualifications, authorization requirements and local content requirements.

A look at Canada's GATS schedule of sector specific commitments reveals a negative list of excluded sectors. Labour mobility is most restricted in business services with 42 entries and least restricted in tourism and travel with three entries. A total of 120 activities are restricted here. In all schedules, members are free to modify their schedules and withdraw commitments. The GATS, then, is significantly more restrictive with 120 exclusions compared to NAFTA's 31 (including existing measures, future measures, and quantitative restrictions), as noted above.

⁵⁰ This figure includes three additional occupations that were added under Canada's GATS Schedule of Specific Commitments, Supplement 2 Revision, 4 October 1995.

Other restricted sectors not covered under the general provisions of the agreements liberalize labour mobility only on a limited basis. Two air transport activities are excluded from coverage under the GATS, traffic rights and its related services as contained in the annexes. Three activities are covered under the agreement, aircraft repair and maintenance services; the selling and marketing of air transport services; and computer reservation system (CRS) services. The NAFTA does not include an annex on air transport although Canada includes an MFN exemption for aviation services. As mentioned, the NAFTA excludes from coverage the cross-border provision of all air services, except air specialty and aircraft repair, in Chapter 12. In air services, then, the GATS is more liberalizing. An analysis of financial services in the GATS reveals several potentially limiting provisions. Financial services exercised under governmental authority are excluded from coverage. Further, a member may nullify commitments under financial services for prudential reasons. The provision of financial information is also protected and may limit transparency. MFN exclusions in financial services are permitted in the GATS as identified in the schedules. Similar reservations are found in NAFTA's chapter on financial services. MFN exclusions are also permitted under the annex on maritime transport services. A final sector with significant restrictions in the GATS is the telecommunications sector as outlined in its annex. The access to and use of cable or broadcast distribution of radio or television programming is limited as is transparency. Other restrictions safeguard the public service responsibilities of suppliers and protect the integrity of the telecommunications systems. In these sectors, the liberalizing language is comparable with the exception of air transport services under the GATS which embraces additional activities.

Another restrictive measure found in the agreements places an onus on workers to meet specific foreign standards. To a greater extent, the NAFTA details these restrictions. For example, the government retains the right to define education levels, licensing and certification and the burden falls on the service provider to demonstrate that education levels meet Canadian standards. Financial service providers are required to incorporate under the law and Canada may impose terms and conditions on establishment. Applicants for temporary entry for business persons must meet certain conditions relating to public health, safety, and national security. The NAFTA also considers the effect of entry on labour disputes. Here it is the burden of the worker to prove they qualify under the agreement and do not represent a disruption to domestic considerations. Further, eligible business entrants must present documentation proving citizenship and describing their purpose of entry and obtain a visa. In both the NAFTA and the GATS professionals are required to meet minimum educational and professional requirements to qualify for entry. It is the burden of the applicant to request reviews and status of submissions. Further, members with a subsidy grievance may request consultations thus it is the burden of the worker to bear the responsibility of challenging the subsidy under Article XV. Article XXI establishes that workers who are affected by the withdrawal of a member's commitments may negotiate compensation or seek arbitration, though the onus is on the affected member to prove that they have been unduly disadvantaged in order to seek compensation. The language of the NAFTA may be considered more limiting here as it identifies additional responsibilities to which the foreign service providers must adhere compared to the GATS which applies more general language. In effect, both agreements place the burden on applicants to qualify for entry and prove they are deserving of compensation in cases of dispute.

A final measure used to identify restrictive elements of the agreements is the sending of issues to committees for further work and clarification. Though these may indeed result in liberalization there is no guarantee of liberalization as further progress may prove difficult or even unattainable. The NAFTA identifies quantitative restrictions as an area of future study with the objective of elimination. Signatories are also asked to harmonize licensing and certification requirements in order to provide clarity to service suppliers and facilitate labour mobility. Finally, the parties are requested to adopt common criteria, definitions, and interpretations relating to the temporary entry of business persons in Chapter 16. A working group is to develop measures to facilitate reciprocal entry and consider the waiving of labour certification tests for spouses.

The trend to send issues to committees, however, is more evident in the GATS. Here too the parties are asked to establish common international standards and criteria for the recognition of service trades and professions. The Annex on Article II Exemptions requires that the Council review and consider the removal of MFN restrictions after five years, though this does not guarantee they will be discontinued. Other articles too rely on committees or future negotiations in order to evaluate the members' obligations and provide resolutions. In Article IX, workers may challenge business practices that restrain competition by entering into consultations with the implementing party. Perhaps most significantly, future liberalization is dependent on successive rounds of negotiations as defined in Article XIX and offers no promise this will occur. Future liberalization in air transport services is also dependent on the Council who are to identify areas of further application of the agreement. Again, this does not guarantee progress towards greater liberalization. Finally, the prudential measures a member may pay are to be made known to trade partners and achieved through

harmonization. This, however, remains the responsibility of the individual trade partners and provides no guarantees that these unreliable measures will be applied in a reasonable manner.

Analysis of the GATS reveals the following significant findings compared to the NAFTA:

- Expansive coverage of services is offered in the GATS and may include any service in any sector, with the exception of government procurement. The GATS offers greater potential for liberalization than the NAFTA in the air services sector.
- The NAFTA includes a standard of treatment article in its liberalizing principles that is not found in the GATS. The language of the NAFTA is somewhat more liberalizing.
- The NAFTA adopts a negative list approach in its schedules of specific commitments. The GATS adopts a mixed model. MFN commitments for apply a negative list while those for national treatment and market access apply a positive list format. The NAFTA's use of negative further increases liberalization.
- Business visitors are particularly restricted in their activities under the GATS compared to the NAFTA.
- The GATS includes a provision for CRS (Computer Reservation Services) under air transport services not found in the NAFTA and expands coverage in this sector.
- Additional language addressing foreign standards under the NAFTA is more limiting than that of the GATS which applies more general rules and guidelines to entry.
- The trend to send issues to committees is more evident in the GATS and is not representative of liberalization.

Conclusion

This Chapter examined the liberalization of labour mobility within the NAFTA and the GATS against a number of measures. An analysis of the general liberalizing language reveals comparable provisions within both agreements, although the GATS includes additional activities in its coverage in the air transport sector. Both agreements embrace the liberalizing principles of MFN, market access, and national treatment. The NAFTA, however, includes a standard of treatment article that demands the better of market access and national treatment and thus provides more favourable conditions to liberalization. The NAFTA is also more liberalizing in its application of a negative list format used in its schedules, whereas the GATS adopts a mixed approach applying both

negative and positive lists. In the assessment of transparency, both agreements uphold and generously apply transparency to their provisions. Though the language identifying general matters of reservations and exclusions is comparable, it is the analysis of Canada's schedules of commitments that indicate the greatest insight into liberalization. Findings reveal the NAFTA to be more liberal towards labour mobility due to its significantly fewer number of reservations and greater inclusion of professional occupations eligible for entry. An evaluation of other restricted sectors reveals the GATS to liberalize air transport services to a greater extent than the NAFTA as it includes the selling and marketing of these services as well as CRS services. In its use of specific language governing qualifications for entry, the NAFTA provides greater transparency. A final restrictive measure evaluates the trend to send issues of future liberalization to committees, this proves to be more evident in the GATS. In light of these findings, Canada's commitments under the NAFTA are found to be more favourable to the free movement of labour across its borders.

CHAPTER 4

CANADA'S LABOUR MOBILITY COMMITMENTS WITHIN ITS BILATERAL TRADE AGREEMENTS

In conjunction with its multilateral and regional commitments Canada has negotiated ten bilateral free trade agreements (FTAs). This chapter examines four agreements negotiated more than a decade apart: the Canada-Chile Free Trade Agreement (CCFTA), Canada-Costa Rica Free Trade Agreement (CCRFTA), Canada-Peru Free Trade Agreement (CPFTA), and Canada-Colombia Free Trade Agreement (CCOFTA). A summary of the recently signed Comprehensive Economic Trade Agreement (CETA) between Canada and the European Union—an agreement expected to advance open trade beyond that of previous agreement—is also provided. The goal of the chapter is to evaluate the liberalization of labour mobility, using the measures of the study. Evidence of liberalization is found in the use of clear language identifying commitments which open trade. Obligations to the liberalizing principles of MFN and national treatment also serve to promote the free movement of labour across borders. Other language that binds parties to transparency measures allows the parties, as well as foreign workers, to understand the rules and regulations for which they must qualify to work abroad. Further evidence of liberalization is found in the use of negative lists and the expansion of existing positive lists. As noted previously, liberalization has also been tempered by ongoing limits to labour mobility. The most obvious of these are clear exclusions and restrictions. Measures that set requirements to meet foreign standards also place a burden on workers to understand and qualify for entry. In addition, some provisions rely on committees or professional associations to facilitate the agreement,

which can also limit mobility. Finally, a reliance on a positive list signals a reluctance to liberalize trade as it neglects those areas not included. Using NAFTA as the basis, a comparative analysis reveals the degree of liberalization within each of the four agreements. Findings of the study reveal that despite some evidence of liberalization, a consistent liberalizing trend was not found from agreement to agreement. Rather, each of the agreements is comparable to the NAFTA and meaningful liberalization in labour mobility has not occurred to a significant extent. Such a finding supports a hypothesis that Canada's pursuit of bilateral agreements has served to "broaden" and not "deepen" its commitments to liberalize trade.

Canadian-European Union: Comprehensive Economic and Trade Agreement (CETA)

The Conservative government under which the CETA was signed, has hailed it as Canada's most ambitious trade initiative yet, being both broader in scope and deeper in ambition than the NAFTA. Though the negotiations concluded on 1 August 2014, and both Prime Minister Stephen Harper and European Commission President José Manuel Barroso signed the agreement on 18 October 2013, it has yet to be ratified by the European Parliament and the European Council along with its 27 states. As it has not yet entered into force, a brief introduction only will be provided here. For Canada, the goal of CETA is to expand its access to the EU market and decrease its trade dependence on the United States. As a second generation trade agreement the CETA moves beyond the traditional topics of tariffs and customs duties and focuses instead on the negotiation of non-tariff barriers (NTBs) including domestic regulations, standards, and procedures related to the flow of goods and services between countries. Some of the largest gains of the CETA are expected to come from the liberalization of trade in services, which includes aspects of labour mobility. In fact, a recent report claims that

better access to labour mobility may be Canada's biggest win, offering business professionals up to three years stay in each other's markets.⁵¹

As a comprehensive agreement, the CETA covers all services though specific sectors may be excluded. Canada, for example, has excluded numerous services such as health care, public education, and other social services as it traditionally does in all international negotiations. Despite these exclusions, coverage is wide ranging and generally considered to increase liberalization. This means that Canadian suppliers in most service sectors will be on equal footing with EU service providers and receive better treatment than most of their non-EU competitors.

Other mechanisms of the CETA are expected to provide service suppliers with greater certainty and stability in both markets. One important feature is that the provinces and territories participated as full partners in negotiations alongside federal officials for the first time. Another feature is the use of the negative list approach which starts from the position that trade in all services will be liberalized except those specifically identified as exceptions. Also included in the CETA is a "ratchet mechanism" which locks-in each improvement that increases access for service providers, without the need to renegotiate or amend the agreement. Additionally, CETA's temporary-entry provisions make it easier for highly skilled professional and business people to work in the EU by expanding on the existing WTO access provisions and by facilitating temporary travel and relocation.⁵² The CETA, then, is potentially Canada's most

⁵¹ The Conference Board of Canada, "Across the Sea with CETA: What New Labour Mobility Might Mean for Canadian Business, 2014," http://brenderwriting.com/wp-content/uploads/2011/08/6344_acrossthesewithceta_br.pdf (accessed June 2, 2015).

