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**REPORT ON THE TEMPORARY EMPLOYMENT
OF FOREIGNERS IN SEVERAL OECD COUNTRIES¹**

INTRODUCTION

The admission of permanent foreign workers into OECD countries is currently limited, particularly in European countries. However, the demand for temporary foreign workers is growing. The recruitment of temporary foreign workers can provide greater labour market flexibility and help alleviate sectoral labour shortages in host countries. It also promotes the movement of managerial staff and highly skilled workers. This is especially true for enterprises that wish to set up abroad. In certain cases, particularly during a period of restricted immigration, it may be a means of reducing the employment of foreigners in an irregular situation.

Temporary work can also be beneficial to workers' home countries by reducing unemployment. In addition, under certain conditions, temporary workers, upon return to their country, can use the experience gained abroad to contribute to an acceleration in the economic reform process and to broaden job opportunities. Thus, there may be less of a risk of highly skilled workers settling permanently abroad. Lastly, certain movements of temporary workers are carried out within the framework of international co-operation between receiving and sending countries.

The main distinction between temporary and permanent employment is that temporary work is not normally considered a preliminary step for foreign workers to settle permanently in the host country. The following consequences flow from this principle: the temporary worker has a fixed-term employment contract, most often for less than one year; the contract often specifies the authorised occupation, the geographical area in which the occupation may be carried out and the employer. Moreover, in most cases, the temporary worker must leave the country on expiry of the contract, may not seek other employment and is not entitled to family reunion. The rules regarding temporary work con-

tracts vary, however, according to the country and category of temporary work.

Most OECD countries have long been favourable to the temporary immigration of workers and believe that it has a beneficial impact on host countries' economies. In Canada, for example, a special legislative framework was introduced in 1973 to make it possible to meet the short-term needs of the Canadian labour market without jeopardising the employment prospects of permanent residents. In the United States, a distinction between permanent immigrants and "non-immigrants" has been introduced. Although there had been annual entry quotas for permanent immigrants since 1921, there had been no quota for "non-immigrants" since their numbers had been relatively small. However, this category had grown so rapidly since that time that the Immigration Act of 1990 set quotas for some "non-immigrant" categories.

Growing awareness of the extent of temporary work has led lawmakers to regulate and even to restrict the temporary employment of foreigners, who had been able to use their temporary status to circumvent the more restrictive legislation on permanent immigration. This is what occurred in the Netherlands, for example, with the new Aliens Employment Act that entered into force on 1 September 1995. In Switzerland, since 1963 a system of quotas has been in place for foreign temporary workers, mostly seasonal workers.

This report, based on eight case studies (Australia, Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States), examines the general characteristics of temporary work (1) and identifies the main categories of workers by specifying for each the conditions of recruitment and residence (2). This first synthesis compares the main types of legislation in place which regulate temporary work for foreigners, in particular, that of skilled and highly-skilled

workers. Appendix describes for each country studied the main categories of temporary workers, the conditions of their admission and recruitment, the length of stay authorised, restrictions regarding professional activity as well as the possibilities for family reunion and a change of status. Certain categories of temporary workers, for example students, have not been included in the table but are discussed in the body of the paper.

1. THE GENERAL CHARACTERISTICS OF TEMPORARY EMPLOYMENT

Temporary employment is not defined in the same way in all OECD countries. As a result, it is necessary to begin by pointing out the differences between these countries before embarking upon a detailed analysis of the temporary immigration of skilled or highly skilled staff.

Some countries (France, Germany, Switzerland) define temporary workers primarily as holders of temporary residence and work permits, while others, such as Australia and the United States, view them as foreigners admitted under a specific immigration programme for which a special visa is issued. In the United Kingdom, foreigners are in principle employed on a temporary basis and are therefore subject to the same rules as all foreigners.

a) The different approaches to temporary employment

The countries studied in this report do not regulate the employment of foreign temporary workers in the same way. Some enact general legislation governing temporary employment, and rely on secondary instruments such as regulations or circulars to define the various categories, while other countries provide for a wide range of possible situations in their legislation.

For example, in Germany, temporary workers are all granted a general temporary residence permit and a specific type of work permit. The duration of work permits varies depending on the country and the occupation concerned. In Switzerland and France, residence permits also authorise people to work. In the Netherlands, employers must obtain a recruitment authorisation, but may only hire workers with a valid residence permit. In Canada, work permits are generally valid for one year, but it can vary in the case of asylum seekers who are authorised to work while their claim is being considered. In both cases, it is possible to extend the permit.

In the United States, the Immigration and Nationality Act lists 20 types of visas granted based on the category or “preference” in which the temporary worker is classified. These categories are in turn divided into sub-categories. This procedure no doubt has the advantage of flexibility, since it makes it possible to create new categories or to change existing categories without completely overhauling existing legislation. However, this proliferation of categories can sometimes create confusion as to the scope of the various visas.

There is also a major difference between those countries that set quotas and those that do not. Quotas are designed to ensure a balance between the national and foreign populations, to make it possible to improve the structure of the labour market and to create favourable conditions for the integration of immigrants. Quotas make it possible to limit or channel the entry of foreigners, including temporary workers. This is the case in Germany, Switzerland, the United Kingdom (only for the Seasonal Agricultural Workers Scheme) and the United States. In Australia, except for Working Holiday Makers (see below), France and the Netherlands, there is no quota system.

Temporary workers are sometimes recruited on the basis of restrictive geographical criteria. For example, Switzerland has adopted the “three circles model”, comprising an inner circle designating the countries of the European Economic Area (EEA), whose nationals have great freedom of movement, a middle circle which currently includes Canada and the United States, from which a limited recruitment of workers is allowed, and, lastly, an outer circle – all other countries – for which work permits are granted on an exceptional basis only.

The other countries studied do not, in principle, lay down specific geographical criteria limiting the areas from which temporary workers may be recruited. However, the United States, Canada and Mexico, under the North American Free Trade Agreement (NAFTA), have defined an area in which some categories of workers may move more freely, and the European countries belonging to the European Union and the EEA have established areas in which there is complete freedom of movement for nationals of member countries.

