



**Congressional
Research Service**

Informing the legislative debate since 1914

India-U.S. Economic Relations: In Brief

Michael F. Martin, Coordinator

Specialist in Asian Affairs

Shayerah Ilias Akhtar

Specialist in International Trade and Finance

K. Alan Kronstadt

Specialist in South Asian Affairs

Samir Kumar

Research Associate

Alison Siskin

Specialist in Immigration Policy

September 26, 2014

Congressional Research Service

7-5700

www.crs.gov

R43741

Summary

As the world's 3rd largest economy, India is an important trade and economic partner for the United States. The upcoming September 29-30 visit by recently elected Prime Minister Narendra Modi, his first to Washington, DC, has heightened congressional interest in the current status of the relationship. Modi's visit provides the Obama Administration with an opportunity to advance the U.S.-India strategic partnership, including by discussing ways to foster greater trade and investment between the two nations.

May 2014 parliamentary elections in India brought a new government into power, led by the Bharatiya Janata Party (BJP) and Prime Minister Modi. Prime Minister Modi's victory was widely seen as a mandate for the new government to pursue economic policies similar to those Modi implemented during his 15 years as Chief Minister of India's Gujarat state.

Although merchandise trade between India and the United States has grown rapidly over the last five years, each nation contends that some aspects of the other's economic and trade policies hinder greater trade and investment growth. For example, the Obama Administration considers India's intellectual property rights (IPR) protection as inadequate, and its localization policies as non-tariff trade barriers. The Indian government considers current U.S. laws on visas for temporary foreign workers and payroll taxes as non-tariff trade barriers that discriminate against Indian workers. While both governments maintain that their policies are compliant with international agreements and respond to domestic needs, these perceptions continue to create tension in bilateral relations.

India and the United States also differ on issues about the World Trade Organization (WTO) and other proposed trade agreements. On July 31, 2014, India withheld its support of a protocol that would ratify the WTO Trade Facilitation Agreement (TFA) agreed upon by all WTO members in December 2013. Its policy is to wait until the WTO members engaged in negotiations for a final agreement on food security—a decision criticized by the United States and other nations. Subsequently, India has called for the permanent solution of the food security issue in conjunction with the implementation of the TFA by the end of 2014. While India and the United States have expressed support for a bilateral investment treaty (BIT), ongoing negotiations are seemingly stalled after each nation decided to revise its model BIT agreements. In addition, the two nations are pursuing regional trade agreements (RTAs) in the Asia-Pacific. India is a party to the Regional Comprehensive Economic Partnership (RCEP) negotiations and the United States is taking a leading role in the Trans-Pacific Partnership (TPP) negotiations.

The report also covers other issues in bilateral relations, including India's membership in the U.S. Generalized System of Preferences (GSP) program; defense trade; civil nuclear cooperation; and India's potential membership in the Asia-Pacific Economic Cooperation (APEC).

For further information, see also CRS Report R43679, *India's New Government and Implications for U.S. Interests*, by K. Alan Kronstadt; CRS In Focus IF00037, *India's Domestic Political Setting (In Focus)*, by K. Alan Kronstadt; and CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

This report will be updated as circumstances require.

Contents

Overview.....	1
Trends in Bilateral Trade and Investment.....	2
Trade in Goods and Services.....	2
Foreign Direct Investment.....	3
Bilateral Issues.....	3
Intellectual Property Rights (IPR).....	3
Localization Barriers and Indigenous Innovation Policies.....	5
Visas and U.S. Immigration Policies.....	6
Bilateral Investment Treaty (BIT).....	7
Totalization Agreement.....	7
Generalized System of Preferences.....	8
Defense Trade.....	9
Civil Nuclear Cooperation.....	10
Trade Agreements and Institutions.....	11
WTO Issues.....	11
Regional Trade Agreements.....	11
APEC Membership for India.....	12
U.S.-India Trade Policy Forum.....	12

Tables

Table 1.India-U.S. Bilateral Merchandise Trade, 2009-2013.....	3
--	---

Contacts

Author Contact Information.....	13
Acknowledgments.....	13

Overview

The United States and India have been pursuing a “strategic partnership” since 2004, and a Fifth Strategic Dialogue session was held in New Delhi in mid-2014.¹ Economic and trade relations are a key facet of this engagement. A May 2014 parliamentary election seated a new Indian government led by the Bharatiya Janata Party (BJP) and Prime Minister Narendra Modi, who is slated to make his inaugural visit to Washington, DC, on September 29-30, 2014. Modi has a reputation as a pro-business leader, and top U.S. officials express eagerness to engage India’s new government and re-energize what some see as a flagging relationship. On Capitol Hill, some Members of both chambers took positive note of India’s democratic exercise and its new government, and expressed recognition of the importance of the bilateral relationship. S.Res. 571, introduced on September 18, 2014, designates the final day of September as “United States and India Partnership Day” and calls the U.S.-India relationship “a special and permanent bond.”

