

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was \$18.2 billion in 2012, up \$3.5 billion from 2011. U.S. goods exports in 2012 were \$22.3 billion, up 3.9 percent from the previous year. Corresponding U.S. imports from India were \$40.5 billion, up 12.1 percent. India is currently the 18th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were \$11.0 billion in 2011 (latest data available), and U.S. imports were \$16.9 billion. Sales of services in India by majority U.S.-owned affiliates were \$14.2 billion in 2010 (latest data available), while sales of services in the United States by majority India-owned firms were \$7.3 billion.

The stock of U.S. foreign direct investment (FDI) in India was \$24.7 billion in 2011 (latest data available), down from \$24.8 billion in 2010. U.S. FDI in India is largely in the professional, scientific, and technical services, finance/insurance services, and the information services sectors.

IMPORT POLICIES

While the United States has actively sought bilateral and multilateral opportunities to open India's market, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts. The U.S. Trade Representative and India's Minister of Commerce and Industry chair the United States-India Trade Policy Forum, to discuss the full range of bilateral trade and investment issues outlined in this chapter. Other bilateral dialogues, such as the Information Communication Technology Working Group and the Commercial Dialogue, also work to increase U.S. exports by highlighting areas and sectors of bilateral commercial opportunity and resolving practical issues that affect doing business in India.

Tariffs and other Charges on Imports

The structure of India's customs tariff and fees system is complex and characterized by a lack of transparency in determining net effective rates of customs tariffs, excise duties, and other duties and charges. The tariff structure of general application is composed of a basic customs duty, an "additional duty" (also commonly referred to as a "countervailing duty"), a "special additional duty," and an education assessment ("cess").

The additional duty, which is applied to all imports except for wine, spirits, or other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties imposed on similar domestic products. The special additional duty is a 4 percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to an official customs notification. The special additional duty is calculated on top of the basic customs duty and the additional duty. In addition, there is a 3 percent education cess (surcharge) applicable on the total of the basic customs duty and additional duty (not on the customs value of the imported product) on most imports, except those exempted from the cess pursuant to an official customs notification. A landing fee of 1 percent is included in the valuation of all imported products unless exempted through separate notification.

While India publishes applied tariff and other customs duty rates applicable to imports, there is no single official publication publically available that includes all relevant information on tariffs, fees, and tax rates on imports. In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and contain numerous exemptions that vary according to product, user, or specific export promotion program, rendering the system complex to administer and more open to administrative discretion. However, in April 2010, as part of its computerization and electronic services drive, India initiated a web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE (<http://icegate.gov.in>). It provides options, among other things, for calculating duty rates, electronic filing of entry documents (import goods declarations) and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses.

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 46.4 percent, while its simple MFN average applied tariff for 2010 was 12 percent. Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. While India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate.

Despite its goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately 5 percent on average), India has not systemically reduced the basic customs duty in the past five years. India also maintains very high tariff peaks on a number of goods, including flowers (60 percent), natural rubber (70 percent), automobiles and motorcycles (75 percent for new products, 100 percent for used products), raisins and coffee (100 percent), alcoholic beverages (150 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent). Rather than liberalizing its import tariffs, India instead operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. Eligibility to participate in these schemes is usually subject to a number of conditions, including an export obligation.

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.2 percent on agricultural goods since 2010), they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). The large gap between bound and applied tariffs in the agriculture sector allows India to use tariff policy to adjust the level of protection in the market frequently, creating uncertainty for traders. For example, in April 2008, in an effort to curb inflation, India reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent. However, in November 2008, India raised crude soybean oil duties back to 20 percent, only to reduce them again to zero in March 2009. Most recently, in January 2013, India issued a customs notification announcing a doubling of the tariff on imports of crude edible oils.

In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the additional duty on alcoholic beverages, India, facing pressures from both the U.S. and the E.U., issued a customs notification exempting alcoholic beverages from the additional duty. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem*, and in some cases higher specific duties. Simultaneously, India raised the basic customs duty on wine from 100 percent to 150 percent. The basic customs duty on distilled spirits remains at 150 percent. When India exempted alcoholic beverages from the additional duty, it

announced it was doing so in lieu of applying state-level excise duties on wine and spirits. India eventually won the WTO case in 2008 and since then, there have been no changes on tariff rates for either wines or spirits. These state-level taxes can result in imported wine and spirits being taxed at a significantly higher rate than like domestic products.