As is often the case for permanent immigrants, temporary workers and residents come predominantly from certain countries or regions. In Australia, for example, half of the temporary residents are from Member countries of the APEC (Asia-Pacific Co-

operation forum), in particular the United States and Japan. In 1994-95, the Temporary Residence Programme mainly attracted nationals of the United Kingdom, Japan, the United States and Canada. In the Netherlands, temporary workers come primarily from the United States, Japan, the Philippines, China, Turkey and Morocco. In Germany, nationals of the central and eastern European countries predominate.

The occupations available to temporary workers vary across countries. A relatively wide range of sectors and skills are open to these workers in Canada, France, Germany, the Netherlands, the United Kingdom and the United States. In Australia, temporary worker programmes aim at meeting the needs of the labour market. The three main programmes considered in this document (highly skilled workers, students and Working Holiday Makers) provide a relatively large range of work opportunities. At the same time, the new business visa (TBE visa) is designed to meet needs of enterprises with regard to skilled personnel. In Switzerland, the vast majority of temporary workers are seasonal workers.

In general, the eight countries studied allow temporary workers to work for a specified period only, in a specific field of activity, in a given geographical area and for the same employer. In addition, there are various provisions requiring employers to ensure that no nationals or permanent residents are able and willing to do the work in question. In other words, the labour market situation is taken into consideration, except for certain occupations.

Canada may require that employment authorisations be validated, *i.e.* checked to ensure that the employment of a temporary worker is beneficial to the Canadian economy and is not detrimental to employment opportunities for Canadians. In principle, labour standards and working conditions may not be less favourable for foreign workers than for Canadian nationals. Foreign workers may not be admitted for the purpose of breaking a strike or a labour conflict (Canada, Germany, Netherlands, United States). In some cases temporary workers are required to speak the language of the host country (United Kingdom). Finally, in most cases a medical examination is required if the foreigner stays in the country longer than three months (France) or six months (Canada).

Temporary workers will not be admitted unless a work permit has been issued. Permits are granted

by various bodies, most often by labour ministries or occasionally by special bodies in co-operation with the ministry (for example, France's *Oce internationale de migrations*). In the Netherlands, the Minister of Social Affairs and Employment, which defined the rules regarding the issue, extension or withdrawal of work permits, has delegated this authority to the Central Employment Board. In some cases, special procedures are required, as in the United Kingdom.² If employers do not comply with certain procedures, they are subject to penalties, as in France,³ the Netherlands⁴ and the United States.

Countries are also concerned about social costs. In general, the presence of temporary workers should not impose financial costs on residents (this is the case in Australia, the United Kingdom and the United States). For example, in Australia, temporary migrants are, in theory, intended to be replaced by Australian nationals or permanent residents trained in Australia.

In Switzerland and France, temporary workers are not entitled to family reunion although exceptions exist for accompanying families of highly skilled workers. For example, in Switzerland, they are issued annual permits for a specified period. In Germany, family reunion is allowed only if the temporary worker has a residence permit or permanent resident status. However, temporary workers generally only have temporary residence permits that do not entitle them to family reunion. Other countries do not prohibit the entry of family members, but they do not allow them to work (United States, Canada). Some countries do allow them to enter the labour market provided they obtain a work permit (Australia, the Netherlands).

In each country, some categories of temporary workers are exempted from work permits, either because of the type or duration of the work they are doing or because of international agreements. Examples of exemptions under agreements are nationals of EU and EEA countries and, in the United Kingdom, Commonwealth citizens who are authorised to enter or reside.⁵ Similar exemptions are provided under the Canada-US FTA and NAFTA.

b) Skilled and highly skilled workers

Most countries encourage the temporary admission of skilled and highly skilled migrants. For example, Australia acknowledges explicitly that these workers are beneficial to the country since they contribute their talents and abilities and transfer skills

to the local workforce. On the other hand, Australia does not favour the admission of low-skilled workers, and the same is true of the United Kingdom. The other countries studied do not state their preference for skilled workers so clearly, and temporary workers also include low-skilled migrants employed in a limited number of specific activities (agriculture, hotels and catering, construction). This is the case in Germany, Switzerland, France and the United States.

Because of the differences, mentioned above, in the ways in which countries carry out the recruitment of temporary foreign workers, making comparisons among the various countries studied is not an easy task.

2. CONDITIONS OF RECRUITMENT AND RESIDENCE OF THE MAIN CATEGORIES OF TEMPORARY WORKERS

By examining the main categories of temporary workers, it will be possible to analyse the issues presented in Part I in greater depth. However, these categories differ from one country to the next, and consequently they cannot all be examined in detail within the limited scope of this report. Four main categories are to be found in most of the countries: (highly) skilled workers, seasonal workers, trainees and students. In addition, there are three distinctive cases that are deserving of mention: Working Holiday Makers (Australia and the United Kingdom), entertainers, and teachers and researchers.

a) Skilled and highly skilled workers

This relatively heterogeneous category most often comprises individuals with university degrees, or extensive experience in a given field. The term "highly skilled" is generally used in most of the countries studied. In France, highly skilled workers are recruited through ordinary procedures or as workers on secondment. German law refers to the category of "workers under contracts for work or services", which is similar to the French concept. In general, in the eight countries studied, the category of highly skilled staff is not always precisely defined. It is divided into a number of sub-categories that may vary from one country to another. For example, the following classifications may be considered as belonging to this category: highly skilled specialists,

for instance in Switzerland and the United States; independent executives and senior managers (Australia, France, Switzerland, United Kingdom, United States and the Netherlands); specialised technicians (Australia, France, United Kingdom, United States); researchers (Australia, France, Switzerland); investors (Australia, Canada, United States); physicians (Australia, United States); business people (Australia, Canada, France, United States); and "keyworkers" (staff with specialised skills) in Australia, the United Kingdom, the Netherlands and the United States. Table III.1 presents the growth in the numbers of foreign workers in some of these categories over the period 1992 to 1996 for the eight countries studied.

In the United States, flows of skilled workers represent more than 80 per cent of entries of temporary workers (not including intra-company transferees and treaty traders and investors). In Canada, the United Kingdom the share of the skilled temporary workers is close to 40 per cent of the total of entries of temporary workers. This percentage is smaller in the Netherlands, Australia and France and ranges between 15 and 30 per cent depending on the country. The heterogeneity in the categories of skilled workers makes comparisons among different countries difficult. However, over the period 1992 to 1995, the share of skilled and highly skilled workers in the total of temporary worker flows has grown in most countries.