Many view the deepening of the U.S.-India partnership as a landmark geopolitical shift away from the Cold War-era in which the two countries were mostly estranged. Today, the U.S. government considers strengthening of diplomatic, economic, and security ties with India a crucial aspect of efforts to foster a stable and prosperous Asia in the 21st century. In the words of Secretary of State John Kerry, the partnership “is on the cusp of an historic transformation,” and “the world’s oldest democracy and the world’s largest democracy can forge a new era of shared prosperity and security for hundreds of millions of people in India, across Asia and the world.”²

Bilateral economic and trade relations, as well as India’s role in international trade bodies, represent major pillars of the still relatively new major power friendship. The U.S. government aspires to reach \$500 billion in annual bilateral goods and services trade with India by 2024, a more than five-fold increase from the \$97 billion total in 2013.³ The relationship also supports employment in both countries.⁴

India is the world’s second most populous nation (after China) and its third largest economy (in terms of purchasing power parity), having recently supplanted Japan in share of global GDP.⁵ However, the country is also in the midst of its worst economic slowdown since the 1990s, with two full years of sub-5% annual growth and persistently high inflation.⁶ Experts generally agree that, for India’s international influence to continue to grow—and thus further boost its attractiveness as a U.S. partner—the country’s negative economic trends need to be reversed.

U.S. officials have lauded Modi’s efforts to create a more stable and tax-friendly investment climate in India’s western state of Gujarat during his 15-year tenure as chief minister. One of Modi’s key lieutenants, Finance Minister Arun Jaitley, has vowed that luring both foreign and

¹ See the July 31, 2014, Joint Statement at <http://www.state.gov/r/pa/prs/ps/2014/07/230046.htm>.

² See the Secretary’s July 30, 2014, op-ed at <http://www.state.gov/secretary/remarks/2014/07/229954.htm>.

³ This goal was first voiced by Vice President Joe Biden in Mumbai in July 2013 (see <http://go.usa.gov/d43H>).

⁴ According to the State Department, U.S. goods exports to India and Indian investment in the United States combine to support an estimated 268,000 U.S. jobs, and U.S. investment in India supports 500,000 jobs in that country (see the July 31, 2014, fact sheet at <http://www.state.gov/r/pa/prs/ps/2014/07/230048.htm>).

⁵ World Bank, *International Comparison Program*, April 29, 2014.

⁶ The Indian economy grew by 5.7% during the quarter ending in June, its fastest pace in more than two years. This better-than-expected rate may have helped propel the country’s benchmark Sensex stock index to new highs in early September (“Indian Optimism Fuelled by Earnings and GDP Growth,” *Financial Times* (London), September 2, 2014).

domestic investment into fast-tracked major projects in infrastructure and skills development would be the primary goal of the new government.⁷ This approach was central to the “Gujarat miracle” that Modi may seek to recreate at the national level.⁸

High hopes that India and the United States would more effectively resolve outstanding issues and pursue new initiatives have been moderated in recent years. Some observers saw a notable cooling of U.S.-India ties after 2013 following a serious diplomatic dispute triggered by the arrest of Indian consular official Devyani Khobragade in New York.⁹ There are also serious disagreements over intellectual property rights protection, multilateral trade negotiations, U.S. immigration law, and stalled efforts to initiate civil nuclear cooperation, among others.

Although considerable optimism exists about the potential for Prime Minister Modi to substantively alter India’s approach to trade and investment policies, many U.S. business leaders are seeking positive changes in India’s business environment. While the United States welcomed the scrapping of the statist Planning Commission and moves toward establishing a new goods and services tax, Modi has yet to demonstrate that he will significantly scale back his predecessor’s legacy of restrictive land-use regulations, food subsidies, and other investment-detering policies.¹⁰ After four months in office, some observers fear he will squander his strong mandate if major reforms are not initiated soon.¹¹

Trends in Bilateral Trade and Investment

Trade in Goods and Services

Bilateral merchandise trade flows between India and the United States have grown rapidly over the last five years according to both Indian and U.S. trade data. Official U.S. trade data reports total trade with India increased 69.2% between 2009 and 2013, while India’s trade data (as reported by *Global Trade Atlas*) indicates bilateral total trade growth of 78.3% over the same five-year period. However, India’s trade figures show a significantly smaller trade surplus with the United States than U.S. trade figures. According to USITC, India was the eighteenth largest export market for U.S. goods in 2013, and the tenth largest source of U.S. merchandise imports.

⁷ “Reviving Investment Is Key, Says Man Tipped to Be India’s Finance Minister,” *Reuters*, April 13, 2014.

⁸ Certainly Gujarat became wealthier under Modi, and “Modinomics” became a political buzzword during the campaign. Yet the state’s strides during Modi’s tenure may have been over-hyped. For more information, see Aseema Sinha, “Understanding Economic Reform of Public Services in a High Growth State of India,” in Vikram Chand, ed. *Public Service Delivery in India: Understanding the Reform Process* (New Delhi: Oxford University Press, 2010).

⁹ In December 2013, Khobragade, then-Deputy Consul of India’s New York Consulate, was arrested on charges of visa fraud related to her treatment of an Indian national performing her domestic work. The circumstances of her relatively brief detention—an unceremonious street arrest, strip-search, and jailing—infuriated India’s government and many of its citizens, who argued that diplomatic immunity should have obtained. The State Department soon approved New Delhi’s request that Khobragade transfer to India’s U.N. Mission, thus affording full, rather than consular, immunity. In January, Khobragade departed from the United States, but the indictment against her has not been dismissed.

¹⁰ Sadanand Dhume, “A Brief Honeymoon in Delhi” (op-ed), *Wall Street Journal*, September 18, 2014.

