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**Revisiting Western Europe's Braceros:
An update on the evolution of French
Seasonal foreign worker policy, 1990-2009**

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Thirty years ago, I presented a paper entitled Seasonal Workers in France and Switzerland: West Europe's Braceros at a Council on European Studies conference in Washington, DC. To my knowledge that was the first paper written by an American social scientist about post-World War II seasonal foreign labor policies in West Europe. As suggested by the title, I thought that such policies warranted careful scrutiny by Americans engaged, then as now, in debates over the pros and cons of temporary foreign worker policies. I still do.

About a decade later, I wrote more extensively about the two cases at the behest of the Commission on Agricultural Workers. That paper and my testimony are a matter of public record.

Several years ago, somewhat to my surprise, I received a request for copies of my writings about the two cases from an official at the Mexican Ministry of Labor who was tasked with monitoring social science research about international migration. I subsequently received an invitation to speak about the two cases at the Ministry of Labor in Mexico City. Assisted by a battery of interpreters, I spoke and answered questions for at least three hours. The dialogue involved the history of Mexican labor migration to the US as much as it did the history of seasonal workers in France and Switzerland.

Here is the gist of what I had to say that evening. Reflection upon seasonal foreign worker policies in Europe should matter to Americans and Mexicans because of underlying similarities between the contexts of temporary foreign worker policies on the two sides of the Atlantic. In terms of broader post-World War II foreign labor migration history in Europe, French and Swiss seasonal worker policies pale in numerical significance to other specific types of foreign worker admissions, such as guestworker admissions to the Federal Republic of Germany. And, from the 1940s to the 1980s, seasonal workers comprised a far larger percentage

of all foreign workers in Switzerland than they did in France. By definition, seasonal foreign workers are admitted to provide temporary services of labor for less than one year and then are required to repatriate. Guestworkers in Germany could renew their residency and employment permits without returning home. I do not think the two types of foreign worker policies should be conflated as is frequently done.

The vast bulk of seasonal foreign workers in France are admitted for agricultural work. In the Swiss case, only a minority of seasonal workers were admitted for farm labor. Most worked in construction, hotels and restaurants. Nevertheless, study of both cases is particularly germane to Mexicans and Americans because foreign workers are admitted to provide temporary services of labor in democratic settings. Some social science theorists, of course, regard the US and now the EU as constituting a kind of transatlantic polity, even if not formally recognized as such.

Questions then follow: How were European seasonal foreign worker policies administered? Were they successful? Were the policies in any way problematic? Turns out they became quite controversial in some ways similar to why bracero-style temporary foreign worker admissions in US-Mexico history became controversial. These observations ought to have bearing if history matters at all to public policy analysis and debate.

My intent here is not to reprise what I wrote about French and Swiss seasonal worker policies from 1945 to 1990. Those histories can be quickly summarized. French and Swiss seasonal foreign worker admissions policies appeared largely unproblematic until the 1960s. In the Swiss case, concerns about the legal status afforded largely Italian seasonal workers began to be voiced by the early 1960s by pro-migrant organizations including trade unions, Italian associations and religious groups. Eventually, Italian government officials also voiced criticism

about the hardships experienced by seasonal workers and their families. Immediate family members of seasonal workers could visit but some overstayed. Illegally resident children of seasonal workers often overstayed and their education became a concern.

A Swiss-Italian bilateral accord regulated the admission of seasonal workers. By 1964, the Italian government succeeded in renegotiating the bilateral accord and modifying it to enable Italian seasonal workers to adjust to year-round status after five consecutive seasons of employment. That status also allowed seasonal workers to be joined by their immediate families for year-round legal residency. The Italian government parlayed its membership in the European Community, Switzerland's most important trading partner, into diplomatic influence that changed an unsatisfactory status quo. Swiss conservatives reacted strongly when news of the outcome of the secret renegotiations was announced. This led to the anti-Ueberfremdung campaign, a movement to reduce foreign worker admissions to Switzerland, and a series of national referenda designed to force the federal government to reduce foreign worker admissions. None of the referenda succeeded. But the federal government began to cap annual admissions of seasonal foreign workers and then to gradually reduce those admissions.

