

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was \$7.1 billion in 2008, an increase of \$611 million from \$6.5 billion in 2007. U.S. goods exports in 2008 were \$18.7 billion, up 6.1 percent from the previous year. Corresponding U.S. imports from India were \$25.8 billion, up 7.0 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were \$9.4 billion in 2007 (latest data available), and U.S. imports were \$9.6 billion. Sales of services in India by majority U.S.-owned affiliates were \$4.2 billion in 2006 (latest data available), while sales of services in the United States by majority India-owned firms were \$3.1 billion.

The stock of U.S. foreign direct investment (FDI) in India was \$13.6 billion in 2007 (latest data available), up from \$9.2 billion in 2006. U.S. FDI in India is concentrated largely in the information, manufacturing, and banking sectors.

IMPORT POLICIES

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. While U.S. exports to India registered sizable growth in 2007-2008, further reduction of the bilateral trade deficit will depend on significant additional Indian liberalization of its trade regime.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally. The USTR and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF). A part of the United States-India Economic Dialogue, the TPF meets regularly, including through its five Focus Groups – Agriculture, Innovation and Creativity (*i.e.*, intellectual property rights), Investment, Services, and Tariff and Nontariff Barriers – to discuss the full range of bilateral trade and investment issues. In February 2008, the TPF and the Private Sector Advisory Group (formed under the TPF) met in Chicago to review the progress of discussions conducted by the Focus Groups.

Tariffs and other Charges on Imports

India's import regime is characterized by pronounced disparities in bound versus applied rates. According to the WTO, India's average bound rate tariff is 48.6 percent, while its applied tariff for FY2007 (latest data available) was 14.5 percent across all goods. Over the past several years, the government has steadily reduced MFN tariffs applied to nonagricultural goods, including a reduction in the applied duty on most industrial products from 15 percent in FY2005-06, to 12.5 percent in FY2006-07, and to 10 percent in FY2007-08. However, the government of India's (GOI) 2008-2009 budget maintained the applied duty at 10 percent. In order to boost the local manufacturing sector, the general rate of central excise duty for domestic products (CENVAT) and "additional duty" for imported goods was reduced to 14 percent from 16 percent for most items. In December 2008, the GOI further reduced excise duties on most products to 10 percent from 14 percent. In February 2009 as part of an economic stimulus package, the GOI again cut the excise duty on most products to 8 percent. As the countervailing duty on imports is equivalent to the excise tax, the total duty assessment for imported products will also be reduced. Despite these cuts, India's average applied tariff on industrial goods remains high, mainly due to significantly high tariff peaks on automobiles, motorcycles, and natural rubber. In November

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2008, India increased tariffs on certain steel products to 5 percent. Also, the U.S. textile industry continues to have concerns about nontransparent application of tariffs and taxes.

Notwithstanding lower applied tariffs in nonagricultural goods, India has bound only 71.6 percent of its nonagricultural tariff lines. Also, India's WTO bound tariffs on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 114.2 percent in 2007. While many Indian applied tariff rates are lower, they still represent a significant barrier to trade in agricultural goods and processed foods (e.g., potatoes, apples, grapes, pistachios, and citrus). Further, given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater uncertainty because India has the ability to raise its applied rates to bound levels in an effort to manage prices and supply. For example, in April 2008, the GOI, in an effort to curb inflation, reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent from 40 percent. However, in November 2008, the GOI raised crude soy oil duties back to 20 percent. Tariffs on processed foods (e.g., chocolate and confectionery, frozen french fries, cookies, and savory snacks) remain high.

