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THE POLITICS OF SEASONAL FOREIGN WORKER
ADMISSIONS TO FRANCE, 1974-2010

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Abstract

In response to the economic crisis of 1973/74 the French government curbed the admissions of seasonal foreign workers. By 2010 the curbs have remained in effect, however, the number of foreign workers authorized to work in French seasonal agriculture under “exceptional circumstances” has been growing. The study inquires about the mechanisms and actors responsible for this gradual policy change. It argues that the gradual expansion of seasonal foreign worker policy admissions to France has been possible due to the remarkable ability of fruit and vegetable growers from the province of Bouches-du-Rhône to expand their pro-seasonal foreign worker advocacy and thereby socialize the key policymakers to the adoption of amendments accounting for gradual policy change.

Keywords

Immigration policy, agriculture policy, France, Spain, policy networks, socialization

The politics of seasonal foreign worker admissions constitutes a highly complex subject matter. The pro and anti seasonal worker advocacies prove difficult to identify and examine because both are composed of diverse, sometimes cooperating, sometimes conflicting, actors. However, at those junctures when policymakers become uncertain about what migration policy objectives should be and whose interests it should serve, the pro and anti seasonal worker advocacies may be able to overcome internal differences, expand coalitions and convince policymakers to adopt policies compatible with their interpretation of reality. Consequently, the policies which have been eclipsed may reappear and persist until another critical juncture renders policymakers uncertain, and thus open to the new ideas regarding what migration policy objectives should be and whose interests should it serve.

Policy change may occur suddenly, as a result of large and easily identifiable crises, or incrementally, as a result of slowly accumulating and not always easily discernible unexpected outcomes. When policy change occurs incrementally, the role of policy advocacies is very important, because it is these advocacies that socialize state policymakers to their ideas concerning whether a prevalent policy is producing expected or unexpected outcomes, and therefore whether it should be maintained or replaced by a new one.

Policy change may occur when the advocates of a new policy attach the elements of that new policy to the old one and the newly attached policy elements gradually overcome the old policy. Policy change may also occur when the advocates of a waning policy are able to convert it to new goals and thereby revive it. Whether incremental policy change occurs through differential growth, conversion or any other mechanism, as suggested by Streeck and Thelen (2005), it often involves a pattern in which small changes lead to large outcomes.

The largest US seasonal foreign worker program, the so-called *bracero* program, grew from the governmental waiver granted to a small group of sugar beet growers in Stockton California, to allow them to admit a few hundred Mexican in 1942. Similarly, the largest European postwar guestworker program, the German *Gastarbeiter* program, grew from the governmental concession to admit five hundred Italian workers in Baden-Württemberg in 1952. In response to the economic crisis of 1973/74, the French government curbed seasonal foreign worker admissions to France. However, the French seasonal worker policy has been slowly expanding as the Bouches-du-Rhône fruit and vegetable growers were able to enlarge their coalition and convince increasingly more policymakers to the idea that such admissions would be beneficial.

This study examines the battle of ideas between the advocates of expanded seasonal worker admissions and the advocates of a status quo, after foreign worker admissions were curbed in France in 1974. It consists of three parts. The first part examines the politics of seasonal foreign worker admissions to the department of Bouches-du-Rhône between 1974 and 2001. Having relied on Moroccans and channeled them to the difficult to mechanize fruit and vegetable jobs, Bouches-du-Rhône developed a much higher dependence on foreign seasonal workers than all other parts of France which relied on European workers and on crops which were easier to mechanize. By July 2001, Bouches-du-Rhône accounted for sixty percent of all seasonal workers admitted to France. This sparked debates whether other departments should be allowed to expand admissions from abroad or whether Bouches-du-Rhône should make harder efforts to recruit the locally unemployed.

The second part examines the politics of seasonal foreign worker admissions as it spilled from the local to the national level. Since 2001, intensive debates on the seasonal work in agriculture have taken place in the French National Assembly and Senate. Following some thirty years of mechanization and heightened contracting of the French unemployed, increasingly more French departments took an interest in the possible expansion of seasonal foreign worker admissions to be able to compete with countries producing the same goods, but featuring cheaper labor, notably Spain and Portugal. Since the 1990s, Spain and Portugal have been admitting seasonal foreign workers from Africa and Eastern Europe. At the same time that growers advocated the expansion of seasonal worker program, human rights organizations advocated its suppression. The human rights organizations

wanted to force growers to offer permanent contracts to those foreign seasonal workers who had been working in France since the 1970s, but could never adjust their status.

The third part examines the outcome of the four-decade long politicization of seasonal foreign worker admissions in France – the current French seasonal worker system. As of 2010, French migration policy continued to be driven by the attempt to admit fewer migrant workers but grant them more rights. However, EU adoption of the President Sarkozy-supported Global Approach to Migration has opened a new window of opportunity for advocates of admission of more migrants with fewer rights to implant their ideas into mainstream policy.

The study is primarily based on the review of government circulars and statistics concerning seasonal foreign worker admissions to French agriculture, parliamentary debates, and official statements by the advocates and opponents of expanded seasonal foreign worker admissions.

1. The Politics of Seasonal Foreign Worker Admissions in Bouches-Du-Rhône, 1974-2000

1.1. The Effects of Mechanization and Socio-Economic Change on Labor Shortages in France

Even though seasonal workers were exempted from the 1974 foreign labor admissions curb (table 1), central government circulars continuously requested departmental authorities (prefects, employment services, labor offices) not to admit seasonal foreign workers unless the efforts to contract the unemployed present in France, were exhausted. At the same time, the French government subsidized research on how to make agriculture less labor-intensive, particularly through mechanization. The quest for alternatives preceded the 1974 crisis and was motivated by the proclivity of non-European seasonal workers to settle and by emerging shortages of European workers. According to the late Georges Tapinos, France had attempted to forge a two-track migration policy. The non-European workers (e.g. Moroccans) were expected to return to their countries of origin. European workers (e.g. Spaniards) were expected to settle and that outcome was favored for demographic reasons (Tapinos, 1975). However, the opposite trend was occurring because, while the socio-economic situation in Europe was improving, reforms in Africa were very slow and the dependence on remittances from migration to France loomed large.

Table 1: Seasonal Worker Admissions to France, 1974-2007

Year	Seasonal Workers Admitted (thousands)	
	France	Bouches-du-Rhône
1974	131.7	4.7
1975	124.1	4.4
1976	121.4	4.9
1977	112.1	5.0
1978	122.6	5.1
1979	124.7	5.9
1980	120.4	5.7
1981	117.5	5.9
1982	107.0	
1983	101.8	
1984	93.2	
1985	86.1	
1986	81.6	
1987	76.6	
1988	70.6	
1989	61.8	
1990	58.2	
1991	54.2	
1992	13.6	
1993	10.8 ¹	
1994	10.3	3.9
1995	9.3	3.7
1996	8.8	3.7
1997	8.2	3.5
1998	7.5	3.4
1999	7.6	3.4
2000	7.9	3.2
2001	10.7	4.3
2002	13.5	4.1
2003	14.5	3.8
2004	15.7	3.9
2005	16.2	
2006	17.2	
2007	19.0	

Source: Author, based on Bray et al., 2003: 17 ; OECD, 2001: 162, 2007; Miller, 1991; Morice, 2006:218; ONI, 1982: 38.

The degree to which growers experienced labor shortages depended on the crops they planted and the nationality of workers they contracted. The four principal crops for which seasonal foreign workers were contracted since 1945 were sugar beets, rice, grapes, fruits and vegetables. Since 1974, only the

¹ http://agriculture.gouv.fr/sections/publications/rapports/l-emploi-saisonnier-dans-le-secteur-des-fruits-et-legumes/downloadFile/FichierAttache_1_f0/rapport_emploi-0.pdf?nocache=1134040585.85

nationals of the countries with which France had signed bilateral labor agreements could be contracted as seasonal workers: Belgium, Italy (1951), Spain (1961), Morocco, Tunisia, Portugal (1963), Yugoslavia (1965, 1986), and Poland (1992). Algerians, who along with the Portuguese comprised the most numerous migrant group in France during the post-war period, did not work in seasonal agriculture, at least not legally.

1.1.1. Horticulture: the Forgotten Candidate for Mechanization

Until the 1960s, sugar beet agriculture proved very labor intensive and relied heavily on Belgian and Italian workers. As European Community nationals, Belgians and Italians were the first workers to lose interest in seasonal agricultural employment. Consequently, the sugar beet industry was forced to espouse alternatives to intensive-labor production before migration curbs of 1974. In the 1950s, the sugar beet industry employed 70 percent of foreign seasonal workers. In 1973, one year before the migration curbs, it employed only 8 percent (ONI, 1982: 6). Since mechanization in sugar beets occurred briskly, did not require growers to engage in extensive reorganization of planting and was not costly, growers did not need to replace disappearing Belgians and Italians with workers from other countries. Had mechanization been more difficult and time-consuming (like it was in fruit and vegetable production), it was very likely that the supply of workers would have reverted to reliance upon manual labor.