By the 1980s and 1990s, the anti-Ueberfremdung referenda had given way to a series of referenda seeking abolishment of seasonal foreign worker status as incompatible with human rights. These referenda also were unsuccessful. But the federal government continued to curtail admissions of seasonal foreign workers. By the twenty-first century, seasonal foreign worker admissions to Switzerland had been nearly phased out. Some seasonal foreign worker admissions from Central and Eastern European states that joined the EU on May 1, 2004 were expected on the basis of the EU-Switzerland treaty. But, in 2006, a senior Swiss official

expected a total phase-out of seasonal foreign worker admissions at the end of the transition period foreseen in the EU-Swiss treaty.

In France, migration-related public policies in general did not become problematic until the late 1960s and early 1970s. Most of the several hundred thousands of seasonal workers worked in agriculture in the Midi, Southern France. There were distinctive groups of seasonal foreign workers, largely Spanish grape pickers encountered problems and issues but nothing compared to North African seasonal workers who were mainly Moroccans and Tunisians. The latter encountered a great deal of prejudice and racism, which became deadly in the early 1970s. Leftist French trade unions and political parties began to critique French seasonal labor admissions. A special concern involved faux saisonniers, seasonal foreign workers who in fact illegally worked year-round.

How extensive the faux saisonnier population became cannot be determined. However, seasonal foreign workers began to demonstrate and march to gain legalization. Legalization of illegally resident foreign workers had been routine until a 1972 governmental decree. Thereafter, seasonal foreign workers would figure importantly in a long wave of protests designed to secure legalizations. These protests contributed to the politicization of immigration issues, inclusive of seasonal foreign worker admissions, in the 1970s. Significantly, admissions of seasonal foreign workers were not immediately affected by the foreign labor recruitment stop declared by the French government in 1974.

Throughout the 1970s, criticism of seasonal foreign worker status became routine in leftist trade union and political circles. In 1981, the French Left came to power for the first time in the history of the Fifth Republic which began in 1958. The new government began to change the administrative procedures through which French employers obtained permission to employ

seasonal workers. It also authorized a legalization which eventually was opened up to seasonal foreign workers.

Over the 1980s, admissions of seasonal workers declined from 120,400 in 1980 to 58,200 in 1990. Many seasonal workers benefited from periodic legalizations as during the 1970s.

French Seasonal labor policy 1990-2009: Towards phaseout?

As the French government spared seasonal agriculture from the curbs on foreign worker admissions in July, 1974, it encouraged agricultural employers and prefects supervising the work of the National Employment Agency known by the French language acronym ANPE and a unit of the Ministry of Labor known by the acronym DDTEFP to ameliorate working conditions in the sector while prioritizing contracting of locally available unemployed before hiring foreigners from countries of origin. The goal was to ensure that farmers reduce reliance on foreign labor while allowing those already admitted to gradually adjust their status from seasonal to permanent.

In 1982, a year after the Socialist-led leftist coalition came to power, the Ministry of Labor concluded that there were both poor and rich farmers. Among rich are those who pretended to be poor to avoid alternatives to labor-intensive production. By exaggerating the supposedly sorry lot of French agriculture, these few farmers sought to prevent the increasingly more qualified French labor force from taking agricultural jobs. But the truth was, the Ministry of Labor claimed, that as a result of the cooperation of most employers on amelioration of agricultural working conditions, the sector had made large progress as

compared to years passed and stood ready to provide the French workers with good jobs (France, 1982: 4).

This positive attitude was perhaps overly optimistic. But officials in Paris knew that, without a counterbalance to the negative example set by a few uncooperative departments, the departments which were making a genuine (yet difficult) effort to achieve labor-saving production, the Herculean task of implementing the 1974 dispositions could easily fail. The three major challenges that the farmers aiming to expand seasonal foreign worker admissions could exploit to their benefit were (1) the impossibility of mechanizing all the tasks implying continuous demand for workers; (2) the farmers' hesitation to contract out of department French workers, as well as these workers hesitation to dedicate themselves to seasonal agricultural work; (3) the central governments' imperfect control of labor market testing and progress made towards implementation of the 1974 law in the departments.

