INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $10.8 billion in 2005, an increase of $1.4 billion from $9.5 billion in 2004. U.S. goods exports in 2005 were $8.0 billion, up 30.3 percent from the previous year. Corresponding U.S. imports from India were $18.8 billion, up 20.8 percent. India is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $4.6 billion in 2004 (latest data available), and U.S. imports were $2.8 billion. Sales of services in India by majority U.S.-owned affiliates were $1.2 billion in 2003 (latest data available), while sales of services in the United States by majority India-owned firms were $892 million.

The stock of U.S. foreign direct investment (FDI) in India in 2004 was $6.2 billion, up from $4.8 billion in 2003. U.S. FDI in India is concentrated largely in the manufacturing, mining, and banking sectors.

IMPORT POLICIES

India's tariffs remain high, especially in the agricultural sector. U.S. producers encounter tariff and non-tariff barriers that impede their exports, despite the government of India's (GOI) economic reform program initiated in 1991. While U.S. exports continued to grow in 2005, substantial expansion in U.S.-India trade will depend on continued and significant additional Indian liberalization.

The GOI has made substantial progress in restructuring tariffs applied to non-agricultural goods. In February 2005, the GOI reduced the peak applied duty on most non-agricultural products from 20 percent to 15 percent. Despite tariff cuts on these goods, the U.S. textile industry continues to have concerns about non-transparent applications of tariffs and taxes. The government applies high tariffs to petrochemicals, automobiles, motorcycles, and finished steel products.

According to WTO records, India's simple average applied tariff rate was 29 percent in 2004. India also reduced applied duties in 2005 on certain selected imports, including: metals, refractories and their inputs, catalysts, specific agriculture items including cloves, oleo pine resin, flowers, cloves, specified plantation machinery, Information Technology Agreement bound items, petroleum products, chemicals and petrochemicals, and capital goods. Reductions to India's generally much higher tariffs on agricultural products, processed foods, beverages, and nutritional supplements continue to be negligible.

The GOI assesses a one percent customs handling fee on all imports in addition to the applied customs duty. The GOI continues to impose a two percent education fund assessment on all sales, both imported and domestic. The education "cess" is a surcharge applied to nearly all direct and indirect taxes. The GOI includes tariffs in calculating the value upon which to assess additional charges.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally in the Doha Development Round. U.S. Trade Representative Rob Portman and his Indian counterpart, Minister of Commerce and Industry Shri Kamal Nath, held the first U.S.-India Trade Policy Forum meeting in November 2005. U.S. Government officials regularly visit India to meet with Indian diplomatic and trade officials, as well as U.S. and Indian private sector representatives, to identify ways to promote greater trade between the United States and India, including a March 2006 meeting to receive recommendations from the U.S.-India CEO Forum. As part of the United States-India Economic Dialogue, the United States-India Trade Policy Forum is meeting regularly through its focus groups to discuss the full range of bilateral trade and investment issues.

In the World Trade Organization (WTO), India has bound tariffs on 73.8 percent of its tariff lines. The majority of these bindings exceed India's applied rates of duty. In agriculture, India's WTO bound tariffs range from 100 percent to 300 percent, also higher than the applied rates in many product areas.

The Indian government publishes tariffs and additional tax rates applied to imports, but there is no single official publication that includes all information on tariffs, fees, and tax rates on imports. The system lacks transparency. Importers must consult separate tariff and excise tax schedules, as well as any applicable additional public notifications and notices, to determine current tariff and tax rates. The rate at which the customs duty is imposed on the goods depends on the classification of the goods determined under the Customs Tariff. The Customs Tariff is generally aligned with the Harmonized System of Nomenclature (HSN). The rate at which the excise duty is imposed on the goods also depends on the classification of the goods under the Excise Tariff, which is primarily based on the HSN. Each Indian state also levies taxes on interstate commerce, which creates additional confusion.

Import Licensing

Importers of vehicles of any type, face restrictive and trade-distorting import practices. For example, the GOI requires special licenses for importing motorcycles. These licenses are virtually impossible to obtain. Import licenses for motorcycles are granted only to foreign nationals: (1) permanently residing in India; (2) working in India for foreign firms that hold greater than 30 percent equity; or (3) working at embassies located in India. Certain domestic importers are eligible to import vehicles without a license, but only if these imports are offset by exports attributable to the same importer.

