



Navigating the Headwinds:

Mitigating Contention in India-US Business Engagement

POLICY REPORT # 1

Deconstructing India's Preferential Market Access (PMA) Policy

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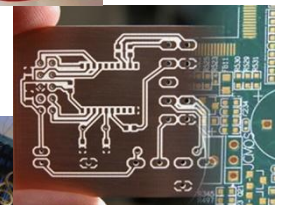
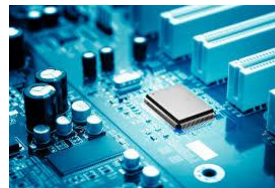
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ICRIER Wadhvani Programme of Research Studies on India-US Relations and Policy Issues

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I. INTRODUCTION

Indian policy makers are once again dealing with the ire of foreign investors, this time over the implications of the Preferential Market Access (PMA) policy notified by the Government of India in February 2012. PMA¹ mandated a phased increase in the domestic value addition of electronic goods. The notification included products that have security implications and must, therefore, be procured from a domestic manufacturer to the extent prescribed. The policy was made applicable to all government ministries and their agencies except defence, but excluded commercial sales.²

PMA quickly became a matter of contention, particularly between investors from the United States and the Indian government. The US-India Business Council (USIBC), on behalf of its 350 member companies, urged the Indian government to review the policy. PMA was also extensively criticised by different quarters, including foreign companies and industry associations³ in both India and the US.

USIBC contested the possibility of bringing private companies under the PMA umbrella and warned that a mandated approach to foreign investment would only drive away investments from India. Technology groups from countries such as Australia, Canada, Japan,⁴ South Korea, and Taiwan had also raised concerns over the “flawed policy”, which they claimed disregards market-based principles of manufacturing growth.

Several other instances in the recent past have reinforced concerns that India is turning protectionist and reneging on its international commitments. For instance, the Supreme Court’s judgment in the Glivec patent case and the imposition of retrospective capital gains tax on telecom firm Vodafone have dented India’s image among foreign investors.

The PMA policy is driven by two broad objectives: a) India’s national security concerns; and b) preserving and indeed promoting domestic manufacturing, especially in the information and communication technology (ICT) sector. There is widespread belief among decision making bodies that the growing pervasiveness of IT and electronics has increased India’s vulnerability to cyber attacks, which are now a reality in India.⁵ The country has suffered such attacks on its critical infrastructure. Besides, India’s decision to join the WTO’s Information Technology Agreement I (ITA I) in March 1997,⁶ has been criticised for damaging its domestic manufacturing capabilities by permitting duty free imports under 217

¹ http://deity.gov.in/sites/upload_files/dit/files/Preferential_Market_Access_Notification_1232012.pdf

² http://eprocure.gov.in/cppp/sites/default/files/gos/Preferential_Market_Access_Notification_1232012.pdf

³ Other associations include American Chamber of Commerce in India, Information Technology Industry Council, ITI, etc.

⁴ Japan Information Technology Service Industry Association

⁵ Telecom Live, September 2013, “Huawei attacks BSNL Network”

⁶ http://commerce.nic.in/wtoit_2.htm

tariff lines.⁷ Over a period of time, this has resulted in inverted duty structures, which add to India's existing cost disadvantages. Boosting domestic manufacturing would, the argument is made, also help India reduce its sizable balance of payments deficit in the electronics sector.

In response to concerns expressed by US and other foreign investors on the application of PMA to the private sector, the Indian Prime Minister's Office (PMO) decided in mid-July 2013 to review the policy. A PMO statement put on hold all aspects related to private sector procurement and called for an assessment of manufacturing capability in products that qualify for domestic value addition. The PMO further decided that no notifications on PMA in the private sector would be issued until the review is complete.⁸ In December 2013, the Indian cabinet approved a revised PMA, completely exempting the private sector from compulsory domestic sourcing of technology products included as security sensitive under the policy. This policy will be valid for a period of ten years.