With the exception of wine, spirits, and other alcoholic beverages, the government applies an "additional duty" at a rate equal to the central excise tax (CENVAT) rate applicable to like domestic products. In July 2007, the government issued a customs notification exempting alcoholic beverages from the rates of additional duty set forth in a prior customs notification. 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). On the same date, the government raised the applied tariff on wine from 100 percent to 150 percent. The applied tariff on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the additional duty, it announced it was doing so in lieu of state-level excise duties on wine and spirits. There is concern that these state-level taxes may result in imported wine and spirits being taxed at a higher rate as compared to 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. In March 2006, the government established a 4 percent *ad valorem* "extra additional duty". The extra additional duty (also referred to as the "special additional duty") applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The extra additional duty is calculated on top of the basic customs duty (i.e., a tariff) and additional duty. In September 2007, the government issued a customs notification allowing importers to apply for a refund of the extra 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 GOI has announced its intention to implement a national goods and services tax that would replace various charges on imports.

In June 2007, a WTO dispute settlement panel was established to consider U.S. claims that the additional duty and extra additional duty result in customs duties that exceed India's WTO-bound rates and as such are inconsistent with India's WTO obligations. The U.S. claims against the additional duty were limited to alcoholic beverages, whereas its claims against the extra additional duty concerned a number of industrial and agricultural products, including alcoholic beverages. India argued that the duties offset internal taxes on like domestic products. The panel, in February 2008, ruled in favor of India. The United States appealed the panel's decision in August 2008. On October 30, 2008, the WTO Appellate Body reversed the panel and ruled in favor of the United States. The Appellate Body agreed with the United States that any import charges aimed at offsetting internal taxes cannot result in a higher amount being charged to imports than to like domestic products and considered that to the extent either duty result in charges on imports in excess of charges on like domestic products it would be inconsistent with India's WTO tariff commitments.

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The government publishes applied tariff and other customs duty rates applicable to imports, but there is no official, centralized publication or searchable database setting forth applied tariff and other customs duty rates. To determine the applied tariff or other customs duty rate applicable to a particular product, importers must consult separate customs and excise tax schedules and cross reference these schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules (assuming the importer is able to determine that any such notification exists). Such a system lacks transparency and imposes significant burdens on importers.

Import Licensing

India maintains a negative import list of 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, certain chemicals); and "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, however fails to observe customary transparency requirements, such as publication of information in the Official Gazette or notification to WTO Committees and in practice, these requirements act as a barrier to trade.

The government allows imports of 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, while refurbished computer parts from domestic sources are not subject to this requirement. The government has required import licenses for all imports of remanufactured goods since 2006. As with such requirements on other products, U.S. industry representatives report that the licensing requirement is onerous as implemented: the license application requires excessive details, quantity limitations are set on specific part numbers, the delay between application and grant of the license is long and creates uncertainty, and in some cases industry representatives report that they have been unable to obtain a license. The U.S. Government has raised concerns about these issues in the U.S.-India Trade Policy Forum.

In October 2007, India's Director General of Foreign Trade (DGFT) eliminated the registration requirement for foreign exporters of unshredded scrap metal. However, a preshipment inspection (PSI) regime remains in place.

Since 2004, India has subjected imported boric acid to stringent requirements. 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 ministries. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee (CIB&RC). Instead, traders fall under the stringent regulations applicable to insecticidal boric acid. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users. The CIB & RC has not enforced this requirement on domestic producers beginning at least since the 2006-07 Indian fiscal year. The United States continues to engage the government to not treat industrial boric acid imported by traders as an insecticide and to withdraw the import permit system for this product.

Customs Procedures

Issues have emerged regarding the application of customs valuation criteria to import transactions. Valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve 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 address this issue.

U.S. industry reports that, since September 2007, India has improperly included certain royalties in the customs valuation of imported digital video disc (DVD) analog master tapes and digital linear tapes and has assessed customs duties, retroactively for five years for some importers, using the revised valuation methodology. In addition, U.S. industry has noted that these issues have resulted in the detention of these products at the border by India's customs officials. The United States is working through the WTO Committee on Customs Valuation and the Trade Policy Forum to address this issue.

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part this red tape is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While these difficulties persist, India has shown improvement in this area. According to the World Bank, over the past three years the number of days needed to complete an import transaction in India has been halved to 20 days, and there have been some reductions in the number of required documents.