⁵² Canada, Global Affairs Canada, "Canada-European Union: Comprehensive Economic and Trade Agreement," <http://international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/understanding-comprendre/overview-apercu?lang=eng> (accessed June 2, 2015).

ambitious and modern agreement to date. Jonne Kregting reinforces this perspective stating, “CETA, in short, recognizes the realities of twenty-first century international commerce, with complex networks of value-chains and flows of people, services, and ideas across borders.”⁵³

Canada - Chile Free Trade Agreement (CCFTA)

The CCFTA was signed on December 5, 1996 and came into effect on July 5, 1997. It follows the same structure as the NAFTA with some exceptions; noticeably absent is a chapter addressing financial services. This exclusion is considered more restrictive than the NAFTA, where such a chapter is found, for its lack of provisions in this area. Evidence of liberalization reveals clear language committing the signatories to open access to markets, commitments to liberalizing principles, the use of negative lists, the liberalization of positive lists, and commitments to transparency. Conversely, evidence of restrictive measures is found in specific exclusions or reservations, reliance on positive lists, placing an onus on workers to meet foreign standards, and sending issues to committees for further work or clarification. A comparison of these measures reveals the CCFTA to be generally more restrictive in its treatment of labour mobility.

Cross-border trade in services under Chapter H is comparable to the NAFTA, covering the presence in its territory of a foreign service provider and adopting the principles of national treatment, MFN, standard of treatment, and local presence as covered in Articles H-01 to H-05. The CCFTA also addresses quantitative restrictions, the liberalization of non-discriminatory measures, procedures, licensing and certification

⁵³ Jonne Kregting, “The EU-Canada Comprehensive Economic Trade Agreement: An Evaluation of the Public Policy Debate and Assessment of its Potential Results” (master thesis, Aarhus University, Aarhus School of Business, 2011), 22, http://pure.au.dk/portal-asb-student/files/34614461/Master_Thesis_Final_1.2.pdf (accessed June 4, 2015).

and the denial of benefits (Articles H-06 - H-11) and are found to be virtual duplicates of the NAFTA although the language is somewhat more concise than that of its predecessor. The general rules governing the annexes too are found to be comparable. The provisions of Section I call for efficient processing of applications, the development of mutually acceptable standards and criteria for licensing and certification of professional service providers, and the development of procedures for temporary licensing. Section II ensures that foreign legal consultants are permitted to practice. Here the parties are to consult with its relevant professional bodies to obtain their recommendations on such things as the form of association and the development of standards and criteria. The parties are asked to establish a work program to develop common procedures for the authorization of foreign legal consultants in order to promote future liberalization. Section III also calls for the establishment of a work program in order to provide for the temporary licensing of foreign engineers in its territory. Due to the geographical distance of the two countries, an annex calling for increased cooperation in land transportation is not found in the CCFTA as it appears in the NAFTA. Despite the minor revision in language, the substance of the CCFTA in cross-border trade in services remains unchanged from the NAFTA.

As in most agreements, Canada's country schedule offers the most insight into the extent of its liberalization commitments. Annex I, Reservations for Existing Measures and Liberalization Commitments, provides a negative list of specific exceptions that do not conform with obligations imposed by national treatment, MFN, and local presence (summarized in the Table 4.1). There are 18 reservations in six sectors which relate to the cross-border trade in services. Compared to Canada's schedule under the NAFTA, the CCFTA includes two additional reservations. The first is

related to the application of national treatment and MFN at the sub-federal level in Canada. Specifically, it excludes all existing provincial and territorial non-conforming measures. It also has no phase out period. This is a significant restriction in that it does allow the provinces considerable leeway in the application of the measures of the agreement. A second departure from the NAFTA annex is a professional services reservation related to auditors requiring two or more members of an accounting firm, insurance company, cooperative credit association, or trust company, including the member who conducts the audit, to be residents of Canada. In light of these findings, the CCFTA is more restrictive than the NAFTA in the reservations it maintains.

Table 4.1. Summary of CCFTA's Annex I: Canada's Schedule of Reservations for Existing Measures and Liberalization Commitments

Sector	Sub-Sector/Industry/Activity
All sectors	2 activities: all existing non-conforming measures of all provinces and territories; and transit authorization certificates
Business Service Industries	5 sub-sectors: customs brokerages and brokers; duty free shops; examination services of cultural property; patent agents and agencies; and trade-mark agents.
Energy	supply of oil and gas services
Fisheries	fishing-related services
Professional, Technical and Specialized Services	professional services - auditing
Transportation	8 sub-sectors: air transportation: operating certificates and aircraft repair; land transportation: truck or bus services; water transportation: vessel registration, officer certification, license of pilotage services, shipping conferences, prohibitions under the Coasting Trade Act with the U.S.

In Annex II, a negative list of reservations for future measures that do not conform to the principles of national treatment, MFN, and local presence are presented (summarized in Table 4.2). In its reservations for future measures, Canada lists eight reservations (in five sectors) as compared to nine reservations in the NAFTA (which includes a specific prohibition in water transportation on service providers of the United States). Canada's list of reservations for future measures in the CCFTA is considered marginally more liberalizing than the NAFTA.

Table 4.2. Summary of CCFTA's Annex II: Canada's Schedule of Reservations for Future Measures

Sector	Sub-Sector/Industry/Activity
Aboriginal Affairs	preferences provided to aboriginal peoples
Communications	3 sub-sectors: telecommunications transport networks and services, radio communications, and submarine cables
Minority Affairs	rights of disadvantaged minorities
Social Services	public law enforcement and social services
transportation: water transport	2 sub-sectors of water transportation: maritime cabotage services, and agreements in waters of mutual interest

Annex IV, Quantitative Restrictions, contains a negative list of reservations applicable to quantitative restrictions of which there are seven (Table 4.3). The CCFTA contains an extra restriction in the gambling operations sector that is not found in the NAFTA.

Table 4.3. Summary of CCFTA's Annex IV: Quantitative Restrictions

Sector	Sub-Sector
Communications	2 sub-sectors: postal services and private radio communications
Energy	2 sub-sectors: electricity transmission and oil and gas transportation
Food, Beverage, and Drug Industries	liquor, wine, and beer stores
Gambling Operations	lottery schemes
Transportation	land transportation: extra-provincial bus services

Chapter I addresses labour mobility in the telecommunications sector. The structure and articles appear to be duplicates of the NAFTA chapter. The scope and coverage includes measures relating to the use of public telecommunications transport networks and services, the provision of enhanced or value-added services by persons of another party, and the standards-related measures relating to attachment of terminal and other equipment to public telecommunications transport networks (Article I-01). Specifically excluded from coverage is the requirement to authorize the establishment, construction, acquisition, leasing, operation, and provision of telecommunication transport networks or telecommunication transport services (Article I-01.3.a). Parties may restrict the provision of transport networks and related services that are not offered to the public generally (Article I-01.3.b). A party must allow private networks access to public networks who transport to third persons (Article I-01.3.c). Finally, a party may not compel any radio or television broadcast distributor to make its facilities publicly available (Article I-01.3.d). Article I-03 sets forth the conditions for the provision of enhanced or value-added services. Here, each party is to ensure that any licensing and

registration procedures that it maintains is transparent and non-discriminatory. Applications must also be filed and processed expeditiously. The information required for applications is to be limited and must only demonstrate that the applicant has the financial solvency to begin providing services. Parties may not require that providers offer their services publicly, cost-justify its rates, file a tariff, interconnect with other customers or networks, or conform with any particular standard or technical regulation for interconnection. Standards related measures addressed in Article I-04 require that any measures adopted and to ensure the integrity and safety of equipment used in telecommunication transport networks. Transparency is embraced in Article I-06 by requiring that the parties make available its measures relating to the access and use of public telecommunications transport networks and services. This brief chapter addressing telecommunications liberalizes some aspects of telecommunications transport networks and provides transparency to foreign service suppliers though clear restrictions do not require the authorization of foreign telecommunication services.

A look at the temporary entry for business persons reveals that it is largely similar to the NAFTA. The chapter establishes transparent criteria for the reciprocal facilitation of temporary entry to business persons who are otherwise qualified under applicable measures relating to public health, safety and national security. Though the articles appear to be duplicates of the NAFTA, a difference in this section is found in Article K-02, General Obligations, which omits a NAFTA requirement to “develop and adopt common criteria, definitions and interpretations” (NAFTA Article 1602). Article K-05, Working Group, is also a departure. The CCFTA is less specific in identifying timelines and goals and as such is considered less transparent. Annex K-03 identifies the same categories for the temporary entry of business persons including business visitors, traders and

investors, intra-company transferees, and professionals with similar requirements for entry. However, some discrepancies are found. Appendix K-03.I.1 identifies the capacities in which a business visitor may enter and are more limited in the CCFTA. Noticeably absent are harvester owners, transportation operators, customs brokers providing brokerage duties, and tour bus operators. Although Appendix K-03.IV.1, which sets minimum education requirements and alternative credentials for professionals is a direct duplicate of the NAFTA requirements, numerical limits are specifically forbidden in an Annex K-03.IV.4. This is a liberalizing finding to which the parties are not bound under the NAFTA.

Chapter O addresses the general exceptions to the agreement restricting labour mobility. These are generally the same as the NAFTA with respect to the cross-border trade in services in addressing the general exceptions, national security, taxation, balance of payments, disclosure of information and cultural industries. Several clear restrictions are identifiable such as the public health and environmental protections identified in Articles O-01.1. Other restrictive measures protect any action that imperil domestic and international security interests in the provision of information as found in Article O-02. Trade may also be impeded due to restrictions in taxation (Article O-03), payment transfers (Article O-04), the provision of financial information (Article O-05), and cultural industries (Article O-06). The CCFTA includes an Annex (O.03.1) on Double Taxation Restrictions not found in the NAFTA. Here the parties are asked to conclude an agreement on double taxation within a “reasonable time” after the CCFTA enters into force. This requirement, however, is dependent on future negotiations and does not guarantee liberalization will occur. In a second departure, the CCFTA does not include provisions addressing restrictions on the cross-border trade in financial services as does

the NAFTA. This is an expected difference as the CCFTA does not address financial services and is considered more restrictive for its lack of provisions in this area.

Comparative Analysis

A comparative analysis of the CCFTA with the NAFTA reveals the CCFTA to be generally more restrictive, despite some liberalizing findings. At first glance, it is apparent that the CCFTA does not include a chapter addressing financial services as does the NAFTA. This omission signals that it is more restrictive in its overall coverage. The general provisions under the cross-border trade in services are found to be comparable with the exception of a NAFTA annex liberalizing land transportation that is not found in the CCFTA. Thus, the CCFTA is somewhat more restrictive in its coverage here. A comparison of the specific schedules of commitments is more revealing. While both agreements adopt the negative list approach differences between the schedules are evident. A look at Annex I, existing reservations and liberalization commitments, finds the CCFTA to be more restrictive as it contains two additional exclusions. Most significantly, it excludes the provinces and territories from the CCFTA's national treatment and MFN obligations. This trend is reversed upon comparison of Annex II, reservations for future measures. Whereas the CCFTA tables eight reservations, the NAFTA lists nine, including an additional reservation for service providers of the U.S. A comparison of the CCFTA's Annex IV, quantitative restrictions, reveals seven exceptions, one more than the NAFTA. Here, the CCFTA is more restrictive than the NAFTA. The rules governing telecommunications under both agreements are comparable. The provisions governing temporary entry under the CCFTA are more restrictive than the NAFTA. The language is marginally less specific and consequently less transparent than the NAFTA. The capacities in which business visitors may enter is more limited

under the CCFTA. Further, the reliance on future negotiations for a double taxation agreement under the CCFTA does not guarantee liberalization. In sum, it is evident that the CCFTA was patterned after the NAFTA though it is not an exact duplicate as differences due to geographic distances have determined content. However, due to the additional reservations found in its schedules and a decrease in the capacities in which professionals may enter Canada, the CCFTA is considered more restrictive than the NAFTA.

