"BIT and Beyond"

Introduction of Report by Amb. H.K. Singh

at its launch

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1. **Backdrop**

- US NIC report on global trends 2030 – India's major contribution to global growth and likely emergence as an economic powerhouse by 2030. Not pre-ordained, depends on addressing challenges of education, governance, infrastructure and economic reform. India needs to emerge from current macro-economic imbalances, low growth and lagging investment. This is a strategic imperative, also linked to India's security.

- US support for India's emergence as a global power: "strategic bet on India's future" (Clinton), "full embrace of India's rise" (Donilon) and "linchpin" of US rebalancing towards Asia (Panetta).

- Trade liberalization is increasingly taking place outside the WTO through regional trade agreements. An estimated 80% of the rules that regulate the functioning of world markets are accounted for by US and EU-led PTAs. India needs to raise its involvement in and ambition on FTAs.

2. **Trends**

- In cumulative terms, the US is India's largest economic partner in terms of trade, investment, jobs and technology.

    - 2011-12 trade exceeded $100 billion, goods $59.2 billion (+30.59%), services $42.5 billion (growth rate similar to some CEPA partners). $500 billion in trade by 2020 is distinctly possible.

    - Major, fifth largest investor ($10.88 billion since 2000) but between 2007-11, leading investor in terms of projects (30%) and jobs (355,000)

- ○ India’s investments comparable at around $6 billion, $25 billion with M&A, tech sector alone supports 107,000 direct and 280,000 indirect jobs in US

- ○ 2009-12: During President Obama's first term, US investment up 30%, Indian 40%.Absence of a BIT is an anomaly. BIT will expand trade and investment, including in key areas like infrastructure.

3. <u>Constraints</u>

a) <u>General</u>:

- As large and vigorous democracies, both tend to seek liberal market access abroad while practicing their respective forms of protectionism at home.

- Both currently face urgency of undertaking economic reforms and domestic political gridlock.

- However, we need to take into account that there are large disparities between the two: India is still struggling to develop, does not enjoy the widespread prosperity of the US.

b) <u>Specific:</u>

India

- Setbacks to India’s investment climate: stalled reforms, regulatory uncertainty and draconian tax measures.

- Symbol and symptom of this adverse scenario: FDI in multi-brand retail with “opt-outs” for states.

Bilateral

- India does not figure in the USTR’s trade agenda, TPF has not met since 2010.

4. <u>Remedies</u>

- India has already embraced globalization for the benefits it brings and needs to align its domestic policies with the open global economic order it propagates abroad.

- After two decades of "politically constrained" liberalisation, it is time to give a definitive direction to India’s economic policy.

    - Major need to liberalise FDI in a host of sectors, e.g., FDI in defence can have a far greater impact on India’s technological prowess, high-end manufacturing and “strategic autonomy” than FDI in retail (2000-2012: FDI in retail only $ 3.6 bn/$272 bn, 1.3% of FDI inflows).
    - In areas of 100% FDI eg. IT, oil and gas, automotive, Indian companies are world leaders

<u>Outlook</u>

- The Government of India fully recognises the need for reform, but it remains to be seen how much can be achieved in the run-up to next year’s general election.

5. <u>Roadmap</u>

- Hence this “BIT and Beyond” report which outlines a possible roadmap for advancing India-US economic ties.

<u>BIT</u>

- Fast track BIPA/BIT negotiations (only four rounds of preliminary contacts since 2007).
    - US BIT model renewed in May 2012, objectives are clear: openness, protection and enforcement

    - India: Ongoing review because of recent investor—state arbitration cases, concerns about treaty shopping and broad provisions like “fair and equitable treatment”

Three Recommendations for GOI

- ISA function is essential to BITs and taking it away will severely undermine India’s investment climate

- What is more important is to establish the predictability of India’s regulatory and taxation regime; all host state regulatory functions can fall under ambit of BITs unless specifically excluded

- An investment-friendly climate, investor protection and regulatory space need to be balanced (DEA/DIPP coordination)

<u>India's concerns</u>

- Legal issues with US BIT model:

  - Pre-establishment rules. Accepting blanket provision not likely, but India's recent CEPAs contain more restrictive provisions for national treatment

  - IPRs: Preserving room for low cost life saving generics. India can accept only TRIPS compliance and strengthened IPR enforcement

  - Environment and labour clauses are not under ISDS enforcement.

  - Prohibitions against performance requirements: middle ground on the basis of India's CEPAs

- BIT is doable, but will require flexibility, pragmatic adjustments, to arrive at a customized BIT model.

"<u>Beyond"</u> the BIT

- As BIT negotiations move forward and India's anticipated economic liberalization progresses, both sides should prepare the ground for future FTA negotiations. Completion of the India-EU BTIA should provide an incentive for the US, expected launch of US-EU FTA negotiations for India. Business sectors of both countries are likely to support an India-US FTA.

  Part of India's preparation

  - India's FTAs lagging behind in quality and utilization

  - India-ASEAN FTA provides only 73.8% tariff liberalization, lowest of all ASEAN+1 FTAs

  - Only 17.9% of India's trade is with FTA partners (US 38.8%, EU 73.8%)

- To enhance India's role in shaping the rules of globalisation, GOI should study costs and benefits of advanced WTO+ and WTO-X FTAs. It should also consider trade adjustments programmes and safety nets.

- Domestic reforms plus greater harmonization with global markets will yield major welfare gains for India's economy.

On both sides, there is need to generate public support for trade liberalisation.

<u>Asian Economic Architecture</u>

- Asia's continuing high growth will make the 10+6 RCEP increasingly attractive. India stands to gain as much as 3.4% of GDP.

- India has joined RCEP negotiations, but will face difficulties because of China's domination.

- Comparatively, the high quality TPP (11 countries) will yield meager welfare gains (+0.1% of GDP for US).

- India and the US should intensify dialogue on regional economic architecture. India needs to remain open to the TPP, US to an FTA with ASEAN.

<u>Other Issues</u>

- Reviving TPF, restoring cooperation at the WTO: difficult. (India's Commerce Minister is pro-liberalisation, new USTR is awaited)

- Finding accommodation on IT services:

    - Technology and innovation driven, this is the leading sector for India-US collaboration. US is India's leading trade partner in IT Services (62%), and leads in number of international partnerships for Indian IT companies

    - Outsourcing: both a revalidation of globalization and a challenge(Reverse cycle is already underway with companies like GE, only 20% wage cost differential by 2015)

- US needs to address visa issues, totalisation agreement

- India needs to move towards WTO Mode 3 commercial presence-based business models for corporate transfers if it is to become a services super power.

6. Conclusions

- Because of domestic political constraints in both countries, it is difficult to predict a time frame for progressing this roadmap. A new team in the Obama Administration is awaited.

- Realistically speaking, BIT is the first step, FTA is a more distant possibility.

- Economic relations must be given priority in the bilateral agenda for 2013 through high level political direction.

- This year's US-India Strategic Dialogue can consider concretising a BIT and Beyond roadmap, preferably through a Joint Statement. Minister Salman Khurshid will host this dialogue, so may I conclude by making this recommendation to him?

THANK YOU!