INDIA

TRADE SUMMARY

The U.S. trade deficit with India was $9.5 billion in 2004, an increase of $1.4 billion from $8.1 billion in 2003. U.S. goods exports in 2004 were $6.1 billion, up 22.4 percent from the previous year. Corresponding U.S. imports from India were $15.6 billion, up 19.2 percent. India is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $3.7 billion in 2003 (latest data available), and U.S. imports were $2.2 billion. Sales of services in India by majority U.S.-owned affiliates were $1.2 billion in 2002 (latest data available), while sales of services in the United States by majority India-owned firms were $261 million.

The stock of U.S. foreign direct investment (FDI) in India in 2003 was $3.6 billion, up from $3.3 billion in 2002. U.S. FDI in India is concentrated largely in the manufacturing, utilities, and banking sectors.

IMPORT POLICIES

India's tariffs remain remarkably high, especially in the agricultural sector. U.S. producers encounter tariff and non-tariff barriers that impede their exports. This is despite the fact that beginning with its economic reform program initiated in 1991, India has taken noteworthy steps to open its markets. A progressively more open and transparent trade regime stimulated a strong increase in U.S.-India trade and investment in the first half of the 1990s. U.S exports to India stagnated in 1996 as the reform process stalled, but have shown a positive growth trend since 2001. While U.S. exports continued to grow in 2004, substantial expansion in U.S.-India trade will be unlikely without significant additional Indian liberalization.

The government of India (GOI) has made substantial progress in restructuring the tariff applied to non-agricultural goods. In January 2004, the GOI reduced from 25 percent to 20 percent the tariff applied to most non-agricultural goods. The GOI applies higher tariffs to petrochemicals, automobiles, and finished steel products. On February 28, 2005, the GOI stated its intention to reduce the peak applied non-agricultural duty by another 5 percentage points.

According to a September 2004 World Bank study on Trade Policies in South Asia, India's simple average applied duty rate is 22.2 percent, down from 24.8 percent in 2003. India also reduced applied duties in 2004 on certain selected imports, including: coal; nickel and nickel articles; power transmission and distribution project equipment; electricity meters; certain raw materials and inputs for optical fibers and cables; capital goods for manufacturing electronic goods; certain telecommunication infrastructure equipment; cellular telephones; VCDs and

DVDs; lifesaving bulk drugs, formulations, and medical equipment; parts of artificial limbs and certain rehabilitation aids; medical, surgical, dental, and veterinary furniture; mosquito nets treated with pesticide; aviation turbine fuel; and equipment for industrial and agricultural water supply projects. According to the U.S. textile industry, India continues to maintain numerous textile trade barriers, and India remains one of the most heavily protected textile markets in the world. In addition, reductions to India's agricultural tariffs continue to be negligible.

The GOI assesses a one percent customs handling fee on all imports in addition to the applied customs duty. In January 2004, the GOI eliminated a four percent Special Additional Duty (SAD), which had been levied on virtually all imports since the 1998/99 budget. In July 2004, a newly elected government imposed a new two percent education fund assessment that must be paid in addition to customs duties. The GOI includes tariffs in calculating the value upon which to assess additional duties.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally in the Doha Development Round. U.S. Trade Representative Robert B. Zoellick and his Indian counterpart, Minister of Commerce and Industry Kamal Nath, held several meetings in 2003-2004. The AUSTR for South Asia regularly visits India and meets with Indian diplomatic and trade officials, as well as U.S. and Indian private sector representatives, to identify ways to open India's markets. As part of the United States-India Economic Dialogue, the United States-India Trade Policy Working Group meets regularly to discuss the full range of bilateral trade and investment issues.

In the World Trade Organization (WTO), India has bound tariffs on 68 percent of its industrial goods tariff lines. The majority of these bindings exceed India's applied rates of duty. In agriculture, India's WTO bound tariffs range from 100 percent to 300 percent, also higher than the applied rates in many product areas.

The Indian government publishes tariffs and additional tax rates applied to imports, but there is no single official publication that includes all information on tariffs, fees, and tax rates on imports. The system is characterized by a lack of transparency. Importers must consult separate tariff and excise tax schedules, as well as any applicable additional public notifications and notices, to determine current tariff and tax rates. Furthermore, official Indian publications use different classification nomenclatures for tariffs and excise taxes, which cause confusion. Each Indian state also levies taxes on interstate commerce, which creates additional confusion. The government has taken steps to implement a Value-Added Tax (VAT) on April 1, 2005 that is meant to replace inter-state taxes, but previous deadlines for VAT implementation have not been met.

