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A new study says legislative proposals in the Congress to place new restrictions on employers petitioning for skilled foreign nationals on H-1B and L-1 visas have provisions that are likely to violate United States' commitments under the General Agreement on Trade in Services.

According to the study released last week, passing a legislation that violates the GATS poses the risk of retaliation against US companies and can undermine US efforts to open markets in other nations to American goods and services. The study — conducted on behalf of National Foundation for American Policy by Jochum Shore & Trossevin, PC, a law firm specializing in trade matters related to US commitments under the World Trade Organization — is particularly significant given that Indians have been one of the largest users of H-1B and L-1 visas and the US has been seeking greater market access in India as part of increasing bilateral trade and business relations.

The authors of the study declined to comment on what kind of impact the bill, if it becomes a law, would have on India and whether it would entail a retaliatory action by New Delhi.

"Only governments can bring a complaint through the WTO process," said Stuart Anderson, executive director, NFAP. "Only governments can bring complaints based on bills that become law. The NFAP legal analysis examines bills and these bills are not laws right now. They may or may not become a law."

Marguerite Trossevin, a partner at the law firm, echoed Anderson. "There is a risk that members have the right to challenge it (*the possible legislation*)," Trossevin told *India Abroad*. "If countries are harmed by the legislation and feel they have interests in bringing the complaint to WTO, they have the right to do so." She added that if a member failed to

# Proposed restrictions on H-1B, L-1 visas could harm US: Study



President Barack Obama, left, with Indian Prime Minister Manmohan Singh. Passing a legislation that violates the General Agreement on Trade in Services poses the risk of retaliation against US companies and can undermine US efforts to open markets in other nations to American goods and services

bring the measure into conformity with the GATS, the complainant could approach the Dispute Settlement Body.

The analysis, Anderson and others clarified, takes no position on whether the proposed legislative changes constitute sound immigration policy. But the study notes why passing such legislation would be highly vulnerable to challenge from WTO members whose companies use H-1B or L-1 visas. Such a challenge, if successful, could lead to retaliation against US exporters and harm America's reputation on trade issues.

Under GATS when a member has made market access commitments, there are certain types of measures a member cannot adopt, including 'limitations on the total number of natural persons that may be employed in a particular service sector.' 'To ensure consistency with US obligations under the GATS there is a need to closely review any legislation on H-1B and L-1 visas,' the study said.

In the past one year or so, there has been a perception that there might be a rising trend of protectionism in the US because of the tough economic situation. Trossevin agreed that countries were under a lot of pressure to become a little protectionist. "But I think pressures for being protectionist have been resisted for most parts in this country," she added. "The US is very committed to open markets. The point of this study is to drive home the point that when you think of immigration, usually you do not consider the ramifications it may have in other contexts like trade commitments. The idea of this study is not to label anyone as protectionist or to make a comment on immigration policies, but to draw attention to the fact that the US needs to be cognizant of its trade commitments."

## The Bills and the problems

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

provisions that carry a significant likelihood of being ruled inconsistent with US commitments under the GATS are:

- H-1B wage rules to require employers to pay median average wages for the occupation and median wages for skill level 2 (S 887)
- Changing 90-day non-displacement rule for H-1Bs to

180 days (S 887)

- Prohibiting new H-1B or L-1 visas for employers with more than 50 percent of US work force in H-1B or L-1 status (S 887)
- New office requirements for L-1 visa holders (S 887)

- Broad no layoff restrictions (S 2804)
- Higher H-1B fees (past Senate floor amendments)

## Jet Airways to provide connectivity to 38 US cities

Indian private carrier Jet Airways has entered a new code share agreement with United Airlines that will enable it to provide connectivity to 38 American cities from India.

"The new code share agreement between Jet Airways and United Airlines has opened for sale today for those traveling from June 30 to 38 destinations in the US (United States) from India and also through trans-Atlantic and trans-Pacific routes," a Jet spokesperson said.

The agreement will allow Jet travelers to fly United Airlines' trans-Atlantic flights from London to Chicago,

Los Angeles, San Francisco, Denver and Washington and trans-Pacific flights from Hong Kong to Chicago and San Francisco.

United's flyers will get seamless connectivity to Ahmedabad, Bangalore, Goa, Hyderabad and Kolkata through Jet's hub at Mumbai, the spokesperson said.

As per the agreement, Jet will place its code on United's trans-Pacific and trans-Atlantic flights and its five US hub cities — Chicago, Denver, Los Angeles, San Francisco and Washington. United will be able to use its code on Jet's London-Mumbai, Hong Kong-Delhi and Hong Kong-Mumbai flights, as well as domestic flights to five Indian

cities.

"With this partnership, Jet offers its guests connectivity and seamless travel from India to Denver, Chicago, San Francisco, Los Angeles and Washington in the US, and onwards to almost 40 cities in North America," said Nikos Kardasis, chief executive officer, Jet Airways.

"We are pleased to bring our customers closer to destinations throughout India," said Mark Schwab, senior vice president, alliances, international and regulatory affairs, United Airlines.

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