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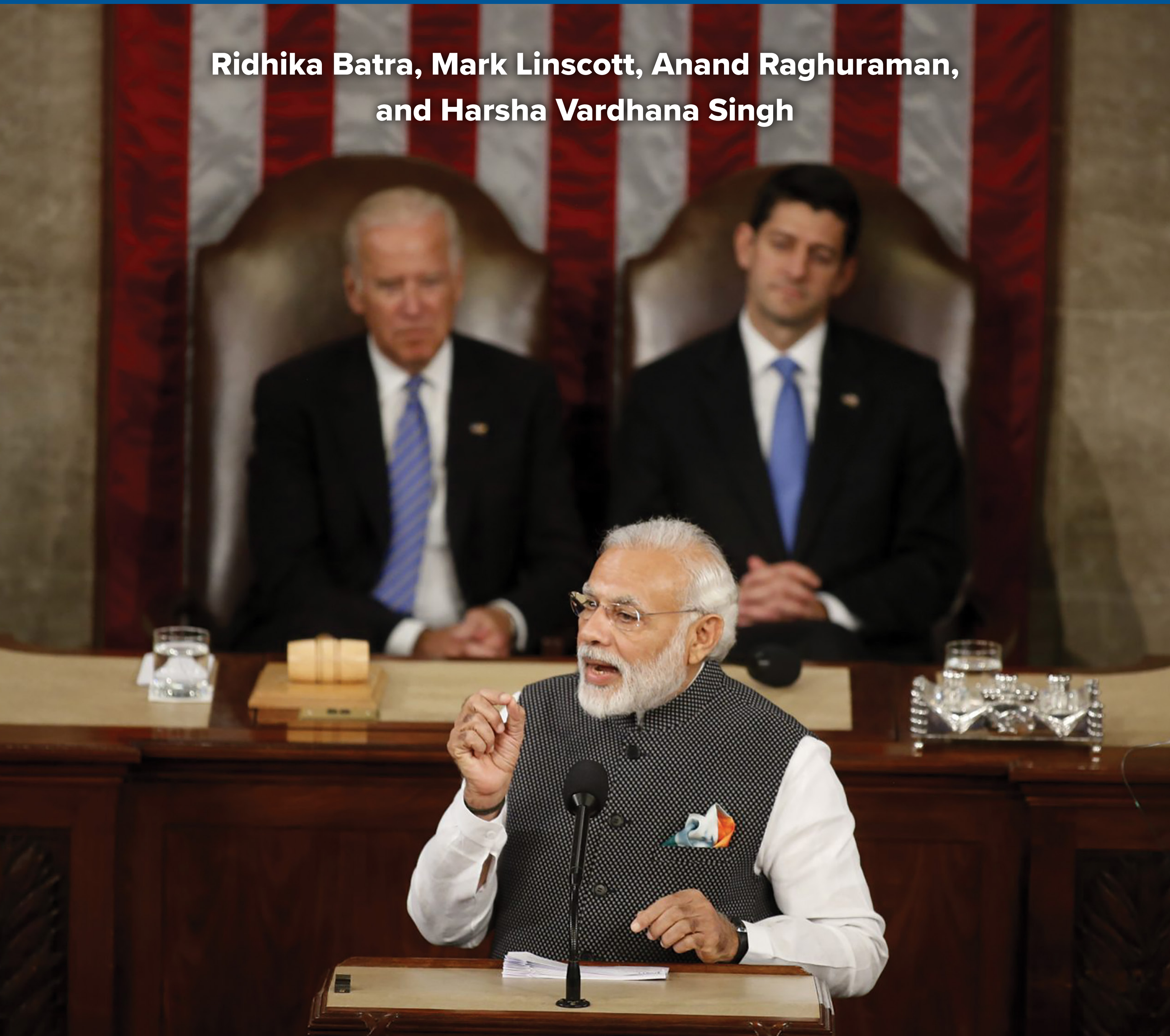
SOUTH ASIA CENTER

Reimagining the US-India Trade Relationship

Ridhika Batra, Mark Linscott, Anand Raghuraman, and Harsha Vardhana Singh



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Cover: U.S. Vice President Joe Biden (L) and Speaker of the House Paul Ryan look on as India's Prime Minister Narendra Modi addresses a joint meeting of Congress in the House Chamber on Capitol Hill in Washington, U.S., June 8, 2016. REUTERS/Carlos Barria

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Executive Summary

By Capucine Querenet, with Irfan Nooruddin

The United States and India have long striven to maintain and deepen bilateral ties, weathering Cold War tensions and antagonisms over India's nuclear tests to reinvigorate linkages and strengthen cooperation. Today's modern US-India relationship continues to develop under a broad-based and multisectoral framework nurtured by common strategic interests and an engaged Indian diaspora in the United States, yet advancements in trade relations have faltered in comparison: though US-India trade has grown steadily, from a mere $16 billion in 1999 to a more robust $146 billion in 2019, long-standing disagreements over critical issues and the lack of structural trade agreements between both countries mar attempts to achieve the full perceived potential of the relationship. Most recent, last year's failure to conclude even a mini trade deal, in spite of much rhetoric emphasizing its importance, highlights the gulf between trade orientations and negotiating postures in New Delhi and Washington, and is a stark reminder of the challenges and limitations of the present relationship.

This report, each chapter curated by a leading expert and South Asia Center nonresident senior fellow, examines US and Indian trade relations, both bilateral and global, and offers forward-thinking policies to help governments in both countries achieve a deeper trade relationship. The various views and ideas expressed by both Indian and US trade-policy experts and industry leaders present a comprehensive analysis to resolve disagreements and establish a short-, medium-, and long-term framework for cooperation. The first and second sections analyze Indian and US trade negotiations and dialogues, respectively, from the recent past to identify strategies moving forward; the third section offers an overview of the last decade in US-India trade negotiations, illuminating concrete achievements and obstinate hurdles; and the final section identifies low-hanging fruit that negotiations often lose sight of and that offer immediate opportunity to secure wins that could reanimate trade negotiations now that there's a new US administration in place. The two governments should:

- take an incremental approach focusing on low-hanging fruit and gradually build up to more significant areas of contention;
- address trade issues head on rather than defer them to prioritize strategic cooperation;
- recommit to a free trade agreement; and
- establish the institutional architecture to ensure successful negotiations.

The **South Asia Center** is the Atlantic Council's focal point for work on greater South Asia and the relations between its countries, neighboring regions, the United States, and Europe. It seeks to foster partnerships with key institutions in the region to serve as a forum for dialogues between decision makers in South Asia and the United States. Areas of focus include governance, trade and development, international migratory flows, traditional and non-traditional security, climate sustainability, energy, and other issues. The Center is committed to partnering with experts and stakeholders from both the region and the United States to offer critical analyses and practicable recommendations for policymakers.

Indian Trade Relations with the World

By Dr. Harsha Vardhana Singh

The State of India's Trade Relations

India has free or regional trade agreements (FTAs/RTAs, henceforth FTAs) with about twenty countries, several of which have been concluded since 2000. So far, compared to a diverse array of economic competitors (including China, the European Union, Thailand, Malaysia, Mexico, Japan, the United States, and Vietnam), India's trade relations and dialogue have not succeeded. This chapter explores what could be done better or differently.

A significant recent development in the context of FTAs has been India's refusal to join a major regional trade agreement (RCEP), after negotiating with the nations that did sign the agreement in November 2020. This has led to a view that India is against FTAs. Within India, FTA-related concerns arose due to market access (i.e., tariff reductions) and new rules in areas such as investment, digital trade, and intellectual property rights (IPRs). However, India is a large country with multiple stakeholders, and the views on any given issue cover a range of positions. Also, among the prominent reasons for India's RCEP decision were its concerns about the cheap/subsidized imports from China and the possibility of circumvention of the FTA rules by practices which in effect dilute the rules of origin and use of safeguards against imports from any particular country.

India's future FTAs with the United States and the EU would not raise similar concerns on market access. Though market access issues would remain an important area to address, the concerns would be different from trade with China and the issues could be addressed through various methods discussed below. Further, the Indian minister of commerce and industry recently said that he would like to have FTAs with the United States and the EU. They are large markets, with several complementarities, and areas within the FTAs to address common concerns and create mutual opportunities for international trade.

Promising Signs for Concluding FTAs

Several developments suggest that India-US FTA negotiations could be successfully concluded.

1. India's FTAs cover most of the areas included in recent FTAs of the United States, though the regulatory disciplines agreed upon are less detailed (or less "deep") with fewer obligations for the parties to the agreement.

2. Historically, India's negotiating positions and concerns have changed significantly with the passage of time, for instance in the area of services. Thus, with transition periods, India could consider its negotiating approach to evolve with time; if its economic situation changes, for example, a change in its economic conditions due to growth could make it easier to adopt more onerous disciplines after a time lag. India has managed to negotiate its relatively deeper FTAs using flexibilities and transition periods, such as its FTAs with Japan and South Korea. In this context, it is noteworthy that India did not raise objections to RCEP on account of the provisions on trade rules being too strict. Its objections related primarily to market access conditions under RCEP. Negotiating approaches with transition periods and safeguard measures for addressing areas of specific concern have been used in much deeper agreements than those agreed upon by India, e.g., the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).

