INDIA

TRADE SUMMARY

U.S. goods exports in 2014 were $21.6 billion, down 1.0 percent from the previous year. India is currently the 18th largest export market for U.S. goods. Corresponding U.S. imports from India were $45.2 billion, up 8.1 percent. The U.S. goods trade deficit with India was $23.6 billion in 2014, an increase of $3.6 billion from 2013

U.S. exports of services to India were $13.5 billion in 2013 (latest data available), and U.S. imports were $19.0 billion. Sales of services in India by majority U.S.-owned affiliates were $17.8 billion in 2012 (latest data available), while sales of services in the United States by majority India-owned firms were $10.1 billion.

The stock of U.S. foreign direct investment (FDI) in India was $24.3 billion in 2013 (latest data available), up from $22.8 billion in 2012. U.S. FDI in India is led by the professional, scientific and technical services, manufacturing, and finance and insurance sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

The United States discusses TBT matters with India during TBT Committee meetings at the World Trade Organization (WTO), as well as on the margins of these meetings. U.S. Government officials also discuss such matters with Indian officials under the United States-India Trade Policy Forum (TPF) (which last met in November 2014), the TPF's Tariff and Non-tariff Barriers and Agriculture Focus Groups, the United States-India Commercial Dialogue and the High-Technology Cooperation Group.

Cosmetics – Registration Requirements

U.S. stakeholders have raised concerns regarding India's "Drugs and Cosmetics (Amendment) Rules of 2007," which introduced a new registration system for cosmetic products. In 2008, India notified the measure, and the United States submitted comments including concerns raised by U.S. stakeholders through India's TBT Inquiry Point.

In response to U.S. comments, India's Ministry of Health (MoH) made a number of clarifications and modifications to the proposed measure in 2009 and, in July 2010, issued "Guidelines on Import and Registration of Cosmetics" which, following an extension, companies were required to implement by April 1, 2013. These guidelines provide additional clarity, such as (1) clarifying the definition of "brand"; (2) allowing different manufacturing units involved in manufacturing and supplying the brand to be listed under a single registration; (3) applying a single registration fee to all product lines of the same brand; and (4) providing a fast track review of products currently on the market. On December 31, 2014, the MoH invited comments on a new draft of the Drugs and Cosmetics (Amendment) Bill 2015. U.S. stakeholders continue to express concerns regarding the need for an adequate compliance period and India's refusal to permit the use of stickers to provide country-specific information, among other issues.

Food – Package Size and Labeling Requirements

The government of India mandated standard retail package sizes for certain foods and beverages effective November 1, 2012, via amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule has not been notified to the WTO, nor is there any reference to a specific comment period for domestic stakeholders. As the United States does not impose specific standards for packaging size, and U.S. package sizes tend to be in English rather than metric units, the list of package sizes effectively bars many U.S.-origin products from entering India. Attempts to import such products have resulted in rejection at the port of entry. This is having a negative effect on trade, with numerous U.S. brands effectively excluded from the Indian market. The United States has repeatedly raised concerns about these standards in various bilateral and multilateral fora and continues to work with India to ensure that U.S. brands have access to the Indian market.

While the requirement for standard retail package sizes has not been removed, other issues related to packaging and labelling requirements were advanced during the November 2014 TPF. In the TPF joint statement, India "noted the potential reconciliation of the definition of wholesale pack between Departments, forthcoming rules to allow stickering of maximum retail prices at the port, and timely implementation efforts concerning these issues."

Foods Derived from Biotech Crops

India effectively prohibits the importation of food and agricultural products containing ingredients derived from biotech crops, except for soybean oil. Importers or the foreign exporter must have a particular biotech event approved by the Indian government before imports may begin. In February 2014, India resumed certain previously discontinued biotech regulatory processes and has approved open field trials for over 200 cultivars. While resumption of regulatory processes is a positive development, these processes remain slow, opaque, and subject to political influences. India's biotech rules have not been notified to the WTO. In the event that biotech products are approved for import in the future, questions about jurisdictional authority and unclear labeling requirements for packages containing "genetically modified" foods between the FSSAI and the Ministry of Consumer Affairs could also effectively ban U.S. biotech products from the Indian market. The United States raised the labeling issue with both the FSSAI and the Department of Consumer Affairs in 2014, but has not received clarification.