A summary of the differences governing labour mobility under the CCFTA compared to the NAFTA reveals the following measures:

- In its schedule of reservations under Annex I, the CCFTA includes 18 reservations in six sectors, two more than the NAFTA. The first of these excludes all existing provincial and territorial non-conforming measures affecting national treatment and MFN. [Though this is permitted in the general language of the NAFTA (Article 1206.1: Reservations), it is not included in its schedule of existing reservations.] The CCFTA is considered more transparent in this regard. The second additional reservation affects residency requirements for auditors and is also a barrier to labour mobility.
- Annex II includes eight reservations in five sectors, one less than the NAFTA. The additional NAFTA restriction allows for the discriminatory treatment of water transport service providers.
- Though included in the NAFTA, an annex addressing land transportation is noticeable absent from the CCFTA and therefore it is considered more restrictive in its coverage.
- Annex IV provides a negative list of quantitative measures with seven reservations in five sectors. This is compared to the NAFTA's six reservations in four sectors. The CCFTA includes an additional reservation for lottery schemes in the gambling operations sector. The CCFTA is more restrictive than the NAFTA here.
- Article I-04 addressing standards-related measures, reinforces its commitment the rules established under to WTO Agreement on Technical Barriers to Trade. Despite this reference, the language governing the attachment of terminal and other equipment to public telecommunications transport networks is identical to that of the NAFTA and is not considered a significant difference.
- The language of the CCFTA is somewhat less specific and therefore less transparent in addressing temporary entry for business persons as identified in Articles K-02 and K-05.
- Most significantly, the capacities in which business visitors may enter is more limited under the CCFTA.
- The CCFTA relies on the future negotiation of a double taxation agreement and is not considered liberalizing as it offers no promise of liberalization.
- The CCFTA does not include provisions for financial services and is more restrictive in this regard.

Canada - Costa Rica Free Trade Agreement (CCRFTA)

Negotiations for the CCRFTA began in 2000 and concluded in 2001 with the Agreement coming into force on November 1, 2002. This is a first-generation agreement focusing primarily on trade in goods and does not include substantive provisions in the areas of cross-border trade in services, telecommunications, financial services, and temporary entry of service providers. In 2011, negotiations to modernize the agreement began, however, despite these efforts an updated document has yet to be produced.⁵⁴

The CCRFTA is a distinct document, in both structure and coverage in comparison to the other bilateral agreements that Canada has negotiated. Services are addressed only briefly in Part Three of the Agreement, Services and Investment, under Chapter VIII. Here the parties agree to cooperate under the provisions of the WTO (Article VIII.1.1) and have not negotiated any coverage beyond that of the GATS. References to licensing and certification are also general, stating that measures be based on objective and transparent criteria (Article VIII.3.1). Although some guidelines for examining criteria are identified, there is little in the way of timelines or procedures for cooperation.

The temporary entry of foreign workers is discussed in Part Four, Chapter X. It is a modest chapter with only one article. It states that while the two countries recognize the importance of the trade in services, temporary entry will currently be governed by each member's applicable laws and regulations. This is with respect to intra-company transferees, business visitors, nationals providing after-sales services directly related to the expiration of goods, and the families of these nationals (Article X.1.1). Overall, the

⁵⁴ Canada, Foreign Affairs, Trade and Development Canada, Canada-Costa Rica Free Trade Agreement Background Information, <http://international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/costarica/info.aspx?lang=eng> (accessed May 7, 2015).

language is weaker and more general than that of the NAFTA and other agreements in the study. Because the CCRFTA relies on the GATS rules in order to manage labour mobility, they are considered to be equally liberalizing in this study. The CCRFTA is therefore less liberalizing towards labour mobility than the NAFTA.

Canada-Peru Free Trade Agreement (CPFTA)

Though exploratory discussions with the Andean Community began in 2002, it was not until 2007 that free trade negotiations were launched with both Colombia and Peru. The Canada-Peru agreement was the first to be signed in 2008 with the Canada-Colombia agreement signed later that year. The CPFTA formally entered into force on August 1, 2009, coming 15 years after the NAFTA. Canada's intention in signing the agreement was to deepen its reciprocal service sector commitments. One source hints at this expectation stating, "incorporated into the CPFTA are provisions that enhance market access in service sectors that are of interest to Canada including mining, energy, professional services and financial services."⁵⁵ Indeed, a comparative analysis based on the liberalizing and restrictive measures of the study considers the general language of the CPFTA —which is more comprehensive than the NAFTA—to be overall more favourable towards labour mobility. However, an examination of Canada's schedules determines that little deepening of commitments has occurred. Consequently, despite evidence of liberalization, labour mobility under the CPFTA has not occurred to a significant extent.

⁵⁵ Global Affairs Canada, Media Release No. 214 (August 4, 2009), "Minister Day Announces Canada-Peru Free Trade Agreement," http://www.international.gc.ca/media_commerce/comm/news-communiqués/2009/387444.aspx?lang=eng (accessed June 2, 2015).

One of the primary chapters addressing labour mobility is Chapter Nine, Cross Border Trade in Services. While some articles are similar to the NAFTA, other articles are distinct to the CPFTA. Its scope and coverage liberalizes a wide breadth of service activities from the production, sale, and delivery of a service to the presence in its territory of a foreign service supplier (Article 901.1). These activities are identical to the coverage under the NAFTA. Article 901.2 identifies specific exclusions which include financial services, government procurement, and subsidies.⁵⁶ Air services are also excluded with the exception of aircraft repair and maintenance, the selling and marketing of air transport services, and CRS services. The NAFTA does not liberalize CRS services and is therefore more restrictive in its coverage. Several liberalizing principles are identified: national treatment (Article 903), MFN (Article 904), standard of treatment (905), market access (Article 906), and local presence (Article 907). The CPFTA embraces an additional principle, market access, not found in the NAFTA and is considered more liberalizing here. Market access is particularly liberalizing as it prohibits, for example, limitations on the number of service suppliers, the value of service transactions, the number of service operations, and the number of persons that may be employed in a particular service sector. These principles, however, do not apply to any non-conforming measure which may be maintained at all levels of government as identified in Canada's schedules found in Annex I and Annex II (Article 908).

⁵⁶ The parties note their mutual obligations related to subsidies under GATS Article XV which requires that members negotiate to reduce there trade distortive effects (CPFTA Article 902).

Article 909, domestic regulation, which maintains the parties' mutual obligations as defined in Article VI.4 of the GATS, attempts to increase transparency.⁵⁷ Article 910 addressing recognition of the education and experience of foreign service suppliers, calls for the harmonization of standards between the parties though the language is not compelling. Its accompanying Annex 910.4, provides practical guidance for governments and entities entering into mutual recognition negotiations for the professional services sector. The guidelines, though helpful, are non-binding and do not affect the rights and obligations of the parties under the CPFTA. In this manner the article and its annex do not guarantee liberalization. Similarly, in Article 911, the parties are to encourage relevant professional bodies in its territory to develop procedures for the temporary licensing of foreign professional services suppliers. Again, by relying on a professional body to do so there is no promise that liberalization will occur. However, in providing clearer and more encouraging language in addressing matters of domestic regulation, recognition of qualifications, and temporary licensing, the CPFTA provides for greater transparency in comparison to the NAFTA.

Article 912 is liberalizing in that it requires the parties to permit transfers and payments of services to be made freely and without delay. Though a party may prevent these transactions in certain instances according to its laws relating to bankruptcy, trading, criminal offences, or ensuring compliance with judicial orders. Article 913 is restrictive as it denies benefits to service suppliers who are not party to the agreement.

Article 914 establishes a working group who are to review matters concerning the

⁵⁷ Article VI.4 of the GATS seeks to ensure that qualification requirements do not constitute unnecessary barriers to trade. The Council for Trade in Services is to develop the necessary disciplines to ensure that requirements are based on objective and transparent criteria, and not more burdensome than necessary, and that licensing procedures do not restrict the supply of a service.

operation of the agreement, and increase the transparency of measures, among other responsibilities. Despite detailing these liberalizing functions, there is no promise of increased labour mobility for service providers.

Canada’s schedules of reservations for the cross-border trade in services are located in two annexes at the end of the agreement, these are summarized in Tables 4.4 and 4.5 below. Clearly liberalizing, the CPFTA does not include an annex of quantitative restrictions as does the NAFTA. In its schedule of reservations for existing measures and liberalization commitments, the CPFTA provides a negative list of 16 reservations, the same as the NAFTA. However, a specific reservation in all sectors excluding all non-conforming measures of the provinces and territories is especially restrictive. This reservation is not found in the NAFTA and for this reason the CPFTA is considered more restrictive here.

Table 4.4. Summary of CPFTA’s Annex I: Canada’s Schedule of Entry into Force Reservations for Existing Measures and Liberalization Commitments

Sector	Sub-Sector/Industry/Activity
All Sectors	import and export permits
Business Service Industries	5 sub-sectors: licensing of customs brokers, duty free shops, examinations services of cultural property, patents and agencies, trademark agents
Energy	supply of oil and gas services
Professional, Technical and Specialized Services	auditing services
Transportation	7 sub-sectors: air transportation: aircraft repair land transportation: truck or bus services water transportations: ship registration, masters and seafarers certification, license or pilotage certification, shipping conferences, exceptions for U.S. vessels

Sector	Sub-Sector/Industry/Activity
All Sectors	existing non-conforming measures of all provinces and territories.

In its Annex II, Reservations for Future Measures, Canada includes 11 reservations. This is compared to seven in the NAFTA [and six in the CCFTA]. New to the CPFTA are: reservations for the licensing of fishing vessels; selling and marketing of air transportation; accreditation of air transportation repair and certification; and measures in all sectors that are not inconsistent with GATS market access provisions. It also includes a reservation in the transportation services sector protecting previously negotiated bilateral or multilateral international agreements. This is a much broader reservation that is not found in previous agreement. As a result, the CPFTA is considered more restrictive than the NAFTA in its schedule of future reservations.

Table 4.5. Summary of CPFTA's Annex II: Canada's Schedule of Reservations for Future Measures

Sector	Sub-Sector/Industry/Activity
Aboriginal Affairs	preferences to aboriginal peoples
Communications	telecommunications transport networks and services, radiocommunications, and telecommunications services
Fisheries	licensing of vessels
Minority Affairs	socially economically disadvantaged minorities
Social Services	public law enforcement, correctional, and social services

Sector	Sub-Sector/Industry/Activity
Transportation	5 sub-sectors: air transportation: accreditation of repair and certification; selling and marketing water transportation: marine cabotage services; agreements in waters of mutual interest transportation services in prior bilateral or multilateral international agreements
All Sectors	measures not inconsistent with GATS Article XVI (Market Access)

A detailed chapter on telecommunications addresses measures adopted relating to access and use of public telecommunications transport networks and services. It also considers the obligations of suppliers of these services and value-added services, as described in Article 1001. It is in this chapter we better understand the effect of the CPFTA on foreign workers seeking to provide services in this sector as well as the availability of telecommunications access to workers in other sectors. Excluded from coverage is the transmission of telecommunications such as broadcast and cable distribution of radio and television programming intended for the public consumption. Article 1001 also specifically identifies exclusions. The parties are not required to authorize foreign enterprises to establish, among other activities, telecommunications transport networks or services beyond that of the agreement. Further, the parties may prohibit persons operating private networks from using their networks to supply public telecommunications networks or services to third persons. The NAFTA contains an extra restriction stating that the parties are not required to compel broadcast distributors to make available its facilities as a public telecommunications transport network (NAFTA Article 1301.3.d). The language of the CPFTA is more concise and accessible to those

seeking to apply the agreement. For these reasons, the scope and coverage of telecommunications services in the CPFTA is considered somewhat more liberalizing.

A subsequent article, 1002, establishes the rules governing the access to and use of public telecommunications transport networks and services. A party may restrict the supply of a service in accordance with its reservations as contained in Annexes I and II. Otherwise, a party is to ensure that foreign enterprises are accorded access to and use of these services offered within or across its borders. Foreign service suppliers are to be permitted to purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications transport networks; interconnect private leased or owned circuits with public equipment; perform switching, signalling, and processing functions; and use operating protocols of their choice. Further, the parties are to ensure that foreign enterprises may use public equipment and services for the movement of information in its territory or across its borders. The NAFTA includes an additional liberalizing provision ensuring that the pricing of public transport services reflect the economic costs of providing the services and that private leased circuits are viable on a flat-rate pricing basis. Though it does permit cross-subsidization between public telecommunications transport services. Here the NAFTA includes both additional liberalizing and restrictive language.