Since the European Economic Area entered into force in January 1994, the seasonal worker lobby asserted a claim that was increasingly much more difficult to counterbalance – depriving agriculture of a foreign labor subsidy would debilitate the French ability to compete with the cheap food producers. Since the foundation of the center-right *Union pour un Mouvement Populaire* (UMP) in 2002, some of its representatives had raised the issue in parliamentary debates. However, as long as the UMP had not yet gained the absolute majority in the National Assembly, members of the Assembly continued to believe in the alternatives to labor-intensive production: farmer-friendly fiscal policies (France, 2008g); subsidized training of the unemployed French workers to allow them to gain the necessary skills expected in agriculture; assistance to farmers cooperating on linking

seasonal worker permits in order to give the French unemployed year-round employment; subsidized housing and transportation for the out-of department workers (Gaymard, 2004).

Separate efforts were also made to help the ANPE to better analyze the French labor market and to offer available workers more incentives to take vacant jobs. The French government was not so much concerned with the admissions of foreign workers but with the seasonal worker status per se. In Poland, for instance, the Ministry of Labor opposed the creation of seasonal worker status.¹ In France the Ministry of Labor attempted to reduce it to the very minimum. Both in Poland and in France, the concern was about the inability of seasonal jobs to provide workers with decent working conditions. According to a summer 2007 poll among French seasonal workers in France, 14 percent did not receive work contracts and 25 percent were not paid overtime. Other abuses took place as well because seasonal workers (regardless of their origin) tend to be unaware of their rights and particularly susceptible to labor abuses (France, 2008g).

However, as the pro-seasonal worker program advocacy began to expand beyond a group of a few farmers in Bouches-du-Rhône, the government officials found it difficult to maintain the status quo. Like any adroit advocacy, the seasonal worker supporters not only co-opted new allies, but they also benefited from a prevalent social, political and

¹ Poland signed a number of bilateral labor agreements with other European countries in the 1990s. These agreements were viewed as beneficial, because among others, they decreased unemployment pressures, allowed to regularize the status of Poles who had been working in some of those countries in the 1980s and in the early 1990s, were a symbol of post-communist government will to integrate with Western Europe etc. Nonetheless, Polish officials themselves were divided about the approval of seasonal worker status as such status had negative connotations in Polish history and was viewed as contradictory with the development of stable labor policies. By December, 2008 the Polish Ministry of Labor did not approve the status despite Polish soft-fruit growers, who saw it as a necessary step to help them overcome labor shortages.

economic context to convince policymakers of their interpretation of reality. In doing so, they implemented two techniques: layering and conversion.

Layering involves active sponsorship of amendments, additions, or revisions to an existing set of policies and practices. The actual mechanism for change is differential growth; the introduction of new elements setting in motion dynamics through which they, over time, crowd out the old policies and practices as their domain shrinks (Streeck and Thelen, 2004: 24).² The advocates of the seasonal worker policy grafted the elements of rotation-oriented migration policy to the settlement-oriented migration policy thereby fostering the latter one

Unlike layering, conversion does not so much amend existing policies, as it redirects them to new goals, functions and purposes. The redirection of policy may occur through political contestation over what functions and purposes an existing institution should serve. Political contestation driving change through conversion is made possible by the gaps that exist by design or emerge over time between institutionalized rules and their enactment (Streeck and Thelen, 2004:26). The window of opportunity for such redirection may appear when: (1) new actors, who were not involved in the original design of the policy and who were not reckoned with before, take it over and convert it to new goals (2) a series of unexpected outcomes or external shocks challenge the prevalent policy.

The entrepreneurs of French seasonal worker policy survived the 1974 migration curbs in Bouches-du-Rhône and a handful of other departments such as Lot et Garonne,

² This so called layering technique was implemented by interest groups in other policy areas such as pension system in the United States. The classic example from the welfare state literature is the layering of a voluntary private pension system onto an existing public system. While the established public system may well be unassailable, faster growth of the new private system can effect profound change, among other things by draining off political support for the public system. For extensive analysis of layering in the welfare state literature see Schickler, E (2001), *Disjointed Pluralism*. Princeton University Press.