¹¹ “Modi Allure Dims for Multinationals Awaiting ‘Big Bang’ in India,” *Financial Times* (London), September 14, 2014. See also Fareed Zakaria, “Is India’s Bold Prime Minister Bold Enough?” (op-ed), CNN.com, September 18, 2014.

Table I. India-U.S. Bilateral Merchandise Trade, 2009-2013

(in billions of U.S. dollars)

	2009	2010	2011	2012	2013
<i>U.S. Figures</i>					
Exports to India	16.462	19.223	21.628	22.336	21.842
Imports from India	21.176	29.531	36.167	40.518	41.845
Total Trade	37.638	48.754	57.795	62.854	63.687
Trade Balance	-4.714	-10.308	-14.540	-18.183	-20.003
<i>Indian Figures</i>					
Exports to U.S.	18.187	23.545	33.263	36.086	38.612
Imports from U.S.	16.627	19.109	23.424	25.115	23.457
Total Trade	34.814	42.654	56.687	61.201	62.069
Trade Balance	1.560	4.436	9.839	10.971	15.155

Source: USITC, Global Trade Atlas.

Trade in services has steadily increased over the past five years, with U.S. service exports rising from \$9.977 billion in 2009 to \$13.470 billion in 2013, and U.S. service imports from India rising from \$12.222 billion in 2009 to \$19.041 billion in 2013.¹² Travel has made up over half of U.S. service exports to India for the last five years, while telecom, computer services, and information technology services have comprised over half of U.S. service imports from India.¹³

Foreign Direct Investment

The United States is the 6th largest source of foreign direct investment (FDI) in India, contributing 5.4% of India's FDI inflows cumulatively between July 2000 and July 2014, according to India's Ministry of Commerce and Industry. The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) reports U.S. FDI in India reached \$24.3 billion in 2013. India's FDI in the United States was \$7.2 billion as of 2013, about 0.26% of total FDI in the United States.¹⁴

Bilateral Issues

Intellectual Property Rights (IPR)

The treatment of IPR is a major trade issue between India and the United States.¹⁵ While both countries adhere to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), their views differ on the approach to IPR protection. In 2014, India remained on the Priority Watch List of the "Special 301" annual report by the Office of the U.S. Trade Representative (USTR) for its inadequate IPR protection and enforcement. While USTR

¹² Bureau of Economic Analysis, "Table 1.3 U.S. International Transactions, Expanded Detail by Area and Country."

¹³ Ibid.

¹⁴ Ibid.

¹⁵ See CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

acknowledged some improvements in India's IPR legal framework and enforcement system, USTR also noted challenges in India's patent regime, digital and physical copyright piracy prevention, trade secrets protection, and IPR enforcement. USTR also announced plans to conduct an "out-of-cycle review" of India to address identified IPR challenges.¹⁶

The Obama Administration and some Members of Congress have expressed concerns about recent legal and regulatory developments in India's patent regime,¹⁷ which the USTR states have raised "serious questions about the innovation climate in India...."¹⁸ In 2005, India amended its patent laws to comply with the TRIPS Agreement, reintroducing product patents for pharmaceuticals, food, and chemicals.¹⁹ Since 2012, India has denied or revoked patents for certain foreign drugs because they did not meet its patentability standards.²⁰ An April 2013 Indian Supreme Court decision confirmed that, under India's Patent Law, pharmaceuticals and certain other technologies—though they meet internationally recognized patentability criteria—must meet India's requirement of "enhanced efficiency" to be patentable.²¹ From India's perspective, the "enhanced efficiency" requirement protects against companies making minor modifications of their patented products to extend the life of their patents (a practice known as "evergreening"). The United States expresses concern that such requirements may have the effect of limiting the "patentability of potentially beneficial innovations ...," including drugs with "fewer side effects, decreased toxicity, improved delivery systems, or temperature or storage stability."²²

In addition, the Indian government has issued compulsory licenses for pharmaceuticals and other products,²³ and India's National Manufacturing Policy has promoted compulsory licensing of patented products to encourage clean energy technology transfer.²⁴ The TRIPS Agreement permits members to grant compulsory licenses for patented devices, subject to certain conditions, including providing compensation to the owner of the patent. India asserts that its actions reflect an effort to balance IPR protections with the need to provide affordable access to medicines for its 1.2 billion people. USTR continues to monitor India's IPR situation, and has called for greater transparency and stakeholder input in the issuing of compulsory licenses.²⁵

In June 2013, numerous Members of Congress sent the Administration several letters expressing concern over India's IPR regime. A letter from 169 Members of Congress stated that, "U.S. companies have suffered from a whole host of IP [intellectual property] issues in areas, including information technology, renewable energy, and biopharmaceuticals," and the "U.S. Government must send a strong signal to the Indian Government that these actions are inconsistent with

¹⁶ USTR, *2014 Special 301 Report*, April 2014, p. 37.

¹⁷ For example, see U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Hearing on U.S.-India Trade Relations: Opportunities and Challenges*, 113th Cong., 2nd sess., March 13, 2013.

¹⁸ *Ibid.*, p. 39.

¹⁹ William Greene, *The Emergence of India's Pharmaceutical Industry and Implications for the U.S. Generic Drug Market*, U.S. International Trade Commission, Office of Economics Working Paper No. 2007-05-A, May 2007.

