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Regulatory Approaches to Managing Skilled Migration: Indonesian Nurses in Japan

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Abstract

This article examines the Japan–Indonesia Economic Partnership Agreement, an agreement that has allowed Japan to supplement its local healthcare workforce while continuing to sidestep the thorny issue of labour and immigration policy reform and Indonesia to increase its skilled workers’ access to the Japanese labour market at a time when it was making a concerted effort to reorient migrant labour flows away from informal sector occupations. Despite the programme’s many problems, it has contributed to the use of trade agreements as a mechanism for regulating labour migration, and so to the normalisation of migrant labour as a tradable commodity rather than a discrete area of policy-making, with all the attendant risks that normalisation brings.

Keywords: Care work, Indonesia, Japan, labour migration, trade agreements

Introduction

Unlike call centres or industries such as software development, hospitals and age care facilities require the physical presence of service providers, making the healthcare sector ripe for skilled labour migration in cases where there is little flexibility in the local labour market. However, as a ‘core’ government responsibility, health care is a sensitive area and is also often community resistance to the presence of foreign nationals in occupations related to care work (e.g. Deegan and Simkin, 2010; Kochardy, 2010). Trade unions and professional associations may also serve as gatekeepers on migrant labour flows (Ford and Kawashima, 2013). Yet, despite these reservations, developed countries have increasingly facilitated the employment of foreign healthcare workers in an attempt to meet the growing needs associated with their ageing populations. In this climate, mechanisms such as preferential trade agreements have emerged as a popular way to access migrant labour in the healthcare sector as they provide a useful alternative to a European Union–style opening up of labour markets that is more flexible than multilateral treaties.

While countries such as Canada have sought to attract healthcare workers by creating pathways to permanent residency (Bourgeault et al., 2010), many others have remained opposed to such programmes for fear of compromising their immigration policies (Hugo, 2009). Among developed receiving countries, Japan has been one of the most cautious, despite forecasts of severe labour shortages in its healthcare sector. In recent years, however, it has opened up its hospitals and residential care facilities and developed a whole suite of labour migration schemes for nurses and other care workers. Importantly, these new flows are positioned as a form of trade in services embedded in a series of Economic Partnership Agreements (EPAs). In doing so, it has set itself apart from other host societies in Asia, which have overwhelmingly dealt with temporary labour migration through labour and immigration policy rather than through trade negotiations (Hasan, 2011; Wang, 2011).

Yet despite the growing strategic importance of labour mobility clauses in trade agreements, the literature on the liberalisation of service trade focuses overwhelmingly on its economic implications (Diermen et al., 2011; Rana, 2006; Thenuwara, 2011). Much less attention has been paid to the implications of the inclusion of migrant labour in trade negotiations, especially in service sector occupations. Using the Japan–Indonesia Economic Partnership Agreement (JIEPA) as an illustration, this article seeks to help redress that imbalance by examining how debates around the regulation of labour migration through trade agreements play out.¹ Having reviewed the literature on different means of regulating skilled migration, we outline the key elements of debates around temporary migrant labour as a form of service sector trade before presenting the JIEPA case study, which draws on an extensive desk study of policy documents and on interviews with stakeholders conducted in both countries between 2009 and 2011. We argue that by eschewing migration and labour market reform in favour of trade agreements such as JIEPA, views of migrant labour as a tradable commodity are normalised. This has the effect of increasing labour flows across national borders in ways that are beneficial to home and host countries but impede the development of broader, structural solutions to the labour market issues faced by both labour-sending and labour-receiving countries.²

Approaches to skilled labour migration

Labour-sending countries consider the outmigration of skilled nationals to be more beneficial than that of unskilled nationals, because it generates higher remittances and reduces the likelihood of exploitation. Skilled labour migration may also help to alleviate labour surpluses at home (Freeman, 2006). Indeed, many developing countries deliberately overproduce skilled labour for export purposes (Hawthorne, 2012: 125).³ Return migration is then encouraged to leverage the development of returned migrants' newly gained knowledge, skills and capital (Filatotchev et al., 2011; Kenney et al., 2013) and thus to avoid the effects of 'brain drain' (Beine et al., 2008; Gibson and McKenzie, 2011). Permanent outmigration may also lead to decreases in tax revenues and local demands for goods and services (Poot and Strutt, 2010) or even a loss of Foreign Direct Investment (Chia, 2006).