This paper is intended to provide an understanding of PMA as a policy instrument, its implications for foreign investments and its relevance for the growth of manufacturing in India. Section II outlines the provisions of the policy and addresses concerns raised by stakeholders. Section III explains the concept of preferential market access along with illustrations of how this policy has been adopted in other countries. Finally, Section IV evaluates the effectiveness of the policy to achieve stated objectives. Section V offers conclusions and recommendations. The analysis and arguments presented in the paper are based on information from secondary data sources and stakeholder interactions.⁹

⁷ Murali Kallummal, 2012, "Process of Trade Liberalization under the Information Technology Agreement (ITA), Centre for WTO Studies, IIFT, *CWS Working Paper no: CWS/WP/200/3*

⁸ <http://pmindia.nic.in/press-details.php?nodeid=1660>

⁹ Stakeholders include representatives from DeitY, DoT, and Industry Associations

II. INDIA'S PMA POLICY AND WHERE IT STANDS TODAY

Market access is a measure of a country's openness to foreign goods and services. Preferential market access tools are used by countries to control the import of products and encourage domestic manufacturing. PMA can also be seen as the practice of introducing policies that are designed to favour domestic firms. Several countries have employed preferential market access policies to bolster domestic manufacturing, which are also referred to as "localisation barriers to trade". The five different types of such localisation barriers are linked to production or sales, intellectual property (IP) or technology transfer, investments, standards or certification, or to data localisation.¹⁰ In the case of electronics, localization is also seen as an instrument for security. Recent examples of security breaches¹¹ have led countries to become conservative in IT openness.

India's localisation barriers under the PMA are production linked through local content requirements, stipulating that final products should contain a certain percentage of local value addition, but does importantly not provide for any price preferences. Similar policy provisions in India include the National Solar Mission, which mandates solar energy producers to procure 50 per cent of their requirements from domestic solar cell manufacturers. This provision is applicable to projects using crystalline silicon technology, which is the technology most domestic Indian manufacturers employ, in order to qualify for subsidies.^{12,13} FDI regulations on multi-brand retail¹⁴ also require foreign firms to comply with local sourcing conditions.

India's PMA policy provides preference to domestically manufactured electronics products under the following terms¹⁵:

"The Government has ... laid down the following policy for providing preference to domestically manufactured electronic products, in procurement of those electronic products which have security implications for the country and in Government procurement for its own use and not with a view to commercial resale or with a view to use in the production of goods for commercial sale."

The list of electronic products is to be notified by concerned ministries and their departments, and agencies are required to procure those products from a domestic manufacturer to the extent prescribed in these notifications. Domestic manufacturers include all companies,

¹⁰ Stephen Ezell, 2013, "Forced Localization Policies Threaten Global Trade in Innovative Industries"

¹¹ Washington State Administrative Office of the Courts (2013), Internal Site of the Federal Reserve (2013), NASA (2012),

¹² The Committee of Energy and Commerce Memorandum, United States, June 2013

¹³ Developers using thin film technology can be sourced from anywhere. The US challenged this barrier at the World Trade Organization (WTO) on February 6, 2013. Japan and Australia asked to join the dispute.

¹⁴ Press Note 5, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India

¹⁵ Using the version

http://deity.gov.in/sites/upload_files/dit/files/Preferential_Market_Access_Notification_1232012.pdf

Indian or foreign, engaged in manufacturing that are registered in India. The definition includes contract manufacturers, but excludes traders. The policy stipulates that, within the first year of its implementation, 25 per cent of value addition must be done domestically in India.

The Department of Telecommunications (DoT) and the Department of Electronics and Information Technology (DeitY) proposed a list of sensitive telecom and communication equipment and other generic equipment respectively. In January 2013, a draft list of 14 products (details in Table 1 below), along with a schedule for domestic value addition requirements,¹⁶ was circulated by DoT. The Department of Electronics and Informational Technology (DeitY) has similarly issued guidelines to provide preference to domestically manufactured electronic products in government procurement, the latest version of which was issued in June 2013.¹⁷ The notification stated that all products would not be taken up simultaneously, and products with high value in terms of procurement in government and government agencies would be identified for notification on a priority basis. The indicative list of 18 such items can be seen in Table 2 below.