Haute Corse, Vaucluse, Gard, Gers, Tarn et Garonne. As they co-opted new allies, they were able to graft the elements of seasonal worker policy into the post-1974 migration system which was based on settlement-oriented admissions. Their ideas fell on receptive ground in the early 2000s, when the European Commission decided to address the crisis of irregular migration flows from its Southern and Eastern periphery. Since the 2005 adoption of Global Approach to Migration, they were able to convert seasonal worker admissions to two new powerful purposes: (1) prevention of irregular migration and (2) fostering of co-development in the countries of origin.

The circular issued on 2 April, 2003 instructed prefects to keep the admissions of seasonal workers in 2003 at the 2001 or 2002 level and to discuss any expansion with the representatives of the Ministry of Labor and Agriculture. Work permits were to be issued for up to six months and only exceptionally extended to eight. All work had to concern genuinely seasonal tasks and no exceptions were to be made to the transport, training and housing requirements. Specific instructions were issued to the prefect of Bouches-du-Rhône. The prefect was asked to set up a committee consisting of the local authorities, employers and labor unions to better assess the demand for foreign labor in this department (France, 2003b). By August 5, 2003, the ministries authorized prefects to admit 405 “extra” workers because of the urgent labor shortages reported by grape growers (France, 2003a:17).

While a number of small crises allowed seasonal worker advocates in specific departments to expand seasonal worker admissions locally, it was the big changes occurring at the European level which could make a lasting difference in the policy. In 2005, the European Commission approved the Global Approach to Migration. The

overarching goal of the Approach was to promote the co-development of the countries of origin in exchange for their cooperation in controlling illegal migration. Nicolas Sarkozy, then the Minister of Interior and a leading member of the powerful UMP was one of the active supporters of the policy and proposed specifically that co-development could be achieved by granting African countries, access to the European labor market through circular work visas (Schäuble and Sarkozy in Angendendt, 2007: 2).

On 1 May, 2006 the French government developed three lists of “unattractive occupations” (*métiers en tension*). The most expansive list consisted of 61 occupations. The list enumerated those jobs for which French employers could recruit the citizens of the ten countries which joined the EU in May 2004 without meeting a labor market test. Another more restrictive list enumerated the jobs available to all third country nationals. This list is included 30 jobs, 6 of which could be performed anywhere in France and the rest in designated regions. The third list was developed for citizens of the countries with which France had signed co-development agreements (Tunisia, Senegal, Gabon, Congo, Cap-Vert, Benin, and Mauritius) (France, 2008b: 2).

Similarly, as in the case of the 2004 EU enlargement, in 2007 the French authorities applied the seven year long transitional period and offered Bulgarian and Romanian workers access to 150 “unattractive occupations” in lieu of full labor market access. This list built on the one developed for the 2004 EU entrants. It included the original 61 jobs while adding 89 ones. What is interesting is how those jobs to be exempted from labor market tests were elaborated. The original 61 jobs were developed as a result of a more or less scientific analysis of the French labor market. The 35 newly added jobs were added based on employers requests and the recommendations of the Comité de dialogue social

international et européen (CDSEI) . The final 54 of the newly added jobs were added through a combination of both scientific and political processes.

In 2008, of the 150 “unattractive occupations”, only 5 concerned seasonal agricultural activities: (1) horticulture worker; (2) viticulture worker; (3) forester; (4) lumberjack; (5) seasonal agricultural aide (France, 2008c:3). Most of the jobs exempted from the labor market test through the list concerned non-seasonal jobs in industry and construction. The original list of 61 jobs was expanded, but the number of seasonal jobs in agriculture continued to amount to five, indicating the government’s belief that there were enough unemployed workers in France to take most seasonal agricultural jobs. However, not all policymakers seemed to have shared the same view.

According to Thierry Mariani of the French Union for Popular Movement, a close collaborator of Nicolas Sarkozy and an active supporter of French tourism sector, in 2006 there were 1 350 000 persons employed in French agriculture, 700 000 of whom held seasonal jobs. The high proportion of seasonal jobs in the sector explains why the sector suffers from chronic labor shortages and is particularly susceptible to losses. According to Mariani, the development of lists of “unattractive occupations” proved a positive step and should be continued in the future paying particular need to seasonal jobs (Mariani, 2007).

