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U.S.-INDIA TRADE RELATIONS: OPPORTUNITIES AND CHALLENGES

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MARCH 13, 2013

Serial 113–TR01

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
82–909 WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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U.S.-INDIA TRADE RELATIONS: OPPORTUNITIES AND CHALLENGES

WEDNESDAY, MARCH 13, 2013

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:08 a.m., in Room 1100, Longworth House Office Building, the Honorable Devin Nunes [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

HEARING ADVISORY

Chairman Nunes Announces Hearing on U.S.-India Trade Relations: Opportunities and Challenges

Wednesday, March 6, 2013

House Ways and Means Trade Subcommittee Chairman Devin Nunes (R–CA) today announced that the Subcommittee will hold a hearing on U.S.-India trade relations. The hearing will focus on the growing trade and investment relationship between the two countries as well as the significant challenges facing U.S. job creators in this vibrant and dynamic market. **The hearing will take place on Wednesday, March 13, 2013, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

The United States and India are experiencing the largest bilateral trade and investment flows ever recorded in this bilateral relationship, with total goods and services trade in 2011 recorded at $86 billion. The United States is India's third largest trading partner, and India is our 13th largest trading partner. The trade relationship fits into the larger bilateral relationship, which, over the past 20 years, has seen an enhancement of relations between the world's largest and oldest democracies.

Despite this positive story, the U.S.-India trade relationship faces some difficult issues. As India strives to prepare its economy for the challenges of its changing demographics—around one-half of the population of 1.2 billion is under 25 years of age—the country is putting in place policies to increase manufacturing (currently 18% of GDP) as well as protect domestic industries and agricultural production. These policies reveal a disturbing trend in which India is turning inward and erecting barriers to trade and investment. U.S. manufacturers, farmers, and ranchers are negatively affected by these policies and find it increasingly difficult to sell to, enter, and operate in India.

This hearing on U.S.-India trade issues will explore the positive aspects of the bilateral relationship, examine India's tariff and non-tariff barriers that affect U.S. job creators and analyze how bilateral trade and investment can be further expanded. Areas of focus will include: tariff structures; investment; agriculture market access; the Bilateral Investment Treaty; India's National Manufacturing Policy; local content requirements; intellectual property policies; services; and U.S.-India cooperation in bilateral and multilateral trade fora.

In announcing this hearing, Chairman Nunes said, **"The U.S.-India partnership is and will continue to be crucial to the global economy in the 21st century, and bilateral trade and investment ties are the lynchpin to keeping this strategic relationship strong. India faces tremendous domestic political challenges as it seeks to grow its economy and lift millions of people out of poverty. However, I am concerned that India has launched a series of alarming policies that harm U.S. job creators and are counterproductive. I intend to push India to remove barriers that prevent U.S. companies, farmers, ranchers, and workers from competing on a level playing field and selling their world-class products and services to India's 1.2 billion consumers."**

FOCUS OF THE HEARING:

The hearing will provide an opportunity to explore current U.S.-India trade issues such as: (1) deepening and expanding the long-term trade and investment relationship with India; (2) completing a Bilateral Investment Treaty, addressing investment caps, and exploring new investment opportunities; (3) addressing agricultural market access barriers; (4) evaluating India's National Manufacturing Policy and other forced localization policies including the Preferential Market Access (PMA) on information technology products; (5) ensuring the protection of intellectual property rights; (6) addressing the issuance of compulsory licenses, patent revocations, and other policies on pharmaceuticals; (7) examining India's system of cascading tariffs, taxes, and other import charges; and (8) advancing WTO negotiations, including "post-Doha" issues such as an international services agreement, Information Technology Agreement expansion, and a trade facilitation agreement in partnership with India.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov/*, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, March 27, 2013**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721 or (202) 225–3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman NUNES. Good morning. I want to welcome our panel of witnesses and everyone else to our hearing on U.S.-India Trade Relations.

It is an honor and privilege to be chairing my first hearing as Trade Subcommittee Chairman and to be serving with my colleague, Ranking Member Charles Rangel.

Under Chairman Camp and Chairman Brady's leadership, the previous Congress passed seven bipartisan trade bills. These achievements show that Congress and the White House, Republican and Democrats can come together and pursue pro-growth, pro-job policies. We must now accelerate this momentum so that U.S. businesses, farmers, ranchers and workers will find new opportunities abroad, where 95 percent of the world's consumers live.

That takes us to the focus of today's hearing. India has risen rapidly since its market-opening reforms in the early 1990s. Its GDP has grown from 275 billion in 1991 to 1.8 trillion in 2012.

Nevertheless, India remains the largest recipient of benefits under the U.S. Generalized System of Preferences. This is a program that expires this July and one this Committee must deal with.

The U.S.-India Strategic Partnership is a key relationship with bilateral trade in goods and services rising from minuscule amounts 25 years ago to more than 86 billion a year now. But there is scope for much more. With a population of over 1.2 billion, India's market holds potential for world class U.S. products and services.

I want to ensure that U.S. job creators compete there on a level-playing field. This hearing will provide an opportunity for the Committee to explore the positive aspects of the U.S.-India economic relationship, as well as to examine India's tariff and non-tariff barriers that are acting as impediments.

In particular, I want to examine the following issues:

Deepening and expanding the long-term trade and investment relationship;

Understanding the existing U.S.-India bilateral for a for discussion and how they can be more effective in addressing bilateral irritants and establishing metrics for measuring progress;

Addressing India's troubling use of forced localization in key sectors;

Ensuring India's protection of intellectual property rights;

Addressing agricultural market access barriers to ensure a level playing field for U.S. farmers and ranchers;

Completing a bilateral investment treating;

Addressing investment cap; and

Exploring new bilateral investment opportunities which are all vital to U.S. growth;

And, finally, partnering with India to advance negotiations at the WTO, including a post-DOHA issue such as Information Technology Agreement Expansion, a trade facilitation agreement, and the International Services Agreement negotiations that are about to be launched in Geneva.

I look forward to having a comprehensive discussion today about promoting economic growth and job creation by solving difficult bilateral issues and strengthening U.S.-India ties.

I will now yield to Ranking Member Rangel for the purpose of an opening statement.

Mr. RANGEL. Let me on behalf of the Democrats congratulate you, Chairman Nunes, for becoming the chair, and also thank you for having this first hearing.

As was pointed out so many times, the area of trade has been the most successful area in which we have been able to penetrate the depth of partisanship that exists in our Congress unfortunately. But I do hope that you know that you can depend on us to move forward in working with you toward improving the economic situation that exists in our country on the international area.

I think there is much agreement, especially with our terrific relationship with India, who is a vital ally not only in terms of national security, but it is one of our great growing trading relationships; a great democracy. Total trade was nearly $50 billion, up from just 8 billion in 2000, and total services have grown just as rapidly, from 4.5 billion in 2000 to 28.5 billion in 2011. And our investment in India and India's investment in the United States has been constantly and continuously expanding.

This people should recognize, we being the two greatest democracies in the world, and I think that we do have problems as most friends and family would have, and we like to point out some of what we believe are unfair incentives in order to improve the relationship that exists, as we think that many of these things violate international trade.

We know the particular concerns that India has with its large, young population. We also know in our country what the pains are of unemployment. But we do have forums that we can try to work out these differences in how we try to bring a better working relationship with both of our great democracies.

We hope that we can avoid threatening taking every issue to the World Trade Organization. We hope that our business people, as well as legislators, work to eliminate or take away the problems that we have in this area, and we hope that we will do this under your leadership and the Congress and the President.

And once again, I welcome you to the chair, and our committee is anxious to get started.

Chairman NUNES. Well, thank you, Mr. Rangel.

And Mr. Rangel and I are trying to work as closely as we can. I think we both feel that this is really one of the issues in Congress where there is bipartisan agreement, and we hope to advance the trade agenda as best as we can.

Today we are joined by five witnesses. Our first witness will be Dan Twining, Senior Fellow for Asia, at the German Marshall Fund of the United States. Mr. Twining will be our scene setter regarding the past, present and future of the U.S.-India relationship.

After him, Arvind Subramanian, Senior Fellow, at the Peterson Institute for International Economics and the Center for Global Development, will be our second witness. Dr. Subramanian will speak about India's economy and domestic developments that are affecting India's outward policies.

Our third witness will be someone who is familiar with this Committee, Ambassador Allen Johnson, founder of the Allen F. Johnson & Associates. Ambassador Johnson has held the position of Chief

Agricultural Negotiator at the Office of the United States Trade Representative and will speak today about the multilateral and bilateral relations with India, focusing on agricultural issues.

Our fourth witness will be Dean Garfield, President and CEO of The Information Technology Industry Council. Mr. Garfield will speak on the opportunities and challenges in bilateral high-tech trade.

Our fifth and final witness will be Roy Waldron, Senior Vice President and Chief Intellectual Property Counsel, at Pfizer, Inc. Mr. Waldron will testify about his company's longstanding work in India and India's intellectual property regime.

We welcome all of you and look forward to your testimony.

Before recognizing our first witness let me note that our time this morning is limited. So we will be limiting questions to five minutes in the hopes of giving as many Members the opportunity to be recognized as possible.

Mr. Twining, your written statement, like those of all the witnesses, will be made part of the record, and you are now recognized for five minutes.

STATEMENT OF DAN TWINING, SENIOR FELLOW FOR ASIA, GERMAN MARSHALL FUND OF THE UNITED STATES

Mr. TWINING. Thanks, Mr. Chairman, Members of the subcommittee. It's an honor to appear before you today to discuss the enormous potential of U.S.-India trade and investment relations.

Within a generation India is likely to become one of America's most vital partners in world affairs. It will bring more capabilities to the table than any existing U.S. ally in pursuit of our convergent interests; defeating terrorism and extremism, managing China's rise, keeping open the Indian Ocean sea lanes, and sustaining a liberal international order.

Recognizing this, Washington and New Delhi have developed a far-reaching strategic partnership centered on defense cooperation, but our economic relationship remains strangely underdeveloped. Despite disappointing growth recently, India's economy has doubled in size in less than seven years. Its economy is likely to become the world's third largest sometime in the 2020s.

The U.S. National Intelligence Council forecasts that India will become the biggest driver of middle class growth on earth by 2030 and will surpass China in economic dynamism. The NIC also forecasts that India could have the world's largest economy by the end of this century. This is a country America will want to work with to sustain an open global economy that promotes the prosperity of all free societies.

A decade ago, then American Ambassador Bob Blackwill famously said that U.S.-India economic ties were "flat as a chapatti". The situation has improved. America is now India's top economic partner measured in goods and services trade. China is India's top partner measured in terms of goods alone.

Since 2001, U.S.-India trade has doubled every five years. It is approaching the 100 billion dollar mark. This is good news in a way, but it is also disappointing. It is a low number still. Our trade with India is only one-seventh of our trade with China, despite the

fact that one country is a strategic partner and the other is a strategic competitor.

Regrettably, the Obama Administration's signature trade initiatives, TTP and TTIP, do not include India. The primary economic initiative between our two countries has been a modest bilateral investment treaty. It has been stuck in the bowels of our bureaucracies for years.

At the same time, India has enacted or is negotiating trade agreements with Japan, the EU, ASEAN and a number of other partners, but not the United States. Although India is part of Asia's security architecture, it is not part of Asia's economic architecture. India applied for APEC membership back in 1991, but the U.S. eventually backed a moratorium on membership. That moratorium has expired. India's exclusion makes little sense for a country that sits in the middle of Asia, is an important trading partner to America, China, and Japan, and has an economy that comprises nearly 20 percent of global GDP by 2060, according to the OECD.

Without a strategic framework for economic cooperation, Indian and American trade negotiators skirmish frequently in bilateral channels and at the WTO. Our trade ties too often degenerate into parochial disputes over things like pistachio nuts and chickens that have occupied even top political leaders. This is no way to build a strategic economic relationship between the world's largest democracies.

To elevate our bilateral relations to the strategic level, I believe America and India should launch negotiations for a free trade agreement. India will have to undertake far-reaching domestic reforms to qualify. New Delhi might find it easier to undertake these reforms if it can do so as part of a process of acceding to APEC. This will take time, but the requirements of membership could incentivize an Indian system wary of reform, the political costs of reform, to pursue aggressive liberalization.

The prize of eventual APEC membership coupled with an eventual FTA with America could empower economic reformers within the Indian system and mobilize the Indian private sector which is, frankly, quite fed up with the government's slow pace of reform.

Skeptics will argue correctly that Indian officials have been among the most obstreperous opponents of the U.S. trade agenda in venues like the WTO. This is true. Stepping back, however, looking strategically at India's deepening involvement in international institutions, we see that India behaves quite differently once it is inside a club than when it is excluded from it. Rather than throwing bombs from the outside, India has acted more responsibly in institutions like the IAEA and the U.N. Security Council. Indians crave the status of full membership in an international order they believe has excluded them for too long. Once seated at the high table, they are more inclined to help enforce global rules. I think the same would be true if India should accede to APEC.

India needs to grow in order to underwrite its security in a very tough neighborhood and to uplift more poor people than exist in all of Sub-Saharan Africa. The country has implemented massive rural welfare schemes, but government welfare alone will never build the world's largest middle class. Only a dynamic private sector will do that.

The U.S. can help accelerate this process by incentivizing our Indian friends to open up their economy to again produce growth rates approaching ten percent. China grew at this pace for several decades, as did Japan and South Korea before it. There is no cultural or historic reason India cannot deliver a "South Asian miracle" to match the "East Asian miracle" we have seen in the Pacific.

India should ultimately find it has no stronger partner in economics than the United States. It is time to put in place an agenda for economic cooperation between our countries that mirrors the ambitions of our strategic partnership, and catalyzes enduring prosperity for both our peoples.

Thank you.

[The prepared statement of Mr. Twining follows:]

Prepared Remarks of Daniel Twining
Senior Fellow for Asia
The German Marshall Fund of the United States
Before the House Ways and Means Committee's Trade Subcommittee
March 13, 2013

Mr. Chairman and Members of the Subcommittee, I am honored to appear before you today to discuss the trade and investment relationship between the United States and India.

Within the next few decades, India will become one of America's most vital partners in world affairs. It will bring more capabilities to the table than any existing U.S. ally in pursuit of our convergent interests: defeating terrorism and extremism, managing China's rise, keeping open the Indian Ocean sea lanes, and sustaining a liberal international order. India is still casting off its legacies of state socialism and non-alignment. But the ongoing urbanization and generational transformation of India is likely to produce a politics driven by middle-class support for market liberalization and close cooperation with the United States in world affairs.

India is a vibrant democracy that will soon be the world's most populous country. Despite disappointing economic growth recently, India's economy has doubled in size in less than seven years. It is likely to have the world's third largest economy within a decade. The U.S. National Intelligence Council forecasts that, by 2030, India will become the biggest driver of middle-class growth on Earth and will surpass China in economic dynamism. The NIC also forecasts that India could be the world's largest economy by the end of this century. This is a country that America will want to work with closely to sustain an open global economy and a liberal international order that promotes the prosperity and security of all free societies – starting with our own.

Given our convergent interests, the United States has a compelling national interest in India's economic and geopolitical rise. It will increasingly be an important market for American exporters of goods and services as companies pursue a "China-plus-one" strategy that hedges against the high risk of investing in an authoritarian state governed by a small clique of unaccountable men and riddled with corruption. A growing number of Indian firms are investing in the United States, bringing capital and creating jobs in this country – a phenomenon that should accelerate as India becomes richer and more of its companies become world-beaters. Joint collaborations between the Indian and American private sectors combine India's rich human capital with U.S. strengths in high technology. Both our countries are "knowledge

powers" whose complementary comparative advantages bode well for collaboration along the innovation frontier in IT, medical research, energy technologies, and other areas.

From a strategic perspective, a prosperous, rising, democratic India will provide ballast to an international system that otherwise risks tilting dangerously in the direction of Chinese-style state capitalism. India's success should make it a more confident and engaged partner to the United States in helping to build free societies in the wider Middle East, shape an Asian balance of power and values that remains hospitable to American leadership, and sustain a liberal bias in international organizations. India has many more reforms to implement to generate the pace and scale of growth that will make it a world power, but it has already taken enormous strides since it first opened up its economy in the early 1990s. America's interest lies in continuing to encourage India to realize its extraordinary economic potential.

This is where a more robust trade and investment relationship factors in. The U.S.-India economic relationship is strangely underdeveloped. When Bob Blackwill assumed the role of U.S. Ambassador to India in 2001, he famously said that U.S.-India economic ties were "flat as a *chappati*." Over the past decade, defense and energy cooperation have been the drivers of U.S.-India cooperation. We signed a far-reaching defense agreement in 2005; forged a civilian-nuclear deal that brought India into the global regime for civilian nuclear energy trade in 2008; sold India as much as $10 billion in military hardware; and ramped up military exchanges to the point that, by 2012, the Indian military exercised more with American forces than those of any other country. These are significant accomplishments that have transformed U.S.-India relations from the days when we were on opposite sides of the Cold War divide – and even from the 1990s, when we feuded over India's nuclear activities and heavily sanctioned it in ways that set back its economic development. We now need our economic relationship to catch up to the historic progress of our diplomatic and security cooperation.

There is some good news: the United States is India's top economic partner measured in trade in goods and services (China is India's top trading partner in goods alone). Since 2001, U.S.-India trade has doubled every five years and is approaching the $100 billion mark. This represents progress. But it remains a relatively low number: U.S. GDP is $16 trillion, and India's is $2 trillion and growing fast. Our economic relationship is far below scale given the size of our markets, their natural complementarities, and India's desperate need for the kinds of capital, technology, advanced manufactured goods, and services the United States is in a singular position to offer. U.S. trade with India is only one-seventh of our trade with China, despite the fact that one country is a strategic partner and the other a strategic competitor.

Regrettably, the biggest trade initiatives of the Obama administration – KORUS, the Trans-Pacific Partnership, and the Transatlantic Trade and Investment Partnership – do not include India. For its part, India has enacted or is negotiating trade agreements with Japan, the European Union, ASEAN, and a range of other partners – but not the United States. Preferential trade agreements with other big markets tilt the playing field against U.S. companies, even as the Indian private sector remains keen on closer collaboration with American firms.

The primary trade-and-investment initiative between our countries has been a modest Bilateral Investment Treaty (BIT), which remains in draft form with enactment uncertain. This rather unambitious initiative was inexplicably stuck in the U.S. bureaucracy for several years. Then late last year, just when Washington was finally ready to move, India launched its own review of a model BIT. The initiative is now stuck in the bowels of the Indian bureaucracy. So we don't even have an investment framework agreement between these two big economies, much less a pathway towards a more comprehensive free trade agreement.

A fundamental problem in the trade and investment relationship between the United States and India is that we have not been sufficiently ambitious. As we saw with the breakthrough in U.S.-India ties during the Bush administration, the best way to elevate the relationship above our feuding bureaucracies is to set out a compelling aspirational goal – backed and driven by the top political leadership of both countries -- who then empower our government institutions to deliver on a big political vision.

A modest Bilateral Investment Treaty is not a sufficiently ambitious goal. Indian negotiators continue to skirmish with their American counterparts not only in bilateral channels, but in multilateral bodies like the World Trade Organization, where the United States and India have lodged various cases against each other. Rather than bilateral trade and investment being greater than the sum of its parts, too frequently trade ties have degenerated into narrow disputes over things like pistachio nuts and chickens that have occupied even top political leaders. This is no way to build a strategic economic relationship between the world's largest democracies.

Not only is India excluded from the Obama administration's signature trade initiatives; it is also excluded from APEC, which brings together many of the key economies across the Pacific. India applied for APEC membership all the way back in 1991, but Washington eventually backed a decade-long moratorium on membership designed partly to exclude India.

That moratorium has expired. Although India is part of Asia's security architecture, it is not a part of Asia's economic architecture. This disjuncture makes little sense for a country that sits in the middle of Asia, is an important partner to countries like American and Japan, and has an economy that, according to the OECD, could comprise nearly 20% of global GDP by 2060.

To elevate our economic relations to the strategic level in a way that organizes our bureaucracies to cooperate on a big vision rather than continuing to clash over micro conflicts, the United States and India should launch negotiations for a free trade agreement. India will necessarily be compelled to undertake a substantial set of domestic economic reforms to qualify for the kind of high-quality FTA Americans prefer. New Delhi might find it easier to undertake those reforms if it can do so as part of the process of acceding to APEC.

This process will take time, but the requirements of membership could incentivize an Indian system wary of the political costs of reform to pursue aggressive liberalization of trade, investment, and regulatory restrictions. The prize of APEC membership coupled with an eventual FTA with the United States could empower the substantial cadre of economic reformers within the Indian system. It could also help mobilize the Indian private sector, which is fed up with the slow pace of reform in India -- and would be empowered by the potential prizes of a U.S. FTA and APEC membership to step up its lobbying campaign for liberalization.

Skeptics, starting with American trade negotiators, will rightly argue that Indian officials have been among the most obstreperous opponents of the U.S. trade agenda in bilateral settings and in venues like the WTO. This is a tactical perspective that rings true. However, stepping back and looking strategically at India's deepening involvement in international institutions, we see that India behaves very differently once it is inside a club than when it is excluded from it. Rather than throwing bombs from the outside, India acts more responsibly as an insider -- in part because Indians crave the status of full membership in an international order they believe excluded them for too long, and once seated at the high table are more inclined to help enforce global rules rather than undercutting them to protest Indian exclusion.

In the International Atomic Energy Agency, India has voted with the United States five times to sanction Iran for its illicit development of nuclear weapons. New Delhi would have been unlikely to have done so had the United States not worked to normalize India's status as a member of the international club that trades in civilian-nuclear technology. Indeed, in addition to membership in the IAEA, India now aspires to join institutions like the Nuclear Suppliers

Group, the Missile Technology Control Regime, the Wassenaar Arrangement, and the Australia Group – the very clubs that once excluded and sanctioned it. It wants to help make global rules rather than be powerlessly subject to them.

Similarly, India is excluded from permanent membership on the United Nations Security Council, a long-standing grievance for the world's second-most-populous country. However, it recently completed a two-year rotation as a UNSC member in which it behaved as a responsible power rather than an obstructionist one from a U.S. perspective. In the UN Human Rights Council, India has also behaved more responsibly, for example supporting resolutions condemning human rights violations in Sri Lanka. This is not to say that the United States and India always agree in international forums – we do not. But the record suggests that when India is brought in as an equal member, it can be a responsible partner that looks beyond narrow self-interest.

The same would likely hold true should India accede to APEC. At the first East Asia Summit in 2005, India's representative actually proposed an all-Asia free trade agreement. India's active or pending trade agreements with the European Union, Japan, ASEAN, and others suggest an ambition to organize preferential trade agreements with major world economies. An India-U.S. FTA would be an aspirational goal that would take many years, and much reform on the Indian side, to realize. But it would fill out the lack of an institutionalized economic framework for India-U.S. trade and investment relations and would be a prize that could well induce Indian leaders to take hard decisions on reforms. To further incentivize Indian leaders to liberalize key economic sectors of interest to American companies, it would be helpful for the U.S. Congress to liberalize visa rules for high-tech workers, who disproportionately hail from India and whose talents have enriched the American economy.

America has a lot of politics that stymie necessary reforms; so does India. The gap between India's actual and potential growth is enormous, given its stage of development, rich human capital, and a supportive international environment. India needs to grow in order to underwrite its security in a very tough neighborhood, particularly given the continuing export of terrorism from Pakistan and China's enormous leap forward in military modernization.

India needs to grow very fast for a very long time to permanently lift hundreds of millions of people who live on less than $2 a day out of poverty. Growth rates that have dipped from 10 % to 5% are morally troubling in a society with more poor people than all of sub-

Saharan Africa. The Indian government has implemented massive rural welfare schemes, but government welfare projects cannot build the world's largest middle class. Only a dynamic private sector can do that.

Former Indian executive Gurcharan Das argues that "India grows at night" – when the government is asleep and the private sector can go about its business. Indeed, India's economy seems to grow despite, rather than because of, government policies, which remain stifling to private enterprise. India has made some progress, liberalizing foreign investment in aviation and multi-brand retail last year. India's 2014 elections will be in part a referendum on the government's economic management, with potential prime ministerial contenders like Narendra Modi and Nitish Kumar flaunting the economic competence with which they have managed their states to rally electoral support.

India's electorate is also evolving. Most Indian voters still live in rural villages, but a growing aspirational class in the cities supports a reformist agenda that actively seeks to grow India's economic pie rather than simply redistributing it. As this "politics of aspiration" replaces what the Indian intellectual Shekhar Gupta calls the old "politics of grievance," Indian political leaders will find that their voters demand more economic liberalization to invigorate a private sector that will soon employ the world's largest workforce.

This will be a multi-generational endeavor. The United States can help speed it along by incentivizing our Indian partners to continue to open up the economy to the international trade and investment that, alongside domestic demand in what will become the world's largest consumer market, will produce economic growth rates approaching 10% on a long-term basis. This is the kind of growth India enjoyed in the first decade of this century. We've seen China grow at this pace for several decades, just as Japan, South Korea, and the other "Asian tigers" did before it. There is no cultural or historical reason India cannot deliver a "South Asian miracle" to accompany the "East Asian miracle" that has transformed the Pacific rim.

In considering how to seed economic growth through foreign investment, technology imports, infrastructure development, foreign trade, and investment in human capital, India will find that is has no stronger partner than the United States. It's time to put in place an agenda for economic cooperation that mirrors the ambitions of our strategic partnership and catalyzes enduring prosperity for Americans and Indians alike.

6

Chairman NUNES. Thank you, Mr. Twining.
Mr. Subramanian.

STATEMENT OF ARVIND SUBRAMANIAN, SENIOR FELLOW, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS, AND THE CENTER FOR GLOBAL DEVELOPMENT

Mr. SUBRAMANIAN. Thank you, Chairman Nunes, Ranking Member Rangel, and Members of the subcommittee for giving me the opportunity to testify today.

In the brief time available, I want to make three observations and three recommendations. Observation number one, the prize is big. I have breaking news for you. In 2012 India became the world's third largest economy in purchasing power parity terms, surpassing Japan and now behind only the United States and China.

My forecast is that this $4.7 trillion economy will double every seven to ten years. This one trillion trade economy will double every seven years, and the U.S. has benefitted immensely, as my colleague has suggested, and it is worth emphasizing that India-U.S. trade and investment are balanced so that you do not have the kinds of tensions with other countries from imbalanced trade.

Observation number two, the sectorial and the micro should not obscure the broad macro development, and these developments are that despite India's transitional turbulence that is happening now, slower growth, mounting macro vulnerabilities, the predominant trend has been toward opening.

In the last two, three years, few countries have opened up to FDI and foreign capital across the board, you know, stock markets, equities, debt instruments, et cetera, like India has, and that is because it reflects a deep and fundamental bipartisan consensus within India that the way forward is greater openness and globalization.

Observation number three, all that being said, however, there are, I think, three major challenges that the U.S. States and U.S. business face in India. Two of these I think my colleagues are going to talk about. One is the localization that, Chairman Nunes, you referred to. And here I just want to say that India has caught the China bug. India wants to do the same Chinese indigenization and localization that China has been doing, and I think there is a domestic imperative to create a manufacturing base which India has not been able to do. So it is resorting to these measures.

A second challenge is the weak and uncertain regulatory and tax environment that affects the U.S., the civil nuclear industry, pharmaceuticals, agriculture, infrastructure, et cetera, and I'll have more to say on that.

The third big challenge that American firms are not complaining about but which they should most of all is what my colleague referred to, which is that because of all these free trade agreements that India has signed or is about to sign, U.S. business is getting disadvantaged.

And why is this serious? For two reasons. India has very high barriers, and it is a growing market. So the extent of disadvantage to American business is absolutely huge.

How should these three challenges be addressed? One, on the localization protectionist measures, the regulatory environment, my strong urging would be to dialogue in the first instance, but if not,

if that doesn't work, use the WTO to resolve conflicts as much as possible for two reasons.

One, you can test the validity of claims, you know, about India being way out of line on many of these issues, IPRs, agriculture; and, second, India has a great record of complying with WTO rulings. A factor that I think is worth pointing out is that India's biggest trade reform came after the U.S. initiated a dispute against U.S.-Indian quantitative restrictions on consumer goods that went through. India complied with it, and you had the biggest change possible.

Recommendation number two, on the uncertain regulatory environment I think the problem here is serious. It is not going to get resolved very soon. I think that U.S. business has a challenge to adapt to the Indian environment because if not, it risks losing ground to other countries, other competitors that are getting in despite the challenging environment.

Recommendation three, and my last recommendation, go big. This is a marathon, not a sprint. This is multidimensional, not unidimensional, and sometimes going big is the best way to address even the small. You cannot resolve chickens by talking only chickens.

So a common theme running through many of these testimonies here this morning is that there is no broad strategic framework for dealing with U.S.-India trade relations. I think my colleague made a very good point. I think it is important for three reasons: the fundamental sharing of values as a democracy; second, to reverse the disadvantage that's taking place with both sides negotiating free trade agreements; third, above all, I think it is very important to realize that a U.S.-India trade relationship is absolutely vital for the other big prize, which is China and keeping China tethered to the multilateral trading system and ensuring that China remains open, nondiscriminatory, and follows the policies that we want.

Finally, I would just add by saying that for this reason and FTA, relations on an FTA make sense, and we at the Peterson Institute have embarked on a big project and hopefully by the end of the year we will have something to show you for it.

[The prepared statement of Mr. Subramanian follows:]

Congressional Testimony

Deepening US-India trade relations

Arvind Subramanian
Senior Fellow, Peterson Institute for International Economics and Center for Global Development

Testimony before the Ways and Means Committee of the United States Congress, hearing on "US-India trade relations."

March 13, 2013

This testimony draws upon my ongoing Peterson Institute for International Economics project with C. Fred Bergsten, "Deeper Trade Integration between the Democracies," supported by the US-India Business Council (USIBC) and the Smith Richardson Foundation (SRF).

Summary and Recommendations

1. India's economy has been growing rapidly, at about 6½ percent for over three decades since 1980, and close to 9 percent in the last decade. As a result, it has emerged as a major power with an economy (US$4.7 trillion) that in 2012 became the world's third largest (in purchasing power terms), surpassing Japan and now behind only China and the United States. Its trade in goods and services is close to a trillion dollars, and expected to double every seven years.

2.This dynamism has expanded opportunities for US business. US exports of goods to India have increased close to 700 percent in the last decade. Exports of services have doubled in the last four years. US foreign direct investment (FDI) has increased from US$200 million to US$6 billion. Moreover, trade and FDI flows between the two countries are balanced, minimizing the scope for macroeconomic and currency-related tensions.

3. However, India is currently encountering a bout of severe turbulence. On the economic front, growth has decelerated sharply, from 9 percent to 4.5 percent. And macroeconomic vulnerabilities--high fiscal deficits (9 percent of GDP), stubbornly elevated (double-digit) inflation, and a deteriorating external balance (over 4 percent of GDP)--have been mounting. Politically, India is heading toward its next general election, which has to take place before the spring of 2014, complicating and imparting uncertainty to economic policy-making.

4. In response to adverse developments, the government has undertaken, since late 2012, major domestic economic reforms. Reforms have also included an ambitious opening up of the economy to foreign direct investment and to foreign financial investors. Indeed, since the global financial crisis, few countries have opened up to foreign capital to the extent that India has. Significantly, and reflecting a domestic bipartisan consensus, there have been no major macroeconomic reversals of opening to foreign trade and capital. These reforms have come

against the backdrop of a longer-term trend of surging Indian trade and foreign direct investment, with enormous benefits for foreign and American business.

5. However, US business faces three major challenges in India. Two challenges common to all foreign business are: first, the weak and uncertain regulatory and tax environment that affects the civil nuclear industry, infrastructure, pharmaceuticals, and more broadly the operations of foreign multinationals in India. Second, although the broad macroeconomic picture is one of opening and surging trade and investment, protectionism in selected sectors has re-surfaced. India is seeking increasing recourse to localization—in banking, telecommunications, retail, and solar panels among others—which favors domestic providers of inputs and equipment over foreign providers. Thus, broad trade and macroeconomic policies toward foreigners are moving in the right direction but sectoral policies have experienced setbacks.

6. Third, American firms are increasingly facing implicit but substantial discrimination in India's large and growing market because of India signing (or on the verge of signing) free trade and economic partnership agreements with its largest trading partners that are all major competitors to the US: Europe, Japan, Singapore, ASEAN, and possibly ASEAN-plus 6. Soon, if not already, this discrimination may be the bigger challenge for US business than some recent sectoral measures. These RTAs are neither as comprehensive in their coverage across and within sectors as the FTAs negotiated by the United States, nor as expeditious in the time frame for implementation. But they provide more favorable access to non-American suppliers and because India's tariffs and barriers can be high, the discrimination can be substantial. Combined with the fact of India's large and growing market, US suppliers can really be disadvantaged.

7. The enormous potential for US-India trade and investment remains enormous not least because of India's unexploited growth opportunities. And this potential will be determined and realized, above all, by India's domestic reforms to re-vitalize investment and growth and to restore macroeconomic stability. Pro-growth trade and investment policies will also play an important role.

8.The US should adopt the following multi-pronged strategy for solving trade conflicts and maximizing the underlying potential. First, the US should address frictions especially where Indian policies are demonstrably protectionist (as in the case of many local content requirement policies) through multilateral (WTO) dispute settlement procedures. The US should not be reticent in this regard. India has an excellent record of compliance with WTO rulings against it. And one of India's most sweeping trade reforms occurred after a US-initiated WTO dispute panel found that India's broad quantitative restrictions on consumer goods violated WTO rules.

9. Second, US initiatives such as the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership, by discriminating against India companies and exporters, will exert natural pressure on India to open up either directly or by prodding participation in these and other trade liberalizing initiatives.

11.Third, there is merit in initiating deeper bilateral trade integration between India and the United States as a framework for giving recognition to the broader strategic imperative of closer cooperation between the two countries pursuing further liberalization in both countries and reversing the discrimination that each is inflicting on the other. But this framework must also be used for re-vitalizing the multilateral trading system and the WTO by moving beyond the Doha Round and giving consideration to a broader "China Round." A re-vitalized multilateral system remains the best way of dealing with the rise of China and ensuring that it pursues transparent, rules-based, and non-discriminatory policies.

12. Finally, India's challenging regulatory environment is unlikely to see major improvements in the short to medium term. US business will have to learn to move outside its comfort zone to navigate an Indian market where rule of law and legal certainty cannot be taken for granted. If it does not, it risks losing out to firms from other countries in one of the world's largest and most dynamic markets. Unfortunately, to paraphrase the line from the great Italian novel, *The Leopard*, the more things stay the same in India, the more American business will have to change.

I. Recent macro-economic background

India has experienced about 6½ percent growth, for over thirty years since 1980, and nearly 9 percent over the last decade. As a result, India is now a 2 trillion dollar economy (measured at market exchange rates). In purchasing power terms, it became in 2012 the world's third largest economy (US$4.7 trillion), surpassing Japan and now behind only China and the United States. Its trade in goods and services is close to a trillion dollars, and expected to double every seven years.

But recently, India has experienced a bout of severe turbulence. After several years of rapid growth, averaging close to 9 percent, India's GDP growth decelerated from late 2010, reaching a low of 4.5 percent in the last quarter of 2012 (Figure 1). External factors, notably the euro-crisis-induced slowdown in the world economy and high oil prices explain part of the growth deceleration. But domestic factors—fiscal populism, weak governance, and policy uncertainty—have also played an important role.

Consumer price inflation has remained at or close to double digits for over three years. There are recent signs of a let-up especially in wholesale and core inflation but fundamental inflationary pressures remain a source of serious concern (Figure 2). Another worrisome trend is the deterioration in India's external balances. India's current account deficit that has remained less than 3 percent of GDP for many years, is now edging close to "flashing amber" territory of about 4.2 percent of GDP (Figure 3).

Underlying the problem of inflation and external imbalances is the fiscal position. As a result of rising expenditures, mainly devoted to the social sectors and transfers, which have doubled in per capita terms over the last decade, the government's budget deficit has remained close to 10 percent of GDP (Figure 4).

A comparison of India's macroeconomic indicators with other emerging market countries (Figure 5 from the IMF) illustrates that India is uniquely vulnerable: it has much higher inflation and much larger fiscal deficits than many emerging markets. Compared to China, for example, India's inflation and fiscal deficits are nearly three times as great.

Late last year, in response to these adverse developments, and in order to head off a looming investment downgrade by the foreign credit ratings agencies, the government undertook bold actions. It enacted measures to reduce fuel subsidies on diesel and limit the subsidy on cooking gas. The reductions are ongoing and take the form of small but steady increases in the consumer price of diesel. It approved greater foreign direct investment (FDI) not just in multibrand retail (which will benefit Walmart in particular) but in aviation, broadcasting and power exchanges. And since the crisis, steady liberalization of the capital account has taken place to allow more access for foreigners to the Indian equity, corporate and government bond, debt, and foreign exchange markets.

Further, to avoid delay in implementation of large projects, a number of measures have been taken, including the setting up of a new Cabinet Committee on Investment (CCI) under the chairmanship of the Prime Minister. The Committee has been mandated to fast track large infrastructure projects. The authorities have recently accepted all the major recommendations of an Expert Committee that would bring about greater clarity in taxation and avoid in particular retroactive tax measures.

For some time now, preparations have been underway to implement a full-fledged value added tax (called the Goods and Services Tax, GST) at the federal and state levels. The expectation is that implementation of the GST will begin in 2014, and when fully implemented this tax is expected to yield about 2 percent of GDP in additional revenues which would improve the medium-term fiscal picture. Importantly, since 2010 the government has embarked on a large project of biometric identification (*Aadhaar*) with the aim of using this as a basis for direct cash transfers to eventually replace the transfers that take place indirectly, ineffectively, and leak-intensively, through various forms of subsidies for food, fuel, and power. This program offers the possibility that government subsidies which are a big drag on the budget could be replaced by measures that cost less and better reach the intended beneficiaries.

The most recent budget submitted to Parliament on February 28, seeks to reduce the budget deficit and limit expenditures which is especially important ahead of elections to Parliament that must take place before the spring of 2014. Politics in the next year will be dominated by the fact of impending elections. Put differently, the temptations to be fiscally populist will be great; and the ability to liberalize the economy to foreign business will also be constrained.

II. The Broader, Medium-Term Context

India's current macroeconomic difficulties, and adoption of specific localization measures notwithstanding, should be seen against the backdrop of positive long term trends and future potential. Since India's reforms were unleashed in 1991, India's trade barriers have come down substantially. As Figure 6 shows, India's average MFN tariffs declined from 100 percent in 1986 to less than 10 percent in 2009. The figure under-states progress on trade opening because India also maintained a broad range of severe quantitative restrictions on consumer goods which were eliminated in the late 1990s. Despite some recent reversals of a sectoral nature, there is no threat of India repudiating the fundamental strategy of embracing greater openness. And this view is shared across the political spectrum: Congress and BJP-led governments have both implemented market opening.

India has, until recently, been amongst the biggest users of anti-dumping actions. The country that has been the greatest target of Indian actions has been China. It is noteworthy that in the last 12-18 months, Brazil and Argentina have displaced India amongst those taking the greatest recourse to antidumping actions (Table 1).

Reflecting the combined impact of policy liberalization, technological change and India's internal dynamism, India's trade surged during the last decade (Figure 7). Exports of goods and non-factor services surged seven-fold in just over a decade from US$60 billion to US$ 420 billion. And imports also increased seven-fold from US$75 billion in 2000 to US$525 billion in 2011. As the chart shows, India recovered robustly from the impact of the global financial crisis. India's openness ratio (the ratio of trade to GDP) doubled over the course of a decade from about 25 to 50 percent. Indian global integration is thus well advanced.

Similarly, India's FDI has also increased but from a very low base of about US$3.5 billion in 2000 to US$43.5 billion just before the crisis. FDI has not completely recovered from the global financial crisis but recent measures should carry forward the momentum established earlier (Figure 8). India's FDI inflows remain well below those of China (which have averaged close to US$ 100 billion over the last decade), so India has to catch up for the nearly two decades of surging FDI that China has benefitted from.

This surging overall trade and investment has benefitted United States-India bilateral trade . India's exports to the US have increased by about 250 percent since 2000, from US$ 9 billion in 2000 to US$32 billion in 2011 (Figure 9a). The United States is India's largest export market. More dramatically, US exports of goods to India have increased by nearly 700 percent, from US$ 3 billion to US$ 23 billion (Figure 9b). However, China has overtaken the US as India's largest supplier of goods and services, and the US is not even amongst the top three sources of imports for India. It is important to note that US-India trade is broadly balanced unlike India-China and US-China trade, so that the scope for trade frictions from exchange rate and macroeconomic policy is minimized in the case of India-US trade.

Trade between India and the US in services is also surging. Between 2006 and 2010, US exports of services to India (cross-border delivery plus sales by US foreign affiliates) have more than doubled from about US$ 12 billion to nearly US$ 25 billion. This remarkable growth occurred during the global financial crisis. A similar trend characterizes India's exports of services to the US (Table 2).

In terms of FDI, two points are worth noting. First, the United States is not the largest investor (consistently) in India. According to OECD data (Figure 10), US FDI to India surged from about US$200 million to nearly US$6 billion in 2010. But the United States was surpassed by the United Kingdom for the most recent period and by Japan in earlier periods. So, the potential exists for large increases in US FDI to India.

Second, FDI like trade in goods and services is also increasingly becoming two-way. A study commissioned by Federation of Indian Chamber of Commerce and Industry (FICCI) showed that between 2004 and 2009, 90 Indian companies made 127 Greenfield investments worth US$ 5.5 billion in metals; software and IT Services; leisure and entertainment; industrial machinery; equipment and tools; and financial services. During the same period 239 Indian companies

invested in excess of US$ 20 billion in merger and acquisitions in different states and across a wide range of sectors. As a result, tens of thousands of direct jobs (predominantly US citizens), supporting many more indirect ones, have been created.

III. Challenges for American Business

However, it remains true that the Indian economy remains less open than several other emerging market economies and that pockets of protectionism have emerged recently. US business faces three major challenges in India, two of which are faced by all foreign business and one that is increasingly unique to the US. The two challenges common to all foreign business are: first, the weak and uncertain regulatory and tax environment and second increasing recourse to localization which favors domestic providers of inputs and equipment over foreign providers. The third uniquely American challenge is the discrimination faced by US business.

1.Regulatory and tax environment

India's uncertain policy environment has taken a toll of investment and growth. The sectors/policies of interest to foreign business that have been particularly affected include:

Civil nuclear supply: under the current nuclear liability regime, supplier liability is potentially unlimited which dampens enthusiasm for suppliers such as General Electric.

Power: inadequate cost recovery and pricing policies, state sector domination, and limited coal supplies affect the profitability of the power sector and the attractiveness for private sector participation;

Retail: despite the ambitious liberalization, regulatory obligations are limiting the enthusiasm of foreign retail brands;

Taxes: the retroactive taxation underlying last year's budget has been addressed but issues related to transfer pricing and taxation continue to affect investor sentiment;

Land acquisition: Despite the passage of a new bill, investor concerns remain regarding procedures and compensation.

2.Protectionism through localization

India has undertaken measures in a number of sectors that would require local sourcing of inputs, parts and components not just in relation to government purchases (which are not inconsistent with India's WTO obligations because India is not a member of the Government Procurement Agreement) but also for the private sector. The sectors covered include power, banking, telecommunications, retail, and energy. (In addition, in a number of professional services--legal, accounting and architecture--foreign providers are virtually excluded from the marketplace).

Why the sudden and enthusiastic embrace of localization by India? There seem to be two reasons. First, at a time of slowing growth and given the longer trend of the weak performance of the manufacturing and employment, localization is a second- or third-best policy response aimed at addressing what India considers are vital priorities: building a large manufacturing base that is cutting edge in terms of technology and that creates robust employment opportunities in the formal sector. It is second or third best because the broader and more direct reform agenda—improving regulation, eliminating legal obstacles to employment generation—is politically difficult to implement.

A second reason is China. Impressed by China's ability to induce foreign business to indigenize and transfer technology, and believing that India has China's bargaining power, India is attempting to imitate the Chinese experience.

3.Discrimination against American suppliers

US firms and businesses are not being targeted for direct discrimination. Rather this discrimination is happening indirectly but substantially because of India signing (or being on the verge of signing) free trade and partnership agreements with nearly all the major competitors to the US.

A major development of India's trade policy over the last decade has been the aggressive pursuit of regional trade agreements, especially but not confined to Asia. In addition to comprehensive economic partnership agreements with Singapore and Japan, India is either negotiating or has negotiated some form of RTAs with a number of countries and regional groupings.

These include: Agreement on South Asia Free Trade Area (SAFTA) with Afghanistan, Bangladesh, Bhutan, and Maldives; India-Thailand FTA, which will include ASEAN-plus tariff concessions; India-ASEAN Comprehensive Economic Cooperation Agreement (CECA); Regional Comprehensive Economic Partnership (RCEP) Agreement among ASEAN + 6 Japan, Korea, and New Zealand, Australia, China, India); India - EU Broad Based Trade and Investment Agreement (BTIA); Global System of Trade Preferences (GSTP).

Now these RTAs are neither as comprehensive in their coverage across and within sectors as the FTAs negotiated by the United States, nor expeditious in the time frame for implementation. But they signal India's interest in seeking access to markets abroad. Equally more important, the strong "Look East" nature of the policy is a reaction to China's strong and growing economic presence in East Asia.

All these agreements provide more favorable access to non-American suppliers and because India's MFN tariffs and barriers can be high in some sectors, the discrimination can be substantial. And add to that the fact of India's large and growing market, and US suppliers can really be disadvantaged.

Of course, it must be added that the United States is reciprocating this discrimination (also indirectly) against Indian business when it negotiates the TPP and the Trans-Atlantic agreements.

IV.The Way Forward

The starting point for forging a cooperative partnership is the recognition that despite frictions, the underlying potential is enormous. In my recent book *Eclipse: Living in the Shadow of China's Economic Dominance,* I project that the Indian economy will average a medium-term growth of about 8-8.5 percent, and that its trade in goods and services, currently close to a trillion dollars, will roughly double every seven years, so that by 2018, it will reach close to 2 trillion dollars.

Moreover, from a US perspective there are several encouraging trends: US FDI to India is still far below potential; India will have enormous energy needs, including for natural gas which the US will be able to supply; the potential of infrastructure investment of about a trillion dollars could be exploited by US companies; and India's demand for services will increase enormously, which, as my Peterson Institute colleague Brad Jensen has shown, will disproportionately benefit the US which has a comparative advantage in supplying services.

Against this background, the US should adopt the following multi-pronged strategy for minimizing frictions and maximizing the underlying potential.

Use multilateralism for addressing frictions

First, the US should address frictions and conflict through dialogue and where Indian policy is egregiously protectionist address it through multilateral dispute settlement procedures. In this regard, the recent case initiated by the US against India on solar panels is a good illustration of such a policy. Perhaps, the US should consider initiating more such disputes for policies in other sectors. This approach is desirable for a number of reasons. India takes its WTO obligations very seriously and has had a very good track record of implementing WTO dispute settlement rulings. As Table 3 illustrates, when India is a respondent, disputes are either settled to the satisfaction of all parties or India appears to comply with the rulings against it.

In fact, it is not widely recognized that arguably the most important and sweeping reform of Indian trade policy occurred because of a WTO dispute panel—initiated by the United States--that ruled against India's quantitative restrictions on consumer goods. These restrictions were severe in intensity and very broad in scope.

For the US, the virtue of using WTO dispute settlement is to reassure the world of its faith in rule-based multilateral institutions; it is also diplomatically and politically less confrontational than unilateral and bilateral actions.

Exert indirect pressure

Second, US initiatives such as the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership will exert natural pressure on India to open up: either directly or by participation in these and other trade liberalizing initiatives. Just as Indian RTAs exclude US suppliers, TPP and TATIP do the same against Indian suppliers.

Create a new strategic framework

There is merit in creating such a new framework for a number of reasons:

- to give recognition to the broader strategic imperative of closer cooperation between the two countries that share common democratic values;
- to pursue further liberalization in both countries and to roll-back the discrimination that each is inflicting on the other via their respective regional trade agreements;
- to revitalize multilateralism and the WTO by moving beyond the Doha Round to what Aaditya Mattoo and I call a "China Round" of multilateral negotiations. This offers the best way of organizing global economic relations and for dealing with the rise of China and ensuring that it follows open, rules-based and non-discriminatory policies.

That is why the Peterson Institute for International Economics has undertaken an ambitious project (led by C. Fred Bergsten and me and supported by the US-India Business Council and the Smith Richardson Foundation) to help create such a strategic framework. We hope to have the results before the end of 2013.

V. Concluding Thought

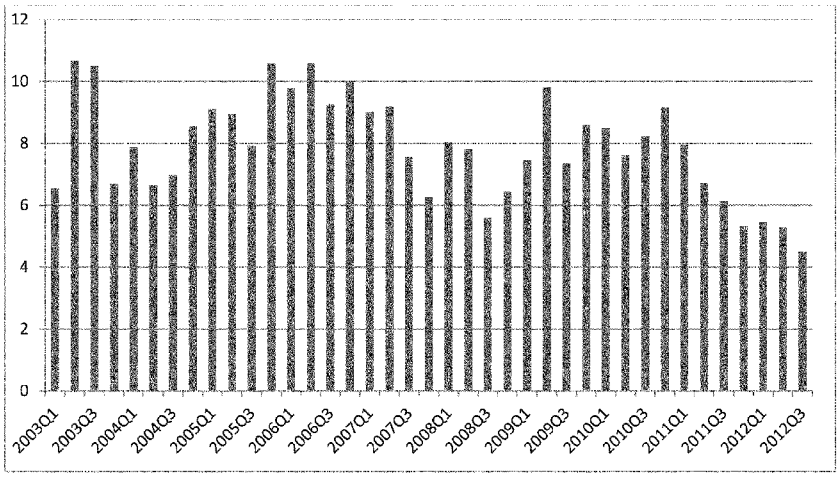
Note that the strategy outlined above will address two of the three major challenges faced by US business (protectionism and discrimination) described earlier. But they would not seriously address the first challenge, namely India's weak and uncertain regulatory regime. Clearly, one of the major impediments to boosting India's economic prospects and opportunities for domestic and foreign investors is its regulatory regime, including weak governance, corruption, uncertain tax and investment climate. Improving this regime is a first-order priority for India from a purely domestic perspective but it would also benefit foreign business.

But there is little prospect that India will at any time in the near future establish a regime—for example, on nuclear liability, on land acquisition, on power pricing, on taxation of MNCs and so on--that in terms of rule of law and legal certainty will match the standards found in most advanced countries; nor will it be able to provide the investment-friendly climate that is associated with effective top-down systems such as China.

This creates a dilemma for American business. If it relies on, and waits until, India's regime changes, there is a serious risk that the wait will allow companies from other countries to gain a competitive edge over US business in one of the world's largest and most dynamic markets.

