



# Immigration Monthly

**November 2005**

- **You Can't Have One Without The Other: Immigration, Trade and Why America Needs Both** by *Gary Endelman*
- **New book: Child Status Protection Act** from *CLINIC*
- **The PERM Workshop - New York City: Dec 7<sup>th</sup>, 2005**

## **You Can't Have One Without The Other: Immigration, Trade and Why America Needs Both** By *Gary Endelman*

Trade and Immigration are joined at the hip. They are a package. If America wants one, it must take the other. Those who reject both are wrong but consistent. Those who do not recognize the synergy between trade and immigration, who operate under the mistaken assumption that we can trade with the world but hide behind a Fortress America, must be made to understand the consequences of their approach. But, this is not a message for America alone. It needs to be heard in Bangalore as well as Boston. Those nations who want immigration concessions from the United States, but are unwilling or unable to abandon protectionist-trading policies, had better think again. The dream of coming to America should no longer be given away for nothing. Just as America needs economic cooperation, so do those countries whose citizens are desperate to get

visas. We can trade with them in a way that benefits all concerned, or we can close the Golden Door if they do not honor their commercial agreements with us. It is their choice. And ours.

Goods, services and people are cascading into the United States in record numbers, yet Americans continue to be conflicted about both trade and immigration. Loss of jobs, loss of cultural identity and loss of national sovereignty are staples of talk radio and television debate. In the current issue of *Foreign Affairs* magazine, a survey conducted by Public Agenda, with major funding from the Ford Foundation, revealed that more than half (53%) of Americans gave international agreements a grade of "C" or worse. See [http://www.foreignaffairs.org/public\\_agenda/report](http://www.foreignaffairs.org/public_agenda/report). In an April 13, 2004 article for the Center for Immigration Studies entitled "Trade Agreements and Immigration," Jessica Vaughan bemoans our trade commitments as a "one-way boulevard with few exits, moving toward wide-open access for foreign workers and the companies who hire them, under terms dictated by an international organization rather than our own democratically-evolving immigration laws." See <http://www.cis.org/articles/2004/jessicaoped041304.html>.

The level of concern prompted Congress to ask the Congressional Research Service to examine the whole topic this past July. See *CRS Report RL32982, Immigration Issues in Trade Agreements* by Ruth Ellen Wassem (July 8, 2005).

Those who call for more immigration tend to discount these fears, while those wanting to close the Golden Door discount the importance of global forces on what they regard as purely a domestic issue. The choice as normally put seems a stark one: Either we have to let everyone in or close up shop and wall off our economy from the rest of the world. Is there a third way? Is it possible, one wonders, to find common ground where America can have both trade and immigration in a way that enhances our ability to promote core objectives? Let's find out.

Trade remains the mother's milk of the US economy. In 1998, for example, Americans farmers exported \$54 billion in products, more than 24% of their income, to hungry consumers in other countries.

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The American Farm Bureau Federation endorsed the Central American Free Trade Agreement (CAFTA) because it felt that this pact would result in \$1.5 billion in new US agricultural exports to this growing market. The National Council of Textile Organizations, traditionally hostile to such trade agreements, also backed CAFTA in the hope that US fabrics and yarns could be sent duty-free to Central American producers, thus enabling American companies to remain competitive with cheap Chinese goods. By 2000, the CATO Institute estimated that two-way trade accounted for over 25% of the gross domestic product, a new record. American computer makers could not survive without access to inexpensive foreign peripherals that go into their final products. Open up your PC and you may be surprised to find motherboards from one country, disk drives from a second and semiconductors from a third. Moreover, there is a direct connection between falling unemployment and rising imports. In a stunningly insightful essay called "WTO Report Card: America's Economic Stake in Open Trade", Daniel Griswold, associate director of the Cato Institute's Center for Trade Policy Studies, explains the nexus:

"Since 1973, the unemployment rate has tended to fall more rapidly in years with strong import growth and to rise in years when import growth was weak or negative. In fact, every percentage point increase in the rate of import growth during that period is associated with a 0.1 point drop in the unemployment rate ... **Since 1973, there has not been a single year in which falling imports have been associated with a falling unemployment rate ...**" (emphasis added) (August 3, 2000).

Despite loud fears to the contrary, capital has not left the United States for low wage markets elsewhere; indeed, this country's political stability and economic vibrancy continue to make it the investment of choice for central banks and venture capitalists. Now, as never before, the future of America remains inextricably linked with the secure and unimpeded flow of goods, capital and services across national boundaries.