There are no quotas on the entry of highly qualified staff in Australia, the United Kingdom, France or the Netherlands. There are quotas, however, in Switzerland (except for residence permits of less than 4 months) and in the United States (for H-1B visas, but not for O visas). H-1B visas, which are issued to workers holding a university degree, are subject to an annual quota of 65 000. Since the introduction of a quota in 1992 for this category, the number of applicants has been lower than the limit, with the exception of fiscal year 1997.

A distinction may be made between countries in which temporary workers are legally obliged to have both a residence and a work permit (France, Germany and Switzerland), and those countries that only require them to obtain a visa, if necessary, and a work permit (United Kingdom) or the necessary visa for the specific category of worker (Australia, United States). In the Netherlands a temporary worker needs a residence permit for employment purposes and the employer needs to obtain an

Table III.1. **Inflows of temporary skilled workers by main category in selected OECD countries, 1992-1996**

Thousands and percentages

	1992	1993	1994	1995	1996
Australia					
Skilled temporary resident programme ¹	14.6	14.9	14.2	14.3	15.4
% of total temporary workers ²	17.1	20.3	18.0	18.4	20.5
Canada³					
Workers obliged to validate their job ⁴	66.4	52.0	43.4	42.2	..
Professionals ⁵	5.3	6.3	7.4	7.8	..
Reciprocal employment ^{5, 6}	5.6	5.3	4.4	5.0	..
Workers with significant benefits for Canada ⁵	4.6	4.6	5.4	5.0	..
Total for the above four categories of workers	81.8	68.1	60.6	59.9	..
% of total temporary workers	35.5	37.0	35.0	43.7	..
France					
Workers on secondment ⁷	0.9	0.9	0.6	0.8	0.8
Researchers ⁷	0.9	1.0	1.4	1.3	1.2
Total for the above two categories of workers	1.8	1.9	2.0	2.2	2.0
% of total temporary workers ⁸	5.0	5.6	6.5	7.3	6.7
Germany					
Workers employed under a contract for services ⁹	115.1	63.3	48.4	56.2	47.3
% of total temporary workers	..	25.2	23.1	22.1	17.3
Netherlands¹⁰	1.9	1.8	2.0	1.5	..
% of total temporary workers	26.4	25.7	29.4	27.8	..
United-Kingdom					
Long-term permits ¹¹	12.7	12.5	13.4	15.5	16.9
% of total temporary workers	42.2	42.7	44.6	43.7	44.8
United States¹²					
Professionals (visa H-1B)	110.2	92.8	105.9	117.6	144.5
North American Free Trade Agreement workers (visa TN) ¹³	12.5	16.6	19.8	23.9	27.0
Workers of distinguished abilities (visa O)	0.5	3.1	5.0	6.0	7.2
Total for the above three categories of workers	123.2	112.5	130.7	147.5	178.6
% of total temporary workers ¹⁴	70.1	61.7	62.0	66.8	70.2

Note: The categories of temporary workers differ from country to country. Data and percentages are therefore not fully comparable. The figures for total temporary workers refer to the total work or residence permits issued in Canada, the Netherlands, the United Kingdom and the United States, to the sum of temporary programmes in Australia (excluding students), to the total provisional work permits issued plus seasonal workers in France and to guest workers, contract workers and seasonal workers in Germany.

1. Data refer to fiscal years (July to June of the given year) and include accompanying dependants.
2. As a per cent of temporary residents programmes (Skilled Employment, Social/Cultural and International Relations Programmes).
3. Data refer to the number of employment authorisations issued. Data may be overestimated because migrants can obtain several authorisations over the given year.
4. The list of jobs that can be validated excludes unskilled jobs, those restricted to Canadian citizens and those with a high rate of unemployment.
5. These workers are exempt from validation by an employment service of the Government. The authorisations are usually delivered for 9 months.
6. This category concerns professors and researchers admitted under bilateral agreements and some specialists.
7. Holders of a provisional work permit (APT).
8. As a per cent of total holders of a provisional work permit, students, trainees and seasonal workers.
9. Workers recruited under bilateral agreements usually for 2 years.
10. Figures include intra-company transferees and managers. Authorisations are usually granted for the duration of the contract with a maximum of three years.
11. Long-term permits (one year or more) are mainly approved for highly skilled and qualified workers.
12. Data refer to fiscal years (October to September of the given year). Data may be overestimated because they include multiple entries by the same person over the given year.
13. Figures include family members.
14. As a per cent of total temporary workers (excluding intracompany transferees - 140 460 in 1996 - and treaty traders/investors - 138 570 in 1996 including dependants).

Sources: Australia: Department of Immigration and Ethnic Affairs (DIEA); Canada: Citizenship and Immigration Canada; France: Office des migrations internationales, *Annuaire des migrations 1996*; Germany: Bundesanstalt für Arbeit; Netherlands: Centraal Bureau Arbeidsvoorziening, Rijswijk (Z-H); United Kingdom: Department of Employment; United States: United States Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*.

employment permit. Ultimately, the conditions required for the issue of these permits or visas are the most appropriate criteria for making compari-

sons between countries. Among the conditions generally required for the entry and residence of highly qualified staff, only five will be examined.

The employment situation and national preference

Some countries require that the employment situation be taken into account and that preference be given to national workers before admitting categories of temporary migrants, while other countries do not. In Australia, Labor Market Testing (LMT) is the procedure used by employers (sponsors) to show that they have tried to recruit a worker on the Australian labour market. They do this by advertising in newspapers and employment agencies. Sponsors must provide information on who responded to the advertisement and why the applicants were not hired. These requirements do not apply to business people, but at the same time, their activities must not be in competition with those of Australian residents.

In the United States, the employment of certain foreigners, particularly lower-skilled, must not have an adverse impact on the working conditions of United States workers, and employers must have notified the appropriate trade union. In the United Kingdom, employers must show that the post cannot be filled by a United Kingdom or EEA national by proving that the post has been advertised widely enough within the previous six months and that no satisfactory response had been received. This is also the case in Canada, where the validation procedure verifies that the entry of a foreign worker would not be detrimental to the employment of resident Canadians (see Appendix).