3. At present, we have some Indian industries that seek market opportunities through FTAs, to better compete with countries that have gained global market share through their preferential arrangements.

4. Within India, an important conclusion of an expert review is that FTAs are important for India, but individual FTA options should be carefully evaluated based on their potential positive economic and strategic impact.

5. India had recently negotiated a small substantive trade package with the United States, which could be the first part of a sequence of such conclusions in the negotiation process.

6. India's commerce and industry minister has stated, as mentioned above, that India would like to

conclude trade agreements with major economies such as the United States and the EU.[1]

7. While current Indian policy focuses on raising tariffs for certain sectors, India emphasizes reform of and opening up its inside-the-border trade policies (e.g., ease of doing business, good governance). These topics are parts of trade agreements and provide a basis for "early harvests" that could pave the way to cover additional areas of agreement.

8. During the postpandemic period, there will be a need to create more resilient supply chains in cooperation with countries with mutual interests. This would provide a basis to focus on specific areas under a trade agreement.

9. Under its recent policy initiative, the Indian government encourages investment by major international firms, with a focus on improving participation in global value chains. Such policies that facilitate investment could be part of the next package covered by an FTA negotiation.

10. An FTA includes rules and mechanisms that range from soft law (e.g., guidelines) to hard law (i.e., regulatory provisions under an FTA). These options provide a basis to move from soft law to hard law over a transition period.

11. India has informal agreements (e.g., memoranda of understanding) in a number of trade-related areas, which can provide a good basis for enhancing mutual trade opportunities. The subject areas provide a basis for substantive momentum to parts of a bilateral trade agreement in areas such as regulatory cooperation or common understanding and approach on IPR.

There is a willingness to initiate talks on improving mutual trade between India and the United States. This could be based on a stepwise approach, with early harvests, or focus on certain areas, including additional market access and regulatory conditions to build a basis for reliable supply chains involving the two countries**.** The negotiations could also consider flexibilities to enable acceptability of conditions that are otherwise difficult to reach in an early phase of implementation. Examples of the flexibilities to consider would be those in the World Trade Organization (WTO) agreements and the FTAs negotiated by the United States or EU: e.g., in the US-Korea FTA (KORUS), the text of the Trans-Pacific Partnership (TPP) relating to the agreements between the United States and Japan in that context, US-Mexico-Canada Agreement (USMCA), and the EU-Canada Comprehensive Economic and Trade Agreement.[2]

Common Ground?

It's fair to ask if there is common ground for creating a good basis for improved mutual trade opportunities, including addressing the concerns during and after the pandemic. In negotiating terms, the United States plays offense to India's defense. Often the positions taken by Washington and New Delhi differ considerably in areas that are emphasized by the United States, e.g., market access, IPRs, investment, and digital trade. However, the picture is distorted if we look mainly at areas of difficulty rather than a combination of difficult areas and those for which solutions are more easily possible.

Taking account of the points mentioned above, the United States could engage with a particular focus on a small number of issues/areas in its trade negotiations, to be considered as early-harvest opportunities under a more comprehensive FTA. A small trade package negotiated earlier by the United States and India is already on the table, indicating that early-harvest packages are possible as part of an extended trade negotiation between the two countries.

Moreover, with the impact of COVID-19, the United States and India as strategic partners could work together to develop trade and investment initiatives that increase the resilience of supply chains, especially for pandemic-related products.[3]

Early-Harvest Opportunities

A number of issues could be addressed as part of a list of priority areas for negotiation, while continuing with the other overall FTA topics as well. The priority areas could include:

market access in selected sectors, including categories that go beyond single products, e.g., healthcare, climate change, and digital trade;

regulatory coherence in specific areas, in particular those which are already being discussed by India and the United States under formal or informal processes;

1 "Commerce Minister Piyush Goyal Bats for FTAs with Developed Countries," *New Indian Express*, last updated October 4, 2021, https://www.newindianexpress.com/business/2020/oct/03/commerce-ministerpiyush-goyalbatsfor-ftas-with-developed-countries-2205309.html.

2 Meredith M. Broadbent et al., "Trans-Pacific Partnership Agreement: Likely Impact on the US Economy and on Specific Industry Sectors," United States International Trade Commission, May 2016, 133, 134, 139, 141, 193, 240, 281, 358, 412, 442, 509, https://www.usitc.gov/publications/332/pub4607.pdf.

3 Broadbent et al., "Trans-Pacific Partnership Agreement," 16-22, 28.

cooperation between Indian and US regulatory agencies and business organizations to improve trade opportunities between the two countries;

certain trade-related areas of interest covered in recent US agreements (e.g., good governance/regulatory practices, promoting regulatory cooperation, and cooperation in promoting jobs and growth in small and medium enterprises);[4]

exchange of experience/information to create market opportunities for business through processes similar to those of Asia-Pacific Economic Cooperation;

database of "success cases" for improvements in operational regulatory processes of interest to India or the United States;

effective engagement in existing institutions for government-to-government discussions, with substantive agenda items, regular meetings, and follow-up on the decisions taken by the two governments; and

a discussion platform for addressing areas of trade concern similar to that provided under Article 2.9.2 of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).[5]

Nonmarket Access Areas

India and the United States have bilateral arrangements for formal/informal Track 1.5 or Track 2 agreements in certain areas. Examples include:

trade-related regulation in medicine, chemicals, and food; and

MOUs and/or informal initiatives in IPR, research and development in clean energy, science and technology co-operation, and cyber issues.

India also is focusing in a major way on investment facilitation and establishing good governance as part of its reform process. These aspects could be formalized, initially as soft law, with a transition period to convert it to hard law under an agreement. This could include:

an interim review process to monitor the effective implementation of the agreed principles and, if required, examine ways of improving performance; and

examine any difficulties that would imply extending the period of time required to adopt/ convert soft law guidelines into the hard law agreed under the FTA.

Beginning with these areas, India and the United States could prepare the ground for larger coverage of other areas to be added under the FTA.

Market Access Negotiations

Though the aim would be to have an overall FTA, the process could:

begin negotiation covering sectors rather than specific products, e.g., healthcare and climate change;

allow transition periods and other flexibilities such as tariff rate quotas, different types of safeguard mechanisms, and other approaches that could provide a basis for mutual agreement in the area;

focus on a series of early harvests with some substantive early results;

allow for incremental increase in market access based on prespecified criteria and review process; and,

involve monitoring the implementation of the agreed results together with processes for a periodic review to make improvements.

Suggestions for Possible Steps

1. The first stage of the market access negotiation could include a certain target area selected by each country.
2. This could be followed by a second similar set of negotiations after two to three years.
3. Four years after launching the first initiatives, market-access negotiations could begin for all the sectors not already covered under the first two sets of negotiations.
4. Each of the three stages/packages would be treated as separate both for negotiations and implementa-

4 See, for example, the Protocol to the Trade and Investment Council Agreement between the Government of the United States of America and the Government of the Republic of Ecuador relating to Trade Rules and Transparency, https://ustr.gov/sites/default/files/files/Press/Releases/US-Ecuador_Protocol.pdf.

5 This provision was included in the TPP signed by participants in early 2016; the United States withdrew from TPP in 2017 under then-President Trump. The other eleven signatories to the TPP negotiated the CPTPP, which includes most of the provisions of the TPP. For the relevant provision of CPTPP, see https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/2.-National-Treatment-and-Market-Access-for-Goods.pdf.

tion of the results achieved within them, though they would be part of the same broader negotiations.

5. The overlap between these three sets of negotiations and regulatory coherence initiatives under nonmarket access negotiations would be kept in mind, so that corresponding movement could be made in those areas as well.

6. A special body of experts established by each country could suggest solutions for issues which prevent progress toward mutual agreement.

7. This expert body would also identify any common patterns across trade negotiations (FTAs and WTO) conducted by India and the United States for examples of possible solutions to address contentious issues.

8. A novel approach could be considered for precommitting to increases in access to markets. Three years after commencing negotiations on each respective package, the two countries may in any case agree to reduce the applied tariff over the next four years by at least 50 percent of the existing tariff, in a linear manner, exempting an agreed percentage (say, one-tenth) of the nonzero tariff lines from such tariff reductions.

9. Negotiations could additionally aim for zero tariffs for an agreed proportion, e.g., three-fourths, of the number of tariff lines after ten years of finalizing the list through negotiations, with provisions for relevant flexibilities/safeguards as agreed.