Livestock Genetics

The Department of Animal Husbandry, Dairying and Fisheries (DADF) of the Ministry of Agriculture imposes restrictions on imports of livestock genetics, requiring progeny testing and establishing quality standards (Revised Guidelines for Import/Export of Bovine Germplasm). These restrictions have not been notified to the WTO. Importation of animal genetics also requires a "no objection certificate" (NOCs) from the state government. The entire procedure for obtaining import permission takes four months, and requires, in addition to the NOC from the state, an import permission from the Directorate General of Foreign Trade and an import permit from the DADF. Neither the burdensome progeny testing, nor the NOC, are required of domestic producers of animal genetics. The United States has objected to these requirements in technical meetings with the DADF but has not received a substantive response.

Telecommunications Equipment – Security Regulations

In 2009 and 2010, India promulgated a number of regulations negatively impacting trade in telecommunications equipment, including mandatory transfer of technology and source codes as well as burdensome testing and certification requirements for telecommunications equipment. While India rolled back most of these measures in response to international stakeholders, India retains the objective of testing all "security-sensitive" telecommunications equipment in India with a current start date of April 1, 2015. However, the criteria have yet to be published and India's domestic security testing capacity is currently very limited, and it is unclear whether that capacity will increase sufficiently by the deadline. U.S. Government officials and U.S. stakeholders have continued to press India to reconsider the domestic testing policy and to adopt the international best practice of using international common criteria and accepting products tested in any accredited laboratory in India or elsewhere.

Electronics and Information Technology Equipment – Safety Testing Requirements

U.S. electronics and information and communications technology (ICT) goods manufacturers have raised concerns about the Indian Department of Electronics and Information Technology's September 2012 order that mandates compulsory registration for 15 categories of electronic and ICT goods. The policy, which entered into force in January 2014, mandates that manufacturers register their products with laboratories affiliated or certified by the Bureau of Indian Standards (BIS), even if they are certified by internationally recognized laboratories. The government of India has never articulated how such a domestic certification requirement advances India's legitimate public safety objectives, and it added an additional 15 categories of electronics and ICT goods to the list in late 2014.

India currently has seven government and private laboratories accredited by BIS for testing and certification – far fewer than can accommodate the high volume of electronic goods the country imports. As a result, the ICT industry faces significant delays in product registration due to lack of government testing capacity, a cumbersome registration process, and tens of millions of dollars in additional compliance costs, which includes factory level as well as component level testing. Accordingly, enforcing these requirements could result in hundreds of millions of dollars' worth of U.S. exports being locked out of the Indian market, causing great concern for U.S. companies.

The domestic testing requirement is particularly burdensome for Highly Specialized Equipment, including servers, storage, printing machines, and ICT products that are installed, operated, and maintained by professionals who are trained to manage the product's inherent safety risks. These products pose little risk to the general consumer public. U.S. companies have incurred significant expenses due to testing samples being destroyed during the safety testing process in Indian laboratories. Indian laboratories have also indicated that they do not have the capacity to test some products that require industrial power supply, exceed household or office voltage, or are very large in size and weight. Moreover, exporters are forced to leave their products in these laboratories for extended and undefined periods of time.

The United States has been actively raising this issue bilaterally, including during meetings on the margins of the TPF, and multilaterally in the WTO TBT Committee in 2014, and will continue to discuss with the government of India in 2015.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's SPS-related trade restrictions in bilateral and multilateral fora including the Agriculture Focus Group of the TPF, the WTO SPS Committee, and Codex Alimentarius (Codex). The United States will continue to make use of all available fora with a view to securing the entry of U.S. dairy, poultry, pork, and other agricultural products into the Indian market.

Food – Product Testing

The Food Safety and Standards Authority of India's (FSSAI) Authorized Officer at the Mumbai Sea Port and Airport posted a notice in 2013 stating that "100 percent samples" will be drawn from all imported agricultural consignments effective from September 13, 2013. This notice appears to broaden a 2004 Ministry of Commerce and Industry list of "high risk" food items, imports of which are subject to 100 percent sampling. FSSAI has not formally announced this notice via press release or other advisory, nor has India notified it to the WTO. Importers have expressed concerns about both the increase in cost of testing and increased detention of cargoes for indeterminate periods of time, which is particularly costly with respect to perishable products. FSSAI officials have indicated that they are considering introduction of risk- and science-based sampling, but have not divulged a timeline for that.