TABLE 1: LIST OF SECURITY SENSITIVE ITEMS IDENTIFIED FOR PREFERENTIAL MARKET ACCESS (AS ON JAN 2013)

Serial No	Product Description
1	Encryption/UTM platforms (TDM and IP)
2	SIM Card Operating System (OS) and Personalisation activities
3	Core/Edge/Access Routers and Ethernet switches (L2 and L3) up to 1 Tbps capacity
4	Wireless/Wireline PABXs
5	SDH/Carrier-Ethernet/Packet Optical Transport equipment and Digital Cross connects
6	DWDM/CWDM systems
7	GPON equipment
8	GSM 2G based BSS Systems including BTS and BSC
9	3G based wireless Access Systems including Media gateway, media server, GGSN, SGSN, Node B , RNC, HLR, SMSC & other subsystems
10	LTE based broadband wireless access systems (eNodeB, EPC etc.)
11	Wi-Fi based broadband wireless systems (Access Point, Aggregation Block, Core Block etc.)
12	Microwave Radio systems (SDH/IP/Hybrid)
13	Repeaters (RF/RF-over-Optical), IBS, and Distributed Antenna system
14	Network Management systems

Source: DoT

¹⁶ <http://www.dot.gov.in/sites/default/files/Draft%20List%20of%20Security%20Sensitive%20Telecom%20Products%20for%20PMA%20by%20Govt%20Licensee-consultation%20dated17-01-2013.pdf>

¹⁷ File No. 8(78)/2010-IPHW, Ministry of Communications and Information Technology, DeitY

TABLE 2: INDICATIVE LIST OF PRODUCTS FOR PMA ISSUED BY DEPARTMENT OF ELECTRONICS AND INFORMATIONAL TECHNOLOGY (DEITY) IN JUNE 2013

Serial No	Products
1	Notebooks and netbooks
2	Tablets
3	Desktops
4	Servers
5	Printers
6	Keyboards
7	Monitors
8	Storage USBs, Memory Cards
9	CCTV and Surveillance Cameras
10	ATMs
11	Photocopiers
12	Scanners
13	Faxes
14	Smart Cards
15	Mobile Handsets
16	Handheld Terminals
17	PC Projector
18	POS based devices

Source: DeitY

Separate notifications have already been issued for LED products,¹⁸ tablets,¹⁹ laptops,²⁰ desktop personal computers²¹ and smart cards.²² As the entire policy is under review, the proposed list of products for telecom and electronics might also undergo change.

The PMA policy provisions in their current form comply with India's international commitments. As an observer to the WTO's Agreement on Government Procurement²³ (GPA), India is not legally bound to comply with GPA provisions. Parties to the agreement are mostly developed countries with mature industries and domestic manufacturing. India, among the group of observer countries, is still struggling with several domestic challenges that need government support and phased-out liberalisation. However, as a signatory to the WTO, India cannot extend the policy to the private sector, except for core security interests.

¹⁸ http://deity.gov.in/sites/upload_files/dit/files/PMA%20Notification%20for%20LED%20.pdf

¹⁹ http://deity.gov.in/sites/upload_files/dit/files/PMA%20Tablet%20PC.pdf

²⁰ http://deity.gov.in/sites/upload_files/dit/files/PMA%20Laptop%20PC.pdf

²¹ http://deity.gov.in/sites/upload_files/dit/files/pma_pc_print.pdf

²² [http://deity.gov.in/sites/upload_files/dit/files/PMA%20Notification%20for%20Smart%20Cards\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/PMA%20Notification%20for%20Smart%20Cards(1).pdf)

²³ The **Agreement on Government Procurement (GPA)** is a plurilateral agreement under the auspices of the World Trade Organization (WTO) that entered into force in 1996. It regulates government procurement of goods and services by public authorities of the parties to the agreement, based on the principles of openness, transparency and non-discrimination. The GPA was negotiated in parallel with the Uruguay Round in 1994, and entered into force on January 1, 1996

As part of its continuing efforts to reform and liberalise, India has been providing greater and non-discriminatory market access to foreign firms. India's approach to reform has been dominated by a gradualist model,²⁴ that in the context of India's political economy has served it well. However, India acknowledges the need for fair practices, and provides judicial recourse against any policy initiative that does not comply with its legal obligations, both domestic and international. This was further strengthened with India's accession to the WTO in 1995, and its signing several plurilateral, regional and bilateral agreements thereafter, that required adoption of global standards and libertarian practices. This has enabled the establishment of an institutional framework that provides for a consultative process to decision making.

In the case of government procurement under PMA, India is within its rights to provide preferential access to domestic producers.

Among other issues, the US believes that India's PMA policy will encourage protectionist measures in other countries, reducing global competition and open markets. The spill over impact of India's PMA to other countries, while possible, cannot be a reason for India to ignore policies that serve national interest. Moreover, this claim needs to be substantiated based on evidence from a longitudinal study. Evaluation will establish if their actual impact is commensurate to the perceived level of being restrictive and an instrument of economic nationalism. India's role as a globalised emerging economy has brought the country onto the centre stage of economic and political decision making. As one of the leading G20 countries among emerging economies, India's policies are now carefully scrutinised by the rest of the world. As a potential market for most developed countries, though policies like PMA are criticized, it fits in well with India's overall development strategy and is similar indeed with that in several other countries. This argument is further strengthened in the next section.