Rules Negotiations in Areas Deemed Particularly Difficult

Areas such as digital trade, IPR, and investment may be considered especially difficult areas of negotiation. A noteworthy feature of these areas, however, is that not all of the provisions in any proposed agreement would be difficult for India to accept. In other words, there are areas within these topics where it will be possible to secure the agreement of India and the United States. The negotiations could focus on early harvest in areas for which a negotiated result could be achieved. These areas could include, for example, facilitation or good regulatory practices.[6]

For the other areas, negotiations could continue, with options that include transition periods, other flexibilities, including moving from a soft law solution toward hard law over a specified period of time (together with a review to examine the possibility of an extension of time). This process may draw inspiration from previous examples of agreement such as:

WTO's Reference Paper on Telecom as a model for negotiations. A specified number of the agreed list may be adopted initially, and additional ones accepted after a transition period;

different levels of disciplines in a limited number of areas, moving from the use of "best efforts" to "should" and to "shall";

a review of the level of disciplines after a specified period of time to consider raising them; and

possibility of two different levels of disciplines in two different zones of the country, similar to the applied policy in China that distinguishes between investment/economic zones and the regions outside it.

Initiatives that Could Begin Quickly as Part of a Larger Strategic Partnership

Three areas of particular focus could be given more immediate attention: healthcare, including a common approach to address the impact of COVID-19; climate change-related aspects; and digital issues.

As mentioned above, an important basis could be a partnership to increase resilience of supply chains, reduce risks in access to key products for addressing the impact of COVID-19,[7] as well as take forward the partnerships envisaged in the recent meeting of the Quad,[8] and the Supply Chain Resilience Initiative launched by Japan, Australia and India.[9] This could involve both market access and nonmarket access-related trade policies. Agreements reached in this context could be incorporated as a part of the India-US FTA.

6 One example of a such an area could be the provisions for which the largest (or a relatively large) number of members agree to accept obligations in the WTO e-commerce negotiations.

7 Leroy Leo and Elizabeth Roche, "India Plays US' Friend in Need, Allows Hydroxychloroquine Export to Fight COVID," *Mint*, last updated April 6, 2020, https://www.livemint.com/news/india/india-plays-us-friend-in-need-allows-hydroxychloroquine-export-to-fight-covid-11586190172767.html.

8 White House, "Fact Sheet: Quad Summit," and "Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan," both of March 12, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/12/fact-sheet-quad-summit/; and https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/12/press-briefing-by-press-secretary-jen-psaki-march-12-2021/.

9 Asit Ranjan Mishra, "India, Japan, Australia Unveil Supply Chain Initiative," *Mint*, April 28, 2021, https://www.livemint.com/news/world/india-japan-australia-launch-supply-chain-initiative-to-counter-china-11619532624451.html.

Workers wearing face shields work at an assembly line of mobile phones at Lava International Limited's manufacturing plant, after some restrictions were lifted during an extended nationwide lockdown to slow the spread of the coronavirus disease (COVID-19) in Noida, India, May 12, 2020. Picture taken May 12, 2020. REUTERS/Anushree Fadnavis

Certain ongoing technological changes will result in a major change in both operational and regulatory conditions. These could include, for instance, areas such as digital trade, biomedicines, renewable energy, and/or any other areas commonly identified by India and the United States. These areas have both economic and strategic aspects, and partnerships in one or more of these areas could be the basis of a stronger strategic relationship. Initiatives in these areas could also be developed on a parallel track to become part of an FTA between the United States and India. Like Article XIX:1 of the WTO's General Agreement on Trade in Services (GATS),[10] the India-US FTA could include a provision to periodically visit the FTA for progressive liberalization.

10 The article states: "In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations."

An American Way of Trade Negotiations

By Mark Linscott

Any serious and informed analysis of future paths for a US-India trade relationship requires some understanding of the apparatus for formulating and executing trade policies on both sides and an appreciation of the motivations that can drive trade initiatives and positions in trade negotiations. This involves simply "getting back to the basics." This chapter lays out how US trade policy and positions in trade negotiations are grounded in clear institutional realities, which themselves are rooted in history going back to the John F. Kennedy administration in the early 1960s.

US trade policy continues to evolve with respect to India, and this reflects a keen understanding that India will be hugely important in the years ahead, both economically and strategically. However, US policy is not likely to be influenced by stakeholder proposals that veer far outside the lane of traditional approaches or that suggest ambitions that are at odds with sober assessments of the readiness of the two governments to solve a range of difficult issues, such as disparities in tariff treatment or fundamental gaps in critical regulatory approaches. The word of the moment might be "incrementalism" to put the bilateral trade relationship on a positive future track. The two countries, which clearly will share a compelling and potentially essential future together, must chalk up a record of discreet successes in order to build confidence that they are ready to expend the resources and make the political commitment necessary to pursue much bigger things.

The USTR: A Brief History

The United States has a long and rich history of engaging with other countries on trade issues, and trade played a key role in formulating US foreign policy since the early days of the federal republic. At the very creation of the United States, much of trade policy focused on radically adjusting its economic ties with the British Empire after the American Revolution and urgently finding new sources of revenue for the fledgling government.

In the aftermath of World War II, President Franklin D. Roosevelt, followed by his successor, President Harry S. Truman, directed the US State Department to focus on multilateral trade relations through creation of an International Trade Organization (ITO) as an essential pillar of the postwar financial architecture. These efforts evolved into the larger plan to recruit allies to and sustain an anti-Soviet bloc for foreign policy. While the ITO was rendered a historical footnote by the US Senate's failure to ratify it, leaving the interim General Agreement on Tariffs and Trade (GATT) as a de facto permanent fallback, US trade policies—formulated and implemented by the State Department—continued to emphasize Cold War preoccupations even if more specific trade disputes were occasionally pursued with vigor.

In 1962, President Kennedy, by executive order, created the Office of the US Trade Representative (USTR, and initially the Special Trade Representative) at the insistence of the US Congress. Members of Congress had criticized the State Department for years for being too inclined to abandon US commercial interests when it perceived there were overriding strategic interests involved, which generally revolved around maintaining a coalition of countries lined up against communism and the Soviet Union. That said, even though the creation of USTR initiated a transition to more balanced trade policies that gave more weight to US commercial interests, it initially was substantially staffed by former State Department diplomats. Over time, US commercial interests became more integrated into a broader consideration of US strategic interests, a good example of which was the initiation and conclusion of negotiations on the Trans-Pacific Partnership (TPP) during the Barack H. Obama administration. The administration viewed TPP as a central pillar in its strategy to isolate and pressure China in the Asia-Pacific region, and many felt that the Donald J. Trump administration's abandonment of TPP was a strategic error, directly counter to its interest in pursuing a more aggressive China policy.

US Trade Act of 1974: The Essentials of USTR's Mandate

After more than a decade of an ad hoc institutional structure, cemented through executive orders, and limited trade negotiation agendas focused on tariff-cutting agreements, the US Congress passed landmark trade legislation that contained a number of firsts. It established "fast track" negotiating authority for the executive branch, which stands to this day as the essential requirement for major trade agreements requiring congressional approval. The 1974 Trade Act also formally established USTR and created an elaborate system of checks and balances to ensure transparency in its processes and require it to engage in consultations with stakeholders, including the congressional committees of jurisdiction: Senate Finance and House Ways and Means. It is this legislation that requires USTR to coordinate across all executive branch trade-related departments and agencies, and provides USTR with the strong authority to develop and implement trade policies and conduct trade negotiations in the name of the United States. The 1974 Trade Act also specified that fast-track negotiating authority extends beyond tariff agreements to efforts to address foreign nontariff barriers.

US Trade Experiences: A Brief and Selective Review

Since 1974, USTR has pursued a strong, institutionally robust, and increasingly ambitious US trade policy. The role was elevated to a cabinet-level position by executive order in 1979 during the Jimmy E. Carter administration, at congressional insistence. By virtue of the now well-established interagency process (despite periodic grousing from involved agencies that USTR can be guilty of overreach), a full range of strategic, regulatory, and policy considerations are integrated into US trade policies and negotiating positions.

In its early years, USTR in each administration, Republican and Democratic, focused its attention and efforts on the multilateral trade system, embodied at that time in the GATT, and from 1995, in the WTO. During this period, engagements in the GATT/WTO headquarters on the shores of Lake Geneva in Switzerland, constituted the main game on trade globally. Bilateral trade relationships could be important, especially when there was a sense of grievance that a trading partner engaged in unfair behavior, but true trade liberalization in the form of negotiations on tariff reductions and new rulemaking, such as on nontariff barriers, took place multilaterally. This phase in post-World War II economic liberalism was crucial in increasing global economic growth, reducing levels of poverty in developing countries, and cementing a shared sense of purpose, even after the collapse of the Soviet Union in 1991.

However, the instinctive assumption that all trade was rooted in the multilateral trading system and depended on it for continued growth increasingly raised doubts as more and more countries negotiated agreements outside it, in the form of FTAs, and as the Doha Round of trade negotiations in the early 2000s began to falter. USTR maintained a strong presence in Geneva and in Doha trade negotiations, and was generally slow in following the lead of some of its trading partners in negotiating FTAs. Gradually, however, and with the support of stakeholders including farmers, corporate interests, and congressional advocates for new trade agreements, USTR devoted more and more attention and resources to bilateral trade opportunities. This began with the North American Free Trade Agreement (NAFTA), became sustained with a series of smaller FTAs during the period of Robert Zoellick as USTR in the George W. Bush administration, and culminated in the grand and strategic effort to conclude the TPP.

