



THE WORLD ACCORDING TO SENATOR SCHUMER: IF IT'S NOT A CHOP SHOP, IT'S A BODY SHOP

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By Gary Endelman and Cyrus D. Mehta

Dear Senator Schumer:

We know that you and your colleagues with great aplomb approved a border security bill, H.R. 6080, that would provide \$600 million in funding for putting \$1,500 border security to prevent illegal immigration, which will be paid for by raising fees on certain H-1B and L-1 visa petitions. The hike in fees, \$2,000 for an H-1B and \$2,500 for an L-1, will be paid by a company that has 50 or more employees if more than 50% of these employees are admitted in H-1B or L status. Most of the companies that will face these punitive hikes will be Indian IT companies. The President signed the bill on August 13, 2010. What Indian IT consultants have to do with border security remains a genuine head scratcher. In a letter to U.S. Trade Representative Ron Kirk, India's Commerce Minister Anand Sharma said the bill unfairly targets Indian companies and estimated it would cost the country's firms an extra \$200 million a year. "It is inexplicable to our companies to bear the cost of such a highly discriminatory law," Sharma wrote. Perhaps the fact that these same companies subsidize US social security solvency to the tune of \$1 billion per annum without any benefit flowing the other way might also raise hackles in Bangalore. <http://www.indiapost.com/india/8922-India-protests-bill-raise-H1B-visa-fees.html>

India bashing is a potent political strategy these days as you probably know. In the recent contest over the Democratic Party's nomination for the Arkansas Senate seat held by your colleague Blanche Lincoln, business lobbyists funded controversial television ads attacking her challenger, Lieutenant Governor Bill Halter, for allegedly profiting from a software company that supposedly

outsourced American jobs to India. (Halter denied the charge.) What did Senator Lincoln do? Take a listen:" With Indian music playing in the background, one of the ads featured several Indians thanking Mr. Halter for sending jobs to Bangalore. Although Ms. Lincoln condemned the ads as racially offensive, her campaign distributed mailers, emblazoned with pictures of the Taj Mahal, making the same charge."<http://india.foreignpolicyblogs.com/tag/indo-us-relations/> . Of course, this will not prevent President Obama from visiting India this coming November to highlight its importance to the United States. Will there be room for you on Air Force One?

Hopefully, Senator, the Indian Government will not retaliate against your visa fee hike in advance of the President's arrival. Consider for a memento a warning by Azim Premji, the executive chairman of Wipro, one of the companies you singled out in your bill:

"I think the United States must realize that today 60 to 70% of the growth of the revenues of large American companies comes from India and China. These are the growth markets. It's a simple thing for our government to raise tariffs. It's a simple thing for our government to say no American corporation will get central or state government contracts, or defense contracts. On the other axis, we're so open to global corporations to bid on exactly the same terms as Indian corporations. You'll get a spate of protectionism coming, I have no doubt. You can see it in China, but they do it very subtly. Nearly 55% of the economy of China is government."

http://www.businessweek.com/globalbiz/blog/globespott/archives/2009/05/wipros_premji_o.html

Senator, your 50/50 rule, which is modeled after what Senators Durbin and Grassley have long advocated,

<http://blog.cyrusmehta.com/News.aspx?SubIdx=ocyrus20099111575>, could trigger a formal complaint by the Indian Government to the World Trade Organization on the grounds that the United States is failing to abide by its obligations under Mode 4 of the General Agreement on Trade in Services (GATS) that regulates services provided by "one Member through the presence of natural persons of a Member in the territory of any other member." GATS Training Module: Chapter 1: Basic Purpose and Concepts, WTO Web site available at http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf_e.htm. A recent study by the National Foundation for American Policy did not dismiss

this possibility but expressed genuine concern that the United States would be deemed guilty of a restrictive trade practice, thus leaving us with the Hobson's choice of revising our immigration laws or risking WTO discipline, not to mention a severe Indian response.

http://www.nfap.com/pdf/GATSLegalAnalysis_NFAPPolicyStudy_June2010.pdf

We all make our living in a global village, Senator, and your fee hike is a boomerang that is going to come back around to hurt the very workers you want to protect. That is why business leaders are muttering in their martinis. US India Business Council President Rom Somers speaks for many:

"It is totally outrageous in this day in age, when the world is so interconnected by the Internet, that draconian measures would be floated by the US Congress that tarbrushes Indian companies as 'chop shops'...Our companies are creating value around the clock thanks to tie-ups with India, keeping us ahead of the global competition...Cutting our nose off to spite our face by imposing restrictions on movement of high-tech professionals will hobble American companies' ability to compete in the global marketplace," he said....Value addition is being provided by Indian companies 12 hours a day, 7 days a week for US companies, complimenting the value being generated by the American work force. When our day winds down and our workforce shuts the lights off, the Indian workforce awakes for their morning to continue adding value," Somers added."