From the perspective of labour-receiving countries, there are two main approaches to skilled labour migration. The first of these uses permanent migration programmes to attract and keep

highly skilled migrant workers (Shachar et al., 2006). The point systems adopted by Australia, Canada, New Zealand and the United Kingdom are designed to select migrants with the most desirable attributes and enable adaptation to changing labour market needs (Schittenhelm and Schmidtke, 2011). Nurses and information technology (IT) professionals have been encouraged to migrate to these and many other parts of the world so that destination countries can meet shifting demographic demands and skills shortages (Chanda, 2012; Clark et al., 2006; Yeates, 2010).

The second approach focuses primarily on temporary labour migration. The H1-B visa in the US and the Blue Card in the European Union fast-track skilled migrants into the domestic labour market for the purpose of addressing skills shortages. The preference for temporary entry of skilled labour stems from policymakers' desire to meet the demand of local businesses for labour while appeasing local concerns regarding its impact on domestic labour conditions, national security and social cohesion (Facchini and Mayda, 2012; Lahav and Courtemanche, 2012; Malchow-Møllera et al., 2012). In order to entice and retain individuals with desirable skills, these temporary visas may allow pathways to permanent migration. For example, Australia's 457 visa allows qualifying migrant workers to transition from temporary to permanent residents (Sherrell, 2014). The two-step approach serves as a 'promise of secure membership' (Triadafilopoulos and Smith, 2013: 5) for individual skilled migrants, as well as being an advantage for the receiving countries in the race to secure globally mobile talent.

Once recruited, national labour market regulations and practices act provide a means of control over skilled labour migrants in both cases. Stringent assessment and recognition of overseas qualifications are prevalent in health-related sectors (Bourgeault et al., 2011; Zubarán, 2012). Together with licensing rules, language requirements and national standards set by professional associations, these measures frequently exclude overseas-trained health professionals from the destination labour markets (Rumsey et al., 2015; Wette, 2011). In sum, by utilising a variety of policies and industrial practices, developed labour-destination countries seek targeted immigration of skilled migrants for the purpose of reaping gains it produces, while controlling inflows of labour.

Another, less common, way of facilitating increased movement of skilled labour is through its incorporation in trade and economic integration policies. The main instrument for the regulation of trade in services, including labour migration, is the General Agreement on Trade in Services (GATS), established in 1995.⁴ The agreement covers 12 sectors, namely, business; communication; construction and engineering; distribution; education; environment; finance; health; tourism and travel; recreation, culture and sport; transport; and others (World Trade Organization (WTO), 2013a). GATS categorises and regulates services supply through four so-called Modes of Supply. Modes 1–3 regulate cross-border trade, consumption abroad and commercial presence, respectively (WTO, 2013b). Mode 4 covers the 'presence of natural persons', which refers to services supplied by foreign nationals who are physically in another country.

The incorporation of services in international trade agreements was originally advocated by advanced economies as a means of accessing foreign markets. However, the diversification

of tradable services has also created opportunities for developing countries. In the context of general reluctance on the part of advanced economies to opening up their domestic labour markets to foreigners, the inclusion of labour migration in trade negotiations gives developing countries more leverage than unilateral or seasonal worker schemes (Ramjoué, 2011). Yet not all occupations are equal in the eyes of those who seek to negotiate trade agreements. During the Uruguay Round (1986–1995), less than 40% of the 123 countries in the WTO made commitments to health and education, compared to 90% to tourism and 70% to financial or telecommunication sectors (Jansen, 2007; WTO, 2013c). Labour-sending countries, meanwhile, see bilateral and multilateral trade agreements as a means of boosting to skilled labour exports. Exporting more service workers not only brings greater revenue in the form of remittances but is also seen as a way to promote skills acquisition.⁵ As a consequence, countries like Indonesia put pressure on developed countries to receive more migrant workers in exchange for access to their markets (Hilger, 2005).⁶ International migration is also attractive at the individual level to many healthcare professionals in developing countries because it presents opportunities for greater remuneration, better opportunities for training and education and a better-managed healthcare system in which to work (Association of South East Asian Nations–Australian National University (ASEAN-ANU) Migration Research Team, 2005). However, impediments imposed by host countries are numerous, ranging from a lack of mutual recognition of qualifications, immigration policy and social security concerns to potential discrimination again against migrant workers and red tape (Jansen, 2007; Strutt et al., 2008).

