

U.S. India CEO Forum
Report on 'Recommended Next Steps'
April 2008

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PART - A

Executive Summary - Key Issues Prioritized for Focused Implementation

1. Education & Skills

■ Near Term

- GOI should encourage collaboration, of multiple types, between Indian entities/ universities and U.S. universities.
 - Encourage private Indian entities to setup world class universities in India in partnership/ collaboration with leading U.S. universities.
 - Support from select State governments could ensure that these universities obtain sufficient autonomy on key aspects such as curriculum, faculty and salaries, student intake and fees.
 - Some/ all of these universities could be sited in one or more Special Education Zone/s.
 - Ideally, they should focus on different disciplines such as Management, Medicine, Science, etc.
- Revamp AICTE with the goal of modernizing the education system and increasing access to education to the burgeoning young population of India.
- Exempt IT and Management/ Financial education programs from AICTE authorization/ approvals.
 - Reinstate/ permit the CFA exam and certification
- Permit reputed companies to set-up ITIs in their/ related areas of expertise, without AICTE authorization.
- Permit reputed education service providers to manage job-oriented skill development training programs without AICTE approval.

■ Longer Term:

- Liberalize the education sector to the greatest extent possible, while ensuring applicants have access to information on the quality offered by independent rating agency/ies.
- Improve Quality of Administration and Teaching - Develop high level administrative capabilities for the Government School, ITI and University systems.
 - Institute an annual teacher certification process and set up Teacher Training Institutes.
 - Develop an Outcome Metric standardized across all institutes of higher education and technical education
 - Funding for expansion/ improvements, rewards and recognition for Institutes, Schools and Teachers to be based on this Outcome Metric.
 - Enhance recognition, rewards and incentives, for high performing institutes and especially for their teachers.
 - Substantially increase compensation for teachers to attract better quality teachers; more strongly link compensation to performance.

- Provide incentives to private sector contributors to the National Skill Development Institute, proposed in the latest budget to be set up as a non-profit organization, to maximize impact of the large skill development program needed to generate qualified workers for keeping the Indian economy growing.
- Improve Educational Materials and Delivery –
 - Leverage Internet, TV and Mobile technologies to supplement the “physically in classroom” teaching methods.
 - Encourage public-private partnerships to improve educational materials and delivery technologies.
- U.S. degrees must be recognized in India and vice versa – with an exam if required (note: Russian degrees are treated this way, hence, there is a precedent).
- Plan to create ‘University Systems’ over 8,000–10,000 acres with multiple university campuses tied into one ecosystem
- India should complete the process of joining the Washington Accord¹ - which will make Indian engineering degrees transferable to the U.S.

2. Funding Growth

- Remove restrictions on External Commercial Borrowings to allow Indian companies unfettered access to funding from the most optimal global sources.
- Remove restrictions on FII investments in debt instruments in India to foster greater foreign access to Indian markets and to deepen debt markets in India.
- Accelerate the market for Indian depository receipts to allow greater investment opportunities to Indian savings.
- Accelerate creation of a vibrant exchange traded interest rate and currency derivatives market to allow legitimate risk mitigation measures to all players in the Indian market.

3. Research

- USG and GOI should set up a Research Fund for alternate energy
 - Equal grants/ contributions from USG and GOI – recommended corpus of \$ 200 million, initially, could be subsequently scaled up to \$ 1 billion.
 - Board to manage the fund to comprise leading U.S. and Indian scientists, equally represented.
 - Fund would support research into alternate energy and bio-fuels.
 - Indian or U.S. companies or U.S.-India consortia can apply for these grants.
 - Similar U.S.-India fund suggested for alternate medicine.
- India should set up a National Science Foundation (NSF)² equivalent.

¹ India has been admitted as a provisional member and has to go through a series of assessments before becoming a full member.

² The NSF in the U.S. is an independent federal agency with an annual budget of ~\$6 billion and funds a wide range of fundamental research in all fields of science and engineering

4. Visas

- The U.S. should increase non-immigrant visa quotas (H-1B, L1) - raise the cap, so that this is not a constraint for U.S. companies to remain competitive, nor an inhibitor of services trade.
- Other measures that can reduce pressure on H-1B visas are:
 - Expedite the process of issuing immigrant visas (which will result in pressure being taken off the non-immigrant visa quotas); or,
 - Extend the physical stay limitation on H-1B visas from the current 6-year period to 10 years.
 - Allow H-4 holders (dependants of H-1B) to work³, since many of them are professionals and the total stay of an H-1B holder can be as high as six years, or beyond, if Green Card processing is commenced.
- Waive the requirement of repeated personal appearances at U.S. Consulates as well as the need for fingerprinting again for workers who have completed their fingerprinting when they visited the Consulate for the first time.
- Automation of filing process to reduce process effort and time - by automating to digitally certified documentation. Consular and Inter-department workflow can minimize risks for U.S.
- Consider dedicating a person at the State Department to serve as a liaison for business and visa processing staff in order to ensure timely applications, interviews and processing. The idea is to replicate essentially that which has been done in China and Saudi Arabia which is to have a “go to” person that companies can work with to ensure that over the life of a project, training visas or business partner visits can be handled efficiently.
- Visas – Other related issues:
 - Removal of linkage of I-94 documentation validity with driving licenses – as it restricts the efficient utilization of resources.
 - Education Access: The U.S. benefits in its ability to train, and potentially retain, the best and brightest in the world. Applicants are unwilling to risk a visa rejection (combined with increasing tuition fees) and are turning away from U.S. institutions to Europe and elsewhere.

5. Totalization Agreement

- The Forum notes the initial progress in the discussions on the Totalization Agreement, and would recommend that such an agreement be expedited.
- An alternative approach suggested envisages Social Security contributions on “fair local salaries” in India should permit optional exemption from making U.S. Social Security contributions.

³ Already allowed for dependants of L-1 visa holders who come to the U.S. on an L-2 visa.

6. Civil Aviation and Air Traffic Control

- GOI and the USG should conclude and implement the BASA in the short term with a target of 3Q09.
- Proactively use the ACP to execute projects supporting civil aviation objectives. Near-term projects should include controller training, Air Traffic Flow Management planning, and a capacity analysis of India's airspace and airport infrastructure.
- Allow existing airports in Bangalore and Hyderabad, with appropriate upgrades and once new airports are operational, to be used for business and general aviation purposes.
- Air Traffic Control needs urgent attention and is a critical area:
 - Upgrade skills and abilities of Air Traffic Controllers
 - Hire U.S./ international controllers to train Indian staff in international best practice.
 - Separate this cadre from the rest of AAI – higher salaries and incentives to attract and retain the best.
 - India should employ state-of-the-art systems for communication, navigation and surveillance in all metro (new/ upgraded) airports; such as, GPS Ground-Based Augmentation System (GBAS) and Automatic Dependant Surveillance-Broadcast (ADS-B). These offer improved performance at a lower cost and are in line with ICAO plans for airspace modernization.

7. Electricity

- Notify national power pricing policy to fix cross subsidy in transmission and distribution to encourage private investment.
- Use Center's negotiations with states to accelerate distribution reform, especially privatization or franchising, where possible.

8. BIT/ BIPA

- The Forum strongly supports USG and GOI discussions towards forging a bilateral investment agreement, while still pushing ahead for a successful conclusion of the Doha Round of multilateral WTO trade negotiations.
- The Forum urges a bold approach to overcoming the challenges in concluding a bilateral investment agreement. In particular, the Forum urges both sides to take a flexible approach to reach common ground and consensus.
- A bilateral investment agreement will help the development of market-oriented policies that protect and treat private investment in an open, transparent and non-discriminatory way, thereby fueling a rapid growth in trade and investment between the U.S. and India.

9. Legacy Issues

- The Forum is heartened by the high-level attention that the legacy issues are receiving in GOI and request that GOI continue to make efforts to resolve them.
- The CEO Forum continues to urge progress by federal and state governments to work together to remediate the Bhopal legacy site.
- The CEO Forum also requests that GOI take urgently the necessary steps towards resolution/ payment in McDermott International's long-outstanding case following the decision by the Indian Supreme Court in October 2006 to dismiss the challenge by Burn Standard (BSCL) to the Indian Arbitration Award in favor of McDermott, thereby exhausting BSCL's legal remedies in the case.

Part - B

Education, Research and AKI

I. Higher Education and Technical Education

The XIth Plan comprehensively addresses the host of issues faced by the Education sector in India and provides for significantly larger outlays, which, if properly deployed, will go a long way in providing the thrust required. The Plan predominantly addresses the education strategy of the government and its funding needs.

The ability of private and/ or foreign education providers to participate in the Indian higher and technical education sector is constrained by legislation. Given the urgent need to build both the quantity and quality of higher and technical education provided:

Recommended Next Steps

Near Term

1. GOI should encourage collaboration, of multiple types, between Indian entities/ universities and U.S. universities.
 - Encourage private Indian entities to setup world class universities in India in partnership/ collaboration with leading U.S. universities.
 - Support from select State governments⁴ could ensure that these universities obtain sufficient autonomy on key aspects such as curriculum, faculty and salaries, student intake and fees.
 - Some/ all of these universities could be sited in one or more Special Education Zone/s.
 - Ideally, they should focus on different disciplines such as Management, Medicine, Science, etc.
 - Revamp AICTE with the goal of modernizing the education system and increasing access to education to the burgeoning young population of India.
2. Exempt IT and Management/ Financial education programs from AICTE authorization/ approvals.
 - Reinstate/ permit the CFA exam and certification
3. Permit reputed companies to set-up ITIs in their/ related areas of expertise, without AICTE authorization.
4. Permit reputed education service providers to manage job-oriented skill development training programs without AICTE approval.

⁴ State Governments under the University Grants Commission (UGC) Act have the power to form Universities, with appropriate legislation enacted by the State Assembly. They need to broadly follow the pattern of UGC guidelines in terms of award of degree's e.g. a Bachelor degree after 12 years or education, for a 3 years course, etc. These Universities can have sufficient autonomy, free from day-to-day management by the UGC. Therefore, collaboration/ partnership with foreign Universities can be undertaken by an Indian University created as indicated above.

