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TRADE AT A CROSSROADS

A Vision for the US-India Trade Relationship

Mark Linscott, Trevor Cloen, and Nidhi Upadhyaya

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Atlantic Council
1030 15th Street NW, 12th Floor
Washington, DC 20005

ISBN-13: 978-1-61977-610-4

July 2019

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Executive Summary

The United States–India trade relationship is rapidly approaching a point of crisis. Institutional arrangements are unable to address evolving and growing trade irritants, while protectionist instincts in both governments are exacerbating tensions. Recent failures to reach even a small agreement, and subsequent tit-for-tat escalations, now place the relationship at a tipping point.

Disputes have continued to escalate despite historic growth in bilateral trade and exchange of people. Impasses span multiple industries, and indicate the presence of deeply rooted disagreements that necessitate dialogue to address. An examination of the institutional structures underpinning the relationship is required to move forward and salvage an otherwise promising partnership.

Several key issues contribute to current tensions.

- **Limited capacity of the Trade Policy Forum (TPF) to convene high-level officials and promote government-to-government engagement.**
- **A lack of authority for the Indian Ministry of Commerce and Industry (MOCI) to negotiate and commit to solving bilateral problems.**
- **A lack of alternatives to bilateral negotiation and conflict management. The World Trade Organization (WTO) is not a suitable venue for negotiating and overcoming multiple bilateral trade differences. The United States and India have historically been at odds in the WTO, and the dispute-settlement process can be prohibitively slow.**
- **A lack of the trust and rapport necessary for negotiating teams to pursue meaningful or long-term agreements. Trade negotiations outside the WTO with measurable outcomes generally involve free-trade agreements (FTAs). The recent breakdown in negotiations over a small, limited agreement reinforces that a US-India FTA is out of reach in the immediate future.**

Political and economic realities require these issues to be addressed and these challenges overcome. India is rapidly emerging as a global economic power in a region of key strategic interest to the United States. The United States-India relationship will be one of the most consequential of the twenty-first century, and commerce will play a vital role in determining whether it is constructive or adversarial. Issues including standards and conformity assessment testing, digital trade, healthcare, and agricultural trade present areas of emerging conflict or opportunities for cooperation. While the history of bilateral trade negotiations has often been contentious, it also includes examples of constructive cooperation. These examples should serve as inspiration in addressing today's challenges.

The authors of this report believe it is vital that both governments take steps to mitigate short-term disagreements and establish a more constructive relationship in the medium and long runs. This report offers the following recommendations to begin this transition. The two governments should

- **manage current conflicts and reach an initial agreement;**
- **review and improve institutional underpinnings;**
- **recommit to the TPF and pursue institutional reform;**
- **replicate recent cooperative success;**
- **explore opportunities for significant market-opening agreements; and**
- **chart a map toward an FTA.**

SECTION I

Overview of the Bilateral Relationship

U.S. Secretary of State Mike Pompeo and Indian Foreign Minister Subrahmanyam Jaishankar shake hands after a news conference at the Foreign Ministry in New Delhi, India, June 26, 2019.

JACQUELYN MARTIN/REUTERS

The United States-India bilateral relationship is underpinned by a strong, and rapidly growing, strategic partnership that emerged in the early years of the George W. Bush administration. While the two countries are significantly different in many aspects, bilateral ties are sustained through the recognition of several shared characteristics and principles: democratic systems of governance, multireligious and multiethnic societies, and general and historical subscription to the principles of the liberal, rules-based international order.

Growth in the relationship is a relatively recent phenomenon, and has progressed rapidly. Two decades ago, India was sanctioned as a perceived threat due to its emergence as a nuclear power; today, it is considered a key and growing strategic partner in regional and global affairs. Strategic cooperation is facilitated by a wide array of bilateral activities, including bilateral summits, senior-level dialogues, and defense, counterterrorism, and intelligence cooperation.[1] India is designated a "major defense partner," a unique designation on par with other non-NATO treaty partners, and receives preferential access to restricted strategic technologies. Notable existing arrangements include the Defense Technology and Trade Initiative (DTTI), the annual US-India Strategic Dialogue, and the annual Malabar naval exercises, among many others.

The foundation for these developments is a broad convergence of strategic interests across issues including freedom of navigation (particularly within disputed waters contested by China), counterterrorism, and regional affairs. Maritime cooperation, in particular, has expanded markedly in recent years. In a historic step, Prime Minister Narendra Modi and President Barack Obama jointly announced the US-India Joint Strategic Vision for Asia-Pacific and the Indian Ocean Region, reaffirming "the importance of safeguarding maritime security and ensuring freedom of navigation and flight throughout the region, especially in the South China Sea."[2] In 2018, the United States renamed the Pacific Command to the Indo-Pacific Command to emphasize the significance of the Indian Ocean theater, and India assumed a prominent position in the Indo-Pacific Strategy articulated by Secretary of State Mike Pompeo in July 2018.[3]

In the past decade, US-India commercial linkages have grown in tandem with, and partly due to, growth in the strategic relationship. The United States exported $15 billion in arms in the past decade, compared to $500 million during the entire prior history of the relationship.[4]

Yet, commerce has rapidly grown beyond strictly strategic ties. Bilateral trade in goods and services grew at an average annual rate of 7.59 percent from 2008 to 2018, more than doubling in value from $68.4 billion to $142.1 billion. The United States was the second-largest trading partner for India in goods in 2018, and the single largest export destination for Indian exporters. India exported an estimated $54.5 billion to the United States in goods in 2017, constituting 16 percent of total Indian exports, and was the tenth-largest supplier of goods to the United States during the same period.

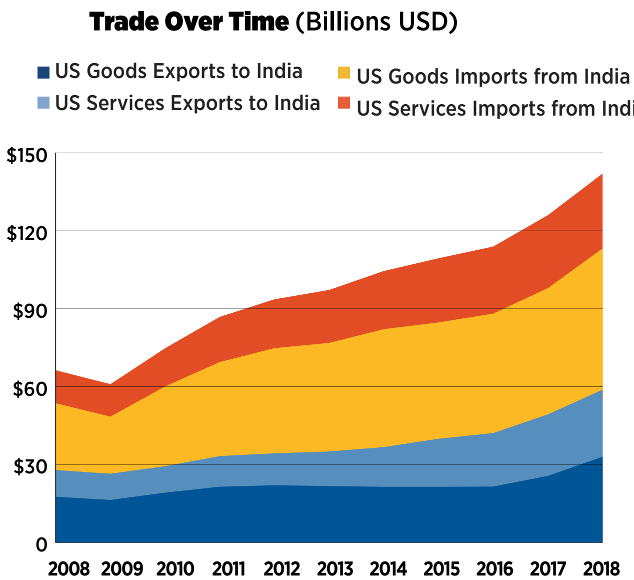
The top categories of Indian goods exports to the United States were precious metals and stone ($11 billion), pharmaceuticals ($6.3 billion), machinery ($3.3 billion), mineral fuels ($3.2 billion), and vehicles ($2.8 billion). India was the ninth-largest trading partner of the United States in 2018. United States exports to India accounted for 2 percent of overall US exports in 2018, and were valued at an estimated $33.1 billion, up 87.3 percent from 2008. The top categories of US goods exports to India were precious metals and stone ($7.9 billion), mineral fuels ($6.2 billion), aircraft ($3 billion), machinery ($2.2 billion), and optical and medical instruments ($1.6 billion).

