Linda M. Dempsey

Vice President
International Economic Affairs

May 12, 2015

Ms. Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436

Re: Section 332-550 Investigation on Trade and Investment Policies of India 2014-2015

Dear Ms. Barton,

In response to the Federal Register notice (80 F.R. 10513) that the U.S. International Trade Commission published on February 26, 2015, I am writing to submit the post-hearing statement of the National Association of Manufacturers.

Should you need additional information from me in advance of the hearing, please do not hesitate to contact me.

Sincerely,

Linda Dempsey

Post-Hearing Statement and Supplemental Submission of Linda Dempsey
Vice President, International Economic Affairs
National Association of Manufacturers

For the Hearing on:
"Trade and Investment Policies in India: 2014-2015"
Before the U.S. International Trade Commission
Inv. 332-550

May 12, 2015

The National Association of Manufacturers (NAM) welcomes the opportunity to provide additional information on the impact of India's trade and investment policies on the U.S.-Indian commercial relationship and to supplement our April 23, 2015 Pre-Hearing Submission and my May 5, 2015.

In their September 24, 2014, letter to Chairman Meredith Broadbent, the Chairmen and Ranking Members of the Senate Committee on Finance and the House Committee on Ways and Means asked the Commission to conduct an investigation into India's trade and investment policies, focusing in particular on any significant changes instituted by India's new government – led by Prime Minister Narendra Modi – since the Commission's Investigation No. 332-543.

Prime Minister Narendra Modi took office last year on an "open for business" platform that was welcomed by businesses in India, the United States and beyond. His leadership of Gujarat had important and positive benefits for that Indian state. Prime Minister Modi and the Indian government have engaged in a number of domestically focused measures including seeking to address a cumbersome and malfunctioning bureaucracy and seeking reform of central, state and local indirect taxes through a new goods and services tax, which are still in progress.

On international commercial engagement issues, manufacturers have strongly welcomed high-level commercial dialogues between the U.S. government and India, including the reestablishment of the Trade Policy Forum and the High Level Working Group on Intellectual Property Rights.

While we appreciate improvements in the bilateral dialogue, these new opportunities for engagement and Prime Minister Modi's positive policy statements have yet to be translated into meaningful improvements to India's trade and investment environment. Indeed, in some cases, we have seen a worsening of the environment.

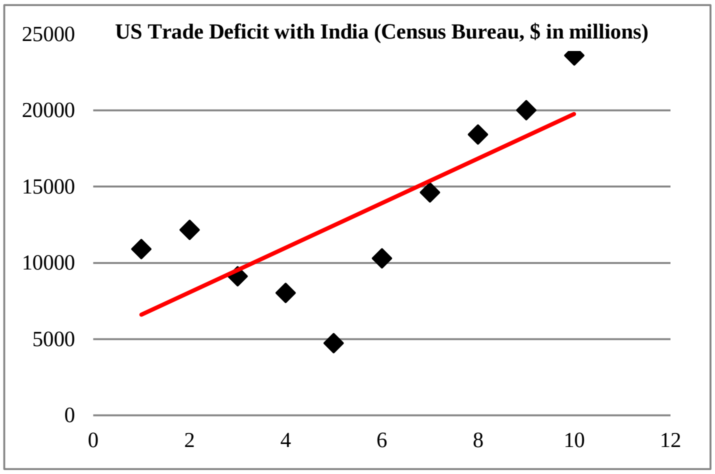
The Commission's December 2014 report on Investigation No. 332-543 found that over one-quarter of U.S. companies engaged in India are substantially and adversely affected by India's restrictive policies, and that those policies also drive down much desired investment in the Indian economy.[1] These findings demonstrate the imperative for the U.S. government to seize the momentum created by improved engagement opportunities in India in order to secure meaningful reforms that will open India's market to U.S. manufacturers on fair terms. As explained in part I of this submission, such policies will have a significant long-term effect on the U.S. economy, and on the depth and strength of America's relationship with a key emerging economy.

