INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $10.3 billion in 2010, up $5.6 billion from 2009. U.S. goods exports in 2010 were $19.2 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from India were $29.5 billion, up 39.5 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were $9.9 billion in 2009 (latest data available), and U.S. imports were $12.4 billion. Sales of services in India by majority U.S.- owned affiliates were $9.3 billion in 2008 (latest data available), while sales of services in the United States by majority India-owned firms were $6.4 billion.

The stock of U.S. foreign direct investment (FDI) in India was $18.6 billion in 2009 (latest data available), up from $16.6 billion in 2008. U.S. FDI in India is led by the information, manufacturing, banking, and professional, scientific, and technical services sectors.

IMPORT POLICIES

U.S. exporters continue to encounter tariff and non-tariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts. The United States has actively sought bilateral and multilateral opportunities to open India's market. The USTR and India's Minister of Commerce and Industry chair the United States – India Trade Policy Forum, which meets regularly – including through its five Focus Groups on Agriculture, Innovation and Creativity (*i.e.*, intellectual property rights), Investment, Services, and Tariff and Non-Tariff Barriers – to discuss the full range of bilateral trade and investment issues outlined in this chapter. Other bilateral dialogues, such as the Information Communication Technology Working Group and the Commercial Dialogue, also work to increase U.S. exports by resolving practical issues that affect doing business in India.

Tariffs and other Charges on Imports

India's tariff structure of general application is composed of a basic customs duty (known as the "peak customs duty" even though many rates are higher), an "additional duty" (also referred to as a "countervailing duty"), and an "extra additional duty" (also referred to as the "special additional duty"). The additional duty, which is applied to all imports except for wine, spirits, or other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties (CENVAT) imposed on similar domestic products. The extra additional duty is a 4 percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The extra additional duty is calculated on top of the basic customs duty and additional duty.

While India publishes applied tariff and other customs duty rates applicable to imports, to determine the applicable applied tariff or other customs duty rate, importers must cross-reference separate customs and excise tax 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). This system lacks transparency and imposes significant burdens on importers. Working with a private publisher, the Ministry of Finance has implemented a subscription-based online (http://www.custadaindia.com/) and CD database of tariff rates and non-tariff measures.

India's tariff regime is also characterized by pronounced disparities in bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) versus the actual rates charged (the MFN applied rate). According to the WTO, India's average bound tariff rate was 48.6 percent, while its simple MFN average applied tariff for 2009 was 12.9 percent across all goods (World Bank data puts the FY2009-2010 applied rate at 14 percent). Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. While India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate.

India steadily reduced MFN applied tariffs on non-agricultural goods, including a reduction in the government-stipulated basic customs duty on most industrial products to 10 percent in FY2007-08. Despite the explicit goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately 5 percent on average), India has not reduced the basic customs duty in the past three 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 for new products, 100 percent for used products), coffee (100 percent), poultry (30-100 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent).

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 114.2 percent. While many Indian applied tariff rates are lower (averaging 32 percent on agricultural goods in 2009), they still represent 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). Goods such as almonds remain subject to high specific duties instead of *ad valorem* rates. The large gap between bound and applied tariffs in the agriculture sector allows India to use tariff policy frequently to adjust the level of protection in the market, creating uncertainty for traders. For example, in April 2008, in an effort to curb inflation, India reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent. However, in November 2008, India raised crude soy oil duties back to 20 percent and then reduced them again to zero in March 2009.

In order to boost domestic manufacturing, India had taken steps to reduce and simplify the general rate of central excise duty for domestic products (CENVAT), reducing the corresponding "additional duties" paid on imported products. For example, in 2009, as part of an economic stimulus package, India cut the excise duty on most products from 10 percent to 8 percent. Later that year, India implemented dual excise rates of 4 percent and 8 percent *ad valorem*, which actually doubled the 4-percent duty rate on several items (*e.g.*, manmade textiles, ceramic tiles, plywood, wood products, writing ink, zip fasteners, and MP3/MP4 players). The FY 2009-2010 budget, however, reversed the stimulus cut in the general excise duty and set it back to 10 percent, where it remains.

In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the additional duty on alcoholic beverages, India issued a customs notification exempting alcoholic beverages from the additional duty. (Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* and in some cases higher specific duties.) Simultaneously, India raised the basic customs duty on wine from 100 percent to 150 percent. The basic customs duty on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the additional duty, it announced it was doing so *in lieu* of applying state-level excise duties on wine and spirits. These state-level taxes can result in imported wine and spirits being taxed at a higher rate than like domestic products.