Long Term

5. Liberalize the education sector to the greatest extent possible, while simultaneously ensuring that applicants to these institutions have access to information on the quality offered – perhaps through an independent rating agency/ies system. As initial steps in this direction:
6. Improve Quality of Administration and Teaching:
 - Develop high level administrative capabilities for the Government School, ITI and University systems.
 - Increase compensation for teachers to attract the best talent to the field and ensure that teachers focus on their role within the institution. Compensation should be made more performance-based, linked to metrics outlined below.
 - Institute an annual teacher certification process and set up Teacher Training Institutes. Key activities of these institutes should be:
 - Annual testing and certification, combined with an ‘updating’ module for every teacher – should take a week at most.
 - Cutting edge teaching methods and latest pedagogy should be the focus.
 - Developing new teachers and work towards professional development of existing teachers.
 - Develop an Outcome Metric standardized across all institutes of higher education and technical education, based on:
 - Employment opportunities after completion – percentage placed, average salary
 - Annual survey of (relevant) companies/ employers
 - Annual survey of peer institutions
 - Funding for expansion/ improvements, rewards and recognition for Institutes, Schools and Teachers to be based on this Outcome Metric.
 - Enhance recognition, rewards and incentives, for high performing institutes and their teachers, to build the Teaching Profession into an attractive career opportunity.
 - Incentivize private sector contributions to the National Skill Development Institute. This institute was announced in the 2008 budget; it is to be set up as a non-profit organization. Providing fiscal and other incentives for private participation will maximize funding and impact of the skill development program that India needs to turn out qualified workers for keeping the economy growing.
7. **Improve Educational Materials and Delivery**
 - Leverage Internet, TV and Mobile technologies to supplement the “physically in classroom” teaching methods.
 - Build a library of recorded ‘ideal’ classroom sessions, across a range of subjects, that can be viewed over the internet or on TV

- Use Doordarshan or set-up a dedicated Education Channel that brings the best Teachers and Material to any TV set, thus reaching even remote areas.
 - Use the best Creative Film Makers to build this content and leverage the excellent material available already globally.
 - Encourage public-private partnerships to improve educational materials and delivery technologies.
8. U.S. degrees must be recognized in India and vice versa – with an exam if required (note: Russian degrees are treated this way, hence, there is a precedent).
9. Plan to create 'University Systems' over 8,000–10,000 acres with multiple university campuses tied into one ecosystem.
10. India should complete the process of joining the Washington Accord⁵ - which will make Indian engineering degrees transferable to the U.S.

II. Research

1. Research Fund for Alternate Energy

Recommended Next Steps

USG and GOI should set up a Research Fund for alternate energy

- Equal grants/ contributions from USG and GOI
 - Fund will support research into alternate energy and bio-fuels.
 - Indian or U.S. companies or U.S.-India consortia can apply for these grants.
- Similar U.S.-India fund suggested for alternate medicine

2. National Science Foundation

The National Science Foundation in the U.S. is an independent federal agency with an annual budget of about \$6 billion, and is the funding source for approximately 20 percent of all federally supported basic / fundamental research conducted by America's colleges and universities.

The NSF leadership has two major components:

- (i) Director - oversees NSF staff and management responsible for program creation and administration, merit review, planning, budget and day-to-day operations;
- (ii) 24-member National Science Board (NSB) of eminent individuals that meets six times a year to establish the overall policies of the foundation. The director and all Board members serve six year terms.

⁵ India has been admitted as a provisional member and has to go through a series of assessments before becoming a full member.

The NSF mission includes support for all fields of fundamental science and engineering, except for medical sciences; and it is tasked with keeping the U.S. at the leading edge of discovery in these areas.

NSF operates from the "bottom up," keeping close track of research around the U.S. and the world, maintaining constant contact with the research community to identify ever-moving horizons of inquiry, monitoring which areas are most likely to result in spectacular progress and choosing the most promising people to conduct the research.

Recommended next Steps

Set up a National Science Foundation equivalent (U.S. model)

A more detailed outline on the NSF and on a model followed in the UK (the Research Councils) is provided in Annexure 1.

III. Agricultural Knowledge Initiative (AKI)

The AKI was announced in 2005 between the U.S. and India to raise agricultural productivity, increase technology transfer, expand U.S.-India trade, ensure a role of the private sector of U.S. and India and recharge agri university-to-university partnerships (briefing in Annexure 2).

While university-to-university interaction is perceived as a bright spot, observers and participants have expressed dissatisfaction with the progress on most other fronts, due to several factors, such as:

1. ICAR (nodal agency on the Indian side) perceived as a bottle-neck
2. Limited private sector involvement
3. Limited funding

Underlying issues that need to be factored in while making fresh recommendations are:

1. Difference between U.S. and Indian farming practices/ farm sizes
2. Limited role played by the private sector in actual farming, in India
3. Opposition to an initiative that is perceived to bring in genetic engineering and impact/ use India's gene pool/ bio-diversity.

There appear to be two areas that promise synergy:

1. U.S. technology for post-harvest cold chain/ processing, where India has a major investment need
2. U.S. market access for select/ demanded varieties of produce

Recommended Next Steps

1. Institute a working group on US Technology for remote sensing (imaging technologies) for assessment of soil health & nutrition on a large scale basis.
 - a. Presently there exists rudimentary soil analysis for this requirement and this whole area of soil health & nutrition can be advanced to a much greater degree.
 - b. Intervention in this area will have a direct and large impact on farm productivity, which is a critical need for the farm sector in India.
 - c. Additionally, India with its well-developed satellite system is a well-respected provider of remote images, and may want to consider applying this technology to the area of agricultural production.
2. Select verticals amongst fruits, vegetables and rice based on U.S. input of preferred varieties for export - grapes, alphonso mangoes, banana, basmati rice, tomatoes, etc.
3. Identify locations to form large Development Zones in areas of cultivation e.g. grapes, onion in Nashik. Scale – at least across 3-4 districts.
 - Each Development Zone to recommend production of the demanded/ specific variety/s and disseminate expertise for:
 - Germ plasm development, precision farming, Integrated Pest Management (IPM), Integrated Nutrient Management (INM), organic cultivation, water management.
 - Post harvest practices, food processing facility, quarantine for exports, ripening chambers as per WTO standards, packaging standards, SPS norms.
 - Terminal markets for buyers, information on international availability/ price trends etc.
 - Each Zone to have a repository of all information; and where the farmers can be trained in various aspects or can access data through internet as well.
 - Each farm or farmer to be assigned certificates beginning from A to AAA based on certification in areas of expertise applied for (for exports)
4. Form consortia of U.S. and Indian private sector and U.S. and Indian agri University/s, to adopt each Zone.
 - Lead to be with private sector, with support from agri University/s
 - Consortia to prepare a plan/ proposal for their respective Development Zone/s with timelines and funds required
 - Funding to be provided by AKI
5. Subsequently, each Development Zone to have nodal cells, for extension for that category, in other states to replicate the success.

Part – C
Recommended Next Steps on Follow-Up Issues from
the CEO Forum Meeting on September 24, 2007

1. Physical Infrastructure Development

- **Infrastructure Fund:** Fund being set-up by IDFC, Blackstone, Citi and IIFCL. Action required:
 - GOI to complete the legislative process for IIFCL's contribution – *done*.
 - Investors from the U.S. to be encouraged as there were currently more investors from Europe and Asia than the U.S.A.

Status

- US\$ 1 billion India Infrastructure Fund ("IIF") being raised as a part of the larger US\$ 5 billion Indian Infrastructure Financing Initiative by IDFC, Citi, Blackstone and IIFCL.
- IIF is likely to announce a first close in the early part of 2008 with proposed commitments of US\$ 525 million. Follow-on close expected in June 08 to get to target size of U.S. \$ 1 billion.
- IDFC and Citi have committed US\$ 100 million each. IIFCL will commit U.S. \$ 25 million.
- Blackstone has decided to opt out of the current fund being raised under this initiative.

Recommended Next Steps

IDFC/ IIFCL led team to visit the U.S. in the next 3 months to solicit U.S. investments into the Fund by meeting with the major institutional investors, facilitated by Citi, to:

- Provide the terms and conditions of the Fund
 - Provide details of the targeted infrastructure projects in the pipeline
- Citi to use its private equity placement group and global wealth management network to tap into U.S. institutional investors and high net worth individuals

- **Infrastructure Conference** in India on Oct 29-30

Recommended Next Steps

The Infrastructure Investment Conference held in Mumbai on Oct 29-30 was a success, with a strong showing from both U.S. and Indian firms.

- U.S. Treasury Secretary Paulson has indicated that on the U.S. side, his office will explore steps that can be taken in the coming

months to advance the discussion between the firms in the United States and infrastructure developers in India.

- The Forum recommends that a similar focus be maintained from the Indian end.

■ **Civil Aviation:**

- Recommended that opportunities for co-operation in civil aviation infrastructure be explored - including through updating the ATC system, upgrading secondary airports and opening them to business and general aviation and setting up of aircraft maintenance, repair and overhaul (MRO) centers in India.

Status

Aviation Cooperation Program (ACP) MOU signed by Minister Patel and Secretary Peters in June 2007 in Washington DC. An air traffic controller training project is underway and planning for several additional projects is in the works.

Negotiations between India and the United States toward a Bilateral Aviation Safety Agreement (BASA) are in progress.

As new airports are built and existing airports are upgraded and expanded, India is considering its options for how it will modernize its air transportation system to optimize airport and airspace management while maximizing passenger/public safety.

Recommended Next Steps

- GOI and the USG should conclude and implement the BASA in the short term with a target of 3Q09.
- Proactively use the ACP to execute projects supporting civil aviation objectives. Near-term projects should include controller training, Air Traffic Flow Management planning, and a capacity analysis of India's airspace and airport infrastructure.
- Allow the existing airports in Bangalore and Hyderabad, with appropriate upgrades and once new airports are operational, to be used for business and general aviation purposes.
- India should employ state-of-the-art systems for communication, navigation and surveillance in all metro (new/ upgraded) airports; such as, GPS Ground-Based Augmentation System (GBAS) and Automatic Dependant Surveillance-Broadcast (ADS-B), which offer improved performance at a lower cost and are in line with International Civil Aviation Organization (ICAO) and other regional plans for airspace modernization.

MRO and Ground Handling

CEO Forum welcomes GOI announcement permitting:

- 100% FDI in MRO facilities and technical training institutes and;
- 74% FDI in ground handling services, subject to security scrutiny.

Recommended Next Steps

GOI should develop targeted tax, fiscal and other incentives designed to spur the setting up of MRO facilities in India.

- **SEZs:** There was a great interest in the SEZs and it was hoped that these would be expeditiously opened to foreign investments.
 - List of the new SEZs and their promoters was requested.
 - CLSA report on Indian SEZs provided to U.S. CEOs
 - Recommended that the possibility of SEZs acting as a trial ground for liberalization in Higher Education and Vocational Training be explored.

Recommended Next Steps

- Permit 100% FDI in higher education/ technical education in SEZs – legislation could be at the State level with initial engagement with 3-4 key states such as Maharashtra, AP, Tamil Nadu, Karnataka.
- Exempt educational institutions in these states/ SEZs from AICTE approvals/ registration.

