INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $6.4 billion in 2007, a decrease of $5.3 billion from 2006. U.S. goods exports in 2007 were $17.6 billion, up 74.9 percent from the previous year. Corresponding U.S. imports from India were $24.0 billion, up 10.1 percent. India is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were $6.7 billion in 2006 (latest data available), and U.S. imports were $6.6 billion. Sales of services in India by majority U.S. owned affiliates were $2.8 billion in 2005 (latest data available), while sales of services in the United States by majority India owned firms were $2.4 billion.

The stock of U.S. foreign direct investment (FDI) in India was $8.9 billion in 2006 (latest data available), up from $6.6 billion in 2004. 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 their exports, despite the government of India's ongoing economic reform efforts. While U.S. exports registered notable growth in 2007, continued reduction of the bilateral trade deficit will depend on significant additional Indian liberalization of the trade and investment regime.

The government has continued to restructure tariffs applied to nonagricultural goods. The government's 2007-2008 budget, unveiled in February 2007, reduced the applied duty on most industrial products from 12.5 percent to 10 percent. At that time the government also announced reductions to applied duties on many raw materials and intermediates. For example, tariffs on polyester fibers, yarn, and other raw materials were lowered from 10 percent to 7.5 percent. The government also adjusted downward tariffs on chemicals and plastics from 12.5 percent to 7.5 percent. Despite tariff cuts on these goods, India's average applied tariff on industrial goods remains high, mainly due to significantly high tariffs on petrochemicals, automobiles, motorcycles, and finished steel products. Also, the U.S. textile industry continues to have concerns about nontransparent applications of tariffs and taxes.

Despite lower applied tariffs in nonagricultural goods, India has bound only 70 percent of its nonagricultural tariff lines. According to the WTO, India's average bound rate is 34.9 percent – well above its average applied tariff rate (16.4 percent in 2005). Also, India's WTO bound agricultural tariffs are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 114 percent. While many Indian applied tariff rates are lower, they still represent a significant barrier to trade in agricultural goods and processed foods. Further, given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater risk of market closure because India has the ability to raise its applied rates to bound levels in an effort to manage prices and supply.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally. The U.S. Trade Representative (USTR) and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF). The creation of the TPF was announced by President Bush and Prime Minister Singh during the Prime Minister's visit to Washington in July 2005. 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.

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 rate applicable to like domestic products. On July 3, 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, and several states continue to discriminate against imported spirits.

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 applied in addition to, and calculated on top of, the basic customs duty (*i.e.*, tariff) and additional duty. On September 14, 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 government publishes tariff and other customs duty rates applicable to imports, but there is no official 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. Classification of products under India's customs and excise tax schedules is generally aligned with the Harmonized System (HS) of tariff nomenclature.

On June 20, 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 are limited to alcoholic beverages, whereas its claims against the extra additional duty concern a number of industrial and agricultural products, including alcoholic beverages. The panel expects to issue its final report to India and the United States in March 2008.

Import Licensing

India also maintains a negative import list. 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 has liberalized many restrictions on the importation of capital goods. 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 5 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. Industry reports that the licensing requirement is onerous as implemented: the license application requires excessive details, quantity limitations are set on specific part numbers, and the delay between application and grant of the license is long and creates uncertainty.

In October 2007, the Indian 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.

Import licensing and other import related requirements and how they apply on an harmonized system (HS)-code basis are published in the International Trade Classification (HS). This document has been unavailable on the Indian Commerce Department Director General of Foreign Trade's website for several months, thus decreasing transparency and placing an extra burden on importers.

Customs Procedures

The government appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures allow India's customs 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.

Industry reports that, since September 2007, India has improperly included 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 5 years for some importers, using the revised valuation methodology. In addition, industry has noted that these issues have resulted in the detention of these products at the border by India's customs.

In addition, India's customs generally requires 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 specific Indian export promotion program. While these difficulties persist, India has shown improvement in this area. According to the World Bank, over the past 2 years the number of days needed to complete an import or export transaction India has been halved, while the there have been smaller reductions in the number of required documents.

The government continues its unofficial policy of revising edible oil reference prices once every two weeks and maintains a reference price system for soybean oil to address alleged under invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. The system is nontransparent and unpredictable. When the government reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India's 45 percent WTO bound tariff. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of $25 million in 2002. The current applicable duty on soybean oil is 40 percent. Due to high international prices of vegetable oils, the government has kept its reference price for vegetable oils unchanged since September 2006, in order to keep domestic prices under control.