India also maintains a negative import list. The negative list is currently divided into three categories: (1) banned or prohibited items (e.g., tallow, fat, and oils of animal origin); (2) restricted items which require a non-automatic import license (e.g., livestock products, certain chemicals); and (3) "canalized" items (e.g., petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity.

India has liberalized many restrictions on the importation of capital goods. The government allows imports of all 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.

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. Under the current system, which the current government says it will revise by April 1, 2006, the GOI sets a maximum retail price that can be charged to farmers for DAP. This price is not adequate to cover the cost of producing or importing DAP. The excess costs for domestic producers and importers were subsidized, at different levels that favored domestic DAP over imports. From July 2004 through June 2005, base rate subsidies were equalized but final subsidy amounts continue to disadvantage imports. The disadvantage has limited regular commercial import transactions.

In addition to this disadvantage, the current system fixes the subsidy on a retrospective basis and in a non-transparent manner, which in turn acts as a further deterrent for importers. The United States continues to press India to end its costly, trade-distorting treatment of DAP.

Customs Procedures

The GOI appears to apply discretionary customs valuation criteria to import transactions. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to obtain further information from India on its valuation methods, and will continue to examine the customs valuation procedures for consistency with India's obligations under the WTO Customs Valuation Agreement.

Indian Customs requires extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part these delays are a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or specific Indian export promotion program.

India continues to maintain a reference price system for soybean oil to address alleged under-invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. When the GOI reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India's 45 percent WTO-bound tariff. The GOI reportedly reviews reference prices every 15 days and adjusts them accordingly. Although the reviews are done periodically, India has not formally defined this procedure, making it non-transparent and unpredictable. Exports of U.S. crude soybean oil to India were negligible in 2003 and 2004 after shipments valued at $25 million were exported in 2002. The U.S. Government continually raises this issue with India, but has not received a response from the Indian government that clarifies its policy and the reference price scheme's relationship to India's WTO commitments.

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

STANDARDS, TESTING, LABELING AND CERTIFICATION

The GOI has identified 109 specific commodities (including food preservatives and additives, milk powder, infant milk foods, certain types of cement, household and similar electrical appliances, gas cylinders, and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. A system now exists by which foreign companies can receive automatic certification for products made outside India, provided BIS has first inspected and licensed the production facility (at the manufacturers expense). Licensing fees include the cost of the initial inspector's visit and tests, an annual fee of approximately $2,000 and a marking fee that ranges from 0.2 percent to 1 percent of the value of certified goods imported into or produced in India.

In 2004, Indian Customs began to require registration or an exemption certificate for imported boric acid. The Ministry of Agriculture's Central Insecticides Board and Registration Committee has not published criteria and procedures for obtaining this documentation. Imports of boric acid are, therefore, effectively blocked. Indian government rulemaking has been *ad hoc* and confusing. India may be the only country that requires registration of boric acid intended for non-insecticide use. U.S. industry is required to register, although it asserts that 90 percent of all boric acid imports into India are for non-insecticide uses and should qualify for an exemption. India's boric acid producers are not, according to U.S. industry, subject to the same constraints. The U.S. Government has raised this issue with the GOI on numerous occasions in 2005, but India has taken no action to address the concerns.

The U.S. Government is increasingly concerned over India's failure to notify certain technical regulations to the WTO. India's procedures for establishing vehicle emissions standards are vague and non-transparent. The emissions standards seem to favor small displacement four-stroke motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers fails to meet India's requirements.

India is also in the process of developing new technical regulations, which will affect medical device trade. While the U.S. fully supports India's legitimate efforts to protect human health and safety, such measures should be based on international standards as much as possible, be developed transparently, and not have the effect of creating unnecessary trade barriers or in any way precluding patient access from life-saving technologies. In September 2005, as part of the U.S.-India Commercial Dialogue, officials of the U.S. and Indian Governments initiated a Standards Dialogue Working Group to seek transparency and understanding of how standards impact upon our bilateral commerce. Three sessions of the dialogue were held in 2005, and additional meetings are planned in 2006.