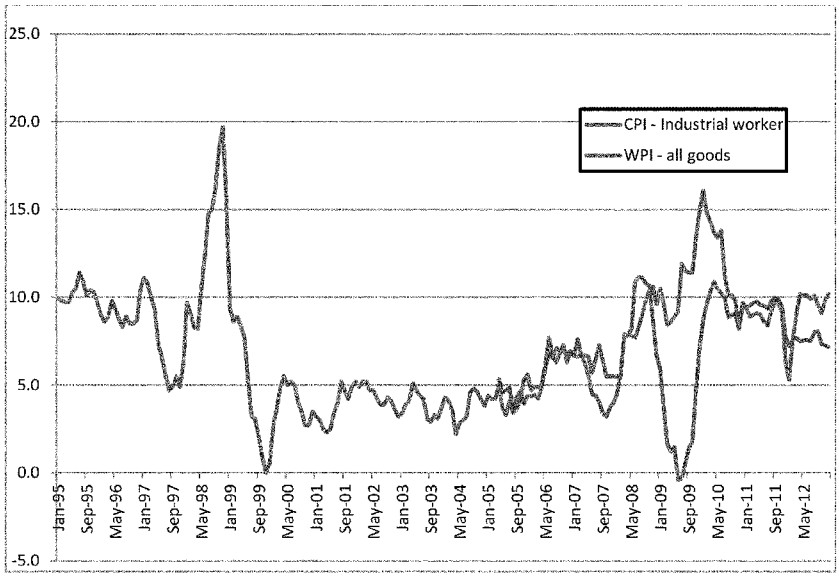
Indeed, in a number of sectors such as infrastructure, this may already be happening. Figure 10 illustrates, for example, that US FDI to India appears to be well-below potential. For American business, with its visceral need for rule of law, the challenge will be to adapt itself to negotiate messy foreign economic environments such as India or else risk losing business to more pragmatically nimble counterparts in other countries. India will need to change but if it does not so too will American business. And, unfortunately, to paraphrase the line from the great Italian novel, *The Leopard*, the more things stay the same in India, the more American business will have to change.

Figure1. India: Quarterly GDP Growth, 2003-2012 (in percent)



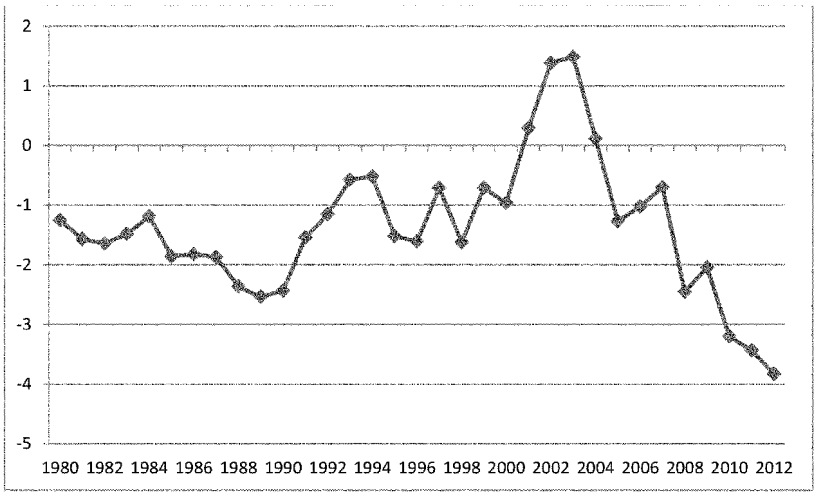
Source: Reserve Bank of India

Figure 2. India: Inflation, 1995-2012 (in percent)



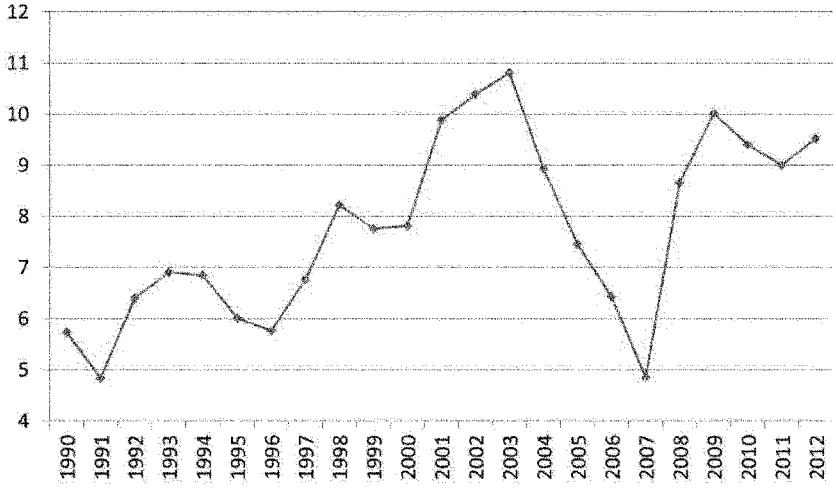
Source: IMF, International Financial Statistics

Figure 3: India: Government Budgetary Position (Net lending in percent of GDP)



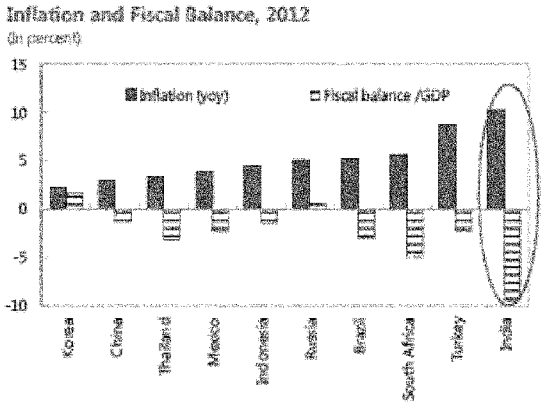
Source: IMF, World Economic Outlook

Figure 4. India: Current Account Deficit (in % of GDP)



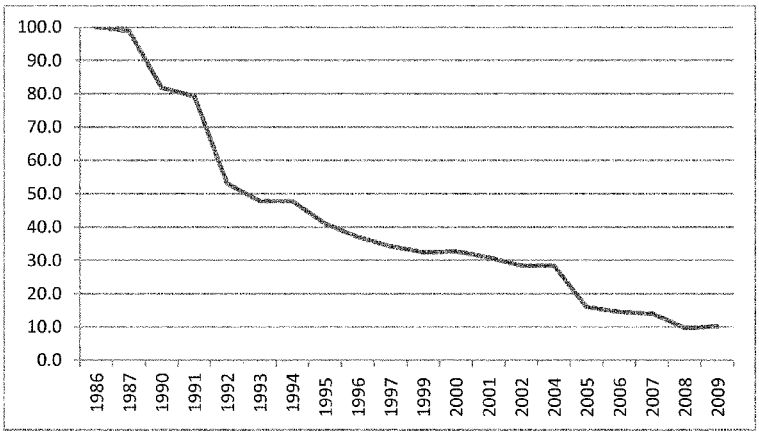
Source: IMF, World Economic Outlook

Figure 5. India's Macroeconomic Imbalances Compared to Selected Emerging Market Coluntries



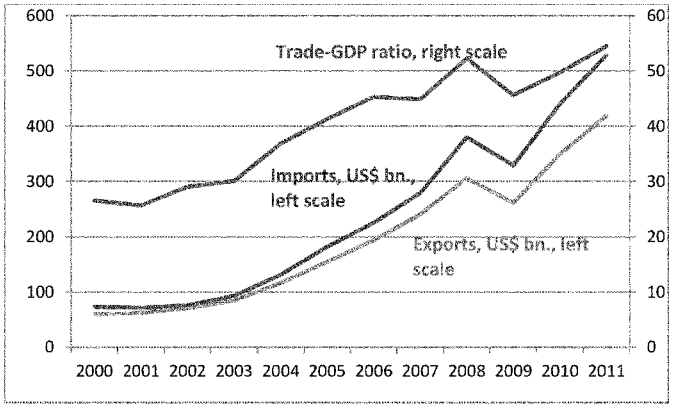
Source: IMF's Article IV Consultation, Staff Report, December 2012

Figure 6. India: Average MFN Tariffs, 1986-2009 (in percent



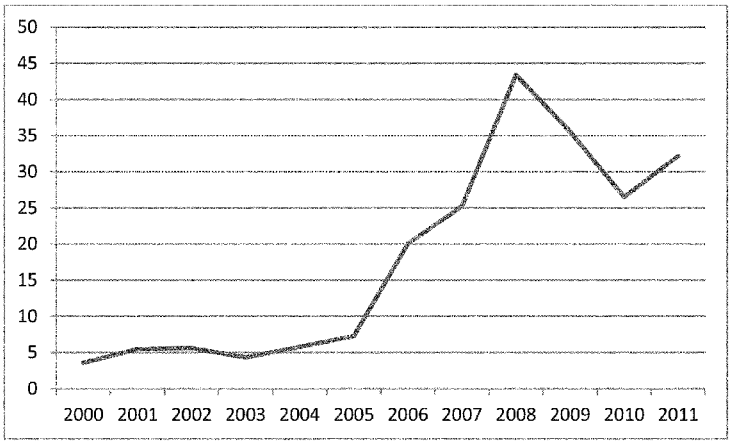
Source: World Bank, World Development Indicators

Figure 7. India: Trade in Goods and Services, Trade Openness Ratio, 2000-2011



Source: World Bank, World Development Indicators

Figure 8. India: Foreign Direct Investment, Net Inflows
(US$ billions)



Source: World Bank, World Development Indicators

Figure 9a. India: Top 5 Export Markets in 2011 (US$ bn.) 1/

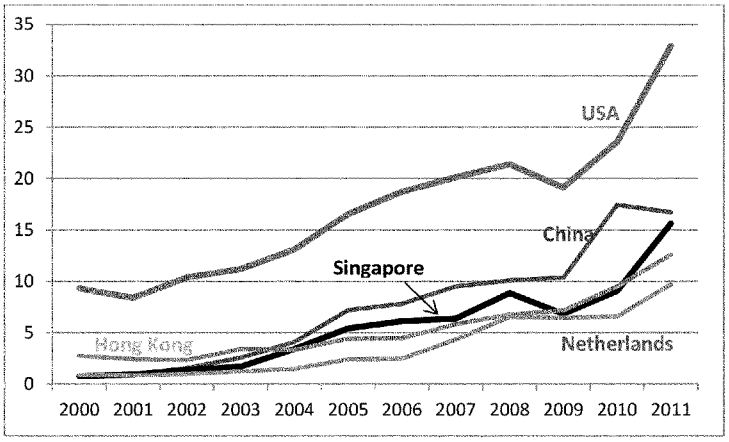
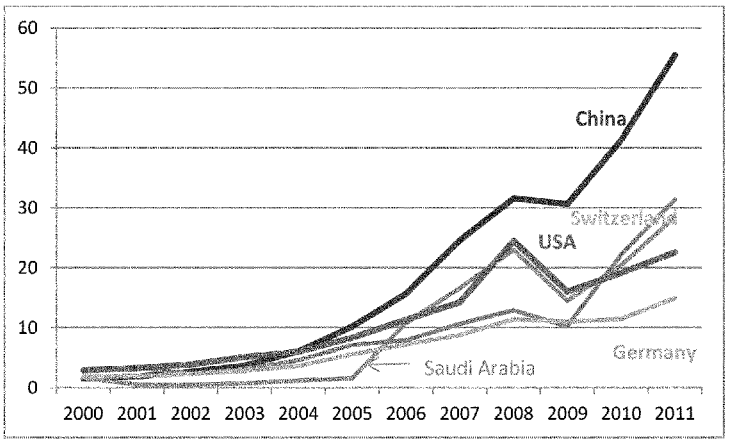
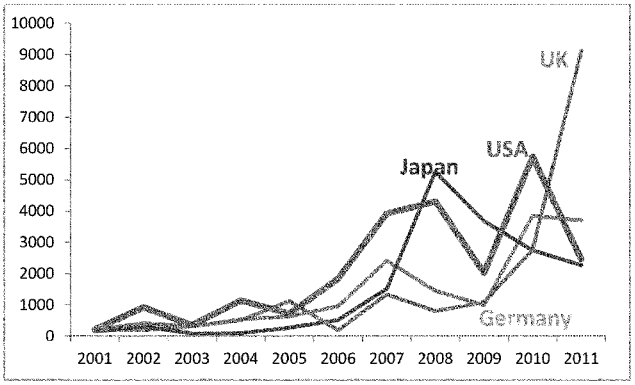


Figure 9b. India:Top 5 Sources of Imports in 2011 (US$ bn.) 1/



Source: OECD STAN Bilateral Database
1/ Excludes India's trade with the United Arab Emirates

Figure 10. Top OECD Foreign Direct Investors in India, 2001-2011, (millions of US dollars)



Source: OECD

Table 1.Top Ten Anti-dumping users, 1995-June, 2012

Country	1995	2001	2002	2003	2005	2007	2008	2009	2010	2011	2011 Jan.-June	2012 June	1995-2012*
India	6	79	81	46	28	47	55	31	41	19	10	7	663
United States	14	77	35	37	12	28	16	20	3	15	9	7	465
European Union	33	28	20	7	24	9	19	15	15	17	8	7	444
Argentina	27	28	14	1	12	8	19	28	14	7	4	10	301
Brazil	5	17	8	4	6	13	23	9	37	16	11	26	258
Australia	5	24	16	8	7	2	6	9	7	18	2	6	241
South Africa	16	6	4	8	23	5	3	3	0	4	1	0	216
China	0	14	30	22	24	4	14	17	8	5	0	4	195
Canada	11	25	5	15	1	1	3	6	2	2	0	10	165
Turkey	0	15	18	11	12	6	23	6	2	2	1	6	154
All countries	157	372	315	234	201	165	213	209	172	155	68	114	4125

Source: Economic Survey of India, 2013

Table 2. India-US Trade in Services, 2006-2010

US Exports to India						
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**% Change, 2010-2006**
Cross-border	6533	8747	10189	9890	10317	58%
Foreign sales by US firms	5455	7305	9755	13064	14238	161%
TOTAL	**11988**	**16052**	**19944**	**22954**	**24555**	**105%**
India's Exports to US						
Cross-border	7437	9825	12465	12447	14155	90%
Foreign sales by Indian firms	3633	5159	6540	7070	7314	101%
TOTAL	**11070**	**14984**	**19005**	**19517**	**21469**	**94%**

Source: Ministry of Commerce, Bureau of Economic Analysis

Table 3. India as Respondent: Compliance in World Trade Organization Disputes

	All disputes	**Disputes in process 1/**	**Disputes settled**	**Compliance 2/**
Initiated by US	6	2	4	4
Initiated by other countries	16	8	8	8
Total	**22**	**10**	**12**	**12**

1/ Defined to include parties in consultation, panels composed, or authority for panel lapsed

2/ Defined to include panel reports adopted, implementation of adoption reported, or disputes settled or terminated, and to exclude requests for compensation or retaliation

Source: Compiled from WTO website (http://wto.org/english/tratop_e/dispu_e/dispu_current_status_e.htm)

References

Jensen, Brad, 2012, *Global Trade in Services: Fear, Facts, and Offshoring,* Peterson Institute for International Economics, Washington D.C.

Mattoo, Aaditya and Arvind Subramanian, 2012, "A China Round of Multilateral Negotiations," *World Economy*.

Subramanian, Arvind, 2011, *Eclipse: Living in the Shadow of China's Economic Dominance*, Peterson Institute for International Economics, Washington D.C.

Chairman NUNES. Thank you, Mr. Subramanian.
Ambassador Johnson.

STATEMENT OF AMBASSADOR ALLEN F. JOHNSON, FOUNDER, ALLEN F. JOHNSON & ASSOCIATES, AND FORMER CHIEF AGRICULTURAL NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Mr. JOHNSON. Thank you, Mr. Chairman, for having me, and Mr. Rangel. It is a very interesting discussion listening to the other two panelists. From an agricultural point of view the potential in India is very significant.

As you mentioned there are 1.2 billion people. It is 17 percent of the world's population. It is growing income, growing population, and it is changing in better diets. It is a young population. About 60 percent are under 30, and we have seen and I put in my testimony that there is growing demand, significant growing demand for a lot of products that the United States can export effectively and efficiently in providing for the Indian market.

And we have seen some progress, although India has seen more. Since 1995, we have seen our agriculture exports triple to India to almost $900 million, and that is out of the total U.S. export of $141 billion. So it is really about a half of one percent of our exports go to India even though it is 17 percent of the world's population. It is the 27th largest market in the United States behind Guatemala, which is 14 million people. About a third of that number comes from almonds, which is followed at some distance by other commodities that are listed in my testimony.

But India has fared far better. Their exports over that same period have increased by tenfold, now over $5 billion. So in other words, they export five times as much agricultural products to the United States than we export to them. Half of that is rubber, but even then you are looking at two and a half times what is exported to the United States, and these are things like cashews, essential oils and other things I list in my testimony.

So you would ask yourself: what is wrong with this picture? They have four times the people. They have a growing population and income. They obviously have dietary needs that we can service, and yet we actually have an agricultural food deficit with the country. And the answer is pretty simple, which is India is very protectionist when it comes to agriculture and to a large extent because they are concerned about rural economic and political instability.

First of all, they have very high agricultural tariffs, among the highest in the world; maximum bound rates are generally between 100 and 300 percent with an average of about 120 percent. The applied tariffs are about on average 35 percent, and the difference between the bound and the applied is what we call water. They use that water effectively for managing imports basically. So if they want to avoid domestic food inflation, they lower the tariff. If they want to protect domestic prices, they raise the tariff, and they can do it within their WTO bound levels.

Most U.S. exports could face a bound level of up to 100 percent. Almonds are top export, as I mentioned earlier, faces a specific rate of 35 rupees per kilogram for shelled and 57 rupees per kilogram for unshelled. That is equal under recent prices to about a 14 percent tariff. Imagine what we could do if that did not exist, and it even today is our third largest export markets for almonds.

Other products, such as beef, pork, poultry are facing similar situations in that they have bound rates of 100 percent and applied rates between 30 and 100 percent. Dairy, for example, has bound rates between 40 and 150 percent, and applied rates between 30 and 60 percent. There are more details on this in my testimony.

The second thing that they do is they have high sanitary and phytosanitary barriers, arbitrary export certificate requirements, restrictive maximum residue levels, unjustified animal disease controls, among other things. For example, in dairy we've been effectively blocked since 2003 due to unwarranted important requirements. Both the U.S. Government and the industry believe these are not scientifically justified. I believe the industry has a paper here today. And to add insult to injury, we actually import twice as much dairy from India as we export.

Pork had access denied due to import residue requirements that do not have a scientific justification, as well as other requirements. U.S. livestock, poultry and pork are denied access due to overly restrictive avian influenza standards, and they have a ban on low-path AI, which is inconsistent with international standards. So the U.S. has initiated a WTO case on this, which had a panel instituted last month.

As a global player, India we have to recognize is a very important player. Unfortunately, it has not always been helpful in moving forward, and at times it has advocated moving backwards. It is a leading member of the G20 and the G33 in the WTO talks, helping those groups to define positions for developing countries that often are not related to market openings, and even loosening rules on tariffs and subsidies allowing developing countries to actually increase the barriers or the subsidies.

They have been active in other trade agreements beyond the WTO, but to a large extent agriculture has been excluded. For example, in the Mercosur Agreement, they only included 20 tariff lines and in the Chilean agreement only 40 in agriculture, and that are out of over 600 tariff lines that they could have included.

The good news is, consistent with what he is saying, by not including us, they have not put us at a significant disadvantage relative to other exporting countries in agriculture, but as he has pointed out, they could easily start doing that and put us at a disadvantage.

The more interesting thing to me is that the world is changing very clearly. After a drought of activity in negotiations, we are seeing stepped up United States in a lot of negotiations that are very important to us. We have seen Europe and others who have never stopped having negotiations and bilateral regional agreements. Even Japan is talking about joining the TPP.

What India does and how it sees its role and sees its interests being affected by this changing environment, especially as the WTO has been stalled, is going to be very interesting. If I were them, I would be watching negotiations very closely and thinking about what I should be doing to engage in a world that is becoming more interactive without me.

So thank you, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

Testimony
House Ways and Means Committee's
Trade Subcommittee
Allen F. Johnson
March 13, 2013

Background

Mr. Chairman, thank you for allowing me to participate in this discussion today regarding U.S.-India Trade Relations: Opportunities and Challenges. As you can see from my bio, I am currently President of Allen F. Johnson & Associates, a trade consulting firm that helps companies, trade associations and international organizations promote global trade and investment. Prior to starting this firm, I served as the U.S. Chief Agricultural Negotiator at USTR from 2001 to 2005 and was involved in the bilateral, regional and global trade negotiations and trade enforcement actions. As Chief Agricultural Negotiator, I closed free trade agreements (FTAs) with 12 countries on five continents and made important advances in FTA negotiations that finished after I left office. I was also responsible for WTO accession negotiations and for resolving difficult bilateral issues and disputes, including issues related to new technologies, subsidies, and tariff and nontariff barriers. Performing these various duties provided me numerous opportunities to engage and work with various officials in the Indian government.

Overview

India is important for U.S. agriculture as a potential market and as an important member of the world trading system. Unfortunately, in both respects Indian policy is restricting U.S. agricultural exports. Moving forward, we can expect the United States to continue to press India bilaterally and multilaterally to reform its policies. Of particular interest will be how the U.S. negotiating agenda (with the EU, in the TPP, and likely with Japan) will put pressure on India to be more constructive in its policies.

India as a Market

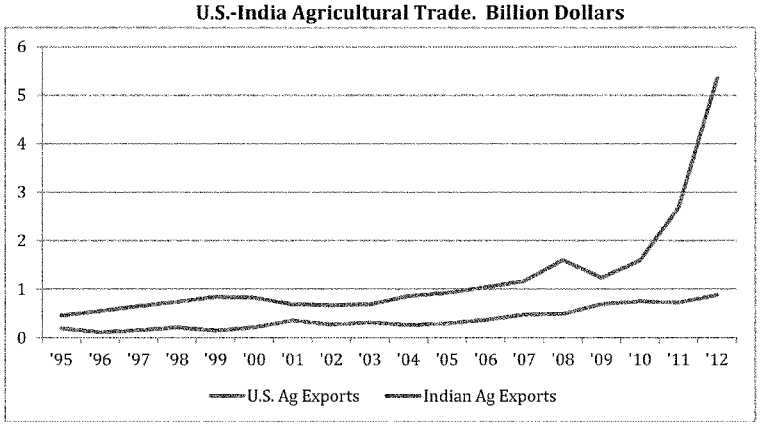
India is a promising market for U.S. agricultural products. U.S. producers have serious competitive advantages for a number of products and should be well placed to exploit opportunities in India, particularly as India has trouble meeting its demand through domestic production. Unfortunately, market barriers are restricting U.S. exports.

As a market, India is very attractive. With 1.2 billion people (the world's second largest country) and expanding income is creating more effective demand for food products. 60% of the population is under age 30, and 80 million Indians earn more than $4,700 a year, affording them disposable income to purchase more and higher quality food products. Growth in consumption has been strong for food products. For example, over the past five years bread and cereals consumption has increased 70%; milk, cheese, and eggs up 64%; meat up 57%, and oils and fats up 89%. The United States is a leading competitor for each of these products. If we can access this market, we will make sales. To do that we must get

past the most important market access barriers for agriculture: tariffs and sanitary and phytosanitary measures.

Unfortunately, to date U.S. exports to India have been limited. U.S. agriculture exports to India in 2012 were almost $900 million (compared to $141 billion globally). While U.S. exports have more than tripled since 1995, U.S. exports lag India's export to the United States, which exceeded $5 billion in 2012 and increased ten-fold since 1995. Despite the economic fundamentals, which would suggest a strong U.S. surplus, the U.S. trade deficit in agriculture with India is growing.

U.S.-India Agricultural Trade. Billion Dollars



Customs data, from USDA/FAS/GATS (Agricultural Products)

The top U.S. export is almonds, followed by apples, soybean oil, and cotton. However, the value of these exports is marginal compare to global exports of these products.

U.S.-India Bilateral Trade.
Leading Agricultural Products, Million Dollars (2012)

	US Exports		India Exports
Almonds	314	Rubber	2,409
Apples	97	Cashews	279
Soybean oil	96	Essential oils	181
Cotton	73	Rice	139
Dried peas	59	Pepper	138
Essential oils	19	Spices	119
Dairy	18	Tea	63

Customs data, from USDA/FAS/GATS

Tariffs

India has some of the highest tariffs in the world. Its maximum allowed tariffs ("bound" in the WTO) generally range from 100 – 300% and average nearly 120%. Applied tariffs are lower, as India needs to import food to meet domestic demand, averaging around 35%. The "water" in the bound tariff allows applied tariffs to be adjusted as the government sees fit. This creates uncertainty for traders and still provides the Indian government with plenty of scope to fine tune protection of domestic producers and manage trade: For example, "in April 2008, in an effort to curb inflation, India reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent. However, in November 2008, India raised crude soy oil duties back to 20 percent and then reduced them again to zero in March 2009 (USTR, National Trade Estimate Report, 2012, page 182).

Tariffs on most U.S. export priorities can be as set at 100%, even if the day-to-day applied tariff may be less because India may not need that much protection and wants some imports to help keep food prices down. Even the top U.S. export, almonds, faces a tariff of 35 Rupees per kg for in shell product and 57 Rupees per kg for unshelled product. (This tariff is around 14% in *ad valorem* terms, based on Indian prices in 2012.) Despite this, the United States has been able to export $314 million of almonds in 2012 and India is now the third largest export market for U.S. almonds.

India's Tariffs on Key Agricultural Products

	WTO Binding	2012 Applied
Beef	100%	30%
Pork	100%	30%
Poultry	100%	30% - 100%
Dairy	40% - 150%	30% - 60%
Fruits & Vegetables	25% - 100%	15% - 30%
Wheat	100%	50%
Corn	70%	50%
Rice	80%	80%
Soybeans	100%	30%
Soybean Oil	45%	26%
Processed Products	50% - 150%	30%
Cotton	100%	0% - 10%

WTO Tariff Download Facility

Sanitary and Phytosanitary Barriers

Tariffs are not the only problem U.S. exports face in the Indian market. U.S. dairy, meat, and other products face unjustified SPS barriers in India. Even if U.S. exporters are able to surmount tariff barriers arbitrary export certificate requirements, restrictive maximum residue levels (MRL), unjustified animal disease concerns, and overly restrictive standards for quarantine pests have stymied U.S. exports.

The examples outlined below illustrate the type of SPS problems faced by U.S. exporters. A

common thread to all of them is that products that are considered safe by regulators in the United States and markets all over the world are denied access to India on the basis of

- U.S. dairy exports have been effectively blocked from the Indian market since 2003 by unwarranted import requirements. These requirements include measures that the U.S. industry and government believe lack scientific justification and are unrelated to protection of human or animal health in India. In particular, India's requirement that exports are certified to never have had any animal tissue included in feed and to never have had been treated with BST/rBST make certifying U.S. exports to India impractical, scientifically unwarranted, and irrelevant for human health protection. To add insult to injury, India has a trade surplus with the United States in dairy – exporting nearly twice as much to us as we export to them despite the U.S. industries strong global competitiveness and India having structural deficits in the dairy sector. U.S. exports are led by protein concentrates and whey, as the milk powder market is restricted by Indian sanitary restrictions. Indian exports are led by natural milk products, butter, and cheese.

- U.S. pork exports are denied access the Indian market because of unjustified import residue requirements. India has decided to impose more restrictive MRL for various chemicals commonly used in animal husbandry than set by international standards, despite failing to have a scientific justification for the standards. In addition, India has unjustified requirements on feeding practices, inspection procedures, and, and other restrictive requirements. The U.S. industry and government believe these requirements lack scientific justification and provide no additional health protection.

- U.S. livestock, in particular poultry and pork, exports are denied access to India because of India's overly restrictive application of avian influenza standards. India's ban on imports after a low pathogen outbreak is inconsistent with OIE guidelines and does not follow normal international trade practices. The United States has initiated the WTO dispute settlement process to resolve this issue.

- India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, which block U.S. wheat and barley imports. These put U.S. export shipments at constant risk of a failed inspection, even if the findings are not a threat to Indian agriculture.

India in the Trading System

India has become a substantial player in global trade discussions. In particular, as a leading member of the G-20 and G-33 in the WTO Doha talks, India has taken a lead roll in defining the list of demands from the key developing country negotiating groups. This contribution has unfortunately been one of the main obstacles in concluding a market-opening trade agreement. India has been less active in bilateral negotiations, but it may need to reassess it actions as the United States, European Union, Japan and other countries accelerate their FTA activity.

World Trade Organization

India was a cofounder and coordinator of the WTO G-20 group of developing countries in the Doha negotiations. This group, which includes both export-oriented and import-protectionist countries, has taken aggressively protectionist positions for developing countries, even as they ask developed countries to make substantial reforms in agricultural trade and subsidy policies. India has taken a key role in developing these positions, which has neutralized the otherwise market-opening influence of countries such as Argentina, Brazil, and Chile which has lowered the level of ambition in the negotiations generally and for emerging markets in particular. Moreover, India is a leading member of the G-33, another group of developing countries that coordinate in the WTO to advocate relaxed positions for developing countries to maintain market barriers (such as safeguards) and domestic support policies (such as government stockpiling by purchasing domestic products off the market.) As with the G-20, G-33 activities have lowered ambition in the negotiations and have threatened to actually take the WTO backwards by allowing countries to increase tariffs above currently allowable levels and allowing countries to increase trade and production-distorting subsidies.

Other Free Trade Agreements

India has not had an aggressive FTA agenda to date. India has FTAs with its South Asian neighbors. It also has partial preferential trade agreements with Korea, Chile, Mercosur, and some Asian countries. Each of these agreements includes substantial exceptions for agricultural trade. For example, the agreement with Mercosur includes less than 20 tariff lines for agriculture and around 40 tariff lines in the Chile agreement, and instead of tariff elimination, the agreements provide tariff preferences of only 10% - 30% on each of these lines.

For U.S. exporters, the good news is that there are not many countries benefitting from tariff preferences over our goods, yet. India's preference for broad sectoral exceptions to tariff elimination suggest our exporters will not be disadvantaged by other countries, at least in the short term. The bad news is that India will likely be more amenable to negotiating very expedient partial trade agreements that allow India to strategically open some markets to the disadvantage of U.S. producers while protecting others.

Under current conditions there does not appear to be an impetus for the United States and India to initiate tariff negotiations or engage in a process of reciprocal market opening related to SPS and other technical barriers. However, with the United States now expanding its bilateral FTA negotiating agenda with talks in the TPP, the European Union, and possibly with Japan, India may feel more pressure to engage with the United States and with other major markets. If FTA negotiations allow for product exceptions, it will be more feasible for India to engage in negotiations. At the same time, with progress on FTAs isolating an India that is unable to negotiate meaningful cross-cutting market opening, India may decide to moderate its positions in the WTO negotiations, allowing progress to be achieved there that delivers market openings across all WTO members.

5

Chairman NUNES. Thank you, Mr. Ambassador.
Mr. Garfield.

STATEMENT OF DEAN GARFIELD, PRESIDENT AND CEO, INFORMATION TECHNOLOGY INDUSTRY COUNCIL

Mr. GARFIELD. Thank you, Mr. Chairman, Ranking Member Rangel, Members of the committee.

On behalf of the Information Technology Council and the world's most dynamic and innovative companies, I would like to thank you for your bipartisan approach on trade holding this hearing. It is quite timely.

We have submitted my testimony for the record, and so rather than repeat what I know you have read, what I will do is make three points.

First, this relationship is incredibly important for geopolitical and economic reasons. The rest of the world is watching, including China, and these two democracies at least for the last 20 years have been illustrative of the power of innovation and open markets to improve lives and drive economic growth. The economist Julian Simon has made the point that the earth's greatest resource is human innovation, and that has come to the fore and has been demonstrated quite well by India over the last 20 years.

As they have opened their markets, we have seen wholly new industries created in India, many in partnership with U.S.-based companies. The result of that for India has been real, but also for the United States. We have gone over some of the statistics this morning about the number of people, for example, who have been moved out of poverty in India, over 400 million people. They have created a middle class that, in fact, is larger than the entire U.S. population.

The result of that is actually economic growth and job creation in the United States as well. India has moved rapidly up the list of our trading partners. In 1990, for example, the two-way trade between India and the United States was a mere $5 billion. Now it exceeds $60 billion, which has created jobs in this country.

Point number two, there are real challenges on the ground in India right now. In spite of the opportunities that exist and the impact, the positive impact that open markets have had on the ground in India, the Government of India seems to be doing a stutter-step on open markets and setting up a steeple chase of barriers to the success of foreign companies, especially American entities.

And the examples are wide ranging, from random new regulations, for example, new testing and certification regimes that require testing your products in the market in order to have access to the market at all. Some of the other folks testifying this morning have alluded to the tax regime there. To say it is unpredictable is to be quite kind.

Similarly, on trade agreements India is one of the partners and participants in the Information Technology Agreement, or "ITA," that was signed in 1996, but the world has changed tremendously since 1996. None of us are carrying around mobile devices that we held back then, and yet still India seems resistant to updating that agreement and moving forward with a new ITA.

Most problematic, which we have alluded to earlier, is the preferential market access regime that is now in place in India which essentially boils down "to if it's not manufactured in India, then it cannot be merchandised in India there," which has the potential to

foreclose that market to foreign players, including the United States, and as a result, over the last few years we've started to see a decline in foreign direct investment in India, and a lot of companies questioning their ability to fully access the market, particularly since it is not just limited to government procurement, but includes private sector arrangements and deals between private entities.

India has suggested that the concern there is really focused on information security and protecting the security of the country, which we can empathize with, but the security of their products is not related to where it is made. It is related to how it is made, and there are reasonable ways for addressing those security concerns that I think industry is well prepared to address.

The third and final point is that though these issues are important for our relationship with India, they are, in fact, quite significant because of the potential contagion effect. India is not the only market that is moving forward with these forced localization requirements that Chairman Nunes referred to. We see the same sorts of developments, of course, in China, but we see them as well in Brazil, Argentina, and in certain parts of Africa. And so if we do not take steps now to deal with these challenges, they will continue to grow and will actually have real and meaningful impact on the ability of U.S.-based industries and companies, particularly in the tech sector, to continue to grow.

We look forward to working with this Committee and Congress generally to resolving these problems.

Thank you.

[The prepared statement of Mr. Garfield follows:]

"U.S.-India Trade Relations: Opportunities and Challenges"

Testimony of
Dean C. Garfield
President & CEO, Information Technology Industry Council (ITI)

Before the
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives

March 13, 2013

"U.S.-India Trade Relations: Opportunities and Challenges"
Testimony of ITI's Dean C. Garfield
House Ways and Means Subcommittee on Trade

March 13, 2013

Mr. Chairman, Ranking Member Rangel, and members of the Subcommittee – thank you for the opportunity to testify at today's hearing on the opportunities and challenges in the bilateral economic relationship between the United States and India. I am Dean Garfield, President and CEO of the Information Technology Industry Council, known as ITI. ITI is a global trade association representing 47 of the world's most innovative, forward-thinking technology companies.

Chairman Nunes, my congratulations to you on being selected to chair the Trade Subcommittee. As a Californian, representing a district in the heart of the Central Valley -- the world's most productive food resource -- and hailing from a third-generation farm family, you know first-hand the critical role international trade plays in key sectors of the California economy, including of course, information technology.

Today's topic – trade relations with India – is timely to say the least. The U.S.-India economic relationship is one of the most strategically important and yet least understood bilateral partnerships on our nation's trade agenda. That is certainly true for the information and communications technology, or "ICT," industry. The United States and India have been the sources of countless innovative ICT success stories over the past two decades. Both nations are poised for many more. The bilateral economic relationship truly reflects our own industry. Our two countries compete and collaborate, creating innovations and opportunities that are felt throughout the world. Thanks to the quality of skilled American and Indian talent, almost every global ICT product development, supply chain, and support chain in our industry is fueled in some manner by both countries.

Unfortunately, despite this extraordinary bilateral success, the Government of India is implementing, or considering implementing, a number of major policy decisions we believe would undermine, if not outright dismantle, the progress India has made as a power in the global ICT marketplace. Moreover, these policies will undermine the ability of U.S. and foreign ICT companies to compete fairly in this important market.

Let me highlight two of these key policies important to our industry, though there are more.

Last year, India rolled out its preferential market access policy, or "PMA," which is designed to force both the public and private sectors in India to procure domestically produced electronic and ICT products and services.

The second is India's current decision to stand on the sidelines during the on-going negotiations to expand the Information Technology Agreement (ITA), a highly successful trade pact India, the United States, and 73 other World Trade Organization (WTO) members are party to.

Both policies reflect India's current focus on developing its own advanced ICT manufacturing capabilities, which it considers the next essential step for economic development and the future of its growing middle class. While we certainly do not oppose India's objective to build a stronger manufacturing base, we do

have concerns with some of the methods it has chosen. These policies have put India crossways not just to the United States. They are also at odds with both the broader economic ideals shared among many global partners, and with the engines of India's own emergence on the global stage.

Before discussing what these policies mean for U.S.-India trade relations, it is important to put them in the context of the development of that relationship for the ICT sector. This helps to underscore the significance of these policies and the risks they present to the exciting future we believe awaits our industry and both countries.

Any comparison of India and the United States typically first begins with our shared commitment to democratic principles – us being the oldest, and India being the largest, democracies on the planet. The growth of the U.S. bilateral economic relationship is rooted in shared economic principles, starting with India's economic reforms in 1991. Through these and additional reforms, as well as the growth of the global ICT sector, the bonds between our two countries have become more dynamic as India's innovative and entrepreneurial minds started to take hold of that country's destiny.

When describing public policies that matter most to the ICT industry, we often talk about the importance of preserving an entrepreneurial ecosystem. In the United States, such an ecosystem has been inherent in our culture since Jamestown and Plymouth Rock. But public policies that support, incentivize and fuel our entrepreneurial spirit are often taken for granted, and this is a big reason why ITI exists. We welcome the opportunity to work with policymakers to advance our innovative potential. At the same time, to effectively do our work, we also find ourselves opposing polices that risk hindering that potential, and perhaps destroying it entirely.

In a dynamic global economy, among the greatest threats to an open, entrepreneurial ecosystem are policies that attempt to restrict the flow of global commerce. The reverse is certainly true as well. In a closed, stagnant, struggling economy, the best ways to unleash an open, entrepreneurial ecosystem include policies that foster the flow of global commerce and investment, and tear down boundaries and barriers to the development and production of goods and services.

Within the last 25 years, India has been a poster child for these fundamental truths.

While innovators and entrepreneurs have been openly celebrated in the United States for centuries, that has not always been the case in India. Over the last few centuries, India's innovative potential has been hampered through a combination of colonial administration and, since its independence, economic dysfunction. Both factors limited the development of a thriving trade relationship between the United States and India.

For its first 45 years of independence, India's economic governance adhered to a socialist, centralized framework. Government-imposed domestic production schedules and licenses, and high import tariffs were the hallmarks of that system and key barriers to economic progress.

Product shortages were the norm, and foreign investment and imports into India were severely limited, making foreign exchange tightly controlled. In the 1970s, an Indian businessperson could only purchase $8 per day of foreign currency. An Indian computer services firm seeking to import a foreign-made computer had to wait as long a three years to get an import license, and once gained, the firm faced a tariff

of 101 percent, which included an import duty, a countervailing duty, an auxiliary duty, and a tax levy to help pay for the war in Bangladesh.

Yet, important and auspicious ingredients existed in India. The government invested in higher education that focused on engineering. Product shortages, especially for spare parts on capital equipment, fueled creativity and innovation. And, of course, one of the legacies of colonial rule was a large population of educated, English-speaking professionals.

In 1991, three economic shocks to India's system placed them at a major policy crossroads: Oil price hikes caused by the first Gulf War; the collapse of the Soviet Union, India's largest trading partner and foreign aid source; and severe fiscal imbalances that dried up its limited store of foreign exchange reserves.

The government responded with a series of economic shocks of its own to put the economy on a more open, liberalized course. The policies it pursued during and after 1991, which helped give rise to a global ICT sector, included:

- Severe reductions in import tariffs and quantitative controls on imports, which enabled India's emerging ICT sector to buy the electronics, hardware and software it needed at competitive prices;
- Devaluation and convertibility of India's currency, the rupee, which would reduce the cost of India's services exports;
- Increased access to international capital markets for Indian-based firms;
- Opening of India's equity markets to foreign institutional investors;
- Encouragement of foreign direct investment in joint ventures;
- Allowance of full foreign equity in key economic sectors, one of them being information technology; and,
- Tax and incentives at the federal and state level targeted at foreign-owned ICT companies.

The 1991 reforms were a combination of dramatic and incremental measures, but the overall effect of this move to a more open, liberalized economy was extraordinary. Average GDP growth since 1991 has more than tripled. The emergence of India's ICT industry helped to contribute to rapid productivity growth. Perhaps most significant, economic liberalization could do what centralized government could not: dramatically reduce poverty. An estimated 431 million fewer Indians lived in extreme poverty in 2009 than in 1991.

The prospects for India's future growth appear even stronger. In 2009, a McKinsey study predicted that continued economic liberalization would triple Indian incomes over the next two decades, and boost India's middle class to more than half a billion people.

Liberalization was one among a number of key factors that unleashed the Indian IT software and services industry, including tax and investment incentives, access to a deep pool of English-speaking engineering talent, and revolutions in global telecommunications. By the mid-1990s, the world's leading software and services companies were building development centers in India, and Indian-based ICT services firms established themselves in key markets in the United States and Europe.

The global ICT industry has unleashed the productive potential of numerous sectors, such as financial services, health care, energy, transportation, retail, and entertainment. The ability of a financial institution

to transfer billions in investment capital at the click of a mouse, or a consumer to buy an airline ticket at the touch of a smart phone screen, are due largely to a global ICT chain that is dominated and operated 24/7/365 by research, development, and maintenance centers in the United States and India.

Liberalization is far from complete in India. Many Indian industries remain subject to foreign investment barriers, and U.S.-based companies in these sectors continue to struggle to gain access India's markets. While liberalization has been vibrant in some sectors, and slow to incremental in others, the foundation of an open economy is there, fueled by a professional workforce of dynamic innovators, managers, and entrepreneurs.

Nineteen ninety-one was in part the first crack in India's massive concrete dam of state-sponsored protectionism. More reforms to further liberalize the economy have been introduced since then in areas ranging from tax reform to tariff relief.

Among the most significant for our industry was India's willingness to sign on to the ITA in 1997. Worried about the impact of lower ICT tariffs on its manufacturing sector, New Delhi was at first reluctant to join the ITA. But that country's software and services industries understood the critical importance to its future of having unfettered access to imports of innovative, affordable ICT technologies from around the world. Ultimately, reason prevailed, and India's leadership took the wise decision to join this ground-breaking agreement.

Despite more than two decades of determined efforts to further open India's economy, challenges remain. While lured to India to tap into an innovative and entrepreneurial workforce, our companies face numerous regulatory challenges and the persistent remnants of ambivalence toward business from public sector officials. We experience it in a regulatory and enforcement context, including random and often disturbing enforcement actions by officials.

For instance, *The Wall Street Journal* recently reported there is a backlog of 140 transfer pricing cases between the United States and India, which is an unusually high number. The Indian tax authorities frequently take tax positions that are inconsistent with the rest of the world, creating a significant risk of double taxation and expensive tax controversy, which are further impediments to trade. The excessive number of large-dollar tax controversies demonstrates the need for improvements in the fairness, predictability, transparency, consistency, and efficiency of Indian tax law, collection, due process, and dispute resolution.

We are also seeing a range of problematic testing and certification requirements on our products that are unworkable and veer markedly from global norms. Starting April 3, for example, the Indian government will impose new and onerous testing and registration requirements for a broad range of ICT products that, if implemented, will effectively exclude foreign companies from that market. These new requirements were developed with limited industry consultations; deviate in significant and impactful ways from international norms; cannot be implemented as published due to the lack of testing capacity and infrastructure; and will make it nearly impossible for companies to import a wide range of ICT products.

It is important to understand that India has seen slowing economic growth in recent years. Once nearing 10 percent annually just a few years ago, India's growth rate slipped to 5.1 percent in 2012. Foreign Direct Investment has also fallen in the last year. The *Press Trust of India* recently reported that India received roughly $14 billion in the first nine months of the current fiscal year compared to $23 billion in 2011-12.

In addition, India is confronting significant challenges to meet the demands of a growing workforce. Despite the dramatic gains in India's economy attributed to its skilled professionals, the proportion of its youth population enrolling in college is a mere 15 percent. While the ICT sector will continue to be a major driver of India's exports and growth, the government sees the fostering of a robust manufacturing sector as its next key development component.

Given the extraordinary role liberalized, and incentive-based economic policies played in launching India's ICT sector, the logical playbook for manufacturing would be more of the same. Instead, New Delhi has taken a number of steps backward, placing its global leadership in ICT services at risk.

This comes into bold relief with India's adoption of the PMA policy. In February 2012, India issued that policy in final form. It imposes local content requirements of up to 100 percent on procurements of "electronic products" by: 1) government; and 2) private sector entities with "security implications for the country." India claims it needs made-in-India products for two key reasons: first, to ensure cybersecurity; and second, to develop India's advanced manufacturing base to boost domestic employment.

A half-dozen guidelines to implement the PMA mandate have been announced by Indian ministries since early last year. Most have focused on government procurement. Although India is a member of the WTO, it is not a signatory to the Government Procurement Agreement (GPA), and thus can apply local content requirements, such as the PMA, to government procurements.

In October 2012, however, a fundamentally bad policy became worse when India issued draft guidelines that would apply the PMA to purchases of a defined list of telecom products by private-sector telecom operators/licensees. These draft private-sector guidelines raise significant questions regarding India's commitment to the rules-based trading system established under the WTO, including the fundamental principle of "national treatment." In addition, India's threat of invoking national security as the grounds for interference in private sector procurements of ICT equipment in this case creates a dangerous precedent for other countries to mirror.

Despite an intense, year-long effort by global industry -- along with governments in Washington, Tokyo, Brussels, Seoul, and other capitals -- to convince India to drop the WTO-inconsistent components of the PMA policy, India seems poised to move forward with implementation anyway. Even worse, there is every indication the application of the PMA to private sector procurements will spread beyond telecom to other areas, including financial services and transportation.

To be sure, we support India's desire to build robust ICT and ICT-enabled manufacturing sectors, as well as to protect its legitimate security interests. India's commitment to advance its economy and grow its middle class will create numerous opportunities for increased trade for U.S.-based industries, including ICT. But just as India utilized market-based incentives to build a competitive and innovative ICT software and services industry, India should be promoting and building investment in domestic manufacturing and infrastructure through market-based incentives.

We also certainly understand India's focus on the security of its people. It is a common cause of both our countries, and many more, and for that reason, requires greater innovative collaboration among governments and industry. India's approach to cybersecurity as embodied in the PMA runs counter to global norms, which acknowledge that the best approaches to security are based on risk management and

public-private partnerships. The security of ICT products or components is dependent upon *how* they are developed, produced, and deployed, not by *where* they are manufactured.

Cyber threats know no national boundaries. The same goes for the solutions to combat those threats. Those solutions can be invented anywhere, and often are. The PMA policy makes effective global collaboration more difficult, and would shut India off from the most innovative security technologies. Given India's international influence, the broader ramifications of using security to justify protectionism include other countries being motivated to take similar actions.

The PMA policy certainly does not bode well for our industry, threatening to shut us out of a significant portion of the Indian ICT market. The policy's coverage in terms of market segments is so broad it could easily capture $9.3 billion, or roughly half, of India's $20.5 billion ICT market. If PMA remains in place without major changes, it sets a highly unhelpful example, encouraging other governments to adopt similar policies to close off their own markets to foreign competition. This would have a cascading effect on U.S. companies. We call this the "contagion effect," and it's real, as we see other governments turn increasingly to similar problematic approaches.

We believe the PMA policy is also not good for India's economic future because it strikes directly at the progress of its recent past. It discourages foreign ICT entities from investing in India, disrupts the global supply chain of ICT vendors that many Indian businesses helped to create and build, raises the price of ICT goods for Indian consumers, and restricts India's access to the best ICT technologies, including those that would improve cybersecurity.

India's unwillingness to join the ITA expansion talks in Geneva is at once surprising and disappointing to us. The ICT industry regards the ITA as one of the most commercially successful trade agreements in the WTO. From 1996 to 2008, total global two-way ITA product trade increased more than 10 percent annually, from $1.2 trillion to $4.0 trillion. In the process, the ITA has helped drive innovation, accelerate productivity, increase employment, lower consumer prices, and bridge communities across the globe in ways unimagined 16 years ago, when the agreement was forged. Yet, while the high-tech sector has exploded with new and improved products since the ITA came into force, the product scope of the agreement has never been expanded.

But since last May, trade negotiators from large and small economies, both developed and developing, have been in active negotiations to finally bring the ITA up to date by significantly expanding product coverage. Estimates suggest ITA expansion will increase U.S. exports of ICT products by $2.8 billion annually, boost revenues of American ICT firms by $10 billion, and support the creation of roughly 60,000 new U.S. jobs. For the world, ITA expansion is projected to boost global GDP by $190 billion.

Yet, driven by the perceived impacts on its manufacturing base, India appears reluctant to support the ITA and has been expressing "buyer's remorse" for joining the agreement in the first place. We find this puzzling. The ITA has played a pivotal role in building India's IT-enabled services industry by providing access to myriad innovative and affordable ICT equipment through tariff elimination. Moreover, while imports of tech goods have outstripped exports, in recent years, as India's ICT services industry has become more advanced, India's growth rates of ICT goods exports far exceed imports. According to the WTO, from 2005-2010, the annual rate of India's tech goods export growth was 35 percent versus only 10 percent for tech goods imports.

Just as India's ICT industry benefitted from tariff-free products as building blocks for its development and growth, its emerging manufacturing industry also would benefit from similar foundational economic building blocks, such as ICT goods. To impose tariffs on these goods would be counterproductive to promoting a strong, competitive, advanced manufacturing industry. ICT tariffs are especially harmful because they raise the cost of tech goods and services in virtually every sector of a country's economy, causing businesses and individuals to invest less in ICT and lowering productivity. Indeed, one study done by Indian economists found that for every $1 in tariffs India imposed on tech imports (in the years before joining the ITA), it incurred an economic loss of $1.30 due to decreased productivity.

Other emerging economies are embracing ITA expansion, from Malaysia to Costa Rica to Croatia. One must ask, after more than two decades of building its global leadership, will India now stand by and let its competitors reap the investment and trade benefits of being more fully integrated into the global supply chains that will inevitably flow from an expanded ITA?

Bottom line, the PMA, India's reluctance to join the ITA expansion negotiations, and a range of other economic and trade policies, suggest a significant reversal in India's broader growth strategy, and potentially, a similar reversal in our bilateral economic ties. Moreover, many of these policies appear specifically designed to disadvantage U.S. and foreign ICT companies seeking to compete fairly in India. The enlightened and progressive economic policies of two decades ago that enabled India to become a global powerhouse in software and services now seems to be in retreat.

Given the critical importance of the Indian market to the tech sector, the U.S. economy and global economy, this trend is the focus of great concern for us and many other nations. So we deeply appreciate your decision to convene this timely hearing this morning. We are committed to continuing the dialog with India in an effort to find better solutions.

As I noted earlier, India is both competitor and collaborator with the United States and many other countries. Global competition is the rising tide that raises all boats. What's at stake is the shared commitment to the economic ideals that have unleashed innovators and entrepreneurs in India, and reinvigorated innovators and entrepreneurs here in the United States. That is why we urge the U.S. government, and like-minded governments around the world, to intensify their efforts to get India back on a track that once again embraces market-driven approaches and open markets. "Forced localization" policies, such as the PMA, taken to their logical conclusion mean the end of vibrant global supply chains. They cannot stand. They are a real threat to our economic model, to the American economy, and to American jobs.

As we address these problems with India, we recognize this may mean some difficult conversations and consideration of the full range of policy options, but too much is at stake to do otherwise. India is too big and too important in the global context to let this slide. We recognize that India faces many daunting challenges. We all do. Our greatest hope is that we can work together to meet those challenges in the spirit of collaboration that has made the last 22 years so enriching and rewarding for both our countries. Our industry considers India a close friend and valued partner, and close friends and partners owe it to each to have frank and honest discussions when differences arise. It is in that spirit that I offer this testimony today. Thank you.

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Chairman NUNES. Thank you, Mr. Garfield.
Mr. Waldron.

STATEMENT OF ROY WALDRON, SENIOR VICE PRESIDENT AND CHIEF INTELLECTUAL PROPERTY COUNSEL, PFIZER

Mr. WALDRON. Chairman Nunes, Ranking member Rangel, and Members of the subcommittee, thank you for the opportunity to testify here today.