Issues have also arisen regarding customs policies with respect to imports of edible oils, such as crude soybean oil. The applied rate of customs duty has varied within the WTO bound rate of 45 percent, and U.S. producers have reported concerns that the valuation methodology used for these imports to India has resulted in higher duty assessments. The customs policies, including the customs valuation system, are nontransparent and unpredictable. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of \$25 million in 2002.

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In early 2009, the GOI revised its mandatory certification compliance list, which now includes 85 specific commodities. The revised list includes such products as milk powder, infant formula, bottled drinking water, certain types of cement, household and similar electrical appliances, gas cylinders, certain steel products and multi-purpose dry cell batteries. Products on the mandatory certification list must be certified for safety by the Bureau of Indian Standards (BIS) before the products are allowed to enter the country. All manufacturers, foreign and domestic, must register with the BIS in order to comply with this requirement. Standards are delineated in India's Scheme of Testing & Inspection (STI), which are on BIS's website or can be obtained from the BIS upon request. Foreign companies can receive automatic certification for imported products, provided the BIS has first inspected and licensed the production facility. However, a general complaint among U.S. industries is that inspection and licensing costs imposed on foreign manufacturers are so high that they may restrict trade in these items.

In bilateral and multilateral fora, the United States has raised concerns about several technical regulations, standards, and conformity assessment procedures promulgated by the GOI. For example, the United States has raised concerns in the WTO Technical Barriers to Trade (TBT) Committee regarding the

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proposed BIS conformity assessment system for tires, in particular U.S. industry's concern that the testing methodology employed by BIS would lead to higher conformity assessment fees being levied on imported tires than on tires produced in India. The United States has asked India to explain why it uses different fee calculation methodologies for imported and domestic tires and to defend its contention that the resulting fees would be the same for imported and domestic tires. The United States has also raised concerns in the WTO TBT Committee with respect to the potential negative impact on trade of India's proposed "Drugs and Cosmetics (Amendment) Rules, 2007." The United States is concerned that the registration system created by the proposal appears to apply only to imported cosmetics, and it has raised several additional questions to which India has not yet replied. U.S. industry has expressed its view that the proposed registration system would be overly burdensome and unreasonably costly, and would cause unnecessary delays to market for their member companies' products.

In 2006, the GOI amended an existing law governing the regulation of pharmaceuticals to include certain medical devices. The government currently is developing legislation for medical devices. A draft Medical Devices Regulatory (MDR) Bill has been formulated to cover medical devices not covered by the Drugs and Cosmetics Act; however, the legislation has yet to be tabled before India's Parliament. Separately, India has introduced a bill that would create a Central Drug Authority that would eliminate the need for a Medical Devices Regulatory Authority that would be created under the MDR Bill. The U.S. Government and U.S. industry continue through the United States-India High Technology Cooperation Group to encourage India to develop its medical device regulations by taking into account and participating in international harmonization efforts on medical device regulation.

Sanitary and Phytosanitary (SPS) Measures

The United States has raised concerns with India on several occasions regarding India's failure to notify SPS measures to the WTO. For example, the United States has urged the GOI to notify to the WTO of the new import requirements for shipments of hides and skins and to provide the international community with an opportunity to comment on proposed measures, pursuant to India's WTO obligations. The United States also has concerns about India's process when it does notify the WTO. In several instances the dates of implementation of India's measures have not allowed time for a comment period or for a consideration of comments provided by trading partners. Regarding the length of the comment period for notifications, both the SPS and TBT Committees recommend that WTO Members provide a minimum of 60 days for comments to be submitted on notified measures when possible.

In 2008, the United States repeatedly raised at the WTO SPS Committee India's import ban of U.S. poultry, swine, and their products as a result of the detection of low pathogenic avian influenza (AI). Despite repeated requests from the United States, Canada and the European Commission, India has not yet provided a scientific justification for the ban which does not appear to comply with guidelines established by the International Organization for Epizootics (OIE).