2. Energy Security

■ Ultra Mega Power Projects (UMPP):

- GOI to send a delegation to the U.S. to inform and invite potential investors.
- CEO Forum to put together a small group to give both Governments feedback on how the policy could be further fined-tuned for achieving the private/ foreign investments envisaged.

Status

Power identified as a key infrastructure sector where deficits restrict GDP growth. GOI has achieved reasonable success in bidding out 3 Ultra Mega Power Projects (UMPPs) of 4000 MW. Considering the large capital investment required it is important to attract investment from foreign companies/ lenders in this sector.

To promote renewable energy and reduce the dependence on fossil fuels, it is imperative that the GOI streamlines incentives available to renewable industry, especially to wind generation.

- The extant policy provides depreciation benefits, making the investment in wind power a tax saving instrument for existing industries that have no interest in optimal generation.

In the hydro power sector, large projects have been awarded to companies with little or no technical/ financial strength. This has resulted in people holding the awards and not pursuing the development of the projects.

Nepal has huge hydro potential which remains untapped due to inaccessibility to Indian markets. GOI should take active steps for developing the Nepal-India transmission network and tap the hydro power potential in Nepal.

Recommended Next Steps

- **Exempt Infrastructure sectors from Press Note 18:** GOI guidelines allow for 100% FDI in most infrastructure sectors like power generation but foreign companies having previous joint ventures need approval from their JV partners. In certain cases, these work as limiting factors to attract FDI. GOI should no longer

require FIPB clearance for any fresh investment by foreign companies in infrastructure sectors where 100% FDI is allowed.

- **Fast track large power projects:** Identify fast track projects (above a minimum size) which should be provided all administrative support necessary for expeditious implementation particularly on areas relating to land and environment clearances.
- **Notify national power pricing policy.** Adopt policies to address the levels of cross subsidy in transmission and distribution. The presence of such a policy will result in greater clarity for participants in the segment and encourage private investment.
- **Accelerate distribution privatization or franchising.** Use Center's negotiations with states to attain this objective.
- **Modify incentives for wind energy:** GOI should provide production tax credits akin to U.S. market that are linked to actual generation so as to promote wind IPPs and for optimal utilization of assets.
- Award hydro projects with due weightage to a bidder's technical and financial strengths.
- **Specific recommendations with respect to bidding for UMPPs** are outlined below (details in Annexure 3):
 - **Permitting Risk** - The current bidding procedures provides permits only upto a certain level, whereas getting final clearances (and hence financial close) may be 12 to 18 months after the bid submission date. These delays expose the bidder to risks on equipment pricing and financing for reasons beyond his control.
 - Recommended that all main requirements like land acquisition and environment and forest clearances should be provided in final form for a committed, time bound tariff bid.
 - **Inadequate Coverage for Force Majeure** - Force majeure provisions are inadequate to attract international financing for projects of this magnitude (details in Annexure 3).
 - **Inadequate Coverage for Buyer's Default** - As the Project is being set up to cater to specific Buyers, and since the size of the project does not render it amenable to sell the output in a merchant market, a buy-out of the Seller in case of termination due to Buyer's EOD/ force majeure is an essential requirement.
 - **ECB Limit of US\$ 500 million should be waived** - considering the estimated investment of ~US\$ 4 billion per project.

- **Drafting of Project Documents** - Numerous drafting issues that need to be suitably revamped to avoid ambiguity and confusion at a later date.
- **FutureGen:** GOI concerns have been conveyed to the State Department. Power Minister has issued a letter to U.S. Energy Secretary.
- **Civilian Nuclear deal:**

Recommended Next Steps

The CEO Forum strongly supports the earliest possible finalization of the Agreement on Civilian Nuclear Energy - the successful conclusion of this strategic agreement will have a material impact on building trust and confidence on both sides and facilitate the exchange of high/sensitive technology.

- The Forum also recommends that nuclear power generation in India be opened to private sector investment.

3. Human Resource Development

■ Collaboration in higher education:

- U.S. and Indian education providers to consult through the forum of the U.S. India Education Round Table and prepare proposals on establishing better linkages between the Universities of India and the U.S.A.
- Partnering in health and medical education as a key area was proposed.

Recommended Next Steps

- Collaboration between the NIH, Bethesda (U.S.A.) and the National Institute of Health & Family Welfare of GOI, New Delhi
 - Collaboration between the Communicable Diseases Centre, Atlanta (U.S.A.) and the National Institute of Communicable Diseases, New Delhi
 - Collaboration (proposed) between a leading Indian private sector healthcare provider and Sloan-Kettering Institute for Cancer Research, New York
- In addition to specific proposals through 3.1.1, GOI to progress proposed liberalization/ permit FDI, in the education sector.

■ Agriculture Knowledge Initiative:

- The U.S. side proposed increased private sector participation and it was agreed that specific proposals for this could be examined, keeping in view the agreed proposals in the 3 Year Work Plan of the AKI prepared by the AKI Board in February, 2006.
- Further detailed proposals regarding opportunities in Agri infrastructure/ logistics/ back-end support/ services for U.S. companies to invest in would be prepared by the CEOs for the consideration of GOI.
- It was suggested that a status report on the AKI (and also the Energy Dialogue) be prepared and shared with the U.S. side and their suggestions invited regarding their investment in these areas.

Detailed AKI proposals outlined in Part – A

4. Technology Exchange

■ High Technology Trade:

- **White List:** India's eligibility for a Validated End User Program was announced by USG in June, 2007, and the actual VEU Program was announced by the U.S. Commerce Department on October 2, 2007. GOI and industry to examine the proposals/ program – and thereafter move to speedy implementation of VEU/ Trusted Customer program.
 - Greater opening up by USG in high technology and dual use technology was requested.

- **Joint Production of Defense Equipment:** The U.S. CEOs requested that GOI consider adjustments to the current Offset Policy to allow investments under the policy in other sectors as well. Specific recommendation/s of the U.S. CEOs were sought.

Status

Defense cooperation continues to increase and improve between the United States and India. The Forum believes that additional concrete steps could be taken and would accrue both to the benefit of India and the United States, as well as to the further strengthening of the overall bilateral relationship.

Recommended Next Steps

- **Offsets**
 - **Banking Offsets:** As was universally endorsed by industry delegates from both countries at the recently concluded U.S-India Defense Procurement and Production Group (DPPG) meeting in Washington, DC, the Forum supports gazette notification/ formalization of the offset banking provision for the revised Defense Procurement Procedure (DPP), as an important way to kick-start defense offsets leading to greater co-production/ co-development between Indian and U.S. industry.
 - **Indirect Offsets:** The U.S. members of the Forum suggest widening the scope of what qualifies as an “offset.” While such a step would help enable U.S. defense firms to meet their offset obligations, it is equally important to note that this would also directly serve India's interests by promoting valuable investments in soft and hard infrastructure aspects of India's economy: e.g., education; healthcare; transportation; agriculture; communications / security and R&D.

The Indian members of the Forum feel that since the percentage of offset is subject to review, it is suggested that indirect offset be looked at when there are higher offset limits for specific deals. The offset beyond 30% may be implemented in other areas which need to be specified. Our recommendation is such areas need to be high tech areas like space, nuclear power generation etc.

- There needs to be greater transparency on offsets for Government to Government deals. Such deals also should be subject to the minimum 30% offset requirement.
- Establish a strong mechanism for supervision of the implementation of offset requirements.
- Allow for credit multipliers at a later date with due consultation.
- **U.S. Government Clearances:** At present, considerable time is taken to obtain U.S. Government approval to even discuss certain technologies with representatives of Indian industry - resulting in avoidable delay and limited choice. It is recommended that, with respect to India, the U.S. Government to classify technologies in four categories:
 - Can be discussed freely;
 - Restricted and requires U.S. Government approval;
 - Not permitted to be discussed
 - Required to be discussed at G2G level.

Such categorization will definitely hasten the process and bring the requisite clarity to ongoing discussions. At the same time, the prevailing procedures need to be streamlined to cut down delays.

- **ITAR Procedures:** Indian industry needs clarity and understanding of ITAR procedures and how to deal with them. A joint seminar/discussions on the subject may be organized by the U.S. along with Indian industry.
- **Technology Evaluation and Transfer:** The lack of well defined criterion to evaluate technology impacts the way bids are evaluated. Further, Technology Transfer also has a lot of ambiguity – at issue is what is included or excluded vis-à-vis further development, product support and obsolescence management. A joint committee could be tasked to produce mutually acceptable guidelines which will hasten the process and foster greater trust and understanding.

- Space-related trade: To identify opportunities to increase cooperation on space-related trade.

Status

During PM Singh's visit to the U.S. in 2005, President Bush and PM Singh agreed to strengthen bilateral relations in space cooperation and space commerce. The Forum is pleased to note that there has been some progress such as on GPS.

The Forum is also pleased that India's first unmanned lunar mission, Chandrayaan-I marks the beginning of a new level of cooperation, trust and partnership between the U.S. and India in space and that for the first time in the history of both countries, India's first lunar mission will carry a payload atop an Indian rocket that includes two critical NASA instruments to map the moon. The Forum hopes that this important initial step will lead to further significant development in beaming medical and educational services as well as disaster preparedness/management, among other areas of collaboration in space between the two countries. Recent agreements between NASA/NOAA and ISRO provide for new ideas and initiatives to be enabled, and are very welcome.

Opportunities exist for India and the United States to drive even greater cooperation in this important arena. Accordingly, the Forum hopes that a more committed dialogue on space cooperation will be undertaken by both sides within a reasonable timeframe.

Recommended Next Steps

If GOI were to ease regulations on space cooperation, this would expand the access of key Indian industries to competitive services that are critical to India's transformation as an information-based knowledge economy. The current environment essentially provides a monopoly on the sale of satellite capacity for domestic use to one company, although there is a shortage in capacity to serve the market.

Allowing direct access to U.S. satellite capacity would enable Indian service suppliers to obtain the satellite broadband capacity they need

to provide innovative solutions to meet the growing domestic communications needs (voice, video and data) of the Indian economy.

Another positive step, one that would serve both U.S. and Indian interests, would be for India to create the regulatory certainty necessary for foreign operators to participate in and design satellites that can serve the Indian market adequately.

■ **Bio-technology and Nano-technology collaboration:**

- A Group of CEOs to make fresh proposals for the harmonization of Indian FDA approved pharma products with U.S. FDA standards.
- **Nano-technology:** Proposals for collaboration in common areas of interest would be prepared in the Nanotechnology Working Group in the India-U.S. High Technology Working Group. GOI to respond to USG proposal on Nanotechnology policy.
- **National Bio-technology Regulatory Board (India):** The proposal was welcomed and it was recommended that the proposed Board be set up as soon as possible.

