U.S.-India Strategic Partnership Forum
Recommendations for Economic Progress
First 100 Days

Businesses across the globe are poised to contribute to India's economic growth and job creation agenda under Prime Minister Modi's second term. U.S. companies, with a rich history of long-term investment in India, are optimistic about India's growth potential and are committed to India's future.

Historic Partners

From venerable companies like General Electric and Boeing, to start-ups such as Stripe, U.S. industry has contributed to India's growth in a number of ways, ranging from Foreign Direct Investment (FDI) to employment, to Research and Development (R&D). Consider:

- As of mid-2018, U.S. companies directly employed more than 1.5 million individuals contributing $19.8 billion in direct employee compensation and indirectly employed over 6.6 million individuals in India.
- U.S. companies contributed almost $44.5 billion in FDI in 2017, a 15% increase over the prior year.
- In 2018, the bilateral trading relationship reached $142 billion, with India realizing a $24.3 billion trade surplus.
- The U.S. is India's largest export market, accounting for 16% of India's exports.
- More than 100 Fortune 500 companies maintain R&D facilities in the country.
- U.S. companies contributed $76 million to India's Corporate Social Responsibility (CSR) program in 2016. Among the nation's top 300 CSR contributors, 63 were U.S. companies.
- Nearly half of the Fortune 500 companies doing business in India have set targets to reduce greenhouse gases, improve energy efficiency and increase renewable energy sourcing.

Recommendations for Progress

Forum members recognize the government's efforts to improve the business environment and believe these improvements will bear fruit with further enhancements. India's rapid progress in ease of doing business has put it on par with Vietnam and Indonesia (though still below both), and India could rapidly improve to be on par with Malaysia and Taiwan in the global Top 20 during PM Modi's second term. Building a strong foundation of trust is essential to improving the business environment and attracting investment. Companies seek a predictable and stable business environment where civic services, such as the provision of water and electricity, taxation and regulation are consistent. Rapid action in the following areas will send a strong signal to investors that India is open for business.

Improve Government Regulatory Processes and Procurement Reform

India can improve predictability for industry by adopting and adhering to an Administrative Procedures Act implemented across the government, which provides for a consistent notice and comment period and meaningful consultation where stakeholder input is taken seriously. An example of a best practice in this area is the Telecom Regulatory Authority of India, which runs a predictable process, including a standard comment period and consultation schedule for new rules, as well as proposed changes to existing rules.

Additionally, the government can save money and increase its own operational efficiencies by improving the regulatory environment and consistency in the procurement and tendering process across sectors. We recommend the following actions:

- Adopt the Quality and Cost-Based Selection (QCBS) approach for tendering.
- Develop regulations that standardize procurement across the government, addressing the rights and obligations of both parties to meet contractual obligations, including performance objectives for the vendor, on-time payment requirements for the government and provides for notice and an opportunity to cure obligation failures.
- Adopt anti-corruption legislation that ensures controls against corrupt practices while empowering government procurement officials to take decisions of commercial importance without the fear of being penalized. Long-term, update the Indian Penal Code to provide further reforms.

Tax Coherence

Forum members report the corporate tax rate is a barrier to establishing or expanding their manufacturing capability. Service-based industries also report the tax rate as a barrier to their further investment in India. Today, India's corporate tax rate stands at approximately 34.9% and after considering a distribution tax of 21.1%, applicable on dividends paid to shareholders, the combined average tax rate is 46%, ranking India among the highest in the world and certainly the highest in the region.

Country	Last	As on
China	25.00	Dec/19
Myanmar	25.00	Dec/18
Malaysia	24.00	Dec/19
Vietnam	20.00	Dec/19
Singapore	17.00	Dec/19
Taiwan	17.00	Dec/19
Hong Kong	16.50	Dec/18

While the 2017 Union Budget reduced the average tax rate to 25%, the benefit was applied to companies whose total turnover on domestic gross receipts did not exceed 250 crores. The result is that large companies with the capability of making further investment in India did not benefit from the reduction in the rate. Going forward, the gross receipt limitation should be removed, and the overall corporate tax rate lowered so that the average effective corporate tax rate is competitive with other emerging and neighboring economies. Any contemplated changes in the tax rate should be subject to an open consultation process to accommodate stakeholder input.

Applying taxes retroactively undermines industry's trust in the predictability of the business environment. Several years-old high-profile cases are watched closely by the investment community and remain ongoing and unsolved, despite government assurances that it will not bring retroactive claims.

