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Testimony

of Linda Menghetti Dempsey
Vice President
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before the House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade

on "A Tangle of Trade Barriers: How India's
Industrial Policy is Hurting U.S. Companies"

June 27, 2013



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HOUSE COMMITTEE ON ENERGY AND COMMERCE
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Hearing on:
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Good morning, Chairman Terry, Ranking Member Schakowsky and members of the Subcommittee on Commerce, Manufacturing and Trade.

I am Linda Menghetti Dempsey, vice president of international economic affairs at the National Association of Manufacturers (NAM), and I am pleased to provide testimony today on India’s industrial policy and its impact on manufacturing and jobs in the United States. We believe “A Tangle of Trade Barriers” is an appropriate description of the significant challenges manufacturers are facing in the Indian market. We look forward to seeing those challenges addressed and resolved promptly.

The NAM is the nation’s largest industrial trade association, representing 12,000 manufacturers in every sector and in all 50 states. Our membership includes both large multinational businesses with operations in many countries around the world and small and medium-sized manufacturers that engage in international trade. Manufacturing employs nearly 12 million Americans and is the engine that drives the U.S. economy by creating jobs, opportunity and prosperity.

Manufacturers in the United States have long been partners in India's growth and development. As India pursued economic reforms launched in the 1990s and opened important sectors to new investment, manufacturers expanded bilateral commercial ties. But over the last year and a half, we have seen a damaging pattern of actions in India that are discriminating against a wide array of products and putting at risk a bilateral trading relationship worth more than \$60 billion in 2012.

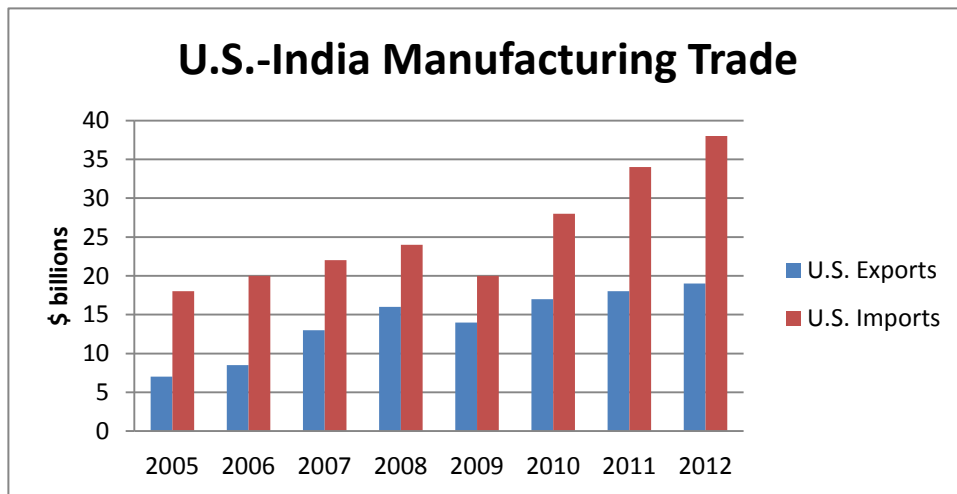
The U.S. government and manufacturers in the United States have expressed serious concerns about India's industrial policy repeatedly and without success. To demonstrate our resolve and to press for real results, the NAM and 16 other trade associations last week formed the Alliance for Fair Trade with India (AFTI). Together, we are asking the Obama Administration to address this issue at the highest levels of the Indian government and to end discrimination against American exports.

U.S.-India Trade and Investment

In 1948, India and the United States were two of the 23 original contracting parties to the General Agreement on Tariffs and Trade (GATT), the predecessor to the World Trade Organization (WTO). India played a significant role in the development of the GATT and then the WTO. The WTO represents the primary set of rules that govern U.S.-India trade and commercial relations.