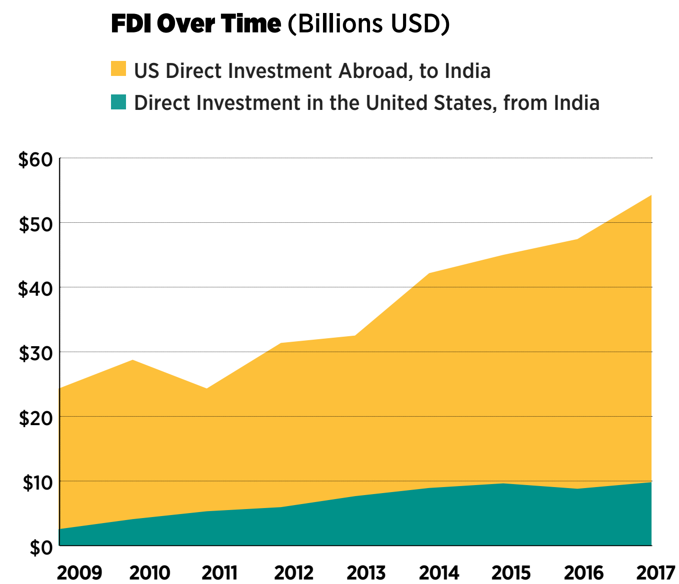
US service exports to India were an estimated $25.8 billion in 2018, up 157 percent from 2008. Leading service exports from the United States to India were in travel, intellectual property, and transport.[5] Indian service exports were an estimated $28.8 billion in 2018, making India one of the few countries that maintains a services surplus with the United States. Leading services exports from India to the United States were in telecommunications, computer and information services, research and development, and travel.

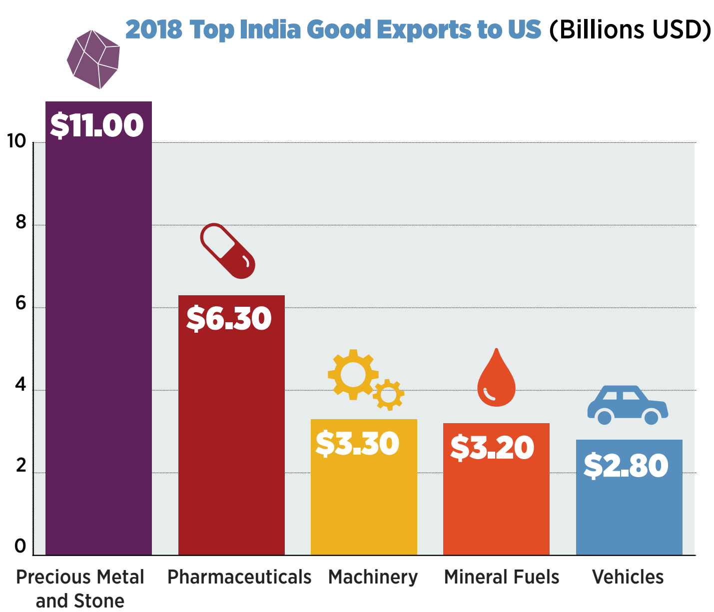
According to the US Department of Commerce, exports to India supported an estimated one hundred and ninety-seven thousand US jobs in 2015 (the latest year for which data are available).[6] This figure likely understates the impact of exports to India on job creation, as bilateral trade has grown substantially in the three years since official estimates were released.

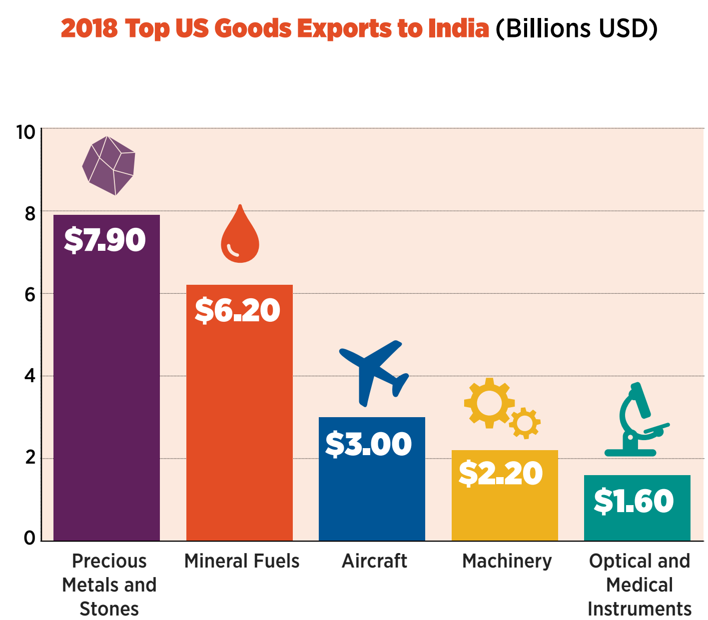
Bilateral foreign direct investment (FDI) has steadily grown as well. Two-way investment more than doubled from $24.3 billion in 2009 to $54.3 billion in 2017. US FDI in India was $44.5 billion and Indian FDI in the United States $9.82 billion in 2017. US direct investment was led by "professional, scientific, and technical services, manufacturing, and wholesale trade," while Indian FDI in the United States was led by "professional, scientific, and technical services, manufacturing, and depository institutions."[7]

Significant people-to-people exchange underpins the commercial relationship. Data from the 2015 American Community Survey indicated that approximately 2.4 million Indian migrants reside in the United States, constituting the third-largest migrant group in the United States, while the diaspora—constituting individuals either born in India or who identify as having Indian ancestry—totaled approximately 3.9 million.[8] The arrival of this population is relatively recent; 51 percent of migrants from India in the United States settled there during or after 2000, compared to 36 percent of the US foreign-born population.[9] More than seven hundred thousand US citizens currently reside in India.[10]