2006 CEO Forum Recommendations

- On biotechnology, United States and India should jointly develop a regulatory pathway to ensure regulations surrounding the sector are based on sound science, transparent, and supportive of policies that encourage investment in and commercialization of biotechnology, and promote trade in biotech goods and services.
- Both countries (i.e. U.S. FDA working with the Indian FDA) should harmonize legislation to provide opportunities and protection for U.S. as well as Indian companies in biotech related IPR.

Status

- India continues to move forward with the development and implementation of agricultural biotechnology and continued efforts to harness this technology and implement it into its domestic markets is encouraged.
- India is also working to implement policy and regulation around agricultural biotechnology, to align with its obligations under the Cartagena Protocol on Biosafety and ensure that the technology is adequately managed

- To this end the Indian government has begun to implement several important policy decisions, including import documentation requirements for grains/oilseeds and processed products, mandatory finished product labeling to enable consumer choice, and elaboration of the rules for product approvals and environmental release.

Recommended Next Steps

- The Forum encourages the government to continue to develop and establish a transparent regulation on the risk assessment and implementation of products of agricultural biotechnology into its food and feed supply chains.
 - We encourage the government to implement systems that expeditiously review and approve genetically enhanced products.
 - These regulatory procedures should be science-based and based on the product's content.
- The Forum urges India to implement their food regulations in a manner that minimizes trade distortions in today's global food system including:
 - Harmonized standards and regulatory processes to the highest possible degree.
 - Use benchmarks more rigorous than internationally recognized standards and procedures only when they are justified by scientific evidence.
 - Establish reasonable and commercially viable tolerances for commingling.
 - In an effort to minimize the disruption of agricultural biotechnology on food and feed supply chain, India is encouraged to support the pending approval Codex LLP Annex for biotechnology products and implement the Annex into National Law.
- The Forum urges India to develop marketing systems that enable consumers to choose the kinds of services, foods and fibers they want. We recognize that labeling plays a role in informed choice.
 - India has adopted mandatory labeling policies for GM foods. Voluntary labeling systems that are independently verifiable and realistic are more likely to promote real choice in the marketplace.

5. Trade and Industry Promotion

■ Bank branches:

- USG agreed to encourage action to authorize new bank branches applied for by Indian banks; Indian CEOs pointed out that some Indian banks seeking additional branches were already represented in the U.S.A., hence permission could be expedited.

Current Status

- Indian banks are seeing increased growth in credit from their foreign operations on account of increased M&A by Indian corporations. Indian banks are therefore keen to expand their network overseas.
- The Federal Reserve Board did not authorize any applications from Indian banks during Jan 2003 to Oct 2007, whereas RBI continued to grant authorizations/ branch licenses to U.S. banks.
 - Some applications have been pending for over 5 years with the U.S. authorities.
 - The CEO Forum is pleased to note that State Bank of India received approval in January 2008 to set up a new branch in New York, and ICICI Bank recently received an approval to conduct wholesale banking operations in the U.S.

Recommended Next Steps

The Federal Reserve should not cite inadequacy of anti-money laundering regulations as a reason not to grant licenses to Indian banks as Indian laws cover money-laundering offences and are in line with worldwide practices.

With USG agreeing to encourage action to authorize new bank branches applied for by Indian banks, the U.S. Treasury should create a financial services dialogue modeled on the dialogue with the European Union to expedite addressing specific policy divergences.

The CEO Forum recommends that:

In the near term

- The Federal Reserve Board should expedite branch licenses requested by Indian banks and Branch licensing should be based, broadly, on a principle of reciprocity.

Over the next 1-2 years

- Federal Reserve board should come out with clearly stipulated guidelines and criteria for approval of bank licensing, making the process less uncertain and faster.
- Consider amendments in the U.S. International Banking Act, 1978 so as to facilitate acquisitions of small U.S. banks by larger well-capitalized Indian banks.

FDI

Recommended Next Steps

- GOI should continue to broaden its policy to allow for full ownership by foreign companies beyond 49% currently allocated in most industries. Being open to competition will mean more investment as companies have the options to negotiate ownership or more equitable joint venture arrangements to work with domestic Indian companies and distributors.
- Most companies are actually interested in pursuing 50/50 joint ventures but the artificial 49% constraint makes negotiations and partnerships less equitable.

FDI in Retail:

Recommended Next Steps

With 20 single brand retail companies with multiple products having received licenses, it is recommended that GOI should consider liberalization and refinement of the current FDI limits, allowing all retailers to operate a variety of formats and sell a full assortment of food and general merchandise without restrictions on product categories.

The Forum applauds GOI's decision to seek a policy formulation and implementation framework which takes into consideration traditional small family outlets/shops. The Forum feels strongly that traditional small family outlets will have improved product assortment, quality and in stock if this sector is liberalized and stronger supply chains are built between the farmers, manufacturers and consumers in India. This also will lead to very dynamic and positive changes in the rural/agricultural and the manufacturing sectors.

■ FDI in Insurance:

The U.S. CEOs requested a review of the current permission to

companies invested in insurance for raising foreign capital at the intermediate holding company level to examine whether it disadvantages companies adhering to the 26% cap on foreign ownership.

Recommended Next Steps

Foreign Direct Investment (FDI) is limited to 26% in insurance and insurance brokering. While FDI approval is automatic, a license must first be obtained from the Insurance Regulatory and Development Authority. In July 2004, the GOI announced its intention to increase the FDI cap to 49%, but this change requires parliamentary approval of an amendment to the Insurance Regulatory and Development Authority Act, which is still awaited. The Forum would urge GOI to expedite approval of this amendment

The Forum also requests a review of the current permission to companies invested in insurance for raising foreign capital at the intermediate holding company level – to examine whether it disadvantages companies adhering to the 26% cap on foreign ownership.

■ The Debt and Equity Markets

External Commercial Borrowings (ECBs) have grown to become an important component of India's balance of payments (BoP). In the last fiscal year 2006-07, the total accretion to RBI's foreign exchange reserves was \$47.5 billion, of which actual dollar purchases were \$26.8 billion, valuation change was \$10.9 billion, and interest accrual another \$9.8 billion. Of the dollars being supplied to the BoP, ECBs accounted for a net \$16.1 billion (gross \$20.6 billion) – the single biggest net item on the capital side.

In a significant measure announced early August 2007, the Government cut off the potential pipeline of external commercial borrowings (ECBs) for Indian corporates. The main restrictions which have been imposed are;

- ECBs for more than \$20 million per borrowing company would only be permitted for foreign currency expenditure, and should be parked overseas.
- ECBs for up to \$20 million per borrowing company would be permitted under the automatic route if meant for foreign currency expenditure, but would require RBI approval if used to fund rupee expenditure.

Market Impact/ Concerns – Liquidity, and rates:

Restrictive ECB norms will reduce surplus domestic liquidity in the system as the RBI will now need to buy fewer dollars, thus resulting in lower injection of rupee funds in the system. While borrowers who have already got approval will not be impacted, this will raise the cost of borrowings for new proposals.

FII investments in government securities and corporate debt are currently restricted to \$3.2 billion and \$1.5 billion respectively. Greater FII involvement in the Indian debt market is likely to considerably deepen and provide more liquidity to the market, especially the secondary market for corporate and municipal debt. Both of these instrument classes are very thinly traded as of now.

Recommended Next Steps

- GOI should pursue a more open ECB policy in order to ensure that Indian corporate entities have access to the best rate of financing and full range of funding options for major investments. It is recommended that GOI remove restrictions on ECBs to allow Indian companies unfettered access to funding from the most optimal global sources, and to allow them to diversify their debt funding. As a first step, ECB curbs should be lifted on all infrastructure projects.
- GOI should remove restrictions on FII investments in debt instruments. This will diversify the investor profile in the Indian debt market, deepen the market and provide liquidity, and over time, foster greater foreign access to Indian markets.
- GOI should actively promote an Indian market for depositary receipts of companies that are listed overseas. This will allow Indian equity investors to participate in global growth opportunities, and provide some degree of diversification from the Indian equity market.
- GOI should also promote an exchange traded interest rate and currency derivatives market. This will allow participants in the Indian market access to legitimate and standardized risk mitigation measures, removing some of the complexity and uncertainty attached to OTC risk mitigation instruments.

■ New M&A Rules under the Competition Act

- GOI amended the 2002 Competition Act in September 2007. One of the outcomes of the Amendment to the Act is understood to result in

foreign companies (meeting certain asset/ turnover thresholds in India) having to seek approval from the Indian Competition Commission for M&A's undertaken elsewhere in the world, and with no competition impact in India, with a waiting period of up to 210 days imposed before any transaction could take place. These requirements, for M&A with no impact on competition in India, are untenable and the CEO Forum seeks amendments for their elimination from the Act.

■ Titanium

Interest has been expressed by U.S. companies on supporting, through purchases and technology tie-ups, mining and mineralization of titanium. [GOI announcement permitting 100% FDI in this area is welcomed.](#)

■ Visas

- H1B & L1 Visas: The need for greater access of Indian professionals to the U.S. and raising the current cap was emphasized.
- Visas for Nurses: In view of the U.S. requirement of one million nurses by 2030, the need to raise current quotas/ limits on visas for Indian nurses was flagged.
- Multi-year visas for senior U.S. executives are being processed by GOI.

Recommended Next Steps

- The Forum urges the U.S. Congress to increase/ modify caps on H-1B and L1 visas to enable U.S. companies and the country to more efficiently utilize the global workforce.
- Additional recommendations to reduce the strain on these categories and speed up processing include
 - Expedite the process of issuing immigrant visas (which will result in pressure being taken off the non-immigrant visa quotas) or extend the physical stay limitation on H-1B visas from the current 6-year period to 10-years.
 - Waive the requirement of repeated personal appearances at all the U.S. Consulates as well as the need for finger printing again for the workers who have completed their finger printing when they visited the Consulate for the first time.
 - Automation of filing process to reduce administrative stress on consulates - reduction in process effort and time can be obtained by automating to digitally certified documentation.

Consular and Inter-department workflow can minimize risks for U.S.