India also continues to maintain other regulations, which do not appear to be related to any international standard or scientific analysis, that block imports of U.S. poultry, poultry products, live horses, pet food, pork, swine, and many dairy products. Although dry processed pet food is exempt from India's AI ban, Indian officials continue to require AI certification statements that do not follow OIE guidelines, as well as other requirements, which has effectively stopped imports of dry processed U.S. pet food. Beyond SPS import requirements, India has recently imposed quality restrictions for imports of bovine genetics as well as hides and skins, effectively limiting the volume of products which can be imported. India also maintains more stringent maximum residue levels on imported dairy products than it does for domestic products and requires certification that products are free of recombinant bovine somatotropin (rBST) and animal-derived rennet. The United States has proposed several health certificates attesting that U.S. milk

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and milk products are fit for human consumption, but the problem remains unresolved. In a continued effort to reopen the market to U.S. products, the United States continues to develop alternative certification options for India's consideration.

The U.S. agricultural industry also faces challenges with India's import permit requirements. For example, in order to import livestock products, an import permit for each individual lot must be obtained from India's Ministry of Agriculture. The import license is valid only for six months, and imports must also be inspected by the health authorities before clearance. In combination, these requirements can raise difficult procedural hurdles for the U.S. exporter.

Additionally, the GOI, in certain cases, only accepts zero risk for plant quarantine pests of concern. For example, sales of U.S. wheat and barley to India are blocked by strict tolerances for weed seeds and unnecessary fumigation requirements. In addition, overly restrictive requirements for freedom from nematodes threaten continuation of U.S. exports of pulses. Bilateral technical level discussions to resolve the aforementioned issues are ongoing, but little progress has been made after, in some instances, several years of discussions.

In August 2006, in an attempt to consolidate its existing multitude of laws and regulations governing the food and food processing sectors, the GOI enacted an integrated food law titled, "Food Safety and Standards Act, 2006." The law also created a Food Safety and Standards Authority (FSSA), responsible for establishing food safety standards for packaged and processed foods and for regulating India's manufacturing storage, distribution, sale, and import sectors. The FSSA is now operational with a Chairman and Chief Executive Officer, but has yet to initiate the rulemaking process.

Agricultural Biotechnology

The GOI's trade policy stipulates that imports of all biotechnology food/agricultural products or products derived from biotechnology plants/organisms should receive prior approval from the regulatory body, the Genetic Engineering Approval Committee (GEAC). *Bacillus thuringiensis* (Bt) cotton, which produces a toxin that can kill certain pests, was introduced for commercial use in 2002/03. However, the only biotechnology food approved for commercial import thus far is soybean oil derived from Round-up Ready soybeans for consumption after refining. As a result, U.S. exports of products derived from genetically engineered commodities are effectively banned, except for soybean oil. In 2007, the U.S. soybean oil exports to India totaled more than \$11 million.

India's biotechnology regulatory system is onerous and time consuming, but is evolving towards harmonization with international standards. Despite recent efforts by regulatory bodies to streamline the process, the biotechnology community feels there is a need for further reforms to facilitate faster growth in the sector. In February 2008, the Ministry of Environment and Forest issued a notification that the GEAC will continue to regulate imports of processed biotechnology food products until the new FSSA, under the Ministry of Health and Family Welfare, takes over the responsibility. Imports of biotechnology food products that are live modified organisms (LMO) will continue to be under the authority of GEAC.

GOVERNMENT PROCUREMENT

In India, different procurement practices apply at the Central level and at the state level, and to the public sector agencies and enterprises. At the Central (federal) level, procurement is regulated through executive directives and administered by the government agencies. The General Financial Rules (GFR), issued by the Ministry of Finance, lay down the general rules and procedures for financial management, the procurement of goods and services, and contract management. Sector-specific procurement policies exist

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in some areas, such as defense procurement. India does not have an authority responsible for establishing procurement policies and overseeing compliance with the procurement procedures. However, a central purchasing agency, the Directorate General of Supplies and Disposal (DGS&D), and state-level central state purchasing organizations enter contracts with registered suppliers for goods and standard items in conformity with the GFR.