Import Licensing

As a result of a WTO dispute settlement action the United States initiated in 1997, India has eliminated its import licensing requirements for most consumer goods. Importers of vehicles of

any type, however, face restrictive and trade-distorting import practices. For example, the GOI requires special licenses for importing motorcycles that are virtually impossible to obtain. Import licenses for motorcycles are granted only to foreign nationals: (1) permanently residing in India; (2) working in India for foreign firms that hold greater than 30 percent equity; or (3) working at embassies located in India. Certain domestic importers are eligible to import vehicles without a license, but only if these imports are offset by exports attributable to the same importer.

In addition, India continues to maintain a negative import list. The negative list is currently divided into three categories: (1) banned or prohibited items (e.g., tallow, fat, and oils of animal origin); (2) restricted items which require a non-automatic import license (e.g., livestock products, certain chemicals); and (3) "canalized" items (e.g., petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity.

India has liberalized many restrictions on the importation of capital goods. The government allows imports of all second-hand capital goods by the end-users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life.

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. Under the current system, which the current government says it will revise by April 1, 2006, the GOI sets a maximum retail price that can be charged to farmers for DAP. This price is not adequate to cover the cost of producing or importing DAP. The excess costs for domestic producers and importers were subsidized, at different levels that favored domestic DAP over imports. Since July 2004, subsidies have been equalized but at a level insufficient to allow for regular commercial import transactions. Prior to 2000, the subsidy differential was minimal and encouraged both the import of finished DAP and domestic production. Beginning in 2000, the subsidy differential between domestically produced DAP and imports put DAP importers at a competitive disadvantage. U.S. imports shrunk by 75 percent from a high of $414 million in 1999, to approximately $100 million in 2004, even though Indian domestic production could not keep pace with rising demand. The United States continues to press India to end its costly, trade-distorting treatment of DAP fertilizer.

Customs Procedures

The GOI appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures issued on September 7, 2001, allow Customs to reject the declared transaction value of an import because a particular sale: (a) was not undertaken "in the ordinary course of trade under fully competitive conditions;" or (b) involved a "reduction from the

ordinary competitive price." U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to obtain further information from India on the operation of these amendments, and will continue to examine the customs valuation procedures for consistency with India's obligations under the Customs Valuation Agreement.

Indian Customs requires extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part these delays are a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or specific Indian export promotion program.

India introduced a reference price system for soybean oil in September 2002 to address alleged under-invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. When the GOI reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India's 45 percent WTO-bound tariff. The GOI states that the reference price is reviewed as frequently as weekly and adjusted, if published world prices differ by plus or minus 10 percent from a calculated three week moving average. India has not formally defined this procedure, making it non-transparent and unpredictable. Exports of U.S. crude soybean oil to India were negligible in 2003 after accounting for $25 million in 2002. The U.S. Government continually raises this issue with India, but has not received a response from the Indian government that clarifies its policy and the reference price scheme's relationship to India's WTO commitments.

Certain customs procedures impede importation of automotive products. Motor vehicles may be imported through only three specific ports and only from the country of manufacture. Declared transaction values of automotive products may be rejected, insofar as legitimate reductions in the wholesale price of such products are ignored.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The GOI has identified 109 specific commodities (including food preservatives and additives, milk powder, infant milk foods, certain types of cement, household and similar electrical appliances, gas cylinders and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. A system now exists by which foreign companies can receive automatic certification for products made outside India provided BIS has first inspected the production facility (at the manufacturers expense). Licensing fees include the cost of the initial inspector's visit and tests, an annual fee of approximately $2,000 and a marking fee that ranges from 0.2 to 1 percent of the value of certified goods imported into or produced in India.

In 2004, Indian Customs began to require registration or an exemption certificate for imported boric acid. The Ministry of Agriculture's Central Insecticides Board and Registration Committee

has not yet published criteria and procedures for obtaining this documentation. Imports of boric acid are, therefore, effectively blocked. Indian government rule making has been *ad hoc* and confusing. India may be the only country that requires registration of boric acid intended for non-insecticide use. U.S. industry is required to register, although it asserts that 90 percent of all boric acid imports into India are for non-insecticide uses and should qualify for an exemption. India's boric acid producers are not, according to U.S. industry, subject to the same constraints. We have sent a demarche addressing this issue to the GOI and are awaiting a response.

India's procedures for establishing emissions standards are vague and non-transparent. The emissions standards seem to favor small displacement four-stroke motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers fails to meet India's requirements.