Up until the early 1960s, the Camargue at the mouth of the Rhone comprised France's most important rice producing area, but thereafter due to the competition of American rice production declined. The fall of rice production was paralleled by the weakening migration flows from Italy and Spain, the two major sources of rice workers in Camargue. By 1972, the number of seasonal workers in rice was only 5 percent of what it was during the peak in the early 1960s. After 1972 Camargue started to specialize in tourism (Berlan, 1984: 65). In 1981 only 23 workers, all from Spain, were employed in Camargue's rice production (ONI, 1982: 8).

Grape harvesting also used to be very labor intensive. Part of labor demand could be met by the French domestic labor force, but the scale of grape production in France was so large that domestic labor force was insufficient. The Grape harvest, like rice, therefore relied on Spaniards. The producers of high quality wines were skeptical about mechanization of grape harvesting. It was likely that, as the numbers of Spanish workers began to decline after 1972, the growers of grapes for the best wines would have contracted Moroccans. However, this did not happen because, in 1976, the French government declared that non-European seasonal workers must be contracted for at least four months and the typical grape harvest lasted only six weeks (ONI, 1982: 9).² By 1981, 73 percent of all seasonal foreign worker contracts were in grape harvesting. The contracts were granted for six weeks, but could be extended if workers were to be employed in another grape harvesting campaign.³ However, since the initial contracts were only six week long, almost all work permits were granted to Spanish workers (ONI, 1982: 19).

Horticulture, particularly involving the production of delicate fruit such as strawberries, tomatoes and peaches, was more difficult to mechanize than beets, rice and grapes. Government funding for innovation in fruit and vegetable production lagged behind much more profitable and symbolically important grape harvesting. Finally, providing year-round employment, fruit and vegetable production was expected to help to absorb the would-be Spanish and Portuguese workers after permanent admissions of foreign workers were suspended in July, 1974. Hence, around 50 percent of work permits granted in fruit and vegetable production after 1974 were for employment between six and eight months, mostly for eight months (ONI, 1982:11). But as Spanish and Portuguese flows began to

² Other nationalities too were subject to minimum contract duration – Spanish 30 days (21 if they worked in viticulture), Portuguese 2 months, Yugoslavs 3 months (France, 1982:12).

³ Only 5.6 percent of seasonal foreign worker contracts were granted for 5-8 months (ONI, 1982: 19).

decrease and mechanization proved difficult to implement, Moroccans filled the workforce gap in fruit and vegetable production. Nationwide fruit and vegetable production was in such dire need of seasonal foreign workers that some of the departments which did not employ them before 1974, or employed very few, such as Lózere and Ariège, started to employ them (ONI, 1982: 36-7).⁴

1.1.2. Moroccans: substitutes for machines

Around 75 percent of seasonal foreign workers admitted to France between 1974 and 1991 came from Spain and Portugal. The rest came from Morocco, Tunisia and Yugoslavia, (Groendijk, 1995: 23). While Iberian workers essentially worked in viticulture, Moroccan workers dominated fruit and vegetable production. Since Spanish and Portuguese gained labor mobility in 1992, Moroccans emerged as the most important foreign labor force in French seasonal agriculture. However the 1992 agreement with Poland made Poles almost equally as important, because Moroccans could not work in short-term grape harvesting.

Belgian and Italian seasonal workers began to decline with the decline of demand for manual labor in beet agriculture as early as in the 1950s and in the 1960s respectively. Tunisians began to arrive in 1969, but their absolute numbers were always very low. Like Moroccans, they could not be admitted for less than four months so a majority worked in fruit and vegetable production and other agricultural jobs (ONI, 1982: 28).

Yugoslavs were admitted for four to eight months, essentially to the “other” agricultural jobs. Due to other labor migration sources available to Yugoslavs (Germany and Switzerland), there were never more than a few hundred Yugoslavs contracted to seasonal agriculture in France a year. The outbreak of civil war closed off admissions from Yugoslavia in the 1990s.

Until 1992, Spaniards remained the most numerous seasonal foreign workers in French agriculture. However the Spanish flows had been declining since 1972, when the first growers began using harvesting machines, and even more after 1992, when Spain’s citizens gained freedom of labor mobility in the European Community. Portuguese comprised the second most numerous group of seasonal agricultural workers after Spaniards, however since only around 3000 were admitted a year, by 1969 they were outnumbered by Moroccans. Portuguese migration began to decline along with the decline of employment in sugar beets. (ONI, 1982).

After 1970, Moroccans constituted the second most numerous nationality among seasonal agricultural workers after Spaniards. The share of Moroccans among all seasonal foreign workers grew from one percent in 1967 to 14.5 percent by 1974. The admissions from Morocco decreased after 1974 and in 1982 Portuguese regained their second position behind Spanish workers. Following the end of transitional periods on labor mobility within the EU, Moroccans became the most numerous seasonal foreign worker group in France only to be challenged by Poles.

Ninety percent of Moroccans worked in what ONI classified as “other” seasonal jobs than viticulture, sugar beets, forestry and fruits and vegetables. By 1981, 42.4 percent of Moroccans had contracts for eight months. Those admitted for shorter periods, principally for four months, found it easy to extend the contracts to eight months (ONI, 1982: 22), given the long-term nature of the jobs that they performed. The decree no. 84-169 of 8 March 1984 restricted work permit extensions beyond six months to exceptional circumstances (GISTI, 1999: 3). However, certain fruit and vegetable growers were able to convince local authorities to grant them exceptions. The extensive use of Moroccan workers was notably the case of Bouches-du-Rhône but also of other departments, such as *Vaucluse, Corse, Gard, Lot-et-Garonne, Drôme* (ONI, 1982: 23). In 1980 the departments of *Bouches-*

⁴ This persisting demand for foreign seasonal workers was also the case with what ONI classified as “other” agricultural works. The “other” works related to any activities in agriculture different than fruit and vegetable, beets, grape and forest production.

du-Rhône, Vaucluse and Gard still admitted more or less the same number of seasonal workers (5800, 5600 and 5000 respectively), but while around two-thirds of those admitted to Vaucluse and Gard were Spanish and Portuguese only 30% of those in Bouches-du-Rhône were Spanish or Portuguese (Clary and Haecke, 2001: 9).

Table 2: Employment of Moroccan Seasonal Workers in France by Activity, 2000-2004

ACTIVITY	2000	2001	2002	2003	2004
Agriculture	3766	5228	6550	6909	7273
• Grape Harvest	4	-	6	3	1
• Sugar beets	16	14	10	4	5
• Arboriculture	190	209	488	600	502
• Fruit and Vegetables	457	491	1369	1801	2239
• Greenhouse work	60	39	140	432	398
• Various ag. activities	2912	4302	4277	3871	3935
Construction	4	4	9	2	8
Industry and Commerce	231	234	228	261	219
Hotels and Restaurants	125	108	127	129	141
Total	3946	5386	6732	7105	7457

Source: Author, based on ANAEM in http://www.amb-maroc.fr/Presence_marocaine/Presence-marocaine_trav_saisonniers.htm

Table 3: Employment of Moroccan seasonal workers in France by principal receiving department, 2000-2004

	2000	2001	2002	2003	2004
Bouches-du-Rhône	2879	3995	3650	3538	3596
Lot et Garonne	66	168	691	897	909
Haute Corse	15	49	416	662	865
Vaucluse	94	96	198	389	544
Gard	237	206	258	307	312
Gers	85	137	266	200	181
Tarn et Garonne	-	36	301	191	133

Source: ANAEM in Source: Author, based on ANAEM in http://www.amb-maroc.fr/Presence_marocaine/Presence-marocaine_trav_saisonniers.htm

1.1.3 Reliance on Moroccan Horticultural Workers: the genesis of the Exceptionalism of Bouches-du-Rhône

The Provençal department of Bouches-du-Rhône has long played an important role in French fruit, vegetable, wine and flower production. The three most foreign labor-reliant areas were Var, Crau and Berre (figure 1).

Var was an important viti- and flori- cultural center, but given the pleasant climate it had to compete for land with the expansion of residential housing. As a grape-picking region, Var mostly relied on foreign workers from Spain.

After irrigation was set up, Crau became an important hay and fruit and vegetable producing area. Labor-intensive peach production became a very important part of Crau's economy (Berlan, 1984: 65). Most foreign workers in Crau were Moroccans and Tunisians.