U.S. government engagement should focus on many of the problems already identified by the Commission and by other U.S. government agencies. The issues, set out in NAM's prehearing submission and elaborated upon in part II of this submission, include: (i) excessive and opaque tariffs and a cumbersome system of customs administration; (ii) non-tariff barriers to trade and investment, such as local content requirements and other regulations specifically targeting several sectors; an unpredictable and weak intellectual property rights environment; (iv) unpredictable regulation of investment; and (v) implementation of the new agreement that will open up India's nuclear industry for greater collaboration. Finally, part III provides additional information in response to questions raised at the hearing.

The NAM believes that focused and sustained outreach on these issues can produce real results in India over the tenure of the current Indian government and promote stronger and mutually beneficial U.S.-India commercial ties.

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

India is the tenth largest economy in the world,[2] yet, it is not even among the top 15 destinations for U.S. exports.[3] While India accounts for approximately three percent of the global economy, excluding the

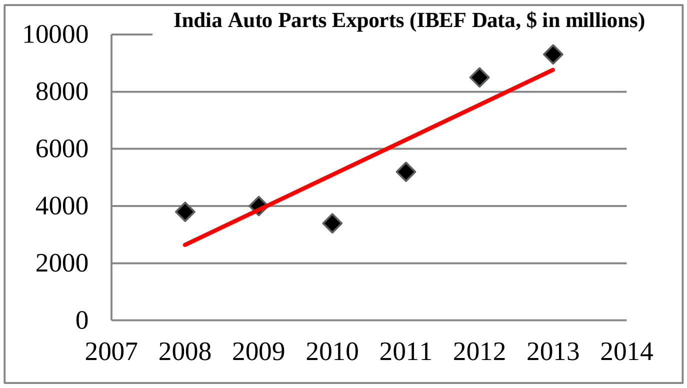


[1] Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy, Inv. No. 332-543, USITC Pub. 4501(Dec. 2014), *available at* http://www.usitc.gov/publications/332/pub4501_2.pdf.

[2] *Gross domestic product 2013*, The World Bank, http://databank.worldbank.org/data/download/GDP.pdf (last visited Apr. 28, 2015).

[3] *Foreign Trade: Top Trading Partners - February 2015*, U.S. Census Bureau, http://www.census.gov/foreign-trade/statistics/highlights/top/top1502cm.html#exports (last visited Apr. 28, 2015).

United States,[4] it accounts for just 1.7 percent of U.S. trade with the rest of the world.[5] Given the size of the Indian and U.S. economies, the dollar amounts behind these discrepancies are highly concerning. The state of the U.S. trade relationship with India is driven by many factors, but there can be little doubt that India's restrictive trade policies are among them.



These policies particularly affect U.S. exporters in employment-intensive manufacturing sectors where India has already established itself as a world leader. India's automotive exports have grown in every one of the past five years, and India is quickly gaining on global export leaders such as Japan and Korea.[6] India exports generic pharmaceuticals to more than 200 countries and its generic manufacturing industry, worth over $25 billion today, is expected to post sales of almost $50 billion by 2018.[7] Yet, as explained below, many of these employment-intensive industries, particularly those in high-technology manufacturing sectors, are among the most affected by India's restrictive trade policies.

And while India's policies may benefit a limited number of domestic Indian manufacturers, discriminatory and opaque policies hurt the Indian, U.S. and global economies as a whole. Despite its desire to attract more international investment, India ranks last among major economies as a place to do business.[8] The OECD, the IMF and other global bodies have made clear that India's economic growth cannot reach its full potential without fundamental structural reform.[9] These organizations have emphasized in particular the need for India to reform and simplify its tax system, open its economy, and simplify bureaucracy.[10] The reforms called for by these international organizations echo those sought by NAM's members.