GATS Mode 4 is thus significant for scholars of labour migration for two main reasons (Ramjoué, 2011). First, it subsumes labour migration within the broader framework of service trade. Second, it does so in a way that presents the temporary presence of skilled workers in a host country as the standard model for labour migration in the service sector. Not surprisingly, given the concerns of host countries about the impact of large-scale labour migration on domestic politics and public service provision, the cross-border migration of service workers within the GATS framework generally presents a sticking point for countries when negotiating trade agreements. As a consequence, the movement of people across national borders remains much more restricted than that of goods and services and more often than not is facilitated through supplementary bilateral mechanisms, including unilateral temporary migration programmes, bilateral agreements and preferential trade agreements rather than through multilateral mechanisms.

Importantly, multilateral and preferential trade agreements usually only deal with skilled service providers (Ramjoué, 2011), reflecting receiving countries' reluctance to relinquish control over any aspect of the management of their semi- and unskilled migrant workforce. Highly skilled workers are often included in service trade agreements, examples of which include the North American Free Trade Agreement, which permits the temporary entrance of business visitors, intra-company personnel, professionals and traders or investors. While comparatively much rarer, there are some precedents of including migrant workers other than executives and professionals in such agreements. The Australia New Zealand Closer Economic Relations Trade Agreement, which came into effect in 1983, is the most expansive

in this regard, allowing free movement of labour between Australian and New Zealand (Iredale, 2000). This agreement is between similarly developed countries, bypassing many common concerns of destination countries. However, there is also a growing trend in attempts by developing countries to use the leverage of access to their markets to negotiate the inclusion of provisions for skilled and semi-skilled labour migration. For example, the New Zealand–China Free Trade Agreement allowed movements of a small number of skilled Chinese migrants. The ASEAN–Australia–New Zealand Free Trade Agreement also makes provisions for the movement of some nurses, chefs and engineers from selected Southeast Asian countries, while New Zealand–Thailand Closer Economic Partnership included Thai chefs (Poot and Strutt, 2010). The case of JIEPA is another example of this trend.

The advantage of these agreements from the perspective of the governments involved lies in the fact that, unlike GATS, the principle of Most-Favoured-Nation treatment – necessitating the equal treatment of all countries within the WTO – does not apply, allowing countries to liberalise services labour mobility only through reciprocal agreements (Kawauchi, 2012). By allowing the inclusion of non-executive labour migration in trade agreements, developed countries are also experimenting with acceptance of semiskilled migration without full commitment to the integration of foreign semi-skilled labour. As the case of JIEPA shows, this is highly relevant to the healthcare sector, where the increase in labour shortages is widely predicted.

Labour migration as trade: The case of JIEPA

A series of EPAs signed with key countries in South and Southeast Asia in the period from 2006 to 2011 illustrate how reciprocal agreements have been used to bring healthcare-related labour migration into trade policy in Japan. Until the late 1980s, Japan's official stance on migrant workers was one of non-acceptance. This stance began to change in 1988 when the demands of the growing economy and lobbying from businesses and industries pushed the government to state publicly that it would selectively accept 'special technical experts' from abroad.⁷ After 2 years, categories of permitted foreign workers were expanded under the revised Immigration Control and Refugee Recognition Act (*shutsunyūkoku kanri oyobi nanmin nintei hō*) from 6 to 16.⁸

Underpinning this policy change was the belief that skilled migrant workers in specialised areas should be actively received but the incorporation of non-skilled migrant workers must be quarantined, given its potential effect on Japan's socio-economic structures (Goto, 2004). By the early 2000s, however, demands from business and the imperative to plan for the country's economic future could no longer be ignored. In 2005 – the year in which Japan's population began declining earlier than previously predicted – revisions were made to the country's immigration policy, outlined in the Basic Plan for Immigration Control (*shutsunyūkoku kanri keikaku*), to widen the range of areas in which migrant workers may be employed. This was, in effect, a move to accept certain low-skilled migrant workers in sectors such as construction, but also in care work and nursing (Endō et al., 2005).