Food – Product Approval

In May 2013, the FSSAI issued an advisory on new procedural guidelines for approval of food products, effective immediately. These guidelines were not notified to the WTO and apply to both domestic and imported foods. These guidelines supersede all preceding advisories and apply to approvals of food products for which standards are not specified under the Food Safety and Standards Act, 2006. In response to U.S. inquiries regarding the functions of the Product Approval Screening Committee, Indian officials responded that the objective of the Committee is to ensure that only products safe for human consumption enter or are sold in India; that decisions on product approval are time specific; and that FSSAI has authority to recall a product from the market based on information indicating that the product or an ingredient is not fit for human consumption. An online "Food Product Approval System" was launched on September 9, 2014, which, *inter alia*, allows applicants to track the progress of their applications. Product approval is required for changes in recipes for food products, meaning that the addition or deletion of individual ingredients requires a new application.

Dairy Products

Since 2003, India has imposed unwarranted SPS requirements on dairy imports, which have essentially precluded U.S. access to India's dairy market, one of the largest in the world. For example, India requires the U.S. Government to certify that any milk destined for India has been treated to ensure the destruction of paratuberculosis, which according to India, is linked to Crohn's Disease. Despite repeated requests from the United States, India has not provided scientific evidence to substantiate this assertion, and has declined to take into account evidence to the contrary submitted by the United States. The United States maintains that the presence of paratuberculosis in dairy products does not pose a human health risk and that India should not make elimination of this bacterium a condition for issuing a sanitary export certificate for U.S. dairy products. In addition, India has insisted on religious grounds that source animals must have never received any non-vegetarian feeds, which is not scientifically justified.

Pork

The Indian import certificate for pork requires that importers make an attestation that the imported pork does not contain any residues of pesticides, drugs, mycotoxins, or other chemicals above the maximum residue levels prescribed in international standards. However, these certificates fail to identify specific compounds and their corresponding international limits. India also limits pork imports to meat derived from animals that were never fed ruminant derived protein, requires attestations that are not consistent with international requirements, and prohibits imports of pork products obtained from animals raised outside the United States even if they were legally imported into the United States before slaughter. Further, veterinary certificates are valid for only six months, and a separate import permit must be obtained for each imported lot.

India also imposes onerous disease-freedom requirements which restrict the importation of U.S. pork into India. In June 2010, the United States requested India to provide a risk assessment for the importation of pork into India. The government of India advised during the October 2010 United States-India agricultural trade talks that the Ministry of Agriculture's technical committee on pork was scheduled to submit its report very shortly. However, after four years the United States has received no response from India's pork importation review committee.

Poultry and Swine

Since 2007, India has banned imports of U.S. poultry, swine, and related products due to the detection of low pathogenic avian influenza in the United States. The United States has repeatedly raised concerns about India's measures in the WTO SPS Committee, has discussed these concerns bilaterally with India, and in 2012 filed a dispute settlement case at the WTO. In 2014, the WTO panel hearing the dispute issued a report finding that India's avian influenza measures breach numerous provisions of the WTO SPS Agreement. India has appealed the panel's report.

Plant Health

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, resulting in blocked U.S. wheat and barley imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date.

The Government of India's requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States due to the phase out of MB due to its demonstrated negative impact on the environment. In August 2004, the United States requested that India permit entry of consignments of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. The most recent extension expires on March 31, 2015, and efforts are still underway to reach a permanent resolution.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to open India's market, and the government of India has pursued ongoing economic reform efforts. India's new government, which took office in 2014, has discussed accelerating economic reforms in 2015. Nevertheless, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products into India.

Tariffs and other Charges on Imports

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

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

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

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 48.6 percent, while its simple MFN average applied tariff for 2013 was 13.5 percent. Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. In addition, while India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, (*i.e.*, there is no WTO ceiling on the rate.)

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

U.S. companies also have objected to the increase in 2014 of tariffs on categories of telecommunications equipment. As part of the 2014-2015 Union Budget, the government of India issued Customs Notification 11/2014. This notification increased tariffs from 0 percent to 10 percent on four broad categories of telecommunications equipment and technologies, including switches, Voice over Internet Protocol equipment and phones, and certain networking equipment. The notification also specifies that products using certain technologies, such as Multiple Input/Multiple Output and Long Term Evolution, would be subject to duties. The United States urged India in 2014 to eliminate the new 10 percent duty on these products to ensure compliance with India's international trade obligations, including its commitments under the Information Technology Agreement.