---

[4] *Gross domestic product 2013*, *supra*. India's GDP in 2013 was US$1,875 billion. Global GDP, after subtracting U.S. GDP, was US$58,854 billion.
[5] *Foreign Trade: Top Trading Partners - February 2015*, *supra*.
[6] Santanu Choudhury & Eric Bellman, *Ford Makes a Billion-Dollar Bet India Can Become an Auto-Export Powerhouse*, Wall St. J. (Mar. 27, 2015), *available at* http://blogs.wsj.com/indiarealtime/2015/03/27/ford-makes-a-billion-dollar-bet-india-can-become-an-auto-export-powerhouse.
[7] C.H. Unnikrishnan, *India's drug industry to touch $48 billion by 2018*, Mint (Sept. 12, 2014), *available at* http://www.livemint.com/Companies/ZjWjujhFX2IksBR2eMswwL/Indias-drug-industry-to-touch-48-billion-by-2018.html (citing data provided by the credit rating agency Care Ratings).
[8] World Bank Group, *Doing Business 2015: Going Beyond Efficiency* at 4 (2015), *available at* http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB15-Full-Report.pdf.
[9] International Monetary Fund, *2015 Article IV Consultation Staff Report; Press Release; and Statement by the Executive Director for India*, IMF Country Report No. 15/61 (Mar. 2015), *available at* http://www.imf.org/external/pubs/ft/scr/2015/cr1561.pdf; OECD, *OECD Economic Surveys: India 2014*, OECD Publishing (2014), *available at* http://dx.doi.org/10.1787/eco_surveys-ind-2014-en.
[10] OECD Economic Survey, *supra*, at 11. International Monetary Fund, *supra*, at 19.

Over the long term, the effect of Indian trade reform on the U.S. economy will also be pronounced. In its December 2014 report, the Commission focused on the effect of reform on the U.S. economy over the course of a *single year*. The effects it found were substantial – exports to India would have been 66.4 percent higher in 2014 without India's restrictive trade policies, and U.S. welfare would have increased by $4.9 billion.[11] At the same time, it is not clear that the Commission took into account the dynamic, long-term effects of reform, such as the impact that heightened Indian growth rates would have on U.S. exports over a five or ten year horizon.[12]

As we explained in our Post-Hearing Submission on the Commission's prior investigation:

> [T]he Commission also should evaluate dynamic effects, including slower productivity growth resulting from production inefficiencies. It should take into account projections of Indian economic growth (which would tend to increase exports, all else being equal), of new technology exports and of exports by firms that have avoided the Indian market altogether.
>
> The dynamic impact of India's trade barriers on U.S. productivity must be a critical part of the Commission's investigation. Trade and investment promote productivity through better resource allocation, higher returns to capital and R&D, increased specialization and technology spillovers. Productivity gains drive economic growth and support rising wages.

The Commission now has a second chance to consider the dynamic effects of India's restrictive trade and investment policies. We urge the Commission to do so in order to account fully for the long-term negative impacts that India's restrictive and discriminatory policies, if left unaddressed, will continue to have on the U.S. economy.

II. High Priority Trade and Commercial Issues Limiting a Stronger U.S.-India Commercial Relationship

The NAM believes that the policies highlighted below are a substantial factor in depressing U.S. exports to and increased U.S. commercial engagement with India.

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

Tariffs in India are high – just how high is hard to say. As the Office of the United States Trade Representative (USTR) has pointed out, "While India publishes applied tariff and other customs duty rates applicable to imports, there is no single official publication publically available that includes all relevant information on tariffs, fees, and

[11] USITC 2014 India Report, *supra*, at 97-98.
[12] *Id.* at 85 ("As indicated in chapter 1, the simulation results show the difference between U.S. activity in 2014 under the current Indian policy regime and what U.S. activity in 2014 would have been under a simulated liberalized policy regime, assuming all other conditions in the 2014 economy remained the same.").

tax rates on imports."[13] This failure is emblematic of a general lack of transparency that begins with the fact that India imposes at least four separate types of tariffs.

