

IS INDIA OPEN FOR BUSINESS?

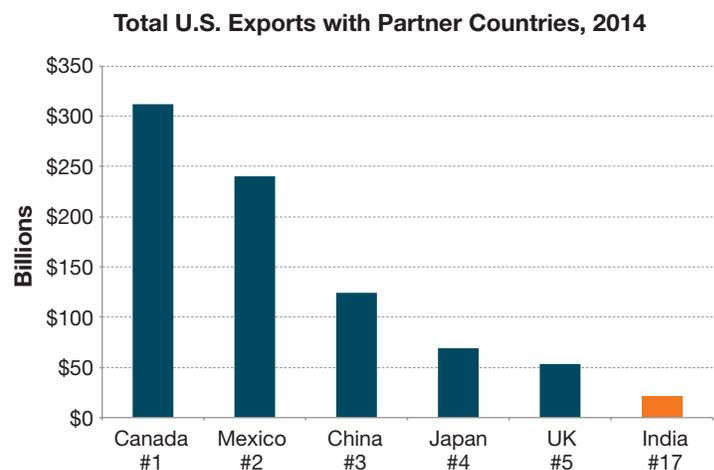
While U.S.–India dialogue on a range of issues has improved since Indian Prime Minister Narendra Modi was elected last year, these new opportunities for engagement and Prime Minister Modi’s positive policy statements have yet to be translated into the type of meaningful improvements to India’s trade and investment environment that will concretely advance a stronger U.S.–India commercial partnership and greater economic growth. In some cases, there has been a worsening of the trade and commercial environment, and many discriminatory and market-limiting policies remain in place, harming both U.S. and Indian industries and the much hoped for potential for a stronger, mutually beneficial relationship.

The Effect of Restrictive Indian Trade Policies on the U.S. and Indian Economies

The U.S. International Trade Commission’s 2014 332 investigation found that more than one-quarter of U.S. companies engaged in India are substantially and adversely affected by India’s restrictive policies and that those policies also drive down much desired investment in the Indian economy.¹

- India is the 10th-largest economy in the world; yet, it is not even among the top 15 destinations for U.S. exports.²
- While India accounts for approximately 3 percent of the global economy, excluding the United States, it accounts for just 1.7 percent of U.S. trade.³

Given the size of the Indian and U.S. economies, the low value of trade and investment is highly concerning. While many factors drive the U.S.–India commercial relationship, there can be little doubt that India’s restrictive trade and investment policies and weak protections for property and innovation are among the most significant.



Source: http://dataweb.usitc.gov/scripts/cy_m3_run.asp

Fundamental Issues in the U.S.–India Commercial Relationship

India imposes prohibitively high tariffs to protect industries that are already globally competitive, and its regulation of trade is unduly complex.

- India’s average applied tariffs are at least three times higher than equivalent U.S. rates, according to World Trade Organization (WTO) data.
- The 2014–2015 union budget increased tariffs from 0 percent to 10 percent on four broad categories of telecommunications equipment and technologies.⁴
- The Indian government has not yet taken any steps to implement the WTO Trade Facilitation Agreement, and India’s highly cumbersome, restricted and nontransparent customs and border practices harm India’s ability to participate successfully in global supply and production chains.⁵

¹ “Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy,” Inv. No. 332-543, USITC Pub. 4501 (Dec. 2014), available at http://www.usitc.gov/publications/332/pub4501_2.pdf.

² “Gross domestic product 2013,” The World Bank, available at <http://databank.worldbank.org/data/download/GDP.pdf> (last visited Apr. 28, 2015); “Foreign Trade: Top Trading Partners - February 2015,” U.S. Census Bureau, available at <http://www.census.gov/foreign-trade/statistics/highlights/top/top1502cm.html#exports> (last visited Apr. 28, 2015).

³ “Foreign Trade: Top Trading Partners - February 2015,” supra.

⁴ Office of the United States Trade Representative (USTR), “2015 National Trade Estimate Report on Foreign Trade Barriers,” available at <https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf>.

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India targets the information, communications and telecommunications (ICT) industry and other key manufacturing sectors with highly restrictive nontariff barriers.