My name is Roy Waldron, and I serve as the Chief Intellectual Property Counsel at Pfizer. In that capacity, I am responsible for managing and protecting Pfizer's intellectual property portfolio worldwide.

Pfizer was founded in 1849. Our mission is to apply science to improve the health and well-being of people's lives. We have developed some of the world's best known pharmaceutical products. We employ 90,000 individuals worldwide, and 30,000 in the U.S. We have a presence in all 50 States with 17 manufacturing facilities and 21 R&D sites located throughout the U.S.

In the U.S., our industry supports over four million jobs, invests over 35 billion annually in R&D, and exports 46 billion in goods. The pharmaceutical sector is the country's sixth largest exporter. Ninety-five percent of our consumers are outside the United States. Emerging markets like India are our key growth markets.

R&D is the lifeblood of our industry. It produces new and innovative medicines to treat diseases for patients worldwide, and intellectual property rights protect the fruits of our innovation.

Today it takes on average more than one billion dollars and ten to 15 years to research and develop a new medicine. Our industry is high risk. Only about one in 10,000 compounds ever enters the drug discovery phase and is approved by the FDA.

India is a critical growth market for Pfizer and for the pharmaceutical sector generally. Pfizer is committed to India and has been operating there for over 60 years, yet the business environment for innovative industries has deteriorated significantly and created uncertainty in that market.

India has taken steps that call into question the sustainability of foreign investment and the ability to compete fairly. India has essentially created a protectionist regime that harms U.S. job creators. Despite being a member of the WTO and an important global trading partner, India has systematically failed to interpret and apply its IP laws in a manner consistent with recognized global standards. In fact, the Global IP Center's International IP Index ranked India last in terms of overall IP protection.

In September of last year, India revoked Pfizer's patent for a cancer medication, Sutent. The patent for Sutent was granted in 90 countries around the world, including India, the United States, Europe and Japan. The Indian patent had been in effect for five years prior to its revocation. The revocation will now allow Indian generic companies to manufacture and sell generic copies of Sutent long before the patent is set to expire.

I would like to note that to ensure Sutent is available to patients who need it, Pfizer developed a patient access program in India. The program provides 80 percent of the patients taking Sutent with a complete or partial subsidy.

We believe that India is undermining IP by misuse of its compulsory license provisions. Compulsory licenses are intended for use in extraordinary situations of extreme urgency or other national emergency. Last March India issued a compulsory license for a cancer medicine, Nexavar, that the Indian Government had justified in part because the product was imported rather than manufactured locally. Such an industrial policy plainly contravenes established international trade obligations.

Recent reports indicate that India has started the process of issuing compulsory licenses for the manufacture of three additional cancer medicines under a public emergency provision that sidesteps notice and public comment obligations. If left alone, this trend will destroy the market for innovative pharmaceuticals in India.

And since many other countries look to India as a leader and an example, India's actions reverberate far beyond its borders. We have seen several countries adopt policies similar to India's which are leading to a worldwide deteriorating trend on intellectual property rights.

These actions also diminish our exports, jeopardize our R&D activities, and ultimately harm U.S. jobs. We need your help. We need the support of Congress and the Administration. It is vital that you prioritize this matter and work together to address these challenges.

Specifically, I would like to highlight four recommendations: that the U.S. Government increase the frequency of talks with the Indian Government and continue to raise concerns directly with Indian officials;

That the U.S. Government should raise concerns at every available bilateral and multilateral forum to send a strong signal to the Indian Government and to other governments that it does not condone these actions;

The U.S. Government should review all available trade policy tools in light of the deteriorating IP environment.

And, four, the U.S. Government should pursue a robust trade agenda that includes strong intellectual property protections, including robust provisions in the trans-Pacific partnership agreement.

Thank you for holding this hearing today, and I look forward to answering your questions.

[The prepared statement of Mr. Waldron follows:]

Written Testimony of

ROY F. WALDRON

CHIEF INTELLECTUAL PROPERTY COUNSEL

PFIZER INC.

Before the

HOUSE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

Hearing

on

U.S.-INDIA TRADE RELATIONS: OPPORTUNITIES AND CHALLENGES

March 13, 2013

Chairman Nunes, Ranking Member Rangel, and members of the subcommittee:

Thank you for the opportunity to testify here today. My name is Roy Waldron. I serve as Chief Intellectual Property Counsel at Pfizer Inc. In that capacity, I am responsible for managing and protecting Pfizer's intellectual property portfolio worldwide.

Pfizer is the largest biopharmaceutical company in the world and a U.S.-based public company. We were founded by two cousins in 1849 in New York and are still headquartered there today. Our mission is to apply science and our global resources to improve the health and well being of people's lives. We strive to set the standard for quality, safety, and value in the discovery, development and manufacture of medicines. And our portfolio includes biologics, small molecule medicines, vaccines, and some of the world's best-known consumer products.

We employ roughly 90,000 individuals worldwide, and 30,000 in the United States. And we have a presence in all 50 states, and have manufacturing facilities located in 11 states including California, New York, Wisconsin, and Massachusetts. We also have another 21 R&D facilities located in 10 states, including California and Connecticut.

Background

The biopharmaceutical sector supports over 4 million jobs in the United States. This is in part because it invests sizable amounts in R&D activities in the U.S. – over $35 billion annually.[1] The industry is also a significant U.S. exporter – exporting $46 billion in goods last year, making it the sixth largest exporting industry in the United States.[2]

With 95 percent of consumers outside the United States, companies look abroad for economic growth. Emerging markets are key to this approach and U.S. exports are fueled by the demand

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[1] Batelle Technology Partnership Practice, The U.S. Biopharmaceuticals Sector: Economic Contribution of the Nation (Columbus, OH: Batelle Memorial Institute, July 2011).

[2] *See* http://dataweb.usitc.gov/, accessed April 17, 2012 (query run of U.S. domestic exports classified by 4-digit NAIC code 3254).

in these markets. The demand leads to jobs and revenues that support our R&D activities here at home that produce innovative discoveries to cure current and future diseases.

R&D is the lifeblood of Pfizer and the pharmaceutical industry. And it is the lifeblood that paves the way to producing new and innovative medicines to treat diseases for patients worldwide. Today, it takes on average more than $1 billion and 10-15 years to research and develop a new medicine.[3] Only about 1-in-10,000 compounds that enter the drug discovery phase is ever approved by the Food and Drug Administration (FDA) and made available to patients.[4] And the truth is that all of the value from our R&D is ultimately transformed into our intellectual property rights. Patents are one of the most important of these IP rights that support our existence.

It is important to remember; we file our patents in the very early stages of development, often a decade or more before the FDA review process begins. Therefore, by the time we have submitted an application to the FDA the patent life has already eroded by a meaningful extent. Thus, the timeframe during which biopharmaceutical companies like Pfizer typically have to recoup our R&D investment of $1 billion is significantly reduced before generic competition enters the market. However, the public health value of our investment continues for generations to come.

India is a critical growth market for Pfizer and for the pharmaceutical sector generally. Pfizer is committed to India and has been operating there for over 60 years. Our main office is located in Mumbai, but we also have manufacturing and R&D facilities in Thane, Goa, and Delhi. We employ about 5,000 in India and these jobs are estimated to support another 15,500 jobs in the

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[3] JA DiMasi, and HG Grabowski. "The Cost of Biopharmaceutical R&D: Is Biotech Different?" Managerial and Decision Economics no. 28(2007): 469-79; PhRMA. "Drug Discovery and Development: Understanding the R&D Process." (Washington, DC: 2007).

[4] Klees JE, Joines R. Occupational health issues in the pharmaceutical research and development process: Occup Med 1997;12:5-27

Indian economy. Pfizer has conducted more than 250 clinical trials in India with 12,000 patients and 1,000 investigators.

Pfizer is a leader in India in terms of innovation and employee satisfaction, and has received awards and recognition through the years. For example, recently we won an award for being the best U.S. company operating in India in the manufacturing category. We were also recognized as one of the best companies to work for by Business Today magazine.

Pfizer also has a strong reputation for leveraging its resources to help those in need. In 2012, Pfizer promoted health literacy and disease awareness across 65 villages, and also partnered with the Spina Bifida Foundation to provide education grants and raise disease awareness among women.

Challenging Investment Climate in India

India's large population, significant unmet medical needs, and growing middle class all contribute to its great potential, but unfortunately the business environment for innovative industries has deteriorated significantly in recent history. India has taken steps that call into question the sustainability of foreign investment and the ability of American companies to compete fairly. In fact, the Global Intellectual Property Center's International Intellectual Property Index, ranked India dead last in terms of overall protection of intellectual property.

Despite being a member of the World Trade Organization, and an important global trading partner, India has systematically failed to interpret and apply its intellectual property laws in a manner consistent with recognized global standards. We have seen a growing trend of anti-IP developments in India, and this is creating significant uncertainty in the market and negatively impacting our industry and Pfizer.

Experience accumulated after India began granting product patents in 2005, shows it has routinely flouted trade rules to bolster the Indian generic industry at the expense of innovators.

At the same time, Indian pharmaceutical companies have grown their U.S. sales dramatically. Three of India's major pharmaceutical companies, for instance, (Dr. Reddy's Laboratories,[5] Sun Pharma[6] and Wockhardt[7]) generated between 42 – 56 percent of their global generic sales in the United States. As one of those companies explained, "The company's U.S. and EU operations have been the major contributor in its growth and the momentum continued in this quarter as they contributed to 71 per cent of consolidated revenues."[8] This is an issue of basic equity.

The Government of India has essentially created a protectionist regime that harms U.S. job creators. The harm is evident in pharmaceuticals where the United States has welcomed Indian generic companies while India is closing its borders to U.S. innovators. Correcting India's protectionist intellectual property regime will require firm leadership by the United States in international organizations and in India.

I. Unwarranted Denial of Intellectual Property Rights

In September of last year, India revoked Pfizer's patent for a cancer medicine, Sutent. The approval of Sutent in 2006 had marked the first time that the FDA approved a new oncology product for two indications simultaneously, gastrointestinal stromal tumors (GIST) and advanced kidney cancer. This drug was first developed by a small U.S. biotechnology company in California. The patent for sunitinib, which is the active compound in Sutent, was granted in many countries around the world, including India. The Indian patent had been in effect for five years prior to its revocation. Its counterparts have never been revoked in any of the 90 countries where it currently enjoys protection, including the United States, Europe, and Japan.

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[5] Press Release, "Dr. Reddy's Q1 FY13 Financial Results," July 19, 2012: http://www.drreddys.com/media/popups/q1fy13_results_19jul2012.html.

[6] Press Release, "Sun Pharma reports a strong quarter," August 10, 2012: http://www.sunpharma.com/images/finance/FY13%20Q1%20Press%20Release%20Financials.pdf.

[7] Press Release, "Q1 FY13," August 10, 2012: http://www.wockhardt.com/pdf/QUARTERLY-REPORT-(Q1)-f12ee.pdf.

[8] http://articles.economictimes.indiatimes.com/2012-08-06/news/33065615_1_wockhardt-q1-wockhardt-today-net-profit.

The revocation will allow Indian generic companies to manufacture and sell generic copies of Sutent long before the patent is set to expire. This constitutes a fundamental breakdown of an incentive-based IP system.

To ensure Sutent is available to patients who need it, Pfizer developed a patient access program in India. Pfizer's program provides medically eligible patients treatment options based on socio-economic criteria. 62% of patients with the disease are treated with Sutent and 80% of these patients receive a complete or partial subsidy. But the program doesn't stop there. It also offers education on managing the disease and medicine, counseling for patients and their families, and in some cases, patients receive nutritional support as well.

Glivec™ is another important anticancer therapy for which intellectual property rights have been denied. The patent was denied under section 3(d) of the Indian Patents Act, which contains a discriminatory provision concerning the inventions of the biopharmaceutical industry. The provision requires certain types of inventions to show "enhanced efficacy", which limits substantially the ability to obtain a patent. Not only is this term unclear, but it goes far beyond the specific requirements of patents under the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement including novelty, inventive step, industrial applicability, and sufficient disclosure for carrying out the invention. Moreover, by discriminating against a particular field of technology, section 3(d) may be inconsistent with provisions of TRIPS, which sets one standard for all patents and does not allow different patent requirements for different industries. Using this prohibition, India has refused a patent to Glivec™ despite patent protection for this product that exists in nearly every other country of the world.

India also provides for a pre-grant procedure in Article 25(1) of the Indian Patents Act. In most countries, applications for patents are examined *ex parte* and published at some point before they are granted. India, however, allows interested parties to "oppose" the grant of the patent after publication, but before the date established for the grant of the patent. Given that the

term of patent protection is measured from the date of first filing, these delays erode the effective life of the patent. If not properly policed, these pre-grant oppositions are opportunities for abuse. India also does not provide for adjustment of patent terms to compensate for delays in patent processing.

II. Abuse of Compulsory Licensing Provisions

Compulsory licenses are intended for use in extraordinary situations of extreme urgency or other national emergency to meet the legitimate needs of the public. Often, however, compulsory licenses may be used by competitors as a means to obtain authorization to use or transfer technology developed by others without having to pay the substantial costs associated with developing and testing the product. These copiers want to obtain a free ride or use the technology at a much-reduced cost. Also, compulsory licenses are inappropriately viewed by some governments as part of their industrial policy to establish domestic production or to reduce government expenditures for medicines.

India issued a compulsory license for a cancer medicine patented by an innovative pharmaceutical company last March and the Indian government has sought to justify the compulsory license, in part, on the basis that the product was imported rather than manufactured locally. That industrial policy basis for a compulsory license must be repudiated as it plainly contravenes established international obligations.

Moreover, recent media reports indicate that the Government of India has started the process of issuing compulsory licenses for the manufacture of three additional cancer drugs. Unlike the compulsory license issued under Section 84 of the Patent Act against Nexavar™, these compulsory licenses would fall under Section 92 of the Act—the public emergency provision that can be issued directly from the Indian Administration without a notice and comment period to the industry.

The generic industry in India has paid attention to all of these developments. We believe that Indian generic companies now see any innovative product as fair game for compulsory license. If left alone, this trend will destroy the market for innovative pharmaceuticals in India.

III. Ignoring Obligations to Prevent Unfair Commercial Use of Data to Grant Generic Marketing Approval

Regulatory data protection is required by the TRIPS Agreement and India was required to prevent unfair commercial use of pharmaceutical regulatory data through the grant of generic marketing approval based on the innovator's data by January 1, 2000. They still have not done so.

IV. Ineffective Patent Enforcement

Indian law permits state regulatory authorities to grant marketing approval for generic versions of medicines four years after the product was first marketed. They are not required to verify or consider the remaining term of relevant patents. Because infringers can obtain marketing approval from the government, patent holders are forced to seek redress in India's court system after approval of the generic – a form of recourse that is not effective in practice.

Conclusion

The issuance of unwarranted compulsory licenses, the unfair revocation of valid patents, and the denial of patentability of inventions in India are critical areas of concern in our industry. As a company, and an industry, we are more than willing to discuss viable solutions to increase access to quality medicines with the Indian government. However, these recent actions by India threaten economic growth in the United States and our industry generally, and Indian patient's access to innovative and high-quality medicines.

These measures further weaken the competitiveness of the U.S. innovative pharmaceutical sector in India. And since many other countries look to India as a leader and an example, India's

actions reverberate far beyond its borders. We have seen several countries adopt policies similar to India's, which are leading to a worldwide deteriorating trend on intellectual property.

These actions diminish our market share abroad, which hinders U.S. exports, and ultimately harms U.S. jobs. These intellectual property violations also jeopardize our U.S. R&D activities and advances in public health, as the revenues of today are funding the research necessary to develop new and innovative medicines of the future. It is for this reason that the U.S. government has a significant interest in protecting the intellectual property of U.S. companies abroad.

Pfizer and other U.S.-based innovative pharmaceutical companies are working actively to resolve these problems and appreciate the assistance and support of Congress and the Administration. We are grateful for your attention and engagement on this issue. And, we hope that you will continue to prioritize this matter and work together to address these challenges.

Specifically, I'd like to highlight four recommendations:

- The U.S. government should increase the frequency of talks with the Indian Government, and continue to raise concerns directly with such officials.
- The U.S. government should raise concerns at every available bilateral and multilateral fora to send a strong signal to the Indian Government and to other governments that such actions are not condoned by the U.S government.
- The U.S. government should review all available policy tools in light of India's deteriorating intellectual property environment.
- The U.S. government should pursue a robust trade agenda that includes strong intellectual property protections that build on the Korea-U.S. Free Trade Agreement and U.S. law, including robust provisions in the Trans-Pacific Partnership Agreement (TPP).

Strong IP provisions in U.S. trade agreements will demonstrate to countries like India that the U.S. is firmly committed to protecting intellectual property.

Thank you holding this hearing today and for your interest in obtaining more information on the opportunities and challenges facing Pfizer and other U.S. companies doing business in India.

Chairman NUNES. Thank you, Mr. Waldron.

So as you all know, this Committee has basically two major capabilities. One is to produce legislation. The other is to conduct oversight. So I am going to ask just a real basic question to all of you, and that is if you had up to three things that we could do either legislatively or through oversight, specifically what would you like to see this Committee engage in over this coming Congress?

And we will just start on the left with Mr. Twining.

Mr. TWINING. Mr. Chairman, rather than three things, I mean, my prize would be one big thing, which is passing trade promotion authority so that the President and the Executive Branch can negotiate the suite of trade agreements, these very ambitious trade agreements. I mean whether or not we include a U.S.-India FTA in that. TTP, TTIP, these horizon stretching agreements, I think some of us are worried that the enabling foundation, should we get to a point where we have these agreements, is not yet in place to see them move through this body expeditiously, and that would be my quick answer.

Chairman NUNES. Thank you, Mr. Twining.

Mr. Subramanian.

Mr. SUBRAMANIAN. I would wholeheartedly endorse what Mr. Twining just said, that we need legislative authority to pursue, you know, all the things that are already on the table, TTP, TTIP, but also a whole bunch of new initiatives like with India, but also to move beyond the DOHA round to a new kind of round of negotiations.

Because the fact of the matter is it is true that India is not very actively participating, Chairman Nunes, in the agreement that you said, and I think there is a problem here. But I think some of that could be overcome if you have a broader agenda, multilateral agenda, moving beyond DOHA that includes items of interest to China and India, as well.

So I think you need a broader agenda for which I think getting this broad based trade authority is very important.

Second, I would urge also that in looking at the economic architecture in Asia, that greater efforts be made to bring India into that architecture as a way of promoting some of the objectives that have been put forward.

And finally, the third thing I would say, you asked us what you could do, but I also want to say something on what perhaps you should not do, if I may with your permission. I think, for example, GSP expires in July, and certainly I read some of the comments you are saying that, you know, maybe we should use all trade tools available. I think on the GSP my kind of cautious advice would be the following.

I think the U.S. needs to think about graduating many countries out of GSP. I mean, I will give you one good reason. India itself now gives GSP to many least developed countries. So it is a bit odd for, you know, a GSP granting country to give GSP.

However, I would not link that to either use that as kind of a retaliatory threat or use it to force, you know, action, change within India because you incur the diplomatic cost without necessarily getting any benefits out of it because I would be highly doubtful whether actions like that, you know, would really change the regulatory environment in a way that we all want to see it changed.

Chairman NUNES. Thank you, Mr. Subramanian.

Ambassador.

Mr. JOHNSON. Yes. Thank you.

I often think of India as being a developing country with a First World bureaucracy. They are capable of stopping things very creatively, and so hearings like this and engagement, whether it is

through letters or calling in Indian officials to talk about problems that they have created to our trade, I think, is really priceless because it forces an action. It forces some interaction within their own government about problems as they exist.

The second thing I would suggest is that you encourage trade, and having many battle scars from pursuing trade promotion authority in the past, I would encourage you to do it again. But I think the main thing is that, as I mentioned in my testimony, the more that India sees the rest of the world is moving, the more it has to think about the consequence to itself for not moving, whether it is in agriculture, in bilateral agreements, or in a World Trade Organization agreement. They could be constructive players if they decided that it was in their best interest to do so.

As I mentioned earlier, we have taken a WTO case recently against India on AI, and I think we are going to need to continue to do those sorts of things.

On other activities, my general point, and you brought up GSP, is that what we should be doing is encouraging them to be moving from the rural areas to other industries, and so as we can encourage that, I think that helps them in taking some of the pressure off reform in agriculture, which is ultimately essential for their own development.

Chairman NUNES. Thank you, Ambassador.

Mr. Garfield.

Mr. GARFIELD. Yes. Number one, I agree with what the other panelists have said about trade promotion authority. I think that is critically important.

Two is making clear the exigency of moving forward and resolving the issues around the preferential market access regulations that are in place. This hearing is quite timely. Just yesterday there was a report out of India that they intend to proceed full speed ahead with the private sector portions of that, which would be significantly detrimental to businesses globally, but specifically here in the United States as well.

And so making sure through Congress as well as the Administration that we are dealing with that and dealing with it now I would say is the second thing.

And then the third is something that you have done before, which is through your letters that come through in a bipartisan fashion making clear that you are paying attention, and that this is an area of emphasis and focus I think is quite important, and continuing that, I think, would be quite helpful.

Chairman NUNES. Thank you, Mr. Garfield.

Mr. GARFIELD. You are welcome

Chairman NUNES. Mr. Waldron.

Mr. WALDRON. I have to echo the comments of my fellow panelists, but I think that some of the emphasis has to be on intellectual property. I think that there is an exigency, as Mr. Garfield references. The acceleration of compulsory license policies has accelerated in the last year. So there is some urgency with respect to the frequency of talks that we have with the Indian Government to register our displeasure with the developments that have taken place there.

I also agree that IP chapters or IP understandings are also important in these bilateral and multilateral fora. So this is really something as a second matter that I think we really have to pursue and go with our eyes wide open as to what is really happening right now, and essentially if we wait too long, we may find ourselves in a situation where it is irremediable.

And referring back to some earlier comments on GSP, I think that we do have to review all available policy tools. I think it is a matter of equity and fairness, and perhaps the upcoming renewal will be a time to actually seriously look at what we want to do and how we want to do that.

Thank you.

Chairman NUNES. Thank you, Mr. Waldron.

With that, my time is up and I yield to you, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chair.

I have to admit to the panel that I have not really been up to India's position as it relates to problems that they see in international trade, and I wonder whether any of the witnesses today, although you want to improve the trade relationship, actually can be speaking on behalf of the Government of India as to how they see.

Are any of you in touch with the Government of India directly? You are.

Mr. GARFIELD. We all are.

Mr. RANGEL. How could I have any little bit of assurances that if we did do what you are recommending, that the Government of India would say, "Thank you and let's move forward"?

What do I have to work with?

Mr. GARFIELD. Well, the thing that I would point to is what has happened in India in the last 20 years. I think all of the panelists have been pretty consistent about the turnaround story and the growth story and the power of innovation in India, the industries that are being created, the people that are being moved out of poverty, the people that have been moved into the middle class, which is the point I made earlier, which is that segment of the population is now larger than the U.S. population in its entirety.

Mr. RANGEL. Mr. Garfield, I did not frame my question correctly. I think all of us are excited about the increase in trade, the number of people that are moving out of poverty into the middle class, and the Chairman asked what is it that all of you three would think is the most important, and of course, that is good.

I also want to know whether there is anyone here that can say this is what India thinks is the most important. Does India want to move toward a free trade agreement? Does India agree with Mr. Subramanian that rather than get issues resolved, that we should take them to the WTO with all the time and expense we have with that?

And even though I would acknowledge you to answer, I cannot perceive that India would support that. You know, do not work it out. We have got a good record with the WTO. Talk to them.

Does that make any sense? What am I missing?

Mr. SUBRAMANIAN. If I may.

Mr. GARFIELD. Yes.

Mr. SUBRAMANIAN. Thank you, Chairman Rangel.

I would say two things in response. One, does India want to move forward? I think there is a sense, firstly, India is moving forward with Japan, the EU, Canada, ASEAN Plus Six, et cetera, et cetera.

Mr. RANGEL. Well, how does India deal with the observations that some of our business have that they have not been fair in terms of their trade agreements, and so why in the world would we be supporting them in the WTO or free trade agreements?

Who here would suggest that India recognizes that we have problems with the tariffs? We have problems with them like we want to make it in USA and they want to make it in India. We recognize that these are problems that we have with all countries, and they have got big problems with us.

I am just having a small problem and wondering how you can help us to deal with these problems. I think after this meeting when I talk with the Ambassador from India more of my questions will be answered as I can deal with their trade people and get a better answer.

But I just do not know if you told the Chair the three things you thought were important and all of us agreed, then what would we do? Tell our Trade Representatives to do it?

Mr. GARFIELD. Yes. If I can jump in as well. Fundamentally, I do not think India would necessarily agree with all of the solutions we have offered. That is number one.

Number two, to the question of what we hear from India, most of what we hear in response to the concerns that we raise relates to security, and so what we are told is this is not directed at the United States, but it is a broader concern about security and the security of India, which we empathize with. And we spend a lot of time talking to the Indian Government, including with the Ambassador, whom we are seeing this evening, about ways of addressing those legitimate security concerns without building a wall around India and Balkanizing the country.

Mr. RANGEL. I am sorry. Who are "we" that is concerned? When you say "we"?

Mr. GARFIELD. When I say "we" it is actually broad, you know. So we just——

Mr. RANGEL [continuing]. I know, but who are you talking about?

Mr. GARFIELD. Actually most specifically I am talking about the global technology sector when I say "we," but I am also talking about the United States and other countries that have significant concerns about the direction in India.

Just a few weeks ago we sent a letter to the Prime Minister that was signed by 39 different entities representing over ten different countries, and so we are here in front of the U.S. Congress, and so, of course, this is a U.S. concern, but I feel comfortable saying this is a multi-sectorial and a multinational issue where the United States and this Congress can play a significant leadership role.

Mr. RANGEL. I yield back, Mr. Chairman.

Chairman NUNES. Thank you, Mr. Rangel.

Mr. Reichert is recognized for five minutes.

Mr. REICHERT. Thank you, Mr. Chairman.

I just want to follow up on the Ranking Member's questions.

So as you said, Mr. Garfield, 39 international trade groups have written the Prime Minister. Other groups have followed with additional letters expressing their concerns about India's actions. But an official at India's Department of Telecommunications said, "The concerns expressed by various stakeholders would be considered as India finalizes their rules."

What does that really mean? It does not sound too promising, as I think Mr. Rangel was pointing out.

We have sent letters; Congress has sent letters expressing our concern. You have sent letters. Others have sent them. What does that really mean, "we will take this under consideration," the concerns?

Mr. SUBRAMANIAN. Let me jump in here. I do not carry a brief for anyone, but I think the important point to recognize is that what is also a response to Chairman Rangel is that the Indian Government's response would be that on many of the concerns that have been raised, we are actually consistent with our international obligations, you know, and where we are not, we are open to dialogue, including, you know, dispute settlement under multilateral procedures.

So I think in some ways to understand the Indian perspective one has to take into account what the domestic challenges are, you know, creating a manufacturing base, for example, you know, imitating China, and that underlies the PMA policy, for example.

But in response to the concerns, they would say in agriculture, yes, our tariffs are high, but out bound tariffs are much higher, and we are not violating any of them. So I think that is why to test some of these claims I think it is useful to get them adjudicated under multilateral dispute settlement procedures.

Mr. REICHERT. Is there any concern on India's part that, you know, we are all, as Mr. Rangel, again, said, pleased to see that a lot of people are moving out of poverty and upward mobility into the middle class and higher in India, and that has been the result of some of their policies possibly.

But when they look into the future, is there any concern at all that as they move ahead other countries are developing other technologies that they will not necessarily have access to, and they will begin to fall behind?

Has that been a consideration at all?

I am from Washington State, and we do a lot of business with India. We just opened, I think our seventh Starbucks in India, some progress, but we are concerned because in 2012 Washington State exported $1.2 billion worth of goods to India, up from $661 million in 2011, but down $3 billion since 2007.

So, you know, we are losing our ability to interact with India and exchange ideas and technology, negative on us, but is India even aware or thinking about the future and the loss of this technology and these opportunities to interact with other countries in the future where they may lose instead of be gaining?

Mr. GARFIELD. I think it is hard to ignore. The foreign direct investment numbers over the last three years are reflective of that. Starbucks is a great example because they're in, but there are a lot of other retailers, including some in the technology sector, who

would like to be in and are challenged in doing so, some very prominent ones, in fact.

Your initial question, I think we have heard it before, which is it is under advisement, and we will consider it, and I think until there is a sense that the implications of not addressing this are going to be significant, then it will continue to be under advisement, and that is why this hearing today is so important.

We know the powers that be in India are, in fact, paying attention.

Mr. REICHERT. Yes.

Mr. SUBRAMANIAN. I just want to add, I just want to say that, you know, again, I think one risks obscuring, you know, what is happening in specific sectors with what is happen overall; that in fact, late last year the most dramatic opening to FDI happened, you know, which would allow Walmart to go into India. That happened recently.

And in the last three years, the access that U.S. investors have to Indian stocks, equities, bonds, have been increased dramatically. So I think one needs to have this balance of, yes, there are sectorial problems, but the underlying trends. FDI came down during the crisis, but it has picked up again once again.

Mr. REICHERT. Thank you, Mr. Chairman.

Chairman NUNES. Thank you, Mr. Reichert.

Mr. Neal is recognized for five minutes.

Mr. NEAL. Thank you, Mr. Chairman.

Just a quick footnote. The issue of intellectual property has lingered here for a long time as we have witnessed this growing relationship between the United States and India, but it is a very stubborn problem, but I want to take you to another question that is more specific with a specific company located in New England, TAKO. They have asked that because we are holding this hearing that I raise this issue specifically on their behalf.

This is an American company that is moving part of their manufacturing business to India from China. Now, you would think that that would be a good thing for India. However, India has made the move so difficult that the company is now beginning to regret the decision.

For example, TAKO has sent some samples of their finished products to Indian vendors who will be manufacturing their products and TAKO ran into major problems with Indian customs, including long holds on samples and arbitrary duties and fees. With a work force of 500 million people which is slated to grow over these next 25 years, India is grasping at any means to generate manufacturing employment, and we have seen and witnessed some forced localization measures.

Here is an instance where an American manufacturer is trying to create manufacturing jobs in India, and India is making it very difficult for them to do so.

As witnesses, is there any one of you who wishes to speak specifically to this question?

And I would note that TAKO is headquartered in Cranston, Rhode Island.

Mr. TWINING. Sir, I can make just a general point, which is that one reason the U.S. and India had a very fraught relationship

really throughout the Cold War was not simply because of Cold War divisions, but because India socialized most of its economic base when it became independent after the British Colonial period. Most of us are pretty progressive, and we are used to thinking about India as this dynamic market, a billion plus people, one of the biggest economies down the road, but in fact, you still have a government whose tentacles are everywhere in the economy, and it is one reason why the Indian private sector, quite interestingly, they are so fed up with the regulatory mess in India that many of them are actually going abroad. It is actually much easier and more rewarding for many Indian companies to invest in Europe or the United States than it is in their own country.

And so we do not have an Indian private sector representative here at the dais, but if we did, I suspect he would say, "Gosh, we have this kind of problem ourselves and it drives us nuts."

But from a ten, 20-year perspective, the Indian Government has been in the process of stepping back from the economy, but it is still far too heavily involved in it, and that is something we think, again, I think there is a consensus that a big push on trade liberalization between our countries would help to extract the Indian state in ways that would really benefit the Indian people through greater economic growth.

Mr. NEAL. But the difficult with that point is that as we pursue free trade agreements and breaking down barriers to trade, one of the items, I think, that could fairly be ascribed to governments in China or India is that they are for free trade on their terms.

Mr. SUBRAMANIAN. I think that that is a fair point, Mr. Neal, but I think the other side, the way this could possibly work, the big push that we are talking about is because trade is a two-way street. For example, just as localization and others, IP issues are raising concerns, I think the Indian Government also has, you know, issues of concern in the U.S. which, you know, a kind of big push would allow this kind of tradeoff to be made.

To give one example, the H1B issue, the immigration issue, you know, export licensing, for example, that is another issue. Totalization in Social Security agreements, that is another issue.

So I think the important thing here is how can we create a framework so that more of these exchanges can take place and it does not just become, you know, U.S. business complaining about problems in India which no doubt exist, but creating a more positive two-way dynamic to create the incentives that Mr. Twining talked about also for India to change some of these policies.

Chairman NUNES. Mr. Waldron.

Mr. WALDRON. I think it is possible here at least in the discussion of technology and intellectual property to create win-win situations. I think you want to be able to convince the Indian Government that this is not a zero sum game. This is about creating an environment for innovation, and India has the resources technically to advance very far in terms of creating new, innovative technologies, yet it seems to be going towards a very short-term view of what is going on.

But I think we can play a very strong role in at least advocating, look, the long term and the future here of prosperity is with advancing a win-win situation.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman NUNES. Thank you, Mr. Neal.

Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman, and thank you to our witnesses for your participation today.

Ambassador Johnson, you touched a bit on agriculture and, you know, I guess in general and some more specific terms, obviously we know we have got a globalized economy, and I think of a business that exports around the world. This business happens to obviously be in my district, but in a town of 300 population, and I hear from them that India's policies have inconsistent tariffs, non-tariff trade barriers, various other challenges.

Could you elaborate on that perhaps?

Mr. JOHNSON. I am sorry. What was the business?

Mr. SMITH. Agriculture.

Mr. JOHNSON. Oh, in general.

Mr. SMITH. Right.

Mr. JOHNSON. Well, I come from a town of 300 people in Iowa. So I have sympathy for your constituents.

No, actually in combination response to the question that Chairman Nunes has asked in sort of responding to Congressman Nunes, is that what India basically wants is agreements on its own terms, whether you are talking about the WTO that they actually want to backtrack on tariffs and developing country subsidies, or are you talking about bilateral agreements where they basically leave agriculture out. They include 20 tariff lines out of 600 potentially.

And in response to Chairman Nunes, I tried to say that I think this Committee is showing an aggressive agenda, an aggressive agenda on trade that India would be left out of if they do not start acting in a way that is more conducive to trade. It would be helpful.

In agriculture, we see countless not just in the number of SPS barriers, but the goal line keeps moving. If you start addressing one and then another one seems to pop up. There is one reason, motivation for it, and you deal with that. Then they come up with another reason for justifying a barrier.

And then as we started out by saying they have very high tariffs, the highest in the world when it comes to agriculture across virtually all of their agricultural industries, and that is very problematic, and it allows them because they have a high bound rate and they apply it, it gives them so much water, so much protection that it gives them the flexibility to lower it whenever they need something, if there is a draught or something domestically, but they put it right back up.

Well, if you are an exporter, it is hard to build a business around not knowing what is going to happen either on the tariff side or on the regulatory, sanitary and phytosanitary rules that seem to be somewhat arbitrary at times.

I hope that answers your question.

Mr. SMITH. Sure. Now, could you reflect a little bit in terms of the restrictions that are or are not based on the sound science and economics?

Mr. JOHNSON. Well, for example, in the dairy industry they have had in place a number of regulations that, in fact, have been changing over time that have to do with what we feed our animals or the drugs that we might use that are internationally recognized and accepted, and then when we go through and we spend a lot of time assisting the industry on this, when we go through trying to address each one of those problems, we get sort of similar responses to what we heard over here, which is that they are under consideration or they still believe they are justified. And so far we have not pulled a trigger on a WTO case.

Another one is avian influenza, which basically they put a ban in place for low path avian influenza, which is not an internationally recognized standard. We have the most rigorous system for monitoring and dealing with avian influenza in the world, and India has actually had high path avian influenza on numerous occasions.

And so now we have taken a WTO case against them that the panel was just empowered last month.

Mr. SMITH. When you say that the policies are changing, could you elaborate on that?

Mr. JOHNSON. So I know the dairy industry has a paper here, but so, for example, when we start working through trying to deal with even things that are not science based, so, for example, they do not want certain drugs to be used for the dairy products that are sent there.

So even when we start investigating how we could be identifying suppliers that could address that specific requirement, then we will find later that there is another reason that those suppliers maybe do not fit the case or the conversation does not continue.

Mr. SMITH. Or perhaps it has less to do about public safety than some other——

Mr. JOHNSON [continuing]. Oh, clearly, and I think it is pretty clear on a number of these that there is not a human or animal health benefit from the regulation, but really there are effectively acts of protectionism.

Mr. SMITH. Would anyone else? Mr. Subramanian?

Mr. SUBRAMANIAN. Just a thought. You know, the description of going to WTO as pulling the trigger, at one level that is true, but I think you have to recognize that many of these regulations that are formulated within India come about because of complicated interests, and sometimes having an international ruling which says this is not based on sound science actually helps the pro liberalization law be within India to act on those who are against it.

So I think that is a big advantage of having, you know, international pressure through, you know, multilateral procedures to kind of strengthen the hands of kind of the good guys within India.

Mr. SMITH. Okay. Thank you. I yield back.

Chairman NUNES. Thank you.

Mr. Larson is recognized for five minutes.

Mr. LARSON. Thank you, Chairman Nunes and Mr. Rangel, and our distinguished guests that are here today. The testimony has been enlightening and certainly we all share the concerns and the great opportunity that exists with the vast potential of India.

I would like to amplify a point that Mr. Neal made and one that continues to be a thorny issue for this Committee and American manufacturers in general, and that deals with the issue of intellectual properties.

And having several value added manufacturers in the Northeast and specifically in the State of Connecticut and one testifying today in terms of Pfizer, I would like to get the perspective, if I could, Mr. Waldron, from you and other panelists if they want to join in, about the difficulties that American companies face.

I believe it was Mr. Garfield that talked about the complications of preferential markets and the bureaucratic entanglements that that creates, and of course, the ongoing concern that so many American manufacturers have related to us about intellectual property, if you could, sir.

Mr. Waldron.

Mr. WALDRON. Thank you, Congressman Larson.

I think we have to sort of talk about balance here in the intellectual property area. I mean, even though India will proclaim it is consistent with trade obligations in terms of its patent law, we have had in the recent past about eight sort of cases that have come up dealing with patented products, and frankly, we are dealing with a situation where we are at zero and eight in terms of the patent being upheld or any sort of pushing back on a compulsory license or revocation actions. I think it speaks to a very poor record, and there is something out of balance.

I mean, the rest of the world has IP provisions that are consistent with international obligations. Yet we are so far towards the range where everything is revoked or there is no valid patent in India. I think we really have to sort of address this quickly before it becomes a very dire situation and we find ourselves where we really have nothing left.

Mr. LARSON. Would you say that that is because of an ensnarled bureaucracy or more of a deliberate plan of India?

Mr. WALDRON. Well, I cannot speak to the intentions of the Indian Government, but I think the government there should play a role and does play a role in at least communicating what it finds important and its priorities. So if all the administrative agencies are deciding cases in a certain way, that seems to be reflective of the tone that is being set at the highest levels.

I really think that there is a role that the Indian Government can do in communicating to its agencies in terms of creating a more positive environment because, frankly speaking, their interests lie in creating a culture of innovation, as we do here. The IP system has been the driver, the historic driver of innovation over many years and contributed to the great prosperity that we enjoy in this country. It is something that we should share. I think it is a legacy that we have to bring to them simply because we are in a world where we do not have drug products that cure all diseases. I think we really need to get further along, and these are interests that we all share in common with every country regardless of border.

So the emphasis really has to be on innovation, and there really needs to be messages from the top within India.

Mr. GARFIELD. If I could add.

Mr. LARSON. Sure.

Mr. GARFIELD. There are multiple forces at play here, and so in part it is bureaucracy. In part it is a slowing economy, and markets like India looking at China and that model and thinking that maybe the path to take, and so the point that has been made about creating opportunities for multidirectional or bidirectional dialogue, so we're exchanging ways in which their interests can be met as well as ours, and when I say "ours," I mean global companies, I think will serve us all well.

The concern I have is—and not to sound too much like the boy who cried wolf—is that some of these challenges that are progressing now could become non-remediable if we do not address them immediately, and so creating those opportunities and that dialogue immediately, I think, is critically important.

Mr. LARSON. I believe it was Gandhi who said, "I want all of the winds of the world to be able to blow freely through my house, but I will not be blown over by any."

And it seems to me, both Mr. Waldron and Mr. Garfield, that what you have said this would enhance their ability to stand with the rest of the world.

Mr. GARFIELD. Well articulated.

Chairman NUNES. Thank you, Mr. Larson.

Mr. Boustany is recognized for five minutes.

Mr. BOUSTANY. Thank you, Mr. Chairman.

This has been a really informative and compelling hearing. I really appreciate all of our witnesses and their testimony.

It has been clearly stated obviously that the benefits of a close trade and investment relationship with India is very significant, and it is also strategically important as well as we look at the growth in Asia, the Rim around the Indian Ocean, and so forth, and back in the second term of the Bush Administration, I was really enthusiastic about the civil nuclear agreement. I thought this was a very important strategic step, an opening, if you will, toward India to really formalize and enhance the relationship, and yet subsequently we saw the liability regime that was put in place, and it sort of really dampened the enthusiasm across the board.

So it is sort of like we take a step, and then there is a reaction which further pushes, and I found this problematic, but hopefully we can continue to move forward.

India clearly is critical, I think, as you all have stated very clearly. India is critical in getting back to rules-based global trading system and bring China in and so forth, and I know we are pushing on TPP and the trans-Atlantic agreement as leverage to hopefully bring them in and to deal with China. But the problem is we are behind timing-wise on this while India is already moving forward with a number of other regional agreements that are, you know, not as comprehensive, but clearly put us at a disadvantage as you all stated.

But it seems to me in answering Mr. Rangel's question, and clearly we need to talk to the Indians about it as well; I agree with you, but a couple of observations.

One, India needs to move up the value chain on manufacturing. That is clearly one of their objectives, but secondly, you know, the security issue as was raised by Mr. Garfield. But what was not mentioned is India's severe vulnerability with regard to energy and

the need for energy. And as I think about this, I know Cheniere Energy, for instance, is a company in my district. In fact, the first LNG export license has been granted to Cheniere, and we in Louisiana are very, very excited about this because it does mean jobs. They have completed a 20-year contract with the Indian energy company. GAIL, I believe, is the name of the company, and this is taking effect in 2017. I think the contract entails 3.5 million tons of natural gas, liquefied natural gas exported from the U.S. annually.

This is a time limited opportunity given, you know, the nature of the change in global LNG markets. We have an arbitrage opportunity that is immense, but it is time limited. None of you address this specifically in your testimony, and as I look at how do we catalyze this relationship with India, what can we use as leverage?

The energy vulnerability seems key in this to me on many levels, both from a security and manufacturing standpoint, and so forth. I would like Mr. Twining and Dr. Subramanian to comment on how we could, you know, position ourselves because this is the second step granting this type of export license to a non-FTA country.

Mr. TWINING. Sir, that is an excellent question, and I am so glad you raised it. India has one of the greatest energy import requirements in the world, and that dependency on world energy supplies will only grow as the country develops, as the population continues to bloom.

One of the smartest things the United States could do strategically in Asia, we are quite used to thinking about our military presence, our naval presence, our alliance commitments. We also sometimes talk about our trade agenda and some kind of market liberalization, but we need to add an energy pillar to this.

And exactly as you say, the shale gas revolution in the United States creates an extraordinary opportunity for us to export it, and I think we should probably export it to the world, but we should also particularly build in that dimension to our key security partnerships in Asia. I would say in Asia our most important, most capable security partnerships are with Japan and India. In different ways, and say to them, "Look. Part of this package could be preferential access or some facilitated agreement to U.S. energy exports because, in fact, we have a national security interest in helping you develop your economy and helping you develop your military capacity, help us police this tough region in the world, create some ballast in Asia other than around China," and this is something our allies desperately need.

And so, you know, I think this could be a game changer if we play it right.

Mr. SUBRAMANIAN. It is a great question, and I agree completely with what Mr. Twining said. I would just add a couple of points.

One is that India is heavily dependent on coal. So from a climate change point of view as well, getting cleaner gas from the United States, I think, will help enormously, and also the fact that not only is coal dirty, but Indian coal supplies are kind of now again boggled by all of these regulatory problems.

So I think there is a huge opportunity there, both the energy side on the climate change side, and I think the United States should

use that as leverage, you know, in pursuing not just the energy agenda. So this comes back to my point about, you know, the two-way need.

I mean, just as, you know, concerns that we have, the U.S. has this great leverage in terms of energy exports. So I think that reinforces my view that we need to get this big thing going whether much more two-way tradeoffs are possible.

And just one comment on your value added. The Indian problem is not moving up the value added chain. It's moving down the value added chain because, you know, it's too skill intensive and too technology intensive. We need to create more jobs and employment.

Mr. BOUSTANY. Thank you.

Chairman NUNES. Thank you, Mr. Boustany.

Mr. Roskam is recognized for five minutes.

Mr. ROSKAM. Thank you, Mr. Chairman.

Mr. Twining, in your opening remarks you said that India plays better inside the club than outside the club, and I just wanted to follow up on Dr. Boustany's observation about the civil nuclear agreement in which they sort of made their own club.

In other words, it seems to me that part of what India has got going for it is they say, "Look. We are so big and so strategically important we are going to wait and you are going to redefine rules based on how big we are."

Am I overstating that? Is that an over-characterization or how would you frame that up?

Mr. TWINING. The way I would frame it is as somebody who worked in the Bush Administration on the civil nuclear agreement was we had a problem, which is that we had a country that was completely outside of the normal proliferation regime, the non-proliferation regime. We had a country that had nuclear weapons and was not proliferating them like China, Pakistan, other countries have proliferated them beyond its borders, but we had a big hole in the rule book on global nuclear trade and proliferation.

We eventually concluded, the U.S. Congress concluded along with the Administration that bringing India into the system would be better than having it on the outside. The liability law that India subsequently passed shot itself in the foot. I mean, a lot of domestic politics here, a lot of domestic politics there. The government in India had fought so hard for that civil nuclear deal. It was the first time an Indian Prime Minister had put his government on the line on a foreign policy issue, put his government on the line over building this new relationship with us.

He won that, but then it was almost like the fight went out of his Administration. They let the parliament devise this liability law that was, frankly, inadequate.

What we had seen though in terms of your question, India's inclusion in the club, not only did we collectively bring India into this civilian nuclear regime, in civilian trade in nuclear components. India now is lobbying to join the clubs that had excluded it: the Australia group, the nuclear suppliers group, the WASSENAAR arrangement, all of these nuclear cartels that control the civilian trade in nuclear energy. India now wants to be a full member of those clubs.

Mr. ROSKAM. So in that case, I mean, the paradigm has shifted, and what you are describing is more of an opportunity to invite——

Mr. TWINING [continuing]. No, I think it is a longer term socialization opportunity. We have also seen, I know, the Hill India's policies towards Iran were a huge cause of concern during the civil nuclear debates. There was no quid pro quo.

We have seen India vote with the United States against Iran five times now in the IAEA, and so I think that is another example of where the country can be more responsible when it is inside than when it is out.

Mr. ROSKAM. Okay. Thank you.

Mr. TWINING. Thank you.

Mr. ROSKAM. Mr. Subramanian, when you went through your one, two, three and one, two, three, and thank you for doing that in a very organized way, by the way, for one of your comments I wrote down, "Rub some dirt on it," meaning the U.S. should basically get over the regulatory and tax problems.

Can you describe what you meant? In other words, what it sounded like to me as, look, this is really big and complicated, and we are not going to be able to influence this as much as we think we can. So the phrase when a kid bumps himself, "Hey, rub some dirt on it. Get over it and move on." Is that what you are saying?

Mr. SUBRAMANIAN. Well, I would put it in the following way. The thrust is you got it exactly right, but the issue is something that is an important issue because, you know, the first best is, for example, on the civil nuclear, is to get a much better law. There is no question about that.

But what if you don't get that law? What if it's not going to happen? Then I think there is a dilemma for American business.

Mr. ROSKAM. So the point is do not wait.

Mr. SUBRAMANIAN. Yes, because others are getting in.

Mr. ROSKAM. Okay. That is my next question. Who is getting in? How are they beating us to this?

So when this Committee in the last Congress was dealing with PNTR for Russia, for example, one of the recurrent themes and it was very persuasive and agreed was that lack of action on the part of the committee and Congress gives other global competitors an advantage in the Russian marketplace.

And so I think we did the right thing and moved forward on it. Who is beating us to the punch? And what are they doing differently? If it is so complicated for us to get these deals and sort of the nickel and dime stuff of pistachios and chickens as you guys were making these analogies, who is beating us? And are they less sophisticated agreements?

What are we missing or how are these being compared?

Mr. SUBRAMANIAN. That is a great question. So I will just give you an example. On the civil nuclear, I think France and Russia, whatever inadequacies are there in the India law, make it up in some way through kind of government guarantees of some sort, and that is the way.

Mr. ROSKAM. Okay.

Mr. SUBRAMANIAN. I mean, unfortunately we are done here, right?

Mr. ROSKAM. Right.

Mr. SUBRAMANIAN. And so it is a problem, but that is one of the examples of the way they are heading. In infrastructure, for example, I think, you know, the East Asians and Malaysians are getting in in a way that U.S. business is not.

Mr. ROSKAM. Well, what are they doing? What are the Malaysians doing, for example? And then wind it up because we have got the red light.

Mr. SUBRAMANIAN. I mean, I think that essentially partly they are willing to take greater risks because I think U.S. business needs this rule of law comfort, you know, which is very good, but I think it loses out in the process.

Mr. ROSKAM. Okay. Fair enough. Thank you.

Yield back.

Chairman NUNES. Thank you.

Mr. Kind is recognized.

Mr. KIND. Thank you, Mr. Chairman, and thank you for holding this very insightful and helpful hearing, and I want to thank the witnesses for your excellent testimony here today.

This is a crucial relationship, not only geopolitically but economically, and it is one that is going to require a lot of care and nurturing and attention as we move forward, given some of the challenges and the obstacles that we face.

I had a chance, Mr. Chairman, last October to head for India for a few day with Adam Smith, Duncan Hunter, and a couple of other members, and it was not just New Delhi. We got out in the countryside and the various cities, and it was a fascinating place with tremendous potential, but also some huge challenges in regards to our economic relationship.

Ambassador Johnson, I appreciate your update on where we are with the agricultural sphere of it and the difficulties that we still face trying to get India to open up a little bit more in regards to our own egg products.

Coming from my home State of Wisconsin, dairy obviously is a source of concern and, Mr. Chairman, I notice that the National Milk Producers and the Dairy Export Council submitted a statement for today's hearing. I am not sure if it was officially included in the record, but I would ask unanimous consent at this time to have it included if it was not.

Chairman NUNES. Without objection.

[The information follows: Dairy Industry]

MARKET ACCESS FOR U.S. DAIRY PRODUCTS INTO INDIA

The National Milk Producers Federation and the U.S. Dairy Export Council appreciate this opportunity to provide comments to the House Ways and Means Committee's Trade Subcommittee regarding U.S.-India Trade Relations: Opportunities and Challenges. For almost a decade India has imposed barriers against U.S. dairy exports to that country. The U.S. government has repeatedly sought to address India's concerns, yet India has not appeared willing to focus on practical measures aimed at addressing this trade dispute. Our industry is discouraged by India's response to this issue and the inability to find a reasonable resolution after virtually a decade of negotiations.

Background:

In late 2003, following an increase in dairy imports from the U.S. and other countries, India revised its dairy certificate for all imported dairy products. The new language was not something that the U.S. could certify to, thereby effectively closing the market to U.S. dairy exports. Beginning in early 2004, the United States has engaged with India to attempt to find mutually acceptable certificate language. This effort to explore workable alternate language has been primarily one-sided.

The U.S. and India are both major milk producing countries. India is the world's largest milk producer due to its significant cow and buffalo numbers, while the U.S. is the world's largest single country producer of cow's milk. Our two countries would best be served by working more closely together to help further growth goals of both industries and gaps in dairy demand in each country. Cross-investment is a frequent result of closer trading relationships between the U.S. and other nations. Such cooperation is difficult, at this stage, given the lack of a constructive working relationship.