The Trump administration, for all of its bluster in loudly departing from TPP—a true strategic and economic blunder—and complaining about bad trade deals and incompetent trade negotiators at USTR, set a more modest agenda of trade negotiation. Its trade policy was much about setting a tone as a disrupter, discrediting the WTO, and taking unilateral actions to raise tariffs—some to provide leverage, such as against China, and others to simply provide protection under the questionable guise of national security. The outcomes of negotiations to conclude the USMCA, which was mostly a much-needed updating of NAFTA, was otherwise limited in breaking new ground. However, the effort with India to negotiate a small trade deal, while confrontational, actually moved the dial in bringing attention to the bilateral trade relationship far beyond efforts in previous administrations. In fact, this can be a starting point, and a positive one, for the USTR in the Joe R. Biden administration.

Finally, any assessment of US trade policy over recent decades and the USTR's role should include some emphasis on the enforcement pillar, which generally focuses on avenues and approaches for ensuring that foreign trading partners live up to trade-agreement commitments or qualify under US legislation for any preferential benefits. Enforcement has always been a priority for USTR and the Congress, going all the way back to the founding of USTR, even if the approaches have evolved. In the GATT days, when multilateral dispute settlement was toothless and trade-agreement obligations limited in scope, Section 301 of the 1974 Trade Act became the favored tool for enforcing trade obligations or addressing US perceptions of unfair trade-related behavior. It provided for pursuing disputes in the GATT, but also provided options for leveraging the threat of retaliatory action outside of the GATT. When the WTO was created in 1995, with its reformed and more effective dispute-settlement system, USTR abandoned Section 301 ("Special 301" for intellectual property rights is a special case) and relied almost exclusively on the WTO for enforcement actions.[11]

However, concerns started to emerge about the activities of the WTO appellate body in the United States, setting the stage for the Trump administration to provoke a crisis

11 The Omnibus Trade and Competitiveness Act of 1988 amended Section 301 to include this provision, which is specific to identification of foreign practices with respect to intellectual property rights that create trade barriers for US exports. USTR issues an annual report under Special 301, which includes designation of priority concerns and provides for the possibility of future retaliatory actions.

U.S. President Joe Biden, flanked by Alicia Booker, Vice President of the Technology Center, speaks with student Sunseray Wen as he tours the Cuyahoga Community College Manufacturing Technology Center in Cleveland, Ohio, U.S., May 27, 2021. REUTERS/ Evelyn Hockstein

and render the appellate body nonoperational and to turn to threats of unilateral tariffs, including through renewed used of Section 301, as the favored tool for enforcement. We can expect the Biden administration to return to a more traditional enforcement approach, as practiced by the Obama administration and its predecessors, by working to reform the WTO dispute-settlement process and favoring that avenue for enforcement in the future. That said, the Biden administration is likely to emphasize a new range of enforcement priorities, such as actions to address certain labor practices.

What Does This Mean for US-India Trade Engagement?

Resetting the table and pursuing a bilateral trade policy with India is not likely to be a top priority for USTR Ambassador Katherine C. Tai and the Biden administration. However, as it turns to articulating a more comprehensive trade policy after its immediate focus on the COVID-19 response, USTR could put some focus on India. An early question may be whether India will be among the countries with which the Biden administration wants to develop pandemic-related approaches to supply chains, which could provide interesting possibilities.

Other emerging policies are likely to reflect the following considerations.

1. Bilateral engagement with India will be a central priority, although it is not clear what forms that will take. USTR institutional biases will likely be against early consideration of an FTA, and it is unlikely that influential stakeholders, including labor and civil society types, will press this option. That said, there can be ample opportunities for smaller deals, starting with the one currently on the table. This approach does not require the start of an FTA framework, although there could be talk of exploratory work. A key priority is likely to be resurrection of the Trade Policy Forum (TPF), and incremental work streams under this will likely guide early Biden trade policy on India.

2. US trade policy on India may not be immune from a new emphasis on progressive trade priorities, including the view that there can be no level playing field without strong commitments on environmental protection and adoption of internationally recognized labor rights.

3. US policy is not expected to be predominantly informed by US export and investment priorities. As noted above, it is likely that other stakeholders will be at the table, including civil society organizations, labor unions, and human rights advocates. These issues may offer opportunities, particularly cooperative initiatives on trade and climate change, but they also could generate some tension. If the Biden administration takes a heavy-handed approach on labor issues, insisting on hard, enforceable obligations as the price for broadening and deepening the bilateral trade relationship, it could set back efforts to raise the trade profile on par with the strategic one. Instead, a focus on incremental progress and soft commitments might make sense at early stages.

4. USTR is likely to look for incremental progress in other areas as well, and the Biden administration may not return to earlier administrations' central focus on strategic considerations. There should be a strong interest in exploring new trade initiatives and getting points on the board in the trade relationship. Perhaps the most interesting early push could be on building a strong alliance in the health sector, including looking for bilateral opportunities to cement supply chains, align regulatory approaches, promote innovation, and reconcile restrictive approaches to public procurement. Other or related TPF work streams could include more intensive dialogue on digital issues, particularly given the growing divergence in regulatory approaches, intellectual property rights, and opportunities to increase agricultural trade, even building on an early bilateral trade deal that includes products such as pork, nuts and fruits, grains (e.g., fuel ethanol), and dairy.

5. At some point, bilateral engagement might include exploring approaches to better align views on the WTO, although this would appear to be a long shot given past experiences. Such alignment would likely require a fundamental shift in the Indian trade establishment's perspectives on multilateral trade matters, including a softening of the instinct to pit developing countries against developed countries, which is increasingly anachronistic, and a USTR readiness to actively table creative ideas on areas of potential mutual interest. Unfortunately, the early trend in this area does not look promising, as India has teamed with South Africa to press arguments on IPR related to COVID-19 and resist efforts by many other WTO members to negotiate plurilateral arrangements, such as those on e-commerce.

Conclusion

It is hard to escape the realities of US-India bilateral trade, many of which are rooted in institutional biases, differing historical perspectives on national economic interests, and well-established approaches to developing and pursuing trade policies, including managing vocal stakeholder interests. Yet a long-term vision on the essential importance of nurturing this relationship should push both sides to start emerging from their comfortable corners, which generally doomed a more ambitious approach in the past. However, they should resist the impulse to think too big—a potential recipe for failing across the board—and dedicate themselves to early, limited, confidence-building actions in the immediate future, on which bigger outcomes can eventually be built.

US-India Trade Relations: Surveying Past Engagement and Lessons Learned

By Anand Raghuraman

Nearly two decades into the modern US-India relationship, Washington and New Delhi have largely shed the old antagonism of the Cold War era and forged a bilateral partnership of growing scope, warmth, and ambition. Anchoring this partnership is an underlying convergence of strategic interests, though shared values and leader-level rapport lend ample ballast to the relationship.

Yet if there is an aspect of the US-India partnership that has lagged in recent years, trade engagement would likely sit near the top of the list. While two-way trade flows have risen steadily, particularly over the past two decades, the pace of growth is limited by the absence of structural trade agreements between the United States and India as well as misalignment on several critical trade issues. With respect to market access, tariffs, IPR, and foreign investment, the divides between the United States and India run wide and deep. Recent efforts by the United States and India to strike a mini trade deal have highlighted these tensions, as talks developing over the past three years ultimately faltered before the finish line. In multilateral arenas such as the WTO—a key venue for US-India trade engagement—Washington and New Delhi routinely spar and rarely work in concert.

Both sides recognize the need to bridge gaps and the importance of transforming the US-India trade relationship. To this end, US and Indian leaders have sought to inspire action by floating lofty goals of inking an FTA or raising two-way trade volumes above $500 billion. While this ambition reflects optimism in the future of the US-India relationship, it stands detached from the hard reality and recent history of trade negotiations. A close study of this track record and the patterns of trade engagement reveal that even modest goals and minor agreements take sustained effort and political will. This does not mean that US and Indian leaders should downgrade their long-term ambitions for two-way trade. However, it suggests that the way forward must be grounded in practical realities and lessons learned—in other words, what worked, what didn't, and why?

Surveying the history of US-India trade engagement and the evolution of economic ties, this chapter takes up these questions and draws out instructive lessons for policy makers in the United States and India. By learning from history and drawing insight from recent experience, Washington and New Delhi can forge new paths and take their trade relationship to greater heights.

