

## Legal Sidebar

# Certain U.S. Laws for Foreign Workers Draw Fire from India in the WTO

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In March 2016, India [officially](#) brought a potentially major [challenge](#) in the World Trade Organization (WTO) dispute settlement system against the United States. Specifically, the dispute concerns U.S. immigration laws that (1) increased fees for certain temporary foreign workers and (2) allotted a specific number of temporary worker visas to Chilean and Singaporean nationals. India has alleged that the United States is violating its obligations under the [General Agreement on Trade in Services](#) (GATS), a [binding agreement](#) for all WTO member countries, as well as the GATS [Annex on Movement of Natural Persons Supplying Services](#), to not discriminate against or between non-U.S. service providers. [Based on WTO records](#), this appears to be the first time a WTO member has formally filed a dispute challenging the immigration laws of another member as a violation of the GATS. For several years, certain U.S. observers cautioned that [fee increases](#) for temporary foreign worker petitions and [other immigration changes](#) might be disputed as GATS violations. Others suggested that this challenge [is an attempt to offset India's loss](#) to the United States in another recent WTO dispute over India's laws regulating solar energy.

**Fee Increases for Certain L-1 and H-1B Worker Petitions:** Under U.S. law, employers who want to import temporary foreign workers must file a petition with immigration authorities and pay a fee. In 2010, Congress enacted a [law](#) raising petition fees for L-1 nonimmigrant workers (intracompany transferees employed as managers, executives, or employees with specialized knowledge) and H-1B nonimmigrant workers (persons in specialty occupations). In 2015, [Congress](#) again raised these rates through September 30, 2025. Both fee hikes apply only to visa petitioners with 50 or more employees in the United States, and then only if more than 50% of those employees are in either an L-1 or H-1B visa status. India had [threatened](#) in 2012 [to file](#) a WTO dispute against the 2010 fee increases, but ultimately decided to [protest informally](#) to the United States. The 2015 increases [apparently motivated India](#) to file a formal WTO dispute.

India [contends](#), among other things, that the 2010 and 2015 fee increases do not comply with “[most-favored-nation \(MFN\) treatment](#)” under the GATS, which [generally prohibits](#) a WTO member from treating the services and service suppliers of one WTO member less favorably than it treats comparable services and suppliers of another. (There are certain [limited exemptions](#) to MFN treatment that are irrelevant to India's complaint). The fee hikes do not specifically apply to workers of a particular nationality, and, therefore, they are facially neutral in application to WTO members. However, some allege that [the hikes would disproportionately affect Indian-owned IT businesses](#) operating in the United States. This alleged effect might be relevant to India's claim because the WTO has [recognized](#) that a GATS MFN [violation](#) may result when a facially neutral measure has a comparatively disproportionate negative impact on service suppliers of one WTO Member.

India also asserts that the fee increases violate GATS [national treatment](#) and [market access](#) obligations under the terms agreed to and specified by the United States in its GATS [Schedule of Specific Commitments](#). “National treatment” means that a WTO member cannot treat the services and service suppliers of another WTO member less favorably than it treats comparable domestic services suppliers. This obligation is subject to each WTO member's [schedule of specific commitments](#) in which each member enumerates commitments to particular laws and policies, as well as limitations on and exceptions to these commitments. The schedule of specific commitments may include provisions respecting immigration and the [delivery of services through the temporary presence of a natural person of one member](#) in the territory of another. Such provisions may treat foreign nationals differently than U.S. nationals.

India [contends](#) that the fee increases are inconsistent with the [U.S. Schedule of Specific Commitments](#) (U.S. Schedule). The U.S. Schedule includes national-treatment and market-access commitments to nonimmigrant visas for various types of service suppliers that parallel various business-related visa categories, but it does not include fees that exceed the processing cost of a petition for foreign workers. India appears to contend that, without an express fee commitment or limitation on a fee commitment, the fees violate national treatment and the GATS [obligation](#) to administer generally applicable laws and policies affecting trade in services reasonably, objectively, and impartially. Here, the [legislative history](#) may suggest that the petition fees increases mandated by the 2010 and 2015 acts are arguably protectionist because they may exceed the government's cost in processing a visa applicant and also could be punitive measures targeting employers perceived by some Members of Congress as abusers of the foreign worker visas.

India [claims](#) that the fee increases also appear to nullify or impair [the benefits to India](#) under the GATS. A member may regulate the entry and stay of natural persons as long as a measure is not applied in a manner that [nullifies or impairs benefits](#) to any member under a specific commitment. [Some observers](#) claim that alleged costs to the Indian IT industry resulting from the increased fees might impair the benefits to India from the L-1 and H-1B visa commitment in the U.S. Schedule. [Others](#) have reportedly contended that such fee hikes have no significant impact on business profits or that, in any event, the continued availability of visas to Indian companies and the fact that the fee hikes apply to both Indian and non-Indian companies means that the fee increases do not impair India's market access.

**Visa Allocations for Chile and Singapore:** [India also alleges that numerical allotments](#) for H-1B nonimmigrant workers from Chile and Singapore do not comply with MFN-market access obligations and the U.S. Schedule. In addition, India argues that the allotments violate the GATS [requirement](#) that a bilateral agreement facilitating trade in services between two WTO members shall not increase the overall level of barriers to trade in services for other members who are not parties to the bilateral agreement compared to the level before the bilateral agreement. A specified statutory cap on the number of H-1B visas granted annually is listed in the U.S. Schedule. Specific allotments for Chilean and Singaporean nationals, pursuant to the [bilateral free trade agreements](#) (FTAs) that the United States concluded with those countries in 2003, are deducted from the overall cap but are not listed in the U.S. Schedule. The United States has not included visa allotments in other FTAs due to reported [congressional opposition](#) and [current statutory restrictions](#). On the other hand, the allotments to Chilean and Singaporean nationals may not violate GATS obligations because the total number of H-1B visas [issued annually exceeds the cap](#) listed in the U.S. Schedule due to various cap exceptions, meaning that countries like India would not be harmed by the allotments.

**WTO Dispute Process and Potential Outcome:** The dispute remains in consultations, the first phase in WTO disputes, and neither party has submitted any detailed legal arguments to the WTO. Although U.S. officials reportedly have [asserted](#) confidence that the disputed laws are fully consistent with WTO obligations, U.S. officials have [informed Indian officials they would review](#) the fee increases. No further public pledge has been made, however, to modify current U.S. immigration policies. If the dispute moves to the [formal dispute settlement panel phase](#), one potential outcome could be a WTO determination that the disputed statutes are inconsistent with GATS obligations and a recommendation that the United States should modify its laws to comply with the GATS. Compliance procedures could subject the United States to [WTO-authorized trade retaliation](#) if Congress does not amend the pertinent laws. A WTO panel report [does not have direct legal effect](#) on U.S. laws and policies; Congress would have to legislate any conforming statutory amendment. Even if India were to prevail in an adopted report, India could choose to "agree to disagree" with the United States without seeking compliance. As a potentially far-reaching effect, a successful challenge to a member's immigration laws could signal that other immigration measures of WTO members [may be subject to greater scrutiny](#), rather than generally being accepted as border control measures consistent with [WTO exceptions](#), [U.S. commitments](#) and long-standing recognition of [sovereign](#) prerogatives.