The United States requested in 2014 that India reduce its very high basic customs duty on drug formulations and eliminate its basic customs duty for all life-saving drugs, as well as any finished medicines listed on the World Health Organization's list of essential medicines (http://www.who.int/medicines/publications/essentialmedicines/en/index.html). The United States also requested that India eliminate the 7.5 percent basic customs duty, additional duty, and special additional duty for medical equipment and devices, such as pacemakers, coronary stents and stent grafts, and surgical instruments; and for parts of medical devices, such as medical grade polyvinyl chloride sheeting for the manufacture of sterile Continuous Ambulatory Peritoneal Dialysis bags for home dialysis. The United States will continue to encourage India to reduce these high tariffs on healthcare products.

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent. India's average bound tariff for agricultural products is 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.5 percent on agricultural goods in 2013), they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). The large gap between bound and applied tariff rates in the agriculture sector allows India to use tariff policy to make frequent adjustments to the level of protection provided to domestic producers, creating uncertainty for traders. For example, in January 2013, India issued a customs notification announcing an immediate doubling of the tariff on imports of crude edible oils.

Imports are subject to state level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. India allows importers to apply for a refund of the special additional duty paid on imports subsequently sold within India and for which the importer has paid state level value-added taxes. Importers report that the refund procedures are cumbersome and time consuming. In addition, U.S. stakeholders have identified various state-level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol. The central government has taken steps and continues to work with state governments to adopt a national goods and services tax (GST) that would replace most indirect taxes, including various charges on imports. Implementation of a national GST will first require amending the Indian Constitution. In 2014, India's new government stated that achieving this reform is a priority.

Import Licenses

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

For purposes of entry requirements, India has distinguished between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India's official Foreign Trade Policy categorizes remanufactured goods in a similar manner to secondhand products, without recognizing that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from virgin materials. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its life, while refurbished computer parts from domestic sources are not subject to this requirement. India requires import licenses for all remanufactured goods. U.S. stakeholders report that meeting this requirement, like other Indian import licensing requirements, has been onerous. Problems that stakeholders have reported with the import licensing scheme for remanufactured goods include: (1) excessive details required in the license application; (2) quantity limitations set on specific part numbers; and (3) long delays between application and grant of the license.

India subjects imports of boric acid to stringent restrictions, including arbitrary import quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use cannot import boric acid for resale because they are not end-users of the product and consequently cannot obtain NOCs from the relevant Indian government ministries and departments or import permits from the Ministry of Agriculture. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee. Meanwhile, local refiners continue to be able to produce and sell boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide.

Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subjected to excessive searches and seizures of imports.

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

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

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy, and as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. Multiple procurement rules, guidelines, and procedures issued by multiple bodies have resulted in problems with transparency, accountability, competition, and efficiency in public procurement. A World Bank report stated that there are over 150 different contract formats used by the state owned Public Sector Units, each with different qualification criteria, selection processes, and financial requirements. The government also provides preferences to Indian Micro, Small and Medium Enterprises, and to state owned enterprises. Moreover, India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above 3 billion rupees (approximately $56 million) in Indian produced parts, equipment, or services. It is not uncommon for the Defense Ministry to request significant changes to previously accepted offset agreements.

India's National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, ICT and clean energy). Consistent with this approach, India issued the Preferential Market Access (PMA) notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods.

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

EXPORT SUBSIDIES

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and for exporters in Special Economic Zones, as well as duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. Numerous sectors (*e.g.*, textiles and apparel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance.

India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs that benefit the textiles and apparel sector. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures (*e.g.*, Export-Oriented Units, Special Economic Zones, Export Promotion Capital Goods, Focus Product, and Focus Market Schemes) that provide, among other things, exemptions from customs duties and internal taxes based on export performance.