US-India Trade: By the Numbers

US-India trade volumes have registered steady gains over the past two decades amid deepening strategic alignment between Washington and New Delhi. Bilateral trade in goods and services—estimated at just $16 billion in 1999 and $59.5 billion in 2009—topped $146 billion in 2019 (the latest available year of complete data prior to pandemic-related distortions).[12] In 2019, India was the ninth-largest trading partner of the United States, while the United States was India's largest trading partner—surpassing China's rank for the second consecutive year.[13]

Despite the aggregate growth in bilateral trade volumes, the US-India trade relationship punches well below its weight class. This reality becomes painfully clear when India's trade with the United States is measured against Asian peers such as Korea, Vietnam, and China. As co-author Harsha Singh has previously noted, the level of goods traded between the United States and Korea is nearly *1.5 times* larger than between the United States and India—despite the fact that Korea's GDP is roughly 40 percent smaller than India's.[14] Similarly, Vietnam's trade with the United States is 84 percent that of India's, even though India's GDP is *10 times larger* than that of Vietnam.[15] A final comparison in US-China trade also merits examination. China's trade with the United States is six times larger than

12 "US-India Trade Facts," Office of the United States Trade Representative (website), accessed February 2021, https://ustr.gov/countries-regions/south-central-asia/india.

13 "US Remains India's Top Trading Partner in 2019-20," *Economic Times*, July 12, 2020, accessed February 2021, https://economictimes.indiatimes.com/news/economy/foreign-trade/u-s-remains-indias-top-trading-partner-in-2019-20/articleshow/76924711.cms.

14 Joshua P. Meltzer and Harsha Vardhana Singh, "Growing the US-India Economic Relationship: The Only Way Forward," Brookings Institute (blog), June 22, 2017, accessed February 2021, https://www.brookings.edu/blog/up-front/2017/06/22/growing-the-u-s-india-economic-relationship-the-only-way-forward/.

15 "Trade in Goods with Vietnam," US Census Bureau (website), accessed March 2021, https://www.census.gov/foreign-trade/balance/c5520.html.

India's; and while Beijing's economic heft puts it in a different category, the aggregate gulf between China and India should give pause to leaders in New Delhi who frequently invite comparisons with India's northern neighbor.[16]

At the present rate of growth—8.5 percent annually from 2009 to 2019—US-India trade volumes should reach $358 billion by the end of 2030. This growth would be a welcome and significant development, but it would still fall below leaders' ambitions for the trade relationship. Raising trade volumes will require both sides to remove structural barriers to trade and forge hard-won agreements that help build trust and credibility. Yet if the past decades have revealed anything about US-India trade engagement, it is that reaching agreement and alignment are both easier said than done.

The Evolution of US-India Trade Engagement

1947 to 2000: Building a Basic Trade Relationship

Tracing the arc of US-India trade relations reveals several important lessons for policy makers, the first of which is that substantive trade engagement between the two countries is still a relatively new phenomenon. For nearly five decades after Indian Independence in 1947, economic and geopolitical misalignment kept US-India trade interaction to a minimum. India's strategy of Nehruvian socialism featured high tariff protection and import substitution, which not only restricted Indian trade on a global basis, but also condemned the Indian economy to an average growth rate of just 3.5 percent from 1950 to 1980.[17] During this period, Cold War politics also placed the United States and India at odds in the international arena and in successive wars between India and Pakistan. Mutual suspicion and minimal commercial opportunities limited US interest and incentives to grow a trade relationship with India.

Over time, however, modest efforts to liberalize India's trading and investment regime in the 1980s created pockets of opportunity for the United States to make early inroads. Rajiv Gandhi's visit to the United States in June 1985 yielded a landmark MOU on technology transfer and infused early positive momentum into bilateral ties as the Cold War neared its end. In 1988, US companies such as PepsiCo capitalized on modest improvements in the Indian economic climate, setting up a major local plant to serve the domestic market. By 1989, US-India trade in goods topped $5 billion, even as trade negotiators in both countries battled over market access, IPR, and foreign investment restrictions.[18]

Between 1991 and 2000, bilateral trade would rise from $5.2 billion to $14.2 billion as economic reforms ushered in by New Delhi transformed the Indian economy and reshaped its orientation toward foreign trade. Yet in the US-India corridor, trade and strategic engagement was still decidedly mixed. USTR repeatedly placed India on its Special 301 priority watch list, citing inadequate protections for intellectual property—a pattern that continues to this day. In multilateral settings, US and Indian negotiators also squared off in the latter half of the Uruguay Round for renewal of the GATT.

2000 to 2009: Laying the Institutional Framework for Substantive Trade Engagement

The first decade of the twenty-first century marked a critical period of evolution in the broader US-India relationship, driving three structural changes that have built the foundation for their modern trade relationship.

First, this period saw historic state visits and summits by US and Indian leaders (Presidents Clinton and Bush as well as Prime Ministers Vajpayee and Singh) that underscored the growing stature and prominence of the US-India partnership. Leader-level visits served as action-forcing events and opportunities to launch new strategic and economic frameworks. Clinton's famous visit to India in March 2000 gave rise to an institutionalized Economic Dialogue, which included the Financial and Economic Forum, the Commercial Dialogue, as well the Trade Policy Working Group.[19] Likewise, Manmohan Singh's 2005 visit to Washington—known for yielding the strategic framework for bilateral civil nuclear cooperation—also expanded the Economic Dialogue to create the Information and Communication Technology Working Group, the CEO Forum, and the Agricultural Knowledge Initiative. Many of these institutional frameworks still exist today as leading channels for engagement on trade and commercial issues.[20]

Second, with the formal signing of the US-India Civil Nuclear Agreement and subsequent approval of the deal between

16 "Trade in Goods with China," US Census Bureau."

17 Arvind Panagariya, "India's Trade Reform: Progress, Impact, and Future Strategy," Brookings Institute, 2004, accessed March 2021, https://www.brookings.edu/wp-content/uploads/2016/07/2004_panagariya.pdf.

18 "Trade in Goods with China," US Census Bureau."

19 "US-India Relations: A Vision for the Twenty-first Century," US Department of State (online archive), March 21, 2000, accessed March 2021, https://1997-2001.state.gov/global/human_rights/democracy/fs_000321_us_india.html.

20 "Joint Statement by President George W. Bush and Prime Minister Manmohan Singh," US Department of State (online archive), July 18, 2005, accessed March 2021, https://2001-2009.state.gov/p/sca/rls/pr/2005/49763.htm.

U.S. Secretary of State Antony Blinken attends a news conference with India's Foreign Minister Subrahmanyam Jaishankar following a bilateral meeting in London, Britain May 3, 2021 during the G7 foreign ministers meeting. Ben Stansall/Pool via REUTERS

2006 and 2008, Washington and New Delhi broke the impasse on nuclear proliferation issues that had historically impeded growth in bilateral ties. Typically, the strategic impact of the deal is often cast as transformational, while the commercial impact of the agreement is dismissed as middling. This is true in a narrow sense, as disagreement over civil liability issues ultimately stalled implementation of the deal. Yet it would be unwise to discount the deal's spillover effects on bilateral trade and investment, especially when accounting for the political stability and trust flowing from Washington's political embrace of India. US and Indian firms would neither fear a wholesale rupture in bilateral ties nor the prospect of stringent sanctions that could fundamentally alter market conditions. US-India merchandise trade would nearly double from $21.6 billion in 2004 to $43 billion in 2008, and the continued growth of the trading relationship would rest on a foundation of strategic trust enabled by the civil nuclear deal.[21]

Third, India's economy became a leading emerging market during this period, posting several consecutive years of gross domestic product (GDP) growth exceeding 7 percent. The rise of globally competitive Indian IT firms and the proliferation of digital services led to an explosion of growth in the Indian IT and business-process outsourcing sectors, creating opportunities for US firms. Indeed, several US companies—Citigroup, Microsoft, Delta Air Lines, IBM, and others—would establish commercial partnerships with Indian IT giants such as Tata Consulting Services, Wipro, and Infosys or set up local campuses in cities such

21 "Trade in Goods with India," US Census Bureau.

as Gurgaon, Hyderabad, and Bangalore. The rush to outsource high-skilled jobs from the United States to India even registered in the 2004 presidential election, when then-Senator John Kerry blasted executives moving US jobs overseas as Benedict Arnold companies and CEOs. By contrast, the Bush administration would specifically cite India as a key destination for outsourcing in its 2004 Annual Economic Report, which argued "when a good or service is produced more cheaply abroad, it makes more sense to import it than to make or provide it domestically."[22]

2009 to 2017: Trade Takes a Back Seat to a Surging Strategic Partnership

Inheriting a US-India relationship that had blossomed under President Bush and Prime Minister Singh, the Obama administration signaled from the outset its desire to deepen bilateral engagement with India. This included bolstering trade ties, and USTR and the Ministry of Commerce and Industry (MOCI) notched early wins through the 2009 Trade Policy Forum (TPF)—with USTR Ron Kirk and Commerce Minister Anand Sharma signing the Framework for Cooperation on Trade and Investment just five months later. Both sides launched formal negotiations on a Bilateral Investment Treaty (BIT) in August 2009, though this would ultimately stall amid domestic efforts to revise model BITs.