Restrictive measures within the CPFTA further govern telecommunication services. As outlined in the general exceptions of Article 2201 and restated within the chapter, parties may take measures to ensure the security and confidentiality of messages or protect the non-public information of users of public telecommunications transport services. Other necessary measures may be used in order to safeguard the public service responsibilities of suppliers; protect the technical integrity of public

equipment and services; and ensure that foreign service suppliers do not supply services that they are not entitled to supply. Conditions for access to and use of transport networks and services may also be applied and may include: requirements to use specified technical interfaces; requirements for inter-operability; type approval of terminal or other equipment; restrictions on interconnection of private leased or owned circuits; and notification, registration, and licensing. Though the language of the article is somewhat more concise than that of the NAFTA, the content is found to be comparable.

Article 1003 addresses the conduct of major suppliers. Here the parties are to ensure that their major suppliers accord foreign suppliers of public telecommunications transport services treatment that is no less favourable than they accord their subsidiaries, affiliates or other service suppliers. A competitive safeguard clause is liberalizing as it prevents major suppliers from engaging in anti-competitive practices. Though a restrictive resale provision grants the parties authority to determine which networks and services are available on a mandatory basis. Major suppliers are to provide interconnection when technically feasible and under non-discriminatory terms, conditions, and rates. Services are to be provided on a quality basis, in a timely fashion, and upon request. Options for interconnection with major suppliers are also outlined in the article. Finally, public availability of interconnection offers, negotiations, and agreements is to be provided. The NAFTA does not include such an article though a much shorter article addresses monopolies. The additional commitments to which the parties are bound under the CPFTA is considered more liberalizing.

The briefer articles that follow are found to be both liberalizing and restrictive. Article 1004 ensures that the regulatory body of each party is separate from any supplier

of networks or services. This is a liberalizing provision as it ensures the impartiality of the regulatory body. Article 1005 grants the parties the right to define the universal service obligations it wishes to maintain and is restrictive. Article 1006 is again liberalizing in establishing transparency for licensing procedures. Article 1007 establishes non-discrimination and transparency as principles in the allocation and use of scarce resources. Article 1008 contains liberalizing language instructing the parties to maintain procedures and grants authority to enforce the obligations of the chapter within its territory. Article 1010 confirms its commitment to transparency and includes additional provisions for the publication of information. Article 1011 requests the parties refrain from applying unnecessary regulations such as those that do not prevent discriminatory practices or protect consumers. Overall, compared to the NAFTA, the CPFTA chapter on telecommunications is more specific and includes additional articles addressing the following: conduct of major suppliers; conduct of regulatory bodies; universal service; procedures for licenses and other authorizations; allocation and use of scarce resources; enforcement; resolution of domestic telecommunication dispute; and forbearance. The detailed language of these articles increases the transparency of the agreement for those seeking to enter the market.

A lengthy chapter addressing financial services follows that of telecommunications. Its scope and coverage applies to measures related to financial institutions of the other party, and, most importantly for the purposes of the study, the cross-border trade in financial services (Article 1101). The chapter embraces only two of the articles found in chapter nine on the cross-border trade in services: transfers and payments (Article 912), and denial of benefits (Article 913). Article 912 is liberalizing in that it requires the parties to permit all transfers and payments relating to the cross-

border supply of services and in a usable currency at the market rate of exchange. It is also restrictive in allowing a party to delay a transfer or payment according to its laws relating to such matters as bankruptcy, trading, financial reporting, criminal offences, and those ensuring compliance with judicial proceedings. Article 913 is also restrictive as it provides for the denial of benefits. Here a party may deny benefits to a foreign service supplier who is not party to the agreement or works for an enterprise who is owned by nationals of a non-party. Other provisions of Article 1101 are also considered restrictive. The parties maintain the right to exclusively conduct or supply the following financial services in its territories: those forming part of a public retirement plan or system of social security; and those for the account or with the guarantee of the party (Article 1101.3). The CPFTA contains additional annexes not found in the NAFTA. Annex 1101.3(a) contains restrictive language clarifying the parties may exclusively supply in its territory the services contained in the article and may adopt measures to ensure this conduct. The parties are free to designate a monopoly, determine where participants to place their contributions, preclude participants from choosing to have certain activities supplied by an entity, and require that services be conducted or supplied by financial institutions located in a party's territory. Annex 1101.5 is also restrictive. Here parties may require the issuance of a decree, among other activities, in order to authorize new financial services not specifically authorized in its law. Further, a party may require the authorization of cross-border financial service suppliers. Finally, a party may apply solvency and integrity requirements to branches of insurance companies of the other party established in its territory. These additional annexes contain restrictive language and restrict the CPFTA's scope and coverage beyond that of the NAFTA.

Subsequent articles embrace liberalizing principles. Article 1102 establishes national treatment as a principle of financial services, stating that it shall be accorded in the establishment, acquisition, expansion, management, conduct, operation, and sale of financial institutions in its territory (Article 1102.2). National treatment also applies to cross-border financial service suppliers of the other party (Article 1102.3). This treatment is extended to the sub-national government level (Article 1102.4). The language here is comparable to the NAFTA.

Article 1103 embraces MFN as a principle of financial services under the CPFTA. In this article, each party is to accord financial institutions and cross-border financial service suppliers of the other party treatment no less favourable than it accords those of a non-party in like circumstances. A party may recognize prudential (restrictive) measures of a non-party which may be achieved unilaterally, through harmonization, or used upon agreement (Article 1103.2). A party is to provide adequate opportunity to the other party to demonstrate that there will be equivalent regulation, oversight, and implementation of regulation between the parties (Article 1103.3). The provisions here are again similar to those of the NAFTA.

The chapter accounts for the occurrence of new financial services in Article 1106 and is primarily liberalizing. Each party is to permit a financial institution of the other party to supply any new financial service that it permits its own financial institutions to supply, provided that its introduction does not require the party to adopt new statutes or modify existing statutes (Article 1106.1). A party, however, maintains the right to determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Such an

authorization may only be refused for prudential reasons (Article 1106.2). These provisions are comparable to those of the NAFTA.

Article 1107 on the treatment of certain information is restrictive. It states that a party is not required to provide or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers. The disclosure of information that would impede law enforcement, be contrary to public interest, or prejudice legitimate commercial interests of enterprises is also protected. A comparable article is not found in the NAFTA chapter.

Article 1108 liberalizes requirements for senior management and boards of directors. Here neither party may require financial institutions of the other party to engage persons of any particular nationality as senior managerial or other essential personnel. Further, the parties may not require that more than a simple majority of the board of directors of a financial institution of the other party be composed of nationals of the party or natural persons residing in the territory of the party. Identical provisions are found in the NAFTA.

Article 1109 addresses non-conforming measures and identifies Canada's specific reservations in financial services under Sections I and II of Annex III. The liberalizing principles of the chapter do not apply to any non-conforming measure maintained by a party at the national and sub-national levels of government (Article 1109.1.a). Non-conforming measures may also be continued or amended (to the extent that the amendment does not decrease the conformity of the measure). In Section I of Canada's Schedule under Annex III, it lists reservations taken with respect to existing measures that do not conform with the obligations imposed by national treatment, MFN, right of establishment, cross-border trade, and senior management and boards of

directors. Here, Canada's schedule provides a negative list of just one reservation in the sub-sector of insurance. In Section II, Canada provides a negative list of reservations it may adopt or maintain that do not conform with the same obligations listed in Section I. It lists two reservations in the banking and other financial services sub-sector. The NAFTA includes a specific reservation for insurance services it maintains the right to adopt additional measures limiting foreign ownership of financial services. For this reason the CPFTA is more liberal in its commitments.

Article 1110 is inherently restrictive in addressing the exceptions to the obligations of the financial service commitments. It states that nothing in this chapter is to prevent a party from adopting or maintaining measures for "prudential reasons". These are defined as those measures which protect investors and other financial participants, or ensure the integrity and stability of the financial system (Article 1110.1). The obligations of the chapter also do not apply to non-discriminatory measures of general application taken by public entities in pursuit of monetary and related credit policies or exchange rate policies (Article 1110.2). Further a party may prevent or limit transfers by a financial institution or cross-border service supplier in order to maintain the safety, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers (Article 1110.3). Finally, the parties may adopt and enforce measures necessary to secure compliance with laws or regulations (Article 1110.4).

Article 1111 establishes transparency as a principle of financial services. Here each party recognizes that transparent regulations and policies governing financial institutions and financial service suppliers facilitate trade. Specifically, the parties commit to publish regulations of general application related to the Chapter, provide interested persons a reasonable opportunity to comment on proposed regulations, and

allow reasonable time between publication of final regulations and their effective date (Article 1111.3). The regulatory body is to make available to persons their requirements for completing applications relating to the supply of financial services (Article 1111.4). On request of the applicant, a regulatory authority is to inform the applicant of the status of its application, though the onus to gather such information is placed on the worker (Article 1111.5). A regulatory authority is to also make an administrative decision on a completed application within 120 days and is to promptly notify the applicant of the decision (Article 1111.6). Finally, on the request of an unsuccessful applicant, a regulatory authority is to inform the applicant of the reasons for the denial (Article 1111.8). Though seeking such an explanation again remains the responsibility of the applicant. The content of the CPFTA is comparable to that of the NAFTA article.

Article 1113 liberalizes the cross-border transactions of foreign financial institutions. National treatment is embraced as the parties are to grant access to payment and clearing systems operated by public entities as well as access to financing facilities. A comparable article is not found in the CPFTA.

Under Article 1115 a party may request consultations regarding any matter covered by the agreement that affects financial services. The other party is to give sympathetic consideration to the request. Further, a party may request that regulatory authorities of the other party participate in consultations under this article regarding the measure of general application (Article 1115.3). In such a manner an onus is placed on the foreign service supplier to request assistance in facilitating entry. A restrictive clause prevents the disclosure of information and actions that would interfere with regulatory and other matters (Article 1115.4). A final clause reinforces the right of domestic law regarding the sharing of information among financial regulators or the requirements of an

agreement between financial authorities(Article 1115.6). Such actions may lessen transparency and restrict trade though similar provisions are found in the NAFTA.

In Chapter 12, Temporary Entry for Business Persons, the parties acknowledge their common goal to liberalize labour mobility. They agree to facilitate temporary entry for business persons, including those seeking to supply a service, on a reciprocal basis and to establish transparent criteria and procedures for temporary entry in Article 1201. This cooperation, however, is not to supersede border security or the protection of the domestic labour force and permanent employment. Article 1202 contains further restrictive language, stating that the parties are free to regulate the entry of persons and may apply measures to ensure the orderly movement of person across its borders though they must not unduly impair trade.

Article 1203 establishes the conditions in which temporary entry is granted. Business persons who comply with the conditions of the chapter, including the provisions of Annex 1203, are to be granted temporary entry. These service providers must also satisfy existing immigration measures, such as those relating to public health, safety, and national security (Article 1203.1). Applicants may also be refused where the temporary entry may affect a labour dispute or the employment of any person involved in a dispute (Article 1203.2). Though the language of this article is restrictive, the parties are required to limit fees for processing applications as to not unduly impair or delay trade (Article 1203.3).

Annex 1203 specifies those business persons eligible for entry. Section A, business visitors, permits entry to those engaged in a business activity set out in Appendix 1203.A.1. This is a positive list of eight activities several of which are not found in previous agreements, including: meetings and consultations; after-lease

service; harvester owner and supervising of a harvesting crew; cook personnel; information and communication technology service providers; and franchise traders and developers. In expanding this positive list of employment areas the coverage of the CPFTA is further liberalized. Persons covered under the appendix are not required to obtain a work permit or an employment authorization. They must, however, comply with existing immigration measures and may be requested to provide documents proving nationality, demonstrating the business activity, or proving that the business activity is international in scope (Annex 1203.A.1). This may require an oral declaration or a letter from the employer attesting to these matters. Such requirements restrict labour mobility by placing a burden on the service provider. The article, however, removes certain requirements. Neither party may require as a condition for entry prior approval procedures, labour certification tests or other procedures of similar effect. Numerical restrictions relating to temporary entry are also prohibited (Annex 1203.A.3.b). Despite these restrictions, a visa may be required prior to entry, though the parties are to attempt to avoid such an imposition through mutual consultation (Annex 1203.A.4). As the removal of the visa requirement depends on negotiations, it offers no promise of liberalization and as such is considered a restrictive measure. The length of stay for business visitors is restricted to up to six months though extensions are possible.