In 2001, India banned textile and apparel imports that contain certain dyes. In January 2004, the GOI relaxed its textile-testing requirement by announcing that it would accept, as proof of the absence of azo-dye, certification that the exporting country had banned azo-dyes in textiles.

Sanitary and Phytosanitary (SPS) Measures

The U.S. Government has raised with India concerns regarding its failure to notify certain SPS measures. Bilateral technical level discussions are ongoing and have resulted in a short-term agreement for important U.S. export commodities, such as almonds. The U.S. government continues to impress upon India the need to base its SPS measures on science, including those affecting apples, dairy products, pulses, poultry, pet food, and forest products. The United States will continue to seek a long-term solution regarding almonds and other outstanding SPS issues.

In 2003, the Ministry of Health implemented amendments under its Prevention of Food Adulteration Act (PFA) which could potentially restrict Indian imports of several agricultural products. In addition, at the end of 2003, the Ministry of Agriculture issued a set of new phytosanitary regulations and quarantine requirements for imports of agricultural products. These are entitled the "Plant Quarantine (Regulation of Import into India) Order, 2003". GOI implementation of these measures prior to notifying them to the WTO SPS Committee jeopardized Indian imports of U.S. almonds, pulses, fresh fruits and vegetables. Furthermore, new requirements affecting solid Wood Packaging Material (SWPM), as they were initially drafted, threatened adversely to impact U.S. exports of nonagricultural products. Bilateral discussions led the Ministry of Agriculture to amend its quarantine requirement for wood packaging materials to make it compatible with international standards, thereby resolving the market access problem.

The Indian government has implemented several sanitary restrictions, which do not appear to coincide with the Office of International Epizootics (OIE) and CODEX recommendations. The OIE and CODEX are the global standard setting bodies for animal health issues and food products respectively. Such restrictions have affected Indian imports of poultry and poultry

products, and pet food and dairy products. Until February 2004, the Indian pet food market had been a rapidly growing and promising market for U.S. exports. U.S. government officials have regularly called upon Indian sanitary authorities in an effort to resolve this problem.

The GOI reports that it is currently reviewing its policy for evaluating the safety of biologically engineered foods. In 2002, the Genetic Engineering Approval Committee (GEAC), the Indian government's regulatory body for biotechnology products, conditionally approved the import of refined soy oil and crude de-gummed soy oil. It declined, however, to consider importation of a corn-soy blend (CSB) without a special U.S.-issued certification. Even if a satisfactory certificate were available, the GEAC has not specified the criteria upon which it would evaluate the safety of CSB. In the absence of a policy framework for assessing the safety of biotechnology commodities and foods, the decision-making process within the GEAC is slow, non-transparent and arbitrary. Meanwhile, Indian researchers themselves are engaged in the domestic development of agricultural products derived from biotechnology such as mustard seed, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. Indian government procurement practices and procedures are non-transparent. Foreign firms rarely win Indian government contracts. In 2004, the GOI extended until April 2005 a policy giving preference to public sector companies whose offers are within 10 percent of the lowest bidder and are willing to match that price. As this applies to procurements by India's numerous public sector enterprises as well as government agencies, the policy seriously restricts the ability of US firms to compete in the Indian market.

EXPORT SUBSIDIES

As part of its Foreign Trade Policy announced in August 2004, the GOI committed to revise its export-based import-duty drawback scheme to address WTO inconsistencies. The GOI continues, however, to maintain a number of "incentive" programs that effectively subsidize exports. In 2004, 30 percent of export profits could be deducted from a company's gross taxable income. The tax exemption for profits from export earnings is being phased out over five years ending March 31, 2005. Tax holidays will continue for Export Oriented Units and exporters in Special Economic Zones. The GOI purchases wheat and rice on the local market at support price levels. At times the government has exported its stocks at prices well below the domestic price.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property protection in India is weak but likely to improve as a result of expanded patent coverage effective January 1, 2005. USTR placed India on the "Priority Watch List" as part of the 2004 "Special 301" review.

Patents

On December 27, 2004, the GOI issued a Patent Amendment Ordinance just ahead of India's January 1, 2005 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deadline to enact product patent protection. The ordinance extends product patent protection to pharmaceuticals and agricultural chemicals. To make these changes permanent, the Indian Parliament must ratify this ordinance or pass substitute legislation before the six-month ordinance period expires. While a positive step, these changes do not address several important weaknesses in India's patent law. For example, as currently written, the new ordinance does not clarify some ambiguities regarding the scope of patentable inventions.