India's average bound tariff rate on non-agricultural goods was 34.6 percent, and its average applied MFN rate was 10.2 percent according to the WTO Tariff Profiles. Such rates are far in excess of those imposed by other significant emerging economies – for comparison, the average tariff rate applied across the Association of Southeast Asian Nations was five percent – but these top-line numbers understate the scale of the problem. For example, India maintains tariff peaks of 60-75 percent on motorcycles and automobiles.

As NAM pointed out in its pre-hearing statement, in the past year, the new government took no actions to alleviate these high tariffs. To the contrary, India's tariffs have moved in the wrong direction. The 2014-2015 Union Budget increased tariffs by ten percent on four broad categories of telecommunications equipment. This sudden increase is not an isolated event. The year prior, in 2013, India doubled the tariff on imports of crude edible oils. These rapid fluctuations in rates make it difficult for U.S. companies to invest in trade and distribution networks with India.

The effect of India's tariff system on U.S. manufacturers is compounded by the fact that India's tariffs target major U.S. export sectors. U.S. new passenger vehicle exports were worth over $50 billion in 2013.[14] In the same year, the U.S. exported almost $150 billion in high-technology goods, including those targeted by India's heightened tariffs.[15] Collectively, the transport manufacturing and computer and electronics manufacturing industries employ well over two million Americans.[16]

It also bears emphasis that India uses export tariffs and other restrictions as a means of protecting domestic manufacturers, and, from India's most recent budget, it appears that India intends to continue to do so going forward. Despite repeated calls from trading partners and its own citizens, the budget maintained a 30 percent tax on iron ore exports. The tax is intended to benefit Indian manufacturing groups, and it continues to exist, despite domestic calls for reform, due to the support of some of the country's largest conglomerates.[17]

On April 1, 2015, the Modi government's New Foreign Trade Policy moved forward. The policy calls for less documentation and has been introduced to make

---

[13] Office of the United States Trade Representative, *2015 National Trade Estimate Report on Foreign Trade Barriers* 171 (Mar. 2014), *available at* https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf.
[14] International Trade Administration, U.S. Export Fact Sheet (Feb. 6, 2014), *available at* http://trade.gov/press/press-releases/2014/export-factsheet-february2014-020614.pdf.
[15] *High-technology exports (current US$)*, The World Bank, http://data.worldbank.org/indicator/TX.VAL.TECH.CD (last visited Apr. 30, 2015).
[16] *Employment Data by Industry*, Bureau of Labor Statistics, http://www.bls.gov/iag/tgs/iag_index_naics.htm (last visited Apr. 30, 2015).
[17] Ajoy K Das, *Indian iron-ore miners' woes persist as govt disregards please to slash 30% export tax*, MiningWeekly.com (Apr. 10, 2015), *available at* http://www.miningweekly.com/article/indian-iron-ore-miners-woes-persist-as-govt-disregards-pleas-to-slash-30-export-tax-and-legislative-changes-take-effect-2015-04-10-1.

several changes in export schemes/incentives, online licensing system (SCOMET license, Advance license for duty free import) compared to the earlier policy FTP 2009-2014. The NAM is encouraged by these trade facilitation initiatives and by the government's plans to establish a National Committee on Trade Facilitation. At the same time, it is disheartening that the Indian government has not yet taken any steps to implement the World Trade Organization's (WTO) Trade Facilitation Agreement and is only just now *proposing to establish a committee* to do so.[18] Moreover, India's Trade Policy 2015 appears principally focused at boosting Indian exports without a corresponding focus on leveling the playing field for imports. In moving forward with its new trade policy, it is important that the Indian government ensure that its initiatives do not discriminate against U.S. manufacturers and exporters.

B. <u>India targets the ICT, telecommunications and other key high technology sectors with highly restrictive non-tariff barriers</u>.

Already subject to excessive tariffs, U.S. manufacturers seeking to export to India are also confronted by an array of non-tariff barriers, many of them plainly inconsistent with WTO standards. These barriers are well recognized and documented, including in USTR's 2015 National Trade Estimate.[19] They affect manufacturers in a wide range of sectors, from cosmetics to food products to chemicals, including pharmaceutical and agricultural chemicals, and medical devices.