Sanitary and Phytosanitary (SPS) Measures

The U.S. Government has risen with India concerns regarding India's failure to notify certain SPS measures to the WTO. Bilateral technical level discussions are ongoing and have resulted in short-term agreements to allow continued entry for important U.S. export commodities, such as almonds. The U.S. government continues to impress upon India the need to base its SPS measures on science, including those affecting almonds, apples, bovine semen, dairy products, pulses, poultry, pet food, and forest products. The United States will continue to seek a long-term solution regarding almonds and pulses, and other outstanding SPS issues.

GOI implementation of the "Plant Quarantine (Regulation of Import into India) Order, 2003" and its amendments, prior to notifying them to the WTO SPS Committee, jeopardized Indian imports of U.S. almonds, pulses, fresh fruits and vegetables, among others. Furthermore, new requirements affecting Solid Wood Packaging Material (SWPM), as initially drafted, threatened to adversely impact U.S. exports of nonagricultural products.

Bilateral discussions led the Indian Ministry of Agriculture to: (a) amend its quarantine requirements for wood packaging materials to make them compatible with international standards; and (b) allow U.S. apples and pears to retain market entry also in accordance with international standards. The market access problems were thereby resolved.

The Indian government has implemented several sanitary restrictions that do not appear to coincide with the Office of International Epizootics (OIE) and CODEX recommendations. The OIE and CODEX are the global standard setting bodies for animal health issues and food products, respectively.

Such restrictions have affected Indian imports of poultry and poultry products, pet food, bovine semen, and dairy products. Until February 2004, the Indian pet food market had been a rapidly growing and promising market for U.S. exports. U.S. Government officials resolved this issue in a July 2005 technical meeting in New Delhi, although implementation problems persist.

In the absence of a policy framework for assessing the safety of biotechnology commodities and foods, the GOI decision-making process is slow, non-transparent and arbitrary. Meanwhile, Indian researchers themselves are engaged in the domestic development of agricultural products derived from biotechnology such as mustard seed, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice. They, too, have expressed frustrations regarding the approval process. The GOI reports that it is currently reviewing its policy for evaluating the safety of foods made using biotechnology.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. Indian government procurement practices and procedures are non-transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to state-owned enterprises in the award of government contracts and the prevalence of such enterprises. The Purchase Preference Policy (PPP) in government enterprises and government departments gives preference to any government enterprise that makes an offer that is within 10 percent of the lowest bid. The GOI renewed this policy for three years, until March 31, 2008, with some modifications.

EXPORT SUBSIDIES

The tax exemption for profits from export earnings was phased out over a five-year period that ended on March 31, 2005. Tax holidays continue for Export Oriented Units and exporters in Special Economic Zones.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

India expanded patent coverage effective January 1, 2005. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2005 Special 301 review.

Patents

On December 27, 2004, the GOI issued a Patent Amendment Ordinance just ahead of India's January 1, 2005 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deadline to enact product patent protection for pharmaceuticals and agricultural chemicals. On March 23, 2005, the Indian Parliament completed its action to make permanent the change to India's patent law. The regulations implementing the law as changed by the Ordinance came into effect January 1, 2005.

The new law extends product patent protection to pharmaceuticals and agricultural chemicals. While a positive step, these changes do not address several important weaknesses in India's patent law. For example, the new law does not clarify some ambiguities regarding the scope of patentable inventions. There is also a large backlog in pending patent applications, resulting in long waiting periods for patent approval. The GOI is currently reviewing legislation and implementing regulations to address these deficiencies. The new law also contains ambiguities concerning compulsory licenses and weakened mailbox patents.

Indian law does not provide for adequate protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products. The GOI is currently reviewing a report that will make a recommendation on adopting data protection legislation for submission to Parliament in 2006. Without specific protection against unfair commercial use of clinical test data, companies in India are able to copy certain pharmaceutical products and seek immediate government approval for marketing based on the original developer's data. Recognizing the role that TRIPS-consistent protection plays in fostering innovation and investment, a small but growing domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms, and educational and research institutions, favors changes to improve protection of data.

Copyrights

India’s copyright laws need updating and their enforcement is weak. The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT).

Piracy of copyrighted materials (particularly software, films, popular fiction works and certain textbooks) remains a problem for both U.S. and Indian producers. Pirated semiconductors are sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine whether optical disk legislation is necessary are now underway. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority. The law provides for minimum criminal penalties, including mandatory minimum jail terms. If implemented, U.S. industry believes these penalties could effectively deter piracy.