However, India's policies are hardly an anomaly in the post-2008 crisis period. "*The gated globe*"²⁵ is an emerging trend among countries across the world that want to enjoy the benefits of globalisation, but simultaneously insulate themselves from volatile capital flows and rising imports. Although PMA is principally a protectionist policy instrument, used by several countries, India's PMA policy is more benign and less distortionary than it appears. The policy does not allow for price preferences to domestic manufacturers, as in the case of other countries,²⁶ and is restricted to government procurement. The notification explicitly states that technically qualified domestic manufacturers are eligible only if they match the lowest bid (L1); in case domestic manufacturers cannot match the lowest price, or are not available at all, the entire contract can be awarded to a foreign company. With demand in the electronics hardware industry projected to increase at a CAGR of 24.4 per cent until 2020,²⁷

²⁴ Montek S. Ahluwalia, 2002, "Economic Reforms in India since 1991: Has Gradualism Worked?"

²⁵ "The Gated Globe", The Economist, October 2013

²⁶ Refer "Buy America" policy discussed in Section II

²⁷ DeitY, 2012, Demand for Electronics Hardware in India estimated to increase from USD69.6 billion in 2011-12 to USD400 billion in 2019-20

and with the share of the private sector being significant,²⁸ the preference provided to domestic manufacturers is unlikely to create major distortions or undermine competition significantly. It would, however, provide technically qualified domestic manufacturers access to an otherwise restricted market. However, industry representatives fear that the revised PMA policy, that excludes the private sector, announced by the Government in December 2013, may jeopardise investments in the private sector, as it suggests a withdrawal from the “big push” reforms towards domestic electronic manufacturing.²⁹

Both telecom and electronics exhibit characteristics of networked industries, which imply high switching costs, problems of lock-in, increasing returns to scale in production, and decreasing average cost of production. High-technology procurement in India is driven by a few large international companies, in a decidedly oligopolistic market. Given their dominance, domestic manufacturers need support to gain access; PMA will thus only create an opening and no distort global manufacturing for IT majors^{30,31}.

As a policy, PMA holds the potential to provide a way to increase the capabilities of local manufacturers, and encourage foreign direct investments in India.³² According to the Indian Telecom Equipment Manufacturing Association (TEMA), implementing PMA is likely to boost FDI, since large telecom companies will focus on domestic manufacturing. Therefore the argument suggesting absolute protection is invalid, and foreign companies remain eligible to participate in manufacturing via the FDI regime and also through exports.

The revised PMA does not include domestic manufacturing requirements, percentage based or otherwise, for security-related products in the private sector. The PMO has officially communicated that the policy suggests a re-look at alternative approaches to handle security-related products, including certifications and the development of domestic testing capabilities.³³

²⁸ According to government sources, the share of government procurement in ICT is not more than 50 percent. This is based on stakeholder interviews conducted as a part of this research.

²⁹ <http://economictimes.indiatimes.com/news/politics-and-nation/government-exempts-private-sector-from-the-revised-pma-policy/articleshow/27480268.cms>

³⁰ M. F. Farooqui, Secretary of the Department of Telecommunications (DoT), during an industry event stated that multinational companies had much to benefit from PMA

³¹ http://www.business-standard.com/article/opinion/breaking-into-the-closed-circle-113073101234_1.html#.UfnKyQ_Cox4.email

³² Similar policies helped India develop its auto industry

³³ <http://pmindia.nic.in/press-details.php?nodeid=1660>

III. UNDERSTANDING PMA: EVIDENCE FROM OTHER COUNTRIES

Several countries adopt forced localisation policies under PMA to bolster domestic manufacturing. A recent example is the "Buy American" provisions of the American Recovery and Reinvestment Act of 2009. According to this provision, funds used for construction, alteration, maintenance or repair of public buildings and public works must procure all iron, steel and manufactured goods produced only in the US, with a price preference of 25 per cent.³⁴ The exceptions include non-availability, when the relative price against a foreign manufacturer is over 25 per cent, or where applying the provision is against "public interest" – where public interest not being defined could apply to almost any situation. The objectives of the policy are to save and create jobs, to give relief to those affected by the recession, and to invest in infrastructure, education, health and renewable energy. Many have argued against this provision, stating that it would not only damage the US's reputation with regard to its free trade commitments but is also unlikely to have a major impact on job creation.³⁵

The United States had first introduced the Buy America Act in 1933, which required the US government to prefer domestically made products. A similar Buy American Act of 1983 extended the 1933 legislation specifically to mass-transit-related products subsidised by federal grants or those valued at over USD100,000.

