# INDIA

## TRADE SUMMARY

U.S. goods exports in 2013 were $21.9 billion, down 1.0 percent from the previous year. Corresponding U.S. imports from India were $41.8 billion, up 3.2 percent. The U.S. goods trade deficit with India was $20.0 billion in 2013, up $1.5 billion from 2012. 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 $11.9 billion in 2012 (latest data available), and U.S. imports were $18.5 billion. Sales of services in India by majority U.S.-owned affiliates were $16.4 billion in 2011 (latest data available), while sales of services in the United States by majority India-owned firms were $9.3 billion.

The stock of U.S. foreign direct investment (FDI) in India was $28.4 billion in 2012 (latest data available), up from $24.6 billion in 2011. U.S. FDI in India is led by the professional, scientific, and technical services, finance/insurance services and the information services sectors.

## IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to open India's market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products into India. 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 and 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, and 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 four percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those imports 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 three percent education cess (surcharge) applied to most imports, except those exempted from the cess pursuant to an official customs notification. India charges the cess on the total of the basic customs duty and additional duty (not on the customs value of the imported product). A landing fee of one 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. 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. 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 the product, user, or specific export promotion program, rendering India's customs system complex to administer and open to administrative discretion.

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 48.6 percent, while its simple MFN average applied tariff for 2012 was 13.7 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 systematically 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 (60 percent to 75 percent), raisins and coffee (100 percent), alcoholic beverages (150 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent). Rather than liberalizing its customs duties, 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. India's average bound tariff for agricultural products is 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.5 percent on agricultural goods in 2012), 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 tariff rates in the agriculture sector allows India to use tariff policy to make frequent adjustments to the level of protection provided to domestic producers, creating uncertainty for traders. For example, in January 2013, India issued a customs notification announcing a doubling of the tariff on imports of crude edible oils.

Imports 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 has allowed 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. In addition, U.S. industry identifies various state level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol. 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 import timing and quantity. India, however, often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees.

For purposes of entry requirements, India has distinguished between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned. 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 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 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. U.S. industry representatives report that meeting this requirement, like other Indian import licensing requirements, has been onerous. Problems that industry representatives have reported with the import licensing scheme for remanufactured goods include: excessive details required in the license application, quantity limitations set on specific part numbers, and long delays between application and grant of the license.

India subjects imports of boric acid to stringent restrictions, including arbitrary import quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use cannot import boric acid for resale because they are not end users of the product and consequently 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 boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide.

## Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising 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 of imports.

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 raises concerns

about the potential for 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, including the provision of multiple exemptions which vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures – including through the ICEGATE (http://icegate.gov.in) portal discussed above – and other initiatives.

**GOVERNMENT PROCUREMENT**

India lacks an overarching government procurement policy, and as a result, its government procurement practices and procedures vary between the states, between the states and the central government, and between different ministries within the central government. Government procurement in India is not transparent. Foreign firms are disadvantaged when competing for Indian government contracts due to preferences afforded to Indian state-owned enterprises and the prevalence of such enterprises. Moreover, 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 agreements.

India's November 2011 National Manufacturing Policy (NMP) calls for increased use of 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 required government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. India issued a revised PMA policy in December 2013. The revised policy continues to require that domestically manufactured goods constitute a certain percentage of the electronic products procured by government entities. The revised PMA policy also applies the same requirement to "procurement of electronic products made under all Centrally Sponsored Schemes and grants made by [the] Central Government."

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 for exporters in Special Economic Zones, as well as 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. Numerous sectors (*e.g.*, textiles and apparel, 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 in which it did not submit a subsidies notification, in 2010 and 2011 India submitted to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee) notifications covering the 2003-2009 time period, each of which notify only one central government program providing for 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 at the central level. India did not notify any state level 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 SCM Committee in October 2011 under Article 25.10 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). India has since filed one notification covering certain central and state fisheries-subsidy programs during the 2007-2010 time period, but has not notified many other subsidy programs that continue to operate in India.

In February 2010, the United States submitted to the SCM Committee a formal request that the WTO Secretariat conduct 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, as well as its intention to eliminate certain subsidy programs. However, India not only continues to offer subsidies to its 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.

India's Foreign Trade Policy 2009-2014 outlines a special initiative to increase agricultural exports, 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 exports of several additional agricultural products eligible under VKGUY, such as corn, barley, soybean meal, marine products, meat and meat products, skimmed milk powder, and tea.