²⁰ For example, see R. Jai Krishna and Jeanne Whalen, "Novartis Loses Glivec Patent Battle in India," *The Wall Street Journal*, April 1, 2013.

²¹ USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 148.

²² USTR, *2014 Special 301 Report*, April 2014, p. 40.

²³ For example, in March 2012, the Indian government issued a compulsory license to an Indian pharmaceutical company to produce a generic version of Nexavar, a kidney cancer drug produced by Germany's Bayer.

²⁴ USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 146.

²⁵ USTR, *2014 Special 301 Report*, April 2014, p. 41.

India's international obligations, set a bad precedent, and undermine the culture of innovation....²⁶ India's ambassador to the United States responded in a letter to Congress that India's IPR enforcement, including for compulsory licensing, is consistent with the TRIPS Agreement.²⁷ In the 113th Congress, legislation was introduced to make ineligible for GSP benefits any country failing to provide adequate and effective IPR protection (H.R. 3167).

Localization Barriers and Indigenous Innovation Policies

The Obama Administration has expressed concern about a trend in India toward localization barriers to trade²⁸ and indigenous innovation policies. While some localization measures may serve data privacy or security objectives, according to the USTR, such measures can be discriminatory and serve as trade and investment barriers.²⁹ Localization measures also can further a country's "indigenous innovation" policy goals.³⁰ These issues are prominent in current U.S. trade negotiations.

In November 2011, India issued a "National Manufacturing Policy" to develop its manufacturing base and boost employment.³¹ The policy calls for greater local content requirements in government procurement in certain sectors, such as information and communications technology (ICT) and clean energy. India's Preferential Market Access mandate, which is based on this policy and currently imposes local content requirements for government procurement related to electronic products, has been a particular source of friction with the United States.³² Other localization examples include a requirement for telecommunication equipment vendors to test all imported ICT equipment in laboratories in India beginning in July 2014,³³ and the Indian National Security Council proposal in February 2014 that electronic communications between users in India remain in India and be stored locally on Indian servers.³⁴

In February 2013, the United States requested formal consultations in the WTO challenging India's local content requirements and government subsidies for the production of certain solar panel products, alleging that such actions restrict U.S. market access in India.³⁵ Consultations

²⁶ "Congress Steps Up India Rhetoric: Ways & Means Members Invoke WTO Rules," *Inside U.S. Trade's World Trade Online*, June 27, 2013; and letter from 170 Members of Congress, to President Obama, June 18, 2013.

²⁷ Letter from Indian Ambassador to the United States Nirupama Rao, to U.S. Congress, House and Senate India Caucuses, June 20, 2013.

²⁸ Localization measures generally refer to measures designed to protect, favor, or stimulate domestic industries, service providers, or intellectual property at the expense of foreign counterparts. Certain localization barriers have been addressed in past trade negotiations, such as the WTO Agreement on Trade-Related Investment Measures (TRIMs).

²⁹ USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 2.

³⁰ Indigenous innovation can reflect multiple policy goals, including promoting innovation from domestic companies rather than relying on foreign technology, building domestic R&D capabilities, and increasing the share of overall value added by domestic companies to the domestic economy. See Stephen Ezell and Robert Atkinson, *The Indian Economy at a Crossroads*, The Information Technology & Innovation Foundation (ITIF), April 2014, p. 66.

³¹ Stephen Ezell and Robert Atkinson, *The Indian Economy at a Crossroads*, ITIF, April 2014, p. 25.

³² *Ibid.*, p. 26.

³³ USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers*, March 31 2014, p. 150.

³⁴ U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade, *Testimony of Linda Menghetti Dempsey, National Association of Manufacturers*, Hearing on "Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs?," 113th Cong., 2nd sess., September 17, 2014.

³⁵ USTR, "United States Challenges India's Restrictions on U.S. Solar Exports," press release, February 2013.

between India and the United States in early 2014 did not resolve the dispute, and the dispute is proceeding through the WTO Dispute Settlement Body.³⁶

Visas and U.S. Immigration Policies³⁷

The granting of temporary visas for Indian nationals to work in the United States is a top trade concern for India. In particular, two visa categories—H-1B visas for professional specialty workers and L visas for intra-company transferees—are often topics of discussion between the two countries. Citizens of India accounted for 65% of all H-1B and 29% of all L-1 visas issued in FY2013; more than any other country.³⁸

Current law generally limits annual H-1B admissions to 65,000, but most H-1B workers are exempted from the cap.³⁹ In recent years, applications for new H-1B workers have routinely exceeded the numerical limits.⁴⁰ The L intra-company transferee visa was established for companies that have offices abroad to transfer key personnel freely within the organization. There is no limit on the number of L-1 visas that can be issued and no labor market tests⁴¹ are required.

The 113th Congress has considered legislation that would make revisions to the H-1B and L visa categories.⁴² Legislative proposals that Congress has considered include streamlining application procedures; requiring employers to make efforts to recruit U.S. workers; extending labor protections to foreign workers; giving foreign workers more flexibility to change jobs; and allowing these workers to apply for lawful permanent resident (LPR) status while seeking or renewing temporary visas. None of the provisions in these bills are specific to any country.

