

WALL STREET JOURNAL

AVOIDING AN IMMIGRATION TRADE WAR

Wall Street Journal editorial
July 17, 2013

With U.S. immigration reform now in the hands of the House of Representatives, the Republican majority's project is to improve on the Senate's effort. One clear opportunity is to strike the temporary-worker provisions that would raise costs on U.S. firms and risk a trade war with India.

The Senate bill's strength is that it would improve America's ability to attract and retain talent, especially by granting green cards to any foreigners graduating from U.S. universities with a job offer and an advanced degree in science, technology, engineering or math. The bill would also welcome more skilled workers on temporary H-1B visas, raising the annual cap from 65,000 to as high as 180,000, depending on labor-market conditions. That number would be supplemented by 25,000 graduate-degree exemptions, up from 20,000 today.

But there are caveats. Before hiring any H-1B workers, employers would have to post job notices for 30 days on a Department of Labor website and take "good faith steps" to recruit American workers instead. Employers would also be forced to pay higher wages to H-1B workers, a sop to the protectionist myth that skilled foreign labor undercuts the pay of Americans.

Even worse is the Senate bill's treatment of a small number of companies classified as "H-1B-dependent," meaning that at least 15% of their U.S. employees are on the visa. This is where Washington might set off a trade war, since "H-1B-dependent" is essentially code for a few Indian firms specializing in information-technology services, including Infosys, Tata Consulting Services and Wipro.

Hewlett-Packard employees work at the company's Business Process Outsourcing center in Bangalore, India.

These companies help American firms with all sorts of non-core functions such as tech support, human resources, payroll and recordkeeping. Now Congress threatens to block them from operating in the U.S.

The Senate bill would hit H-1B-dependent firms with up to \$10,000 in extra fees per visa application, depending on the share of their workforce using H-1Bs. These firms could only hire a foreign worker after having "offered the job to any United States worker who applies and is equally or better qualified for the job"—as determined, naturally, by some all-knowing Labor Department bureaucrat. This standard immediately puts any hire in legal jeopardy. By 2017 no firm could have more than 50% of its U.S. workforce on H-1Bs.

But the coup de grace is the bill's "outplacement restriction" banning H-1B-dependent firms from sending workers to client sites. Outplacement is the business model of these firms—allowing an Infosys to serve a Boeing BA +0.54% around the clock, for example, with H-1B workers on-site in Chicago or Seattle and other staff in Bangalore. Banning such

collaboration, says Som Mittal of India's National Association of Software and Service Companies, "basically tells us not to do business in America."

Hence India's threats to challenge the U.S. at the World Trade Organization if the Senate bill becomes law. New Delhi resisted going to the WTO after the U.S. raised visa fees on H-1B-dependent firms in 2010, though it had a good case.

India has a far-from-perfect trade record, especially on intellectual-property protection and, more recently, its domestic electronics industry. But India is now a nearly \$100 billion trading partner of the U.S., and any protectionist tit-for-tat would hurt economic growth in both countries.

At its core, the Senate bill's H-1B treatment is an exercise in picking winners and losers in IT services. It would penalize Indian firms and help their U.S. competitors, such as IBM and Accenture, which provide the same services—also using H-1B workers—but don't qualify as "dependent" because they employ enough Americans elsewhere in their workforces.

American firms needing IT services would have less choice and higher costs. One likely outcome: They move more back-office operations overseas, continuing to work with firms like Infosys but doing so exclusively abroad. In other words, the protectionist project of Senators Dick Durbin, Chuck Schumer and others would have the opposite of its intended effect, creating jobs abroad while destroying them in the U.S.

To avoid this outcome, the full House can support the Skills Visa Act, which passed the Judiciary Committee last month and would improve the green-card and H-1B systems without discriminating against certain companies. Socking it to India needn't be a condition of passing pro-growth, bipartisan immigration reform.