Based on mutual respect for global trade rules, manufacturers in the United States have long sought closer economic ties with India. When India

began opening its economy in the 1990s, the U.S. and India commercial relationship took off. India benefitted from greater openness and closer commercial ties with the United States. Over the last decade, India's manufactured goods exports to the United States grew tenfold to \$38 billion. The United States is now India's second largest export market. U.S. foreign direct investment in India totaled nearly \$25 billion in 2011, of which \$3.5 billion was in manufacturing.



The United States and India launched formal Bilateral Investment Treaty (BIT) negotiations in September 2008, although those negotiations slowed down due to the Obama Administration's review of the BIT template (the so-called Model BIT review), which was completed in April 2012. While the United States has been ready for more than a year to restart negotiations, no formal negotiating timetable has been established as India has embarked on actions contrary to such treaty obligations.

Manufacturers in the United States have faced challenges in the Indian market – from very high tariffs and weak intellectual property protection and enforcement to complex and expensive regulatory processes. U.S. exports to India face an average applied tariff more than six times higher than Indian goods face in the United States. India ranks 132 out of 185 countries on the World Bank’s *Doing Business* report – below Papua New Guinea, Swaziland and Yemen. India also dropped to 100 out of 132 countries in terms of its global trade-enabling environment, according to the World Economic Forum’s *Global Enabling Trade Report 2012* – behind China, Indonesia and Argentina.

Despite these challenges, manufacturers in the United States have viewed India as a promising market with great potential. However slowly, the Indian government was making progress toward reform and greater openness. India is the world’s largest democracy and second-largest market by population. It has a young, dynamic and innovative workforce with a well-deserved reputation for quality production, particularly in key sectors. Today, India boasts a \$1.8 trillion GDP – larger than Australia, Canada or Mexico. It is a rising middle income country, a G20 member and an important voice on the global stage.

India’s Industrial Policy Actions

However, India’s industrial policy is putting this growing trade and investment partnership at risk. Over the past year and a half, we have seen a damaging pattern of actions in India that are discriminating against U.S. exports of a wide array of goods. These actions have no other purpose but to favor

India's domestic corporations in strategic state-favored and state-advantaged sectors at the expense of manufacturing and jobs in the United States.

Consistent with a National Manufacturing Policy issued in late 2011, the Indian government is imposing local content requirements, denying or revoking patents and taking other steps to "induce the building of more manufacturing capabilities and technologies within the country" by forcing the local production of electronic, telecommunications, solar energy equipment, medicines and other "industries with strategic significance" and "industries where India enjoys a competitive advantage."

For example, India's Preferential Market Access rules would impose local content requirements on procurement of information and communications technology (ICT) products by government and private sector entities. Those rules require that as much as 100 percent of each covered product's market must be filled by manufacturers based in India, with the local content share for each product rising over time. The policy's coverage is so broad it could easily capture half of India's ICT market.

In the clean energy sector, India is requiring developers of solar photovoltaic projects employing crystalline silicon solar technology to use solar modules and cells manufactured in India. We understand India is considering whether to expand the scope of domestic content requirements in the solar sector to include solar thin film technologies. If this happens, it will make a bad situation far worse. Solar thin film technologies comprise the majority of U.S.

solar exports to India. The United States challenged several of these policies in February 2013 in the WTO.

India bans imports of remanufactured medical imaging devices and other equipment, while allowing sales of such equipment remanufactured in India. India recently denied or revoked patents for nearly a dozen innovative medicines. This includes medicines that were either distributed in India free of charge or sold at a small fraction of their cost in the United States. India imposes price caps on hundreds of medications. However, those caps do not apply to drugs Indian researchers develop.

On intellectual property more generally, India is a top country of concern for manufacturers in the United States. India continues to be a major channel for the export of counterfeits to consumers worldwide, with ineffective remedies due to major judicial delays and, in criminal cases, extremely low conviction rates. Furthermore, manufacturers are disturbed that India consistently promotes the view that trade secrets and patents impede innovation and the free exchange of technology. For all of these reasons, India remained on the United States Trade Representative's *Special 301* "Priority Watch List" in 2013.