The U.S. has become a significant export destination for India's dairy industry. Indian dairy exports to the U.S. over the past five years averaged $62 million. Sales to the U.S. last year were $52 million, a 27% increase over 2011's total. It is also noteworthy that India has retained access to the U.S. market despite a recent public investigation by India that revealed serious food safety lapses in its dairy system. Over that time period, India has also at times struggled to ensure adequate domestic dairy availability, due in part to weather issues. The temporary bans on exported dairy products that India has had to impose in response to that has undermined its reliability as a supplier. Had India been able to avail itself of a broader range of import sources it could have addressed domestic shortfalls while maintaining its important expansion of export involvement.

India's dairy market is far from open, even aside from SPS barriers. Tariffs are relatively high for most dairy products. For examples, applied rates for skim milk powder are 68%, for whey 36%, for butterfat products 36 – 46%, for cheese 30 – 36%. Among those, tariff-rate quotas with lower in-quota rates are in place only for milk powder and butterfat. Clearly, trade devoid of SPS barriers would not leave India unreasonably exposed to dramatic dairy import surges. U.S. exporters are simply seeking some degree of access, despite these sizable tariff levels; the industry has not insisted on securing duty-free trade.

Issue Detail:

At various times over the past 9 years India has offered up one certificate attestation or another as the primary impediment to resolution of this issue. For instance, the U.S. devoted considerable time and extensive conversations with India to focus on India's requirements with respect to maximum pesticide residue levels. Upon nearing completion of resolution of that matter, the focus then switched to indicating a primary concern with usage in the U.S. of rBST, a product deemed safe by JECFA and stalled in its Codex approval process in significant part due to India's objection. After in-depth government to government discussions on that topic and industry feasibility assessments on its usage, the focus then switched to feeding practices which were then presented as the key obstacle to resolution.

The U.S. dairy industry has attempted throughout that period to exhaustively evaluate what changes in production methods would be feasible for companies interested in the Indian market to implement, even if only on a limited scope (i.e. only some U.S. companies would choose to make the demands on their supplying farmers, thereby narrowing the prospective range of U.S. suppliers to India). In the lead-up to President Obama's late 2010 trip to India, the U.S. dairy industry thoroughly evaluated the full extent of flexibility options that it could consider to attempt to address India's concerns. In order to finally secure a path forward on this issue, industry was even willing to consider unscientifically-supported avenues such as committing exporters to require that their supplying farmers did not use rBST. In a similar fashion, the Administration poured significant resources into engagement with India in the months leading up to that visit. Despite this, India was not willing to entertain practical alternate ways to resolve the issue, particularly with respect to animal feed requirements.

When India ultimately changed its certificate yet again in 2012 in order to further restrict permissible feed options, among other changes, it became abundantly clear to U.S. companies that it was not realistic to make any long-term plans with respect to altered production practices given a continually shifting situation with respect to India's requirements. Current required certificate language is as follows. The primary areas believed to be contentious are bolded (emphasis added):

Veterinary Certificate to be issued by the Official veterinarian

The undersigned official veterinarian certifies that the product described above satisfies the following requirements specified in sections II and III:-

II. General Conditions or requirements

1. Animal rennet has not been used in making of this product.

Or
Animal rennet has been used in making of this product. The product package/container has been labelled accordingly.
(Retain as applicable.)

2. The source animals, from which milk was drawn have never been fed with feeds containing any animal tissues, except milk products.

III. Sanitary Information or requirements

1. The milk / milk product has been processed to make it fit for human consumption.

2. Milk, used for making the milk product, has been processed with a heat treatment which ensures destruction of pathogenic organisms, including, *Mycobacterium bovis sub tuberculosis, Listeria monocytogenes, Mycobacterium avium paratuberculosis, Coxiella burnetii, Brucella sps.* and other bacterial disease-causing organisms.

3. The animals from which the milk has been derived were not administered with Bovine Growth Hormones (BGH) / Bovine Somatotropin Hormone (BST/rBST).

4. The source animals were not treated with estrogen within the last ninety days before the milk was drawn.

5. The milk/milk product (*retain as applicable*) does not contain drug/pesticides/heavy metal residues and levels of mycotoxins above the limits prescribed by the Codex Alimentarius Commission.

6. Milk/ milk product (*retain as applicable*) does not contain pre-formed bacterial toxins such as those produced by bacteria belonging to *Staphylococcus aureus, Bacillus cereus, Clostridium botulinum* and enterogenic *Escherichia coli.*

Note that although only two sections have been bolded above, this reflects an assessment of the U.S. industry's belief on where the primary issues remain, not a guarantee by India that there are no other problems with respect to the other required items.

Regarding the two bolded items above:

- India's ban on the use of any animal tissues in feed is not scientifically supported. India appears to recognize this due to its separation of that issue and the rennet labeling requirement (also not scientifically warranted, but not a requirement that industry believes would be extremely onerous to comply with) from the "Sanitary Information or Requirements" section. Instead, after seven years of negotiations, India asserted in the last few years that this feed restriction is in place due to religious concerns. Despite this, India does not appear to have a reliable oversight system in place within its country to ensure domestic compliance with this and other dairy regulations, as the Indian government study mentioned earlier found. This appears to raise significant national treatment violation concerns.

- India is the only country that bans imported dairy products on the basis of use of rBST during milk production. Scientific evaluations of this drug have consistently found it to be safe for usage, although some countries have chosen not to permit its use in their own countries for primarily trade-related reasons (e.g. Australia and New Zealand) or for perceived animal welfare issues (e.g. European Union). Despite lack of approval for domestic usage in some areas of the

world, none of these other countries bans imported dairy products on that basis, given the understood lack of food safety risk. It is particularly noteworthy that the EU does not restrict imports on this basis, given the EU's extremely cautious approach to the use of many food-related technologies.

India is unique in its application of its restriction to imported product. India's stance is not in keeping with the scientific assessments on rBST by JECFA, nor by multiple countries around the world. This does not appear to be in keeping with India's WTO SPS obligations.

Summary:

The U.S. has provided considerable scientific data in support of our position, compromise solutions to address India's concerns, as well as information demonstrating that the vast majority of countries around the world accept our dairy products and recognize them as safe. Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1 billion, presents a large and unrealized market opportunity for the U.S. dairy industry.

USDEC has calculated that resolution of this issue could yield significantly additional exports after the U.S. dairy industry has been able to establish itself in the market. Resolution of this longstanding issue is critical to maximizing future export possibilities for our industry in that region of the world. Some relatively small levels of trade have taken place since India imposed the import requirements in 2003. However, the risk that a shipment will most likely be rejected at the border due to the lack of agreed-upon dairy certificate has kept most U.S. exporters out of the Indian market.

The U.S. dairy industry is appreciative of U.S. government efforts to resolve this issue and is dismayed it has not been met with a serious effort from India to find a reasonable way forward on this long-standing issue. The industry remains dismayed, however, at the inability to challenge the WTO compliance of India's SPS barriers due to India's last-stage assertion that some of its criteria are religious-based requirements. Despite this asserted basis, the industry believes that there are significant national treatment questions raised about the extent to which India's requirements are equally enforced and monitored within its own dairy farming industry. Without an avenue for legal challenge, however, there is no clear solution and the U.S. appears likely to remain effectively blocked from this rapidly growing market in the years to come at the same time that India continues to benefit from access to the U.S. market for its dairy products and from benefits granted to it through the U.S. GSP system.

The U.S. dairy industry believes that the ideas proposed by Chairman Nunes in H.R. 6537 last year are particularly relevant with respect to major developing nations that take advantage of that unilaterally-granted preferential access to the U.S. market yet in return impose a significant number of intractable non-tariff barriers on U.S. products. The U.S. should examine all potential tools in its effort to encourage compliance by our trading partners with their international obligations.

Our industry desires to work together to forge closer ties with India's dairy industry and expand bilateral investment. That outcome, beneficial to both countries, remains difficult to envision at this stage due to how this issue has been handled and the continued lack of willingness by India to find a workable resolution to this challenge.

Thank you for the opportunity to provide comments on this important issue.

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Mr. KIND. Thank you.

But, Mr. Subramanian, something that you mentioned earlier when you were going through your litany of three things as far as U.S.-India relations, the final one was what not to do, and that is GSP. Obviously that is coming up for reauthorization, and given

the compulsory license decisions that they have made right now, which is very unsettling and could detrimentally affect Indian foreign investment going into the country, but also some of the other hurdles that we have faced, agricultural or otherwise, your recommendation is not to use that as a point of leverage as far as engaging India.

But assuming we did, what would the consequences be if they lost GSP preference from us, and what would that mean as we move forward?

Mr. SUBRAMANIAN. That is a great question, Mr. Kind. My sense is that the loss of GSP in quantitative terms will not be huge for India, you know. India basically exports a lot of high tech, you know, more advanced goods, and apart from a few things here and there, I think the quantitative impact will not be great.

So it does not make for a very strong lever vis-a-vis India, but I think you are going to incur the diplomatic costs because this will be symbolically seen as a kind of, you know, retaliatory action or so. That is why I think on the balance of cost and benefits I would be a little hesitant about using that.

And on the compulsory licensing, I do agree with Mr. Waldron that, you know, there are a few things in Indian law like Section 3(d) of the Indian Patent Act has these requirements for a patent, the efficacy requirement or the working requirement. I think these are things that are well tested in the WTO. I mean, I do not think we need to resort to retaliatory threats to get these changes because I think because India might be out of line with international practice, I think it is good to get an international——

Mr. KIND [continuing]. You think it would be fair game as we come up with reauthorization of GSP to be looking at India and other countries involved, too, in regards to whether we need to at this point in development extend those preferences to India or some others.

Mr. SUBRAMANIAN. Yes, but that should be a more generic discussion, right?

Mr. KIND. Yes.

Mr. SUBRAMANIAN. Because, as I have said, why should a country that grounds GSP receive GSP, and that is true for many countries. But that is a different conversation and a different dynamic from using this as a specific——

Mr. KIND [continuing]. Mr. Waldron, let me go back to the compulsory license issue on that, and assuming they are moving forward on this, what would be the impact on foreign investment or other private companies looking to do business in India if they go down this road?

Mr. WALDRON. Well, I cannot speak to all of the individual countries, but I would say that if you are an innovator and you are trying to sell innovative products there, you are going to find yourself in competition with numerous other products. We have had products on the market there that did not have patent protection, where we were competing against 60 other competitors marking the same thing. So obviously, the consequences of that are dire.

I guess in talking about trade instruments or trade tools, I do think that they are somewhat of a blunt instrument to try to deal with something that you are really trying to get focus on. If you

are trying to focus on specific issues, you may not get that through the revocation of certain preferences or a WTO case, which has all kinds of unintended consequences.

But you really have to send strong messages on the things that you believe are priorities, and I think that that is really the starting point, but obviously we do not have a lot of time.

Mr. KIND. Yes. Well, thank you, Mr. Chairman. I certainly encourage this Committee with your leadership to continue to focus on India and any parliament or congressional exchanges that we might have, too, so that we can have the dialogue at that level I think would be very helpful and productive as we move forward.

Thank you.

Chairman NUNES. Thank you, Mr. Kind.

Mr. Paulsen is recognized for five minutes.

Mr. PAULSEN. Thank you, Mr. Chairman, also for holding this hearing.

Great testimony today. I really have appreciated kind of the reinforcement about what I have heard about these disturbing trends within India kind of turning inward and erecting more barriers to trade and investment and kind of turning back the clock, if you will, and so some real challenging opportunities for us moving forward.

One of Minnesota's largest exports to India is in the area of medical technology, and unfortunately, I understand that the United States medical manufacturers are facing incredible challenges now selling their products in India, including lack of transparency in pricing under India's central government health care scheme, as well as discriminatory government procurement policies.

And there is no doubt that American medical device companies are well positioned to partner with the Indian Government toward improving health care access and outcomes and awareness and developing much need more stronger health care infrastructure, but they are going to have a difficult time doing so in the current environment.

Mr. Waldron, you touched on some of this from the drug perspective. Now, can you also maybe comment from the perspective of maybe how an American medical device company might have difficulty selling their products in India?

And is it going to be helpful to have a renewed or a revised bilateral trade dialogue in this area, addressing this industry's concerns?

Mr. WALDRON. I guess very generally I think it is probably one of the more important tools that might be helpful. I guess it all depends on the particularities of what is included in that. So I would say that if it is amongst the instruments that you could move forward on, but I mean, a lot of medical instruments also depend on intellectual property and sort of the respect for the innovation that is coming in.

So I think it is sort of like part and parcel of the same kind of environment that we are trying to create there. I think we are all experiencing it in the same way. Our innovation really is not being respected, and it is being pushed back.

Mr. GARFIELD. The thing that I would add there is particularly in the context of GSP coming up for renewal, before we get there

I think we have an opportunity to engage in the kind of bidirectional dialogue so that we can talk strategically about differing interests that can help us advance and resolve some of the challenges we are facing in the market, and so it is something that we would highly endorse.

Mr. SUBRAMANIAN. Just a thought on this, the PMA policy. So India, I mean, it is not a member of the Government Procurement Code, and so localization in government contracts is okay, and now it is extending it to the private sector. I think there is a great opportunity here actually through the government procurement route because the government wants to save money in its purchases. Fiscal deficits are very high, and you know, getting the fiscal under control is a major objective.

Therefore, I think getting India into the Government Procurement Code is actually an easier way of, you know, dealing with the PMA policy than it is, in fact, of addressing PMS in the private sector. I think that is the kind of thing that is worth considering, and that is another reason why I think getting India into the WTO, into the Government Procurement Code would be worth pursuing.

Mr. PAULSEN. Let me ask this question, too, because today global supply chains are absolutely playing a more increasing integral role in trade overall, and there are a lot of Minnesota companies that have a strong network of supply chains, you know, 3M, General Mills, Cargill, Equal Labs, C.H. Robinson, Medtronic. The list goes on and on and on.

But more and more of these goods and services now used by producers and consumers contain inputs and value added components from a number of countries rather than just being produced in one country alone. How well is India itself integrated now into global supply chains and how can it improve that integration in the global supply chain? Anybody?

Mr. GARFIELD. It is incredibly well integrated certainly for technology, and that is a part of what is so surprising about the direction in which India has been going in the last couple years, particularly as it relates to the PMA and some of the regulation that we talked about earlier, including the testing or certification or taxes.

They have benefitted. India has benefitted significantly, given the global integrated supply chains that we see today, and given the policies they put in place though, they stand to lose their role as a part of that process, and so our hope is that through these types of conversation, they are able to see as well as we are how we mutually benefit from this relationship.

Mr. PAULSEN. Anyone else?

[No response.]

Mr. PAULSEN. Thank you, Mr. Chairman. I appreciate it.

Chairman NUNES. Thank you, Mr. Paulsen.

I would like to thank the witnesses for their testimony and for the responses to our questions. I think you have given us much to think about concerning the opportunities and the challenges presented by the U.S.-India bilateral relationship.

Our record is open until March 27th, 2013, and I urge interested parties to submit statements to inform the committee's consideration of the issues discussed today.

With that this hearing is now adjourned.
[Whereupon, at 11:42 a.m., the subcommittee was adjourned.]
[Submissions for the Record follows:]

American Bar Association

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March 27, 2013

The Honorable Devin Nunes
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 201515

The Honorable Charles Rangel
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nunes and Ranking Member Rangel:

On behalf of the American Bar Association, I am pleased to submit this letter for the record of the hearing on "U.S.-India Trade Relations: Challenges and Opportunities." We appreciate this opportunity to share with you the importance of global trade in legal services and the significant challenges currently faced by the U.S. legal profession in providing services in India. The ABA believes that addressing these challenges is one of the steps necessary to accomplish the goal of expanding the long-term trade and investment relationship between the U.S. and India.

With nearly 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. Our members include lawyers from practice settings of all sizes and types, and from every U.S. jurisdiction and many foreign countries. Through entities such its Task Force on International Trade in Legal Services and the Section of International Law, the ABA monitors ongoing trade negotiations and other initiatives that impact trade in legal services; informs and educates ABA members and state regulators about legal services trade issues and their implications for the regulation and practice of law in the U.S. and abroad; and regularly communicates with Office of the U.S. Trade Representative (USTR) and the Department of Commerce regarding legal services issues.

The ABA has long supported a liberalized, rules-based system of international trade, both as a mechanism to advance the rule of law and as a means to enhance the ability of U.S. lawyers and law firms to effectively serve their clients through cross-border practice. The ongoing globalization of commercial activity by American individuals and businesses makes it imperative for U.S. lawyers to be able to provide advice and assistance to their clients wherever the clients need that assistance. In 2002, the ABA adopted a policy urging the USTR to seek practice rights for outbound U.S. lawyers equivalent to the practice rights set forth for inbound foreign lawyers in the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants. In support of this policy, the ABA is actively working to enhance the ability of U.S. firms to establish offices overseas and to associate freely with foreign lawyers and law firms.

As you know, the U.S. is the largest exporter of services in the world, and the legal services sector is no exception. The U.S. legal profession is the preeminent player in the global marketplace, with annual exports of more than $7 billion in legal services.[1] With imports averaging approximately $1.7 billion, the U.S. enjoys a strong trade surplus in the legal services sector. More importantly, legal services are a "key input to international commerce: they facilitate trade and investment by increasing predictability and decreasing risk in business transactions."[2] As a rapidly emerging economy and a leading destination for U.S. business and investment, India is a critical market for U.S. lawyers and law firms.

Unfortunately, India continues to be one of the most restrictive markets for U.S. lawyers and law firms. Under a ruling issued by the Bombay High Court in 2009, neither U.S. nor other foreign law firms may establish offices in India. While many U.S. firms maintain India practice groups, they must be managed out of their U.S. offices or offices in other countries, and they must confine their activity to travel to India on a temporary (fly-in/fly-out) basis to provide advice on the law of their home jurisdictions. Yet presently even this very minimal access by U.S. law firms to the Indian market is under threat.

Following the Bombay decision, a suit was filed against a number of U.S. and other foreign firms challenging the right to provide services relating to home country or international law on a temporary fly-in/fly-out basis. In February 2012, the Madras High Court issued a decision finding that there is no bar to foreign lawyers or law firms providing services on a fly-in/fly-out basis for the purpose of giving advice on home country or international law or to their participating in arbitration proceedings involving international commercial transactions. However, the Bar Council of India appealed the Madras ruling and the case is now pending before the Supreme Court of India. *A ruling by India's Supreme Court prohibiting fly-in/fly-out access or participation in arbitration proceedings by foreign law firms in India would have serious consequences for the U.S. legal profession and would likely inhibit U.S. commercial transactions in India as well.*

Prohibiting American lawyers from visiting their India based clients to advise them on matters pertaining to U.S. law, even on a short-term basis, would adversely impact their ability to represent their clients and unnecessarily disadvantage U.S. law firms. Requiring officials of Indian companies to travel outside India to obtain advice concerning non-Indian law would significantly raise the transaction costs of Indian companies, creating an additional impediment to retaining the services of U.S. based law firms. In addition, prohibiting American lawyers from traveling with their U.S. clients to India to advise them on U.S.-related legal issues in connection with transactions, ventures, financings, international arbitrations, or the like being pursued with India-based companies will severely handicap the ability of U.S.-based companies in pursuing activities in India with India counter-parties – activities that will certainly benefit the Indian and U.S. economies and promote bilateral investment and trade.

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[1] U.S. Department of Commerce Bureau of Economic Analysis, Table G. Other Private Services Receipts, *available at* http://www.bea.gov/scb/pdf/2012/10%20October/1012_international_services_tables.pdf [visited March 13, 2013].
[2] United States International Trade Commission, *2011 Annual Report on Trends in U.S. Services Trade*, Pub. 4243, at 7-1 (July 2011).

We would note that in the majority of U.S. jurisdictions, foreign-licensed lawyers, including those from India, may establish an office and provide legal services to clients located in or doing business in this country. The ABA's Model Rule for Licensing and Practice by Foreign Legal Consultants has been adopted by 32 U.S. jurisdictions (including the leading U.S. commercial states, such as New York, California, Florida and Illinois, as well as the District of Columbia). This regime allows lawyers from outside the U.S., upon certain conditions, to establish an office in the relevant state and advise clients, face-to-face or otherwise, on the law of the jurisdictions in which they are licensed without passing any examinations or undergoing any additional training. Indian lawyers also travel frequently to the U.S. on a fly-in/fly-out basis to advise American clients on issues arising out of Indian law. Given the increasing number of cross-border transactions involving India and the U.S. (for example, investments in and acquisitions of U.S. businesses by India-based multi-national companies), this practice is likely to become even more prevalent. *U.S. lawyers and law firms should be provided access in India comparable to that accorded lawyers from India by most jurisdictions here.*

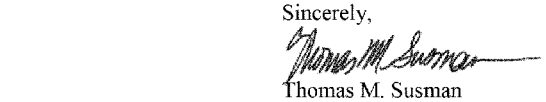
In the short term, the ABA expects to file an amicus curiae brief urging the Supreme Court of India to affirm the Madras decision, which would maintain the status quo (under which lawyers from both countries can visit the other on a temporary basis to advise only on home country law) while the appropriate Indian authorities address the broader issue of permitting U.S. lawyers to have a more established role in India. Ultimately, we would hope that India, as an important U.S. ally and trading partner, will adopt rules and regulations that are consistent with the ABA's Foreign Legal Consultant Rule so that U.S. lawyers and law firms may open offices in India, just as Indian lawyers can in most jurisdictions in the U.S., without the risk of lawsuits and action by courts.

The ABA believes that allowing these activities is critical not only for the mutual benefit of legal practitioners and their clients in both countries, but also to foster the vital relationship between India and the United States and to promote the robust growth of trade and investments between our two countries.

We appreciate ongoing initiatives by the U.S. government to address legal services market barriers in a number of countries. And we are pleased to note that some progress toward liberalization has been made, including most recently in South Korea. However, serious barriers remain in countries, such as India, that are key U.S. trading partners; we urge continued efforts towards reducing or eliminating these market access restrictions around the world.

Thank you for the opportunity to share these comments.

Sincerely,



Thomas M. Susman

ASCAP

March 27, 2013

Submission via http://www.waysandmeans.house.gov

Hon. Devin Nunes
Chairman, Subcommittee on Trade
Trade
House Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

Hon. Charles B. Rangel
Ranking Member, Subcommittee on

House Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

Re: U.S. – India Relations: Challenges for the Public Performing Right in Music Post March 13, 2013 Hearing Submission by ASCAP

Dear Chairman Nunes and Ranking Member Rangel:

On behalf of the over 450,000 songwriter, composer and music publisher members of American Society of Composers, Authors & Publishers ("ASCAP"), we write to commend your Subcommittee's recent hearings regarding our country's burgeoning bilateral trade relations with India. Certainly there are bright spots, but the same cannot be said for the recognition of the public performing right in musical compositions.

Under a reciprocal agreement with the Indian Performing Right Society ("IPRS"), IPRS collects royalties for the public performance in India of music created and published by ASCAP members, while ASCAP does the same for performances in the U.S. of music of IPRS members. Sadly, recent court rulings in India have stripped all holders of the public performing right in music of their exclusive right to control and to be compensated for, the public performance of their musical works when broadcast over the radio or performed in films in cinemas.[1] To make matters worse, in

[1]Ref: Music Broadcast Pvt. Ltd. V. Indian Performing Right Society, suit No. 2001 of 2006 (High Court of Judicature at Bombay, July 25, 2011), and Indian Performing Right Society v. Aditya Pandey, cases CS (OS) Nos. 1185/2006, 6487/2006 and 7027/2006 (High Court of Delhi at New Delhi, July 28,

an effort to "remedy" these cases, India enacted "The Copyright (Amendment) Act of 2012, further amending the Copyright Act of 1957," effective June 21, 2012 (the "Act"). Instead of "fixing" these court decisions, the Act has – in fact – created a whole new set of complexities and confusions. While the Act restores a right of remuneration in the public performing right in music, the Act could be read to make ASCAP and IPRS members wholly dependent for the collection of this remuneration on third parties, the rights holders of sound recordings and films.

Both these court decisions and India's Act, raise serious questions concerning India's compliance with its obligations under the Berne Convention and the TRIPS Agreement. The latter require recognition of the exclusive right of authors to authorize communication of their musical works to the public and receive remuneration directly for such exploitation.[2]

In June of 2012, in response to these developments, and in particular, the fact that the Act does not make it clear whether it applies retrospectively, or only prospectively, IPRS appealed one of the decisions to India's Supreme Court. The international association of performing right organizations ("PROs"), the Confédération Internationale des Sociétés d'Auteurs et Compositeurs ("CISAC") has joined IPRS with a petition of its own, supported by some of the world's larger PROs, including ASCAP. The timeline for a final decision is unclear, but given the well-known tendency of Indian courts to be mired in backlog and delay, resolution, and thus relief, is not expected in the near term.[3]

Below we describe the problems created by the case on appeal, and next turn to why the Act, amending India's copyright law, has not remedied the situation even on a prospective basis, but instead, created a whole new set of encroachments on the public performing right in music.

The Court Decision Now on Appeal to the Indian Supreme Court

The decision of May 8, 2012, *Indian Performing Right Society v. Aditya Pandey ("Pandey"),* now on appeal before India's highest court, its Supreme Court, held—contrary to well-established international copyright laws—that songwriters and

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2011; see also Indian Performing Right Society v. Eastern India Motion Picture Association, AIR 1977 (2) SCC 820.

[2]The Annex attached hereto, provides a more detailed analysis of the ways in which these rulings and the Act appear to violate India's international obligations under Berne and TRIPS. See also Written Submission of the International Intellectual Property Alliance (IIPA) Regarding 2013 Special 301 Review, Feb. 8, 2013, submitted via www.regulations.gov, Docket No. USTR-2012-0022, wherein the problems with the recent Act are also discussed at pages at pages 64-69 ("IIPA Report: India Section").

[3]Estimates of the number of pending cases run anywhere from 20 million to over 31 million cases; some estimate it will take anywhere between 320 to 466 years to clear these cases. See, e.g., http://articles.timesofindia.indiatimes.com/2010-03-06/india/28143242_1_high-court-judges-literacy-rate-backlog; http://www.msnbc.msn.com/id/29164027/ns/world_news-south_and_central_asia/t/report-india-court-years-behind-schedule/ http://www.atimes.com/atimes/South_Asia/JF28Df02.html.

music publishers lose their exclusive public performance right in their musical compositions once the composition is embodied in a sound recording, and by analogy, an audio-visual work or film. As a result of this deeply flawed decision, radio stations broadcasting recorded music would only be required to pay license fees to sound recording companies (or record labels), and would not have to pay license fees to the music creators and publishers represented by IPRS. Similarly, film producers exhibiting films with music can refuse to pay IPRS. A separate case reached a similar conclusion, with the result that broadcasters are increasingly refusing to pay IPRS anything for the public performance of music, including music in the ASCAP repertoire.[4]

In short, the decision effectively disenfranchises the world's songwriters, music composers and music publishers of their exclusive public performance right in music in India, causing economic harm to all of them. Here is why: Through representation agreements with foreign PROs, like ASCAP, IPRS is the designated representative and agent in India for licensing the public performance right in the musical works of effectively all the world's songwriters, music composers and music publishers as well as its own members in India. Under these representation agreements, IPRS collects license fees and distributes royalties on behalf of its own members and the members of the foreign PROs for the public performance of their musical works, whether embodied in a sound recording or an audio-visual program, when that sound recording or audio-visual program is publicly performed.

Similarly, IPRS enters into representation agreements with foreign PROs so that its members' public performance rights in their musical works can be represented in the countries of the foreign PROs. Such is the case with ASCAP and IPRS, which entered into reciprocal representation agreements, effective as of January 1, 2004, that allow IPRS members to receive royalties from ASCAP for performances of their works in the U.S. and allow ASCAP members to receive royalties when their works are publicly performed in India.

The Act Amending India's Copyright Law, June 2012

The 301 Report to the USTR of the International Intellectual Property Association ("IIPA") on India clearly explains why this legislative effort to "fix" the recent court decisions has only created more problems. As summarized by IIPA, Section 18(1) of the Act provides that:

> "the author of a literary or a musical work shall not be deemed to have assigned or waived 'the right to receive royalties to be shared on an equal basis with the assignee of the copyright in two cases: 1) when included in a cinematograph film' for all 'utilization' other than 'the communication to the public of the work along with the cinematograph film in a cinema hall'; and 2) when 'included in the sound recording but not forming part of any cinematographic film.'

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[4]See note 1.

> New Sections 19(9) and (10) of the Act preserve the right of the author to claim an equal share of royalties ['and any other consideration payable'] as to 1) 'utilization' of 'any work' in a cinematograph film in a cinema hall'; and 2) 'utilization' of a 'any work' in a 'sound recording with does not form part of any cinematograph film.'"[5]

These new provisions cast a cloud over the ability of creators of musical works and their publishers to negotiate the terms of the exploitation of their independent exclusive rights, whether through direct contractual relationships, or using IPRS, to negotiate and collect remuneration for them. Instead, authors may be left to seek remuneration from the owners of sound recordings and cinematographic works, without the new Act providing any guidance as to how to do so, nor what "royalties and other consideration" means, nor how to interpret the terms "on an equal basis" and "an equal share." Is it a share of gross or net revenues? What are the permissible deductions? Merely recognizing that authors have a right of remuneration from third parties, over whom they have no control and without making clear the manner in which authors can enforce their remuneration right is not a solution. Moreover, it does not comply with India's Berne and TRIPS' obligations (as detailed in the attached annex).

The Resulting Harm to U.S. Music Creators, the U.S. Economy & Its Balance of Payments

Why are these developments in India harmful to America's music creators? Because our members represent one bright and growing area of the U.S. economy, helping both the smallest of the U.S.' entrepreneurs, its music creators, as well as supporting the continued growth of the copyright industries which contribute to the U.S. job market and economy.[6] For example, despite these challenging economic times, U.S. PROs, like ASCAP receive $5 to $6 dollars for every dollar that they send overseas. The sums received from foreign PROs by three U.S. PROs in 2012, came to close to three-quarters of a billion dollars. Almost all of these royalties were paid to individual U.S. songwriters, composers and authors. Music publishers' royalties, on the other hand, tend to be paid by the foreign PRO to the local subpublisher, and remitted back to the U.S. publisher under its contractual terms with its foreign subpublisher.

Up until these questionable lower court rulings in India, and the confusing attempt to "fix" them through amending India's copyright law, the relationships between ASCAP and IPRS were reciprocal. That is, ASCAP has sent and does send

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[5]See IIPA Report: India Section, at page 65, supra at note 2.

[6]A recent government study found that copyright-intensive jobs accounted for 5.1 million U.S. jobs in 2012, and that between 1990 and 2011, these industries experienced an employment increase of 46.3%. See Economics and Statistics Administration and the U.S. Patent and Trademark Office, "Intellectual Property and the U.S. Economy: Industries in Focus," available at *www.**uspto**.gov/news/publications/IP_Report_**March_2012**.pdf*.

royalties to IPRS for its members; and likewise IPRS sent royalties to ASCAP for its members. With the increasingly popularity in the U.S. of India's music, television programs and movies containing the musical works of IPRS members, these royalties for IPRS are likely to grow.

However, the same cannot be said when looking at the future of American music creators' right to be fairly compensated for the performance of their works in India, against the clear evidence of the ever-increasing popularity and exploitation of American musical works in India.

Up until these recent court and legislative developments, ASCAP had high hopes for increasing its receipt of royalties from India for its members. Why? There are several reasons, including India's increasingly globalized economy, but two are illustrative of these hopes: the growth in India's radio market and the exponential growth of live concerts.

To be clear, royalties received from India by ASCAP, were mostly from radio. While not substantial, they were growing in the past few years, and thus, ASCAP's expectations that American music on radio was on the verge of "taking off" had begun to grow as well due to the convergence of several recent trends in the Indian radio market.[7] First, the Indian government has supported extending FM radio services from about 86 cities, to 227 new cities, which will result in a total of 839 FM radio channels. In addition, India's mobile phone users are increasingly listening to radio on their mobile phones, from 20% in 2009 to 25% in 2011, and that is without taking into account the roll out of new FM stations, as well as increasing listenership on other platforms like the internet and tablets. Third, and most importantly, the growth in stations has led to greater content offerings, shifting content away from traditional movie sound tracks and devotional music, to a broader array of offerings. For example, "Radio One has gone completely English in Mumbai and Delhi, . . . targeting [a] premium audience segment. Fever FM [was] the first radio to experiment in this direction. Hit FM, Radio Indigo, Chennai Live are other [all] English FM stations."

American music publishers and record labels have been following these trends as well: Sony Music established genre-specific music labels, including in urban and hip-hop formats in India; MTV Unplugged entered the Indian market featuring live music performances; and, perhaps of greatest significance, the number of live events, particular by foreign groups, "increased nearly 15-20 times between 2004 and 2011. While in 2004, India had approximately 300-400 live events, the number increased to 6000-7000 in 2011 with ticket prices also increasing substantially."[8] These live events included concerts by a wide and diverse range of well known American songwriters and performers, from Bryan Adams and Metallica to Lady Gaga and the renowned Cuban American rapper and singer, Pitbull, with such foreign concerts garnering far higher ticket prices than local popular artists.

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[7]See http://www.indiabuznews.com/?q+node/3141 , visited March 20, 2013, "M&E Industry: No looking back 3."

[8]Ibid.

Although many issues in the U.S.'s bilateral trade relations with India may be intractable, our issue, that is, restoring the exclusive right in the public performance of music, should not be. Contrary to international principles, creators of music should not be forced – by Indian law – to become dependent on the holder of another exclusive copyright, whether in a sound recording or a film, to obtain remuneration for such performances, on grounds that are not laid out in the law and are ambiguous at best. This problem can be fixed in the near term by restoring the independent and exclusive right in the public performance of music in India, including the right to receive remuneration directly, for all songwriters, composers, authors and their publishers.

Respectfully submitted,

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cc: Members of the Subcommittee on Trade,
House Ways & Means Committee
Rep. Kevin Brady, TX
Rep. Dave Reichert, WA
Rep. Vern Buchanan, FL
Rep. Adrian Smith, NE
Rep. Aaron Schock, IL
Rep. Lynn Jenkins, KS
Rep. Charles Boustany, LA
Rep. Peter Roskam, IL
Rep. Richard E. Neal, MA
Rep. John Larson, CT
Rep. Earl Blumenauer, OR
Rep. Ron Kind, WI
Stanford K. McCoy, Assistant USTR for Intellectual Property & Innovation
Shira Perlmutter, Chief Policy Officer and Director for International Affairs, U.S. Patent & Trademark Office
Karyn Temple Claggett, Assoc. Register of Copyrights and Director of Policy & International Affairs, U.S. Copyright Office
Paul Williams, President, ASCAP
John LoFrumento, CEO, ASCAP
Roger Greenaway, EVP, International, ASCAP
Randy Grimmet, EVP, Membership
Elizabeth Matthews, EVP & General Counsel
Willie Yeung, Asia Pacific Rep., ASCAP
Alec French, Thorsen French Advocacy
Harriet Melvin, The Capitol Group

ANNEX: INDIA's POTENTIAL VIOLATIONS OF THE BERNE CONVENTION AND THE TRIPS AGREEMENT

For the Subcommittee's benefit, set forth below is a more detailed explanation of why if the decision were to be upheld, and the 2012 Amendment to India's Copyright Law not changed, the Indian Government will be in breach of its international obligations under the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention") and the Agreement on Trade Related Aspects of Intellectual Property Law (the "TRIPS Agreement").[9] Either way, India's current position is inconsistent with the laws of all other Member States of the Berne Convention, including those of the U.S[10]

THE OBLIGATIONS OF INDIA UNDER THE BERNE CONVENTION

The Berne Convention protects the rights of authors in their literary and artistic works (art. 1). "Literary and artistic works" are defined in art. 2(1) as including *inter alia* "musical compositions with or without words." The expression "with or without words" in the Convention means that any words accompanying the music are protected like the music itself.[11] The works mentioned in art. 2 shall enjoy protection in all countries of the Union and the protection shall operate for the benefit of the author and his or her successors in title (art. 2(6)). This includes those who, for whatever reason such as transfer or assignment, become entitled to the copyright.[12] Thus, India as a party to the Berne Convention is obliged to protect "musical compositions with or without words" as works and to ensure that such protection benefits the owners of the copyright in such works.

The Berne Convention is governed by the principle of national treatment. The principle is laid down in art. 5 of the Berne Convention, which reads as follows:

> "(1) Authors shall enjoy, in respect of works for which they are protected under the Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention". [Emphasis added.]
> (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his [or her] rights, shall be governed exclusively by the laws of the country where protection is claimed.
> (3) Protection in the country of origin is governed by domestic law. However, when

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[9]India's international copyright obligations have been implemented by the International Copyright Order, 1999 (S.0.228E of 24 March 1999, published in the Gazette of India, Extra Pt II, Sec. 3(i) dated 6 April 1999).

[10] The analysis set forth below synopsizes the Expert Opinion of Dr. Gillian Davies, submitted to the Supreme Court of India on January 31, 2013, to accompany CISAC's application. Dr. Davies is based in London, and is an internationally recognized authority on intellectual property, and particularly copyright, having spent over four decades working and publishing in the field.

[11]WIPO Guide to the Berne Convention, 1978, para. 2.6(e)

[12]WIPO Guide, para. 2.22.

the author is not a national of the country of origin of the work for which he [or she] is protected under this Convention, he [or she] shall enjoy in that country the same rights as national authors."

Thus, the Convention sets a minimum standard of protection and art. 36 thereof states that, at the time a country becomes bound by the Convention, it is understood that it will be in a position under its domestic law to give effect to the provisions of the Convention. Thus, the statement made in the *Pandey* decision, now on appeal to India's Supreme Court, where the Court held in relation to the impact of international conventions that "It is always open to a legislature keeping in view the socio-economic conditions in a country to confer lesser or larger rights" is incorrect insofar as conferring lesser rights are concerned. The minimum rights of the Berne Convention must be implemented but it is of course open to parties to the Convention to confer greater rights and in such case nationals of other Member States would benefit from such rights under the principle of national treatment.

The right of public performance of authors of musical works is laid down in art. 11 Berne Convention, which provides:

"(1) Authors of dramatic, dramatico-musical <u>and musical works</u> shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;
(ii) any communication to the public of the performance of their works.

Art. 11 *bis* concerns the right of broadcasting of authors of all literary and artistic works, including authors of "musical works with or without words." In this respect, authors enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication to the public by any other means of wireless diffusion of signs, sounds or images;
(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

These provisions apply to both sound and television broadcasts to the public and are cumulative.[13]

Thus, India is obliged by the Berne Convention to recognize the rights of public performance, broadcasting and communication to the public of the authors of all "works" as defined under art. 2(1) of the Convention, including both the Indian authors of works represented by the IPRS and also the Berne Convention nationals who are the authors of the works represented by ASCAP and other foreign PROs around the world.

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[13]WIPO Guide, para. 11 *bis* 14.

SOUND RECORDINGS ARE NOT COVERED UNDER THE BERNE CONVENTION

Sound recordings are not included in the definition of the expression "literary and artistic works" laid down in art. 2(1) of the Berne Convention. Nevertheless, they are protected under the TRIPS Agreement and by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 The Rome Convention). But, India is not party to the Rome Convention.

However, art. 9(1) of the Berne Convention gives authors of literary and artistic works the exclusive right of authorizing the reproduction of such works in any manner or form and art. 9(3) specifies that any sound or visual recording shall be considered to be a reproduction.

As a result of the different rights granted to authors and producers of sound recordings, separate rights subsist with respect to: (a) the music and lyrics embodied in a sound recording; (b) the fixation of the performances recorded on it; and (c) the sound recording itself. Someone who wishes to exploit the sound recording in whatever manner including by public performance, broadcasting or communication to the public must, therefore, acquire or clear all these separate rights. Any unauthorized exploitation will be actionable by any individual right owner. This was the situation under the Indian Copyright Act 1957 (prior to the 2012 Act) and under the U.S. Copyright Law. Importantly, when an author authorizes the reproduction of the author's musical and literary work in a sound recording, the author does not also give a license to the producer of the sound recording to publicly perform, broadcast or communicate to the public the work embodied in the phonogram. Rather, the author retains those separate rights. In addition, to the extent that national law provides the producer of the sound recording with a public performance right, that right is completely independent of, and not subordinate to, the public performance right in the musical composition and lyrics embodied in the recording.

THE OBLIGATIONS OF INDIA UNDER THE TRIPS AGREEMENT

Art. 2 of the TRIPS Agreement imposes an obligation on Members to comply with the substantive provisions of the Berne Convention, namely arts. 1 - 12 and 19, which include all the Berne Convention provisions already referred to above. The obligation to accord national treatment to authors who are nationals of the Berne Convention is laid down in art. 3. The TRIPs Agreement provides for a dispute settlement procedure under the World Trade Organization (WTO) (art. 64). Under this procedure, sanctions may be imposed on a Member, which fails to comply with its obligations under the TRIPS Agreement, including the obligation to comply with the substantive provisions of the Berne Convention. Thus, should the impugned decision be upheld and the law not amended, India could find itself the subject of a complaint filed under the TRIPs dispute settlement procedure and at risk of trade sanctions being imposed.

BIO

HEARING STATEMENT

United States House Ways and Means Subcommittee on Trade

U.S.- India Trade Relations: Opportunities and Challenges

March 13, 2013

Executive Summary

- The Biotechnology Industry Organization (BIO) represents more than 1,100 innovative biotechnology companies including many small and medium sized enterprises, and institutions in all 50 states, leading companies in the production of conventional and advanced biofuels, renewable chemicals and other sustainable energy and manufacturing solutions.

- Biotechnology is a capital- and time-intensive industry requiring hundreds of millions of dollars of investment and often more than a decade of development time.

- Accordingly, biotechnology companies are heavily reliant on intellectual property protection to generate the investment funding necessary to research, develop and commercialize innovative biotechnology products.

- India's recent actions relating to intellectual property are of significant concern to BIO. Specifically, the Indian government has revoked the patents of three medicines that are in force in over 100 countries, and it has issued a compulsory license for a fourth medicine. In January 2013, the government signaled its consideration of three additional compulsory licenses for three commonly used anti-cancer drugs. In March 2013, a petition for a compulsory license was filed with the Indian patent office on one of these drugs.

- BIO is concerned that these recent actions by India threaten economic growth in the U.S. biotechnology industry and the United States generally. Moreover, India's weakening of IP for biopharmaceuticals harms the competitiveness of the U.S. innovative pharmaceutical sector in India. But

even more harmful is the real possibility that other countries that view India as a leader and policy pioneer will follow in India's footsteps.

- BIO urges the U.S. government to review all available policy tools in light of India's deteriorating intellectual property environment and to send a strong signal to the Indian Government and to other governments that such actions are not condoned and will not be tolerated by the U.S. government.

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HEARING STATEMENT

United States House Ways and Means Subcommittee on Trade

U.S.- India Trade Relations: Opportunities and Challenges

March 13, 2013

The Biotechnology Industry Organization (BIO) applauds the House Ways and Means Subcommittee on Trade on its review of U.S.- India trade relations, taking into consideration both the opportunities and challenges in India.

About BIO and the Biotechnology Industry

The Biotechnology Industry Organization (BIO) is a non-profit organization with a membership of more than 1,100 biotechnology companies, academic institutions, state biotechnology centers, and related organizations worldwide. BIO's members, which range from start-up businesses and university spin-offs to Fortune 500 corporations, are involved in the research and development of healthcare, agricultural, industrial, and environmental biotechnology products.

Since its inception roughly 30 years ago, the biotechnology industry has spurred the creation of 7.5 million direct and indirect jobs in the United States and hundreds of innovative products that are helping to heal, feed, and fuel the world. In the healthcare sector alone, the industry has developed and commercialized more than 300 biotechnology therapies, cures, vaccines, and diagnostics that are helping worldwide to prevent disease, and to aid those who are suffering from cancer, HIV/AIDS, and numerous other serious diseases and conditions; another 400 or so biotechnology medicines are in the pipeline. Synthetic insulin and human growth hormone are two examples of how biotechnology has changed human healthcare.

Prior to biotechnology, insulin, the hormone that regulates blood sugar levels, was once available only from the pancreases of slaughtered cows or pigs to treat diabetes. In the late 70's, through a biotechnology process, the first synthetic human insulin was produced in bacterial host cells[1]. Unlike pig and cow insulin, synthetic insulin does not cause allergic reactions in human patients and is available in abundant quantities. Human growth hormone (HGH) used to be extracted from the pituitary glands of human cadavers. Biotechnology processes enabled the production of this molecule in bacterial cultures and thus made it available for wider therapeutic applications. Recombinant HGH is now used to treat a variety of childhood and adult growth disorders.

In the agricultural field, researchers continue to work on ways to feed more people at lower cost and with less environmental impact by identifying and using genetic markers associated with natural resistance to insects and diseases, resistance to environmental stresses such as drought and temperature fluctuations, and improved characteristics such as lower nutrient use and higher yield. Biotechnology is also being used to drive improvements in food processing, food safety, and quality assurance. Biotechnology further holds great promise in combating food borne illness, a major public health issue affecting millions of people each year[2].

Biotechnology companies are also leading the way in creating alternative fuels from renewable sources without compromising the environment. Through biotechnology enzymes can be made to decrease energy use, replace harsh chemicals in industrial processing, and produce biofuels and green plastics without the use of petroleum, helping to reduce dependence on "dirty" energy sources and mitigate global climate

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[1] Press Release, Genentech, *First Successful Laboratory Production of Human Insulin Announced* (Sept. 6, 1978).
[2] BIO, *Guide to Biotechnology* 37 (2008).

change. But we have yet to scratch the surface of the tremendous innovative potential that exists within the industry.

Intellectual Property Protection and Biotechnology

By its very nature, and because biotechnology springs from early-stage/hypothesis-driven research laboratories, developing biotechnology discoveries into products for the public is, even under the best of circumstances, a time-, risk-, and capital-intensive endeavor. On average, it takes more than 10 years to develop a biotech medicine or a plant improved through agricultural biotechnology from its inception to regulatory approval and finally to market launch. The average fully capitalized cost of developing a new medicine has been estimated at $1.2 billion[3] and a new biotechnology-derived plant product at $133 million.

Most biotechnology innovation begins in the laboratory where a particular gene of interest is identified in association with some biological phenomenon. This gene may have some correlation with a specific disorder or disease or perhaps a new plant trait or enzyme. Further research and development of these promising discoveries can take years, even decades, and hundreds of millions of U.S. dollars to achieve. Biotechnology innovators generally patent these promising discoveries to (a) increase the likelihood of further research, development and commercialization of these discoveries by the innovators or on their behalf; (b) generate interest from investors to perform further research on these discoveries; and/or (c) license them to potential partners or developers. In these situations patents are critical as instruments to assure investors that their investment is secure, has the potential to be recouped, and is transferable. Thus it is no surprise that inadequate patent rights, or an absence of patent rights, will severely hinder

[3] J. A. DiMasi and H.G. Grabowski, "The Cost of Biopharmaceutical R&D: Is Biotech Different?," Managerial and Decision Economics 28 (2007): 469–479.

the development and commercialization and hence the availability of promising biotechnology discoveries.

Once a biotechnology product has been developed, unlike most other products, it must go through regulatory approval before it can be commercialized. This regulatory approval process, for example in the drug industry, can be the most cost-intensive portion of the drug development process. Generating the regulatory data package that is required by various regulatory authorities to demonstrate the safety and efficacy of a product comprises 90 percent or more of the cost of developing an individual drug all the way from laboratory to pharmacy.[4] Therefore, protection for biotech products must include sufficient protection against foreign and domestic competitors relying on the innovator's data package to secure abbreviated approval of competitive products in the market. Under the best of circumstances biotechnology R&D and commercialization is risky. Today's economic and investment climate has only served to exacerbate this difficult process.

The Impact of India's Policies and Actions on Biotechnology

In India, BIO's members have partnered with Indian companies, built research facilities, and are collaborating with its research institutions. To its credit, India has recognized the benefits of biotechnology. It has invested billions of dollars into biotechnology and has developed a national strategy that calls for, among other things, predictability in the IP system.[5] India boasts over 350 biotechnology companies employing over 20,000 scientists and contributing over US$2 billion to the Indian economy.[6]

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[4] Stifling New Cures: The True Cost of Lengthy Clinical Drug Trials, Manhattan Institute Project FDA Report No. 5, March 2012

[5] India's "National Biotechnology Development Strategy" found at http://dbtindia.nic.in/biotech_strategy.htm.

[6] "Tenth Annual Biospectrum-ABLE Survey of Indian Biotech Industry", June 2012, found at http://www.ableindia.in/able_biospectrum_surveys.php.

However, the Indian Government's vision for biotechnology does not correspond with the anti-innovation policies it has implemented. In fact, rather than support its vision with innovation-friendly initiatives and policies, the Government of India has taken actions that have resulted in a serious deterioration of the environment for biotechnology, especially over the last 12 months. This environment not only impacts biotechnology innovation and R&D in India, but also has the potential to impact biotechnology innovation and R&D – and by extension, innovative life-saving products – in the United States and elsewhere.

BIO's members have witnessed, and been subject to, a growing trend of anti-IP developments in India that is creating significant uncertainty in the market and negatively impacting the biotechnology industry.[7] Despite being a member of the World Trade Organization, India has systematically failed to interpret and apply its intellectual property laws in a manner consistent with recognized global standards. As an example, India's Patents Act includes Section 3(d), which explicitly excludes from patentability new forms of a known substance that do not result in "enhancement of the known efficacy of that substance." [8] This requirement excludes from patentability many significant inventions in the pharmaceuticals area, e.g., new forms of known substances with improved heat stability for tropical climates, or having safety or other benefits that may not result in "enhanced efficacy" *per se*. India also has not yet implemented any meaningful protection for the regulatory data that must be generated to prove that pharmaceutical and agricultural chemical products are safe and effective. Under Article 39.3 of the TRIPS Agreement, protection must be extended against unfair commercial use of such data by makers of generic copies of innovator products.

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[7] BIO's 2013 Special 301 Submission http://www.bio.org/sites/default/files/2013%20BIO%20Submission.pdf
[8] A court decision addressing this issue is expected to be released on April 1st.

More recently, the Indian government has revoked the patents of three medicines that are in force in over 100 countries, and it issued a compulsory license for a fourth medicine. In 2012, the Indian Patent Office (IPO) invalidated or revoked patents for AstraZeneca, Roche, Pfizer, and Merck. It also issued a compulsory license on a Bayer product, and in January 2013, the government signaled its consideration of three additional compulsory licenses for three commonly used anti-cancer drugs[9]. In March 2013, a petition for a compulsory license was filed with the Indian patent office on one of these drugs[10].

BIO has long been concerned that if this behavior by the Indian government is left unchecked, other countries will follow in its footsteps, and this, in fact, seems to be happening. In late 2012 Indonesia issued compulsory licenses to seven pharmaceutical products,[11] and Greece is being urged to look at compulsory licensing as a means to reduce the cost of medicines[12]. If this trend continues, the investment that pharmaceutical companies make in biotechnology R&D as partners and as instigators of biotechnology research will diminish as these companies are forced to reassess their R&D investments. Moreover, investors are likely to look elsewhere for less risky investments as it becomes apparent that biotechnology products once successfully developed can potentially be subject to compulsory licenses in various markets. Consequently, early stage biotechnology companies may be forced to stop or significantly delay development of promising innovations and to cut back on R&D activities. This can in turn affect the creation of new, high-

[9] The Indian Express--http://www.indianexpress.com/news/govt-moves-to-make-three-key-cancer-drugs-cheaper/1058247/
[10] Reuters, March 18, 2013--http://www.reuters.com/article/2013/03/18/us-india-bdrpharma-drug-idUSBRE92H0F620130318
[11] Reuters, October 12, 2012--http://www.reuters.com/article/2012/10/12/us-indonesia-hiv-idUSBRE89B0O620121012
[12] Financial Times, March 17, 2013--http://www.ft.com/intl/cms/s/0/ade78168-8f3a-11e2-a39b-00144feabdc0.html#axzz2OEMg9hgE

value jobs and the availability of innovative products for those who need them most.

