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Interview with Susan G Esserman

The expert on trade discusses US-India potential with Aziz Haniffa

Susan G Esserman, former deputy trade representative in the Clinton administration, is one of the country's leading experts on the United States-India trade relationship and international trade negotiations. As a strategic advisor to prominent Indian companies through her law practice at Steptoe & Johnson LLP, she has spent the last decade helping companies navigate the legal regulatory and political barriers that can impede trade and investment in the US.

Esserman, who serves on the Board of Directors of the US-India Business Council and is a member of the Council on Foreign Relations, is the USIBC's point person on trade and commerce. During her time as a top government official, she was responsible for US trade policy and negotiations in the World Trade Organization and with Europe, India, Russia, Africa, and the Middle East.

Besides Deputy USTR, with the rank of Ambassador, she also held three additional senior posts at USTR and the Department of Commerce. As USTR General Counsel, she played a lead role in devising the Clinton administration's litigation strategy in the critical early years of WTO dispute resolution.

Earlier, as Assistant Secretary of Commerce for Import Administration, Esserman was the key decision maker in literally hundreds of antidumping and countervailing duty cases and during her tenure also played a lead role in developing comprehensive antidumping and countervailing duty trade legislation and regulations.

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During Indian Prime Minister Manmohan Singh's recent visit to Washington, DC, at his address to the USIBC, he committed to continue India's economic reforms to attract foreign trade and commerce that has been a catalyst in the evolving bilateral strategic partnership?

First, it's important to step back and put this in context. I believe the trip had special symbolic significance. By making India the first state visit and dinner of his presidency, President Obama was sending a very strong signal about the importance of the US-India relationship. In his world view, in fact, he sees the US-India partnership as the defining partnership of the 21st century. That is very important and hopefully sets to rest fears and claims to the contrary. The president and the prime minister spoke in terms of partnership not only on bilateral issues, but in attacking global issues, such as financial reforms.

In this regard, what were you particularly struck by?

I was particularly struck by the prime minister's affirmative and constructive tone in the area of financial recovery and reform. The tone was fully collaborative rather than seeking to assign blame. This is something that I noted early on actually with the Indian business community and this was followed up by the very positive tone set by the prime minister in this area. Earlier, the Indian business community came to the US in a spirit of friendship and shared interests and recognition that we were all in the same boat together – a very constructive attitude – and this was then reflected in the various speeches the prime minister gave both at the US-India Business Council and Council on Foreign Relations. It was all about collaboration and the important challenges that we can tackle and solve together. So, this was very significant. And, yes, he did reassure the business community that economic



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reforms would continue and that economic reforms had brought India advantages and that was good for all of us to hear, especially in the current climate where free trade and markets for our goods and services and investment are very important in terms of the recovery. But, of course, there is some concern about the pace of reform in India. There is hope that the prime minister will draw on his strong political mandate that he received and act to remove impediments that have long outlived their usefulness – that are relics of the past, like high tariffs and discriminatory taxes and tax policies that are out of step with international norms – and that they will begin to implement more internationally accepted tax policies, and extend the important steps that have been taken in the intellectual property area to better promote innovation, collaboration and joint investment and develop stronger intellectual property enforcement. So, our hope is for action in these important areas.

But I guess there's no denying that the reforms and exponential growth and

the progressive steps India has taken in the past decade and the fact that its economy was immune from much of the damage that affected the US and many other economies over the past two years, positions India as a country that's necessarily an emerging global power.

Absolutely. Let's just look at where India was over 10 years ago. India was not even within my portfolio [*when she was deputy USTR and America's chief trade negotiator*] and I asked to take India because I saw the tremendous potential and the stirrings of innovation and entrepreneurialism in the Indian business community. There were these seeds of change that we had never seen before. So, I took a great interest in India at a time when there was little interest in India-US trade issues. That was 1999. Over the past decade, we have seen immense change. One thing that is incredibly different today is that the US and Indian private sector have driven trade, joint investment, and collaboration, to an unprecedented degree. We are in a very different place than we were 10 years ago. So, what that means is that the role of government is to facilitate greater collaboration and not stand in the way. We've seen far more change on the private sector side and not as much on the government side, where it's lagging. But, a lot of these [*global*] issues are hard – they are very, very hard – and it's no surprise to me...