In December 2003, the GOI issued regulations to implement the Protection of Plant Varieties and Farmers' Rights Act, passed in August 2001. As a result, India provides protection for plant varieties.

Indian law does not provide for protection against unfair commercial use of test or other data that companies submit to the government in order to obtain marketing approval for their pharmaceutical or agricultural chemical products. Since 2003, the GOI has been debating the provision of such protection, but has taken no action. Without specific protection against unfair commercial use of clinical test data, companies in India are able to copy certain pharmaceutical products and seek immediate government approval for marketing based on the original developer's data. Recognizing the role that TRIPS-consistent protection plays in fostering innovation and investment, a small, but growing, domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms and educational and research institutions, favors changes to improve protection of data.

Copyrights

U.S. industry estimates that, in 2003-2004, lost sales resulting from piracy in India of U.S. motion pictures, sound recordings and musical compositions, computer programs, and books totaled about $500 million.

In 2000, India amended and substantially weakened the software provisions of its Copyright Act which, since 1995, had been one of the most progressive in the developing world. Nevertheless, the Information Technology Act of 2000 includes penalties for the unauthorized copying of computer software. Penalties of up to $240,000 can be applied to unauthorized copying. Also, the penalty affords no immunity from prosecution under other laws. But, to our knowledge, no successful prosecutions have emerged from the Indian court system.

The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT). For several years a "core group" of GOI officials, local industry representatives, academics and lawyers has been discussing amendments to the Indian Copyright Act which would enable India to implement these treaties. The core

group has yet to introduce the necessary amending legislation. United States' attempts to provide useful input into this process continue to be disregarded.

The Indian Constitution delegates enforcement responsibility to the state governments. The central government can pass laws but the states are responsible for implementing them. The Central Bureau of Investigation (CBI), for example, which has inter-state jurisdiction, does not pursue IPR-related cases. The state, municipal or local police forces - although untrained - are charged with enforcing IPR laws.

Piracy of copyrighted materials (particularly software, films, popular fiction works and certain textbooks) remains a problem for both U.S. and Indian producers. Pirated semiconductors are sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine this option are now underway. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority. The law provides for minimum criminal penalties, including mandatory minimum jail terms. If implemented, these penalties, U.S. industry believes, could effectively deter piracy. The establishment of a copyright enforcement advisory council with responsibility for policy development and coordination, as well as the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws, has not been vigorously pursued. Due to backlogs in the court system and documentary and other procedural requirements, few cases recently have been prosecuted. U.S. and Indian industry report that piracy levels in all sectors remain high.

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated videocassettes, VCDs, or DVDs as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments in India - theatrical, home video and television. For instance, pirated videos are available in major cities before their local theatrical release. The proliferation of unregulated cable TV operators has led to pervasive cable piracy. The United States continues to press for effective copyright enforcement and has found pockets of positive movement.

Trademarks

The Government of India has pledged to upgrade its trademark regime. Upgrades include national treatment for the use of trademarks owned by foreign proprietors, statutory protection of service marks, and clarification of the conditions under which the cancellation of a mark due to non-use is justified. In December 1999, after four years of debate, India passed new trademark legislation. It provides protection for service marks for the first time. Implementing regulations to put the new law into effect were not published until September 2003. Although enforcement is improving, protection of foreign marks in India remains difficult.

The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) can be refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Management Act 1999 (FEMA) restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

The United States continues to press for adequate and effective protection of trademarks and looks forward to India fulfilling its pledge to upgrade its trademark regime.

Enforcement

India's criminal justice system does not effectively support the protection of intellectual property. India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, remains weak. There have been few reported convictions for copyright infringements resulting from raids, including raids against recidivists. Adjudication of cases is extremely slow. Police action against pirates of motion pictures has improved somewhat since 2003. No criminal software end-user piracy cases have resulted in convictions to date. Obstruction of raids, leaks of confidential information, delays in criminal case preparation and the lack of adequately trained officials have further hampered the criminal enforcement process.

Recent amendments to the Code of Civil Procedure requiring that civil cases must be completed within one year may provide more expeditious disposition of the civil cases brought by U.S. industry in Indian courts.

SERVICES BARRIERS

Indian government entities run many major services industries either partially or entirely. Nevertheless, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is a growing awareness of India's potential as a major services exporter and increasing demand for a more open services market. While India has submitted an initial WTO GATS offer to provide further services liberalization in the context of the WTO Doha Development Agenda, it does not go far enough in removing existing restrictions in its services market in key sectors such as professional services, telecommunications and financial services. The United States will continue to press India for further market opening in these sectors and its services market overall to provide additional export opportunities for U.S. services providers.