Imports also are subject to state-level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. Since 2007, India allows importers to apply for a refund of the special additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes. Importers report that the refund procedures are cumbersome and time consuming. The central government has taken steps and continues to work with state governments to adopt a national goods and services tax (GST) that would replace most indirect taxes, including various charges on imports. Implementation of a national GST, however, will first require amending the Indian Constitution.

Import Licenses

India maintains a “negative list” of imported products subject to various forms of nontariff regulation. The negative list is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and “canalized” items (*e.g.*, some pharmaceuticals) importable only by government trading monopolies and subject to cabinet approval regarding timing and quantity. India, however, often fails to observe customary transparency requirements, such as publication of this information in the Official Gazette or notification to WTO committees, which can, in practice, act as a barrier to trade.

For purposes of entry requirements, India has distinguished between goods that are new, on the one hand, and those that are secondhand, remanufactured, refurbished, or reconditioned, on the other hand. This distinction has resulted in barriers to trade in goods that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by the end users without requiring an import license, provided the goods have a residual life of five years. India’s official Foreign Trade Policy treats remanufactured goods the same as secondhand products, without recognizing that remanufactured goods have typically been restored to original working condition and meet the technical and/or safety specifications applied to products made from virgin materials. 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, while refurbished computer parts from domestic sources are not subject to this requirement. India began requiring import licenses for all remanufactured goods in 2006. As with licensing requirements on other products, U.S. industry representatives report that this requirement has been onerous, for example, in light of excessive details required in the application, quantity limitations set on specific part numbers, and the uncertainty created by the long delay between application and grant of the license.

India subjects imported boric acid to stringent requirements, including arbitrary quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from the relevant Indian government ministries and departments or import permits from the Ministry of Agriculture. NOCs are required before applying for import permits from the Ministry of Agriculture’s Central Insecticides Board & Registration Committee. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid with only the requirement to maintain records showing they are not selling to insecticidal end users.

Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price compared to the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and raise the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subjected to excessive searches and seizures.

Furthermore, as explained above, India does not assess the basic customs duty, additional duty, and special additional duty separately on the customs value of a given imported product. Rather, India assesses each of these duties cumulatively; that is, the additional duty is assessed on the sum of the actual (or transaction) value and the basic customs duty, while the special additional duty is assessed on the sum of the actual (or transaction) value, the basic customs duty, and the additional duty. This can result in importers paying higher duties than they should be liable for on the basis of the actual value of their imported product.

India's customs officials generally require extensive documentation, inhibiting the free flow of trade and leading to frequent and lengthy processing delays. In large part this is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures and other initiatives, as with the ICEGATE (<http://icegate.gov.in>) portal discussed above.

Motor vehicles may be imported through only three specific ports and only from the country of manufacture.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy, and as a result, its government procurement practices and procedures vary at the state and central levels and by ministry. Government procurement in India is also not transparent. Foreign firms are disadvantaged when competing for Indian government contracts due to the preference afforded to Indian state-owned enterprises and the prevalence of such enterprises. Similarly, pursuant to the 2006 Micro, Small and Medium Enterprise (MSME) Act, India requires that 21 specific goods and services (*e.g.*, pickles/chutneys, bread, wood furniture, wax candles, safety matches, and fireworks) be purchased from MSMEs. India provides similar preferences to government-registered "small scale industry units" for certain products. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above 3 billion rupees (approximately \$56 million) in Indian produced parts, equipment, or services. It is not uncommon for the Defense Ministry to request significant changes to previously accepted offset proposals.

As part of the Indian government's efforts to improve procurement practices, the Planning Commission and the Ministry of Finance circulated separate draft procurement bills for comment. Each draft contained certain provisions that appear to deviate from international best practices as set out in the revised WTO Government Procurement Agreement approved in December 2011. In May 2012, the government introduced a Public Procurement Bill in Parliament that seeks to harmonize India's various procurement instructions, guidelines, and recommendations into one law and to regulate the award of government contracts above \$100,000. This bill remains in Parliament and includes provisions of concern to the United States.