The tax appeals process, with its requirement of a 100% cash deposit as a pre-condition to initiate the appeal, violates the notion of a fair appeals process and takes working capital out of the economy, impeding India's own goals of attracting investment. Suggested actions:

- Resolve the outstanding tax cases. Where the government has entered into international arbitration for the resolution of cases, adhere to the final determination.
- Commit to and adhere to the terms of the international treaty ruling on retrospective tax.
- Remove the retrospective clause from the income tax laws to provide stability and predictability to potential investors.
- Issue a directive to relax the pre-condition of cash deposits as a condition of filing an appeal at the Tax Authorities and Courts, and reinstate the prior practice of accepting a bank guarantee.

The introduction of the Goods and Service Tax (GST) regime was a welcome reform. Continued focus is needed to resolve procedural and legislative issues faced by industry across sectors. Challenges range from implementing new and unique concepts, customizing IT systems to meet new requirements, supply-chain reengineering, complex documentation and high tax rates for certain goods and services to complex or no clear treatment for many common transactions. Issues requiring urgent attention:

- Resolve the Value Added Tax and GST legacy cases from the pre-GST era within defined timelines.
- Reconsider introducing e-invoicing until the GST system stabilizes. While we support mechanisms to add efficiencies to the system we feel the current proposal is premature and could pose a deterrent threat to businesses, resulting in signification disruption for businesses and the economy as a whole.
- Implement the changes in the tax rate structure for solar projects. Since the roll-out of GST, the solar power industry has struggled with ambiguity on GST rates for procurement of Solar Power Generating Systems (SPGS) and various components required for setting-up solar power generation projects.
- Provide ease of compliance for companies for the first cycle of return and audits beginning in June 2019.

Commitment to Global Leadership in the Digital Economy

No other country is better positioned than India to lead the global digital economy. With its success at shaping and dominating the IT services/back office processing industry, which is expected to generate $181 billion in India by 2019, India can extend its influence to the emerging e-commerce sector and the larger digital economy by implementing an enabling policy framework which supports the following:

- The free flow of data across borders, including the flexibility to process and store data on- and off-shore without government proscription.
- A data protection framework that protects personal information while being flexible enough to inter-operate with existing international frameworks.
- Strengthening commercial cyber security by adopting a risk-management approach to cyber security and strengthening cooperation between government cyber security entities and the private sector.
- Eschewing regulatory approaches that treat domestic companies differently than foreign-owned companies and refraining from establishing separate rules and regulators for offline and online companies.
- Re-assessing existing policies, such as the RBI decision to prohibit payment system data from leaving the country, through a public consultation process, to assure alignment with the new framework.
- Forbearing on policies that restrict the provision or impose content requirements on new digital services, including so-called over the top (OTT) services.
- Aligning India's digital tax policy as raised in the 2017 Union Budget with international norms consistent with the outcome of the OECD BEPS process on digital tax, expected in 2020.

Make in India – For the World

Forum members have invested in manufacturing facilities in India and want to realize a return on the investment. Corporate executives, however, need assurance that they can keep their plants operational 52 weeks a year, which means they must be able to cost efficiently manufacture for global supply chains. High tax rates, systemic infrastructure failures and government-created policies are often counter-productive to the shared goals of keeping these plants operating at capacity. Given the complexity of the issues, Forum board members are undertaking an analytical deep dive into the issues facing foreign investors in India and will make recommendations to the government. The Forum will present this report to government officials later this month.

As the government is aware, the situation in the auto sector is particularly acute and calls for immediate action. Vehicle manufacturing contributes more that 7% to India's GDP and the sector is one of the largest generators of jobs. Every job in an assembly plant creates approximately 6-10 additional jobs. However, vehicle sales have declined steadily in 2019 including a 16% decline in April, the worst in eight years. The sales decline has resulted in major auto companies cutting production, and starting to lay off employees. The reduction in jobs will have a serious impact in the economy and companies have started to lower their sales forecast for 2019-2020 and put on hold plans for further investment. We urge the government to take the following immediate actions:

- Cut GST rates to stimulate vehicle sales. A GST rate cut combined with a Cess reduction for automobiles would boost sales, stabilize auto production, and add a much-needed stimulus to the economy.
- Announce plans to accelerate trade negotiations and to establish a government body to focus on vehicle exports. An increase in the number of global markets with duty free access for autos will increase the demand for Indian made vehicles. A new body focused on the regulatory issues of large exporters would remove obstacles that are in the way of India becoming a global leader in vehicle exports. Proposed reforms include greater co-ordination between the Commerce and Finance ministries.
- Provide assurance to automakers of the predictability of the regulatory environment. Whether it is the emerging electric vehicle policy, or the discussions about the ongoing use of diesel for passenger vehicles, we urge the government to assure automakers that the government will seek input from industry on how best to accelerate the transformation of India's auto sector and not implement any new major regulatory change that would jeopardize existing investments.

