International migration and relations with third countries: European and US approaches

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United States

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MPG's project "international migration and relations with third countries" seeks to identify opportunities for transatlantic exchange and learning. The country report on the U.S. therefore highlights policy areas in which the European debate can benefit from existing initiatives and discussions in the U.S. context. In particular, the report will look at the U.S. debate on remittances and on development strategies involving migrants.[1]

The steady growth of remittances, their direct benefits to poor populations, their stable nature and their high volume relative to official development aid have put them high on the international agenda. The United States has been at the forefront of this development. Data on remittance flows have been collected through targeted research, and various actors have formulated policy recommendations. A large part of these recommendations concern transfer costs and regulations, since transfer costs from the United States to Latin America, a main destination of remittances, are particularly high. The growing philanthropic activities of migrant clubs or "Hometown Associations" (HTAs) have also led to a focus on potential synergies between remittances and other forms of development aid. As developing countries claim that liberalising the temporary free movement of service providers could also play a significant role in their development efforts, the report will conclude by considering the U.S. position in the GATS mode 4 negotiations.

1. Remittances

While remittances have long been the subject of research in the U.S., the recent attention they have received in policy circles has been driven strongly by improved data on their volume and quantitative importance. In particular, the scale of flows to Latin America and the Caribbean has captured the interest of actors previously uninvolved in the debate.

Already in 1990, remittances were mentioned by a Commission on migration and development, chaired by Ambassador Diego Asencio. However, the amount of recorded remittances was quite small, and no policy recommendations followed.[2] In the following years, the real as well as the recorded volume of remittances continued to grow, as the migrant population in the U.S. constantly increased and as stepped-up border enforcement made it more difficult to transfer funds personally. In the late 1990s, the Inter-American Development Bank (IDB) was alerted to the importance of remittance flows and started to see their relevance for development in Latin America as well as for financial integration within the hemisphere. The IDB's Multilateral Investment Fund (MIF), with a mandate to support the development of the private sector in Latin America and the Caribbean through loans, investments and grants, began to sponsor studies on

[1] The report is based primarily on interviews carried out in Washington D.C. in November 2003.
[2] Report of the Commission for the Study of International Migration and Cooperative Economic Development: hearing before the Committee on Foreign Affairs, House of Representatives, One Hundred First Congress, second session, 24 July 1990.

remittances to establish a strong data foundation for its goal to strengthen remittances as a development tool.

At the same time as working with formal data and encouraging Central Banks in Latin America to improve their recording of remittances, the MIF sponsored a series of surveys as a complementary basis for remittance estimates. Working primarily through a company specialising in Hispanic public opinion research (Bendixen and Associates), the MIF published almost twenty studies between 2000 and 2004, encompassing regional surveys as well as detailed studies on specific populations of remittance senders and receivers. The MIF also produced an annual regional map on remittance flows to the Latin American and Caribbean region and used it as a powerful tool to raise awareness of the high volume of remittance flows. Other actors such as the Inter-American Dialogue and the Pew Hispanic Center collaborated in the research efforts.[3]

The research showed that remittances to Latin America and the Caribbean expanded from about 10 billion dollars in 1996 to 32 billion in 2002. These flows were about 2 percent of the region's Gross National Product, and more than double that of all foreign aid going to the region. U.S. development aid to Latin America is of small significance as a share of net official development assistance (which stood at $15 791 million in 2003, equalling 0.14 percent of Gross National Income).[4] Rather than the migrant-sending countries of Latin America, the top five recipients of U.S. official aid in 2001-2002 were Egypt, Russia, Israel, Pakistan, Serbia and Montenegro. [5] Interestingly, remittance flows were largely unaffected by the U.S. economic downturn of 2001-2002, remaining stable where other financial flows proved to be volatile.

Table 1: Remittances and Other Financial Flows to Latin America[6]

Country/region	1996 ($ billions)			2001 ($ billions)		
	Remittances	FDI	ODA	Remittances	FDI	ODA
Mexico	4.2	9.2	0.3	8.9	24.7	<0.1
Central America	1.8	1.1	1.8	3.6	2.0	2.1
Caribbean	2.4	0.7	0.7	4.5	2.7	0.5
South America	1.7	9.3	0.8	4.0	8.2	1.0

Sources: Remittances are reported by the central bank of each country/region. Foreign direct investment (FDI) and official development assistance (ODA) data are from World Development Indicators (Washington, DC: World Bank, 2003). ODA excludes loans from the World Bank or International Monetary Fund.