In France, although the employment situation theoretically constitutes grounds for refusal to admit workers on secondment, the authorities are required to give favourable consideration to applications by senior executives with a salary in excess of FF 21 000 per month, which most often amounts to a waiver of the condition. Furthermore, the employment situation is not taken into account for installers and specialised technicians admitted to install or commission equipment sold by a foreign firm. The priority given to national workers is also waived in the Netherlands for "keyworkers" in a multinational enterprise, and in Switzerland for highly skilled workers.

Lastly, in Germany, workers under contracts for work or services benefit from a special system. This is a traditional practice in Germany based on international agreements for the completion of one or more work or service contracts. The number of workers admitted is determined by quotas for each country. These agreements have mainly been

signed with central and eastern European countries⁶ and are a means of supporting the economic reforms under way in these countries. In 1995, the overall quota was approximately 56 000 workers, of whom one half were Polish. The labour market situation in Germany may not constitute grounds for refusal to admit this category of workers. Nevertheless, work permits are not granted in districts of the national employment office in which unemployment is significantly higher than the national average.

Work permits

In Australia, temporary workers must have a sponsor. It is the sponsor who must provide the necessary proof that the entry of the highly skilled worker will be beneficial to Australia's economic development. Sponsors must also assume financial responsibility for foreign workers so as to limit the social and financial costs borne by the community. Generally, the sponsors are also the employers. They are responsible for compliance with the worker's conditions of entry as well as with the provisions of labour law. This condition is not required of business people holding a TBE visa (Temporary Business Entry).

The length of stay allowed and the procedures for obtaining work permits vary in Australia depending on the category of skilled workers, but usually they are granted for two years, and may be renewed once, up to a maximum of four years. In general, for investors, senior managers and skilled technicians, this renewal may be denied on the grounds of the employment situation. Medical practitioners may stay only for two years. Since 1995, business people are eligible for a special visa (Temporary Business Entry) which initial duration (renewable) varies from three months to four years.

In France, provisional work permits are issued for a nine-month period, and may be renewed once for a further two years on an exceptional basis. These permits are only valid for six months for installers and specialised technicians. In the United States, the length of stay permitted varies according to the category of visa, although in principle it is always for a limited time (ranges from one year to up to 10 years, in exceptional cases). In the Netherlands, the employment permit is valid for one year, and may be renewed. The worker who has held a valid residence permit for employment purposes for a continuous three-year period and who has not established his or her place of residence outside the Netherlands, will receive a new

residence permit with no employment restrictions. Employment permits for highly qualified employees are valid for the duration of the employment, with a maximum of three years.

In Germany, work permits issued to individuals recruited under contracts for work or services are valid for a maximum of two, or, exceptionally, three years. Workers who install or carry out maintenance, repair work or tests, on equipment supplied by a foreign enterprise are not required to have work permits provided they do not remain in Germany for more than three months.

In Switzerland, work permits are limited to a maximum of 18 months for short-term residence permits and generally one year for yearly permits for a specified period (up to four years under certain circumstances), renewable each year. At the end of a four-year period, the holder may request a renewable one-year permit.

In the United Kingdom, work permits are normally only granted to individuals classified as highly qualified workers on the basis of their educational or professional qualifications. Workers must have at least two years' professional experience. The permit may be renewed up to a maximum of four years. "Keyworkers" with specialised skills may also be granted work permits provided their skills are not readily available in the United Kingdom and that the jobs of other people in the firm depend on them. These work permits are issued for a maximum period of 36 months.

In Australia, France, Switzerland, the Netherlands and the United Kingdom, work permits are limited to a single employer, and any change of employer must be authorised. In Australia, holders of a business visa can easily change employers. Moreover, geographical mobility must be authorised in France and Switzerland.

The obligation to leave the country

On expiry of the work permit, foreign workers are required to leave the country (France, Germany, United States). In several countries, *e.g.* Australia and the United States, it is possible for workers to change their status and in some cases they can obtain permanent resident status. Exemptions are also provided for under Canadian law. In the Netherlands, after three years uninterrupted legal employment, the foreign worker is free on the Dutch labour market. After five years of legal residence, permanent settlement is possible.

Accompanying family and family reunion

In Australia, Canada and the United States, family members may be authorised to accompany the visa holder. In addition, in Australia they are entitled to work.

In the United Kingdom, family reunion is permitted if the conditions regarding resources and accommodations are met. This is also the case in the Netherlands. In France, however, temporary workers are not entitled to family reunion, but high-level staff may benefit from the accompanying family procedure that allows individuals on secondment to be accompanied by their spouse and children provided they have adequate accommodation. However, accompanying family members are not entitled to work, unlike families having family reunion rights. In Switzerland family reunion is not possible for foreigners holding short-term residence permits. This is also the case in Germany for workers under contract for work or services.

Exemptions from the work permit requirement

Some categories of workers – primarily highly skilled staff – are exempt from the work permit requirement or may not be refused a permit on the grounds of the employment situation. This is the case for business people and sole representatives in the United Kingdom and for the sole representatives of foreign firms in France and executive managers in Switzerland. In the United States, temporary workers admitted under trade treaties are entitled to visa E, which allows them to remain in the country for an unlimited period of time. In Canada, some people entering for business purposes do not require work authorisation, provided they do not remain in Canada longer than nine months. Foreign workers who come to Canada to oversee the installation or maintenance of special equipment purchased or leased abroad are not exempt from the need to obtain the employment authorisation, but validation is not required.

b) Seasonal workers

In most of the countries studied, foreign seasonal workers are employed primarily in the sectors of agriculture, hotels and catering and construction, *i.e.* highly seasonal activities. The length of stay for seasonal work contracts is generally limited to between three and six months. The number of seasonal workers (see Table III.2) varies by country and has tended to decline over the past few years. Out

Table III.2. **Inflows of seasonal workers in selected OECD countries, 1992-1996**

	1992	1993	1994	1995	1996
Australia (WHM ¹)	25 873	25 557	29 595	35 391	40 273
Canada (Caribbean and Mexican Seasonal Agricultural Workers Programme)					..
France ²	11 115	11 212	10 443	10 879	8 766
Germany ³	13 597	11 283	10 339	9 352	8 766
Netherlands ⁴	212 442	181 037	155 217	192 766	220 894
Switzerland ⁵	1 000	900	500	-	-
United Kingdom	93 118	71 829	61 102	53 707	45 259
Working Holiday Makers ⁶					
Seasonal agricultural workers ⁷	24 100	21 659	31 604	36 013	33 045
United States (Agricultural workers H-2A)	3 560	4 230	4 440	4 660	5 540
	16 390	14 628	13 185	11 394	9 635