BIO is concerned that these recent actions by India threaten economic growth in the U.S. biotechnology industry and the United States generally. IP-intensive industries of which the biotechnology sector is a part, accounted for about $5 trillion in value added or 34.8% of the U.S. GDP in 2012 and supported 27 million jobs directly[13]. There is no question that India's weakening of IP for biopharmaceuticals harms the competitiveness of the U.S. innovative pharmaceutical sector in India. But even more harmful is the example India's actions provide for other countries that view India as a leader and policy pioneer. Without significant political pushback by the United States and like-minded governments, India may end up worsening the environment for U.S. IP throughout the developing world, restricting export opportunities for our innovative biotech companies, many of which are exactly the small companies U.S. policy should be encouraging to export. Such IP policies also jeopardize biotechnology R&D in the United States and advances in public health, as the revenues of today are funding the research necessary to develop new and innovative medicines of tomorrow. As we have also pointed out, it will have the effect of discouraging biotechnology innovation in India.

Finally, the anti-IP actions of the Government of India reflect industrial policy in the guise of health policy. The Government of India of India consistently under-spends on health care. In 2010, it spent only 1.19% of GDP on healthcare. This is well below the expenditure of other developing countries. For example, Brazil's government spent 4.23% of its GDP on healthcare, China 2.73%, and South Africa

[13] Intellectual Property and the U.S. Economy: Industries in Focus, A report prepared by The Economics and Statistics Administration and the United States Patent and Trademark Office. http://www.uspto.gov/news/publications/IP_Report_March_2012.pdf

3.9%. Even more telling, India's figure is significantly less even than many least developed countries, including Botswana, which spent 6% of its GDP on healthcare, Angola 2.39%, Burkina Faso 3.4%, Congo 3.35%, Gambia 2.89%, and Cameroon 1.5%.[14] In 2011-2012, the Government of India healthcare spending dropped even further to 1.04% of GDP.[15] Rather than increasing healthcare spending to an amount consistent with its level of development, India chooses instead to effectively shift costs to the very party that is developing new healthcare options.

Conclusion

Decisions to issue compulsory licenses and otherwise weaken U.S. biotechnology IP rights have been done in a manner that benefits Indian manufacturers and other domestic stakeholders to the detriment of U.S. innovators and exporters. India's actions have the potential to affect biotechnology R&D and innovation in the United States and elsewhere. BIO urges the U.S. government to review all available policy tools in light of India's deteriorating intellectual property environment and to send a strong signal to the Indian Government and to other governments that such actions are not condoned and will not be tolerated by the U.S. government.

[14] Data taken from the World Bank at http://data.worldbank.org/indicator/SH.XPD.TOTL.ZS/countries. Specific percentages given are a combination of the Health Expenditure, total (% of GDP) which measures public and private spending and the Health Expenditure, public (% of total health expenditure) to reflect public spending.
[15] http://forbesindia.com/article/universal-health-care/health-care-industry-captains-are-wary-of-newer-bets/34909/1

Blue Diamond Growers

Statement

Of

Blue Diamond Growers

Before the
Committee on Ways and Means
Subcommittee on Trade

Hearing on U.S.-India Trade Relations: Opportunities and Challenges
March 13, 2013

This statement is submitted on behalf of Blue Diamond Growers. Blue Diamond Growers is a 3,000 member, non-profit farmer-owned marketing cooperative headquartered in Sacramento, California. We employ 900 people in Sacramento; 400 in Salida; and we will employ up to 100 in Turlock by May 2013 for a total of 1400 people in California. The California almond industry, overall, provides about 50,000 jobs in California. New jobs and additional revenue will be returned to almond growing communities as California production and value-added products continue to grow. Over 80 percent of the world's supply of almonds is grown in California. Almonds are the state's largest food export, and the largest specialty crop export in America.

Blue Diamond Growers obtains its supply of almonds from its member/owners, and sells them to retail chains and food processing, confectionery and food service companies in nearly 100 nations around the world. Presently, the 2-billion pound almond crop is valued at $6 billion, and almond production continues to expand in order to supply the world.

Blue Diamond Growers believed that the market in India would be a very large market, if access could be obtained. Blue Diamond began to export almonds to India in the 1960s and the effort to open the market in India began in a dedicated manner in the mid-1970s. It was a team effort with USDA, USTR and Blue Diamond. At that time, India permitted only small quantities of almonds to be imported for medical purposes.

Our first exports were very limited because there were many barriers. It seems appropriate to the effort that has gone into obtaining market access in India. Because of this effort, almonds are the number one U.S. agricultural export to India. Sales have increased 145 percent in India over the last 10 years. In 2012, India was the 3rd largest export market for California almonds after China and Spain.

One of the reasons the market grew in India is because almonds enjoy a revered reputation in Indian culture. Almonds play an integral part in Indian religious ceremonies, weddings, festivals, and day-to-day life. Many Indian families give their children almonds every morning before school, because they firmly believe almonds are good for the brain and will help their children do better academically. Now, the younger, more western Indian consumers, not only have their own strong beliefs regarding the special benefits of almonds passed down by their parents, but many of almonds' health benefits are now backed up with modern, scientific studies. According to the latest research conducted by the industry, 95% of respondents claim to have consumed almonds in the previous month, and 66% claimed to be consuming almonds year round.

Blue Diamond has been the pioneer in bringing American almonds to India by: promoting them; creating a mass market through print & media advertising; and starting a variety of promotional programs throughout India.

In the mid 1970's, market research showed that there were a large quantity of almonds present in the market in India. Virtually all these almonds were smuggled into India. This problem has returned, but it will be addressed later in this statement. It was this smuggling that became the basis of the argument to gain market access. India, which needed foreign earnings, learned that if almonds could enter their country with a duty, they would receive additional revenue. These efforts did begin to open the market, and India received additional revenue.

At the same time that India allowed U.S. almonds to be imported at a tariff rate of 120%, India allowed almonds to enter from Afghanistan and Iran at preferential rates. The next year, almonds were put on open, general licensing with the minimum value of import licenses set at rupees 50,000. India then increased the margin of preference on Afghan almond imports.

The next year, it reduced the preference for Afghan almonds.

In 1981, almonds were placed by India on restrictive licensing. In 1983, India removed the discriminatory customs valuation practices against U.S. almonds. At the same time, it raised the tariff on U.S. almonds to 185%. The Indian Parliament granted

authority to increase the almond tariff to 200%, but this was never done. Blue Diamond Growers found that there was strong demand in India for almonds, even when the duty rates were extremely high.

In 1984, India moved from the ad valorem duty to a specific duty of rupees 56 per kilogram on shelled almonds and rupees 28 per kilogram on soft-shell almonds. This was a big help to our exports.

In 1985, the minimum value of import licenses was reduced to rupees 5,000.

With this humble start, Blue Diamond Growers continued to work with its government to open the market in India. The next step occurred in the late 1980s. In 1988, an agreement was reached between India and the United States that allowed major progress to be made. The Indian government agreed to allow global import of almonds for a three-year period, ending March 31, 1991 at the level of $20 million annually.

India also agreed, at the same time, to increase the minimum value of import licenses to at least 20,000 rupees. The Indian licensing system was such that a market in import licenses was created. Traders purchased import licenses, even though they had no interest in the almond trade itself. Almond import licenses became a valuable commodity in and of themselves. This limited the trade.

India also agreed that if its balance of payments allowed, it would agree to place imports of almonds on the open, general licensing schedule beginning April 1, 1991 and to leave them this way for a three-year period. This agreement was reflected in an exchange of letters dated May 31, 1988 between U.S. Ambassador Clayton Yeutter and Ambassador P.K. Kaul for India.

The next significant event occurred in the early 1990s. India and the United States agreed in 1992 to adjust the tariffs on in-shell almonds to rupees 55 per kilogram and on shelled almonds to rupees 100 per kilo. At the same time, India also re-affirmed its intention to bind these tariffs at this new level under article 28 of GATT.

In 1994, India, without notice, announced its intention to increase the duty on in-shell almonds to the level of rupees 60, which violated the existing agreement and binding. At the same time, it announced its intention to reduce the duty on shelled almonds to rupees 80, thereby changing the margin between inshell and shelled. This action immediately hurt U.S. almond exports to India. The margin between shelled and inshell is critical and must be maintained.

In response to this, USTR began to consider the initiation of a section 302(b) investigation. Intense negotiations began to resolve this problem. For the second time in the history of U.S.-India almond trade, exports of almonds reached the highest levels in both governments. Eventually, President Clinton and the Indian Prime Minister agreed to restore the margin between shelled and unshelled. At the same time, India agreed to reduce the duty on almonds to rupees 44/kg for inshell and rupees 80/kg for shelled almonds.

In 1997, India stated that importers could either pay the specific duty on almonds, which was increased, or an ad valorem rate. India provided an option to permit imports at 40% ad valorem plus a 2% surcharge. This was very adverse to U.S. almond exports. After intense negotiations, India removed the ad valorem rate, but did not restore the original agreed upon specific duty rate for almond imports. The rate remains at the increased level of rupees 55 for inshell and rupees 100 for shelled. It is critical that these specific duties be retained and not converted to ad valorum duties.

The next significant issue was the imposition of phytosanitary measures in 2004. India mandated that almonds be fumigated with methyl bromide. This was done without scientific justification or WTO notification. The introduction and immediate implementation of new phytosanitary standards threatened almond imports into India during the main festival season, which is the peak import and consumption period.

Almonds shipped to India have always been treated with phosphine, which is effective. India is the largest manufacturer of phosphine in the world.

After significant negotiations, India agreed to allow the United States to continue to use phosphine, provided testing was done on the efficaciousness of phosphine on Indian meal moth, Mediterranean flower moth, and tobacco moth. Scientific literature reports that India is a host for two of these moths and none are found in the United States. Nevertheless, a protocol was established and tests were conducted establishing the effectiveness of phosphine. Almonds were allowed to continue to be exported to India, fumigated with phosphine.

Throughout much of this period, India has imposed a special additional duty on almond imports of 4%. This illegal, special additional duty is imposed on inshell almonds, even though it results in a combined duty rate in excess of the specific agreement between the U.S. and India. Additionally, it causes the duty being collected on inshell almonds to exceed the bound rate. Blue Diamond Growers has worked with its

government to establish the illegality of this duty, which is not charged on domestic almonds.

The investment in the retail trade by the largest business houses in India has led to a certain organization of the almond importers. They are able to look into and identify the needs of the consumers either directly, or through the new retail formats. The number of importers servicing the new retail formats might be considered low. However, this makes sense, because on a macro level, organized retail accounts for not more than 15% of the total Indian retail industry.

With larger almond crops in California, the Indian market for inshell almonds is absolutely vital to the success of the California almond industry. The Indian market has shown strong growth, especially over the last 8 years. This market now imports almost $300 million dollars of almonds a year from California. This market still has the capacity to grow over this benchmark substantially in the coming years. This is because the current duty structure is acceptable to our Indian customers.

As has been shown, India is and will continue to be a very important export market for California almonds.

The table below clearly demonstrates the continued growth in exports to India. This growth has occurred due to the strong demand in India. The growth has occurred due to the persistent work of the U.S. Government and Blue Diamond Growers over a long period of time. This progress was recorded above.

The following table[1] shows the growing export of inshell almonds to India for the past five years:

Inshell:	Year	Value (in 1000 dollars)
	2008	140,849
	2009	138,770
	2010	196,119
	2011	256,281
	2012	278,890

[1] Data Source: United States Department of Agriculture, Foreign Agriculture Service, Foreign Trade Statistics

The following table[2] shows the export of shelled almonds to India for the past five years:

Shelled:	Year	Value (in 1000 dollars)
	2008	35,328
	2009	35,648
	2010	31,868
	2011	30,111
	2012	34,076

It should be noted that U.S. government statistics rarely agree with industry statistics. Official U.S. government statistics show far more shelled almonds being exported than actually occurs. Most of what is shown as shelled almonds is actually inshell almonds.

As referenced above, the current and very serious problem of smuggling almonds into India is undermining our persistent efforts to grow a strong market in India.

The current smuggling route starts with California almonds shipped to Dubai and then Pakistan via overland through Iran and under invoiced at 1/6th the real cost at entry into Pakistan. This usually happens in Quetta, Pakistan. The almonds are then repacked from the original cartons into bags to hide the origin of the almonds. From this point, they are shipped to Kashmir and then into India. The free trade agreement between Kashmir and Pakistan in 2008 makes such smuggling attractive. It goes without saying, that this channel is distorting the trade channels for almonds into India. Consequently, our good customers in India are at a competitive disadvantage when competing for business in their markets.

It is estimated approximately 10 million pounds of almonds are smuggled through this route each year and this channel is expected to increase significantly in the future. While 10 million pounds may not seem to be a very large amount, the timing of the smuggling activity during harvest and key shipment periods have a negative effect on the trade. The dollar amount for this trade is over $27 million, and is lost business for California almonds shipped directly to India. These prices are also used to bring down

[2] Data Source: United States Department of Agriculture, Foreign Agriculture Service, Foreign Trade Statistics

the world almond market prices. It is rumored this trade is being financed by people with terrorist connections in Pakistan and Kashmir. This activity also takes away shelling jobs from the Indian workers, who are employed to shell almonds. The Indian press has reported that 20,000 Indians are employed in this manner.

The Indian Government stepped in last year to stop this smuggling and was successful. Unfortunately, it has now returned. It is hoped that the Indian government will once again act to stop this smuggling. The smuggling causes a loss of revenue for the Indian Government and a loss of jobs for its citizens. It also hurts sales of U.S. almonds to India.

Any assistance this Committee can provide to encourage India to stop this smuggling would be most appreciated. If India cannot stop the smuggling, one solution is to reduce the import duty for inshell California almonds into India from Rs 65/kilo to Rs 10 /kilo. This duty reduction should only be applicable to the inshell duty for almonds. This will eliminate the duty advantage enjoyed by the smuggled trade.

The good state of Indo-US relations today allows for greater cooperation, and thus an amicable atmosphere to work and resolve issues. For Blue Diamond, this has been achieved by our persistent interaction with the Indian Government, either directly or through Indian importers. Blue Diamond Growers' experience is that by working closely with our government, exports to India will continue to grow. It requires patience, perseverance, and dedication. Blue Diamond Growers thanks all those that have worked so hard to open this market for its farmer members. Special thanks go to the dedicated individuals in USDA and USTR. Blue Diamond Growers also thanks the government of India for its cooperation in making almonds available to the consumers in India.

Blue Diamond Growers especially thanks this Committee for holding this important hearing on a very important and growing export market. It is appreciated that this Committee is willing to receive this statement.

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Confederation of Indian Industry

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the growth of industry in India, partnering industry and government alike through advisory and consultative processes.

CII is a non-government, not-for-profit, industry led and industry managed organisation, playing a proactive role in India's development process. Founded over 117 years ago, it is India's premier business association, with a direct membership of over 7100 organisations from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 90,000 companies from around 250 national and regional sectoral associations.

CII catalyses change by working closely with government on policy issues, enhancing efficiency, competitiveness and expanding business opportunities for industry through a range of specialised services and global linkages. It also provides a platform for sectoral consensus building and networking. Major emphasis is laid on projecting a positive image of business, assisting industry to identify and execute corporate citizenship programmes. Partnerships with over 120 NGOs across the country carry forward our initiatives in integrated and inclusive development, which include health, education, livelihood, diversity management, skill development and water, to name a few.
The CII Theme for 2012-13, **'Reviving Economic Growth: Reforms and Governance,'** accords top priority to restoring the growth trajectory of the nation, while building Global Competitiveness, Inclusivity and Sustainability. Towards this, CII advocacy will focus on structural reforms, both at the Centre and in the States, and effective governance, while taking efforts and initiatives in Affirmative Action, Skill Development, and International Engagement to the next level.

With 63 offices including 10 Centres of Excellence in India, and 7 overseas offices in Australia, China, France, Singapore, South Africa, UK, and USA, as well as institutional partnerships with 223 counterpart organisations in 90 countries, CII serves as a reference point for Indian industry and the international business community.

Intellectual Property Protection & Enforcement

Emerging knowledge economy and new global order makes it imminent and essential for nations and their institutions to be ready to undergo a major paradigm shift in the process of wealth generation, gaining strategic advantage, achieving global leadership in trade and commerce and influencing geo-politics by laying more and more emphasis on creation and protection of new knowledge, science, technology and art leading to innovations through legal systems of protection for betterment of the nations and human society. Developed countries have been driving the new paradigm for many years now and the developing countries have to follow suit but will have to accelerate the efforts in order to be at par with the developed countries. The journey is long and demands a great deal of effort in terms of formulating proper and adequate policies, law making, facilitating systems for academics, industries and research institutions, setting up of mechanisms for creation of knowledge, translation of knowledge into marketable products and evolving a suitable enforcement environment for meeting national goals and international obligations.

The Confederation of Indian Industry (CII) strongly believes IPR and technology have a very close inter-relationship. Historically, each has been a co-producer of other in one sense or the other. Management of intellectual property of the individuals, institutions, academics, industry and the nation is and would be the key to the success in the knowledge economy. The area of management of IPR in the country is at the early stages of development and there is a need for consolidated efforts by government, industry, civil society and research institutions to continually evaluate the Indian IPR system and develop new models to improve it and make it relevant and competitive. The growth of IPR jurisprudence is at very early stages of its development and is yet to make the desired impact on the social, cultural, economic and political fronts.

CII is clear that IPR help industries and companies in enhancing their economic position, competitive advantage, business, future growth and investment in research and development. Therefore, CII has taken many initiatives in promoting the IPR culture among the Indian industries.

CII is actively engaged in generating well researched inputs to evolve a national strategy on intellectual property (IP) which should encompass a very wide area cutting across all disciplines of knowledge and try to bring about a reasonably good balance between public policy and private and community rights ensuring the strengthening of our democracy. CII has undertaken a survey to collect inputs from 5000 members of CII. The initial responses suggest industry's interest in having a legal framework for protecting trade secrets and enhancing the filings by the Indian entities.

CII has been focussing in creating awareness about the need and importance of anti-counterfeit measures and conducting seminars and workshops for all stakeholders including industries, legal fraternity and customs and police officials in association with different agencies such as US Embassy in India.CII has recently taken a strong step towards creating an IP ecosystem in States and is proposing to engage with state governments to help them come out with comprehensive state-level IP strategy and in building a robust IP ecosystem in the state to protect the interest of IP owners operating from the states. Such a state level IP strategy will focus primarily on creating awareness, encouraging IP protection, providing quality IP education, training the stakeholders and strengthening IP enforcements to fight against infringements, counterfeiting and piracy in the state.

It can be seen that CII is committed to propagate and promote the role of IPR in leveraging competitive advantage by the Indian industries. It has always supported strong protection of IPR in India. In this connection CII has been working closely with the Government of India in different dimensions of IPR policies framing and their implementation.

Compulsory licensing, revocation etc..

India's position on compulsory licensing is not different, in principle, from what has been stipulated in the Paris Convention and TRIPS. How the principles of CL are applied would vary from country to country and many such examples are available globally. The first CL in India was issued last year and has been endorsed by the Appellate Board. It may be noted that the process of issuing CL is complex and many factors need to be evaluated before a decision is arrived at. CII is in tune with the legal provisions of the Patent Act. Everyone is looking towards the effective implementation of the recently issued CL. CII is confident that the desired objectives of issuing the CL will be met.

Position of CII National Committee on ICTE (Information Communication Technology and Electronics) Hardware Manufacturing on
Preferential Market Access (PMA) in the ICTE Industry

In the preamble of the Government policy paper, the need for **National Policy on Electronics (NPE)** has been clearly brought out. It has been stated that "at the current rate of growth the domestic production can cater to a demand of US$100billion in 2020 as against a demand of of US$400 billion and the rest would have to be met by imports...Unless the situation is corrected it is likely that by 2020 the electronics imports (US $ 300billion) may exceed oil imports". This level of imports exceeds the present forex reserves of the country.
In this context it is important to attract investments and encourage domestic manufacturing to meet higher levels of demand through domestic production and to reduce India's dependence on imports.
The NPE has vision to create a globally competitive Electronics System Design and Manufacturing (ESDM) industry to meet country's needs and serve the international market.
CII National Committee on ICTE Hardware Manufacturing supports the NPE 2012.
The notification on preference to domestically manufactured electronic products, in procurement of those products which have security implications for the country and in Government procurement for its own use, is a means of encouraging domestic manufacturing with progressively higher value additions.
The policy clearly states that the provision would be consistent with Commitments to WTO (**sl no 1.3 of para IV on Strategies)**.
The growth in domestic manufacturing would also create the much needed employment opportunities.

India and the United States: Partners in Prosperity

By Adi Godrej, President, Confederation of Indian Industry
(Published in Washington Diplomat, June 2012)

For 117 years, the Confederation of Indian Industry (CII) has played a critical role in India's economic and social development. In this process, the United States has been a key partner for CII and its member companies, especially since India's economy opened up in the early 1990s.

Recognizing the potential of the bilateral partnership, CII has made great efforts to promote bilateral trade and commercial linkages and encourage the expansion and growth of Indian investments in the U.S. economy. On both these fronts, we have come a long way.

As the US-India bilateral relationship has progressed to what President Obama referred to as 'one of the most defining partnerships of the 21st century', CII has been delighted to a part of this story of transformation.

Collaboration in Critical Sectors

To leverage US leadership in critical sectors, CII has established several joint flagship initiatives which have grown over time:

- During US President Barack Obama's visit to India in November 2010, CII established the **Food and Agriculture Centre of Excellence (CII-FACE)**, with technical support from USAID to work towards building efficiencies across the agricultural value chain from farm to fork and improve food security.
- With technical support of the US Green Building Council (USGBC) and LEED India Committee, CII's Indian Green Building Council has launched LEED – India to meet the Indian priorities and environmental conditions. The initiative was launched during US President Bill Clinton's visit to India in 2000 and heralded the **green building movement in India.** As on date, 1020 green buildings with the built-up area of 632 million sq. ft. are being constructed in India, of which 138 green buildings have been certified.
- To encourage growth in investments and jobs in newly emerging markets, CII in collaboration with the US Department of Commerce launched the Growth in Emerging Metropolitan Centers (GEMS) in 2010.

Attracting FDI from India into the United States

In addition to various initiatives in India, CII has consistently sought to encourage Indian business engagement with the U.S. Through the CII India Business Forum USA (IBF), we provide a platform to Indian companies with operations and investments in the U.S. to come together and discuss areas of concern, and opportunities for growth in the US market. For two years now, the 34 members of the IBF have, through an annual reception on Capitol Hill, engaged with U.S. Senators and Representatives in Washington DC. This effort has helped highlighted attention on the impact Indian businesses are having on the local US economy and society through investments and job creation, and more importantly, through integration with the communities in which they operate.

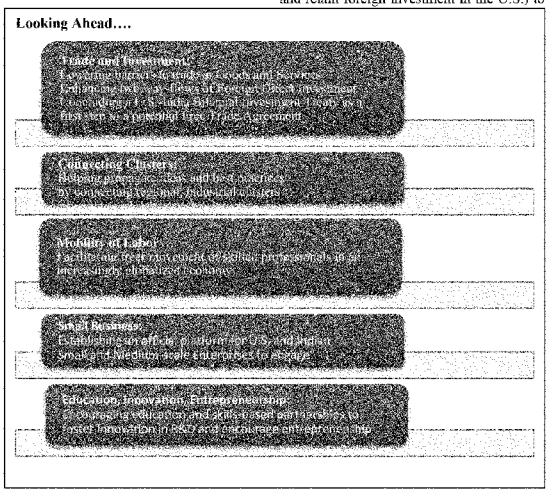
"CII firmly believes that ushering in the second generation of reforms is necessary to revitalize the Indian economy and to help India remain a favorable investment destination for foreign companies."
--Adi Godrej,
President, Confederation of Indian Industry

This year, CII-IBF released a survey report *'Indian Roots, American Soil: Adding Value to the US Economy and Society'* which revealed that:

- Indian companies have a presence across 40 US states and the District of Columbia, with 70% having increased the number of employees since 2005, despite the U.S. economic downturn.
- More than 34% of companies have manufacturing facilities in the U.S., investing more than $820 million in those facilities.
- In 2012 alone, companies will invest $190 million in R&D activity in the US
- Nearly 65% of companies surveyed engage in Corporate Social Responsibility initiatives, including programs that support 27 universities, community colleges and high schools in developing curriculum, establishing training programs and encouraging Science-Technology-Engineering-Mathematics (STEM) education.

The contributions of Indian companies to the US economy are thus incredibly broad based, and are adding value across the spectrum.

In a competitive global economy, where businesses have the freedom to choose where their investment dollars will go, CII has made significant efforts to project the United States as a premier destination. In 2011, CII partnered with Select USA (the Obama administration's initiative to attract and retain foreign investment in the U.S.) to



bring out a report, *'US Business Climate: Local Economy, State Incentives and Growth Prospects'* which compiled investment attraction and incentives data from all 50 US states and four territories. The effort, I am sure, serves as a handy guidebook not only for Indian companies, but companies across the world.

Partnering for Economic Growth

CII firmly believes that ushering in the second generation of reforms is necessary to revitalize the Indian economy and to help India remain a favorable investment destination for foreign companies. CII has been working with the Government of India to make the case for reforms and closer cooperation with business. CII through its partners in the United States will sustain efforts to push for greater and more collaborative business and commercial linkages, and a stable and secure business climate in both countries, conducive to the growth of industry.

The promise of partnership between the world's oldest and largest democracies is indeed potent, and there is tremendous room for collaboration and cooperation on virtually every front. CII will, with the help of its partners, and through active collaboration with the governments of both countries, keep pushing to bring this promise to fruition.

Deepening US-India Ties

(Op-Ed published on November 12, 2012 in The Economic Times)

By Chandrajit Banerjee
Director General, Confederation of Indian Industry

Democracy is the core value at the heart of the India-US bilateral partnership—a partnership built on mutual and growing trust, and shared values, which has only become stronger under Mr. Obama's leadership.

In the last four years, the engagement between our two countries has deepened in substantive ways. This enduring friendship is perhaps best exemplified by a thriving people-to-people relationship, while the shared entrepreneurial spirit helps drive the business partnership.

In 2009, President Obama welcomed PM Manmohan Singh as the first State visitor in his (first) Presidency, which was followed by his own visit to India in 2010. Through these exchanges, Obama has re-affirmed faith in India as a strategic partner, whether through the support for India's seat at the UN Security Council, the relaxation of export controls and removal of several Indian organizations from the 'Entities list', or through the establishment of the US-India Strategic Dialogue—initiatives that have helped further the common aspiration for peace and prosperity.

Bilateral engagement in a range of sectors like higher education, homeland security, cyber security, green energy and climate change, women's empowerment, science and technology, healthcare and innovation have further helped expand the agenda for cooperation. Business-to-business ties remain strong, with bilateral trade set to cross the $100 billion mark in 2012.

Much progress has been made, but much also remains to be done. The bilateral business and trade agenda can specifically focus on some key areas.

One, the US-India Agriculture Dialogue needs to be revived through private sector participation and a technology-driven agenda. Government of India has announced 100% FDI in multi-brand retail, which would enable U.S. corporations to cater to Indian consumers and strengthen India's agricultural supply chain. Both countries can collaborate on food security, particularly through US know-how and investments in cold chain technologies, and on weather forecasting, information dissemination, and water management.

Two, India has provided defense contracts worth over $9 billion to US companies in the past few years. Facilitative procurement processes and closer cooperation in offsets can enhance partnership between small and medium enterprises. Both sides can engage in joint development and production, R&D collaborations and technology sharing for a defense partnership.
Three, creation of the US-India Infrastructure Debt Fund has been a notable development recently. India's infrastructure sector presents a $1 trillion opportunity for US companies in roads, highways, power plants, telecom lines, sea ports, airports etc.

Four, conversation on clean technologies and renewable energy development is picking up pace on both sides, especially with regard to exploration of new sources such as shale gas, and financing options, in the recent US-India Energy Dialogue. Joint manufacturing and R&D in the area of green energy and renewables could be an important agenda item for the next four years.
Finally, the two sides need to reach out to SMEs, states and Tier-II cities by connecting sector-based clusters, and by encouraging SME networks.

To provide additional boost to two-way trade and investment, CII hopes that both governments will encourage early completion of the Bilateral Investment Treaty as a prelude to a Free Trade Agreement. Renewed negotiations towards timely conclusion of a bilateral Social Security Agreement should take place, as well as engagement on the mobility of high skill labor, a critical component of corporations' value chains.

India counts among the top 10 fastest growing sources of Foreign Direct Investment into the United States. Indian companies across the US are operating in a range of sectors such as pharmaceuticals, healthcare, financial services, manufacturing, telecommunications, iron and steel, information technology and media and entertainment. These companies are not only investing and creating revenue in the US, but critically, are saving, creating and growing jobs. India's IT industry alone employs some 35,000 US workers and R&D activity is on the upswing. Indian companies have brought in $30 billion in investments into the US economy in the last five years and paid $15 billion of taxes, as also contributed $3 billion to social security. Also, Indian students, the largest from any country in the US after China at 1,65,000 in 2009-1010, add to domestic university strength and contribute to local economies as well.

Indian industry looks to President Obama's continued leadership in ensuring a business climate in the US that is not protectionist, while providing a level playing field to all companies.
The US-India bilateral relationship has progressed to what President Obama referred to as 'one of the most defining partnerships of the 21st century'. Indian industry congratulates President Obama and wishes him all the very best for the next four years.

A Growing Stake

Indian IT Companies Ramp up Hiring in the United States

(Op-Ed published on September 06, 2012 in The Economic Times)

By Chandrajit Banerjee
Director General, Confederation of Indian Industry

Indian based IT companies have been investing in the US for almost 30 years. And the quality of the investment – in facilities, research, and employment has only deepened over time. These companies are in the U.S. for the long haul. And they will continue to invest—not only in terms of employment and facilities, but also in the people and the communities in which they operate. While the global economy has slowed down, these companies continue to hire. The Indian IT industry spearheaded the two-way street of U.S.-India collaboration and it intends to keep leading it.

Indian IT giant, Tata Consultancy Services (TCS) is planning to hire 2,000 U.S. employees in the 2012 fiscal year (April 2012-March 2013). Infosys Ltd., another major IT company, has also said that it plans to hire 2,000 employees in the U.S in 2012. The company will be establishing a new delivery center in Milwaukee, Wisconsin (its 17th location in the US) which will cater to its clients in the Mid-West.

MindTree Ltd. aims to recruit more local talent to staff the four software-development centers that it plans to set up in the U.S. over the next five years. MindTree has already established a center in Florida while several others are in the pipeline. Larsen and Toubro hired over 370 professionals locally in the U.S. in 2011 and in 2012 is planning to hire 40% more than last year's number. Additionally it is planning on opening a new center in Florida this year.
Similarly, HCL Technologies hired 2,600 professionals in the U.S. during its last fiscal year (ended June 30, 2012), and plans to increase U.S. hiring by 30% over the coming year, in a larger initiative under which the company expects to hire 10,000 new employees in the U.S. and Europe by 2015. Another major IT services company, Wipro Technologies, has also declared its commitment to creating and increasing jobs in the US with robust hiring plans.

Increasingly, Indian IT companies and U.S. companies are collaborating and innovating to create products and services that are globally competitive by leveraging talent in each country, in the most efficient manner. The imperative of the need to be closer to the client base and managing projects and contracts in a timely manner are major reasons why Indian companies have recruited locally and continue to do so. In a tough economic climate, Indian IT companies in the U.S. are continuing to provide value to the U.S. economy, not only in terms of jobs created, but also in terms of community engagement and philanthropic activities.

Indian companies are also not sparing any effort in training and re-training workers in the continuously evolving technology field. Companies are working with local colleges and universities in the U.S. to hire students, and many are also taking the lead in encouraging interest in STEM fields (Science, Technology, Engineering and Mathematics) amongst high school students. For example, TCS has been running the goIT program, which, since its inception, has reached over 2,000 students across numerous school districts in Ohio and Michigan through in-school workshops and summer robotics camps. Companies like HCL and Wipro are also providing specialized training and recruitment programs for US Army Veterans.

India counts among the top 10 fastest growing sources of foreign direct investment into the United States and Indian companies are operating in a cross section of sectors such as pharmaceuticals, healthcare, financial services, manufacturing, telecommunications, iron and steel, and media and

entertainment. The Indian IT industry in the U.S. has in particular significantly scaled its operations in the country and has forged long standing partnerships with US companies. Through cutting edge innovation, research and development, these companies have significantly helped enhance the competitiveness of U.S. companies in the global marketplace. Indeed, Indian IT industry has in some ways, led the way for additional Indian investment in the U.S.

India is proud of its corporate sector, which has helped drive innovation and growth not only in our country, but across the world. Our only hope is that during the U.S. Presidential election season, these companies will not be targeted unfairly.

CII realizes that the global economic scenario continues to be weak, and that economic recovery in the U.S. is also not progressing as fast as we would all like. At the same time, it must be remembered that Indian companies have a critical stake in the vitality of the U.S. economy. The global economy and its increasing interconnectedness mandates that our economic futures are intertwined in a way that was unimaginable just a few years ago.

In other words, we are all in this together. CII hopes that policymakers in the U.S. will take into account the positive story of the U.S.-India trade and commercial relationship, especially in the context of the IT industry and will help foster a business climate and labor environment that is conducive to the growth of business on both sides.

We owe this much to both of our peoples and economies.

CSIS

WRITTEN COMMENTS SUBMITTED FOR THE HEARING RECORD

U.S. House of Representatives Committee on Ways and Means

Hearing on: "U.S. – India Trade Relations: Opportunities and Challenges"
March 13, 2013

Submitted by:

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March 25, 2013
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WRITTEN COMMENTS SUBMITTED FOR THE HEARING RECORD

House of Representatives Committee on Ways and Means

Hearing on "U.S. – India Trade Relations: Opportunities and Challenges", March 13, 2013

Submitted by Amb. Karl F. Inderfurth, Wadhwani Chair in U.S.- India Policy Studies, Center for Strategic and International Studies (CSIS), Washington, D.C.

Mr. Chairman, Members of the Committee

In the U.S. – India relationship, economic engagement remains at the top of the agenda for both sides. Economic cooperation has been the primary engine of closer relations, as Indian reforms have allowed a rapid expansion of U.S. – India trade and investment flows in both directions over the last 20 years. The progress made on economic ties has set the stage for successes in other phases of the relationship, such as defense cooperation. Both governments recognize the key role that trade and investment play in this partnership.

U.S. Economic Policy Engagement with India

Bipartisan support for enhanced economic engagement with India has been the engine of growth in the U.S.-India strategic partnership. Following President Bill Clinton's landmark visit to India in 2000 and the establishment of a U.S.-India Economic Dialogue, the Bush administration accelerated the diplomatic momentum by taking the relationship to an even higher level. In July 2005, President George W. Bush and Prime Minister Manmohan Singh revitalized and realigned the Economic Dialogue to incorporate a number of existing and new bilateral dialogues, including ones on trade, finance, environment, energy, and high technology, as well as a Track-1.5 "CEO Forum."

The Obama administration carried the agenda forward through a U.S.-India Strategic Dialogue chaired by Secretary of State Hillary Clinton and External Affairs Minister S.M. Krishna. The purpose of the annual Strategic Dialogue is to assess progress, provide policy guidance, and propose new areas of cooperation across the breadth of the U.S.-India relationship.

Along with these positive developments, however, there have also been a number of "speed bumps" in bilateral economic engagement. Both countries have been affected by a significant slowdown in economic growth. In India, the growth forecast has been lowered to a projected 6.0 percent in the current fiscal year from a high of 9.8 percent in 2007. Meanwhile, the private sectors in the United States and India have been unnerved by an erratic economic reform agenda in New Delhi, although recent signs of progress have emerged.

Prime Minister Singh's Congress-led government in September 2012 unveiled a set of highly anticipated economic reforms, including liberalization of foreign direct investment (FDI) limits in various sectors, most prominently multi-brand retail. Fully implementing

and then going beyond the announced reforms, while necessary, will be politically difficult. State and national elections loom large—the latter to be held no later than 2014—as defections of political allies and a series of corruption scandals have shaken the Congress-led coalition government.

While taking the above into account, the second Obama administration should press ahead with its Indian counterparts to move the U.S. – India economic and trade agenda forward. It should be an ambitious agenda, but realistic in terms of timing. Some steps are possible in the near term; others are longer-term objectives. Taken together, they would go a long way toward unlocking the full potential of our bilateral economic and trade ties.

Recommendations

- *Establish a "New Framework for U.S.-India Economic Cooperation"*: The Obama administration should reignite U.S.-India economic and trade relations by establishing an ambitious, 10-year "New Framework for U.S.-India Economic Cooperation." Such a framework would serve as the organizing principle for bilateral discussions and negotiations at the highest levels. This framework should be issued as a joint statement at the next Strategic Dialogue, scheduled for June of this year, and should set out a detailed agenda for the two countries to pursue, starting with a high-standard Bilateral Investment Treaty (more below); prioritizing the Infrastructure Debt Fund (IDF); moving ahead with individual sectorial agreements and regulatory reform; improving the movement of high-skill professionals; and potentially culminating—over a 10-year horizon or beyond—in a full-fledged free trade agreement. In addition, as the U.S.-India Business Council (USIBC) and the Confederation of Indian Industries (CII) have proposed, a goal of achieving $500 billion in annual bilateral trade by 2020 should be established.

- *Complete a high-standard Bilateral Investment Treaty (BIT)*: At the 2012 U.S.-India Strategic Dialogue, Secretary of State Clinton and her Indian counterpart, External Affairs Minister Krishna, called for an "expeditious conclusion" to the negotiation of a high-standard BIT. A BIT would reframe bilateral trade and investment relations and serve as a stepping-stone to larger agreements. A high-standard BIT, negotiated on the basis of the 2012 U.S. model BIT, would include important protections for both U.S. and Indian investors, including strong investment protections, meaningful market-access ("pre-establishment") commitments, and a robust investor-state dispute settlement mechanism.

- *Move ahead with individual sectorial agreements*: While achievement of a free trade agreement (FTA) will be difficult, pursuing liberalization on a sectorial basis can make more immediate progress. The United States and India should work together to identify specific sectors where lowering tariff and nontariff barriers are politically palatable and mutually beneficial. Priority should be given to successful implementation of announced liberalization in multi-brand retailing and the food

sector, civil aviation, broadcasting, and power trading exchanges. Sectors might include information technology (IT) services, chemicals, energy, and education.

- *Restart the Trade Policy Forum (TPF) and establish a Tax Forum*: The TPF has been the premier venue for discussing multilateral trade issues and expanding bilateral economic engagement. However, it has been postponed indefinitely. While the TPF may need restructuring, it is a critical platform for advancing the relationship and should not be permitted to languish. A focused tax dialogue should also be established between the Treasury Department and Finance Ministry—as was hinted during Secretary Timothy Geithner's visit in the fall of 2012—to look at domestic, bilateral, and multilateral tax issues.

- *Reinvigorate the CEO Forum and initiate an SME Forum*: The CEO Forum gives business leaders from both countries a platform to provide input on trade and investment policy initiatives. However, the 2012 meeting was postponed and is yet to be rescheduled. In addition to setting a date for the next CEO Forum, a complementary Small and Medium-sized Enterprise (SME) Forum should be established.

- *Look to U.S. and Indian states as "laboratories" for progress and reform*: Several of India's more progressive and prosperous states are emerging as power centers in their own right, pursuing dynamic economic and policy agendas. The State Department has recognized the importance of this development by focusing some of its efforts to promote greater state-to-state interaction and investment. U.S. officials and trade delegations should regularize visits to Indian states and state leaders to deepen these relationships and find incremental "wins" that benefit both countries.

- *Actively engage the U.S. Congress and Indian Parliament (including the opposition)*: Bipartisan support for the U.S.-India relationship in the U.S. Congress has facilitated the growth of the partnership. Likewise, in India, both the Congress-led and Bharatiya Janata Party (BJP) governments have championed the bilateral relationship. Bold economic initiatives will benefit from the buy-in and support of legislators in both countries. Continued engagement with government and opposition parties at both the national and regional levels will only strengthen ties.

Conclusion

The U.S. and India both have thriving private sectors that are eager to seek out opportunities for trade, investment and partnership. The key to moving forward is working together with our common strategic interests in mind to rein in protectionist tendencies and let those businesses thrive. With some modest steps to regain a positive tone, a serious effort to complete a BIT, a clear direction for future engagement, the U.S. and India can continue building on the great successes of the last 20 years. The governments on both sides should establish the conditions that allow the economic side of our relationship to flourish.

Dairy Industry

MARKET ACCESS FOR U.S. DAIRY PRODUCTS INTO INDIA

The National Milk Producers Federation and the U.S. Dairy Export Council appreciate this opportunity to provide comments to the House Ways and Means Committee's Trade Subcommittee regarding U.S.-India Trade Relations: Opportunities and Challenges. For almost a decade India has imposed barriers against U.S. dairy exports to that country. The U.S. government has repeatedly sought to address India's concerns, yet India has not appeared willing to focus on practical measures aimed at addressing this trade dispute. Our industry is discouraged by India's response to this issue and the inability to find a reasonable resolution after virtually a decade of negotiations.

Background:

In late 2003, following an increase in dairy imports from the U.S. and other countries, India revised its dairy certificate for all imported dairy products. The new language was not something that the U.S. could certify to, thereby effectively closing the market to U.S. dairy exports. Beginning in early 2004, the United States has engaged with India to attempt to find mutually acceptable certificate language. This effort to explore workable alternate language has been primarily one-sided.

The U.S. and India are both major milk producing countries. India is the world's largest milk producer due to its significant cow and buffalo numbers, while the U.S. is the world's largest single country producer of cow's milk. Our two countries would best be served by working more closely together to help further growth goals of both industries and gaps in dairy demand in each country. Cross-investment is a frequent result of closer trading relationships between the U.S. and other nations. Such cooperation is difficult, at this stage, given the lack of a constructive working relationship.

The U.S. has become a significant export destination for India's dairy industry. Indian dairy exports to the U.S. over the past five years averaged $62 million. Sales to the U.S. last year were $52 million, a 27% increase over 2011's total. It is also noteworthy that India has retained access to the U.S. market despite a recent public investigation by India that revealed serious food safety lapses in its dairy system. Over that time period, India has also at times struggled to ensure adequate domestic dairy availability, due in part to weather issues. The temporary bans on exported dairy products that India has had to impose in response to that has undermined its reliability as a supplier. Had India been able to avail itself of a broader range of import sources it could have addressed domestic shortfalls while maintaining its important expansion of export involvement.

India's dairy market is far from open, even aside from SPS barriers. Tariffs are relatively high for most dairy products. For examples, applied rates for skim milk powder are 68%, for whey 36%, for butterfat products 36 – 46%, for cheese 30 – 36%. Among those, tariff-rate quotas with lower in-quota rates are in place only for milk powder and butterfat. Clearly, trade devoid of SPS barriers would not leave India unreasonably exposed to dramatic dairy import surges. U.S. exporters are simply seeking some degree of access, despite these sizable tariff levels; the industry has not insisted on securing duty-free trade.

Issue Detail:

At various times over the past 9 years India has offered up one certificate attestation or another as the primary impediment to resolution of this issue. For instance, the U.S. devoted considerable time and extensive conversations with India to focus on India's requirements with respect to maximum pesticide residue levels. Upon nearing completion of resolution of that matter, the focus then switched to indicating a primary concern with usage in the U.S. of rBST, a product deemed safe by JECFA and stalled in its Codex approval process in significant part due to India's objection. After in-depth government to government discussions on that topic and industry feasibility assessments on its usage, the focus then switched to feeding practices which were then presented as the key obstacle to resolution.

The U.S. dairy industry has attempted throughout that period to exhaustively evaluate what changes in production methods would be feasible for companies interested in the Indian market to implement, even if only on a limited scope (i.e. only some U.S. companies would choose to make the demands on their supplying farmers, thereby narrowing the prospective range of U.S. suppliers to India). In the lead-up to President Obama's late 2010 trip to India, the U.S. dairy industry thoroughly evaluated the full extent of flexibility options that it could consider to attempt to address India's concerns. In order to finally secure a path forward on this issue, industry was even willing to consider unscientifically-supported avenues such as committing exporters to require that their supplying farmers did not use rBST. In a similar fashion, the Administration poured significant resources into engagement with India in the months leading up to that visit. Despite this, India was not willing to entertain practical alternate ways to resolve the issue, particularly with respect to animal feed requirements.

When India ultimately changed its certificate yet again in 2012 in order to further restrict permissible feed options, among other changes, it became abundantly clear to U.S. companies that it was not realistic to make any long-term plans with respect to altered production practices given a continually shifting situation with respect to India's requirements. Current required certificate language is as follows. The primary areas believed to be contentious are bolded (emphasis added):

Veterinary Certificate to be issued by the Official veterinarian

The undersigned official veterinarian certifies that the product described above satisfies the following requirements specified in sections II and III:-

II. General Conditions or requirements

1. Animal rennet has not been used in making of this product.

Or
Animal rennet has been used in making of this product. The product package/container has been labelled accordingly.
(Retain as applicable.)

2. The source animals, from which milk was drawn have never been fed with feeds containing any animal tissues, except milk products.

III. Sanitary Information or requirements

1. The milk / milk product has been processed to make it fit for human consumption.

2. Milk, used for making the milk product, has been processed with a heat treatment which ensures destruction of pathogenic organisms, including, *Mycobacterium bovis sub tuberculosis, Listeria monocytogenes, Mycobacterium avium paratuberculosis, Coxiella burnetii, Brucella sps.* and other bacterial disease-causing organisms.

3. The animals from which the milk has been derived were not administered with Bovine Growth Hormones (BGH) / Bovine Somatotropin Hormone (BST/rBST).

4. The source animals were not treated with estrogen within the last ninety days before the milk was drawn.

5. The milk/milk product (*retain as applicable*) does not contain drug/pesticides/heavy metal residues and levels of mycotoxins above the limits prescribed by the Codex Alimentarius Commission.

6. Milk/ milk product (*retain as applicable*) does not contain pre-formed bacterial toxins such as those produced by bacteria belonging to *Staphylococcus aureus, Bacillus cereus, Clostridium botulinum* and enterogenic *Escherichia coli.*

Note that although only two sections have been bolded above, this reflects an assessment of the U.S. industry's belief on where the primary issues remain, not a guarantee by India that there are no other problems with respect to the other required items.

Regarding the two bolded items above:

- India's ban on the use of any animal tissues in feed is not scientifically supported. India appears to recognize this due to its separation of that issue and the rennet labeling requirement (also not scientifically warranted, but not a requirement that industry believes would be extremely onerous to comply with) from the "Sanitary Information or Requirements" section. Instead, after seven years of negotiations, India asserted in the last few years that this feed restriction is in place due to religious concerns. Despite this, India does not appear to have a reliable oversight system in place within its country to ensure domestic compliance with this and other dairy regulations, as the Indian government study mentioned earlier found. This appears to raise significant national treatment violation concerns.

- India is the only country that bans imported dairy products on the basis of use of rBST during milk production. Scientific evaluations of this drug have consistently found it to be safe for usage, although some countries have chosen not to permit its use in their own countries for primarily trade-related reasons (e.g. Australia and New Zealand) or for perceived animal welfare issues (e.g. European Union). Despite lack of approval for domestic usage in some areas of the

world, none of these other countries bans imported dairy products on that basis, given the understood lack of food safety risk. It is particularly noteworthy that the EU does not restrict imports on this basis, given the EU's extremely cautious approach to the use of many food-related technologies.

India is unique in its application of its restriction to imported product. India's stance is not in keeping with the scientific assessments on rBST by JECFA, nor by multiple countries around the world. This does not appear to be in keeping with India's WTO SPS obligations.

Summary:

The U.S. has provided considerable scientific data in support of our position, compromise solutions to address India's concerns, as well as information demonstrating that the vast majority of countries around the world accept our dairy products and recognize them as safe. Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1 billion, presents a large and unrealized market opportunity for the U.S. dairy industry.

USDEC has calculated that resolution of this issue could yield significantly additional exports after the U.S. dairy industry has been able to establish itself in the market. Resolution of this longstanding issue is critical to maximizing future export possibilities for our industry in that region of the world. Some relatively small levels of trade have taken place since India imposed the import requirements in 2003. However, the risk that a shipment will most likely be rejected at the border due to the lack of agreed-upon dairy certificate has kept most U.S. exporters out of the Indian market.

The U.S. dairy industry is appreciative of U.S. government efforts to resolve this issue and is dismayed it has not been met with a serious effort from India to find a reasonable way forward on this long-standing issue. The industry remains dismayed, however, at the inability to challenge the WTO compliance of India's SPS barriers due to India's last-stage assertion that some of its criteria are religious-based requirements. Despite this asserted basis, the industry believes that there are significant national treatment questions raised about the extent to which India's requirements are equally enforced and monitored within its own dairy farming industry. Without an avenue for legal challenge, however, there is no clear solution and the U.S. appears likely to remain effectively blocked from this rapidly growing market in the years to come at the same time that India continues to benefit from access to the U.S. market for its dairy products and from benefits granted to it through the U.S. GSP system.

The U.S. dairy industry believes that the ideas proposed by Chairman Nunes in H.R. 6537 last year are particularly relevant with respect to major developing nations that take advantage of that unilaterally-granted preferential access to the U.S. market yet in return impose a significant number of intractable non-tariff barriers on U.S. products. The U.S. should examine all potential tools in its effort to encourage compliance by our trading partners with their international obligations.

Our industry desires to work together to forge closer ties with India's dairy industry and expand bilateral investment. That outcome, beneficial to both countries, remains difficult to envision at this stage due to how this issue has been handled and the continued lack of willingness by India to find a workable resolution to this challenge.

Thank you for the opportunity to provide comments on this important issue.

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DISCUS

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS

**HEARING ON U.S. – INDIA TRADE RELATIONS:
OPPORTUNITIES AND CHALLENGES**

STATEMENT OF THE DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

March 27, 2013

Dr. Peter H. Cressy
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The Distilled Spirits Council of the United States is a national trade association representing U.S. producers, marketers, exporters and importers of distilled spirits products. The Council's member companies export spirits products to more than 130 countries worldwide, including India. The Council applauds Chairman Nunes for focusing the first Trade Subcommittee hearing of this Congress on opportunities and challenges in the vast and dynamic Indian market. The Council is grateful for the opportunity to submit comments in connection with Chairman Nunes' examination in particular of India's agricultural market access barriers and system of cascading tariffs, taxes and other import fees.

Overview

U.S. distilled spirits exporters have achieved significant export growth globally over the past ten years. Since 2002, U.S. spirits exports have nearly tripled, to almost $1.5 billion in 2012 (FAS export value, not retail value). Despite the industry's global success, however, U.S. spirits export to India remain disappointingly low. In 2012, U.S. direct spirits exports to India were valued at $2.86 million, accounting for less than 0.2% of all U.S. spirits exports. Indeed, U.S. spirits exports to India remain far below U.S. exports to comparable markets, particularly in light of the fact that, according to Euromonitor, India ranks as *the largest whiskey market in the world*, both in terms of volume (1.3 billion liters in 2011) and value ($21 billion in retail sales in 2011). In fact, whiskey accounts for 58% by volume and 69% by value of the total Indian spirits market, which should play to U.S. export strengths; whiskeys accounted for 68% of total U.S. spirits exports globally in 2012.

The reasons for lackluster U.S. exports to India are simple: India's tariffs on imported distilled spirits are among the highest in the world and a labyrinthine – and in some cases discriminatory – regulatory maze at the state level impedes market access for imported spirits. In 2009, the most recent year for which data are available, imported spirits accounted for less than five percent of total apparent consumption in India by volume (Euromonitor International). We describe below some of the major challenges the U.S. spirits industry faces in India.

