

How can the existing Canada-US Free Trade Agreement illuminate some of the choices that will need to be made in an agreement between the United States and Mexico? James H. Walsh, Associate General Counsel with the Immigration and Naturalization Service in the U.S. Department of Justice, examines the migration-related sections of the US-Canadian agreement from this perspective.

REGAINING CONTROL OF THE BORDER

By James H. Walsh

Today the Estados Unidos de Mexico and the United States of America are moving toward less restrictive trade regulations. Both nations realize the need for new mutual trade arrangements to compete with other geographic trade alliances, such as those of the European Community and the Pacific Rim. Canada and the United States have had a free trade agreement since 1988, and a North American trade alliance consisting of Canada, Mexico, and the United States may be on the horizon. In addition to economic benefits, a properly arranged free trade agreement with Mexico could help the United States solve the long-standing problem of illegal aliens seeking entry across the US border. But unless consideration is given to migration issues, a Mexico-US FTA could exacerbate problems created by economic and environmental refugees from Third World nations who are entering the United States through Mexico.

US migration problems are compounded by these economic and environmental refugees who pass through Mexico — undocumented and uninspected — on their way to the United States. Some first seek residency in Mexico but failing to find financial security make their move toward the US border. US and Mexican border patrols have been overwhelmed by a combination of this growing wave of refugees and organized alien smuggling operations which prefer to use land borders.

Thus far, the Mexico-US FTA negotiators have not listed migration as a topic for discussion. Traditionally migration matters are not detailed in trade agreements, but the present sensitive nature of migration — legal and illegal — merits innovative thinking and diplomacy. An FTA that addresses the trade-related movement of people back and forth across the Mexican-US border could help resolve border problems rather than leave them in an aleatory state.

The main opposition to a Mexico-US FTA comes from immigration, environmental, labor, and some farms groups in Canada and the United States. While each group wants its own specific spin on the FTA for acceptance of an agreement, the loudest critics focus predictions on increased unemployment in the United States as cheaper labor markets in Mexico open. However, the FTA can be a lasting

agreement of inclusion, not exclusion, if legitimate criticisms are answered.

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CURRENT MIGRATION TRENDS

Migration is one of the most complex aspects, if not the most complex, of an FTA. In the overall document, it is likely that migration matters would receive little attention. They are, however, of major significance to the population, the corporate and personal incomes, and the gross national product of each country. The United States has two other FTAs, the one with Canada and the other with Israel, but only Canada shares a land border with the United States. A Mexico-US FTA has the Canada-US FTA for precedent on the borders issue to help smooth concerns about movements of people.

In the last 20 years, the flood of a new sort of alien has further complicated Mexico-US border problems. Mexicans and Salvadorans no longer are the only ones crossing the southern border illegally. In the last ten years, Asians, Africans, and Central Europeans constituted almost 40 percent of the undocumented aliens crossing the border. Loss of control of the US southern border to a daily flood of undocumented aliens is a serious concern for the United States and must be a significant factor in any Mexico-US FTA.

In addition to undocumented aliens apprehended by the Border Patrol, an estimated 4.5 million aliens successfully eluded detection and entered the United States illegally each year during the 1980s. Even though most Mexican illegals do not plan to remain, many ultimately make the United States their permanent residence, as personal economic concerns transcend their desire to return home. Non-Mexican illegal aliens usually come to the border with the express intention of making the *United States* their home.

In recent years the *Servicios Migratorios*, Mexico's equivalent of the US Immigration and

Naturalization Service, has begun to apply pressure on undocumented aliens who cross Mexico's southern border illegally. The *Servicios Migratorios* has increased checkpoints along interior transit corridors, and stepped-up scrutiny of documents and deportations of intercepted aliens. This reflects a change in the Mexican government's policy toward border control. President Carlos Salinas de Gortari has demonstrated that Mexico wants to cooperate with its northern neighbors. Mexico also has come to realize that this flood of illegal aliens is not in Mexico's best interests.

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Enhanced enforcement actions by the Mexican authorities resulted in a reflex concern by migrant-advocacy groups in the United States which claimed that Mexican and US immigration officials were cooperating to thwart the movement of Central American asylum-seekers.

Both governments deny any agreement to stop the flow of Central Americans or other nationals across Mexico's southern border. But the Mexican government admits tacitly that most of the illegal aliens from Central America and elsewhere are economic rather than political refugees. When work is available in Mexico, these illegal aliens stay to compete with Mexican citizens for jobs, hindering the government's efforts to reduce unemployment.

A Mexico-US FTA needs to specify that persons crossing into the United States from Mexico, or vice versa, be fully documented citizens of one country or the other. Mexico needs to continue its new border-policing policy. Most likely, illegal aliens will continue to enter Mexico in hopes of sharing in the anticipated benefits arising from a free trade agreement. Migration and border control policies of the trading partners should be compatible. No persons should be accepted *sin papeles* (without papers) by either government.

PROPOSALS

Before a Mexico-US Free Trade Agreement is attempted there should be a "migration impact study" modeled on environmental impact studies. This would offer a forum for interested groups to present their concerns. Such a procedure would evaluate the effects of migration on cultural, environmental, labor, and social interests of a defined geographic community, a population community, or both. The results of the study should then be the basis for policy decisions.