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

The government of India has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. In August 2013, for example, the government authorized two million tons of wheat exports from government held stocks. It also lowered the minimum price at which those stocks could be sold to $260 per ton FOB, significantly below the government's acquisition cost of $306 per ton, plus storage, handling, inland transportation cost, and other charges for exports. The United States has raised this issue in the WTO Committee on Agriculture along with other interested Member countries. While the government of India did not reach this export volume for 2014 or authorize additional volumes for exports due to lower global wheat prices, the United States continues to monitor this practice. Other WTO Members have also questioned the government of India in the WTO Committee on Agriculture on India's subsidy for exports of raw sugar.

AGRICULTURE PROGRAMS

India provides a broad range of assistance to its agricultural sector, including credit subsidies, debt forgiveness, and subsidies for inputs, such as fertilizer, fuel, electricity, and seeds. These subsidies lower the cost of production for India's producers, and have the potential to distort the market for which imports seek to compete. In addition, agricultural producers of 24 products benefit from the government program to purchase food products from farmers at minimum support prices (MSP). Rice and wheat are the most commonly supported, and account for the largest share of products procured by the government. High guaranteed MSP prices and extensive government procurement distorts domestic market prices and incentivizes the over production of rice and wheat, which restricts demand for imports.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2014 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). USTR also conducted an Out-of-Cycle Review of India's IPR environment focused on the level of government engagement with the United States on IPR issues. Finally, the United States and India committed to establish an annual high-level

Intellectual Property (IP) Working Group based on the common recognition of the need to foster innovation in a manner that promotes economic growth and job creation.

Although there has been some recent progress with respect to certain IPR enforcement, there have also been a number of IPR developments that have raised concern from stakeholders, including the prior grant of one compulsory license by the government of India as well as revocations and other challenges to patents, particularly patents for pharmaceutical products. Current Indian law suggests that the lack of local manufacturing in India may be considered in reviewing a request for a compulsory license, and India's National Manufacturing Policy suggests curtailing patent rights to facilitate technology transfer in the clean-energy sector. Furthermore, in April 2013, the Indian Supreme Court stated that India's Patent Law creates a second tier of requirements for select technologies, like pharmaceuticals, an interpretation that may have the effect of limiting the patentability of a wide array of potentially beneficial innovations.

The United States also urges India to provide an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural products. Additionally, India's 2012 Copyright Law amendments have not effectively implemented the WIPO Internet Treaties, including with respect to the protection against circumvention of technological protection measures.

India is in the process of undertaking an examination of its current IPR environment, including by developing a National IPR Policy to provide more clarity for stakeholders. However, India has yet to undertake substantive amendments to its IPR legal regime that would lead to improvements in its IPR environment. The United States remains concerned that measures such as compulsory licensing, patent revocation, and non-transparent and unpredictable price controls may create an atmosphere of uncertainty for IPR owners and disincentivize new and additional investment from foreign rights holders in India. The United States will continue to urge India to take steps to address specific concerns.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted, and in the case of legal services, prohibited entirely.

Insurance

Foreign investment in the insurance sector has long been limited to 26 percent of paid-up capital. In March 2015, India's Parliament passed legislation to raise the cap on foreign investment to 49 percent, albeit only with Indian management and control.

Banking

Although India allows privately held banks to operate in the country, the banking system is dominated by state owned banks, which account for roughly 76 percent of total banking assets and 84 percent of all Indian bank branches. The market participation by foreign banks in India is largely controlled by the Reserve Bank of India (RBI). As of March 2013, India had 26 public sector banks, 20 private Indian-origin banks, 43 foreign banks and over 100 smaller, regional banks and credit cooperatives, with a combined network of over 100,000 branches. Foreign banks with a combined 327 branch offices constitute approximately 0.40 percent of the total bank branches in India, including four U.S. banks with a total of 49 branches. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered by nontransparent quotas on branch office expansion.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than five percent of an Indian private bank without approval by the RBI. Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and nonresident Indians) cannot exceed 74 percent. In addition, voting rights for any shareholders in private banks are capped at 10 percent.

RBI released framework guidelines in 2013 governing the establishment of wholly-owned subsidiaries by foreign banks in India. These guidelines contain several provisions that U.S. stakeholders have requested that the government of India clarify. According to the guidelines, foreign banks present in India prior to 2010 will have the option to subsidiarize or continue to operate as branches. However, the guidelines incentivize foreign banks to subsidiarize by offering Indian subsidiaries of foreign banks treatment similar to domestic banks when it comes to opening branches.