The GOI revised the GFR in 2005 to provide greater flexibility. It has also issued a Manual on Policies and Procedures for Purchase of Goods. A number of instructions, issued by the Central Vigilance Commission (the Indian Government's oversight body for government employees), supplement these regulations. The individual government agencies also sometimes issue more detailed instructions and their own handbooks, model forms, and model contracts. Currently, government procurement in India is decentralized, and all state and public sector agencies have their own procurement organizations. India's government procurement practices and procedures are not transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises in the award of government contracts and the prevalence of such enterprises. Under the Purchase Preference Policy (PPP), government enterprises and government departments give a preference to any state-owned enterprise that submits an offer that is within 10 percent of the lowest bid. The PPP lapsed on March 31, 2008 and has not been renewed.

India is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for export oriented units and exporters in Special Economic Zones (SEZ). In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides preshipment and postshipment export financing to exporters at a preferential rate. India's textile industry enjoys subsidies through modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2008 Special 301 review. IPR protection and enforcement has been the subject of ongoing discussion in the TPF's Innovation and Creativity Focus Group.

Patents

India amended its patent law effective January 1, 2005. The amended patent law extends product patent protection to pharmaceuticals and agricultural chemicals. While a positive step, these changes did not address several important weaknesses in India's patent protection regime. For example, the new law does not clarify some ambiguities regarding the scope of patentable inventions. Additionally, there are growing concerns by the research based pharmaceutical industry that the application of the new pre-grant opposition rules may impede the timely processing of patent applications for new compounds.

Indian law does not provide for effective protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or

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agricultural chemical products that contain a new chemical entity that has not been previously approved. In June 2007, an inter-ministerial committee of the government of India released a report on India's implementation of the data protection provisions of the TRIPS Agreement. The report's recommendations fell short of international standards (*e.g.*, proposing an undefined transitional period prior to providing data protection for pharmaceuticals). Further, the report recommended limiting the scope of protection with a number of "safeguards." The recommendations of the report are being discussed within the government, and some of the recommendations may require legislative changes to be implemented. The United States continues to monitor this situation.

Copyrights

The GOI has proposed amendments that are intended to update the copyright laws to address issues related to the Internet and digital works. However, the proposed amendments have some deficiencies, including with respect to India's implementation of the World Intellectual Property Organization Internet treaties. The United States continues to encourage India to address these issues and fully implement the treaties.

Enforcement

The establishment of specialized IP courts, the training of judges on issues specific to IP litigation, and the increased efforts by Indian Customs Officials to stop infringing goods from entering the country are all welcome steps. India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, however, remains weak.

India is considering enacting optical disc legislation and amending its copyright laws. Piracy of copyrighted materials (primarily software, films, popular fiction works, and certain textbooks) remains a problem for both U.S. and Indian producers. Costs to the U.S. industry are estimated to be more than \$1 billion in 2008. The sale of semiconductors that violate copyright and integrated circuit mask laws also continues to be a concern.

Cable television piracy continues to be a significant problem. Copyrighted U.S. content is transmitted without authorization by licensed cable operators often using pirated videocassettes, video compact discs, or DVDs as source materials. This has had a detrimental effect on all motion picture market segments in India, including theatrical, home video, and television markets.

There have been few reported convictions for criminal copyright infringement resulting from raids, including raids against repeat offenders. Backlogs in the court system and documentary and other procedural requirements have created impediments to the prosecution of those engaged in criminal counterfeiting and piracy. Obstruction of raids, leaks of confidential information, delays in criminal case preparation, and the lack of adequately trained officials have further hindered the criminal enforcement process. The United States is monitoring this situation.