- Allow H-4 holders to work: Dependents of H-1B travel to the U.S. on H-4. They (though many of them are professionals) are not allowed to work at all in the U.S., in spite of the fact that the total stay of an H-1B holder can be as high as six years, or beyond if Green Card processing is commenced. Request that H-4 visa holders also be allowed to work in the U.S. This is already allowed for dependants of L-1 visa holders who come to the U.S. on an L-2 visa. Can help reduce the strain on H1 cap

Visas - Associated Issues:

- Removal of linkage of I-94 documentation validity with driving licenses: Most the states have linked the validity of the driving licenses (DL) with the validity of the I-94. In addition, some states have informed that the driving license won't be issued unless the petition / I-94 is valid for a further six months. The situation becomes even worse as certain states are asking for a further validity of 1 year. This restricts the efficient utilization of resources and access to workers with non-immigrant visas to businesses not located in large cities or business hubs. Request the de-linking of the validity of the DL with the I-94 validity and providing a validity of 5 years by default.
- Education Access: The U.S. benefits in its ability to train and potentially retain the best and brightest in the world. Applicants are unwilling to risk a visa rejection (combined with increasing tuition fees) and are turning away from U.S. institutions to Europe and elsewhere. Increasing visa-approval ratios for the top 50-75 U.S. Universities and Business Schools will enhance the global demand and rating of these schools.
- While progress has been made in streamlining the visa process, concentration of requests from key areas in India (Chennai, Bangalore) could be further streamlined by additional resources. Improving the two-way flow of information (between companies and government) would ensure more timely and efficient processing.
- Consider dedicating a person at the State Department to serve as a liaison for business and visa processing staff in order to ensure timely applications, interviews and processing. The idea is to replicate essentially that which has been done in China and Saudi Arabia which is to have a "go to" person that companies can work

with to ensure that over the life of a project, training visas or business partner visits can be handled efficiently.

■ **Totalization Agreement:**

In December 2007 a fact finding meeting was held, where USG and GOI officials presented their version of the social security system in the two countries.

U.S. officials pointed out that the two countries will first have to conclude an agreement (as the two systems were not fully compatible as per USG), which may take six months or more to be formalized thereafter.

USG and GOI have now agreed to meet again in the U.S. and are in the process of fixing dates.

Recommended Next Steps

The Forum notes the initial progress in the discussions on the Totalization Agreement, and would recommend that such an agreement be expedited.

An alternative approach suggested envisages Social Security contributions on “fair local salaries” in India should permit optional exemption from making U.S. Social Security contributions.

■ **Trade Missions from the U.S:**

Recommended Next Steps

The Forum notes that USG offered to increase the number of USG-led trade missions to India. In addition to missions from the U.S., focus should also be on leveraging awareness of missions to the U.S. – for example, the Feb 2008 CII/ Chicago Council on Foreign Relations conference on Indian SMEs. Building and broadcasting success stories will encourage additional missions and investments. The Forum also suggests increased engagement with U.S.IBC, CII and FICCI to build a strategic program of business and government-led missions to foster awareness of economic opportunities.

■ Tariffs

Status

Manufacturing is the traditional area of U.S. – India industrial cooperation and, in the current and future context of globalization, global supply chains and competitive pressures, offers new potential for partnership.

Manufacturing is attracted to locations where there are strong domestic markets for manufactured products, but also locations where import of raw materials and export of finished products provide additional incentive to source a plant. An open environment where products can be sold locally, and gain additional profit through export while not carrying excessive burden from imported raw materials, is ideal. India should commit, especially in bilateral and regional agreements to a much more aggressive degree of trade liberalization. Competition fostered by trade liberalization is an incentive for growth.

Recommended Next Steps

- GOI should focus on promoting regional trade policies that reduce tariffs, especially on the necessary chemical inputs to sustain large-scale manufacturing.
- GOI needs to build out a new template for trade policy based on expectations of the economy and manufacturing in 2015/ 2025, rather than continuing to press for significant negative exclusions (i.e., products that would maintain high tariffs) because they are currently manufactured in country.

Some concerns with regard to U.S. policies and processes which need to be addressed:

- Reduction of import duties on certain products, such as steel (where duties can be as high as 30% on some items) and textiles (over 20% on some items)
- Remove anti-dumping and safeguard legislation / anti-dumping duties on items such as steel
- Lower/ remove non-tariff barriers and technical barriers - sanitary & phyto-sanitary standards legislation to be unbiased and equal on both sides

■ **Legacy Issues:**

Recommended Next Steps

The Forum is heartened by the high-level attention that the legacy issues were receiving in GOI and requested that GOI continue to make efforts to resolve them. Strong commitments have been expressed by the representatives of the GOI, but they have yet to translate into actual remediation of the legacy issues.

The CEO Forum continues to urge progress by federal and state governments to work together to remediate the Bhopal legacy site. Failure to demonstrate tangible progress hurts the residents and victims. It also delays the creation of new jobs and the rehabilitation of image for the communities surrounding the site.

The CEO Forum also requests that GOI take urgently the necessary steps towards resolution/ payment in McDermott International's long-outstanding case following the decision by the Indian Supreme Court in October 2006 to dismiss the challenge by Burn Standard (BSCL) to the Indian Arbitration Award in favor of McDermott, thereby exhausting BSCL's legal remedies in the case.

6. Intellectual Property Protection

- The CEOs offered to define opportunities and prepare proposals on strengthening IPR enforcement for the consideration of GOI.

Recommended Next Steps

The Forum appreciates the greater attention being paid to the importance to economic growth of protecting intellectual property in India. However, the Forum notes that despite a greater focus on music and movies, piracy persists in these areas as well as with print materials, including textbooks, and electronically-delivered content.

The Forum is continuing to explore opportunities for improvement and can present proposals for increasing protection for intellectual property in India.

In the U.S., there is no mandatory disclosure requirement for a person who applies for a patent to reveal to the patent examiner from where he got that information or from where he got the knowledge on the basis on which he is making an application. This is something which is increasingly being mandated under various international agreements. This is important for countries like India which have a very rich bio-diversity, genetic resources, and traditional knowledge. If there is a disclosure requirement, the origin of such knowledge would need to be made by the patent filer. We hope due consideration is given to updating of the U.S. laws in terms of requirements in the U.S. on patent issues.

- **Data privacy:** Passage of legislation on the IT Amendment Bill is required.
 - The new Information Technology Act with appropriate changes relating to cyber security, IP protection and steps to combat piracy effectively will be passed in the next session of Parliament (March 08).
- **On data exclusivity** specific proposals (separately for Pharma and for Pesticides) are required to be prepared by the CEO Forum before they can be considered by GOI.

[See Regulatory Data Protection - Recommendations on page 47.](#)

7. Agriculture and Processed Foods

Status

While issues surrounding agriculture have been deemed some of the most difficult to manage between the two countries, there are synergies that exist between India and the United States in the area of agriculture.

The focus of our recommendations center on the underlying notion that rural development in both India and the United States is critical to advancing and securing the food supply for growing populations. Rural development is dependent on a healthy, vibrant agricultural industry in both countries, underpinned by efficient domestic production and liberalized trade. Thus, our recommendations are meant to ease the policy and regulatory burdens that exist in both markets that are stunting growth and that are not allowing the Indian and U.S. producers, businesses, and consumers to fully capture the benefits of the U.S.-India relationship in agriculture.

In India, as the population continues to expand at a rapid rate, it is critical to devote resources to link the Indian farmer to domestic and international markets. In addition, since the U.S. industry is dependent on opening new export markets for its products, where there is a deficit in supply of agricultural and food items in India, U.S. farmers and agriculture and food businesses can provide solutions to meet the growing demands. The relationship in agriculture should be one based on promoting the strengths of both agricultural economies.

To capture the synergies between the two agriculture economies, both governments must seek to:

- Create opportunities for increased investment in the agriculture and food production infrastructure of both countries, but in particular in India;
- Promote innovations and technological advancements in agriculture and food production, distribution, marketing, and retail to link the farmer to the consumer; and
- Advance opportunities to eliminate harmful policy distortions in the food system.

With the spirit of collaboration and cooperation toward a greater goal of advancing and securing the food system in both countries, we commend the following recommendations to both governments.

NOTE: The updated recommendations have been grouped into categories based on the original recommendations for agriculture and processed food from the CEO Forum report of March 2006 and the CEO Forum meeting of September 24, 2007. An update on status of the issues is provided as well as recommended next steps.

■ Taxation

2006 CEO Forum Recommendation

Provide for unlimited movement of domestic and imported agricultural products across district and state boundaries.

Status

Value Added Tax (VAT) has been introduced across all remaining states in the last two years.

Recommended Next Steps

- While the VAT has been implemented across all states, local lobbies continue to pressure state governments to create barriers advantaging the players in the state – The Forum recommends that the GOI stay on course for nationwide GST by the established 2010 goal, and dissuade state governments from creating regional barriers.
- The Forum recommends that the GOI expeditiously implement those priority measures that will provide for the unlimited movement of domestic and imported food products internal borders.
- The Forum recommends that a harmonized classification system across all states and with the central government be developed for the taxation of processed food
- The Forum recommends that GOI provide fiscal incentives for investments in the cold chain⁶.
- The Forum recommends that GOI provide tax incentives for companies who provide extensive services to the farmer.

⁶ It is noted that the 2008-09 budget provides for Excise duty exemption to be extended to refrigeration equipment (including compressor, condensing units and evaporator) of certain capacities.

- **Production and Trade-distorting Subsidies in Agriculture**
 - **U.S. Agricultural Subsidies**

2006 CEO Forum Recommendation

- Reduction in Agricultural subsidies in the U.S. so as to give India a chance to develop export markets for agricultural produce.
- Food standards should be science-based and not be allowed to be used as non-tariff trade barriers

Status

Currently the U.S. Congress is working on an updated Farm Bill that addresses farmer subsidy schemes in the United States. Additionally, the U.S. has committed to reducing trade-distorting subsidies as part of the WTO agriculture negotiations. The process is currently in play, with a view to reducing trade-distorting subsidies in agriculture.

Recommended Next Steps

The Forum recommends that the two countries work to settle difficult differences in the area of agricultural trade and work toward a successful completion of the WTO Doha Development Round, with a view to eliminating trade-distorting subsidies in agriculture.

- **Indian Agricultural Subsidies**

2006 CEO Forum Recommendation

Replace any remaining agricultural sector subsidies with direct payments that are in the line of sight to the farmer. Indirect subsidies should be avoided as they distort and obfuscate sectoral investment and do not reach the intended beneficiaries.

Status

In the past few years there has been a significant increase in the minimum support price for food and feed grains which have improved farmer margins and have also in some ways improved the quality of inputs utilized in growing those crops.

Recommended Next Steps

- The Forum encourages the GOI to continue to advance policies that allow the farmer to capture the benefit of the market price.

- The Forum continues to recommend that where subsidies are necessary, the GOI seek to support the farmers with direct payments that are WTO-compliant (i.e., implies non-trade and non-production distorting application of subsidies).
- The Forum recommends increased domestic support be provided for critical agri-infrastructure, especially in the area of post harvest logistics and export/import of agricultural commodities and raw materials.