Still, from the outset of the Obama administration, it was clear that the primary focus of bilateral engagement would be deepening the strategic partnership rather than addressing persistent trade issues. As such, early cabinet-level interactions took place under the auspices of the new US-India Strategic Dialogue, which was held consistently from 2010 to 2015 to build a steady drumbeat of engagement. By contrast, the TPF—the signature channel for trade engagement—fell to the wayside between 2010 and 2013, reconvening only in late November 2014 under USTR Mike Froman and MOCI Minister Nirmala Sitharaman. In the intervening period, long-festering differences on intellectual property, particularly in the health and pharmaceutical sector, boiled over, triggered an intense flurry of outreach by congressional members in 2013 as well as sharp ripostes from Indian officials.[23] To the extent that bilateral trade issues were to be taken up, the Obama administration would often favor advancing claims through the WTO and letting the process play out over time.

Of course, bilateral trade engagement through the TPF was ultimately reinvigorated between 2014 and 2016, and yet the timing overlapped with the creation of the flagship Strategic and Commercial Dialogue (S&CD). The upgrade of the earlier US-India Strategic Dialogue was ostensibly intended to elevate commercial issues within the context of the broader strategic partnership. Yet the S&CD would ultimately give short shrift to trade and commercial issues, achieving few substantive gains if any. Trade experts and industry leaders cite the decision to appoint the Department of Commerce as the lead for the commercial arm of the S&CD as a "fatal flaw"—noting that the department lacked the mandate and in-house expertise to engage on trade issues traditionally led by USTR. Contemporaneous accounts of the 2015 and 2016 dialogues likewise gave the S&CD little to no hope of achieving substantive breakthroughs on trade issues, a track record that bears close study if the Biden administration considers reviving the S&CD.[24]

2017 to 2021—Trump Pursues a Bilateral Trade Deal and Unilateral Pressure

Sweeping to power and promising to reshape US trade engagement and reduce trade deficits, President Trump pivoted US trade policy away from multilateral engagement and toward bilateral talks with allies and adversaries alike. The shift to bilateral engagement was in many ways a direct result of the president's deep distrust of regional trading agreements, such as NAFTA and TPP, as well as his administration's efforts to paralyze the WTO by blocking the appointment of new members to its appellate body.

Against this backdrop, bilateral trade discussions between India and the United States would enter a new phase in 2018-2019 due to an escalating tit-for-tat cycle stemming from:

- President Trump's unilateral imposition of Section 232 tariffs on steel and aluminum imports from India and other trade partners;
- the announcement (but not imposition) of retaliatory Indian tariffs;
- market-access challenges facing dairy and medical-device companies, prompting petitions to USTR;
- the review and ultimate termination of India's benefits under the Generalized System of Preferences (GSP) program; and

22 Administration of George W. Bush, *Economic Report of the President*, Transmitted to the 108th Congress, 2nd Session, February 2004 (Washington, DC: Government Printing Office: 2004), 229, accessed March 2021, https://www.govinfo.gov/content/pkg/ERP-2004/pdf/ERP-2004.pdf.

23 Amiti Sen, "India Readying Rebuttals to US Charges on Patent Regime," *Hindu Business Line*, March 11, 2014, accessed March 2021, https://www.thehindubusinessline.com/economy/india-readying-rebuttals-to-us-charges-on-patent-regime/article23154861.ece.

24 Nyshka Chandran, "No Trade Progress Expected at US-India Strategic and Commercial Dialogue," CNBC, August 30, 2016, accessed March 2021, https://www.cnbc.com/2016/08/30/no-trade-progress-expected-at-us-india-strategic-and-commercial-dialogue.html.

the imposition of Indian retaliatory tariffs targeting US exports of chickpeas, shelled almonds, walnuts, apples, and lentils.

Taken together, these five developments set the stage for negotiations on the so-called mini trade deal, which has dominated USTR and MOCI engagements for the past three years. The basic structure of the deal—US restoration of India's GSP benefits in exchange for Indian market access and tariff concessions of equal value—introduced a new dynamic for bilateral trade engagement anchored around the principle of basic reciprocity. Remarkably, the scope and terms of the deal remained relatively steady over time despite numerous policy shifts in both countries that could have very well upended talks. Instead, sustained engagement by USTR and MOCI negotiators as well as the personal rapport between trade ministers Robert Lighthizer and Piyush Goyal repeatedly breathed new life into the mini deal after it was pronounced dead time and again.

In one reading of events, the longevity of the mini deal and the substantive resolution of most of its key components speak to the durability and growth of the US-India trade relationship. Were it not for the idiosyncrasies of President Trump and the timing of the US presidential election, both sides would have likely completed a deal and perhaps built momentum for more ambitious endeavors. Nevertheless, the missed chances and failure to capitalize on action-forcing events, such as the "Howdy, Modi!" rally in Houston in September 2019 or Trump's visit to India in February 2020, will surely haunt negotiators and long-time observers of the trade talks. Looking ahead in 2021, both sides bring a new appreciation of the fact that leader-level focus is a scarce commodity and yet a vital necessity to take the US-India trade relationship forward.

Key Lessons from History

India and the United States have come a long way since the early Cold War era and built a solid foundation for stronger trade engagement. Yet to reach the lofty peaks and trade volumes envisioned by leaders on both sides, Washington and New Delhi must recommit to serious trade engagement. As a part of this, they must pursue avenues and new solutions that draw on the lessons and insights of the recent past.

1. **Commit to tackling trade issues head on:** The growing interplay between trade and strategic issues—particularly in the digital and health domains—suggests that India and the United States should aim to tackle trade challenges directly rather than walling them off to preserve and prioritize "strategic cooperation." While underlying strategic alignment provides the foundation for a robust trade relationship, it does not guarantee that trade volumes will bloom. If New Delhi and Washington aspire to transform their trading relationship, they must commit to putting in the hard work needed to shepherd deals across the finish line.

2. **Calibrate expectations and build small-scale wins:** Ambitious trade targets that go unmet or set unrealistic expectations do more harm than good to the bilateral trade relationship. Recognizing the nascent state of the US-India trade relationship, leaders on both sides should set aside lofty targets of inking FTAs or quintupling bilateral trade and instead concentrate on smaller and achievable targets such as the completion of mini deals. If the Biden administration and Modi government ultimately pick up where things were left in 2020, trade negotiators on both sides should move to quickly finalize the mini deal and then identify the next "intermediary deal" to focus negotiations for the next phase of interaction. The way forward in trade engagement may require following a stepping-stone trail that builds gains and trust over time.

3. **Develop a steady drumbeat of engagement**: Maintaining a steady cadence of leader-level engagement on trade is vital to sustaining progress and creating action-forcing events. Both sides should commit to holding the TPF consistently over the next four years to avoid hiatus periods that allow trade issues to fester. By contrast, leader-level engagement on trade should be selectively employed to push deals across the finish line. Embedding trade negotiations into leader-level agendas at a politically ripe moment will avoid the missed opportunities and dashed expectations of the Houston rally and Trump's India trips.

4. **Align the institutional architecture for trade engagement:** As the track record of the S&CD illustrates, institutional architecture for bilateral trade engagement can shape perceptions about the importance of trade within the relationship as well as the patterns of engagement between the two sides. Looking ahead, the Biden and Modi teams can reenergize trade engagement by looking at new groupings, such as a 2+2 led by the State Department and USTR as well as Ministry of External Affairs (MEA) and MOCI. Close coordination with the White House and the Office of the Prime Minister also will help both sides make credible offers and concessions that might overlap with another department or ministry's remit.

Looking Ahead: Strategies to Improve US-India Trade Negotiations

By Ridhika Batra

Despite the challenges the Indian economy has been facing lately, the nation's GDP reached a significant mark in 2019 of $2.88 trillion, ranking it as the fifth-largest economy in the world, surpassing France and the United Kingdom at $2.71 trillion and $2.83 trillion, respectively. Though 2020 might not leave India's output at the same level, given the impact of the pandemic, New Delhi is recalibrating its economic policy, like other nations, to overcome the decline from COVID-19. The virus contagion has been creating an economic contagion, as countries are looking to move their supply chains closer to home. Having experienced the benefits of globalization, India can no longer be an inward-looking economy: it must expand and deepen its economic alliances.

In that reassessment, trade policies are front and center. India is reassessing its FTAs with the Association of Southeast Asian Nations (ASEAN), Japan, and Korea. After declining RCEP membership, India is now considering a mini trade negotiation with the United States and the UK, and is restarting FTA negotiations with the EU and Australia. In 2015, the Modi government unveiled its five-year foreign trade policy to increase exports of goods and services, and generate employment by integrating its supply chain with other markets.[25] The policy recognizes an integration of domestic economic regulations with international trade policy. It had an exhaustive list of export products to be added to global value chains, including a focus on employment in micro, small, and medium-sized enterprises, technology upgrades for Indian exporters, agriculture trade policy, infrastructural barriers for exports, and more.[26] However, leadership failed to create criteria and a process to measure the impact. Besides, the policy was heavily focused on export promotion and missed including investment promotion, intellectual property integration with other markets, digital trade assimilation, data localization, an integrated approach to climate issues, labor-related concerns, and so on. If the objective of the policy laid out for 2015-2020 was to "make trade a major contributor to the country's economic growth and development,"[27] then a single-minded focus on exports alone would not, unfortunately, help achieve it.