Improve Market Access Conditions

U.S. importers continue to struggle with market access restrictions ranging from tariffs differing from bound rates to technical barriers to trade, such as duplicative testing requirements and domestic standards. To address these complex issues, the Forum has joined with the Atlantic Council to conduct a detailed analysis and recommendations for addressing the bilateral trade relationship, which we will present to the new government shortly. In the meantime, we recommend further progress can be made in areas where India already has a good start:

- Continue implementation of the Trade Facilitation Agreement.
- Accept and implement the draft National Standards Policy drafted in 2018 by the Ministry of Commerce.

Continued Liberalization of FDI Policy

India can continue to attract investors by eliminating restrictions. India's insurance sector, which in turn drives investment in manufacturing and infrastructure, requires lifting the FDI cap from 49% to 100% and eliminating the management control clause for joint ventures. FDI in e-commerce should be technology- and business-model neutral and should not limit foreign investors to a specific business model – such as limiting foreign investment in e-commerce platforms that serve consumers. Similarly, in aerospace and defense, lifting the FDI cap above 49% will substantially increase global corporations' willingness to invest in India and build India's domestic defense industry. Lifting the FDI cap in the brick-and-mortar retail sector will bode well for investment in infrastructure and job creation.

Intellectual Property Rights and Enforcement

India's small and medium sized enterprises will benefit from their own IP creation and will require consistent enforcement, as do large businesses operating in India today. Some reform areas include:

- Protecting patent filers' data for a period of five years, in order to protect the filers' IP from "copycat" filers who have not invested in R&D but are merely piggybacking on other's works.
- Adopting a notification mechanism for the DGCI to list details on their website of all new applications for marketing approval so that patent holders may query the database to determine cases of patent infringement.
- Improve the government's counterfeit detection and enforcement capabilities.
- Enact legislation to protect trade secrets and confidential information.
- Continue the government's anti-piracy education efforts including film, TV/cable and Internet services/websites.
- Secure final passage of The Cinematograph (Amendment) Bill, 2019, which prohibits the recording and unauthorized transmission of a theatrical film.

Agriculture Reform and Food Security

India is one of the largest consumers of food in the world and is the third largest agricultural producer. The country is the largest producer of milk, fruit and vegetables in the world. This massive raw material base, paired with a growing 1.3 billion population, presents considerable investment and partnership opportunities between the U.S. and India.

With agriculture being the largest sector of employment in India, the right balance of reforms could successfully double the farmers' income while resulting in economic and environmental efficiencies. A successful reform package would contain several elements:

- Improved access to new seed technology that reduces water use and is more resistant to monsoons.
- Measures to facilitate faster consolidation of small farms across the country.
- Incentives to spur the modernization of the agro-processing industry.
- Deployment of efficient cold chain infrastructure to mitigate food waste.
- Adopt regulations for the processed food sector that align with the CODEX standards to support global supply chains.
- Creating public private partnerships to support initiatives to educate the public in nutrition, safe food hygiene, and healthy food habits for children.

Defense and National Security

Since the civilian nuclear deal in 2005, India and the U.S. have steadily advanced defense and national security ties and have agreed to be Major Defense Partners in order to advance common security interests and priorities. The oft-cited figure of $18 billion of Indian defense procurement from the United States does not adequately illustrate the strategic value of the partnership. The United States, for example, has driven other nations to accept India's admission to global non-proliferation regimes, called for India to have a permanent UN Security Council Seat and embraced modernization of India's military capabilities as a key to peace and stability in the Indo-Pacific. Just this year, the United States offered steadfast support to India's right to defend itself in the wake of the Pulwama terror attacks and spearheaded efforts to push Beijing to designate Masood Azhar, a move China resisted for years.

The conclusion of the COMCASA agreement in 2018, granting of STA Tier 1 status, and expected conclusion of the BECA agreement to enable geospatial intelligence sharing and the Industrial Security Agreement that allows U.S. and Indian companies to share sensitive information will increase India's fighting effectiveness and ability to collaborate with U.S. forces. U.S. aerospace and defense industries already support Make in India, with critical components of U.S. military systems built in India for the global supply chain and a majority of U.S. defense sales offers now including Make in India provisions, including for fighter aircraft. U.S. aerospace and defense companies employ tens of thousands of Indians and are investing actively in innovation and entrepreneurship in India. These partnerships are critical to India's vision of a robust defense industrial base and defense innovation ecosystem.