The November 2011 National Manufacturing Policy (NMP) calls for greater local content requirements in government procurement in certain sectors (*e.g.*, information and communications technology (ICT) and clean energy). Consistent with this approach, India issued the Preferential Market Access (PMA) notification in February 2012, which requires government entities to meet their needs for ICT equipment in part by purchasing domestically manufactured products. The government adopted a first set of implementing measures under the PMA in late 2012 and early 2013 that identified specific telecommunications and computer equipment as products subject to this requirement. (*See below under "Other Barriers" for a discussion on the application of the PMA to private firms.*)

India is not a signatory to the WTO Government Procurement Agreement, but became an observer to the WTO Committee on Government Procurement in February 2010.

EXPORT SUBSIDIES

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and exporters in Special Economic Zones and duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. India's textile industry enjoys subsidies through various modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. The Duty Exemption Passbook Scheme for cotton and yarn, reinstated by India in 2011, enables exporters to earn credits that they can sell to importers, who can apply for duty-free import status for certain products. Numerous other sectors (*e.g.*, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance.

After several consecutive years of not submitting a subsidies notification, India recently submitted two notifications covering the 2003-2009 time period to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee), both of which notify only one central government program of preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones. These notifications were substantially incomplete, as they failed to notify several well-known Indian subsidies, including export subsidy programs. Because of India's failure to notify its subsidy programs in a timely manner, USTR "counter-notified" 50 Indian subsidy programs to the WTO Subsidies Committee in October 2011 under Article 25.10 of the SCM Agreement.

The United States submitted a formal request to the SCM Committee in February 2010 requesting a calculation of the export competitiveness of Indian textile and apparel products. The resulting calculation, published in March 2010, indicated that, with respect to textile and apparel products, India had met the definition of "export competitiveness" set out in Article 27.6 of the SCM Agreement. As a result, India must phase out export subsidies for those products over a period of eight years, in accordance with the SCM Agreement. Since the calculation, India has announced some reductions in duty drawback rates for textile products and the intention to eliminate certain subsidy programs. However, India not only continues to offer subsidies to the textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs that benefit the textiles and apparel sector. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures (*e.g.*, Export-Oriented Units, Special Economic Zones, Export Promotion Capital Goods, Focus Product and Focus Market Schemes) that provide, among other things, exemptions from customs duties and internal taxes based on export performance.

There is a special initiative for agricultural exports in India's Foreign Trade Policy 2009-2014, including a scheme called *Vishesh Krishi Gram Upaj Yojana* (VKGUY – “Special Agriculture Produce Scheme”), aimed at boosting exports of fruits, vegetables, flowers, some forest products, and related value-added products. Under the plan, exports of these items qualify for a duty-free credit that is equivalent to 5 percent of their free-on-board export value. The credit is freely transferable and can be used to import a variety of inputs and capital goods. To mitigate the impact of the global economic slowdown on exports, the government has made several additional agricultural products eligible under VKGUY, such as soybean meal, marine products, and tea.

In March 2013, India moved to release wheat from government public stockholding reserves for export at prices below the cost of production and acquisition. India, the world's second-biggest wheat producer, began allowing private traders to export up to 5 million tons of wheat from government warehouses but set a floor price of 14,800 rupees (approximately \$274) per ton plus taxes. This was 2,890 rupees (approximately \$53.51) per ton less than the government of India's cost of buying wheat from domestic farmers including charges for local levies, transportation and storage

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2012 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). Recent patent-related actions have only heightened these concerns. These include the March 2012 decision of the Controller General of Patents, Designs and Trademarks to effectively require an innovator to manufacture in India in order to avoid being forced to license an invention to third parties, and provisions in India's National Manufacturing Policy that seek to curtail patent rights to facilitate technology transfer in the clean energy sector. India also continues to lack effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. Stronger protection and enforcement is also needed for trademarks and copyrights, including addressing the failure of India's 2012 Copyright Law amendments to effectively implement the WIPO Internet Treaties and protect against unlawful circumvention of technological protection measures.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms play a preponderant to exclusive role in some of the fastest growing areas of the services sector, such as information technology and business consulting. Foreign investment in major services sectors, including financial services, telecommunications, and retail, is subject to equity limitations, while foreign participation in legal services is prohibited entirely.