Influential in this decision were two reports published in 2000 that ignited a social and policy debate on acceptance of migrant workers. The first of these was *The Frontier Within: Individual Empowerment and Better Governance in the New Millennium*, commissioned by the then-Prime Minister, Keizō Obuchi. The report outlined visions for Japan in the 21st century, arguing for neoliberal policy changes in areas such as immigration, education, and social governance while also advocating the retention of unique Japanese identity. The second, published by the United Nations Population Division, was *Replacement Migration: Is it a Solution to Declining and Ageing Populations?* which found that Japan would need a much larger level of immigration than in the past to offset population decline.⁹ The way Japan now deals with migrant labour reflects the assumption that highly skilled migrant workers contribute to maintaining Japan's influence in the globalising world, whereas 'workers for labour-shortage areas' fill the gaps in labour power created by Japan's ageing and declining population (Suzuki, 2007: 12). There is also considerable pressure from Japanese business interests to open up the labour market. The Japan Business Federation (Keidanren) stated as early as 2007 that EPAs should be expanded to include workers in sheet metal processing, welding and shipbuilding (Vogt, 2007). They reiterated their position in July 2012 in anticipation of the upcoming renegotiation of JIEPA, demanding further liberalisation of human movements between Indonesia and Japan (Keidanren, 2012).

The EPAs signed between 2006 and 2011 facilitated the temporary entry of health professionals, most significantly nurses and care workers, in an attempt to begin to fill that gap.¹⁰ In doing so, they expanded labour migration beyond Japan's commitments under GATS Mode 4, which were limited to employees of foreign companies in Japan (known as 'intra-corporate transferees'), business visitors and contractual service suppliers in the fields of law, tax and accounting (Ramjoué, 2011: 9). The Japan–Philippines Economic Partnership Agreement (JPEPA), which was negotiated in 2004 and signed in 2006, included provisions for the employment of 400 nurses and 600 caregivers in Japan within 2 years of the commencement of the scheme. JIEPA, signed in 2007, had an initial target of 200 nurses and 300 care workers per year for 2 years. In 2008 and 2011, Japan concluded similar agreements with Viet Nam and India under which those countries' nationals were also to be allowed to work as nurse and care worker candidates. The Japanese government subsequently began negotiations with Thailand on similar schemes to promote the migration of nurses and care workers (Kawauchi, 2012).

In the case of JIEPA, nurses and care workers came to be included as a result of several rounds of bargaining over a period of 3 years. There was a series of preliminary meetings held between January and May 2005 to determine the parameters of negotiations within the JIEPA framework with regard to the movement of natural persons (Ministry of Foreign Affairs (Japan) (MOFA), 2005a). The first two of these were held in Indonesia and the third in Japan. Both sides came to the table with specific goals (Adam-Stott, 2008). Indonesia's interests included redressing a downward trend in Japanese investment for the last two decades by boosting exports of natural resources, including fresh produce and manufactured goods such as textiles and footwear. Technology and skills transfer through training programmes in areas including finance and science was also on the agenda, with the aim of

up-skilling the country's labour force and increasing the technological capacity of Indonesian businesses. Japan, meanwhile, sought to secure continuing access to energy supplies, especially natural gas, and, to a lesser extent, to raw materials for its firms based in Indonesia.

Indonesia opened the preliminary negotiations with four requests regarding the movement of natural persons. Indonesia asked Japan to recognise Indonesian qualifications for a range of occupations including tourism, hotel and spa services, food and beverage services, seafarers, caregivers and nurses, as well as to accept more Indonesian temporary labour migrants in those categories. The third and fourth requests pertained specifically to seafarers: that their professional certification be recognised on tuna fishing vessels and that Indonesian officers be recruited at the same level on Japanese ships (MOFA, 2005a). As these requests suggest, Indonesia's strategy incorporated two discrete elements: the recognition of Indonesian qualifications and professional certification, and admission of skilled Indonesian workers into Japan for employment in a relevant occupation. Japanese negotiators responded by noting that mechanisms to accept professional/technical workers were already in place. They also explained that they had developed a scheme with the Philippines to admit nurses and certified caregivers, but that any such agreement must be negotiated on a country-by-country basis. The Japanese team was far less accommodating with regard to the other occupations raised by the Indonesian delegation, observing that there was little room to move on what they considered to be unskilled labour migration. Similarly, they took the position that the question of seafarers was best dealt with in another forum, since the focus of negotiations within JIEPA was on the movement of natural persons for entry and stay in each country (MOFA, 2005a).

