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Immigration Issues in Trade Agreements

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Summary

The connections between trade and migration are as longstanding as the historic movements of goods and people. The desire for commerce may often be the principal motivation, but the need to send people to facilitate the transactions soon follows. Recognition of this phenomenon is incorporated into the Immigration and Nationality Act (INA), which includes provisions for aliens who are entering the United States solely as "treaty traders" and "treaty investors." Although the United States has not created a common market for the movement of labor with our trading partners, there are immigration provisions in existing free trade agreements (FTAs) that spell out reciprocal terms regulating the "temporary entry of business persons."

Immigration issues often raised in the context of the FTAs include whether FTAs should contain provisions that expressly expand immigration between the countries as well as whether FTAs should require that the immigrant-sending countries restrain unwanted migration (typically expressed as illegal aliens). The question of whether the movement of people — especially temporary workers — is subsumed under the broader category of "provision of services" and thus an inherent part of any free trade agreement also arises. Even in FTAs that do not have explicit immigration provisions, such as the United States-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), there may be a debate over the effects that FTAs might have on future migration.

There are a variety of approaches to study the impact of trade agreements on migration, and this report draws on several different perspectives. The volume of trade that the United States has with its top trading partners correlates with the number of times foreign nationals from these countries enter the United States, regardless of whether there is an FTA. Research on the aftermath of the North American Free Trade Agreement (NAFTA) found upward trends in the temporary migration of business and professional workers between the United States and Canada during the years that followed the implementation of the Canada-United States FTA (later NAFTA). Another set of analyses revealed that the number of Mexican-born residents of the United States who report that they came in to the country during the years after NAFTA came into force is substantial and resembles the "migration hump" that economists predicted. Many factors other than NAFTA, however, have been instrumental in shaping this trend in Mexican migration.

This report provides background and analysis on the complex nexus of immigration and trade. It does not track legislation and will not be regularly updated.

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Introduction

The connections between trade and migration are as longstanding as the historic movements of goods and people. The desire for commerce may often be the principal motivation, but the need to send people to facilitate the transactions soon follows. Recognition of this phenomenon was incorporated into the Immigration Act of 1924, which included a provision for aliens who were entering the United States solely to carry on trade between the United States and the foreign state the alien was coming from, pursuant to a treaty of commerce and navigation.[1] Over 80 years later, a comparable provision of immigration law continues to enable foreign nationals, now known as "treaty traders" and "treaty investors," to enter the United States.[2]

In addition to the specific treaty trader/investor provisions of immigration law, there are often broader immigration issues raised in the context of the recent free trade agreements (FTAs).[3] These issues include whether FTAs should contain provisions that expressly expand immigration between the countries as well as whether FTAs should require that the immigrant-sending countries restrain unwanted migration (typically expressed as illegal aliens). The question of whether the movement of people — especially temporary workers — is subsumed under the broader category of "provision of services" and thus an inherent part of any free trade agreement also arises. Even in FTAs that do not have explicit immigration provisions, such as the U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), there is a debate over the effects that FTAs may have on future migration.

This report opens with an overview of the specific elements of immigration law and policy that are germane to trade-related immigration and follows with a summary of the recent FTAs that include changes to U.S. immigration law. An analysis of research on the interaction between trade and migration is discussed, with caveats on

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[1] The Immigration Act of 1924 was comprehensive for its day. Among other things, it authorized consular officers to issue visas to intending immigrants and nonimmigrants as well as required aliens entering the United States to have the appropriate immigration documents.

[2] The specific legislative language of INA §101(a)(15)(E) is: "(i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital." 8 U.S.C.

[3] For a more on these trade agreements, see CRS Issue Brief IB10123, *Trade Negotiations During the 109th Congress*, by Ian Fergusson and Lenore Sek.

the limitations of such analysis. The report concludes with a set of immigration policy questions that arise in the context of FTAs.

Background on Immigration Policy

Context of Policy Making

As a prologue to any discussion of the nexus of immigration and trade, it is important to acknowledge two key points of departure in policy making on these issues. Foremost is what branch of government — the legislative or executive — takes the lead in setting the policy. Secondly, is whether policies are set unilaterally and without special consideration of other countries or are developed bilaterally or multilaterally.

Although Congress has the ultimate Constitutional authority to regulate interstate and foreign commerce, it has shared the authority with the executive branch. The executive branch takes the lead in negotiating trade agreements under strictly defined conditions. Congress considers legislation implementing the trade agreements, according to the Trade Act of 1974, as amended.[4] Immigration policy, on the other hand, is traditionally spelled out by the Congress, not the executive branch. Congress has not shared its authority over immigration and naturalization law with the executive branch to the extent it has done so with trade policy.[5]

Bilateral and multilateral agreements with specific countries, a staple of trade negotiations, are quite rare in U.S. immigration policy. When the Immigration Amendments of 1965 replaced the national origins quota system (enacted after World War I) with per-country ceilings, U.S. immigration policy shifted to one that was

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[4] The statutory authority and requirements for the enactment and implementation of recently completed or planned trade agreements are contained in the provisions of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (Title XXI of the Trade Act of 2002, as amended by Section 2004(a)(17) of the Miscellaneous Trade and Technical Corrections Act of 2004; P.L. 108-429). The legislative procedure for their implementation is set out in Section 151 of the Trade Act of 1974 (P.L. 93-618). For further information, see CRS Report RL31974, *Trade Agreements: Requirements for Presidential Consultation, Notices, and Reports to Congress Regarding Negotiations*; and CRS Report RL32011, *Trade Agreements: Procedure for Congressional Approval and Implementation*, both by Vladimir N. Pregelj.

[5] This last point was made clear by House Committee on the Judiciary Chairman James Sensenbrenner during the 2003 debate over the Chile and Singapore FTAs. Chairman Sensenbrenner offered the following summation in his opening remarks: "Members of this Committee spoke with a united bipartisan voice that immigration provisions in future free trade agreements will not receive the support of this Committee." He went on later in the proceedings to state: "I am also concerned that there not be future changes in the basic immigration law contained in future trade agreements. Article I, Section 8 of the Constitution makes immigration and naturalization law an exclusive enumerated power of the Congress, and we intend to follow the Constitution and not to delegate this authority to the executive branch of Government." H.Rept. 108-224, Part 2, *United States-Chile Free Trade Agreement Implementation Act*, 2003.

applied neutrally across the countries of origin.[6] Not only did the admission of legal permanent residents (LPRs) become country-neutral at that time, but formal bilateral guest worker programs, such as the Bracero Program with Mexico, ended as well.[7]

Temporary Admissions in General

Foreign nationals seeking to come to the United States temporarily rather than to live permanently are known as nonimmigrants.[8] These aliens are admitted to the United States for a temporary period of time and an expressed reason. Currently, there are 24 major nonimmigrant visa categories, and 72 specific types of nonimmigrant visas issued. These visa categories are commonly referred to by the letter and numeral that denote their subsection in the Immigration and Nationality Act (INA).[9] Several visa categories that are designated for business and employment-based temporary admission are discussed below, as they are the most likely to correspond to trade-related temporary immigration.[10]

Treaty Traders and Treaty Investors

To qualify as an E-1 treaty trader or E-2 treaty investor, a foreign national first must be a citizen or national of a country with which the United States maintains a treaty of commerce and navigation.[11] The foreign national then must demonstrate that the purpose of coming to the United States is one of the following: to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country; or to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing a substantial amount of capital. Unlike most nonimmigrant visas, the E visa may be renewed indefinitely.