■ Trade Policies in Agriculture

○ U.S. Trade Policies

2006 CEO Forum recommendations

- Reduce tariff and non-tariff barriers to export of agricultural produce and seafood to the U.S.
- Review restrictions on exports of agricultural products from India, such as tobacco, to the United States
- Food standards should be science-based and not used as non-tariff barriers to trade

Status

- After a routine review of the anti-dumping duty (ADD) on Indian seafood by the U.S. Dept of Commerce (audit of the selected exporters' books of account), the ADD is revised downwards to 1.06% from 10.17%.
- Export of fresh Indian mangoes is now allowed into U.S. after irradiation.
- No change in status of tobacco imports into U.S. from India.

Recommended Next Steps

- Considering the low level of ADD now, the duty may be done away with altogether.
- Conditions on mango imports may be reviewed after this season.
- India should be included in the tobacco Tariff Rate Quota allotted to nine other exporting countries such as Brazil, EU, Argentina, Malawi and Turkey.
- USG to consider support for upgrading laboratories and skill development to facilitate compliance with U.S. food safety laws.

- **Indian Agriculture Trade Policies**

- 2006 CEO Forum Recommendations**

- Liberalize policies and tariffs around oilseeds, feed grains, and vegetable oils, which serve as inputs into further processed products.
 - Review the range of technical barriers (TBT) and phytosanitary (SPS) measures imposed by India, which pose significant obstacles for U.S. agricultural exports.
 - Food standards should be science-based and not be used as non-tariff barriers to trade

- Status**

- GOI has been reducing the effective import duty on oils over the period and is in the process of negotiating tariff cuts as part of the WTO Doha negotiations.
 - With potential grain shortages in the past few years, policy is shifting toward state-controlled implementation of stock limits that restrict movement of goods, and that run contrary to a market-based policy approach.

- Recommended Next Steps**

- Continue to reduce duties on imported vegetable oils to continue to meet Indian demand for this staple commodity, and harmonize all vegetable oil import duties to allow consumers access to preferred choice of oils (e.g., reduce Sunflower Oil import duty to equate it with effective duty on Palm and Soybean Oil).
 - Trade policy on food and feed grains should be geared towards open markets to offer the Indian farmer the ability to benefit from market price signals as well as to afford the Indian consumer access to affordable food items. We recommend against state-sanctioned stock limits.

- **Processed Food/Value added Agriculture**

- **Cold Chain**

- 2006/2007 CEO Forum Recommendations**

- In order to capture the full value of agricultural commodities and processed foods the CEO Forum has been requested to provide specific recommendations to improve the cold chain.

Status

The U.S. Trade and Development Agency, under the umbrella of the Agriculture Knowledge Initiative, is sponsoring a program to strengthen the Indian cold chain infrastructure in late 2007 and early 2008. “The Cold Chain Global Alliance”, the U.S.-based cold chain industry association, is providing the technical expertise and training for four Cold Chain workshops in India in 2007 and 2008, followed by “master training course” including study tour for select participants.

Recommended Next Steps

- Following the conclusion of the Cold Chain training program, evaluate next steps and opportunities for U.S. investment.
- Evaluate merits of fiscal incentives for domestic and international investors to accelerate the development of food processing sector, including those supporting the cold chain infrastructure.
- For cold chain to work effectively, a cooling infrastructure at retail is required. Organized retail can facilitate this process and thus should be supported by the GOI.

■ Regulatory Processes and Approvals

○ Agri-chemicals

2006 CEO Forum Recommendations

Focus on improving the regulatory approval process for agri-chemicals. To support increased yields and production, reform license application process, including allowing for annual renewals without requiring a new application each year. Increase transparency and reduce unnecessary delays that can impact the growing cycle.

Status

- There has been no change in the regulatory approval process for agri-chemicals, including for the introduction of new grades of fertilizers.
- However, among the Budget proposals for 2008-09, GOI is examining proposals to move to a nutrient based subsidy regime and an alternative delivery method.

Recommended Next Steps

- Recommend that the GOI broad base the concession program for fertilizers to include all nutrients rather than limit the program to specific fertilizer products. Therefore, we recommend rationalization of the subsidy program to be nutrient-based versus the current product-specific program.
 - Concession scheme for fertilizers continues to be non-transparent and are applied retroactively. Addressing these aspects will put the program on a more effective footing in meeting India's challenges of making fertilizers available to Indian farmers.
 - Suggest promotion of the use of micro- and secondary nutrients.
- **Processed Foods/ Agri Products**
- **U.S. Regulations**

2006 CEO Forum Recommendation

Grant FDA accreditation approvals to exports of Indian processed foods to the United States

Status

No change in status

Recommended Next Steps

- Fast track FDA clearance mechanism through Green ticket should be permitted for Indian Ready to Eat Foods, including poultry and meat products.
- USG could consider permitting FDA Registration by an identified and approved Certifying Agency in India.

- **Indian Regulations on Processed Foods**

2006 CEO Forum Recommendation

Review the Agricultural Produce Market Committee Act, (APMCA) which prevents buyers and processors of agricultural produce from participating meaningfully and disintermediating non-value added costs.

Status

- The APMCA has been reformed in 13 states although significant additional work is needed to create a common market for

agricultural products to move freely across state and district boundaries.

- The Indian Food Safety Regulatory Authority has been set up. The GOI co-hosted, with the U.S.A, the CODEX Committee meeting in October 2007

Recommended Next Steps

- The Forum encourages the GOI to seek to implement uniform food laws across the country, as presently state governments amend the food laws to local conditions, which is not in the best interest of the Indian consumer, and which makes it challenging to efficiently produce, process, and transport food pan-India.
- The Forum would be willing to prepare specific proposals for harmonization and coordination between GOI and USG
- Continue to work on APMCA reform
- The Food Industry should be actively engaged in the new Rule making process and the harmonization process with Codex.

■ Organized Retail

Recommended Next Steps

- Increasing organized retail, and FDI in organized retail, can create new and better employment opportunities and by modernizing supply chain management and distribution, allow Indian farmers to build new and better markets for their products.
- The Forum can prepare a white paper highlighting the benefits of FDI in retail environment and case studies where retail opening has provided significant new employment through bolstered supply chain infrastructure

New Issues

1. **Bilateral Trade and Investment Agreement consistent with the existing relevant multilateral processes:** This was proposed by the CEOs with the rationale that business that currently flows through Mauritius and Singapore would come directly to India if there were a U.S.-India bilateral investment treaty. In response, it was stated that GOI would consider an appropriate format and both sides would launch negotiations on a BIT/ BIPA.

WTO Multilateral Trade Negotiations

2006 CEO Forum Recommendation:

- India and the U.S. can partner to make the Doha Round of the WTO a success by showing leadership to support an ambitious outcome and making strong offers in all the key areas of negotiations.

Update on Status:

- As of the preparation of this document, an agreement on Modalities in the WTO has yet to be achieved. India and the United States have often been on opposite sides of the major trade issues in the past two years. At this time, there is yet another push to achieve a global trade agreement sometime in 2008.

Recommended Next Steps

The Forum understands that issues remain in resolving the trade-offs between agriculture and non-agriculture market access (NAMA) including issues that are important to India such as services and livelihoods of its fishermen. We recommend that the two governments begin to narrow the gaps in their positions and seek a common way forward in the negotiations. A multilateral trade agreement, based on a transparent system of rules, is a critical factor for continued growth of the two economies.

Bilateral Investment Treaty

Discussions have been held in New Delhi between USG and GOI, with the next round of discussions in the early part of 2008 in the U.S. The objective is to conclude the agreement in 2008, if possible.

Two areas that will require discussion and resolution are understood to be:

- The Indian model does not provide for protection pre-investment but only post establishment, while the U.S. seeks equal status for U.S.

companies in India pre-establishment i.e. U.S. companies to be treated at par with Indian companies prior to investment in India.

- The U.S. seeks language on Labor and Environment norms.

It is believed that these issues will be resolved through ongoing discussions.

Recommended Next Steps

The Forum strongly supports USG and GOI discussions towards forging a bilateral investment agreement, while still pushing ahead for a successful conclusion of the Doha round of multilateral WTO trade negotiations.

The Forum strongly supports this engagement between the two governments and urges a bold approach to overcoming the challenges in concluding a bilateral investment agreement. In particular, the Forum urges both sides to take a flexible approach to reach common ground and consensus.

The Forum believes that such a bilateral investment agreement will help the development of market-oriented policies that protect and treat private investment in an open, transparent and non-discriminatory way, thereby fueling a rapid growth in trade and investment between the U.S. and India.

The Forum also welcomes the introduction of Resolution 928 by Congressman David Dreier and Congressman Joe Crowley urging that the U.S. initiate negotiations to enter into a Free Trade Agreement between the U.S. and India.

2. **Cooperation in Healthcare:** With high quality, low cost health care available in India, the Indian CEOs recommended that outsourcing - of U.S. research and medical treatment to its citizens - to India by insurance and health care companies be considered by the U.S. side.
 - Partnership involving medical cooperation - U.S. medical hardware and procedures but Indian cost-effective medical skills, was a suggested format.

Status Update⁷

A U.S. FDA delegation led by the Secretary, U.S. Department of Health and Human Services, visited India in Jan 08. The U.S. is open to the idea

⁷ Based on press reports of the visit of U.S. Secretary of Health

of setting up a branch office of its Food and Drug Administration (FDA) in India, as per the Secretary.

The Indian Health Ministry plans to collaborate with the U.S. Department of Health to set up working groups in each other's countries to address quality related issues in areas such as food, drugs and medical treatment.

From the Indian side, two bodies — one bureaucratic and one technical — are to be set up/ restructured shortly to work on how the gaps between Indian and U.S. medical and public health systems can be bridged. This will include developing common quality standards for the import-export of drugs.

A decentralized independent drug authority is to be set up, on the lines of the U.S. FDA, in the next one year or so. A Bill outlining this has been submitted in the Parliament.

Recommended Next Steps

The Forum fully supports the above initiatives now underway, and urges their speedy implementation.

- CEO Forum members Apollo Hospitals and Max Hospitals will explore collaboration with centres in U.S.A. (to be identified).

3. **Pharmaceuticals, Healthcare, Clinical and Medical Research:** The U.S. side could explore the possibility of a bilateral collaboration between NIH in the U.S. and Indian companies - as partners/ suppliers in clinical and medical research. Mutually beneficial research in Allopathy, as well as alternative systems of medicine suggested by the India CEOs, could be considered under the CEO Forum and also the bilateral Education Initiative.