Figure 1: Bouches-du-Rhône Map



Berre used to be a sheep grazing area, but the urbanization of Marseille converted Berre into a center of fruit and vegetable production since the 1970s. The expansion of greenhouses allowed increasingly more farmers to produce lettuce, tomatoes, eggplants, cucumbers and peppers year-round. Some farmers have relied on computer-run hydroponic production and found it easy to attract French workers. But others relied on manual work which was becoming unpopular among the French workers (Berlan, 1984: 65). As in Crau, most foreign workers in Berre were recruited from among Moroccans and Tunisians. Unlike Spaniards, who were contracted for a one month-long grape harvest, Moroccans and Tunisians were contracted for orchard and the greenhouses jobs that could be performed almost year round. Benefitting from a seemingly unlimited labor supply Var, Crau and Berre viti-, flori- and horti-cultural sectors were under much weaker pressures to engage in costly and timely rationalization of production than the regions which had relied on weakening European labor sources.

Three types of labor were used in Bouches-du-Rhône seasonal agriculture in the post 1974 period: (1) “national” workers, be it Gypsies, French seasonal workers or unemployed; (2) seasonal foreign workers with valid work permits; (3) illegal workers. According to the Ministry of Labor estimates,

illegal contracting (of both French and foreign workers) increased after oil crisis of 1974. However, illegal contracting was prominent before 1974 because neither Moroccans nor their employers were interested in rotation. Moroccans were aware of the paucity of employment at home, particularly if they wanted to work only for four months.⁵ But they were also aware of the fierce competition for the jobs in France and were willing to stay throughout the off-season as long as they were offered any employment in the gap four months. By staying following their contract expiry, Moroccans prevented somebody from taking their job while they were at home. Employers wanted workers to stay following contract expiry because they needed some workers during winter for maintenance or greenhouse work. Furthermore, knowing exactly how many workers would be available for the next season facilitated planning and it obviated the need for training.

The Ministry of Labor acknowledged the paucity of resources to control illegal migration, especially in agriculture (France, 1982: 24-5) and especially in Bouches-du-Rhône, where the Labor Inspectorate suffered from acute resource shortages. Furthermore, authorities did not want to risk raising the unpopular issue of illegal work given that they had only a vague idea of how many illegal workers were there and where they worked. Hence, departmental authorities demanded report after report and proposed only symbolic policy measures (Berlan, 1984:61-2).

Confronted with scattered, often undocumented, workers, unions found it more difficult to mobilize them, particularly when the departmental authorities were relatively open to contracting abroad. Afraid of being more exposed to police, migrant workers themselves became apprehensive about union activism. Since most Bouches-du-Rhône migrants were Moroccans and on seasonal contracts or without one, they were afraid of engaging in political participation (Berlan, 1984:61-2) until 2003, when the scattered pro-migrant worker organizations united within the CODETRAS network. With the exception of 1981 and 1997, when 121 100 and 77 800 migrants (including 16 700 and 9 200 Moroccans) were regularized in France respectively, until the early 2000s, the agricultural worker lobby remained largely dormant. By contrast the business lobby was assuming greater importance.⁶

1.2. The Effects of Local Politics on Labor Shortages

The decision *whether* and *how many* seasonal foreign workers to admit were vested with the departmental employment (ANPE) and labor authorities (DDTEFP). The logistics of recruitment was vested with the national employment office (ONI, OMI, ANAEM).⁷

1.2.1. The formal and informal sources of seasonal foreign worker admissions

ANPE was charged with verifying if there was a French, legally resident foreign or EU citizen available and qualified to fill the job vacancy reported by the employer. While searching the unemployed registers and posting the job on ANPE's bulletin boards (and since the 1990s on internet databases), ANPE was also responsible for ensuring that employers too had exhausted efforts to find and contract a "national worker". Until the late 1990s, ANPE's technical capabilities were limited, as it was not until then when the quest for workers was digitalized and gradually coordinated with European labor mobility databases. Even by 2009, the extent to which a worker from outside of a department could be informed about a job vacancy and motivated to take the interview varied with the

⁵ The hourly wages in Nador-Oujda and Southern Tunisian areas where they came from were one-tenth of the minimum hourly wage in France (Berlan, 1984: 69).

⁶ Legalization of 1997 regularized some of the settled seasonal workers, but not others. This led to protests supported by CGT. The number of seasonal workers employed in Bouches-du-Rhône dropped after regularization (according to ITEPSA the figures were 3420, 3378, 2858 for 1998, 1999 and 2000 respectively).

⁷ In 1988 ONI was transformed into OMI and in 2005 OMI into ANAEM.

bureaucratization of ANPE procedures.⁸ Labor market tests are the key in the assessment of labor shortages and as such require labor services in charge to have a well trained and large staffs to be able to deal with backlogs of applications and to discern between those which genuinely look for any qualified worker and those which adjust job descriptions in order to qualify to contract abroad. Employers have all year to draft job descriptions. Labor services staff in charge of a labor market test have a couple minutes to analyze each application, particularly during peak times associated with harvest contracting. Since the early 2000s, state employment services in many European countries were undergoing restructuring, but finding a balance between keeping labor market tests effective and relatively de-bureaucratized has been difficult. Even if “national” workers could be found, wages proffered often were too small to offset unemployment benefits, incomes from undeclared work and removal from the areas where one spent his or her own life. Lack of housing loomed as another great challenge to French and European labor mobility.

DDTEFP was charged with verifying that the contract guaranteed a foreign worker minimum working and housing conditions and that an employer’s labor and criminal record did not prohibit the admission of a foreign worker. But neither working conditions nor housing were verified a priori, and hardly ever did DDTEFP question ANPE certifications unless ANPE itself expressed doubts whether to certify an employer to contract foreign worker or not.

Nonetheless, ANPE was not entirely left on its own authorizing foreign worker recruitment. Departmental prefects had considerable powers to influence ANPE’s effectiveness. Depending on the current political, economic and social context, the prefects could encourage ANPE (and to a lesser degree DDTEFP) to apply more liberal criteria, such as when the economic well-being of the department was perceived to depend on abundant labor supply. But they could also encourage ANPE to apply more restrictive criteria, such as when such admissions were thought to undermine the economic or social cohesion of the department.

If prefects wished to facilitate contracting of the unemployed workers, they could facilitate cooperation between ANPE offices throughout the department, in France and within the European Union. Prefects could train ANPE staffs to verify if, despite labor shortages, growers were not expanding production, on the assumption that additional workers could be easily brought from abroad. Prefects could provide ANPE with extra human resources to support the processing of the complicated cases, such as when there were suspicions that employers could be replacing old foreign workers with new ones so as to prevent status adjustment. Furthermore, prefects could help growers make the jobs more attractive to the unemployed. They could subsidize hydroponic modes of production; provide harvesting machinery for collective use; organize professional training for the lowest-skilled French workers (RMIs) so that they could meet the basic work requirements; supplement commuting of workers from other departments, and all the way to the fields.

If prefects wished to facilitate contracting abroad, they could cede the prerogative to supervise the foreign worker certification process to lower-level administrators. They could declare states of emergency so as to offset the 1974 law prioritizing employment of “national workers”. They could authorize blanket (as opposed to individual) labor market testing and influence the composition of the taskforces in a way that would support the interests of business. Since 2005, prefects could also link their migration policies to the various EU labor migration programs embedded in the Global Approach to Migration and, since 2007, Circular Migration. In doing so, they would not be able to totally circumvent Paris-dictated migration policy, but with no admission caps and the not-always binding character of central government circulars, they could expand admissions as long as they could argue that the steps would help to stem illegal migration.

⁸ Given a lack of resources and the complexity involved in the short labor market tests, particularly during the peaks of demand, state employment services in many countries, including the United States, Spain and Poland found it difficult to locate the “national” worker and assess the efforts made by employers to attract “national” workers and interview them in a non-discriminatory fashion.

Prefects found it difficult to assess to what extent the admission of foreign seasonal workers would benefit their constituencies. Thus, in formulating their policy objectives the prefects could not escape, and sometimes even actively sought, the feedback of those who were directly affected by seasonal foreign worker admissions – employer organizations and labor unions – and sometimes those who were indirectly affected by the policy - agricultural cooperatives, the processing industry, humanitarian organizations, religious leaders. Academics too could exert an impact on prefects, both through publications and direct consultation.

Seasonal workers had to be recruited through the national migration office- ONI. The national migration office was in charge of foreign policy-related aspects of admissions, i.e. ensuring that foreign workers were recruited in the countries with which France had signed bilateral labor agreements and ensuring that worker selection followed the rules specified in these agreements.⁹ The key decisions - which French department would receive foreign workers and how many - rested with the prefects. By authorizing production planning more compatible with one group of migrant workers than others, the prefects could also influence which countries workers would come from (the more labor-intensive the jobs offered were, the less likely growers were able to contract workers from Europe and the more likely from outside of it).