Labor advocates did not welcome the lists, because they did not seem to support development of the countries of origin as much as they seemed to support employers in French sectors featuring difficult jobs. When the French government debated whether the new EU member states admitted in 2004 and 2007 should be subject to transitional periods on labor mobility or not, labor advocates called for complete labor mobility. They considered that, despite the improving economic situation in Poland, Poles were still very

flexible and willing to acquiesce to low wages and long working hours (Confederation Paysanne, 2003: 7). Thus, to better protect Poles from exploitation, the French government should grant Poles full labor mobility. From this perspective, the lists provided a labor subsidy to employers because they continued to keep the citizens of the affected countries in the most difficult jobs.

It was not until July 1, 2008 that the French government lifted the transitional rules for citizens of Poland. But the policy change was symbolic given that, having won the majority in the National Assembly in election that year, the UMP was able to adopt a *Immigration Choisie* Plan favoring larger admissions of seasonal workers but with considerably scaled-down possibilities of adjusting seasonal to permanent status.

One of the UMP achievements, even before *Immigration Choisie* was adopted, was the scaling back of the maximum employment period in France from eight to six months. Until 2007 seasonal workers could be recruited for up to eight months in a twelve month long period. Based on the Law of 11 May, 2007, the duration of employment was scaled back from eight to six months, except for a few jobs requiring 8 month long labor supply due to the nature of work involved (e.g. certain jobs in forestry and horticulture).

Employers who do not qualify for extended employment may contract other foreign workers. But they cannot request renewal of permits for workers who have already exhausted the six month limit. Employers may split six months contracts (France, 2008c: annexe 1) into as many short-term contracts as they want. Thus, in theory, they can bring foreign workers for April-June, then hire French workers during the summer holidays, and bring foreign workers in again for September-November. However, splitting contracts is expensive as it involves additional transportation costs.

The employment period was reduced to prevent the transformation of seasonal to permanent workers. In a number of cases, the French courts have recognized the right of seasonal workers to adjust status from seasonal to permanent, based on the duration of stay exceeding ten years and the year-round character of the jobs performed.

The reduction of the seasonal employment period raised controversies. Employers in truly seasonal jobs supported it on the grounds that workers would be less likely to adjust their status and leave for year-round jobs. By contrast, those who could offer foreign workers eight month-long employment, such as greenhouse growers from Bouches-du-Rhône, opposed it because they feared having to look for other workers for the remaining two months. The employers in Bouches du Rhône figured prominently among those petitioning for the maximum contract duration in the years prior to the 2007 reform and local authorities generally went along with their requests (. The Parliamentary Commission rejected the proposal to maintain the eight-month long employment period in seasonal agriculture. It considered that the court cases which have already recognized the rights of settled seasonal workers to status adjustment would be repeated in future. Furthermore, it considered that the eight-month long seasonal work authorization would benefit only a minority of growers while the majority had no reason to contract seasonal workers for longer than six months (Mariani, 2007).

Most foreign seasonal workers have been employed in the southern department of Provence-Alpes-Côte d'Azur, but new demand emerged since 2000 in Rhône-Alpes and to a

lesser extent in Aquitaine, Midi-Pyrénées, Champagne-Ardegne and Corsica (ANAEM, 2007: 17).³

In 1992 the proportion of seasonal workers employed in agriculture was 96 percent and in hotels, restaurants and industry four percent (OMI, 1993 in Groendijk, 1995: 22). This trend continued into the next century. Out of 19 064 seasonal workers admitted in 2007 (France, 2008b:15), 18 333 worked in agriculture, and 3500 in *Bouches-du-Rhône* horticultural sector (Le Monde, 2008). However the UMP's ability to win a majority in the French National Assembly in 2007 opened a window of opportunity for seasonal employers in tourism who advocated for expansion of their share of seasonal workers admissions. Thierry Mariani, an UMP deputy from Vaucluse, head of the Parliamentary group concerned with cafés, hotels and restaurants and a close collaborator of President Sarkozy advocated for those employers. Clearly the change in the political context in France and in Europe appeared to have crowned thirty years of pro seasonal foreign worker advocacy launched by a handful of fruit and vegetable growers in Bouches-du-Rhône with success.

