

U.S.-India Insight

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# A BIT Can Be a Lot

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Prime Minister Narendra Modi arrives in the United States in a few short weeks. Officials from both countries are attempting to establish deliverables for the trip and are looking for stretch goals for the coming years. While the Bilateral Investment Treaty (BIT) is often referenced as an objective, rarely is it given its proper place as a potential game-changing agreement.

BIT talks were launched under President George W. Bush but have progressed slowly. This is due, in large part, to consecutive, unrelated “revisions” of the model BITs (called a Bilateral Investment Promotion Agreement, or BIPA, in India) by both the United States and India. The United States released its revised model in [2012](#), and India is apparently on the cusp of following suit.

Few analysts look at the BIT as something more than a positive political statement, so there is not always a great deal of energy devoted toward finalizing the BIT—either from policymakers or the business community. In practice, a high-standards BIT has the potential to remove significant barriers to investment on both sides.

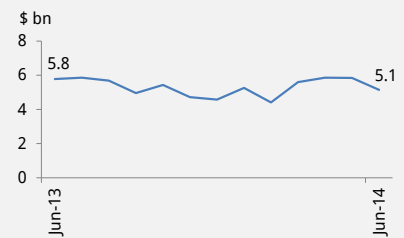
### IMPROVING THE INVESTMENT CLIMATE

The deterioration in bilateral economic relations over the last few years has largely been driven by four main issues in India: the slow pace of reform, particularly as it relates to foreign direct investment (FDI) caps; concerns about patent protection afforded to pharmaceutical products; the introduction of forced local manufacturing rules in some sectors; and an increase in cross-border taxation cases. Below is a quick sketch of how these issues are handled in the U.S. and Indian BITs:

Issue	Handled in U.S. Model BIT	Handled in Indian Model BIT
<b>Foreign Direct Investment Caps</b>	<b>Article 3: National Treatment at Establishment</b> This article equates to removing FDI caps in sectors where domestic firms do not face equity limitations.	Not covered.
<b>Forced Local Manufacturing</b>	<b>Article 9: Performance Requirements</b> Limits the ability to force a level of local content.	Not generally covered, though India’s treaty with <a href="#">Kuwait</a> does restrict the use of performance requirements on investments.

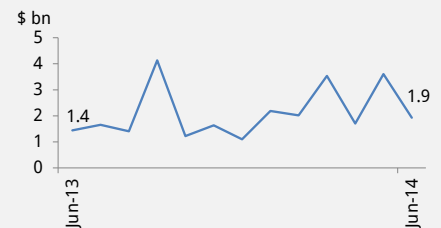
### KEY DATA

**-3.0%**



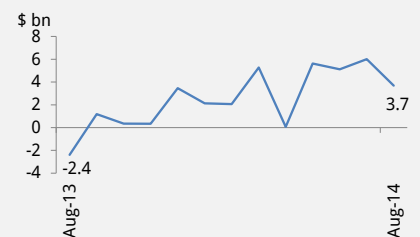
Decrease in U.S.-India goods trade, 12-month rolling average, per U.S. Census\*

**+11.7%**



Increase in FDI, 12-month rolling average, per DIPP

**+69.3%**



Increase in FII, 12-month rolling average, per NSDL

\* Not updated since our last newsletter.

<b>Taxation</b>	<b>Article 21: Taxation</b> Taxation generally defaults to the Double Taxation Avoidance Agreement, though the U.S. model allows for taxation to equate to expropriation.	Similar to the U.S. model.
<b>Intellectual Property</b>	Refers to intellectual property rights in several areas but typically defaults to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as the standard.	Notes that intellectual property (IP) is an asset that makes up a part of an investment, but it is not otherwise covered.

As noted above, concluding a high-standards BIT could have a substantial, positive impact on the investment environment—potentially “fixing” two of the four main areas of dispute—FDI caps and local manufacturing rules. This is in addition to smaller benefits, such as reducing restrictions on the nationality of executives and a commitment to greater transparency in rule making.

#### FROM INDIA’S PERSPECTIVE

India has fewer incentives for wanting a BIT with the United States, as the United States generally places nominal restrictions on foreign investors. But there is one very big hook: investor protection as a means to attract infrastructure investment into India. Prime Minister Modi is committed to building out India’s inadequate infrastructure and needs capital and expertise. U.S. investors are reluctant to invest in infrastructure directly, citing the examples of about a dozen power projects built by U.S. firms across India in the 1990s—all of which suffered from payment security problems. A BIT may provide a layer of much-needed protection that can lure U.S. companies back in to support India’s industrial drive.

#### COMMIT TO THE BIT

We can be quite certain that the commitment to negotiate a BIT will show up in the joint statement following Prime Minister Modi’s visit, as it has for the last [several years](#). But between joint statements, there must be a greater commitment from both sides to conclude talks—including by the U.S. business community, which has not placed a great deal of priority on this deal. There is much to be gained by both sides through a good BIT.

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