Facilitating market access for local manufacturers is thus a common instrument of state policy. Since the government is the largest consumer in almost all economies, and the only dependable source of business during economic downturns, most countries adopt measures to ensure that government spending benefits domestic industry. Procurement laws in several countries stipulate the need for government to favour local companies in procurement. For example, Brazil implemented local content requirements (LCR) in 4G telecommunication (2012-2014) and construction (2013). Canada used LCR for wind and solar energy projects (2009), Israel for textile purchases by security forces (2013), Australia for managing electronic health records (2012), South Africa for electrical components, solar water heaters, etc.³⁶ Most of these policies were adopted after the global financial crisis of 2008-09 with a common objective to empower small and medium enterprises, create employment, and increase the domestic revenue base.

Protectionism, much criticized by free-traders and much favoured by anti-globalists has not disappeared as the world embraced globalisation. Its instruments have changed from explicit

³⁴ Steve Tibbets, 2011, "Home Field Advantage: Domestic Preferences in Government Procurement and Obligations under International Agreements"

³⁵ February 2009, "Buy American: Bad for Jobs, Worse for Reputation", Policy Brief, Peterson Institute for International Economics

³⁶ Global Trade Alert <http://www.globaltradealert.org/>

to implicit³⁷. Rules defined by the General Agreement on Trade and Tariffs (GATT) permitted member countries to protect domestic production from foreign competition only through tariffs. The gradual reduction in tariffs led countries to innovate measures, popularly referred to as non-tariff barriers, to restrict imports. Non-tariff barriers include specific limitations on trade such as import licensing, customs procedures including anti-dumping practices, standards, government participation in trade, etc. During the 1980s, several countries imposed restrictions on foreign investors to protect their domestic industry, violating GATT Article III (National Treatment on Internal Taxation and Regulation) and Article XI (General Elimination of Quantitative Restrictions). Among other conditions, foreign investors were forced to comply with local content requirements, a violation of GATT Article III.4. The Agreement on Trade-Related Investment Measures (TRIMS), concluded in 1994, and agreed upon by all members of the WTO, prohibited the use of such measures, commonly notified in the agriculture and automotive sectors.³⁸ Additionally, a number of cases in the WTO reflected the use of non-tariff barriers to protect domestic industry rather than the violation of any agreed principle. For example the United States ban on imports of shrimp and shrimp products from India, Malaysia, Pakistan and Thailand, and the restriction on imports of tuna from Mexico³⁹ are interpreted as the use of NTBs to protect the domestic industry.

The financial crisis of 2008 brought about a change in the WTO's long-standing belief in the benefits of economic liberalisation.⁴⁰ Economies across the world saw a quiet return to protectionist measures, including tariff and non-tariff barriers to trade.⁴¹ The watchdog Global Trade Alert (GTA) reported that protectionist measures imposed in the fourth quarter of 2012 and first quarter of 2013 were the worst since the financial crisis began. Table 3 below ranks countries on the level of protectionist measures adopted since November 2008.

³⁷ Bhagwati Jagdish, 1988, "Protectionism"

³⁸ <http://www.meti.go.jp/english/report/data/gCT9908e.html>

³⁹ http://www.wto.org/english/tratop_e/envir_e/edis08_e.htm;
http://www.wto.org/english/tratop_e/envir_e/edis04_e.htm

⁴⁰ Clift and Woll, 2012, Economic Patriotism: Reinventing control over open markets, *Journal of European Public Policy*, 19(3), pp. 307-323

⁴¹ Ikenson, 2009, A Protectionism Fling: Why Tariff Hikes and Other Trade Barriers Will Be Short-Lived, Cato Institute