India's tariff barriers

Base tariff: India's applied base tariff on imports of bottled spirits is 150% *ad valorem*, which is its WTO bound rate. At 150% *ad valorem*, India's tariff is dramatically higher than distilled spirits tariffs in the vast majority of developing country markets. (China's tariff, *e.g.*, is 10% *ad valorem* on all spirits.)

Additional customs duty: From April 2001 until July 3, 2007, India also applied additional customs duties (ACD) on imports of bottled spirits, beer and wine. These additional customs duties were assessed on top of the basic customs duty and varied depending on the per-case CIF value of the imported spirits. The ACD in effect from April 2003 – July 2007 ranged from 25% *ad valorem* or $53.20 per case, whichever was higher, to 150% *ad valorem*, in clear breach of India's tariff bindings.

India announced on July 3, 2007 that it would "exempt" beer, wine and spirits from the ACD, effective immediately. While the U.S. spirits industry warmly welcomed this action, which was unquestionably prompted by a U.S. WTO case (and similar action by the European Commission), we have yet to receive assurances that India will not reimpose the ACD in any form and that the states will not introduce (and, where in effect, will rescind) duties and fees that discriminate against imported spirits.

Extra additional duty: In connection with India's 2006/2007 Budget, the Indian government announced the imposition of an extra additional duty (EAD) of 4% *ad valorem* on most imported goods, including imported spirits. This duty is levied on the value of imported goods, which is the sum of the CIF value + Customs Duty (150%), making India's effective tariff on imported spirits 160%, in breach of its WTO tariff binding. On September 14, 2007, Indian Customs published a notification that appears to provide a mechanism whereby importers may seek a refund of the EAD with respect to imported products that are subsequently sold within India (and therefore subject to VAT and/or sales taxes) if proper documentation is provided. The Distilled Spirits Council welcomed this announcement, but remains concerned that importers must still pay the EAD up front and then comply with burdensome documentation requirements in order to obtain a refund, requirements that are not imposed in connection with domestically produced goods. This discriminatory duty should be eliminated as soon as possible.

India's cascading import tariffs have clearly impeded U.S. spirits exports to one of the world's most important spirits markets. A significant reduction in India's import duty would certainly help level the playing field for U.S. distilled spirits, though near-term prospects for such a reduction are not likely in the absence of progress in the multilateral WTO Doha Development Agenda negotiations. Instead, the U.S. spirits industry's already tenuous position in the Indian market may be weakened even further if India's free trade agreement (FTA) negotiations with the European Union reach a successful conclusion. If India should agree to a significant reduction in its tariff on imported European spirits – the United States' chief competition in international spirits markets, particularly in the whiskey category – U.S. exporters would be placed at a significant competitive disadvantage in an already challenging market.

Goods and Services Tax: India has proposed the adoption of a single federal goods and services tax (GST) that would replace the various state taxes (some of which are described below) and cascading import taxes. This would be a welcome development, but a current draft of the constitutional amendment bill for GST would exclude beverage alcohol and certain other sectors from the new GST system. The Distilled Spirits Council continues to urge India to include distilled spirits in the GST system as a means to adopting a transparent and predictable tax system for beverage alcohol.

State-level restrictions on imported spirits

In addition to the almost-prohibitive import tariffs and additional duties India applies to imported spirits, several of India's states apply their own discriminatory measures to imported distilled spirits, in apparent violation of India's WTO obligations. We provide a few illustrations below.

The state of **Tamil Nadu**, for example, has not yet been fully opened to imported spirits in a meaningful sense, despite India's removal of quantitative restrictions in April 2001 in response to adverse WTO rulings. Tamil Nadu adopted a law in 2008 to permit the sale of imported products, but required that brands be registered before they can be sold by the state monopoly, *i.e.,* Tamil Nadu State Marketing Corporation Limited (TASMAC). Although companies have applied to register their imported brands, to date only 30 brands of imported spirits have been registered and only a handful are listed on TASMAC's price list. More telling, however, is that TASMAC does not routinely order imported products, and, as a result, often there is no inventory of imported spirits throughout its 7,500 retail outlets.

In addition, payment terms appear to discriminate against imported spirits. Suppliers of imported spirits are paid when the products are reported as sold from the TASMAC retail outlets, whereas suppliers of locally-produced spirits are paid far more promptly – half upon supply of the goods to a TASMAC depot and half upon depletion of stocks to retail outlets. There is a further disincentive for off-premise TASMAC retail outlets to stock high-value imported spirits: the 4730 TASMAC off-premise retail outlets are linked to small low-end bars whose license fee is based on the value of sales from the retail outlet (2.5% of the sales value). These bars therefore have an incentive to sell lower-value domestic products in order to avoid the higher license fees that would be triggered by sales of more expensive imported spirits.

The excise policy of **Delhi,** unveiled in June 2011, imposes differential tax rates on domestically produced and imported spirits. In addition, retailers wishing to sell imported spirits to hotels, bars and restaurants are required to pay an additional licensing fee on top of the licensing fee they must pay for domestically-produced spirits. There is also differential treatment regarding the storage of imported spirits. Specifically, customs duties are not permitted to be collected in advance for imports, whereas domestically-produced spirits may pay the required excise taxes in advance and continue to be stored in a warehouse prior to sale. Clearance for imported products, however, may only be granted after an order, and subsequently the appropriate duty payments, are received. The practical impact of this differential treatment is that orders for domestically-produced spirits can be satisfied in 1-2 days, while completing orders for imported spirits takes at least 1-2 weeks. More recently, the Delhi excise policy announced in May 2012 imposed discriminatory pricing restrictions on imported spirits: the declared wholesale price of imported (Bottled in Origin) spirits is required to be lower in Delhi than anywhere else in India, whereas locally-produced spirits are not subject to the same requirement.

The state of **Haryana** has established a discriminatory Value Added Tax (VAT) regime,

with a much higher VAT applied to imported foreign spirits (25%) than to domestically produced spirits (4% VAT). Further, while the license fee for domestic spirits brands is a flat rate fee per annum, the license fee for imported spirits increases as the sales volume increases, yielding higher license fees for imported spirits.

The state of **Odisha** also applies a discriminatory excise tax regime, applying the highest rates to imported spirits. In addition, label registration fees are higher for imported spirits as compared to domestically-produced brands.

The state of **Andhra Pradesh** has established differential tax arrangements for domestic and imported spirits brands.

Other non-tariff barriers -- bonding period/interest rate

The interest-free bonding period for imports is 90 days and the interest rate applicable thereafter is 15%. In contrast, domestically-produced goods may be held in bond without time limits or payment of interest. In the Council's view, this practice violates Art. III: 2 of GATT 1994.

Summary

India's spirits market is massive yet remains dominated by domestically-produced spirits, particularly in the important whiskey category. India's expanding middle class, with higher disposable incomes and a growing interest in trying new and imported products, represents a potential consumer base for increased sales of U.S. spirits, including whiskeys.

However, the tariff and non-tariff barriers described above have severely restricted access to India's vast spirits market for U.S. spirits exporters. U.S. spirits exports to India remain far below exports to comparable markets, particularly in light of the fact that India is a significant spirits-producing and spirits-consuming nation. India's "suspension" of the ACD in 2007 has opened up the market somewhat. But, with one of the highest base tariffs in the world on spirits at 150% *ad valorem* (160% taking into account the extra additional duty), high and discriminatory taxes and other state-level restrictions, overall India's spirits market remains impenetrable for the vast majority of U.S. spirits products. Even worse, the U.S. position in India's spirits market is at risk of significant erosion if, as discussed above, the successful conclusion of EU-India FTA negotiations yields a significant reduction in the tariff on European spirits, particularly Scotch and Irish whiskies.

We applaud the Subcommittee's decision to focus on the promising but challenging Indian market. We thank you again for the opportunity to submit a statement for the record.

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IBM

Statement for the Record
IBM Corporation
March 13, 2013

Subcommittee on Trade
Committee on Ways and Means

U.S.-India Trade Relations: Opportunities and Challenges

IBM is a globally integrated technology and consulting company headquartered in Armonk, New York. With operations in more than 170 countries, IBM attracts and retains some of the world's most talented people to help solve problems and provide an edge for businesses, governments and non-profits. Innovation is at the core of IBM's strategy. The company develops and sells software and systems hardware and a broad range of infrastructure, cloud and consulting services.

Since IBM re-entered India in the late 1990s, we have built a dynamic presence that supports our growing business within the country. Our ability to compete fairly in India supports jobs, innovation and growth here in the United States. It also enhances our global competiveness, ensuring that the company can compete and win in other critical markets.

We are deeply concerned by a number of new policies that have been issued by the Government of India (GOI) that discriminate against IBM and other foreign companies. Indeed, these troubling policies signal a marked departure from what, to date, had been a positive policy trajectory of opening the market to competition and international participation. These policies, which impact most sectors in India, include unfair tax polices directed at foreign multinationals; increased tariffs, duties and other market-distorting fees; and very specific government regulations designed to disadvantage foreign companies over Indian companies. Many of these policies appear to be inconsistent with India's obligations under the World Trade Organization and other international norms and standards.

Within this overall context, IBM and other Information and Communications Technology (ICT) companies are confronted with two new policies that are especially troubling.

The Preferential Market Access Policy

Published on February 10, 2012 by the Ministry of Communications and Information Technology (MCIT), the Preferential Market Access (PMA) Policy and its associated implementation guidelines would impose severe local content and sourcing requirements for the procurement of "electronic products." Importantly, the PMA Policy imposes these onerous requirements not just on the procurement of ICT products by government agencies and government-controlled entities, but also by private sector companies. If these provisions are implemented, they could force foreign companies to transfer technology to Indian partners and establish joint manufacturing ventures with local

Indian companies as a condition of doing business with large segments of private-sector companies in India.

The GOI has already begun implementing this policy for government procurement of desktop PCs, tablets, laptop computers, printers and certain telecommunications equipment. More troublesome is that despite more than a year of dialogue with foreign companies and governments, the GOI is preparing to implement the PMA Policy for purchases of electronic products by private telecommunications operators, and there are indications that it may expand the scope and coverage of the policy to other critical sectors of the economy.

Such a step would represent significant interference in the operations of private Indian companies, create disruptions in key sectors of the Indian economy, and undermine the ability of IBM and other ICT companies to compete fairly. Forcing companies to source locally for private contracts would also plainly violate India's core commitments as a member of the World Trade Organization.

In response to the PMA Policy, American ICT companies have partnered with domestic and global business associations and the U.S. and foreign governments to engage Indian government and business leaders. These efforts have focused on (1) rescinding the PMA Policy and its policy antecedents and (2) supporting incentive-based, non-discriminatory policies that would better accomplish the objectives the PMA Policy is designed to promote.

Despite these efforts, however, the GOI seems determined to implement the PMA Policy and has made clear that it will impose the Policy's local content requirements on foreign companies for both government and private sector procurement.

Last year, more than 50 Members of Congress sent letters to Ambassador Ron Kirk and Indian Ambassador Nirupama Rao raising concerns about the PMA Policy. IBM believes it is critical that the PMA policy be rescinded and that American companies be assured of fair and open access to the Indian market for electronic products.

India Compulsory Testing and Registration

In October 2012, MCIT's Department for Electronics and Information Technology (DEITY) issued a new "Compulsory Registration Order" intended to safeguard consumers from sub-standard electrical and electronic items. Under the order, new equipment cannot be imported into or sold in India after April 3, 2013, unless it is tested and registered with Bureau of Indian Standards (BIS)-approved testing labs in India. This order was initially applicable only to consumer products, such as laptops, printers, set top boxes, microwaves, speakers, TVs, etc.; Indian manufacturers would not fall under this requirement.

These new requirements were developed with limited consultation with outside stakeholders, including foreign companies that manufacture and import these products into India.

More seriously, however, in February 2013, DEITY issued new guidance (in the form of FAQs) that extended the registration and testing requirements to a far larger range of ICT products, including commercial and industrial ICT defined simply as "Automatic Data Processing Machines." This definition may now capture PCs, tablet computers, servers, and storage machines. Under the rules, imported products will be stopped at port unless they have been tested and registered with a BIS lab and labeled with a valid registration number.

These new testing requirements deviate significantly from internationally accepted safety and certification norms and protocols. The testing requirements, as published, are particularly onerous on high-end systems where sample cost and complexity greatly add to the impact of the registration process. It can typically take several weeks or months to properly test and certify high-end ICT technology, such as servers. The process in testing requirements will have a far greater impact on high-end, professional use ICT that is not typically a target of most consumer products safety regulations.

Because BIS requires that testing must be done in India at a limited number of BIS recognized laboratories, this extension to a far larger set of ICT products is likely to overwhelm testing capacity and infrastructure necessary to implement this requirement within the timeframes established. Indeed, it is unclear how many testing labs exist in India, whether they have been accredited by international standards bodies and who, in fact, controls them. BIS has ignored the primary international mutual recognition agreement for product safety test reports performed by internationally accredited laboratories under the International Electrotechnical Commission's System for Conformity Testing and Certification of Electrotechnical Equipment and Components (IECEE), an agreement under which India is already a signatory.

Despite repeated requests by companies and industry bodies to change, modify and delay the implementation of these new requirements, Indian officials have stated that the requirements will come into effect on April 3.

This raises concerns under the Technical Barriers to Trade (TBT) measures of the WTO, and we understand that officials from the U.S., European Union, and Japan may plan to raise the new requirements at the next meeting of the TBT Committee.

We thank the Committee on Ways and Means for its continued interest in market access in India and appreciate the opportunity to provide these views.

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IIPA

International Intellectual Property Alliance Submission for the Record
Hearing on U.S.-India Trade Relations: Opportunities and Challenges
March 13, 2013

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INDIA (SUMMARY)[1]

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

(ADAPTED FROM 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT)

Special 301 Recommendation: IIPA recommends that India remain on the Priority Watch List in 2013.

Executive Summary: India can be one of the world's leading legitimate markets for the creative industries – both foreign and domestic. The country continues to produce the greatest number of films in the world (estimated at nearly 1,000 full-length feature films per year), boasts a creative and diverse music market, a prolific publishing industry (19,000 publishers producing 90,000 titles per year), and a vibrant software market.[2] Other key economic studies (including by international organizations like UNCTAD and the Motion Picture Distributors Association) indicate that growth will continue. Unfortunately, content theft negatively impacts the profitability of creators, as a recent study highlighting the film industry[3] and piracy's effects the livelihoods of the professionals and workers involved demonstrates.[4]

Physical, online, and mobile piracy (through both mobile uploading/downloading, as well as mobile applications being used to infringe), illegal camcording of movies from cinema screens, the unlicensed use of software by enterprises, print and photocopy piracy, circumvention of technological protection measures (TPMs), e.g., through the use of mod chips and game copiers, and pay-TV theft stifle the market for other creative sectors and keep India's creative economy from reaching its full potential. Market access barriers in India further stifle the film, software, and entertainment software industries' businesses in India, fueling piracy. Some effective approaches to physical piracy (such as the implementation of the Goondas Act in many of the states, though to be a truly comprehensive framework it should include piracy of books and software within its scope) and online piracy (mainly through the IT Act and ancillary regulations) have been taken in recent years, but these steps have not been enough to stem the tide of piracy.

The Copyright Law as amended in 2012 leaves some remaining issues, but it is hoped the new law along with the IT Act and ancillary regulations (in particular, the Information Technology (Intermediaries guidelines) Rules, 2011) will result in strengthened law enforcement and judicial enforcement in dealing with all forms of piracy. A National IPR Strategy is under development, offering a forum to make needed changes that can achieve results in line with Prime Minister Manmohan Singh's call for India to experience a "decade of innovation."

Priority Actions Requested in 2013:

Enforcement

- Implement a national anti-piracy task force to reduce piracy, *inter alia*, by working with state Nodal officers,[5] providing them with significantly increased resources; provide more accountability and power to the recently constituted task force by FICCI under the aegis of the Ministry of Human Resource Development (MHRD). Our understanding is that the Task Force is now preparing recommendations to present to MHRD.
- Reinvigorate "IP cells" within the state police, provide them with significantly increased resources, and establish specialized IP prosecutors, to be more effective in addressing piracy, including Internet/mobile device piracy.
- Encourage judicial reform, including establishing IP courts or panels with expert judges and prosecutors, which will help in accelerating the adjudication process in criminal and civil cases, and imposing deterrent fines and imprisonment, and civil remedies, including statutory damages.
- Develop a national-level database to track IP criminal cases.
- Increase the number of *suo moto* raids, including against corporate end-user software piracy, and empower government tax inspectors, including external and internal auditors, to check and account for genuine software licenses inside organizations, whether public or private.
- Mandate management officials of companies to account for and declare genuine software licenses in their books of accounts and financial statements, including by providing a regulation under the existing Companies Act.

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[1]The complete India Special 301 report can be found on the IIPA website, at http://www.iipa.com/rbc/2013/2013SPEC301INDIA.PDF.

[2]For example, NASSCOM estimates that software and service revenues (excluding hardware) are expected to reach $87 billion in fiscal year 2012, a 14.9% increase over 2011. Another recent industry report pegged the Indian film and television industry's total gross output at US$20.4 billion, higher than the advertising industry. PricewaterhouseCoopers, *Economic Contribution of the Indian Film and Television Industry*, March 2010. Employment generated by this industry is estimated at 1.83 million workers, most of whom are daily wage earners.

[3]A report issued by KPMG in March 2012 indicated India's film industry grew by 11.5% in 2011, to US$1.85 billion (Rs93 billion). Liz Shackleton, *India's Film Industry Revenues Up 11% in 2011*, Screen Daily, March 13, 2012, at http://www.screendaily.com/news/asia-pacific/indias-film-industry-revenues-up-11-in-2011/5039184.article.

[4]A separate Ernst and Young study concluded that the Indian Film Industry lost US$959 million and 571,896 jobs due to film piracy in 2008.

[5]Nodal officers in the Indian State enforcement system are designated contact individuals relevant to intake and response.

- Promote and require the use of legitimate (original) books and scholarly journals at educational institutions.
- Empower customs to effectuate *ex officio* seizures, followed by destruction, of pirate goods.
- Ensure Anton Pillar orders are readily available in infringement cases to allow for preservation of evidence, and thereby minimize harm caused by defendant's delay of proceedings as evidence can be preserved by court appointed commissioners.
- Issue a directive or strict policy guidelines mandating all government departments across the country use legal software and follow due diligence while procuring software assets.

Legislation

- Continue to pursue effective remedies through the IT Act and ancillary regulations (including the Information Technology (Intermediaries guidelines) Rules, 2011), to ensure fair and effective measures to address repeat infringers, and include effective mechanisms to disable infringing content on domestic and foreign websites.
- Adopt legislation making it an offense to use (or attempt to use) an audiovisual recording device in a movie theater to make or transmit a copy of an audiovisual work, in whole or in part.
- Establish enhanced penalties for "pre-release" piracy, with provisions comparable to those adopted in the U.S.
- Adopt statutory damages in civil cases and allow restitution to be awarded in criminal cases.
- Provide that *ex parte* search and seizure orders should be granted to copyright owners as a matter of right in civil cases.
- Amend Indian tax laws to classify software piracy as a form of tax evasion and define corresponding tax violation rules in line with international best practices.
- Regulate production of optical discs including a licensing requirement, among other provisions.
- Amend state anti-piracy statutes laws (Goondas Acts) to include software and book piracy in addition to other forms of piracy.
- Provide tax benefits for associations involved in anti-piracy actions and capacity building.

Market Access

- Eliminate significant market access barriers imposed on the motion picture industry including:
  - Bans on exclusivity in the pay-TV sector and similar restrictions in the Direct-to-Home (DTH) market (the reception of satellite programs with a personal dish in an individual home).
  - Price controls on the pay-TV sector.
  - Foreign ownership restrictions.
  - Inordinately high and discriminatory entertainment taxes on theatrical admissions, including unconstitutional taxes based on the language of the film.
  - Price fixing on tickets in South India as well as quotas on the number of screenings per title per day.
  - Onerous regulations on uplink and downlink of satellite signals beaming into India.
  - Disruptive content control rules for television.
- Eliminate high tariffs on entertainment software products.
- Eliminate double taxation of software.
- Refrain from imposing technology or procurement preferences or mandates for products using technology or IP owned and developed in India.

PIRACY UPDATES IN INDIA

Online and mobile device piracy have become serious problems in India as Internet and broadband penetration have widened. The ubiquitous use of mobile devices and the rapid expansion of mobile and console-based game playing have led to new opportunities for right holders but unfortunately also to new challenges, as evidenced by the spread of mobile device piracy and modification chips for circumventing TPMs used to protect console-based games. Losses are very difficult to calculate for most industries, but for example, the music industry estimates a total loss of $431 million in 2012 (the largest percentage of that attributable to mobile device piracy, then physical piracy, Internet piracy, public performance piracy, and radio/TV broadcast piracy) and upwards of 90% music piracy online,[6] while the software industry reported a 63% rate of PC software piracy in 2011 with a commercial value of unlicensed software estimated to be over US$2.9 billion. The motion picture industry continues to be hammered by a devastating combination of illegal camcording,

[6]The music piracy rate remains extremely high notwithstanding the recent launch of many legitimate services, including Saregama, Nokia Music, Flipkart, Cyworld, 7digital, Gaana, In, Indiaone, Meridhun, My Band, Raaga, Radio One, Saavn, Dhingana, Artist Aloud, Telugu One, and Smashits.

Internet, and hard goods piracy, notwithstanding the launch of some legal services for audiovisual materials.[7]

Internet and Mobile Piracy Devastating Creative Industries in India: With the growth of Internet connectivity, and increasing mobile penetration, Internet and mobile device piracy have grown worse in 2012 for the copyright industries in India. Internet & Mobile Association of India (IAMAI) reports 150 million Internet users in India as of December 2012, with 12.8 million fixed broadband connections, and 78.7 million mobile Internet users as of October 2012. Illegal downloading sites, P2P filesharing, BitTorrent trackers and indexes,[8] streaming sites, deep linking sites, blogs, forums, and social network sites directing users to infringing files, cyberlockers used to advertise massive amounts of infringing materials, and piracy through auction sites all continue to plague right holders in India. A study undertaken by MPDA has India among the top ten countries in the world for Internet piracy, as pirated films out of India appear on the Internet in an average of 3.15 days. During 2011, Peer Media Technologies reported that users initiated over 25 million downloads/uploads of unauthorized copies of major U.S. movie titles via certain P2P protocols in India. There is no indication that this situation improved in 2012. In 2012, the Entertainment Software Association reports that India placed sixth in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks, up from seventh in 2011.

The music industry reports a significant increase in 2012 of mobile chip piracy, in which retail establishments sell or offer for free flash cards or other storage devices (or chips) for mobile phones preloaded with music to customers (sourced either from pirate or legitimate CDs or downloaded from pirate websites or through P2P filesharing services). In addition, there are numerous "apps" for mobile phones, for example, operating on iOS and Android phones, used to make available Indian and international music to mobile subscribers without authorization. For the software industry, Internet piracy takes the form of auction sites and sites offering unauthorized copies of software for download. For the motion picture industry, camcorded versions of a film hit the Internet on infringing websites through release groups within a few hours of a film's release. The illegal online copy may be used further to produce hard goods for sale in key markets across India. The top ten illegal websites in India for piracy of motion pictures are: *Tamilwire.com*, *moviemobile.net*, *bharatmovies.com*, *tamilthunder.com*, *tamilcreation.com*, *bwtorrents.com*, *torrents.in*, *extratorrent.com*, *filestube.com*, *hindi5.com*, *movi91.com*, *fullmovies.com*, *moviespack.com*, *kat.ph*, *desitorrents.com*, *tamiltorrents.net*, *doregama.in* and *dctorrents.com*. These sites cater to the demand for local language dubs of U.S. films as well as Indian films. Many of the illegal websites and other services affecting India operate from foreign servers including Ukraine, Canada, Russia, Pakistan, South Africa, Afghanistan, and the United States.

Camcording Piracy Has Grown Out of Control in India: Illegal camcords from India have been globally redistributed through release groups at least 32 times in 2012, and paired with audio tracks globally in 12 different languages. There was a significant rise in the number of camcording incidents in India in 2012 (67), with India accounting for 53% of all forensic matches in the Asia Pacific region in 2012. Increased camcording incidents were observed from Ahmedabad (Gujarat), Indore (Madhya Pradesh), and Ghaziabad.

Retail Piracy and Circumvention of TPMs Continue to Harm Right Holders: The predominant form of retail piracy in India consists of burned optical discs, with content including music compilations in MP3 formats, pre-release music (primarily Indian titles and some international repertoire), motion pictures on VCDs, DVDs, and CD-Rs (most of which are available in major cities well before the local theatrical release of the title), and CD-ROMs and DVDs of software, entertainment software and books/reference materials. The music industry alone reports losses due to hard goods piracy of Rs300 crores (US$55.8 million). Some imported discs and factory-produced discs from India have reportedly still been detected in recent years. Publishers continue to report cases where many best-selling medical and technical textbooks are being loaded onto CD-ROMs and being sold for US$5 or less. The pirate assembly of PCs (so-called hard disk loading piracy) is also prevalent in India. There is almost no legitimate rental video market in India, since cottage pirate rental video stores dominate the market. Movie piracy hard goods remained available for open sale through street vendors who were most prominent in metropolitan areas like Mumbai, Delhi, Chennai, Kolkatta, and Ahmedabad. The high rate of piracy of entertainment software in India is made possible by the widespread availability of circumvention devices used to bypass TPMs, with vendors openly selling circumvention devices on the Internet, in retail stores and kiosks, or selling game

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[7]Legitimate entertainment content is available through legitimate retail chains such as Landmark, Planet M, and Ezone. Online retailers such as Ebay.com and Flipkart.com also sell legitimate DVDs. There are more legitimate avenues available in India to watch movies and TV shows online than ever before. In India, iTunes, Movieflix.com, Rajshri.com, Eros Digital, BigFlix.com, Hungama.com, Indya.com, Bollywoodmoviemax.in and Myplex.com have all emerged as legitimate platforms to access legitimate entertainment content.

[8]For example, the International Intellectual Property Alliance (IIPA) listed Canada-based *Torrentz.eu* as a notorious market in its 2012 submission to the U.S. Trade Representative in its Special 301 out-of-cycle review to identify notorious piracy markets. *Torrentz.eu* is particularly highly ranked in the city of Calcutta (12th) and in all of India it is ranked as the 18th most visited site (it is ranked in the top 32 sites throughout South Asia). See International Intellectual Property Alliance (IIPA), *Submission Re: IIPA Written Submission Re: 2012 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, 77 Fed. Reg. 48583 (August 14, 2012), Docket No. USTR-2011-0011*, September 14, 2012, at http://www.iipa.com/pdf/2012_Sep14_Notorious_Markets.pdf

consoles that are already modified. Both USTR and IIPA members have noted various physical marketplaces in India as "notorious" for the availability of pirated/illegal materials.[9]

Signal Theft and Public Performance Piracy: Pay-TV piracy is another problem which plagues the content industries. Unlicensed films/titles are aired by local cable operators. At times even new releases are broadcast over cable networks. In the past, cable operators in India routinely "under declared" the number of subscriptions for which they were being paid, so they paid right holders in movies and television content substantially less than they were rightfully owed. Given the size of the Indian market, the losses to the industry from such levels of underdeclaration were huge. Cable TV digitization, which has by now been implemented in the four primary metropolitan areas in India (and second and third tier metro areas now set to roll out as well) is expected to reduce the incidence of under-declaration. Up to the present, these practices resulted in substantial losses in tax revenue to the Indian states, and several of the states have begun complaining loudly about losses. Public performance piracy (e.g., in hotels, bars, restaurants, retail establishments) is also widespread for the music and sound recording industry.

Software Piracy: The software industry reports that the rate of software piracy has continued to decline in India, though it remains high at a rate of 63% in 2011 (down from 69% in 2007), representing a commercial value of unlicensed software of almost US$3 billion.[10] A key part of this problem remains the unlicensed use of software by enterprises in India. There have also been decreases in hard disk loading (the consumption of "white boxes" or assembled hardware with unlicensed software), although this remains a problem in some states. Moreover, companies appear to be gradually more concerned and diligent about ensuring that they use licensed software programs. A 2010 study conducted by IDC and sponsored by BSA, entitled *Piracy Impact Study: Economic Benefits of Reducing Software Piracy*, found that decreasing India's PC software piracy rate by ten points over four years would deliver US$4.7 billion in GDP, $512 million in tax revenues and nearly 60,000 new IT jobs. The benefits would be even greater if the ten point reduction was achieved in two years, yielding $6.1 billion in GDP and $676 million in tax revenues. Notably, in November 2011, BSA launched in India a new global program for certifying enterprises that meet International Organization for Standardization (ISO) standards for software asset management (SAM) – the "Certified in Standards-based SAM for Organizations (CSS(O))" program. Several Indian enterprises have completed or are in the process of obtaining this certification, which will recognize them as implementing SAM best practices. Also in November 2011, BSA and the Department of IT issued a joint report establishing a roadmap for promotion of SAM best practices in government and private enterprises and collaborative efforts between government and industry continue under this framework. Both of these efforts offer promising opportunities to drive down unlicensed software uses by enterprises.

Pirate Printing and Photocopying of Books and Journals: Piracy of trade books, textbooks, professional books (scientific, technical, and medical), and scholarly journals continues to harm the publishing industry in India. Book piracy occurs in a variety of ways in the country. While online piracy of trade books, textbooks, journals and reference books is beginning to rise, publishers' main problem in India remains hard goods piracy. Unauthorized photocopying as well as the compilation and sale of "course packs" are commonly seen in relation to textbooks used in educational institutes. Print piracy (off printing presses or reprints) affects academic titles as well as trade titles. Unauthorized and scanned copies of books (particularly in the scientific, technical and medical sectors) and the hosting of such copies on websites created and maintained by university students are also on the rise in India. Photocopying remains a severe problem for the academic and professional sectors of the industry, and continues on and around university campuses and in libraries, sometimes even condoned by the institutions. Wholesale copying of entire books is increasingly complemented or replaced by use of unauthorized compilations in the form of course packs, or "self instructional material" (SIM). These are used both for classroom teaching and distance learning, with the materials for the latter sometimes found in electronic form. Industry continues to wait, apparently in vain, for the MHRD to issue a long-promised government order/circular to all

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[9]In its December 2012 announcement, USTR cited Nehru Place (New Delhi, India) as "one of the many markets in major cities throughout India that are known for dealing in large volumes of pirated software, pirated optical media containing movies and music, and counterfeit goods." *See* United States Trade Representative, *Out-of-Cycle Review of Notorious Markets*, December 13, 2012, at http://www.ustr.gov/sites/default/files/_121312%20Notorious%20Markets%20List.pdf. The Motion Picture Association of America (MPAA) recently identified in its Special 301 out-of-cycle review submission on "notorious markets" for piracy Richie Street and Burma Bazaar (Chennai); Bada Bazaar (Kolkata); Palika Bazaar (underground market in Delhi); Manish Market, Lamington Road, Fort, Andheri Train Station, Thane Train Station, Borivli Train Station, and Dadar Train Station (Mumbai). These Indian markets with clusters of street vendors attract significant pedestrian traffic and are known for their high volume of pirated DVDs and other counterfeit products. *See* Michael O'Leary, Motion Picture Association of America, *Request for Public Comment on the 2012 Special 301 Out of Cycle Review of Notorious Markets, Docket No. USTR-2012-0011*, September 14, 2012.

[10]BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in India was 63%, representing a commercial value of unlicensed software of over US$2.9 billion. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), http://portal.bsa.org/globalpiracy2011/index.html. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA's 2013 Special 301 submission at http://www.iipa.com/pdf/2013spec301methodology.pdf.

educational and research institutions to combat illegal photocopying on university campuses. Another persistent problem continues to be the export of India-only, lower-priced editions of books intended only for distribution in the Indian market. Such India-only copies are being exported to countries in Africa, the U.S., the United Kingdom, and other European markets. The lower-priced edition program was intended to benefit and meet the specific needs of the Indian market, but unfortunately, the export of such editions out of India is now adversely affecting more developed markets. In 2012, the publishing industry conducted a global investigation into the export of India-only editions. The investigation identified a known distributor which has since agreed to cease engaging in the infringing activity.

ENFORCEMENT UPDATES IN INDIA

Internet Enforcement Experiences Mixed in India: The Internet enforcement situation in India demonstrates the complex nature of fighting piracy in India. The Copyright Law (both before and after the 2012 amendments) fails to provide a wholly adequate framework for a systematic and effective approach to Internet piracy. As such, takedowns have been generally patchy and never entirely successful. The music industry reports a takedown rate in India of 30% to 40%, with better luck against established user generated content (UGC) sites with established takedown processes, but only some relief in the case of court-mandated takedowns due to claimants' efforts to serve orders on ISPs, who comply for a short period of time after which compliance is an issue. One of the largest problems in India remains rogue foreign sites operating within the country, despite criminal cases having been filed against many of these sites. With ISPs taking the position that they will only take instructions from the Department of Telecommunications, and with no MOU in place with ISPs, there is no real remedy except for seeking to disable access to such foreign rogue sites. It is against this backdrop that local right holders have requested courts to order the disabling of access to foreign rogue sites causing significant harm to their interests. The latest instance involves the local music industry association obtaining orders from the Calcutta High Court directing all ISPs (387 in all) to disable access to 104 music sites from India (this included *songs.pk* mentioned in the 2011 IIPA report as particularly egregious, but many others with clear linkages to Bollywood, music or movies of India, or other indicia such as inclusion of words like "desi" or "tamil"). Where investigations reveal that websites have a nexus to or contact details in India, the music industry is bringing criminal complaints. Twenty-two such criminal complaints were lodged in 2012 by the music industry. One of these criminal cases was lodged in Rajkot Gujrat involving two websites (both shut down) and resulted in the arrest of two students in connection with running the websites; the case is ongoing. With respect to growing mobile device piracy, the Indian music industry is bringing to the police more than 500 mobile device piracy cases per month (up from 200 per month in 2011). However, cases such as these are not high on the agenda of Indian police, since they are instead focused principally on Internet or mobile cases involving credit card fraud or false names and addresses. One court case may also be helpful in defining the contours of liability for intermediaries in the online space and fostering greater cooperation among ISPs and other intermediaries. In *Super Cassettes Industries Ltd. v. Myspace Inc. & Another*, decided in July 2011, the plaintiff was granted an interim injunction against the defendant whose social network was found to be secondarily infringing through allowing its "webspace" or "place" to be used for sharing infringing materials. The local Indian record industry was involved in this legal action, as well as other complaints filed with the Mumbai Cyber Cell against 23 other websites (many of which have been shut down as a result of the actions in Calcutta).

Camcording and the Nexus to Internet and Hard-Goods Piracy: For the motion picture industry, the strong nexus between illegal camcording in India, a problem which is growing out of control, and Internet piracy and even hard goods piracy involving motion pictures, requires a multi-faceted approach. Several actions were taken in 2012 against syndicates engaged in the illegal camcording of films and the release of those films on websites or on hard goods. For example, joint efforts between the MPA's representative office in India, the Motion Picture Distributors Association (India) Pvt Ltd., and the Andhra Pradesh Film Chamber of Commerce (APFCC), resulted in arrests of four members of two major syndicates in southern India specializing in illegal camcording as well as online and hard goods piracy. The arrested operated out of Bangalore, Hyderabad, and Vijayawada and had links with syndicates in Delhi. The arrests led to the taking down of *spicyden.com*, *tollyzone.com*, and *desibuffer.com*. In another case during the fall of 2012, the arrests of three individuals distributing illegal copies of films online led to the takedown of *team-cc.com*, *rockerzone.com*, *southreels.com*, *southdownloads.com*, and *southcreations.com*. This latter operation was primarily initiated by the APFCC. Industry reports some awareness activities on "source" piracy have been helpful, and that cinema owners are showing slides in cinema halls and placing messages on tickets conveying that illegal camcording is not allowed. Industry has also launched the "Make a Difference" campaign working directly with cinema owners, whose interest should include clamping down on illegal camcording.

Some Retail Enforcement Ensues, But Piracy Remains a Low Priority Offense: Some industries continued to experience good support from Indian authorities in 2012, with law enforcement generally willing to conduct complaint-

based raids and, e.g., running *suo moto* raids for the music industry. The music industry reported more than 2,260 raids during 2012 (up from 1,400 in 2011), many of which were run *suo moto*, while the number of piracy cases remaining in litigation stands at an estimated 18,000. Publishers, on the other hand, note that police rarely ever initiate *suo moto* raids to address book piracy, usually only taking action after receiving a right holder's formal complaint under Section 200 of the Code of Criminal Procedure. The motion picture industry notes a couple of raids in 2012 conducted in Nasik, involving illegal DVD manufacturing and retail stores where more than 10,000 DVDs were seized and two people were arrested. The second raid was conducted in a warehouse, and led to the seizure of 5,535 DVDs and one person being arrested. Major hurdles remain, given the lack of anti-piracy teams among the Indian government other than in Tamil Nadu and Kerala, the lack of dedicated prosecutors or police, and the fact that piracy continues to be in general a low-priority offense amongst enforcement authorities. Moreover, publishers report that there are often threats of violence against rights holder representatives engaged in anti-piracy activities.

Enforcement Against Software End-User Piracy Improving: Enforcement is improving against software enterprise end-user piracy due in large part to the impact of civil enforcement actions. Civil actions comprising injunctions and Anton Piller orders continue to have a significant impact. On the other hand software "channel piracy," i.e., the reproduction of infringing/counterfeit software on physical media remains largely the same in India. Criminal enforcement remains an ineffective means of combating end-user software piracy.

Enforcement Through State Cells in India Should be Enhanced Further Through National Coordination: The Indian government, in its 2010 Special 301 Submission, indicated, "[e]nforcement Cells have been set by the state governments in their respective police headquarters. Nodal officers have been appointed by the state governments to handle IPR related offences." However, there remains no Federal government-led initiative to coordinate enforcement with and between the state governments. A national anti-piracy task force with goals to reduce piracy, *inter alia,* by working with state cells and Nodal officers should be established forthwith. The state cells, first established in 2002, are apparently starting to run more significant numbers of *suo moto* raids against piracy. The industries all report good working relationships with the state cell in Delhi, while one or more industries reports good working relationships and effective assistance from Tamil Nadu, Kerala, Punjab, Mumbai, Bangalore, Chennai, and Hyderabad. One issue that publishers have encountered, however, is that the jurisdiction of various teams are not clearly defined, leading to delays and confusion as to the most efficient approach for addressing instances of piracy. For example, in the Delhi Economic Offences Wing there are sections dealing with cyber crime and IPR. However, there are no clear guidelines about which section a right holder should approach.

State Anti-Piracy Statutes: Many states have enacted state anti-piracy laws (Goondas Acts) that recognize the link between piracy and organized crime. These statutes should cover all forms of piracy including software and books and journal piracy which are often not within the scope of these laws.

Civil and Criminal Court Processes Remaining Somewhat Problematic: Despite some positive case results in both civil and criminal cases in the past couple of years, industry notes some endemic problems. First, criminal fines (reportedly roughly 200 fines were meted out in copyright cases in 2012) are invariably low and non-deterrent, with most falling under US$1,000. Second, while the number of criminal convictions has gone up in the past couple of years, the sheer number of piracy cases still pending indicates that much more needs to be done to effect judicial reform and speed dockets; the music industry reports roughly 18,000 pending cases. Third, many courts, particularly outside Delhi, remain of concern, due to the endemic delays in court proceedings, the lack of trained prosecutors, problems with retaining evidence, and failure to investigate up the chain. Further problems involve unreasonable demands on right holders to produce copyright registration certificates, and demands for right holders to physically make witnesses available. Even in civil cases, in which credible IP judges have developed in the High Court in Delhi, Chennai and Kolkata, the high pendency rate, low damages, and the years that it takes to enforce any kind of court judgment, remain problematic features of the legal system in India. For these reasons, IIPA continues to urge the Indian government to establish special IP courts throughout the country with expert judges and prosecutors.

COPYRIGHT LAW AND RELATED ISSUES

Copyright (Amendment) Act, 2012 In Force, Further Modernizing India's Copyright Law: Copyright protection in India is governed by the Copyright Act, 1957 as amended last by the Copyright (Amendment) Act, 2012, effective June 21, 2012, and related laws and regulations. The Act (as amended) leaves in place existing, and raises some new, concerns which can be summarized as follows:

- unprecedented ownership and assignment provisions that could unduly restrict existing commercial arrangements in India;
- expanded compulsory license provisions;
- inadequate provisions on the protection of technological protection measures (TPMs) against unlawful circumvention as well as trafficking in circumvention devices and services;[11] and inadequate protection of rights management information (RMI);
- failure to address adequately online infringement/Internet piracy issues and to promote ISP responsibility and foster cooperation with right holders to combat such infringements; and
- some overly broad exceptions and limitations.

These issues and others[12] are reviewed in detail in IIPA's full India Special 301 report, at http://www.iipa.com/rbc/2013/2013SPEC301INDIA.PDF. IIPA also provided comments on the development of a National IPR Strategy.[13]

MARKET ACCESS ISSUES

India currently imposes significant market access hurdles on the motion picture, entertainment software, book publishing, and software industries. One reason for this is the various taxes and charges that are imposed on right holders at various points in the distribution or dissemination of creative product in India. One measure which the Indian Parliament is considering is the Goods and Services Tax (GST) expected to be taken up in the 2013 Parliamentary Budget Session. Some hurdles remain to achieving consensus on the GST, particularly in regard to the states' views on 1) fiscal autonomy, 2) revenue-neutral rates, and 3) which items will be included in the GST list. Nonetheless, adoption of the GST could resolve many issues below related to entertainment taxes, high tariffs on entertainment and double taxation.[14]

Motion Picture Barriers: The U.S. motion picture industry faces numerous market access barriers in India.

- ***TRAI Bans Exclusivity, Includes "Must Provide" in the Pay TV Sector; MIB Also Restricts "Direct-to-Home" Business:*** A 2007 Telecom Regulatory Authority of India (TRAI) regulation creates a potentially Berne- and TRIPS-incompatible ban on exclusivity (prohibiting broadcasters from granting exclusive contracts with any distributors) combined with a "must provide" requirement (obligating broadcasters to provide channel programming to all

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[11] The Act left unchanged the previous draft amendments which sought to implement the anti-circumvention provisions (protection of TPMs) of the WCT (Article 11) and WPPT (Article 18). While India has not yet ratified these treaties, the amendments are intended to address the WCT and WPPT issues to make India ready for such ratification. Specifically, Section 65A of the Act remains of concern as, on its face, it is incompatible with the WCT and WPPT. The provision falls short of international best practices without some clarifications and possibly revisions. IIPA has proposed certain of these through the Draft Rules process. Among key concerns are the following:

o The Act as amended does not expressly cover access controls as is required by the treaties. It should define "effective technological measure" as "any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright" to ensure proper coverage. IIPA has recommended that the Rules could confirm this definition of "effective technological measure."

o The Act appears to cover only the "act" of circumvention and only when the person engaging in circumvention activities acts "with the intention of infringing" an exclusive right.

o The Act does not expressly prohibit manufacturing, importing or trafficking in circumvention technologies, devices, or services and merely requires that person to keep a "record" of the names and addresses and other "particulars" of the person using such device or service to circumvent. This is highly unfortunate.

o The Act does not define an "effective technological measure."

o The Act would permit circumvention to take advantage of any exception, such as fair dealing, contained in the Copyright Act (thereby potentially eviscerating protection), and creates other overbroad exceptions. While this exception provision clearly places India outside the scope of the "adequate and effective" protection needed regarding unlawful circumvention, there may be ways to limit the scope of this provision through the Draft Rules. The Draft Rules currently permit a person to "approach anyone who can assist him to circumvent the technological protection measures." The Draft Rules should at the very least limit the scope of entities eligible to assist in circumvention, e.g., an approved list by the Ministry of those who it has verified will keep proper records and ensure that no act of circumvention is performed outside of any permitted purpose.

o The Act provides for criminal remedies, but not civil remedies.

[12] For example, IIPA also recommends that the government of India: 1) Confirm That Camcording of a Motion Picture is Illegal; 2) Deal with Damaging "Pre-Release" Piracy; 3) Adopt Statutory Damages; 4) Allow Seizure Orders as a Matter of Right; 5) Allow for Restitution in Criminal Cases; 6) Amend Tax Laws to Make Software Piracy a Form of Tax Evasion; 7) Enhance Corporate Audit and Disclosure Requirements; 8) Adopt Policies to Ensure Legal Software Use and Software Asset Management (SAM) Best Practices in Government Agencies and Promote the Same With Private Enterprises; 9) Address Lengthy Patent Pendency, and 10) Adopt an Effective Optical Disc Law.

[13] During the fall of 2012, the Department of Industrial Policy and Promotion (DIPP) initiated a process to review a Draft National IPR Strategy, inviting views of stakeholders. IIPA and BSA submitted comments in the process. In IIPA's comments, we note the importance of properly defining intellectual property rights, that copyright and creativity have long played an important role in India's economic development, and the importance of providing adequate and effective levels of protection and enforcement in India as a means to achieve the goals of the IP system (citing the priority actions from the 2011 Special 301 report as guideposts). BSA's submission highlighted the need to, among other things, 1) cover software under the Goondas Acts which recognize the link between piracy and organized crime; and 2) make software-specific changes to the Copyright Act consistent with this report; 3) make changes to disclosure and audit requirements in the Companies Act, 1956, to ensure that companies are properly procuring and licensing software; 4) establish a "National Intellectual Property Council" under the Prime Minister's Office to monitor progress of the National IPR Strategy and for other purposes; 5) put into place a directive or strict policy guideline mandating all government departments across the country use legal software and follow due diligence while procuring software assets, including the adoption of latest software asset management (SAM) practices; and 6) not discriminate in procurement or adoption practices on the basis of their business model, their place of origin, or the type of technology they employ.

[14] CNBC-TV18, Budget 2013: GST stuck between states' demands, India Inc's pleas, SME Mentor, January 17, 2013, at http://www.moneycontrol.com/_smementor/news/indian-markets/budget-2013-gst-stuck-between-states-demands-india-incs-pleas-808898.htm.

requesting distributors on a nondiscriminatory basis). The exclusive contract prohibition, along with "must provide" requirements, eliminates all potential for competition and any incentive to develop programming or buy any "rights." The industry has made numerous submissions to the Indian government, opposing restrictions in the functioning of India's cable and satellite market, arguing that the draft regulation would remove private parties' ability to negotiate standard free market transactions and would ultimately limit the quality and quantity of legitimate content available to consumers. This regulation eliminates all potential for competition and any incentive to develop programming or buy any "rights" and should be deleted or significantly altered.

- ***Restrictions on Direct-to-Home (DTH) Market:*** The Ministry of Information and Broadcasting (MIB) has also taken similar restrictive steps with respect to the DTH market (the reception of satellite programs with a personal dish in an individual home). Specifically, it issued Guidelines to include, among other things, prohibitions against DTH operators from entering into exclusive contracts with any broadcaster; and prohibitions against DTH operators carrying signals of any broadcaster who has entered into any exclusive contracts with any distribution medium and/or against whom any litigation is pending in such regard. These regulations and guidelines limit choice and undermine anti-competition laws.

- ***Price Controls on Pay TV Sector:*** TRAI has also introduced price caps for pay channels and "price bands" for bouquets in areas with set-top-boxes. TRAI says they will relax the price controls once other television platforms are widely adopted (e.g., satellite TV, Internet Protocol TV). Such rate regulation is stifling to the growth of this clearly competitive industry sector, and TRAI should make a strong commitment to relax price controls.

- ***Foreign Ownership Restrictions:*** Foreign ownership/investment in cable television systems is limited to 74%. IIPA opposes such ownership restrictions, which ignore the fact that significant capital infusion, which may be accessed from international markets, is necessary to further develop the television industry in India. A task force in the Ministry of Information and Broadcasting (MIB) was set up to re-examine the foreign ownership caps in broadcasting, particularly in electronic commerce, but there have been no reports of its conclusions.

- ***Entertainment Taxes:*** Entertainment taxes vary widely among Indian States, ranging from 15 to 40% in some key markets, and from 40 to 70% in other States. The average tax rate, computed on a country-wide basis, is estimated to be between 27-36%, and constitutes a significant disincentive to investment in the industry, including in the much needed area of cinema construction. The film industry, including the MPAA's India group, in association with the Film Federation of India, continues to encourage the Federal and various State governments to rationalize the high taxation levels and the Indian government has also stepped in to persuade various State governments to impose a uniform entertainment tax not exceeding 60%. Citing revenue considerations, however, most states are reluctant to conform. In addition, at the request of their local state film industry representatives, some states discriminate between local and non-state originated films, charging nothing (or even offering incentives) for local films, while assessing higher rates for non-state originated films. Any film not produced in the same language that is predominately spoken in that state is charged a higher tax. The Supreme Court has ruled this to be unconstitutional, but states are still engaged in the practice.

- ***Price Fixing on Theatrical and Quotas:*** The Indian government in various of the southern states has engaged in price fixing on tickets as well as quotas on the number of screenings per title per day.

- ***Onerous Restrictions on Satellite Services:*** For years, foreign content providers wishing to make their programming available by satellite have been stymied by onerous restrictions on their ability to uplink and downlink satellite signals beaming into India. Under 2005 Guidelines, foreign broadcasters are required, among other things, to set up offices in India, be subject to licensing by the government, and pay prescribed fees per channel beaming into India.

- ***Disruptive Content Control Rules for Television:*** In August 2006, the Ministry of Information and Broadcasting issued a notification to broadcasters that only films rated "U" can be broadcast on TV channels. This change was reportedly in response to public concern over increasingly offensive scenes shown on television. In addition, the Mumbai High Court issued a judgment that same month requiring broadcasters to recertify all films through the Central Board of Censors to ensure that only "U" rated films are aired. These decisions, unfortunately made without industry consultation and without supplementing Censor Board resources, have introduced uncertainty and disruption in the marketplace.

- *Service Taxes on Transfers of IP:* IIPA notes positively the addition of temporary transfers of IP rights to the Negative List, but also notes that litigation (Constitutional challenges filed by local Hindi studios in July 2010 and Motion Picture Association members in September 2010 in the Delhi and Mumbai High Courts) remains pending for the 2010-2012 period. A further service tax has now been imposed on the "input"/production side (i.e., the services of actors, composers, and musicians) which cannot be offset, with negative effects on those who produce locally or are engaged in local co-productions.

High Tariffs on Entertainment Software and Hardware Products: Entertainment software publishers continue to be hindered by the existence of high tariffs on PC game products, console game products, game console hardware, and game activation cards. Additional taxes compound to create an environment where the market share of authorized hardware and software is only a fraction of what it would be under less restrictive market conditions. India maintains unbound tariffs on consoles and accessories, including activation and value cards used in software and online game transactions, creating an uncertain business climate for trade and investment in the Indian market.

Taxation of Software: An array of tax policies negatively impact market access for software goods and services in India. These include transfer pricing rules based on global profit split attributions to outsourced R&D activity in India and double taxation of certain software as both the sale of a good and service. IIPA urges that these and other problematic tax policies impacting market access for software be amended to be consistent with international practices.

Technology and Procurement Mandates: The Indian government has issued a number of policies that raise concerns they will be implemented in a manner that provides significant preferences and mandates for government procurement, and in some cases private sector procurement, of products and services that are locally manufactured, that utilize a particular technology, or that have IP owned and/or developed in India. These include the National Electronics Policy, the National IT Policy and the National Telecom Policy, all of which culminated in the February 2011 Preferential Market Access (PMA) policy and subsequent implementation guidelines. The PMA policy represents an unprecedented interference in the operations of U.S. IT and software companies in India by imposing onerous and discriminatory local content requirements on certain "electronic" goods and services. Importantly, the Policy imposes these requirements on both government and private sector procurements, which is clearly inconsistent with India's WTO obligations. Moreover, the rules will apply to all "Managed Service Providers" operating in India.

