

# National Foundation for American Policy

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## **New Research Finds Many Proposed Changes to Skilled Worker Visa Laws Would Likely Violate Major U.S. Trade Commitments**

### ***Legal Analysis Carries Implications for Legislation in Congress on H-1B and L-1 Visas***

**Arlington, Va.** – Legislative proposals to restrict the entry of high-skill, foreign-born professionals would violate a major U.S. trade agreement, the General Agreement on Trade in Services (GATS), according to a new study released today by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The study was performed by the Washington, D.C.-based law firm of Jochum Shore & Trossevin, PC, which is expert in trade matters related to U.S. commitments under the World Trade Organization (WTO).

The study's findings are significant and timely because several contentious provisions related to H-1B and L-1 visas are part of immigration proposals that Congress is considering this year.

"Legal Analysis: Proposed Changes to Skilled Worker Visa Laws Likely to Violate Major U.S. Trade Commitments" can be found on the NFAP website at [www.nfap.com](http://www.nfap.com).

According to its analysis: "Current legislative proposals to place new restrictions on employers petitioning for skilled foreign nationals on H-1B and L-1 visas contain provisions likely to violate U.S. commitments under the General Agreement on Trade in Services (GATS)."

The provisions that appear to violate U.S. commitments under the GATS include:

- 1) changing H-1B wage rules to require employers to pay median average wages (S. 887);
- 2) changing the 90-day nondisplacement rule for H-1Bs to 180 days (S. 887);
- 3) prohibiting new H-1B or L-1 visas for employers with more than 50 percent of the U.S. workforce in H-1B or L-1 status (S. 887);
- 4) creating new office requirements for L-1 visa holders (S. 887);
- 5) imposing broad no-layoff restrictions (S. 2804) and, depending on level and justification, higher H-1B fees (Senate floor amendments).

The legal analysis took no position on whether such proposed legislative changes constitute sound immigration policy. But it does conclude that passing such legislation would be highly vulnerable to challenge from WTO Members whose companies use H-1B or L-1 visas to perform services in the U.S. Such a challenge, if successful, could lead to retaliation against U.S. exporters and harm America's reputation on trade issues.

"Passing legislation with measures that violate the GATS risks retaliation against U.S. companies," said NFAP Executive Director Stuart Anderson.

If a WTO Member believes that another Member has deployed a trade "measure" that is inconsistent with its GATS commitments, the complaining Member may invoke the WTO dispute settlement mechanism for redress. If the measure is found to be inconsistent with the GATS, the Dispute Settlement Body will recommend that the Member bring its measure into conformity with the Agreement. If the Member fails to bring the measure into conformity with the GATS, the Complainant may seek authority from the Dispute Settlement Body (DSB) to retaliate against the other Party.

The study examined S. 887, a bill introduced by Senators Richard Durbin (D-IL) and Charles Grassley (R-IA), the Employ America Act (S. 2804), and proposals to raise the fees on H-1B visas. Key provisions in S. 887 are contained in a draft legislative proposal on immigration reform offered by a group of Democratic Senators.

Attorneys Marguerite Trossevin and James Jochum, both Partners at Jochum Shore & Trossevin, authored the study. Trossevin is an expert in World Trade Organization agreements, and former Deputy Chief Counsel, Import Administration, U.S. Department of Commerce. Jochum is a former Assistant Secretary, Import Administration, U.S. Department of Commerce. While working in Congress Jochum was International Trade Counsel and Legislative Director for Senator Charles Grassley.

#### **About the National Foundation for American Policy**

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at [www.nfap.com](http://www.nfap.com).

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