But the gradual expansion of seasonal worker program has not been uncontested. In November, 2007 Senator Gerard Le Cam, from Bretagne, the region relying on local labor force called the Senate to recognize the settlement of seasonal workers and grant them the right to adjust their status so that they do not suffer precarious conditions and to eliminate

³ For instance up until 1998 the department of Gers in South-eastern France contracted only a few seasonal workers because the local labor was plentiful. However, the growth specialized tasks in viticulture and forest works did not attract students and French seasonal workers unaccustomed to these new tasks or unavailable when they were available. In consequence in 1998 Gers ANPE authorized the admission of 59 seasonal foreign workers. In 2003 the number of annually admitted grew to 255. By 2002 the work inspectorate was investigating the first case of human trafficking linked to employment in seasonal agriculture (Gers, 2003:68).

unfair competition by certain unscrupulous growers from Bouches du Rhone (Le Cam in France, 2005e).

Sous-payés, disponibles, car logés sur place, recrutés en fonction de leur résistance physique, soumis et dépendants - leur contrat est renouvelable selon le bon vouloir de l'employeur -, les « saisonniers sous contrat OMI » sont devenus des permanents à temps partiel ! A cet égard, il serait essentiel de redéfinir la « saisonnalité », en termes de durée minimale et maximale. De plus, le contrat de travail devrait comprendre une clause de reconduction pour les saisons suivantes et l'accès au statut de travailleur étranger avec titre de séjour. Ces mesures permettraient aux saisonniers de s'intégrer durablement dans un système professionnel et social précis et de pérenniser une part importante de la main-d'oeuvre saisonnière locale indispensable pour certaines productions, comme les fruits et légumes.

Whether these claims, still held by the majority of French departments will withstand the remarkable ability of seasonal foreign worker advocates to arise from the dead is still difficult to predict. However, the lesson to draw from the history of seasonal foreign worker admissions to France is that one needs to be very attentive to incremental sources of change in assessing continuity and change in migration policy. The incremental character of migration policy evolution has often accounted for much continuity throughout putative periods of change and much change throughout putative periods of continuity, a lesson often missed by migration scholars. In this regard, the effects of the 2008/09 economic crises may be similar: we will not know until a decade or longer after the crisis to what extent the crisis has fostered change.

THE PRINCIPLES OF SEASONAL FOREIGN WORKER ADMISSIONS TO FRANCE IN 2009

The legal bases for the current seasonal worker recruitment are laid out in articles L. 313-10-4 of CESEDA and L 122-1-3 of the Labor Code. In order to recruit seasonal workers abroad, the French employers must start the process two months before the expected employment date. Unless the job they are seeking to fill or the worker they are seeking to contract have been exempted from labor market test, employers must first post a job offer with ANPE to verify if there are qualified French, EU or legally resident third country nationals available (OFII, 2009a).⁴ To comply with the EU labor legislation, a local labor office should inquire about the availability of workers in the entire EU. However, in practice, a decision is issued following examination of a departmental labor market (GISTI, 1999: 8). According to the 2001 Ministry of Agriculture report, the vast majority of prefects examined labor market tests results prudently and were careful about authorizing contracting of foreign seasonal workers when they anticipated that, with some extra effort, employers could make the offers attractive to the unemployed in the department (Haecke, 2001: 28). The ability of an employer to provide decent housing was another key aspect that most prefects considered. However, in the 2000s, the determination of prefects began to wane as the prefects of Bouches-du-Rhône were getting away with large admissions and recourse to alternatives was becoming increasingly more difficult.

Employers who have passed labor market test may request the DDTEFP to authorize them to recruit abroad. The role of DDTEFP is to verify if employer and worker meet the conditions necessary to conclude a contract, i.e. if the workers skills match with

⁴ The list specifies jobs by department, without a numerical limit. For the current list of jobs see : http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=4906E25BFB6D9F61169C4791FC620832.tpdjo02v_3?cidTexte=LEGITEXT000017986900&dateTexte=20090421#

those required for the job, and if an employer is able to guarantee minimum working and living conditions. DDTEFP is aware of the risk that an employer may not comply with the conditions offered once the worker arrives, thus DDTEFP could authorize ITEPSA (Inspection du travail, de l'emploi et de la politique sociale agricole) to conduct an inspection. If DDTEFP does not approve an employer's application for a foreign worker, it must notify employer in writing. An employer has the right to appeal (GISTI, 1999: 9).