While the WTO views the employment of temporary foreign workers as the importation of services and therefore a trade issue, some congressional committees see it as an immigration issue.⁴³ Most recently, in March 2012, in a letter to former USTR Ron Kirk, the then-Chairman and Ranking Member of the House Judiciary Committee asked the USTR to assure that “your office will not negotiate immigration provisions with respect to ... trade agreements.”⁴⁴

³⁶ WTO Dispute DS456, India—Certain Measures Relating to Solar Cells and Solar Modules.

³⁷ This section is adapted from CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*, by Ruth Ellen Wasem.

³⁸ In FY2013, Indian citizens accounted for 99,705 of the 153,223 H-1 visas issued and 19,658 of the 66,700 L-1 visas issued. See Department of State, FY2013 Nonimmigrant Visa Detail Table.

³⁹ Returning workers and those who work for universities and nonprofit research facilities are exempt from the cap. See CRS Report R42530, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, by Ruth Ellen Wasem.

⁴⁰ Seven days after U.S. Citizenship and Immigration Services (USCIS) began accepting H-1B petitions for FY2015, it received enough petitions to reach the statutory cap for that year. U.S. Citizenship and Immigration Services, “USCIS Reaches FY 2015 H-1B Cap,” press release, April 7, 2014.

⁴¹ Statute bars the admission of any alien into the United States to perform labor, unless it is determined that (1) there are not sufficient U.S. workers who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the United States. See CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

⁴² See the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate, and the Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act (SKILLS Visa Act, H.R. 2131), as ordered reported by the House Committee on the Judiciary.

⁴³ See CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

⁴⁴ Letter from Lamar S. Smith and John Conyers Jr. to Ambassador Ronal Kirk, Ambassador, United States Trade (continued...)

India would like an increase in the number of H-1B and L-1 visas made available to Indian workers. India is particularly concerned about a provision in S. 744⁴⁵ that it sees as limiting market access to Indian companies offering technical and professional services.⁴⁶ However, an unnamed “senior administration official” said that S. 744 would increase the number of Indian university graduates who could work in the United States.⁴⁷ At this point in time, there appears to be a consensus that action on S. 744 is unlikely.⁴⁸

Bilateral Investment Treaty (BIT)

Support for a U.S.-India BIT (or Bilateral Investment Promotion Agreement, BIPA, as it is called in New Delhi) has increased in recent years. Potential investors in India and the United States maintain such a treaty would reduce uncertainties and so facilitate investment flows, especially if accompanied by reform measures to further open the Indian market.⁴⁹

India and the United States began BIT negotiations in August 2009.⁵⁰ Key U.S. issues in the ongoing talks include reducing restrictions on foreign investment and ensuring adequate investor protection, such as through access to binding and neutral investor-state arbitration. India placed negotiations on hold in January 2013 pending a review of its model BIT after the United States placed a hold on talks while it conducted a similar of its own model BIT, which concluded in April 2012. In September 2013, President Obama and then-Indian Prime Minister Singh reaffirmed their commitment to concluding a high-standard BIT.⁵¹ The United States and India held technical discussions on the BIT in February 2014.⁵²

Totalization Agreement

Another element of U.S. policy that India would like to see changed is the deduction of social security taxes from the pay of Indian nationals temporarily working in the United States. Under U.S. tax law, Indian nationals working in the United States under temporary work visas must pay

(...continued)

Representative, March 2, 2012.

⁴⁵ S. 744 includes provisions to increase immigration enforcement, expand employment eligibility verification, revise temporary and permanent immigration policy, and legalize some unauthorized aliens residing in the country.

⁴⁶ S. 744 caps the percentage of H-1B full-time employees in a company at 15%, which India sees as a protectionist measure to prevent its technical and professional services companies from entering the U.S. market.

⁴⁷ White House, “Background Conference Call with Senior Administration Officials on Vice President Biden and Dr. Jill Biden’s Trip to India and Singapore,” press release, July 19, 2013.

⁴⁸ David Nakamura and Ed O’Keefe, “Immigration Reform Effectively Dead Until After Obama Leaves Office, Both Sides Say,” *The Washington Post*, June 26, 2014; Lawrence Downes, “Immigration Reform Is Dead,” *The New York Times*, June 25, 2014; and, “The Immigration Reform Collapse: A Bipartisan Failure That Will Hurt the Economy—and Especially the GOP,” *The Wall Street Journal*, July 2, 2014.

⁴⁹ See, for example, Hemant Krishan Singh and Tincy Sara Solomon, “BIT and Beyond: Advancing India-US Economic Relations,” Indian Council for Research on International Economic Relations/Center for Strategic and International Studies, January 2013.

⁵⁰ BITs constitute binding rules for the reciprocal protection of FDI between two countries. See CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

⁵¹ The White House, “U.S.-India Joint Statement,” press release, September 27, 2013.

⁵² Department of State, *2014 Investment Climate Statement—India, June 2014*.

social security taxes although they may be ineligible to collect social security benefits because the duration of their employment in the United States is less than 10 years.