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance, while private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, car rental, and a wide range of business consulting services. While India has submitted initial and revised offers for improved services commitments in the WTO Doha Round, these offers do not remove existing limitations

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or promise new liberalization in such key sectors as distribution, express delivery, telecommunications, financial services, and the professions.

Insurance

Foreign participation in the Indian insurance sector has been allowed since 1999, but foreign equity is limited to 26 percent of paid-up capital. The GOI introduced legislation in late 2008 that would allow foreign equity participation to 49 percent, but the legislation was not passed before Parliament adjourned prior to elections due in the first half of 2009.

Banking

Although India has opened up to privately-held banks, most Indian banks are government-owned, and entry of foreign banks remains highly constrained. State-owned banks hold roughly 70 percent of the assets of the banking system, although private banks are growing rapidly. Foreign banks may operate in India in one of three forms: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank. As of June 2008, there were 30 foreign banks with 279 branch offices operating in India under Reserve Bank of India (RBI) approval, including 4 U.S. banks with a total of 52 branches. 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. In 2007, India granted 19 new foreign branch office licenses (latest data available).

Foreign banks have not opened any wholly-owned subsidiaries because of an RBI requirement that they divest to 74 percent by 2009, making this option largely unattractive. Foreign banks may not own more than 5 percent of an Indian private bank without approval of the RBI. Total foreign ownership of a private Indian bank cannot exceed 74 percent.

Audiovisual and Communications Services

Although the GOI has removed most barriers to the import of motion pictures, U.S. companies have continued to experience difficulty in importing film/video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions.

U.S. companies continue to face difficulties with a "Downlink Policy" issued by GOI in 2005. The Downlink Policy applies to international content providers that down-link programming from a satellite into India and requires that they establish a registered office in India or designate a local agent. The government reportedly implemented this rule to ensure greater oversight over programming content. However, U.S. companies note that most other countries (including the United States) do not require a license for the down-linking of programming and that the GOI can control content through its licensed entities (such as cable companies or Direct to Home providers). Companies claim that this policy is overly burdensome, results in a taxable presence in India and should be amended to avoid the taxable presence. The United States continues to raise this issue with India's Ministry of Information and Broadcasting, including most recently at the State Department-led United-States-India Information and Communication Technology (ICT) Working Group meeting in New Delhi in December 2008.

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. Only

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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 GOI is working on opening up the sector to foreign chartered accountants and professional consultants through the Limited Liability Partnership Bill, which still awaits approval in the Parliament.

Construction, Architecture, and Engineering

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

Legal Services

Foreign law firms are not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, an initiative created at the TPF meeting in December 2006, has faced difficulty in starting a substantive dialogue due to opposition within certain quarters of the Indian legal profession. But, with U.S. Government assistance, U.S. and Indian panel members met informally during a legal conference in India in early 2009.

Telecommunications

Despite the GOI's positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India's weak multilateral commitments in basic and value added telecommunications services. In addition, many pro-competitive recommendations of the independent telecommunications regulatory agency (Telecommunications Regulatory Authority of India – TRAI) have been delayed or rejected by the Ministry of Communications and Information and Technology, Department of Telecommunications (DoT) without adequate explanation.

India's national telecommunications policy allows up to 74 percent foreign participation for fixed national and international long distance services, and several U.S. companies have obtained licenses to provide these services. However, other U.S. companies complain that India's licensing fee for these services (approximately \$500,000 per service) serves as a barrier to market entry for smaller market players.

The GOI maintain limits on foreign direct and foreign indirect investment (FDI and FII) in several areas; namely, cable networks (49 percent), satellite uplinking (49 percent), "direct-to-home" (DTH) broadcasting (49 percent with FDI limited to 20 percent), and the uplinking of news and current affairs television channels (26 percent). These limits negatively impact the ability of U.S. companies to invest in this sector.