Recommended Next Steps (Suggested by Indian members of the CEO Forum)

Clinical & Medical Research

- Collaboration between an Indian company and University of Cincinnati, faculty of medicine in the areas of Clinical Pharmacology, Molecular Medicine and Nephrology in the field of Clinical Research.
- Collaboration between the Indian Council of Medical Research, New Delhi and Georgetown University, U.S.A. in the field of Clinical Trials and Ethics.

Traditional Medicine

- Collaboration between the Council for Scientific & Industrial Research, New Delhi and the Institute of Complementary Medicine, Washington (U.S.A.).
- Collaboration between InCLEN, New Delhi and the Samuelli Foundation, Virginia (U.S.A.).
- Collaboration between the Institute of Yoga, Bangaluru, India and Harvard Medical School – a department which is already carrying out similar studies.
- Collaboration between pharmaceutical houses in U.S.A. to be identified e.g. Eli Lilly for Diabetes and Clinical Research centres of Department of Bio-technology, New Delhi for evaluation of Traditional Medicines

■ Healthcare System and Health Insurance

Status

Despite a large public network of health providers, public spending on health is very low, at around 1.2% of the GDP. Also, there is large variance in health financing among the states – for example, Kerala, Punjab and Tamil Nadu have double the per capita public health spending of Bihar and Madhya Pradesh.

Private health spending accounts for more than 80% of all healthcare spending - one of the highest proportions in the world. Private sector spending is 3.6% of GDP. Nearly all private spending is out-of-pocket at the point of service. Only 10% of Indians have some form of insurance, and most forms are inadequate.

Recommended Next Steps

- Increase Government Expenditure on Healthcare
- Expand Health Insurance: Promoting health insurance would not only improve access to quality care but would also have equity implications.
- Promote Diversity in Healthcare Financing Tools to address the access needs of different social segments - explore a combination of social health insurance, medical savings accounts and private health insurance.

■ Pricing of Patented Medicine

Status

The draft Pharmaceutical Policy 2006 states that there will be mandatory price negotiation prior to marketing approval for all patented products. There is no mechanism set out for this negotiation as yet. The draft policy also includes measures that would discriminate against foreign medicines in violation of GATT Article III.

Lowering patent standards and implementing pharmaceutical price controls are being viewed as a way to increase access to medicines—this approach is inappropriate and short-sighted. Before 2005 and under the old law (which did not allow patenting of pharmaceuticals at all), 65% of the population still had inadequate access to medicines. Achieving goals towards increased access to medicines must be addressed through comprehensive healthcare reform.

Recommended Next Steps

- **Eliminate Price Controls:** The proposed price control scheme could have the unintended consequence of severely undermining the global competitiveness of India's domestic pharmaceutical industry. It would discourage advanced life sciences research as well as the introduction of innovative life-saving medicines that represent the latest advances in global biomedical science.
- **Undertake Comprehensive Healthcare Reform:** Access to medicines must be addressed in the context of comprehensive healthcare reform.
- **Sustain Incentives for R&D Investment:** India needs to develop a pricing system that addresses the socio-economic and development patterns of India. This pricing regime should strike a balance between increasing access to medicines and sustaining incentives for R&D investment.

■ Regulatory Regime

Status

The regulatory environment in India is still evolving. The Central Government has a number of regulatory authorities, and there are a great number of different laws, regulations and guidelines that regulate clinical

trials and drugs. The system is even more complicated for biotech drugs. The proposed new Central Drug Authority (CDA) would have comprehensive power to control and regulate the pharmaceutical sector and could streamline the regulatory process. However the CDA is not yet functional.

Trial protocols do not seem to be reviewed with rigor, and the regulatory authority relies on approvals from other agencies. Furthermore, no regulatory oversight is required to export drugs – a valid import order and a No Objection Certificate (NOC) from the regulatory authority suffices.

In recent times, global companies are being required to conduct new Phase III trials in India, even when data from global trials that had significant India participation is available for local registration.

Recommended Next Steps

- Establish Central Drug Authority (CDA): Expedite the establishment of the CDA and ensure that it meets international standards and practice – capacity building is required.
 - Promote International Exchanges on policy approaches and technical regulatory information.
 - Adopt Internationally Accepted Guidelines like the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) in their entirety. For biotech products, transparent guidelines on scope and ambit are required.
 - Increase Drug Safety: Greater oversight of all manufacturers or tightening of export clearance will help prevent introduction of counterfeit/substandard/spurious drugs.
- Intellectual Property Rights
- Regulatory Data protection

Status

The Indian marketing approval process for a new drug is based on marketing authorization by a regulatory authority in another country, like the United States Food and Drug Authority (USFDA) or the European Medicines Agency (EMA).

The current practice brings India into conflict with its minimum international obligations as reflected in TRIPS Article 39.3. Besides

the Intellectual Property obligation, there is a significant safety and efficacy aspect of a new drug which has public health implications.

The Report of the Inter-Ministerial Committee headed by Satwant Reddy was submitted to the Ministry of Commerce on August 22, 2007. Among other issues of concern, the Report recommends protection of data only from disclosure, not reliance, and protection from unfair commercial use would come after an undefined transition period.

Furthermore, five months after the Report, there has been no change in the law. India is an emerging economy with an important pharmaceutical industry. A strong pharmaceutical intellectual property system in India should be viewed as consistent with India's own economic growth.

Recommended Next Steps

- **Implement Regulatory Data Protection:** India must implement regulatory data protection for pharmaceutical products that protects the clinical dossier of the innovator from both disclosure and reliance by third parties. Reliance by the Drug Controller on data submitted in another country to benefit generic competitors in India provides them undue commercial advantage, and, thus, the practice is inconsistent with India's TRIPS obligations.
 - **Term:** This protection should be available for at least five years from the date of marketing approval in India.
 - **Scope:** Furthermore, this protection should cover all drug products including marketing approval in India.
- Patent Law and Administration

Status

Lack of meaningful and effective patent protection: Indian law does not recognize incremental innovation and use patents. Section 3 (d) of the Indian Patents Act, 2005 creates additional hurdles (outside the normal patentability criteria) for pharmaceutical patents. Salts, esters, ethers, polymorphs, and other derivatives of known substances are considered the same substance and not patentable, unless it can be

shown that they differ significantly in properties with regard to efficacy. The recent patent rejections (at most times triggered by pre-grant oppositions) demonstrate that the term efficacy is being construed in a 'drug regulatory' sense and patent examiners are ill equipped to appreciate efficacy standards. It is difficult for patent applicants to satisfy efficacy requirements at the stage of filing patent applications, as pharmaceutical applications are filed at the initial stage of drug discovery, and it is only much later in the development cycle that efficacy and safety data is generated during clinical trials. There are no clear and transparent guidelines defining 'efficacy'.

The four patent offices in Chennai, Mumbai, Delhi and Kolkata have a total of 135 Controllers and Examiners. This staffing is inadequate considering the number of patent applications being filed each year, thus creating a huge backlog. In addition to this, the Examiners and Controllers are required to review and decide whether to approve patent applications in multiple disciplines, which may affect the quality of prosecution.

Recommended Next Steps

- **Reform Standards for Patentability** to bring India into the mainstream of patent practices like allowing "Second Use" patents, and elimination of hurdles beyond novelty, commercial applicability, and non-obviousness as in China and other countries at a similar stage of development.
 - **Build Capacity:** Patent offices need immediate recruitment of trained manpower (at least 1500) and adequate division between prosecution and administrative work. Efficiency and capability of India's patent offices can be bolstered through effective training in best practices in patent offices in countries with developed and evolved patent systems.
4. **Food Safety Authority:** The Indian Food Safety Regulatory Authority has been set up. GOI is co-hosting, with the U.S., the CODEX Committee Meeting in October. CEO Forum to prepare specific proposals for harmonization/ co-ordination between the Governments of India and the U.S.A.
 5. **Opening up of Rural Credit markets and Financial Services in rural areas:** Proposed by the U.S. CEOs and agreed that both sides should consider options and propose an initiative aimed at increasing access/

openness and productivity.

Recommended Next Steps

- GOI/RBI should consider treating Regional Rural banks (RRBs) on par with weak banks for the purposes of investment by foreign banks. They are by and large very comfortable on the Priority Sector lending. The existing shareholding of the central/state government and the sponsor banks can be bought by the investee bank. As an incentive, the investee bank can be offered additional branch licenses in metro/urban areas
- Foreign investors can play a key role in financial inclusion. Microfinance is fast emerging as a key opportunity for global players with an estimated US\$ 3 billion expected to be invested in the next 2 to 3 years in India in this sector. There currently are over 800 to 1000 MFIs in India.

The Committee on Financial Inclusion has recommended a separate category – “Micro Finance - Non-Banking Finance Companies (MF-NBFCs)” wherein the minimum equity investment from a foreign entity is suggested to stand reduced at US\$ 100,000 (instead of a minimum requirement of US\$ 500,000). The committee also recommends that venture capital funds would be permitted to invest in MF-NBFCs. U.S. investors may be encouraged to actively invest in this sector.

U.S. support on technology co-operation on smart cards, payments routed through mobile technology and biometric methods to increase outreach would be valuable. U.S. support could also be sought on micro insurance products.

GOI: Need to pass the Micro Financial Sector (Development and Regulation) Bill, 2007 and accept the recommendations of the Committee on Financial Inclusion.

6. Other Financial Sector Reforms

Recommended Next Steps

- **Indian public sector banks to be encouraged to consolidate.** This encouragement needs to come from MOF/RBI. Foreign banks can demonstrate that they are part of the solution by assisting the weaker public sector banks through know-how/technical link-ups. Credit, treasury, foreign exchange, risk management and distribution to name some of the areas where such collaboration could take place. Through technical

collaborations, know-how could be brought in without disturbing the ownership pattern. The ceiling of 20% investment by foreign investors in public sector banks limits the growth of the market caps of these banks. By raising this even to 30%, without giving away management control would be a step in the right direction. Eventually there is no alternative to permitting greater foreign investment in public sector banks. All the private sector banks, aside from ICICI and HDFC, need the same support as their personnel is at least as weak as the public sector banks.

- **Pension Fund and Asset Management Reforms**

Currently, the management of pension funds has been liberalized to the extent of allowing professional fund management, but this is restricted to a few domestic public-sector fund managers (LIC, UTI, SBI). There are a large number of foreign fund houses who have significant experience across countries in managing pension/PF money, and they can bring quality technology as well as business processes to bear on the task. It is suggested that the ones with the best track record world-wide for pension management be chosen, rather than leaving it to the local public sector to experiment and learn.