Imports also are subject to state-level value added or sales taxes and the Central Sales Tax as well as various local taxes and charges. In September 2007, India 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. India announced its intention to implement a national goods and services tax (GST) by 2011 that would replace most indirect taxes, including various charges on imports. Implementation of a national GST, however, will first require amending the Indian Constitution.

Import Licensing

India maintains a "negative list" of imported products subject to various forms of non-tariff 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.*, petroleum products and some pharmaceuticals) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity. India, however, often fails to observe customary transparency requirements such as publication of this information in the Official Gazette or notification to WTO Committees, which can, in practice, act as a barrier to trade.

India allows imports of second-hand capital goods by the end users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement. India has required import licenses for all remanufactured goods since 2006. India's official Foreign Trade Policy, last issued in August 2010, treats remanufactured goods the same as second-hand products and provides no criteria for different levels of transformation that would distinguish remanufactured, refurbished, reconditioned, and second-hand goods. As with licensing requirements on other products, U.S. industry representatives report that the requirement is onerous as implemented: the license application requires excessive details; quantity limitations are set on specific part numbers; the delay between application and grant of the license is long and creates uncertainty; and in some cases industry representatives report that they have been unable to obtain a license.

Since 2005, India has subjected imported boric acid to stringent requirements, including arbitrary quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from the Ministry of Agriculture. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users.

Customs Procedures

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

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent and lengthy processing delays. In large part this is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures and other initiatives.

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

GOVERNMENT PROCUREMENT

Government procurement in India is decentralized, and all state (sub-central) and public sector agencies have their own procurement organizations. Different procurement practices are applied at the central (federal) level, at the state level, and by public sector agencies and enterprises. At the central level, procurement is regulated through executive directives and administered by individual government agencies. The Ministry of Finance's General Financial Rules (GFR) sets out central government general rules and procedures for financial management, procurement of goods and services, and contract management. The GFR includes a Manual on Policies and Procedures for Purchase of Goods. A number of instructions issued by the Central Vigilance Commission (the Indian government's oversight body for government employees) supplement these regulations. Individual government agencies also sometimes issue more detailed instructions and their own handbooks, model forms, and model contracts.

India does not have an authority responsible for overseeing compliance with the procurement procedures. However, a central purchasing agency, the Directorate General of Supplies and Disposal, along with state-level central purchasing organizations, enter contracts with registered suppliers for goods and standard items in conformity with the GFR. Sector-specific procurement policies apply in certain areas, such as defense procurement. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above Rs. 300 crores ($67 million) in Indian produced parts, equipment, or services. These offset requirements are often so onerous that they dissuade foreign companies from bidding. In addition, it is not uncommon for the Defense Ministry to request significant changes to previously accepted offset proposals. India has indicated that it is preparing to broaden the areas of acceptable offsets but a new policy has not been announced.

India's government procurement practices and procedures are often not transparent. Foreign firms also rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises and the prevalence of such enterprises. Similarly, the 2006 Micro, Small and Medium Enterprise (MSME) Act authorizes the government to provide procurement preferences to MSMEs. India requires purchase of certain items from MSMEs, but this list has been gradually reduced from a peak of 800 items in the late 1990s to just 21 specific goods and services (*e.g.*, pickles/chutneys, bread, wood furniture, wax candles, safety matches, fireworks). India provides similar preferences to government-registered "small scale industry units" for certain products.

India is not a signatory to the WTO Agreement on Government Procurement (GPA) but became an observer to the WTO Committee on Government Procurement in February 2010. India is currently undertaking internal consultations on potential GPA membership and the formulation of a new regulatory framework for government procurement practices.

EXPORT SUBSIDIES

India's tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for export-oriented enterprises and exporters in Special Economic Zones (SEZs). In addition to these programs, India continues to maintain several other export subsidy programs, including duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. India's textile industry enjoys subsidies through various modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. Numerous other sectors, including paper, rubber, toys, leather goods, and wood products receive subsidies tied to export performance. After several consecutive years of not submitting a subsidies notification, India has recently submitted two notifications to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee), both of which notify only one central government program of preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones covering the 2003-2009 time period. These notifications were substantially incomplete, as they failed to notify several well-known subsidies programs in India.