The establishment of a Copyright Enforcement Advisory Council with responsibility for policy development and coordination, as well as the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws, has not been vigorously pursued. Due to backlogs in the court system and documentary and other procedural requirements, few cases recently have been prosecuted. U.S. and Indian industry report that piracy levels in all sectors remain high.

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated videocassettes, video compact discs (VCDs), or DVDs as source materials. This has had a significant detrimental effect on all motion picture market segments in India – theatrical, home video and television. For instance, pirated videos are available in major cities before their local theatrical release. The proliferation of unregulated cable TV operators has led to pervasive cable piracy.

Noting pockets of positive movement, the United States continues to press for adequate and effective copyright protection.

Trademarks

The Government of India has pledged to upgrade its trademark regime. Upgrades include national treatment for the use of trademarks owned by foreign proprietors, statutory protection of service marks, and clarification of the conditions for the cancellation of a mark due to non-use. Although enforcement is improving, protection of foreign marks in India remains difficult.

The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) can be refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Management Act of 1999 restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

The United States continues to press for adequate and effective protection of trademarks and looks forward to India fulfilling its pledge to upgrade its trademark regime.

Enforcement

India's criminal justice system does not effectively support the protection of intellectual property. India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, remains weak. There have been few reported convictions for copyright infringements resulting from raids, including raids against recidivists. Adjudication of cases is extremely slow. Police action against pirates of motion pictures has improved since 2004. Obstruction of raids, leaks of confidential information, delays in criminal case preparation, and the lack of adequately trained officials have further hampered the criminal enforcement process.

Amendments to the Code of Civil Procedure are being considered that would require civil cases to be completed within one year. These amendments may provide more expeditious disposition of the civil cases brought by U.S. industry in Indian courts.

SERVICES BARRIERS

Indian government entities run many major services industries either partially or entirely. Nevertheless, private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is a growing public awareness of India's potential as a major services exporter and increasing demand for a more open services market. While India has submitted an initial offer to provide further services liberalization in the context of the WTO Doha Development Agenda, the offer does not remove existing restrictions in such key sectors as professional services, telecommunications, and financial services. The United States will continue to press India bilaterally and at the WTO to open its services markets.

Insurance

The Insurance Regulatory and Development Authority (IRDA) law opened India's insurance market to private participation with a limit on foreign equity of 26 percent of paid-up capital. In July 2004, the GOI announced its intention to amend the IRDA law to increase that cap to 49 percent. Intense domestic political debate has delayed action.

Banking

Foreign banks may operate in India through only one of three channels: branches, a wholly-owned subsidiary, or up to 74 percent ownership in a private Indian bank. Most Indian banks are government-owned, and entry of foreign banks remains highly regulated. State-owned banks control 80 percent of the banking system. The Reserve Bank of India has granted operating approval to 25 new foreign banks or bank branches since issuing new guidelines in 1993. As of September 2004, 35 foreign banks with 217 branches were operating in India. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Foreign direct investment (FDI), foreign institutional investment (FII) or portfolio investment and investments by non-resident Indians is being liberalized to 74 percent from 49 percent. At all times, at least 26 percent of the paid up capital of the private sector banks will have to be held by resident Indians. FDI in state-owned banks remains capped at 20 percent. Foreign investor voting rights are capped at 10 percent in private banks and one percent in state-owned banks.

Audiovisual and Communications Services

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

In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the GOI suspended implementation of the Conditional Access System (CAS) for cable television pending review by a regulatory authority.

The CAS would require television subscribers to install set-top-box decoders to view premium channels. By providing tighter regulation of the cable industry as a whole, CAS was expected to help reduce the problem of pirated broadcasts.

The government of India permits foreign direct investment (FDI) of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in "direct-to-home" (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted to have up to 26 percent foreign equity investment. They must also ensure that a dominant Indian partner holds at least 51 percent equity. Operational control of the editorial content must be in Indian hands. The Indian government has also announced restrictive minimum capitalization requirements. In addition, all pay television content providers are required to make their content available to all cable and satellite television system operators; and content providers must give 30-day public notification before cutting off their signals to non-paying system operators.