Indian tax authorities increasingly are imposing discriminatory taxes on U.S. businesses, making them less competitive and triggering expensive litigation to resolve tax controversies. The uncertainty in India regarding tax administration has increased the cost and difficulty for foreign investors to do business in the country. Other critical concerns include barriers to foreign direct investment, particularly in the telecommunications sector, as well as

requirements to use local information infrastructure that inhibit cross-border data flows and India's anti-competitive export taxes on iron ore and its derivatives, which are designed to improve the cost competitiveness of its domestic steel industry – already the fifth largest in the world.

These actions are no way for a responsible stakeholder and rising global power to treat its second-largest trading partner. They are counterproductive to India's stated goals to attract capital and to develop its own innovative economy. Forcing local production and seeking to provide and create jobs through the rejection of basic property rights undermines India's ability to achieve the kind of long-term foreign investment that is vital for sustainable economic growth and job creation.

These actions are also inconsistent with international norms. Several appear to violate India's WTO obligations, including certain provisions of the GATT and the Uruguay Round agreements that prohibit local content requirements and require equal treatment for imported and domestic products. As a founding member of the GATT, India helped establish these fundamental "national treatment" rules some 65 years ago.

Without an immediate and purposeful response, India's industrial policy could spread and be applied to other products and sectors. It sets an unfortunate example that other countries are sure to follow. India's National Manufacturing Policy refers to other "industries with strategic significance" that, as far as we are aware, do not yet face new discriminatory treatment. It speaks of compulsory

licensing as a way to promote “technology acquisition and development” in the clean energy sector.

The Indian government is well aware of all these concerns, which have been raised repeatedly in Washington and Delhi by the U.S. government and businesses. They have been outlined in the annual *National Trade Estimate* and *Special 301* reports prepared by the United States Trade Representative and in the NAM’s written statement to the House Ways and Means Trade Subcommittee in March 2013. Some are the subject of ongoing WTO dispute settlement proceedings.

Seeking Action and Results

The NAM is committed to resolving these concerns. To that end, we joined 16 other trade associations to form AFTI. This coalition unites a wide manufacturing and business community behind concrete solutions. Together, we are calling on the Obama Administration to raise concerns immediately at the highest levels of the Indian government. We understand Secretary of State John Kerry raised these issues during this week’s U.S.-India Strategic Dialogue.

AFTI members want a level playing field and a fair shake in India. We want India to end its discriminatory industrial policy and unfair trade practices and ensure those practices are not repeated or extended to other products or sectors in the future. We look forward to the results of Secretary Kerry’s visit to India. We hope and expect the Indian government will respond positively and work constructively with the manufacturing community to address and resolve concerns.

Until we see positive action, it will be difficult to convince manufacturers and others that India is ready to undertake the obligations of a BIT. While achieving a BIT based on the U.S. template with India would help address a significant number of concerns manufacturers are facing with the Indian government's actions, it is not clear that the Indian government has any intention of negotiating a strong, market-opening and enforceable treaty.

Given the complexity, time and resources that a BIT negotiation entails, it is critical for the U.S. government to determine if a strong BIT outcome is possible. If it is not, those resources might be best directed to negotiations with other countries. A BIT is not and should not be a political deal. It is a key part of the international rules-based system. Getting it right is vital to level the playing field and strengthen manufacturers' competitiveness in a challenging global economy.

A strong, bilateral trade and economic relationship is essential to achieving the strategic aims of India and the United States in South Asia and beyond. However, to have the kind of strategic partnership we all want, India must play by the rules.

Conclusion

The NAM looks forward to working with the subcommittee to identify solutions and improvements that can address these actions, increase opportunities for manufacturers and grow commercial activity between the United States and India.