Unlike Spain or Italy, France did not subject seasonal foreign worker admissions to quotas, thus the national migration office recruited as many workers as ANPE and DDTEFP authorized and prefects approved. Until the late 1990s, the vast majority of French prefects (and thus ANPEs and DDTEFPs) reflected the objectives of the 1974 policy to prioritize labor-saving production and contract the French unemployed, including settled foreign workers. The prefects believed that there were alternatives to expanded seasonal foreign worker admissions. This tacit entente began to thaw as prefects in Bouches-du-Rhône would sympathize with fruit and vegetable growers and authorize relatively large proportions of seasonal foreign worker admissions. Pursuing the alternative to foreign worker recruitment was perceived as costly, time-consuming and politically unpopular. As long all prefects cooperated, the alternatives-driven post 1974 labor migration policy was not questioned. But when Bouches-du-Rhône prefects were found to have clung to seasonal foreign worker admissions, growers in other departments pressed their prefects to join the bandwagon.

1.2.2. The Transformation of Seasonal Foreign Worker Politics from Local to National

European integration facilitated the growth of seasonal foreign worker advocacy beyond the department of Bouches-du-Rhône and beyond the fruit and vegetable sector. As the transitional periods on the mobility of Spanish and Portuguese workers – the only foreign labor force available to viticulture-were coming to an end in 1992, grape growers confronted with the prospect of a drastic decline in the supply of workers. Facing a dilemma between exempting Tunisians and Moroccans from the minimum four month long employment period and signing bilateral labor agreements with a new countries of origin, the French government opted for the latter choice. The admission of Poles was compatible with the broader Western European foreign policy of assisting the economic, political and social transformation in Eastern Europe. It was also perceived as a way to regularize those Poles who had been working in France illegally since the 1980s. The government expected that the improving economic situation in Poland coupled with legal work opportunities in France would make Poles genuinely seasonal migrants and provide French employers with an additional safety net to successfully complete the shift to mechanization of production and contracting the French unemployed.

⁹ Under special circumstances workers could be contracted in other countries. In these cases, an employer had to apply for a permit to the central ONI office in Paris and provide the name of a specific worker as ONI could not conduct an anonymous selection in the country where it did not have an office (GISTI, 1999:10).

The signature of bilateral labor accord with Poland in 1992 coincided with another significant phase of European integration. The establishment of the European Single Market in 1993 lifted trade barriers within the EU between the member states, giving the countries with lower labor costs, such as Spain and Portugal, an advantage over those with the higher labor costs, such as France. Not only were the wage levels in Spain and Portugal below those in France, but Spanish and Portuguese growers lowered labor costs even further by contracting illegally, as evidenced by frequent recourse to legalizations.¹⁰ In order to prevent irregular contracting, the Iberian governments authorized foreign worker admissions. When in 1993 Spain initiated admission of temporary workers through quotas, 7000 workers were authorized for agriculture (MTAS, 1992). By 2006 the Spanish government removed caps on seasonal worker admissions, because farmers' requests constantly surpassed the ceiling authorized (Plewa, 2008a). In 2008, in Huelva alone 35 000 seasonal workers were brought in to work in strawberry planting and harvesting. The tourism industry was another area where France, Spain and Portugal competed, thus also hotel and restaurant owners began to consider expanded foreign worker admissions. However, until around 2007 the services sector contended itself with an approximately five percent share of seasonal worker admissions, as French workers, particularly students were easy to contract.

The French grape harvesters considered the agreement with Poland very beneficial. Transportation costs from Poland were low and since workers were brought in and out by busses, the supply of Poles was much more flexible than that of Moroccans or Tunisians who had to be brought by boat or plane, both of which did not make it possible to bring in workers on short notice. Due to wage disparities, Poles were willing to take jobs in agriculture. Furthermore, unlike Moroccans, they were not conflictive, because they could not claim to have worked in France for long enough to adjust their status from seasonal to permanent. The docility of Poles began to change in the mid 2000s. But, in 1995, the legal possibility to contract a perfectly-profiled Polish seasonal worker whet French employers' interest in seasonal foreign worker admissions. Consequently, the numbers of Poles admitted to France grew very rapidly and by 2005 surpassed the numbers of Moroccans (table 2). The French Ministry of Labor and Agriculture nonetheless continued to believe that only the minority of French employers suffered genuine labor shortages and that this minority could still improve working conditions so as to attract French unemployed (France, 1982: 4).

Table 4: Flows of Seasonal Workers by Nationality, 1995-2005

Year	Poland	Morocco	Tunisia	Other	Total
1995	3585	4744	683	340	9352
1996	3351	4529	626	260	8766
1997	3012	4278	629	291	8210
1998	2591	4083	587	262	7523
1999	2608	4172	637	195	7612
2000	3271	3946	537	175	7929
2001	4634	5386	517	257	10 794
2002	5856	6732	718	237	13 543
2003	6668	7105	487	306	14 566
2004	7356	7457	582	348	15 743
2005	8192	6941	682	427	16 242

Source: France, 2005d

¹⁰ Spain authorized six "exceptional" legalizations (1985/86, 1991, 1996, 2000, 2001, 2005), Portugal four (1992/93, 1996, 2001) and Greece two (1997/98, 2001). The total numbers of legalized foreign workers through these processes were 1.1224 million, 243.2 thousands and 722 thousands (OECD, 2006: 82).

By 2000 three types of seasonal contracts were available in France: (a) shorter than 20 days (b) between 20 days and four months; (c) between four and eight months. The contracts granted for up to twenty days concerned only viticulture. They represented 50 percent of all seasonal contracts issued in France, but only five percent of those authorized in Bouches-du-Rhône. Since Moroccans and Tunisians had to be admitted for at least four months, only Poles and grape-growing areas benefitted from these contracts (Clary and Haecke, 2001: 14).

The contracts granted for more than 20 days and less than four months also essentially benefitted Poles. They received two-thirds of all contracts issued for over 20 days, and typically for seasonal jobs in arboriculture between May/June and September/October. In Bouches-du-Rhône, they constituted less than half of all contracts granted (Clary and Haecke, 2001: 14).

The contracts granted for four to eight months were the only contracts available to Moroccans and Tunisians. They received one-third of all longer than 20 days contracts in France and over half in Bouches-du-Rhône. They principally concerned work in fruit and vegetable production (Clary and Haecke, 2001: 14).

In order to prevent the Department of Bouches-du-Rhône from further breaking the consensus on the recruitment of local unemployed and the amelioration of working conditions, the French government urged the prefect of Bouches-du-Rhône to have the major employer organizations (FDSEA and CDJA)¹¹ commit themselves to cooperating with ANPE to attract the locally unemployed to work in agriculture. When contracting abroad, employers were to grant priority to returners (Clary and Haecke, 2001: 10). Prioritizing returners was to ameliorate the status of those who had been working in Bouches-du-Rhône agriculture since as early as 1974 yet who were not able to adjust their status because of the large supply of workers available to employers (CODETRAS, 2003:2). The goal of the accord was to bring employers in Bouches-du-Rhône in line with their colleagues in neighboring departments, who having signed similar accords much earlier were able to progressively overcome dependence on seasonal foreign workers and minimize unemployment in their departments (Clary and Haecke, 2001: 9).

In 2001, the Ministry of Agriculture and Labor commissioned inspectors Clary and Haecke to investigate the degree to which Department of Bouches-du-Rhône implemented the commitments made in 1995. The investigation stemmed from the initial evidence that Bouches-du-Rhône continued to rely heavily on contracting abroad to the detriment of mechanization of production and full employment policy. In June 2001, the Ministries of Labor and Agriculture issued an annual circular on seasonal workers reminding all prefects to exhaust domestic labor resources before contracting seasonal workers abroad. On August, 1, the Ministries issued a separate request to the prefect of Bouches-du-Rhône asking to limit the admissions of the new seasonal workers immediately (Clary and Haecke, 2001:1).

As uncovered by the report, between 1995 and 2000 Bouches-du-Rhône was receiving approximately 45 percent of all seasonal foreign workers admitted to French agriculture, i.e. around 3500 per year. This was five times as much as the other five most foreign seasonal labor-reliant departments, such as Gard and Vaucluse. Gard and Vaucluse were receiving around 500 seasonal foreign workers. By contrast, Dordogne remained relied exclusively on local labor supply. Ninety-eight percent of those admitted to Bouches-du-Rhône were Moroccans or Tunisians (Clary and Haecke, 2001: 3). By July 2001 Bouches-du-Rhône received 61 percent of all seasonal workers admitted that year. The Ministries of Labor and Agriculture considered such a high proportion of contracts concentrated in one department alarming, hence the August request to Bouches-du-Rhône prefect to stop admissions of new workers immediately.

¹¹ FDSEA - Fédération Départementale des Syndicats d'Exploitants Agricoles ; CDJA-Confédération Départementale des Jeunes Agriculteurs.