1. Data refer to fiscal years (July to June of the given year). The Working Holiday Maker program is restricted to young people aged 18 to 25. Authorised length of stay is one year (not renewable). Employment for more than 3 months with the same employer is not permitted.
2. Duration of the contract cannot exceed 6 months in a period of 12 consecutive months. The contract is restricted to an occupation, a geographical zone and one employer.
3. Contracts of seasonal workers cannot exceed 3 months per year.
4. Admission conditions are very restrictive. The length of the activity cannot exceed 6 months (limited possibility for renewal).
5. End of August of each year.
6. Applicants are admitted for 2 years (no renewal). Employment is incidental to the holiday, *i.e.* person may not pursue a career in the United Kingdom.
7. Including readmissions. Such persons need to be students in full-time education, aged between 18-25 years inclusive (except if returning by specific invitation), and have a Home Office work card. They are admitted until 30 November of the years in question.

Sources: Australia: Department of Immigration and Ethnic Affairs (DIEA); Canada: Citizenship and Immigration Canada; France: Office des migrations internationales, *Annuaire des migrations 1996*; Germany: Bundesanstalt für Arbeit; Netherlands: Centraal Bureau Arbeidsvoorziening, Rijswijk (Z-H); Switzerland: Office fédéral des étrangers; United Kingdom: Department of Employment; United States: United States Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*.

of the eight countries studied, Germany and Switzerland are the two which recruit, by far, the most seasonal workers.

Seasonal workers are a major category of temporary workers in Switzerland, but only a small one in the United Kingdom, essentially because it is a youth mobility scheme and hotel and catering staff are included in the "keyworker" category. In the Netherlands, the decline in the number of seasonal workers is largely due to a sharp reduction in inflows of agricultural workers. Australia apparently does not have a category of seasonal workers, although such workers do exist under a different heading, since young foreigners who come to the country under the Working Holiday Makers (WHM) programme may be employed in seasonal jobs.

In the United States, temporary agricultural workers entered during 1942-64 under the "bracero" programmes. They are now required to have an H2-A visa. The H-2B visa is issued to temporary non-agricultural workers and is subject to two conditions: not only the workers' stay, but the job itself must be temporary, and employers must present a certificate attesting to the fact that no national worker was qualified or available for the job ("labor certification").

In Germany the employment of foreign seasonal workers is restricted to the economic sectors of agriculture and forestry, hotels and catering, the processing of fruits and vegetables and to sawmills. In France, nearly all seasonal workers are employed in agriculture (95 per cent). In Canada, seasonal agricultural workers are employed under programmes based on agreements with certain countries.

Seasonal work is sometimes limited by quotas and work permits issued on certain conditions.

Quotas

Some countries set quotas limiting the number of seasonal workers recruited. This is the case in Australia for workers admitted under the WHM programme since fiscal year 1995/96. In the United States, the number of H2-B visas granted to seasonal (non-agricultural) temporary workers is limited to 66 000, but this numerical limitation has not yet been reached. There are also quotas in Switzerland, where, in addition, recruitment is limited to EEA nationals, mainly workers recruited under bilateral agreements with Italy and Spain (in addition, since 1991, restrictions have been placed on the entry of nationals of the former Yugoslavia). In principle, there are no quotas in France and Germany, but in France employers who recruit Moroccan or Tunisian

workers may not increase their numbers without prior authorisation.

Work permits

The duration of work permits for seasonal workers is limited to three months in Germany and to a maximum of three years in Canada and the United States, although in the United States work permits for temporary non-agricultural workers are valid for one year only. In the United Kingdom, work permits for "keyworkers" can also be granted for up to three years.

Work permits are issued for shorter periods in France and Switzerland. In France, provisional work permits are granted for six months and may be extended to eight months for some occupations. They are valid for a minimum of four months for workers from Morocco and Tunisia. In Switzerland, work permits are issued to workers for a maximum of nine months, with a requirement that they leave Switzerland for three months of the year. In the Netherlands, work permits for seasonal work are issued for a maximum of 24 weeks. This permit is not renewable. In the United Kingdom, seasonal agricultural workers must obtain an authorisation from the Home Office although they are not issued work permits. The maximum length of stay is from the date of admission in the spring until 30 November of the year in question.

Work permits are not required in Germany for individuals who are sent by an employer based abroad and who remain less than three months in the country for the following activities:

- to assemble and maintain plants or machines that have been delivered, are ready for use and serve commercial purposes;
- to accept plants, machines or other items that have been ordered or to be instructed in their use;
- to take part in a company training course in the context of export delivery or licence contracts;
- to set up, dismantle and look after exhibition stands owned by the foreign company or render comparable services which no business partner in Germany can provide.

Special conditions

The admission of seasonal workers is sometimes subject to special conditions. For example, in France, foreign workers must be between 17 and

50 years old if they are recruited through an anonymous contract, although this condition does not apply to individuals recruited by name. There is no age limit in Germany other than that the worker must be at least 18 years old. In the Netherlands an age limit exists (18-45 years) for all foreign workers with the exemption of seasonal workers.

The admission of seasonal workers may also be conditional upon an international agreement, as in Germany, where agreements have been signed with Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic and Slovenia. In France, agreements have been signed with Morocco, Poland, Senegal, Tunisia and the former Yugoslavia. Switzerland has also entered into agreements with Italy and Spain. Finally, in the United Kingdom, seasonal workers are only admitted under one approved scheme.

In the United States, it is necessary for receiving H-2A and H-2B visas to obtain a "labor certification", delivered by the Department of Labor, attesting to the fact that no national worker was qualified or available for the job. Still other conditions may be required, such as the requirement that working conditions and pay be identical to those of nationals (this is the case in the eight countries studied), mandatory registration for social security (France, Germany) or a written employment contract and guaranteed accommodation (Germany, United States and the Netherlands). In the United States, temporary agricultural workers must be provided with free accommodation and transport and low-cost meals; they must be employed for at least three-quarters of the duration of the contract.

The employment situation

In all countries, the employment situation may constitute grounds for refusal to admit seasonal workers. This means that they may be hired only if no other worker (either a national or permanent foreign resident) is available and willing to accept the position offered. This principle is enforced very restrictively in the Netherlands, since no work permits at all were issued for this category in 1995.