India imposes particularly burdensome testing and certification requirements for telecommunications equipment.[20] While the requirement is new and so its effects uncertain, there are significant reasons for concern. Crucially, India's testing capacity is extremely limited and likely to create significant import bottlenecks. Cybersecurity is a vital concern, but there is no reason for India to reject international best practices and international standards to achieve that goal. India's security goals can be met equally by accepting products tested in accredited laboratories in the U.S. or in third countries that meet broadly respected international standards.

A similar regulation applies to electronics and information and communications technology (ICT) goods.[21] India requires registration of many such products with laboratories affiliated or certified by the Bureau of Indian Standards even if they are certified by internationally recognized laboratories. Only seven such laboratories exist.[22] As the United States Trade Representative points out, "The government of India has never articulated how such a domestic certification requirement advances India's legitimate public safety objectives."[23] What is clear is that the requirement delays and

[18] *New Foreign Trade Policy proposes new institutions to boost global trade*, Economic Times (Apr. 1, 2015), *available at* http://articles.economictimes.indiatimes.com/2015-04-01/news/60720114_1_trade-facilitation-agreement-commerce-secretary-rajeev-kher-global-trade
[19] USTR 2015 National Trade Estimate, *supra*, at 167-171.
[20] *See* United States Trade Representative, *2015 Section 1377 Review* at 17 (Mar. 2015), *available at* https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf.
[21] Government of India Department of Electronics and Information Technology, Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 (S.O. 2357(E)).
[22] USTR 2015 National Trade Estimate, *supra*, at 170.
[23] *Id.*

hinders exporters.

Local content requirements are another significant area of concern. The U.S. government is tackling one such policy in the growth area of renewable energy technologies through the *India – Solar Cells* case before the WTO. But this is only one example of India's use of local content requirements. India' 2012 Preferential Market Access policy enacted local content requirements for ICT goods purchased by the government.

While the policy is currently largely in abeyance, it has not been fully rescinded, causing ongoing uncertainty for U.S. manufacturers. Press reports suggest that India is also considering local content requirements in other sectors, notably including traditional power generation. Any such proposals would risk violating India's international trade commitments, and would undermine growth in that sector in India.

C. <u>India's intellectual property rights regime does not foster manufacturing innovation</u>.

Robust intellectual property protections are increasingly important for manufacturing, particularly as demand for knowledge-intensive goods grows. We welcome India's recognition of the critical role that intellectual property plays in fostering innovation and promoting economic growth in its draft National IPR Policy, released in December 2014,[24] and we appreciate the new opportunities for engagement on intellectual property issues created by the Modi government. Nevertheless, there has been no concrete action to bring about meaningful policy change. As detailed in NAM's comments on India's draft IPR policy[25] and in connection with the 2015 Special 301 Review,[26] India's intellectual property protection and enforcement environment remains weak and unpredictable. As a result, USTR again placed India on its Priority Watch List in its 2015 Special 301 report.[27]

NAM highlighted a number of intellectual property concerns across sectors in our pre-hearing statement. In this section, we highlight further a few of these issues, namely a continuation of the revocation and denial of valuable patents, manufacturing policies that discriminate against U.S. rights holders, and a stated commitment in some instances to the status quo.

India continues to deny patents for medicines patented in dozens of countries

---

[24] Hon. Justice Prabha Sridevan et al. ("Think Tank" Committee of the Ministry of Commerce and Industry of the Government of India), National IPR Policy (19 Dec. 2014), *available* at http://dipp.nic.in/English/Schemes/Intellectual_Property_Rights/IPR_Policy_24December2014.pdf.

[25] National Association of Manufacturers, *Comments of The National Association of Manufacturers on India's Draft National IPR Policy*, http://documents.nam.org/IEA/FINAL_NAM_Comments_IndiaIPRPolicy.pdf.