<http://www.deccanherald.com/content/87773/us-industry-outraged-senators-chop.html>.

You might be interested to read a 2008 report from the US India Business Council concerning Indian investment in the United States. Covering 12 states, Indian corporate titans handed out paychecks to 30,000 Americans; the Tata Group, by itself, operated 16 businesses with 19,000 workers and an estimated total investment of \$3 billion.

<http://www.expressindia.com/latest-news/Indian-firms-employ-over-30k-US-citizens-Study/332089/>.

Senator Schumer, we are not sure whether you read our blog that we posted the night before you approved HR 6080 in the Senate on August 12, 2010, <http://cyrusmehta.blogspot.com/2010/08/silence-in-time-of-torment-throwing.html>, where we reminded you that the use of pejoratives such as "chop shop," or even "job shop" with regard to Indian's crown jewel IT company, Infosys, were racist terms, which have been legitimized in public discourse much as

racist terms found acceptance in the Jim Crow era. You clarified the next morning, August 12, 2010, that the use of "chop shop" was not appropriate, but then indicated that the more appropriate term ought to have been "body shop," which continues to rub salt in the wound and demonstrates an ignorance of the very real value that firms like Infosys, Wipro, Tata and other smaller companies with similar business models bring to American business. In your August 12 speech, you referred to the so called "good" H-1B folks at Oracle, Cisco and Apple who create products and technologies. But IT development is not just about making products such as iPhones or iPads. The same skills and ingenuity are used in efficiently providing IT services to major American businesses that run the economy. You later said, "If you are using the H-1B visa to run a glorified international temp agency for tech workers in contravention of the spirit of the program, I and my colleagues believe that you should have to pay a higher fee to ensure that American workers aren't losing their jobs because of unintended uses of the visa program." But Infosys and similar companies are not temp agencies and have ingeniously taken advantage of a global around the clock business cycle. They have been made possible by high speed internet, and the concept of software as a service is a unique Internet driven strategy. Moreover, they have efficiently provided these services to American businesses in a time of rapidly aging populations in the United States and Europe, which will result in a significant shortage of IT workers in the near future, <http://www.visalaw.com/00feb2/11feb200.html>.

As Angelo Paparelli astutely noted in his latest blog, "Temp agencies, whether domestic or foreign, supply temporary workers to fill short-term needs, sometimes at lower costs. Global sourcing enterprises use a legitimate business model that significantly benefits governments, businesses, citizens and customers by offering better quality, 24/7 service across time zones, and speedier start-up and delivery, while allowing customers to focus on core competencies. Global service providers are not 'glorified international temp agenc.' They are no less vital to American businesses than are the hundreds of private contractors who serve the federal government, including the Departments of Justice and Homeland Security. Regrettably, the border-law's definition of businesses that must pay the ramped-up H-1B and L-1 filing fees is not carefully tailored to reach only temp agencies engaged in body-shop activities. It unjustly imposes a protectionist tax on legitimate multinationals in the global sourcing industry," <http://ping.fm/hl1sO>.

Senator Schumer, you focus only on the alleged exploitative aspects of the "job shop" business mode, but ignore completely the extent to which American companies are partnering with these Indian IT giants to create new business models that will transform the way services are provided to consumers on the most important issues facing them in their daily lives. Here is a great example, <http://www.moneycontrol.com/news/business/satyamcisco-announce-collaboration-for-health-solutions-311005.html>. We know that you are too busy to find out much about the business model that these Indian companies use so perhaps we can do some of your research. These "glorified international temp; agencies" actually are some of the best run companies in the world . They are pioneers in workforce development and much of their mushrooming growth is not based upon smoke and mirrors but rather upon a holistic engagement with employees, treating them not as a cost to be controlled but a capital asset to be developed. During your upcoming recess, we recommend that you crack open a terrific book on this very subject called The India Way by Peter Capelli, Harbir Singh, Jitendra Singh and Michael Useem. <http://hbr.org/product/india-way-how-india-s-top-business-leaders-are-rev/an/12037-HBK-ENG> It's a real page turner! Just take a look at one of the malefactors you mention in your speech, Infosys. In 2002, they had 10,700 employees and total revenues of \$545 million. Seven years later, they employed 104,900 with gross revenues of \$4.6 billion. Since the H quota has been set at the artificially low level of 65,000 during this time, maybe they were doing something else right?