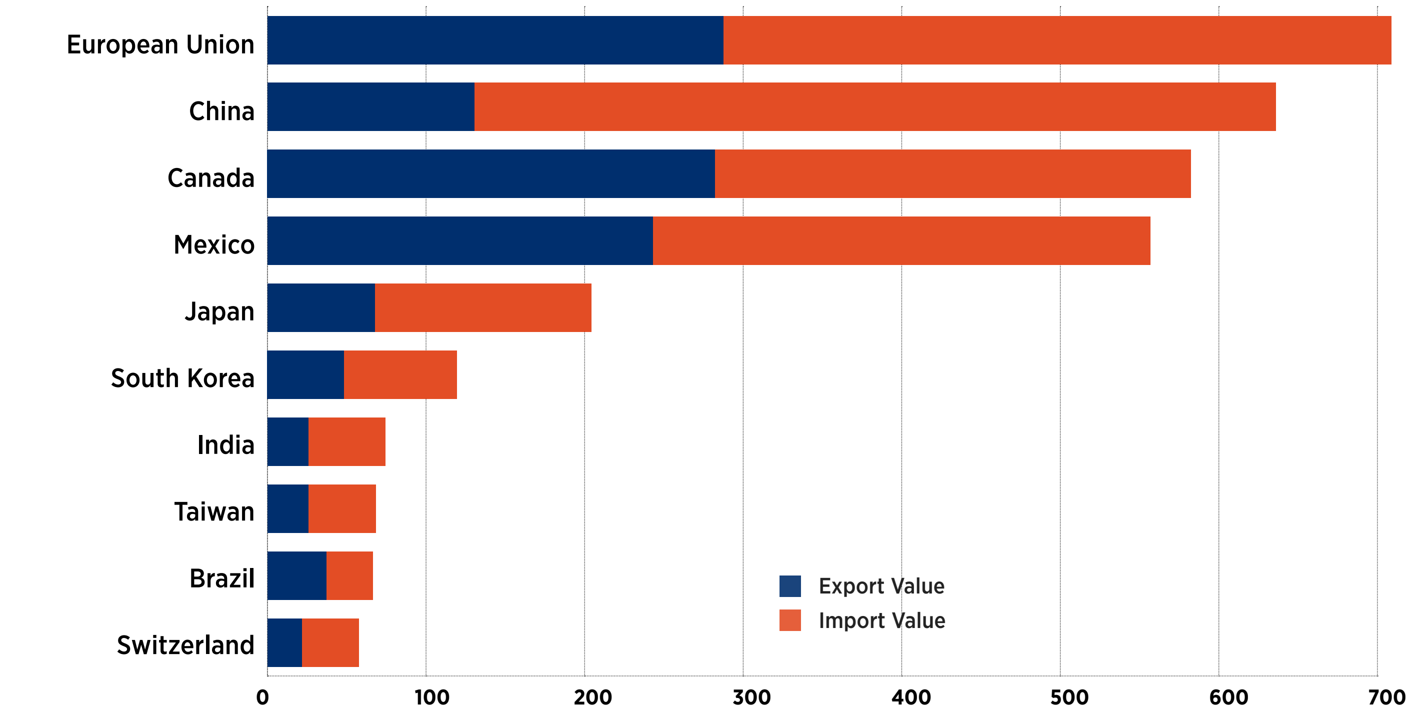

Trade Over Time (Billions USD)
US Goods Exports to India
US Services Exports to India
US Goods Imports from India
US Services Imports from India
$150
$120
$90
$60
$30
0
2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018


FDI Over Time (Billions USD)
US Direct Investment Abroad, to India
Direct Investment in the United States, from India
$60
$50
$40
$30
$20
$10
$0
2009 2010 2011 2012 2013 2014 2015 2016 2017

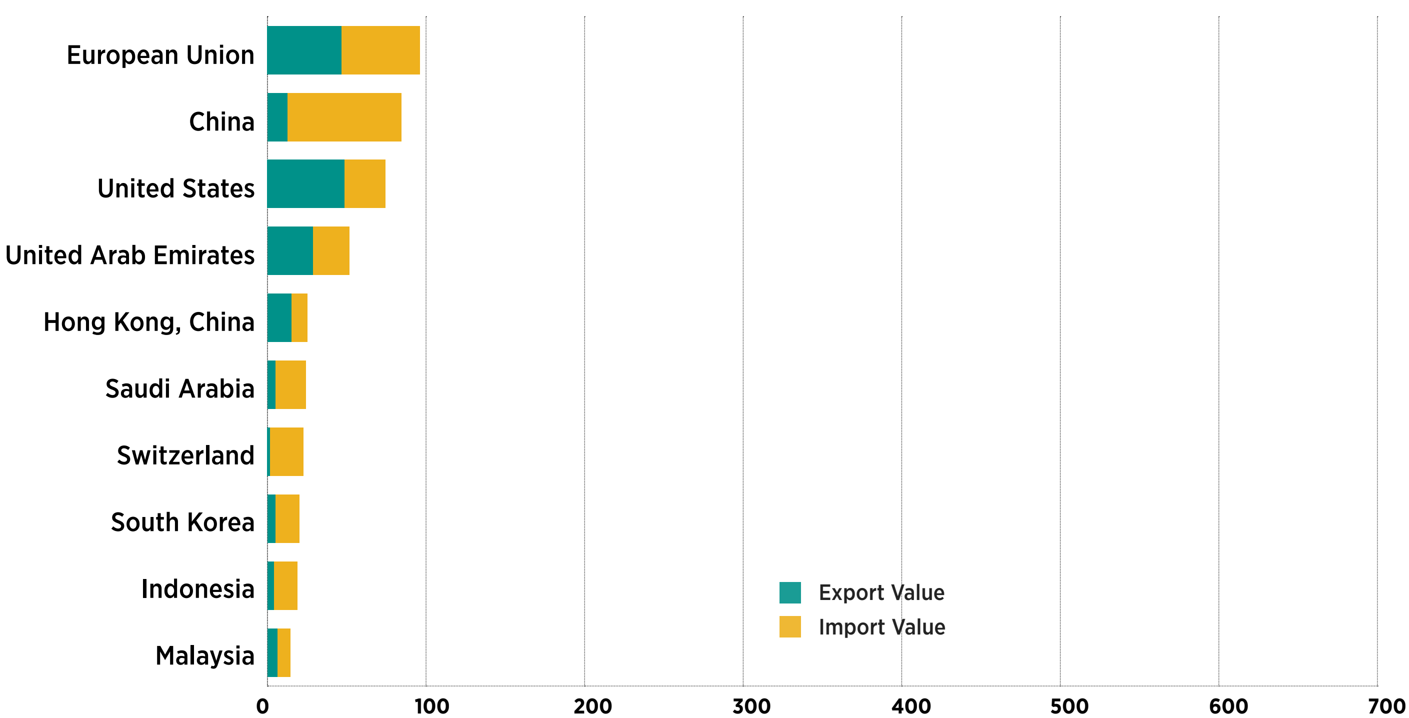

2018 Top India Good Exports to US (Billions USD)
10
8
6
4
2
0
$11.00
$6.30
$3.30
$3.20
$2.80
Precious Metal and Stone
Pharmaceuticals
Machinery
Mineral Fuels
Vehicles


2018 Top US Goods Exports to India (Billions USD)
10
8
6
4
2
0
$7.90
$6.20
$3.00
$2.20
$1.60
Precious Metals and Stones
Mineral Fuels
Aircraft
Machinery
Optical and Medical Instruments

United States Top 10 Trading Partners 2017 (Goods / Billions USD)



India Top 10 Trading Partners 2017 (Goods / Billions USD)



A worker walks past a container ship at Mundra Port in the western Indian state of Gujarat April 1, 2014.

AMIT DAVE/REUTERS

SECTION II

Examining the Trade Relationship

While the US-India bilateral trade and investment relationship is relatively healthy in an economic sense, institutional efforts by the two governments to underpin it have struggled to match the growth in bilateral trade in goods and services, lacking a robust and consistent government-to-government framework that can facilitate problem-solving, let alone advance innovative initiatives. Consequently, the two governments discuss problems but rarely solve them, leading to some degree of frustration on both sides.

The TPF is the primary venue for the US and Indian governments to engage on the specifics of their bilateral trade relationship. The TPF was established in 2005 and has generally met annually at the ministerial level, supplemented by senior-level engagements during the course of each year. The two governments have also cooperated on commercial issues through the Strategic and Commercial Dialogue (S&CD) during the Obama administration, and more recently in the standalone Commercial Dialogue (CD) during the Donald Trump administration. The Commercial Dialogue also sponsors the CEO Forum, which consists of private-sector CEO representatives from each country.

The TPF plays a central role in discussing, and theoretically solving, bilateral trade problems. It is headed by the Office of the US Trade Representative (USTR) and the Indian MOCI, and has a far-ranging agenda that covers trade in goods and services, investment issues, and protection of intellectual property rights (IPR).

In recent years, spanning the Obama and Trump administrations on the US side, and the Manmohan Singh and Modi administrations on the Indian side, there have been semi-regular staff-level and senior-level engagements throughout the year, for the purpose of sharing notes on problems as they arise. With the exception of efforts in 2018 and early 2019 to develop a bilateral agreement, these engagements generally have not included regular ministerial or vice-ministerial meetings to negotiate and resolve the most complicated bilateral-trade irritants.

There is a critical need for USTR and MOCI to include participation by representatives from other relevant departments, ministries, and agencies. US participants should include the Department of State, the Department of Commerce, the Department of Agriculture (USDA), the National Security Council, the Department of Health and Human Services (HHS), the Food and Drug Administration (FDA), etc. Indian participants should include the Prime Minister's Office (PMO), the Ministry of External Affairs (MEA), the Ministry of Finance, the Ministry of Agriculture and Farmers' Welfare, the Ministry of Electronics and Information Technology (MEITY), the Ministry of Health and Family Welfare, the Bureau of Indian Standards (BIS), etc. In fact, this already happens to some degree in the TPF—most dependably on the US side. Nonetheless, consistently ensuring full representation on both sides remains a challenge.