The regulations describe substantial trade as follows:

> Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. This

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[6] Major exceptions to this tradition involve humanitarian migrants, refugees, and asylees who are admitted to the United States on the basis of country conditions and the likelihood that they would be persecuted if returned home. For more background, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno; CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem; and CRS Report RS20468, *Cuban Migration Policy and Issues*, by Ruth Ellen Wasem.

[7] For an explanation of immigration policy on permanent admissions, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

[8] For a full discussion and analysis of nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[9] Most of these nonimmigrant visa categories are defined in §101(a)(15) of the INA.

[10] The term "guest worker" is not defined in law or policy and typically refers to foreign workers employed in low-skilled or unskilled jobs that are seasonal.

[11] The investor provision was added by P.L. 82-414 in 1952 when the INA was codified into the body of law that exists today, amended.

> continuous flow contemplates numerous transactions over time. Treaty trader status may not be established or maintained on the basis of a single transaction, regardless of how protracted or monetarily valuable the transaction.

The regulations define the related concept of principal trade as "when over 50 percent of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality."[12]

For treaty investors, the investment must be sufficient to ensure the successful operation of a bona fide enterprise, and the investor must have control of the funds. Uncommitted funds in a bank account or similar security are not considered an investment. The investor must be coming to the United States to develop and direct the enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive, or highly specialized skill capacity.

Other Business Personnel and Temporary Workers

Business Travelers. B-1 nonimmigrants are visitors for business and are required to be seeking admission for activities other than purely local employment or hire. The difference between a business visitor and a temporary worker depends also on the source of the alien's salary. To be classified as a visitor for business, an alien must receive his or her salary from abroad and must not receive any remuneration from a U.S. source other than an expense allowance and reimbursement for other expenses incidental to temporary stay.

Multinational Executives and Intracompany Transferees. Intracompany transferees who are employed by an international firm or corporation are admitted on the L visas.[13] To obtain an L visa, the alien must be employed in an executive capacity, a managerial capacity, or have specialized knowledge of the firm's product. To qualify as an executive, the regulations state that the alien must direct the management of the organization or a major component or function of the organization and receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. Those considered to be managerial staff supervise the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization. The regulations define "specialized knowledge" as special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.[14]

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[12] 8 CFR §214.2(e).

[13] See CRS Report RL32030, *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*, by Ruth Ellen Wasem.

[14] 8 CFR §214.2(l)(ii).

Temporary Workers.[15] The major nonimmigrant category for temporary workers is the H visa.[16] The current H-1 categories include professional specialty workers (H-1B) and nurses (H-1C). There are two visa categories for temporarily importing seasonal workers, i.e., guest workers: agricultural workers enter with H-2A visas and other seasonal workers enter with H-2B visas. Temporary professional workers from Canada and Mexico may enter according to terms set by the North American Free Trade Agreement (NAFTA) on TN visas. The law sets numerical restrictions on annual admissions of the H-1B (65,000), the H-2B (66,000) and the H-1C (500) visas. There is no limit on TN visas.

Requirements for Employers of Temporary Foreign Workers

Labor Certification. The INA requires that employers of H-2 nonimmigrants conduct an affirmative search for available U.S. workers and that the Department of Labor (DOL) determine that admitting alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Under this process — known as labor certification — employers must apply to the DOL for certification that unemployed domestic workers are not available and that there will not be an adverse effect from the alien workers' entry. The H-2A visa has additional requirements aimed at protecting the alien H-2A workers from exploitive working situations and preventing the domestic work force from being supplanted by alien workers willing to work for sub-standard wages. Most notably, the employer must offer the H-2A workers wages according to the "adverse effect wage rate."[17]

Labor Attestation. The labor market test required for employers of H-1 workers, known as labor attestation, is less stringent than labor certification. Any employer wishing to bring in an H-1B worker must attest in an application to the DOL that the employer will pay the H-1B worker the greater of the actual wages paid other employees in the same job or the prevailing wages for that occupation; the employer will provide working conditions for the H-1B worker that do not cause the working conditions of the other employees to be adversely affected; and there is no strike or lockout. Employers recruiting the H-1C nurses must attest similarly to those recruiting H-1B workers, with the additional requirement that the facility attest that it is taking significant steps to recruit and retain U.S. registered nurses.

The INA does not require firms who wish to bring L intracompany transfers into the United States to meet any labor market tests (e.g., demonstrate that U.S. employees are not being displaced or that working conditions are not being lowered)

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[15] See CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem; and CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

[16] In addition, persons with extraordinary ability in the sciences, arts, education, business, or athletics are admitted on O visas, while internationally recognized athletes or members of an internationally recognized entertainment group come on P visas. Aliens working in religious vocations enter on R visas.

[17] See CRS Report RL32861, *Farm Labor: The Adverse Effect Wage Rate (AEWR)*, by William Whittaker.

in order to obtain a visa for the transferring employee.[18] Foreign nationals obtaining B-1 business visas are not held to any labor market tests, as they must receive their salary from abroad.

Immigration Provisions in FTAs

The United States is not a signatory to any trade agreements that provide for open borders or freedom of movement of individuals among the participating countries. Although the United States has not created a common market for the movement of labor with our trading partners, there are immigration provisions in several existing FTAs[19] that spell out reciprocal terms regulating the "temporary entry of business persons." These provisions are discussed below.

Negotiators for the Uruguay Round Agreements of the General Agreement on Tariffs and Trade (GATT), completed in 1994 and known as the General Agreement on Trade in Services (GATS), included specific language on temporary professional workers. This language references §101(a)(15)(H(i)(b) of INA and commits the United States to admitting 65,000 H-1B visa holders each year under the definition of H-1B specified in GATS.[20] In addition, GATS includes very specific language on "intra-corporate transfers."[21] This language is similar but not identical to the definitions of intracompany transferee found in the regulations governing the L visa.[22]

North American Free Trade Agreement

The provisions of the North American Free Trade Agreement (NAFTA) dealing with migration among Canada, Mexico, and the United States closely tracked those of the U.S.-Canadian Free Trade Agreement of 1988. The official summary of the four categories of "business persons" who may enter the three countries temporarily and on a reciprocal basis are as follows:

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[18] Intracompany transfers from Mexico or Canada may be denied in the case of certain labor disputes. 8 CFR §214.2(l)(18).

[19] The United States currently has FTAs with Israel, Jordan, Chile, Singapore, Australia, Morocco, and (via NAFTA) with Canada and Mexico.

[20] General Agreement on Trade in Services, Uruguay Round Trade Agreements, Schedule of Specific Commitments. For legal analysis, see CRS Congressional Distribution Memorandum, *U.S. Immigration-Related Obligations Under the WTO General Agreement on Trade in Services*, by Jeanne J. Grimmett, May 12, 1998; and CRS Report RS21554, *Free Trade Agreements and the WTO Exceptions*, by Jeanne J. Grimmett and Todd Tatelman.

[21] For example, the GATS Schedule of Specific Commitments defines the specialist type of intra-corporate transferees as "persons within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's services, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions.)"

[22] 8 CFR §214.2(l)(1)(ii)).

