

H-1B Visas, India and the US: Trade Tussle Intensifies

Higher fees for H-1B visas have become a heavily contentious issue between India and the US with India taking the dispute to the WTO. The electoral rhetoric in the US criticises H-1B visas for snatching local jobs. This paper analyses the contrasting perceptions on temporary skilled migration into the US, India's concerns on restricting the latter and the yawning gap between India and the US on trade issues notwithstanding growing strategic proximity.

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Trade friction between India and the US has been rapidly escalating over the last few weeks with the H-1B visas for temporary migration of skilled workers to the US as the major point of contention. The Indian Finance Minister, who is currently in the US, chose to describe the US decision to hike H-1B visa fees 'discriminatory' and specifically targeted towards Indian IT companies². The comment came in the backdrop of India's decision to initiate dispute proceedings against the US on the subject at the WTO a few weeks ago³.

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² The H-1B visa fees have increased by US\$4000. 'US visa fee hike discriminatory, targeted at Indian IT Companies: Finance Minister Arun Jaitley', The Times of India, 14 April 2016; <http://timesofindia.indiatimes.com/tech/tech-news/US-visa-fee-hike-discriminatory-targeted-at-Indian-IT-companies-FM-Arun-Jaitley/articleshow/51825608.cms> Accessed on 15 April 2016

³ 'India takes on US at WTO over visa rules', The Hindu, 5 March 2016; <http://www.thehindu.com/news/international/india-takes-on-us-at-wto-over-visa-rules/article8314860.ece> Accessed on 15 April 2016

Trade, India and the US: Deep Differences

India and the US have had very significant differences on international trade issues. The WTO Ministerial meetings have been regular sparring turfs between the two countries. The latest Nairobi Ministerial of the WTO held in December 2015 was not an exception, when India argued for special safeguard mechanism (SSM) for imposing high tariffs on surging agricultural imports into developing countries, which, expectedly, was opposed by several developed countries and agricultural exporters, including the US.

Apart from locking horns on global trade matters, India and the US have had conflicts on bilateral trade as well. Both countries have approached the WTO for resolution of bilateral trade differences on more than one occasion in the past. The most recent examples include disputes over preferences given by India to local producers of solar cells and modules for procurement of solar panels for its National Solar Power Mission and restrictions on import of US poultry products. On both occasions, the US obtained favourable rulings from the WTO. In addition to these specific disputes, the US unhappiness over India's domestic patent laws is well-known with the USTR (United States Trade Representative) continuing to express serious concerns over India's difficult patent regime in its annual assessment of intellectual property regulations across the world⁴.

H-1B visas and US Presidential elections

The history of bickering on trade has reached a stage where India has become a part of the rhetoric dominating the ongoing US Presidential election campaign. Trade and immigration are the two most significant issues being debated in the campaign. As of now, the overall tone of the debate is favouring inward-looking trade policies with great emphasis on the need to protect American jobs. In this regard, the H-1B visa programme has emerged the undisputed 'villain' among American lawmakers. The visa fees under the programme have been sharply raised and their quota has also been capped at 65,000 for the year 2016.

⁴ India was a 'priority watch list' country in the USTR's Special 301 report of 2015.

The H-1B visa programme has been extensively used by the American businesses for recruiting cheap skilled labour for on-site jobs in the US. Indian IT industry has been a significant beneficiary of the programme. Thousands of Indian IT professionals have been migrating to the US for many years now for working on specific projects for short periods. Over time, particularly with joblessness becoming a serious issue in the US and domestic labour market conditions becoming politically sensitive concerns, the programme has come under attack as an instrument for depriving skilled Americans from local jobs. US lawmakers have been sharply critical of American businesses for abusing the programme to deprive skilled Americans of local jobs by employing foreign labour at lower wages⁵.

Labour Standards and Trade

The debate over the H-1B visas brings into sharp focus the issue of labour standards and wages in international trade. The US has been at the forefront of opinions insisting labour standards being part of various regional and bilateral trade agreements. In the trade agreements that it has been signing with various countries in recent years (e.g. South Korea, Columbia, Panama) as well as in the Trans-Pacific Partnership (TPP), the US has insisted on the signatories agreeing to common labour standards. The logic behind the insistence has been to ensure that American labour – and the goods and services using American labour – does not become uncompetitive compared with labour from other countries, which is possible if labour in other countries does not get paid minimum wages, and the latter's goods and services reflect the cheaper wages in their final lower prices.

The very logic argued above appears to have put the US political establishment in an awkward position on the H-1B visas. US businesses are doing exactly what the US authorities do not want their trade partners to do. Indeed, if US businesses themselves are not particularly concerned about the sanctity of maintaining minimum wages at home by employing foreign labour at lower wages, one wonders how the US will be able to ensure similar sanctity from other trade partners.

⁵ 'US senators slam H-1B visa programme', The Times of India, 26 February 2016; <http://timesofindia.indiatimes.com/tech/tech-news/US-senators-slam-H-1B-visa-programme/articleshow/51154416.cms> Accessed on 15 April 2016

Indian Concerns

India has argued that the US move to restrict immigration of foreign workers through H-1B visas by enhancing their fees militates against the US commitment to provide uniform access to foreigners for providing various services in its domestic market under the GATS (General Agreement on Trade in Services) in the WTO. Whether it will be able to convince the WTO in this respect is difficult to predict. It will hardly be surprising if in the consultations at the WTO on the issue, India tries to capitalise on the divide existing between the US politicians and businesses on the subject. Nothing exemplifies the dichotomy better than the vacillation of the Republican Presidential hopeful Donald Trump on H-1B visas⁶. India might also insist on the US agreeing to a bilateral ‘Totalization Agreement’, as the Finance Minister also mentioned in his comments alluded to earlier, which the US has with various other countries, and which would exempt Indian IT professionals migrating for short periods to avoid paying social security taxes.

The fact that the Finance Minister chose the occasion of his visit to the US and the meeting with the USTR to strongly criticise the move to tighten the H-1B visas reflects the significance of the programme for India. Notwithstanding the electoral rhetoric and the fact that the US might well respond to the pressure of its own businesses by relaxing the restrictions after the Presidential elections, the current restrictions imply major costs for India. Lesser movement of short-term professionals to the US would mean lower IT and software exports for the country at a time when its exports are declining continuously for several months. The outcome would be particularly damaging for medium-term prospects of Indian exports.

Distance on Trade: Unbridgeable?

From a larger perspective, the dispute over the H-1B visas reflects the problems that continue to exist between India and the US on bilateral trade. It also draws attention to the widely

⁶ Donald Trump, who has been condemning the H-1B visa programme, softened his position in a recent debate by admitting the importance of importing foreign skilled workers – a view prominent among US businesses. Within hours, however, he retracted and reversed to his hardline rhetoric. ‘India complains to WTO over US visa changes’, Financial Times, 4 March 2016; <http://www.ft.com/intl/cms/s/0/0cde8216-e22b-11e5-9217-6ae3733a2cd1.html#axzz45reH1y00> Accessed on 15 April 2016

contrasting aspects in contemporary Indo-US relations. While on foreign policy and geo-strategic matters, India and the US have greatly reduced their distance over the last couple of decades and see eye-to-eye on many issues, they remain very distant partners on trade⁷. There is little possibility of the gap reducing in near future given their distinctly divergent interests and perceptions on global and bilateral trade issues.

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⁷ 'H-1B Protectionism and Trade War', Amitendu Palit, Financial Express, 30 March 2016; <http://www.financialexpress.com/article/fe-columnist/column-h-1b-protectionism-and-trade-war/230675/>
Accessed on 15 April 2016