Contemporary Trade Practices

Recently, the World Bank published a report on how contemporary trade deals have moved away from archaic preferential trade agreements to so-called deep trade agreements that go far beyond tariff barriers or market access. Instead, the contemporary preferential trade agreements or deep trade agreements are "about regulatory measures and other so-called nontariff measures that were once the exclusive domain of domestic policy making" and "cover policy areas such as competition, subsidies, and regulatory standards."[28] These agreements go beyond conventional border measures to "regulate the behavior of the exporting and importing government."[29] Interestingly, a 2019 report commissioned by the Ministry of Commerce and Industry highlighted that India had a relative performance in global trade because of its risk-averse "mindset."[30] India's participation in global trade grew exponentially after 1991 liberalization, and current international trade contributes a quarter of its GDP. Yet the inherent need to control the events has led Indian policy makers to focus only on tariff regulations and restriction. Over the past two decades, many of India's trade agreements and negotiations have been influenced by the mindset/behavior of regulating trade.

India's Experience with Recent Trade Negotiations

After walking away from RCEP, India stated that its past trade agreements had forced India to "deindustrialize."[31]

25 The 2020 export/import figures declined, compared with the prior year. Up until November 2020, exports of goods and services stood at $304.25 billion and imports at $290.66 billion, leaving a surplus of $13.59 billion.

26 "Foreign Trade Policy 2015-2020: Key Highlights," India Brand Equity Foundation (website), November 30, 2020, https://www.ibef.org/pages/foreign-trade-policy-2015-20-key-highlights.

27 "Foreign Trade Policy 2015-2020," India Brand Equity Foundation.

28 Aaditya Mattoo et al., eds., *Handbook of Deep Trade Agreements* (World Bank, 2020), 1.

29 Matoo et al., eds., *Handbook of Deep Trade Agreements*, 21, 25, 26.

30 Department of Commerce, Government of India, *Report of the High-Level Advisory Group,* 2019, 33.

31 Suhasini Haidar, "A Day after RCEP, Jaishankar Slams Trade Pacts, Globalisation," *The Hindu*, updated November 17, 2020, https://www.thehindu.com/business/a-day-after-rcep-jaishankar-slams-trade-pacts-globalisation/article33110309.ece.

In other words, India thinks that China has taken unfair advantage of globalization and subsidized its manufacturing to create global value chains to prevail at India's disadvantage. This idea is similarly expressed in the economic survey of 2020, which also advocates strongly for India to participate in global trade deals to help India increase its share in exports to 3.5 percent by 2025. The overall impact on India's exports to its partners, with which it has trade agreements, is 13.4 percent for manufactured products, and the impact on imports is lower, at 12.7 percent for manufactured products. Therefore, from the perspective of trade balance, India has clearly "gained," it said.

To amplify the earlier discussion of India's RCEP decision, there were three essential objections India had about the proposed partnership: a low threshold for rules of origin, lack of safeguards to avoid dumping, and extending the obligation to RCEP members that are only reserved for third parties.[32] Neither of the three clauses would have put India at an advantage with Australia, New Zealand, or China given that India already had an FTA with other RCEP members including ASEAN, Japan, and South Korea. However, the three objections also are centered on regulating imports, and they don't take into account the market access or exports boost that India might have experienced if it were part of RCEP.

Shyam Saran, former foreign secretary of India, said that as New Delhi focuses on strategic alignment with countries like the United States, Australia, and the UK, India runs the risk of putting insufficient vigor and effort in aligning with economic partners.[33] India has not been able to leverage all the provisions with its existing FTA partners to the fullest, resulting in low benefits and misleading conclusions. For example, Saran said:

> There is a commitment by Japan to assist the Indian pharma industry through the regulatory and registration process, so that Indian pharma products which are competitively priced can have access to the market. That requires industry bodies to take that up and the government to have persuaded them that there is an opportunity here to access the market. This wasn't used at all.[34]

The India-EU FTA, which has been in negotiations since 2007, with a pause in 2016, has experienced a disinterest and distrust from both sides. Contentious issues like IPR, custom duties on automobiles, spirits, and visa regimes were further fraught by data-security issues. During the negotiations, both sides had committed to tariff elimination on more than 90 percent of goods traded and a strong GATS, plus agreement in services. Access to the EU service market would be of great benefit to India, if the FTA is signed. Even though most of the issues were close to resolution, a difference of opinion on data security is what made it most difficult for the negotiations to move forward. The EU came up with strict, high standards on data protection and privacy in 2018 with the introduction of General Data Protection Regulation (GDPR). In its current form, India's data-protection rules do not meet these EU standards for two reasons: a requirement to mirror and localize sensitive and critical personal data, and the lack of independence of the Data Protection Authority. The EU walked away and focused on Mexico and Japan, putting India on low priority after nine years of negotiations. Nonetheless, now both the EU and India have begun to show renewed interest in negotiating their trade agreement.

On the ASEAN FTA, there was an urgency to renegotiate the agreement after India decided not to participate in RCEP. India feared that China would circumvent the "rules of origin" and access Indian markets via ASEAN countries without the tariff that would normally apply. The other contention concerned its trade deficit with ASEAN after the FTA was signed. India's exports to ASEAN countries amounted to $23 billion in 2010, which increased to $36 billion in 2018, with a growth rate of 5 percent. Simultaneously, India's imports from these countries increased from $30 billion in 2010 to $57 billion, a growth of 8 percent. However, the India-ASEAN FTA covered more than 90% of the products under nontariff barriers, which meant consumers benefited from cheaper prices given lower tariffs on a host of raw materials and finished products. India and ASEAN in principle agreed that a review should take place, but the details of the process and content of the review need to be agreed upon.

Trade Theory and India

Most of India's FTAs and negotiations are motivated by export promotion, with imports viewed as a liability. How does David Ricardo's principle of comparative advantage, developed in the nineteenth century and touting specialization such as "cloth in Manchester and wine in France," hold up amid the new trade theory of "vertical integration" and "global value chain?"

The fundamentals of global trade lie in Ricardo's comparative advantage theory: "Whilst not all countries have an

32 Dhruva Jaishankar, "For India, Autarky Is Not an Option," Observer Research Foundation, December 4, 2020, https://www.orfonline.org/expert-speak/for-india-autarky-is-not-an-option/.

33 Ananth Krishnan, "Leaving RCEP Was a Short-sighted Decision, Says Former Foreign Secretary Shyam Saran," *The Hindu*, November 17, 2020, https://www.thehindu.com/news/national/leaving-rcep-was-a-short-sighted-decision-says-former-foreign-secretary-shyam-saran/article33118832.ece.

34 Krishnan, "Leaving RCEP Was a Short-sighted Decision."

absolute advantage, all can have a comparative advantage and that we don't export for the sake of exporting, but in order to be able to afford to import what we want to consume."[35] In the past two decades, global trade has brought to the fore the concept of a product with components made in many nations that is assembled—at a price making "affordable consumption" remain relevant today.

Another change in that time frame is the creation of export advantages by subsidizing exports and blurring the lines between state-led and private firms. This development blurs the definition of comparative advantage and monopolizing trade in goods. It is no secret that this practice is led by China and is closely followed by a few other Asian countries. Therefore, countries like India, with an advantage in trade of services rather than goods, should probably look to create bilateral partnerships with nations whose markets are complementary. The EU, for example, exports heavy engineering products, automobiles, auto parts, and aircraft to India, while India can trade in services. The United States' major imports from the world include machinery, mineral fuels, pharmaceuticals, organic chemicals, gems and jewelry, and furniture, for example, which are among India's top export items. One of the United States' top services imports comes from India at about $30 billion per year.

Compared with other Asian countries, India has a relative advantage in contemporary trade negotiations when it comes to certain categories that are priorities for trade pacts: intellectual property, climate change provisions, and data security. India can work harmoniously with nations such as the United States, UK, and EU without feeling threatened by a surge of imports of goods from these allies. As per the latest exports figures from the International Trade Centre in the United States, India's untapped export potential to the United States, as a percentage of its current exports, is around 60 percent, and for the EU it is at 90 percent.[36] Therefore, working toward well-negotiated bilateral trade agreements with complementary markets would be advantageous for India and address a misplaced conclusion that FTAs are detrimental to India's exports and a liability on its imports.

There are a few other measures that Indian policy makers need to consider while making choices on trade negotiations.

1. Instead of completely protecting the underperforming export sectors, India's FTA negotiations and tariff regulations need to align with its national potential, and encourage a phased integration in global value chains and gradual easing of tariffs for a few sectors that need federal assistance to grow.

2. India should either use smart safeguard provisions to ensure antidumping or follow the EU to implement so-called horizontal safeguards that keep checks on third-party impact on EU businesses and investments. The EU regularly concludes trade agreements with third countries, most of which include bilateral safeguard clauses or other mechanisms for the temporary withdrawal of tariff preferences or preferential treatment. Up until now, the bilateral safeguard mechanism has been proposed *separately* in conjunction with each trade agreement.