Throughout the past year, the GOI has struggled to formalize its policies for the allocation of wireless spectrum to serve India's rapidly expanding and lucrative wireless telecommunications industry. The auction of spectrum for providing 3G services has been postponed several times, with the latest speculation that it could be held in March 2009 or wait until after India's elections due to be held in April/May 2009. This auction will be open to existing operators, license holders, and foreign companies,

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allaying concerns for the time being voiced by U.S. industry that they would be precluded from participating in the auction.

DoT's recently released 3G bid document permits foreign companies to participate in the auctions without first obtaining a telecommunications license or securing a joint venture partner. Only those operators that are successful in the upcoming auctions will have to obtain a license and find an Indian partner for establishing the joint venture (existing regulations restrict foreign holdings to 74 percent and mandate that an Indian entity hold the remaining 26 percent).

The GOI 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 the 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private competitive carriers to express concern about the fairness of the GOI's general telecommunications policies. By way of example, valuable wireless spectrum will be set aside for MTNL and BSNL and not subject to competitive bidding. The industry is concerned that the restricted availability of blocks in areas such as Delhi will lead to very high bidding prices, effectively making the 3G service expensive for the end consumer, and as a result, deterring potential investment in these areas by U.S. services suppliers.

India does not allow companies to provide Internet telephony over networks connected to the public switched telecommunications network, unless it obtains a telecommunications license. U.S. industry views India's requirement as overly burdensome for companies interested only in providing Internet telephony. Following a public consultation process initiated in May 2008, TRAI forwarded recommendations to the DoT in August 2008, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. To date, the DoT has not ruled on these recommendations.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. In practice, even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must be provided through the Indian Space Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer (a markup added by ISRO); second, it allows ISRO to negotiate contract terms with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at a rate determined by ISRO.

In the past, TRAI has recommended that India adopt an "open skies" policy and allow competition in the satellite services market, noting that India had already instituted a partial open skies policy with respect to international, very small aperture terminal connections to the U.S. Internet backbone for Indian Internet service providers. However, to date, the GOI has not adopted TRAI's recommendations for further liberalization.

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006, the government began allowing FDI in single-brand retail stores, subject to a foreign equity cap of 51 percent and government approval and 100 percent in cash and carry (wholesale). FDI in multi-brand retail outlets is not permitted. With regard to direct selling, apparently arbitrary legal actions (including raids and seizures of property) have been initiated against a U.S. company operating in India with Foreign Investment Promotion Board (FIPB) approval. The case remains unresolved pending a clarification from the RBI that resolves a

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conflict between the FIPB and certain Indian state authorities about the interpretation of India's laws governing direct selling.

Postal and Express Delivery

In 2006, India's Department of Post made public a draft of the India Post Office (Amendment) Bill. The draft bill updates the 1898 Post Office Act but also includes provisions with potentially negative effects for the operations of private express delivery companies. The key issues of concern to U.S. industry are: a provision requiring private delivery services suppliers to contribute to financing the postal operator's universal service obligation; expansion of the postal monopoly to cover all "letters" up to 300 grams; and new limitations on foreign investment in all private delivery services, including express delivery, which might force foreign-owned express delivery companies to divest from their current levels of investment in India. The proposed legislation was officially withdrawn in January 2009 due to opposition from many stakeholders, including courier services companies. The Indian postal ministry has indicated that the legislation might be rewritten with professional help. The U.S. Government continues to urge India's government not to include these problematic provisions before finalizing any postal reform legislation.

Internet Services

U.S. companies have expressed concern that proposed amendments to India's Information Technology Act, which would impose liability on Internet based companies whose users commit illegal acts, could have a chilling effect on Internet access and commerce in India.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, with certain important exceptions. The 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 government 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, while investment in some sectors still requires government approval. The Ministry of Commerce, noting it wished to liberalize FDI within pre-existing caps, issued new guidelines (Press Notes) in February 2009, which asserted that if a company, with foreign investment, was still majority owned or controlled by resident Indians, then it could conduct "downstream" investment within sectoral caps, which previously had been constrained by the initial investment in the joint venture. However, much confusion was created by the language of the new guidelines, which an additional press note did nothing to dispel. The full extent to which foreign investment is allowed in downstream investments is not yet clear and probably will not be made so until after a new government is formed in June 2009.