While we applaud and admire your commitment to Comprehensive Immigration Reform, and realize that you had to pass the border bill to show Republicans that you did something to control the border in order to get some bipartisan support, and we do hope your trust in them was not misplaced, we think it is a fatal mistake not to challenge you on this point and concede that the business model used by Infosys and others is bad for America. This is what The Economist has to say, "What's also funny about all this chest-thumping service-sector protectionism is that it comes from the world's leading exporter of commercial services, who you'd think would understand the need for open markets in an industry where it is the world's biggest player. In 2008, the last year for which the WTO has comprehensive worldwide data, America's exports of commercial services were around 5 times India's (and about 28% of its total exports). And while latecomers like India have been playing catch-up, America's

service-sector exports have not exactly done badly: they more than doubled in value between 1999 and 2008, when the US had a big surplus in its commercial-services trade."

http://www.economist.com/blogs/freeexchange/2010/08/trade_1. A great point. If all countries were to adopt your approach, guess who would be the big loser, Senator Schumer?

The wellsprings of American prosperity Senator are watered not by keeping talent out but by inviting talent in so that invention is encouraged, ideas are shared, and new technology developed . That Senator is what gives America its edge in the information age and keeps us a step ahead of our competitors. Why give that up? You are 100% right to worry that not enough American kids are studying computers on campus; as a result largely of the dot.com bust, the Computer Research Association that tracks these things reports that, at its nadir, the number of computer science majors undergraduate degrees at 170 institutions shrank to 8,021 in the 2006-2007 academic year. But, cheer up Senator! Since then, assisted by the advancement of computer research into emerging fields, enrollments have soared by 14%. http://www.computerworld.com/s/article/print/9180646/Senator_Schumer_H_1_B_use_and

And here's an interesting piece in Fortune Magazine, "It would be easy to imagine Reno, Ohio, as the type of place that would be hit hardest by outsourcing - a small American town losing out to the invisible hand shifting jobs to places like Bangalore and Guangzhou. Instead, outsourcing is bringing the jobs to Reno. Across the street from an Army Reserve center and next to a farm, a customer-service call center hums, its 250 workers answering phones for online travel agency Expedia. The center's owner? Indian conglomerate Tata Group."

http://money.cnn.com/magazines/fortune/fortune_archive/2007/08/06/100141303/index.htm?postversion=2007080305. Senator Schumer, do you really oppose this?

Finally, while you admirably corrected the record by indicating that the Indian firms that you mischaracterized as "chop shops" were not engaged in illegal behavior, you still seemed to imply that the so called staffing agencies were responsible for reducing wages and cite to a flawed and biased study of the Economic Policy Institute, http://www.epi.org/analysis_and_opinion/entry/enforcement_needed_in_h-1b_v

[isa laws/](#). This study fails to take into account that employers must pay wages in accordance with DOL recognized prevailing wage surveys. If H-1B workers constitute a miniscule fraction of the employed population of the US, and wage surveys must take into account a broad cross section of employers, how can H-1B workers depress wages? Moreover, H-1B dependent employers, in order to escape the more onerous attestations, pay H-1B workers \$60,000 or more, even if they may be entry level programmer analysts working in Minot, North Dakota! Perhaps, you could have looked around and referred to a recent peer reviewed study by Professors Lucas and Mithas of the University of Maryland School of Business by Professors Lucas and Mithas of the University of Maryland's Business School, which demonstrates quite the opposite. H-1B and L visa workers in the IT Industry were paid 6.9% more than their American counterparts, and green card holders took home more than 12.9% than their American counterparts. This study confirms what we immigration lawyers have always known - that US employers seek out workers on H-1B and L visas because they are really good and not because they can get away by paying them cheaply. We also know that employers are not going to go through the hoops and hurdles of filing an H-1B or L visa petition, pay filing and attorney fees, take pains to comply with all of the complex regulatory requirements (including paying the prevailing wage for H-1B workers and those being sponsored for green cards through labor certification), and respond to burdensome requests for evidence, unless they believed in the worth of this foreign worker, <http://cyrusmehta.blogspot.com/2010/05/study-shows-that-h-1b-and-l-1-workers.html>.