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The government has identified 68 specific commodities (including milk powder, infant milk foods, packaged drinking water, certain types of cement, household and similar electrical appliances, gas cylinders, and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. Foreign companies can receive automatic certification for imported products, provided BIS has first inspected and licensed the production facility. However, U.S. industry alleges that inspection and licensing costs imposed on foreign manufacturers are so high that they may restrict trade in these items.

Since 2004, India has subjected all imported boric acid to stringent requirements associated with insecticides, whether the product is intended for use as an insecticide or as a manufacturing input (for example, in the production of glass and ceramics). Most uses of boric acid are noninsecticidal, and most boric acid exported from the United States to India is noninsecticidal. The Indian government has not indicated that there has been a problem of noninsecticidal boric acid being diverted for use as insecticide. Traders (*i.e.*, resellers) of boric acid remain unable to import boric acid for resale because they cannot obtain no-objection certificates (NOCs) from ministries. These NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee (CIB&RC). The NOC system was extended in July 2006 for 3 years. End users are able to import boric acid with an import permit issued by the CIB&RC. However, these import permits also include a tonnage limitation in excess of which an end user cannot import. Meanwhile, local refiners continue to be able to produce and sell noninsecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users. The United States continues to engage the government to not treat industrial boric acid as an insecticide and to withdraw the import permit system for this product.

The U.S. Government is increasingly concerned over India's failure to notify certain proposed technical regulations and conformity assessment procedures to the WTO (*e.g.,* the BIS protocol for tires and the Drugs and Cosmetics (Amendment) Rules, 2007, see below). Some measures do not appear to have been published at all. Until recently, India did not specify emission standards for motorcycles with engine capacities above 800 ccm, preventing the import of such motorcycles from international manufacturers. After concerted efforts by the U.S. government and private industry to encourage India to adopt a reasonable standard for large motorcycles, the government harmonized its emission norms with Euro III standards for large engine motorcycles.

In bilateral and multilateral fora, the U.S. Government has raised concerns about the Indian government's development, adoption, and implementation of technical regulations, standards, and conformity assessment procedures. For example, the United States is currently raising concerns in the WTO Technical Barriers to Trade Committee about India's 2007 implementation of the BIS protocol on tires. At both the July 2007 and November 2007 meetings of the WTO Committee on Technical Barriers to Trade, the United States encouraged continued Indian participation in the UN/ECE WP-29 discussions on a global standard for tires. The United States has also asked to meet with the government bilaterally to discuss several potential issues, including: the objective of the new protocol; whether compliance with the protocol is voluntary or mandatory; whether compliance testing at the Central Institute for Road Transport applies to both imported and domestic tires; whether foreign and domestic tires are subject to the same performance criteria for tire specifications; and why licensing fees are calculated differently for foreign and domestic companies. On this latter point, it is the U.S. understanding that such fees for

foreign companies are based on sales invoiced to dealers in India, whereas fees for domestic companies are based on units sold in India. Industry has asserted that the different fee calculation methodologies result in much higher licensing fees for foreign tire companies.

The United States has also raised concerns in Geneva with respect to the potential negative impact on trade of the proposed "Drugs and Cosmetics (Amendment) Rules, 2007." The draft amendment appears to introduce unnecessarily burdensome procedures and includes a costly registration system that appears to discriminate against imported products. The United States has been unable to ascertain how these procedures will increase product safety for consumers and has asked India to engage in further discussions on this issue to enable a better understanding of the objectives and rationale of the new rules. The United States has also requested that India consider delaying enforcement of the amendment to allow reasonable time for all interested parties to comment and to afford suppliers a reasonable interval to comply with the new requirements.

The lack of an efficient medical device regulatory regime in India has hampered growth in the country's healthcare sector and impeded trade in health products. In 2006, the government amended an existing law governing the regulation of pharmaceuticals to include certain medical devices. The government currently is developing a regulator for medical devices. 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 regarding its failure to notify SPS measures to the WTO. India continues to maintain regulations that restrict most forest products and block all imports of U.S. poultry, poultry products, pet food, pork, and most imports of U.S. dairy products. Although processed dried pet food is exempt from India's avian influenza ban, Indian officials continue to ban imports of dry processed pet food while a new pet food import protocol is being negotiated. In addition, fumigation requirements threaten existing U.S. exports of pulses and new market access for barley. Sales of U.S. wheat to India are blocked by strict tolerances for weed seeds and impractical sampling procedures. Bilateral technical level discussions to resolve these issues are ongoing. Earlier discussions have resulted in long term agreements under which U.S. in-shell almonds and other U.S. commodities are allowed entry into the Indian market.