Differing arrangements for career trade personnel pose a further challenge to the existing institutional framework. Personnel in the Indian Administrative Service (IAS), under MOCI, experience greater cross-ministerial mobility than do personnel under USTR—who typically remain at USTR once they arrive there, often from other US government departments, for the remainder of their careers in government. Consequently, the Indian negotiating team experiences greater turnover, inhibiting the career accumulation of trade negotiating experience. USTR staff, particularly at senior levels, also experiences turnover. However, the replacements are almost always career trade experts already employed at USTR. Frequent turnover among Indian trade negotiators has made it challenging to establish substantial rapport and trust, which could assist ministerial-level involvement by effectively teeing up issues for ministerial decision-making and setting an agenda for future problem-solving. Establishing a professional cadre of career trade negotiators would also empower Indian negotiators to convene representation from high-level officials across government ministries when needed.

THE PRESENT STATE OF AFFAIRS

The current state of play in the trade relationship amply demonstrates the opportunities and shortcomings as the two governments, working with (or managing fallout from) their respective stakeholders, seek to chart a more productive course forward.

In recent years, the two sides have highlighted a range of issues for engagement, on an ongoing basis and across the spectrum of trade and investment in goods and services. This catalogue of issues, stretching back to previous administrations on both sides, includes: market access issues for goods, such as tariffs, standards and conformity assessment, and sanitary and phytosanitary (SPS) measures; trade-in-services constraints, such as licensing and visa requirements and FDI limitations; and IPR protection and enforcement.

Yet, while USTR and MOCI have made earnest efforts to understand the concerns of the other side, and have brought experts from other parts of their governments to discuss the specifics of these problems, they have been frustrated in generating a set of accomplishments.

Most recently, there were high hopes that the two sides might have turned a corner and started to engage more concretely. However, this engagement predictably failed to build momentum, even after the two sides introduced a new approach involving regular "intersessional" meetings at senior levels. In April 2018, the United States announced a review of India's eligibility as a beneficiary under the US Generalized System of Preference (GSP) program. The announcement made clear that USTR would be examining whether India provides "equitable and fair market access" for goods, as required under the GSP statute.[11] For example, the United States has joined other WTO members in expressing concerns about India's increases in tariffs for information-technology products, arguing that these increases violate India's WTO tariff bindings.

In order to jumpstart bilateral discussions on market access issues for priority goods, Indian MOCI Minister Suresh Prabhu traveled to Washington in June 2018 to meet with his counterpart, US Trade Representative Robert Lighthizer. This meeting launched a series of negotiating sessions over the course of the following five months, with the objective of concluding a new bilateral trade agreement between the United States and India.

By early this year, the negotiations had petered out, as USTR concluded that US priority issues would not be adequately resolved to meet the statute's market access requirement. Ambassador Lighthizer announced on March 4 that he had recommended to the president "revocation" of India's beneficiary status, covering roughly $6.3 billion of Indian exports to the United States, as measured in 2018.[12] GSP benefits were terminated as of June 5.[13]

With the rapid penetration of Internet access and success of high-technology services in recent decades, India stands to gain, or lose, much more than most.

In a short time, with an unprecedented degree of effort and public attention, the two sides went from a period of great promise and high expectations for a first-ever agreement to a growing state of crisis, in which both came up empty-handed, and there is a growing risk of sliding into the early stages of a trade war.

The present moment calls for effective management of simmering disputes, while looking ahead to how best to undertake the challenge of developing a more strategic trade relationship. As a first step toward a long-term view, the two sides should reflect on some positive and constructive initiatives that are already under way or could be launched in the near future, even as they manage more immediate trade conflicts.

The remarkable turnaround in bilateral engagement on the World Trade Organization Trade Facilitation Agreement (WTO TFA) since the conclusion of negotiations at the Bali Ministerial Conference in December 2013 provides an example of successful relationship management. In Bali, the two sides went toe-to-toe in cliffhanger negotiations, and were the two WTO members most responsible for their huge success, owing much to the shuttle diplomacy of WTO Director General Roberto Azevêdo. Soon after Prime Minister Modi took office in 2014, India withheld its approval to bring the TFA into force. Months later, the two sides worked out a deal that allowed its passage, to the benefit of the entire WTO membership.

Since then, through the TPF, USTR and the Indian customs authority in the Ministry of Finance have conducted a series of workshops, in collaboration with private-sector interests on both sides, to share perspectives on best practices and promote more rapid implementation of the WTO TFA.

Progress has been slow on IPR issues (and India remains on USTR's "priority watchlist" under the annual Special 301 process), but steady progress has been made. The two countries' representatives have collaborated on opportunities to reform India's intellectual property regime and enhance its enforcement activities.

Although outside the trade sphere of the TPF, the two countries' regulatory bodies for telecommunications have collaborated in a quiet, under-the-radar way to promote reforms in the regulatory policy-making process through the Federal Communications Commission's (FCC) International Visitors Program. This program has "allowed foreign delegations to interact in informal discussions with FCC personnel who provide legal, technical, and economic perspectives on a wide range of communications issues." Since its creation in 1994, the program has provided US and foreign regulators around the world with opportunities to "gain insight from each others' regulatory agencies, policies, and procedures."[14]

Programs such as this have built decades of rapport between US and foreign telecom regulators, and helped ingrain world-class administrative rules-making processes with partner countries. In the case of India, regular interactions have assisted in the development of administrative procedures—invitations for industry feedback, public posting of comments on draft regulation, etc.—that have promoted transparent regulatory policymaking. This could be one of the more promising topics for future collaboration, and would parallel recent initiatives in trade negotiations on regulatory coherence and good regulatory practices.[15]

These examples demonstrate that collaborative efforts can work even in sensitive areas, such as the WTO TFA and IPR. Of course, cooperation can only go so far, and it remains highly likely that issues as far ranging as agricultural trade and e-commerce policies will generate ongoing tensions. Several examples of areas in which there is abundant potential for collaborative opportunities—or, alternatively, serious conflict—follow below.

