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India, US head to WTO on visa, poultry issues

India asks for consultations on rise in professional visa fee that hurts IT companies' interests

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India and the US have embarked on a trade war over higher visa fees and restrictions on poultry imports. India has dragged the US to the World Trade Organization's (WTO's) dispute settlement body (DSB) over an increase in the professional visa fee. Both sides will fight a separate case on India's ban on US poultry imports.

This is for the first time in the history of their bilateral relations that India is taking the US to the WTO. In the 1990s, both countries were involved in a similar imbroglio concerning the US 'Super 301' legislation but the matter was resolved through bilateral discussions.

According to the dispute settlement norms, India has not yet made a formal complaint against the US in the DSB but has sought consultations with the US, which is the first step. If both parties arrive at an amicable solution during the consultation process then the case would not be formally filed with the WTO.

"We have already made a request for consultation with the US over the issue of the hike in H1B and L1 visa fees and discrimination against certain Indian IT companies. We will inform them formally once the draft proposal is ready, which would be soon," a senior



VICTIMISING INDIAN IT?

- On Aug 13, 2010, US govt enacts law raising L1 and H1B visa fees
- James Zadroga Act extends law to 2015
- Hike construed as violation of US commitments under Mode 3 (commercial presence) and Mode 4 (movement of natural persons) of the WTO
- India requests repeatedly the law be withdrawn, saying it is directed at Indian firms.
- US legislators admit that based on criteria stated in the law, four Indian companies would qualify for the significantly higher fees: TCS, Infosys, Wipro and Mahindra Satyam
- Matter expected to worsen with the US presidential election scheduled this year and protectionist rhetoric expected to get louder

commerce department official told *Business Standard*.

In the complaint, India will cite the US's breach of commitment of mode 3 of services trade under the

General Agreement on Trade in Services (GATS), Uruguay round of negotiations, which refers to the commercial presence of a country within the territory of another

member-country with the objective of providing services.

India has said the US is using a particular law, Public Law 111-230 (Border Security Act), that substantially enhances fees in relation to applications for L1 and H1B visas. The bill nearly doubles the skilled-worker H-1B and L1 visa fees to as high as \$4,500 per applicant (from around \$2,320) for any company with at least 50 employees in which foreigners are more than 50 per cent of the US workforce. As a result, Indian IT giants like Tata Consultancy Services, Wipro, Infosys and Mahindra Satyam have come under the net.

"They (the US) have clearly breached their services agreement commitment under the Uruguay round. However, considering the fact that we are strategic partners, I hope the matter would be resolved amicably during the consultations. Otherwise, it will be a trade war," the official said.

H-1B visas are for non-immigrant speciality workers. L-1 visas are for intra-company transferees (L-1A category for managers or executives; L-1B for ICT specialists). There is an annual statutory cap of 65,000 on H-1B non-immigrant visas for foreign professionals together with some labour condition requirements but there are no such limitations on L-1 visas.

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While the Indian government maintains the rate of visa rejections went up to 40 per cent last year, Nasscom data peg it as high as 70 per cent.

On April 16, India and the US will consult on the case concerning India's ban on US poultry imports. If the consultations fail to resolve the issue within 60 days, the US possesses the right to call for a dispute settlement panel, giving rise to a full-fledged dispute. Normally, it takes almost 8-10 years for a case to be settled at the DSB.

India's poultry market is one of the largest in the world and it had been maintaining the ban on US poultry products since 2007 even after the US denied having any inconsistencies on international safety standards. According to US trade representative Ron Kirk, India has never substantiated its arguments with proper scientific evidence.

"Every country today is becoming protectionist, with the huge churn that is happening in the global economy. There is still a huge slump in US

employment rates. India and the US are stuck in matters of national importance having political repercussions. Every country is now apprehensive of India's economic might and its impact on their economies," said T S Vishwanath, principal adviser, APJ-SLG Law Offices.