Section B of Annex 1203 addresses traders and investors. Entry is granted and a work permit provided to a business person who carries on substantial trade in services between the two parties. This must be in a capacity that is supervisory, executive, or that involves essential skills. Further liberalizing language states that labour certification tests and numerical restrictions are not to be applied (Annex 1203.B.2). As with business visitors, a visa may be required though the parties are to consult with a view to

avoid such an imposition. This is, as before, considered a restrictive requirement. The length of stay for traders and investors is restricted to up to one year though extensions are possible.

Section C of Annex 1203 addresses intra-company transferees. Entry is granted to business service suppliers who are executives, managers, specialists, or a management trainee on professional development, with a foreign enterprise. A party may require that the business person be employed continuously for the enterprise for six months before their date of application for admission (Annex 1203.C.1). Some liberalization here is evident as management trainees do not appear in previous agreements and employment history with the company prior to entry has been reduced from 1 year to 6 months. Again, labour certification tests and numerical restrictions are prohibited. Although a visa may be required, the parties are requested to consult with a view to avoiding the imposition. This is considered a restrictive measure. The length of stay for intra-company transferees is restricted to up to three years and extensions are possible.

Section D of Annex 1203 addresses professionals and technicians. Temporary entry is granted to business person seeking providing services at a professional or technical level in accordance with Appendix 1203.D.1. Under the appendix, a negative list of nine restricted professional categories is provided and ranges from health, education, and social service occupations to judges, lawyers and notaries. For technical categories, however, a positive list of 19 approved sectors is provided. These range from civil engineering technologists and technicians to international selling and purchasing agents. An allowance for technicians who are independent professionals or contract service suppliers is a newly liberalized sector in the CPFTA. The limitations,

however, on approved business activities represents significant restrictions. Business providers in both categories must present proof on nationality or documentation demonstrating that they are entering on pre-arranged professional services for which they have appropriate qualifications. Again, prior approval, labour certification tests, and numerical restrictions are not permitted. A visa may be required though the parties are to consult with a view to its removal. Length of stay for professionals and technicians is restricted to up to one year and extensions are possible.

Article 1204 attempts to apply transparency measures to the provision of information under temporary entry. The parties are to provide relevant materials to applicants so that they may be aware of the measures relating to this chapter. Explanatory material regarding the requirements for entry are also to be made available. Finally, each party is to collect and maintain and provide on request, data respecting the granting of temporary entry, though this is to be provided in accordance with domestic law (Article 1204.2). [The notice of publication of information has been reduced from one year in the CCFTA to six months.] Article 1207 restates that no provision of the CPFTA is to impose any obligation on a party regarding its immigration measures, apart from what has been negotiated under the agreement. Article 1208 again calls for transparency, this time in the processing of applications. The parties are requested to establish mechanisms to respond to potential applicants (Article 1208.1). Once an application is complete, a party is to respond within 45 days on the status of the application. If the applicant requests, the party is to provide information concerning the status of an application (Article 1208.2).

Chapter 22 addresses the general exceptions to the agreement. Here the parties reconfirm their commitment to GATS Article XIV for specific domestic protections.⁵⁸ The provisions of the agreement may also be restricted for reasons of national security as described in Article 2202. These include: restrictions on the disclosure of information, the protection of essential security interests, and the ability of the parties to pursue their obligations under the United Nations Charter. A lengthy article addressing taxation restricts its coverage under the provisions of the CPFTA, except to what is specifically provided for in the respective chapters. This article is comparable to the NAFTA with a departure reducing the exceptions to national treatment and MFN (Article 2203.6.b).⁵⁹ The CPFTA, then, is more liberal here.

Article 2204 protects the disclosure of information. Here a party may restrict access to information that would impede law enforcement or compromise the functions of the executive branch of government. It may also be restricted in order to protect personal privacy or protect the financial information. Information is further restricted that protects competition laws. Stronger language is again evident in stating that during a dispute resolution procedure, a party is not required to allow access to information that is protected or privileged under its competition laws (Article 2204.b). The addition of protectionist language towards the provision of information may be used to restrict labour mobility. Article 2205 protects the cultural industries of the parties from coverage

⁵⁸ GATS Article XIV permits the enforcement of measures necessary to (a) protect public morals or maintain public order; (b) protect human, animal or plant life or health; and (c) secure compliance with laws or regulations relating to fraudulent practices, the protection of privacy; and safety.

⁵⁹ CPFTA Article 2203.6 states that national treatment and MFN are to apply to all taxation measures, except to those on income, capital gains or on the taxable capital of corporations. In addition to these, NAFTA Article 2103.4 includes exceptions on taxes on estates, inheritances, gifts and generation-skipping transfers.

under the agreement. [This chapter is similar to the CCFTA though there is no article restricting the balance of payments].

Comparative Analysis

A comparative analysis of the CPFTA and the NAFTA by chapter finds the general language of the CPFTA to be overall more liberalizing in its treatment of labour mobility. Canada's reservations, however, as found in its schedules to the cross-border trade in services, do not increase labour mobility. Most promising is the expansion of activities and categories under temporary entry provisions. However, commitments here are only deepened incrementally. Despite the lack of a clearly liberalizing trend, evidence suggests marginal evidence of labour mobility liberalization in the CPFTA beyond that of the NAFTA.

While financial services, air services, procurement, and subsidies are restricted under both agreements, the coverage of air services under the CPFTA is expanded to include CRS services. The CPFTA also adheres to an additional liberalizing principle, market access. Though both agreements adopt a negative list approach in their schedules of commitments, the CPFTA is more liberalizing as it does not maintain a schedule of quantitative restrictions. Further liberalizing is the use of more concise language increasing the accessibility and understanding of the agreement to workers. Conversely, differences in restrictive measures reveals the CPFTA to be somewhat more limiting in its schedule of reservations. Though both agreements table 16 reservations for existing measures, the CPFTA includes a reservation excluding all non-conforming provinces and territories. Canada's schedule of reservations for future measures under the CPFTA is also more restrictive at 11 reservations compared to 7 under NAFTA.

The general language governing telecommunications under the CPFTA is more concise than that of the NAFTA and contains additional articles holding the parties to their obligations. This clarity increases the transparency to workers seeking coverage under the CPFTA. Additional articles strengthen the liberalizing principles of national treatment and nondiscrimination beyond that of the NAFTA . Many restrictions remain under both agreements, most significantly treatment allows for the parties to restrict authorization in the supply of telecommunications transport networks and telecommunications transport services. The CPFTA chapter, however, expands scope and coverage. For this reason, the CPFTA is considered more liberalizing for labourers seeking to access and provide telecommunication services.

A comparison of financial services reveals both restrictive and liberalizing provisions. However, much of the content of the CPFTA is similar to the NAFTA. General exceptions addressing prudential measures, conduct of financial service suppliers, new financial services, and the provision of information are comparable. Additional language of the scope and coverage of the CPFTA is more restrictive allowing for the exclusive provision of financial services as identified in its annexes. Also restrictive is additional language protecting the disclosure of information. Conversely, Canada's schedule of reservations under the CPFTA is considered more liberal than that of the NAFTA. While CPFTA identifies three specific reservations, the NAFTA includes one specific and two general reservations. Such reservations allow for the adoption of greater restrictions than what is permitted in the CPFTA. Consequently, findings indicate that though the general language of the CPFTA is more restrictive, its schedule is more liberalizing towards financial services. As a result, financial services have not been liberalized significantly beyond that of the NAFTA.

Provisions governing the temporary entry of business persons are particularly illuminating. While the parties share a common goal to facilitate temporary entry, the CPFTA's language addressing its general obligations is more restrictive in emphasizing the regulatory powers of the state in granting entry. Though the treatment of business persons is similar to the NAFTA, the list of permissible business activities is expanded under the CPFTA. Business visitors who are participating in meetings and consultations are additionally permitted entry in the CPFTA. The list of intra-company transferees is expanded under the CPFTA as management trainees are now permitted entry here. An employment history requirement is also reduced under the CPFTA from one year to six months. Increased transparency provisions of the CPFTA also reduce the time the parties are to make available explanatory material from one year to six months. However, a negative list of nine professional categories are excluded from coverage under the CPFTA. The CPFTA then provides a positive list of 19 technical professions that are covered by the chapter (Appendix 1203.D.1). The NAFTA has no such lists but instead provides a table of professional categories with minimum education requirements. However, this does not indicate that entry is to be granted to these professionals. Despite the use of a positive list, the CPFTA is considered more liberalizing here. Provisions granting temporary entry, then, have been expanded under the CPFTA compared to that of the NAFTA.

A chapter addressing general exceptions finds the language of the CPFTA to be more favourable to trade than the NAFTA. The CPFTA liberalizes a positive list of national treatment and MFN taxation exemptions. Most notably the CPFTA does not contain a restrictive balance of payments article as found in the NAFTA. Less

significantly, a somewhat more restrictive disclosure of information article does not follow this liberalizing trend.

A summary of the key differences governing labour mobility under the CPFTA compared to the NAFTA reveals the following findings:

- Some air service activities are liberalized, most notably CRS services, which are not found in the NAFTA.
- Several liberalizing principles are included: national treatment, MFN, standard of treatment, market access, and local presence. The inclusion of market access is especially signalling its liberalizing posture (though it does not apply to any non-conforming measure as identified in the schedules).
- The language of the CPFTA is more concise than that of the NAFTA and increases its accessibility to workers.
- The CPFTA does not include a schedule of quantitative restrictions as per its market access commitments and as such is particularly liberalizing.
- Greater clarity in addressing recognition and licensing of cross-border trade in services provides for increased transparency.
- Though both the CPFTA and the NAFTA table 16 reservations for existing measures, especially restrictive is a CPFTA reservation in all sectors excluding all non-conforming measures of the provinces and territories.
- Canada's Annex II, Reservations for Future Measures, includes 11 reservations. This is several more than the NAFTA's seven reservations. Most notable is a restriction in the transportation sector protecting previously negotiated international agreements. The CPFTA is considered more restrictive in practice than the NAFTA here.
- Telecommunications services are liberalized to a greater extent under the CPFTA. The scope and coverage is expanded and the language more concise, increasing transparency. Additional articles embrace national treatment, nondiscrimination and seek to reduce anti-competitive practices beyond that of the NAFTA.
- The CPFTA's scope and coverage of financial services contains additional restrictive annexes that allow for the exclusive provision of financial services and for specific authorization procedures and requirements.
- An additional restrictive provision of the CPFTA protects the disclosure of information in Article 1107.
- A negative list of non-conforming measures is provided in Annex III. Canada's schedule of reservations in Section I lists one reservation in the insurance sub-sector. In Section II it lists two reservations in banking and other financial services. No reservations are listed in Section III. Canada's schedule under the NAFTA is more restrictive as it reserves the right to adopt measures relating to the cross-border trade in securities and places residency requirements on foreign ownership of Canadian financial institutions. It also seeks to limit foreign ownership of Canadian financial institutions. These provisions are more restrictive than those found in the CPFTA.
- Article 1113 liberalizes payment and clearing systems for cross-border transactions of foreign financial institutions. The NAFTA does not contain a comparable article.
- The general language of the CPFTA governing temporary entry of business persons is more restrictive.

- Temporary entry provisions are expanded under the CPFTA. Appendix 1203.A.1 provides a list of 8 business activities that are permitted entry. These range from meetings to consultations to general services.
- Additional business persons are permitted entry: participants in meetings and consultations.
- A list of intra-company transferees under the CPFTA is expanded to include management trainees.
- Burdensome requirements such as employment histories are reduced under the CPFTA.
- Transparency provisions are strengthened that provide information to potential workers.
- A positive list of 19 technical professions eligible for entry is provided that is not found in the NAFTA.
- The CPFTA is restrictive in applying limits on the length of stay for each professional category.
- Exceptions to the CPFTA are more liberal than that of the NAFTA. Fewer exceptions to liberalizing principles are identified and a restrictive balance of payments provision is not included.