The passage of certain amendments to the Banking Regulation Act allows Indian business conglomerates and non-bank financial institutions to establish new private banks. However, the RBI restricted total foreign shareholding in any bank established by such entities to 49 percent for the first five years, after which the limit would be the same as that applicable to foreign ownership of other private banks, *i.e.*, 74 percent.

Audiovisual Services

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that transmit programming into India using satellite must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome and can result in having a taxable presence in India. India also requires that foreign investors have a net worth of Rs. 50 million (approximately $800,000) in order to be allowed to downlink one content channel. A foreign investor must have an additional Rs. 25 million (approximately $400,000) of net worth for each additional channel that the investor is allowed to downlink.

The Telecommunications Regulatory Authority of India has introduced new regulations on content aggregation and distribution that eliminates bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally as it allows niche and foreign content to be bundled into and sold by domestic partners without a large local presence or sales force. The new regulations are particularly difficult for small and international content providers as the result is that these companies must directly sell content to cable TV operators, among which there are 60,000 local cable operators, radio, and TV broadcasters.

There are also a number of limits on foreign ownership in the audiovisual sector: cable news (49 percent); FM radio (20 percent); head-end in the sky (74 percent); direct-to-home (DTH) broadcasting (49 percent); teleports (49 percent); news broadcasting (26 percent); and newspapers (26 percent). India also maintains one of the highest entertainment tax rates in Asia and the nature and extent of tax varies widely across states, ranging from 14 percent to 167 percent. There is also pending litigation related to audiovisual services, including the acquisition of content and telecasting rights and advertising revenue of foreign telecasting companies that is causing uncertainty for companies considering market entry.

Accounting

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only accounting firms structured as partnerships under Indian law may supply financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Legal Services

The Bar Council of India (BCI) is the governing body for the legal profession in India. Membership in the BCI is mandatory "to practice law" in India, but is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Madras High Court has determined that foreign lawyers are permitted to advise clients on foreign law and international legal issues (*e.g.*, in connection with international arbitrations) on a "temporary" basis; the BCI is currently challenging this decision.

Architecture

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

Telecommunications

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

The government of India continues to hold equity in multiple telecommunications firms. It holds a 26 percent interest in VSNL, the leading provider of international telecommunications services; a 56.25 percent stake in Mahanagar Telephone Nigam Ltd. (MTNL), which primarily serves Delhi and Mumbai; a 100 percent stake in Bharat Sanchar Nigam Ltd. (BSNL), which provides domestic services throughout the rest of India; a 100 percent stake in Bharat Broadband Nigam Limited, which is a special purpose vehicle company set up to establish, manage, and operate the government-funded National Optical Fibre Network; a 100 percent stake in Telecommunications Consultants India Limited, a telecommunications engineering and consulting company; and a 100 percent stake in Indian Telephone Industries Limited, an equipment manufacturer, which in turn holds a 49 percent stake in India Satcom Limited. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was set aside for MTNL and BSNL instead of being allocated through competitive bidding. Although MTNL and BSNL did not pay a preferential price for their spectrum, they received their spectrum well ahead of privately owned firms.

India has amended the licenses required for telecommunications service providers with a view to addressing security concerns posed by telecommunications equipment. These amendments, however, contain provisions of concern to the United States, including: (1) a requirement for telecommunications equipment vendors to test all imported ICT equipment in laboratories in India with several deadline extensions now pushing compliance into mid-2015; (2) a requirement to allow both the telecommunications service provider that contracted with the vendor, as well as Indian government agencies, to inspect the vendor's manufacturing facilities and supply chain and to perform security checks for the duration of the contract to supply equipment to the telecommunications service provider; and (3) a provision imposing on vendors, without the right to appeal and other due process guarantees, strict liability and possible "blacklisting for doing business in the country" if the vendor has taken "inadequate" precautionary security measures. In September 2013, India obtained Common Criteria (CC) "authorizing nation" status for ICT product testing, as a result of which Indian testing will be recognized by other CC countries as long as Indian testing laboratories adhere to specified standards. However, India has not revoked a domestic testing requirement for imported ICT equipment currently scheduled to take effect on April 1, 2015, including from other CC "authorizing nations." Government officials have indicated that they expect to introduce requirements for India-specific domestic testing for foreign telecommunications equipment and other security-sensitive products even if the equipment has been subjected to the internationally accepted CC testing and approved.