The United States submitted a formal request to the SCM Committee in February 2010 requesting a calculation of the export competitiveness of Indian textile and apparel products. The resulting calculation, published in March 2010, indicated that, with respect to textile and apparel products, India had met the definition of "export competitiveness" set out in Article 27.6 of the SCM Agreement. As a result, India must phase out export subsidies for those products over a period of two years, in accordance with the SCM Agreement. Since the calculation, India has announced some reductions in duty drawback rates for textile products. However, India continues to offer subsidies to the textiles and apparel sector designed to promote exports, and has even extended or expanded such programs.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

India was listed on the Priority Watch List in the 2010 Special 301 Report. Key concerns include weak protection and enforcement of intellectual property rights. Although India continues to take potentially positive steps towards establishing a more comprehensive and stable legal framework for the recognition and protection of IPR, India needs to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents. India also needs to provide effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products.

India has not yet enacted legislation to implement the provisions of the WIPO Internet Treaties. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. While India continues to consider optical disc legislation to combat optical disc piracy, it has not taken steps to introduce such legislation. In addition, India's criminal IPR enforcement regime remains weak. More police action against those engaged in manufacturing, distributing, or selling pirated and counterfeited goods as well as expeditious judicial dispositions for criminal IPR infringement actions and imposition of deterrent-level sentences, is needed.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms play a preponderant to exclusive role in some of the fastest growing areas of the services sector, including information technology, advertising, car rental, and business consulting. While India has submitted offers for improved services commitments in the WTO Doha Round, these offers do not remove existing limitations or promise new liberalization in key sectors such as telecommunications, financial services, and the legal services sector.

Insurance

India first opened its insurance sector to foreign participation in 1999, and foreign equity is currently limited to 26 percent of paid-up capital. India introduced legislation in late 2008 to allow foreign equity participation to increase to 49 percent and also allow for entry of foreign re-insurers. In 2009, the Insurance Laws (Amendment) Bill went to the Standing Committee on Finance for evaluation where it continues to await re-introduction in the Parliament. As with other sectors being considered by the government for greater FDI liberalization, opposition party lawmakers are concerned that passing the Insurance Bill will result in foreign companies' holdings increasing significantly. As lawmakers consider increasing foreign investment in the sector, many existing investors are approaching ten years of doing business in India. Under current regulations, at the ten-year mark, the foreign partner is required to divest its equity stake down to 26 percent. While the Insurance Regulatory and Development Authority said it plans to publish a clarification of these regulations, foreign investors continue to operate in an extremely uncertain business environment.

Banking

Although India allows privately-held banks to operate in the country, most Indian banks are government-owned and entry of foreign banks is highly regulated. State-owned banks account for roughly 72 percent of the assets and 86 percent of all bank branches in the banking system, although private banks are growing rapidly. Foreign banks may operate in India in one of three forms: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank.

As of September 2010, there were 34 foreign banks with 315 branch offices operating in India under RBI approval, including four U.S. banks with a total of 52 branches. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion. Between April 2009 and March 2010 (latest data available), India granted six new foreign branch office licenses.

The Ministry of Finance has conveyed its preference that foreign banks convert their presence into wholly-owned subsidiaries. In the past, foreign banks have not opened wholly-owned subsidiaries because of RBI caps on ownership: Foreign banks are not authorized to own more than 5 percent of on-balance sheet assets of an Indian private bank without approval of the RBI, while individual investors, including foreign investors, cannot own more than 10 percent of any private bank. Total foreign ownership from all sources (FDI, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent. In addition, voting rights are capped at 10 percent. Implementation of the roadmap the RBI developed in 2005 to allow national treatment of foreign banks in India continues to be stalled. The Ministry of Finance and RBI are exploring the feasibility of lifting this indefinite hold on implementation of the roadmap.

Audiovisual and Communications Services

Although India has removed most barriers to the import of motion pictures, U.S. companies continue to experience difficulty importing film and video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions. The industry also has experienced difficulty importing digital masters of films loaded on electronic medium as opposed to those imported on cinematographic film, owing to a different customs duty structure. In its FY 2010-2011 Annual Budget, India rationalized this by charging a customs duty only on the value of the carrier medium. The same treatment also applies to music and gaming software imported for distribution. In all such cases, the value representing the transfer of intellectual property rights is subject to a service tax.