What went wrong? According to the report, Bouches-du-Rhône prefects did not obey the March 16, 1976 circular instructing the departments to shift away from contracting abroad. As the local economy started to depend on migrant labor in fruit and vegetable production, enforcement became progressively more difficult. By 1995 the prefect ceded the responsibility of ensuring that the accord is implemented to a special committee. As the responsibility dissipated to a number of lower key officials, nobody felt responsible or empowered to assume the task of untying one of the most complicated knots of French post-1974 migration policy. The case of Bouches-du-Rhône was to the French effort to manage seasonal migration what the Augias' stable was to Hercules.

Based on the interviews with the employers, the investigators concluded that while the local population aspired to increasingly more qualified jobs, growers were expanding the low skilled ones. While local workers were shunning work in the greenhouses, Moroccans found it relatively attractive as it made it possible for them to be employed for up to eight months and often, year-round. Thus apart from contracting the highest proportion of seasonal foreign workers, Bouches-du-Rhône employers were also able to extend the highest proportion of contracts from the normal six month to the exceptional eight month-long limit (table 3).

Table 5: The proportion of contracts extended to the maximum of 8 months by the Labor Department in Bouches-du-Rhône, 1995-2004

Year	Number of contracts	Number of contracts extended beyond 6 months	Proportion of extended contracts %
1995	3910	1248	31.9
1996	3744	2193	58.57
1997	3625	1124	31.00
1998	3420	1754	51.28
1999	3378	1756	51.98
2000	2858	1667	58.32
2001	4583	1164	25.39
2002	4089	1750	39.40
2003	4087	1881	42.90
2004	4004	1617	40.30

Source: DDTEFP and ODESA in CODETRAS, 2007: 8.

Growers argued that seasonal workers were irreplaceable. According to CDJA only foreign seasonal workers were able to adjust to the work conditions characterizing seasonal agriculture in Bouches-du-Rhône. According to MEDAF (Le Mouvement pour l'Emploi et de Développement de l'Agriculture Française), foreign workers were so crucial to local economy that production of certain crops would collapse without them. Unlike local workers who abandon work once they saved up a little bit, foreigners have long-term savings goals and are willing work anytime there is work available. Since they are interested in returning to work every year they are very cooperative (Clary and Haecke, 2001: 10-11).

Even though it was the growers who were looking for such workers who would accept the jobs that locally available unemployed would not accept, the authorities were accomplices. It was up to the authorities to extend or not work permits. The political context of Bouches-du-Rhône was characterized by prefectural attentiveness to the growers' interests, disempowered labor unions and understaffed work inspection services. The largest employer organization in the department would offer a couple dozens of permanent jobs to local workers, but would be authorized to recruit hundreds of seasonal workers from abroad (Clary and Haecke, 2001:15-17). These seasonal workers were doing permanent jobs or a series of jobs which accounted for labor continuity throughout the year. This

explains why many would stay on following contract expiry. The irregularities in Bouches-du-Rhône had a negative effect on other departments as they started to undermine cooperation on the shift to alternatives. Those workers who became illegal lived in a very precarious status. They would be underpaid, sometimes housed in substandard conditions. When employers lent each other workers for short periods of time the number of abuses, particularly concerning housing and remuneration for overtime, would increase. Since almost all workers were from the impoverished areas of Morocco or Tunisia and had very high earning expectations, they were willing to accept very hard working and living conditions because entire families depended on their remittances (Clary and Haecke, 2001: 15).

The report on Bouches-du-Rhône concluded that by 2001 France had developed labor shortages in the shorter than one month-long and longer than three month-long jobs (Clary and Haecke, 2001: 7). These shortages corresponded to grape and fruit and vegetable production. Geographically, the demand was deemed to be growing in the historically labor-reliant South. The employers in the North and Centre of France were to a large degree able to overcome labor shortages through a combination of various labor-saving techniques and by appealing to locally available unemployed. Among others they provided training, organized commuting or grouped contracting, so as to provide workers with the longest employment periods possible (Clary and Haecke, 2001: 17). The South was expected to face more acute labor shortages in the nearest future due to the aging of the Moroccan workers (Clary and Haecke, 2001: 8).

The unusually high admissions to Bouches-du-Rhône resulted from the importance that fruit and vegetable production assumed in the department. This importance was neither matched by the amelioration of working conditions and nor of the image of work in fruits and vegetable sector. The report recommended gradual, but decisive promotion of non-seasonal work and modifications of administrative procedures lending themselves to the expansion of seasonal employment (Clary, 2001: 2).

The report recommended stricter cooperation from all the parties involved (Ministries of Agriculture and Labor, employers and labor unions, particularly on the departmental level) to make work in agriculture more appealing and to reform the methods of local recruitment (Clary and Haecke, 2001: 2). As a part of this cooperation collective agreements should be modified (Clary and Haecke, 2001: 30-31), seasonal labor regulations should be clarified, additional labor matching instruments should be developed to complement the work of ANPE where necessary (Clary and Haecke, 2001: 36). Also better transportation to the fields and more housing should be provided (Clary and Haecke, 2001: 37-39). Finally, France should not exclude the possibility of wider employment opportunities for Eastern Europeans (Clary and Haecke, 2001:3, 28).

2. The Politics of Seasonal Foreign Worker Admissions to France, 2001-2010

In February 2000, bloody tensions between Moroccan fruit and vegetable workers and local population broke out in the Spanish town of El Ejido. The tensions were to Southern European agriculture what the publication of *Grapes of Wrath* was to California agriculture. Whether the emulation of California intensive agriculture model in Southern Europe was producing unexpected effects, as the labor advocacy claimed, or was not, like employer advocacy argued, it catalyzed the expansion of respective policy advocacies. Consequently, the central government was put under increasing pressure to regulate seasonal employment.

2.1. Labor Advocacy

France had a strong tradition of civic action. Strikes are a common feature of contesting prevalent policy and when they do not translate into immediate policy changes, they raise the conscience about an issue and help to place it on political agenda. Regardless of whether their arguments lead to policy changes or not, the mere formation of labor advocacy network empowers workers who feel more

confident claiming their rights. The 1972-1974 waves of strikes and protests by French migrant workers, organized by *Confederation Generale du Travail* (CGT) and *Confederation Francaise Democratique du Travail* (CFDT) and aided by Algerian Trade Unions (UGTA) and semi-governmental migrant organization (AAE) helped to make policymakers ameliorate working and living conditions for French and foreign workers. They also helped to consolidate the notion that temporary foreign worker admissions were producing unexpected outcomes. Following the 1974 recruitment curbs, the pro-labor network dissipated, but it started to come together again as the post-Ejido media reports, conferences, and various publications reactivated labor defenders.¹² The outbreak of violence in El Ejido led to a number of conferences on migrant labor in French agriculture. The first such conference was held in June 2001 in Paris and the second in August 2001 in Saint-Martin-Crau. Half a year later *Forum Civique Européen* published a book « Le gout amer de nos fruits et légumes » thus paving the way for the renewed academic and media interest in the lot of seasonal workers in France. Since 2002 on, like after 1972, the French academic journals and media followed what pro-labor groups portrayed as the rise of “modern day slavery” or “California mode of production”.

As of 2002, the most active pro-labor actors in Bouche-du-Rhône grouped themselves in the *Collectif de défense des travailleurs étrangers dans l'agriculture des Bouches-du-Rhône* (CODETRAS). Among the members of CODETRAS there were militant labor unions (FGA-CFDT, FSU 13, and Confederation Paysanne), migrant organizations (ASTI, ESPACE-accueil aux étrangers), human rights organizations (Ligue des Droits de l'Homme, MRAP, Droit Paysan) and civic associations (Forum Civique Européen, ATTAC).

What united CODETRAS and other members of the agricultural worker rights advocacy was the perception that seasonal worker status was exacerbating poverty among agricultural workers (both Spanish and foreign). Seasonal worker status had been the object of debates for a long time before Bouches-du-Rhône emerged as the post-1974 major seasonal foreign worker magnet. However, it was with the admission of foreign workers that the agricultural worker advocacy was able to raise the issue to the state agenda, because of the greater magnitude of suffering involved.

Foreign workers were admitted on seasonal visas even to year-round jobs. Many employers, the labor advocacy claimed, did not want to grant year-round or permanent contracts to prevent them from fleeing to more stable sectors and to avoid extra costs associated with higher status. Some workers would circulate back and forth France and Morocco on seasonal visas always and receiving the same minimum wage. Since migrants could never be sure if they would be asked to return, those who rotated had to be docile to receive a contract again (CODETRAS, 2003: 3-4). Other workers were afraid to leave. They feared that once they leave they would not be able to come back, so they overstayed their visas. When they stayed on, they suffered even larger deprivations. They feared they could not do anything because it was better to be underpaid in France than not paid at all at home. Often it was migrants' own families who advised them to accept the hard reality (TF1, 2007b). Employers were aware of the large supply of those willing to work and some would give workers the option to leave if they were not satisfied with what they were getting.