Insurance

Foreign investment in the insurance sector is limited to 26 percent of paid-up capital. The Ministry of Finance introduced the Insurance Laws (Amendment) Bill in Parliament in late 2008 to allow foreign equity participation of up to 49 percent and also allow entry of foreign re-insurers. The Parliament's Standing Committee on Finance recommended against increasing the 26 percent foreign equity cap. In September 2012, the Indian Cabinet re-affirmed its commitment to the existing bill that would allow a 49 percent foreign equity ceiling in the insurance sector, and thus, that bill remains for consideration before Parliament.

As lawmakers continue to consider increasing foreign investment in the insurance sector, many existing investors are approaching 10 years of doing business in India. Under current regulations, at the 10 year

mark, any partner in an insurance enterprise is required to divest its equity stake down to 26 percent. Given the 26 percent equity cap for foreign investors, this requirement effectively applies only to Indian partners, as a result of which many existing joint ventures may be required to locate new Indian partners or otherwise modify their ownership structure. Although the Insurance Regulatory and Development Authority has said that it will seek to clarify its plans regarding these regulations, foreign investors continue to operate in an environment of extreme uncertainty.

Banking

Although India allows privately held banks to operate in the country, the banking system is dominated by government-owned banks and direct investment by foreign banks is subject to restrictions. State-owned banks account for roughly 76 percent of the advances portfolio and 84 percent of all bank branches in the Indian banking system. According to 2011-2012 data, there were 40 foreign banks with 323 branch offices operating in India under approval from the Reserve Bank of India (RBI), including four U.S. banks with a total of 51 branches. Among the seven new foreign banks that opened branches during fiscal year 2011-2012, none were from the United States. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion. Only one license to open an additional bank branch has been issued to a U.S. bank since March 2009, despite several banks having applied.

In the past, foreign banks have not opened wholly-owned subsidiaries because of RBI-imposed caps on ownership. Foreign banks are not authorized to own more than 5 percent of on-balance sheet assets of an Indian private bank without approval by the RBI, while individual investors, including foreign investors, cannot own more than 10 percent of any private bank. Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent. In addition, voting rights for shareholders in private banks are capped at 10 percent.

Following passage of certain amendments to the Banking Regulation Act at the end of 2012, allowed Indian business conglomerates and non-bank financial institutions to establish new private sector banks. However, the RBI restricted foreign shareholding to 49 percent for the first five years, after which the limit would be as per the extant FDI policy, *i.e.*, 74 percent.

Audiovisual Services

Although India has removed most barriers to the importation of motion pictures, U.S. companies continue to experience difficulty importing film and video publicity materials and are unable to license merchandise in connection with movies due to royalty remittance restrictions. India also charges a service tax on the importation of films, music, and gaming software based on the value of the intellectual property rights, rather than just a customs duty on the value of the carrier medium.

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that downlink programming from a satellite into India must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome and can result in having a taxable presence in India. India also requires that foreign investors have a net worth of Rs. 5 crores (approximately \$1 million) in order to be allowed to downlink an initial content channel, and an additional Rs. 2.5 crores (approximately \$500,000) of net worth for downlinking each additional channel. While 100 percent foreign ownership is permitted for entertainment and general interest channels, foreign investment in news and current affairs channels up-linking from India is limited to 26 percent.

Accounting

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign-licensed accountants may not be equity partners in an Indian accounting firm.

The Companies Bill 2011, which contains provisions governing the operations of accounting firms, was passed in 2012 by the Lok Sabha (lower house of Parliament) and is expected to be cleared by the Rajya Sabha (upper house) in 2013. Opinions are divided over provisions requiring the rotation of auditors every five years. Additionally, foreign accounting firms are concerned about provisions that seek to increase third party liability in ways that would depart from the practices employed by most G20 countries. The Companies Bill 2011 is expected to be brought before Parliament in 2013.