- business visitors engaged in international business activities for the purpose of conducting activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service and other general services (B-1 visitors for business);
- traders who carry on substantial trade in goods or services between their own country and the country they wish to enter, as well as investors seeking to commit a substantial amount of capital in that country, provided that such persons are employed in a supervisory or executive capacity or one that involves essential skills (E-1 treaty traders and E-2 treaty investors);
- intracompany transferees employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country (L intracompany transferees); and
- certain categories of professionals who meet minimum educational requirements or who possess alternative credentials and who seek to engage in business activities at a professional level in that country (TN professionals under Section 214(e) of the INA).[23]

No party to NAFTA may impose numerical limits or labor market tests as a condition of entry for intracompany transferees.[24] The agreement, however, included a 10-year limitation, which expired last year, of 5,500 annually on Mexican professionals who could enter the United States under the TN category. To qualify as a TN, an alien must possess certain credentials included in a list of approximately 60 professions. An employer must certify that the alien is so qualified and is coming to a position which requires such a professional.

Chile and Singapore Free Trade Agreements

The legislation implementing the Chile and Singapore FTAs (P.L. 108-77 and P.L. 108-78, respectively) amended several sections of the INA. Foremost, the laws amended §101(a)(15)(H) of INA to carve out a portion of the H-1B visas — designated as the H-1B-1 visa — for professional workers entering through the FTAs. In many ways the FTA professional worker visa requirements parallel the H-1B visa requirements, notably having similar educational requirements. The H-1B visa, however, specifies that the occupation require *highly* specialized knowledge, while the FTA professional worker visa specifies that the occupation require only specialized knowledge.

The laws also amended §212 of INA to add a labor attestation requirement for employers bringing in potential FTA professional worker nonimmigrants that is

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[23] The "TC" professional category was added to the INA by legislation implementing the U.S.-Canada Free Trade Agreement and initially applied only to Canada. An amendment to Section 214(e) of the INA extended the TC professional provision to Mexico, making it "TN."

[24] Chapter 16, of the North American Free Trade Agreement, Annex 1603 Section C, signed Dec. 17, 1992.

similar to the H-1B labor attestation statutory requirements. The additional attestation requirements for "H-1B dependent employers" currently specified in §212 are not included in the labor attestation requirements for employers of the FTA professional worker nonimmigrants.

P.L. 108-77 contains numerical limits of 1,400 new entries under the FTA professional worker visa from Chile, and P.L. 108-78 contains a limit of 5,400 from Singapore. The laws do not limit the number of times that an alien may renew the FTA professional worker visa on an annual basis, unlike H-1B workers, who are limited to a total of six years. The laws count an FTA professional worker against the H-1B cap the first year he/she enters and again after the fifth year he/she seeks renewal. Although the foreign national holding the FTA professional worker visa remains a temporary resident who is only permitted to work for employers who meet the labor attestation requirements, the foreign national with an FTA professional worker visa may legally remain in the United States indefinitely.

In addition to the immigration provisions in the implementing law, the U.S.-Singapore Free Trade Agreement states that the United States shall not require labor certification or other similar procedures as a condition of entry and shall not impose any numerical limits on intracompany transfers from Singapore.[25] Similar language is also in the U.S.-Chile Free Trade Agreement.[26]

Australian Free Trade Agreement

The Australian FTA, signed on May 18, 2004, does not contain any explicit immigration provisions. However, the FY2005 supplemental appropriations for military operations in Iraq and Afghanistan, reconstruction in Afghanistan and other foreign aid (H.R. 1268, P.L. 109-16) includes a provision that touches on the nexus of H-1B visas and FTAs. Specifically, §501 of the legislation as reported by the conferees and enacted adds 10,500 visas for Australian nationals to perform services in specialty occupations under a new E-3 temporary visa. The Senate had adopted a provision during the floor debate on H.R. 1268 that created a new E-3 temporary visa and capped the number at 5,000 per year.[27]

Dominican Republic-Central America Free Trade Agreement

The U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) was signed on August 5, 2004, but must be approved by the legislatures of all seven countries before it becomes effective. Implementing legislation was sent to the U.S. Congress on June 23, 2005. Unlike NAFTA and the Chile and Singapore FTAs, the DR-CAFTA does not contain any explicit immigration provisions.

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[25] Chapter 11, §3 of the U.S.-Singapore Free Trade Agreement, Annex 11A, signed May 6, 2003.

[26] Chapter 14, §3 of the U.S.-Chile Free Trade Agreement, Annex 14.3, signed June 6, 2003.

[27] U.S. Congress, House, *Conference Report on H.R. 1268*, H.Rept. 109-72, May 3, 2005.

Interaction of Trade and Migration

Classical trade theory presents trade and migration as substitutes, that is, a country where labor is abundant and inexpensive is assumed to have the option of exporting either labor-intensive goods or its workers. Another construct — the multinational corporation — emphasizes the value of relocating managers and technical experts to facilitate production, which has led to the theory that trade liberalization increases the migration of knowledge-based workers. Obviously, the similarities of the economies of the trading partners (e.g., relative level of development and size of the economy) are factors that would affect the assumptions underlying any theory of the nexus between trade and migration. One analyst summed up the research on these relationships as follows:

> The question of whether trade and migration are complements or substitutes has been the focus of numerous studies, the results of which differ markedly according to the hypotheses selected. According to some authors free trade could lead to a reduction in migration flows. For others, it could have no visible effect on migration or it could bring about an increase of these flows (disruptive effect) by having a negative effect on small and medium-sized industries and by accelerating the drift from rural to urban areas.[28]

There are a variety of approaches to study the impact of trade agreements on migration, and this report draws on three of several different possible perspectives. The first explores the relationship between trade and temporary workers and business personnel among the United States' top trading partners. The second synthesizes the research on how NAFTA may have affected temporary migration of knowledge-based workers between the United States and Canada. The third analyzes possible effects of NAFTA on permanent migration from Mexico.

Trade Volume and Business-Based Temporary Admissions

The volume of trade that the United States has with its top trading partners correlates with the number of times foreign nationals from these countries enter the United States.[29] This positive relationship holds whether analyzing total nonimmigrant admissions or only those foreign nationals entering with the business-based visas discussed above (E, H, L and TN visas).[30] As **Table 1** details, the rankings of the top trading partners by total trade and by the number of their nationals entering with the business-based visas, while not identical, are similar. The relationship also appears when analyzing the alien admissions data with the balance of trade data.

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[28] Lawrence Assous, "Regional Integration and Migration Flows: A Critical Review of Recent Literature," *Globalisation, Migration and Development*, OECD, 2000.

[29] The author analyzed 2004 data on trade and nonimmigrant admissions for the 34 countries listed in **Table 1**. The findings presented in this portion of the report are statistically significant (based on Pearson correlation coefficients ranging from 0.95 to 0.98).

[30] For more detailed data, see **Appendix A** at the end of this report.