Whether they worked legally or illegally, foreign workers risked considerable risks if they filed a lawsuit against their employer. If employers found out about the lawsuit, they could dismiss the revendicative workers right away. Without a job foreigners could not stay in France solely for the purpose of participating in the court case. Among other unexpected outcomes of seasonal worker program CODETRAS claimed: (a) lagging payments; (b) no days off at the peak season; (c) unpaid extra hours (d) productivity, rather than hour-based pay; (e) no job mobility, including paucity of

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training; (f) substandard housing (dirty, overpopulated, non-secure, sometimes without running water in the housing unit –as when migrants are housed in farmhouses or camping cars); (g) unpaid seniority bonuses; (h) excessive housing charges;(i) substitution of old or revendicative seasonal workers for new ones (*primo-migrants*); (j) no right to family reunification; (k) indifference of authorities (police, labor inspectors, prefects)(CODETRAS, 2003:5).

Even though employers are directly responsible for seasonal workers' lot, the authorities are accomplices. According to CODETRAS the seasonal foreign worker contracts allowed employers in Bouches-du-Rhône to undermine labor legislation. Foreign workers were introduced in excessive numbers; on substandard conditions and often through illegal procedures (CODETRAS, 2006). By perpetuating the regulations which produce unexpected outcomes, the authorities exacerbate such outcomes (such as when they allow employers to contract new workers instead of renewing the contracts of the old workers) (CODETRAS, 2004: 5). Work inspection services contented themselves with the very occasional inspections allowing for many infractions to go undetected. The courts dragged the cases on and continued to require evidence that is difficult to gather. Labor Services tolerated the multiplication of seasonal contracts in place of permanent ones. ANPE did not seek “national” workers in other departments and certified employers who had done very little to incentivize the unemployed to take up their offers. Insurance companies charged migrants for the entire year of insurance even though the law obliges seasonal workers to leave France within 10 days since the contract end. Municipalities tolerated substandard housing conditions. Landlords rented housing which does not meet regulations. Human smugglers undercut the legal channels of entry with illegal ones; all local officials showed disregard towards the lot of migrant workers in agriculture (CODETRAS, 2004: 6).

According to CODETRAS, seasonal work should apply only to those tasks which last less than 3 months. To socialize policymakers to the idea that seasonal work contracts fostered year-round employment, CODETRAS coined the expression “permanents à temps partiel” (temporary-employed permanent workers). If workers had to be contracted for over three months, they should be given year-round contracts along with renewable temporary residence cards. CODETRAS also advocated a number of transitory measures such as the right to reside and work in France during the duration of court case, so as to give him/her the equity in the process. Furthermore, foreign workers who have been refused contract extension should be kept on the waiting lists while at home so that the new candidates would not replace who had earned priority to work in France (CODETRAS, 2004: 7).

While in the early 1970s the pro-labor advocacy concentrated on the protests, sit-ins and strikes 1970s, in the early 2000s the labor advocacy has widened their methods of policymakers socialization to lobbying, either directly through allies and representatives in departmental capitals, Paris and Brussels or indirectly through publications. To some extent, this change mirrored the change of socialization methods by the agricultural lobby. European integration offered new modes of influencing state policymakers, while the militant action has debilitated by the decline of far left wing ideology. The opening of borders has also facilitated a greater degree of international cooperation. For instance, in order to better defend the rights of Polish seasonal workers, the CGT-FO allied with the Polish labor union *Solidarnosc* to jointly monitor Polish workers employment in the key areas of France, particularly to ensure that they received correct contracts and decent housing (EIRO, 2007).

As of 2008, however, the most far reaching success of the French pro-labor advocacy concerned the assistance to migrants in preparation of court cases against abusive employers. According to the CFDT secretary, Jacky Bontemps, between 2003 and 2006 the number of cases submitted to the human rights tribunals doubled from 300 to 600 precipitating *prise de conscience* among employers (EIRO, 2007).

Despite their precarious status migrant seasonal workers would periodically initiate the lawsuits against their employers. The number of migrants involved in such lawsuits increased with the crystallization of pro-agricultural worker advocacy, such as CODETRAS in Bouches-du-Rhône.

Nonetheless, even in Bouches-du-Rhône where migrants benefitted from very active CODETRAS assistance, workers were courageous enough to claim their rights. In some cases, they were discouraged by the fear that employers would not renew their contracts. In other cases, they were discouraged by their own families dependent on remittances their work provided (TF1, 2007b). Typically migrants would not initiate a lawsuit individually, but in concert with other migrants who felt they could provide enough evidence in a similar case, so as to maximize the chances of winning the case without repatriation. This means that many of the abuses taking place in smaller or more isolated farms went unreported.

Typically, most lawsuits concerned those seasonal workers who had not been able to adjust their status for over 10 years, some since as early as the 1970s. Most lawsuits concerned adjustment of status (from seasonal to permanent), but other issues were raised as well: perpetuation of short term contracts (*contrats de duration déterminée* as opposed to *contrats de duration indéterminée*), no contracts, excessive housing or utility charges, seniority bonuses, due back payments, unjustified dismissals (Mesini, 2008: 123).

The formation of CODETRAS helped the various organizations assisting migrants individually to reach more persons and expand the networks of allies, e.g. lawyers willing to support lawsuits on their behalf or *La Haute autorité de lutte contre les discriminations* (HALDE).¹³ For instance, in March 2008 a group of 23 Moroccan seasonal workers before Bouches-du-Rhône, supported by CODETRAS, seven lawyers and HALDE demanded the Marseille's *Tribunal Administrative* the right to obtain a *carte de séjour de salarié* after the prefecture refused it to them despite a long (in some cases 25 years) period of continuous work in agriculture. On 26 March, 2008 the Tribunal revoked the prefecture's refusal and recognized Moroccan workers' right to permanent work permit. According to the Tribunal the workers were never seasonal since they were employed in greenhouses or in a series of agricultural jobs which accounted for year-round employment. Their work contributed to the economic success of intensive agriculture in *Bouches-du-Rhône* and the length of their stay testified to their integration in to French society (Tribunal Administratif de Marseille, 2008).

Apart from the lawsuits, migrants participated in strikes and demanded their rights through labor unions. Given the greater protection against expulsion, Poles were more active in strikes and pressures through labor unions, than Moroccans and Tunisians who preferred to engage in slower yet somewhat more secure action through the courts of justice. Most strikes concerned the issues which did not call for legal intermediation, such as due back payments. Most lawsuits concerned the issues which called for legal intermediation, such as status adjustment.

In July 2005, 240 Moroccan and Tunisian peach harvesters employed by SEDAC, the largest agricultural employer in *Bouches-du-Rhône*, staged a protest to claim due overtime. They were paid for 150 hours a month, but had worked for 230 hours (TF1, 2005). Only 5 of the 240 protesters were contracted again in the following year, demonstrating why in many cases workers do not report abuses.

In September, 2007 Polish grape pickers went on strike to demand unpaid overtime. According to French and Polish labor unions *Force Ouvrière* and *Solidarnosc*, Polish harvesters worked 50-60 hours a week and were not paid overtime. Despite the problem, three quarters of Polish workers declared they had no choice but continue working because the minimum wage in Poland was far below the French minimum wage (SMIC) (TF1, 2007). The unpaid overtime, long working hours and

¹³ According to HALDE: seasonal foreign workers are almost always paid minimum, even those who worked over 36 months for the same employer, which should guarantee them seniority bonus. Furthermore, seasonal workers receive minimum or not training; they do not have the right to family reunification; they are housed in substandard collective housing often on the farms; they are deprived of the access to the health system in the off the season months even though they contribute the same social security fees as the French; they are disadvantaged when claiming their rights, because even the on-going court case does not give them the right to stay in France to defend themselves (CODETRAS, 2007: 16).

substandard living conditions were the major problems reported by the French labor unions throughout since the admissions of seasonal workers have been slowly increasing.

The results of collective actions differed from case to case. The court cases were generally more successful than strikes, because employers could not escape judges verdicts, while they could and often did escape their own promises. Yet, to prove their case in a lawsuit, migrants had to produce the evidence, which was not always easy. For instance, to prove the hours worked, the courts required migrants to submit handwritten compilations of hours worked on the documents which bore the dates corresponding to the days worked (e.g. at the reverse of bus tickets, dates newspapers etc.). The judges also preferred that such notes be made with different pens (Mésini, 2008: 129, 130-136). CODETRAS helped to convince the courts to the idea that seasonal workers may be legally eligible to the so called “precarious status” and “senior” bonuses (Morice, 2006: 220).

The court rulings highlighted the problem of precarious status of seasonal workers, be it French or foreign employment in France, and served as a powerful antithesis to employers’ arguments. Nonetheless, while the labor advocacy was underfunded and crystallizing slowly, the employer advocacy was financially-sound and growing quickly.