Canada-Colombia Free Trade Agreement (CCOFTA)

The CCOFTA entered into force on August 15, 2011, three years after it was signed in November 2008. At the outset, the treatment of labour mobility under the CCOFTA appears to follow that of the CPFTA though some provisions are closer to that of the NAFTA. Because the CCOFTA shares much in common with the CPFTA, the differences between the agreements are highlighted throughout the summary in order to distinguish how the CCOFTA compares to the NAFTA in its own right. Analysis using the measures of the agreement reveals a less liberalizing trend than the CPFTA though evidence of liberalization is found. Most notably, the language of the agreement is generally more concise and thereby provides greater transparency. Canada's schedules of non-conforming measures are found to be somewhat more restrictive than that of the NAFTA. However, a schedule of quantitative restrictions is not maintained. In effect, the agreement has served to broaden Canada's trade rules rather than to deepen its commitments in a meaningful manner.

One of the primary chapters addressing labour mobility is Chapter Nine, Cross Border Trade in Services. The CCOFTA chapter parallels that of the CPFTA with few departures though some articles are distinct to the CCOFTA.⁶⁰ Its scope and coverage liberalizes a wide breadth of service activities from the production, sale, and delivery of a service to the presence in its territory of a foreign service supplier (Article 901.1). These activities are identical to the coverage under the NAFTA. Specific exclusions are also identified and include financial services, government procurement, and subsidies. Air services are also excluded with the exception of aircraft repair and maintenance, the selling and marketing of air transport services, and CRS services. The NAFTA does not include CRS services and is therefore more restrictive in its coverage. Several liberalizing principles are identified: national treatment (Article 902), MFN (Article 903), market access (Article 904), local presence (905). The CPFTA does not include standard of treatment as a liberalizing principle but instead replaces it with a stronger market access provision. Market access is particularly liberalizing as it prohibits, for example, limitations on the number of service suppliers, the value of service transactions, the number of service operations, and the number of persons that may be employed in a particular service sector. These principles, however, do not apply to any non-conforming measure which may be maintained at all levels of government as identified in Canada's schedules found in Annex I and Annex II (Article 906) and summarized in Tables 4.6 and 4.7.

⁶⁰ The CCOFTA does not include an article on subsidies or standard of treatment as does the CPFTA. Further, the CCOFTA Article 907, Domestic Regulation, does not contain a paragraph addressing measures relating to the liberalization of qualification requirements. The language of the CCOFTA in cross border trade in services, then, is less binding and less liberalizing than the CPFTA.

This restrictive vein is continued in Article 907, domestic regulation, where the parties confirm their rights to determine qualifications and regulations on entry. The parties, however, note their mutual obligations as defined in Article VI.4 of the GATS.⁶¹ Transparency is reinforced as the parties are required to respond in a reasonable period of time to and provide information on any application of authorization for the supply of a service (Article 907.2). However, the CCOFTA omits a clause ensuring that measures relating to recognition are applied in a non-discriminatory manner. The language here is less liberalizing than the NAFTA. Article 908, attempts to provide transparency in awarding recognition of foreign service suppliers through the harmonization of standards between the parties. Its accompanying Annex 908.4, provides practical guidance for governments and entities entering into mutual recognition negotiations for the professional services sector. The guidelines, though helpful, are non-binding and do not affect the rights and obligations of the parties under the CPFTA. In this manner the article and its annex offer no guarantee of liberalization.

Similarly, in Article 909, the parties are to encourage relevant professional bodies in its territory to develop procedures for the temporary licensing of foreign professional services suppliers. Again, by relying on a professional body to do so does not guarantee that liberalization will occur. Article 910 is liberalizing in that it requires the parties to permit transfers and payments of services to be made freely and without delay. Though a party may prevent these transactions in certain instances according to its laws relating to bankruptcy, trading, criminal offences, or ensuring compliance with judicial

⁶¹ Article VI.4 of the GATS seeks to ensure that qualification requirements do not constitute unnecessary barriers to trade. The Council for Trade in Services is to develop the necessary disciplines to ensure that requirements are based on objective and transparent criteria, and not more burdensome than necessary, and that licensing procedures do not restrict the supply of a service.

orders. Article 911 is restrictive as it denies benefits to service suppliers who are not party to the agreement. This article, while the same in substance, is yet even more streamlined and concise in wording than previous agreements, thus increasing the transparency of the agreement. Article 912 establishes a working group who are to review matters concerning the operation of the agreement, and increase the transparency of measures, among other responsibilities. Despite detailing these liberalizing functions, there is no promise of increased labour mobility for service providers.

Canada's schedules of reservations for the cross-border trade in services is located in two annexes at the end of the agreement and summarized in tables below. A negative list format is adopted in the CCOFTA. Notably, the CPFTA does not include an annex of quantitative restrictions as does the NAFTA. In its schedule of reservations for existing measures and liberalization commitments summarized in Table 4.6, the CPFTA provides a negative list of 16 reservations, the same number as the NAFTA. The CCOFTA replaces a NAFTA reservation on fisheries with a professional, technical, and specialized services sector reservation. The CCOFTA does not contain a reservation for air transportation operating certificates as does the NAFTA. Further, the CCOFTA contains a reservation in all sectors excluding all non-conforming measures of the provinces and territories is especially restrictive. This reservation is not found in the NAFTA and for this reason the CPFTA is considered more restrictive here, though both agreements contain the same number of reservations.

Table 4.6. Summary of COFTA's Annex I: Canada's Schedule of Reservations for Existing Measures and Liberalization Commitments

Sector	Sub-Sector/Industry/Activity
All Sectors	import/export certificates
Business Service Industries	5 reservations: customs brokers, duty free shops, examination services, patent agents and agencies, trade mark agents
Energy	oil and gas
Professional, Technical, and Specialized Services	financial auditing services
Transportation	7 reservations: air transportation: aircraft repair land transportation: truck or bus services water transportation: ship registration; seafarer certification; pilotage services; joint offices; U.S. government exception for DEW
All Sectors	existing non-conforming measures of all provinces and territories

A comparison of Canada's schedule of reservations for future measures found in Annex II, as summarized in Table 4.7, reveals some differences. It tables 8 reservations, one more than that of the NAFTA's seven. Canada's schedule includes an extra reservation on fisheries and an expansive reservation including any measure not inconsistent with the market access provisions of the GATS. It does, however, include one less reservation covering agreements in waters of mutual interest. In view of an additional number of reservations and the particularly restrictive market access reservation in all sectors, the CCOFTA is considered more restrictive than the NAFTA. (The CPFTA contains 11 reservations here and the CCFTA six. The CCOFTA is therefore less restrictive than the CPFTA and more restrictive than the CCFTA in its schedule of future reservations).

Table 4.7. Summary of CCOFTA's Annex II: Canada's Schedule of Reservations for Future Measures

Sector	Sub-Sector/Industry/Activity
Aboriginal Affairs	aboriginal peoples
Communications	telecommunications transport networks and services, radiocommunications, telecommunications services
Fisheries	fishing Related Services: licensing of foreign fishing vessels
Minority Affairs	socially or economically disadvantaged minorities
Social Services	provision of law enforcement and social services
Transportation	2 reservations: air transportation: selling and marketing of air transportation services water transportation: marine cabotage services
All Sectors	any measure not inconsistent with GATS Article XVI*

*GATS Article XVI addresses market access commitments and prohibits limitations on the number of service suppliers, the total value of service transactions, the total number of service operations, the total number of natural persons in a service sector, among other binding restrictions.

Chapter Ten of the CCOFTA addresses the supply of and access to telecommunications networks and services. In general, it is a more liberalizing chapter than the NAFTA and seeks to deepen commitments in the this sector. The scope and coverage as contained in Article 1001 is the same as that of the CPFTA. Here coverage extends to measures relating to access to and use of public telecommunications networks and services as well as to the obligations of suppliers and

other related measures including those relating to the supply of value-added services. The language of the CPFTA is more specific than that of the NAFTA and again lends greater transparency to the agreement. Excluded from coverage is the broadcast and cable distribution of radio and television programming intended for the public. Other exclusions do not require the parties to authorize the supply, among other activities, of foreign enterprises other than what has been negotiated. The parties are not required to operate or supply telecommunications networks or services not offered to the public generally. Further, the parties may prohibit persons operating private networks from using their networks to supply public telecommunications networks or services to third persons. These exclusions are also found in the NAFTA, though the NAFTA contains an additional restriction stating that the parties are not required to compel broadcast distributors to make available its facilities as a public telecommunications transport network (NAFTA Article 1301.3.d). Due to the increased transparency of the CCOFTA and fewer exclusions, the scope and coverage is considered somewhat more liberalizing than the NAFTA.

A subsequent article, 1002, establishes that the parties are to provide foreign enterprises access to and use of public telecommunications transport networks and services on a non-discriminatory basis. The provisions here are the same as the CPFTA, though the wording is somewhat more concise (see Articles 1002.1 and 1002.2). Though similar to the NAFTA, some differences are evident. The NAFTA contains an additional liberalizing provision ensuring the competitive price of public telecommunications transport services and private leased circuits. Though the parties are permitted to prevent cross-subsidization between public telecommunications transport services (NAFTA Article 1302.3). Other language of the CCOFTA (and the

CPFTA) is more liberalizing stating that the parties are not to impose conditions beyond those necessary to “ensure that service suppliers of the other Party do not supply services limited by the Party’s Reservations” as stated in Article 1002.5.c. The NAFTA contains a further restriction on resale that is not found in the CCOFTA (NAFTA Article 1302.7.a). The CCOFTA includes additional restrictions allowing for requirements based on the inter-operability of services (Article 1002.6.b) and type approval of terminal and other equipment (Article 1002.6.c). This article is not clearly more liberalizing or restrictive and is overall similar in content to the NAFTA despite some differences.

Subsequent articles consider additional areas of telecommunications not addressed or shallowly treated in the NAFTA. The language of the Article 1003, Conduct of Major Suppliers, is largely liberalizing in addressing such areas as treatment of major suppliers, competitive safeguards, regulated wholesale supply, and interconnection. Other provisions of the article are restrictive and strengthen the authority of the state in matters of resale of public transport telecommunications services or networks. The parties are also free to identify the services available on an unbundled basis [this provision is not found in the CPFTA]. Article 1004 ensures that independent regulatory bodies and government owned telecommunications suppliers operate in a manner that is impartial and on a national treatment basis. The inclusion of these articles and their additional commitments to which the parties are bound is considered to increase liberalization.

Other articles of the CCOFTA are restrictive and are not found in the NAFTA. Article 1005, on the contrary, grants the parties the right to define the kind of universal service obligations they wish to adopt. Such regulations may limit service suppliers. Though Article 1006 gives the parties authority to issue licenses and other authorizations

they must do so in a transparent manner. Under Article 1007 the parties retain the right to determine the allocation and use of scarce resources. Here again, they must do so in an objective, transparent, and non-discriminatory manner.

Article 1008 is liberalizing as it requires the parties to maintain appropriate procedures and authority to enforce the measures of the chapter and introduces accountability to the members. Article 1010 is particularly liberalizing in embracing the principle of transparency in such matters as the publication of regulations, standards-related measures, and specifications of technical interfaces, among others. New language that is not found in the NAFTA or the CPFTA requires major suppliers to make publicly available their interconnection agreements (Articles 1010.c and 1010.d). These regulations increase transparency and further liberalize telecommunications operations. A newly introduced Article 1011 that is not found in either the NAFTA or the CPFTA, allows suppliers flexibility in their choice of technologies that they use to supply their services and increases liberalization. Article 1012 requests forbearance on behalf of the parties from applying unnecessary regulations such as those that do not prevent discriminatory practices or protect consumers. Interestingly, Article 1013, addressing the conditions for the provision of value-added services is not found in the CPFTA but is found in the NAFTA (NAFTA Article 1303). The article is liberalizing in limiting government regulations on value-added services.