As written, the PMA will capture software for a number of reasons: 1) the local content and value addition requirements will capture pre-installed software in relevant ICT hardware, including PCs, tablets, and printers that have already been notified for government procurement; 2) Indian government officials have verbally indicated to U.S. company representatives that software will be captured in some form by the policy, although they have not provided further details; 3) neither the February 2011 PMA document nor subsequent implementation guidelines create any clear distinction between hardware and software in local content/value addition calculations; and 4) the PMA policy's broad definition of an MSP as "a provider of Information Technology (IT) and Communications related services, who provide such services by establishing Information Technology (IT)/Communications infrastructure," could capture software and services. IIPA believes that an open and competitive market is an essential component of a world-class IT sector that fosters IP development. The Indian government should avoid policies that restrict market access through such mandates or stringent procurement preferences.

GENERALIZED SYSTEM OF PREFERENCES

India enjoys preferential trade benefits under the Generalized System of Preferences trade program. Among the criteria the President must take into account in determining whether a country should continue to be designated as a GSP beneficiary country are "the extent to which such country is providing adequate and effective protection of intellectual property rights," and "the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets ... of such country." 19 USC 2462(c)(4) and (5). In 2011, India was the largest recipient of GSP preferences, with more than US$3.73 billion worth of Indian goods entering the U.S. under the duty-free GSP code, accounting for almost 10.4% of its imports into the U.S. and around 20% of all U.S. imports under the program (US$18.5 billion). In the first eleven months of 2012, more than US$4.1 billion of India's exports to the U.S., or almost 11.1% of its total exports to the U.S., received duty-free treatment under the GSP code. India needs to continue to endeavor to meet the adequate and effective test under the statute to remain eligible to receive favorable treatment under the GSP program.

ITIF

Written Statement to the U.S. House of Representatives Committee on Ways and Means Trade Subcommittee

Hearing on U.S.-India Trade Relations: Opportunities and Challenges (Held March 13, 2013)

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March 27, 2013

India's robust economic growth over the past two decades—including its development of a world-class information and communications technology (ICT) software and services industry—has largely arisen from its decision in the early 1990s to abandon the restrictive economic and trade policies that characterized the Indian economy of the 1970s and 1980s and instead embrace core tenets of free markets, open and non-discriminatory trade, and openness to flows of goods, people, technology, and capital. Indeed, the liberalization of India's economic and trade policies in the early 1990s have had profoundly positive impacts on the Indian economy. For example, India's gross domestic product (GDP) grew at a 4.21 percent annualized rate from 1970 to 1991, but after India's embrace of economic and trade liberalization policies in 1991, India's GDP grew at a 6.81 annualized rate from 1992 to 2011, meaning that India's economic liberalization policies contributed to a sustained average of 40 percent greater GDP growth per year for a period of two decades.[1] Similar impacts can be seen in India's contributions to regional (Asian) economic growth, which increased by one-third after India's economic reforms in the early 1990s. Specifically, India contributed just 9.8 percent of regional economic growth from 1970 to 1990, a rate that increased to 15.5 percent over the period from 1990 to 2010.[2]

Unfortunately, as the competition for innovation-based economic growth has intensified among nations, a growing number of countries are increasingly turning to "innovation mercantilist" tactics such as forcing local production or technology/intellectual property (IP) transfer as a condition of market access, manipulating standards or currency rates, or otherwise disadvantaging foreign competitors to gain domestic advantage.[3] These practices are evident, for example, in China's recent attempts to impose indigenous innovation product standards or its insistence that firms participate in joint ventures or transfer technology or intellectual property as a condition of obtaining market access.[4] Both pressured by and seeing the "apparent success" of such mercantilist tactics in countries like China, India is increasingly adopting similar innovation mercantilist practices of its own, as evidenced in its recent Preferential Market Access (PMA) rules for procurement of electronic goods or new requirements to license intellectual property to sell in-country. These policies are particularly concerning because they threaten to disrupt the strong trade relationship that exists between India and the United States. Indeed, the United States represents India's second largest export market (while India is the United States' 13th largest goods trading partner). U.S. goods and services trade with India totaled $86 billion in 2011.[5]

The House Ways and Means Trade Subcommittee's Wednesday, March 13 hearing on the turbulent state of U.S.-India trade relations reflects the growing attention and concern related to India's recent embrace of a wide slate of "innovation mercantilist" policies that seek to bolster Indian economic and employment growth by distorting global trade rules and forcing investment and production to occur in India. India has erected these policies in a diverse range of sectors from ICT to life sciences, clean energy, digital content, financial services, and retail.

For instance, in February 2012, the Indian Ministry of Communications and Information Technology announced a Preferential Market Access mandate for electronic goods (the PMA Mandate) which imposes local content requirements on procurement of electronic products by government and private sector entities with "security implications for the country." A specified share of each product's market—anywhere from 30 to possibly even up to 100 percent—would have to be filled by India-based manufacturers, with the local content share for each product rising over time.[6] The policy's coverage is so broad it could easily capture half of India's ICT market. In fact, on March 12, 2013, India's Department of Telecommunications sought the Defense Ministry's approval to classify select telecommunications products as "security sensitive" in the run-up to mandating 100 percent domestic sourcing for private sector gear procurements.[7]

When applied to the private sector, India's PMA violates Article III of the GATT (the General Agreement on Tariffs and Trade, whose provisions are incorporated into World Trade Organization (WTO) rules), which prohibits a member nation from discriminating against foreign competitors by forcing them into "buy local" contracts with domestic suppliers for purposes of private sector procurements. It's also poised to violate the WTO's Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits WTO members from granting incentives based on the use of local content. India's PMA is significantly and dangerously outside the bounds of the globally established norms of international trade and if implemented will engender serious harm both to India's economy—and to the entire global trading system.

Two objectives of the PMA Mandate are for India to have 80 percent of the computers and electronics sold in India by 2020 be manufactured domestically and to increase India's ICT exports thirteen-fold from $5.5 billion today to $80 billion by 2020.[8] In pursuit of these goals, India has also excluded foreign ICT vendors from participating in the country's $4 billion national fiber optic network project, introduced a compulsory registration scheme requiring onerous and duplicative in-country certification testing on a range of computer and electronics equipment, and instituted new rules requiring that foreign corporations enter into joint ventures to sell computers online.[9] As the United States Trade Representative Office's *2012 National Trade Estimate Barriers Report* notes with regard to India's increasing introduction of mercantilist ICT policies, "Certain aspects of these proposals, if implemented, would impose significant barriers to trade in the ICT sector. Moreover, such approaches, as well as other proposals such as increased conformity assessment procedures and domestic preferences in government procurement, will likely do little to foster domestic manufacturing, but instead produce perverse consequences of discouraging investment, weakening ICT infrastructure, and increasing costs to Indian consumers and firms seeking to do business in India."[10]

India has also declined to participate in negotiations to expand the Information Technology Agreement (ITA), which eliminates tariffs on trade in ICT products, despite strong evidence that membership in the ITA boosts countries' levels of domestic innovation in ICT sectors and evidence that countries that are non-members of the ITA have seen substantial decreases in ICT exports as a share of their total goods exports.[11] For example, from 1997 to 2010, the share of ICT goods exports as a percentage of the country's total exports increased by 39 percent 16 percent, respectively, in ITA members China and India, but decreased by 227 percent and 300 percent, respectively, in non-ITA member countries Argentina and Brazil.

In life sciences, the India Patents Controller has issued at least four compulsory licenses (essentially a government-mandated licensing of a patent) for innovative cancer therapies that were researched and developed in the United States, including Genentech's breast cancer drug Herceptin, Bayer's Nexavar, and Bristol-Myers Squibb's Ixempra and Sprycel leukemia therapeutics. The compulsory licenses were granted on the specious grounds that: 1) the drug prices were too high; 2) the domestic market wasn't supplied adequately; 3) and the drug wasn't being adequately "worked" (e.g., manufactured) in India. In at least three more cases, India revoked patents for an alleged failure to demonstrate an inventive step. And India denied Novartis's patent application for the cancer drug Glivec on the grounds that it did not satisfy a "special" rule for "new forms" of known substances—despite the fact that 75 countries have already issued a patent for the drug.

These are just some of the actions recently taken by the Indian government aimed at stripping innovative biopharmaceutical companies' intellectual property for the benefit of India's domestic industry. Meanwhile, even as Indian generic drug sales to the United States have grown dramatically, data suggests India has routinely flouted trade rules to bolster its generic industry at the expense of the United States'. Without access to the Indian market, biopharmaceutical innovators lose access to a great number of consumers, which impacts demand and ultimately affects jobs in the United States that rely on innovation and R&D.[12]

India has also erected new barriers to foreign direct investment (FDI) in the pharmaceutical industry. India had previously allowed up to 100 percent FDI in the pharmaceutical sector without requiring government approval. But in October 2011, India appeared to back away from this openness, adopting a requirement that foreign acquisition of pharmaceutical firms ("brownfield investments") be approved by the Competition Commission of India (CCI). While FDI would still be permitted up to 100 percent, such investment would no longer be automatic. Instead, the CCI has been charged with "balancing" public health concerns with the need to attract FDI when deciding whether to approve a particular acquisition. As the United States' *2012 National Trade Estimate Barriers Report* notes, "This 'balancing' requirement erroneously presumes that FDI in the pharmaceutical sector is in tension with the government's public health objectives, and places the evaluation of such objectives in the hands of the CCI, which appears to be neither competent nor statutorily authorized to perform such analysis."[13] The CCI has been tasked with developing regulations within six months to govern these brownfield decisions, during which time the Foreign Investment Promotion Board will determine approvals for acquisition of pharmaceutical firms by foreign companies. As the *2012 National Trade Estimate Barriers Report*

explains, "India's stringent and nontransparent regulations and procedures governing local shareholding inhibit inbound investment and increase risk to new entrants."[14] Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined incentives for foreign investors to increase their equity holdings in India.

In clean energy, India has introduced local content requirements for wind turbines and solar photovoltaic cells as part of an effort to promote creation of domestic solar cell and wind turbine manufacturing industries. Specifically, as part of its Jawaharlal Nehru National Solar Mission, India introduced local content requirements that solar project developers source at least 50 percent of their crystalline solar modules and cells from domestic manufacturers in order to receive significant government subsidies.[15] In response, the United States requested a WTO dispute settlement in February 2013 over India's solar program.[16]

Digital content piracy, especially that affecting software, music, and film, continues to be a major challenge in India. As the United States Trade Representative's Office *2012 Special 301 Report* notes, "large-scale copyright piracy, especially in the software, optical media, and publishing industries" persists in India.[17] For instance, the Business Software Alliance's *2011 Global Piracy Study* found that the commercial value of PC software theft in India in 2011 totaled $2.9 billion, with the software piracy rate reaching 63 percent.[18] Likewise, the International Federation of the Phonographic Industry (IFPI) estimates that more than half of Internet users (54 percent) access unlicensed services on a monthly basis in India.[19] Such rampant digital piracy distorts global trade, threatens the production of digital content in the future, and costs jobs in the United States. While India has introduced new draft copyright legislation, the United States has raised a number of concerns with it, arguing that it contains inadequate protections against unlawful circumvention of technological protection measures connected to Indian and foreign rights holders copyrighted works.[20]

Because of U.S. concerns about inadequate protections for U.S. intellectual property rights holders in a range of industries from life sciences to digital content, India remained on the United States' Special 301 Priority Watch List in 2012, with the *2012 Special 301 Report* noting that India has "made limited progress on IPR protection and enforcement, and its legal framework and enforcement system remained weak."[21] Unfortunately, when intellectual property rights are not protected, it has a chilling impact on both rates of domestic innovation and on foreign direct investment into India's economy. But while compulsory licensing—or outright theft—of intellectual property can help countries in the short-run, it stifles incentives to embark on home-grown technology development, and this only hurts countries in the long-run.[22]

India also makes it difficult for foreign financial services providers to compete in-country. Although India allows privately held banks to operate in the country, the banking system is dominated by government-owned banks and direct investment by foreign banks is subject to restrictions. State-owned banks account for roughly 72 percent of the assets and 86 percent of all bank branches in the banking system.[23] Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by

nontransparent quotas on branch office expansion. No licenses to open additional bank branches have been issued to U.S. banks since March 2009, despite several banks having applied.

While India has taken important steps to liberalize its retail sectors and open them to more foreign direct investment, several hurdles still remain. For example, FDI provisions in the retail sector are to be handled on a state-by-state basis and are to be focused only on big cities with a population of more than one million, which risks further polarizing urban and rural India, as well as exacerbating planning and environment issues in these already congested cities. Another provision stipulates that foreign chains have to source almost one-third of their manufactured and processed goods from small- and medium-sized enterprises.[24]

Beyond barriers to trade in specific industries, a number of additional hurdles impede trade between India and the United States (and other foreign nations). For example, as the *2012 National Trade Estimate Report on Foreign Trade Barriers* notes, "U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts." According to the World Trade Organization, India's average bound tariff rate as of 2010 was 46.4 percent, while its simple MFN (most-favored nation) average applied tariff for 2010 was 12 percent. According to the *2012 National Trade Estimate Report on Foreign Trade Barriers,* India has not reduced the basic customs duty in the past four years.[25]

Furthermore, India is not a signatory to the WTO's Government Procurement Agreement (GPA), though it did become an observer to the GPA in February 2010. As the *2012 National Trade Estimate Report on Foreign Trade Barriers* directly states, "India's government procurement practices and procedures are often not transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises and the prevalence of such enterprises."[26] India's 2006 Micro, Small and Medium Enterprise (MSME) Act authorizes the government to provide procurement preferences to MSMEs.

In summary, India's tariff walls, market access restrictions, local content requirements, licensing of foreign intellectual property to domestic companies, and other trade-distorting practices are part of a concerted industrial policy intended to boost domestic manufacturing in India. India feels it must bolster its manufacturing sector for two primary reasons. In part, Indian officials feel they must create millions of manufacturing jobs to accommodate the more than 250 million citizens entering India's workforce by 2025 and in part they are concerned about growing current account balance (trade) deficits. But modernized import substitution industrialization policies that try to add an export-led growth component simply won't work; and in fact are likely to do more harm than good to India's economy.

First, there's simply no correlation between a medium- or large-sized nation's balance of trade and its unemployment rate.[27] Second, India's mercantilist policies miss that India could most readily increase economic growth by raising productivity across-the-board, especially with the productivity level of India's economy just 10 percent that of the United States.[28] Third, they miss that trade barriers which raise prices (or compel the use of inferior) general purpose technologies like ICTs only hurt consumers

and inhibit the diffusion of ICTs among domestic-serving sectors such as financial services, retail, and transportation, causing productivity growth in these sectors to languish. These higher prices also raise the prices of imports for inputs used by Indian manufacturers. This explains why economists have found that for every $1 of tariffs India imposes on imported ICT products, India suffers an economic loss of $1.30.[29] Fourth, they ignore that the best way to ensure that countries participate in global supply chains, such as for ICTs, is by acceding to global multilateral agreements that remove barriers to their trade. That's why the OECD has found that countries not participating in the ITA saw their participation in global ICT value chains decline by over 60 percent from 1995 (when the ITA was chartered) to 2009,[30] leaving a clear message: countries that don't participate in open cross-border flows of digital information and ICT products only end up excising themselves from global production networks.[31] Finally, India neglects to recognize that as it erects more barriers to global trade, other countries will respond with their own trade barriers in kind, meaning that India's own trade-distorting policies will surreptitiously undermine its ambitious export goals.

To be sure, manufacturing can certainly play an important role in helping India meet its employment goals. In fact, a McKinsey Quarterly report, *Fulfilling the promise of India's manufacturing sector*, finds that India's manufacturing sector could grow six-fold to $1 trillion by 2025, creating up to 90 million domestic jobs.[32] For India's manufacturing sector to achieve that level of impact, it will both have to build its domestic manufacturing base and also attract robust levels of foreign direct investment (FDI) from multinational manufacturers. But mandating and forcing companies to manufacture in India in order to be able to sell products there is not the way to go about it. In fact, such an approach will only backfire and make multinational corporations leery of moving forward with FDI projects in India. This approach is one reason why foreign direct investment in India, which reached a record $47 billion in FY 2011, had fallen by 67 percent in the following year [up to September 2012].[33] Indeed, it's quite clear that foreign direct investment in India's electronics and telecommunications sectors fell off a cliff after the country's announcement of the PMA. For example, FDI in India's telecommunications sector fell from $2 billion in the period from April 2011-March 2012 to just $70.6 million from April 2012 to December 2012. Likewise, FDI into India's electronics sector fell by over 80 percent between those two time frames.

Rather, India can realize its goals and attract globally mobile investment—and within the time frames it desires—if it focuses on enacting a range of "good" innovation policies that enhance the competitiveness of its economy. In particular, India needs to implement a range of policies to increase the productivity of its manufacturing sector, a problem because workers in India's manufacturing sector are almost four and five times less productive, on average, than their counterparts in Thailand and China, respectively.[34]

As Rajiv Kumar and Abhijit Sen Gupta of ICRIER (the Indian Council for Research on International Economic Relations) write in *Towards a Competitive Manufacturing Sector*, six key factors are holding back the competitiveness of India's manufacturing sector, including: 1) the presence of entry barriers (e.g., making it difficult to start a new business); 2) labor market rigidities; 3) procedural constraints; 4) exit barriers; 5) emerging skill constraints; and 6) infrastructure.[35] For instance, it takes 35 days to start a business in India, the cost to start a business equals 56.5 percent of the average Indian citizens per

capita income 62 days to register property, 25 days to complete one procedure to enforce a contract, and 10 years to close a business—all durations well in excess of those seen in developed and developing countries alike, including India's principal competitors such as China and Korea.[36] Meanwhile, more than $60 billion in committed capital investment awaits environmental or land clearances. And over both the near- and long-term, India must tackle an infrastructure investment deficit of some $350 billion that affects particularly its energy and transportation infrastructure. Addressing these issues is the best way for India to empower its manufacturing sector to realize the kind of contribution India's government would like it to make to bolster the country's economic and employment growth.

In other words, the best path forward for India is to offer globally mobile investment and enterprise all of the attractors of China—a large, fast-growing consumer marketplace, a cheaper labor pool, but one that yet features hundreds of thousands of skilled engineers, etc.—with none of the "innovation mercantilist policies" multinational corporations all-too-often encounter in China. India shouldn't be playing the same game as China, rather it should be offering an alternative and superior model. India should be adopting an attraction, not a compulsion, strategy.

Ultimately, India's innovation mercantilist policies if not significantly modulated threaten to inflect great harm not only on its own but also the global economy. U.S. government and industry have been engaged in intense dialogue with Indian officials for well over a year toward modifying the PMA, compulsory licensing, and related policies without seeing significant improvement. It's time to add some sticks to the carrots. Congress should immediately direct the U.S. International Trade Commission (ITC) to initiate an investigation of how India's mercantilist policies damage the U.S. economy, as it did with the ITC's 2011 report examining the *Effects of China's Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*.[37] Congress should also begin the process of withdrawing India's participation from the Generalized Systems of Preferences (GSP), which provides reduced tariffs for Indian goods entering U.S. markets.[38] In fact, India was the top developing country GSP-beneficiary in 2011, with $3.7 billion in imports entering the United States duty free, and the country has benefitted significantly from the preference.[39] Indeed, as a 2011 report, *Is the US GSP scheme benefitting India's trade?*, finds, "GSP concessions [have] helped to accelerate India's exports into the USA."[40] Finally, the U.S. Trade Representative's Office (USTR) should start preparing to bring a WTO dispute against India regarding the PMA Mandate's local content requirements, as it has done with solar panels.

To be clear, a strong, growing, and collaborative trade relationship between the United States and India is in both parties' best interests. But India's recent trade policies are placing that relationship in jeopardy. The United States should not sit idly by as the Indian government enacts regulations that harm American industry and jobs. Strong leadership will be needed from both sides to ensure a continued constructive and robust trade relationship between the two countries.

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ENDNOTES

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[1] Author's analysis of World Bank Development Indicators Data. World Bank, World Development Indicators, "GDP growth (annual %)," (accessed January 24, 2013).
[2] Asian Productivity Organization, *APO Productivity Databook 2012*, 2012, 23, http://www.apo-tokyo.org/publications/files/ind_APO_Productivity_Databook_2012.pdf.
[3] Robert D. Atkinson and Stephen J. Ezell, *Innovation Economics: The Race for Global Advantage* (New Haven, CT: Yale University Press, 2012).
[4] Robert Atkinson, *Enough is Enough: Confronting Chinese Economic Mercantilism*, (Washington, DC: ITIF, February 2012), http://www2.itif.org/2012-enough-enough-chinese-mercantilism.pdf.
[5] Office of the United States Trade Representative, "U.S.-India Bilateral Trade and Investment," http://www.ustr.gov/countries-regions/south-central-asia/india.
[6] Amol Sharma, "India to Western Tech Firms: To Sell It Here, Build It Here," *Wall Street Journal*, January 8, 2013, http://online.wsj.com/article/SB10001424127887323482504578227583950036410.html.
[7] Kalyan Parbat, "DoT seeks to tag 14 items as security sensitive," *Times of India*, March 12, 2013, http://articles.timesofindia.indiatimes.com/2013-03-12/security/37650063_1_telecom-licensees-telecom-department-telecom-products.
[8] India Ministry of Communications and Information Technology (MCIT), Department of Electronics and Information Technology, "National Policy Electronics 2012," (New Delhi, India: MCIT, November 19, 2012).
[9] Jamie Yap, "India bars foreign vendors from national broadband initiative," *ZDNet*, January 21, 2013, http://www.zdnet.com/in/india-bars-foreign-vendors-from-national-broadband-initiative-7000010055/.
[10] United States Trade Representative's Office, *2012 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: USTR, March 2012), 192, http://www.ustr.gov/sites/default/files/NTE%20Final%20Printed_0.pdf.
[11] Stephen Ezell, "The Benefits of ITA Expansion for Developing Countries," (Washington, DC: ITIF, December 2012), http://www2.itif.org/2012-benefits-ita-developing-countries.pdf.
[12] Robert D. Atkinson, "India's Recent Trade Policies Put Domestic, International Growth at Risk," *The Huffington Post* (blog), October 31, 2012, http://www.huffingtonpost.com/robert-d-atkinson-phd/indias-recent-trade-polic_b_2050434.html.
[13] United States Trade Representative's Office, *2012 National Trade Estimate Report on Foreign Trade Barriers*, 191.
[14] Ibid.
[15] Matthew Stepp and Robert D. Atkinson, "Green Mercantilism: Threat to the Clean Energy Economy," (Washington, DC: ITIF, June 2012), http://www2.itif.org/2012-green-mercantilism.pdf.
[16] Office of the United States Trade Representative, "United States Challenges India's Restrictions on U.S. Solar Exports," February 2013, http://www.ustr.gov/about-us/press-office/press-releases/2013/february/us-challenges-india-restrictions-solar.
[17] United States Trade Representative's Office, *2012 Special 301 Report* (Washington, DC: USTR, April 2012), 35-36, http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report.pdf.
[18] Business Software Alliance and IDC, Shadow Market: 2011 BSA Global Software Piracy Study (Washington, D.C.: BSA, 2011), http://portal.bsa.org/globalpiracy2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf.
[19] International Federation of the Phonographic Industry, *IFPI Digital Music Report 2013*, February 2013, http://www.ifpi.org/content/library/dmr2013.pdf.
[20] United States Trade Representative's Office, *2012 Special 301 Report*, 35-36.
[21] Ibid.
[22] Stephen Ezell, "India's IP Growing Pains," *Reuters Expert Zone* (blog), March 25, 2013, http://blogs.reuters.com/india-expertzone/2013/03/25/indias-ip-growing-pains/.
[23] United States Trade Representative's Office, *2012 National Trade Estimate Report on Foreign Trade Barriers*, 87.
[24] Richard Cuthbertson and Malobi Mukherjee, "Retail Reform is in the Doing," *The Indian Express*, October 2, 2012, 13.

[25] United States Trade Representative's Office, *2012 National Trade Estimate Report on Foreign Trade Barriers*, 182.
[26] United States Trade Representative's Office, *2012 National Trade Estimate Report on Foreign Trade Barriers*, 184.
[27] Robert Atkinson, *Enough is Enough: Confronting Chinese Economic Mercantilism*, 55.
[28] James Manyika et al., *How to Compete and Grow: A Sector Guide to Policy* (New York: McKinsey & Co., 2010), http://www.mckinsey.com/Insights/MGI/Research/Productivity_Competitiveness_and_Growth/How_to_compete_and_grow.
[29] P.D. Kaushik and Nirvikar Singh, "Information Technology and Broad-Based Development: Preliminary Lessons from North India," UC Santa Cruz Economics, Working Paper No. 522, July 2002, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=344830.
[30] OECD, Measuring Trade in Value Added: An OECD-WTO joint initiative, "Trade Policy Implications of Global Value Chains," http://www.oecd.org/sti/ind/tiva-policy-implications.pdf.
[31] Stephen Ezell, "Written Testimony to the United States International Trade Commission: Investigation No. 332-531; Hearing: Digital Trade in the U.S. and Global Economies," March 14, 2013.
[32] Rajat Dhawan, Gautam Swaroop, and Adil Zainulbhai, "Fulfilling the promise of India's manufacturing sector," *McKinsey Quarterly*, March 2012, http://www.asia.udp.cl/Informes/2012/manufacturing_india.pdf.
[33] *Economist*, "Aim Higher," September 29, 2012, http://www.economist.com/node/21563414/print.
[34] Rajat Dhawan, Gautam Swaroop, and Adil Zainulbhai, "Fulfilling the promise of India's manufacturing sector."
[35] Rajiv Kumar and Abhijit Sen Gupta, "Towards a Competitive Manufacturing Sector," (working paper, Indian Council for Research on International Economic Relations, February 2008), 3, http://www.icrier.org/pdf/Working%20Paper%20203.pdf.
[36] Ibid.; Robert D. Atkinson, Stephen J. Ezell, Luke A. Stewart, The Global Innovation Policy Index (Washington, DC: ITIF, March 2012), 55, http://www2.itif.org/2012-global-innovation-policy-index.pdf.
[37] Katherine Linton, Alexander Hammer, and Jeremy Wise, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, (Washington, DC: U.S. International Trade Commission, May 2011), http://www.usitc.gov/publications/332/pub4226.pdf.
[38] Stephen Ezell, "Withdraw India's GSP Preference If It Continues to Impose Localization Barriers to Trade on Foreign Enterprises," *The Innovation Files* (blog), January 23, 2013, http://www.innovationfiles.org/withdraw-indias-gsp-preference-if-it-continues-to-impose-localization-barriers-to-trade-on-foreign-enterprises/.
[39] Office of the United States Trade Representative, "GSP by the numbers," http://www.ustr.gov/sites/default/files/GSP%20by%20the%20numbers.pdf.
[40] Anwarul Hoida and Shravani Prakash, *Is the US GSP scheme benefitting India's trade?,* (New Delhi, India: Indian Council for Research and International Economic Relations, November 2011), http://www.icrier.org/pdf/Policy_Series_No_7.pdf.

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Knowledge Ecology International (KEI) comments
U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, March 13, 2013 Hearing on U.S.-India Trade Relations

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Title of Hearing: U.S.-India Trade Relations

Introduction

These comments concern trade disputes involving patents and other intellectual property for medical inventions, including pharmaceutical and biologic drugs.

I am the Director of Knowledge Ecology International (KEI), a non-profit organization that focuses on the management and governance of knowledge resources. A significant amount of KEI's focus is on trade policy as it relates to both innovation and access to knowledge goods, including medical technologies.

Including my work before KEI was created at the Center for the Study of Responsive Law's Consumer Project on Technology (CPTech), I have worked on the impact of intellectual property rights on consumers for more than twenty years. Since 1994, I have followed international trade negotiations on global standards for intellectual property protection and the implementation of those standards by governments.

During the hearing on March 13, 2013, the Subcommittee heard from Roy Waldron, the Chief Intellectual Property Counsel for Pfizer. Dr. Waldron's written and oral testimony included a variety of complaints about India's patent law[1] and made some misleading or completely wrong statements about India's global obligations under WTO rules for intellectual property. In this respect, the comments by Arvind Subramanian from the Peterson Institute for International Economics were relevant and worth considering. Subramanian noted that government officials in India see their actions as consistent with their international obligations. Subramanian also stated that if the United States government believes India is operating outside of the rules, it should file a complaint under the WTO dispute resolution understanding (DSU) system.

Publicly, Pfizer, other big drug companies, and the United States trade negotiators are constantly asserting that India and some other countries are operating outside of their TRIPS obligations on issues such as the scope for granting patents, the grounds for compulsory licensing, or the

1 Waldron focused on the failure of Pfizer and other companies to obtain patents for some pharmaceutical products, the high standards for granting patents under Section 3(d) of the India patent law, the India system of pre-grant opposition to patents under Section 25(1) of the India patent act, the Nexavar compulsory licensing case under Section 84 of the India patent act, the requirement in the Nexavar case for local manufacturing, and the new proposals to grant compulsory licenses under Section 92 of the India patent act. Waldron also asserted that India had not complied with TRIPS requirements for the protection of test data, and complained that drug regulatory authorities did not block drug approval where there are assertions of patent protection.

protection of pharmaceutical test data. But the USTR has not used the WTO to resolve these disputes, and the reason is that the USTR expects it would lose the cases. Instead, the drug companies are pushing the Congress and USTR to mount more political efforts to change policies in India and elsewhere.

To be clear, what Pfizer wants is not a "rules based" trading system, but rather outcomes that reflect the economic and political power of the U.S. government to demand tough intellectual property right standards and practices, and ultimately higher prices for drugs in India.

Pfizer wants the U.S. government to give other trade and political concessions to India, in return for those high prices. This has nothing to do with the WTO's TRIPS requirements.

There are two reasons why the Congress should reject the lobbying by Pfizer and other companies on this issue.

1. The first and most compelling reason is that prices for new drugs and other medical technologies create hardships and lead to unacceptable and even appalling disparities in access to products.

2. The second reason, touched on by other witnesses at the March 13, 2013 hearing, is that the United States will have to give up a lot to get India to take steps that exclude its own residents from access to new medicines, and in a world of finite political and economic assets and leverage, excessive attention to Pfizer's agenda will inevitably harm other domestic economic interests in the United States, for example, the energy, agricultural, information and services sectors.

Disparities in access to products

Since my first visit to India in 1996, I have closely followed changes in the India patent law and the Indian pharmaceutical industry.

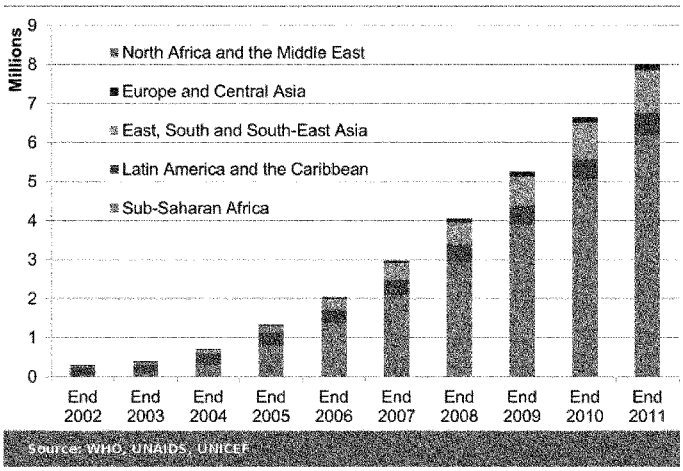
HIV/AIDS

In February 2001 I negotiated a deal between CIPLA, an India manufacturer of generic drugs, and MSF, the medical humanitarian organization, for a $350 per year three drug combination therapy to treat HIV/AIDS, a sharp reduction from the more than $10 thousand cost of the same cocktail from patent holders in South Africa at the time. The CIPLA offer dramatically changed the global debate on access to HIV/AIDS drugs in the developing world, and from 2002 to 2011, the numbers of persons receiving antiretroviral drugs in Africa increased from a few thousand to more than 6 million persons. Among all low and middle income countries, access to ARV drugs increased from a few hundred thousand to more than eight million, during this same period (See Figure 1). The expanded access was only possible because in 2001, India was already producing generic HIV/AIDS medicines to supply the Brazil market, and because first generation AIDS drugs were off-patent in both India and Brazil.

Today the United States government is the world's largest purchaser of generic AIDS medicines

manufactured in India (through programs the United States funds at PEPFAR, the Global Fund for HIV/AIDS, Tuberculosis and Malaria, and the World Bank), and there is no way that the United States can meet its own objectives for the treatment for persons who are HIV+ unless the government can continue to obtain low cost generic drugs manufactured in India.

Figure 1: Number of people receiving antiretroviral therapy in low- and middle-income countries, 2002 - 2011.



Cancer

Pfizer's testimony highlighted decisions by the courts in India to reject patents on Imatinib, a cancer drug marketed by Novartis under the trade name Gleevec, the granting of compulsory licenses to Bayer's patents on the cancer drug Sorafenib (trade name Nexavar), and several potential compulsory licenses for cancer drugs, including the patents on trastuzumab, a drug sold by Roche under the trade name Herceptin for the treatment of HER2+ breast cancer.

I was recently in India for the Bayer appeal of a compulsory license on Nexavar patents, and have filed two statements in the case, which are available here: http://keionline.org/node/1359 and here: http://keionline.org/node/1657.

In the Nexavar case, Bayer was charging $5174 per month in India, a country with a per capita income of $121 per month in 2011. The government found this price was not "reasonably affordable" in India. Can you blame them?

The Bayer price was in fact higher in India than than in several European countries. Last year

Bayer provided the drug to less than 300 patients in India -- a country with a population of more than 1.2 billion people. After the compulsory license was issued, the price of the generic alternatives quickly fell below 3 percent of the Bayer price, and access in India expanded.

My wife is currently taking the Roche version of trastuzumab to treat metastatic breast cancer at a price of $7,861 every 21 days. This is both an expensive and a generally effective drug for HER2+ breast cancer patients. Because of its high price, there is unfortunately almost no access to trastuzumab in developing countries.

If the policy of the United States is to block generic competition for cancer drugs, the predictable and appalling consequence will be to expand the disparities in access to treatments. In practical terms for breast cancer, this means means fewer wives, daughters and mothers will have access to the best drugs and diagnostics. Think for a moment about how you would react to a trade policy that created barriers for the vast majority of cancer patients in your own country, and then try to understand why exclusionary policies are unpopular in other countries, including India.

Of course, the trade policies advocated by Pfizer concern not only HIV/AIDS and cancer, but any disease or condition that impacts a person's health. What the Congress is being asked to do is to institutionalize second class access to new medicines for the majority of the global population.

India supplies the whole world with generic drugs

Since 1970, India has become the primary global source of high quality medicines. Many drugs now sold in the U.S. market by both brand name and generic companies are manufactured in India in FDA approved facilities, and India plays a similar role in nearly every country these days. If India adopts restrictive policies as regards patent and regulatory barriers for generic drugs advocated by Pfizer, the entire world will be impacted.

Alternatives to disparities in access

People who are concerned about the disparities in incomes and access to medical inventions have proposed a way forward for trade negotiations that addresses the legitimate policy objectives of expanding both innovation and access. The fundamental idea is to de-link the costs of R&D from the prices of medicines. In the context of trade policy, this would involve a shift from promoting IPR to promoting R&D. Countries could advance innovation through investments in public sector research, such as the expenditures of the National Institutes of Health on biomedical research, or by offering de-linked incentives, such as medical innovation inducement prizes to reward successful development programs. (See, for example S.626: A bill to de-link research and development incentives from drug prices for new medicines to treat HIV/AIDS and to stimulate greater sharing of scientific knowledge).

In this regard, the Committee should take a look at the positions taken by the Department of Health and Human Services (DHHS) during negotiations at the World Health Organization (WHO). To make a long story short, the WHO is engaged in negotiations over a possible

binding agreement to fund medical R&D for certain areas of health priority. The United States is now an outlier in the funding of medical R&D, from both (1) the public sector, and (2) the investments that are induced by strong IPR and high domestic prices. As a percentage of GDP, the United States does more than other countries as regards public sector R&D, and also as regards private sector investments.

Under the most likely scenarios for the WHO negotiations, the United States would have no new obligations to fund R&D, but other countries would. The agreement would effectively amplify the U.S. government's current investments in R&D directed at poverty related illnesses, and require foreign countries, both developing and developed, to do more of what the U.S. government already does through the NIH and other federal agencies. Because the pharmaceutical industry perceives a binding R&D funding agreement as a competing international paradigm for the trade related aspects of R&D, and one that is potentially a substitute for the current paradigm of trade pressures forcing strong IPR and high drug prices, they lobbied the DHHS to kill or block the R&D funding discussions.

Submitted March 27, 2013

Further references

2009. James Love and Tim Hubbard, "Prizes for Innovation of New Medicines and Vaccines," Annals of Health Law, Vol. 18, No 2, pages 155-186, Summer.

March 22, 2011. James Love. The production of generic drugs in India: A new trade agreement with the EU would hinder access to drugs in developing countries," BMJ 2011; 342:d1694. http://www.bmj.com/content/342/bmj.d1694

March 12, 2012. KEI Statement on India's granting of compulsory license to patents on cancer drug sorafenib (NATCO Vs. BAYER) http://keionline.org/node/1384

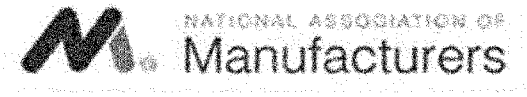
November 2012. James Love. Balancing options for health research and development, Bulletin of the World Health Organization 2012;90:796-796A. doi: 10.2471/BLT.12.113886 http://www.who.int/bulletin/volumes/90/11/12-113886/en/

Feb 21, 2013. KEI's February 17, 2013 Statement in Nexavar India compulsory licensing case http://keionline.org/node/1657

March 15, 2013 Op-Ed: How a new trade agreement will hurt poor's access to medicines http://www.humanosphere.org/2013/03/op-ed-how-a-new-trade-agreement-will-hurt-the-poors-access-to-medicines/

March 25, 2013. India pressured by U.S. Congressional committee, Pfizer, over drug patents http://www.keionline.org/node/1689

NAM



Submission for the Record to the

House Committee on Ways and Means
Trade Subcommittee

for a hearing on

U.S.-India Trade Relations: Opportunities and Challenges

March 13, 2013

The National Association of Manufacturers (NAM) is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our membership includes both large multinational corporations with operations in many foreign countries, and small and medium-sized manufacturers that engage in international trade. The manufacturing sector employs nearly 12 million Americans, and is the engine that drives the U.S. economy by creating jobs, opportunity and prosperity.

NAM member companies are focused on policies, international trade and investment agreements, and legislation that promote America's manufacturing competitiveness in the international economy.

The NAM applauds the Ways and Means Trade Subcommittee for closely examining the bilateral U.S.-India trade relationship and welcomes this opportunity to provide our comments on behalf of the NAM membership.

While the U.S.-India relationship has deepened and strengthened over the last several years and India continues to present many commercial opportunities, manufacturers face persistent challenges in India, including tax and market access issues, localization barriers to trade (LBTs), lack of or inadequate protections for intellectual property (IP) rights, and other investment or trade-restrictive policies. These policies are exacerbated by India's negotiation of regional trade agreements, such as the India-ASEAN Comprehensive Economic Agreement and the ASEAN+6 agreement, that leave manufacturers in the United States at an even greater competitive disadvantage.

Manufacturers see important opportunities to address many key issues in the U.S.-India commercial relationship through full implementation of existing World Trade Organization (WTO) commitments and building stronger ties, including through a high-standard U.S.-India Bilateral Investment Treaty (BIT) and through joining together in multilateral customs and trade facilitation, information technology and services negotiations.

In 2012, India was the United States 13th largest trading partner and 18th largest export market for America's manufacturers, with $18.3 billion in manufactured exports. While U.S.

manufactured exports have been on the increase since 2009, reaching a record $1.3 billion mark in 2012, U.S. suppliers were not even in the top five exporters to India in the most recent WTO report.[1]

Market Access and Localization Barriers to Trade (LBTs)

In recent years, manufacturers have witnessed a growing and worrisome trend among our trading partners, including India, to impose localization measures designed to protect, favor, or stimulate domestic industries and technologies at the expense of imported goods or services. Some of these discriminatory policies require the localization of intellectual property and servers for data storage; others seek to mandate domestic research and development (R&D) and manufacturing in key industries.

Manufacturers welcome the U.S. government's work to develop and execute a more robust approach to address these growing market access challenges, including the recent announcement of the new interagency Task Force on Localization Barriers to Trade. A coordinated approach within the U.S. government to combating LBTs with other like-minded governments is vital to push back effectively on these anti-competitive practices, including using multilateral venues like the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum, as well as through the Trans-Pacific Partnership, Transatlantic Trade and Investment Partnership and investment treaty negotiations.

LBTs include measures that link market access to local intellectual property development, domestic input and product requirements, local product design and data storage requirements, and other performance requirements that distort trade and competitive market conditions. These barriers affect manufacturers in a broad range of sectors and effectively close markets to many manufacturers in the United States and their exports. While these practices may seem appealing to India and other countries in the short term, they serve only to distort the domestic economy, including by undermining the country's overall investment climate, decreasing efficiencies, stifling innovation, increasing costs and limiting access to competitive inputs from overseas.

India has embarked on a number of localization and preference policies in recent years. Just one example of India's troubling LBT policies is their Department of Telecommunications Order No. 10-15/2009-AS-III/193 (March 2010), which required service providers to mandate in their contracts that foreign equipment manufacturers transfer all critical equipment and software to Indian manufacturers within three years of signing the purchase order. In addition, Order No. 10-15/209-AS.III/Vol.II (Pt.)(25) (July 2010) mandated a template to be signed by vendors and operators for procurement of equipment that included a clause for escrowing source code. These regulations have since been amended due to significant opposition by foreign governments and industry, but demonstrate a worrisome trend by India's government to seek trade-restrictive measures as a means to grow their domestic economy.

Barriers to market access more generally, be it high tariffs, non-tariff barriers and discriminatory tax and procurement policies, also impede stronger U.S.-India commercial relations. The NAM urges that India join key negotiations to address such issues, including:

[1]World Trade Organization, Trade Profiles 2012.

- The WTO Customs and Trade Facilitation negotiations that could eliminate barriers and inconsistencies in customs processing for all WTO countries, helping to facilitate and reduce costs in the global trading system;
- The expansion of the WTO Information Technology Agreement (ITA), that is critical to promote innovation and lower costs for manufacturers worldwide (both as producers and consumers of information technology products);
- The WTO Agreement on Government Procurement, in which India should move quickly to join and adopt more transparent, market-driven and non-discriminatory government procurement systems; and,
- The plurilateral services negotiations that will open services markets, including important transportation and distribution services that are critical to manufacturers.

Intellectual Property (IP) Rights and Protections

IP rights are the lifeblood of the U.S. economy, and the protection of those rights assures manufacturers that their inventions will be secure as they create jobs and build industries around them. Manufacturers rely on IP rights – such as patents, copyrights, trademarks, and trade secrets (including test data) – as an integral part of business in the global market. The NAM has long been a strong supporter of a proactive and aggressive U.S. Government approach to international intellectual property (IP) rights protection and enforcement given the importance that IP has to the development and growth of manufacturing industries throughout the United States and the competitiveness of manufacturers in the global economy.

India remains a top country of concern to manufacturers for a number of reasons. India continues to be a major channel for the export of counterfeits to consumers worldwide, with ineffective remedies as a result of major judicial delays and, in criminal cases, extremely low rates of conviction. Furthermore, manufacturers are disturbed that India consistently promotes the view that trade secrets and patents impede innovation and the free exchange of technology.

In addition, India has a growing and troubling record of violating and ineffectively enforcing patent rights, and issuing unwarranted compulsory licenses on a number of innovative technologies. In many cases these failures and unfair policies disproportionately affect manufacturers in the United States and have the adverse effect of stifling innovation. Equally, manufacturers are concerned by India's proposals in international negotiations, particularly the United Nations Framework Convention of Climate Change negotiations, that seek to force the compulsory licensing of environmental and other advanced innovative technologies.

The NAM urges Congress and the Administration to intensify their efforts to help India improve the protection and enforcement of IP rights for all industries.

U.S.-India Bilateral Investment Treaty (BIT) Negotiations

The NAM recognizes the importance of U.S. investment overseas, including in India, in expanding markets to advance the growth and competitiveness of manufacturers in the United States. Our members are strong supporters of the global system of rules that promote trade and investment on a level playing field and create new economic opportunities. U.S. investment overseas is a key driver of U.S. exports. We strongly support, therefore, the U.S. Bilateral Investment Treaty (BIT) program, which helps to expand and protect private investment overseas.

A BIT is an international agreement between two governments that sets forth rules binding each government's treatment of investment from the other country. BITs open markets, include strong rules based in substantial part on core U.S. legal principles, such as non-discrimination, the Takings Clause and due process, and provide binding dispute settlement between the investor and the country where the investment is located. Concluding a U.S.-India BIT would be a major accomplishment that would substantially advance commercial relations between our two countries.

While the United States and India formally launched BIT negotiations in 2008, those negotiations have effectively been on hold, first for the Obama Administration's internal BIT review, which was completed in April 2012, and now by India's own internal BIT review. The failure to move these negotiations forward undermines the ability of manufacturers in the United States to compete on a level playing field. India has signed BITs with 61 countries, including all major European countries and recently concluded BIT negotiations with Canada.

An investment treaty between India and the United States would provide protection to investors from arbitrary, discriminatory or confiscatory measures as well as independent investor-state arbitration to resolve disputes that may arise. A strong BIT could help facilitate additional investment in infrastructure and other areas, expanding economic opportunities for both the United States and India.

The United States has a growing manufactured goods trade surplus with countries with which the United States already has BITs, and a stronger investment relationship with India would promote job growth in the United States.

General Regulatory and Investment Climate

The uncertainty in India regarding tax administration has increased the cost and difficulty for foreign direct investors to do business in the country. Improved bilateral tax relations between India and the United States are important to support a more robust investment climate and commercial relations.

Conclusion

The NAM welcomes the opportunity to provide these comments and looks forward to working with the committee to identify solutions and improvements that can increase opportunities for manufacturers and grow commercial activity between the United States and India.

National Chicken Council 1

March 21, 2013

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Title of Hearing: U.S.-India Trade Relations: Opportunities and Challenges

To: Chairman Devin Nunes
House Ways and Means Trade Subcommittee

Re: Submission of Comments for the Record for the "U.S.-India Trade Relation: Opportunities and Challenges Hearing"

Thank you for the opportunity to provide these comments so that this joint statement can be included in the record for the "U.S.-India Trade Relations: Opportunities and Challenges" hearing. Your support and cooperation for this very important international trade issue are most appreciated.

National Chicken Council 2

July 2, 2012

Mr. Bradford L. Ward
Assistant United States Trade Representative
For Monitoring and Enforcement
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: Docket Number USTR-2012-0004 www.regulations.gov

Dear Mr. Ward:

The National Chicken Council, USA Poultry & Egg Export Council, and the National Turkey Federation are pleased to jointly submit these comments in response to the Office of the United States Trade Representative's (USTR) *Federal Register* notice of *Federation Register* Volume 77, Number 107, Monday, June 4, 2012, Pages 33015-33016 "Dispute Number WTO/DS430 WTO Dispute Settlement Proceeding Regarding India-Measures Concerning the Importation of Certain Agricultural Products." We appreciate USTR's on-going action and continued willingness to pursue a successful outcome of this WTO case. We are especially pleased that the WTO has agreed to establish a dispute settlement panel to determine the case.

The National Chicken Council (NCC) represents companies that produce and process over 95 percent of the young meat chickens and mature fowl marketed in the United States and for U.S. export into international markets.

USA Poultry and Egg Export Council (USAPEEC) represents the export interests of U.S. chicken, turkey and egg companies. Its members account for more than 90 percent of U.S. poultry and egg exports.

The National Turkey Federation (NTF) is the advocate for all segments of the U.S. turkey industry, providing services and conducting activities, which increase demand for its members' products and protect and enhance the ability to effectively and profitably provide wholesome, high quality, nutritious turkey products.

With reference to the cited notice, the organizations strongly support USTR's undertaking of this critically important issue with the World Trade Organization (WTO). For much too long the Government of India has arbitrarily and blatantly prohibited the importation of poultry from the United States. Bilateral consultations with India failed to resolve the issues and, therefore, U.S. poultry trade with India will not be possible at this time. With the establishment of a dispute settlement panel we look forward to a final report of favorable recommendations within nine months from the time the panel was established. We recognize USTR's diligence to reach this point in the effort to establish U.S. poultry trade with India and urge continued diligence and resolve to achieve a successful outcome.

India's ongoing excuse regarding U.S. poultry possibly transmitting avian influenza to India's poultry flocks is a clearly and obviously a bogus non-tariff trade barrier. Any objective scientific analysis of the disease risk posed by U.S. poultry to India poultry will find such risk to be essentially negligible if not, in fact, zero. The United States has not experienced a highly-pathogenic avian influenza outbreak in commercial poultry since the early 1980s, whereas India continually experiences such outbreaks.

With India's rapidly expanding middle class of consumers who increasingly desire to devote more of their discretionary income for animal protein products, it is time for the U.S. poultry to be able to participate in this rapidly developing market. The National Chicken Council estimates that more than $300 million of U.S. poultry could be annually exported to India if market access permitted the free and fair trade of such products. In addition to the great concern of the three poultry organizations, similar important concerns have been stated by 47 members of the U.S. House of Representatives and 19 members of the U.S. Senate. Letters from the elected officials are submitted as a part of these comments.

In addition, the letter of December 2, 2011 from the National Chicken Council and USA Poultry and Egg Export Council to U.S. Trade Representative Ron Kirk and U.S. Secretary of Agriculture Tom Vilsack is submitted as a part of these comments. As the letter notes, India was one of the 23 original signatories to the General Agreement on Tariffs and Trade (GATT) that has evolved into the WTO. As a founding member of GATT, India has increased responsibility to work diligently and cooperatively to build international trade, not stymie it with unacceptable and inappropriate barriers to trade. As the letter further notes, India's disregard for its international obligations has been tolerated long enough. Although India may view its WTO obligations as a burden, it will discover that in the long run meeting its obligations is not a heavy burden to bear, but rather the opportunity to advance its economy, including its poultry sector.

The National Chicken Council, USA Poultry & Egg Export Council, and the National Turkey Federation look forward to a very successful outcome of the WTO proceedings for this case. Please know that we continue to stand ready to strongly support this most important initiative and effort.

Respectfully submitted,

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National Chicken Council 3

Congress of the United States
Washington, DC 20515
January 20, 2012

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk:

We are writing today regarding India's position to deny access to U.S. poultry into the Indian market. Our constituent poultry processors inform us that they are being prevented from realizing significant opportunities in a market with great potential. Accordingly, we respectfully request that you take immediate action to resolve this longstanding issue.

We have been advised that, although India uses a variety of measures to prohibit the importation of U.S. poultry, the primary issue involves India's position on the viral disease avian influenza (AI). Evidently, India makes no distinction between low-pathogenic AI and the highly-pathogenic AI, making India's ban on U.S. poultry inconsistent with World Health Organization for Animal Health (OIE) guidelines and the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS). The United States is one of the few countries in the world that has in place comprehensive and rigorous programs to prevent, control, and eradicate AI in poultry and prevent the spread to the human population.

In fact, our poultry production sector asserts that the United States' track-record on AI is unsurpassed. Despite the very effective U.S. measures in place for AI, India continues to prohibit access to their market.

Industry analysts estimate that U.S. poultry exports to India could exceed $300 million annually, if appropriate market access was provided in accordance with India's obligations as a member of the WTO. With two of the United States' top poultry markets having been severely disrupted in the past three years, it is especially important that efforts be undertaken to regain market share and India is a good place to start.

We respectfully request that, during your upcoming discussions with the government of India, you convey that the uses of such measures to prevent trade are WTO-inconsistent and that the U.S. Government will seek to enforce its rights.