[3] Key studies include: Roberto Suro, Sergio Bendixen, Lindsay Lowell, Dulce Benavides, "Billions in Motion: Latino immigrants, remittances and banking", report produced in cooperation between the Pew Hispanic Center and the Multilateral Investment Fund, November 2002; "Remittance senders and receivers: tracking the transnational channels", Pew Hispanic Center, November 2003; and "Sending Money Home": regional maps 2002 and 2003. See http://www.iadb.org/mif/v2/remittancesstudies.html

[4] World Bank, *Global Development Finance 2004*, Ch. 4, "The Changing Landscape for Official Flows".

[5] OECD DAC, http://www.oecd.org

[6] In: "All in the Family: Latin America's Most Important International Financial Flow", report of the Inter-American Dialogue Task Force on Remittances, January 2004, p.3.

U.S.-based initiatives have contributed to bringing the topic of remittances into the international policy arena through the World Bank, the ILO and other bodies. For instance, the much-cited chapter on remittances in the World Bank's Global Development Finance 2003, while having a global scope, draws prominently on examples from the U.S. (e.g. the *matricula consular*, or financial fairs organised in Kansas City and Chicago). It also notes that the U.S. is the largest remitting country in terms of volume with $28.4 billion (official flows only).[7] The 2004 edition of the Global Development Finance report, which contains an annex on workers' remittances, gives the figure of $31.4 billion.[8] Latin America and the Caribbean are noted as the region receiving the most remittances with $30 billion, nearly a third of remittance flows to all developing countries.

<u>Transfer costs and methods</u>

Beyond raising awareness of the importance of remittance flows, a key aim of the IDB has been to increase competition and lower the costs of sending remittances. While establishing the scale of transfers and some of the basic characteristics of remittance senders, most questions in the surveys conducted therefore concerned the transfer methods and attitudes towards the banking system.

The surveys typically targeted adult Latin American immigrants living in the U.S. with family in Latin America. A general survey in November/December 2001 had 1000 respondents, while more extensive qualitative interviews were held with smaller samples of regular remittances senders. In 2003, surveys were extended to the recipients of remittances. In Mexico for instance, a combination of national survey (3.263 respondents, of which 583 received remittances) and focus groups was used to draw a picture of the characteristics and attitudes of remittance receivers. In May 2004, the IDB presented a detailed state-by-state analysis of remittances from the United States to Latin America, looking at the distribution of remittance senders across the U.S. and the amount of their remittances.[9]

The key findings of these surveys have been that remittances senders are mostly recent immigrants with little education and low earnings and not much familiarity with banking systems. They are often unaware of the full costs they are paying to send money home. Many of them do not have bank accounts and use wire transfer services, which charge a money transfer fee as well as a check-cashing fee, often combined with an unfavourable exchange rate and fees at the receiving end. Fees are predominantly charged at flat rates, disadvantaging senders of small amounts.[10] The surveys suggest that many remittance senders are deterred from using banks – which typically offer cheaper rates - by requirements such as minimum balances or documentation of legal status, at the

[7] World Bank, *Global Development Finance 2003*, Ch. 7, "Workers' Remittances: An Important and Stable Source of External Development Finance", p.160.
[8] For the year 2002. World Bank, *Global Development Finance 2004*, Appendix A: "Enhancing the Developmental Effect of Workers' Remittances to Developing Countries", p.169.
[9] Multilateral Investment Fund, "Sending Money Home: Remittances to Latin America from the U.S.", 2004.
[10] The report "Sending Money Home" (see note 9 above) indicates that the 10 million Latin American immigrants who send money home on a regular basis (more than 60% of the 16.5 million Latin American born adults currently living in the United States) remit on average 12.6 times a year, typically $150/200/250 each time.

same time as holding a general distrust of the banking system. They tend to rely on word-of-mouth recommendations, familiarity and convenience in choosing a method for transferring money. Remittance senders are open to new remittance transfer products, but the quality of financial service in Latin America is as important as the quality of service in the U.S.