Chapter 11 addresses the financial service industry and includes in its coverage cross-border financial service suppliers. It is apparent that the CCOFTA chapter is based on that of the CPFTA as the chapters are markedly similar, though not identical. Several articles of the CCOFTA, however, are duplicates, including Scope and Coverage (Article 1101), National Treatment (Article 1102), MFN (Article 1103), Right of

Establishment (Article 1104), Cross-Border Trade (Article 1105), New Financial Services (Article 1106), Treatment of Certain Information (Article 1107), and Senior Management and Boards of Directors (Article 1108). Other relevant articles that follow are again the same as the CPFTA and include: Exceptions (Article 1110), Transparency (Article 1111), Self-Regulatory Organizations (Article 1112), Payment and Clearing Systems (Article 1113), Financial Services Committee (Article 1114), Consultations (Article 1115).

Differences appear in the Annexes. In the Understandings Regarding Financial Services Measures, located under Annex 1101.5, a new provision allows a party to adopt taxes levied on cross-border services (Annex 1101.5.2). A second new provision permits a party to apply non-discriminatory exchange rate regulations on the acquisition of financial services from cross-border financial suppliers (Annex 1101.5.5). These new restrictions represent the most significant differences between the chapters and therefore the CCOFTA must be considered more restrictive in the general language of financial services than the CPFTA.

A look at Canada's schedule under the CCOFTA and the CPFTA reveals some differences. The CCOFTA's schedule of non-conforming measures in cross-border trade Canada includes an additional reservation not found in the CPFTA (Annex III, Section II). This reservation covers all financial sub-sectors and limits the application of MFN in securities services. Although the CPFTA does not include any specific commitments to liberalize measures in its schedule, the CCOFTA includes one liberalizing entry. Here Canada allows foreign financial institutions to provide services to a collective investment scheme located in some provinces. The general language of the agreement is overall is more restrictive than the CPFTA. Because analysis of the CPFTA and the NAFTA

determined that the CPFTA was somewhat more restrictive here, the CCOFTA must therefore also be considered more restrictive than the NAFTA.

Chapter 12 covers the temporary entry for business persons. For the most part, the articles here are either duplicates of those of the CPFTA or adopt clearer language (Annex 1203.D, temporary entry for professionals and technicians, for example). A few differences are noteworthy. In Article 1208, transparency in processing applications, the time period in which a party is to inform the applicant of a decision concerning an application is reduced to 30 days (from the usual 45). This reduction in timeline is only somewhat more liberalizing as it improves access for foreign workers.

The annex to Chapter 12 is divided into five categories which set the conditions for entry: business visitors, traders and investors, intra-company transferees, professionals and technicians, and spouses. A key difference in the coverage of traders and investors allows not only those persons who “establish, develop, and administer” advice or technical services but also those who “provide” these services as well (Annex 1203.B.1.b). This addition to the CCOFTA serves to broaden temporary entry. A second deviation of the CCOFTA is also liberalizing as it includes temporary entry for spouses of business persons who qualify under the agreement (Annex 1203.E). The CPFTA does not include such a provision. The treatment of spouses here contains similar conditions as those of the NAFTA. In a final difference between the CCOFTA and the CPFTA, the former does not identify length of stay limits for each category of business visitors. This omission is considered restrictive as such a list provides clarity and transparency to potential workers. In sum, the treatment of labour mobility under the CCOFTA is only marginally expanded beyond that of the CPFTA and is therefore considered more liberal. It is consequently also more liberal than the NAFTA.

The exceptions to the CCOFTA are found in Chapter 22. As in other chapters, the agreement more closely identifies with the CPFTA though some provisions found in the NAFTA, and not included in the CPFTA, are observed in the CCOFTA. While coverage of the environmental restrictions for labour mobility is comparable to the CPFTA, it is more restrictive than the NAFTA. Three chapters are included in this coverage under the CCOFTA, Chapters 9, 10, and 12 (Article 2201.2). The NAFTA, however, applies the restrictions only to cross-border trade in services and telecommunications. The CCOFTA, then, is more restrictive than the NAFTA, and comparable to the CPFTA in its coverage. Additional new language within the CCOFTA is also restrictive allowing the parties to adopt measures aimed at preserving public order (Article 2201.4). A restrictive provision allows the parties to restrict transfers in the case of serious balance of payments difficulties (Article 2203). While not included in the CPFTA, a comparable article is found in the NAFTA. Here the CCOFTA is more restrictive than the CPFTA.

A lengthy article on taxation measures, while similar the CPFTA, contains new language. In identifying the application of liberalizing principles in Article 2204.5.a, the CCOFTA adds restrictive language stating, “nothing in this subparagraph shall prevent a Party from conditioning the receipt...of an advantage relating to the consumption of particular services.” Such restrictive language is not found in the CPFTA or the NAFTA. Other language addressing national treatment and MFN within the cross-border trade in services and financial services identifies exceptions to these liberalizing principles (Article 2204.5.b). Here the CCOFTA includes taxes on estates and inheritances and gifts as exceptions, and is more restrictive than the CPFTA. The NAFTA, however, includes a longer list of exceptions and is therefore the most restrictive. Additional

language found in the CCOFTA and the CPFTA but not in the NAFTA serves to provide transparency in the dispute resolution process (Article 2204.8 and 2204.10). A final taxation measure protects the access to information and is restrictive (Article 2204.11). While found in the CPFTA, this provision is absent from the NAFTA. Subsequent articles addressing the disclosure of information (Article 2205) and cultural industries (Article 2206) are comparable to the CPFTA. In sum, the measures of the study support the conclusion that the exceptions found in the CCOFTA are generally more restrictive than those of the NAFTA. Additional restrictive measures are included and are applied more broadly. Though the CCOFTA is similar to the CPFTA, additional restrictions, such as those limiting transfer payments for balance of payments and taxation, reduce the liberalization of labour mobility in the chapter.

Comparative Analysis

A comparative analysis of the CCOFTA with the NAFTA does not reveal a consistent trend based on the measures of the study. While some language allows for incremental liberalization, Canada's schedules of commitments are somewhat more restrictive. It is apparent that the CCOFTA is modelled after the CPFTA and closely resembles several of its provisions, however, some differences are evident. A look at the treatment of cross-border trade in services, when compared to the NAFTA, reveals both greater liberalization and greater restrictions. The provisions of the chapter embrace market access as a liberalizing principle, expand air service coverage, increase transparency and most significantly, prohibit quantitative restrictions. Canada's schedules of reservations, however, are more restrictive than the NAFTA resulting in a more limiting agreement in practice.

A comparison of the provisions governing telecommunications finds the CCOFTA to be only marginally more liberalizing. With few exceptions, the more concise language of the CCOFTA increases transparency and access to potential applicants. The liberalizing principles of national treatment and non-discrimination are also more generously applied. Other liberalizing language broadens the activities of suppliers as they are offered greater freedom in their choice of technologies. Additional provisions, however, are more restrictive. The parties are granted the right to define their universal service obligations and also to determine the allocation and use of scarce resources. These limitations may potentially limit the business activities of foreign service providers in Canada.

The treatment of financial services within the CCOFTA is overall more restrictive than what is found in both the CPFTA and the NAFTA. Though the language of the chapter is more clear, providing increased transparency, additional taxation regulations and exchange rate rules are more limiting. Canada's schedule of reservations here is not clearly more liberalizing or restrictive. It includes an additional reservation limiting the application of MFN in security services, however, it also tables a commitment expanding the offerings of foreign financial institutions.

Analysis of the provisions governing temporary entry for business persons reveals incremental liberalization. Most significantly, the list of traders and investors permitted entry is expanded. A provision granting spouses entry is also liberalizing. More specific language and decreased time periods for the publication of information serve to increase transparency and accessibility of the agreement to potential workers. Though less transparent measures do not identify periods of stay for business persons, as does the CPFTA; this is the same as the NAFTA.

When measures of the study are applied to the exceptions of the agreement a more restrictive trend is evident. As in other chapters, the language is more transparent although the content of that language is often more limiting. For example, environmental exceptions apply to more chapters, laws preserving the public order are expanded, and additional taxation restrictions are found. A balance of payments article is more restrictive than the CPFTA though comparable to the NAFTA. In sum, though the application of national treatment and MFN are more liberalizing in the NAFTA than the CCOFTA, there is greater evidence of restrictive measures.

A summary of the key differences governing labour mobility under the CCOFTA compared to the NAFTA reveals the following findings:

- Several liberalizing principles are included in the cross border trade in services: national treatment, MFN, market access, and local presence. Though the NAFTA's standard of treatment article is absent, a more liberalizing market access principle is embraced.
- Air services activities that are permitted include repair and maintenance, the selling and marketing of services, and CRS services (the latter is not found in the NAFTA).
- Transparency is a principle of domestic regulation (Article 907.2) though the language here is less liberalizing than the NAFTA.
- The CCOFTA does not permit quantitative restrictions and includes no schedule for such as does the NAFTA. This is especially liberalizing.
- The CCOFTA is somewhat more streamlined and concise as seen in Article 911, increasing the accessibility and transparency of the chapter.
- Sixteen reservations for existing measures are identified in Annex I. Though this is the same as the NAFTA, a reservation in all sectors includes all non-conforming measures of the provinces and territories is especially restrictive.
- Eight reservations for future measures are identified in Annex II. This is one more than the NAFTA's seven. A market access reservation in all sectors is considered especially restrictive. The CCOFTA is considered more restrictive here than the NAFTA.
- Coverage extends to access to and use of public telecommunications transport networks and services by foreign persons. It also extends to the provision of enhanced or value-added services by foreign suppliers (Article 1001). The language is more specific than the NAFTA increasing transparency.
- Foreign service suppliers are permitted to purchase or lease and attach terminal equipment, interconnect private leased or owned circuits with public equipment, and other functions as outlined in Article 1002. The wording is more concise than the CPFTA and though similar to the NAFTA, the NAFTA contains additional liberalizing

- provisions. Other additional language of the CCOFTA is liberalizing in limiting conditions placed on service suppliers (Article 1002.5.c).
- A detailed article, 1003, governs the operations of major service suppliers and calls for national treatment and non-discriminatory practices. The language in this article is much more liberalizing than the NAFTA.
 - Article 1004 ensures the impartiality of the regulatory body and again calls for national treatment.
 - The CCOFTA contains additional articles that increase the transparency of the agreement (Articles 1006, 1007, 1010, 1013).
 - Article 1008 requires the parties to maintain procedures and grant authority to enforce the obligations of the chapter.
 - Article 1011 is new from both the NAFTA and the CPFTA and increases liberalization by granting suppliers flexibility in their choice of technologies.
 - Article 1012 requires forbearance on behalf of the parties in applying unnecessary regulations. Such language is liberalizing.
 - The CCOFTA's financial services chapter is largely comparable to the CPFTA. Differences are found in the Annexes. A restrictive provision allows a party to adopt taxes on cross-border services (Annex 1101.5.2). A second regulation allows a party to apply exchange rates on the acquisition of financial services from cross-border financial suppliers (Annex 1101.5.5).
 - Within financial services Canada's schedule of additional commitments includes one entry allowing foreign institutions to provide services to a collective investment scheme (Annex III, Section III).
 - Canada's schedule of reservations includes an additional reservation limiting the application of MFN in securities services (Annex III, Section II).
 - The language addressing professionals and technicians under temporary entry is clarified making the agreement more transparent and accessible to potential foreign workers (Annex 1203.D).
 - The time period to inform an applicant on the status of a completed application is reduced to 30 days (Article 1208). This increases access for workers.
 - The coverage of traders and investors is expanded to include those who provide advice or technical services (Annex 1203.B.1.b).
 - A provision for spouses to enter as temporary workers also expands the coverage of the agreement from the CPFTA (Annex 1203.E). The treatment of spouses is the same as the NAFTA.
 - The CCOFTA does not identify length of stay for business persons as specified under the CPFTA. This omission lacks transparency and does not provide assurances to potential foreign workers.
 - Language increasing the transparency of the dispute resolution process is found in the CCOFTA and the CPFTA (Article 2204.8).
 - Environmental exceptions apply to more chapters in the CCOFTA than in the NAFTA (Article 2201.2)
 - New language allows the parties to adopt measures to preserve public order (Article 2201.4)
 - A balance of payments article is included in the CCOFTA and comparable to the NAFTA (Article 2203). Such an article is not found in the CPFTA.
 - New restrictive taxation measures permit the conditioning of a receipt (Article 2204.5.a)

- Additional exceptions to the liberalizing principles of national treatment and MFN are found in the CCOFTA compared to the CPFTA, increasing the number of restrictive elements (Article 2204.5.b). (These are less than what is found in the NAFTA, however.)
- An additional taxation measure protects the access to information and limits transparency (Article 2204.11).