Also driven by domestic political compulsions?

Absolutely. And, so it's no surprise to me there was no progress made in the [Obama-Singh] summit on the WTO [World Trade Organization] Round. I didn't expect it, and this is not typically what happens in these bilateral summits where an ability to make progress on global issues, like the WTO Round, depends on a number of different trading partners. I would say, however, that there is a more positive tone in the second [Manmohan Singh] administration on trade – less harsh rhetoric – but I don't have any sense that the differences between India and the US and the major players in the WTO Round have narrowed. And, also, I didn't sense

from the [Obama-Singh] summit that the WTO was a priority part of the discussion. Again, I don't find that surprising. But I am not heartened by where we are on the WTO Round.

I do hope that ultimately when President Obama goes to India, that his visit can serve as a driver of progress on some concrete economic issues – that it is a bookend and that the visibility of the visit will give momentum for concrete progress such as on the US-India bilateral investment treaty, the removal of certain high tariffs, for progress on intellectual property and other areas of mutual concern.

Are you gung-ho about the possibility of a bilateral investment treaty?

I believe there is a lot of positive support, because there is a perception of mutuality – where the US is investing in India, India is investing in the US, and where both sides stand to gain. I haven't looked at the most recent investment numbers. But up to a certain point last year, bilateral investment was in balance, and I believe that has helped to create momentum and support for moving forward.

When asked by Fred Bergsten, president, Peterson Institute, about why not a bilateral investment treaty between the US and India now, particularly since India has a lot of such treaties with other countries and not having such a treaty with the US could be considered discriminatory, the prime minister was not inimical to it. Does that give rise to optimism that a bilateral US-India investment treaty could become a reality sooner rather than later?

Yes. And, it was mentioned in the [Joint] Statement. What I have found very interesting about the bilateral investment treaty was that both sides – in the private sector as well as the governments – want to move forward. I do believe that as the Indians and the US are making agreements with other countries, it is incumbent on us to forge ahead with deeper US-India trade ties, given our strong mutual interests, our strong economic, potential and cultural ties, and this unique partnership that the President talked about. The bilateral

investment treaty is a great vehicle, as it will provide concrete benefits for our companies but it also projects a strong symbol of the greater economic ties between the countries and...

You mean it would sort of institutionalize these ties and the unique partnership that President Obama spoke of?

Yes, since these ties have developed over the last decade and gotten stronger. The United States and India have very large economies – large, diverse economies – and that's one of the reasons why it can be more difficult to develop a comprehensive trade relationship. It is often easier for the US or India to negotiate with a country whose economy is smaller and poses less complicated and sensitive issues. A bilateral investment treaty would be good as a first important, significant step towards a more comprehensive trade relationship. So, we should encourage conclusion of a bilateral investment treaty, as it will not only help to remove impediments to investment but promote rule of law and stability at a time of great uncertainty in the global economic environment.

On the issue of outsourcing, which just a few years ago targeted India as the whipping boy, particularly during election cycles here in the US, has it become passé? When I interviewed Tarun Das of the Confederation of Indian Chambers of Commerce and Industry recently, they asserted that it was now a whole new ball game where US-India trade was concerned and the mutuality of investment – of foreign direct investment by Indian companies in the US generating jobs, tax revenue and capital growth in the US – made a mockery of the whole argument of outsourcing?

I do believe that we are in a different stage of our relationship – one based on more mutuality – but I don't think fears about outsourcing are totally a relic of the past. We have to recognize that recovery in the US will be slow, especially slow on the jobs side. So, in this environment, it would be expected that fears about outsourcing will stir up in the future. But, again, we

are in a different position today, and it is very important that Americans know that outsourcing is only a small part of the Indo-US relationship. Since the outsourcing issue first came to the fore, Indian companies have made very important investments in the US, creating thousands of jobs here. So, the way we can address these issues constructively is through increased US-Indian investment and collaboration, and there are so many areas where we have mutual and complementary strengths – whether it is in energy, health, medicine, defense, or technology areas. The more we are able to do this and create joint ventures and the more we can show the mutuality of the relationship, the better we will be able to deal with this issue.