Table 1. Comparative 2004 Rankings of Top U.S. Trading Partners and Entries of Persons with E, H, L and TN Visas

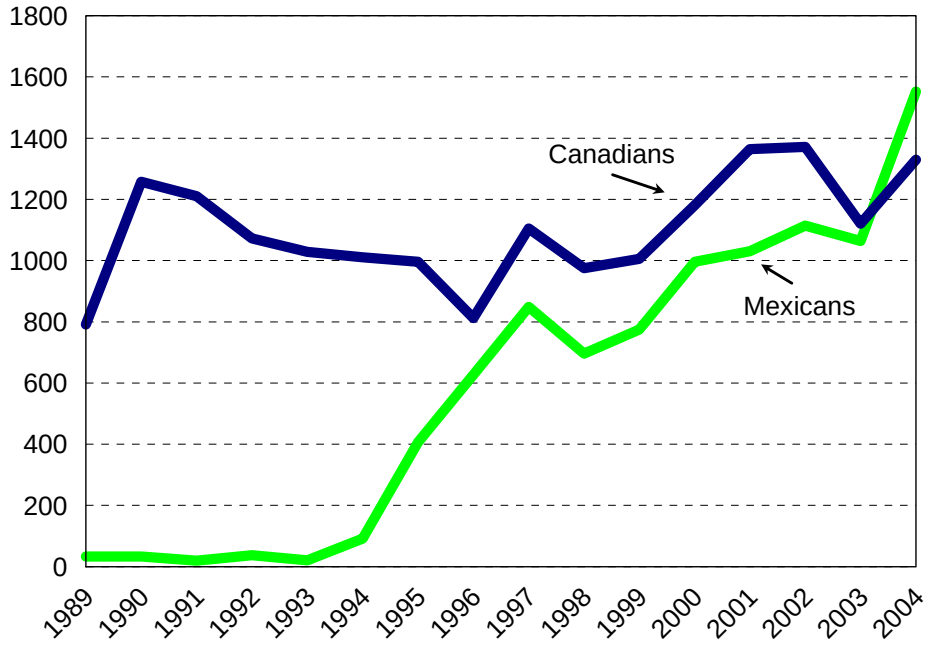
Total trade in U.S. dollars			Entries with E, H, L or TN visas		
Rank	**Country**	**Dollars (millions)**	**Rank**	**Country**	**Entries**
1	Canada	446,091	1	Mexico	133,427
2	Mexico	266,618	2	Canada	126,295
3	China	231,420	3	Japan	118,441
4	Japan	183,995	4	United Kingdom	117,303
5	Germany	108,617	5	India	111,355
6	United Kingdom	82,362	6	Thailand	104,642
7	Korea (South)	72,496	7	Germany	62,193
8	Taiwan	56,348	8	France	46,817
9	France	53,054	9	Korea (South)	28,940
10	Malaysia	39,082	10	China	26,477
11	Italy	38,800	11	Venezuela	24,028
12	Netherlands	36,891	12	Australia	23,434
13	Ireland	35,608	13	Brazil	22,954
14	Brazil	35,020	14	Colombia	21,507
15	Singapore	34,907	15	Italy	19,636
16	Venezuela	29,744	16	Netherlands	16,059
17	Belgium	29,325	17	Israel	15,593
18	Saudi Arabia	26,169	18	Spain	15,124
19	Hong Kong	25,123	19	Ireland	11,821
20	Thailand	23,940	20	Sweden	10,067
21	Israel	23,725	21	Philippines	9,751
22	Australia	21,815	22	South Africa	9,613
23	India	21,657	23	Russia	8,369
24	Switzerland	20,911	24	Switzerland	8,229
25	Nigeria	17,798	25	Belgium	6,795
26	Philippines	16,216	26	Malaysia	4,039
27	Sweden	15,952	27	Singapore	3,715
28	Russia	14,806	28	Hong Kong	2,588
29	Spain	14,116	29	Nigeria	1,873
30	Indonesia	13,480	30	Indonesia	1,621
31	Colombia	11,794	31	Saudi Arabia	256
32	Iraq	9,371	32	Iraq	6
33	South Africa	9,116	33	Taiwan	(in China)
	World	**2,289,573**		**World**	**1,181,799**

Source: Table 6 in CRS Issue Brief IB96038, *U.S. International Trade: Data and Forecasts*, by Dick K. Nanto and Thomas Lum; and temporary admissions data from DHS Office of Immigration Statistics, Yearbook of Immigration Statistics: 2004.

Note: Trade data presented as millions of U.S. dollars, customs basis.

This strong positive relationship between trade and temporary admissions appears to exist regardless of whether the United States has an FTA with the country. The specific relationship that one would expect between FTAs and the issuance of E visas for treaty traders and investors, however, is clearly illustrated in the growing use of E visas by foreign nationals from the United States' top trading partners and NAFTA signators — Canada and Mexico. As **Figure 1** illustrates, issuances of the E visas by the State Department to nationals of both countries accelerated as soon as the FTAs were implemented in 1989 and 1994, respectively. In 2004, U.S. issuances of E visas to Mexicans exceeded Canadian issuances for the first time.

Figure 1. Issuances of E Visas to Treaty Traders and Investors from Canada and Mexico, FY1989-FY2004



Source: CRS analysis of data from the Visa Office, Bureau of Consular Affairs, U.S. Department of State.

NAFTA: A Canadian Illustration

When Canada and the United States implemented an FTA in 1989, some Canadian policy makers expressed concern that the trade liberalization between the two nations would trigger a "brain drain" of knowledge-based workers from Canada. Others argued that the migration of professional and managerial workers is fundamental to economic integration, and that U.S. professional and managerial workers would likewise migrate to Canada. While some feared that labor flows would be economically damaging to Canada, others speculated that it would benefit Canada in the long run when these temporary workers returned to Canada with additional professional and technical skills acquired in the United States. The core migration questions were whether the FTA would stimulate the flow of professional workers to the United States and whether these workers returned or became permanent residents of the United States.

Ten years after the implementation of the Canada-United States FTA, the Canadian government asked a group of experts to assess its effects, and one of these research studies found that the migration of skilled workers increased during this time. In particular, Professor Steven Globerman, currently the Director of the Center for International Business at Western Washington University, reported that the number of Canadian professionals coming to the United States on TC/TN visas increased by approximately 3,000 to 4,000 visas each year over the period studied. Globerman noted that professional workers from the United States were emigrating to Canada in higher numbers, though at a slower rate than their Canadian counterparts. Globerman also found an increase in bilateral flows of L intracompany transfers.[31]

Figure 2 illustrates the upward trends in the temporary migration of all business and professional workers that Globerman observed between the United States and Canada during the years that followed the entry into force of the Canada-United States FTA. The data depicted in **Figure 2** include intracompany transferees, traders and investors as well as professional workers.[32]

When Globerman analyzed permanent migration flows between the two countries, he found that the patterns of permanent migration had been fairly consistent during the 1980s and 1990s. Globerman concluded that the trade liberalization *per se* had little impact on permanent migration between the United States and Canada. Although the magnitude of the permanent flow did not meaningfully change, the composition of the immigration did appear to change somewhat. Specifically, Globerman found some evidence that professional and managerial workers comprised a larger share of the immigration to the United States and a smaller share of the emigration from the United States over the period studied compared with the previous period.[33]