India's defense budget and its modernization requirements are increasingly squeezed by limited funds, especially with the growing costs of personnel and pensions. Some estimate that India needs $250 billion in defense materiel upgrades over the next decade but has only $6 to $7 billion per year available. The United States is the most important partner for supporting India's efforts to increase its defense capabilities. Key priorities for India's defense modernization include:

- Further streamlining defense procurement procedures, including more reliance on the Integrated Defense Staff to mitigate inter-service rivalry.
- Additional improvements to offsets policy beyond those being announced early in Prime Minister Modi's second term to provide greater flexibility and speedy discharge of obligations met by international partners.
- Reductions in end strength like those envisioned in the new Army reforms to ensure quality and free up resources for investment.
- Stimulation of defense industry, including through the reform or privatization of defense public sector undertakings and further relaxation of FDI caps for defense including permission for ventures with more than 49% foreign ownership to qualify for Make in India or strategic partnership purposes.
- Defense Procurement Procedure reform led by the Defense Planning Committee to enable consideration of value and strategic factors like contribution to development of the defense sector rather than just price and technical requirements.

Infrastructure

India is now at a crucial stage where infrastructure investment will play a vital role in sustaining economic growth and attracting new investment. However, land acquisition, aggressive bidding and non-performing assets are key challenges to infrastructure development. If Public Private Partnerships (PPPs) are to be used as a financing and management vehicle, structural improvements are needed. We recommend the following actions:

- Improve the clarity of project specifications to facilitate a more accurate assessment of risks, which will result in improved risk-sharing and risk-management among the participants.
- Develop criteria to ensure strong and credit worthy counterparties.
- Include international arbitration clauses in all PPP contracts.
- Shorten the timeframe for dispute resolution by appointing an independent regulator or international arbitration with enforceability authority.

There is potential for India to take advantage of the large pool of investments available across multiple classes of investors in the infrastructure financing sector. Domestic sources such as India Pension Funds, with close to a trillion dollars of assets which have been lying dormant, could give a boost to the sector if utilized efficiently. The government and Reserve Bank of India will need to develop a holistic approach to dealing with stressed assets, setting a policy applicable across sectors for non-performing assets.

Energy

As India's economy continues to grow, urbanization and evolving demographics will result in significant increases in energy consumption. India will account for one-third of the growth in global energy demand in the coming decades and developing the country's domestic resources will aid India's ability to meet the demands of a growing middle class in a modernizing economy. While the country is moving towards more sustainable solutions to fill the gap in the supply and demand of energy, the following reforms could help the sector attract the required investments to meet this demand:

- Incorporate natural gas into the GST regime in order to eliminate varying state tax rates and to provide greater certainty for natural gas suppliers and consumers.
- While the UDAY scheme has made progress in the power sector in select states, there is still an urgent need for ensuring timely payments by DISCOMs in order to increase investor confidence and ensure viability of projects.
- Relax stringent banking norms and lower the cost of funding for the power sector to increase the development of renewable energy projects.
- Initiate a dispute resolution committee or body to resolve issues in the energy sector, which will help reduce untimely delays and bring down the cost of doing business in the sector, which will ultimately result in lower tariffs to energy consumers.
- Auction sufficient numbers of large coal blocks for commercial mining without end-use restrictions. The proposed auctions would attract new investment and technology in addition to improving mining efficiency and coal production in India.

- Liberalize biofuel import regulations, which will help the government meet its blending targets.

Environmental Management Reform

Forum members are committed to environmental stewardship. E-waste and the Plastic Waste Management Rules have become difficult to implement. A national framework to create regulatory coherence among all levels of government and relevant agencies needs to be put in place with timelines for implementation. The framework should be subject to open consultation and designed to be environmentally effective.

Labor Reform

We encourage the government to re-commit to its effort to modernize and rationalize the country's disparate labor laws. Flexibility in hiring, firing and restructuring organizations will be needed to continue expanding the overall number of jobs; while effectively deploying the workforce and meeting the needs of new and continuing workers. We recommend the government convene an experts' group to study and propose how to consolidate the existing law and labor code by conducting a process similar to the Shri Krishna Commission, which included public consultations and written comments from all interested parties.