Employers may recruit those non-EU workers who come from the countries with which France has signed seasonal labor agreements, i.e. Morocco or Tunisia. However, the newly negotiated agreements with Senegal, Gabon, Congo, Cap-Vert, Benin, and Mauritius within the Global Approach to migration will open up possibilities to recruit in sub-Saharan Africa.

Recruitment in the countries of origin is conducted by the national immigration agency that succeeded the International Migrations Office now known by the French acronym ANAEM. Poles may continue to work in seasonal agriculture, but their numbers will inevitably decline given the freedom of labor mobility in France as of 2008. When brought in on seasonal contracts, Poles constituted the only foreign grape-pickers, because the grape harvest lasts one month and French seasonal worker admission rules do not allow the citizens of non-European countries to be admitted for less than four months.

One way to overcome the problem of shortages in viticulture could be grouping of employers so as to guarantee workers a minimum four month long employment. But in France, as in Spain, this solution was not always effective as the vagaries of the ripening cycle in agriculture make it difficult to synchronize with harvests perfectly. It is very likely that, apart from agreements with sub-Saharan countries, France will have to sign another

agreement with some other non-EU Eastern European country. The Spanish government has invested very strong efforts in finding a replacement for Polish and Romanian workers in another European country and, on May 12, 2009, signed an agreement with Ukraine. However, despite little fanfare the pilot program conducted outside of agreement in 2007 showed that recruitment in Ukraine is not totally immune to corruption and the growth of intermediaries. For the same reasons, the Spanish government never pursued a growers' proposal to sign an accord with another closest-European country-Moldova (Plewa, 2008b).

French employers must offer foreign workers conditions comparable to those they would offer to French workers in the same jobs (article R.341-4-1 of the Labor Code). As long as workers are going to be employed for at least one month, employers must pay them a minimum wage - *salarie minimum de croissance*, SMIC. The SMIC is revised every year and as of 1 July, 2008 it amounted to €8.71 per hour. Furthermore, employers must provide workers housing in compliance with the legally set standards.⁵ The housing is not verified a priori, but could be checked upon request.

Employers contracting abroad must pay administrative fees. In agriculture, these fees amount to €158, €194, €336 and €473, for up to two, four, six and eight months per worker respectively (France, 2004).⁶ Employers are not allowed to reimburse themselves these fees from migrants' earnings (Article L.341-7-1 of the Labor Code). The deductions for migrant food and housing must comply with the article D.141-11 of the Labor Code

⁵ For agricultural workers these standards are specified by article L.716-1, R.716-1 of the Rural Code. French employers had to offer at least 10 m² per one or 16 m² per two workers. They did not need to offer housing to local workers, but must offer it to foreign workers. They complained that these rules were inflexible and when they had nice lodging that was only 1 m² smaller, local authorities do not certify them (Ministère de l'agriculture, 2001:18).

⁶ Foreign worker employment fee in industry and construction amounts to €400 regardless of the duration of seasonal contract.

(France, 2009b). Individual employers found in violation of recruitment procedures risk up to five years in prison, up to a € 15 000 fine per each worker (article 441-2 of the French Penal Code) and the costs of their repatriation (France, 2009b).⁷

Both nominative and anonymous forms of recruitment are possible. In the exceptional cases when an employer receives permission to recruit in the country with which France had not signed bilateral labor agreement, only nominative recruitment is possible due to the absence of an ANAEM office in a country. Workers must be at least 16 years old. The maximum age depends on the type of recruitment and nationality. Nominative recruitment does not impose an age ceiling. Moroccan and Tunisian workers in seasonal agriculture should not be older than 45 years old (GISTI, 1999: 5). Even though there are no admission quotas, employers contracting workers from outside of Europe should not contract more than in the previous year (circularize interministérielle 5/76 du 16 mars, 1976 in GISTI, 1999: 5).