These findings are at the root of the main policy recommendations which have emerged from the U.S. remittance debate: to reduce the costs and increase the security of remittance transfers by encouraging remittances senders to engage with the formal banking system: in other words, to "bank the unbanked". Presented with evidence of the scale of remittance flows, commercial banks have in fact become more interested in the Hispanic market. Wells Fargo, Bank of America, and Harris Bank, among others, launched initiatives to capture a larger share of the Latino immigrant market. In response, wire transfer services also lowered their fees: in 1999, Western Union charged 22 dollars in fees to remit sums of 200 dollars or less; by 2001, its fee had dropped to 15 dollars; and in 2003 it fell again to 10 dollars.[11]

While the surveys indicate that the accessibility of financial services in receiving countries is of prime importance to both senders and receivers, commercial banks in Latin America were not immediately interested. However, alternative financial institutions such as microfinance services became involved in remittance transfers, and some U.S. banks acquired stakes in Latin American banks or established cooperative agreements to facilitate remittance flows. Credit card companies also engaged in the transfer business; for instance, in Guyana Visa International developed partnerships with local banks and money transfer services.

Much of the banks' activities have been driven by a desire to use remittances as an entry point with the large potential Hispanic customer base. While this motivation has sometimes been criticized, most policy recommendations have endorsed the banks' initiatives as an opportunity for migrants. Rather than being an unintended consequence, the broader access of migrants to a range of financial services is considered positive. Banks may initially only be used as transfer services but can provide migrants with interest-bearing savings accounts; checking accounts for paying bills (instead of using costly money orders); free and secure check-cashing services; access to credit cards; loans for housing, education, and health insurance; and a means to establish a credit history. Engaging with the banking system may open up ways towards "economic citizenship" for migrants.[12] Financial literacy training is provided by many non-governmental organizations as a complementary offer.

Limitations of the transfer cost debate

The United States is the largest shareholder in the IDB, and the support of the U.S. government has contributed to the IDB's considerable leverage. This leverage has helped the bank to engage Latin American governments as well, most publicly through a series of conferences on remittances in receiving countries. The conferences address the impact of remittances on the development of the countries concerned and encourage governments to remove legal and bureaucratic obstacles that may impede transfers. The

[11] All in the Family, op.cit., p.9.
[12] Ibid.

IDB has formalised its proposals in the “Lima Declaration” (2004), a series of basic recommendations for the Latin American remittance market. The declaration posits two goals to be reached by 2010: To reduce by 50% the average cost of transactions by promoting increased competition, and to increase to 50% the number of families receiving remittances through the financial system. The U.S. Treasury has declared its support for the goal of cutting remittance costs, and has placed remittances on the agenda of the G8.

Despite the advances made through the focus on transfer costs, there is criticism that the remittance debate in the U.S. has been too “technocratic” and has neglected two key aspects: the question of immigration policy, and the actual impact of remittances on development. Those active in the transfer cost debate respond that bringing down cost addresses the most important policy challenge while at the same time avoiding the pitfalls associated with the discussions on both immigration and development impacts.

In particular, actors in the remittance debate have been keen to avoid the clashes characterising immigration policymaking. By casting remittance senders as people engaging in assistance to their families rather than as immigrants, they have sought to keep remittances separate from the controversial discussions about immigration. Nevertheless, the issue of illegal immigration has affected the remittance debate to an extent in connection with the “matricula consular”. The matricula consular is an identity card introduced by the Mexican government in the U.S., which is delinked from migrant status and facilitates access for migrants to bank accounts and remittance services offered by banks. It is a proof of identity and residence, but not necessarily of legal migrant status. Banks also accept the Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service that looks like a social security number but is available without showing of legal status. The “matricula consular” has been subject to political controversy especially as Guatemalan consulates have followed the Mexican example, with other consulates considering the possibility. However, the U.S. Treasury Department has rejected efforts to prohibit financial institutions from accepting it if they so choose.

Since the total population of unauthorized persons residing in the United States more than doubled in the 1990s to an estimated 9.3 million in 2002, the potential for controversy remains. The 5.3 million Mexican migrants are the most important source of unauthorized migrants making up 57 percent of all unauthorized persons in the United States as of 2002.[13] At the same time, the fact that most remittance senders are recent immigrants continues to challenge the strict separation between the immigration and remittance debates.