The Japanese team then made a number of requests of its own. In terms of immigration requirements, it proposed that Indonesia allow Japanese passport holders entry on the same terms as ASEAN countries, namely, on a free 30-day visa on arrival. It also asked that the processes for organising a work permit be brought under a single authority and that Japanese residents in Indonesia be exempted from having to pay the exit tax imposed on Indonesian citizens and foreign residents when leaving Indonesia. Finally, it requested that short-term business visitors be exempted from a requirement to contribute to the funding of skills development. The team also made two requests that specifically reflected the interests of Japanese businesses (MOFA, 2005a). The first was that Indonesia remove the nationality requirement for manager positions in Japanese companies in Indonesia and the second that Japanese be permitted to serve concurrently as directors of business ventures in Japan and joint ventures in Indonesia. The Indonesian team rejected the request for an exemption from the exit tax on foreign residents and indicated that they could not remove the nationality requirement on managers, which, being based on Manpower Law No.13/2003, could only be revised by the national legislature. The fact that no reservations were recorded in relation to technical matters regarding visa requirements and other aspects of immigration policy indicated the extent to which the Indonesian team was prepared to compromise in order to secure access for skilled Indonesian migrants to Japan's labour market.

On the basis of the successful conclusion of these preliminary meetings, Indonesia and Japan announced in June 2005 that formal negotiations had begun to hammer out the detail of the agreement (MOFA, 2005b). An in-principle agreement regarding conditions for the movement of natural persons under JIEPA was announced on 28 November 2006 following the sixth round of JIEPA negotiations in Tokyo (MOFA, 2006). At that meeting, the parties committed to developing a framework to facilitate the movement of short-term business visitors, corporate transferees, investors and professional service providers. They also undertook to widen the scope of the Industrial Training and Technical Internship Programme with regard to hotel-related services and to establish a scheme for admission of Indonesian nurses and care workers. A draft agreement was finalised during the seventh round of negotiations in June 2007, also held in Tokyo (MOFA, 2007). It was subsequently signed on 20 August 2007 and came into force on 1 July 2008.

The signing of JIEPA was an important step for Indonesia. At the time it was negotiated, Japan accounted for 20% of Indonesia's export earnings. While the balance of trade was firmly in Indonesia's favour, it reflected a significant bias towards Japan in terms of manufactured products. Quality and other considerations such as occupational health and safety were seen to constitute a form of non-tariff barrier to access to the Japanese market (Atmawinata et al., 2008). As a consequence, according to a spokesperson for the Ministry for Industry, Indonesia's target was not only to increase non-oil and gas exports by 100% of 2005 levels but also to improve the efficiency of Indonesian industry (Antara, 2007). In recognition of this aim, JIEPA included provisions not only for trade liberalisation but also for facilitation of market access and technical cooperation (Atmawinata et al., 2008). A large part of the latter was focused on industrial capacity building through the establishment of a number of Manufacturing Industry Development Centres (MIDECs) in Indonesia.

The labour mobility clauses also incorporated a form of capacity building, expanding on the longstanding practice of traineeships. Overseas labour migration is an important part of Indonesia's export economy. In 2010, Indonesian migrant workers remitted some USD6.92 billion to Indonesia (World Bank, 2013), which accounts for approximately one-third of all service exports (Manning and Aswicahyono, 2012). But the vast majority of workers sent overseas have been women employed in the informal sector as domestic helpers or home-based caregivers (Ford, 2006, 2012). Indonesia is seeking to send more formal sector workers abroad with a view to eventually phasing out informal sector employment. As a destination, Japan offers high levels of wages for Indonesian migrants and potentially good opportunities in a range of formal sector occupations. However, it accounts for a very small percentage of the millions of Indonesians working abroad. Of a total 772,375 foreign workers and trainees officially employed in Japan in 2005, just 12,909 were from Indonesia (Iguchi, 2012). Almost 60% of these Indonesians were employed in manufacturing, while a further 20% were employed in restaurants and hotels, agriculture and construction. In terms of occupational category, 6% of Indonesians working in Japan at that time had specialist skills, 72% were classed as being involved in production and 8% were classed as being employed in services (Iguchi, 2012). Conversely, Japanese accounted for some 22% of foreign workers in Indonesia in 2009 (Bank Indonesia, 2010).