Insurance

Prior to 2000, all insurance companies were government-owned, except for a number of private sector firms providing reinsurance brokerage services. The Insurance Regulatory and Development Authority (IRDA) bill ended the government monopoly and established an insurance regulator. The law opened India's insurance market to private participation with a

limit on foreign equity of 26 percent of paid-up capital. In July 2004, the GOI announced its intention to amend the IRDA law to increase that cap to 49 percent. Intense domestic political debate has delayed action.

Banking

Most Indian banks are government-owned, and entry of foreign banks remains highly regulated. State-owned banks control 80 percent of the banking system. The Reserve Bank of India has granted operating approval to 25 new foreign banks or bank branches since issuing new guidelines in 1993. As of September 2004, 35 foreign banks with 217 branches were operating in India. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Foreign direct investment (FDI) in banking is slowly being liberalized and the foreign equity ceiling has been raised to 74 percent from 49 percent for investment in private banks. FDI in state-owned banks remains capped at 20 percent. Foreign investor voting rights are capped at 10 percent in private banks and one percent in state-owned banks Foreign banks may operate in India through only one of three channels; branches, a wholly owned subsidiary, or up to 74 percent ownership in a private Indian bank.

Audiovisual and Communications Services

The Indian government has removed most barriers to the import of motion pictures, although U.S. companies have experienced difficulty in importing film/video publicity materials and are unable to license movie-related merchandize due to royalty remittance restrictions.

Legislation passed in December 2002 allowed the GOI to put in place the Conditional Access System (CAS) for cable television whereby television subscribers would be required to install set-top-box decoders to view premium channels. By providing tighter regulation of the cable industry as a whole, CAS was expected to help reduce the problem of pirated broadcasts. In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the GOI suspended implementation of CAS pending review by a regulatory authority.

The government of India permits FDI of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in Direct to Home (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted to have up to 26 percent foreign equity investment. As of August 2003, they must also ensure that a dominant Indian partner holds at least 51 percent equity. In addition, operational control of the editorial content must be in Indian hands. The Indian government has also announced other minimum capitalization requirements. In December 2004, the Telecom Regulatory Authority of India (TRAI) implemented regulations requiring (1) all pay television content providers to make their content available to all cable and satellite television system operators; and, (2) requiring 30

days public notification before content providers can cut off their signals to non-paying system operators.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned the use of logos of accounting firms. Only firms established as a partnership may provide financial auditing services. Foreign accountants may not be equity partners in an Indian accounting firm.

Construction, Architecture and Engineering

Many construction projects are offered only on a non-convertible rupee payment basis. Only government projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

Legal Services

The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market.

Telecommunications

India has one of the fastest growing telecommunications markets in the world and has taken positive steps towards liberalizing the market and introducing private investment and competition in basic telecommunications services. Concerns remain regarding interconnection charges for new entrants, India's weak multilateral commitments in basic telecommunications, and the apparent bias of telecommunications policy towards government-owned service providers.

The national telecommunications policy allows private participation in the provision of basic (including cellular) and value-added telecommunications services. Foreign equity in value-added services is limited to 51 percent. For basic services, the limit was 49 percent, but was raised to 74 percent in February 2005. Private operators can provide services within regional "circles" that roughly correspond to the borders of India's states.

Private competitive carriers are concerned about the neutrality and fairness of government policy. The Indian government retains a significant ownership stake and interest in the financial health of the dominant telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. The government holds a 26 percent position in the international carrier, VSNL, a 56 percent position in MTNL, which primarily serves the Delhi and Bombay metropolitan areas, and a 100 percent position in BSNL, which provides domestic services throughout the rest of India. The government has indicated it will privatize MTNL and BSNL in the future but has not established a timetable.

American telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international submarine cable access and landing stations in India. They complained about the discriminatory and monopolistic practices of VSNL and requested the Indian government to intervene to ensure VSNL makes available submarine cable capacity to other suppliers on a reasonable and non-discriminatory basis. In mid-2004, VSNL reached agreement with then-U.S.-based Flag Telecom, allowing the latter to sell international bandwidth through a VSNL landing station; however, overall capacity constraints and artificially higher prices persist in the market.

In October 2003, the Indian cabinet approved the introduction of a unified license regime for cellular and basic telecommunications services. India continues to modernize its regulatory framework, with a draft “convergence” bill which is pending parliamentary consideration. The bill will consolidate authority over telecommunications, the Internet, and broadcasting in a single, super regulator.