A second aspect that has received little emphasis in the transfer cost debate is that of the developmental impact of individual remittances. Research continues to show that remittances are largely spent on housing, consumer durables, everyday expenses, education and health care. However, “the debate over the macroeconomic effects of remittances is just beginning and will be an important area of future research”.[14] While

[13] Lindsay Lowell, *Managing Mexican Migration to the United States: Recommendations for Policymakers*, A Policy Report of the Center for International and Strategic Studies and Instituto Tecnológico Autónomo de México, Washington D.C., 2004.
[14] *Global Development Finance 2004*, p.170.

experts continue to argue about the positive and negative consequences of remittances for receiving communities, policy recommendations in this area have been very cautious. The fact that remittances are private person-to-person flows is highlighted in all policy statements, along with the warning to governments to "do no harm" and avoid interference with the decisions of individuals. While this restraint is crucial in order to avoid the "confiscation" and over-regulation of remittances by governments, it may also have precluded a wider discussion about the link between migration and development.
By isolating the issue of remittances, it may have contributed to the lack of integration between U.S. development policies and the activities of migrants. A growing exception to this is the issue of "collective remittances" or philanthropic donations collected by migrant clubs or hometown associations. These associations increasingly engage in partnerships with established development actors in both private and public sectors.

2. Hometown Associations

Hometown associations (HTAs) fulfil several functions, from social exchange, to political influence, to the pursuit of low-scale development goals in their home community. They are small philanthropic organisations that generally provide assistance to their communities of origin. Some of the migrant communities in which hometown associations exist are Mexicans, Salvadorans, Guatemalans, Guyanese, Dominicans, Colombians and Nicaraguans. The degree of concentration of a population is important for whether strong hometown associations emerge. For instance, Hondurans are comparatively more dispersed in the U.S. than Salvadorans, as well as being a newer migrant population. A recent study of Mexican hometown associations shows an average age of eleven years, although the majority of HTAs was created after 1995. In fact, only a small percentage was founded prior to the 1990s. Most clubs have a president, treasurer, secretary and auditors, usually adding up to ten or fewer members. This core membership mobilises for fundraising events. Forty percent of Mexican HTAs studied were members of a federation.[15] Salvadoran hometown associations are another prominent example. With a population of a little over 5 million, it is estimated that more than 20 percent of Salvadorans have migrated or fled the armed conflict lasting from 1980 to 1992. Approximately 655.000 people live and work in the United States. The focus of most Salvadoran HTAs in the 1980s was preserving cultural identity, but eventually the membership began to contribute relief and humanitarian aid to their communities of origin with funds raised through dances, tours, dinners, picnics, beauty pageants, raffles and canvassing corporations.[16]

Many hometown associations are built around a specific identity, for instance related to the Catholic Church or to a political party. Bolivians in the U.S. typically organise in soccer clubs, but alumni or professional associations also exist. Life in the U.S. is an important element of HTAs, although the community of origin provides the focus of activities: an estimated $50 million annually is collected by organizations of immigrants and donated for community projects. The majority of amounts raised on a given project are under $10.000 a year. This can represent a significant contribution in small rural communities. Hometown associations typically work together with a counterpart in the

[15] Manuel Orozco, *Hometown Associations and their present and future partnerships: new development opportunities?* Report commissioned by USAID, September 2003.
[16] Salvador Sanabria, Remittance Forum – Players and Programs in El Salvador, Grassroots Development 24/1, Inter-American Foundation 2003, p.36.

hometown, who may be a relative or a community member and who volunteers to oversee the project.[17]

Increasingly, hometown associations also engage in other partnerships, be they state actors or foundations. Hometown associations approaching municipal leaders in Mexico to discuss their projects and activities led to the matching grant programme *Iniciativa Ciudadana 3x1,* which was officially set in motion in 2000. The programme matches grants between HTAs and the three levels of government: federal, state and municipal. The federal institution in charge of the programme is SEDESOL (Department of Social Development). In 2002, the Mexican government allocated $15 million to match Mexican HTA donations.