2.2. Employer Advocacy

France had a long tradition of seasonal foreign worker admissions. While the 1974 migration curbs led most agricultural employers to espouse alternatives to labor-intensive production, even those growers who had shifted to machines and locally available unemployed, remained a priori receptive to foreign worker admissions, if it was to ameliorate the quality of harvest or lower production costs. The context of the 1970s favored the shift to local workers and mechanization, because France had few competitors in fruit and vegetable production. But, since the mid-1990s, Spain, Portugal, Greece, and since the early 2000s Poland were able to produce cheaper than France. At the same time, consumer preferences changed. The new preferences favored labor-intensive commodities such as strawberries, cherries and consumers demanded them fresh at any time of the year.

Under normal circumstances emergence of the countries with cheaper labor and more competitive natural conditions would have precipitated a shift of fruit and vegetable production to the countries where labor costs were lower and climate favored year-round production, e.g. Morocco or Tunisia (White, 2001). But food production, since time immemorial, has been part and parcel of French tradition and culture and the nation’s basic industry. While a wine made from grapes grown in Morocco would be considered a guillotine-deserving heresy, a wine made from grapes harvested by Moroccan pickers in France was far less controversial. Hence, even if reduced to a small group, the seasonal worker lobby could always appeal to national symbols to revive labor-intensive production and related industries (processing, canning) were ready to support them. To a considerable extent, the advocates of labor subsidies could take advantage of potent symbols, favorable public attitudes as well as a weakened, but still potent, apparatus of power, lobbies and political connections.

The argument advanced by the re-emerging French seasonal foreign worker admissions lobby held that traditional sources of labor had dried up and recourse to locally available unemployed or labor-saving techniques had become either too costly or too time-consuming for the French agricultural sector struggling to compete on the global agricultural market. If there were adequate local unemployed willing to respond to the job offers, French farmers would not have to seek workers abroad, because importing foreign labor was expensive, bureaucratic and inflexible.

2.2.1. Contracting locally: the ideal but unavailable scenario

Traditionally, French growers relied on their families, community members, Gypsies, students, French seasonal workers as well as Spanish and Portuguese. Employers and local authorities agreed that contracting within the department was most beneficial. From the employers’ perspective workers from

the department did not require the time and effort associated with recruitment, they had direct or indirect experience performing agricultural tasks and they were loyal to employers. From the authorities' perspective, local contracting promoted full employment, contributed to the wealth of the community and kept social tensions at bay. For employers and authorities alike, local employment obviated the need for organizing transportation and temporary housing.

Community members and growers' children comprised the very best workers available. They grew up in the agricultural milieu and acquired the "right instincts" or were very quick to learn. As family members, friends and neighbors, they could be mobilized to work at any moment and, were hardworking, loyal and accommodating in negotiations. Since they lived locally, they did not require any housing, transportation or any extra services. However, with the growth of the service economy community members would take easier jobs, either in agriculture (e.g. machine operators, packing house workers etc.) or outside of it (offices, shops, restaurants) (Ministère de l'agriculture, 2001: 12). Growers' children would dedicate more time to school and even when they were available their inclination to work in agriculture was declining. The creation of CDJA – the association of young farmers -helped to bring youth back to agriculture, but they aspired to be farm managers, not harvesters.

Similarly to community and family members, Gypsies, did not require housing and transportation, but they dictated their own conditions. They wanted to be paid piece-rates and to be able to leave the job whenever they wished (Ministère de l'agriculture, 2001: 9). Spanish, Portuguese and professional French seasonal workers started to retire by the 1990s and those who were still available by the early 2000s did not want to accept the conditions farmers were able to grant them.

2.2.2. Contracting Outside of Department: the Difficult Alternative

While the availability of local workers provided a safety net during which most agricultural employers were able to espouse alternatives to labor-intensive production, some of those who remained reliant on labor and had their first experience with the French workers from outside of department found it difficult to adjust to a labor force that lacked the flexibility, efficiency and cooperativeness that both the local and foreign labor had.

In the opinion of fruit and vegetables growers, the unemployment statistics were illusory in a sense that many of the unemployed were not qualified for employment. Even the simplest tasks, they claimed, required workers to have certain predispositions. Depending on harvesting techniques, harvesters had to be healthy and usually young. Certain crops called for tall harvesters, others for short. Moreover, harvesters had to have excellent eyesight and gentle hands, be precise, prepared to work in adverse weather conditions, motivated and be willing to learn. Many of the unemployed did not meet these conditions or wanted to work where employers thought they would not be the most effective. Moreover, some jobs lent themselves more to female and others more to male workers. ANAEM representatives recruiting abroad were considered more attentive to the complex needs of farmers than ANPE agents looking for French workers. ANPE agents attempted to convince employers to take anybody registered as unemployed, so as to promote full employment. By contrast, ANAEM agents had no such obligations and were willing to select the profile of workers that farmers requested.

Farmers were aware that in order to attract the out of-department workers, they needed to ameliorate working conditions, but they thought agriculture suffered from structural problems which could be neither overcome immediately nor by growers themselves. Agriculture was considered to be characterized by instability because of weather and price vagaries. French workers, on the other hand, did not want to wait on call and, once admitted, wanted to work the ideal hours specified in the contracts. Since 2002, French labor law reduced the weekly employment duration to 35 hours. For farmers, agriculture should be excluded from employment thresholds and ceilings, because, while at

the beginning of a season employers may be able to provide only 20 hours of work, at its peak they needed the workers to work up to 50 hours.¹⁴

From the employers' point of view, workers from outside of the department did not always have the necessary experience, skills and will to dedicate themselves to the job. Some of the unemployed did not want to stay on the job longer than it necessary to qualify for unemployment benefits or to cover the time gap between various undeclared activities (Ministère de l'agriculture, 2001: 46-47). Students were limited by the duration of summer holidays. Most French workers treated agriculture as a transient step in their careers while searching for more stable jobs in another sector. As French citizens they were free to select between employers and could quit at any time. Employers whose crops ripened late were disadvantaged because even the workers who had committed themselves to work with them would often opt to work with the employer whose crops ripened first (Ministère de l'agriculture, 2001: 13). Some of the French workers, particularly students, had only short-term savings goals and were inclined to leave for vacations whenever they met them. With the exception of those most motivated, French workers wanted to take frequent breaks and were difficult to convince to work extra hours or on Sundays (Ministère de l'agriculture, 2001: 46).

The quality of French workers varied. Some were very efficient, particularly those with rural backgrounds. Others were not efficient at all, particularly city-dwellers (Ministère de l'agriculture, 2001: 46). But even the most efficient French workers did not help to minimize pressures for mechanization because they expected their employers to automate production to make their jobs easier, particularly the more qualified and educated ones.

Brought from outside of the department, the French workers required that employers organize housing and transportation. The easiest way to grapple with the challenge would be to house workers in the fields, but the French wanted to be close to all urban amenities. Unlike foreign workers who were more likely to accept extra hours, the French were more likely to divide the day into work and rest. Some remembered the days when employers would provide them with meals, such as the traditional sumptuous *casse-croûte* during the grape harvest. In certain departments, local authorities subsidized transportation, housing and meals, particularly in programs aimed to promote the employment of the least qualified French unemployed-the RMIs. Such programs included picking the RMIs from home, serving breakfast, transporting them to work, providing lunch and bringing them back home at the end of the day. Some growers considered such programs very useful. Others thought the RMIs were unproductive, careless, conflictual and thereby having a negative effect on the good workers (Ministère de l'agriculture, 2001: 26). Where local authorities assumed too active of a role in promoting employment of the RMIs, growers complained that the government treated them as "reintegration services" (Ministère de l'agriculture, 2001: 35).

The skepticism about contracting French workers from outside of the department varied. Even where local authorities lacked resources, employers were able to develop a number of cost-effective solutions to overcome some of the difficulties in contracting or retaining the workers from outside of department. Among such solutions there were: carpooling, bicycle rentals (Ministère de l'agriculture, 2001:17), or arrangements for grocery store owners to drive to the fields with products requested by workers from the employer (Ministère de l'agriculture, 2001:19), a combination of minimum pay augmented by piece-rate for the workers surpassing certain norm and doing quality job (Ministère de l'agriculture, 2001:15). Even portable toilets and provision of workers with water and symbolic meals helped some employers to retain French workers. These efforts were most effective when they were based on cooperation between farmers, local authorities, labor unions, NGOs, and community members.

¹⁴ For instance, Bernard Accoyer, from UMP and a current president of the French National Assembly argued that the 35 hours should not apply to agriculture due to the instability of work in the sector, with some periods requiring less and others more work per week (Accoyer in France, 1999a).

But certain agricultural jobs lent themselves more to upgrading than others. Despite the short contracts, viticulture was able to assuage part of its labor shortages by attracting motivated French workers. Many wineries were located in attractive settings. Their owners were relatively well off and since they often complemented their incomes with tourism, they made every effort to keep their workers satisfied. Viticulture also found it easier than the fruit and vegetable sector to adjust wine prices so as to have the consumer pay the higher labor costs. By contrast, fruit and vegetable farms were located on less attractive grounds and found it more difficult to pair production with agrotourism.