[26] Letter from Linda M. Dempsey to Susan F. Wilson, Director for Intellectual Property and Innovation, Office of the U.S. Trade Representative (Feb. 6, 2015) (available at http://aftindia.org/wp-content/uploads/2015/02/NAM-Special-301-Comments.pdf).

[27] Office of the United States Trade Representative, *2015 Special 301 Report* 45-52 (Apr. 2015), *available at* https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf.

around the world and in a manner inconsistent with its international obligations. For example, in the past year, India has revoked or denied patents on at least two additional drugs based on the internationally-inconsistent basis of "enhanced efficacy."[28] Under the World Trade Organization's TRIPS Agreement, patents must be granted for inventions that are new, involve an inventive step and are capable of industrial application. However, Section 3(d) of India's patent act creates a fourth hurdle for patentability: "enhanced efficacy." As noted by USTR in this year's Special 301 report, India has "applied this standard to deny patent protections to potentially beneficial innovations, some of which enjoy patent protection in multiple other jurisdictions."[29]

Similarly, the NAM remains concerned that there has been no effort to clarify previously-issued Indian policies and decisions that seem to require local manufacturing and as such discriminate against U.S. and other foreign rights holders. For example, there has been little clarity provided with respect to whether a patent can be subject to compulsory license if the patented product is not manufactured in India.[30] As noted in NAM's comments on India's draft National IPR policy, we strongly encourage India to address its laws and policies that encourage compulsory licensing, including the National Manufacturing Policy, on the basis that a product is not "worked" or manufactured in India. Such requirements appear to be inconsistent with India's international obligations not to discriminate against imports and to create uncertainty for innovative industries seeking to invest in India.

We appreciate Prime Minister Modi's recent statements about the need to bring India's intellectual property laws on par with global standards. However, in many other instances, India's recent initiatives and statements suggest a commitment to the status quo. For example, we continue to hear concerns from manufacturers that India does not provide regulatory protection for clinical test and other data submitted during the marketing approval process. Yet, India's December 2014 Draft National IP Policy explicitly excluded data exclusivity from further study suggesting a lack of willingness to address this significant concern. Also of concern is India's exclusion of intellectual property from the definition of investment in its draft Model BIT. This reflects a misunderstanding of the increasing importance of intellectual property to India's own growth and a worrisome step backwards in terms of protecting intellectual property rights in India.

D. <u>Investors in India continue to be subject to significant unpredictability, as demonstrated by its tax and investment policies</u>.

India's taxation of foreign firms is a prime example of how the Indian government's rhetoric has been belied by its actions. It is true that India has taken or proposed actions to improve its tax climate. It plans to streamline its value added tax

---

[28] *See* Rupali Mukherjee, *U.S. company denied patent on anti-cancer drug*, Times of India (Jun. 24, 2014), *available at* http://timesofindia.indiatimes.com/business/india-business/US-company-denied-patent-on-anti-cancer-drug/articleshow/37109029.cms (last accessed May 1, 2015); Zeba Siddiqui, *Germany's Boehringer loses India patent on lung drug to Cipla*, Reuters (Mar. 10, 2015).
[29] USTR 2015 Special 301 Report, *supra*, at 49.
[30] *Id*. at 52.

system and reduce the corporate tax rate, and it has declined to continue its arbitrary pursuit of retroactive taxes in two prominent tax disputes. While we welcome those actions, we remain concerned by other steps taken by the Modi government.

First, shortly after the government disclaimed the sorts of retroactive tax demands that have plagued foreign investors in recent years, Indian tax authorities brought a new $3.3 billion retroactive tax claim against a British investor. This development appears to contradict Prime Minister Modi's statements during the election campaign when he called such demands "tax terrorism" when they were made by the prior government.[31] While the action was brought against a British firm, it could just as easily have targeted an American investor.