TABLE 3: COUNTRIES RANKED ON THE BASIS OF PROTECTIONIST MEASURES ADOPTED

Rank	Ranked by number of discriminatory measures imposed	Ranked by the number of tariff lines (product categories affected by discriminatory measures, max 1204)	Ranked by the number of sectors affected by discriminatory measures (max 79)	Ranked by the number of trading partners affected by discriminatory measures (max 232)
1	EU 27 (372)	Vietnam (943)	EU 27 (78)	EU 27 (201)
2	Russian Federation (231)	Venezuela (787)	Italy (78)	Italy (194)
3	Argentina (185)	Kazakhstan (738)	Argentina (73)	China (193)
4	India (113)	China (705)	Germany (66)	Indonesia (170)
5	Belarus (101)	EU 27 (676)	Algeria (58)	India (164)
6	Germany (99)	Nigeria (603)	Russian Federation (54)	Netherlands (164)
7	United Kingdom (98)	Indonesia (558)	China (52)	United Kingdom (164)
8	Italy (94)	India (514)	Kazakhstan (50)	Germany (160)
9	France (91)	Argentina (499)	USA (47)	France (159)
10	Brazil (80)	Algeria (485)	Nigeria (45)	Poland (159)

Source: *GTA Database*

The plurilateral agreement on government procurement (GPA) is part of the WTO's constant efforts to promote open and free trade. Re-negotiated in 2012, the GPA has created an effective legal framework for greater liberalisation of government procurement. Plurilateral agreements are signed by countries with similar objectives; countries decide to establish among themselves a common set of guidelines, often dealing with a particular sector. Plurilateral deals create rights and obligations among a narrower group of WTO members and therefore, are different from multilateral agreements. Examples include the Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, Financial Services Agreement, Anti-Counterfeiting Trade Agreement (ACTA), Informational Technology Agreement (ITA), etc. The GPA has put in place a non-discriminatory clause that prevents signatories from protecting domestic services and suppliers. Article III (National Treatment and Non-discrimination) of the GPA explicitly states that all signatories to the GPA **should not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership**. Currently, 42 countries (including 28 EU member countries) are party to the GPA, while 27 are observers. Ten of the 27 observer countries are negotiating accession. India is an observer.

Essentially, this implies that preferential market access policies implemented in the form of local content requirements cannot be implemented by any WTO member for commercial/private sector businesses, but can be used for government procurement in case they are not party to the GPA. India, an observer to the GPA and mindful of its international

trade obligations, has limited its PMA only to government procurement, which is permissible and WTO-compliant, although with a benign preference for domestic manufacturers. While the policy does not alter the competitiveness of foreign products in India, foreign firms with well established global supply chains might need to bear the cost of re-orienting their manufacturing and sales processes in order to meet requirements of the proposed law.

IV. EFFICACY OF INDIA'S PMA POLICY

Criticism from foreign investors aside, a more important and relevant issue for Indian policy makers is to evaluate whether the PMA is indeed optimal from the point of view of achieving its stated objectives. There is no clear consensus on whether such a policy will help India achieve either of its objectives, i.e., manufacturing or/and security, in the current scenario. India's concerns, however, are valid: rising demand for electronics does create a need for India to urgently develop long-neglected electronics manufacturing capabilities. Additionally, the deployment of high technology equipment has become a major security concern for India. In July 2013, Huawei, a Chinese telecom vendor, is reported to have attacked the public sector service provider BSNL's Base Switch Controller (BSC) in Andhra Pradesh from a remote location in Chennai through the internet.⁴² The BSC's software completely crashed as a consequence of this attack. Although the attack was said to be the result of rivalry between two private telecom vendors, it reflected a larger security threat, the costs of which can be enormous. India needs to secure itself against similar attacks on main switching centres and intelligent network platforms, which could have a much larger impact than the incident cited above.⁴³ In 2012, the government dealt with a serious security challenge arising from the use of Blackberry phones. After a lengthy battle with the device manufacturer, the government finally won access to its data.⁴⁴

Both objectives, therefore, are important to pursue and require immediate government attention. Whether the PMA can address these twin objectives, is a question that remains to be answered. There have been suggestions to delink the 'security' and 'manufacturing' aspects of the policy.