The President may enter into an international Social Security (i.e., totalization) agreement with a foreign country to coordinate the collection of payroll taxes and the payment of benefits under each country's Social Security system for workers who split their careers between the two countries.⁵³ Generally, totalization agreements allow workers (and their employers) to contribute only to the foreign system if the worker is employed in that country for five or more years, or only to the employee's home system if the worker is employed in the foreign country for less than five years. Totalization agreements also allow workers who divide their careers between the two countries to combine earnings credits under both systems to qualify for benefits if they lack sufficient coverage under either system.⁵⁴ Totalization agreements also waive the following two conditions for receiving social security: (1) a foreign national's benefits are suspended if he or she is outside the United States for more than six consecutive months; and (2) to receive payments outside the United States, generally a foreign national dependent/survivor must have lived in the United States for at least five years in the same relationship with the worker. The United States has entered into totalization agreements with 25 countries.⁵⁵ While totalization agreements are subject to congressional review, Congress has never rejected a Social Security agreement.⁵⁶

India would like to negotiate a totalization agreement with the United States. According to Indian officials, the lack of a totalization agreement discourages Indian nationals from accepting jobs in the United States, increases the cost of hiring Indian nationals (who seek higher salaries to offset the lost social security taxes), and operates as a non-tariff market barrier for Indian companies considering entry into the U.S. market.

Generalized System of Preferences

The U.S. Generalized System of Preferences (GSP) program expired on August 1, 2013, after Congress did not extend the program beyond the date stipulated in Section 1 of P.L. 112-40.⁵⁷ The U.S. GSP program (Title V of the Trade Act of 1974) provides non-reciprocal, duty-free tariff treatment to certain products imported from designated beneficiary developing countries (BDCs). India has been a BDC in the U.S. GSP program since its implementation in 1976, and was the top BDC beneficiary in 2013 in terms of volume of GSP-qualifying trade (\$2.5 billion).⁵⁸

⁵³ For more information on Social Security and totalization agreements see, CRS Report R41009, *International Social Security Agreements*, by Dawn Nuschler; and CRS Report RL32004, *Social Security Benefits for Noncitizens*, by Dawn Nuschler and Alison Siskin.

⁵⁴ This applies to Social Security retirement and disability benefits. Fewer credits are required to qualify for disability benefits than retirement benefits.

⁵⁵ The 25 countries are: Australia; Austria; Belgium; Canada; Chile; Czech Republic; Denmark; Finland; France; Germany; Greece; Ireland; Italy; Japan; Luxembourg; the Netherlands; Norway; Poland; Portugal; Slovak Republic; South Korea; Spain; Sweden; Switzerland; and the United Kingdom.

⁵⁶ A totalization agreement automatically goes into effect unless the House of Representatives or the Senate adopts a resolution of disapproval within 60 session days of the agreement's transmittal to Congress.

⁵⁷ See CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by Vivian C. Jones.

⁵⁸ U.S. Trade Representative, "GSP by the Numbers," press release, March 5, 2014. Trade data covers January to July 2014, as the GSP program expired on August 1, 2014.

One of the main issues in the current renewal debate is whether to continue to provide BDC status to nations that are classified as upper-middle-income countries or account for more than 0.25% of world trade. India meets both of those conditions. In addition, some Members have advocated eliminating or reducing India's GSP benefits in response to India's stance on a number of trade issues. During USTR Froman's confirmation hearing, several Senators asked if India should continue to receive GSP benefits given its IPR policies and opposition to U.S. stances on a number of multilateral issues.⁵⁹ Indian officials maintain that they have been targeted for GSP eligibility review in the past as punishment for advocating for their own national development goals in multilateral talks.⁶⁰

Defense Trade⁶¹

Security cooperation between India and the United States is a major pillar of the decade-old partnership, and increased bilateral defense ties are perceived as a possible hedge against or counterbalance to growing Chinese influence in Asia. India's military is the world's third-largest, and New Delhi is seeking to transform it into one with advanced technology and global reach, reportedly planning up to \$100 billion on new procurements over the next decade to update its mostly Soviet-era arsenal. India has become the world's largest "open" defense market, accounting for about 10% of the \$63 billion in global sales in 2013. It imported nearly \$2 billion worth of U.S. military hardware in 2013, making it the largest U.S. export market. The two nations have signed defense contracts worth more than \$9 billion since 2008, up from \$500 million in all previous years combined.⁶² However, Russia continues to be India's key supplier, accounting for 75% of the value of all Indian defense imports from 2002-2013 (Israel is a distant second at 6% and the United States ranks third, accounting for 5%).⁶³

New Delhi requests increased co-production and technology sharing in its defense procurements. Washington promises to find sales under this model while also urging reform in India's defense offsets policy.⁶⁴ At present, Maryland-based Lockheed Martin and India's Tata Corporation are co-manufacturing C-130 aircraft components in a deal that the Obama Administration views as a model for further joint partnerships.⁶⁵ While in India in August 2014, Secretary of Defense Hagel offered to jointly develop a new version of the U.S.-made Javelin anti-tank missile and vowed to share with India advanced electromagnetic catapult technology for use in India's aircraft carriers.⁶⁶

⁵⁹ U.S. Congress, Senate Committee on Finance, *Hearing to Consider the Nomination of Michael Froman*, 113th Cong., 1st sess., June 6, 2013.

⁶⁰ September 6, 2006, public comment letter to USTR from ActionAid International USA.

⁶¹ See also CRS Report R42823, *India-U.S. Security Relations: Current Engagement*, by K. Alan Kronstadt and Sonia Pinto.

⁶² James Hardy, "India's Rising Military Might: Made in the USA?," *National Interest* (online), September 11, 2014; "U.S. Plans to Sell Missiles to India for Submarines," *Wall Street Journal*, July 3, 2014.