Second, and without warning, the Indian government has reinterpreted its "minimum alternative tax" (a minimum income tax) to effectively impose a 20 percent flat tax on foreign investment funds investing in India. The tax may be applied retroactively, which would result in an unexpected tax bill of as much as $6.4 billion for foreign investors. Current information indicates that the Indian government is reviewing this issue and concerns about the uncertainty it is creating.[32]

Third, the Indian government has proposed a major step backwards in the respect for the international rule of law with its draft Model Bilateral Investment Treaty (BIT). The India draft Model BIT would completely exclude tax-related measures from the scope of investor-state dispute settlement. The model BIT's exclusion of tax measures is part of a wider, and troubling, theme: the exclusion from dispute settlement of several aspects of India's trade and investment regime. In this regard, NAM refers the Commission to its detailed comments on India's draft Model BIT,[33] which explain how India's approach is entirely out of step with international practice and ignores basic and long-recognized standards of fundamental investor protection.

As noted in the NAM's pre-hearing statement and at the hearing, India did make two positive steps in opening its investment environment, allowing 100 percent investment in railway infrastructure and 49 percent investment in the defense sector with no prior review. To clarify the defense investment rules, India could permit higher than 49 percent foreign investment in the defense sector, but it must be approved first by the government.

Unpredictable policy changes make it extremely challenging for U.S. manufacturers to plan and finance trade and investment in India, and they contribute toward an investment environment that remains unpredictable and often hostile.

---

[31] Arun Jaitley, *India promises investors a fair deal on tax*, Financial Times (Apr. 26, 2015), *available at* http://www.ft.com/intl/cms/s/0/df701f7a-ea68-11e4-96ec-00144feab7de.html#axzz3YRVNxbHM.
[32] Asit Ranjan Mishra, MAT row: Arun Jaitley Seeks Law Commission advice on FPIs," **LiveMint** (May 8, 2015), accessed at http://www.livemint.com/Politics/pN1QFfaN3YoQXQWIZL0ZeM/Arun-Jaitley-seeks-Law-Commission-advice-on-MAT-row-with-FPI.html.
[33] National Association of Manufacturers, *Comments on Draft Indian Model Bilateral Investment Treaty* (Apr. 10, 2015), http://documents.nam.org/IEA/NAM%20input%20to%20India%20model%20BIT.pdf

Recognizing this, India's finance minister recently criticized some of his own government's tax measures, noting that they were implemented by politically insulated administrative bodies.[34]

The tax concerns discussed above are only a subset (albeit an important subset) of the concerns NAM members have about the Indian regulatory climate. Other key concerns include sectoral equity caps and performance requirements that limit investment based on local production or sourcing. Particularly given the substantial delays involved in seeking judicial solutions to these measures within India,[35] it is vital that U.S. firms have access to balanced and impartial international tribunals when they are subject to arbitrary and unreasonable treatment.

E. Nuclear liability issues must be resolved promote full implementation of the U.S. –India Civil Nuclear Agreement.

In January, the United States and India announced a "breakthrough understanding" on implementing the 2008 nuclear cooperation agreement. Manufacturers welcomed the commitments of the U.S. and Indian governments to resolve issues that have stood in the way of full implementation of the U.S.-India Civil Nuclear Agreement.

India's Civil Liability for Nuclear Damage Act, enacted in 2010, effectively blocked U.S. companies from fully participating in India's nuclear energy market. The act failed to shield suppliers from liability risk for damages from a nuclear incident in India. The law discouraged both domestic and foreign nuclear suppliers from concluding contracts with Nuclear Power Corp. of India Ltd., India's exclusive nuclear plant operator.

The highlight of the deal in January was a commitment by India to channel immediate costs arising from any nuclear accident to the nuclear plant operator – rather than the current situation that makes suppliers liable in perpetuity – by creating a nuclear liability insurance pool backed by the government.

As part of the understanding, India agreed to ratify its accession to the Convention on Supplementary Compensation for Nuclear Damage (CSC), a global risk-sharing treaty managed by the International Atomic Energy Agency. India's adherence to the CSC would restrict lawsuits arising from an accident in India to Indian courts and make available to India supplemental compensation from other member states. This new deal wouldn't change the 2010 Indian law, but the new insurance pool could make the situation workable.