Over the long haul, India is more than a promising market for Silicon Valley, it is a strategic alternative. Just as economic prosperity in the 20th century required investment and raw materials, competitive dominance in the information age of the new millennium will depend, in no small measure, on who can prevail in the global hunt for the best technological talent. Those who want to protect US jobs by closing down the Indian pipeline are having precisely the opposite effect. By making it more difficult to work and remain in the United States, such policies will either enable the Indian IT industrial complex to reach critical mass much earlier than would have otherwise been the case or give our chief competitors in Europe, Japan and China a badly needed infusion of talent. Beyond this, there is a deeper point, namely this: India is on the rise. The

question is not whether this development will take place but, rather, whether, when it does, the relationship with the United States will be characterized by partnership or competition. Senator Schumer, your brand of immigration protectionism will not prevent Bangalore from developing into a strategic alternative to Silicon Valley but it most certainly will destroy any chance for the kind of entrepreneurial amity and technological cross-fertilization that will allow America to reap the benefits of this Indian renaissance. Beyond that, IT wages in India will either fall or slowly rise since the supply of qualified workers will grow. This means, in turn, the US companies, under enormous cost pressures, will be unable to resist the obvious solution of sending IT jobs to India or simply establishing Indian subsidiary operations in the first place. Wages are transnational, not domestic, and what is a prevailing wage cannot be defined in only, or even primarily, a domestic context and make sense since the economic systems in which people work are increasingly global without much interest in, or respect for, national boundaries. Skill not geography counts. Immigration is an economic force not a political problem and must be dealt with as any other economic issue. In the long run, American jobs will hemorrhage if wages are kept artificially high when world markets offer attractive alternatives at high quality but much lower cost. If you think this serves US national interest, ask the thousands upon thousands of steel workers in Ohio and Pennsylvania whose jobs are now being done in Korea. The American economic miracle depends not on cheap labor but on productive labor capable of creating jobs in industries that have yet to be invented.

If you think that it is cheap for Indian workers to come here, Senator, how much cheaper would it be for them to stay at home and have US jobs come to them? We are, it seems, no longer the only game in town. Your bill will only serve to accelerate this change in the Indian IT business model so that, rather than coming to the customers, India's IT giants will have the customers come to them. Infosys Technologies, the second largest software exporter in India with over 66 per cent of its revenues coming from North America, has already begun to plan for this transition. Kris Gopalakrishnan, CEO and ME of Infosys Technologies, predicts that, over time, as more US technology companies establish a presence in India, Infosys will be able to service them while cutting back on H-1B sponsorship. http://www.domain-b.com/infotech/itnews/20100814_models_one_View.html. You will have made the H visa irrelevant Senator but the jobs at

issue will also have gone away, not just the H1B jobs but those of the American workers that are inextricably linked with them. Your bill forces India to respond for their failure to do so will only serve as a green light to the rest of their Western customer base to follow your example. That is the real fear. <http://economictimes.indiatimes.com/articleshow/6285448.cms> An expression of this anxiety over the future was immediately played out on the Mumbai stock exchange where shares of Infosys Technologies Ltd., Tata Consultancy Services Ltd. and Wipro Ltd. declined across the board. Tata Consultancy, the country's largest IT concern fell 1.7 percent; Infosys, the second-biggest dropped 1.6 percent and Wipro slid 2.1 percent on the Bombay Stock Exchange, compared with a 0.4 percent loss in the benchmark Sensitive Index. <http://www.businessweek.com/news/2010-08-10/india-expresses-concern-on-discriminatory-u-s-bill.html>. Change that was inevitable will now come more suddenly and with greater force. The thousands of Americans working in India will almost certainly be the collateral damage swept up by the coming Indian response.

Senator Schumer, we know that you have good motives because you desire Comprehensive Immigration Reform and pushed the border bill to eliminate any excuses that nothing was being done at the border first. I think you will find lots of people who are inherently anti-immigrant. They will continue to ask for more enforcement and will never agree on a CIR measure. I hope we are wrong, and that you did not give away a previous bargaining chip prior to passing a CIR proposal, and have it paid from a group of employers who have nothing to do with illegal immigration at the Mexican border.

Thank you for hearing us out, Senator Schumer. In case you are stuck and cannot get CIR passed, and see more jobs moving outside the US because of the hike in fees and other protectionist proposals, please do not hesitate to call upon us and we will be glad to write another letter of advice.