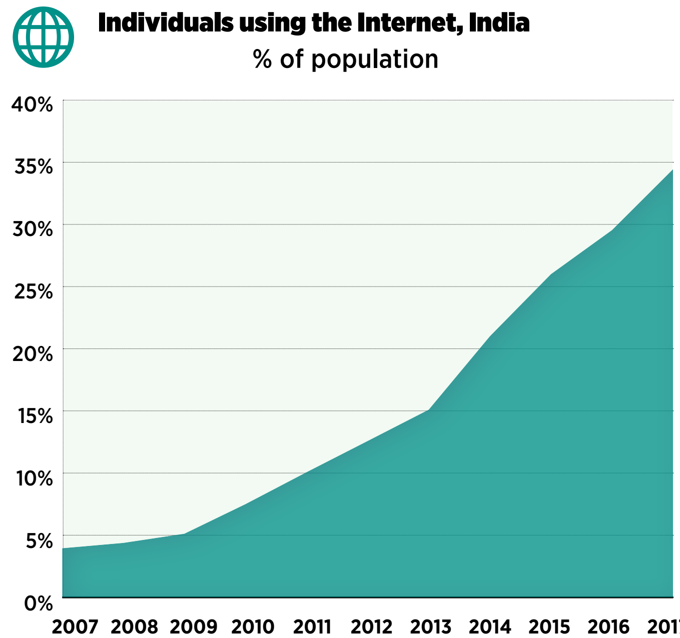
DIGITAL

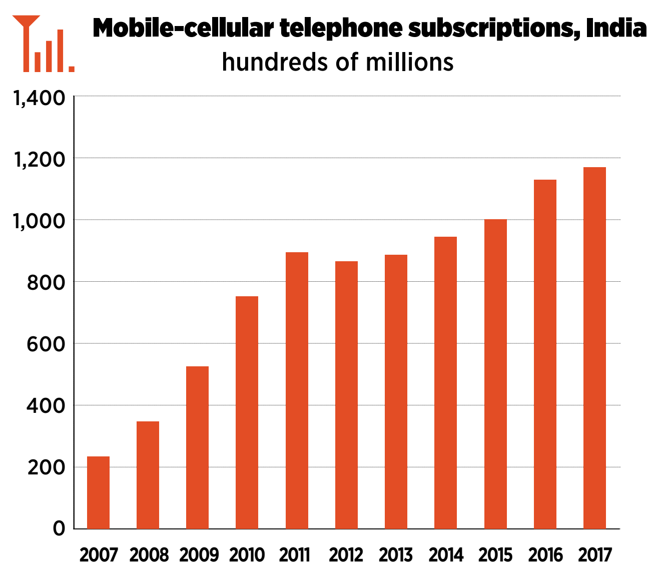
Until recently, the United States and India had been in somewhat parallel situations with respect to regulation of digital trade, which is broadly defined as both the sale of consumer products and online services via digital mediums, as well as the data flows that enable global value chains, services that enable smart manufacturing, and myriad other platforms and applications.[16] The WTO more narrowly defines electronic commerce as "the production, distribution, marketing, sale, or delivery of goods and services by electronic means."[17]

The United States is a global leader in Internet-based technologies, and home to many of the largest companies in the world. Likewise, India has enjoyed significant success in nurturing Internet-based services companies with global reach, particularly in the US market, and is keen to further develop its IT industry—including in cloud services, e-commerce marketplace platforms, and digital payment systems. While the growth of digitalized economies worldwide has been unprecedented, India has been particularly phenomenal in this regard. Mobile-phone users have increased from 233 million to 1.17 billion in ten years (2007–2017), while more than 21 percent of the Indian population, roughly 302 million individuals, gained access to Internet services from 2012 to 2017 (the latest data available).[18] Mobile-data costs have fallen dramatically to among the lowest in the world, integrating hundreds of millions of potential consumers to digital markets.[19] Indeed, India appears destined to become the largest digital-consumption market in the world.

With the rapid penetration of Internet access and success of high-technology services in recent decades, India stands to gain or lose much more than most, depending on how well it maps its future regulatory policies. Digital innovations increasingly shape the way small and medium-sized enterprises operate and grow, and they remain vulnerable to disruption. For example, in an article published on April 15, 2019, the Indian *Business Standard* highlighted the successes of Indian small businesses in using Walmart and Amazon platforms to develop new export markets. "Home-grown Indian manufacturers and sellers are profiting from the business models and facilitation offered by India-focused multinationals such as Walmart and Amazon. Walmart, with its sourcing model, and Amazon, by offering a Global Selling Programme, are raising the aspiration bar of small Indian businesses, elevating them to earn the coveted tag of 'global entrepreneurs.'"[20]

Likewise, both countries are in the early stages of developing comprehensive regulatory approaches to protecting personal information. While the US model is generally considered a regulatory-light approach that encourages innovation driven by market behavior, domestic authorities and consumer-protection advocates have increasingly expressed concerns about





data protection, and the potential for new regulatory measures to restrain the free flow of data is on the rise. Some have gone as far as sounding warning signals about "surveillance capitalism," the widespread gathering and utilization of behavioral data to influence and drive consumer behavior.[21] Indian authorities are also actively considering a more comprehensive approach to regulating the flow of consumer data, although a variety of motivations seem to be in play, and even some degree of potentially competing objectives—including consumer protection and data privacy on the one hand, and more effective law enforcement and governmental access to personal data on the other. As the two countries continue to navigate the future of their regulatory landscapes, there will likely be calls from various stakeholders to look to the experiences of others, such as that of the European Union (EU) in the development and implementation of its General Data Protection Regulation (GDPR).

Even as US debates on appropriate data-protection policies continue, the United States has remained active in "plurilateral" negotiations in the WTO with seventy-six other countries on electronic commerce, in which it is advocating against data localization and in favor of free flow of data across national borders. India has resisted joining these negotiations, which may even suit US negotiators' interests in making rapid progress on a WTO agreement, and has argued against renewing the existing WTO moratorium on duties applied to electronic transmissions.

In these contexts, the draft e-commerce policy released by India's Department for Promotion of Industry and Internal Trade (DPIIT) in February 2019, the draft personal-data-protection bill released by MEITY in June 2018, and the data-localization policies issued in November 2018 by the Reserve Bank of India (RBI) risk amounting to disproportional and potentially destructive policymaking when the time calls for a deliberative, inclusive, and thoughtful regulatory-development process.[22] Short-term political imperatives could backfire if India were to adopt a comprehensive regulatory framework that discourages FDI, disrupts the flow of data, reduces low-cost options for consumers and small and medium-sized businesses, and increases the potential for new trade conflicts.

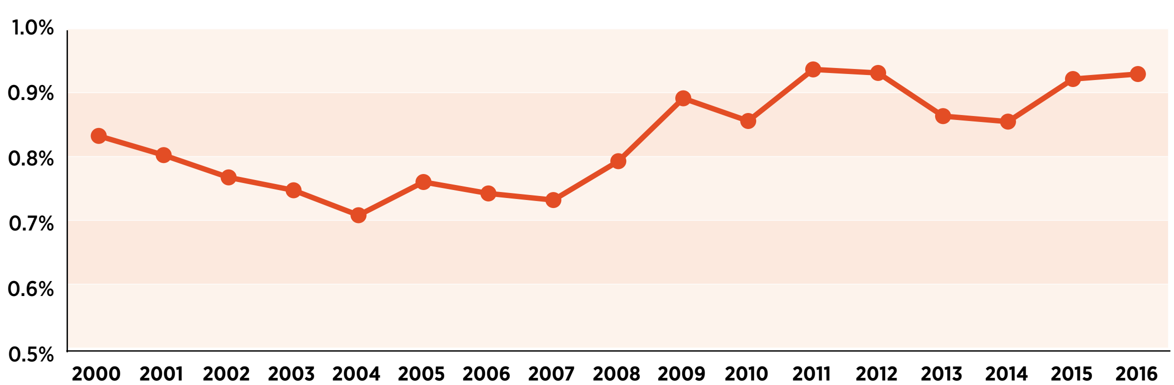
There are similar risks for the United States if aggressive immigration reforms constrain access to visas for foreign nationals—particularly those from India, who have played such a significant role in development of the US digital economy. India has highlighted its concerns with new policies and approaches under discussion with respect to the H-1B program. Both countries have benefited substantially from the program. Indians represent the largest category of H-1B visa recipients, and many of these visa holders have worked for Indian IT-services firms with operations in the United States. Roughly 70 percent of H1-B recipients in the past decade originated in India.[23] According to the White House, more than 166,000 Indian students studied in the United States in 2016 alone, and Indian students have contributed $31 billion to the US economy in the past decade.[24]

The US position as the global tech leader for years is due, in part, to Indian visa holders and emigres who have made Silicon Valley a virtual garden of innovation. Any radical change to the legislation underpinning the program, or to the administrative measures implementing it, risks undermining the United States' attractiveness as a destination for innovative talent.