The facts do not support the notion that international trade requires a surrender of US sovereignty. The World Trade Organization has no power of enforcement against any member state. It lacks the ability to levy fines or impose sanctions. No taxes flow from its decrees. It cannot compel a change in national law. Under the WTO Charter, any nation can restrict trade for reasons of national security. This happened, for example, in 1985 when the United States imposed an embargo against Nicaragua and again in 1996 when the Helms-Burton Act allowed US citizens whose property had been seized by Fidel Castro since 1959 to sue for return in US courts. Both times, the WTO disapproved and both times US policy remained the same. Like all WTO members, the United States can veto any WTO settlement of which it disapproves nor can any WTO decision take effect without enabling legislation from Congress. Do not forget that it is not only other countries who complain at the WTO about policies they find to be contrary to their national interest. In the first

five years after the WTO was created, 1995-1999, the US lodged 49 requests for consultation against other nations. 25 of those cases were resolved, with the WTO ruling going in Uncle Sam's favor 23 times, including a case that forced India to remove import bans and quota restrictions on 2,700 categories of products, thereby opening up its consumer, farm product, petrochemical and high-tech markets to US exports. See "WTO Report Card II: An Exercise or Surrender of National Sovereignty," by William H. Lash III and Daniel T. Griswold (*Cato Institute May 4, 2000*). Sometimes it helps to have the WTO around. The WTO came in rather handy when it upheld Washington's right to collect \$5 billion in duties that Uncle Sam levied on Canadian software lumber exporters. Believe it or not, in order to support the American position, the WTO had to part company with a special NAFTA panel that had earlier backed the Canadian demand for a refund. Not surprisingly, when confronted with the NAFTA ruling, the Bush Administration did what major powers always do in such situations- they just said no and continued to operate as they always had. "US Gets Lift in Lumber Fight with Canada" by Ian Austen and Clifford Krauss. NY Times, August 31, 2005. Business Section C, p6. [www.nytimes.com/2005/08/31/business/worldbusiness/31trade.html](http://www.nytimes.com/2005/08/31/business/worldbusiness/31trade.html)

Well, if it is not the WTO, what is making us so antsy? Maybe, there are immigration give-aways in the trade agreements themselves. It is true that NAFTA and the Singapore/Chile trade pacts both created new visa options that Congress had not approved first. When Congress looked at the Singapore and Chile Free Trade Agreements and found this out, both sides of the aisle went nuts. House Judiciary Committee Chair James Sensenbrenner (R-WI) exacted a promise from the Administration that this would never happen again and it has not. CAFTA has nothing about immigration in it; all CAFTA signatories, including the USA, signed a "side letter" on August 5, 2004 that states explicitly "No provision of the Agreement shall be construed to impose any obligation on a Party regarding its immigration measures." While critics may scoff at such assurances and deem them to be of inferior status, it is the official view of the Office of the United States Trade Representative that this side letter is legally binding and must be taken into account by any international tribunal interpreting CAFTA. <http://www.ustr.gov> (CAFTA Policy Brief-June 2005). In the case of the Aussies, it was Congress that created the special E-3 visa *after the FTA went into effect*.

So, if we need to trade, the WTO is not Darth Vader, and there is no secret sell-out in the trade agreements themselves, what is the deal? Two reasons for our national unease come to mind. First, the value of trade to the American public is not well presented or readily understood. The media outcry against cheap imports rarely points out that the burden of a protectionist trade policy would fall disproportionately on the poor and elderly who spend a larger slice of their meager incomes on food, clothing and other essentials. How often have the Lou Dobbs restrictionists mention the number of US jobs created by foreign investment or the extent to which such investment has modernized

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- "Joel Stewart is outstanding and is a walking encyclopedia. He is so clear and smart and intelligent –he makes me forget I have been studying since 9 am and it is now 4:30 pm!" - Gabriela Kreutzer, Law Offices of Gabriela Kreutzer, Los Angeles, CA
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American's manufacturing infrastructure, thereby enhancing productivity and keeping good paying jobs at home? Second, in a post-9/11 world, threats by rising third world economic giants to shut their markets to US exports if we do not liberalize our immigration policies only serve to stoke nativist sentiments on the part of unemployed, underemployed or at-risk US workers who are bewildered by their predicament and looking for someone to blame. Every time India warns that it will play hardball in WTO talks with American trade negotiators if the H quota is not tripled, the forces of shutting down all immigration are given a shot in the arm. Populist nationalism mixed with economic insecurity is a potent, and potentially lethal, brew. Is there no exit from this dilemma? Let's find out.

Most Americans would be astonished to learn that the golden prize of coming permanently to the United States is literally given away without seeking anything for it in return. We do not as a nation favor those nations with whom we maintain the closest trading ties or the most important military relationships with more immigrant visas. We do not reward nations who work with us or punish those who seek to undercut our prosperity. Instead, every nation gets the same number of immigrant visas. Why? It is utterly baffling as to why immigrant visas are doled out according to nation states, with the same amount going to Denmark as India. When Turkey closed its borders to US forces during the Gulf War, did they pay an immigration price? When the UK stood shoulder to shoulder with our forces, did they get an immigration bonus? If India played ball on trade, would they get more visas? If China did not, would they get less? Why not? In our private lives, do we not seek to reward our friends and punish our enemies? Is there a reason why nations should act differently when it comes to immigration? If there is a rationale behind such an approach where the accident of geography trumps all else, it would be most enlightening to know what it is. After all, being able to stay in the United States on a permanent basis remains the hope and dream of much of the world that is not already here. Why give it away for nothing? Can we get something for it?