In El Salvador, a federation of hometown associations (COMUNIDADES) cooperated with El Salvador-based organisations to seek the support of municipal governments for funding economic and social development projects. The national Corporation of Municipalities reached an agreement with COMUNIDADES in 2001, and in 2002 the first matching funds projects were initiated through the government body FISDL (Social Investment for Local Development Fund). The Salvadoran government, which has contributed over one million dollars, finances its programme with funds from an Inter-American Development Bank loan.[18]

More directly, the IDB's Multilateral Investment Fund has itself approved twelve projects on "remittances as a development tool" for grants up to a maximum of $2 million. Moreover, in April 2004, the MIF and the United Nation's International Fund for Agricultural Development (IFAD) announced the creation of a 7.6 million dollar joint programme to promote savings and investments in poor rural areas in Latin America and the Caribbean that receive remittances from migrants. While these programmes are set to engage with HTAs, the Multilateral Investment Fund has been criticised for keeping too big a distance from immigrant associations. For instance, no representatives of immigrant associations have been speakers at the series of conferences organised on remittances. Similarly, observers note a disconnect with much of the work done by local NGOs in Latin America.

Foundations have emerged as intermediaries in some contexts and have served to bridge the "institutional gap" between immigrant associations and state actors. Some are primarily grantmaking, such as the Rockefeller Foundation, the Center for the Study of Philanthropy, the Ford Foundation and the New York Foundation. Others make grants but at the same time offer complementary support such as training, access to networks and advice on negotiations with government or private funders. About thirty foundations have taken up remittances in their work. Development agencies in particular see a fit with hometown associations, since they share the objective of reducing poverty. The small-scale nature of HTA projects, their participatory methods and their focus on financial democracy is likewise attractive to development agencies.

For instance, the Inter-American foundation sees the hometown associations' view of community-based development in line with its own. It has come to see diasporas as an integral part of their home communities and has initiated work to facilitate and enhance their involvement. The Inter-American foundation is a U.S. government foreign

[17] Manuel Orozco, op.cit.
[18] Salvador Sanabria, op.cit., p.37.

assistance agency. It can by law only assist organisations outside the U.S., but has funded five projects with a transnational component, typically through a grant to a community-based organisation in Latin America working with a hometown association in the U.S. The foundation has also co-sponsored dialogues in several U.S cities on community development in transnational communities with immigrant organisations, private foundations, academics and municipal government.

The “triangle” between foundation, hometown association and local community organisation is sometimes complemented trough the addition of a further sponsor. For instance, USAID supports hometown associations through a public-private alliance sponsored by the Bureau for Latin America and the Caribbean in collaboration with the Pan-American Development Foundation. In this “Transnational Development Initiative”, the Pan-American Development Foundation carries out projects in Haiti, El Salvador and Mexico. It typically requires local community organisations working, for instance, in agricultural development to raise the counterpart of the funds provided from the U.S. in the relation 1:1 or 2:1. The foundation offers training to these organisations as well as to HTAs in the areas of needs identification, project management, financial literacy, evaluation skills, fundraising techniques etc.

Foundations are also active in bringing in private sector involvement. For instance, the Pan-American Development Foundation has worked with Unibank, a Haitian financial services institution, which agreed to make a financial contribution per remittance transfer from the New York City area toward select development activities. USAID in Haiti then provided matching funds.

Limitations of hometown associations

Although partnerships have sometimes increased the impact of hometown associations, their efforts are still essentially small-scale. While this may pose limitations, an over-extension of HTA activities may hold different risks.

Typical HTA fundraising activities such as raffles, dinners or larger celebrations are limited in how much money they can raise. While some associations indicate that they raise approximately $2000 per event, others may raise less.[19] Additionally, even the most organized groups are still voluntary associations and members’ time is limited. This limits the number of activities they can plan as well as posing a challenge to their communication with donors and other partners. The fact that HTA members are not working full-time in the area of development may also constrain their ability to identify the most beneficial projects in their home communities.

Since the “track record” of hometown associations is still comparatively short, generalizations about whether they are “good in development” are difficult to make. Such judgments also hinge on what is perceived as “good development”, a notoriously problematic question. Identification of projects usually takes place in consultation

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[19] Innovative approaches to fundraising are being explored by some associations, for instance through using the buying power of the Hispanic market with (local) companies. For example, a Budweiser distributor in the Washington DC area has agreed to contribute to a local development fund a share of the profits from every Budweiser bottle that is consumed in a Salvadoran-run establishment.

between HTA and community members, although as donors HTA members often have a strong voice. For most HTA members, the overriding motivation for contributing is to help so that people in the future will not have to migrate: they want to give members of their home communities the "right not to leave".