On November 11, 2005, the Ministry of Information and Broadcasting announced its "Policy Guidelines for Downlinking of Television Channels" – ostensibly to guard against harmful content – that include major new restrictions on foreign pay-TV channels doing business in India. These channels are received through cable TV systems that reach 62 million Indian households mainly in urban areas, and also through direct-to-home satellite services now coming online. These regulations, if left unchanged, will deter future investment by non-Indian broadcasters by imposing new, onerous bureaucratic processes, fees, and litigation expenses; extracting new taxation; threatening revenues from and protection of purchased rights for broadcasting programs; and restricting India-directed content, news, and advertising.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. The Institute of Chartered Accountants of India (ICAI) continues to ban the use of logos of accounting firms. Only firms established as a partnership may provide financial auditing services. Foreign accountants may not be equity partners in an Indian accounting firm.

Construction, Architecture and Engineering

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

Legal Services

The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market. In 2005, the Bar Council of India denied permission to Britain and Australia to allow their law firms to set up practices in India. An American law firm had also approached the Bar Council of India seeking permission to open its branch office in India to render legal services, but its request was similarly denied.

India requires that anyone wishing to practice law must enroll as a member of the Bar Council and if that person happens to be a foreign national then he must belong to a country that allows Indian nationals reciprocal rights to practice in their country. FDI is not permitted in this sector, and international law firms are also not authorized to open offices in India. Foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners.

Telecommunications

India has taken positive steps towards liberalizing, and introducing private investment and competition in, its telecommunications services market. Concerns remain regarding India's weak multilateral commitments in basic telecommunications and the apparent bias of telecommunications policy towards government-owned services providers, in particular, with respect to access to and use of submarine cable systems.

The national telecommunications policy allows private participation in the provision of all types of telecommunications services. Private operators can provide services within regional "circles" that roughly correspond to the borders of India's states. In November 2005, foreign equity limits were raised from 49 percent to 74 percent.

Competitive carriers are concerned about the neutrality and fairness of government policy. The GOI retains a significant ownership stake and interest in the financial health of the dominant telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. The government holds a 26 percent interest in the international carrier, VSNL; a 56 percent interest in MTNL, which primarily serves the Delhi and Mumbai metropolitan areas; and a 100 percent interest in BSNL, which provides domestic services throughout the rest of India. The government has indicated it will privatize MTNL and BSNL in the future, but has not yet established a timetable.

U.S. telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international submarine cable access and landing stations in India, and have requested that the Indian government intervene to ensure that VSNL makes available submarine cable capacity to other suppliers and provides access to and use of cable landing stations on a reasonable and non-discriminatory basis. In mid-2004, VSNL reached agreement with then-U.S.-based Flag Telecom, allowing the latter to sell international bandwidth through a VSNL landing station. However, overall capacity constraints and artificially high prices persist in the market.

The Indian government has put in place new requirements on how international networks are managed in India, which U.S. operators believe seriously impede their ability to do business. In the face of widespread complaints, the Indian government agreed to delay implementation of these rules until July 2006. Whether concerns of U.S. carriers can be addressed in the interim remains unclear. The U.S. Government will continue to work with India to explore how it might regulate the provision of national and international long distance services in a way that will allow U.S. companies to benefit from India's loosening of foreign direct investment limits.

In February 2003, India's telecommunications regulator, TRAI, announced that it would impose a more than 50 percent reduction in its current access deficit charge (ADC) and move towards a revenue-share-based model for long distance calls in place of the existing system where charges are levied in a per minute basis. Concerns remain, however, that the new ADC model will not apply to international calls (i.e., charges will still be levied on a per minute basis) and that U.S operators may not benefit fully from the rate reduction unless Indian firms pass their savings on to the foreign carriers with which they partner. The U.S. Government will monitor this issue.

In November 2005, TRAI took action to lower the cost of International Private Leased Circuits (IPLCs), and in December, issued a set of recommendations on "Measures to Promote Competition in International Private Leased Circuits (IPLC) in India." If adopted, these recommendations would potentially resolve many of the U.S. telecommunications companies' problems in this market.

In addition, on November 10, 2005, the GOI removed several market barriers in India's long distance telecommunications sector, including the following actions:

-- Legalized Internet telephony effective November 10, 2005 – now all types of access service providers can provide Internet telephony, Internet services, and Broadband services.