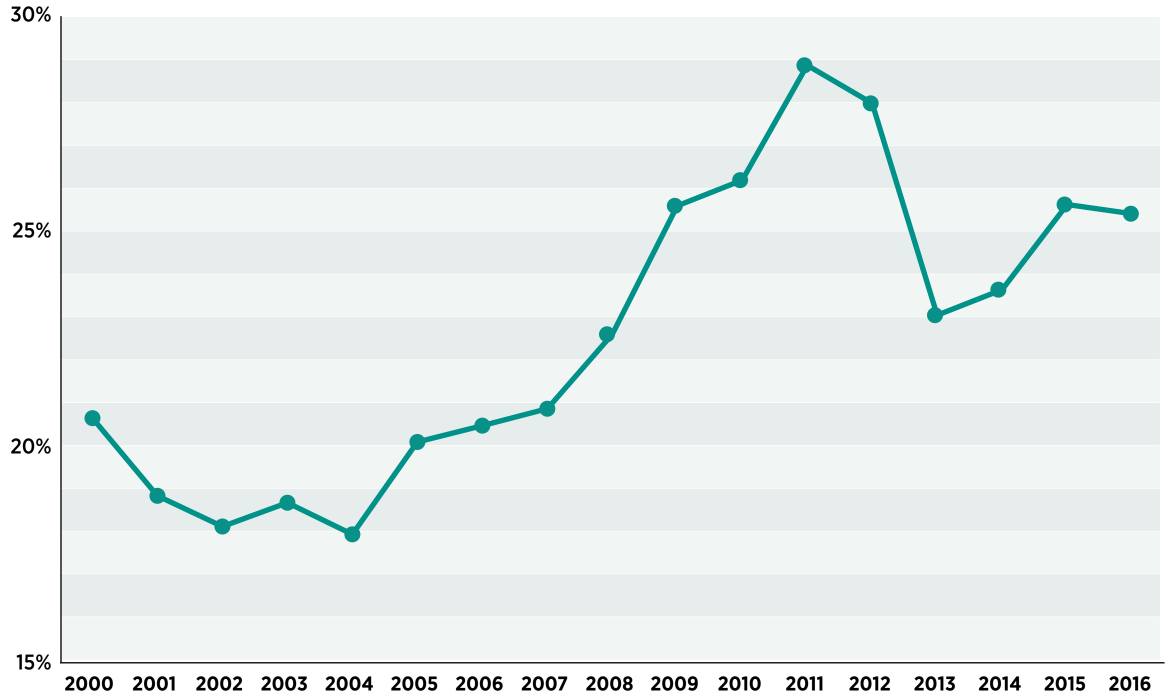
HEALTHCARE/MEDICAL

The healthcare ecosystems in both countries also present compelling examples of how the US and Indian economies are already mutually supportive, and should be destined for great futures together. No country has been a bigger beneficiary of innovative US regulatory policies on generic biopharmaceutical products than India. While US healthcare costs have been steadily increasing at alarming annual rates, the increase in market share of Indian

Domestic general government health expenditure, India (% of GDP)



Domestic general government health expenditure, India
(% of current health expenditure)



generic products has helped to offset some of these cost trends. India, on the other hand, is in need of a wider range of innovative healthcare-industry goods and services for its population, which is currently inadequately served.

Prime Minister Modi's signature healthcare-reform effort, Ayushman Bharat, can only be successful and sustained through reinforcing policies that encourage the development of world-class healthcare approaches. Despite its status as a constitutional right, Indian investment in public healthcare has long lagged other countries as a percentage of gross domestic product (GDP). The government of India allocated just 0.93 percent of GDP to public healthcare in 2016 (the latest year with data available).[25]

The two governments have discussed issues related to this sector in the TPF in recent years, with some focus on intellectual property and pricing issues. The immediate future bodes well for increasing cooperation and outcomes on intellectual property issues, especially in light of their importance for many sectors in which innovation is critical. For example, there is tremendous scope for India to continue to reform its patent system, to promote more innovation among homegrown Indian companies and those sustained by increased FDI. A comparison of the number of patent applications filed by Indian pharmaceutical companies in both countries offers an illustrative case of the need for such a reform effort; Roughly one-third of patents filed by Indian pharmaceutical multinationals in the United States claim subject matter that is otherwise unpatentable in India.[26]

The dialogue under the TPF—through ministerial-level, intersessional, and high-level working-group meetings—has offered tremendous opportunities for fostering better understanding in some areas and promoting specific, reform-oriented outcomes. Good examples include: steps to increase the scope for IT patent applications by eliminating a requirement for novel hardware; developing legislation against video piracy; and establishing a copyright-royalties board, although decisions about its membership are still pending. The healthcare sector should be a prime target for further work between the two governments on IPR issues, including innovative approaches to technology transfer, better protection and enforcement of patents for biopharmaceutical products, and a more balanced system for promoting innovative products, while continuing to develop policies to increase access and reduce costs for essential medicines.

The two sides could also unwind some of the tension that has developed over pricing policies, to ensure long-term increases in trade and investment in the sector. On the US side, there might be greater

A bilateral FTA is unlikely to be on the horizon for the immediate future. This hasn't deterred some groups from arguing that the bilateral economic relationship has become so compelling that ignoring the possibility is a colossal missed opportunity.

scope for understanding concerns related to fees associated with registering generic products for the US market. On the Indian side, there remains a risk of companies removing products from the Indian market, or deciding to forego introduction of new ones, based on assessments of cost recovery.

More productive engagement between the governments through the TPF, perhaps with a strong supporting role for the Commercial Dialogue, could better avoid conflicts resulting from measures that can inhibit trade and investment, and lay the groundwork for policies that promote innovation, better access to healthcare, and increased economic growth.

STANDARDS AND CONFORMITY ASSESSMENT

Recent trends in this area reflect Indian policies to promote a more indigenous and hermetic approach to manufacturing. In several sectors—such as IT, pharmaceuticals, and medical devices—the BIS has focused on developing specific Indian standards with requirements for testing in domestic labs. This approach may appear to offer significant payoffs in the future through promoting preferential access to the Indian marketplace, including government procurement for homegrown production, but it is likely to close Indian producers off from a more global marketplace.

India's future challenge in this area will be to ensure that its regulatory systems efficiently meet compelling policy objectives, such as consumer protection, while promoting industrial development, including related-services providers, in ways that are globally oriented. Government-set export-growth targets generally do not work unless fundamentally supported by a sound regulatory ecosystem that nurtures innovation.

AGRICULTURAL TRADE

Both the United States and India hope to develop new markets in one another for their agricultural products. While each has its share of tariff and non-tariff barriers in specific sectors, experts from the two sides have been working side by side in the Animal Health Working Group and the Plant Health Working Group of the TPF. These groups have made important progress, such as recent efforts to exchange information and approve export certificates for a range of US and Indian agriculture products.

Unfortunately, this work is unnecessarily slow, and has not been prioritized by experts on either side. An added complication has been the tendency for approval of specific products to be tied up in transactional dynamics present in ongoing bilateral trade negotiations, such as those that were underway in 2018 under the GSP review. This certainly has been the case with several agricultural commodities (e.g., pork, cherries, table grapes) that could have been part of a GSP deal, but now remain stuck as negotiations on such a deal have withered.

Meat and poultry products are one contentious area in which grudging progress has been made. For years, US poultry exports were barred from India, due to baseless concerns regarding the spread of avian flu. In 2015—following seven years of efforts to resolve the issue bilaterally, and then through a legal challenge—a WTO dispute-settlement panel ruled in favor of the United States, and the WTO Appellate Body subsequently affirmed this ruling. Only under the threat of WTO-authorized retaliation did India provide the first permits to US exporters in 2018. With respect to Indian exports, fresh or cooked meat products—including cooked meat as a component of a processed food product—are not currently allowed for import from India to the United States, as India's meat-inspection system has not been determined to be "equivalent" to the US system. Indian exporters, however, claim that they meet similar requirements for exports to Japan and the EU.[27]

Exporters in both countries confront market access challenges in the dairy sector. The United States maintains restrictive import quotas on dairy products, above which prohibitively high tariffs are designed to exclude foreign exporters. US dairy exports are currently blocked from Indian import on religious and social grounds—US suppliers are unable to certify that dairy products did not originate from cattle fed with ruminant material. EU, Australian, and New Zealand suppliers are able to comply with Indian requirements.