Insurance industry experts and nuclear suppliers participated in a workshop on March that laid the groundwork for the insurance pool that was announced as part of the deal. From the perspective of manufacturers, though, more legal certainly from India is still needed.

---

[34] Jaitley, *supra*.
[35] Investors have also been required to post substantial bonds in order to challenge tax rulings.

Manufacturers are awaiting India's concrete action to implement its commitments to unlock this important market for U.S. nuclear suppliers.

III. Additional Information in Response to Hearing Questions

A. The Modi government has sought to reform the complex Indian bureaucracy. Are those changes trickling down to companies with operations in India? What are the expectations going forward?

Prime Minister Modi has planned many reforms, some of which are already introduced, to simplify the complex Indian bureaucracy system. As a part of this process, Prime Minister Modi listed 19 new requirements for the conduct of bureaucrats. Some of the most important provisions have already been inserted in the existing rules which now require that every member of the all-India administrative service shall maintain "high ethical standards, integrity and honesty as well as political neutrality." The new rules also state that a civil servant "should not misuse his position" and not take decisions in order to derive financial or material benefits for "himself, his friends or family." It has also been specified that a civil servant shall perform and discharge his duties with the "highest degree of professionalism" and "dedication to the best of his abilities." These initiatives are expected to make bureaucrats more confident, punctual, and accountable, which will eventually result in substantial change in work culture for both domestic and foreign businesses. While these changes are being made, there has, however, been a slowdown in decision making by the bureaucrats, particularly more junior level bureaucrats. After months of inaction, companies need to invest substantial effort to elevate issues to get them resolved, but the impact of these changes remains slow and uneven.

In addition, the Ministry of Commerce and Industry, Department of Industrial Policy & Promotion issued Press Note No.5 (2014 series) on July 2, 2014, to increase the initial validity period of Industrial Licenses to three years instead of two years allowed earlier.

These and other measures are designed to improve the ease of doing business for all businesses in India and move in a positive direction. Yet, it will be important to observe the implementation of these and other measures over a longer period of time to measure their impact.

B. Has India's competitive liberalization among its different states resulted in greater liberalization or other positive measures since the Modi government took office?

NAM members have reported some forward progress on the competitive liberalization agenda, although this process was initiated prior to the Modi government taking office. There is hope that the Modi government push on this issue will lead to streamlining of the overall approval processes for large projects in infrastructure and other core sectors, encouragement for development of Smart Cities around the country to cater to the increasing urbanization needs and streamlining the tax structure and granting a bigger share of the tax revenues to the states. Several states are actively pursuing this agenda, but it remains early to determine the impact of the Modi government push versus prior activity.

The passage of the Goods and Services Tax (GST) and approval of other key projects could be an important signal of the Modi government's intentions and could help further pave the way for longer-term competitive federalism.

C. Are there any quantitative studies of the impact of goods and services tax reform? On a related issue, what types of taxes are industries seeing at the local level that might be alleviated if this measure moves forward?

India is moving toward a major tax reform through the adoption of the GST, a national sales tax, that seeks to transform the country into a more "seamless" market to cut the cost of doing business. Indian Finance Minister Arun Jaitley has said adoption of the GST could add up to two percentage points to India's growth. We do not have, however, any publicly available quantitative analyses. As proposed, the GST will be levied on buyers of goods and services, or where the service is consumed. This reform still faces hurdles including approval by the upper house and more than half of the 29 states. Some states object to giving up their own right to levy taxes and there remain differences over the disproportionate impact the levy will have on high consumption verses high manufacturing states. If this measure is successful, it would replace multiple other taxes, such as CENVAT, the central sales tax, state sales tax, octroi, and the service tax.

* * *

Earlier this year, President Obama and Prime Minister Modi announced their intention to identify and resolve impediments to trade and investment between India and the United States. The goal is worthwhile, but hard work and concrete results are necessary to achieve it. The NAM appreciates the Commission's continued attention to U.S.-India trade barriers. To this end, NAM would be happy to provide additional information.