

NAM Priorities for 2016 U.S.-India Commercial Dialogues

May 2016

Over the last two years, the U.S. and Indian governments have sought to expand their commercial relationship, building on statements from Prime Minister Modi that India was “open for business,” welcomed foreign direct investment in key sectors, and would take steps to address longstanding commercial barriers. Since then, the two sides have restarted and expanded their commercial dialogue, including two critical forums to discuss economic and commercial issues – the U.S. India Strategic & Commercial Dialogue (S&CD) and the U.S.-India Trade Policy Forum (TPF).

While these dialogues represent important channels for the U.S. and Indian governments and for industry to expand economic opportunities and resolve commercial issues, they must move beyond rhetoric to capture concrete deliverables. Such progress is the ultimate goal for these dialogues, and is the benchmark by which stakeholders in both countries will judge the success of these efforts, particularly in 2016 as India hosts this year’s editions of the reinvigorated S&CD and TPF.

To aid the U.S. government in preparations for these important dialogues, the National Association of Manufacturers (NAM) offers these specific recommendations for priorities and deliverables that would demonstrate concrete progress in this year’s dialogues and address some of the most troublesome issues that manufacturers in the United States continue to face in India. The NAM is the largest industrial trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Across the country, manufacturing employs more 12 million men and women, supporting nearly one in six private sector jobs. Manufacturing sectors contribute \$2.17 trillion each year to the U.S. economy.

The NAM and the Importance of India for Manufacturers in the United States

International trade and investment is critical to the continued competitiveness and growth of manufacturers in the United States, enabling them to find new customers, sustain and grow jobs at home, and further the growth of the United States in an increasingly interconnected global economy. Notably, 95 percent of the world’s consumers live outside the borders of the United States – including a sizable number in India.

Today, India is a global economic power with rising household incomes and a burgeoning middle class. It is the world’s fastest growing large economy – ahead of its neighbor China – and is ranked by the World Bank as the world’s third largest economy by purchasing power parity (PPP) – ahead of Japan. India’s rapid growth represents an enormous opportunity to expand the U.S.-India economic relationship, which has been characterized over the last decades by relatively low trade and investment levels.

Manufacturers in the United States have long been partners in India’s growth and development, on the forefront of building commercial ties that benefit both the American and Indian economies. When Prime Minister Narendra Modi first came into office in May 2014, manufacturers hoped his vision would be translated quickly to action as Modi and his new government declared India “open for business,” committed to boost foreign investment, and sought to boost engagement with the United States to address a range of economic and commercial challenges facing businesses in both countries.

Since that date, the U.S. and Indian governments have restarted and expanded their commercial dialogue, including two critical forums to discuss economic and commercial issues – the U.S.-India Strategic & Commercial Dialogue (S&CD) and the U.S.-India Trade Policy Forum (TPF). While these dialogues represent important channels for the U.S. and Indian governments and for industry to expand economic opportunities and resolve commercial issues, these dialogues must move beyond rhetoric to capture concrete deliverables. Such progress is the ultimate goal for these reinvigorated dialogues, and the benchmark by which stakeholders in both countries will judge the success of these efforts, particularly in 2016 as India hosts this year’s editions of the S&CD and TPF.

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Overall, the U.S. government should work with the Indian government to ensure that it translates positive rhetoric into lasting policy change. Despite statements made by Prime Minister Modi and other senior Indian officials over the past two years, there has been limited progress in many key areas that make it challenging to do business in India, from policy areas such as localization policies and high tariffs to day-to-day business issues such as administrative licensing and India’s own priority of passing a Goods and Services Tax and Bankruptcy Law. All parties – including the Modi government and Indian and global businesses – agree that reforms are needed to make it easier to do business in India. India still ranks 130th out of 189 countries in the World Bank’s 2016 Doing Business report, the lowest of G-20 nations.