India, the world's second-largest wheat producer, announced in July 2012 that it had authorized the export of 2 million tons of wheat from government public-stockholding reserves. The government of India permitted exports of this wheat at prices below the government's costs, including the price of wheat purchased from domestic farmers at minimum support prices as well as charges for local levies, transportation, and storage. In December 2012, the government of India announced an additional 2.5 million tons of wheat exports from government-held stocks, which were shipped through August 2013. In August 2013 the government authorized an additional 2 million tons of wheat exports from government-held stocks. It also lowered the minimum price at which those stocks could be sold to $260 per ton F.O.B., significantly below the government's acquisition cost of $306 per ton, plus storage, handling, inland transportation cost and other charges for exports.

## INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2013 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. In addition, an April 2013 Indian Supreme Court decision appears to confirm that India's Patent

Law creates a special, additional criterion for patentability for select technologies, like pharmaceuticals, which could preclude issuance of a patent even if the applicant demonstrates that the invention meets the internationally-recognized criteria for patentability.

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. Additionally, India's 2012 Copyright Law amendments failed to effectively implement the WIPO Internet Treaties and protect against circumvention of technological protection measures. Stronger protection and enforcement is needed for trademarks and copyrights,

## SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms dominate some of the fastest growing areas of the services sector, such as information technology and business consulting. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on the amount of foreign equity permitted in the business. Foreign participation in professional services is significantly restricted, and in the case of legal services, 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. However, in September 2012, the Indian Cabinet re-affirmed its commitment to increase the foreign equity ceiling to 49 percent in the insurance sector.

As lawmakers continue to consider permitting increased 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. While this requirement does not affect foreign investors, whose stakes are already capped at 26 percent, this requirement may serve to compel some of their Indian joint venture partners to divest a portion of their stakes. Foreign investors may therefore find themselves having to take on additional Indian partners. 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 state-owned banks. State-owned banks account for roughly 76 percent of total assets and 84 percent of all bank branches in the Indian banking system. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is severely limited by nontransparent quotas on branch office expansion. Only one license to open an additional branch has been issued to a U.S. bank since March 2009, even though several U.S. banks have applied.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than 5 percent of an Indian private bank without approval by the Reserve Bank of India (RBI). 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 any shareholders in private banks are capped at 10 percent.

In the past, although foreign banks were authorized to open wholly-owned Indian subsidiaries, they had not done so because of the RBI-imposed caps on foreign ownership of Indian private banks. Recently, however, the RBI released framework guidelines governing the establishment by foreign banks of wholly-owned subsidiaries in India. These guidelines contain several provisions that U.S. industry has requested that the government of India clarify. The guidelines do not necessarily require foreign banks that have been operating in India since before August 2010 to restructure their Indian operations into wholly-owned Indian subsidiaries. However, the guidelines incentivize foreign banks to do so by offering Indian subsidiaries of foreign banks treatment similar to domestic banks when it comes to opening branches

The 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 banks. However, the RBI restricted total foreign shareholding in any bank established by such entities to 49 percent for the first five years, after which the limit would be the same as that applicable to foreign ownership of other private banks, *i.e.*, 74 percent.

**Audiovisual Services**

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that transmit programming into India via satellite 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. 50 million (approximately $800,000) in order to be allowed to downlink one content channel. A foreign investor must have an additional Rs. 25 million (approximately $400,000) of net worth for each additional channel that the investor is allowed to downlink. While 100 percent foreign ownership of Indian entertainment and general interest channels is permitted, foreign investment in Indian news and current affairs channels 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 accounting firms structured as partnerships under Indian law may provide financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

**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 therefore could be provided only by 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 a 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.

**Architecture**

Although Indian companies continue to demand high quality U.S. design for new buildings and infrastructure development, foreign architecture firms are finding it increasingly difficult to do business in India due to the legal environment. An ambiguous Indian legal regime for architectural and related services has resulted in court cases against foreign design firms seeking to perform work in India and harassment of potential clients of foreign design firms. This legal regime causes significant losses of business for U.S. companies.

**Telecommunications**

India eliminated the 74 percent cap on FDI in Indian wireless and fixed telecommunications providers in August 2013, though government approval is required above 49 percent FDI. However, U.S. companies note that India's initial licensing fee (approximately $500,000 for a service-specific license or $2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller market players.

In September 2012, India revised its limits on foreign investment in cable operators and "direct-to-home" (DTH) broadcasting services to allow up to 49 percent foreign direct investment without prior approval from the government, and to allow up to 74 percent with prior government approval (provided that cable operators invest in technical upgrades that support digitization and addressability).

The government of India continues to hold equity in three telecommunications firms. It holds: a 26 percent interest in VSNL, the leading provider of international telecommunications services; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and a 100 percent stake in 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 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.