The limited scope of the work permit

The authorisation to engage in a seasonal activity is limited, unless otherwise provided for by bilateral agreements, to a single type of activity (France, Switzerland, United Kingdom) with a single employer (France, Switzerland, United Kingdom),

and is often restricted to a specific geographical area (France, Switzerland).

Family reunion

Seasonal workers are not entitled to family reunion in France, Germany, the Netherlands, Switzerland and in the United Kingdom. In the United States, families of holders of H-2A and H-2B visas may enter the country but do not have the right to work.

Obligation to leave the country on expiry of the contract

Seasonal workers must generally leave the country on expiry of their contract. However, Switzerland allows seasonal workers who have resided in the country for a total of 36 months over four consecutive years to request that their temporary residence permit be converted into an annual permit. This option is not subject to quota restrictions and allows for family reunion. In practice, however, only Italian nationals benefit from this measure.

c) Trainees

Trainees are individuals who come to work in an enterprise to improve their professional skills or to learn the language. This category is found in all the countries examined. However, in all these countries the traineeship must be temporary and may not be a first step towards the permanent settlement of the

new worker. Some countries distinguish between several categories of trainees. Australia has two sub-classes of visas for trainees. The first (visa sub-class 442) provides for the temporary entry of people who come for training in their current area of employment. The second (visa sub-class 457) is granted to highly skilled personnel (managers, specialists) participating in company exchange programmes or specialised training.

In France, there are two main categories: trainees under general legislation, who come to France for vocational or language training, and trainees under bilateral agreements. In the United Kingdom, a distinction is made between trainees who are admitted for vocational training (they will normally be graduates and will be studying for a specific professional or specialist qualification) and work experience trainees (who should normally already have relevant experience or the appropriate academic or vocational qualifications which will enable them to benefit from the work experience undertaken; no acquisition of qualifications is involved and employment is in a supernumerary capacity. In the Netherlands, a distinction is made between trainees with a job in their country of origin who come to the Netherlands in order to further their professional expertise and knowledge and trainees who come within the framework of their ongoing vocational training. In the United States, there are several types of visas, in particular J-1 for student trainees and H-3 for trainees in industry. The number of trainees is, in general, relatively limited (see Table III.3) and the length of stay is usually for 12 to

Table III.3. **Inflows of foreign trainees in selected OECD countries, 1992-1996**

	1992	1993	1994	1995	1996
Australia ¹	4 888	3 984	4 395	4 268	4 830
France ²	985	905	590	438	520
Germany (Guest workers) ³	5 057	5 771	5 529	5 478	4 341
Netherlands	1 200	1 300	1 300	1 100	..
Switzerland ⁴	1 609	972	907	855	679
United Kingdom ⁵	3 407	3 467	3 791	4 405	3 969
United States (Industrial trainees H-3)	3 352	3 126	3 075	2 787	2 986

1. Data refer to fiscal years (July to June of the given year). The Occupational Trainee programme allows entry of people for occupational training which is compatible with their background.
2. Trainees who benefit from a provisional work permit only valid for one year; can be exceptionally extended to 18 months.
3. Workers aged 18 to 40, recruited under bilateral agreements, for 12 to 18 months.
4. Workers recruited under bilateral agreements according to professional experience usually for one year; can be exceptionally extended to 18 months.
5. Training and Work Experience Scheme (TWES). Persons recruited for 12 months (Work experience) or up to 3 years (Training). These periods can be extended by another 12 months or up to 3 years respectively depending on the results obtained.

Sources: Australia: Department of Immigration and Ethnic Affairs (DIEA); France: Office des migrations internationales, *Annuaire des migrations 1996*; Germany: Bundesanstalt für Arbeit; Netherlands: Centraal Bureau Arbeidsvoorziening, Rijswijk (Z-H); Switzerland: OFIAMT; United Kingdom: Department of Employment; United States: United States Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*.

18 months. In most cases, the recruitment is carried out within the framework of bilateral agreements and the professional occupation varies according to the country.

Quotas

The number of trainees admitted is subject to quotas in Germany, France and Switzerland, but this is not the case in the United Kingdom or the United States (H-3 visas). The number of trainees admitted is normally determined through bilateral agreements.⁷

Work permits

Two approaches are taken as regards work permits. Some countries require trainees to have a work permit, while others waive this requirement. Nevertheless, for both approaches, exceptions may be made for various categories of trainees.

Germany (when the traineeship lasts longer than three months), France,⁸ both for trainees under general legislation and trainees under bilateral agreements, and Switzerland, require trainees to have a work permit. However, the United Kingdom does not require a work permit for certain vocational traineeships (e.g. student nurses, post-graduate doctors and dentists).

In Germany and Switzerland, these permits, when required, are valid for a maximum of eighteen months. However, in Germany, foreign specialists and managers temporarily working as part of their initial or advanced training who are recipients of government grants (government trainees) may be issued work permits valid for a maximum of up to two years. The maximum validity of work permits is normally one year with extensions permitted in Canada, two years in the United States, one year in France⁹ (although it may be extended up to eighteen months on an exceptional basis) and in the United Kingdom for work experience traineeships. In the Netherlands, the maximum validity of employment permits for vocational trainees is one year and for work experience trainees 24 weeks.

Special conditions

In Germany, worker trainees are admitted under international agreements that provide for reciprocity, but most often (except for Switzerland) there is a one-way flow of foreign trainees into

Germany. These trainees have completed a vocational training course and take up temporary employment to improve their job and foreign language skills. They must be between the ages of 18 and 40 and have a work contract.

Trainees are only admitted to France as part of an exchange programme between a French and a foreign enterprise or under bilateral agreements. The latter provide for age limits between 18 and 30 or 35 depending on the agreements. There are similar age limits in the United Kingdom for work experience traineeships, but not for vocational traineeships.

In France and Germany, trainees are gainfully employed and are subject to the same conditions as national workers, while in the United Kingdom trainees are unpaid and only receive an allowance to cover their personal needs. In the Netherlands, the rule that a vacant post must be advertised for five weeks is waived for trainees, as is the requirement that employers pay a full month's wages even if the job is for less than one month.