The GSP trade discussions involved efforts at some creative workarounds, but these were abandoned with the collapse of a potential deal and the suspension of GSP benefits.

Finally, the United States and India should be able to find new ways to cooperate on technology in agricultural production. India is prioritizing its transformation into a more innovative society, and no sector is in greater need of harnessing technological change to promote more efficient production and better distribution of income. US producers are some of the most technologically innovative in the world. The two governments should be able to collaborate, through a combination of cooperative programs and market openings, to ensure Indian producers have access to the most advanced agricultural technologies. The Indian government's plan for the National Institution for Transforming India (NITI Aayog) to head up a task force on agricultural structural reform could be an important focal point for some of this work.

REVIEWING BILATERAL AND REGIONAL EXPERIENCES ON TRADE

A number of authorities on the US-India relationship have argued relentlessly—and, at times, compellingly—for future negotiations on an FTA. Given the growing importance of the relationship, the rapid increase in bilateral trade, and the lack of effective alternatives for resolving a large number of trade problems, these arguments deserve serious analysis.

Neither India nor the United States has been immune from the FTA fever that has characterized the global trade architecture during the last two decades. For many years after creation of the multilateral trading system in 1947—first with the General Agreement on Tariffs and Trade (GATT) and, from 1995, with the WTO—FTAs generally did not rival the supremacy of multilateral rules. That all started to change in the late 1990s, when more and more countries began to experiment with negotiating trade-liberalizing agreements outside the system. The GATT and WTO permit countries to negotiate preferential trade agreements among themselves, so long as these agreements cover "substantially all trade" between their signatories, as required by Article XXIV:6 of the GATT. Developing countries may cover a lesser proportion of their trade in agreements between them, as permitted under the GATT's "enabling clause." Historically, the rule of thumb is to seek to minimize the variations from non-discriminatory treatment ("most-favored-nation") among members of the multilateral trading system, while smaller, less-extensive agreements can make them much easier to negotiate—and potentially more insidious in undermining the system.

India has not been particularly active in negotiating FTAs, and many developed countries have seen their negotiations with India stall and wither as a result of their failures in obtaining meaningful, market-opening concessions. India has two significant FTAs with developed countries—Japan and South Korea (although the latter considers itself "developing" in the WTO). The EU, Canada, Australia, and New Zealand have had much less success in developing momentum in negotiations with India. India also has FTAs with a number of developing countries, including Sri Lanka, Malaysia, Thailand, and the Association of Southeast Asian Nations (ASEAN). India's most ambitious regional FTA negotiation to date is the high-profile Regional Comprehensive Economic Partnership (RCEP) with ASEAN, Australia, China, Japan, and South Korea. However, these negotiations have moved slowly—due, in large part, to India's concerns about providing tariff-free treatment for China and its inability to achieve its ambitions in respect to services trade, especially movement of natural persons, such as IT and healthcare professionals.

The United States, likewise, has not been among the most active of developed countries in negotiating FTAs. It has a collection of bilateral FTAs—including with Australia, Bahrain, Chile, Colombia, Israel, Jordan, South Korea, Morocco, Oman, Panama, Peru, and Singapore. It also has two regional FTAs—the North American Free Trade Agreement (now pending as the US-Mexico-Canada Agreement) and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The United States succeeded in concluding negotiations for the Trans-Pacific Partnership (TPP), but the Trump administration withdrew before the agreement could be submitted to and passed by the US Congress, which would have been an uncertain process in any event.

Until now, there has been no serious initiative to explore a bilateral FTA between India and the United States. Neither country goes into an FTA negotiation lightly, and each has experience in confronting anti-FTA domestic constituencies. For the two to change their stripes and look seriously at an FTA negotiation in the future, they would have to achieve a new level of confidence through increased engagement and a record of successes. A bilateral FTA is unlikely to be on the horizon for the immediate future. This hasn't deterred some groups from arguing that the bilateral economic relationship has become so compelling that ignoring the possibility is a colossal missed opportunity. That may not be an unreasonable supposition, given the limited avenues for negotiating meaningful trade liberalization between the two countries. With the demise of the Doha Round, and the unlikelihood that the two sides will engage in multilateral negotiations in areas such as tariffs and trade in services anytime soon, even the seemingly improbable dream of a US-India FTA may tempt watchers to press for more active consideration of this possibility.

Conclusions on the State of the Bilateral Trade Relationship

In summary, central problems confound the bilateral trade relationship.

The primary bilateral trade venue has limited capacity and political-level attention to ensure that trade issues are front and center in government-to-government engagement. While there have been efforts to enhance the profile of the TPF, and to convene it on a frequent and sustained basis at senior and ministerial levels, its achievements are singular with respect to identifying serious trade-related issues—and rare in resolving them.

In recent TPF engagements, the shadow of sanctions has been the primary motivator in searching for opportunities to generate specific and meaningful problem-solving outcomes. This may be the dynamic for the foreseeable future.

In many respects, TPF engagement is lopsided. On the US side, USTR is generally empowered by the president and relevant Cabinet-level departments to negotiate market-opening outcomes, whereas MOCI is not similarly supported. This leaves MOCI undercut and cornered, even as it confronts expectations that it make bilateral problems go away.

Neither government has proven adept at finding opportunities to negotiate agreements that solve priority problems. There have been some successes as a result of WTO dispute settlement, but this process is anything but nimble and efficient in getting the two sides to the table for give-and-take engagement focused on striking bargains. A central problem is leverage, which is always a calculation in any trade negotiation. A manifestation of the effort on the US side to develop new leverage has been the recent readiness to threaten some form of retaliation in response to Indian trade-restrictive measures, such as the recent policies on medical devices and information and communications technology tariffs.

Given that the WTO is still in a long-term process of finding new footing for negotiating trade-liberalizing agreements—and the United States and India remain as far apart as ever in terms of how to approach reform in the WTO—bilateral or regional alternatives would seem to be the best fix for the moment. However, substantial bilateral trade negotiations, with measurable and meaningful outcomes, generally involve FTAs. The United States and India are too far from building a relationship of trust and accomplishment on trade to warrant a serious examination of that option at this time.

At the same time, commercial ties, through trade and investment, continue to thrive, even if interrupted by regulatory measures and policies that restrict the full potential of the economic relationship.

The commercial relationship is compelling, and it seems clear that its pace of growth will accelerate given an enabling policy environment.

The two appear to share a social and cultural affinity, as two very large, messy democracies with elevated senses of their place in the world. The South Asian diaspora in the United States is large, dynamic, and growing, and both countries have benefited from it.

The strength and resilience of the strategic partnership is inspiring more voices to press for enhanced engagement on the economic, and specifically trade, front. In fact, the immediate tensions in the trade relationship could even provide more impetus for bringing new attention to ideas on how to improve it.

U.S. President Donald Trump shakes hands with India's Prime Minister Narendra Modi during a bilateral meeting alongside the ASEAN Summit in Manila, Philippines November 13, 2017.

SECTION III

Recommendations

Reviewing the short history of the US-India bilateral trade relationship, it is clear that the first priorities for the future should be to manage current challenges and address those that are likely immediately ahead. There is no easy way to sugarcoat the present state of the relationship—it is one in which the only common denominator is a fundamental misunderstanding of priority objectives on the other side, which has led to misalignment of expectations in recent negotiations.

That said, a strong commitment to improve the bilateral trade relationship and build a sound foundation for future successes can start now. The current state of play suggests that the two countries are now at a crossroads, with one direction leading to an initial bilateral agreement, and the other to outright conflict. While conflict in which the two sides engage in retaliatory measures—such as GSP suspension and tit-for-tat tariff increases—can create new leverage and focus minds to eventually achieve an agreement, it can also significantly set back the relationship at a moment when there is an urgent need to cultivate trust and achieve some confidence-building outcomes.