3. The use of trade data to make informed decisions on the viability of any trade deal is probably the most important tool that policy makers need, instead of just quantifying export and import figures. Qualitative and long-term effects of trade deals are important to consider while assessing the trade deals, and for that, exhaustive data crunching is required. A case in point is that India for a few years now has been missing from the WTO e-commerce work program, which plans to negotiate global trade policies around digital trade. India's argument is that setting up digital trade regulations at this point might prove to be detrimental to emerging markets that are still grappling with a surge of e-commerce impact on their domestic markets. It argues that it might discourage innovation and creativity. If the policy makers were to participate in these regulatory dialogues at an early stage, equipped with enough data to support their arguments, they may be better positioned.

Institutional Changes to Prepare for Future Trade Deals

While India prepares itself for renegotiations and new trade negotiations with complementary markets including the UK, United States, and EU, one cannot miss that officials from these large, developed economies are master negotiators with specialized skills, institutional knowledge, and strength in numbers. Typically, Indian representatives engaged in trade negotiations are met with double or triple the number of negotiators on the other side. India's trade negotiations are done by bureaucrats from the commerce ministry either through permanent representation in Geneva at the WTO or through a need-based

35 Simon J. Evenett, *Cloth for Wine? The Relevance of Ricardo's Comparative Advantage in the Twenty-first Century* (London: CEPR Press, 2017).

36 "Export Potential Map," International Trade Centre website, https://exportpotential.intracen.org/en/products/gap-chart?toMarker=j&market=699&fromMarker=i&exporter=842&whatMarker=k.

A truck ferries a shipping container at a port in the southern Indian city of Chennai February 13, 2013. India posted its second highest ever monthly trade deficit of $20 billion in January, worsening from a $17.7 billion deficit in December, piling pressure on a widening current account deficit and limiting scope for the central bank to cut interest rates. REUTERS/Babu

swift move of other civil servants from relevant ministries. Inadequate resources and skill set can lead to a situation where officers work reactively instead of proactively on trade deals.

Historically, India has been notorious in leading negotiations on behalf of developing countries at WTO or at GATT. Whether it was leading the developing nations during the Uruguay Round to resist expansion of issues under trade in services, e.g., agreements on trade-related investment measures (TRIMS) and property rights (TRIPs), or during the Cancun Round to counter agricultural and farm subsidies for developed nations, India managed to stay in the limelight with half a dozen bureaucrats voicing the opinion of the developing markets. There is not a dearth of talent in India, but an effort to mobilize a special unit of trade negotiators is required. A lateral movement of sector experts would bring in the necessary expertise. In 2018, the Ministry of External Affairs initiated lateral recruitment by bringing in twelve sector experts. In the wake of the apparent success of the initiative, the government announced lateral hiring for ten joint-secretary level officials across the bureaucracy that year.

Besides, as India's High-Level Advisory Group suggested, international trade shouldn't be assigned to the department of commerce alone:

> "All departments and arms of the government need to be assessed, inter alia, on this parameter. This would bring synergies among what various departments do. We need to create participative mechanisms for decision-making, which will assimilate the points of view of various sector departments and arrive at a policy decision."[37]

In addition, state governments and industry representatives should equally participate in successful percolation of center's international trade efforts.

That said, the Indian public and private sectors, combined, have had a global footprint for a decade. They have an

37 Department of Commerce, Government of India, *Report of the High-Level Advisory Group*, 2019, 184.

active role in foreign-policy formulation that is reflected in international trade negotiations. Recruiting industry experts in the ministry may result in biases. A simple option would be to set up a body within the ministry of commerce that recruits fresh graduates and lawyers who are not yet associated with any private-sector entity but have the required qualifications for trade negotiations. But unlike the MEA, the ministry of commerce must recruit them as full-time employees in order to avoid becoming a revolving door workplace.

If such a body is established, then what is worth cloning from the USTR model is the appointment of a designated trade representative as the principal adviser to the commerce minister on trade policy and on the impact of other Indian policies on international trade. This would be no different from the appointment of a chief economic adviser (CEA) under the ministry of finance, a practice that started as early as 1956. This designated representative could be responsible for the trade policy graduates and lawyers, compensating for their lack of experience. The designated trade negotiator also could be responsible for coordinating trade policy with other agencies, states, and industry representatives, and act as the principal international trade policy spokesperson for the ministry of commerce. By setting up a designated trade representative and trade wing, the ministry of commerce would have the capacity—purely dedicated to trade negotiations—to work actively toward new versions of deep trade agreements with tough negotiators.

About the Authors

Ridhika Batra is a non-resident senior fellow at the Atlantic Council's South Asia Center with deep expertise in public diplomacy, trade negotiations, government relations, foreign policy and economic diplomacy. Ms. Batra is also the vice president of corporate affairs, Americas for the Mahindra group, an Indian multinational conglomerate with operations in over 100 countries and for which she directs group public policy across all Mahindra group companies in North and South America. She is also on the board of Bristlecone, a San Jose HQ supply chain consultancy with presence in over 10 countries. She also serves on the board of Mahindra Ag north America (the farm equipment business for Mahindra in America) and on the board of Mahindra automotive north America (auto business for Mahindra in North America). Previously, Ms. Batra was the Country head and Director for Federation of Indian Chambers of Commerce & Industry in the USA, based in Washington DC since 2014. Prior to that, she served as the country head for UK and France from 2007 to 2013 for FICCI. She has a Masters' degree from the University of Sussex, UK and has specialized in international law and global finance.

Mark Linscott is a non-resident senior fellow at the Atlantic Council's South Asia Center and a senior advisor at The Asia Group. Mr. Linscott spent most of his career at the Office of the US Trade Representative (USTR), most recently as the lead US negotiator with India. Previously, Mr. Linscott served as the assistant US trade representative for WTO and Multilateral Affairs with responsibility for coordinating US trade policies in the WTO, and served as the assistant US trade representative for Environment and Natural Resources. He also represented the United States in trade meetings of the Group of Twenty (G-20) and the Organization for Economic Cooperation and Development (OECD). Earlier in his career, Mr. Linscott served in the US mission to the WTO in Geneva, Switzerland, and at the US Department of Commerce in Import Administration and in the Office of Multilateral Affairs. He holds an undergraduate degree in economics from the University of Virginia and a law degree from Georgetown University, where he concentrated in international and comparative law.

Irfan Nooruddin is the director of the Atlantic Council's South Asia Center and the Hamad bin Khalifa Al-Thani Professor of Indian Politics in the School of Foreign Service at Georgetown University. He studies the political economy of development, trade, and investment, and the challenges of democratization in the 21st century. In 2012, he was a Fellow at the Woodrow Wilson International Center for Scholars. Irfan has a PhD in Political Science from the University of Michigan and a BA in Economics from Ohio Wesleyan University. He was born and raised in Bombay, India.

Capucine Querenet is a project assistant with the Atlantic Council's South Asia Center and a 2021 graduate of the University of California, Berkley with a BA in Political Economy. She manages the Center's India portfolio and has written on various topics relating to Nepal.

Anand Raghuraman is a non-resident fellow at the Atlantic Council's South Asia Center and a Vice President at The Asia Group, where he advises clients operating in South Asia across the internet, e-commerce, social media, fintech, and financial services sectors. Using his deep regional and sectoral expertise, he supports clients looking to navigate India's complex policy environment, advance tailored market expansion strategies, and develop high-impact corporate citizenship initiatives. Prior to joining The Asia Group, Mr Raghuraman was a Brent Scowcroft Award Fellow at the Aspen Strategy Group, where he supported the planning and execution of the Aspen Strategy Group Summer Workshop and the inaugural Aspen European Strategy Group Dialogue. He also provided speechwriting and business development support to the Aspen Ministers Forum. Previously, Mr Raghuraman was a Fulbright ETA grantee in Turkey, where he served as an English lecturer at Afyon Kocatepe University. Mr Raghuraman is a graduate of Duke University. He is proficient in Tamil and conversational in Turkish.

Dr Harsha Vardhana Singh is a non-resident senior fellow at the Atlantic Council's South Asia Center and a senior fellow at the Council on Emerging Market Enterprises (Fletcher School) where he brings over three decades of experience working on international trade policy, development, infrastructure regulation, and global governance. Mr. Singh spent his career working in the GATT/WTO Secretariat; as an economic advisor and then secretary of the Telecom Regulatory Authority of India; and as deputy director-general at the WTO. He has taught at SIPA (Columbia University), Fletcher School (Tufts University), and Nan Kai University in China; been Senior Associate at International Centre for Trade and Sustainable Development (ICTSD), Senior Fellow at International Institute for Sustainable Development (IISD), member of Global Agenda Council on Trade and FDI 2014-2016 (WEF), chair/member of high level policy committees, chair of WTO dispute settlement panels, and visiting faculty at research institutes on trade and regulation. He has a PhD in Economics from Oxford University, where he went as a Rhodes Scholar from India.

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

(202) 463-7226, www.AtlanticCouncil.org