In 2007, the United States raised two issues at the WTO SPS Committee that concern SPS enforcement actions by India: restrictions due to avian influenza and dairy restrictions. India bans imports of U.S. poultry, swine, and their products as a result of the detection of low pathogenic avian influenza in wild birds in the United States. Despite repeated requests, India has not yet provided a scientific justification for this ban, which does not appear to comply with guidelines established by the World Organization for Animal Health (OIE).

As for the dairy restrictions, India maintains more stringent maximum residue levels on imported dairy products than it does for domestic products. In October 2006, the United States proposed a health certificate attesting that U.S. milk and milk products are fit for human consumption. However, India rejected this offer to certify citing concerns for outdated U.S. action levels for pesticides that have been banned in the United States. In November 2007, Indian and U.S. officials held a digital video conference to discuss possible changes to the U.S. proposed export certificates. These discussions are ongoing.

The United States also has concerns about India's notification process for amendments to certain regulations that affect plant trade. In particular, India has amended its "Plant Quarantine (Regulation of

Import into India) Order, 2003" several times without providing an opportunity for prior public comment, as required by WTO obligations. India's amendments constrain U.S. agricultural exports, introduce onerous labeling requirements, and set pesticide and quarantine pest requirements that may not be science-based or may not meet OIE and Codex Alimentarius guidelines.

In August 2006, in an attempt to consolidate its existing multitude of laws and regulations governing the food and food processing sectors, the government 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 not yet operational.

Agricultural Biotechnology

Under India's biotechnology regulations, the Genetic Engineering Approval Committee (GEAC) must approve all biotechnology food/agricultural products or products derived from biotechnology plants/organisms prior to import, and the importer must notify officials if a consignment contains a biotechnology trait. As a result of India's biotechnology regulations, U.S. exports of products derived from genetically engineered commodities are strictly prohibited, except for soybean oil derived from Round-Up Ready soybeans for refining prior to consumption. In 2007, U.S. soybean oil exports to India totaled approximately $11 million.

India's evolving biotechnology regulatory process does not appear to be entirely science based and despite recent efforts, consensus within the biotechnology community is that further reforms are needed to facilitate faster growth in the sector. In 2007, the Ministry of Environment and Forest (MEF) issued a notification that processed food products derived from genetically engineered products where the end product is not a live modified organism do not require approval from GEAC for production, marketing, importation and use in India. The DGFT is now expected to notify necessary amendments that would allow imports of biotechnology processed food without prior GEAC approval.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. 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. The Purchase Preference Policy (PPP) applied by government enterprises and government departments gives preference to any state owned enterprise that submits an offer that is within 10 percent of the lowest bid. The PPP was renewed in 2005, with some modifications. The government announced in October 2007 that the PPP will be terminated on March 31, 2008.

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 2007 Special 301 review.

IPR protection and enforcement has been the subject of ongoing discussion in the Trade Policy Forum'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 do not address several important weaknesses in India's patent law. 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 pregrant opposition rules may impede the timely grant of patent applications for new compounds.

Indian law does not provide for adequate protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products. The government in June 2007 released recommendations of the long awaited Data Protection Committee. The report's data protection recommendations, however, fell short of international standards. The report is being discussed within the government, and some of the recommendations may require legislative changes to be implemented.

Copyrights

The government 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 no clear path towards India's implementation of the World Intellectual Property Organization Internet Treaties.

India's enforcement efforts against copyright piracy are weak. 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 amounted to nearly $496 million in 2006. The sale of semiconductors that violate copyright and semiconductor mask laws continues to be a concern. In addition, India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine draft optical disc legislation are underway.

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 significant detrimental effect on all motion picture market segments in India – theatrical, home video, and television.

Enforcement

India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, remains weak. There have been few reported convictions for copyright infringement resulting from raids, including raids against repeat offenders. Backlogs in the court system and documentary and other procedural requirements have provided impediments to the prosecution of 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.

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 an initial offer to provide further services liberalization in the WTO Doha Round, the offer does not remove existing limitations in such key sectors as distribution, telecommunications, financial services, and the professions.

Insurance

In 1999 the Insurance Regulatory and Development Act opened India's insurance market to private participation. Under this law, foreign participation in the Indian insurance sector is allowed, but foreign equity is limited to 26 percent of paid-up capital. In recent years, the Indian government has initiated attempts to raise the limit on foreign equity participation to 49 percent, but strong opposition from opposition parties has thus far prevented any increase in foreign equity in the insurance sector.