In the United States, as in the United Kingdom, the traineeship should not be the same as one found in the applicant's home country and the trainee should not simply be assigned to carry out the same tasks as ordinary workers. Trainees should not be "productive" and should master skills from which they will benefit after leaving the United States.

The employment situation

The extent to which the employment situation is taken into account varies across countries. It may not constitute grounds for refusal to admit trainees in Germany, the Netherlands and France under international agreements. The same applies in Switzerland. In the United States, trainees are only accepted provided they are not depriving a United States resident of a training opportunity. Trainees may not change employers in France, Switzerland, the Netherlands or the United Kingdom.

Family reunion

Family reunion is not allowed in France and Switzerland. Trainees' spouses and children under 18 may be authorised to enter the United Kingdom.

The obligation to leave the country

Trainees must leave the country at the end of their traineeship, and must sign a document to this effect on arrival in France. In the United Kingdom, they may not reapply for another traineeship programme or a new work permit until they have worked abroad for at least two years. This foreign residency requirement also applies to certain trainees in the US programme. In the Netherlands, the trainee must provide a document from his or her employer in his or her own country stating that the latter will re-employ the trainee at the end of the traineeship abroad. This period is one year in Switzerland.

d) Students

The principle is that foreign students should have only limited access to the labour market. Countries either prohibit student work or subject it to conditions such as the ban on working during the first year of study (France, United States). In the United Kingdom, students may only take casual work and must receive authorisation to do so. The same is true of a training course that is relevant to their studies. There are special rules in France and the United Kingdom for students studying medicine and pharmacy.

In principle, Canada allows students to work, with the condition that the job is related to their studies. In this case the work permit is not necessary. Thus, the employment situation may not constitute grounds for refusal. Australia allows students to work full time during the holidays and 20 hours per week during the academic year. In the Netherlands, foreign students are allowed to do seasonal work during June, July and August or work for 10 hours per week during the whole year. The rule is the same in France where, as from the second year of study, students are allowed to work no more than 20 hours per week provided that the institution with which they are registered provides them with social security coverage specifically designed for students. In the United States, students with F-1 visas may work on-campus for 20 hours per week and may work full time during the holidays. Work permits may be granted for practical training programmes or on an exceptional basis to students who encounter unforeseeable financial difficulties if there is no possibility of work on-campus.

Work permits

Foreign students who work must generally have a work permit. In Canada, the validity of the permit corresponds to the duration of the studies. In France, students are granted a provisional work permit valid for a period of six to nine months, which is renewable. In Germany, work permits are not required when foreign students are receiving training or have a holiday job lasting less than three months. For student trainees, this period is extended to six months per year, provided that the training is directly relevant to the student's technical studies, that the Federal Labour Office has agreed and that the student is participating in an international exchange programme.

In France, foreign students admitted to complete a training programme that lasts less than three months and is relevant to their studies may not be denied a work permit on the grounds of the employment situation. In the Netherlands, the employment situation does not constitute grounds for refusal in the case of seasonal work in June, July and August or work not exceeding 10 hours per week. However, in France and Germany, the employment situation may constitute grounds for refusal of work permits to students who are not trainees.

Family reunion

In Canada, post-secondary and university students may be accompanied by their spouses and dependants. Spouses may work provided they can prove sufficient financial resources. In addition, they must obtain a work permit (the employment situation does not enter into consideration) and they must not be students themselves. In France, the members of a student's family may work regardless of the employment situation. In the United Kingdom, family reunion is authorised and the spouse may work if the student has been admitted for 12 months or more.

Obligation to leave the country on completing studies

In principle, students must leave the country on completion of their studies. However, Canada allows students to accept a job related to their studies after graduation for a non-renewable period of no more than one year provided they are granted a work permit, for which the employment situation may not be taken into account.

e) Working Holiday Makers

In Australia and the United Kingdom, there is a special category for young foreigners (in the United Kingdom, they must be Commonwealth citizens). These young people (Working Holiday Makers, WHMs) come for extended holidays during which they are allowed to work for a maximum of 2 years (United Kingdom) or one year (Australia). They must have the means to pay for their return journey and do not have recourse to public funds. A work permit is not required. In the United Kingdom scheme the intention to take employment must be incidental to the holiday. Australia defines this scheme more broadly, since WHMs are considered as one of the main categories of temporary workers. This scheme is based on a series of reciprocal agreements with Canada, Ireland, Japan, Korea, Malta, the Netherlands. Nationals of other countries are not automatically excluded, but are only accepted under certain conditions.

The aim of this scheme is essentially cultural, *i.e.* to allow young foreigners between the age of 18 and 25 (up to 30 years under certain conditions) to discover Australia and at the same time to receive some financial compensation. WHMs work in temporary or seasonal jobs in agriculture, trade or services. This special category is to some extent an exception to Australia's general policy, which is aimed at limiting temporary immigration to highly skilled staff. Because of the scheme's success (more than 35 000 visas were issued in 1994-95), Australia had to impose a quota of 42 000 in 1995-96 and of 50 000 the following year. During the previous fiscal year, to WHMs. Young people participating in this scheme are authorised to stay in Australia for a period of 12 months, not renewable. However, they may only work three months with the same employer and must have sufficient means to pay for their return journey and to support themselves. They are also only permitted to work a maximum of 6 months during the 12 months in Australia permitted by the visa.

The United States has established summer schemes for students that allow them to work in the country on a temporary basis under a category J visa. There are also cultural exchange programmes that include traineeships or temporary jobs for which foreigners have, since 1990, been granted a Q visa, which is not subject to quotas.

f) Entertainers and sportspersons

There is a wide range of temporary jobs for these two categories of workers in highly specific fields that are subject to special regulations. In Canada, performing artists are exempted from work permits if they belong to a group of at least 15 people. This is also the case for sportspersons.

In the Netherlands, no employment situation considerations are applied in the case of entertainers and musicians appearing for a short period. In France, however, performing artists and musicians are required to have a provisional work permit that is normally valid for only one year, and for which the employment situation may constitute grounds for refusal. For this category, as well for high-level sportspersons, the United Kingdom also requires a specific work permit. It may be denied on the grounds of the employment situation and is only valid for a limited period (twelve months or less depending on the individual case).