We look forward to working with you on this very important matter.

Sincerely,

Devin Nunes

DEVIN NUNES
MEMBER OF CONGRESS

John C. Carney

JOHN CARNEY
MEMBER OF CONGRESS

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National Chicken Council 4

United States Senate
WASHINGTON, DC 20510

December 21, 2011

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk:

We write to express our concern about India's longstanding restrictive trade policies with respect to poultry and the variety of poultry products from the United States. These non-scientifically based policies are denying our poultry producers and processors access to a market with great economic potential. We are thankful that the U.S. has for years raised concerns over India's trade policies. Given that India's trade barriers remain in place, we respectfully request that you continue to work to resolve this longstanding issue during your upcoming meeting in mid-January with the senior government leadership of India.

As you know, India uses a variety of trade barriers to prohibit the importation of U.S. poultry. One issue involves India's position on the viral disease avian influenza (AI). India's trade policies do not conform to World Organization for Animal Health (OIE) standards and are not scientifically justified. India makes no distinction between low-pathogenic AI and the highly-pathogenic AI. India's recently released risk assessment is not consistent with international standards for conducting a risk analysis and does not contain sufficient scientific evidence to support India's AI restrictions.

The U.S., in cooperation with the major poultry-producing states, has one of the most comprehensive and rigorous programs in the world to prevent, control, and eradicate AI. Few, if any, countries have in place the stringent biosecurity measures and controls to prevent AI from becoming a problem to poultry and, more importantly, to the human population. The U.S. has set the gold standard on this issue and has a track record on AI that is unsurpassed around the world. Despite the United States' track record on AI and the very effective measures in place for AI, India continues to use this non-scientifically based position to prohibit U.S. poultry to access the Indian market.

With two of the United States' top poultry markets having been severely disrupted in the past three years, it is especially important that efforts be undertaken to replace them. The National Chicken Council estimates that U.S. poultry exports to India could exceed $300 million annually if appropriate, fair market access was provided in accordance with India's obligations as a member of the World Trade Organization (WTO).

Accordingly, we respectfully request that during your upcoming discussions with the government of India, you strongly explain the important biosecurity measures that have been implemented in the U.S. and that the continued use of non-scientifically based measures to prevent trade is unacceptable. We look forward to working with you on this very important issue and thank you for your full and careful attention to this important matter.

Sincerely,

Senator Christopher Coons

Senator Johnny Isakson

Senator Thomas Carper

Senator Saxby Chambliss

Senator Barbara Mikulski

Senator Thad Cochran

Senator Benjamin Cardin

Senator Daniel Coats

Senator Joe Manchin

Senator Richard Lugar

Senator Tom Harkin

Senator Robert Portman

Senator Jim Webb

Senator John Boozman

Senator Kay Hagan

Senator Jeff Sessions

Senator John D. Rockefeller IV

Senator James Inhofe

Senator Mark Warner

National Cotton Council

Hearing on U.S.-India Trade Relations
Trade Subcommittee of the Ways and Means Committee
U.S. House of Representatives
Written Statement of the
National Cotton Council
March 2013

The National Cotton Council (NCC) would like to thank Ways and Means Subcommittee on Trade Chairman Devin Nunes for the opportunity to submit written comments on cotton and textile trade between the United States and India. As the world's second largest producer, processor and exporter of raw cotton fiber, policy decisions by India significantly impact the global market.

The NCC, the central organization of the United States cotton industry, represents seven segments of the U.S. cotton industry: producers, ginners, cottonseed processors and merchandizers, merchants, cooperatives, warehousers and textile manufacturers. While a majority of the industry is concentrated in 17 cotton-producing states, the downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution and processing of cotton employ almost 200,000 workers and produce direct business revenue of more than $27 billion. Annual cotton production is valued at more than $6 billion at the farm gate, the point at which the producer sells. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 420,000 workers with economic activity well in excess of $100 billion. In addition to the cotton fiber, cottonseed products are used for livestock feed, and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

In recent years, India's erratic policy changes have caused significant market disruption characterized by a historical increase in international cotton contract dispute arbitrations, record numbers of contract defaults, and substantial loss of fiber market share for cotton, while adding to the volatility and uncertainty in the world cotton market. The loss of fiber market share for cotton impacts all cotton producers but especially those growers in the least developed markets that are heavily dependent on exports.

Starting in April 2010, the Government of India has acted in various ways to limit exports of Indian cotton. This has taken varying forms, including an export ban, restrictions on export quantities and licensing requirements. The export ban was initially implemented at the request of Indian textile companies in order help them compete against foreign rivals. The Indian textile industry was very clear about the reasons for the ban or restriction and made those reasons public on many occasions.

When an exporting country institutes border restrictions, the expected impact is for world prices to be pushed higher while internal prices are pressured lower. Based on reported price data, India's export restrictions exactly followed economic predictions. Raw cotton prices in India were 40 to 60 cents per pound below world prices for December 2010 to June 2011. With Indian textile mills able to buy 20 million bales (480 lb.) at a discount averaging 50 cents a pound, the

Indian cotton restraints provided the equivalent of a $5.0 billion subsidy to the Indian textile industry in the 2010/11 crop year.

The impact of this subsidy was clear in the textile and apparel chain. This price wedge in raw cotton then disrupted the world cotton yarn market as Indian cotton yarn began trading at discounts of 15% to 25% below world cotton yarn prices from April 2011 to July 2011. As Indian prices for cotton yarn exports dropped dramatically (compared to world-wide prices), India displaced other producers, including U.S. textile mills, in yarn markets around the world. The $5.0 billion subsidy was also undoubtedly transferred into the fabric and apparel stage of the Indian export sector.

By contributing volatility to the world cotton market, India's actions served to increase the financial strain on world yarn spinners. As India maintained its ban on raw cotton and cotton yarn exports, world cotton prices rose substantially from $1.00 per pound in the spring of 2010 to over $2.20 per pound by February 2011. In many cases, textile mills outside of India responded to the dramatic price increase by failing to honor their contractual obligations on previous cotton purchases. According to a survey of U.S. cotton merchandizing firms, textile companies in 19 countries defaulted on almost 3.5 million bales of cotton valued at $1 billion. Contracts in the following countries were identified as in arbitration, in default, or at risk of default: Argentina, Bangladesh, Brazil, China, Colombia, Guatemala, India, Indonesia, Italy, Korea, Mexico, Morocco, Pakistan, Peru, Taiwan, Thailand, Turkey, the United Arab Emirates, and Vietnam. Of the 19, Bangladesh, Indonesia, Thailand and Vietnam accounted for a significant portion of the contracts.

As world prices increased, world cotton consumption began to decline, eventually falling by 11 million bales. At the same time world mill use of textile manmade fiber was expanding by 13 million bales. The loss in market share and resulting downward pressure on world cotton prices directly impacts all cotton producers in the exporting countries.

While continuing to push for a complete ban on exports, growth in India's textile industry was bolstered by a number of government subsidies. In September 2011, the Indian government released more than $130 million under the Technology Upgradation Fund Scheme (TUFS). The program provides interest reimbursements and capital subsidies for investments in the textiles and clothing sectors.

In March 2012, India abruptly announced another ban on exports after being an aggressive exporter during the first six months of the '11/12 marketing year. However, the ban was short-lived as it was removed by the end of April. Following the export ban, India allowed cotton exports through a relatively strict export registration process. In October 2012, the export registration process was extended with limits placed on the amount of cotton that could be registered for export at a given time. Quantities are limited to 7,800 bales under one export registration and 50 percent of those bales must be exported before another export registration can be processed. In November, the registration quantity was increased to 23,400 bales.

Although India is currently allowing cotton exports, there are renewed concerns that India could again consider export restrictions. Unfortunately, India's recent export restrictions are the latest

evidence of increasingly uncertain policy decisions by the Indian government. In 2008, India increased support prices for cotton, in some cases by as much as 48%. Shortly after the higher support prices took effect, world prices declined and the Indian government authorized the purchase of almost 12 million bales of the 2008 crop. In 2009, India disposed of that cotton on the world market by offering an export subsidy scheme for cotton exports equal to 5 percent of the value of the export. In the span of just one year – between the spring of 2009 and spring of 2010 – India moved from an export subsidy to an export ban. It is becoming increasingly clear that India will continue to make dramatic changes to their cotton trade policies, despite the detrimental and trade-distorting effects on the world market and cotton and textile industries in other countries.

NPPC

March 27, 2013

The Honorable Devin Nunes
Chairman
House Ways and Means Trade Subcommittee
1102 Longworth House Office Building
Washington, DC 20515

Submitted by: The National Pork Producers Council

RE: House Ways and Means Trade Subcommittee Hearing on U.S.-India Trade Relations: Opportunities and Challenges

The National Pork Producers Council (NPPC) hereby submits comments for consideration by the Ways and Means Trade Subcommittee with regard to the hearing on opportunities and challenges in U.S.-India trade relations. This document is submitted for inclusion in the printed record of the hearing.

NPPC is a national association representing a federation of 43 state producer organizations and the federal and global interests of 67,000 U.S. pork operations that annually generate approximately $15 billion in farm gate sales and more than $97 billion annually in total U.S. economic activity. The U.S. pork industry supports an estimated 550,000 domestic jobs, of which 110,000 jobs are generated directly by U.S. pork exports.

The U.S. pork industry is highly dependent on exports as a revenue source. Approximately 27 percent of the pork produced in the United States in 2012 was exported, compared with about 8 percent 10 years ago. In 2012 the United States exported 2.3 million metric tons of pork, valued at $6.3 billion.

The United States is one of the lowest cost producers of pork in the world. It is no coincidence that the United States is also the No. 1 pork exporter in the world. The vast majority of demand for pork in the world today is outside the United States. To remain successful, the U.S. pork industry needs to continue to expand overseas sales by removing unfair barriers to U.S. pork exports.

India imposes a large number of technical and sanitary barriers on imported pork, and these barriers have effectively eliminated chilled, frozen and processed U.S. pork imports. These barriers keep the U.S. pork industry from realizing the potential of the India market, particularly in providing high-value processed products for the Hotel, Restaurant and Institutional sector. While the United States has been excluded from exporting to India, U.S. pork export competitors, including Spain and the Netherlands, have benefited from rapidly increasing demand for high-value processed meats such as dry cured hams and sausages.

Indian Barriers to U.S. Pork Imports

Residues of Veterinary Drugs

The India pork export certificate requires that meat not have any residues of pesticides, drugs, mycotoxins or chemicals above the maximum residue limits (MRLs) prescribed internationally. It is uncertain to which compounds and corresponding MRLs India is referring. India should recognize the U.S. Department of Agriculture Food Safety Inspection Service's National Residue Program as equivalent to its food-safety system for ensuring safe product. Compounds and slaughter classes of most public health concern are selected to be in the program. At a minimum, India should adopt Codex Alimentarius MRLs for those compounds with international standards.

Import Permit

One of the most onerous challenges to exporting pork to India is the country's import permit system. India's "International Sanitary Certificate for Import of Pork" contains vague and restrictive animal health requirements that are not based on science. India's animal health status requirements exceed those of the World Organization for Animal Health (OIE) and fail to recognize the authority of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to determine animal health status. India should bring in line its requirements for foreign animal diseases with that of the OIE or APHIS, which are consistent with the texts of other U.S. pork export certificates.

Porcine Reproductive and Respiratory Syndrome (PRRS)

India should also remove any restrictions related to porcine reproductive and respiratory syndrome (PRRS) since it is not an OIE listed disease, and there is negligible risk of transmission via pork. It is not a food safety issue.

Trichinae

India imposes trichinae risk mitigation requirements even though there is negligible risk from the U.S. commercial herd. Given the extremely low annual incidence of trichinosis – 1-in-300 million – in the United States and the very high level of biosecurity practiced by the U.S. pork industry, there is no legitimate science-based reason for this import restriction.

Feed Requirements & Packaging

The India pork export certificate also imposes, without any scientific basis, specific feeding requirements that do not allow the feeding of mammalian or poultry products to pigs. Additionally, the export certificate imposes packaging material specifications. These barriers to trade are not based on food safety or other relevant trading requirements and must be removed immediately.

Plant Approvals

India's pork export certificate is vague with regard to an establishment's eligibility to export. India should adopt the principle of equivalence, which is a fundamental World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) requirement that is based on a systemic audit process. NPPC strongly urges India to accept all USDA federally inspected plants as eligible to export to India.

Origin of Animals

India requires that all imported meat and live animals originate from the country of export. The United States is recognized worldwide as a country with strong pork industry ties to Canada, and in 2012 fed out and slaughtered approximately 5.65 million Canadian hogs. NPPC supports amended language in India's pork export certificate – similar to language accepted by other U.S. trading partners – that allows pork products to come from animals that are legally imported into the United States.

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PhRMA

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA (PhRMA)
Submission for the Record
Hearing on U.S.-India Trade Relations: Opportunities and Challenges
March 13, 2013

The House Ways and Means Trade Subcommittee hearing on U.S. – India trade relations takes place at an opportune time. Chairman Nunes, Ranking Member Rangel, and the members of the subcommittee should be praised for holding their first trade hearing of this Congress on India.

The title of the hearing, "U.S.-India Trade Relations: Opportunities and Challenges", aptly describes the Indian market. However, at this time it seems to be tipping more to challenges.

The deteriorating protections for patented medicines in India have become increasingly concerning to PhRMA and its member companies. Over the past year, the Government of India has issued several intellectual property (IP) decisions that have disproportionately impacted U.S. biopharmaceutical companies. The Government of India has created a protectionist regime that harms U.S. job creators. The harm is evident in our industry, where the U.S. has welcomed Indian companies while India is closing its borders to U.S. innovators. For instance, three of India's largest pharmaceutical companies have generated around 50% of their revenue in the U.S.[1] Experience accumulated after India began granting product patents in 2005, shows it has routinely flouted trade rules to bolster local industry.

Our industry's experience demonstrates that patent rights in India are unreasonably denied. Just last month (and for the second time in six months) the Indian Patent office revoked a patent on Sutent®, a cancer therapeutic, which is patented in over 90 countries around the world. Indian law also contains a discriminatory special rule for certain chemical and biological inventions. Using this rule, India refused patent protection for a breakthrough anticancer therapeutic (Glivec®) that enjoys patent protection in countries across the globe.

The Indian government has also sought to justify a compulsory license, in part, on the basis that the product was imported rather than manufactured locally. This blatant industrial policy must be repudiated as it plainly contravenes established international obligations.

Correcting India's protectionist IP regime will require firm leadership by the United States in international organizations and in India. We urge Congress to work with the Administration to press the Government of India to step back from its industrial policies and give American companies the same market access that Indian companies enjoy in the U.S. We believe that working together with the Government of India we can ensure that patients in India and around the world will be able to benefit from our member companies' innovative therapies.

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[1] Press Release, Dr. Reddy's Q1 FY13 Financial Results, July 19, 2012, available at http://www.drreddys.com/media/popups/q1fy13_results_19jul2012.html; Press Release, Sun Pharma reports a strong quarter, Aug. 10, 2012, available at http://www.sunpharma.com/images/finance/FY13%20Q1%20Press%20Release%20Financials.pdf; Press Release, Q1 FY13, Aug. 10, 2012, available at http://www.wockhardt.com/pdf/QUARTERLY-REPORT-(Q1)-f12ee.pdf (last visited Mar. 22, 2013).

Few industries provide more high-quality, high-paying, and high-productivity jobs in the United States than the biopharmaceutical sector. Industry employment (direct, indirect, and induced) in 2009 totaled 4.0 million jobs,[2] including direct employment of over 674,000 Americans.[3] Direct employment in the biopharmaceutical sector grew almost twice as fast as employment in the rest of the economy between 1998 to 2008.[4] Each job in the biopharmaceutical sector contributed more than double the average contribution to GDP from jobs in the rest of the economy.[5] For every dollar that biopharmaceutical companies contributed to gross domestic product (GDP) in 2008, the ripple effect of that activity supported another $1.91 in contribution to GDP from other sectors.[6] Nevertheless, our industry faces tremendous loss of revenue that has been widely attributed to fallout of the Global financial crisis, including the deep austerity measures in Europe, threatening jobs, slowdowns in research and development, loss of exports, increased pressure to outsource, and more.[7]

At the same time, PhRMA member companies make substantial investments in research and development, further fueling the U.S. economy and advancing public health through the discovery and development of new cures and treatment options for patients. In 2011, PhRMA members alone invested $49.5 billion in research and development for new medicines, almost 80 percent of which was invested in the United States.[8] Furthermore, the average biopharmaceutical company spends approximately $105,000 on R&D per direct employee, more than ten times the average R&D spend per employee in manufacturing industries overall.[9] Moreover, according to the most recent data from the National Science Foundation, the U.S. biopharmaceutical sector accounts for the single largest share of all U.S. business R&D, representing nearly 20 percent of all domestic R&D funded by U.S. businesses.[10] These figures highlight the pressing need to defend this sector's IP rights against infringement. With more medicines in development in the United States than in the rest of the world combined, the United States accounts for approximately 3,240 products in development in 2011, in large part due to IP protections and other strong incentives that foster the environment needed to support continued research and development investment.[11]

PhRMA and its member companies recognize that India has legitimate concerns regarding access to healthcare throughout the country and we acknowledge the challenges of the Government to make essential medicines available to the most vulnerable sections of society. However, we are concerned about inadequate IP

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[2] Battelle Technology Partnership Practice, *The U.S. Biopharmaceuticals Sector: Economic Contribution of the Nation*, July 2011. Battelle Memorial Institute. Prepared for the Pharmaceutical Research and Manufacturers of America. (Battelle Report).
[3] Id.
[4] Id.
[5] Id.
[6] Id.
[7] Sources including PricewaterhouseCoopers, *Exploring the Relationship between Revenues and Employment in the Biopharmaceutical Industry*, PwC Research Report, June 2009, Table 1; and Ryan, B., Deutsche Bank, "4Q'10 Review & Model Book," Feb.14, 2011;Peterson, T, J.P. Morgan, "Pharma R&D Post-Mortem," Feb. 16, 2011.
[8] PhRMA Annual Member Survey (Washington, DC: PhRMA, 2012).
[9] Pham, N., *The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs Wages, and Exports*, NDP Consulting (April 2010), *available at* http://www.theglobalipcenter.com/sites/default/files/reports/documents/NDP_IP_Jobs_Study_Hi_Res.pdf (last visited Mar. 22, 2013).
[10] Science and Engineering Indicators 2012, National Science Foundation, Division of Science Resource Statistics. 2012.
[11] Adis R&D Insight Database, Wolters Kluwer Health (accessed 10 Feb. 2012).

protections, including the recent issuance of a compulsory license, which pose significant market access barriers in India. Having created a strong domestic biopharmaceutical industry, India has so far failed to provide regulatory data protection to encourage new innovations carried out by both its own industry and PhRMA member companies. Further, standards for patentability need to be amended to conform to prevailing international practice.

Limiting IP protections and creating barriers to market access will only inhibit India's own biopharmaceutical industry from developing products for India, while doing little to improve accessibility of medicines for its population. Sustainable solutions to India's healthcare concerns should be found through programs that address the lack of healthcare financing. PhRMA and its member companies are willing to partner with the Indian Government in developing those public policy solutions.

Key Issues of Concern in India:

- **Compulsory Licensing (CL)**: In March 2012, India issued its first CL.[12] The decision was based on price differences and Indian "patent working" requirements. The decision held that local manufacturing is mandatory to fulfill working requirements, which is not consistent with India's obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Additionally, recent media reports indicate that the Government of India has started the process of issuing CLs for the manufacture of three additional cancer drugs.
- **Lack of Regulatory Data Protection**: The Indian Regulatory Authority relies on test data submitted by originators to another country when granting marketing approval. This indirect reliance results in unfair commercial use prohibited by the TRIPS Agreement and discourages the development of new medicines that could meet unmet medical needs.
- **Patent Enforcement and Regulatory Approval:** Indian law permits state regulatory authorities to grant marketing approval for generic versions of medicines four years after the product was first marketed. They are not required to consider the remaining term of the relevant patents.
- **Narrow Standards for Patentability**: Indian law also contains a prohibited, discriminatory "special" rule for certain chemical and biological inventions, which requires innovators to prove their product has "enhanced efficacy" to secure a patent. Additionally, the Indian Government recently revoked of a patent on a cancer therapeutic using a "hindsight" analysis citing a lack of inventiveness.

Compulsory Licenses on Patented Pharmaceutical Products

India issued a compulsory license (CL) for an anti-cancer patented pharmaceutical product on March 9, 2012. We understand that this is the first CL issued

[12] Decision and Order on the Application for Compulsory Licenses under Section 84(1) of the Patents Acts, 1970 in Respect of Patent No. 215,758, March 2012.

in India. In addition, recent reports indicate that the Indian Government has started the process of issuing CLs for the manufacture of three additional anti-cancer medicines. Unlike the CL issued under Section 84 of the Patent Act in March, these CLs would fall under Section 92 of the Act – the public emergency provision that can be issued directly from the Indian Administration without a notice and comment period to the industry. The research-based pharmaceutical industry is concerned that the findings in the CL decision on the local working requirements are at odds with India's TRIPS commitments (as well as its broader WTO obligations), and distorts what was intended as a public health exception into an industrial policy. We further believe that resorting to CLs is not a sustainable or effective way to address healthcare needs. Voluntary arrangements independently undertaken by our member companies better ensure that current and future patients have access to innovative medicines. We are also concerned about apparent inaccuracies and misunderstandings that appear to underpin the reasoning reflected in the decision. For example, statements from the Government incorrectly imply that CLs are widely used by other governments (both, developed and developing), including the United States and Italy.[13] Those inaccuracies and misrepresentations cannot justify resorting to compulsory licensing.

India should ensure that the CL provisions comply with TRIPS by clarifying that importation satisfies the "working" requirement (as required by TRIPS Article 27.1). In cases of CL for exports, India should ensure that, consistent with the August 30, 2003 Decision of the TRIPS Council on Implementation of Paragraph 6 of Doha Declaration on TRIPS Agreement and Public Health, proper anti-diversion measures are taken and that the CL is granted only for export to eligible importing countries that lack manufacturing capacity and used in good faith to protect public health and not used for industrial or commercial purposes.

Lack of Regulatory Data Protection

TRIPS Article 39.3 requires India to provide protection for certain pharmaceutical test and other data, but India has not yet done so. India conditions the approval of pharmaceutical products on the prior approval by a Regulatory Authority in another country rather than requiring submission of the entire dossier for review by its Regulatory Authority. An applicant in India needs only to prove that the drug has been approved and marketed in another country and submit confirmatory test and other data from clinical studies on a very few (in some cases as few as 16) Indian patients.

By linking approval in other countries that require the submission of confidential test and other data to its own drug approval process, India, in effect, uses those countries as its agents. Thus, India relies on test data submitted by originators to another country. This indirect reliance results in unfair commercial use prohibited by TRIPS.

[13] These allegations of wide-spread use of CLs in the U.S. and the premise that CL's can resolve access problems in India have been refuted by OPPI and PhRMA. See http://dipp.nic.in/ipr-feedback/Feedback_OPPI_30September2010.pdf (last visited Mar. 22, 2013).

Patent Enforcement and Regulatory Approval

Indian law permits state drug regulatory authorities to grant marketing approval for a generic version of a new medicine after four years of patent protection for the new medicine. State regulatory authorities are not required to verify or consider the remaining term of the existing patent. Therefore, an infringer can obtain marketing authorization from the government for an on-patent drug, forcing the patent holder to seek redress in India's court system.

Moreover, India does not provide mechanisms for resolution of patent disputes prior to marketing approval of third party products. Such mechanisms are needed to prevent the marketing of patent infringing products. To ensure proper patent enforcement, the U.S. Government should urge the government to implement such mechanisms. Furthermore, PhRMA member companies report that even when their cases are filed in the Indian legal system, their ability to obtain redress for patent infringing product launches is extremely limited. We believe the Indian Government must also ensure that the existing laws and regulations can be properly enforced in a timely manner through its legal system.

Narrow Standards for Patentability

Some of the standards for patentability in India are not transparent and are inconsistent with the TRIPS Agreement. For example, section 3(d) of the Patents Act 1970 as amended by the Patents (Amendment) Act 2005 creates additional hurdles to the grant of certain chemical compound patents, and appears to be applied only to pharmaceuticals. Under this provision, salts, esters, ethers, polymorphs, and other derivatives of known substances are presumed to be the same substance as the original chemical and thus not patentable, unless it can be shown that they differ significantly in properties with regard to efficacy. These additional requirements for patentability beyond novelty, commercial applicability and non-obviousness are inconsistent with the TRIPS Agreement, in at least two respects. First, Article 27 requires that "patents shall be available for any inventions ... provided that they are new, involve an inventive step and are capable of industrial application." Although the TRIPS Agreement also provides a non-extendable list of the types of subject matter that can be excluded from patent coverage, this list does not include "new forms of known substances lacking enhanced efficacy" as excluded by Section 3(d) of the Indian law. Therefore, Section 3(d) is inconsistent with the framework provided by the TRIPS Agreement. Second, Section 3(d) represents an additional hurdle for patents on inventions specifically relating to chemical compounds and, therefore, the Indian law is in conflict with the non-discrimination principle also provided by TRIPS Article 27. Moreover, from a policy perspective, Section 3(d) undermines incentives for innovation.

Another example of the overly narrow standards for patentability in India is the Government's recent revocation of a patent on a cancer therapeutic (a product that is patented in over 90 countries), using a "hindsight" analysis citing a lack of inventiveness rather than evaluating the invention at the time it was made based on objective

criteria. The Supreme Court overturned the Patent Controller's Order revoking the patent for failing to consider certain information deemed relevant by the Court. Still, the case was sent back to the Patent Controller for a *de novo* hearing within one month.

In addition, India's Patents Act requires applicants to disclose the source and geographical origin of biological materials used to make an invention that is the subject of a patent applications. These requirements may be a basis for opposition or revocation proceedings; however, the necessary relationship to the patented invention is not clear. Therefore, these requirements not only create uncertainty over potentially valuable intellectual property rights, but appear to be inconsistent with India's obligations under the TRIPS Agreement.

Conclusion

PhRMA and its member companies thank Chairman Nunes, Ranking Member Rangel, and the members of the subcommittee for holding this hearing to explore the challenges and opportunities in U.S.-India trade relations. Correcting India's protectionist IP regime will require firm leadership by the United States and we look forward to engaging further on these issues. We believe that working together with the Government of India we can ensure that patients in India and around the world will be able to benefit from our member companies' innovative therapies.

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"U.S.-India Trade Relations: Opportunities and Challenges"

Rapaport Group Submission For The Record
House Ways and Means Committee
Subcommittee on Trade

Hearing on March 13, 2013
U.S.-India Trade Relations: Opportunities and Challenges

RAPAPORT.

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U.S.-India Trade Relations: Opportunities and Challenges

March 27, 2013

The U.S. and India Trade In Diamonds, Gems and Jewelry

Introduction

The Rapaport Group appreciates this opportunity to provide comments to the House Ways and Means Committee's Trade Subcommittee regarding U.S. India Trade Relations: Opportunities and Challenges.

I am Martin Rapaport, Chairman of the Rapaport Group a U.S. owned international group of companies providing added value services to the international diamond, gem and jewelry industry. The Group's information services division, established in 1978, provides a broad range of information, research and analysis. It is best known for the benchmark Rapaport Price List which is the primary source of diamond price information and subscribed to by over 15,000 companies in 105 countries. Our trading division includes RapNet® – the world's largest diamond trading network with daily listing of 950,000 diamonds valued at $6.1 billion and 12,100 members in 81 countries. The Rapaport Auction division is the world's largest recycler of diamonds with monthly sales of 50,000 carats of polished diamonds. Our RapLab™ – provides Rapaport and Gemological Institute of America diamond grading services in Israel, India and Belgium. While the Group does not trade diamonds for its own account it physically handles over $2 billion of diamonds annually for grading and trading purposes. The Group employs over 180 people with and offices in New York, Las Vegas, Antwerp, Ramat Gan, Mumbai, Surat, Dubai, Hong Kong and Shanghai.

Rapaport India serves over 3,000 Indian clients and employs seventy five people with offices in Mumbai and Surat. The group also owns 50% of AOJ the largest jewelry magazine in India and a provider of jewelry exhibitions. While Rapaport India promotes the international trade in diamonds through its RapNet – diamond trading network enabling direct transactions between Indian diamond manufacturers and worldwide dealers/retailers, its primary activity over the past decade has been providing the gemological laboratory diamond grading services of the Gemological Institute of America to Indian clients. Since 2003 Rapaport India has exported to the Unites States for grading purposes and then re-imported to India a total of 1,626,926 diamonds valued at over $5.8 billion.

The Rapaport Group is a value based organization. Our mission is the sustainable development and implementation of ethical, fair, efficient, transparent, and competitive markets. All of our services support these goals.

RAPAPORT.

Background U.S. - India Diamond Trade

Diamonds, gems and jewelry are the largest international commodity traded between the U.S. and India. In 2012 polished diamonds were the number one U.S. import from India ($5,399 million, 13% of total imports) and they were the number two U.S export to India ($2,631 million, 12% of total exports). Diamonds, gems and jewelry combined were the number one import ($7,124 million, 18% of total) and number one export ($2,868 million, 13%). In terms of total trade the category accounted for $9,992 million or 16% (see table 1 below for full details).

U.S. - India Diamond, Gem and Jewelry India Trade Data ($M)					
U.S. Diamond, Gem and Jewelry Exports to India	**2008**	**2009**	**2010**	**2011**	**2012**
(42100) Gem diamonds	1,730	1,472	2,772	3,559	2,631
(41310) Jewelry, etc	245	186	189	227	237
Total U.S. Diamond, Gem and Jewelry Export to India	1,975	1,658	2,960	3,785	2,868
Total U.S. Exports to India	17,682	16,441	19,250	21,501	22,336
Diamonds as % of Total Exports to India	*10%*	*9%*	*14%*	*17%*	*12%*
Diamonds, Gems, Jewelry as % of Total U.S. India Exports	*11%*	*10%*	*15%*	*18%*	*13%*
U.S. Diamond, Gem and Jewelry Imports from India	**2008**	**2009**	**2010**	**2011**	**2012**
(42100) Gem diamonds-uncut or unset	3,880	3,079	5,175	6,260	5,399
(41310) Jewelry (watches, rings, etc.)	1,517	1,320	1,452	1,492	1,505
(42110) Other gem stones-precious, semiprecious, and imita	189	134	203	238	219
Total U.S. Diamond, Gem and Jewelry Imports from India	5,587	4,533	6,829	7,990	7,124
Total US Imports from India	25,704	21,166	29,533	36,153	40,518
Diamonds as % of Total U.S. Imports from India	*15%*	*15%*	*18%*	*17%*	*13%*
Diamonds, Gems, Jewelry as % of Total U.S. India Imports	*22%*	*21%*	*23%*	*22%*	*18%*
U.S.- India Total Diamond, Gem and Jewelry Trade	**2008**	**2009**	**2010**	**2011**	**2012**
(42100) Gem diamonds-uncut or unset	5,610	4,551	7,946	9,818	8,031
(41310) Jewelry (watches, rings, etc.)	1,762	1,506	1,640	1,718	1,742
(42110) Other gem stones-precious, semiprecious, and imita	189	134	203	238	219
Total U.S. Diamond, Gem and Jewelry Trade with India	7,561	6,191	9,789	11,775	9,992
Total U.S. - India Trade in Goods	43,386	37,607	48,783	57,654	62,854
Diamonds as total of U.S. India Trade	*13%*	*12%*	*16%*	*17%*	*13%*
Diamonds, Gems, Jewelry as % of Total U.S. India Trade	*17%*	*16%*	*20%*	*20%*	*16%*
Table 1 - Source U.S. Census, Data in $ Million					

The testimonies provided by the expert witnesses appearing before the subcommittee on March 13, 2013 provided a clear indication of severe problems in the trade relationship between the U.S. and India. There is a clear consensus that something must be done on an urgent basis to improve the situation as India is moving forward with international trade agreements with other countries. Given the size and importance of diamond production and exports to India's economy and our trade with India it is important for us to identify problems and solutions based on principles that are consistently implemented and enforced.

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Reading the testimonies of others and based on personal experience, it is clear that we are all complaining about the same thing. When it comes to commerce, the U.S. government and U.S. companies have very little influence on what India does. Import taxes (such as a sudden 2% tax on polished diamonds) are implemented overnight without consultation or explanation. Obtaining withholding tax certificates so that we can pay our U.S. suppliers for services is an unending annual nightmare. It takes three months or more to get approval to pay U.S. suppliers. U.S. companies are subject to arbitrary and absurd demands from officials who are frequently absent. Expensive annual transfer pricing studies are difficult to get proof of corporate residency but are required every year even if nothing has changed with a company. The list of problems and complaints goes on and on. It is obvious our problem is not understanding what the problems are, but rather identifying and implementing the solutions. The key issue before us is – What should we do?

1. Principles. International trade must be based on clearly understood and communicated principles that are consistently applied and enforced. If our trade partners do not know what to expect from us when they mistreat us, then it's our fault. We can't blame India for taking advantage of us if we do not have clear policies and have not communicated the consequences of their actions because we ourselves do know what we are doing. Therefore, our first step must be to establish principles that we are willing to enforce.

   There is consensus that the primary U.S. international trade principle should be maintenance of a level playing field with our trading partners. Furthermore, we want a fair and open international trade that supports efficient, competitive and transparent markets.

   In order to accomplish this goal we must introduce and implement a second over-riding enforcement principle – reciprocity. Wishing for a level playing field without implementing and enforcing reciprocity is irresponsible. If there is no incentive to treat us fairly, why should India or anyone else do so?

2. Reciprocity and the Golden Rule. There are two interpretations of the golden rule. The first is to "treat your neighbor as you would like to be treated" and that works well with the "level playing field" principle. The second interpretation is "he who has the gold rules" and that works well with the "reciprocity" principle.

   In the case of diamonds, gems and jewelry, the U.S. position should be that all import duties by India and the U.S. should be eliminated. If that is not possible, then we should reciprocate by implementing the same level of import taxes on India that they are implementing on us.

   Regarding the informal bureaucratic tactics used by India to restrain our trade, here again reciprocity makes sense. If we are forced to jump through unreasonable hoops to get our withholding certificates or in order to operate our businesses then the same requirements should be put on Indian companies seeking to obtain payment from the U.S. or to operate in the U.S. It is natural and normal for trading partners to understand and accept government policies that are based on reciprocity.

   While I support the idea of legislation that, subject to Presidential and/or Congressional exemption, requires reciprocal trade actions by the U.S. government, I recognize there may be others who fear that such legislation may result in trade wars. Therefore, Congress may wish to

temper implementation and enforcement of reciprocity. The key idea is to have such a policy and move towards implementation so that we and our trading partners know the consequences of our actions. We want our trading partners to fully understand and expect the ramifications of their unfair and unacceptable actions. Not having a clear U.S. policy and position regarding unfair trading is unacceptable and irresponsible. We must know and our trading partners must know the consequences of unfair trade and that we are prepared to take action. And that action is: implementation and enforcement of reciprocal trade policies that ensure a level playing field.

3. United States Trade Representative (USTR). We must recognize that the USTR has very little traction with regard to negotiations with the Indian government. Our people talk and yet India does whatever it wants, whenever it wants. We are not even informed of tax increases or changing policies that negatively impact us. Frankly, it's not the USTR's fault. It is outrageous that we send the USTR into battle without any ammunition. Whether we use reciprocity or something else, we must empower our negotiators. We should not be talking with the Indians if we have nothing to give them or take away from them. At this stage we appear weak and are ignored. It's embarrassing.

4. The Private Sector. At times it appears as if the Indian government is more than willing to hurt its economy. It's as if the government and private sector are at war with each other and the government does not care about implementing positive development. To some degree this is an illusion propagated by the government and we should not buy into it. India's private sector has real power and can change the course of government – sometimes with just one phone call. U.S. policy makers should significantly increase their interaction with U.S. firms on the ground in India and work with these firms to establish relationships and contacts with Indian companies that will be interested in protecting and expanding their U.S. business interests.

   In many instances the deadlock reached with government officials and policy makers can be overcome with the assistance of the private sector. From the diamond industry perspective establishing and interacting with an advisory panel consisting of companies operating in India who share a common interest with Indian companies would be very helpful.

   Please note, that the U.S. is the world's most important diamond market in terms of size and consistency of demand. India is the largest diamond manufacturer. When it comes to diamonds, India needs the U.S. more than the U.S. needs India. Furthermore, India is desperate for foreign currency. In the current environment, the diamond trade appears to be low hanging fruit from a negotiation standpoint and could be an ice breaker regarding other commodities. Having said this, we should be careful not to negotiate with India until we are able to provide our negotiators with real leverage.

5. Generalized System of Preferences (GSP). While India is well known for the poverty of many of its citizens we must recognize that it is also the home of many millionaires and billionaires. It is time for the U.S. to support India by recognizing their financial independence and power. It's time for us to treat them as trading equals.

   GSP is harmful to India's development because it diminishes the natural economic forces moving India towards deregulation and the implementation of rational international trade policies. Furthermore, India's consistent denial of a level playing field to U.S. companies is

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reason enough to deny them GSP status. It is time for us to end this subsidy and consistently apply the concept of a level playing field.

6. Due to time and presentation constraints I have not addressed a number of important issues in this brief comment. These issues include preferential credit facilities to the diamond trade which inflate rough diamond prices and enable Indian companies to dominate select areas of diamond manufacturing; the export of diamonds sourced from OFAC sanctioned entities to the U.S.; the need for U.S. customs to establish procedures that will minimize the importation of these diamonds as well as other diamonds that may be involved in terrorist financing or money laundering. Should the subcommittee be interested in expanding my discussion on these topics I should be pleased to extend my comments at some future date.

Conclusion and Recommendations

7. Congress should take action by creating legislation that establishes, implements, communicates and enforces the principle of a "level playing field" in combination with the principle of "reciprocity." Such legislation may be modified to ensure flexible implementation by the President and/or Congress so as to avoid unintended consequences that may threaten other strategic U.S. interests.

8. The USTR must be supported with real leverage with the ability to apply market power that significantly helps and/or harms the economic position of the counter-party. We should hold off on negotiations until we have established reasonable policies that ensure such market power.

9. The private sector should be encouraged to participate in the strategic development of U.S. trade policy with attention given to firms operating on the ground in India. U.S. companies should be involved in negotiations with their counterparts in India to help influence government policy and decision making.

10. The GSP for India should not be extended.

I thank the subcommittee for providing me this opportunity to communicate my views and hope the information provided is helpful. Additional information about the Rapaport Group is available at www.diamonds.net.

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March 20, 2013

Dear Chairman Nunes, Ranking Member Rangel, and members of the subcommittee:

On behalf of Rio Tinto, I would like to thank you for holding this hearing on U.S.-India Trade Relations. Rio Tinto's business is finding, mining, and processing mineral resources, and our activities span the world. In the United States, Rio Tinto produces aluminum, copper, gold and borates for export worldwide. Rio Tinto's activities in India go back to 1930, when aluminum producer Indal - a former subsidiary of Rio Tinto Alcan - began operating.

India's Barriers to Trade
We strongly share in the belief that the trading relationship between the U.S. and India holds a wealth of potential for both parties, but that much work remains for this potential to be fully realized. In a rapidly developing nation as large and diverse as India, unique business challenges are to be expected. Testimony during the hearing discussed these challenges at the macro-level as well as in specific sectors where protectionism and forced localization are hampering trade and growth.

Supporting India's Liberalization Efforts through Rules Based Trade
We believe that the most important message from this hearing is that the recourse to remedies and rights under international trade agreements between the two countries should not be seen as antagonistic to the bilateral trading relationship. India is the largest democracy in the world, and as such it must accommodate an extraordinary array of diverse and competing interests. This is the reason that India is so often seen to be opening up in one sector while turning inward in another. While India has a responsibility to adhere to the commitments it made when it joined the World Trade Organization, other countries should understand that ensuring India's compliance with these commitments is in everyone's interest, including India's. As Arvind Subramanian noted in his testimony, India has an excellent record of compliance with WTO rulings against it, and we agree wholeheartedly with his urging that the U.S. "not be reticent" in engaging the WTO dispute resolution process. India has ample capacity with regard to its international trade representation, and rulings against trade barriers strengthen the hand of those within India seeking greater liberalization and growth.

Rio Tinto's Own Experience – 8 Years of Lost Exports from California to India
The last seven annual publications of USTR's National Trade Estimate Report on Foreign Trade Barriers have noted India's discriminatory restriction on imports of boric acid. Boric acid, derived from mineral borax, has a wide variety of industrial uses, including glass and glass fiber,

Rio Tinto

ceramics, enamels, personal care products, adhesives and clean energy. Boric acid may also be used in small quantities as a pesticide and in agriculture as a micronutrient.

Beginning in 2004, India's Customs authority imposed a restriction on tariff line 2810, the global tariff classification for boric acid. The restriction states that imports are subject to an import permit from India's Ministry of Agriculture. The result is that every shipment of boric acid must be accompanied by a permit, and these permits are only issued – if at all– for a given quantity of boric acid measured in metric tons. Conversely, India has imposed no such restriction or limitation within its borders on the manufacturing and sale of boric acid produced in India. The result is the forced localization of boric acid processing. Because India has no natural deposits of mineral borax [the input for manufacturing boric acid], no restriction was imposed on the tariff line for mineral borax, 2840. Thus India's chemical companies freely import the required input and enjoy a protected domestic market for boric acid. Rio Tinto's subsidiary, U.S. borax, can continue to mine mineral borax in California, but demand for Rio Tinto's boric acid manufacturing workers' labor is reduced while those jobs are instead generated in Indian manufacturers' plants. India in turn suffers from less choice and higher prices.

This kind of trade barrier is not sophisticated – the discriminatory restriction on tariff line 2810 violates numerous core WTO obligations, including the central obligation to provide national treatment. U.S. trade officials both here and in India have graciously worked with Rio Tinto representatives for more than half a decade to seek a resolution to this matter. Indian manufacturers which need boric acid have likewise expressed their frustration with the barrier, as have Indian courts. Many in Indian government desire to seek an end to this trade irritant. Despite all this, the restriction persists. We believe that were the U.S. to bring forward a WTO consultation request on the matter, the balance would tip in favor of those within India who support liberalized trade, and that both countries would be richer for it and closer to realizing their relationship's potential.

Sincerely,

Dean Gehring
Vice President, Operations

SoFTEC

Software Finance & Tax Executives Council

www.softwarefinance.org

March 12, 2013

Via Email

Hon. Devin Nunes
Chairman
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Letter for the Record:
Hearing on U.S.-India Trade Relations: Opportunities and Challenges

Dear Chairman Nunes:

This letter conveys the views of the Software Finance and Tax Executives Council (SoFTEC) with respect to your hearing tomorrow on U.S.-India Trade Relations: Opportunities and Challenges. U.S. based multinational software companies have long enjoyed robust trade with customers and have a strong record of making substantial investments in India. However, recent tax legislation and administrative policies in India have erected significant non-tariff barriers that create uncertainty and threaten to retard the previously robust trade with and investment in India by software companies. We ask that this letter be made a part of the record of the hearing.

SoFTEC is a trade association providing software industry focused public policy advocacy in the areas of tax, finance and accounting. SoFTEC represents the leading developers of software and is the voice of the industry on tax issues. Many SoFTEC members have customer, employees and facilities in India and it thus has an interest in providing its views on the subject matter of the hearing.

In particular, SoFTEC is concerned that recent retroactive legislative changes to the tax laws of India make it exceedingly difficult for software companies to determine their tax obligations to India for current and prior years. Those legislative changes also throw into doubt the efficacy of cases decided by the courts of India, which undermine the rule of law further exacerbating the difficulty in predicting how the Indian tax laws will be applied to foreign software businesses. These retroactive legislative changes also attempt to unilaterally change recognized interpretations of standard terms used in bilateral tax treaties, changes that are inconsistent with established treaty interpretations, which lead to extensive double taxation of profits earned in India by U.S.-based companies. Last, SoFTEC is concerned that the

mechanisms for resolving tax disputes with the Indian government are inadequate and ineffective, resulting in expensive and time-consuming controversies and double taxation. .

1. Retroactive Legislative Changes and Tax Treaty Interpretation:

Last year, in Finance Bill 2012, the Indian legislature approved numerous changes to its Income Tax Act, some provisions of which would retroactively change the tax law of India as far back as 1962. Many of these changes are directed at how the Indian tax authorities are to interpret bilateral income tax treaties, including a treaty with the United States ratified in 1989.

As applied to software, the definition accepted around the world of the term "royalty," as evidenced by the OECD and UN model tax conventions, generally only includes payments for the right to make copies of software and distribute them to the public. The term "royalty" does not include payments for the right to use software copies. There are many cases decided by the courts in India that follow this interpretation. Finance Bill 2012 departed from this internationally accepted definition of the term "royalty" by including within the definition payments for the right to "use" software. The Bill also purported to make this new interpretation retroactive to 1976. This different interpretation is leading to disputes between software companies, the U.S. tax authorities, and the tax authorities of India over whether payments of tax based on India's expansive interpretation of the definition of "royalty" is eligible for a U.S. tax credit, leading to double taxation.

Many of the tax provisions of Finance Bill 2012 are retroactive to the dates of enactment of the Income Tax Act (1962) or amendments thereto. The tenor of these retroactive provisions is to upset past and future decisions by the Indian courts. These provisions even go so far as to reverse court decisions with respect to the very taxpayers who secured the decisions. These provisions essentially deprive all taxpayers, foreign and domestic alike, of judicial review of tax assessments asserted by Indian tax authorities. The inability to obtain meaningful judicial review of tax assessments seriously undermines taxpayer confidence in the rule of law in India, creating significant financial uncertainty and impeding their ability to trade with India.

India has a significant number of bilateral tax treaties containing provisions Finance Bill 2012 purports to modify by defining terms for tax treaty purposes. SoFTEC believes the appropriate process for defining terms contained in bilateral tax treaties is consultation with the treaty counterparty. Unilaterally defining terms in a bilateral tax treaty erodes confidence by taxpayers and treaty counterparties that the treaty will be respected. Tax treaties are supposed to provide certainty for taxpayers and reduce the risk of double taxation. The provisions in Finance Bill 2012 relating to tax treaty interpretation promote uncertainty.

The tax provisions of Finance Bill 2012 promote opacity and unpredictability in the Indian tax law with the effects of deterring foreign investment and making software and information products more expensive for India's consumers.

2. Tax Dispute Resolution:

Many multinational taxpayers with operations in India face protracted tax disputes with Indian tax authorities and view the process for resolving those disputes as "broken." Many of

these disputes center around so-called "transfer pricing' which is a process for allocating business profits between countries, with the taxpayer exposed to double taxation when two countries lay claim to the right to impose tax on the same profits. Usually, such disputes are worked out in negotiations between what is known as the "competent authority" of each country. In the United States, the competent authority is the Deputy Commissioner (International) of the Internal Revenue Service. The government of India has a similar post within its tax authority.

Many times, a business will attempt to negotiate what is known as a "bilateral advance pricing agreement" which provides certainty over how their profits will be split between two countries and avoid transfer pricing disputes. However, the U.S. Competent Authority refuses to engage in bilateral advance pricing agreements with India because of a large backlog of double tax cases with India that have proven difficult to resolve. Indian competent authority appears to be negotiating double taxation cases not based on the facts and circumstances of the each case, but based on policy and revenue targets.

The backlog of tax disputes also is a problem. Some U.S. software companies have more cases pending in India than they do in the rest of the world, some of which date from the 1996 tax year. There is an estimated 60,000 cases in the pipeline. For the assessment year 2009-10, more than 12,000 tax evasion cases were launched, while only 600 were resolved. One U.S. software company has 17 cases pending in the Indian courts and 61 cases in appeals with the administration. The length of time these complex cases take to resolve and the inability to trust that a favorable court decision will be honored by the tax administrators or not retroactively overturned by the legislature only leads to needless expense and greater uncertainty.

The U.S. tax treaty with India dates to 1989 and contains no mechanism for binding arbitration of tax disputes. Should the U.S. and India undertake negotiations over revisions to the treaty, the U.S. negotiators should insist on inclusion of an alternative dispute resolution procedure to more efficiently and expeditiously resolve tax disputes. Specifically, any revised tax treaty between the United States and India should include a provision for mandatory binding arbitration of income tax disputes.

Conclusion:

SoFTEC thanks the Chairman for the opportunity to present these views with respect to the Hearing on U.S.-India Trade Relations: Opportunities and Challenges. Please contact the undersigned at (202) 486-3725 or mnebergall@softwarefinance.org with regard to any questions or for more information.

Respectfully submitted,

Mark e. Nebergall
President
Software Finance and Tax Executives Council

Wine Institute

March 8, 2013

The Honorable Devin Nunes
U.S. House of Representatives
Longworth House Office Building Suite 1013
Washington, DC 20515

Dear Congressman Nunes:

In response to your announcement of a Ways and Means Trade Subcommittee hearing next week on improving the bilateral trade relationship with India, we ask that you and Committee members consider the significant non-tariff and tariff barriers that California and U.S. wineries face in exporting to India.

India is one of the emerging BRIC (Brazil, Russia, India and China) markets of major interest to the U.S. wine industry. Its wine import market is USD 25 million of which USD 1.35 million or 5.4 percent is the U.S. share. EU wine producers dominate the import market with a 62 percent share. Of the four BRIC countries, India has been the most difficult for California producers in seeking better market access. In addition to the prohibitive tariff of 150 percent, several of the provincial states impose taxes on wine imports to protect their domestic winemaking industry. In addition, the non-tariff issues make it virtually impossible for small and medium sized wineries to export to India. The most difficult non-tariff barriers are the winemaking regulations that exclude the use of certain internationally accepted additives and processing aids used by U.S. winemakers.

The Indian government and its people see this combination of national growth and interest from abroad and have taken action to support and supply their own emerging demand from within. This national demand for products such as wine has encouraged the development of a domestic wine industry and the Indian government has taken significant strides in developing its trade policies to protect its nascent industry.

Another non-tariff barrier is the requirement that all imported wines must be stored at a government approved custom bonded warehouse that includes paying a storage fee. The wines can be released from the bonded warehouse for distribution only after the importer/distributor meets all the mandatory requirements of the state where they plan to market and/or sell the product.

Control over selling, distribution, and pricing of alcoholic beverages belongs to state governments under Section 47 of the Directive Principles of the Indian Constitution. India is a federal nation, and like the U.S., the Central government has empowered states to generate revenue and control sales. Each of India's 29 states and 6 union territories has its own rules and regulations for alcohol control. In many states, the collection of excise taxes on alcohol and tobacco products represents the majority of a state's yearly revenue. Each state therefore determines its own excise policy, which is declared annually between March

and April. As an example of the discrimination against U.S. imports, the Excise Department of the state of Maharashtra charges a 200% 'special fee' on imported wine. The Indian Government (state and federal) asserts that this fee is designed to offset the cost of domestic excise taxes charged upon local producers; however, the Maharashtra State Government has provided an excise tax exemption for local wine producers. Under this example, the state government of Maharashtra is claiming that excise taxes levied on local wine producers (which they are exempt from paying) provides justification for charging a 200% fee on wines originating outside the state but sold within its boundaries.

States such as Uttar Pradesh and Tamil Nadu control imports by refusing to issue an excise Transport Permit. The Transport permit is the distribution authorization form that allows goods to be released from warehouses and delivered to designated customers, be they hotels or other authorized retail outlets.

Despite these significant barriers U.S. wineries have doubled their exports to India over the last two years. By comparison, however, the Indian wineries being protected and subsidized by their state and federal government increased exports globally in the last few years from less than USD 1 million to over USD 4.5 million.

Thank you very much for your efforts to remove these discriminatory barriers, including the state excise taxes, which make it virtually impossible for U.S. wineries to compete with the heavily subsidized and protected Indian producers.

Sincerely,

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