U.S. companies continue to face difficulties with India's 2005 "Downlink Policy." This policy applies to international content providers that down-link programming from a satellite into India, and requires that they establish a registered office in India or designate a local agent. India reportedly implemented this rule to ensure greater oversight over programming content. However, U.S. companies note that most other countries (including the United States) do not require a license to down-link programming, and that India can control content through its licensed entities (such as cable companies or "Direct to Home" providers). Companies claim that this policy is overly burdensome and should be amended to avoid the resulting taxable presence in India. However, India claims that most companies have now established registered offices there and have complied with the requirements. Thus, India currently is not considering any amendments to the "Downlink Policy."

Accounting

Foreign accounting firms encounter several hurdles to entering the Indian accounting services sector. Before an accountant can practice in India, the accountant must become a member of the Institute of Chartered Accountants of India (ICAI), which requires taking ICAI courses, undergoing practical training at an ICAI accredited organization, and passing an examination. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign-licensed accountants may not be equity partners in an Indian accounting firm. India's Limited Liability Partnership (LLP) Act of 2008 took effect on March 31, 2009, but has not yet been effective in facilitating foreign participation in LLPs.

Foreign accounting firms are also concerned with proposed Indian Companies Act amendments currently with the Parliamentary Finance Committee. If passed, these amendments would require a mandatory audit firm rotation and increase third party liability, changes that foreign firms fear would disrupt business continuity and represent a departure from the practices employed by most G20 countries.

Legal Services

Foreign law firms are not authorized to open offices in India. Foreign legal service providers may be engaged as consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. The Bar Council of India (BCI) is the legal governing body in India. Membership in BCI is mandatory to practice law in India but is limited to Indian citizens.

Recent lawsuits have asked Indian courts to interpret ambiguous provisions of the Advocates Act to limit the ability of foreign attorneys to provide any type of legal services, including not only oral arguments in court, but also drafting advice and counseling on matters of foreign (*i.e.*, non-Indian) law. The Bombay High Court decided in 2009 that such legal advisory activities in India fell under the Advocates Act, and were therefore restricted to Indian lawyers, but urged the government to amend the law. In 2010 the Association of Indian Lawyers filed a similar challenge against 31 foreign law firms, the BCI, and the Ministry of External Affairs in the Madras High Court, which has repeatedly delayed a decision.

Telecommunications

Despite India's positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India's limited multilateral commitments in basic and value-added telecommunications services. In addition, many pro-competition recommendations of the independent telecommunications regulatory agency (Telecommunications Regulatory Authority of India - TRAI) have been delayed or rejected by the Department of Telecommunications (DoT) without adequate explanation. A major scandal surrounding the allocation of 2G spectrum erupted in November 2010, based on allegations of extensive government corruption at the Ministry of Communications and Information and Technology (MCIT), and caused uncertainty for foreign and domestic companies alike.

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

India maintains limits on FDI and foreign indirect (portfolio) investment in cable networks (49 percent), satellite uplinking (49 percent), "direct-to-home" (DTH) broadcasting (49 percent with FDI limited to 20 percent), and the uplinking of news and current affairs television channels (26 percent). In August 2009, the TRAI recommended to the DoT that FDI for cable networks, DTH, and satellite uplinking should be increased to 74 percent. This recommendation has not yet been implemented.

India issued a series of new requirements for telecommunications service providers (TSP) and equipment vendors in December 2009, March 2010, and July 2010, allegedly in order to maintain the security of its commercial telecommunications networks. The requirements apply to the purchase of imported products and do not apply to products manufactured or developed in India by Indian-owned or -controlled manufacturers. Issued in the form of amendments to telecommunications service licenses, the new regulations imposed an inflexible and unworkable security approval process, mandating the forced transfer of technology to Indian companies, the escrowing of source code, and assurances against malware and spyware during the entire use of the equipment. The United States has emphasized to India that these measures effectively halted billions of dollars worth of trade in telecommunications equipment and were unlikely to advance India's security objectives. Recognizing these concerns, India has suspended implementation of several of these requirements while it works to revise the policies in consultation with relevant stakeholders.