Coming back to the Doha Round, there was some optimism that in India, with Anand Sharma taking on the commerce portfolio and, of course, the fact that the Congress party had come back with an enhanced mandate and with less coalition partners and so on, that there might indeed be some analysis nothing really moved?

I am not really surprised by it. First of all, I do believe it is helpful to have a more positive tone and good personal bond in the trade negotiations – that’s essential. And, I agree with you that’s a very positive thing that has happened. But it is not sufficient. And, so, tone helps to set the stage for potential agreement, but I don’t sense that there is enough of a change in positions such that agreement is around the corner. So, I am disappointed but not at all surprised by the lack of movement.

Is that because the agricultural subsidies issue is the 800lb gorilla in the room?

No. I don’t see it that way. I think it is broader than that. It goes to this point of mutuality we discussed earlier, which is that for an agreement to conclude, the major parties have to see mutual benefit. The US needs to show its public that there are tangible gains it is achieving if it’s to make important concessions – in agriculture. Its common sense. And, so it’s important for the American public to see that the US will gain access to major markets like India and

China, if it is seen to make important concessions to those trading partners. So, we need to work harder to achieve a mutuality of benefit sufficient to support the conclusion of the agreement.

When Montek Singh Ahluwalia [deputy chairman, India’s Planning Commission] was here, he said that Indian farmers are only too willing and can compete with the American farmers, but that the joke in India is that what the Indian farmers cant compete with is the US Treasury, obviously referring the subsidies the US government provides to its farmers. Has he got a point?

I believe that’s grossly overstated in the sense that the [US] subsidy levels are far lower in the last several years than they have been in the past. And I believe that we can resolve this issue in a way that will be fair to all sides. It has to be in a situation where the US is seen to receive some concrete benefits from other key trading partners. And that’s the key. Every country has the same issue. If they are going to sign an agreement, they have to show their publics that there’s a balance of benefits – that there are gains as well as concessions.

On climate change, at the recent Copenhagen conference, is there a sense of disappointment that hopes of India helping to carry the developing countries along didn’t exactly pan out and ultimately, the entire conference – for all the hype – was a damp squib?

I am much more positive about that. My sense is that the involvement and direction of the prime minister in climate change have been critical. [Indian Environment Minister] Jairam Ramesh made it quite clear here during the autumn that the prime minister’s direction to him was to make sure that India is part of the solution, especially recognizing India’s vulnerability to global warming. And, we have seen India’s position evolve from a defensive posture to one that seems to accept a shared responsibility in this critical

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area. So, there have been important changes and the exchange between President Obama and Prime Minister Singh was important.

India came out with its offer following its meetings with President Obama. While the result at Copenhagen was not as strong as we all would have liked, given the seriousness of the issue, it was first step. India rightly had a big seat at the table. There was an evolution of the Indian view over the year in a positive direction. We are not where we need to be, given the significance of the issue, but I think the tone and the approach of India were very different in Copenhagen than it’s been in the WTO. Climate change is such a challenging issue for all countries – major economies and smaller economies – and it’s no surprise to me, as a former trade negotiator, that 190 countries were unable to reach an agreement on such a complex subject. President Obama showed great drive and leadership to salvage a framework for moving forward.

On the newly re-constituted US-India CEOs Forum, the new members of the American side that President Obama appointed are different – in terms of the composition of industry and businesses – than that were represented in the CEO Forum of the Bush administration. What’s your take on this?

The CEO Forum has been a good idea. I don’t have any particular thoughts about the new composition, and it is to be expected that each new administration starts anew. But, I am delighted that they preserved the forum because it is very important that we have the views of such important business leaders on both sides. Having the input and experience of these business leaders who are active in each other’s markets may help to inform and drive further government reform. So, I am very positive about this CEO Forum concept being continued, because these very strong leaders can bring to government policymaking their unique insights and help our government to be more pro-active and more timely with regard to reform.