Legal Services

The Bar Council of India (BCI) is the governing body for the legal profession in India. Membership in the BCI is mandatory to practice law in India, but is limited to Indian citizens. Foreign law firms are not allowed to open offices in India.

Indian lawyers have filed suit in the Bombay and Madras High Courts against a group of foreign law firms, challenging the ability of foreign attorneys to provide any type of legal services in India, including advising on matters of foreign (*i.e.*, non-Indian) or international law under ambiguous provisions of the 1961 Advocates Act. The Bombay High Court issued a judgment in December 2009, finding that non-litigation advisory services provided by foreign lawyers fell within the purview of the current Advocates Act, and were therefore restricted to Indian lawyers. However, the judgment also noted that the issue of foreign firms being able to practice law in India was under consideration by the government, and directed the government to “take [an] appropriate decision on this issue as expeditiously as possible.” In the separate case before the Madras High Court, the court ruled on February 21, 2012 that the Advocates Act did not prevent foreign lawyers from advising clients on foreign law and international legal issues (*e.g.*, in connection with international arbitrations) on a “temporary” basis. The BCI has appealed the Madras High Court judgment to the Indian Supreme Court.

Telecommunications

Foreign investment in wireless and fixed telecommunications providers in India is limited to 74 percent, and U.S. companies have noted that India’s initial licensing fee (approximately \$500,000 per service or \$2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller market players. The government has yet to announce the guidelines for receiving applications for, and awarding, licenses. In September 2012, India revised the foreign investment limits in cable networks and “direct-to-home” (DTH) broadcasting to allow up to 49 percent foreign direct investment without prior approval either of the government or the Reserve Bank of India and up to 74 percent with prior government approval (if networks invest in technical upgrades that support digitization and addressability).

The government of India continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private carriers to express concern about the fairness of India’s general telecommunications policies. For example, valuable wireless spectrum was allocated and

set aside for MTNL and BSNL instead of being allocated through competitive bidding. Although BSNL and MTNL did not pay a preferential price for their spectrum, they received their spectrum well ahead of privately owned firms.

India amended telecommunications service licenses in May 2011 with a view to addressing security concerns posed by telecommunications equipment. These amendments, however, contain provisions of concern to the United States, including: (1) a requirement for telecommunications equipment vendors to test all imported information and communications technology equipment in labs in India; (2) a requirement to allow the telecommunications service provider and government agencies to inspect a vendor's manufacturing facilities and supply chain, and to perform security checks for the duration of the contract to supply the equipment to the telecommunications service provider; and (3) the imposition of strict liability and possible "blacklisting" of a vendor for taking "inadequate" precautionary security measures, without the right to appeal and other due process guarantees.

U.S. satellite operators have long raised concerns about the closed and protected satellite services market in India. Even though current Indian regulations do not preclude the use of foreign satellites, India's uplinking guidelines provide that "proposals envisaging use of Indian satellites will be accorded preferential treatment." In addition, foreign satellite capacity must in practice be provided through the Indian Space Research Organization (ISRO), effectively requiring foreign operators to sell capacity to a direct competitor. U.S. companies have noted that this requirement creates additional costs, allows ISRO to negotiate contract terms with the goal of moving the service to one of its satellites once capacity is available, and puts ISRO in a position of being able to determine the market growth rate. Although the Telecom Regulatory Authority of India (TRAI) has in the past recommended that India adopt an "open skies" policy and allow competition in the satellite services market, no measures have been adopted to date to implement TRAI's recommendations for further liberalization.

Distribution Services

In November 2011, India raised the cap on FDI in single-brand retail from 51 percent to 100 percent, subject to case-by-case government approval and contingent, among other things, on a requirement to source 30 percent of products from Indian small and medium sized enterprises. The government revised this policy in September 2012 to permit the local sourcing to be met by purchases from any Indian firm.