India struggled for over a year to formalize its policies for the allocation of wireless spectrum to serve its rapidly expanding and lucrative wireless telecommunications industry. After several postponements, India conducted long-awaited 3G spectrum and Broadband Wireless Access auctions in May – June 2010 amidst intense competition. The 3G auctions were held for a total of 71 blocks in 22 telecommunications circles of 2X5MHz spectrum in the 2.1GHz band. The auctions raised $23 billion in revenue, which nearly doubled initial expectations. The high 3G spectrum prices are attributed to uncertainty over 2G spectrum policy, the availability of fewer slots per circle, and the limited spectrum available for auction. However, the prices are likely to make 3G services expensive for consumers, which is contrary to the Indian objective of providing affordable broadband services to rural India. India initially announced that spectrum would be made available to the winning bidders by September 2010, but to date, the winners are still awaiting the release of spectrum previously allocated to the Indian defense services.

The government of India continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was allocated and set aside for MTNL and BSNL and not subject to competitive bidding. BSNL and MTNL paid the final bid price of the 3G auction, but they received 3G spectrum well ahead of private players.

India does not allow companies to provide Internet telephony over networks connected to the publicly switched telecommunications network unless they obtain a telecommunications license. U.S. industry views this requirement as overly burdensome for companies interested only in providing Internet telephony. Following a public consultation process initiated in May 2008, TRAI forwarded recommendations to the DoT in August 2008, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. In December 2010, the DoT rejected TRAI's recommendations.

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

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

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006, India began allowing FDI in single-brand retail stores, subject to a foreign equity cap of 51 percent and government approval and 100 percent foreign equity with automatic approval in cash and carry (wholesale). FDI in multi-brand retail outlets is not permitted. India in July 2010 invited public comment on a discussion paper on liberalization of FDI in multi-brand retail, receiving extensive comments. On October 25, 2010, India convened an inter-ministerial committee to make a final decision on this matter with several Indian officials making positive statements in favor of some liberalization. However, India has not yet announced a decision, and has declined numerous requests from stakeholders and trading partners to provide an indication of the processes and notional timelines involved in reaching such a decision.

India has periodically interpreted the activities of direct selling companies as violating the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, causing uncertainty. Industry groups would like to see the Department of Industrial Policy and Promotion issue a press note establishing the definition of direct selling and clarifying any ambiguity, including ambiguity related to commissions earned in connection with the sale of products. Allegedly arbitrary legal actions (including raids and seizures of property) were taken in 2006 against a U.S. direct selling company operating in India with Foreign Investment Promotion Board (FIPB) approval. The case remains with the courts and could go to trial at any time.

Postal and Express Delivery

India's Department of Post supports amending the 1898 Post Office Act. An amendment introduced in 2006 included several provisions with potentially negative effects for private express delivery companies, such as: a provision requiring private delivery service suppliers to contribute to financing the postal operator's universal service obligation; expansion of the postal monopoly to cover all "letters" up to 300 grams; and new limitations on foreign investment in private delivery services, including express delivery, which might force foreign-owned express delivery companies to divest from their current levels of investment in India. The proposed legislation was officially withdrawn in January 2009 due to opposition from many stakeholders, including courier services companies. In mid-2009, the Indian Post Office requested that the Administrative Staff College of India (ASCI), based in Hyderabad, prepare input for another comprehensive postal bill to replace the India Postal Act of 1898. Responding to a request from industry, ACSI met with Express Industry Council of India members in December 2009 in Mumbai to hear their views. ASCI submitted its draft recommendations to the Department of Post in May 2010, and the Department of Post is currently drafting a new bill. The United States continues to urge India to ensure that any new version of the postal bill is drafted in a transparent fashion, in full consultation with stakeholders, and draws on global best practices, including the promotion of free competition and a level playing field for foreign express delivery and other courier services suppliers

Education

Foreign providers of higher education services interested in establishing in India face a number of market access barriers, including a requirement that representatives of states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. A draft Foreign Education Providers Bill may address some of these issues, but it remains under review by Parliament.

INVESTMENT BARRIERS

Equity Restrictions

India continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trade, railways, and real estate. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed, though investment in some sectors still requires government approval. The Ministry of Commerce and Industry, seeking to liberalize FDI within pre-existing caps, issued new guidelines (Press Notes) in February 2009, which provided that if a company with foreign investment were majority-owned or controlled by resident Indians, then it could conduct "downstream" investment within sectoral caps. Such downstream investments previously had been constrained by the initial investment in the joint venture. However, the new guidelines caused some confusion regarding downstream investments. A subsequent press note failed to clarify the extent to which foreign participation is allowed in downstream investments, which continues to be unclear.