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

Distribution Services

India allows foreign ownership up to 100 percent in retailers selling a single brand of product, subject to case-by-case government approval and contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian small and medium sized enterprises (although the government has, in practice, permitted the local-sourcing requirement to be met by purchases from any Indian firm). Foreign investors not willing or able to comply with these requirements are subject to a foreign ownership cap of 51 percent.

India permits up to 51 percent foreign ownership in companies in the multi-brand retail sector, but leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where such FDI is allowed, the policy imposes conditions on entry, including requirements to: invest at least approximately $100 million, of which at least 50 percent must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehouses) within three years of the initial investment; open stores only in cities that have been identified as eligible by the respective state government; and source at least 30 percent of the value of products sold, from "Indian 'small enterprises' which have a total investment in plant [and] machinery not exceeding" $2 million.

FDI in single-brand and multi-brand retail "by means of [electronic] commerce" is explicitly prohibited.

Indian states have periodically challenged the activity of direct selling (the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in the direct selling industry. This central government legislation contains no clear distinction between fraudulent activities such as Ponzi schemes, on the one hand, and legitimate direct-selling operations, on the other hand. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act. In May 2014, the Chief Operating Officer of a direct selling company was arrested by Indian state police for violations under the Prize Chits Act. He was freed on bail after two months; the case remains under adjudication in Indian courts.

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

Education

Foreign suppliers of higher education services interested in establishing a presence in India face a number of barriers, including: a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research.

INVESTMENT BARRIERS

India continues to regulate FDI by sector. The Indian Department of Industrial Policy and Promotion (DIPP) periodically revises FDI policies through consolidated press notes. The most recent revision of the Consolidated FDI Policy was made effective from April 2014, and the next revision is expected to be released in April 2015, though it is not uncommon for DIPP to issue amendments to the Policy throughout the year.

In August 2014, the government of India cleared a proposal to allow 100 percent FDI in railway infrastructure through the automatic route (*i.e.*, without any prior government review). It also raised the FDI cap in the defense sector to 49 percent from 26 percent through the automatic route, and for investments exceeding 49 percent, the Cabinet Committee on Security will review applications on a case-by-case basis. The FDI cap increase in the defense sector, however, was accompanied by a provision stating that foreign investors may not control joint ventures manufacturing defense equipment.

OTHER BARRIERS

In 2010, India issued guidelines for the Jawaharlal Nehru National Solar Mission (JNNSM) which aims to bring 20,000 megawatts (MW) of solar based electricity online by 2022, as well as promote solar module manufacturing in India. In November 2014, Prime Minister Modi raised this target to 100,000 MW. The JNNSM is broken down into three multi-year phases and further divided into batches. Phase-I required all solar photovoltaic (PV) projects to use domestically manufactured solar modules and later expanded this to include solar cells. Furthermore, all solar thermal projects were required to meet a 30 percent local content threshold under both parts of Phase I. Phase-II (2013-2017), Batch I, which was initiated in October 2013, called for 750 MW of Grid Connected Solar, of which half (375 MW) must use domestically produced solar cells and modules. Moreover, under Phase II, Batch 1, this local content requirement (LCR) expanded to cover solar thin film technologies as well, which comprise the majority of the components made in the United States. The other 375 MW is open to any source regardless of origin. State-level projects are not obligated to abide by LCRs. The government of India is offering a number of incentives such as long-term contractually guaranteed rates to project developers who agree to use locally-sourced equipment. In 2013, the U.S. Government filed a WTO complaint (dispute DS456) challenging the LCRs in Phase-I. In February 2014, the U.S. Government expanded the complaint regarding similar LCRs in Phase-II. Consultations on these measures with the government of India failed to address U.S. concerns. In May

2014, the WTO established a panel to hear the U.S. legal challenge against the LCRs under the JNNSM. These proceedings are ongoing.

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 percent and 15 percent, respectively, to 20 percent on both, and increased that export duty to 30 percent in January 2012. In February 2012, India changed the export duty on chromium ore from Rs. 3,000 (approximately $56) per ton to 30 percent *ad valorem*, an increase at current chromium ore price levels. In recent years certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. India's export duties affect international markets for raw materials used in steel production.

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