Second, the NAM recommends increased attention on improved policies to grow a strong manufacturing economy, particularly given India's focus on manufacturing with its "Make in India" program. In the [2015 U.S.-India Joint Statement on the Trade Policy Forum](#), senior U.S. and Indian officials raised the importance of manufacturing and of policies that offer "a transparent and predictable policy environment and simplified compliances to help attract investments in manufacturing." Such policies are of central importance to both economies, and the NAM has led efforts to promote manufacturing in the United States, most recently through its [Competing to Win](#) initiative that can be instructive for India's efforts.

At this year's bilateral dialogues, the United States and India should build on the 2015 discussion and commit to pursue manufacturing policies that recognize the value of and move to implement a broad range of policies to promote manufacturing investment, from trade liberalization and strong innovation and intellectual property policies to policies that promote global competitiveness of producers in the market regardless of nationality, such as regulation and tax. By seeking to create an attractive and more open environment for manufacturing, India will be better able to achieve its own goals.

Finally, the NAM encourages both governments to strengthen further private sector participation in these dialogues. Our organization and members appreciate the continued efforts of both your agencies to engage with industry on a wide range of commercial concerns. The U.S. government's considerable efforts to mark progress with the Indian government on these issues would be further enhanced by promoting direct private sector participation in these dialogues and by ensuring that public-private dialogues engage on policy issues in addition to operational discussions. This model is similar to what exists in the U.S.-China Joint Commission on Commerce and Trade (JCCT). The JCCT structure includes a variety of working groups that incorporate this participation through formal and informal structures. The NAM recommends that the U.S. and Indian governments discuss ways to strengthen these dialogues further with greater private sector participation, and agree to incorporate such private sector participation moving forward.

Specifically, the NAM recommends four priority areas for discussion on commercial issues through the S&CD and TPF: tariffs and trade facilitation, forced localization, intellectual property and investment/ease of doing business.

Tariffs and Trade Facilitation

High tariffs in India and other trade barriers and policies that slow or hinder trade in goods remain a significant challenge for many manufacturing sectors. For example, overall U.S. goods exports to India face an average applied tariff of more than 13 percent – over six times higher than U.S. duties on Indian goods. Such tariffs not only impede manufacturers in the United States, but India's own industries that seek to use inputs and participate in global supply chains. Beyond tariffs, cumbersome and complex customs processing and import licensing procedures also limit India's trade growth. India's February 2016 ratification of the Trade Facilitation Agreement (TFA) marked an important step forward, but more work is needed to build on the opportunities that a fully implemented TFA can bring to India.

The NAM urges that the final outcomes include language that:

- India commit to eliminate immediately any tariffs on products covered by the original Information Technology Agreement (ITA) to which India is a signatory, and also commit not to impose high tariff rates on products covered under the expanded ITA reached in December 2016. Eliminating these tariffs will lower costs for key information technology inputs and products, benefiting both Indian consumers and domestic Indian startups.
- The United States and India agree to engage on identifying tariff lines that could be lowered to facilitate trade and boost economic activity in both countries, as well as discussing tangible concerns and the negative economic and public welfare impact on India's economy of proposed tariff hikes. Examples for discussion could include automobiles, textiles, medical device products, and information technology products such as GPS devices.
- India commit to accelerating its implementation of the TFA to the fullest extent, including by releasing a list of Category B provisions (provisions that require a transition period before to implementation) with as short a set of transition periods as possible. India should also build on TFA commitments by introducing a commercially meaningful de minimis regime that would increase the flow of cross-border commerce and allow inputs necessary for Indian manufacturing at minimal cost. The United States just raised its de minimis to \$800 as part of the Trade Facilitation and Trade Enforcement Act.
- The United States and India partner to promote full implementation of TFA around the world, encouraging countries to ratify the agreement and to implement the agreement quickly, with as few commitments as possible in Categories B and C (provisions that can only be implemented with assistance from other countries). Accelerating the implementation of TFA – and broadening its immediate benefits – will only make the agreement more valuable for businesses in the U.S. and India, while allowing India an opportunity to be viewed as a leader on global trade issues.