⁶³ Stockholm International Peace Research Institute Arms Transfer Database, accessed September 23, 2014.

⁶⁴ Since 2005, India has required that 30% of any defense deal valued at more than Rs3 billion (about \$50 million) must be reinvested in the Indian economy, a requirement that many firms find difficult to meet.

⁶⁵ Statement of Deputy Assistant Secretary of Defense for South and Southeast Asia Amy Searight before the Senate Foreign Relations Subcommittee on Near Eastern and South And Central Asian Affairs, CQ Transcript, July 16, 2014.

⁶⁶ Statement of Deputy Assistant Secretary of Defense for South and Southeast Asia Amy Searight before the Senate Foreign Relations Subcommittee on Near Eastern and South And Central Asian Affairs, CQ Transcript, July 16, 2014; Secretary Hagel's August 9, 2014, speech transcript at <http://go.usa.gov/dTUj>.

High-level engagement on the bilateral Defense Trade and Technology Initiative (DTTI) is a top-tier priority for U.S. defense planners.⁶⁷ India's new government has already sought to lift FDI limits in the defense production sector from the 26% to 49%, an effort that failed under the previous government. This proposed increase—welcomed by the U.S. government, although a disappointment for those hoping that majority share would be permitted—could lure more foreign investment by promising greater repatriated profits, and could also make it easier for investors to decline technology-sharing requests.⁶⁸

Civil Nuclear Cooperation⁶⁹

Obstacles to initiating bilateral nuclear energy cooperation remain a source of frustration for both U.S. officials and for U.S. companies eager to enter the Indian market. More than nine years after President George W. Bush's landmark reversal of U.S. nonproliferation policy and offer of full civilian nuclear cooperation with India—a country that is neither a signatory to the Nuclear Nonproliferation Treaty nor a member of the Nuclear Suppliers Group (NSG)—U.S. firms remain unwilling to enter an Indian market regulated by strict liability laws. The Bush Administration initiative, endorsed by Congress in 2008, came with the promised benefits of new opportunities for trade and investment, including job creation in the United States.⁷⁰ Some observers see France and Russia—both with state-owned nuclear power companies that have done business with India in the past—as better poised to build nuclear reactors in India, although their governments also view India's liability law as overly restrictive. In August 2014, China became the most recent potential supplier vying for a stake in the Indian market.

India signed the Convention on Supplementary Compensation for Nuclear Damage (CSC, which has yet to enter into force) in 2010. However, India's Civil Liability for Nuclear Damage Bill, adopted by its Parliament the same year, may not be consistent with the CSC, due to provisions which make reactor suppliers, in addition to operators, liable for damages caused by a reactor accident.⁷¹ Pennsylvania-based Westinghouse received an "Authorization to Proceed" with implementation of a "pre-Early Works Agreement" with India's state-run nuclear power corporation in late 2013. However, in the absence of any signs that Indian law will be amended, future progress may continue to be slow and halting.

⁶⁷ While in Asia in May 2014, Secretary Hagel announced that his Under Secretary for Defense Acquisition, Technology, and Logistics, Frank Kendall, will lead the U.S. DTTI delegation as successor to Deputy Secretary of Defense Ashton Carter, who departed the Pentagon in December (see the May 31, 2014, remarks at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1857>).

⁶⁸ See Ajai Shukla, "Defense Industry, MoD Hunker Down for FDI Battle," *Business Standard* (Delhi), May 31, 2014.

⁶⁹ See also CRS Report RL33016, *U.S. Nuclear Cooperation with India: Issues for Congress*, by Paul K. Kerr.

⁷⁰ See a September 16, 2008, State Department fact sheet at http://www.nti.org/media/pdfs/off_us_dept_37.pdf. The U.S. Chamber of Commerce—which, along with the U.S.-India Business Council, had lobbied vigorously in favor of the initiative—had speculated in 2006 that civil nuclear cooperation with India could generate contracts for American businesses worth up to \$100 billion, as well as generate up to 27,000 new American jobs each year for a decade (see Sridhar Krishnaswami, "Indo-US N-Deal a Historic Opportunity" (op-ed), *India Abroad*, March 22, 2006).

⁷¹ The 1984 Bhopal tragedy, in which thousands of people died when a Union Carbide plant in India's Madhya Pradesh state unintentionally released toxic gas, is a memory that drives New Delhi's caution.

Trade Agreements and Institutions

WTO Issues

India and United States, as members of the WTO, are involved in WTO negotiations to liberalize trade through the removal of barriers and establishment of enhanced trade rules and disciplines. India's position on implementation of the WTO "Bali package"—an agreement reached at the WTO Ministerial in December 2013 consisting of new commitments on trade facilitation, agriculture, and development—is a source of friction between India and the United States.⁷² The Bali package represented a significant breakthrough from the longstanding impasse in the WTO Doha Round. The Doha Round, which began in 2001, has struggled with persistent differences between developed countries (including the United States) and emerging economies (including India) on major trade issues.⁷³ The growing economic weight of India and other emerging economies has changed the dynamics of the WTO, as these countries are increasingly more assertive in pursuing their own interests in multilateral negotiations.