--- Reduced the entry fee for new Domestic Long Distance (DLD) licenses from $22.22 million to $55,555. Likewise, the annual license fee for DLD licenses will be reduced from 15 percent to 6 percent of adjusted gross revenue (AGR) effective January 1, 2006.

--- Reduced the entry fee for International Long Distance (ILD) from $5.55 million to $55,555.

--- Reduced the annual license fee for ILD licenses from 15 percent to 6 percent of AGR effective January 1, 2006

--- Removed the mandatory roll-out obligations for existing and future DLD and ILD licenses and existing licenses. The one remaining requirement is to have at least one switch in India.

--- Reduced the net worth requirement for DLD & ILD licenses from $12.35 million to $55,555.

--- Removed the mandatory roll out obligation for ILD service licensees.

Distribution Services

The retail sector in India is closed to foreign investment, except for single-brand retail stores, which were opened to up to 51 percent foreign direct investment in January 2006.

U.S. direct selling firms have been misclassified as retail instead of wholesale companies and have also been mischaracterized as illegal pyramid schemes. Current Indian law does not sufficiently differentiate between legitimate direct selling operations and pyramid schemes.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, with certain exceptions. The Indian government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. At the same time, the GOI has liberalized other aspects of foreign investment and eliminated various government approvals. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed. Some sectors still require government approval.

The Indian government's stringent and non-transparent regulations and procedures governing local shareholding cause concern. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. Press Note 18, promulgated in 1998 by the Ministry of Industry, poses major impediments to investment in India by requiring prior approval of the Indian party to a joint venture before the foreign partner can pursue other investment opportunities in India. This provision had been widely abused, holding foreign partners hostage, even for failed joint ventures. In January 2005, the GOI partially lifted Press Note 18 by eliminating its application to all new joint ventures and relaxing the hold local firms have on the future business plans of foreign partners for existing joint ventures. Investment Disputes After years of negotiation, the Government of India persuaded state-owned financial institutions and the State of Maharashtra to reach a settlement with U.S. investors, the Overseas Private Investment Corporation, and other foreign lenders on the investment dispute surrounding the Enron-sponsored Dabhol power project in July 2005. A comprehensive commercial settlement was thereby achieved and litigation between the claimants has ceased. There has been significant progress in resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The GOI, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes.

The United States continues to urge the GOI that to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues.

ANTICOMPETITIVE PRACTICES

India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively. With little or no fear of government action and with a clogged court system where cases linger for years, Indian firms face few if any disincentives to engage in anticompetitive business practices.

OTHER BARRIERS

India has an unpublished 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 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. The exact nature of offsetting exports is unspecified, as is the export destination. The Indian government does try, nonetheless, to eliminate the use of re-exports in countertrade.

India's medicines policy concerns U.S. pharmaceutical companies. While the scope of the rigid government-controlled pricing system has been reduced, final steps to eliminate it have stalled. Some politicians and GOI officials continue to call for expanding price controls as the preferred means to confront inflationary trends. The GOI is currently reviewing proposed legislation that would significantly expand price controls over medicines.

Indian states fail to apply consistently certain national laws and regulations. This creates uncertainty for U.S. companies exporting to, and investing in, India. U.S. companies affected by such inconsistency include: cable television content providers of programming subject to conditional access system rules and distilled spirits producers who face non-uniform state-level taxes despite the national government's directive to harmonize such taxes. In addition, less than universal adoption of a state-level VAT by all Indian states and conflicting regulations continue to hamper the free flow of goods within India.

India's implementation of its antidumping regime has raised concerns in key areas such as transparency and due process. India continued to apply aggressively its antidumping law over the past year. According to WTO statistics, India initiated 13 (third highest among all WTO members) antidumping cases in 2005. In fact, from the second half of 2004 through the first half of 2005, which is the most recent 12-month period for which WTO statistics are available, India imposed 30 final antidumping measures, more than any other WTO Member, and ranked second in the number of initiations.

Of the newly initiated investigations, two of which involved U.S. exports, chemical products were the leading target of investigation. The United States will continue to seek clarification and address concerns both bilaterally and multilaterally. In September 2004, the United States participated in a technical exchange with Indian antidumping administrators to obtain a better understanding of India's trade remedies laws and their compliance with India's WTO obligations.