Typical projects include infrastructure, health and education projects such as the provision of school supplies and donation of computers, support for the church, town beautification, etc. The preference for projects that are tangible and visible often converges with municipality and government preferences, maybe "reflecting an idea of development that has historically equated construction with progress". [20] Although the needs perceived by HTA members may not exactly correspond to community priorities, few cases are known where HTA preferences clearly did not match needs: for instance, where members chose to buy an ambulance for their home community despite bad road conditions and a lack of community capacity for proper maintenance.

More serious concerns are raised in connection with matching fund programmes. Given the fungibility of public resources, from which sources do governments take the funds for "3+1" projects, and may they be diverted from non-migrant sending communities? Do politicians support projects primarily to maintain political clienteles in rural areas? On another point, do governments work with migrants so that they will not have to restructure their own economic policies? Many HTAs as well as municipal partners in the home communities seek to expand their activities to "productive projects" (usually taken to refer to wealth and income generating activities such as business ventures). While positive examples exist, there are risks inherent in mixing profit-making and philanthropic activities. Investments are also frequently threatened by unstable economic environments.

Non-economic aspects

In the context of hometown associations, some foundations and experts have begun to speak about "non-financial remittances". In their view, money is only a small part of what is exchanged between the diaspora and their home communities. Also important to economic and community development are exchanges of human capital, knowledge, business opportunities, organizational practices and culture. Hometown associations often pressure local authorities to meet higher standards of transparency and accountability, to produce clear budgets and to meet timelines. They monitor the success of projects and introduce higher expectations for working conditions and labour rights into the communities.

Hometown associations can also be "political" in a more direct sense: many of them have become important campaign sites for political candidates. Migrants make large campaign contributions, and fundraising trips to U.S. cities with significant concentrations of migrants have become essential stops for Dominican, Haitian, and Mexican candidates. Some countries have extended voting rights to non-residents. Moreover, migrants can also strongly influence how their non-migrant family-members vote, a fact which is recognised by politicians in the sending countries.[21]

[20] Manuel Orozco, op.cit., p.31.
[21] Peggy Levitt, *Transnational migration: taking stock and future directions*, Global Networks 1, 3 (2001), p.205.

Some hometown associations promote political integration into the United States while simultaneously encouraging migrants to stay active in homeland politics. Hometown associations can be sites for social activism in the United States. For instance, a number of HTAs in Los Angeles became the focus of immigrant organising against Proposition 187 in California.

3. Migration, mobility and trade

Temporary entry has been negotiated in treaties between the United States and third countries for a number of years. Mobility provisions in trade agreements were already inserted in the 1988 Canada-United States Free Trade Agreement, and NAFTA and the Uruguay round of GATS likewise made allowances for the temporary entry of certain categories of workers. For the most part, these provisions did not have a large impact, such as the mobility provisions for professionals under NAFTA, whose annual cap of 5,500 for Mexican professionals was never reached. However, there was a significant growth of temporary U.S. and Canadian professional workers in Mexico, especially in high-skill services.

By granting Trade Promotion Authority to the Executive Branch of the U.S. government, Congress enabled the Administration to pursue Free Trade Agreements with other countries. While USTR (the Office of the United States Trade Representative) is in the lead on negotiations, there is inter-agency discussion for instance in the Industry Sectoral Advisory Committee 13, which meets once a month, and in the Trade Policy Staff Committee. The departments of Commerce, Labour, and Homeland Security are involved, as well as the State department which works specifically on the implications for bilateral affairs.

While the Department of Labour is sceptical towards temporary movement provisions and especially towards binding agreements which do not allow the U.S. to adjust the rules according to changes in the labour market, inter-agency co-ordination has worked well. However, the negotiating authority of the executive in the area of mobility has been significantly curtailed as a result of Congressional and Senate debates surrounding the negotiation of the Chile and Singapore Free Trade Agreements in 2003. Contrary to the expectations of the negotiators that the mobility provisions would go “under the radar” similarly to those contained in the first GATS round, Congress and Senate mounted a major opposition, almost jeopardising the completion of the agreement.