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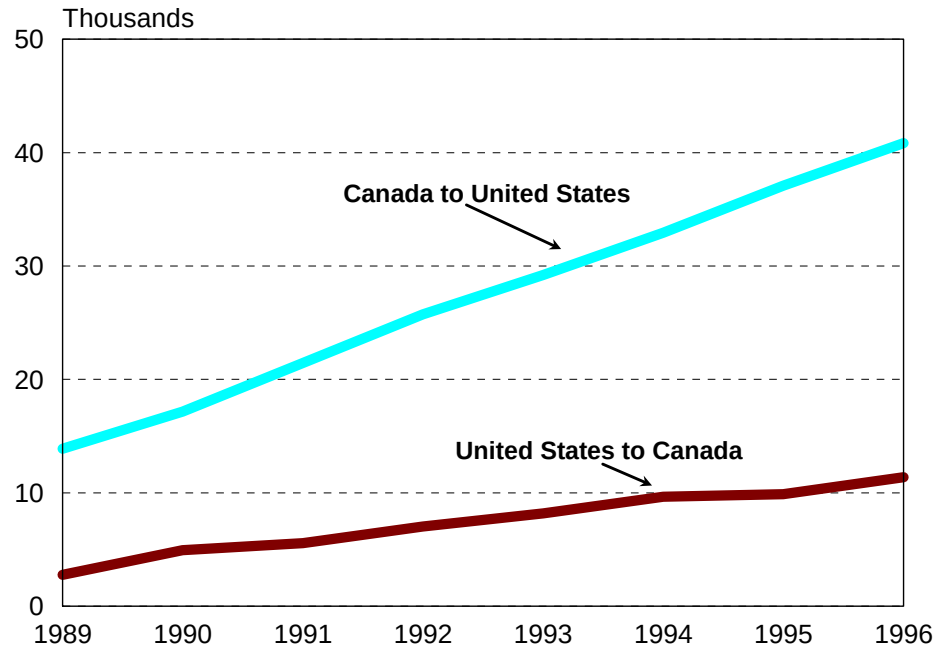
[31] Steven Globerman, *Trade Liberalism and the Migration of Skilled Workers*, Perspectives on North American Free Trade Series No. 3, Industry Canada Research Publications, Apr. 1999. (Hereafter cited as Globerman, *Trade Liberalism and the Migration of Skilled Workers*).

[32] Ibid.

[33] Ibid.

Figure 2. Temporary Migration of Business and Professional Workers between United States and Canada, 1989-1996



Source: CRS presentation of data from Steven Globerman (1999).

NAFTA: A Mexican Illustration

During the debate over NAFTA, some asserted that the agreement would reduce unwanted migration (typically expressed as illegal aliens) from Mexico. They based this argument on the assumption that the NAFTA would bolster the Mexican economy, thereby improving employment opportunities. The result, some theorized, was that NAFTA would reduce the "push-pull" forces that draw workers from less developed countries to more developed countries because of better economic prospects. This view was presented by the U.S. International Trade Commission in its 1991 report to the House Ways and Means and the Senate Finance Committees:

> An FTA is likely to decrease slightly the gap between real United States wages and Mexican wages of both skilled and unskilled workers combined, but a greater share of the wage adjustment would occur in Mexico than in the United States. As wage differentials between the United States and Mexico narrow, the incentive for migration from Mexico to the United States will decline.[34]

Others asserted that NAFTA would stimulate unwanted migration from Mexico. This argument stemmed from the view that the NAFTA would destablize the Mexican economy as it tries to compete in a free market, dislocating many workers

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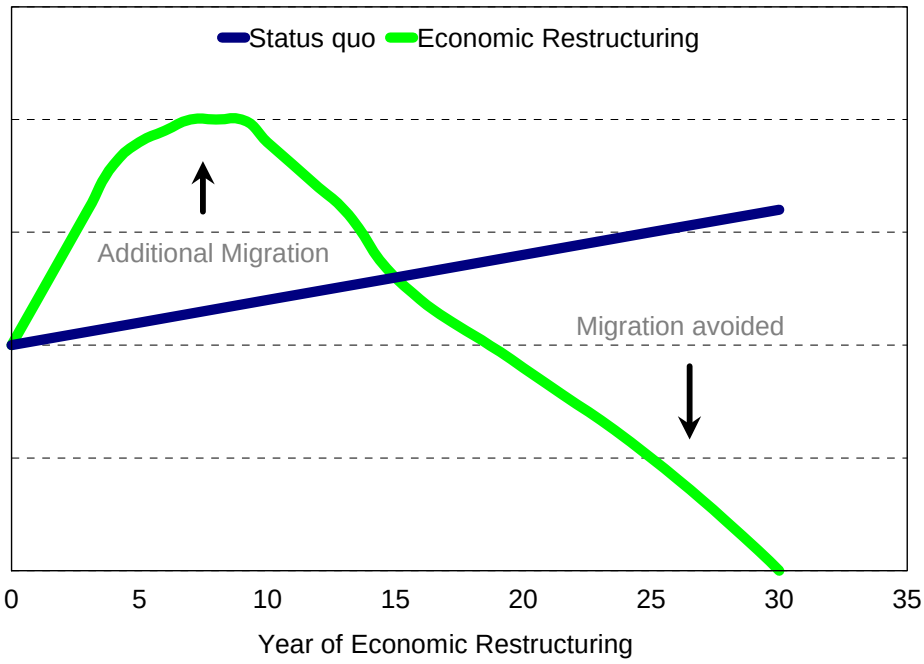
[34] United States International Trade Commission, *The Likely Impact on the United States of a Free Trade Agreement with Mexico*, USITC Publication 2353, Feb. 1991, p. viii.

and farmers. The result, some theorized, was that — once these workers and farmers were uprooted — they would be forced to seek new employment opportunities and ultimately many would migrate to the United States.

These issues were weighed by the Commission for the Study of International Migration and Cooperative Economic Development (International Migration Commission) that Congress established in 1986 to examine the "push" factors in the major source countries for illegal migration. Although the International Migration Commission specifically recommended a U.S.-Mexican free trade agreement in its 1990 report, it stated that expanded trade and development was a long-term solution to the problem of unauthorized migration. It noted a major paradox: "[T]he development process itself tends to stimulate migration in the short to medium term by raising expectations and enhancing people's ability to migrate. Thus, the development solution to unauthorized migration is measured in decades — even generations."[35]

Figure 3. Theorized Model of Relationship Between NAFTA and Immigration to the United States from Mexico



Source: CRS depiction of migration model developed by Phillip Martin (1993, 2002)

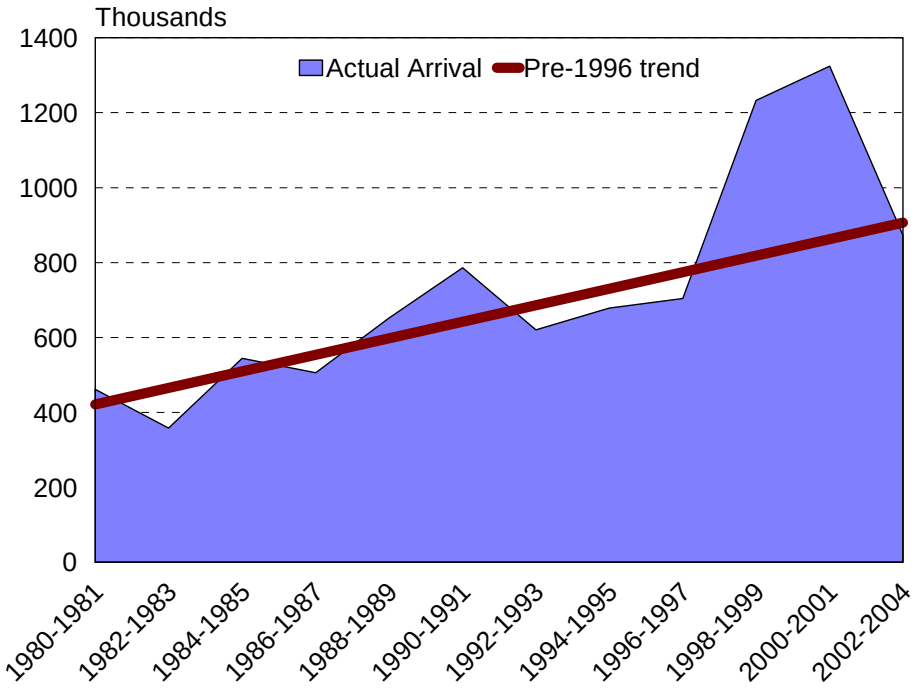
One widely discussed model, referred to as the "migration hump," incorporated these perspectives. Professor Philip Martin, chair of the Comparative Immigration and Integration Program at the University of California-Davis, proposed this migration model, depicted in **Figure 3**, during the debate on NAFTA in the early

[35] Commission for the Study of International Migration and Cooperative Economic Development, *Unauthorized Migration: An Economic Development Response*, July 1990, p. xxxvi.