This report counsels that India and the United States redouble their efforts to go down a path of constructive engagement that can lead, in the short term, to a first-ever bilateral trade agreement. In parallel, the two can explore new areas for bilateral engagement, with the objectives of continually building new confidence, gradually aligning their visions for opportunities to open their markets to each other, and growing trade and investment at an accelerated pace.

In this spirit, the authors offer the following set of recommendations. Some can be immediately relevant, while others will depend on whether India and the United States succeed in building a new foundation through agreement on central priorities, or "irritants," as they are too often described.

JONATHAN ERNST/REUTERS

MANAGE CURRENT TENSIONS AND REACH AN INITIAL AGREEMENT

This is almost too obvious to state, but bears repetition because the stakes are currently so high. Now that India has finished its general election, and vacant Cabinet positions have been filled, there is a better opportunity to reach an agreement that permits reinstatement of GSP benefits for India and provides resolution to the issues that prompted the GSP review in the first place.

However, it appears that the bilateral trade relationship is entering a new, unprecedented level of tension, with GSP suspension and India's retaliatory tariffs aimed at US Section 232 tariffs on steel and aluminum. As of this report's publication, there are foreboding signs that the Trump administration will open a new, larger battlefront with initiation of a Section 301 review of India's e-commerce policies—which may even extend to a broader scope of trade problems, such as IPR issues and high tariffs. If all of this comes to pass, it is even more critical that the United States and India return to the negotiating table without delay, and find a path through this wilderness that will result in some form of an initial agreement. It will not be a clear precursor to the most enhanced form of bilateral trade relationship—an FTA—but could be a first step in that direction.

REVIEW AND IMPROVE INSTITUTIONAL UNDERPINNINGS

While the Indian government has a top-notch, competitive career civil service in the IAS, the MOCI bureaucracy is not empowered to coordinate trade policy across the government or negotiate effectively, at least when compared to the career staff at USTR. By statute, USTR has specific trade-policy and negotiating responsibilities. Its horizontal structure and status as a White House agency reinforce its mandates, and ensure it can also effectively coordinate interagency efforts.

Ideally, India should explore creating a specific trade cadre of individuals—perhaps parallel to the career staff of the Indian Foreign Service—who are primarily responsible for developing trade policy and conducting trade negotiations. As some other countries have done, India might even consider bringing this responsibility out of MOCI by establishing a ministerial-level office that reports directly to the prime minister.

RECOMMIT TO THE TPF AND PURSUE INSTITUTIONAL REFORM

The United States and India should also critically examine the shortcomings of the TPF, and consider whether there could be improvements to promote more regular engagements at the ministerial level, compared to the annual (if even that) meetings that occur now. While the two sides were recently beginning to gravitate toward more regular engagement under the TPF, at various levels, the failure of efforts to negotiate a GSP deal has interrupted this evolution. It is critical that there be various forms of TPF meetings and discussions throughout the year, including a regular schedule of intersessional, vice-ministerial, and ministerial meetings.

REPLICATE RECENT COOPERATIVE SUCCESSES

Bilateral work on implementation of the WTO Trade Facilitation Agreement has been a surprising example of how the two countries can succeed in building a program of work in an area previously fraught with controversy. A first critical area should be protection and enforcement of intellectual property rights. In the recent past, there has been generally positive dialogue, and slow progress, on these issues. But, the overall atmosphere has been of significant tension, with mutual animosity related to differences in historical approaches and national narratives that have been at odds, particularly with respect to the international arena. Both countries are sources of impressive innovation, and should have long-term shared interests in promoting innovation and ensuring that the fruits of innovation are fairly protected. Regulatory coherence could be another area for future cooperative success. The United States has a long history of stop-and-start efforts to bring greater transparency and accountability to the process of developing, implementing, and reviewing regulations, starting with the Administrative Procedures Act in 1946.[28]

The two sides have a tremendous opportunity to begin building a foundation of confidence-building initiatives, which can also provide added benefits, such as increased regulatory engagement and information sharing, mutually supportive reform programs, and greater alignment in regulatory approaches. These outcomes, in turn, are strong signals to industry, increasing the potential for increased bilateral trade and investment.

EXPLORE OPPORTUNITIES FOR SIGNIFICANT MARKET-OPENING AGREEMENTS

For reasons that are apparent by looking at each side's recent experiences in FTA negotiations, there can be no reasonable expectation that the circumstances are right for seriously exploring such a bilateral agreement. India is deeply skeptical of FTAs, and those trading partners that have negotiated with India in the last few years—including the EU, the RCEP countries, Australia, and Canada—have learned this the hard way. The United States is also plodding and deliberate in initiating and conducting negotiations, and there is clearly no appetite in the administration, in Congress, or among stakeholders to promote the prospects of an FTA with India. However, the bilateral trade agenda can, and should, go beyond managing tensions and promoting cooperative initiatives, to embark on actual short-term, trade-expanding negotiations. The effort at a GSP package is one manifestation of a new readiness to negotiate directly on bilateral trade agreements.

One idea floated among some stakeholders on the US side is the possibility of negotiating a bilateral government-procurement agreement. In many respects, prospects for this are not much higher than for a full-blown FTA negotiation, given India's traditional aversion to the WTO plurilateral agreement and the US administration's new skepticism about including government procurement in trade negotiations, as played out in negotiations with Canada and Mexico. Nonetheless, there are compelling market access considerations, including potential trade opportunities for producers and exporters on both sides, and there is residual authority for USTR to reach such agreements short of negotiations to expand membership of the WTO Government Procurement Agreement, or in the context of a bilateral FTA negotiation.

Other possibilities include sectoral regulatory agreements that can deal with technical regulations and conformity assessment. A stronger framework for engagement to resolve SPS issues may be worth exploring, as could a set of commitments on regulatory coherence. Regardless, tariffs are one area unlikely for negotiation in the immediate future. While the Trump administration may press its leverage through a Section 301 review, negotiations on tariffs generally require a significant degree of give and take, and that is only possible through WTO or FTA negotiations.

LOOK TO THE FUTURE—A UNITED STATES-INDIA FTA

This report concludes with a truly long-term recommendation that risks generating, at best, a tepid response—or, at worst, widespread criticism that this possibility is nothing more than a pipe dream. At an appropriate moment, when compelling arguments in favor of consideration of an FTA outweigh the large number of arguments against, the two sides should begin exploratory discussions for an FTA negotiation. An exploratory framework will generate new expectations and a political momentum that may not reflect facts on the ground (which one might argue is the case with respect to the ongoing work between the United States and the EU). On the other hand, it can spur new, creative thinking, and helpful impetus for building a trade relationship that better matches the strategic partnership—which may ultimately be one of the most consequential of the twenty-first century.

There are numerous arguments against this. Neither country easily enters or leaves a bilateral FTA negotiation, and each has experienced colossal failures—the TPP for the United States, which was a historic loss following years of negotiation (although congressional approval was never certain), and for India, endless and fruitless negotiations with the EU, now spanning more than a decade.

However, the arguments in favor should not be readily dismissed, and are likely to become more convincing in coming years. For example, tariffs still matter in restricting trade and offering preferential status to close trading partners, while the WTO is unlikely to be a venue for tariff negotiations for years, or even decades, to come. If the two countries are successful in developing confidence-building outcomes, such as in regulatory alignment and reform, an FTA negotiation would offer a platform for refining and securing commitments that can bind the two economies more extensively and meaningfully. An undertaking as fraught and complicated as an FTA negotiation must not be entered into lightly, or too quickly. Yet, this relationship deserves some level of high aspirations—even dreaming.

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