One of the commitments of the Bali package is the Trade Facilitation Agreement (TFA), which includes binding provisions for expediting the movement, release, and clearance of goods at the border. WTO members were to begin the TFA implementation process by notifying the WTO no later than July 31, 2014, of the trade facilitation commitments that they plan to implement upon the TFA's entry into force. However, in July 2014, India withheld its support for the TFA Protocol of Amendment⁷⁴ until the WTO concludes a final agreement on public stockholding for food security purposes.⁷⁵ The United States sought safeguards in the food security agreement to ensure that public stockholding programs do not act as subsidies that distort trade, while India sought to ensure its flexibility to address food security issues. As part of the December 2013 Bali package, members agreed to a four-year interim agreement that would shield India and other developing countries from WTO legal challenges for exceeding their domestic support limits under the WTO Agriculture Agreement, while they developed a permanent solution on public stockholding by 2017. Presently, India opposes TFA implementation until a permanent solution is reached on stockholding, and calls for both the permanent solution and the TFA to be concluded by end-2014. Countries objected to India's reversal of its agreement to the December 2013 Bali package, and said that, by doing so, India had "ruptured trust" in the future of the Bali negotiations.⁷⁶

Regional Trade Agreements

India and the United States do not have Trade and Investment Framework Agreement (TIFA) or a bilateral trade agreement at present. India and the United States are currently pursuing different paths for the establishment of a regional trade agreement (RTA) in the Asia-Pacific. India is one

⁷² CRS Report IF00028, *The World Trade Organization at 20 (In Focus)*, by Ian F. Fergusson.

⁷³ CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson.

⁷⁴ The Protocol of Amendment would allow the TFA to become part of the WTO system of agreements.

⁷⁵ Public stockholding for food security purposes refers to government purchases of food at support prices for stockholding to benefit low-income farmers or those lack resources and for food security.

⁷⁶ World Trade Organization, "Members Fail to Agree on Post-Bali Work on Agriculture," press release, September 16, 2014.

of 16 countries⁷⁷ negotiating the proposed Regional Comprehensive Economic Partnership (RCEP), while the United States is negotiating with 11 other countries⁷⁸ to form a proposed Trans-Pacific Partnership (TPP).⁷⁹ RCEP and the TPP reportedly are being negotiated as “living agreements,” which could incorporate new members and address new issues as they emerge. While some observers view RCEP and TPP as alternative models for regional economic integration, others see the two RTAs as potentially complementary frameworks. RCEP and the TPP are also considered pathways for the possible formation of the “Free Trade Area of the Asia-Pacific” (FTAAP) envisioned by APEC ministers in November 2009.

APEC Membership for India

India has sought membership in the Asia-Pacific Economic Cooperation (APEC) for nearly two decades, but the existing APEC members have decided not to accept new members at this time. India’s lack of APEC membership may become an issue if India seeks to join the proposed TPP, as it is assumed by some that APEC membership is a prerequisite for TPP membership.

U.S.-India Trade Policy Forum

The Trade Policy Forum (TPF) was established in 2005 as the primary mechanism to resolve India-U.S. trade and investment issues. Chaired by the U.S. Trade Representative and the Indian Minister of Commerce and Industry, it contains five focus groups: agriculture; innovation; investment services; tariffs; and non-tariff barriers. Active between 2005 and 2010, the Trade Policy Forum established a bilateral dialogue to promote opportunities for Indian and U.S. small and medium-sized enterprises (SMEs). In 2005, it established the U.S.-India CEO Forum to allow policymakers and business leaders from both nations to meet and discuss major economic issues. In 2007, the TPF created the Private Sector Advisory Group (PSAG), composed of several experts from non-governmental organizations (NGOs) in India and the United States.⁸⁰

The TPF has not met since 2010. However, the United States and India indicated during the Fifth India-U.S. Strategic Dialogue that the TPF would resume.⁸¹ Deputy USTR Wendy Cutler traveled to India in September 2014 in part to lay the groundwork for the resumption of the TPF’s ministerial dialogue.⁸²

⁷⁷ The other countries are Australia, Brunei, Burma (Myanmar), Cambodia, China, Indonesia, Japan, Laos, Malaysia, New Zealand, Philippines, Singapore, South Korea, Thailand, and Vietnam.

⁷⁸ The other countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

⁷⁹ For more about the proposed TPP, see CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson.

⁸⁰ U.S.-India Trade Policy Forum Facts, Office of the U.S. Trade Representative, September 2010.

⁸¹ Office of the Spokesperson, “Joint Statement on the Fifth India-U.S. Strategic Dialogue,” U.S. Department of State, Washington, DC, July 31, 2014.

⁸² Deputy USTR Meets Commerce Secretary, Discusses Next Ministerial Meeting of Trade Policy Forum, Ministry of Commerce and Industry, September 17, 2014.

Author Contact Information

Michael F. Martin, Coordinator
Specialist in Asian Affairs
mfmartin@crs.loc.gov, 7-2199

Shayerah Ilias Akhtar
Specialist in International Trade and Finance
siliaskhtar@crs.loc.gov, 7-9253

K. Alan Kronstadt
Specialist in South Asian Affairs
akronstadt@crs.loc.gov, 7-5415

Samir Kumar
Research Associate
skumar@crs.loc.gov, 7-5050

Alison Siskin
Specialist in Immigration Policy
asiskin@crs.loc.gov, 7-0260

Acknowledgments

Michael Donnelly, Ian Fergusson, and Carolyn Smith assisted in the preparation of this report.