1990s. Martin theorized that migration would initially increase in the years immediately following the implementation of NAFTA and subsequently it would diminish. Martin predicted that migration levels would be at the point they would have been without NAFTA after about 15 years, and that over the course of 30 years migration would be at much lower levels.[36] In 2002, Philip Martin concluded "that NAFTA will reduce unwanted Mexico-US migration in the medium to long term, as trade becomes a substitute for migration."[37]

While there are no data that accurately measure the annual flow of all migrants from Mexico to the United States, the March Supplement of the Current Population Survey offers limited data on migration by year of arrival. The CPS is a sample of all persons living in the United States and, thus, includes unauthorized aliens, long-term nonimmigrants, and legal permanent residents, as well as U.S. citizens. Specifically, the CPS asks foreign-born residents: "When did you come to the U.S. to stay?" The CPS data represent a sample of those foreign born who remain in the United States. The data understate the earlier (pre-1996) migration trend because of the emigration and death of earlier migrants. As a result, the slope of the trend line depicted in **Figure 4** is biased upward.

Figure 4. Estimated Mexican-Born Residents of the United States by Reported Year of Arrival, 1980-2004



Source: CRS analysis of the March 2004 Supplement of the Current Population Survey.

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[36] Philip Martin, *Trade and Migration: NAFTA and Agriculture*, Institute for International Economics, 1993.

[37] Philip Martin, *Economic Integration and Migration: The Mexico-US Case*, prepared for the United Nations University World Institute for Development Economics Research Conference, Sept. 2002. (Hereafter cited as Martin, *Economic Integration and Migration*.)

As **Figure 4** illustrates, the number of Mexican-born residents of the United States who report that they came after 1995 (NAFTA went into force in October 1994) is substantial and resembles the "migration hump" that Philip Martin predicted. It would be naive, however, to not acknowledge the importance of other factors in shaping this surge. The dramatic drop in the value of the *peso* in 1995, for example, is often cited as a major "push" determinant in out-migration from Mexico. The growth of jobs in the U.S. economy during the mid- and late-1990s was an obvious "pull" variable.

Another factor that may have contributed to the increase in Mexican residents is a change in the INA provisions on legal permanent admission that now allows 75% of Mexicans coming as spouses and children of legal permanent residents (LPRs) to exceed the per-country ceiling set by law.[38] Immediate relatives[39] of U.S. citizens, moreover, are exempt from direct numerical limits. As a result, Mexico consistently ranks as the top LPR sending country, with 206,426 (19.4%) in 2001, 219,380 (20.6%) in 2002 and 115,864 (16.4%) in 2003.[40]

In terms of illegal migration, the research points to a constellation of factors that has contributed to the increase in unauthorized resident aliens, many of whom (an estimated 57%) are from Mexico. Historically, unauthorized migration is generally attributed to the "push-pull" of prosperity-fueled job opportunities in the United States in contrast to limited or nonexistent job opportunities in the sending countries.[41] Some observers maintain that lax enforcement of employer sanctions for hiring unauthorized aliens has facilitated this "push-pull," but it is difficult to empirically demonstrate this element. Although most policy makers have assumed that tighter border enforcement would reduce unauthorized migration, some researchers are now suggesting that the strengthening of the immigration enforcement provisions, most notably by the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), may have inadvertently *increased* the population of unauthorized resident aliens. This perspective argues that IIRIRA's increased penalties for illegal entry coupled with increased resources for border enforcement have raised the stakes in crossing the border illegally and created an incentive for those who succeed in entering the United States to stay.[42]

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[38] Section 202(a)(2) of the INA (8 U.S.C. 1151) establishes per-country levels at 7% of the worldwide level. In FY2003, the per-country ceiling was set at 27,827 and in FY2002 was 25,804.

[39] "Immediate relatives" are defined by the INA to include the spouses and unmarried minor children of U.S. citizens, and the parents of adult U.S. citizens.

[40] For analysis of immigration admissions categories and numerical limits, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

[41] For a discussion on estimates of how many unauthorized aliens are currently in the U.S. workforce, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno, pp. 6-7. For trends in apprehensions of unauthorized aliens, see CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

[42] For trends in unauthorized alien migration, see CRS Report RS21938, *Unauthorized* (continued...)

Another caveat to consider before embracing the "migration hump" model is that *all* migration to the United States dropped sharply immediately after the September 11, 2001 terrorist attacks (see **Appendix B** for trends in non-Mexican foreign-born residents). Post-September 11 revisions of immigration law and procedures have slowed down the processing of immigrant petitions and visas. The United States' economic recession in 2001 and initially slow rebound, moreover, may have also slowed down migration.

Migration Trends: Countries of DR-CAFTA

When Congress considered the DR-CAFTA implementing legislation, migration trends from these nations arose as an issue.[43] There are several important differences between the migration patterns of the DR-CAFTA countries and Mexico that would bear on any predictions or models.

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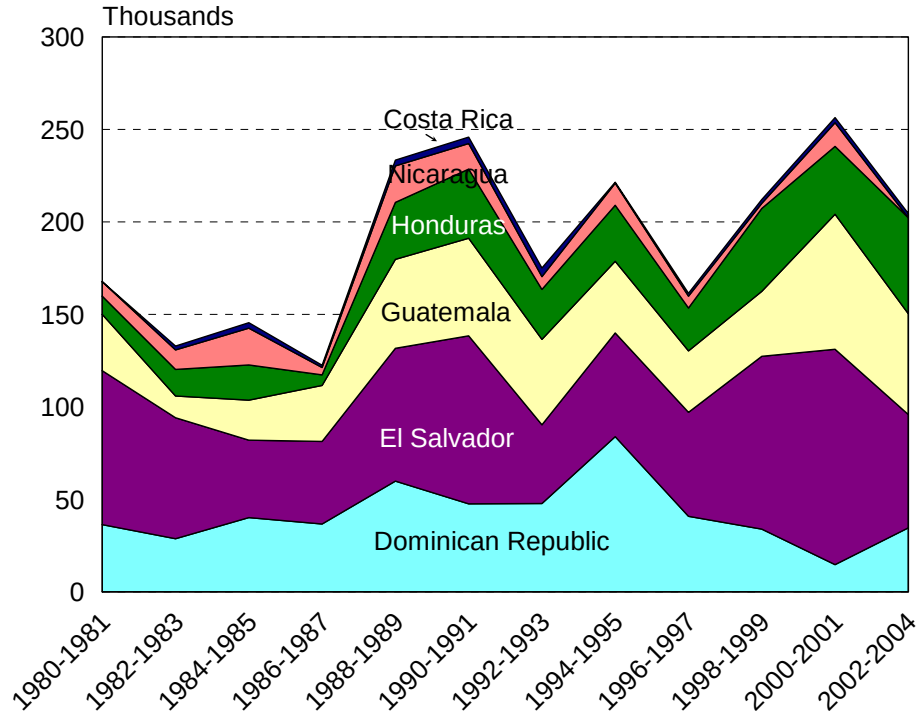
[42] (...continued)
Aliens in the United States: Estimates Since 1986, by Ruth Ellen Wasem. For analysis of the IIRIRA's effect on unauthorized alien residents, see Wayne Cornelius, "Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy," *Population and Development Review*, vol. 27, no. 4, Dec. 2001.