The Department of Industrial Policy and Promotion (DIPP), within the Ministry of Commerce and Industry, issued a consolidated FDI policy in April 2010 with the intention of issuing a revised policy every six months. The first revision was released in October 2010, and DIPP has requested public comment in advance of the next revision. Although DIPP had previously published plain-language FDI manuals for potential foreign investors, to date it has not published such a manual that reflects the consolidated FDI policy.

India's stringent and nontransparent regulations and procedures governing local shareholding inhibit inbound investment and increase risk to new entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, which are permissible in principle, face regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have further undermined incentives for foreign investors to increase their equity holdings in India.

Investment Disputes

India's poor track record in honoring and enforcing agreements with U.S. investors in the energy sector has improved in recent years. The central government, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has sought to have India's states engage with investors in an effort to settle commercial disputes. The United States continues to emphasize that in order for India to be viewed as 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. India's over-20 million legal case backlog countrywide (according to a 2008 UN Development Program report) reflects the frequent delay of legal proceedings in India.

ANTICOMPETITIVE PRACTICES

Historically, Indian firms faced few, if any, disincentives to engage in anticompetitive business practices. However, in 2002, the Indian Government enacted the Competition Act, which created the Competition Commission of India (CCI). The CCI began taking on cases in 2009, after delays caused by litigation and legislative amendments. It is in the process of becoming fully staffed. In March 2011, the Government of India announced that the merger provisions of the Act would come into force on June 1, 2011, and also clarified certain aspects of those provisions. At the same time, CCI issued revised draft merger regulations providing more details on how merger reviews will be handled by the agency. The United States continues to work with India to assist the CCI in its efforts to implement the Act, including these merger provisions, in a manner consistent with international best practices.

OTHER BARRIERS

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

India issued new guidelines in July 2010 as part of the Jawaharlal Nehru National Solar Mission, requiring that eligible projects source certain materials from domestic manufacturers. Future phases of the policy are expected to implement broader local content requirements. These restrictions prevent U.S. exports of certain solar power equipment to India and impede India's access to the high quality materials necessary for its solar projects to obtain financing and meet India's renewable energy objectives.

Potential challenges to making defense sales include the lack of a signed Communication Interoperability and Security Memorandum of Agreement (CISMOA) and a Basic Exchange and Cooperation Agreement (BECA) between the United States and India. A signed CISMOA would provide the framework necessary to ensure that sensitive communication encryption capabilities are adequately protected, and would act as the first step toward making some of the most advanced U.S. communication and jam resistant navigation technologies available to India. A signed BECA would provide a structure for exchange of geospatial data used in sophisticated navigation and cockpit display systems.

In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore and its concentrates but revised the tax to 5 percent in December 2008. In December 2009, India raised this export tax rate to 10 percent, leaving the export duty on iron ore fines at 5 percent. India then increased the export tax on iron ore lumps to 15 percent in April 2010. In July 2010, the Indian state of Karnataka banned the export of iron ore from the state. Exporters have challenged this ban, and as of January 2011, the case is before the

Supreme Court of India. Officials from the state of Orissa indicated in January 2011that they intend to adopt an iron ore export ban as well. Such restrictions affect international markets for raw materials used in steel production. India also requires that exports of high grade iron ore (greater than 64 percent iron content) pass through state trading enterprises, with the state-owned Minerals and Metals Trading Company acting as a clearinghouse. In 2010 India became the world's sixth largest steel producing economy, and it appears the Indian government is using these measures to improve supply and lower prices of inputs used by India's rapidly growing steel industry.

India has adopted similar measures that appear designed to preserve the availability of affordable inputs for its textile and apparel sector. Since April 2010, India has maintained quantitative export restrictions (of 5 million to 5.5 million bales) and export duties (of Rs. 2500 per ton, subsequently increased by a 3 percent *ad valorem* duty) on cotton. At the same time, India established an export quota of 720,000 metric tons on cotton yarn. These measures not only serve to support the Indian domestic textile and apparel sector, but because India is the world's second largest exporter of cotton, they have also contributed significantly to the dramatically increasing world price of cotton and the consequent rise in costs of production for other countries' textile and apparel producers.