Conclusion

Liberal trade theory predicts labour mobility to be liberalized to a greater extent under bilateral agreements when compared to those of regional and multilateral agreements. It further predicts that as the services sector became increasingly prominent in international trade that commitments would deepen, building on the success of previously negotiated agreements. However, a comparison of labour mobility within Canada's bilateral agreements does not reveal a consistent trend towards greater liberalization beyond that of the NAFTA, despite incremental liberalization. Indeed, there is limited evidence of a deepening of commitments from the negotiation of services in the 1994 NAFTA. Differences between the agreements were found to be marginal which made it challenging to reach a definitive conclusion on where they stood in relation to one another. Often more revealing than the general provisions were the specific commitments found in Canada's schedules. New sectors have not been opened to a significant degree and changes in the requirements for entry are unsubstantial to the overall effort of increasing the movement of labour on a temporary basis. The conditions for entry have not changed and visas may still be required.

A look at the reservations contained in the CCFTA determined it to be a more restrictive document than that of the NAFTA. As a first generation agreement, the CCRFTA does not negotiate the trade in services but recognizes each member's obligations under the GATS. As the GATS was previously determined to be more

restrictive than the NAFTA, the CCRFTA is considered equally restrictive. The most significant evidence towards liberalization of labour mobility was found in the CPFTA. Though the CCOFTA appears to share much in common with the CPFTA, other provisions are more comparable to the NAFTA. A clear liberalizing or restrictive trend is not evident in the general language of the agreement while a study of Canada's schedule of commitments proves it to be marginally more restrictive than the NAFTA.

CHAPTER 5

CONCLUSION

As a relatively small economy, Canada is dependent on international trade in order to grow its wealth and provide stability to the domestic economy. Canada, a free trade proponent, allocates much time and resources to the pursuit of its trade goals through various types of agreements. Though traditionally it favoured a multilateral approach to trade, recent history has seen a shift in focus to bilateral arrangements that contribute to a decentralized approach to international governance. This study evaluated the extent of liberalization within several of Canada's international trade agreements in order to assess the achievements of each type of arrangement. In doing so, it sheds light on the debate between whether bilateral agreements act as "stepping stones" or "stumbling blocks" to the neoliberal pursuit of freer trade at the global level of governance. It is important for Canada to consider the effects of bilateral agreements on its overall goals of multilateral cooperation. It further aids by informing Canadian foreign policy on the mode of engagement that best achieves its goals of trade liberalization by deepening commitments.

A qualitative analysis of the technical language of the agreement was applied in order to assess the extent of liberalization of labour mobility. Labour mobility represents a particularly insightful aspect of trade as it has proved more difficult to negotiate than the trade in goods. While globalization demands that services be addressed at the international level, the complexity of this issue area has complicated negotiations. This study concludes that despite the shift from a multilateral to bilateral approach, state sovereignty has restrained liberalization and meaningful trade commitments have not

been achieved to a great extent. Despite a broadening and extension of the rules of trade, there is marginal evidence of a deepening of commitments. It further suggests that FTAs may not complicate the rules of trade or frustrate multilateral negotiations to the extent suggested by economic liberals. A summary of these findings follows.

Results of the study determined the General Agreement on Trade in Services (GATS) to be more restrictive than the North American Free Trade Agreement (NAFTA). While the general language governing labour mobility in both agreements potentially allows for meaningful liberalization, Canada's specific commitments as found in its schedules are liberalized to a greater extent under the NAFTA. The GATS adopts a mixed approach of a negative list for most favoured nation treatment (MFN) exemptions and a positive list for market access and national treatment commitments. The trend to send issues to committees is also more prevalent in the GATS. That the NAFTA was found to be more liberalizing in labour mobility confirms a liberal trade theory hypothesis asserting that liberalization is more easily achieved in regional than in multilateral forums.

Major differences between the Canada-Chile FTA (CCFTA) and the NAFTA, based on the measures of the study, were also found despite similarities in the general provisions governing labour mobility. Notably, the CCFTA does not include provisions for financial services. A comparison of Canada's schedules of commitments determined the CCFTA to be only marginally more restrictive, with one additional reservation in its schedule for future measures. Conversely, the language of the CCFTA was found to be somewhat more concise and less legal than the NAFTA thereby increasing its transparency and accessibility to foreign workers seeking to enter Canada. This,

however, is considered a more minor liberalizing factor and the CCFTA is therefore considered less favourable towards labour mobility than the NAFTA.

The Canada-Costa Rica FTA (CCRFTA) is a distinct document that does not follow the pattern set by the NAFTA. As a first-generation agreement focussing primarily on trade in goods, services are only shallowly addressed. In addressing temporary entry of workers, the parties' applicable laws and regulations are reconfirmed as the mechanism governing entry. Labour mobility provisions also confirm commitments made under the GATS, beyond which nothing more is liberalized. Because the CCRFTA relies on the GATS rules, it is considered equivalent to the GATS and therefore more restrictive than the NAFTA.

Efforts to liberalize labour mobility are most apparent in the Canada-Peru FTA (CPFTA). Most notably, the general language is found to be more liberalizing than that of the NAFTA as it embraces additional air services and market access provisions and in doing so removes quantitative restrictions. In Canada's remaining schedules, however, there is no deepening of commitments. Additional articles provide greater transparency but also include additional restrictions. Though the capacity in which a business person may enter has been expanded, the professions in which they may engage in are more limited.

It is clear the Canada-Colombia FTA (CCOFTA) was modelled after the CPFTA though some provisions revert back to that of the NAFTA. As in the CPFTA, air services are expanded, transparency is increased, and market access provisions potentially liberalize labour mobility beyond that of the NAFTA. Quantitative restrictions have additionally been removed. Canada's schedules of reservations were found to be more restrictive than both the CPFTA and the NAFTA. Despite the lack of a consistent

liberalizing or restrictive trend there is evidence of language that seeks to broaden labour mobility beyond that of the NAFTA.

These findings support a conclusion that though liberalization of labour mobility through a deepening of commitments has occurred since the negotiation of the NAFTA, it has been inconsistent and limited in its depth of commitments. Of the bilateral agreements in the study, CPFTA is considered most successful in both broadening and deepening commitments, however incrementally. The CCFTA and CCOFTA were found to be less liberalizing than the NAFTA but more so than the GATS. However, they serve to broaden the rules of trade in a multilateral forum. The provisions of the CCRFTA, as a first-generation agreement, are found to be comparable to the GATS. Over the last two decades since services were first negotiated in the NAFTA, there exists scant evidence that commitments have deepened and no consistent liberalizing trend is evident.

Canada's bilateral agreements, under a neoliberal perspective, have served to broaden the rules and norms of trade to secure reliable trade partners rather than deepen its commitments to liberalize labour mobility. The liberalization through the spread of rules and norms to new partners serves Canada's interests by adding stability and predictability to trade relationships. However, this study examines the effect of a deepening of the rules of trade because it is this development that is credited with complicating the rules of trade and threatening greater multilateral achievements in what Bhagwati calls "the spaghetti bowl" effect. Liberal economic theory predicts that while trade may be deepened to a greater extent in bilateral agreements, it hinders progress at the global multilateral level where more economically efficient achievements can occur. This study, however, finds only incremental liberalization that is inconsistent from agreement to agreement. Since little deepening of commitments is observed bilateral

agreements are not found to threaten multilateral achievements. A “spaghetti bowl” effect has not occurred and no new rules have been created. Rather, this study finds that Canada’s treatment of labour mobility represents a consistent trend over the twenty-year period included in the study. These findings temper concerns that bilateral agreements act as impediments to greater liberalization at the global level as they are not found to complicate trade rules to the extent claimed by multilateralists, such as Bhagwati.⁶² Bhagwati’s perspective is incomplete in that he equates the liberalization of trade with a deepening of commitments rather than the transfer of existing rules of trade. In effect, bilateral agreements have increased liberalization primarily through the spreading of rules and norms. Findings support the conclusion that bilateral agreements act as “stepping stones” rather than “stumbling blocks” to global free trade. In doing so, bilateral agreements facilitate progress towards multilateral agreements as the harmonization of rules is made easier.

The findings also have implications for Canadian foreign trade policy and suggest that Canada should not overemphasize its objectives of deepening commitments in the pursuit of its bilateral agreements. The strength of bilateral agreements is found to be rule-making and not market opening in the sense of reducing trade barriers. That bilateral agreements liberalize trade by creating new trade partners calls for greater recognition in Canadian foreign policy of this benefit. Such a conclusion supports the hypothesis of competitive liberalization as a motive Canada’s pursuit of bilateral agreements. These findings further support the perspective that trade objectives are more easily achieved at the bilateral level. It is the proliferation of bilateral agreements through the extension of existing rules and norms that allows them to act as building

⁶² Jagdish N. Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade*. Oxford University Press, New York, 2008. xii.

blocks to greater multilateral liberalization. In this manner, the extension of existing rules and norms proves to facilitate the addition of new trade relationships. This offers a different perspective from economists who suggest that bilateral agreements deepen trade liberalization and differ significantly in trade rules from agreement to agreement.

This study focused on the policy preferences of the Canadian government and the type of international arrangements in which it chooses to manage its trade agenda. Specifically, it questions state participation in multilateral, regional, and bilateral agreements. In embracing the neoliberal international economic order, it is important that Canada consider the type of arrangement in which it chooses to advance its trade objectives and what goals are achieved. By applying a qualitative approach looking at the technical language of the agreement and how it evolved, a unique insight is provided offering an original contribution to the study of neoliberal trade scholarship. The evidence suggests that despite the proliferation of bilateral agreements, efforts to deepen trade commitments have not been achieved to a significant extent beyond what is achieved in multilateral and regional agreements negotiated in the 1990s. In light of this finding, the study highlights the limitations of global institutions as mechanisms of trade liberalization and supports a view that bilateral agreements act as building blocks for success at the multilateral level of negotiations. It is hoped that this analysis contributes to a better understanding of the relationship between Canadian foreign policy and its available strategies to global free trade.

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APPENDIX 1

CANADA'S FREE TRADE AGREEMENTS

FTAs in Force

- Canada - Korea. In-force January 1, 2015
- Canada - Honduras. In-force October 1, 2014
- Canada - Panama. In-force April 1, 2013
- Canada - Jordan. In-force October 1, 2012
- Canada - Colombia. In-force August 15, 2011
- Canada - Peru. In-force August 1, 2009
- Canada - European Free Trade Association. In-force July 1, 2009
- Canada - Costa Rica. In-force November 1, 2002
- Canada - Chile. In-force July 5, 1997
- Canada - Israel. In-force January 1, 1997
- North American Free Trade Agreement (NAFTA). In-force January 1, 1994
- Canada - U.S. Free Trade Agreement (CUSFTA). In-force January 1, 1989 (superseded by NAFTA)

FTAs Concluded

- Canada - Trans-Pacific Partnership. October 5, 2015
- Canada - European Union: Comprehensive Economic and Trade Agreement (CETA). August 5, 2014
- Canada - Ukraine - July 14, 2015

Ongoing FTA Negotiations

- Canada - Caribbean Community (CARICOM)
- Canada - Canada-Guatemala, Nicaragua and El Salvador
- Canada - Dominican Republic
- Canada - India
- Canada - Japan
- Canada - Morocco
- Canada - Singapore
- Modernization of the Canada-Costa Rica Free Trade Agreement

Exploratory Discussions

- Canada - MERCOSUR Exploratory Trade Discussions
- Canada - Turkey Exploratory Trade Discussions
- Exploratory Discussions for a Canada - Philippines Free Trade Agreement
- Exploratory Discussions for a Canada - Thailand Free Trade Agreement

Source: Canada, Global Affairs Canada, Canada's Free Trade Agreements, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fta-ale.aspx?lang=eng> (accessed February 15, 2016).

APPENDIX 2

The Liberalization of Labour Mobility within Canada's FTAs