The Indian government's stringent and nontransparent regulations and procedures governing local shareholding inhibit inward investment and increase risk to new entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, permissible in principle, face regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have undermined incentives for foreign investors to increase their equity holdings in India. Some companies have reported forced renegotiation of contracts in the power sector as a result of government changes at the state and central levels.

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Press Note 1, issued by the Department of Industrial Policy and Promotion in 2005, liberalized the rules for new foreign investments in India by foreign joint-venture partners in the same field as their existing joint ventures or technology transfer, or trademark agreements, but only for joint ventures and agreements entered into after January 12, 2005. GOI approval is still required for most such follow-on investments involving joint ventures and agreements entered into on or before January 12, 2005.

In 2008, India and the United States agreed to launch formal Bilateral Investment Treaty negotiations.

Investment Disputes

India's poor track record to date in honoring and enforcing agreements with U.S. investors in the energy sector has discouraged further U.S. investment in this important sector. In November 2008, the GOI finally issued a settlement payment to a U.S. company for work performed for an Indian parastatal in the 1980s, following a 2006 Supreme Court of India decision in favor of the U.S. firm. The settlement payment was significantly less than the amount awarded under the Court's order.

There has been significant progress since 2007 toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The central government, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes. The United States continues to urge the GOI that in order to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues. The Government Law Ministry signed an agreement in 2007 with The Permanent Court of Arbitration (PCA), The Hague, to open a regional center in India.

ANTICOMPETITIVE PRACTICES

Historically, Indian firms faced few if any disincentives to engage in anticompetitive business practices. However, in 2002, the Indian Government enacted the Competition Act, which created the Competition Commission of India (CCI). As of March 2009 the Competition Commission has yet to function owing to delays caused by litigation and legislative amendments. In September 2007, the government introduced new merger control amendments to the Competition Act, which included new merger and acquisition provisions. The amendments ostensibly require companies to seek approvals for mergers and acquisitions that have little or no nexus to India, and impose a 210 day waiting period before transactions could take place. Recognizing these problems, the CCI has proposed draft regulations that if enacted would largely blunt the adverse effect of the Act on transactions that have little effect on business within India. The United States continues to work with the GOI to assist CCI in its efforts to implement the Act, including its merger control provisions, in a manner consistent with international best practices.

OTHER BARRIERS

The U.S. Government is increasingly concerned over India's failure to publish in an official gazette and notify certain proposed import policies, technical regulations and conformity assessment procedures to the WTO. Examples include the Bureau of Indian Standards' protocol for tires and the Drugs and Cosmetics (Amendment) Rules, 2007, which India has not notified to the TBT Committee.

India has an unwritten 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.

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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.

India has continued to apply actively its antidumping law. During 2007, the last year for which WTO statistics are available, India initiated 47 antidumping investigations (highest among all WTO Members) and imposed 25 new antidumping measures. India's new investigations focused largely on chemicals, with two of these initiations involving U.S. exports. In October 2008, the United States participated in the third technical exchange with Indian antidumping administrators to obtain a better understanding of India's trade remedy laws and their compliance with India's WTO obligations. The U.S. and Indian Governments have agreed within the context of the United States-India Commercial Dialogue to continue these discussions on trade remedy issues.

In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore, pig iron, and ferrous scrap. India revised its exports tariffs again in October and November 2008: the export tariff on pig iron has been revoked, but tariffs on iron ore and ferrous scrap remain in place. In addition, India maintains restrictions on the exports of certain high-grade iron ore. These restrictions create supply issues for international markets for steel making raw materials and it appears the Indian government is using these measures to improve the availability of inputs used by India's rapidly growing steel industry. Meanwhile, the GOI also announced plans for increased duties on imports of certain steel products in late 2008.