Congress effected a renegotiation of the temporary movement provisions, which in their final form only contain the small concession that a number of H-1B visas have been carved out for each of the two countries. No new visa categories were created, and no administrative requirements were waived. Moreover, the House Judiciary Committee only passed the implementing legislation in stating that it would “never” again pass a bill with similar immigration provisions to that contained in the Singapore and Chile texts, which it considered to threaten the primacy in immigration policy set aside for the Congress by the U.S. constitution. Similarly, the Senate passed a non-binding resolution stating that “trade agreements are not the appropriate vehicle for enacting immigration-related laws or modifying current immigration policy”, and that “future trade agreements to which the United States is a party … should not contain immigration-related provisions."[22]

The failure of trade negotiators to anticipate this opposition was primarily due to their lack of knowledge of the immigration debate and its potential for controversy. Trade negotiators failed to involve immigration stakeholders in the preparation of the Chile and Singapore agreements. Most importantly, USTR was unfamiliar with the members and preferences of the House and Senate Judiciary Committees, which received concurrent jurisdiction together with the committees normally responsible for trade agreements, namely the House Ways and Means committee and the Senate Finance committee.

The negotiators neglected that the political climate in the U.S. had turned against free trade due to unemployment concerns during the "jobless recovery" and the linkage of outsourcing and immigration in the public debate. As large U.S. companies shifted service, information-technology and high-end manufacturing work to countries such as India and China, a "new anti-free trade movement" emerged comprising design engineers, skilled machinists, information technology experts and other high skilled workers.[23] They vocally stated their opposition to outsourcing, L-visas or intra-company transfer visas, and H-1B visas. Congressional and Senate members responded to these activities by becoming more sceptical towards trade agreements. Business associations such as the Coalition of Service Industries unsuccessfully sought to place an emphasis on U.S. offensive interests in the area of temporary movement, for instance by pointing out the U.S. interest in gaining access for business visitors, traders and investors, intra-company transferees, and professionals to markets in Singapore and Chile.[24] Moreover, trade issues have become increasingly connected to questions of national security and counter-terrorism concerns. As a result trade policy, once the sole realm of the USTR, now operates within the broader U.S. labour market and foreign policy and as such is subject to multiple pressures.

Growing concern about unemployment among skilled workers has also contributed to bipartisan support for the lapsing of the H1B cap boost. Under the current law, only 65.000 aliens may be issued a visa or otherwise be provided H-1B status in financial year 2004. This ends the temporary rise of the numerical limitation to 195,000 in 2001, 2002 and 2003. In fact, in 2003 the ceiling of 195,000 was not reached, with 78,000 persons counted against the cap. This number constituted only about two-fifths of the total number approved for H-1B employment, because petitions for an extension of stay do not count against the cap and because some employers such as educational institutions are exempted from the cap.

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[22] Senate Resolution 211, 108th Congress, introduced 31 July 2001 by Senator Sessions, cited in Demetrios G. Papademetriou, "The Shifting Expectations of Free Trade and Migration", Chapter 2 in *NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere*, Carnegie Endowment for International Peace, 2003, p.54.

[23] For instance, the Organisation for the Rights of American Workers, http://www.toraw.org, Save American Manufacturing, http://www.samnow.org, and Mad in USA, http://www.madinusa.org. See: Skilled Workers in U.S. Now Rue Free Trade, Wall Street Journal 13.10.2003. There are partial overlaps with anti-immigration groups; for instance, TORAW is partly supported by FAIR (see FAIR annual review 2003).

[24] Coalition of Service Industries, Letter on 16 July 2003 on the importance of the "temporary entry" provisions of the Singapore and Chile Trade Agreements, and other trade agreements including GATS.

While the high cap of 195,000 was not reached in 2003, a notice in the Federal Register from the Bureau of Citizenship and Immigration Services announced already in February 2004 that enough H1B petitions were pending to reach the cap of 58.200 for FY 2004. The general cap has been lowered by the Free Trade Agreements for Chile and Singapore, under which 1,400 of the 65,000 H-1B numbers are reserved for Chile and 5,400 of the 65,000 numbers are reserved for Singapore.[25] Further bilateral trade agreements are being negotiated as well as regional ones like the Central American Free Trade Agreement (CAFTA), which was initialed by the Bush Administration on December 17, 2003, and the Free Trade Agreement of the Americans (FTAA). They will most probably not contain significant mobility provisions. The U.S. initial offer on GATS mode 4 under the current Doha Round has been minimal, with no significant offers for liberalization. This is despite the fact that about half of the requests received by the U.S. on GATS concerned mode 4. The "development" aspects of mode 4, addressing the potential gains from temporary movement for developing countries, have played no role in the debate or in the formulation of the initial offer.

[25] See above. Agreements approved by Congress in Public Laws 108–77 and 108–78.

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