[43] For complete discussion and analysis of DR-CAFTA, see CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA)*, by J. F. Hornbeck; and CRS Report RL32322, *Central America and the Dominican Republic in the Context of the Free Trade Agreement (DR-CAFTA) with the United States*, coordinated by K. Larry Storrs.

Figure 5. Estimated Costa Rican, Nicaraguan, Honduran, Guatemalan, Salvadoran, and Dominican-Born Residents of the United States by Reported Year of Arrival, 1980-2004



Source: CRS analysis of the March 2004 Supplement of the Current Population Survey.

Foremost, even when viewed as the total of all six countries, as **Figure 5** depicts, migration from the DR-CAFTA countries is historically much smaller than that from Mexico. In 2004, the number of foreign-born U.S. residents from the DR-CAFTA countries was 2.7 million compared to 10.7 million foreign-born U.S. residents from Mexico. Migration from Costa Rica has been so small that there was an estimate of only 53,000 Costa Rican-born residents in 2004.

Secondly, migration from the DR-CAFTA countries has fluctuated over the past several decades. These fluctuations are largely due to a variety of factors, including political instability, civil violence, and natural disasters that have affected several of these countries.

Selected Policy Questions

The issues of trade and immigration generate a considerable number of policy questions and legislative issues, most of which have no direct bearing on the other,[44] yet there are policy questions that arise at the nexus of immigration and trade. This

[44] For full discussions of the range of these issues, go to the CRS Current Legislative Issues web pages on the CRS website at [http://beta.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=69] and [http://beta.crs.gov/cli/level_2.aspx?PRDS_CLI_ITEM_ID=23].

report concludes with three common policy questions and summaries of the competing answers.

Should FTAs Expressly Expand Immigration Avenues?

Some have expressed concern that FTAs, most recently the Chile and Singapore FTAs, included language that liberalized immigration law on temporary professional workers and bars the United States from future statutory changes to H-1B visas as well as other temporary business and worker nonimmigrant categories.[45] Some asserted that the Office of the U.S. Trade Representative (USTR) overstepped its authority by negotiating immigration provisions in FTAs and voiced opposition to trade agreements that purportedly prevent Congress from revising immigration law on temporary professional nonimmigrants. Some expressed concern that professional workers from Chile and Singapore are held to a less stringent standard than existing H-1B law as a result of the recent FTAs.[46]

Proponents of these trade agreements argue that they are merely reflecting current immigration law and policy, and that the movement of people is subsumed under the broader category of "provision of services" and thus an inherent part of any free trade agreement. Such agreements on the flow of business people and workers, they maintain, are essential to U.S. economic growth and business vitality. The USTR states that the labor attestations, education and training fees, and numerical limits provisions have been added to the FTAs in response to congressional concerns. The USTR further argues that the temporary business personnel provisions in the FTAs are not immigration policy because they only affect temporary entry.[47]

This question has become one of the most controversial issues at this stage of the negotiations in services that the World Trade Organization (WTO) are engaged in now in the "round" of negotiations called the Doha Development Agenda. Several developing countries have criticized the visa restrictions placed on temporary workers entering the United States, particularly workers not directly affiliated with companies located in the United States and have also called for greater transparency of U.S. immigration policy on the temporary entry of personnel. The U.S. business community maintains that the United States needs to be more flexible in its offers, arguing that not doing so prevents the United States from obtaining useful commitments from developing countries.[48] In a May 2005 letter to the new USTR Rob Portman, the then-Chairman and Ranking Member of the House Judiciary Committee (Representative F. James Sensenbrenner, Jr. and Representative John

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[45] For example, if amendments to the INA altered the professional qualifications for an H-1B visa, they might be ruled in violation of trade agreements if the changes raised the standards.

[46] For examples of these perspectives, see H.Rept. 108-224, Part 2, *United States-Chile Free Trade Agreement Implementation Act*, 2003.

[47] For examples of these views, see U.S. Congress, Senate Judiciary, *Proposed United States-Chile and United States-Singapore Free Trade Agreements with Chile and Singapore*, July 14, 2003.

[48] For a full discussion of these talks, see CRS Report RL3308, *Trade in Services: The Doha Development Agenda Negotiations and U.S. Goal*, by William H. Cooper.

Conyers, Jr., respectively) asked the USTR to pledge, "not to negotiate immigration .... provisions in bilateral or multilateral trade agreements that require changes in United States law."[49]

Should Immigration Control Be a Condition for FTAs?

Arising initially in the context of NAFTA and Mexico, some have advocated hinging FTAs on bilateral agreements on stronger immigration enforcement.[50] Some proponents of this view argue the immigrant-sending countries that are parties to the agreement should agree to measures that curb the flow of migrants to the United States, while others maintain that the agreements should include strict numerical limits on the numbers of migrants who can enter the United States. More recently, some opine that FTAs should include immigration enforcement measures aimed at human trafficking and smuggling as well as terrorist tracking.[51]

Others argue that negotiating bilateral and multilateral immigration enforcement measures is not the appropriate role of the USTR and is best done by other federal departments and agencies, such as the Departments of Homeland Security and State. Some refer to Congress' primary role in setting U.S. immigration policy and a longstanding preference to have country-neutral immigration policies as further grounds to oppose inclusion of immigration enforcement provisions in FTAs.[52]

Should FTAs Be Considered a Policy Response to Reduce Illegal Migration?

Some express the view that FTAs are an important policy option to reduce unauthorized migration. In the debate over DR-CAFTA, for example, some called the agreement "good immigration policy." Proponents argue that trade liberalization will improve the economies in the migrant-sending countries and reduce the "push"

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[49] Letter to USTR Robert Portman from Representative F. James Sensenbrenner, Jr. and Representative John Conyers, Jr, dated May 19, 2005. It is publically available in *Inside U.S. Trade*, May 27, 2005.

[50] The Federation for American Immigration Reform (FAIR), an organization which favors increased restrictions on immigration, criticized "the lack of any mention of illegal immigration" as the most significant omission in NAFTA. Quoting further, "NAFTA is about business and labor; illegal immigration is the focal point of our labor relationship with Mexico." FAIR argued that "explicit bilateral cooperation on immigration must be part of any trade agreement with Mexico," stating without further explanation that "the agreement will lure immigrants to the border, increasing the potential number of illegal immigrants to the U.S.," *Free Trade Agreement Ignores Key Immigration Link*, FAIR Immigration Report, Sept./Oct. 1992.