Indian investors have shown that they want diversification across geographies, witness the success of the international funds. However, these are new funds, often sub-managed. The investor would get a far better deal were he to invest in any one of the top international funds with existing track records. Yet, because of lack of enabling guidelines from RBI/ SEBI, existing asset managers and intermediaries are not able to develop the expertise to advise on the USD100,000/- that each individual can invest abroad.

International funds can be floated by domestic fund houses who have domestic assets under management of over USD1 billion. This is not very helpful, since how much money one manages in India is hardly a measure of the experience of managing money in other geographies. It may be worthwhile to link this to assets under management in the country where the money mobilized from Indian investors is invested.

7. **Import of controlled drugs to India:** A sub-group of the CEOs to engage on issues related to the import of controlled drugs and submit proposal/s.

8. Dispute Resolution mechanism

Recommended next Steps

A dispute settlement mechanism that has the power and jurisdiction to resolve commercial and contractual disputes quickly should be set up by India. Continued government focus at both center and state levels is required to resolve legacy issues. Recognizing that earlier ideas/options to expedite dispute settlement cases would not be acceptable under GOI judicial system, there continues to be problems with the efficiency of resolution on commercial and contractual disputes. The Forum recommends building expertise for the specifics of these types of cases as a division of the Ministry of Law that can provide oversight and support to ensure that cases are handled fairly and quickly.

9. Tax Treatment

Status

India - Taxable Presence/ Aggressive Transfer Pricing Concerns

Indian rules are not explicit on what level of activity a foreign company can conduct in India without creating a taxable presence i.e. a permanent establishment (“PE”). As non-Indian companies expand in India, it is often necessary to have employees of non-Indian companies in India assisting in transition issues. There is a need for greater clarity on what activities these foreign employees may conduct without creating a PE in India for their non-Indian employer. India also needs to develop a consistent and reasonable approach on how income should be apportioned to the PE if one is deemed to have been created.

India is aggressively attacking transfer pricing between affiliates and cross-border flows of money and assets. A more principled and consistently applied approach must be adopted. Aggressive tax enforcement is unreasonable given the lack of clearly defined standards.

U.S. - Allowing taxability of profits in the states of New York and California on Separate Accounting basis

The Indian Software Industry enables its clients leverage the Global Delivery Model to achieve higher quality, rapid time-to-market and cost-effective solutions, with a lot of such clients based in the states of New York and California. In general, the states of New York and California impose taxes on

worldwide income, using a worldwide apportionment formula. However, it does provide for circumstances where a Separate Accounting for California operations are allowed under the regulations, if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in California. In the case of the Indian Software Industry, such allocation and apportionment provisions pull foreign earned profit into the United States, since the profitability of the Indian Software Industry is higher on work done in offshore locations.

Recommended Next Steps

- Expedite existing mechanisms for resolving double taxation cases, particularly by ensuring that the U.S. and Indian authorities meet more often;
- that the authorities are able to develop a formal “case history” that allows them to quickly resolve future cases that follow similar fact patterns as previous cases; and that authorities do not seek to collect disputed tax when the official process for resolving such cases has been initiated.
- The Forum requests that usage of Separate Accounting methodology for computation of taxes in the states of New York and California be allowed

10. **Specific Issue:** The problems being faced by the Blackstone in their proposal to invest in UEL due to delay in approvals was flagged at the Forum’s meeting in September 2007.

The Forum understands that the proposal has received approval.

Annexure 1
Alternate Models for Building a Research Focus
Briefing on National Science Foundation (U.S.A.) and the Research
Councils

A. National Science Foundation (U.S.A.)

- Independent federal agency “to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense...”
- Annual budget of about \$5.92 billion
- NSF is the funding source for approximately 20 percent of all federally supported basic research conducted by America's colleges and universities.

NSF leadership has two major components:

- A Director who oversees NSF staff and management responsible for program creation and administration, merit review, planning, budget and day-to-day operations;
- A 24-member National Science Board (NSB) of eminent individuals that meets six times a year to establish the overall policies of the foundation. The Director and all Board members serve six year terms.
- Total workforce of about 1,700, including approximately 1,200 career employees, 150 scientists from research institutions on temporary duty.
- NSF is the only federal agency whose mission includes support for all fields of fundamental science and engineering, except for medical sciences.
- NSF tasked with keeping the United States at the leading edge of discovery in areas from astronomy to geology to zoology.
- In addition to funding research in the traditional academic areas, the agency also supports "high-risk, high pay-off" ideas, novel collaborations and numerous projects that may seem like science fiction today, but which the public will take for granted tomorrow.
- And in every case, NSF ensures that research is fully integrated with education so that today's revolutionary work will also be training tomorrow's top scientists and engineers.
- NSF's task of identifying and funding work at the frontiers of science and engineering is not a "top-down" process. NSF operates from the "bottom up," keeping close track of research around the United States and the world, maintaining constant contact with the research community to identify ever-moving horizons of inquiry, monitoring which areas are most likely to result in spectacular progress and choosing the most promising people to conduct the research.

B. Research Councils (UK model)

Research Councils UK is the strategic partnership of the UK's seven Research Councils.

- Each year the Research Councils invest ~£2.8 billion in research covering the full spectrum of academic disciplines from the medical and biological sciences to astronomy, physics, chemistry and engineering, social sciences, economics, environmental sciences and the arts and humanities.
- Research Councils are public bodies charged with investing tax payer's money in science and research in the UK in order to advance knowledge and generate new ideas which can be used to create wealth and drive improvements in quality of life.
- Each Research Council funds research and training activities in a different area of research. The Councils employ around 12,000 staff, and support around 30,000 researchers, including 15,500 doctoral students in UK universities and in their own Research Institutes.
- There are currently seven Research Councils:
 - Arts and Humanities Research Council (AHRC)
 - Biotechnology and Biological Sciences Research Council (BBSRC)
 - Engineering and Physical Sciences Research Council (EPSRC)
 - Economic and Social Research Council (ESRC)
 - Medical Research Council (MRC)
 - Natural Environment Research Council (NERC)
 - Science and Technology Facilities Council (STFC)
- All are Non-Departmental Public Bodies (NDPBs), established by Royal Charter and are independent legal bodies outside of Government, accountable to Parliament.

Annexure 2

Briefing on Agricultural Knowledge Initiative (AKI)

Background

- July 2005: President Bush and PM Singh announce AKI
- Dec 2005, Feb 2006: 1st Board meeting in D.C., 2nd in New Delhi
- Mar 2006: President Bush visits India; a major focus is the AKI
- November 2006: USDA Secretary Johanns renews Presidential AKI pledge with PM Singh
- June 2007: 5th Board meeting in D.C.
- April 2008: 6th Board meeting scheduled for Delhi

AKI Board

- Honorary Advisors: Norman Borlaug and M.S. Swaminathan
- Board members each from U.S. and India, representing universities, private sector, and government
- U.S. Co-Chair: A. Ellen Terpstra, USDA
- Indian Co-Chair: Mangala Rai, Indian Council of Agricultural Research
- U.S. Private Sector – Monsanto, Wal-Mart/India, Archer Daniels Midland
- Indian Private Sector - Venkateshwara Hatcheries, ITC, Masani Farms

Funding

- India: \$80 million pledged over three years
- United States: \$24 million pledged over three years

AKI Objectives

- Raising agricultural productivity in India to strengthen food security
- Increasing technology transfer, including biotechnology
- Expanding U.S.-India trade, and accelerating India's integration into the global economy
- Ensuring a key role for the Indian and U.S. private sectors
- Re-invigorating U.S.-India, university-to-university partnerships

Four Focus Areas

- Post-harvest/ Agro-Processing – i.e. Food Processing and Marketing
- Biotechnology
- Water Management
- University Capacity-Building

Annexure 3

Specific Recommendations on UMPPs

Permitting Risk

Construction of a power project in India involves number of permits and licenses which in turn have time consuming and complex procedures. The current bidding procedures provides permits only upto a certain level. Getting the final clearances involves long drawn processes and the financial closure may be up to 12 to 18 months after the bid submission date. This delay exposes the bidder to risks on equipment pricing and financing for the reasons that are beyond his control. It is recommended that all main requirements like land acquisition and environment and forest clearances should be provided in final form for a committed, time bound tariff bid.

Inadequate Coverage for Force Majeure

Force majeure provisions are inadequate to cover the risks for attracting international financing for a project of this magnitude. Specific instances of this are:

- The political force majeure (referred to as Direct Non-natural Force Majeure in the PPA) coverage is inadequate even as compared to the IPPs that have been financed in India till date. The onus of proving the political force majeure through an order of court of law is impractical and does not provide any protection to the investors.
- Force Majeure till Financial Closure results in a 'day for day' basis extension in the COD and does not effect monetary compensation.
- Compensation for Political and Indirect Political FM events begins only after the cessation of such event and then also through future tariff increase only, such increase to be approved by the Regulator. It likely would be extremely difficult to fund the cash flow required during the period of force majeure and, therefore, will be unacceptable to the investors and lenders.

Inadequate Coverage for Buyer's Default

- Delay in commissioning due to unavailability of transmission system is compensated through payment of the same LDs as are available to the Buyer from the Transmission Utility. Since the Seller is not a party to the agreement between the Buyer and the Transmission Utility, the Seller's compensation should not be linked to agreement between them. Instead the Seller should be compensated through payment of its Debt Service obligations. .

- In case of Buyer event of default and political force majeure, and force majeure affecting the Buyers, it should be the responsibility of the Buyers to provide for an exit route to the investor by way of a properly structured buy-out provision. The PPA has a buy-out provision only till financial closure and that too if the buyer defaults. Beyond that the PPA does not provide for any buy-out clause. Considering the fact that the Project is being set up to cater to specific Buyers and the size of the projects does not render it amenable to sell in a merchant market, force majeure is an essential requirement.

Payment Security Mechanism

The Incremental Revenue concept in the escrow does not seem to be practical as it provides that only the charges of existing lenders and existing IPPs will have precedence over the charge created for UMPP. While it may appear desirable that UMPP will be covered but it is not clear how the utility will meet its operational expenses on a day to day basis. Further, what payment security structure will be available for lenders and projects (beyond this first round of UMPPs) needs to be ascertained.

Other Issues

- Foreign currency risk is on the Seller.
- Impact of change in withholding tax and dividend tax is not a pass-through under the PPA.
- Limit of US\$ 500 million for raising ECB for a single project should be waived for UMPP considering the estimated investment of approx US\$ 4 billion.

Drafting of the Project Documents

The drafting of the project documents leaves a lot to be desired in terms of making the documentation acceptable for international quality non-recourse project financing. In addition to the above main issues, there are numerous drafting issues that need to be suitably revamped to avoid ambiguity and confusion at a later date.