¹ These schemes include the Export Promotion Capital Goods scheme, the duty exemption entitlement certificate programs, the Focus Market scheme, and the Served from India scheme.

- The United States and India should affirm the importance of transparency, predictability, and efficiency in government approvals and inspections related to cross-border trade to promote a robust bilateral trading relationship, and engage to resolve outstanding issues. Areas for discussion include areas such as reducing delays in applications

for trade promotion schemes that fall under India's April 2015 Foreign Trade Policy¹, ensuring appropriate timelines for duty refund claims, and improving efficient clearing of shipments through institution of time-definite customs clearance procedures for small parcels and by increasing use of scanning and automation technologies.

Localization

India maintains an array of forced localization barriers in sectors such as energy, information technology, medical equipment, testing and certification and other sectors that add to the cost and complexity of participating in the Indian market. These policies not only discriminate against manufacturers in the United States, but also raise costs and limit choice and innovation for Indian industry, cutting India off from the rest of the world and shielding Indian companies from the types of global competition and partnerships that would best equip them to innovate and grow. Addressing localization barriers is critical to level the playing field for manufacturers in the United States and should continue to be a top priority of these dialogues.

The NAM urges that the final outcomes include language that:

- The United States and India agree to launch a concrete discussion on data localization and privacy issues, including exchanging information about how the United States and other trading partners work together ensure both free data flow to benefit business while also protecting privacy for citizens. Such a dialogue would also raise awareness about how local data requirements broadly and negatively impact a wide-range of industries, particularly small businesses, beyond the information technology sector.
- The United States and India commit to eliminate or to suspend and revise localization policies that do not conform with their international obligations or their desired level of participation in the global economy. For India, this includes policies such as local security and testing requirements, high export tariffs, limits on remanufacturing, and other localization mandates on commercial activities.
- The United States and India reaffirm their engagement on standards issues included in the 2015 S&CD and agree to expand dialogues to include more sectors and standards areas as well as challenges in conformity assessment such as duplicative testing.

Intellectual Property

Innovation is a critical economic driver for both the United States and India, and a priority for both countries and their leaders. Yet growing innovation requires policies to encourage, support, and protect intellectual property. Prime Minister Modi has recognized the innovation-IP link, pledging his support to “do everything possible” to promote India as an innovation hub² and assuring the foreign business community that India is “committed to protecting IPR... [as] essential to fostering creativity”³ and that it will “protect Intellectual Property Rights of all innovators and entrepreneurs.”⁴ Stronger policies to protect intellectual property will benefit all parties, both foreign and domestic firms, seeking to innovate in India, and provide the best means for India to achieve the mandates laid out by Prime Minister Modi. In addition, such policies would encourage greater investment in India, particularly in innovative industries that help to create jobs and fuel economic growth.

The NAM urges that the final outcomes include language that:

- The United States and India reaffirm their mutual commitment to promote and enforce laws, regulations, and procedures that fully protect intellectual property rights, in line with Prime Minister Modi's statements. Such a commitment should also include a clear commitment that both countries' intellectual property provisions and actions will be fully consistent with TRIPS and other international obligations.
- The United States and India commit to treat intellectual property fairly and equally, regardless of nationality. In line with such a commitment, the NAM recommends that India commit to reconsider its Section 8 reporting requirements to find workable solutions that do not limit the abilities of both domestic and foreign patent-holders to innovate and use intellectual property globally. The NAM also recommends that India ensure that further drafts

² “Will do everything to make India innovation hub: Modi,” The Hindu: New Delhi (July 6, 2015), last accessed April 5, 2015 (<http://www.thehindu.com/news/national/digital-dialogue-will-do-everything-possible-to-make-india-innovation-hub-says-prime-minister-narendra-modi/article7389350.ece>).