- India also employs an array of nontariff barriers that negatively impact ICT, cosmetics, food products, pharmaceutical and agricultural chemicals as well as medical devices.
- For example, India imposes particularly burdensome testing and certification requirements for telecommunications equipment that limit testing capacity and certified laboratories.⁶
- India's 2012 preferential market access policy, which has not been fully retracted, creates market uncertainty and if implemented would impose costly and discriminatory local content requirements for private purchases of ICT goods.
- Local content requirements exist in other areas, and press reports suggest that they may be expanded to additional sectors, notably including traditional power generation.

India's desire to foster innovation and manufacturing is thwarted by its weak intellectual property (IP) rights regime.

- India's December 2014 release of its draft national IPR policy was a welcome recognition by the country of the important role that IP plays in fostering innovation and economic growth. Yet, the policy fails to set forth a concrete strategy with clear goals and steps that will truly advance India's innovation potential.⁷
- While India has begun discussions with the U.S. government on IP and innovation, the country's continued deviation from core internationally recognized IP rules is undermining both U.S. and Indian innovative companies.⁸
- India continues to deny patents for medicines that have been patented in dozens of countries around the world and in a manner inconsistent with its international obligations. In the past year, India has revoked or denied patents on at least two additional drugs based on the internationally inconsistent basis of "enhanced efficacy."⁹
- India has made no effort to clarify previously issued policies and decisions that require local manufacturing and as such discriminate against U.S. and other foreign rights holders.

Unnecessary barriers, weak property protections and significant unpredictability in India's investment and tax policies weaken the country's efforts to attract additional foreign investment.

- While India opened foreign investment opportunities in the railway and defense sectors in the last year, investment barriers and unpredictable tax, investment and other policy changes make it extremely challenging for U.S. and other foreign businesses to plan and finance trade and investment in India, particularly in the manufacturing sector where capital investments require greater stability.
- India missed an opportunity to address these challenges when it issued its draft Model Bilateral Investment Treaty in March 2015; it excludes new investment, IP and investment contracts vital for infrastructure and contains weak or nonexistent property protection standards and limited procedures on neutral dispute settlement.¹⁰

Manufacturers in the United States want to expand commercial relations with India, but Indian policies that limit market access, fail to protect property and innovation and seek to force, rather than attract, investment are limiting many potential new areas for partnership and economic growth.

⁵ "New Foreign Trade Policy proposes new institutions to boost global trade," *Economic Times* (Apr. 1, 2015), available at http://articles.economicstimes.indiatimes.com/2015-04-01/news/60720114_1_trade-facilitation-agreement-commerce-secretary-rajeev-kher-global-trade; "WTO Trade Policy Review Report of India," WT/TPR/S/313 at 9, 34-38 (Apr. 28, 2015), available at https://www.wto.org/english/tratop_e/tpr_e/s313_e.pdf.

⁶ United States Trade Representative, "2015 Section 1377 Review" (Mar. 2015), available at https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf.

⁷ Comments of the National Association of Manufacturers on India's Draft National IPR Policy (Jan. 30, 2015), available at <http://documents.nam.org/IEA/NAM%20Comments%20IndiaIPRPolicy.pdf>.

⁸ Office of the United States Trade Representative, "2015 Special 301 Report," 45-52 (Apr. 2015), available at <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>; and "Trade, Investment and Industrial Policies in India," *supra*.

⁹ Rupali Mukherjee, "US company denied patent on anti-cancer drug," *Times of India* (June 24, 2014), available at <http://timesofindia.indiatimes.com/business/india-business/US-company-denied-patent-on-anti-cancer-drug/articleshow/37109029.cms> (last accessed May 1, 2015); Zeba Siddiqui, "Germany's Boehringer loses India patent on lung drug to Cipla," *Reuters* (Mar. 10, 2015), available at <http://www.reuters.com/article/2015/03/10/cipla-boehringer-patents-idUSL4N0WC31P20150310>.

¹⁰ National Association of Manufacturers, "Comments on Draft Indian Model Bilateral Investment Treaty" (Apr. 10, 2015), available at <http://documents.nam.org/IEA/NAM%20input%20to%20India%20model%20BIT.pdf>.

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