The claim that PMA will help resolve security concerns is contentious. According to the PMO, security objectives could be met through audits, tests, and should be handled separately from achieving higher domestic manufacturing. However, the Department of Telecommunications (DoT) continues to lay stress on the need for localised manufacturing to nip this problem in the bud, therefore linking the two objectives. It must be reiterated that domestic manufacturing does not imply indigenous manufacturing, as under PMA there is no distinction between an Indian and a foreign company in India. Therefore, domestic manufacturing is not going to ensure complete security. According to the Telecom Systems Design and Manufacturers Association (TDMA), telecom equipment consists of very complicated and advanced elements with software codes in which spyware and malware can

⁴² "Center to probe alleged hacking of BSNL network by Huawei", The Hindu, December 30, 2013 <http://www.thehindu.com/news/national/centre-to-probe-alleged-hacking-of-bsnl-network-by-huawei/article5516261.ece>

⁴³ Telecom Live, October 2013

⁴⁴ Government, Blackberry end dispute over interception of BB Devices, Economic Times, July 10, 2013. http://articles.economictimes.indiatimes.com/2013-07-10/news/40492683_1_blackberry-services-blackberry-messenger-interception-solution

be implanted in a way that may not be captured by the country's testing capabilities.⁴⁵ However, the United States has successfully used its testing procedures to help the country identify security loopholes in products supplied by Chinese telecom manufacturers.⁴⁶

The government acknowledges the immediate need to address security considerations. Accordingly, new testing standards are due to be announced by the Department of Electronics and Information Technology, Department of Telecommunication (DoT) and the National Technical Research Organisation (NTRO).⁴⁷ The Common Criteria Recognition Arrangement (CCRA)⁴⁸ clearance is no longer enough to certify global telecom gear used in India.⁴⁹ DoT has also established a pilot lab and the creation of a full-fledged certification centre is in progress. The National Cyber Security Law⁵⁰ introduced in 2013 proposes strategies to create a secure computing environment in India with adequate trust and confidence in electronic transactions, software, services, devices, and networks. These measures, if implemented well, can help address India's security challenges.

PMA can enable the process of ensuring more security, but does not guarantee it in the absence of other measures. There is a massive demand-supply gap for telecom equipments in India. According to TRAI's Recommendations on Telecom Equipment Manufacturing Policy, 2011, India will constitute about 8% of the global demand in 2019-20, yet meet less than 40% through domestic manufacturing. The current market is largely dependent on imports of both components and final products. A lot more than the PMA will be required for domestic manufacturing to catch up and match security standards in the long term. Other initiatives, such as those mentioned above, are likely to be more potent in addressing security concerns in the short-term. A more focused approach on testing equipment may be preferable to complete reliance on "Made in India" products.

PMA can however be one of many instruments to promote domestic manufacturing. Promoting manufacturing will require the government to facilitate research and development, fund equity, provide good logistics, and create effective infrastructure. An improved business environment will encourage domestic manufacturers and make Indian industry more

⁴⁵ <http://www.lightreading.in/lightreadingindia/news-analysis/172114/domestic-vendors-quick-pma-roll>

⁴⁶ Rajiv Kher, Additional Secretary, Ministry of Commerce,

http://www.communicationstoday.co.in/index.php?option=com_content&task=view&id=7889&Itemid=147

⁴⁷ NTRO is the country's technical intelligence gathering agency under the Prime Minister's Office

⁴⁸ CCRA ensures that products can be evaluated by competent and independent licensed laboratories to determine the fulfilment of particular security properties. Supporting documents are used within a common criteria certification process to define how the criteria and evaluation methods are applied when certifying specific technologies. The certification of the security properties of an evaluated product can be issued by a number of Certificate Authorising Schemes, with this certification being based on the result of their evaluation. These certificates are recognised by all signatories to the CCRA and motivate global telecom vendors to find common processes and reduce equipment certification costs worldwide.

⁴⁹ http://articles.economicstimes.indiatimes.com/2013-06-20/news/40093764_1_telecom-gear-telecom-equipment-security-sensitive-telecom-products

⁵⁰ http://deity.gov.in/sites/upload_files/dit/files/National_cyber_security_policy-2013.pdf

attractive for foreign investments. The National Manufacturing Policy (2011)⁵¹ also recognised the need for India to bolster domestic manufacturing. It outlines challenges faced by manufacturing including inadequate physical infrastructure, a complex regulatory environment, and inadequate availability of skilled manpower. Several proposals have been made to help India achieve increases in manufacturing activity, one of which is the setting up of National Investment and Manufacturing Zones (NIMZ). The National Telecom Policy 2012 and National Policy on Electronics 2011 also propose several measures to drive manufacturing in telecom, IT and electronics. In particular, the Modified Special Incentive Package Scheme (M-SIPS)⁵² proposes to attract investments in the Electronic Systems Design and Manufacturing (ESDM) industry using subsidies for investment in capital expenditure