Banking

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. Although India has opened up to privately-held banks, most Indian banks are government owned, and entry of foreign banks remains highly regulated. Foreign banks may not own more than 5 percent of an Indian private bank without approval of the Reserve Bank of India. Foreign ownership of a private Indian bank cannot exceed 74 percent of the capital of the private Indian bank. State owned banks hold roughly 75 percent of the assets of the banking system, although private banks are growing rapidly.

As of October 2007, there were 29 foreign banks with 273 branch offices operating in India under RBI approval. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis. Four U.S. banks now have a total of 52 branches in India. They operate under restrictive conditions including directed lending and asset allocation requirements. Their ability to expand is severely limited by nontransparent quotas on branch office expansion. In its GATS schedule, India committed to grant 12 new foreign branch office licenses annually. In contrast, domestic private Indian banks received 100 branch office licenses in 2006. Foreign banks are allowed to establish wholly-owned subsidiaries but must divest their ownership stakes down to 26 percent by 2009, making this option largely unattractive. As a result, there are no wholly owned subsidiaries of foreign banks in India.

Audiovisual and Communications Services

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

In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the government suspended implementation of the Conditional Access System (CAS) for cable television. However, in accordance with a Delhi High Court Order in January 2007 requiring television subscribers to install set-top-box decoders to view premium channels,

CAS now has been implemented across the country. By providing tighter regulation of the cable industry as a whole, industry participants expect CAS to help reduce the problem of pirated broadcasts, although it is too early to assess the impact on piracy yet.

The government allows FDI of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in "direct-to-home" (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted 26 percent foreign equity investment, ensuring a dominant Indian partner holds at least 51 percent equity. Operational control of the editorial content must be in Indian hands.

India's government prohibits any foreign equity interest in FM radio broadcasting. Foreign ownership in satellite ventures uplinking from India is capped at 20 percent and the management must be Indian. There is a 49 percent cap on foreign ownership of cable operators.

In November 2005, the Indian government issued a "Downlink Policy" that applies to international content providers that want to downlink programming to India. One of the requirements under the policy is that international content providers either establish a registered office in India or designate a local agent. The government implemented this rule reportedly to have greater oversight over programming content. However, companies note that most other countries (including the United States) do not require a license for the downlinking of programming and that India can control content through its licensed entities (such as cable companies or DTH providers). Companies claim that this policy is overly burdensome and results in a taxable presence. Companies have asked that the downlink regulations be amended to avoid the taxable presence. However, in February 2008, India's Ministry of Information and Broadcasting confirmed that the Policy will remain in place and that companies must amend the agreements signed between the companies and their Indian customers, making the tax liabilities retroactive to November 11, 2005.

The United States continues to raise this issue with the Indian government and the Ministry of Information and Broadcasting, most recently at the United States-India Trade Policy Forum in Chicago on February 19, 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 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 government is working on opening up the sector to foreign chartered accountants and professional consultants through the Limited Liability Partnership Bill, which was introduced in Parliament in December 2006. Press reported in November 2007 that the bill had cleared Parliament's Standing Committee on Finance, raising the prospects of the bill's passage in early 2008.

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

India requires that anyone wishing to practice law must enroll as a member of the Bar Council. Only foreign nationals from countries that allow Indian nationals the right to practice law may enroll in the Bar Council. FDI is not permitted in this sector, and foreign law firms are also 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, a TPF initiative created in December 2006, has faced difficulty in arranging its first meeting due to the Bar Council's continued opposition to opening the legal services market in India.

Telecommunications

Despite 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 and the apparent bias of telecommunications policy towards government owned services providers. In addition, many procompetitive recommendations of the telecommunications regulator have been delayed or rejected by the Department of Telecommunications (DOT) without adequate explanation.

India's national telecommunications policy allows private participation in the provision of all types of telecommunications services. In April 2007, DOT guidelines operationalized an increase in foreign equity limits from 49 percent to 74 percent for National and International Long Distance services.

In India's rapidly expanding and lucrative wireless telecommunications industry, the government is struggling to move forward with formalizing policies for reallocating telecommunications spectrum frequencies from defense, space, and other government bodies to commercial cellular mobile telecommunications operators. Expectations for the release of new second generation (2G) and third generation (3G) spectrum resulted in an avalanche of new applications for Unified Access Service licenses before the government arbitrarily announced an application deadline of October 1, 2007. U.S. companies have complained that the spectrum and licensing policies under consideration by the government could potentially block their participation in the market.