Although Japan had previously reached an agreement on healthcare workers with the Philippines, JIEPA's was the first of the EPA schemes to be implemented (Onuki, 2009). In the 6 years after the first cohort left Indonesia, 481 nurse candidates from Indonesia entered the Japanese healthcare workforce (Japan International Cooperation of Welfare Services (JICWELS), 2015: 33). Before entering the labour market, these candidates underwent induction and took Japanese language and culture lessons. They worked for up to 3 years while preparing for the national examination. Those who pass it are given renewable resident status and may continue to work in Japan. If they fail, they must return home; however, they may re-enter on a short-term visa in order to re-sit (JICWELS, 2015: 3). By the end of the 2013 financial year, 98 nurses from Indonesia had obtained a Japanese qualification (JICWELS, 2015: 33).

Indonesian nurses in Japan: A case of up-skilling?

As Ball (2007) has observed, it takes time to train nurses, care workers and other health professionals. As a consequence, both sending and receiving countries need to develop systems to manage labour migration in the health sector in order to respond to rapid changes in market demand. The JIEPA scheme has been praised by the International Labour Organization (ILO) because of its focus on skills and capacity development, which a spokesman described as a 'significant development' in Indonesia's attempts to move beyond low-skilled labour migration' (Duncan Campbell cited in Antara, 2008). This aspect of the agreement was highlighted by the Indonesian Employers' Association spokesperson Rachmat Gobel both as evidence of the current standard of Indonesian nurses¹¹ and as a means to raise quality even further so that Indonesia could compete for placement opportunities in other countries with high standards of health care (Antara, 2011). Indonesia's then-Minister for Manpower, Muhaimin Iskandar, also emphasised the importance of the scheme as a test-case for skilled temporary labour migration, noting that 'opportunities for temporary migrant workers in the formal sector demand that we rise to international standards of competence, which is also the case for nurses and caregivers and for trainees' (Antara, 2012b).

Despite this formal focus on up-skilling, in practice the scheme is far from generous. The employment contracts offered to nurse candidates must state that their salary level is equal to that of Japanese staff doing equivalent work, but nurse candidates are classified as assistant nurses, and they are paid at that level until they pass the national examination. The scheme assumes that the tasks in which nurse candidates engage will become progressively more complex, taking into account experience and increased Japanese language proficiency. In practice, however, this has often not been the case (Asato, 2010). According to Okushima (2010), the 208 Indonesian nursing candidates initially employed were mainly engaged in tasks such as feeding and bathing, or cleaning and managing equipment. Foreign candidates were also affected by the sharp distinction in the Japanese system between medical and aged care. All the Indonesians recruited as care worker candidates in the first year of the training scheme were graduates of nursing schools, in effect resulting in the de-skilling of these workers. These very real issues in terms of workplace opportunities, along with problems with work readiness, exacerbate inequities built into the scheme's structures.¹² Acknowledging the enormous challenge of passing the national examination, there have been

effort to support the candidates, both during their residence in Japan and even after they return home. These efforts have had some impact on success rates: only 2% of the first group of Indonesian nurse candidates passed the national examination in 2010, a figure that rose to 14.3% in 2011 and 29.6% in 2012 (Ministry of Health, Labour and Welfare (MHLW), 2015).

Trade agreements such as JIEPA have so far only facilitated the entry of a far smaller number of workers to Japan than required to meet that country's rapidly rising demand for their labour. Once in Japan, promises of skills development and opportunities to more permanent forms of migration are only partially met. Yet although many problems have been encountered in the implementation of the nurse and care worker schemes associated with JIEPA and similar EPAs, Japan is likely to continue to use such mechanisms to expand the range of occupations open to migrant workers, while continuing to sidestep the thorny issues of labour and immigration policy reform (Ford and Kawashima, 2013). Indonesia's experience with the JIEPA programmes, meanwhile, is likely to encourage further use of trade frameworks to promote its dual aim of phasing out unskilled labour migration and upgrading the skills of its workforce. During a visit from Prime Minister Shinzo Abe to Jakarta in January 2013, leaders of the two countries pledged to further bolster cooperation (Jakarta Post, 2013a). Several months later, Abe and Indonesian President Susilo Bambang Yudhoyono agreed to renegotiate JIEPA following a joint evaluation of the partnership (Jakarta Post, 2013b). Japan has since also made further adjustments to the scheme. In February 2015, the Japanese government announced a 1-year visa extension for Indonesian and Filipino candidates who had failed the national qualification examination in order to allow them to make a second attempt (Nihon Keizai Shinbun, 2015). A similar move had been made twice previously, indicating the government's willingness to modify the conditions of its trade agreements in order to allow for greater access to the domestic labour market by migrant workers. In addition, it negotiated a third nurse and care worker scheme under the Japan–Viet Nam EPA. In short, JIEPA has contributed to the normalisation of migrant labour as a tradable commodity rather than a discrete area of policy-making, as it has traditionally been among Asian destination countries.