The United States has introduced the P visas for eminent entertainers and high-level sportspersons (see Appendix). This visa is not subject to a quota. The length of stay is limited to the time necessary to complete the series of performances given by the entertainer. In some cases, the relevant trade unions must be consulted. Australia does not include entertainers and sportspersons in the category of temporary workers because of the short time they stay and the small number of individuals concerned.

g) Teachers and researchers

In Australia, researchers and university teachers are allowed to stay four years and extensions are granted provided they remain with the institution that originally sponsored them. In France, the employment situation may not constitute grounds for refusal to admit foreign teachers and foreign language assistants. In the United Kingdom, foreign exchange teachers are not required to have a work permit, but may not stay for more than two years. However, researchers who have not been invited by a research institution must have a work permit, although the validation procedure is not required (see above). In the Netherlands, the employment situation does not constitute grounds for refusal in the case of university teachers if their length of stay will not exceed one year. In the case of trainee research assistants or trainee researchers at university institutions, an employment permit is issued for

three years. In the case of post graduate researchers a permit is issued for two years.

In the United States, teachers and researchers may enter under a J visa, which allows them to come into the country on a temporary basis to participate in teaching, research or training programmes that have been arranged in advance.

CONCLUSION

The comparative analysis of the temporary employment of foreigners in several OECD countries has made it possible to point to a number of common features in the various legislative provisions in this field. The most important of these is the generally favourable attitude of the countries studied towards temporary foreign labour. The admission of skilled or highly skilled temporary foreign workers makes it possible to introduce greater flexibility into the labour market. The same is true of the employment of seasonal workers in sectors that are highly seasonal in nature (agriculture, hotels and catering, construction).

However, the fact that these countries all have a favourable attitude towards temporary workers does not mean that their legislation is identical. Quite the reverse; this study has shown the great diversity of the conditions imposed on the employment of foreign temporary workers. The amount of time these workers are allowed to stay, for example, varies considerably depending on the category and country concerned. It generally ranges from three months to four years, and in some cases may be renewable. However, when workers are allowed to stay longer than several years, it is legitimate to ask whether the term "temporary" is really appropriate to describe the situation. Some workers are also entitled to change their status. In the countries where this is possible, temporary workers may be able to obtain permanent worker status, which means that temporary migration is a first step towards permanent residence. This being the case, one may wonder whether this practice should be encouraged or would be better dropped. While some view it as a "pre-selection" of future candidates for permanent immigration, others think that the admission of temporary workers for increasingly longer stays makes it possible to circumvent the restrictive legislation regarding permanent immigration.

One may also ask whether the countries studied are not overly dependent on temporary foreign labour, both in terms of numbers, skill levels and the specific sectors involved. Is the labour recruited to meet the needs of seasonal activities or under bilateral agreements regarding "workers on projects" absolutely indispensable? Is the social protection of temporary workers adequately ensured? One may also question whether the provisions on labour standards and equal treatment with national workers are really enforced for some categories of temporary workers. Since it is not always easy to verify that this is the case, this type of migration may be directly detrimental to enterprises and employment at local level.

Lastly, in all the countries studied, some movements of temporary workers are carried out through international agreements between developed and less developed countries. This kind of co-operation has become more widespread, especially in Europe in the framework of co-operation agreements between the countries of the European Economic Area and central and eastern European countries. The purpose of these flows of temporary labour is not so much to meet specific job needs as to transfer know-how and establish lasting ties between countries, regions or enterprises with a view to opening up and developing international economic relations.

This synthesis report has provided a detailed analysis of the nature and magnitude of temporary foreign workers migration. The issues raised in this document concerning the status of these workers, the length of stay, the conditions of their employment and their distribution by sector, show that the analysis of this phenomenon goes beyond the simple notion of categorising immigration flows as either temporary or permanent. The immigration of temporary foreign workers is playing a growing role in the labour markets in some OECD countries. In addition, these types of movements are increasingly taking place within the framework of economic relations and co-operation between countries of emigration and immigration. For these reasons, this first comparative study of temporary foreign workers should be extended to include additional OECD Member countries and further analysis should be carried out on this topic.

NOTES

1. This summary report was drafted by the Secretariat with the assistance of Mme Nicole Guimezanes, a Consultant to the OECD.
2. The First-Tier Application Procedure is a simplified procedure introduced in 1991 for certain specific activities allowing employers to complete only Part I of the work permit application. They simply give their reasons for recruiting a foreign worker, while in other cases employers must prove that it is necessary for them to recruit a foreign worker and complete Part II of the form (Second-Tier Application Procedure).
3. The maximum penalty is three years imprisonment and a fine of FF 20 000.
4. A fine of Gld 10 000 or six months imprisonment if the employer is a natural person, a fine of Gld 30 000 if a legal person. Moreover, if the employer has not applied for an employment permit, the authorities assume that the worker has been employed for at least six months, unless there is proof to the contrary. This means that the employer must pay the wages due for this period if they have not yet been paid.
5. On the grounds that a grandparent was born in the United Kingdom, Gibraltarians, the spouses and children under 18 of work permit holders or persons exempt from the permit requirement.
6. Germany has entered into agreements concerning workers under contracts for work or services with the following countries: Croatia, Bosnia-Herzegovina, Bulgaria, Hungary, Latvia, Lithuania, the Republic of Macedonia, Poland, Romania, Russia, Slovenia, the Czech Republic, the Slovak Republic, Turkey and the former Yugoslavia.
7. In the course of this study, it has been possible to note a number of bilateral agreements entered into by some of the eight countries: thus, Germany has agreements with Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Poland, Romania, Russia, the Slovak Republic and Switzerland; France, with Canada, New Zealand, Poland, Switzerland and the United States; the Netherlands, with Austria, Finland, Norway, Sweden and Switzerland; the United Kingdom, with Finland, Malta, Switzerland and the United States; and Switzerland, with 23 countries.
8. Provisional work permit.
9. Under the various bilateral agreements, this period ranges from three to twelve months, and may not exceed eighteen months.

BIBLIOGRAPHY

COUNCIL OF EUROPE (1996), "Temporary migration for employment and training purposes", Report and Guidelines.

ROBIN, S. (1996), *The Provision of Services and the Movement of Labour in the Countries of the European Union*, OCDE/GD(96)63.

WERNER, H. (1996), *Temporary Migration of Foreign Workers*, Institut für Arbeitsmarkt- und Berufsforschung (IAB), Nürnberg.