In formulating the Canada-US FTA, negotiators were able to allow for the temporary entry of business persons and address nearly all migration concerns. [These classifications are explained in more detail in the accompanying box.] The Mexico-US FTA would not be so easy.

To deal with the movement and temporary entry of persons between the two nations, the Mexico-US FTA would need to acknowledge the agricultural interests of the United States, the population growth of the Mexican labor force in the next decade, and the desire of unemployed US citizens to seek employment south of the border. The agreement would need to resolve the problems of economic and environmental refugees from other nations, whose numbers are growing apace.

In addition to the Canada-US classifications, the Mexico-US FTA would need to add other categories. The most troublesome would likely be the agricultural worker and industrial worker. Additionally, the worker or visitor who traverses the border daily, the seasonal worker (whether Mexican national or not), and lastly, the Mexican woman who crosses the border so that she may give birth to a child in the United States for the sole purpose of endowing her child with US citizenship, all present real problems in defining classifications.

● **Agricultural Worker.** Under a Mexico-US FTA, the labor force coming north will consist largely of unskilled farm and seasonal labor. The Mexican labor force is growing by 1 million workers yearly; by the year 2000 it will number about 40 million. Unskilled workers from the southern Mexican states currently compete with Central Americans and Third World emigres as the main source of agricultural labor in the United States. The continued poverty and unsettled politics of Central America and other Third World nations will fill the ranks of undocumented "stoop labor" with refugees eager to work as farm laborers for years to come.

The Agricultural Worker category in the Immigration Reform and Control Act of 1986 (IRCA) provided for (1) Special Agricultural Workers (SAW) and (2) H-2A Temporary Workers primarily from the Caribbean Basin. The temporary entry of agricultural workers into the United States raises the specter of permanent overstays. The issue remains to be resolved. IRCA provides for legalization of SAW workers if they meet minimal criteria. However, a significant number of the 1.3 million applications submitted thus far have been fraudulent.

● **Industrial Worker.** The *maquiladoras*, or border factories in Mexico, require basic skills that exclude many Mexican nationals. The *maquiladoras*, which likely will continue to employ other nationals, legal or illegal, are a factor in need of FTA clarification. For

instance, what if some or all of the 2,400 workers in Radford, Virginia, who lost their jobs when an AT&T plant was relocated in Matamoros, Mexico, opted to move to the southern border and sought re-employment by AT&T on the Mexican side? Under a Mexico-US FTA will *maquiladora* management hire trained workers who voluntarily, and at their own cost, move to the Mexican border?

Management personnel classifications, less difficult to delineate, can follow INA non-immigrant Business Visitor classifications.

DIFFICULTIES

The United States forged IRCA (1986) and the Immigration Reform Act of 1990 (IMMAC) with relatively little difficulty compared to the difficulties ahead in a Mexico-US FTA. Senators and representatives of opposing philosophical views joined forces to incorporate constituent interests, especially on environmental, labor, and farm issues. The congressional alliance required for passage of IRCA and IMMAC will be even more necessary if the Mexico-US FTA comes to fruition. Legislators will be looking over the shoulders of negotiators just as constituents and lobbyists will be looking over the congressional shoulders. Congress will have ninety days after submission to approve or disapprove, without amendment, the final draft of any proposed FTA.

The Bush Administration scored an initial victory in late May 1991 in the granting of authority for fast-track talks during which negotiators will not have to go to Congress for each item in a proposed treaty. US labor unions and environmental interests opposed the fast-track initiative, industry appears to support it, and agricultural interests are divided. If forces are divided on the question of fast-track procedures, imagine the division on such a substantive and sensitive issue as migration.

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As quoted in *The Washington Post* on May 2, 1991, President Bush envisions a free trade zone from the Arctic to Acapulco. On the Mexican side, the media reports that President Salinas has substantial support with token environmental and labor opposition. Mexico anticipates and desires the eventual merger of the Mexico-US FTA with the Canada-US FTA. President Salinas, like his US counterpart, envisions an Arctic-Acapulco free trade zone.

LOOKING TO THE FUTURE

A Mexico-US FTA could help reduce the number of undocumented aliens crossing the southern US border. Mexico is committed to interdicting undocumented aliens attempting to cross its borders. In 1988, Mexico apprehended and deported 14,000 Central Americans; and in 1989, the number had grown to 85,000. The 1990 figure may be 160,000 apprehensions and deportations of Central Americans.

A properly constructed FTA could help the US Immigration and Naturalization Service control the borders. Since migration will present distinct problems for each country, it is in the interests of Canada, Mexico, and the United States to attempt to resolve the coming human onslaught of Third World refugees at border entry points. The desire for economic, personal, and social well-being by millions of the world's population will not be easily quenched. The economic success of North American FTA partners can only inspire greater efforts by Third World economic refugees to crash the borders. As long as political instability exists in Central America, and there are environmental disasters such as the African drought, North America will witness a constant testing of border integrity. Future Canadian, Mexican, and US immigration decisions can be shaped by the provisions and entitlements of well-executed free trade agreements.

The requirement for a "migration impact study" in any Mexico-US Free Trade Agreement could help resolve the local, regional, national, and international concerns for environment, human resources, migration, and refugees. As the intertwining of population and environmental issues becomes more evident, migration impact studies will need to be part of the new world vision. ■

[This article contains the personal opinions of the author and does not reflect the opinions or policy of the Department of Justice nor the Immigration and Naturalization Service. JHW]