Though India's Prime Minister has indicated greater support for the use of open auctions to resolve the controversial policy issues of 2G and 3G telecommunications services licensing and spectrum allocation, his views appear to remain at odds with those of the Communications Minister, who continues to advocate a "first come, first served" policy for the allocation of 2G spectrum. Though the Minister has said that open auctions may be appropriate for the allocation of 3G spectrum, he has not clarified whether or not the auction will be restricted to certain companies. U.S. companies remain concerned that they will be denied the opportunity to obtain either 2G and 3G spectrum, and thereby miss the opportunity to participate in India's lucrative and growing mobile telecommunications market, which has experienced 90 percent annual growth since 2005 and which reportedly adds eight million new subscribers per month.

Competitive carriers have expressed concerns about the neutrality and fairness of government policy. The government retains a significant ownership stake 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. Private companies and associations accused the government of favoritism after they learned at Government/Industry meetings on October 3-4, 2007, that MCIT/DOT had unilaterally given BSNL an additional 10 MegaHertz in 2G/GSM spectrum.

India's Access Deficit Charge (ADC) regime disproportionately impacts consumers making international calls to India. Telecommunications Regulatory Authority of India (TRAI) implemented the ADC in 2003 in connection with its Telecommunications Interconnection Usage Charge (IUC) Regulation. However, the ADC is not an "interconnection charge," but, rather, a supplemental component of India's overall universal service regime. Although India has eliminated the charges on outbound international calls, inbound international calls are still subject to the per-minute charge. India has stated that the ADC will be steadily cut, allowing the ADC to be phased out in 2008. The U.S. Government will continue to encourage India to meet this goal.

India does not allow voice over Internet protocol over networks connected to the Public Switched Telecommunications Network.

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 2004, TRAI recommended that India adopt an "open skies" policy and allow competition in the satellite services market. Prior to that date, 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 further liberalization proposed by the TRAI recommendations has not been adopted by the government of India.

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. Foreign direct investment in other than single-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 approval. The case remains unresolved pending the outcome of an appeal to the Supreme Court.

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: the draft bill includes a provision requiring all registered delivery services suppliers to contribute to financing the regulator's universal service obligation; the postal monopoly would be expanded by providing the Indian Department of Post the exclusive right to carry all "letters" up to 300 grams; and the bill would impose limits on foreign investment in all private delivery services, including express delivery suppliers, and might force foreign owned express companies to divest their existing operations in India. The U.S. Government has encouraged India's government to strike these problematic provisions from any final 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, would 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 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 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 report forced renegotiation of contracts in the power sector as a result of ruling government changes at the state and central levels.

Investment Disputes

Long standing unresolved disputes involving U.S. investors continue to discourage further U.S. investment in the energy sector. For example, in one unresolved dispute, notwithstanding a 2006 Supreme Court of India decision in favor of a U.S. firm in its claims against an entity of the government of India, the government has yet to pay the award required by the decision.

However, there has been significant progress in 2007 toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The 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 government 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 with The Permanent Court of Arbitration (PCA), the Hague, to open a regional center in India. PCA officials visited India in late 2007 to view the logistics for opening up the regional PCA center, which is not expected before mid-2008.

ANTICOMPETITIVE PRACTICES

India suffers from a slow bureaucracy and with little or no fear of government action and a clogged court system where cases can linger for years. Indian firms face few if any disincentives to engage in anticompetitive business practices.

In September 2007, the government introduced new merger control amendments to its Competition Act. The merger and acquisition provisions, once notified and enacted, would require foreign companies, including those with a limited nexus to Indian markets, to seek approvals for mergers and acquisitions made anywhere in the world, including outside India and the company's home country. The government would impose a 210 day waiting period before the transaction could take place, even if it would have little or no impact on business within India. If enacted, a broad swath of global mergers and acquisitions would be potentially caught up in this new law. The United States is working with industry, foreign governments, and Indian companies and industry groups to persuade the government to promulgate regulations under the new law to correct the most problematic aspects of the M&A provisions.

OTHER BARRIERS

India has an unwritten policy that favors counter-trade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major counter-trade body, although the State Trading Corporation also handles a small amount of counter-trade. Private companies also are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter-trade.

India has continued to apply actively its antidumping law. During 2006, the last year for which WTO statistics are available, India initiated 30 antidumping investigations (highest among all WTO Members) and imposed 18 new antidumping measures (third highest among all WTO Members). India's new investigations focused largely on plastics and textiles, with two of these initiations involving U.S. exports. In September 2007, the United States participated in the second 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.