[51] For an additional example of these arguments, see Jessica Vaughan, "Trade Agreements and Immigration," *In the National Interest*, Apr. 13, 2004, available online at [http://www.cis.org/articles/2004/jessicaoped041304.html].

[52] For examples of the approach, see White House Office of the Press Secretary, *Fact Sheet: Security and Prosperity Partnership of North America*, Mar. 23, 2005.

factors that foster unwanted migration. As the workers' employment opportunities improve at home, they maintain, the workers will be less motivated to migrate.[53]

Others maintain that, while this theory may prove true in the long run, FTAs are more likely to trigger new migration, some of it illegal, for at least a generation. They assert that this additional migration, whether temporary or permanent, will take root and stimulate the traditional flows of family-based immigration to the United States. Some argue that FTAs should be evaluated on the particular terms of the agreement and not on their potential effects on unauthorized migration.[54]

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[53] For examples of these views, see "Statement by President George W. Bush on the Central American and Dominican Republic Free Trade Agreement," Washington, June 23, 2005 available at [http://geneva.usmission.gov/Press2005/0623BushonCAFTA.htm]; and U.S. Congress, House Committee on Ways and Means, *Exchange of Letters on Issues Concerning the Negotiation of a North American Free Trade Agreement*, committee print, 102d Cong., 1st sess., May 1, 1991, WMCP 102-10 (Washington: GPO, May 1, 1991).

[54] For examples of these perspectives, see Martin, *Economic Integration and Migration*; Jessica Vaughan, *Be Our Guest: Trade Agreements and Visas*, Center for Immigration Studies, Dec. 2003; and Robert Manning, *Five Years After NAFTA: Rhetoric and Reality of Mexican Immigration in the 21st Century*, Mar. 2000.

Appendix A. Selected Trade and Admissions Data for Top U.S. Trading Partners, 2004

(millions of U.S. dollars, Customs Basis)

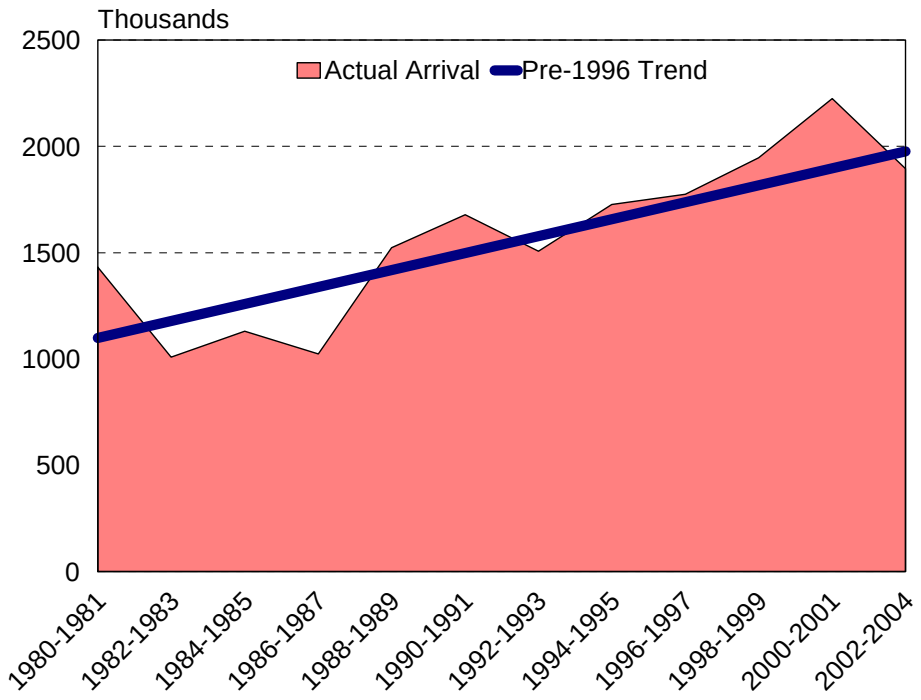
Country	Balance of Trade	Total Trade	Entries with E, H, L and TN Visas	Total Entries (Nonimmigrant)
Australia	6,727	21,815	23,434	645,234
Belgium	4,428	29,325	6,795	208,754
Brazil	-7,294	35,020	22,954	534,163
Canada	-65,765	446,091	126,295	238,897
China	-161,978	231,420	26,477	687,148
Colombia	-2,785	11,794	21,507	394,152
France	-10,574	53,054	46,817	1,241,511
Germany	-45,855	108,617	62,193	1,630,247
Hong Kong	6,496	25,123	2,588	81,237
India	-9,467	21,657	111,355	611,327
Indonesia	-8,142	13,480	1,621	72,859
Iraq	-7,658	9,371	68	2,041
Ireland	-19,276	35,608	11,821	428,209
Israel	-5,329	23,725	15,593	337,513
Italy	-17,378	38,800	19,636	759,895
Japan	-75,194	183,995	118,441	4,335,975
Korea (South)	-19,829	72,496	28,940	829,031
Malaysia	-17,288	39,082	4,039	68,712
Mexico	-45,068	266,618	133,427	4,454,061
Netherlands	11,682	36,891	16,059	607,110
Nigeria	-14,694	17,798	1,873	61,550
Philippines	-2,072	16,216	9,751	266,840
Russia	-8,889	14,806	8,369	121,774
Saudi Arabia	-15,678	26,169	256	16,091
Singapore	4,295	34,907	3,715	98,849
South Africa	-2,772	9,116	9,613	111,563
Spain	-835	14,116	15,124	542,733
Sweden	-9,421	15,952	10,067	307,827
Switzerland	-2,374	20,911	8,229	276,433
Taiwan	-12,886	56,348	(in China)	(in China)
Thailand	-11,214	23,940	104,642	82,205
United Kingdom	-10,442	82,362	117,303	4,996,211
Venezuela	-20,181	29,744	24,028	363,962
World totals	-651,521	2,289,573	1,181,799	30,781,330

Source: Table 6 in CRS Issue Brief IB96038, *U.S. International Trade: Data and Forecasts*, by Dick K. Nanto and Thomas Lum; and temporary admissions data from DHS Office of Immigration Statistics, Yearbook of Immigration Statistics: 2004.

Appendix B. Year of Arrival for Non-Mexican Foreign-Born Residents

The March Supplement of the Current Population Survey offers limited data on migration by year of arrival. The CPS is a representative sample of all persons living in the United States and, thus, includes unauthorized aliens, long-term nonimmigrants, and legal permanent residents, as well as U.S. citizens. Specifically, the CPS asks foreign-born residents: "When did you come to the U.S. to stay?" The CPS data represent a sample of those foreign born who still remain in the United States as of March 2004. The data understate the earlier migration trend because of the emigration and death of earlier migrants. As a result, the slope of the trend line depicted in **Figure 6** is biased upward.

Figure 6. Estimated Non-Mexican Foreign-Born Residents of the United States by Reported Year of Arrival, 1980-2004



Source: CRS analysis of the March 2004 Supplement of the Current Population Survey.

As **Figure 6** illustrates, the estimated number of non-Mexican foreign-born residents of the United States who report that they came after 1995 tracks fairly closely to the trend line based upon the numbers who came prior to 1996. Migration to the United States dropped sharply after the September 11, 2001 terrorist attacks. Post-September 11 revisions of immigration law and procedures have slowed down the processing of immigrant petitions and visas. The United States' economic recession in 2001 and initially slow recovery, moreover, may have also slowed down migration.