In May 2011 India amended the licenses required for telecommunications service providers 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 (ICT) equipment in laboratories in India beginning in July 2014; (2) a requirement to allow both the telecommunications service provider that contracted with the vendor, as well as Indian government agencies, to inspect the vendor's manufacturing facilities and supply chain and to perform security checks for the duration of the contract to supply equipment to the telecommunications service provider; and (3) a provision imposing on vendors, without the right to appeal and other due process guarantees, strict liability and possible "blacklisting for doing business in the country" when the vendor has taken "inadequate" precautionary security measures. In September 2013 India obtained Common Criteria (CC) "authorizing nation" status for ICT product testing, as a result of which Indian testing will be recognized by other Common Criteria countries as long as Indian testing labs adhere to specified standards. However, India has not revoked the domestic testing requirement for imported ICT equipment scheduled to take effect in July 2014. Government officials have indicated that they expect to introduce requirements for India-specific

domestic testing for telecommunications equipment and other security-sensitive products in addition to the internationally accepted CC testing.

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 regulations provide that "proposals envisaging use of Indian satellites will be accorded preferential treatment." In addition, foreign satellite capacity must in practice be made available 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 retailers selling a single brand of product from 51 percent to 100 percent, subject to case-by-case government approval and contingent, among other things, on a requirement to source at least 30 percent of the value of products sold, from Indian small and medium sized enterprises. The government revised this policy in September 2012 to permit the local-sourcing requirement to be met by purchases from any Indian firm.

Also in September 2012, India approved a policy lifting its FDI ban and permitting up to 51 percent FDI in companies 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 is allowed, the policy imposes conditions on entry, including requirements to: invest 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; open stores only in cities that have been identified by the respective state government; and source at least 30 percent of the value of products sold, from "Indian 'small enterprises' which have a total investment in plant [and] machinery not exceeding [$1 million]." The government of India increased the upper limit on Indian small enterprises to $2 million in August 2013.

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

Indian states have periodically challenged the activity of direct selling (the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, creating uncertainty for companies operating in the direct selling industry. This central government legislation contains no clear distinction between fraudulent activities such as Ponzi schemes, on the one hand, and legitimate direct-selling operations, on the other hand. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementing guidelines and/or taken unexpected 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, which had been operating in India with the approval of the Foreign Investment Promotion Board. The case remains under adjudication in Indian 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 uncertainty related to commissions earned in connection with the sale of products. 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. The Department of Posts invited public comment on a draft of the bill in 2012. This bill seeks, *inter alia*, to establish a new licensing and registration scheme for persons providing courier services, potentially granting India Post regulatory authority over its private sector competitors; and to require that private operators providing express delivery of items weighing 50 grams or less and letters weighing 150 grams or less charge twice the rate charged for the same delivery by India Post's Express Mail Service. Many stakeholders raised concerns with these and other aspects of the bill and with India's draft National Postal Policy during an October 2012 meeting called by the Department of Posts. The draft Postal bill is still under review.

**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 approved by 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 2013, and the next revision is expected to be released in April 2014, though it is not uncommon for DIPP to issue amendments to the Policy throughout the year.

Beginning in 2002, India allowed 100 percent FDI in the pharmaceutical sector for several years with no requirement of government approval. In December 2012, India modified that policy to require approval by the Foreign Investment Promotion Board for any FDI in brownfield investments while maintaining the "automatic" approval route for greenfield investments. Following further government review, in January 2014 India reaffirmed this policy of allowing 100 percent FDI in the pharmaceutical sector but requiring government approval only for brownfield investments.

India's stringent and nontransparent regulations and procedures governing shareholding in local enterprises inhibit investment and increase risk to new market entrants. Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined the attractiveness for 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 crystalline silicon cells had to be manufactured in India. India significantly expanded these local content requirements in August 2011 for the second part of Phase I, such that all crystalline cells *and* modules (except thin-film) had to be manufactured in India. Solar thermal projects were required to meet a 30 percent local content threshold under both parts of Phase I. In October 2013, India issued guidelines for the first set of projects under Phase II of the JNNSM. These guidelines bifurcated these projects into two groups: the first group is required to use crystalline cells and modules (including thin-film) that are manufactured in India, and the second group has no restrictions relating to the origin of the equipment used. These restrictions have effectively blocked imports of certain U.S. solar panel technologies for use in the JNNSM, affecting a large segment of U.S. solar manufacturers. The United States initiated a WTO dispute in February 2013 challenging the JNNSM Phase I local content requirements, and included the Phase II local content requirements in a dispute filed in February 2014.

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 and 15 percent, respectively, to 20 percent on both, and increased that export duty to 30 percent in January 2012. In February 2012 India changed the export duty on chromium ore from Rs. 3,000 (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. India's export duties affect international markets for raw materials used in steel production.

In the agriculture sector, India has established tariff-rate quotas for corn and dairy products. Access to the tariff-rate quotas is complicated by requirements on who can be the end user of the imported products. These requirements often lead to low quota fill rates.