³ IANS, “India will protect intellectual property: Modi,” Times of India: New Delhi (September 25, 2015), last accessed April 5, 2015 (<http://timesofindia.indiatimes.com/india/India-will-protect-intellectual-property-Modi/articleshow/49099030.cms>); and

⁴ “India Committed to Protect Intellectual Property Rights: PM Narendra Modi in London,” Press Trust of India: New Delhi (November 13, 2015), last accessed April 5, 2015 (<http://www.ndtv.com/india-news/india-committed-to-protect-intellectual-property-rights-pm-narendra-modi-in-london-1242859>)

of the amended Patents Rules, last released for public comment in late 2015, address industry concerns about discrimination against foreign IP prompted by proposed expedited examination for inventions manufactured in India.

- India commit to revise to its National Intellectual Property Rights Policy to promote further the needs of innovation and intellectual property protection, adhering to a transparent approach that involves engagement with both foreign and domestic stakeholders to seek, incorporate, and respond to their views. The NAM also recommends that India also provide concrete information about the follow-up regulations and revisions to the laws and regulations needed to realize the IP improvements in the policy.
- India commit to address patentability concerns stemming from Section 3(d) of the Indian Patent Law, agreeing to a basket of both short-term improvements and long-term legal fixes that could include Patent Law revisions, DIPP guidance documents for patent examiners, best practices sharing between U.S. and Indian patent officials and promoting forums to bring together stakeholders – including judges – to exchange views.
- India launch efforts to draft a formal trade secrets legal framework, engaging with domestic and international experts to gather specific proposals on how best to provide clear, consistent protection for trade secrets and confidential business information.
- The United States and India host an Innovation Forum in 2016, in line with commitments made at the 2015 S&CD, prominently featuring discussion on the positive role of intellectual property in promoting innovation.
- The United States and India commit to engage on mechanisms to ensure the timely and efficient resolution of patent disputes in India, and to work towards a system in India whereby patent holders would be promptly notified if an application has been filed with a state-level drug regulatory agency for a product still under patent protection.

Investment and Ease of Doing Business

The Modi government has put considerable time and effort into promoting India as an investment location, touting efforts to make India an easier location to invest and operate. This shift in tone – and increased willingness to engage – are both steps in the right direction, and recent months have seen the public announcement of investment openings in areas such as medical devices, railways, defense, e-commerce, and food processing. In practice, however, these openings are have not yet been realized fully, and other barriers and policies continue to limit the ability of manufacturers in the United States to participate in the Indian economy. The United States should use the opportunity of these dialogues to encourage more tangible outcomes in this area that would also improve the attractiveness of India as an investment destination.

The NAM urges that the final outcomes include language that:

- India commit to eliminating or raising investment caps to allow full ownership in key manufacturing-related sectors, such as defense. These changes would encourage greater investment in India as well as support other political and economic goals, such as stronger national defense, greater innovation, better competition, and a wider variety of available quality products.
- India provide concrete information, including a planned timeline, for drafting and releasing formal rules for the operation of its nuclear liability pool in order to advance reforms made in this sector and allow broader participation.
- The United States and India establish a formal dialogue underneath the S&CD's Ease of Doing Business Track to address administrative licensing and permitting, building on previous Indian government reforms that extended the expiration date for licensing to promote broader changes to streamline licensing processes and to implement a "single-window" approach for government licensing. Such reforms would free up time and resources from companies already seeking to invest in India, while also encouraging more foreign investment from additional companies.
- The United States and India commit to more formal transparency discussions, with both sides agreeing to involve key agencies such as the United States Office of Information and Regulatory Affairs and Indian Ministry of Law and Justice. The discussions should include information exchange about transparency best practices and a goal to support the formal establishment of sustainable mechanisms in India to increase and improve regulatory transparency during the drafting and implementation of laws and regulations.

Conclusion

Manufacturers in the United States remain committed to working with the U.S. and Indian governments to promote a more productive, mutually beneficial and stronger commercial relationship between our countries. Progress on the broad and specific issues identified herein are critical for the United States and India to advance that relationship and for India to demonstrate its commitment to participate constructively in the international rules-based trading system.