Also in September 2012, the Indian government approved a policy permitting up to 51 percent FDI in the multi-brand retail sector, but left to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where such FDI will be allowed, the policy imposes conditions on entry, including the following: investment of at least approximately \$100 million, of which at least 50 percent must be in "back-end infrastructure" (e.g., processing, distribution, quality control, packaging, logistics, storage, and warehouses) within three years of the initial investment; opening stores only in cities identified in the 2011 census as having populations greater than one million residents; and sourcing at least 30 percent of purchases from "Indian 'small enterprises' which have a total investment in plant [and] machinery not exceeding [\$1 million]."

The September 2012 retail policy announcements also explicitly prohibit FDI in single-brand and multi-brand retail by means of electronic commerce.

India has periodically interpreted the activities of direct selling companies as violating the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, creating uncertainty for companies operating in this market. This central government legislation contains no clear distinction between fraudulent activities such as Ponzi schemes, on the one hand, and legitimate retail business operations through direct selling,

on the other hand. Enforcement of the Prize Chits Act is reserved to the states, which have adopted implementing guidelines and/or taken enforcement actions on the basis of the ambiguous provisions of the Act. Raids and seizures of property were undertaken in 2006 by an Indian state against a U.S. direct selling company operating in India with Foreign Investment Promotion Board approval. The case remains with the courts.

Industry groups have asked the Department of Industrial Policy and Promotion to issue guidance establishing a definition of direct selling and clarifying ambiguities, including ambiguity related to commissions earned in connection with the sale of products, but this is yet to happen. In 2012 the Ministry of Finance issued draft guidelines designed to guide the preparation of state measures implementing the Prize Chits Act. Rather than clarifying the distinction between fraudulent schemes and legitimate business operations, however, the draft guidelines contain provisions making many standard direct selling activities, including activities that go to the core of the direct selling business model, inconsistent with the Prize Chits Act.

Postal and Express Delivery

In 2011, the Department of Posts announced a proposed bill to replace the 1898 Post Office Act and invited public comment on a draft in 2012. This bill seeks, *inter alia*, to establish a new licensing and registration scheme, potentially granting India Post regulatory authority over its private sector competitors; to establish a governmental monopoly on express delivery of items weighing up to 50 grams and on letters weighing up to 150 grams; and to require that private operators charge twice the Express Mail Service rate in order to provide services falling within the monopoly. Many stakeholders, including unions, raised concerns with these and other aspects of the bill and the draft National Postal Policy during an October 2012 meeting called by the Department of Posts.

Education

Foreign providers of higher education services interested in establishing a presence in India face a number of barriers, including a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. A Foreign Education Providers Bill was expected to address some of these issues, but it has not yet been introduced in Parliament.

INVESTMENT BARRIERS

Equity Restrictions

India continues to regulate FDI by sector. The Department of Industrial Policy and Promotion (DIPP) periodically revises FDI policies through consolidated press notes. The most recent revision of the Consolidated FDI Policy was made effective from April 10, 2012, and the next revision is expected to be released on March 29, 2013, though it is not uncommon for DIPP to issue amendments to the Policy throughout the year.

Although India has allowed 100 percent FDI in the pharmaceutical sector for several years with no requirement of government approval, in October 2011, the government adopted a requirement that foreign acquisition of pharmaceutical firms be approved by the Competition Commission of India (CCI). In deciding whether to approve acquisitions, the CCI is charged with “balancing” the need to attract FDI with public health concerns. This “balancing” requirement erroneously presumes that FDI in the pharmaceutical sector is in tension with the government’s public health objectives. Because such review

is beyond the scope of the CCI's existing authority, the Competition Commission of India Act must first be amended. In December 2012, a high-level government meeting chaired by the Prime Minister concluded that all FDI proposals in pharmaceutical sector would go to the Foreign Investment Promotion Board for approval until that amendment.

India's stringent and nontransparent regulations and procedures governing local shareholding inhibit investment and increase risk to new market entrants. Even when legally permissible, attempts by non-Indians to acquire 100 percent ownership of locally traded companies often face regulatory hurdles that render such ownership unobtainable. Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined the attraction to foreign investors of increasing their equity holdings in India.