In the broader context, PMA alone seems to be a feeble attempt at driving domestic manufacturing, given that manufacturers need more than just access to government procurement to become as competitive as a foreign supplier. According to an estimate provided by Booz & Co,⁵³ infrastructure disabilities lead to a cost disadvantage of 6 to 8 per cent for Indian manufacturers. Progress in infrastructure development, labour reforms, smooth credit, an improved intellectual property rights regime, and reduced red-tapism, when addressed, can ensure greater success of the PMA policy.

⁵¹ http://commerce.nic.in/whatsnew/National_Manufacturing_Policy2011.pdf

⁵² <http://pib.nic.in/newsite/PrintRelease.aspx?relid=85303>

⁵³ Booz & Co and COAI, 2012, “ Telecom Equipment Manufacturing Policy – Developing an Actionable Roadmap”

V. CONCLUSIONS

Forced Localisation under the ambit of Preferential Market Access policies is often referred to as “the new protectionism”. Countries adopt a variety of measures that are designed to protect, favour or promote domestic industries. For example, China’s policy is related to compulsory intellectual property transfer, while those of India, Argentina, Brazil, China, Indonesia, Malaysia, Nigeria, Russia, Turkey, and Vietnam, among many others, have introduced local content requirements for sectors ranging from information and communications technology (ICT), to energy, pharmaceuticals, financial services and the media. India, entrenched in manufacturing policy failures, has adopted the PMA to fix its glaring weakness in electronics and telecom manufacturing. Among several other initiatives promoted by the government, this is yet another well-intentioned policy.

Domestic manufacturers, especially telecom equipment makers supporting PMA, believe that the policy will encourage entrepreneurs to start product manufacturing in India.⁵⁴ While PMA addresses the demand side challenges of the industry, proposals in India’s recently introduced National Manufacturing Policy, National Telecom Policy, and National Electronics Policy tackle the supply side bottlenecks including capital expenditure, research and development, physical infrastructure, etc. PMA in this context is part of a policy mix and cannot yield successful results as a standalone initiative.

PMA does not represent a reversal of India’s economic reforms, it is more promotional than protectionist in nature. As argued above, it is in line with the local content requirement policies adopted by different countries to address domestic priorities. However, reactions from US business bodies have raised several concerns, some of which appear unwarranted. While there is no publicly available estimate on the loss accruing to American businesses due to the PMA, the impact would be quite limited due to the restricted application to government procurement at similar levels of price and quality.

Under the PMA, domestic manufacturers are not likely to create massive market distortions. The concern of investors that PMA represents a return to protectionism, therefore, may not be borne out. Apprehensions about the extension of the policy to the private sector have been belied and concerns about its extreme protectionist nature also seem exaggerated.

On the other hand, if successfully implemented, the PMA may add to the manufacturing capacity of domestic firms, the benefits of which will spill over to foreign investors in terms of technology demand, a stronger intellectual property regime and improved infrastructure.

Given India’s current environment of weak infrastructure and poor policy implementation, the stated objective of increased domestic manufacturing by mandating local content may not be realised. The public sector is unlikely to effectively lead a manufacturing surge without a renewed domestic reform push that creates an enabling environment for the private sector to

⁵⁴ Feedback from the Telecom Equipment Manufacturers Association, India

operate more freely. In this context, the newly introduced policies on manufacturing, especially in telecom and electronics, are a ray of hope.

The PMA may or may not deliver on its stated objectives, but in its current form, it does not violate India's international obligations. Most importantly, the revised PMA policy has ruled out private sector coverage addressing the apprehension of foreign companies. It provides clarity to domestic manufacturers with regard to policy incentives and asserts the focus on price and quality competitiveness. Security issues, which have provided the initial impulse to PMA, are also being dealt with separately; the National Security Council has been handed the task of defining security-related issues concerning products, projects or sectors. Additionally, alternative approaches to handling security-related products are being proposed, which include modes of certification and a roadmap for building domestic testing capacity.

The revised updated PMA policy will perhaps meet its basic objectives, while taking into account the interests of all stakeholders, domestic and foreign. To be successful during its existence over ten years, we need a well planned roadmap and simultaneous complementary efforts that overcome the weaknesses in the domestic market.

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