Work in the tomato or peach harvests, even if paid the same as the grape harvest, remained considered socially unattractive. It is in this context that fruit and vegetable growers in other parts of the country began to “rediscover” their difficult lot and to consider joining the leadership of Bouches-du-Rhône in their advocacy for the quick revival of the sector through facilitated admissions of foreign seasonal workers.

Government officials encouraged employers to raise wages but the growers argued they themselves were subject to the low prices characterizing fruit and vegetable market and pointed to the profit-limiting effect of competition in agricultural production (Ministère de l’agriculture, 2001:16). The drive to keep production costs low became an important factor catalyzing French employers’ renewed interest in contracting abroad. Miraculously, the transportation and housing problems which made contracting in other departments cost-prohibitive were omitted in the calls to contract outside of France.

2.2.3. Contracting abroad: the Compromise

Theoretically, contracting abroad was the most disadvantageous option. Employers had to invest considerable time and effort in applying for workers and organizing selection. Their transportation costs were the highest and least flexible. Once foreign workers were brought in, they needed extra training and supervision while learning on the job. There was a possibility that some would either come illegally attracted by the availability of work or overstay their visas. Prefects were taking the risk that their communities would oppose growing diversity or apparent social costs. Finally, either local authorities or employers had to subsidize the cost of transportation and housing. Migrants were responsible only for half of transportation costs even though they paid for housing themselves. Nevertheless, the department had to make affordable and decent temporary lodging available. Despite all these difficulties, when local workers were unavailable, both employers and local authorities could find contracting foreign workers more beneficial than workers from other departments.

The initial costs of foreign worker admissions, seasonal foreign worker admissions advocates claimed, were high. But they could pay off in the long term. The countries of origin would distribute the information about job vacancies and, as long as employers specified the profile (anonymous recruitment) of the worker they wanted, ONI/OMI/ANAEM would select a good worker. Since the numbers of work candidates were large, the risk of getting a worker with dubious characteristics was low. Furthermore, following the first year, employers could ask for specific workers to return.

Unlike workers from other departments, migrant workers would be less likely to change their minds and stay at home or opt out for another country once selected. Since they were admitted to specific employers and geographical areas, they could not opt to work with the employer whose crops ripened first.

The costs of transportation were not as high as they seemed. Migrants were supposed to pay the part corresponding to transportation from their hometown to the French border and employers from the French border to the worksite and back to the migrants’ hometown. If employers selected migrants as a group and were able to provide them with continuous employment while switching them from one farm to another, they could share the transportation costs like they could with the out of department

workers. Since foreign workers were to be brought in groups, the risk that they come when there was not enough work seemed to be minimal.

Housing loomed as a large challenge, but not any larger than in the case of out-of department workers. Whether admitting French, from another department or foreigners, the authorities and employers had to organize decent and affordable lodging. However, contrary to the French, foreigner workers, particularly the newcomers, were less concerned about living in the fields. They were assumed to want to devote their short-term stay in France to maximizing their earnings and to abstain from social distractions. Indeed, by living on the farm, they are available and willing to work anytime. Farmers would have to provide them with weekly transportation to grocery stores, but this was far less costly and inconvenient than organizing a commuting service. Housing seasonal workers outside of towns was also convenient from the perspective of local authorities who were concerned that large numbers of out-of town, particularly culturally different residents during the peak season could lead to social problems.

Depending on whether foreign workers were new or returning, whether they came from rural or urban background, and whether they spoke French or not, they required various degree of training. In general though, the large supply of workers in the countries of origin was expected to bring the workers as closely matching the required professional profile as possible, and since there would be always some returners on the farm, the returners could train the newcomers eliminating the language problem for employers.

Once trained, foreign workers were expected to be hard-working and willing to accept any extra hour available, because, unlike the French, they had to save enough to support their families. And even if they worked for themselves, they wanted to maximize the time to earn as much in such a short time as possible. The social expectation in the countries of origin that migration generates huge wealth seemed to be a very helpful motivational factor too. Even when paid minimum wage, foreign workers would still earn considerably more than at home, particularly if they were unemployed at home. The wage differences were helpful in offsetting the 3D (dirty, dull, dangerous) stigma of agricultural jobs. Foreign workers were expected to content themselves with relatively high pay while employers and socially unaccepted jobs were underwent upgrading, as when the workforce changed from the lowest educated and socially disruptive French RMIs to Polish doctors or Moroccan teachers.

The French growers did not aim to deprive the countries of origin of valuable human resources. Rather, the expanded opportunities to work in France would benefit all parties involved. Growers could overcome labor shortages. Workers could make substantial savings to complement poor wages at home or provide a source of income if they were unemployed. France would be able to produce quality produce cheap enough to compete on the global produce market while at the same time maintaining French agricultural traditions. Finally the countries of origin could offset unemployment.

Expanding foreign worker admissions seemed particularly important in the context of European integration. With the accession of Poland to the EU, French employers knew that the most they could count on Poles would be during the seven year transitional periods. But the UK, Ireland and Sweden did not apply transitional barriers and other countries began lifting them early. Poles appeared an excellent substitute for the Spanish and Portuguese seasonal workers. But they were not expected to last long. Facilitating foreign worker admissions in the new countries of origin, particularly those characterized by large agricultural sectors, could offer a good replacement for all the categories of workers which had dried up, including the French unemployed.

Table 6: Inflows of seasonal workers by nature of employment and nationality, 2000

	Poland	Morocco	Tunisia	Former Yugoslavia	Other nationals	Total
Agriculture	3 259	3 766	528	54	89	7 696
• Beets	0	16	0	0	0	16
• Arboriculture	4	190	41	15	11	261
• Forestry	11	127	13	0	0	151
• Grape harvest	1 996	4	0	0	7	2007
• Fruit and vegetable harvest	943	457	473	4	2	1 879
• Greenhouse works	0	60	0	29	1	90
• Varied agricultural activities	0	2 855	0	0	3	2 888
• Other ag. jobs	305	27	1	6	65	404
Construction	0	4	0	0	0	4
Industry	0	1	0	0	11	12
Hotels and Restaurants	0	125	8	0	5	138
Other	305	50	1	0	16	79
Total	3 271	3 946	537	54	121	7 929

Source: OMI in Larry, 2004: 52

Table 7: Inflows of seasonal workers by nature of employment and nationality, 2001

	Poland	Morocco	Tunisia	Former Yugoslavia	Other nationals	Total
Agriculture	4 620	5228	489	40	30	10 407
• Beets	0	14	0	12	4	30
• Arboriculture	71	209	105	1	0	386
• Forestry	7	173	9	0	6	195
• Grape harvest	2375	0	0	0	0	2 375
• Fruit and vegetable harvest	1659	491	361	14	8	2 533
• Greenhouse works	26	39	13	13	1	92
• Varied agricultural activities	0	4281	0	0	3	4284
• Other ag. jobs	482	21	1	0	8	512
Construction	0	4	0	0	0	4
Industry	13	1	1	1	100	114
Hotels and Restaurants	0	108	25	25	10	143
Other	1	45	3	0	187	387
Total	4 634	5 386	517	40	217	10 794

Source: OMI in Larry, 2004: 52

2.3. The Government

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 ANPE and 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 with 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.¹⁵ 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 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

¹⁵ 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.

practices as their domain shrinks (Streeck and Thelen, 2005: 24).¹⁶ 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, 2005:26). 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, 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 peripheries. 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

¹⁶ 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.

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-Ardenne and Corsica (ANAEM, 2007: 17).¹⁷

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

¹⁷ 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).

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.

3. The Principles of Seasonal Foreign Worker Admissions to France in 2010

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).¹⁸ 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 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 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.

¹⁸ 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#

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 - *salaire 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.¹⁹ 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).²⁰ 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 (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).²¹

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).²² Nonetheless, the problem of enforcing seasonality in the *Bouches-du-Rhône* greenhouse

¹⁹ 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).

²⁰ Foreign worker employment fee in industry and construction amounts to €400 regardless of the duration of seasonal contract.

²¹ For specific sanctions see: http://www.travail-solidarite.gouv.fr/informations-pratiques/fiches-pratiques/emploi/sanctions-liees-au-travail-illegal.html?var_recherche=saisonnier%20agricole%20E9tranger

²² 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).

production persists 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).²³ 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, Corsica and Bouches-du-Rhône. The settlement of migrants in these two departments, particularly in Corsica, where xenophobia began to mount, has been viewed as problematic. 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.

Seasonal workers cannot bring families in (France, 2008a) and the *migration choisie* 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

²³ The obligation to return ceased to apply to Poles since May 1, 2004 due to the freedom of circulation afforded to EU citizens.

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).

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