OTHER BARRIERS

In July 2010, India issued guidelines for the Jawaharlal Nehru National Solar Mission (JNNSM), requiring that eligible solar project developers source certain materials from domestic manufacturers in order to receive preferential power rates. In the first part of Phase I of the JNNSM, all projects based on solar photovoltaic (PV) technology were required to source crystalline silicon modules from manufacturers in India, while solar thermal projects were required to meet a 30 percent local content threshold. These local content requirements were expanded significantly in August 2011, such that solar PV cells as well as modules used in JNNSM projects must be manufactured in India. These restrictions have effectively blocked imports of U.S. equipment based on crystalline silicon technology for use in JNNSM projects, affecting a large segment of U.S. solar manufacturers. In December 2012, India issued a draft policy document for Phase II of the JNNSM, proposing to extend the existing local content requirements to cover thin film modules in addition to crystalline silicon technology. The United States initiated a WTO dispute challenging the JNNSM local content requirements in February 2013.

India's PMA notification not only requires government entities to purchase domestically manufactured products (*discussed above under "Government Procurement"*), but anticipates applying similar domestic purchase mandates to private firms for purchases of "electronic products which have security implications." Neither the PMA nor subsequent government measures articulate precisely how domestic manufacture *per se* would improve India's security. Furthermore, initial draft lists of these products appear to cover an expansive range of electronic products, suggesting that industrial policy rather than security interests is the primary motivation for imposing such requirements.

In a similar vein, in 2011, the TRAI issued a policy proposal styled as "Recommendations on Telecom Equipment Manufacturing Policy." The proposal called for a number of actions to encourage domestic manufacturing in the telecom sector, including requiring government entities and certain private firms to purchase domestically manufactured telecom equipment; requiring government entities and certain private firms to purchase telecom equipment developed using Indian-origin intellectual property; offering subsidies for private firms that purchase a certain percentage of domestically manufactured telecom equipment; and requiring that imported telecom equipment be tested and certified only by a conformity assessment body located in India. Like the PMA, TRAI's policy recommendations will likely do little to foster domestic manufacturing, but instead produce perverse consequences of discouraging investment, weakening ICT infrastructure, and increasing costs to Indian consumers and firms seeking to do business in India. TRAI's proposal appears to remain under consideration by the government of India.

India has steadily increased export duties on iron ore and its derivatives. In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore and its concentrates, but revised the tax to 5 percent in December 2008. In December 2009, India raised this export tax rate to 10 percent, leaving the export

duty on iron ore fines at 5 percent. India then increased the export tax on iron ore lumps to 15 percent in April 2010. In February 2011, India increased the export duty on both iron ore lumps and fines to 20 percent, and increased that export duty to 30 percent in January 2012. In February 2012 India changed the export duty on chromium ore from 3,000 rupees (approximately \$56) per ton to 30 percent *ad valorem*, an increase at current chromium ore price levels. In recent years certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. Such export duties and bans affect international markets for raw materials used in steel production. India also requires that exports of high grade iron ore (greater than 64 percent iron content) pass through state trading enterprises, with the state-owned Minerals and Metals Trading Company acting as a clearinghouse. It appears that the Indian government is using these measures to improve supply and lower prices of inputs used by India's rapidly growing steel industry. With 7 percent growth in steel production during 2011-2012, India became the fifth largest steel manufacturing economy in the world.

India implemented export restrictions and bans on cotton and yarn during 2010 and 2011. These restrictions contributed to significant volatility on world cotton markets and appear designed to provide India's textile and apparel producers with a cheaper supply of cotton during a period of record high world cotton prices. Following intensive U.S. engagement and changing conditions in the world cotton market, India now permits the export of cotton and yarn subject only to registration with the government.

The Indian Minerals and Metals Trading Corporation engages in significant countertrade, although the State Trading Corporation also handles a small amount of countertrade. Countertrade is a form of trade in which imports and exports are linked in individual transactions. Private companies also 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.

In the agriculture sector, India has established tariff-rate quotas for corn and dairy products. Access to the tariff-rate quotas is complicated by end-user requirements that often lead to low fill rates.