Conclusion

There are competing views regarding the extent to which trade agreements can be used as a substitute for more traditional agreements around labour migration (Carbaugh, 2007; Djafar and Hassan, 2013). Proponents emphasise flexibility and control as benefits of the inclusion of skilled migration in trade agreements and advocate their use as a means of bypassing the principle of Most-Favoured-Nation status under GATS. It is clear that they are of value to both labour-sending and labour-receiving countries, allowing the former to selectively open their labour markets to more skilled labour migrants in a way that minimises domestic opposition, and the latter to leverage their competitive advantages, such as abundance of natural resources, to create high-return, skilled employment pathways for their citizens. Importantly, also, they allow both sides to retain a high degree of control over who accesses which labour markets and through what avenues.

The perceived benefits of the approach notwithstanding, the use of trade agreements as a substitute to opening up the labour market to foreign workers is deeply problematic. When access to labour markets and the conditions of employment of foreign workers become just one bargaining chip in a broad-based trade agreement, it promotes an ad hoc approach that diverts attention from structural challenges such as labour market segmentation and the suboptimal position of migrant workers in that labour market. Thus, while EPAs and similar mechanisms may facilitate initial flows of labour migrants by treating their embodied labour as a tradeable commodity, they are poorly placed to address the long-term challenges of labour mobility. As long as immigration remains a contested issue in destination countries, however, the use of trade negotiations as a route to accepting skilled migrants is likely to increase in popularity, particularly with service sector occupations like health care, that require the physical presence of service providers.

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Notes

¹ In Indonesia, the agreement is referred to as the IJEPA (Indonesia–Japan Economic Partnership Agreement).

² The authors made an equal contribution to the writing of the article.

³ For a critique of treating labour migration as a source of export revenue, see Rosewarne (2010).

⁴ Since the 1990s, services have come to represent around two-thirds of global gross domestic product (GDP) (Lipsey, 2009). While services are relatively non-tradable in comparison to manufacturing, mining and agricultural products, exports of commercial services grew worldwide to USD4170 billion in 2011, constituting approximately 20% of total global trade (WTO, 2012).

⁵ There are, of course, concerns about brain drain, especially in the case of the Philippines, where large numbers of highly qualified professionals leave to work overseas (Ball, 2007; Chia, 2006). Between 2004 and 2010, 19% of all emigrant professional, medical and technical workers leaving the Philippines were nurses. This is a significant number in absolute terms, given that over 4.3 million Filipinos worked abroad in that year (Commission on Filipinos Overseas 2010 cited in Dimaya et al., 2012).

⁶ This is especially the case in relation to northeast Asia, where the Indonesian government believes there is significant room for expansion in its programmes.

⁷ This government stance was stated in the Ministry of Finance's document 'Japan to Co-Exist in the World: 5-Year Economic Management' (*keizai keikaku: sekai to tomo ni ikiru nihon*), released in 1988, and the 'Basic Employment Measures Plan' by the Japan Institute for Labour Policy and Training. The mid to late 1980s was also the time when sending countries in Asia and the Middle East experienced a greater labour surplus due to the contraction of opportunities in the Middle East and the stronger yen following the Plaza Accord (Ward, 2001).

⁸ In the pre-1990 period, the six types of residence permit with work provisions were business, education, entertainment, technological cooperation, skilled labour and a category that required special permission by the Minister of Justice (Kenshūsei, 2009).

⁹ Japan is one of the fastest ageing societies in the world, and the delayed impact of fertility decline means its labour force will continue to decline at an accelerated pace some decades from now (Iguchi, 2005).

¹⁰ Other occupations include instructors, judicial scriveners, administrative scriveners, certified social insurance and labour consultants, and land and hour surveyors (Ministry of Economy, Trade and Industry (Japan) (METI), 2010).

¹¹ Similar sentiments were expressed by Jumhur during a visit to Japan in 2012, when he emphasised that the Indonesian government was very proud that more Indonesians than Filipinos had passed the exam (Antara, 2012a).

¹² For more details of the experience and the labour market position of foreign nurse candidates in Japan, see Ford and Kawashima (2013).