To answer that question requires a paradigm shift in the way that most Americans view the legal immigration system, particularly the employment-side of the ledger. Americans are a generous and good-hearted people. Since almost all of us came from somewhere else at some point in our family tree, with the exception of native Americans whose ancestors had the good sense to walk across the Bering Straits, we have long held a romantic notion of immigration as a form of international social work designed to offer a helping hand to those poor souls who sought their share of our bounty. There is much to commend in this and nothing said here should detract from our core commitment to a humane asylum and refugee policy. However, that is where the thinking on immigration has pretty much stopped. So long as we think first and last of how US policy affects the individual migrant, the use of immigration in a strategic or tactical sense to promote larger national objectives will be frustrated and

even blocked. We must instead ask how the entry of this same person to our shores will benefit the nation and make it more competitive in the world arena. What America needs, not what the immigrant wants, should be the beginning and the end of any US immigration policy. Only after we are willing to make ours a nation-centered, rather than an alien-centered, immigration system can the next necessary steps be taken

There is another way to allocate immigrant visas, one grounded firmly on enlightened national self-interest. If India or China is more important to the American economy than Lithuania or New Zealand, they should get more immigrant visas. We can make this system work for us if we are smart about it. There should be a directly reciprocal relationship between trade policy and access to immigrant visas on the part of all major trading partners. If, for example, India grants trade concessions that level the playing field in important domestic markets so that US companies have a fair chance at doing business, then Indian citizens who wish to immigrate to the USA should be rewarded. Correspondingly, if India refuses to open up its economy, their citizens should expect fewer chances to come here. If China honors a trade commitment made to the USA, let their people reap the immigration benefits; if China reneges on such a pledge, or even adopts a more protectionist trade policy that closes off large chunks of the Chinese market to US goods or services, then China will pay an immigration price.

How is this brave new world to work? One way it will not work is to allow the same kind of red tape that ties our present system into knots and frustrates any intelligent attempt at genuine reform. It is simply not possible to have mass migration and micromanagement. The two cannot co-exist. At the same time, there have to be general guidelines that establish the rules of the game so that everyone knows how to play. The Constitution places such authority squarely with the Congress. Once the Congress has set down the broad strokes of our immigration policy, it should step aside and allow the Executive to administer it on a daily basis. This should not require us to reinvent the wheel. An obvious analogy is the Export/Import Bank that underwrites international trade, providing the credits, insurance and financing when necessary to smooth out the rough spots and grease the wheels of America's commerce with our major trading partners. Why not do the same thing here with immigration?

This can be done through the mechanism of a Export/Import Visa Bank that underwrites and regulates immigration activity with other nations much as the Immigrant visas can be kept in escrow by the Visa Bank pending the outcome of particular trade negotiations. If India, for example, honors its commitment to grant trade concessions to the United States, such visas are released for use by Indian citizens who wish to immigrate here. If, on the other hand, China reneges on a trade deal, or even adopts more regressive trade policies towards American companies, than the Export/Import impounds the visas and withdraws those

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that have previously made available to China. This is a system of reward and punishment where US immigration policy and US trade policy work in tandem to strengthen each other. It is clearly in the interest of India or China, as well as other major trading partners, particularly from developing economies, to maximize immigration and trade to the USA since this would raise the income of their citizens as almost nothing else could. This approach should reassure those who worry that free trade is selling the USA down the river or delivering national policy to the tender mercies of international tribunals. It is also consistent with the WTO, which explicitly does not deal with permanent migration. Reward our friends and punish our enemies, while also encouraging immigration on a large scale. What is not to like? To those who say that this is unfair to the individuals involved, I agree. The purpose of US immigration policy should be to strengthen the nation, not dole out justice to potential visa applicants. To those who say this is a Rube Goldberg system too complex to work, I ask if we do not have byzantine complexity now, and towards what end? There is no reason why immigration cannot be regulated in a predictable manner exactly as we conduct all other aspects of our relationship with those nations who matter the most to us.

America must remain open to both trade and immigration. No President believed it that more than Ronald Reagan who won approval of the US-Canada Free Trade Agreement in 1988, launched the Uruguay round of multilateral trade talks that eventually led to the creation of the World Trade Organization in 1995, and vetoed protectionist textile quotas in 1985 and 1988. In his Farewell Address to the nation, President Reagan linked immigration with trade as the cornerstones of the America mosaic:

“I’ve spoken of the shining city all my political life, but I don’t know if I ever quite communicated what I saw when I said it. But in my mind, it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open o anyone with the will and heart to get here.” Farewell Address of President Ronald Reagan January 1989, <http://www.cato.org/dailys/06-24-04.html>.

There is a way to prevent a Fortress America that would have no room in it for President Reagan’s vision. Nationalism is too important to abandon to those who want to divorce America from the global economy. This is *our country too* and we owe it to ourselves and our children to fight for its future. The deal is there for those with the will to make it happen. Any takers?

**About The Author:** Gary Endelman practices immigration law at BP America Inc. The opinions expressed in this essay are purely personal and do not represent the views or beliefs of BP America Inc. in any way.

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