In January 2003, TRAI implemented an interconnection Access Deficit Charge. Although revised in October 2003 and lowered further in late 2004, this charge appears inconsistent with India's legal and regulatory requirements that such charges be cost-based, completely neutral, and nondiscriminatory.

Internet telephony became legal in India in 2002, but this long-awaited liberalization came with several restrictions. Only Internet Service Providers (ISPs) are allowed to offer Internet telephony within their service areas, and telephone-to-telephone communications through the Internet remain illegal within India.

Distribution Services: Direct Selling

U.S. direct selling firms have been misclassified as retail instead of wholesale companies, and have also been mischaracterized as illegal pyramid schemes. Current Indian law does not sufficiently differentiate between legitimate direct selling operations and pyramid schemes.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now partially open to foreign investment, with certain exceptions. The Indian government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. At the same time, the GOI has liberalized other aspects of foreign investment and eliminated various government approvals. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed. Some sectors still require government approval.

Foreign industries have expressed concern with the Indian government's stringent and non-transparent regulations and procedures governing local shareholding. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. Press Note 18, promulgated in 1998 by the Ministry of Industry, poses major impediments to investment in India by requiring prior approval of the Indian party to a joint venture before the foreign partner can pursue other investment opportunities in India. This provision had been widely abused, holding foreign partners hostage, even for failed joint ventures. In January 2005, the GOI partially lifted Press Note 18 by eliminating its application to all new joint ventures and relaxing the hold local firms have on the future business plans of foreign partners for existing joint ventures.

Investment Disputes

Although the new government wants to increase infrastructure investment, high-profile commercial disputes in the power sector, such as the Dabhol power project, dampen investor sentiment. The U.S. Government is taking the GOI to state-to-state international arbitration because OPIC has been unable to resolve a $300 million to $400 million claim - including a $110 million expropriation claim - against the GOI under the Dabhol project. This is the first time that the U.S. Government has had to file a claim on behalf of OPIC. This dispute is one of many involving U.S. and other investors in India’s power sector. The United States continues to try to persuade the GOI that, to attract investment, India needs to provide a secure legal and regulatory framework for the private sector.

ANTICOMPETITIVE PRACTICES

India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively. With little or no fear of government action and with a clogged court system where cases linger for years, Indian firms face few if any disincentives to engage in anticompetitive business practices.

Although the Indian Parliament approved competition legislation in 2002 that provided for a new regulatory authority, the Competition Commission of India (CCI) has yet to be constituted due to disagreement over its leadership and its relationship to the judicial system. The new law does not prohibit monopolies but does charge the CCI with regulating unfair practices and promoting policies that favor competition.

OTHER BARRIERS

India has an unpublished policy that favors countertrade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major countertrade body, although the State Trading Corporation also handles a small amount of countertrade. Private companies are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to countertrade. The exact nature of offsetting exports is unspecified, as is the export destination. The Indian government does try, nonetheless, to eliminate the use of re-exports in countertrade.

India's medicines policy is an issue of concern for U.S. pharmaceutical companies. While the scope of the rigid government-controlled pricing system has been reduced, final steps to eliminate it have stalled and some politicians and GOI officials continue to call for expanding price controls as the preferred means to confront inflationary trends.

Indian states fail to apply consistently certain national laws and regulations. This creates uncertainty for U.S. companies exporting to, and investing in, India. U.S. companies affected by such inconsistency include: cable television content providers of programming subject to conditional access system rules, pesticide manufacturers whose products have been approved at the national level and banned at the state level, and distilled spirits producers who face non-uniform state-level taxes despite the national government’s directive to harmonize such taxes. In addition, taxes on inter-state trade and conflicting regulations continue to hamper the free flow of goods within India.

India’s implementation of its antidumping regime has raised concerns in key areas such as transparency and due process. India continued aggressively to apply its antidumping law over the past year. From the second half of 2003 through the first half of 2004, which is the most recent 12-month period for which WTO statistics are available, India imposed 38 final antidumping measures, more than any other WTO Member, and ranked second in the number of initiations. Of the newly initiated investigations, six of which involved U.S. exports, chemical products were the leading target of investigation. The United States will continue to seek clarification and address concerns both bilaterally and multilaterally. Most recently, the United States participated in a technical exchange with Indian antidumping administrators to obtain a better understanding of India’s trade remedies laws and their compliance with India’s WTO obligations.