Even though employers should not recruit more foreign workers than they did in the past, they can justify expanded recruitment with expanded production. Employers are free to expand production. The jobs offered to foreign workers must be truly seasonal. Seasonal jobs are defined as those which last up to six, and exceptionally eight, months and occur more or less at the same time every year with fluctuations of the season length that could not be attributed to the employer (OFII, 2009a; France, 2005).⁸ Nonetheless, the problem of enforcing seasonality in the *Bouches du Rhône* greenhouse production persists

⁷ For specific sanctions see: http://www.travail-solidarite.gouv.fr/informations-pratiques/fiches-pratiques/embauche/sanctions-liees-au-travail-illegal..html?var_recherche=saisonnier%20agricole%20E9tranger

⁸ It is actually “work activities which repeat every year at more or less the same time depending on the rhythm of the season or collective live modes” (GISTI, 1999).

and so does the thorny issue of status adjustment for those workers who have been admitted on seasonal work permits for over ten years.

The selection of seasonal workers takes place in the countries of origin, based on the rules set in bilateral agreements. All prospective workers must be younger than 50 years old and undergo medical examination. Moroccans and Tunisians are transported to France by airplanes, Poles by busses. The transportation is organized by ANAEM. Once migrants arrive in France, they must work for the same employer and in the same activity authorized on their visas. Migrants can change an employer as long as a new one issues them a work contract and meets all the conditions for the employment of a seasonal foreign worker. The original contract could be extended as long as the total employment period does not exceed six (or exceptionally eight) months. The new employer must offer the same job, in the same region to which worker had been originally admitted. Employers must make copies of worker documents and send them (in form of a fax, e-mail or dated letter) to the prefect at least 48 hours before the expected work start date for the purpose of document authenticity verification. The prefect should respond within 48 hours. A lack of response is considered an affirmative response. The employer must also register workers with French social security. Depending on the contract duration, workers are subject to a maximum two week long trial period. If they lose a job during the trial period, they may look for another employer corresponding to the job and region specified on their visa (France, 2008c: annexe 1).

The remuneration and tasks are specified in the contract. Employers should offer the prevailing wage in the region and in the sector. Generally employers have been paying the lowest minimum wage possible (GISTI, 1999: 6). However, soft fruit producers have

been aware of the risk involved in paying the wages which may make harvesters be less careful and damage the fruit.

When signing contracts, non French seasonal workers commit themselves to voluntarily return home within ten days after the end of employment. ANAEM missions abroad must inform the Ministry of Labor about those workers who do not report back to them and the Ministry of Labor excludes them from application for work in France in the future. Nonetheless, the settlement of seasonal workers has been growing (Hervé Guichaoua in France, 2006b).⁹ Based on a special protocol, kiwi and citrus growers in Haute Corse were permitted to bring in Moroccan workers as long as they covered their entire transportation costs to ensure their return. According to the ANAEM office in Morocco, the program was characterized by exceptionally low return rates. In 2005, 71 percent of 501 of admitted did not return. As of 2009, the Ministry of Migration has not issued any formal estimate regarding the size of irregular employment in agriculture but acknowledged it to be a serious problem, mainly, but not only, in Corsica and Bouches du Rhône. The settlement of migrants in these two departments has been viewed as problematic, particularly in Corsica, where xenophobia began to mount. Substandard housing often is a corollary of illegal employment, and thereby looms as the biggest challenge to seasonal worker admissions characterized by significant parallel illegal flows (Harvé Guichaoua in France, 2006b). Employers continue to regard housing legislation as too restrictive and some continue to break the rules but not to the extent that it would draw public attention.

⁹ The obligation to return ceased to apply to Poles since May 1, 2004 due to the freedom of circulation afforded to EU citizens.

Seasonal workers cannot bring families in (France, 2008a) and the migration choice policy further limited possibilities for family reunion through status adjustment. It was expected that the prohibition to come with families would foster rotation. However, both men and women could apply for jobs and spouses may apply for work with the same employer. As previously stated, following their return home seasonal workers must also report to the ANAEM office to confirm their return. Nonetheless, certain employers discouraged the implementation of this measure arguing that there were workers who spent the remaining six months working in Spain instead of in their countries of origin, therefore they would not be able to report to the ANAEM offices in the country of origin following return (Harvé Guichaoua in France, 2006b). It is difficult to estimate what proportion of migrants continue to stay over their work permits in France, what proportion leaves for work in Spain and what proportion simply does not register because the consulate is too far away. Those who had worked in France once do not have to pass through the selection process again as long as they demonstrate they have a new work contract (France, 2008).